

DRAFT APPROVED BY THE CHAIR FOR PUBLICATION
Subject to approval by the full board at its next scheduled meeting

MINUTES
Costs Lawyer Standards Board Ltd
Tuesday 21 July 2020 at 10.30 am
Remotely by videoconference

Present: Steve Winfield (Chair): Lay NED
Stephanie McIntosh (Vice Chair): Lay NED
Paul McCarthy: Non-Lay NED
Andrew Harvey: Lay NED
Andrew McAulay: Non-Lay NED

In attendance: Kate Wellington (Company Secretary and CEO)
Jacqui Connelly (Administration Manager) (for items 1 to 5 and 13)

1. OPENING MATTERS

1.1 The Chair declared the meeting quorate. There were no apologies.

1.2 There were no declarations of interest on any agenda item. Steve noted that item 5.1 touched on issues relating to Kate and Jacqui's working hours, but their attendance did not give rise to any conflict of interest.

2. MINUTES

2.1 Minutes dated 22 April 2020

The board considered the minutes of its last scheduled quarterly meeting on 22 April 2020. 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 22 April 2020. 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

The board was provided with a progress update against the 2020 Business Plan, including a summary of H1 activity and a RAG rating of each priority in the plan. Kate noted that around half of the priorities had been fully achieved during H1 and significant progress had been made on others.

The board noted in particular the importance of having delivered on priorities 14 (new website), 16 (business continuity) and 18 (digitalisation). These were all big projects that had a major impact on performance and risk mitigation.

Andrew H noted that the new practising certificate renewal forms (priority 18) should be tested broadly, not just by individuals who knew the CLSB's processes well.

3.2 Approach to coronavirus

Steve introduced this item and asked the Non-Lay NEDs for an update on their experience of the market. They reported that pilots were under way to test the impact of bringing staff back into offices. Different firms were intending to take different approaches in the longer-term, with some intending to allow (or require) staff to work from home permanently.

The board considered the outcomes of the coronavirus impact survey carried out by the CLSB in May. Kate provided an update on how the survey report had been received by stakeholders and what steps other regulators were taking in relation to coronavirus.

The board discussed the timing of a follow-up impact survey. It was agreed that another survey should be carried out at some point during Q4 once the "new normal" had bedded in, or a second spike in infections had occurred, either of which would affect the results. The board agreed to reconsider the issue at its October meeting and fix a timeframe for the next survey then, based on up-to-date information.

The board discussed the themes around CPD that had emerged from the impact survey. Kate explained the steps that the CLSB had taken so far to mitigate practitioners' concerns about accessing affordable, relevant CPD online during the crisis. Jacqui also provided feedback on the number and nature of enquiries received on the topic.

The board commended the efforts that had been made to broker discounts from training providers and collate free resources to assist Costs Lawyers in meeting their CPD obligations. The board considered carefully whether there was sufficient evidence to warrant a reduction in the required number of CPD points for 2020. All board members agreed strongly that there was not. The board felt it was essential for Costs Lawyers to continue to learn and maintain their competency during the crisis, unless they were prevented from doing so by their individual circumstances (such as long-term illness caused by the pandemic). ACL's feedback had also been that there were sufficient CPD opportunities online. The CLSB should send a clear message that learning and development remains mandatory in 2020.

The board also agreed that it would be useful to produce an operational policy for handling CPD dispensation requests in 2020, to ensure consistency of treatment in relation to coronavirus. This policy would need to be approved by the board in advance of the practising certificate renewal window opening. Given the timing of this year's renewals (with the application deadline being in November instead of December), the board was content to consider a draft policy by email prior to its October meeting if needed.

Actions: Add an agenda item for October board meeting to consider timing of next coronavirus impact survey; Communicate to regulated community that there will be no change to CPD points requirement for 2020; Prepare CPD dispensation policy for approval at or before October board meeting.

3.3 2021 Business Plan

Kate introduced this item and explained the rationale behind the proposed key projects for 2021. The board discussed the proposals and agreed that the Business Plan set the right priorities for achievement of the CLSB's mid-term strategy by 2023. The board approved the Plan, subject to any feedback provided in the context of the practising fee consultation.

The board also discussed the timing of Business Plan development generally. Board members noted that the process took place earlier in the year than it would in a commercial setting (due to the need for LSB approval of the practising fee) and this caused some difficulties with predicting precisely when projects would start and end. The board acknowledged that Business Plan priorities might need to be adjusted forward or backward to account for changing circumstances, but this did not prevent the Business Plan from establishing the broad framework for what the CLSB intended to achieve by the end of 2021.

Action: Publish proposed 2021 Business Plan with practising fee consultation.

4. BOARD MATTERS

4.1 Chair recruitment

The board discussed logistical issues relating to appointment of a new Chair when Steve's term expires in early 2021. The board agreed that it was desirable for the incoming Chair to attend the January 2021 board meeting by way of handover and a recruitment timetable should be set with this in mind.

In terms of recruitment criteria, board members were provided with an updated version of the board capabilities matrix and they discussed skills gaps that remained following the last round of NED recruitment. While it was desirable to fill those gaps where possible, the board agreed that those skills were secondary to strong leadership qualities and an ability to successfully chair a regulatory body.

