

Company number: 04608905

MINUTES
Costs Lawyer Standards Board Ltd
Wednesday 2 February 2022 at 10:30 am
Remotely by videoconference

Board:	Rt Hon David Heath CBE	Lay NED (Chair)
	Stephanie McIntosh	Lay NED (Vice-Chair)
	Paul McCarthy	Non-Lay NED
	Andrew McAulay	Non-Lay NED
In attendance:	Kate Wellington	CEO and Company Secretary
	Jacqui Connelly	Director of Operations
	Heather Clayton	Director of Policy (Item 7.1)
	Alison Hook, Ben Rosie and Nankunda Katangaza	Hook Tangaza (Item 7.1)

1. OPENING MATTERS

- 1.1** The Chair declared the meeting quorate. There were apologies from Andrew Harvey, who provided comments on the papers by email.
- 1.2** There were no declarations of interest on any agenda item.

2. MINUTES

2.1 Minutes dated 20 October 2021

The board considered the minutes of its last scheduled quarterly meeting on 20 October 2021. The board agreed the minutes as being a true record for signing.

Action: Publish approved minutes on CLSB website.

2.2 Matters arising

The board considered the matters arising from the minutes of its meeting on 20 October 2021. There were no matters arising that had not been scheduled as agenda items or otherwise dealt with.

3. STRATEGY

3.1 Progress against Business Plan: 2021 roundup

The board was provided with a progress update against the 2021 Business Plan. Kate noted that five additional priorities had been achieved during Q4, which completed the Business Plan in its entirety other than two items. Those were:

- Priority 10, on improving consumer information about regulatory status: This had been wrapped into the innovation project (see Item 7.1 below), so would be delivered through the final project report in March 2022.

- Priority 11, on testing the efficacy of the CLSB’s interim suspension order (ISO) powers: No suitable disciplinary cases had arisen in 2021 to allow this work to be carried out. However, to ensure the work is completed when a suitable case arises, looking at ISOs had been incorporated into a new complaints triage process that was under development.

The board noted that several significant projects had been delivered during the year that were not included in the original Business Plan, including the Competency Statement and innovation projects. It was therefore a particularly notable achievement to complete the Business Plan for 2021, and the board commended the executive team for their effort and careful resource planning.

3.2 Annual progress against performance indicators

The board was provided with a summary of progress against the metrics in the performance indicators document (PID), which was adopted in January 2020 and updated in January 2021. The performance indicators had been developed to help the board monitor the effectiveness of the CLSB’s governance arrangements and track achievement of the mid-term strategy. The board was also provided with the results of a NED satisfaction survey that had been carried out to provide data for the governance metric in the PID relating to cultural alignment and accountability.

The board was asked for feedback on the progress made in 2021, as well as the ongoing relevance of the performance indicators. Kate recommended tweaking certain measures for 2022, as outlined in the board report, but noted that overall she found that assessment against the PID continued to be a useful reflective exercise.

The board considered the report, starting with the 2021 operational statistics. The board considered the reinstatement and new qualifier numbers, both of which seemed to be increasing. Jacqui explained possible reasons for this and trends over time, including new processes that had been put in place to contact leavers after an appropriate period depending on their reasons for termination. Board members also asked about the figure reported for the longest time taken to process a PC renewal application. Jacqui explained that this was an outlier due to human error in data entry for one application. The remaining data showed the vast majority of complete applications were processed on the day of receipt or the following day.

The board discussed the governance metrics and whether any adjustments should be made for the following year. The board agreed that, while robust business continuity measures were in place, there had not been any unexpected events that tested those arrangements in real-time. Therefore while the risks around business continuity were better controlled than previously, a KPI in this area remained appropriate.

The board also considered the results of the NED satisfaction survey and whether cultural indicators were still a relevant KPI given the 100% satisfaction rates reported in the survey this year. Board members agreed that the KPI should be adjusted to refer to the qualitative rather than quantitative aspects of the survey, noting that the words NEDs had used to describe the CLSB’s culture had evolved between 2020 and 2021. This

was a more nuanced and insightful reflection of the organisation's journey than perpetually high satisfaction rates.

