



Costs Orders Guidelines

General

1. These guidelines set out the approach that the Legal Complaints Review Officer (LCRO) will take to making awards of costs in respect of applications for review. The jurisdiction to make awards of costs is found in s 210 of the Lawyers and Conveyancers Act 2006.
2. The following considerations will be relevant to the making of any costs orders:
 - Whether the making of the complaint was justified (even if no finding of unsatisfactory conduct is ultimately made).
 - The conduct of the parties in respect of the inquiry and/or review.
 - A costs order will not be used to punish a practitioner for the conduct complained about.
 - Where there is an adverse finding against a practitioner there is a presumption that he or she should contribute to the costs of the complaints and discipline procedure.

Costs against practitioner

3. Where a finding of unsatisfactory conduct is made or upheld against a practitioner costs orders will usually be made against the practitioner in favour of the Society. Those orders will usually relate both to the costs of the inquiry before the Standards Committee (dealt with at para 15 below) and the costs of the conduct of the review in accordance with s 210(3).
4. Costs orders may be made against practitioners in favour of the Society even where no finding of unsatisfactory conduct is made. Such orders may be made where the LCRO considers “the proceedings were justified and it is just to do so”. Such orders will usually only be made where the conduct of the practitioner, while not attracting a finding of unsatisfactory conduct, is nevertheless subject to criticism.
5. In general where an adverse finding is made or upheld against the practitioner that practitioner will be expected to bear approximately half of the costs of the review. In general where costs orders are to be made they will be made in the following amounts:

	Hearing in person	Hearing on the papers
Where the review is straightforward	\$1200	\$900
Where the review is of average complexity	\$1600	\$1200
Where the review is factually or legally complex or of particular significance	\$2400	\$1800

6. Where the practitioner has acted vexatiously, frivolously, improperly or unreasonably in the conduct of the review; or the practitioner has ignored or disobeyed an order or direction of the LCRO or breached an undertaking given to the LCRO or another party the award of costs may be increased.

7. No award of costs will exceed a fair estimate of the full actual costs of the conduct of the review.

Costs in favour of practitioner

8. The Act provides that a costs order in favour of the practitioner complained against (the "person to whom the proceedings relate") may be made and that the professional body pay those costs.
9. Such an order would be made only where the conduct of the Society can be criticised. In particular, such an order might be made where the application for review is made by the practitioner in response to an adverse finding by a Standards Committee and the application is upheld. However, the mere fact that the Standards Committee's decision is modified or reversed will not necessarily be grounds for a costs award.
10. Given the obligation of the Society to investigate complaints and of this office to conduct reviews, such an order is unlikely to be made where the application for review has been brought by the complainant.

Costs between the parties

11. Section 210(1) of the Lawyers and Conveyancers Act gives a general power to the LCRO to make such order as to the payment of costs and expenses as the LCRO thinks fit. This may extend to an award of costs as between complainant and practitioner in respect of the review, however, such power will be exercised sparingly.
12. Where the application for review was reasonable (whether or not the decision of the Standards Committee is modified or reversed) and the parties have acted appropriately, parties will generally be expected to bear the costs they incurred in being party to the review.
13. A costs order may be made against a party to review (whether a practitioner or a lay person) in favour of the other party where there has been some improper conduct in the course of the review. Such conduct may exist where a party has acted vexatiously, frivolously, improperly, or unreasonably in bringing, continuing, or defending the review. Improper conduct may also exist where a party has ignored or disobeyed an order or direction of the LCRO or breached an undertaking given to the LCRO or another party.
14. Such an order will take into account the actual costs incurred by the other party in the conduct of the review including any counsel retained and any out of pocket expenses.

Costs before Standards Committee

15. The LCRO may revisit any costs orders made by a Standards Committee. In doing so he or she may order that the practitioner pay the costs of the inquiry to the Society, and/or that the costs or expenses incurred by the person to whom the complaint relates be paid by the Society. In general where the decision of the Standards Committee is reversed or significantly modified the issue of costs before the Committee will be revisited.

Enforcement

16. Orders of the LCRO, including costs orders, are enforceable as a final judgement of a court in its civil jurisdiction in accordance with s 215 of the Lawyers and Conveyancers Act 2006. Any party who wishes to enforce a costs order in the Court should seek a duplicate of the order from the LCRO with the court in which it is to be enforced named in the order.