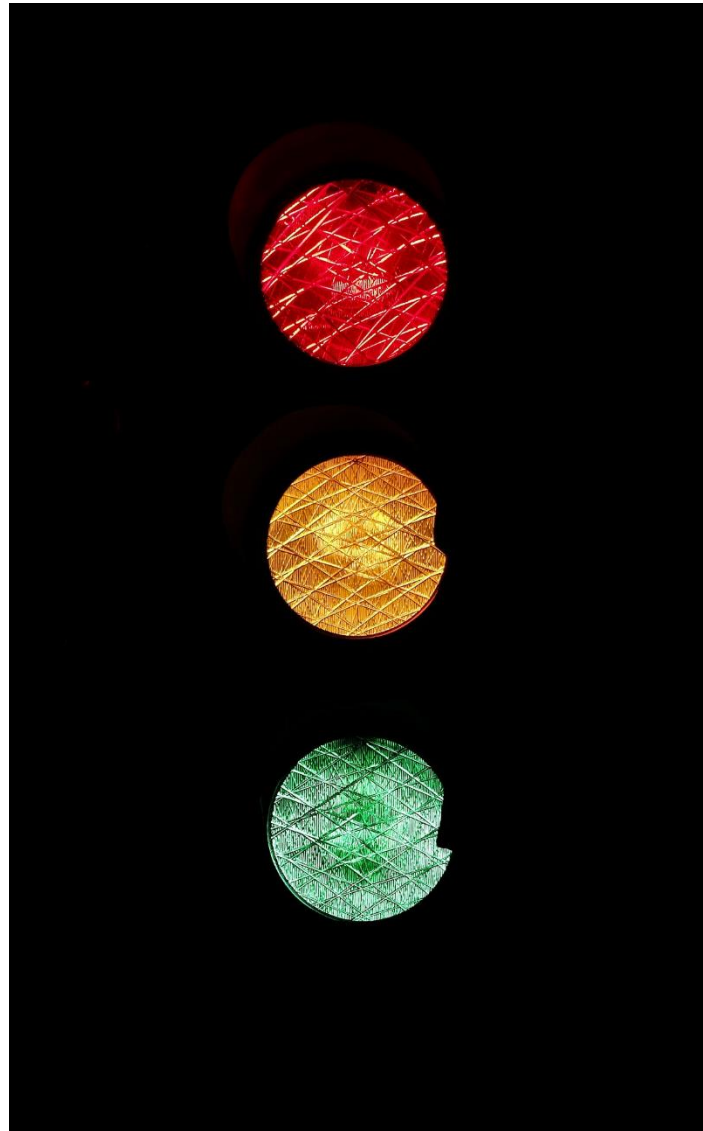

Disciplinary Rules and Procedures

Complaint triage process



19 May 2022

Costs Lawyer Standards Board

CLSB
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Purpose

1. This document sets out the triage process that is used by the CLSB when considering whether a complaint falls within the scope of the CLSB's [Disciplinary Rules and Procedures](#) (DR&P) and deciding what steps to take in handling the complaint during the initial stages.
2. The CLSB has engaged an external consultant, with expertise in professional conduct matters, to provide services from time to time in relation to complaints made about the conduct of Costs Lawyers (the Investigator). That person acts on behalf of the CLSB upon the instruction of the CLSB Executive. Any activities or decisions that are ascribed in this document to the Investigator may be carried out by the Executive; for example, where the Investigator does not have capacity to handle a particular complaint.
3. References to the "Executive" in this document are to any of the following persons, as relevant to the circumstances of the complaint:
 - the CLSB CEO;
 - the Director of Policy or Operations Director (or equivalent) upon delegation from the CEO; or
 - any other person acting pursuant to arrangements set out in the CLSB's Business Continuity and Disaster Recovery Plan.
4. This document should be read together with the other guidance and materials published by the CLSB from time to time in relation to the DR&P. In the event of any inconsistency between this document and the DR&P, the provisions of the DR&P should be followed.

Overarching considerations

Regulatory objectives

5. All of the CLSB's activity must promote the regulatory objectives set out in the Legal Services Act 2007. The objectives that have direct relevance to handling complaints about conduct matters are:

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- Protecting and promoting the public interest
 - Supporting the constitutional principle of the rule of law
 - Protecting and promoting the interests of consumers
 - Encouraging an independent, strong, diverse and effective legal profession
 - Promoting and maintaining adherence to the professional principles

6. The “professional principles” require Costs Lawyers to:

- act with independence and integrity;
- maintain proper standards of work;
- act in the best interests of their clients;
- comply with their duty to the court to act with independence in the interests of justice; and
- keep the affairs of clients confidential.

