

BOARD DECISION NOTE
Costs Lawyer Standards Board
Date of decision: 22 January 2020
Issue: Mid-term strategy for consumer engagement

Board constitution: Steve Winfield (Chair): Lay NED
Gillian Milburn (Vice-Chair): Lay NED
Stephanie McIntosh: Lay NED
Tracyanne Ayliffe: Non-Lay NED
Paul McCarthy: Non-Lay NED

1. Background information and summary of the issue

This Board Decision Note documents the decision-making process in relation to the CLSB's Consumer Engagement Strategy, which was adopted on 22 January 2020.

Regulatory action plan

Outcome RA3 of the Legal Services Board's regulatory performance framework requires that legal services regulators have a robust evidence base from a range of sources on, amongst other things, consumers' needs and their use of legal services. Historically, the CLSB has found it challenging to find reliable and statistically significant data relating to Costs Lawyers given the small size of the regulated community, the even smaller pool of complaints against regulated individuals, and the lack of engagement from (predominantly sophisticated) consumers of Costs Lawyers' services when asked for feedback.

In June 2019, the CLSB agreed an action plan with the Legal Services Board, aimed at meeting or exceeding all outcomes in the regulatory performance framework. Under the action plan, the CLSB acknowledged the need to be innovative in the way it approached potential evidence sources, including the need to make informed extrapolations from data held by other organisations where appropriate.

Specifically, the CLSB committed to undertaking a project with the following parameters:

- **Purpose:** *Gain a deeper understanding of who the consumers of Costs Lawyers' services are, how they interact with the market and the factors that drive their purchasing decisions. Establish a framework for ensuring that the CLSB's regulatory approach meets consumer needs and mitigates the right risks.*
- **Approach:**
 - *Define what we mean by consumers of Costs Lawyers' services, thinking broadly about ultimate beneficiaries of those services.*
 - *Snapshot the evidence that we currently have about consumers' characteristics and behaviours (e.g. mix of informed and lay, number and type of vulnerable consumers) and identify gaps.*
 - *Map the sources of evidence that might be available to widen or deepen our evidence base, e.g. data on SRA regulated firms employing costs lawyers; SRA*

and BSB data on the ultimate/indirect clients of costs lawyers; the LSB's ILNS; the LSCP's tracker survey; MoJ research in the context of costs reforms; Citizens Advice enquiries; LeO complaints with a costs element; Legal Choices search term data etc.

- *Engage with the SRA and LSCP on policy research that may read across to Costs Lawyers (e.g. LSCP work on consumer engagement).*
- *Engage with the BSB on who they consider to be "consumers" of barristers' services and how this impacts their evidence base.*
- *Engage with the CMA to identify any relevant evidence from the market study that could be shared.*
- *Analyse the evidence gathered to identify any unaddressed areas of risk or disengagement.*
- *Review whether the current client survey is adding value and explore possible alternatives/supplements.*
- *Consider other ways to measure the typical consumer experience, such as mystery shopping.*
- **Outputs:** *A report covering the above areas. A revised consumer engagement strategy, including how we will ensure our evidence base remains current. An agreed framework for aligning risk assessment and regulatory approach to consumer need, expectations and behaviours.*

Interim report

The initial stages of the project culminated in an interim report entitled Costs Lawyers and Consumers (Annex 1). The CEO presented this report to the board at its scheduled meeting on 23 October 2019. The report collated and considered various evidence sources on the consumer dimension of the Costs Lawyer market, as envisaged in the regulatory action plan. The board found the report valuable, noting that creative ways had been identified to access consumer insight. The board's comments are noted in the minutes of the meeting, [published on the CLSB website](#).

The board discussed various elements of the report, including the observation that Costs Lawyers had a role to play in helping the wider legal services market present prices in a transparent way. The board also discussed the role of the Legal Choices website in public education about Costs Lawyers' role and scope of service.

The board considered the evidence of unmet need stemming from the report. There was further scope to look at complaints against other legal services providers (e.g. complaints to the Legal Ombudsman or SRA about solicitors) that related to costs or pricing, to assist in identifying and quantifying unmet need. The Non-Lay board members shared insights as to how own-client costs are presented to consumers and the possibility that a lack of awareness about whether and how to challenge costs is leading to further unmet need.

The board agreed that the report should be shared with the LSB and other approved regulators who could provide input, and this was actioned following the meeting. The board supported progression to the next phase of the project, as outlined in the report, which included development of a new consumer engagement strategy.

Roundtable with the LSB CEO

At its October meeting, the CLSB board also had the benefit of a roundtable discussion with the new CEO of the Legal Services Board, Matthew Hill. Evidence of the consumer dimension of the market was a central aspect of that discussion.

The discussion touched on who consumers of Costs Lawyers' services are, historic difficulties in capturing data about consumers and future opportunities for remedying this. The Chair of the CLSB board outlined some of the initiatives being explored by the CLSB, as described in the interim report, and sought feedback from Matthew on the overall approach.

There was also a wider discussion about evidence, including different sources and forms of evidence, how complaints data can be used, ways of informally gathering evidence, and learnings from the LSB's Individual Legal Needs Survey. Matthew offered the LSB's assistance in fostering collaboration between the CLSB and the larger regulators in terms of evidence collation. Full minutes of the roundtable can be found in the minutes of the meeting, [published on the CLSB website](#).

Strategy proposal

Between the board's meetings on 23 October 2019 and 22 January 2020, a proposed Consumer Engagement Strategy was developed which built on the findings in the interim report. The interim report had drawn together existing evidence about the way consumers purchase Costs Lawyers' services and flagged potential avenues of further investigation. The Consumer Engagement Strategy aimed to establish a prioritisation framework for those further avenues of investigation, providing a basis to build on and utilise the CLSB's evidence base going forward.

The proposed Consumer Engagement Strategy covered the same period as the CLSB's prevailing organisational strategy (2020 to 2023). It was structured to highlight priorities for each year of the strategy and the anticipated outcome by the end of the period.

2. Evidence considered by the Board

- Interim report on Costs Lawyers and Consumers (Annex 1).
- Views of the LSB CEO.
- Draft Consumer Engagement Strategy developed by the executive.

3. Recommendation(s) of the executive and/or Chair

The board was asked to consider the draft Consumer Engagement Strategy, which was put forward by the CEO for discussion. The Chair commended the draft to the board and invited feedback on the approach.

The CEO also recommended that the existing Consumer and Potential Consumer Engagement Strategy (Annex 2), developed in 2016, be revoked. This mainly described

ongoing activities and relied on a description of “consumers” that had been superseded by the CLSB’s recent work. The CEO therefore recommend that this document be replaced wholesale by the new Consumer Engagement Strategy.

4. Summary of deliberations

The board considered the proposal and discussed the envisaged activities and timings. Board members agreed that the document was accessible and concise. They supported the staged approach, allowing adjustment of the strategy to reflect continual learning. The strategy would also directly address risk R4 in the CLSB’s regulatory risk register, bringing down the rating for this risk over time.

The board considered whether it was appropriate to revoke the existing Consumer and Potential Consumer Engagement Strategy that was developed in 2016 and concluded that there was nothing in the existing strategy that was not captured or superseded by the new strategy.

