



Summary of Decision

This document provides a summary of the decision of the Legal Services Board (“LSB”).

It is not and should not be taken as a formal part of the LSB’s decision notice under the Legal Services Act 2007 (“the Act”).

Purpose of notice and decision

The purpose of this summary document is to provide a high level and accessible summary of the LSB’s decision. Readers are recommended to read the formal decision notice itself for further detail.

The LSB’s decision is to grant in full the application from Costs Lawyer Standards Board to make changes to its regulatory arrangements to make it clear that Costs Lawyers cannot:

- make unsolicited approaches to private individuals or domestic premises, or
- accept referrals from a third party who has made such unsolicited approaches.

The LSB concluded that the changes do not meet the refusal criteria in the Act. Consequently, the LSB considers that there is no reason to refuse this application.

Decision notice

Issued by the Legal Services Board (LSB) under Part 3 of Schedule 4 to the Legal Services Act 2007

Costs Lawyer Standards Board (“CLSB”) rule change application for approval of changes to its regulatory arrangements in respect of its Costs Lawyer Code of Conduct.

1. The LSB has granted an application from CLSB approving alterations to its regulatory arrangements to prohibit costs lawyers from making unsolicited approaches.
2. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (“the Act”) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Association of Costs Lawyers (“ACL”) is an approved regulator and the CLSB is the regulatory arm to which the ACL has delegated its regulatory functions.
3. This decision notice sets out the decision taken, including a brief description of the changes. The notes at page 4 of this notice explain the statutory basis for the decision. The chronology for the LSB’s handling of this application is set out at the end of this decision notice.

Background

4. The CLSB presently relies on Principle 1 of its Code of Conduct to prevent behaviours such as unsolicited approaches by costs lawyers. Specifically, it relies on the duty of costs lawyers at Principle 1.1 to act professionally and with integrity, and at 1.6, not to act in a way which is likely to diminish trust in the profession.
5. The reason why the CLSB has not in the past made a prohibition on unsolicited approaches explicit, is that it did not anticipate that costs lawyers, as a profession, would have need to offer legal services directly to private individuals. However, it has identified, through its recent supervision and disciplinary processes, a risk that individual costs lawyers may be making such unsolicited approaches. The proposed changes are therefore intended to address this risk.

Proposed changes

6. The CLSB, proposes to insert a new Principle, 1.5, into its Code of Conduct, to make explicit that a cost lawyer:

“must not:

- *make an unsolicited approach by any means to a private individual (lay person) or to domestic premises (unless a business is being conducted from there) in order to publicise your service as a Costs Lawyer or your business; or*

- *accept referrals from a third party who made an unsolicited approach to the private individual (lay person) being referred.”*

LSB assessment of the application

7. No issues of significance were raised in our assessment. We note from the application that the CLSB consulted on the changes and there was no opposition raised. We also note that as a result of a response from a consultee, the wording was amended from that originally proposed, to introduce the requirement in respect of referrals from third parties.
8. The LSB recognises that where a regulatory risk has been identified through supervisory and disciplinary processes, it is sensible for an approved regulator to adjust its regulatory arrangements to address that risk.

Decision

9. The LSB has considered the CLSB's application against the criteria in paragraph 25(3) of Schedule 4 to the Act and has decided to grant the application.
10. The Annex to this decision notice contains the proposed changes to the Costs Lawyer Code of Conduct (insertion of new rule 1.5) approved by the LSB. There are some minor consequential amendments to the numbering of paragraphs in Principle 1.

Chronology

- The LSB confirmed receipt of an application from the CLSB on 8 November 2018.
- The 28 day decision period for considering the application ends on 5 December 2018
- This decision notice is effective from 5 December 2018
- The decision notice will be published on our website by 7 December 2018

Neil Buckley, Chief Executive of the Legal Services Board
Acting under delegated authority granted by the Board of the Legal Services Board
5 December 2018

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that:
 - (a) granting the application would be prejudicial to the regulatory objectives
 - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
 - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are:
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules¹ about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

¹ Rules for Rule Change Applications – Version 2 (November 2010)