Breach of a “Principle” under the DR&P

7. Under DR&P 1.2(i), the CLSB is concerned with complaints about Costs Lawyers that give rise to a reason to suspect the Costs Lawyer has been, or is, in breach of a Principle. The DR&P define a Principle as follows:

Any one or more of the seven principles a Costs Lawyer must comply with under the Code of Conduct, namely:

- 1. Act with integrity and professionalism*
- 2. Comply with your duty to the court in the administration of justice*
- 3. Act in the best interests of your client*
- 4. Provide a good quality of work and service to each client*
- 5. Deal with the regulators and Legal Ombudsman in an open and co-operative way*
- 6. Treat everyone with dignity and respect*
- 7. Keep your work on behalf of your client confidential*

The Principles are underpinned by CLSB rules, such as Practising Rules and CPD Rules, contained in the CLSB Handbook. A potential breach of a Principle may therefore

involve breach of a rule and a potential breach of a rule may indicate the breach of a Principle. For this reason, a reference to a Principle in these DR&P includes a reference to any associated CLSB rule.

Triage process

Stage 1: Establishing jurisdiction

8. The steps in the flowchart on page 5 should be carried out by the Operations Director (OD) promptly upon receipt of a complaint from an external source or when a complaint is instigated by the CLSB (for example, following an audit).
9. The OD should consider whether they need to obtain further information – from the complainant, from the Costs Lawyer or from public sources – in order to answer the questions in the flowchart. If so, the OD should request that information promptly, unless this is not appropriate for any reason (such as confidentiality or sensitivity of the complaint). The OD should seek advice from the Executive if they are unsure about gathering information or otherwise need assistance.
10. The OD should never request personal data over and above that which the CLSB requires to fulfil its purpose. Personal data received from complainants, Costs Lawyers and other individuals must be handled in line with the CLSB’s Privacy Policy and Data Protection Manual.
11. When the flowchart below indicates that a complaint should be closed, the OD should explain the reason for this to the complainant, including by reference to any relevant provisions of the DR&P, providing a link to the DR&P on the CLSB website where appropriate.
12. When referring the complainant to another organisation or service, the OD should provide contact details and/or weblinks where possible, to assist the complainant in navigating the regulatory framework.

Stage 1 flowchart

1. Is the complaint about a Costs Lawyer?

→ No

Close complaint. Refer the complainant to any other body that might have jurisdiction. Log any complaints about unregulated costs advisers.

↓ Yes

2. Did the Costs Lawyer hold a practising certificate when the conduct occurred?

→ No

Close complaint.

↓ Yes

3. Did the Costs Lawyer hold a practising certificate when the complaint was made?

→ No

Close complaint.

↓ Yes

4. Is the complainant a litigant or lawyer on the other side of open proceedings involving the Costs Lawyer?

→ Yes

Close complaint. Advise the complainant that conduct issues may be raised with the court. If the court does not deal with the issue, the complaint can be renewed once the proceedings close.

↓ No

5. Does the complaint relate to the Costs Lawyer's professional conduct?

→ No

Close complaint. Refer the complainant to the Legal Ombudsman for purely service-related complaints from clients.

↓ Yes

6. (Where the complainant is a client) Has the complainant exhausted the Costs Lawyer's first tier complaints procedure, or provided a valid reason why they should not be required to do so?

→ No

Close complaint. Advise the complainant to complain under the first tier procedure. If the matter is not resolved satisfactorily within eight weeks, the second tier complaint can be renewed.

↓ Yes

7. (Where the complainant is a client) Does the complaint also relate to the service provided by the Costs Lawyer (e.g. fees, timeliness, quality)?

→ Yes

Refer complainant. Refer the complainant to the Legal Ombudsman, who should consider the complaint in the first instance. CLSB will consider any outstanding conduct issues following the Ombudsman's determination if it has jurisdiction to do so. Ask to be kept informed. (Check with the Executive that they do not consider the complaint to be so serious in nature that it requires the immediate attention of CLSB.)

↓ No

See next page.

8. Was the complaint made in writing?

→ No

Invalid complaint. Advise the complainant to put the complaint in writing. Remind the complainant of any upcoming time-limits.

↓ Yes

9. Does:
(i) the Costs Lawyer work for a firm regulated by the Solicitors Regulatory Authority (SRA); and
(ii) the complaint relate to the conduct of, or implicate, the firm as well as the Costs Lawyer?