The board agreed the other adjustments to the metrics that were suggested in the report.

Action: Update PID for 2022 and publish on website.

3.3 Education and competency

The board was provided with updates and papers on various education workstreams, including:

- an update on Kate's attendance at the first meeting of the new ACL Training board, which was showing very promising progress under the leadership of the new independent chair;
- a draft Board Decision Note (BDN), recording the decision-making process in relation to accrediting ACL Training for 2022, for approval;
- the proposed consultation outcome report for the Competency Statement consultation, for approval;
- an early draft of a new training provider accreditation scheme, for initial feedback; and
- an update on resourcing, including consultancy arrangements, for the various aspects of the CLSB's education work.

In relation to accrediting ACL Training for 2022, the board had considered between meetings (by email) ACL Training's final response to the course audit recommendations, as well as a financial viability report for 2022 and a proposed accreditation letter. Given the time pressures involved, the accreditation letter was sent to ACL Training in November. The board therefore took the opportunity, at this meeting, to ratify the accreditation on the terms set out in the accreditation letter.

Board members agreed that the accreditation decision was a good candidate for a BDN, to ensure stakeholders had a full picture of how the decision was made and what evidence was taken into account. The board approved the BDN for publication.

The board then considered the consultation outcome report in relation to the Competency Statement. Board members commented on how constructive and positive the consultation process had been. They hoped that the level of detail in the outcome report, which showed how responses had been taken into account, would encourage respondents to engage again in the future.

Board members suggested some final tweaks to the wording of the Competency Statement, including to ensure that references to "budgeting" captured the whole process of budget and costs management and not just preparing written costs budgets. Subject to those adjustments, the board approved the outcome report for publication.

The board considered the early draft of the provider accreditation scheme in detail. Board members asked about how the scheme would work in practice, including whether initial advice given by the CLSB would be binding, at what stage a refusal to accredit could be made, the timing of validation events, the consequences of competition emerging between providers, and which elements of the decision-making process would require discretion. Kate explained the intentions and options in relation to each aspect and the board provided feedback to shape development of the scheme.

As well as inviting general feedback, Kate had asked the board for input on two specific aspects of the scheme, namely: (i) whether a fee should be charged to applicants in order to cover the cost of the scheme, and (ii) which body should have ultimate decision-making authority in relation to accreditation. The board discussed the pros and cons of charging applicants and considered the approaches taken by others in the sector. Ultimately it concluded that the CLSB could absorb the cost of at least one application in the first few years of the scheme without impacting the practising fee, and any unanticipated applications could be dealt with using uncommitted reserves if necessary. The issue could be revisited once there was some lived experience of how resource-intensive the application process would be. Board members also acknowledged the significant investment that ACL Training would need to make in order to modernise the existing course. It was therefore agreed to remove reference to fees from the drafting at this stage.

The board discussed the options for where ultimate decision-making responsibility should lie – including weighing the logistical challenges of requiring board approval for all decisions against the need to maintain proper board scrutiny and accountability – and the appropriate avenue for appeals. The board agreed that a sound balance would be struck by appointing a board member to the proposed Accreditation Panel, alongside one independent member and CLSB staff member. Appeals in relation to accreditation decisions could be made to the Chair of the board, who would convene a panel of three board members to consider that appeal, none of whom would be the Accreditation Panel member.

Kate agreed to update the accreditation scheme based on the board's feedback and then proceed with next steps, which included the production of supplementary documents and beginning to socialise the proposals with stakeholders.

Action: Publish BDN on website; Amend and publish consultation outcome report and final version of Competency Statement; Implement comments on accreditation scheme and proceed with next steps.

4. BOARD MATTERS

4.1 Reappointment of Chair

David left the meeting for this item and handed the chair to Stephanie. The board considered David's performance in the role during his first term as Chair and unanimously approved his reappointment for a further three years, in line with the Board Appointment Rules.

David returned to the meeting after a short break. Stephanie thanked David for his stewardship during 2021 and conveyed that all board members looked forward to working with him into the future.

