

DISCIPLINARY RULES & PROCEDURES
TRAINEE COSTS LAWYERS

Regulator: Costs Lawyer Standards Board

Effective date: 1 January 2013

Introduction

These Rules govern disciplinary procedures to regulate the conduct of Trainee Costs Lawyers and replace any other disciplinary rules and procedures issued by the Association of Costs Lawyers. In the event of contradiction in information issued by an Authorised Study Provider on anything contained herein, these Rules will prevail.

These rules apply only to a Trainee Costs Lawyer:

- (i) whose name appears on the Register of Trainee Costs Lawyers; and
- (ii) is currently undertaking the three year modular Costs Lawyer training course; and
- (iii) are a manager or an employee of a person authorised to carry on the following reserved legal activities:
 - the exercise of a right of audience
 - the conduct of litigation
 - the administration of oaths

Interpretations

CLSB	Costs Lawyer Standards Board
Complainant	A CLSB concern or a person (natural, legal or commercial) who makes a complaint to CLSB about a Trainee Costs Lawyer's conduct.
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 Trainee Costs Lawyer by the Chief Executive or Conduct Committee following investigation and consideration of the complaint
Lay Person	As defined in Schedule 1 Section 2(4) of the Legal Services Act 2007
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 The following will be deemed a complaint for the purposes of these Rules:
 - (a) a complaint about the conduct of a Trainee Costs Lawyer which has been referred to CLSB by a Complainant; or
 - (b) circumstances where CLSB has reasonable grounds to consider that prevailing rules and codes have not been complied with by the Trainee 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.

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, if required, into a complaint.
 - (b) Making the necessary administrative arrangements.
 - (c) Preparing the notices and papers.
 - (d) Securing a suitable venue.
 - (e) Securing any independent legal or other advice as may be required by the Conduct Committee or Conduct Appeal Committee.
 - (f) Drawing up the decision document and/or orders made by the Conduct Committee or Conduct Appeal Committee and sending the same to the Trainee Costs Lawyer and Complainant.

RULE 3: Investigation (level one)

- 3.1 CLSB may initiate an investigation 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 into a complaint 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 Trainee 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 and documentary evidence) in order for the complaint to be fully considered. The Trainee 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 Trainee Costs Lawyer's comments 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 Chief Executive or 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 the matters complained of.
 - (iii) Whether the complaint involved the integrity or honesty of the Trainee Costs Lawyer.
 - (iv) The Trainee Costs Lawyers standard of care and conduct leading up to that complained of.
 - (v) Whether any material harm has been caused to the standing of the Costs Lawyer profession.
 - (vi) The past disciplinary record of the Trainee Costs Lawyer.
 - (vii) 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 Trainee 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 investigators recommendation of “a minor disciplinary finding” then the Chief Executive may issue one of the following to the Trainee 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, or;
 - (b) a proposed undertaking to be signed by the Trainee Costs Lawyer to effect changes within a defined time period to avoid the matters complained about arising again.
- 5.2 The Trainee Costs Lawyer will be asked to sign their acceptance to the terms of any warning letter or undertaking and CLSB will subsequently monitor to ensure accepted terms are complied with.
- 5.3 Any warning letter or undertaking issued will set out in brief the findings of the investigation on which it has been issued.
- 5.4 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.
- 5.5 A Finding at level one (save for “no case to answer”) 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 Trainee Costs Lawyer does not accept the Findings at level one then CLSB will convene a Conduct Committee in accordance with Rule 7. CLSB will disclose the investigative report, information and documentation (provided that CLSB is not prevented for any reason by law) to the Trainee Costs Lawyer or their representatives (if appointed) and the Complainant.
- 6.3 The Trainee 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 a Lay Person Panel Member, the further two members shall be one Lay

Person Panel Member and one Non-Lay Person Panel Members all of whom will have no conflict of interest in the matter.