5. Other factors considered by the Board

Standing items for consideration are the impact of the decision on:

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|---|---------------------------------|
| - the CLSB’s independence | - the CLSB’s financial position |
| - furtherance of the regulatory objectives | - equality and diversity |
| - consumers, including vulnerable consumers | - data privacy |

Factors not already addressed in sections 1 or 4 above are:

- CLSB independence: The strategy envisages engagement with the Association of Costs Lawyers in the sharing and gathering of data and evidence. This is an appropriate collaborative exercise and is in keeping with the LSB’s Internal Governance Rules 2019. Otherwise, further development of the CLSB’s own evidence base enhances the CLSB’s independence from the representative body.
- CLSB’s financial position: Staging the actions in the strategy will help to ensure this work can be accommodated within the parameters of the usual annual budget.
- Equality and diversity: The strategy has the potential to reveal unmet legal need or identify client vulnerabilities, promoting equality at the consumer level.
- Data privacy: Collation of evidence will be in accordance with the CLSB’s Privacy Policy, and any personal data used for analytical purposes will be anonymised.

6. Risk assessment

The Consumer Engagement Strategy is designed to directly address a risk identified in the CLSB’s regulatory risk register, namely the risk that the CLSB cannot generate sufficient

evidence about the consumer dimension of the market (risk R4). This risk has the potential to undermine the CLSB's ability to implement targeted, evidence-based regulatory interventions that will deliver better outcomes for consumers. It also jeopardises the CLSB's ability to meet the regulatory standards expected by the Legal Services Board. For these reasons, the decision is seen as essential in managing and mitigating a recognised risk.

Adopting the strategy does not import new risks, and the risks involved in failing to successfully deliver the strategy are already captured in the risk register.

7. Decision taken, including reasons for the decision (if not apparent from the above)

The board adopted the Consumer Engagement Strategy, the final version of which is at Annex 3. The board agreed this should be published on the CLSB website to promote transparency and encourage stakeholder interest.

The board revoked the existing Consumer and Potential Consumer Engagement Strategy.

The board also agreed to update the CLSB's regulatory risk register by reducing the probability score for risk R4 (*CLSB cannot generate sufficient evidence about the consumer dimension of the market*) to level 2, to reflect implementation of the new strategy.

8. Dissenting Board members (if any), including reasons for their dissent (if not apparent from the above)

There were no dissenting board members.

9. Provision of the Legal Services Act 2007, or other legislation, under which the decision was made

Section 28 and section 1(1)(d) of the LSA.

Board Decision Note approved by the Board on: 22 April 2020

CLSB

Overview

In the regulatory action plan that we adopted in June 2019, we outlined our aim of gaining a deeper understanding of who the consumers of Costs Lawyers' services are, how they interact with the market and the factors that drive their purchasing decisions. The first stage of our work involved an evidence gathering and mapping exercise, which is the subject of this interim report.

Our work to date has identified a variety of evidence sources in relation to consumer needs and behaviour in the market that we regulate, enabling preliminary conclusions to be drawn or assumptions to be made. We have also identified a number of areas in which further research or investigation could potentially be carried out. The next phase of our work can therefore be divided into three areas:

- determining which further opportunities for evidence gathering should be prioritised and how they should be resourced;
- developing a framework for aligning risk assessment and regulatory approach to consumer needs, expectations and behaviours, in line with our research (as outlined in our action plan); and
- revising our consumer engagement strategy in light of the above.

Consumers in context

Who is a consumer

The first question to be addressed when trying to better understand consumers' needs is: who is a consumer? Consumer protection laws generally define a consumer in the negative; a consumer is considered to be someone who is not a trader. The Consumer Rights Act 2015, for example, defines a consumer as "an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession".

The definition of a consumer under the Legal Services Act 2007 is wider than this, encompassing all persons who "use, have used or are or may be contemplating using"

legal services, or who “have rights or interests which are derived from, or are otherwise attributable to, the use of such services by other persons”. This covers a diverse range of legal services users: from lay individuals through to qualified legal professionals, from SMEs through to multinational corporates with in-house legal and procurement functions. In considering “consumers” for the purpose of our current work, we have kept all these categories of potential users in mind. Different categories will, inevitably, have different requirements, vulnerabilities and levels of bargaining power.

In the Costs Lawyer (CL) market, a single instruction may involve a chain of successive consumers. The ultimate beneficiary of costs advice is likely to be an individual or corporate client who is involved in (or contemplating) the procurement of other legal services, most often in relation to a contentious matter. However, a CL’s instructions may come from a solicitor, barrister or other legal professional who is involved in providing substantive legal services to the underlying client. In this scenario, we must take account of the needs of the immediate consumer (the legal services professional who engages the CL) and the ultimate consumer or beneficiary of the service (the individual or corporate client).

We are also mindful that there is potential for misalignment between the interests of different types of consumers of CL services. There may be misalignment:

- At a market level: The CL profession has the dual roles of (i) being instructed by (and earning fees from) other legal professionals and (ii) scrutinising the practises of other legal professionals in relation to their fees.
- On a case-by-case basis: A CL may be required to act in the interests of, and on the instruction of, an immediate client (legal professional) while also preserving the interests of an underlying client.

The potential for misalignment in the latter scenario is not unique to CLs – barristers, for example, often advise within this framework – and ethical and professional principles (including those in the Costs Lawyer Code of Conduct) will guide a CL’s behavior. However, the potential for misalignment at a market level warrants further discussion

with the profession's representative body about how best to protect and promote the interests of *all* consumers of CL services and minimise any unmet need.

Potential area to explore: Collaborating with ACL on ensuring the regulated community understands and is prepared to address the breadth of consumer need for its services.

Sources of instructions

The most recent year for which we have data relating to the sources of CLs' instructions is the 2018 practising year (with data being provided upon application for a 2019 practising certificate). Over time, we have seen a move away from a position where the majority of CLs work in costs law practices. The proportion of sole practitioners has remained relatively stable, while the proportion of CLs working in solicitors firms has increased.

The table below shows the percentage of CLs working exclusively in each environment (with the remainder of the profession working in mixed employment, in-house, or not being actively employed for various reasons).

	Proportion of the profession working in:		
	100% costs law practice	100% sole practitioner	100% firm of solicitors
2011	53.8%	16.1%	26.5%
2012	48.2%	17.4%	31.0%
2013	42.0%	19.4%	29.2%
2014	44.0%	17.8%	34.3%
2015	41.0%	15.8%	33.7%
2016	38.0%	17.7%	37.2%
2017	43.1%	14.5%	37.8%
2018	39.6%	14.1%	41.0%

In considering evidence sources for this report, we had confidential discussions with two CLs who lead teams of costs advisers in solicitors firms, to gain an initial anecdotal understanding of the sources of instructions in that context. Both reported that costs

advice was predominantly provided as an “add-on” service to existing clients of the firm, with at least 95% of instructions being generated by internal referral. The remainder of instructions were predominantly generated by litigants in person who had not been represented in their substantive dispute but required specialist advice on costs issues. Further research would be required to assess whether this experience is representative, but it does raise the question of who CLs perceive to be the consumer(s) of their services in this context – their internal solicitor colleagues and/or the firm’s ultimate clients – and whether this has any impact on consumer outcomes.

Potential area to explore: Broader investigation of sources of instructions for CLs working within solicitors firms and perception of the client relationship.

We also hold data relating to instructions received by CLs from lay clients. Prior to 2017, data was collected in relation to the amount of lay and professional instructions as a proportion of CLs’ total workload. During the period for which data was collected, the proportion of CLs who worked solely for lay clients was low and relatively stable. The proportion who received their work from mixed sources fell, largely accounted for by a rise in the proportion working only for professional clients.

