

GUIDANCE NOTES: PRINCIPLE 3.6

Regulator: Costs Lawyer Standards Board

Effective date: 21 August 2012

These notes aim to offer clarification and guidance for Costs Lawyers holding a current practising certificate on Principle 3.6 of the Costs Lawyer Code of Conduct which reads: ***“you must not accept client money save for disbursements and payment of your proper professional fees”***.

I am a Costs Lawyer, why can I not accept client monies?

By virtue of this principle, the Costs Lawyer profession is deemed by the CLSB board to be lower risk than other legal professions where practitioners handle client monies. If Costs Lawyers were to handle client monies then this would have wide ranging implications across the profession such as audited attendances by the regulator, increased practising certificate fees to cover that cost, one off finance to establish a considerable indemnity fund and annual payments in by Costs Lawyers to maintain that indemnity fund.

What is the definition of “proper professional fees”?

Fees incurred only in relation to the provision of the Costs Lawyer service.

What is the definition of a “disbursement”?

Disbursements are a sum that you spend on behalf of your client including the VAT element. They include but are not limited to:

Disbursement: Court fees, Counsels fees, travel costs, postal costs (if exceptional sum e.g. courier), photocopying cost (if exceptional sum).

Not a disbursement: Hourly rates, telephone calls made or received, faxes made or received, general office overheads.

You must not:

- Charge for items as disbursements when they do not amount to such.
- Increase the amount of a disbursement by adding on an element of fees.

Can I request payment in advance of a disbursement?

Only if you are a Costs Lawyer employed by an SRA regulated firm. If not, then in respect of a Court fee ask your client to provide you with a cheque for that fee made payable directly to the Court. In respect of other disbursements, these can be recovered under an interim billing arrangement with your client.

I have been asked to represent a litigant in person, but the financial risk is too great, how do I approach this?

CLSB is mindful of balancing both consumer protection with Costs Lawyer protection as well as avoiding a situation where a litigant in person cannot find appropriate representation because the financial risk to a Costs Lawyer is too great in taking the instruction. In such circumstances CLSB recommends you agree with the client to interim billing.

Can I receive client monies on account?

I am a Costs Lawyer employed (PAYE) by/am a partner in a firm of Solicitors regulated by the SRA: Yes, in accordance with prevailing SRA rules & regulations.

I am a Costs Lawyer operating as a sole practitioner: No. You may however agree with your client to interim billing for your proper professional fees and disbursements incurred to the date of billing.

I am a Costs Lawyer working for a firm not regulated by an Approved Regulator under the Legal Services Act 2007: No. You may however agree with your client to interim billing for your proper professional fees and disbursements incurred to the date of billing.

Can I receive monies in respect of a Costs Order?

I am a Costs Lawyer employed (PAYE) by/am a partner in a firm of Solicitors regulated by the SRA: Yes, in accordance with prevailing SRA rules and regulations.

I am a Costs Lawyer operating as a sole practitioner: No, as these monies would have to be held in a client account.

I am a Costs Lawyer working for a firm not regulated by an approved Regulator under the Legal Services Act 2007: No, as these monies would have to be held in a client account.