

Consultation Response Report
Costs Lawyer Standards Board (CLSB)

Documents consulted on: Proposed revised Code of Conduct
 Consultation commenced: Friday 22 November 2013
 Consultation closed: Friday 31 January 2014 (midnight)
 Consultation period: 10 weeks

CL: Costs Lawyer
 TCL: Trainee Costs Lawyer

	Received	General comments
CL	22 Nov 2013	No objections
CL	23 Nov 2013	The proposals seem sensible and clarify the proceedings which a Costs Lawyer can conduct. I agree with the proposal.
CL	27 Nov 2013	I confirm my agreement to the matters raised in the first four questions raised in the consultation paper. In relation to question 5, I would simply say that the approach adopted by CLSB, is eminently sensible.
CL	10 Dec 2013	I have no objections to the proposed changes.

QUESTION 1	Received	Do you agree the Authorised Rights should appear in the Code rather than in a standalone document?
CL	18 Jan 2014	Yes
Costs Judges of the SCCO	31 Jan 2014	Yes. It would seem sensible to define the rights in the document that also defines the duties and obligations.

QUESTION 2	Received	Do you agree with the proposed revised definition and introduction section of the Code?
CL	18 Jan 2014	Yes
Costs Judges of the SCCO	31 Jan 2014	Yes. It is noted that the new Code is not expressed to be retrospective and that there are no transitional provisions. It is implicit (but could be stated expressly) that conduct between 31st October 2011 and XX 2014, when the new Code becomes effective, will be governed by the old Code. CLSB response: As is usual process, the revised code will be dated as being effective on the day the LSB approves it and will not be backdated.

QUESTION 3	Received	Do you agree with the proposed revised Authorised Rights?
CL	18 Jan 2014	Yes
Costs Judges of the SCCO		With one caveat. The present statement of rights expressly granted rights of audience in the UKSC and Privy Council.

		<p>The proposed Code provides: <i>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, where:</i></p> <ul style="list-style-type: none"> • <i>the proceedings are at first instance; or</i> • <i>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</i> • <i>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</i> <p>While the intention is presumably that Costs Lawyers may continue to conduct detailed assessments (and other costs related matters such as section 11/26 applications) in the UKSC and Privy Council, there is a tension between the second and third bullet points which may cause confusion but which could be avoided by express provision.</p> <p>CLSB response: CLSB has considered this point and suggests the following addresses the matter raised and has included it in the draft Code of Conduct following consultation attached to this application:</p> <p><i>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:</i></p> <ul style="list-style-type: none"> • <i>the proceedings are at first instance; or</i> • <i>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</i> • <i>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</i>
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QUESTION 4	Received	Do you agree with the proposed new Principle 1.2?
CL	18 Jan 2014	Yes
Costs Judges of the SCCO		Yes. Although it is an offence under s.14(1) LSA to carry on a reserved legal activity without authorisation and a Costs Lawyer convicted of such offence may well be liable to disciplinary proceedings under principles 1.1 or 1.6, it is better to spell it out. This reinforces the need to define the

		<p>permitted reserved activities with the utmost clarity.</p> <p>CLSB response: CLSB does not believe this revised wording is necessary for the following reasons:</p> <ul style="list-style-type: none"> • The Introduction already states <i>“Under s176(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”</i>. • CLSB has not set out where other Principle breaches are offences under the LSA or indeed any other current legislation. There has to be continuity as otherwise, it may lessen other Principle breaches.
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QUESTION 5	Received	Do you have any additional comments on the proposal being consulted on?
CL	18 Jan 2014	Yes
Costs Judges of the SCCO		<p>No.</p> <p>The only other point we would raise is: in relation to the ability of a costs lawyer to advocate and give evidence at the same time. There is nothing within the code to prevent the costs lawyer producing a witness statement and then doing the advocacy. The BSB code prevents barristers from doing this. This could cause difficulties with submissions and evidence becoming hard to disentangle.</p> <p>CLSB response: We believe the SCCO Judges are referring to BSB Handbook Rule 21.10.</p> <p>R21: You must not accept instructions and act in a particular matter if (10) there is a real prospect that you are not going to be able to maintain your independence.</p> <p>BSB guidance under gC73 goes on to state: Rule C21.10 is an aspect of your broader obligation to maintain your independence (CD4). Your ability to perform your duty to the court (CD1) and act in the best interests of your client (CD2) may be put at risk if you act in circumstances where your independence is compromised. Examples of when you may not be able to maintain your independence include appearing as an advocate in a matter in which you are likely to be called as a witness (unless the matter on which you are likely to be called as a witness is peripheral or minor in the context of the litigation as a whole and is unlikely to lead to your involvement in the matter being challenged at a later date).</p> <p>However, if you are planning to withdraw from a case because it appears that you are likely to be a witness on a</p>

		<p>material question of fact, you should only withdraw if you can do so without jeopardising the client's interests.</p> <p>CLSB is of the view this is covered by Principle 1, which requires a Costs Lawyer to act honestly and with integrity. CLSB would however be prepared to issue a guidance note on advocacy.</p> <p>The ACLT advise this is covered under the ethics section of the Costs Lawyer course which states: <i>"It is generally unwise for a Costs Lawyer who is engaged as an advocate to be a witness in the case. The exception is where his evidence is to be purely formal."</i></p>
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