	Proportion of the profession receiving:				Information not provided
	100% of instructions from professional clients	100% of instructions from lay clients	100% of instructions from other source (e.g. in-house)	Mixed sources	
2013	60.5%	3.2%	0.8%	29.5%	6.0%
2014	68.8%	2.3%	2.8%	21.0%	5.1%
2015	68.0%	1.0%	2.7%	22.5%	5.8%
2016	72.0%	0.3%	2.8%	19.4%	5.5%

In relation to CLs who reported receiving instructions from both professional and lay clients, more than 80% of those CLs received over 90% of their instructions from professional clients across the four years.

From 2017, the survey questions were changed to ask about the volume (rather than proportion) of lay instructions, to get a better feel for the scale of lay client engagement with the market. The data suggests that the total volume of lay instructions remains low, but not immaterial, and may be growing.

Number of lay client instructions	2017	2018
1 - 10	99	135
11 - 20	7	-
21 – 30	1	1
31 – 40	-	-
41 – 50	-	1
51 – 60	-	1
61 – 70	-	-
71 – 80	-	-
81 - 90	-	-
91 - 100	-	3
100+	-	5

The number of pro bono cases (and thus, we have assumed, pro bono clients) taken on by CLs has also risen in recent years, as shown in the table below.

Year	Number of cases reported
2015	0
2016	4
2017	77
2018	61

Finally, the proportion of CLs whose work consists solely of legal aid instructions has remained stable over time, with 2.5% of CLs having reported doing only legal aid work in 2012 compared with 2.8% in 2018. However, there has been a rise in the proportion of CLs who report doing some legal aid work over the same period; 38.8% of the profession in 2012 as compared to 55.2% in 2018.

Potential area to explore: Amending or adding to the questions asked in the annual regulatory return to provide more insightful data on the types of consumers that engage CLs (e.g. which types of professionals instruct CLs and the sources of referrals).

Vulnerability and segmentation

In considering the experience of consumers, we must keep in mind that consumers of a similar type will not necessarily all have the same needs nor approach markets in a homogenous way. The Legal Services Consumer Panel's (LSCP's) work in the context of its Consumer Challenge programme highlighted the many benefits of adopting [consumer segmentation](#) in developing a regulatory approach. The LSCP's report notes that:

Consumer segmentation enables both regulators and providers to identify those consumers who are likely to face significant detriment, to tailor solutions, and to evaluate whether solutions are having the desired effect. In our research we've seen people segmented by: capability, literacy, technological skill, individual understanding of legal matters, disabilities affecting communication, ethnic background, and case factors i.e. whether a case is complex or contentious.

The size of our regulated community, and therefore the size and nature of the market that it serves, is unlikely to warrant detailed segmentation. This is acknowledged in Part 5 of the LSCP's report (entitled "Proportionality and practicality"). However, that Part of the report does suggest several ways that a segmentation approach can be used by smaller regulators – such as learning from existing research, collaborating with market-wide initiatives and so on – to implement simple changes that target the most vulnerable consumers.

We also need to identify whether consumer vulnerabilities in the CL market differ from those in the markets for front-end, substantive legal services. Some areas of vulnerability (particularly when considering lay individuals and SMEs) are likely to be familiar; such as difficulties in accessing services due to disability or technological marginalisation. Other vulnerabilities may be particularly acute in the CL market; such

as a lack of understanding of the services available or financial vulnerability at the point when advice is needed. These vulnerabilities may be intensified where a consumer has lost trust and confidence in their primary legal service provider, for example because they have recently lost a dispute or they wish to challenge their service provider's own fees.

The CLSB currently publishes [guidance on vulnerable consumers](#) on its website. While the advice is useful and practical, it is mostly generic and relates to legal services as a whole. The guidance would benefit from being refreshed to focus more acutely on risks of vulnerability that are specific to the market for costs advice. The LSCP's [guide to recognising and responding to consumer vulnerability](#) will be a helpful starting point for that purpose, but our current work on the consumer dimension of the CL market (of which this report forms part) will allow us to give more thought to how the general principles map across to the CL market in particular.

Potential area to explore: Refreshing our guidance on vulnerable consumers to address risks of vulnerability that are specific to the market for CLs' services.

Summary

In researching, understanding and addressing consumer need in the CL market, it is clear that we will need to consider at least the following types of consumers:

- legal services professionals who instruct CLs at arms length (although we would benefit from more data on precisely which types of professionals);
- legal services professionals within the same firm as CLs;
- ultimate clients of instructing legal services professionals;
- lay individuals (including pro bono clients);
- corporate clients;
- employers of in-house CLs.

The needs and interests of these consumers will be distinct in many ways. The aim of our current work is to make, and then test, informed assumptions about the level of risk

posed by our regulated community to these different types of consumers, allowing us to tailor our regulatory arrangements accordingly. To do this, we need to know more about how the various types of consumers interact with the market. A summary of our investigations to date is set out in the remainder of this report.

Legal Services Consumer Panel (LSCP)

We sought the LSCP's early advice on how we might approach our work, including whether the Panel has access to existing data and evidence sources that we could draw from. We met with the LSCP Chair and an LSCP policy associate, as well as three individual Panel members with relevant expertise in the consumer policy and research fields.

LSCP evidence sources

The primary dataset produced by the LSCP relating to consumer experience in the market for legal services is its [Tracker Survey](#). Trends identified from the 2019 survey of 3583 members of the public include the following:

- The proportion of consumers who shop around for legal services remains low at 28%.
- The proportion of consumers who say it is easy to make a price comparison fell from 58% in 2018 to 38% in 2019, despite transparency measures being implemented as a result of the recent market study by the Competition and Markets Authority.
- 88% of consumers were satisfied with the outcome of their matter and 84% were satisfied with the legal service.
- Consumers' use of online services has increased from 21% in 2012 to 33% in 2019.
- There are gaps in understanding about how to make a complaint or seek redress. The proportion of consumers who were dissatisfied but did not complain rose to 37%, and 46% of consumers still do not know how to go about making a complaint.

The question is then whether these themes and statistics reflect the experience of consumers in the CL market specifically.

We do not have a clear picture of how many survey respondents used the services of a CL. The survey asks respondents to indicate which “legal services” they used in the previous two years, however many of the options relate to the subject matter of the advice sought (e.g. employment disputes, immigration matters, problems with consumer goods or services) rather than a type of legal service. CLs could be involved in matters covering a vast array of subject areas where the matter is contentious or where professional fees are in issue. At a general level, a significant proportion of respondents reported using legal services in relation to matters that are unlikely to involve CLs (36% on conveyancing, 32% on will writing, 23% on power of attorney). A relatively small proportion of respondents reported using legal services in relation to matters that are more likely to involve CLs (6% on accident or injury claims).

The survey goes on to ask about the type of organisation that provided the services to respondents (solicitors, barristers etc). The list of options includes “Law Cost Draftsman”. This raises several difficulties:

- 0% of survey respondents reported using a Law Cost Draftsman.
- Even if respondents had reported using a Law Cost Draftsman, this is not the equivalent of a CL (indeed, the term “costs draftsman” tends to be used to describe unregulated providers of costs services). There is a follow-up question in the survey asking respondents whether their provider was regulated (yes, no, don’t know), which has the potential to give some insight into how consumers interpreted the phrase “Law Cost Draftsman”, however there is no breakdown of responses to that question by type of provider.
- The survey asks about the “type of organisation” that provided the services. As we have seen above, a significant minority of CLs work in solicitors firms, meaning that respondents may have answered “solicitors” even though services were provided by a CL.

