

Costs Lawyer Standards Board

Application to the Legal Services Board for approval of change to the Costs Lawyer Code of Conduct

Dated: 8 November 2018

1. Enclosures with this application

- (i) Consultation paper
- (ii) Current Costs Lawyer Code of Conduct

2. This application

This application is made by the Costs Lawyer Standards Board (“CLSB”) under Part 3 of Schedule 4 to the Legal Services Act 2007 for approval of a change to the Costs Lawyer Code of Conduct.

The change consulted on was the addition of:

- 1.5 You must not make an unsolicited approach (cold call) 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.*

Following consultation responses, approval is being sought on the addition of:

1.5 You 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.*

3. Reason for this application

A review of approved regulator arrangements identified that some explicitly prohibit the unsolicited approach of private individuals (lay persons) e.g. SRA, whilst others, as with the CLSB, seek to rely on it being indicative behaviour of breaching a core professional principle. Whilst the CLSB considers such activity a breach of principle 1.1 and principle 1.6 of the Costs Lawyer Code of Conduct, the proposed change will be explicit on such activity.

4. Regulatory objectives

- (i) Protecting & promoting the public interest

The proposed change is relevant to this regulatory objective as an unsolicited approach to a private individual (lay person):

- Invades privacy.
- May put undue pressure on that individual.

- Represents a particular risk to a vulnerable individual.

(ii) Supporting the constitutional principle of the rule of law

The proposed change is considered neutral in respect of this objective.

(iii) Improving access to justice

An unsolicited approach to a private individual (lay person) only enables access to one legal professional and the information available to that private individual (lay person) comes only from the party making the approach.

(iv) Protecting & promoting the interests of consumers

An unsolicited approach does not promote sound decision making by the private individual (lay person).

(v) Promoting competition in the provision of legal services

An unsolicited approach compromises this objective as it restricts the private individual (lay person) to access to that one Costs Lawyer.

(vi) Encouraging a strong and diverse and effective legal profession.

The proposed change is considered neutral in respect of this objective.

(vii) Increasing public understanding of the citizens legal rights and duties

The proposed change is considered neutral in respect of this objective.

(viii) Promoting and maintaining adherence to the professional principles.

The proposed change serves to support the professional principle that a Costs Lawyer acts with integrity and professionalism.

5. Better regulation principles

(i) Proportionality

The change will provide absolute clarity that such conduct will not be accepted.

(ii) Accountability

The change has no particular relevance to this principle.

(iii) Consistency

The act of making an unsolicited approach to a private individual (lay person) is explicitly prohibited by some other approved regulators thus a similar rule in the CLSB's Code of Conduct will promote consistency of regulation.

(iv) Transparency

The change will make it explicitly clear to Costs Lawyers and the public that this activity is unacceptable behaviour for a Costs Lawyer.

(v) Targeted

The change will only affect those Costs Lawyers who are, or plan to, engage in such an activity. Further, it will reinforce the requirement that in the event of a referral, the Costs

Lawyer should satisfy themselves that the referring party is not making that referral based on an unsolicited approach.

6. Desired outcome of the change and how the applicant intends to assess whether the desired outcome has been achieved

The desired outcome is to reinforce to Costs Lawyers that making an unsolicited approach to a private individual (lay person) is not an acceptable practice, nor should a Costs Lawyer accept the referral of a private individual (lay person) based on an unsolicited approach by the referring party. The CLSB will assess whether the outcome has been achieved by complaint monitoring and analysis.

7. Does the proposed change affect areas regulated by other approved regulators?

No. As stated above, some approved regulators explicitly prohibit cold calling already e.g. the SRA.

8. When does the CLSB hope to implement the change?

The CLSB would implement the change as soon as reasonably practicable, following receipt of notification the change has been approved by the Legal Services Board.

9. Details of consultation processes undertaken and responses received by the applicant in relation to the change

The CLSB consulted with the profession, all other approved regulators and the Association of Costs Lawyers between 1 August 2018 and 31 August 2018. 18 Costs Lawyers responded to the consultation, all in support. There was no opposition from anyone consulted. The SRA helpfully responded on their current and intended position, which resulted in the revised wording proposed under this application.

10. Any other explanatory material as the applicant considers is likely to be needed for the purposes of Part 3 of Schedule 4 to the Act

None.

11. Equality and Diversity

The CLSB cannot identify any issues in relation to this change which will impact on equality and diversity.

END