

DISCIPLINARY RULES & PROCEDURES
COSTS LAWYERS

Regulator: Costs Lawyer Standards Board

Effective date: 31 October 2011

Introduction

These rules (“Rules”) were made pursuant to the Legal Services Act 2007 (“LSA”). On the effective date above, the Association of Costs Lawyers (“ACL”) as an Approved Regulator delegated its regulatory function to the Costs Lawyer Standards Board (“CLSB”). These Rules govern the disciplinary procedures to regulate the conduct of Costs Lawyers and replace any other disciplinary rules and procedures issued by the ACL.

Interpretation of terms within these Rules

ACL	The Association of Law Costs Draftsmen, known with effect from 1 January 2011 as the Association of Costs Lawyers
CLSB	Costs Lawyer Standards Board
Costs Lawyer	A person who holds a current Practising Certificate and is therefore authorised to carry on the following reserved legal activities: <ul style="list-style-type: none">• The exercise of a right of audience• The conduct of litigation• The administration of oaths
Complainant	A CLSB concern or a person (natural, legal or commercial) who makes a conduct complaint to CLSB or through the Legal Ombudsman
Complaint Documents	The complaint, as formalised in writing and any documentation submitted or to be used in support of the complaint
Finding	Determination against a Costs Lawyers by the Chief Executive, Conduct Committee or Conduct Appeal Committee following investigation and consideration of the complaint
Lay Person	As defined in Schedule 1 Section 2(4) of the Legal Services Act 2007
Hybrid Complaint	Complaint which has both service and conduct elements to it
Non-Lay Person	A person who is not a Lay Person
Panel Member	Individual appointed by CLSB to be called upon as required to serve on a Conduct Committee or Conduct Appeal Committee.

RULE 1: Jurisdiction

- 1.1 Subject to Rules 1.2 and 1.4 these Rules apply when:
 - (a) a complaint about the conduct of a Costs Lawyer has been referred to CLSB by a Complainant or the Legal Ombudsman; or
 - (b) CLSB has reasonable grounds to consider that its rules and codes have not been complied with by the Costs Lawyer.
- 1.2 To be considered under these Rules, a complaint must be received by CLSB:
 - (a) within a 12 month period from the date on which the matters giving rise to the complaint occurred; or
 - (b) within a 12 month period from the date on which the Complainant first became aware that they had grounds for the complaint; or
 - (c) the Complainant can provide sufficient and justifiable reasons as to why the complaint could not have been brought earlier.
- 1.3 These Rules apply to complaints relating to the conduct of Costs Lawyers only.
- 1.4 These Rules do not apply to complaints about the service provided by a Costs Lawyer, which fall within the jurisdiction of the Legal Ombudsman.
- 1.5 In accordance with a Memorandum of Understanding reached with the Legal Ombudsman, all complaints received by CLSB will first be directed to the Legal Ombudsman for them to evaluate whether it falls within their jurisdiction in whole or part.
- 1.6 In the event the Legal Ombudsman establishes the complaint is one of conduct in whole or part, CLSB will be notified by the Legal Ombudsman.
- 1.7 In the event of a Hybrid Complaint, the CLSB will allow the Legal Ombudsman to conclude the service element of the complaint before CLSB considers the conduct element of the complaint, unless CLSB deems the conduct element of the complaint the more serious in nature.

RULE 2: Administration

- 2.1 CLSB will provide administrative support and other necessary support services to the Conduct Committee and Conduct Appeal Committee, to include:
 - (a) Initiating an investigation into a complaint.
 - (b) Making the necessary administrative arrangements.
 - (c) Preparing the notices and papers.
 - (d) Securing a suitable venue for the hearing or review.
 - (e) Attending to minute any hearing or review.
 - (f) Securing any independent legal or other advice as may be required by the Conduct Committee or Conduct Appeal Committee.
 - (g) Drawing up decision document and orders and sending the same to the Costs Lawyer and Complainant.
 - (h) The publication of decisions in the Costs Lawyer Journal and/or on the CLSB /ACL website.