- 7.2 The Trainee Costs Lawyer and Complainant 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 Trainee Costs Lawyer is entitled to attend and be accompanied at the hearing. Should the Trainee Costs Lawyer wish to be professionally represented they may do so at their own expense. The Trainee 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. If the Trainee Costs Lawyer intends to call any witness they will provide the witnesses names to CLSB.
- 7.4 The Complainant and Trainee Costs Lawyer are both 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 or Trainee Costs Lawyer 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 Trainee 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 Trainee Costs Lawyer only.
- 7.8 The decision and the reasons for the decision will be sent to the Trainee 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 against a Trainee Costs Lawyer 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 Trainee 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 Trainee 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 Trainee Costs Lawyer, Complainant or otherwise.
- 8.3 Both the Trainee 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 shall comprise of three members including its chair. It shall be chaired by a Lay Person Panel Member, the further two members shall be one Lay Person Panel Member and one Non-Lay Person Panel Members who were not involved in the original Conduct Committee hearing.
- 8.5 The Conduct Appeal Committee will notify the Complainant and Trainee Costs Lawyer of its decision in writing within 14 calendar days of meeting to review the case.
- 8.6 If deemed appropriate in the circumstances the Conduct Appeal Committee may take legal advice from an independent Lawyer, adjourning any review if so required.
- 8.7 The review outcome will be on the balance of probabilities.
- 8.8 All evidence which is fair and relevant will be admissible.
- 8.9 A review outcome against the Trainee Costs Lawyer 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 Trainee 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 Person and Non-Lay Person Panel Members to be called upon as required to serve on a Conduct Committee hearing or Conduct Appeal Committee review.
- 10.2 A non-lay 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 must not be a serving member of the CLSB Board or have served in such a capacity for 2 years before applying to become a Panel Member.
- 10.4 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.
- 10.5 A Panel Member must only agree to serve in that capacity on a complaint on which they have no conflict of interest.
- 10.6 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.
- 10.7 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.
- 10.8 Panel Members will comply with the Panel Member Code of Conduct.
- 10.9 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 Finding is made then further to any costs order under Rule 13, the Conduct Committee may also impose penalties on the Trainee Costs Lawyer by way of one or more of the following:
 - (a) A warning letter to be signed by the Trainee Costs Lawyer which may also include a requirement that the cause of the complaint be remedied within a defined time period.
 - (b) A proposed undertaking to be signed by the Trainee Costs Lawyer to effect changes within a defined time period.
 - (c) Payment of a financial penalty up to £1,000.
 - (d) Suspension or removal of the Trainee Costs Lawyers name from the Register of Trainee Costs Lawyers.
- 11.2 Where the Conduct Committee directs a financial penalty is to be paid it shall also direct the time in which it is to be paid and the manner of payment.
- 11.3 A financial penalty will be recovered by the CLSB as a debt in the event of non-payment.

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

- 12.1 The Conduct Appeal Committee may:
 - (i) Dismiss the original decision, penalty and costs order.

- (ii) Uphold the original decision, penalty and costs order.
 - (iii) Uphold the original decision, but revise the penalty.
- 12.2 The maximum financial penalty of Conduct Appeal Committee is £1,500.
- 12.3 A financial penalty will be recovered by CLSB as a debt in the event of non-payment.

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 made against a Trainee Costs Lawyer will be for a fixed sum dependent on the disciplinary level:
- 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 A costs order at level two will replace any costs order at level one. A costs order at level three will replace any costs order at level two.
- 13.5 Should a Trainee 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 decision will be cancelled.
- 13.6 A costs order will be recoverable by the CLSB as a debt in the event of non-payment.
- 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 at its discretion publish any Finding, penalty or costs order against a Trainee Costs Lawyer by the Chief Executive, Conduct Committee or Conduct Appeal Committee however it will be anonymous.

RULE 15: Delivery of documents

- 15.1 The Complainant and Trainee 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 Trainee 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.