Action: Formalise reappointment of Chair.

4.2 Governance review

Kate introduced this item. She explained that she had been working with governance experts at Indigo during Q3 and Q4 to develop a new suite of governance documents that were fit for purpose and reflected current good practice standards. The board was provided with a proposed new Board Governance Policy, which appended a series of related governance documents as a “one stop shop” for board members. The board was asked to approve the Board Governance Policy and revoke eight existing documents that had been superseded by the review.

The board considered the Policy, including the new list of matters reserved for the board, and approved it for adoption. It was recognised that a policy of this kind could potentially cover a vast array of material, but the scope of the draft was appropriate for an organisation of the CLSB’s limited size and complexity.

The board discussed whether it was appropriate to reinstate a Remuneration Committee (RemCom). Kate conveyed Indigo’s advice that having an independent RemCom was good practice even for a small board, to avoid real or perceived conflicts of interest. The board accepted this and agreed to reinstate a RemCom with two members, as per the draft Terms of Reference appended to the Board Governance Policy. The board approved the appointment of Paul and Andrew H to that committee.

Kate explained that, in producing the Board Governance Policy, she had been mindful to implement the recommendations from the LSB’s deep-dive reviews into the governance arrangements of the BSB and Faculty Office. The board was provided with an updated version of the CLSB’s internal tracker document that records changes to governance arrangements made in light of the LSB’s findings across both reviews. The board noted that there were a few recommendations yet to be implemented, as they were not naturally housed within the Board Governance Policy, but that workplans for implementing the outstanding items in a timely fashion were in place.

Actions: Adopt Board Governance Policy; Revoke superseded policies; Make arrangements for RemCom.

5. FINANCE

5.1 Quarterly report: Q4 2021

Jacqui introduced the quarterly finance report. She noted that several costs for 2022 had been brought forward into 2021, but the final budget position at year-end was nevertheless balanced. She also conveyed that budgeted income for 2022 had already been achieved. The board noted the financial position in the report.

5.2 Cost of living wage rise

The board considered the annual standing item of a pay rise across all employees to reflect the increasing cost of living. The Bank of England had reported that the rate of inflation rose to 5% in the winter of 2021 and would reach about 6% by spring 2022, but was expected to start falling after that to a projected average of 3.5% across next year. Average inflation across 2021 was reported as 2.6%.

On that basis, the board approved a salary increase of 3%, being an average of the 2021 and 2022 figures, implemented from 1 March 2022. The board also noted that future decisions about wage adjustments for the cost of living would be made by the RemCom.

Actions: Implement wage rise from 1 March 2022; Update the “cost of regulation” webpage to reflect changes.

6. RISK MANAGEMENT

6.1 Review of risk registers

The board reviewed the risk registers and considered whether any new risks should be added, any existing risks removed or any risk scores changed. The board discussed the positive feedback from the first ACL Training board meeting, but agreed it was too early to downgrade the rating for any of the risks relating to new qualifiers or stakeholder relationships.

The board agreed to:

- update the evidence of risk OP1 (*more enter than leave the profession*) to reflect that there were no terminations directly linked to covid-19 in the recent renewal round, and to provide the attrition rate for 2021;
- update the controls for risk OP3 (*insufficient numbers of new qualifiers*) to reflect engagement with the new ACL Training board, and update the actions/status for risk OP3 to reflect completion of the course audit and delivery of the Competency Statement;
- update the evidence of risk OP4 (*ACL becomes insolvent*) to reflect the potential challenges with succession on Council;
- update the controls for risk R1 (*our standards do not achieve positive consumer outcomes*) to reflect the findings from recent work on under-insurance; and
- update the controls for risk R5 (*CLSB cannot promote diversity due to small size of profession*) to reflect the EDI work carried out in 2021.

Action: Update risk registers as agreed and publish on website.