RULE 3: Investigation (level one)

- 3.1 CLSB may initiate investigation of a Costs Lawyer at any time in the event of circumstances defined under Rule 1.1.
- 3.2 CLSB will use all reasonable endeavours to ensure a complaint is fully investigated within 36 calendar days of receipt of the complaint.
- 3.3 Any investigation will be carried out by the Chief Executive of the CLSB or an appointed investigator who will undertake an investigation in accordance with the following prescribed standards at all times:
 - They will act independently.
 - They will act in the strictest confidence.
 - They will comply with the CLSB Confidentiality & Information Security Policy.
 - They will fully investigate and gather all required evidence to support their recommendation e.g. documents, witness statements.
- 3.4 The Chief Executive or investigator will send a copy of the Complaint Documents to the Costs Lawyer inviting them to provide, within a period of 14 calendar days from the date of the request, brief and concise observations (which may include admissions) in order for the complaint to be fully considered. The Costs Lawyer may seek an extension to this 14 calendar day period by a request in writing to the Chief Executive stating the reasons. Only one extension (not exceeding 14 days) will be permitted.
- 3.5 The investigative report will be in writing in a format prescribed by CLSB and will include detail of the allegation and any relevant facts of evidence. It will include the explanation provided by the Costs Lawyer and will attach such documents as required to support the explanation and findings therein.
- 3.6 The report will conclude with one of the following recommendations:
 - (a) No case to answer.
 - (b) Minor disciplinary finding.
 - (c) Referral to Conduct Committee for consideration.
- 3.7 In reaching the recommendation as set out in 3.6 the investigator will further consider, without limitation:
 - (i) Whether the complaint is minor in nature.
 - (ii) The extent of any prejudice or loss caused or likely to be caused because of that complained of.
 - (iii) Whether the complaint involved the integrity or honesty of the Costs Lawyer.
 - (iv) The Costs Lawyers standard of care and conduct leading up to that complained of.
 - (v) Whether the Costs Lawyers handling of the matter under their first-tier complaints handling procedure was reasonable, and what steps, if any, the Costs Lawyer had taken to terminate or prevent repetition of that complained of.

- (vi) Whether any material harm has been caused to the standing of the Costs Lawyer profession.
 - (vii) The past disciplinary record of the Costs Lawyer.
 - (viii) Whether it is a case which involves a matter of public interest.
- 3.8 The Chief Executive will consider and evaluate any external investigative report to ensure it is thorough and fair. It is at the discretion of the Chief Executive as to whether further investigation is carried out before the recommendation is considered by the Chief Executive and acted upon.
- 3.9 Any Finding at level one will be on the balance of probabilities.
- 3.10 All evidence which is fair and relevant will be admissible.
- 3.11 The Chief Executive will notify both parties in writing of the outcome.

RULE 4: Investigation recommends: No case to answer

- 4.1 In the event the Chief Executive finds or concurs with the investigators recommendation of “no case to answer” the Chief Executive will write to both the Complainant and the Costs Lawyer advising them of that conclusion.
- 4.2 There will be no cost order in such circumstances.

RULE 5: Investigation recommends: Minor disciplinary finding

- 5.1 In the event the Chief Executive finds or concurs with the recommendation of “a minor disciplinary finding” then the Chief Executive may issue one of the following to the Costs Lawyer, with a copy being sent to the Complainant:
- (a) a warning letter, which may also include a request that the cause of the complaint be remedied and evidence provided to CLSB within a defined time period, failing which the matter will be referred by CLSB to the Conduct Committee, and/or;
 - (b) a proposed undertaking to be signed by the Costs Lawyer to effect changes within a defined time period to avoid the complaint arising again.
- 5.2 Any warning letter or undertaking issued will set out in brief the findings of the investigation on which it has been issued.
- 5.3 The warning letter or undertaking will state that should a complaint of the same nature be received within 2 years of its date then the warning letter or undertaking and report on that complaint will be used in evidence when the second complaint is considered.
- 5.4 The Costs Lawyer will be asked to sign their acceptance to the terms of any warning letter or undertaking. CLSB will monitor to ensure accepted terms and undertakings are complied with. In the event the Costs Lawyer does not accept the warning letter or proposed undertaking issued then they may within 10 days of the letter communicating the warning or proposed undertaking appeal to the Conduct Committee in accordance with the appeal Rules set out herein.
- 5.5 A Finding at level one will attract an order for costs in the fixed sum of £250.00 payable within 21 days.