On the last point above, the survey asks those respondents who used solicitors to indicate which type of firm they used. The majority (77%) used a small local firm. Only 7% used a national firm with a local office and 8% used a large corporate firm. It is reasonable to assume that most CLs working in solicitors firms are working for larger firms that can support a costs team, meaning that this aspect of the survey data is also of limited use. However, that assumption has not been tested.

Potential area to explore: Collating data on the types of solicitors firms that employ CLs, to enable us to extrapolate from data about those firms in relation to the experiences of CLs' clients.

It is not surprising that a general population survey returns limited information that is applicable to CLs, given that we know CLs (regardless of where and how they work) generally receive a limited number of instructions from lay clients. Members of the public who have benefitted from a CL's services indirectly via their solicitor might be inclined to answer "solicitor" in relation to the provider of services, especially as respondents can choose only one answer from the list. The outcome is similar for barristers (with 1% of respondents having used a barrister), trade mark attorneys (0%), patent attorneys (0%) and notaries (1%), presumably given the nature of the services those professionals provide and the demographic of their clients.

One thing we can sensibly do is explore whether the LSCP can adjust its survey questions to ensure that, if respondents have in fact used the services of a CL, this is apparent from the survey results.

Potential area to explore: Collaborating with the LSCP on the Tracker Survey questions to improve the data collected – for our benefit and theirs – going forward.

Otherwise, a pragmatic approach is to consider the high-level trends from the Tracker Survey in the round – as indicative of issues experienced by consumers across the legal services sector as a whole – and be mindful of these as one aspect of the picture when developing our regulatory arrangements.

Panel member feedback

In the absence of directly applicable data from the Tracker Survey, we engaged with a member of the LSCP who has expertise in research and data to obtain her thoughts on other valid methodologies we could employ to gather evidence of the consumer experience. This led us to consider the following data sources and options for further investigation:

- anecdotal evidence from costs judges and masters as to the kinds of cases in which CLs appear and the types of clients represented;
- anecdotal evidence from CLs who are in a position of relative impartiality (e.g. having recently retired or recently qualified) in relation to issues such as the nature of first tier complaints and competitive market forces;
- anecdotal evidence from procurement functions in large solicitors firms that do not have an in-house costs team;
- using the above anecdotal evidence to build hypotheses that can be tested in more detail by hosting a targeted event, such as a stakeholder roundtable;
- establishing an advisory group of solicitors who regularly instruct CLs to advise on regulatory proposals;
- collaborating with academics in undertaking targeted research.

We have begun to action a number of these options through initial discussions and will consider, as part of the next phase of our work, which are most likely to be effective and practicable going forward.

Potential area to explore: Testing different sources of anecdotal evidence and deciding which of the above options to take forward.

Other LSCP initiatives

Other LSCP published work is helpful in the generality, but rarely touches on consumers of CLs' services in particular. References to other LSCP materials have been made throughout this report where relevant.

Otherwise, it is worth noting one interesting observation that was made by the LSCP in the context of its 2016 work on [Opening up Data in Legal Services](#). In considering price transparency, the LSCP commented on the unique position of CLs in being able to assist other legal services providers to improve their own practices for the benefit of consumers:

Some suggest that it is impossible for legal professionals to cost services because of the variation in the work they do. But this argument disproportionately places the risks with consumers. It is also a less credible argument when one considers the experience and knowledge firms have in understanding the different directions cases might go in, along with the likely price implications. Also, there is an arm of the profession, Costs Lawyers, dedicated to understanding and advising on legal costs, including costs budgeting – a resource for firms to draw on when costing services.

This is particularly relevant given the shift we have seen toward CLs working in solicitors firms. There may be scope for us to work with the SRA from a regulatory perspective, or with ACL from a commercial / reputational perspective, to explore how CLs can help to promote price transparency for consumers in the wider market.

Potential area to explore: Considering the role of CLs as promoters of the consumer interest in the area of price transparency across the wider market.

Other surveys of the public

Legal Services Board (LSB)

In 2016, the LSB published the results of a [survey of individuals' handling of legal issues in England and Wales in 2015](#), more commonly referred to as the individual legal needs survey or ILNS. The survey is funded by the LSB and The Law Society, but executed by YouGov. It covers the way individuals deal with different legal problems and their experience of choosing and using advice services. The ILNS has recently been updated

with data for 2018, however the data and associated reports have not yet been published so we are currently working with the 2015 materials.

Potential area to explore: Extracting data from the updated ILNS once it is published.

The ILNS identified, at a headline level, significant unmet legal need with almost half of all legal issues being tackled by respondents on their own or with informal help. Where survey respondents did seek advice, satisfaction with that advice was generally high. In choosing a provider from whom to seek formal advice, consumer choice was mainly driven by (in descending order): prior direct experience of using a provider, an internet search, recommendations from a friend or relative, knowledge of the provider without personally using them, and referrals.

The ILNS also contains data that is relevant to CLs specifically. In relation to awareness, 5.9% of respondents (roughly 1,500 people) reported knowing something about CLs, such as what CLs do. By way of comparison, 73% reported knowing something about solicitors, 23% reported knowing something about licensed conveyancers and 11% reported knowing something about notaries. Knowledge about CLs was the lowest of any of the listed legal professions, although not all the legal professions were listed (the question did not ask about barristers, for example).

Respondents were also asked whether, for certain types of problems, they knew whether legal aid funding was available. “Costs Lawyer” was listed as a problem type, for which 15.1% of respondents thought legal aid funding was available, 24.5% thought it was not available and 60.4% did not know. The reliability of this data is not clear given the conflation of provider type and problem type in relation to CLs.

1.4% of respondents had contacted a CL on their own behalf at some point in the past (respondents were not asked about making contact on behalf of another person or in a business context) and 38 respondents reported receiving advice from a CL in the prior three years. This is a statistically small sample size, but it is bigger than that attained in any other public survey, so in that sense it provides unique insight.

In relation to the legal issues about which respondents sought advice from a CL:

- More than one respondent sought advice from a CL in relation to: clinical negligence; other personal injury; immigration; arrest; domestic violence; and legal issues with children.
- One respondent sought advice from a CL in relation to each of: police misconduct; road traffic accident; will writing; divorce; relationship breakdown; problem with tenant; problem with landlord; and re-mortgaging.

Some of these reported legal issues (such as arrest) may suggest that respondents did not fully understand what was being asked. Other reported issues align with what we might expect based on anecdotal evidence (clinical negligence, personal injury etc).

In terms of consumer experience, of the 38 respondents who used a CL's services:

- 13 provided feedback on value for money: nine felt they received value for money, three did not and one did not feel strongly either way;
- 20 would be likely to recommend a CL to a friend, four would be unlikely to do so and 14 were neither likely nor unlikely to do so;
- 17 would use their same provider again if they experienced a similar legal issue in the future, 12 would use another CL, six would use another type of provider and three were not sure;
- for respondents whose matters had concluded, 78% were satisfied with the outcome and 13% were dissatisfied (9% were neither satisfied nor dissatisfied).

The above statistics are broadly in line with consumers' experience of using other legal services (there is some variation against the total population, but none that is particularly significant given the sample size).

91 respondents reported contacting the CLSB in relation to the handling of their legal issue. Given that this is more than twice the number of respondents who reported using the services of a CL, this suggests that either contact with the CLSB related to pre-instruction queries or the survey question was misunderstood by some respondents

(given the volume of queries we receive annually from consumers, the latter is perhaps more likely).