6.2 Professional indemnity insurance

Kate reminded the board that priority 9 in the 2021 Business Plan required the CLSB to take an in-depth look at three key areas in which it had identified risks of poor consumer outcomes, namely: under-insurance; handling of client money; and communication of complaints procedures. Having considered client money and complaints earlier in the year, under-insurance was reviewed in Q4. The board was provided with a paper summarising the findings of the review, which looked at the

insurance cover purchased by a sample of regulated Costs Lawyers. The paper recommended several follow-up actions specifically targeted at the areas identified as posing the highest risk to the regulatory objectives. The board was asked to agree those recommended actions for delivery in 2022.

The board discussed a number of issues arising from the paper, including the sufficiency of the minimum prescribed cover, the intersection between client money risks and insurance risks, and client information about policy limits. Board members probed the relevance of using firm turnover as an indicator of risk and Kate explained the rationale for this, although acknowledging that it was a proxy only. The board considered statistics from the regulatory return as to the level of cover that firms and sole practitioners are actually procuring and discussed the circumstances in which the minimum level of cover might be appropriate for a particular firm. Analogies were drawn to data about the value of claims made on compensation funds administered by other bodies.

There was clearly a large variation in Costs Lawyers' circumstances, in terms of insured risk as well as client type, and this would impact both the appropriate level of cover and the framing of client communications. The board considered whether a sliding scale of prescribed cover was necessary, however it was recognised that the benefits of a sliding scale were likely already achieved through the current approach of requiring Costs Lawyers to take their own assessment of risk, based on the nature of their work and their client profile. The evidence showed that cover values have increased over time faster than inflation, which could indicate that Costs Lawyers are engaging in this risk assessment process as the landscape changes. The Non-Lay NEDs provided feedback on how the risk profile of costs work has changed over time, particularly following the Jackson reforms, and the factors that firms are likely to take into account in determining cover levels. These will extend far beyond the regulatory requirements and will include practical considerations such as contractual obligations to clients, price and policy availability.

The board agreed that the minimum prescribed cover should be retained, and approved the recommendations in the report by way of next steps.

7. REGULATORY MATTERS

7.1 Innovation project update

The purpose of this item was to update the board on progress of the project entitled *How could Costs Lawyers reduce the cost of legal services?*, which was funded by the Regulators' Pioneer Fund. The board was provided with an interim report from consultancy Hook Tangaza, explaining how the project had been structured and summarising the findings of the project's first stage. David welcomed Heather and guests from Hook Tangaza to introduce this item and speak to the report.

Heather confirmed that the project was running to time and budget, and that there were no material governance issues or risks. The board was also informed that two external members had been recruited to the challenge board – Fran Gillon of IPReg and Elisabeth Davies of the OLC – and a successful meeting of that board had taken place at the end of the year.

Nankunda and Alison drew out various themes from the report and emerging findings. Board members asked questions about how the research had been carried out and what evidence was being uncovered, including in relation to: the degree of engagement from practitioners, the profession's profile and sense of identity, stakeholders outside the profession who would have useful insights, traditional vs emerging models of costs work, structural conflicts within the profession, the use of costs data in innovation, and the impact of the project on the CLSB's regulatory approach.

The board noted that the outputs of the project would be useful in a variety of ways and agreed to have a session, once the final report was produced, on how the findings could inform the CLSB's strategic focus.

David thanked Hook Tangaza for attending and noted that the progress so far was very encouraging.

8. LEGAL SERVICES BOARD (LSB)

8.1 Updated regulatory performance assessment

The board had been informed by email in December that the CLSB was now assessed as meeting all standards in the LSB's regulatory performance framework. For this meeting, the board was provided with the final version of the assessment as published, under cover of a letter from the LSB. The letter signalled the LSB's likely areas of interest in upcoming assessments, as well as the LSB's intention to have a new performance framework in place for 2023. Kate explained that priorities in the 2022 Business Plan would need to be flexed to accommodate the LSB's areas of interest.

Board members noted the significant achievement of meeting all standards in the performance framework, given the CLSB's starting point in 2019. They also flagged the fundamental change in the organisation's relationship with the LSB, which was now considered constructive and mutually beneficial. The board also noted the LSB's intended areas of interest and encouraged the executive to work collaboratively with the LSB and others in these areas where possible.