RULE 6: Investigation recommends: Referral to Conduct Committee/appeal against warning letter or undertaking

- 6.1 In the event the Chief Executive concurs with the recommendation of “referral to Conduct Committee” CLSB will convene a Conduct Committee in accordance with Rule 7.
- 6.2 In the event a Costs Lawyer does not accept the Findings at level one then CLSB will convene a Conduct Committee in accordance with Rule 7.
- 6.3 CLSB will disclose the investigative report, information and documentation (provided that CLSB is not prevented for any reason by law) to:
 - The Costs Lawyer or their representatives (if appointed).
 - The Complainant.
 - Anyone else in the public interest.
- 6.4 The Costs Lawyer will provide a written explanation for the basis of the appeal, including any new facts or evidence not originally considered within 14 calendar days from the date the appeal was filed.

RULE 7: Conduct Committee (level two)

- 7.1 The Conduct Committee shall comprise of three members including its chair. It shall be chaired by one of the Lay Person Non-Executive Directors on the CLSB board (not the CLSB board chair). The further two members shall be one Lay Person and one Non-Lay Person drawn from the panel of Conduct Committee Members who have no conflict of interest in the matter.
- 7.2 The Costs Lawyer will be given a minimum of 14 calendar days’ notice of a Conduct Committee hearing. The notice will contain the allegation to be considered, the date, time and venue of the hearing and the names of the Conduct Committee members. A copy of these Rules will also be attached to the notice.
- 7.3 The Costs Lawyer is entitled to attend and be accompanied at the hearing. Should the Costs Lawyer wish to be professionally represented they may do so at their own expense. The Costs Lawyer is required to notify CLSB not less than 5 days before the hearing as to whether they will be attending, if they will be accompanied, professionally represented or calling any witnesses (names also required).
- 7.4 Both the Complainant or Costs Lawyer are entitled to make further written representations but these must be received by the CLSB not less than 7 calendar days before the hearing. CLSB will ensure such representations are made available to the other party before the hearing.
- 7.5 The Complainant will not attend the Conduct Committee hearing unless requested to do so by the Conduct Committee as a witness. In such circumstances, their attendance will be limited to their witness evidence only.
- 7.6 The Conduct Committee will notify the Complainant and Costs Lawyer of its decision in writing within 14 calendar days of the hearing.
- 7.7 The decision of the Conduct Committee may be appealed by the Costs Lawyer only.

- 7.8 The decision and the reasons for the decision will be sent to the Costs Lawyer who shall be advised of the right of appeal.
- 7.9 There will be no right of appeal from the decision of the Conduct Committee of an appeal against a warning letter or undertaking at level one.
- 7.10 If deemed appropriate in the circumstances the Conduct Committee may take legal advice from an independent Lawyer, adjourning any hearing if so required.
- 7.11 Any Finding at level two will be on the balance of probabilities.
- 7.12 All evidence which is fair and reasonable will be admissible.
- 7.13 A Finding at level two will attract an order for costs in the fixed sum of £1,000 payable within 21 days.

