

**Application by the Costs Lawyer Standards Board
for approval by the Legal Services Board of change to regulatory arrangements
Revised Practising Rule 10.1 (Insurance)**

Attachments to this application:

- (i) Consultation paper
- (ii) Consultee list
- (iii) Consultation response report

Application

The Costs Lawyer Standards Board (the “CLSB”) make this application to the Legal Services Board (the “LSB”) pursuant to Schedule 4, Part 3 of the Legal Services Act 2007 (the “LSA”).

Following significant CPR changes on 1 April 2013, CLSB formed the view that financial risk has increased. Subsequent case law clearly demonstrated the courts are adopting a strict application of costs budgeting and costs management rules.

Murray & Anor v Neil Dowlman Architecture Ltd [2013] EWHC 872 (TCC)
Andrew Mitchell MP v News Group Newspapers Ltd [2013] EWCA Civ 1537
Henry-v-News Group Newspapers Ltd [2013] EWCA Civ 19

The insurance rule in effect since 25 April 2013 currently reads:

RULE 10: Indemnity insurance

10.1 With the exception of those who are employees of a Solicitors firm, Costs Lawyer firm, Insurance firm or other alternative business structure on a PAYE basis, a Costs Lawyer shall ensure that:

- a) professional indemnity insurance is in place at all times with minimum cover of £100,000 together with loss of documents cover;
- b) there are no gaps between policies;
- c) policy fees are paid in accordance with payment terms set out by the insurer to ensure cover is in place.

10.2 A Costs Lawyer will provide a copy of their professional indemnity insurance policy or declaration from the insurer or broker upon request from a client, CLSB or the Legal Ombudsman within 14 calendar days of the request being made.

The proposed revised insurance rule consulted on was:

RULE 10.1: Indemnity insurance

10.1 All Costs Lawyers, save for those exclusively employed on a PAYE basis by a firm of Solicitors regulated by the SRA, insurance company, bank or other such financial institution, shall ensure that they/their employer has professional indemnity insurance in place at all times with minimum cover of £100,000 together with loss of documents cover. Costs Lawyers are required to assess the risks associated with the work being undertaken by them

and ensure that professional indemnity insurance is put in place, in excess of the minimum set out herein, at a level commensurate with that work.

Following the outcome of the consultation, CLSB has made amendment to the proposed rule and now seeks approval of the following:

RULE 10.1: Indemnity insurance

10.1 Costs Lawyers shall ensure that they:

(a) practice with the benefit of professional indemnity insurance of a minimum £100,000 (any one claim) to include loss of documents; and

(b) on an ongoing basis, assess all financial risk associated with work being undertaken by them and ensure that professional indemnity insurance and loss of documents insurance is in place in excess of the minimum set out in rule 10.1(a) at a level commensurate with that work.

Basis of the application

CLSB is obliged to identify and eliminate/mitigate risk and has procedures in place to do this. It was through those defined procedures that an increased financial risk was identified.

Following receipt of 2014 practising certificate applications CLSB undertook an analysis of professional indemnity insurance cover currently in place. The analysis covered:

Costs Lawyers working for a Costs Lawyer firm; and
Costs Lawyers working as sole practitioners.

The figures below do not include those working for an SRA regulated firm or those working in-house for an insurance company or bank.

PI Policy Value	2014
£100k	79
£150k	1
£200k	10
£250k	77
£500k	42
£1m	82
£1.5m	7
£2m	32
£3m	2
£5m	28
£10m	1
£35m	1
Total	362

The figures evidence that 79 out of 362 (22%) regulated Costs Lawyers in this risk category are practising with the minimum level of PI Insurance cover in place.

Costs budgeting & costs management Work

A main insurance broker to the Costs Lawyer profession, Kerry London, who currently broker in excess of 200 policies has assisted CLSB in considering increased risk. They have advised " *it seems that from various conversations with the ACL and Insurers and in fact some ACL members the general consensus is that this work could potentially open up far bigger liability for our Insured's and therefore a larger limit of indemnity is advised.*"

Increased claims

Kerry London advised of "*a larger influx of claims and /or notifications for cost lawyers since last year we have a larger ACL insured with another Insurer who now has 2 new claims at approximate reserves of £46,000 and £24,000.*"

Whilst none of the claims brokered through Kerry London currently exceed the value of £100k, this never the less supports the view both ACL and CLSB reached that CPR changes in 2013 has increased financial risk in the profession and that there is real risk that such a claim could well exceed £100k. A view supported by the Costs Judges of the SCCO.

Increased financial burden

There would be no increased financial burden for those who are not working on a case(s) where the financial risk is in excess of their current minimum level of professional indemnity insurance.

