

Consultation Response Report
Costs Lawyer Standards Board (CLSB)

Consultation commenced: Tuesday 10 December 2013
 Consultation closed: Tuesday 4 March 2014 (midnight)

Documents consulted on: Proposed revised Practising Rule 10.1

CL: Costs Lawyer
 TCL: Trainee Costs Lawyer

Respondent	Received	Do you agree with the proposed revision to Costs Lawyer Practising Rule 10.1?
CL	11/12/13	Whilst the changes do not affect me directly – I am employed in-house by a firm of solicitors – I understand that the proposed amendment will benefit other Costs Lawyers and the profession as a whole and, on that basis, I am in agreement with the proposal.
CL	11/12/13	I have read the consultation paper and the proposed change to Rule 10.1 (insurance) and confirm that I do not have any difficulties with this.
CL	11/12/13	No objections or comments.
CL	11/12/13	I think the change to the rule is essential but I am not sure that the level of insurance cover to be obtained should be as low as £100,000.00 or that the appropriate people to assess what level of cover is reasonable would be the person/persons purchasing the cover?
CL	11/12/13	I have no objection to the change outlined.
CL	11/12/13	It looks eminently sensible
CL	11/12/13	I have a £1m policy that covers all employees and relevant sub-contractors too. Anyone doing work without adequate cover is very foolish from their own point of view aside from their clients' interests. I have always maintained cover even when it wasn't a requirement.
CL	11/12/13	As a PAYE employed Costs Lawyer I would object most strongly to a rule that makes me personally responsible for the policy and financial decisions of my employer when I have no say or influence over the running of the Partnership. I believe the rule should make <u>employers</u> of costs lawyers responsible. I would be very much concerned that a change in the rule would make me personally liable for any alleged error or omission and the rule change would remove my ability to place vicarious liability on my employer when I am acting under the terms of my

		<p>employment as instructed.</p> <p>CLSB action: CLSB has revised the proposed wording to read <i>“Costs Lawyers shall ensure that they practice with the benefit of professional indemnity insurance and loss of documents insurance cover of a minimum £100,000 (any one claim) ...”</i> taking out reference to a Costs Lawyer making sure their employer has the required level of insurance in place.</p>
CL	12/12/13	The purpose of this e-mail is to confirm that I have no objection to the proposals set out in the Consultation Paper.
CL	18/1/14	Yes
SRA	19/2/14	<p>We broadly welcome the proposed amendments, which seek to close any gaps in who is covered by the rule and to introduce an obligation on costs lawyers to consider the risks associated with their work and put in place insurance above the minimum prescribed level as commensurate with that work. We have a few comments to make on the detail of the proposal.</p> <p>We note that in the proposed new rule 10.1 an exception is made for "those exclusively employed on a PAYE basis by a firm of solicitors regulated by the SRA....". The SRA Indemnity Insurance Rules and the Minimum Terms and Conditions of Insurance (the SIIR) set out the compulsory indemnity insurance requirements and the minimum level of cover that apply to SRA regulated firms. The SIIR apply to anyone who is an employee of an insured firm. In this context, "employee" is defined (in the Glossary to the SRA Handbook) as "any person other than a principal, employed or otherwise engaged in the insured firm's practice (including under a contract for services)" (i.e. not PAYE) "but does not include any person who is engaged by the insured firm under a contract for services in respect of any work where that person is required.... under the rules of any other professional body to take out or to be insured under separate professional indemnity insurance in respect of that work"</p> <p>CLSB action: The proposed wording has been revised to remove exemptions.</p> <p>On the basis outlined in paragraph 4 above, costs lawyers working for a solicitor’s firm under a contract for services (such as a consultancy agreement) would no longer be covered by the SRA Indemnity Insurance Rules as they would be required to take out separate insurance under the CLSB's Practising Rule 10.1. This would mean that they would be required a lower minimum level of insurance cover than that required under the SRA Minimum Terms and Conditions of professional indemnity insurance. However it may be considered more appropriate for an independently operating costs lawyer to operate under the rules applying to his or her own profession.</p> <p>CLSB action: CLSB has removed reference to “save for those</p>