RULE 8: Conduct Appeal Committee (level three)

- 8.1 The Costs Lawyer may, within 14 calendar days of notification of a Conduct Committee decision, file an appeal against that decision setting out the grounds for the appeal in accordance with Rule 9. Any such appeal received by the CLSB will be referred to a Conduct Appeal Committee for review.
- 8.2 The Costs Lawyer and Complainant will be given 14 calendar days' notice of a Conduct Appeal Committee review although the decision on the appeal will be made on paper alone, there will be no hearing of the Costs Lawyer, Complainant or otherwise.
- 8.3 Both the Costs Lawyer and Complainant are entitled to make further written representations but these must be received by CLSB no less than 7 calendar days before the appeal date. CLSB will ensure such representations are made available to the other party before the review.
- 8.4 The Conduct Appeal Committee can impose a greater penalty than the Conduct Committee.
- 8.5 The Conduct Appeal Committee shall comprise of three members including its chair. It shall be chaired by the Lay-Person Non-Executive Director Chair or Vice Chair of the CLSB board. The further two members shall be one Lay Person and one Non-Lay Person drawn from the panel of Conduct Committee Members who were not involved in the original Conduct Committee hearing.
- 8.6 The Conduct Appeal Committee will notify the Complainant and Costs Lawyer of its decision in writing within 14 calendar days of meeting to review the case.
- 8.7 If deemed appropriate in the circumstances the Conduct Appeal Committee may take legal advice from an independent Lawyer, adjourning any review if so required.
- 8.8 Any Finding at level three will be on the balance of probabilities.
- 8.9 All evidence which is fair and relevant will be admissible.
- 8.10 A Finding at level three will attract an order for costs in the fixed sum of £1,500 payable within 21 days.

RULE 9: Appeals

- 9.1 The following applies in relation to both an appeal on a minor disciplinary Finding to the Conduct Committee and an appeal against a Conduct Committee decision to Conduct Appeal Committee.
- 9.2 The appeal must be made in writing and must set out the grounds on which the appeal is being made.
- 9.3 The only grounds for making an appeal are that the decision was flawed because:
 - (a) there was a material error in law; and/or
 - (b) there was a failure to take into account material information; and/or
 - (c) the decision was irrational; and/or
 - (d) the decision was one which could not be made; and/or
 - (e) new evidence has been obtained which could not have been made available when the decision was made.
- 9.4 An appeal shall be by way of a review and the appeal decision will be made on consideration of written evidence alone, there will be no hearing of the Costs Lawyer, Complainant or otherwise.

RULE 10: Panel Members for Conduct Committee and Conduct Appeal Committee

- 10.1 CLSB shall advertise for and appoint lay and non-lay Panel Members to be called upon as required to serve on a Conduct Committee hearing or Conduct Appeal Committee review.
- 10.2 A Panel Member must not be a serving member of the ACL Council or have served in such a capacity for 2 years before applying to become a Panel Member.
- 10.3 A Panel Member who has served on the Conduct Committee may not then sit on the Conduct Appeal Committee in relation to the same complaint.
- 10.4 A Panel Member must only agree to serve in that capacity on a complaint on which they have no conflict of interest.
- 10.5 A Panel Member will be reimbursed for their time and disbursements incurred in attendance at a Conduct Committee hearing or Conduct Appeal Committee review at a rate agreed by the CLSB board and prevailing at the time.
- 10.6 A Panel Member will not be an employee of CLSB and will hold no term of office, they will put themselves forward to be called upon, on a needs be basis.
- 10.7 Panel Members will comply with the Panel Member Code of Conduct.
- 10.8 CLSB will review the suitability of the panel every two years and will advertise to replace any Panel Member who indicates they no longer wish to serve in that capacity.

RULE 11: Penalties which may be imposed by Conduct Committee

- 11.1 In the event a complaint is substantiated and further to any costs order under Rule 13, the Conduct Committee may also impose sanction(s) on the Costs Lawyer by way of:

- (a) a warning letter to be signed by the Costs Lawyer which may also include a requirement that the cause of the complaint be remedied within a defined time period, and/or;
- (b) a proposed undertaking to be signed by the Costs Lawyer to effect changes within a defined time period, and/or;
- (c) payment of a penalty up to £2,000; and/or;
- (d) suspension of the Costs Lawyer's Practising Certificate and name from the Register of Costs Lawyer for a fixed term not exceeding 2 years, and/or;
- (e) permanent removal of the Costs Lawyer's Practising Certificate and name from the Register of Costs Lawyers.