While this data helps us to build a picture of consumer outcomes in the CL market, there are limitations on its use that we must keep in mind. Some of these limitations are as follows:

- We cannot be certain that consumers who reported using a “costs lawyer” were in fact using the services of a CLSB regulated professional. Respondents were asked whether they sought advice from certain types of unregulated providers (that is, providers not regulated under the Legal Services Act 2007) to meet their legal needs. The list of unregulated providers included, for example, CMCs, employers, charities, accountants and insurers, but the list did not include unregulated costs draftsmen. It is unclear whether all survey respondents understood the term “costs lawyer” in a way that differentiates between regulated and unregulated individuals.
- While a question was asked about whether barristers were instructed directly or via a solicitor, the same question was not asked in relation to CLs. It is possible that respondents received the advice of a CL via a solicitor, and thus only responded to the survey questions in relation to their experience of the solicitor. This would be a particular risk if a respondent engaged the services of a single law firm that provided both substantive and costs advice.
- In relation to assessing unmet need, respondents were asked about their legal needs and legal issues they had encountered. However, these questions did not ask directly about issues relating to legal costs or fees. It is difficult to extrapolate, from the list of substantive issues used, about advice needs in the area of legal costs.

For these reasons – and given the small number of respondents who report using a CL’s services even in a survey of this scale – we must view this kind of quantitative data as one piece of the larger puzzle, to be taken into account alongside other qualitative and descriptive evidence.

IRN Research

IRN Research recently published a report entitled “UK Legal Services Consumer Research Report 2019”, however this is only available to the public at significant cost. We explored whether other approved regulators or the LSB had access to this resource, or whether we could obtain it on a public interest basis, but with no success. IRN Research kindly provided us with a copy of the survey questions that formed the basis of the report, so we could assess likely relevance of the data. From the question set, it does not appear that the survey touches on any issues that are directly relevant to CLs over and above the data we have from the LSCP and LSB surveys. We therefore decided not to procure further materials in relation to the report.

Competition and Markets Authority

In 2016, the Competition and Markets Authority (CMA) carried out a [market study into the wider market for legal services](#). We engaged with the CMA to explore whether any of the evidence they gathered in undertaking the market study might be relevant for our purposes.

In sum, most of their research was focused on consumers in the narrower sense (non-traders) and – in line with the experience of others – they found little useful evidence in relation to the CL market in this regard. They undertook some work on the supply side of the legal services market, however none of their three core case studies touched upon costs issues.

As part of the market study, the CMA had commissioned its own survey of individual consumers (in addition to information provided by the approved regulators), as well as undertaking qualitative research such as focus groups with small businesses. They reported difficulties in finding sufficient numbers of consumers with relevant legal problems to ensure a large enough population size to draw meaningful conclusions on the quantitative side. They therefore supported our approach of combining existing quantitative data with anecdotal qualitative evidence to produce a rounded picture of consumer outcomes in the market. The CMA also reported difficulties in securing

engagement from individual CLs to assist with their research, but they put us in touch with several contacts they had found helpful.

The CMA emphasised that transparency and information provision remain important for professional consumers, as well as lay consumers, of CLs' services. They noted that many solicitors, particularly sole practitioners or local firms, will not be expert purchasers of costs advice and might therefore lack a clear understanding of how to find the right CL, what to expect from the service and how to interrogate fee levels. This is an important observation to keep in mind.

Costs Lawyers

Association of Costs Lawyers

The Association of Costs Lawyers (ACL) is the profession's representative body. ACL can deliver valuable insights via access to its membership and we have been working with ACL to identify opportunities for collaboration in relation to the consumer experience. While our ultimate purpose and objectives may differ from ACL's, our interests are aligned in terms of promoting consumer understanding of, and engagement with, the CL market and ensuring consumers have a positive experience of procuring CLs' services.

We are currently exploring ways of working together to capture evidence at the ACL industry conference (e.g. via flash surveys or one-to-one Q&As recorded on a roving tablet) in relation to sources of instructions, work types and routes to market. We also presented to the ACL Council in August on the CLSB's current priorities and consumer agenda. This has led to evidence-sharing in relation to key consumer protection issues (such as insurance provision) and forms part of a wider dialogue around sharing anecdotal evidence of risk to clients, to help us build up a fuller picture of risk in the market.

Individual CLs

We have begun to seek insights from individual CLs in different areas of costs practice, in relation to the types of consumers they act for, how consumers find them and perceptions of risk in the market generally.

Anecdotal reports suggest that an archetypal matter for a CL is still an instruction from a solicitor – who is likely to have instructed the CL previously – to deal with the costs elements of a contentious matter (budgeting, costs assessment and so on). A significant proportion of work reportedly relates to personal injury disputes, and in that context CLs often receive repeat instructions directly from large insurers in addition to solicitors (plus the ILNS, referred to above, suggests that CLs act for claimants in some PI cases). This anecdotal picture broadly aligns with the [evidence gathered from our regulated community](#) about the potential impact of MoJ reforms to the fixed recoverable costs regime.

Anecdotal reports also suggest that pockets of the profession are moving away from the more traditional work areas and finding innovative ways to add value for clients. One evolving business model is the end-to-end costs consultancy, helping litigants to control the cost of litigation from pitch stage through to costs recovery, including by: negotiating fee structures; advising on funding; settling and managing costs budgets; scrutinising bills from legal advisers; advising on the costs aspects of settlement negotiations; and conducting advocacy on costs issues. One CL described this model as akin to acting as “the quantity surveyor of litigation”.

As can be seen, there is scope for CLs to provide guidance directly to clients when negotiating with solicitors, barristers or other legal providers in relation to fees. Conversely, some CLs are taking on a more expansive remit within a firm of solicitors – providing a bolt-on client facing service rather than acting as an internal adviser to their solicitor colleagues. In either context, this suggests a shift toward CLs having more contact with underlying clients, whether corporates or individuals.

These types of clients – unlike other legal professionals who provide repeat instructions – are likely to need more help in understanding what a CL does and how they charge for their services. Additional skills will be required by CLs to enable them to deal professionally with lay clients who have varying levels of experience, resource and emotional investment in the instruction. At the more extreme end, CLs have relayed anecdotal accounts of individual clients (including increasing numbers of pro bono clients) being emotionally distraught when facing adverse costs orders that will mean the loss of their family home or bankruptcy of their business.

Feedback suggests that there are currently limited training opportunities for CLs to upskill in areas which are central to protecting and supporting consumers as new business models emerge, such as client care, safe business innovation, responsible marketing and interpersonal skills. We are currently investigating the best way to address this from a regulatory perspective as part of the review of our approach to continuing professional development.

Potential areas to explore: Ensuring our CPD arrangements facilitate and encourage upskilling to allow CLs to meet likely future consumer need. Considering whether the CLSB can directly or indirectly (by facilitation) do more to raise awareness amongst direct clients of the role of a CL.

There is no universal perception among the CLs we have spoken to thus far about how consumers find CLs. CLs working in solicitors firms report relying heavily on internal referrals or being part of an end-to-end service provision. Sole practitioners and small firms seem to benefit from repeat instructions from fellow legal services professionals. Some CLs in costs practices report being found by individual clients via an internet search. However, these are very high-level observations; it is difficult to identify any concrete themes from the anecdotal information we have obtained about sources of instructions and routes to market. We will need to look to other sources and/or take a more systematic approach to gathering further evidence. Our collaboration with ACL is likely to be important in this regard.

One final point to note is that CLs generally report (again anecdotally) that there is minimal appetite within the profession to embrace technological change or leverage technology to offer new products and services for the benefit of consumers. This appears to be cultural, and we have had no reports of innovation being stifled by regulatory arrangements. However, we will keep this under review in the context of emerging findings from both the LSB and LSCP in relation to lawtech.