Kerry London advised policies are underwritten based on fee income, claims experience, limit etc. and not on size but have however assisted with guidance on policy costs as follows:

<i>£100k Limit</i>	<i>£200 + tax</i>
<i>£500k Limit</i>	<i>£450 + tax</i>
<i>£1mil Limit</i>	<i>£510 + tax</i>
<i>£2mil Limit</i>	<i>£650 + tax</i>

A qualified, claim free Cost Lawyer with a fee income of up to 100k can expect to pay along the following lines:

<i>£100k Limit</i>	<i>£260 + tax</i>
<i>£500k Limit</i>	<i>£500 + tax</i>
<i>£1mil Limit</i>	<i>£600 + tax</i>
<i>£2mil Limit</i>	<i>£850 + tax</i>

A qualified, claim free Cost Lawyer with a fee income of up to 150k can expect to pay along the following lines:

<i>£100k Limit</i>	<i>£350 + tax</i>
<i>£500k Limit</i>	<i>£600 + tax</i>
<i>£1mil Limit</i>	<i>£725 + tax</i>
<i>£2mil Limit</i>	<i>£950 + tax</i>

And so on as fee income increases. £5m limits are however different as they need to be done yearly and reviewed. They are normally subject to a minimum premium of £3,250 + tax.

This evidences a relatively small cost increase compared to the level of consumer protection afforded by the increased level of professional indemnity insurance.

Availability of cover

The LSB asked us to be sure insurance cover was available in the insurance market. We have found no evidence to suggest that it isn't. Kerry London have advised *"we are still writing PI and the scheme is still running through ourselves on behalf of RSA. There has been no notification that this will stop however Insurance is always looked at from a risk perspective and if claims increase then premiums can do also. Obviously if the scheme became unprofitable for Insurers in the years to come then it would be reviewed and the scheme stopped as a worse case scenario. This has however been placed through Kerry London and RSA for a number of years and the historic element and continuity of the scheme with one Insurer always helps. As previously sent to you, we have had an increase in the amount of notifications recently which RSA will continue to monitor and we will update you whenever we hear."*

Impact on Regulatory Objectives

Protecting and promoting the public interest

The application ensures Costs Lawyers give due consideration to financial risk on a case by case basis thus protecting public interest.

Supporting the constitutional principle of the rule of law

Rules and regulations applicable to Costs Lawyers emphasises the duty on Costs Lawyers to support the constitutional principles of the rule of law.

Improving access to justice

This application has no detriment to access for justice as CLSB does not believe it will impact on Costs Lawyer numbers.

Protecting and promoting the interests of consumers

The application ensures Costs Lawyers give due consideration to financial risk thus protecting consumer interest.

Promoting competition in the provision of services

The application has no impact on competition as it applies to all Costs Lawyers.

Encouraging an independent, strong, diverse and effective legal profession

Costs Lawyers are an independent part of the legal profession. Analysis evidences that it is diverse profession which is effective in its delivery and this amended practising rule will have no impact.

Compliance with Better Regulation Principles

The application follows the principles set out under s28(3) of the LSA as follows:

Transparency

CLSB engaged in a wide ranging consultation, the attached consultee list indicates all those CLSB issued the consultation paper to. Due to the nature of the application, CLSB included the Costs Judges of the Senior Courts Costs Office (the "SCCO") in this consultation, who responded by raising the concern *"the only query which has been raised is whether the minimum cover requirements of £100,000 is sufficient given the size of bills passing through the SCCO"*.

This submission evidences that the Costs Judges of the SCCO share the concerns of CLSB and ACL which led to this application. Indeed, the concern raised by the SCCO about the minimum level of insurance cover in the profession has been echoed by others under the consultation process. As an "across the board" increase was not an option open to CLSB as under the LSA a change to regulatory arrangements has to be "proportionate" and "targeted," this application was the alternative solution to ensure this risk was addressed.

Accountability

CLSB believes the application encapsulates an outcome focused approach to regulation with accountability to CLSB as the professions regulator.

Proportionality & consistency

The application is proportionate as it does not seek to increase the current minimum level of insurance across the whole profession.

Targeted

The application is targeted solely at those whose instruction presents a financial risk in excess of £100k.

Outcomes focused

CLSB became aware of this risk following significant CPR changes in April 2013, subsequent case law and representations made by the ACL. Our concerns are supported by the Costs Judges of the SCCO under the consultation process.

Consultation process

CLSB went out to consultation between 10 December 2013 and 4 March 2014. A consultation response report to this application is attached which evidences support. This application evidences that CLSB has also taken on board additional concerns raised, particularly by the SRA, under that consultation process.

Impact on other Approved Regulators

CLSB was of the view the profession likely to have most interest was the Solicitors profession and they duly responded through the SRA to the consultation. CLSB considered their submissions and made revisions accordingly.

Equality impact

CLSB does not consider that the application contradicts principles set out in the CLSB Equality & Diversity Policy.

Monitoring effectiveness

CLSB will continue to monitor, on an ongoing basis, the insurance provision under its Practising Rules.

Submission

This application is in the best interest of both the consumer (both professional and lay) and the profession and supports regulatory objectives for reasons set out herein. CLSB therefore respectfully requests LSB approval.

Questions or requests for clarification regarding this application

Any questions arising from this application should be sent to CLSB by email or post at:

Email: ceo@clsb.info

Post: Lynn Plumbley (Chief Executive)

CLSB

Centurion House

129 Deansgate

Manchester

M3 3WR

Phone: 0161 214 7904

Date of filing
19 March 2014