→ Yes

Refer complaint. Refer the complaint to the SRA directly or ask the complainant to do so, as appropriate. Ask to be kept informed.

↓ No

10. (Other than where the complainant is the CLSB) Was the complaint made within one calendar year of the date of the conduct, or within one calendar year of the date on which the complainant became aware a breach of a Principle may have occurred?

→ No

Refer complaint to the Executive. The Executive will consider whether DR&P 1.4 applies and thus whether the CLSB should consider the complaint despite the delay.

↓ Yes

Refer complaint to the Executive for consideration under stage 2.

For all complaints about Costs Lawyers, at the end of stage 1, regardless of the outcome:

- Inform the Executive of the answers to each of the above questions.
- Record the complaint and the outcome in the database against the Costs Lawyer's record. (More information may be added subsequently if the complaint proceeds to stage 2.)
- Follow the procedure set out in the CLSB's Supervision Framework for Point of Complaint Monitoring. If a supervisory check reveals potential non-compliance, refer this to the Executive so that it can be dealt with in line with the Supervision Framework.

Stage 2: Confirming jurisdiction and preparing for investigation

13. The steps below should be carried out by the Investigator when a complaint is referred from stage 1, as described above. The Executive will contact the Investigator and convey the details of the complaint and the stage 1 findings. The steps should be carried out in the order shown, unless the circumstances require otherwise.
14. The Investigator should consider whether they need to obtain further information in order to carry out these steps. The factors in paragraphs 9 and 10 above apply equally here.

1. Determine whether there is reason to suspect that the Costs Lawyer is, or has been, in breach of a Principle. If there is not, close the complaint. Provide summary reasons for this determination to the OD, so the OD can communicate the outcome to the complainant.

2. If the complaint is out of time, determine whether the complaint should nevertheless be considered under DR&P 1.4. If not, close the complaint. Provide summary reasons for this determination to the OD, so the OD can communicate the outcome to the complainant. If jurisdiction is taken in reliance on DR&P 1.4, provide a reasoned decision to the Costs Lawyer.

If the complaint has not been closed by this point, then the CLSB has jurisdiction to, and should proceed promptly to, consider the complaint.

3. Consider whether there are grounds for imposing an interim suspension order under DR&P 4. If so, appoint a Lay Person Panel Member to consider the relevant facts and make a recommendation as to whether such an order should be imposed.

4. Check whether the Costs Lawyer is regulated by any other body. If so, inform that body that a complaint has been made about the regulated individual and that the complaint is under consideration by the CLSB.

5. Inform the complainant that the CLSB has taken jurisdiction over the complaint.

- Provide summary reasons for any complex or unusual aspects of the determination that the CLSB has jurisdiction.
 - Explain the intended next steps and note that the CLSB might need further information from the complainant as matters progress.
 - Inform the complainant that they will be told about the outcome of the complaint, but will not be a party to any disciplinary investigation that may be carried out.
 - If relevant, manage the complainant's expectations about the outcome; reiterate that the CLSB may impose disciplinary sanctions but cannot adjudicate disputes or award remedies as between the complainant and the Costs Lawyer.
 - Provide links to web material to aid understanding.
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Wherever possible and appropriate, the CLSB should aim to resolve the complaint through early resolution. An investigation should only be opened where it is genuinely needed.

6. Inform the Costs Lawyer of the complaint and ask for their initial account of events and/or any preliminary information required to determine whether an investigation is warranted. If the Costs Lawyer provides evidence (such as court documents or correspondence) that demonstrates there has been no breach of a Principle, close the complaint and inform the complainant.

7. Where the Costs Lawyer's conduct is capable of being rectified, and it is appropriate to do so, seek a voluntary resolution. For example, if the complaint relates to a Costs Lawyer's failure to provide their complaints procedure to a client, ask the Costs Lawyer to provide the procedure and rectify the misconduct. Explain the proposed resolution to the complainant. If it is acceptable, close the complaint.

8. Where the facts are not contentious and the Costs Lawyer accepts that they have breached a Principle, seek to agree an appropriate disciplinary outcome. This is most likely to be a warning letter or written undertaking, as provided for in DR&P 5.3.1.

Where early resolution is not possible or not appropriate, an investigation should be commenced under DR&P 5. Bear in mind that the investigation should be completed within three months of appointing the Investigator, or within three months of taking jurisdiction where the Executive conducts the investigation.