ANNEX A

CODE OF CONDUCT

COSTS LAWYERS

Regulator: Costs Lawyer Standards Board

Effective Date: (Date change approved by LSB)

Definitions herein:

Costs Lawyer	A Costs Lawyer with a current practising certificate issued by CLSB and regulated by CLSB (Authorised Costs Lawyer)
Code	This Code of Conduct made pursuant to the LSA
CLSB	The Costs Lawyer Standards Board (Approved Regulator)
LSA	Legal Services Act 2007

Introduction

This Code is made pursuant to the LSA and sets out the principles to be followed by you as a Costs Lawyer. Further, it sets out your authorised rights and works in conjunction with prevailing legislation in such a way as to regulate what you can and cannot do under your authorisation.

Under s.176(1) of the LSA you must comply with this Code. Breach of this Code may result in disciplinary proceedings being brought against you by CLSB. This Code is effective on the date stated above and replaces the previous Code of Conduct effective 31 October 2011.

Authorised rights

As a Costs Lawyer you are a regulated person under the LSA and are authorised to carry on the following reserved legal activities:

- The exercise of a right of audience
- The conduct of litigation
- The administration of oaths

Provided that you are instructed to deal only with matters that relate to costs, you may conduct proceedings and represent clients in any court or tribunal, including any criminal court or courts martial, the Supreme Court or the Privy Council where:

- the proceedings are at first instance; or
- the proceedings include an appeal below the level of the Court of Appeal or Upper Tribunal, are on a first appeal (other than in the Court of Appeal) and the appeal itself relates to costs; or
- the proceedings do not fall within either of the categories above, but your instructions are limited to dealing with the costs of the proceedings; or
- the court or tribunal grants permission for you to conduct proceedings or to represent a client (or both).

Where proceedings relate to other matters, in addition to costs, the rights referred to above apply only to those parts of the proceedings (if any) that:

- relate solely to costs; or
- when they relate to other issues, solely those issues that are not in dispute.

A matter 'relates to costs' if it relates to payments for legal representation, including payments in respect of pro bono representation under s194 of the LSA and/or to payments made for bringing or defending any proceedings, but only if and to the extent that those monies are not damages. For the avoidance of doubt, this includes:

- Costs between opposing parties including costs management and budgeting.
- Solicitor and client costs but not if and to the extent that issues of negligence arise when a Lawyer competent to deal with allegations of negligence ought to be instructed instead.
- Legal aid, criminal costs, wasted costs or costs against third parties.

Further, you may administer any oath.

Seven principles of regulation

There are seven principles to which Costs Lawyers must conform to ensure public confidence in you and the profession. Adherence to these principles is mandatory.

You must:

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 clients confidential.

PRINCIPLE 1: Act with integrity and professionalism

- 1.1 You must act honestly, professionally and with integrity in all your dealings in your professional life and not allow yourself to be compromised.
- 1.2 You must not attempt to carry on a reserved legal activity other than one you are authorised to undertake under the LSA.
- 1.3 You must not give false or misleading information to anyone with whom you deal.
- 1.4 You must not be misleading or inaccurate when you publicise yourself as a Costs Lawyer or your business.
- 1.5 **You must not:**
 - (i) make an unsolicited approach by any means to a private individual (lay person) or to domestic premises (unless a business is being conducted from there) in order to publicise your service as a Costs Lawyer or your business; or
 - (ii) accept referrals from a third party who made an unsolicited approach to the private individual (lay person) being referred.
- 1.6 You must not enter into any fee arrangements which are unlawful.
- 1.7 You must not act in any way which is likely to diminish the trust the public places in you or in the profession of Costs Lawyers.

PRINCIPLE 2: Comply with your duty to the court in the administration of justice

- 2.1 You must at all times act within the law.
- 2.2 You must not knowingly or recklessly either mislead the court or allow the court to be misled.
- 2.3 You must comply with any court order which places an obligation on you and you must not be in contempt of court.
- 2.4 You must advise clients to comply with court orders made against them.

PRINCIPLE 3: Act in the best interests of the client

- 3.1 You must act at all times to ensure the client's interest is paramount except where this conflicts with your duties to the court or where otherwise permitted by law. You must decline to act if it would not be in the client's best interests or if that client's interests conflict directly with your own or with those of another client.