Direct evidence of consumer experience

Historically, we have focused on obtaining feedback from consumers of CLs' services via our feedback questionnaire. This is available on our website [here](#) and we also encourage CLs to provide the questionnaire to clients at the conclusion of a matter. However, we have struggled to secure client engagement with the survey and have therefore begun to investigate alternative ways to directly target CLs' clients and gather evidence of their needs and experience.

Associations and interest groups

We are keen to collaborate with user groups and associations that intersect with the CL market, as those organisations can draw on the experience of their memberships as a whole. We have started by collaborating with the Legal Aid Practitioners Group (LAPG), which is a membership body representing legal aid practitioners in England and Wales and the clients they serve.

Given that the proportion of CLs who report carrying out legal aid work is rising – tipping over to a majority (55.8%) in 2018 – we hope that working with LAPG will provide valuable insights for the CLSB and provide a channel for LAPG's members to provide feedback to their CL colleagues. We intend to take learnings from this initial work to see how we can best collaborate with other organisations.

Potential area to explore: Identifying other interest groups or associations whose members may have a collective insight into the consumer dimension of the CL market.

Legal Ombudsman (LeO)

Since the inception of the CLSB, there have been only four complaints about CLs determined by LeO. This makes it difficult for us to directly act upon evidence from complaints data in the same manner as other approved regulators.

A sensible way to learn from LeO's experience is likely to be by assessing market-wide themes and considering their likely relevance to the CL profession on a case-by-case basis. LeO has very few published materials relating to thematic issues, however the Chief Ombudsman has indicated that LeO will soon be embarking on an initiative to improve the feedback loop between the ADR scheme and the regulated professions. We have conveyed our intention to engage with that initiative. We hope it will allow us to identify areas of risk that have materialised in other parts of the profession, and which could emerge in the CL market, enabling us to take proactive measures to protect consumers.

Potential area to explore: Engaging with forthcoming LeO initiatives to improve feedback to the approved regulators on themes identified from complaints data.

Other options

In gathering intelligence for this report, several other options for gaining insights into the typical consumer journey have emerged. These include:

- Mystery shopping: Undertaking structured desk research that involves putting ourselves in the shoes of a consumer seeking advice on a costs issue.
- Improving our client feedback survey: Working with a research expert on techniques for improving the response rate to our survey, including improving the content, layout and/or distribution channels.
- Citizens Advice enquiries: Approaching Citizens Advice, as the most likely source of data on this subject, in relation to the volume and nature of enquiries about legal costs.

-
- Web usage data: Gather data from Legal Choices, or use analytics in relation to third party websites, in relation to search terms, hit rates and content journeys that are relevant to costs issues.

Potential area to explore: Considering whether resource should be deployed in actioning these (or other) options for gaining further insight into the typical consumer journey.

Other approved regulators

While there are important differences in the way consumers interact with the various regulated legal professions, there are of course areas of overlap. For example:

- Given that many CLs work in solicitors firms, SRA data relating to the way that consumers engage with those firms may be relevant to the CL market.
- Given that many barristers, like CLs, are instructed by other legal services professionals on behalf of an underlying client, there may be a read-across from the BSB's approach to identifying consumers.
- Given that there is limited information in the quantitative surveys (such as the LSCP's Tracker Survey) relating directly to patent attorneys and trade mark attorneys, IPReg may be able to share ideas for finding other ways to understand the consumer experience.

We have taken steps to pursue information from other approved regulators, but with limited success (for example, we have contacted the SRA's research lead on numerous occasions with no response). We will continue to follow up, but may need to carry out desk research to determine whether any useful data is publicly available in relation to the other regulated professions. This is not the most efficient way forward, but given the competing demands on other regulators' time and resource, it may be the best option in the short term.

CONSUMER/POTENTIAL CONSUMER ENGAGEMENT STRATEGY

Costs Lawyer Standards Board

Effective from: 11 October 2016

1. Introduction

The Legal Services Consumer Panel (LSCP) has identified its main objective as being “*placing the consumer at the heart of regulation.*” This strategy sets out the approach of the Costs Lawyer Standards Board (CLSB) in relation to consumer/potential consumer engagement. Reference herein to a Costs Lawyer is reference to a Costs Lawyer authorised and regulated by the CLSB.

2. Factors considered on forming this strategy

In considering consumer/potential consumer engagement the CLSB will ask itself the following to ensure cost/benefit:

- Why now?
- What is the issue?
- Who do we engage with?
- What is the right approach?
- What will we do with the outcome?

3. Costs Lawyer consumers

There are two consumers of Costs Lawyer services:

- Solicitor
- Non-Solicitor (lay consumer)

Analysis of the Costs Lawyer profession for 2015 evidenced that 72% of Costs Lawyers received instructions from 100% Solicitors, 86% of Costs Lawyers received 90% or more of their instructions from Solicitors and only 0.3% of Costs Lawyers received instructions from 100% lay consumers.

Due to the varying % mix of instructions to a Costs Lawyer, it is difficult to identify the exact % of annual lay consumer instructions, however the CLSB believes this is likely to be 5% or less. For 2017 practising certificates the CLSB proposes to ask Costs Lawyers the actual number of clients they represent, Solicitor or lay, so an actual number can be identified.

4. CLSB objectives on consumer engagement

Objective 1: To engage pro-actively with consumers and stakeholders to understand the needs and requirements of the consumer of costs law services and use that information for evidence based policy development.

Consumer/potential consumer: “To engage pro-actively”

To achieve this the CLSB will continue to:

- Monitor consumer complaints made to the CLSB and their outcome.
- Monitor consumer complaints made to the Legal Ombudsman and their outcome.
- Consider consumer/potential consumer feedback via the on-going survey on the CLSB website.
- Attend (Chair & CEO) the annual two day Costs Lawyer National Conference in London and address and engage with Solicitor consumers in attendance.
- Attend (Chair & CEO) the annual one day Costs Lawyer National Conference in Manchester and engage with Solicitor consumers in attendance.

Further, the CLSB will:

- Issue to all Costs Lawyers a consumer (client) questionnaire with a request they include the same with their client care letters. The questionnaire will ask the consumer to complete the same at the end of their instruction to their Costs Lawyer and post direct to the CLSB for evaluation.
- Request ACL establish a “pop up” on their website which will direct the viewer to the on-going consumer/potential consumer survey on the CLSB website.
- Request Legal Choices editorial panel establish a “pop up” on their website to a consumer/potential consumer survey.

Costs Lawyer: “To engage pro-actively”

To achieve this the CLSB will continue to:

- Ask the question “*how can the CLSB better regulate the profession*” on each Costs Lawyers annual application for a practising certificate.
- Engage with the Association of Costs Lawyers, the professions representative body.
- Engage with the Association of Costs Lawyers (Training), the professions authorised study provider to Trainee Costs Lawyers.
- Attend (Chair & CEO) the annual two day Costs Lawyer National Conference in London and address and engage with Costs Lawyers and Trainee Costs Lawyers in attendance.
- Attend (Chair & CEO) the annual one day Costs Lawyer National Conference in Manchester and engage with Costs Lawyers and Trainees Costs Lawyers in attendance.
- Write a regular column in the Costs Lawyers Journal signposting current issues.
- Issue newsletters to Costs Lawyers where considered appropriate and publish them on the CLSB website.