8.2 Consultations

The board received updates in relation to LSB consultations (and the CLSB's engagement with them) in relation to:

- the LSB's 2022/23 business plan and budget;
- ongoing competency; and
- a draft policy statement on empowering consumers.

9 STAKEHOLDER UPDATES

9.1 ACL Council meeting minutes

The board noted the minutes of ACL Council meetings held in September, October and November 2021. The board discussed an extract from the September minutes that flagged a risk around turnover of Council members and succession planning, particularly for the chair role. Board members considered options that might be open

to ACL, such as appointing joint-chairs to share the workload, as well as the potential impacts on CLSB if succession risks materialised.

Andrew M updated the board on key points from the ACL conference in late 2021.

9.2 Work updates

The board was updated on the Legal Ombudsman's consultation on its budget and workplan for the following year, including feedback from stakeholder workshops that Kate had attended.

10 OPERATIONAL MATTERS

10.1 Practising certificate renewals data

Jacqui introduced this item and noted that the CLSB had continued to improve and refine the online practising certificate (PC) renewals process in 2021. The improvements in efficiency, accuracy and data capture achieved through digitalising the process were immense.

The board considered a roundup paper, summarising how the process went, providing renewal statistics and updating last year's project evaluation. Board members discussed the reasons for termination given by Costs Lawyers exiting the profession and the extent to which these were linked to economic impacts. They also considered verbatim comments drawn from a new field in the online form, through which Costs Lawyers could provide feedback on how they thought the CLSB was doing. The responses were overwhelmingly positive, with only one comment suggesting that there was further work for the CLSB to do to become fully effective. Particularly notable was the number of unsolicited positive comments about the new CPD regime, introduced for 2021.

The board commended the executive on the pace of digitisation and thanked Jacqui for her hard work in running the system smoothly.

The board also considered a paper on preliminary results of the 2021 diversity survey. The board noted that, despite offering a prize incentive this year, the survey response rate had fallen from the previous year. There was also a clear indication from respondents that they did not want the CLSB to store their diversity data (such that survey responses could be pre-populated for convenience year to year). Only 22% said they would prefer this option. The board agreed that it would be inappropriate to store practitioners' diversity data if they were not comfortable with this, and that doing so could have the counterproductive effect of disincentivising people to provide information.

The board considered various other options for boosting response rates, including an opt-in model to storing diversity data or further integrating the survey into the PC renewal form. Board members drew on experience in other organisations and agreed that many regulatory and public bodies face similar difficulties where practitioners cannot be compelled to provide data. The board agreed that the executive should work with other regulators to identify best practice and possible options to explore, accepting that a best practice approach might not lead to comprehensive data.

11 PUBLICATION

11.1 Confirmation that papers can be published

The board agreed that all board papers for the meeting should be published, other than those noted on the agenda for the reasons stated.

Action: Publish board papers on website in accordance with agenda notations.

12 AOB

Kate informed the board of a role that she would be taking on outside her CLSB duties, namely as a co-founder of the Class Representatives Network. She confirmed that there were no conflicts between the work of the Network and that of the CLSB.

13 NEXT SCHEDULED QUARTERLY MEETING

The next meeting was scheduled for 19 May 2022. The board agreed to hold this meeting virtually, although using Teams instead of Zoom, with the aim of holding the July meeting in person.

Action: Update joining details for upcoming meetings.

There being no further business, the Chair declared the meeting closed at 12:59.

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Chair

Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes (20 October 2021)	About ⇒ Our board
3.2	Performance Indicators	About ⇒ Strategy and governance
3.3	Consultation outcome report	Regulatory ⇒ Consultations
3.3	Competency Statement	Qualification ⇒ How to become a Costs Lawyer
6.1	Risk registers	About ⇒ Strategy and governance
7.1	Innovation project webpage	CLSB website here
11.1	Board papers	About us ⇒ Our board
Item	Document	Publication location (other)
8.1	Regulatory performance assessment	LSB website here

8.2	LSB consultations on business plan and budget, ongoing competency, and empowering consumers	LSB website here
9.2	Consultation on Legal Ombudsman business plan and budget	Legal Ombudsman website here