		<p>exclusively employed on a PAYE basis by a firm of Solicitors regulated by the SRA”</p> <p>We also have concerns about the wording in relation to the minimum cover of £100,000. It is not clear whether this is a limit per claim or in the aggregate. If this is a limit in the aggregate we consider it to be very low.</p> <p>We have been advised by Kerry London insurance broker that with the RSA for example, general limits of indemnity liability are for an “any one claim basis” but that loss of documents is up to £100k “in the aggregate.”</p> <p>CLSB action: CLSB has revised the proposed wording to state “<i>minimum £100,000 (any one claim) to include loss of documents ...</i>”</p> <p>Another issue where we feel greater clarity is needed in Practising Rule 10.1 is in the phrase "at all times". As professional indemnity cover is arranged on a claims made basis, cover is needed long after the work is done or the practitioner ceases practice. We feel it would be better to set out clearly how long insurance cover must be in place for.</p> <p>CLSB response: In relation to “run off” insurance. Practising Rules are only applicable whilst the Costs Lawyer has a current practising certificate and hence the requirement would be unenforceable by CLSB.</p> <p>Kerry London advised: “<i>Professional Indemnity Insurance is underwritten on a ‘claims made’ basis meaning that insurance must be in force at the time of the claim and or notification for it to be covered – therefore when an Insured ceases to trade a ‘run-off’ policy is offered. This is advised to be carried normally for periods of 6 or 12 years as this is what is sometimes stated in Insured’s contracts, however it is not and can not be our decision as to whether this is taken up or for how long. If it has never been stipulated in any contracts then it should be bought until the client feels there is effectively no risk of problems that will occur from past work.</i>”</p>
CL	2/3/14	<p>With regard to the consultation, I dont consider the targeted group is correct, the target group should be all Cost Lawyers.</p> <p>CLSB action: Reference to the rule not applying to those working in banks and insurance companies has been deleted.</p> <p>I also consider the minimum cover should be £250,000.00 + loss of documents.</p>
SCCO Judges	3/3/14	<p>The Costs Judges of the SCCO have considered this consultation paper but are of the view that it is not for them to comment on</p>

		<p>the regulation of Costs Lawyers. The only query which has been raised is whether the minimum cover requirement of £100,000 is sufficient given the size of bills passing through the SCCO.</p> <p>CLSB comment: Whilst this has been raised by others as well as the judges of the SCCO, CLSB has been led to believe the LSB would not allow any increase of the minimum level of insurance. The alternative approach therefore adopted by CLSB is to put the onus on each individual Costs Lawyer to ensure they have in place insurance of appropriate value based on risk of work being undertaken by them.</p>
CL	3/3/14	<p>1. It is submitted that all Costs Lawyers without exception, should ensure that they carry professional indemnity insurance at all times with a minimum cover of £100,000.00 with appropriate level of loss of documents cover. This will ensure that all Costs Lawyers holding Practising Certificates from the CLSB comply with the Regulatory objectives as outlined on page 2 of the consultation document. This will bolster public and consumer confidence /interest in the professional nature of work undertaken for them by Costs Lawyers. This would alleviate the need for a Costs Lawyer, even in an employed PAYE position, to ensure that his/ her employers carry appropriate Professional Indemnity Insurance. Given recent events, it is submitted that Solicitors firms regulated by the SRA, are capable of becoming subject to administration, and therefore incapable of providing appropriate PII cover for the employed Costs Lawyer. Similarly, insurance companies, banks, other financial institutions and ABS entities are not immune to financial / operational difficulties. These circumstances may result in the shedding of Costs Lawyer employees, who hold practising certificates, but not PII insurance, to cover their subsequent Costs Lawyer activities. Insurance companies would benefit in that they would be writing PII policies to cover Costs Lawyers in their employ, and /or the employment of their instructed Solicitors in addition to those policies already being written. This amendment should ensure that in the current employment market in which Costs Lawyers operate in, those holding Practising Certificates are adequately insured, irrespective of their employment status.</p> <p>2. It is submitted that the availability of PII cover at modest cost for those Costs Lawyers with appropriate histories make the compulsory holding of such PII cover desirable. The costs of PII cover can be offset against taxation, by Costs Lawyers and / or their employers, which will result in little or no overall costs to the individuals or their employers.</p> <p>3. The compulsory holding of PII by individual Costs Lawyers, would support the eradication of those unregulated firms and individuals from the legal costs environment, ensuring</p>

		<p>that a quality standard is achieved. This would also remove any doubt of clients and Costs Lawyers who have in the past, on making enquiries regarding PII of firms, been informed that the firms are ‘effectively self insuring’.</p> <p>4. Where Costs Lawyers undertake work which would require Indemnity beyond the minimum required by the rule amendment, then there is scope for such work to be undertaken, with individual indemnity policies relating to the risk involved in undertaking that particular work. (e.g. top up policies for Costs Budgets in commercial cases where Indemnity Exceeding £100,000.00 may be necessary.) Such policy premiums should be allowed to be incorporated as part of the Costs Lawyer’s charges for undertaking the work (as a clear disbursement) and claimable without dispute from a Paying Party. This approach would alleviate the burden of over expensive PII cover for those Costs Lawyers who practise in areas with lower risk of claims against the PII cover. (e.g. Legal Aid only practitioners)</p> <p>CLSB comment: Analysis of policy costs have identified they are not “over expensive” as suggested, the Costs Lawyer profession is low risk as because:</p> <ul style="list-style-type: none"> (i) they do not handle client monies; and (ii) have historically enjoyed low claims experience.
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