Stakeholder (others): “To engage pro-actively”

To achieve this the CLSB will continue to:

- Engage with the Legal Services Board.
- Engage with the Legal Services Consumer Panel (LSCP)

- Engage with the Legal Ombudsman.
- Engage with other parties e.g. MoJ and CMA.
- Consider LSCP reports and surveys e.g. annual tracker survey.
- Write a regular column in the Costs Lawyer Journal (which has a wider distribution than just Costs Lawyers) signposting current issues.
- Write articles for other publications as considered appropriate, and where permitted by those publications.
- Read current legal opinion in legal publications.

“Understand the needs and requirements of the consumer”

To achieve this, the CLSB will continue to monitor consumer feedback through surveys, reports and other activities set out above will continue to be evaluated and disseminated throughout the CLSB.

“Use that information for evidence based policy development”

To achieve this, the CLSB board will continue to consider policy development identified as a result of the activities set out above.

Objective 2: To provide information to help consumers make decisions about costs law services and understand the standards they can expect.

“Provide information to help consumers make decisions about costs law services”

To achieve this, the CLSB will continue to:

- Maintain the CLSB website with up to date information and documentation.
- Maintain the register of Authorised Costs Lawyers on the CLSB website.
- Make disciplinary outcomes available to view on the CLSB website.
- Maintain the Costs Lawyer section on the Legal Choices website.
- Promote the use of the Costs Lawyer Mark of Regulation.

Further, the CLSB will:

- Issue a guidance note for use by a consumer on what a Costs Lawyer does and what a client can expect of them. This guidance note will be made available on the CLSB website.
- Provide a link on the Legal Choices website to the CLSB website.
- Create a new tab on the CLSB website providing even greater detail on what a Costs Lawyer does.

“Understand the standards they can expect by”

To achieve this, the CLSB will continue to:

- Maintain as relevant its guidance notes on client care letters.
- Require Costs Lawyers to file their complaints procedure with the CLSB each year when they apply for a practising certificate.
- Make the Costs Lawyer Code of Conduct available on the CLSB website.
- Make Costs Lawyer Practising Rules available on the CLSB website.

- Make Costs Lawyer Disciplinary Rules & Procedures available on the CLSB website.
- Make disciplinary outcomes available on the CLSB website.
- Ensure the explanation of the role of the CLSB remains up to date on the CLSB website.
- Ensure the explanation of the role of the Legal Services Board remains up to date on the CLSB website.
- Ensure the explanation of the role of the Legal Ombudsman remains up to date on the CLSB website.

Further, the CLSB will:

- Provide a link to the CLSB website through the Costs Lawyer section on the Legal Choices website.

Objective 3: Consult the consumer and other stakeholders on matters of regulation of costs law services and take into account their views.

Consumer/potential consumer: “Consult”

To achieve this, the CLSB will continue to:

- Post a news item announcing any consultation process on the CLSB website.
- Post the consultation paper and associated documents on the CLSB website.
- Highlight in the Costs Lawyer journal, which has a wider distribution than Costs Lawyers (provided editorial and publication dates permit this) when a consultation has been issued.

Costs Lawyers: “Consult”

To achieve this, the CLSB will continue to:

- Post a news item announcing any consultation process on the CLSB website.
- Post the consultation paper and associated documents on the CLSB website.
- Email the consultation paper and associated documents to all Costs Lawyers.
- Email the consultation paper and associated documents to all Trainee Costs Lawyers, where considered appropriate.
- Email the consultation paper and associated documents to the ACL, the professions representative body.

Stakeholders (others): “Consult”

To achieve this, the CLSB will continue to send the consultation paper and associated documents to all Costs Lawyers and where it is considered appropriate having regard to the matter being consulted upon, to, inter alia:

- Trainee Costs Lawyers
- Costs Judges
- The Law Society
- The Solicitors Regulation Authority
- General Council of the Bar

- Bar Standards Board
- Chartered Institute of Legal Executives
- ILEX Professional Standards
- Chartered Institute of Patent Attorneys
- Institute of Trade Mark Attorneys
- Intellectual Property Regulation
- Council of Licensed Conveyancers
- Master of Faculties
- Citizens Advice
- Law Centre Federation
- Legal Ombudsman
- Ministry of Justice

“take into account their views”

To achieve this, the CLSB will continue to:

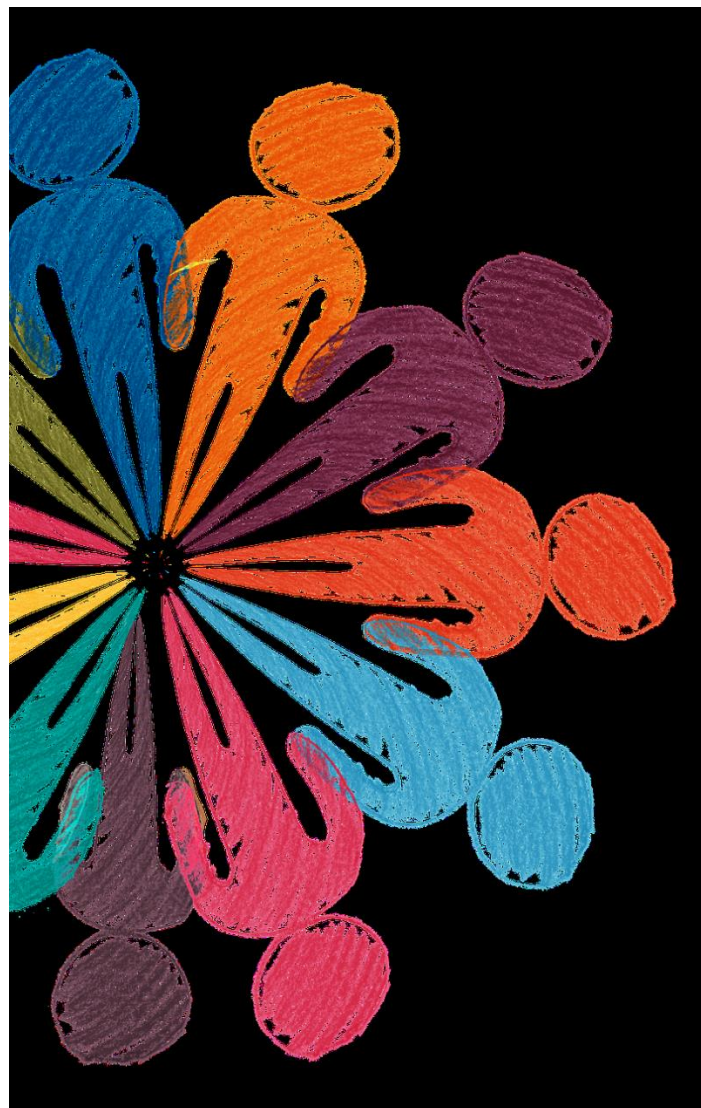
- Record all responses on a Consultation Response Report (responder, date received and response made).
- Reply to the responder where a question has been posed under their response.
- Reply to the responder where the CLSB believes they have misunderstood the matter being consulted upon.
- Record CLSB comments following a response, where considered appropriate, on the Consultation Response Report.
- Send the Consultation Response Report to the CLSB board for consideration before any decision is made on that being consulted upon.
- Send the Consultation Response Report to the LSB on an application for their approval to change regulatory arrangements.
- Permit the LSB to publish the Consultation Response Report as part of the CLSB application.

5. Outcome and review

Actions and their outcome will continue to be reviewed by the CLSB board on an on-going basis to ensure they inform risk, drive policy and remain effective.