- 3.2 You must provide for an effective complaints procedure (first-tier complaints handling procedure) which is simple and transparent and ensures that a complaint can be made by any reasonable means and which takes into account the individual needs of clients (in particular the needs of vulnerable clients).
- 3.3 You must ensure that complaints are dealt with promptly (within a maximum 8 week period from date of receipt) openly and fairly and that appropriate provisions for redress exist.
- 3.4 You must advise new clients in writing when instructions are first received of:
 - (i) An estimate of fees / details of charging structure and where that estimate subsequently becomes inaccurate or that charging structure changes provide an updated estimate / notice of revised charges.
 - (ii) The right to complain.
 - (iii) How to complain i.e. first-tier complaints handling procedure.
 - (iv) The period within which you will deal with complaints under first-tier complaints handling procedure.
 - (v) The clients right to refer their complaint to the Legal Ombudsman in the event the matter is not resolved to the satisfaction of the client or the matter has not been resolved within 8 weeks of the complaint being made.
 - (vi) Applicable time limits for referring the complaint to the Legal Ombudsman.
 - (vii) Legal Ombudsman contact details.
- 3.5 You must identify and rectify any systemic client complaint issues, taking steps to do so promptly upon discovery.
- 3.6 You must not accept client money save for disbursements and payment of your proper professional fees.
- 3.7 You must provide required documentation and information on an application for a practising certificate and in the event of any complaints investigation conducted by CLSB or the Legal Ombudsman.
- 3.8 You must ensure that you maintain professional indemnity insurance which complies with the requirements of the CLSB prevailing at the time and promptly provide evidence of that insurance cover if requested by a client, CLSB, ACL or Legal Ombudsman.

PRINCIPLE 4: Provide a good quality of work and service to each client

- 4.1 You must ensure that you only undertake work for which you are properly qualified.
- 4.2 Work must be undertaken with due skill, care and attention, with proper regard for the technical standard expected of you. If you do not have the knowledge, skills or experience to undertake the work you must decline it.

- 4.3 You must ensure that you carry out your professional work in a timely manner with proper regard for standards of professional service and care.
- 4.4 You must keep your professional knowledge up to date by undertaking relevant training in accordance with current Practising Rules.
- 4.5 You must keep the client regularly informed as to the progress of the work and keep accurate records of that work.
- 4.6 You must ensure that clients are able to make informed decisions about the work being undertaken on their behalf and the cost of that work.

PRINCIPLE 5: Deal with the regulators & Legal Ombudsman in an open & co-operative way

- 5.1 You must be open, honest and co-operate in your dealings with the CLSB, ACL, other regulators and the Legal Ombudsman responding to any requests promptly and fully within 14 calendar days.
- 5.2 You must promptly notify the CLSB of any breach of this Code by yourself or other Costs Lawyers.
- 5.3 You must not take any action to prevent anyone from reporting you to the CLSB or Legal Ombudsman.

PRINCIPLE 6: Treat everyone with dignity and respect

- 6.1 You must treat all clients, staff or third parties with dignity and respect. You should encourage equality of opportunity and must not unlawfully discriminate against them, either directly or indirectly, victimise or harass them on the grounds of age, disability, race, colour, ethnic or national origin, sex, gender reassignment, pregnancy and maternity, marital status (including civil partnerships), sexual orientation, religion or belief.
- 6.2 You must have / adhere to a written policy which prevents discrimination and harassment and must investigate any allegation of discrimination, victimisation or harassment and take disciplinary action where appropriate.
- 6.3 You must make reasonable adjustments for those with a disability to ensure they are not at a disadvantage in comparison with those without disabilities.

PRINCIPLE 7: Keep your work on behalf of your clients confidential

- 7.1 You must keep the affairs of clients or former clients confidential unless disclosure is required or allowed by law or if the client consents in writing to disclosure, having had the consequences of such consent explained to them. You must ensure that your client is able, in your reasonable opinion, to give informed consent to waiving their right to confidentiality.