11.2 Where the Conduct Committee directs a penalty to be paid it shall also direct the time in which it is to be paid and the manner of payment.

RULE 12: Penalties which may be imposed by Conduct Appeal Committee

12.1 The Conduct Appeal Committee may:

- (i) Dismiss the original decision, sanction and costs order.
- (ii) Uphold the original decision, sanction and costs order.
- (iii) Uphold the original decision, but reduce the sanction.
- (iv) Uphold the original decisions and revise the original sanction by way of:
 - (a) payment of a revised penalty up to £4,000, and/or;
 - (b) suspension of the Costs Lawyer's Practising Certificate and name from the Register of Costs Lawyer for a period of time at the discretion of the Conduct Appeal Committee, and/or;
 - (c) permanent removal of the Costs Lawyer's Practising Certificate and name from the Register of Costs Lawyers.

12.2 Where the Conduct Appeal Committee upholds or finds in favour of a revised penalty it shall state the time in which that penalty is to be paid.

RULE 13: Costs

13.1 A costs order will be payable to CLSB within 21 days of the order being made.

13.2 A costs order will be for a fixed sum dependent on the disciplinary level Finding:

Level one: £250

Level two: £1,000

Level three: £1,500

13.3 The costs set out in Rule 13.2 reflect a contribution towards the actual costs of the process at that level and will not therefore be subject to appeal.

13.4 There will be no costs order in the event an investigation concludes there is no case to answer.

13.5 Should a Costs Lawyer successfully appeal to the Conduct Committee or the Conduct Appeal Committee with the original decision being dismissed, any costs order attached to that decisions will be cancelled.

- 13.6 A costs order will be recoverable by the CLSB as a debt and failure by the Costs Lawyer to pay the costs may lead to a further investigation or referral to the Conduct Appeal Committee
- 13.7 CLSB will have no right to order a Complainant to pay costs in the event a complaint is unsubstantiated or dismissed.

RULE 14: Publication of sanctions and costs orders

- 14.1 CLSB may publish the findings of any Conduct Committee or Conduct Appeal Committee decision at its discretion in the Costs Lawyer Journal and/or on the ACL/CLSB websites unless publication would:
- (a) prejudice legal proceedings or investigations whether of a legal or regulatory nature; or
 - (b) disclose legally privileged information; or
 - (c) involve a significant risk of a breach of Article 8 of the European Convention on Human Rights.
- 14.2 In the event a warning letter or undertaking is issued and accepted by the Costs Lawyer it shall be recorded against the Costs Lawyers name on the Register of Costs Lawyers (available for public inspection) and will be removed on expiry / completion in accordance with terms stated therein.
- 14.3 In the event a sanction is issued by the Conduct Committee or Conduct Appeal Committee it shall be recorded against the Costs Lawyers name on the Register of Costs Lawyers (available for public inspection) for the period stipulated in the sanction.

RULE 15: Delivery of documents

- 15.1 The Complainant and Costs Lawyer shall send all documents to the CLSB marked and addressed as follows:
Strictly private & confidential (addressee only)
Chief Executive
CLSB
Centurion House
129 Deansgate
Manchester
M3 3WR
- 15.2 Alternatively, documents can be sent to the CLSB by email headed private and confidential to: ceo@clsb.info
- 15.3 In the event of using postal delivery, the Complainant and Costs Lawyer are advised to use a method of post in which delivery is recorded as the CLSB cannot accept responsibility for any failure by a postal service provider, to safely deliver documents.
- 15.4 CLSB will use a method of post in which delivery is recorded when issuing any documents, notices or otherwise as required under these Rules.