Consumer engagement

2020 to 2023



22 January 2020

Costs Lawyer Standards Board

CLSB

Consumer engagement strategy

Overview

This strategy sets out how we will meet our aim of gaining and maintaining a deeper understanding of who the consumers of Costs Lawyers' services are, how those consumers interact with the market and the factors that drive their purchasing decisions.

The strategy also outlines how we will use this understanding to:

- ensure that our policy development reflects consumer needs;
- help consumers find out about Costs Lawyers' services and how to resolve problems; and
- help Costs Lawyers engage with consumers.

This strategy will apply from 2020 to 2023, in line with our [wider organisational strategy](#). It will be reviewed annually by the CLSB board during its lifetime. Planned activities will therefore be subject to amendment and development as we obtain further information, test "what works" and build on learnings from previous years. The ways in which consumers access services change over time, and we are mindful of the need to anticipate and adapt accordingly.

For these reasons, the activities described in this strategy are specified in more detail for year one than in subsequent years; the actions for future years will be refined and built upon as part of the annual review.

The consumers of Costs Lawyers' services

The overwhelming majority of Costs Lawyers' instructions come from professional clients – predominately solicitors. There has been an increase over time in the proportion of Costs Lawyers employed directly by solicitors' firms, from 26.5% in 2011 to 41% in 2018. In 2018, 54% of Costs Lawyers worked exclusively as sole practitioners or in practice with other Costs Lawyers.

Our data suggests that the total volume of lay instructions remains low, but is not immaterial, and may be growing. For example, in 2018 there were 135 Costs Lawyers who received 1-10 lay client instructions each year compared to 99 in the previous year, and five Costs Lawyers who received more than 100 such instructions when there were none in the previous year.

The range of clients, both direct and indirect, who benefit from Costs Lawyers' services currently includes:

- legal services professionals who instruct Costs Lawyers at arms-length;
- legal services professionals within the same firm as Cost Lawyers;
- ultimate clients of instructing legal services professionals;
- lay individuals (including pro bono clients);
- corporate clients; and
- employers of in-house Costs Lawyers.

We therefore need to take into account the needs of the immediate consumer of Costs Lawyers' services and, where an instruction comes via an intermediary, the ultimate beneficiary of those services.

Price transparency

Costs Lawyers have a unique contribution to make to consumer information through the promotion of price transparency across the wider legal profession. Their expertise can assist solicitors and other legal services providers in clearly presenting information to clients and can assist consumer understanding of legal fees at all stages of a transaction.

We know that 15.5% of complaints handled by the Legal Ombudsman in 2018 related to costs, and that figure reached 22% in the family law category and 25% in consumer law.¹

¹ <https://www.legalombudsman.org.uk/raising-standards/data-and-decisions/#complaints-data>

Better information about costs can help facilitate choice, improve consumer outcomes, and reduce complaints.

Engagement and data analysis

In 2019, we engaged with a variety of stakeholders, conducted desk research and mined our existing data to produce an interim report about Costs Lawyers and Consumers. The report identified gaps in our existing evidence-base and potential avenues that could be explored to remedy those gaps. This strategy builds on that work and prioritises key areas of research and engagement.

In terms of existing data, the limited number of direct lay consumers of Cost Lawyers' services – as well as the fact that consumers may not always distinguish between a regulated Cost Lawyer and an unregulated costs adviser – means that current data on the lay consumer experience in this market is limited. The small numbers involved will also make it difficult to identify trends through quantitative research. However, since the majority of Costs Lawyers' instructions are derived from professional sources, we can use data relating to those sources to help build a clearer picture of consumer need. Data relating to complaints about legal costs across the wider sector can also point us to potential unmet need.

In terms of engagement, throughout the duration of this strategy we will continue to engage with existing stakeholders to benefit from their research and learnings, and explore opportunities for collaboration. These stakeholders include:

- The Association of Costs Lawyers (ACL)
- Regulated Costs Lawyers
- Consumer groups and not-for-profit organisations
- The Legal Services Consumer Panel (LSCP)
- The Legal Services Board (LSB)
- The Legal Ombudsman
- Other regulatory and representative bodies, such as the Solicitors Regulation Authority (SRA), The Law Society (TLS) and the Competition and Markets Authority

We will regularly review published data sources and research, such as the LSCP's tracker survey and the LSB's individual legal needs survey.

The actions set out in this strategy for each year will be in addition to those ongoing activities but may require increased engagement with particular stakeholders on specific issues.

Year 1

2020 to 2021

In this year we will:

- Review the information about complaints on our website to reflect the different types of consumers of Costs Lawyers' services identified in our interim report and to improve our use of plain language.
- Amend or add to the questions we ask Costs Lawyers in their annual regulatory return to provide more insightful data on the types of consumers that instruct them. This will enable us to obtain better information about, for example, the types of professionals that instruct Costs Lawyers and the sources of referrals.
- Explore and test sources of informal feedback to improve our understanding of the consumer journey and experience. Potential options will include:
 - anecdotal evidence from costs judges and masters as to the kinds of cases in which Costs Lawyers appear and the types of clients represented;
 - anecdotal evidence from Costs Lawyers who are in a position of relative impartiality (e.g. having recently retired or recently qualified) in relation to issues such as the nature of first tier complaints and competitive market forces;
 - anecdotal evidence from procurement functions in large solicitors' firms that do not have an in-house costs team;
 - establishing an advisory group of solicitors or other professionals who regularly instruct Costs Lawyers to advise on regulatory proposals;

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- carrying out targeted research with academics.
 - Work with ACL to obtain feedback on consumer issues from their membership, including at their annual conferences.
 - Explore possible changes to the tracker survey with LeO to obtain more relevant data about the Costs Lawyer segment of the market.
 - Engage with Citizens Advice to understand the nature of complaints relating to legal costs.
 - Engage with the SRA and TLS to improve our knowledge of the sources of instructions for Costs Lawyers working within solicitors' firms, perceptions of the client relationship and the types of solicitors' firms that employ Costs Lawyers.
 - Incorporate a draft statement on how proposed policy changes will meet the regulatory objective of protecting and promoting the interests of consumers in our consultations going forward.

Year 2

2021 to 2022

In this year we will:

- Have selected and be using the most fruitful of the informal feedback arrangements tested in year 1.
- Review and improve our consumer website page and the guidance for consumers of Costs Lawyers' services, including a refresh of our guidance on vulnerable consumers to address risks that are specific to the Costs Lawyer market.
- Issue a discussion paper on how Costs Lawyers can help to improve price transparency for consumers of legal services more widely.
- Explore measures to raise awareness amongst consumers of the benefits of instructing a regulated Costs Lawyer.

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- Explore opportunities for and potential barriers to pro-bono work with key players in the sector (such as LawWorks) and publish an information sheet and/or guidance on Costs Lawyers and pro bono work.

Year 3

2022 to 2023

In this year we will:

- Introduce measures to help improve price transparency (for example through guidance, training and joint initiatives with other regulators) based on the previous year's feedback.
- Review our new CPD arrangements to ensure that they continue to facilitate and encourage upskilling to allow Costs Lawyers to meet likely future consumer need.
- Produce a policy paper on Costs Lawyers and SMEs and hold a stakeholder event to inform the debate.
- In consultation with ACL, undertake a survey of our regulated community on the efficacy of measures taken so far and future measures for consumer engagement.

Anticipated outcome

The intended outcome of this strategy is that, by 2023, a feedback framework will be in place as depicted on the next page. This will enable us to ensure that our regulatory approach is aligned to consumer needs, expectations and behaviours in the market for Costs Lawyers' services.