The board discussed options for advertising the role, considering the depth and breadth of reach offered by various channels, balanced against cost. A key consideration was the need to promote diversity, ensuring that the constitution of the board was reflective of the regulated community and the wider public. Stephanie and Kate made suggestions for niche advertising channels that target specific demographics and agreed to investigate the viability of these for chair-level recruitment.

The board discussed the approach to interview within the constraints of the Board Appointment Rules. The board agreed that the constitution of interview panels could be determined by email closer to the time. Interviews could be carried out fairly and robustly by videocall – particularly given the board's intention to conduct more meetings via videocall in the future – so first-round interviews (at least) should be held remotely.

Action: Prepare updated job specification to begin recruitment in the autumn; Contact NEDs about participation in process closer to the time.

4.2 Meeting dates for 2021

The board considered its meeting dates for 2021. Board members agreed that meetings would be held:

- in person on 20 January, for a handover with the incoming Chair;
- remotely on 21 April;
- in person on 21 July, to facilitate a strategy day;
- remotely on 20 October.

A venue for the in person meetings would be determined once the new Chair was appointed.

Action: Publish 2021 board meeting dates on website.

5. FINANCE

5.1 Quarterly report: Q2 2020

Jacqui introduced the quarterly finance report and highlighted changes that had been made to the budget categories to better reflect current expenditure streams. The board considered the financial position at the end of Q2. The projected underspend, and the consequent decision to increase staff hours temporarily to push forward priority projects in 2020, were noted.

5.2 2019 accounts

The board approved the 2019 accounts for filing with Companies House. The notes to the accounts would not usually be made public, but the board agreed they should be published in the board pack in the interests of transparency.

Action: File accounts with Companies House and publish on website.

5.3 Legal Choices funding

Steve updated the board on discussions with the LSB, SRA and CLC in relation to the funding of Legal Choices. Kate provided an additional update from a recent Legal Choices Governance Board meeting and shared the proposed financial contribution breakdown for the next three years of the project with the board. The board noted that, following its approval in April, the CLSB had agreed to pay a top-up contribution for 2020 to cover part of the funding shortfall created by the Bar Standards Board's withdrawal from the project.

The board discussed the funding contribution sought from the CLSB, which represented around 2% of the total Legal Choices budget. The board noted that the CLSB was being asked to make the same contribution as regulators that had significantly larger budgets, and the board had concerns around the disproportionate financial burden this placed on Costs Lawyers as compared to other legal practitioners.

The board reiterated its commitment to the Legal Choices project both in principle and practice, and approved a contribution of 1% of the Legal Choices budget (rather than the 2% sought). The board asked Kate to have further discussions with the other approved regulators to see how the gap might be bridged. It was agreed that the practising fee consultation should be issued on the basis of the approved 1% contribution.

Action: Feed back to other regulators on approved level of contribution and discuss how this might be accommodated.

5.4 2021 budget

Kate explained how the budget had been set for 2021, including a detailed line-by-line expenditure review. Information about the budget setting process had also been shared with the LSB for the purpose of the upcoming regulatory assessment.

The board scrutinised a summary budget, which would be published with the practising fee consultation, as well as a full budget breakdown. Board members agreed it was helpful to have sight of both versions, and felt the public version was user-friendly and pitched at the right level for its purpose. Board members were particularly pleased to see how the cost savings generated by the 2019 organisational restructure had been allocated to priority projects that would further improve efficiency and performance going forward. The board approved the proposed budget, subject to consultation.

Action: Publish summary budget on website with practising fee consultation.

5.5 2021 practising fee

The board considered the executive's recommendation to maintain the practising fee at £275 for 2021. The 2021 budget had been developed using fully costed projections and informed assumptions to ascertain the level of income needed to meet performance expectations. Based on anticipated Costs Lawyer numbers for 2021, this income level could be achieved without increasing the practising fee, which the board considered to be a welcome outcome in the current economic climate.

Kate noted that she had sought early feedback from the LSB on the proposed fee. The LSB had indicated (without fettering its discretion) that it did not foresee any significant concerns about the level of the fee, given the information it had received about the budget setting process.

Board members discussed the likely impact of the fee on different types of practitioners and business models, and agreed that a differential or disproportionate impact was unlikely.

The board then considered a draft consultation on the practising fee. Board members discussed how factors relating to the fee had been presented in the consultation paper and agreed that the level of detail was appropriate. The board approved the proposed practising fee and the draft consultation for publication.

Action: Issue consultation on a practising fee of £275 for 2021.

5.6 Policy on handling disciplinary income

In April, the board had identified a need (in the context of implementing the new Disciplinary Rules and Procedures) for an internal process to allocate income derived from disciplinary sources to expenditure on discipline-related activities. The board considered a draft policy for this purpose.

The board agreed that the policy was appropriately straightforward, given that the CLSB derived income from disciplinary sources only occasionally, and approved it for adoption.

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 agreed to:

- update the evidence of risk OP1 (*more leave than enter the profession*) to reflect the findings of the recent coronavirus impact survey;
- downgrade the probability rating for OP2 (*organisational structure not sufficient to ensure business continuity*) from 3 to 2, and update the controls, to reflect implementation of the new Business Continuity Plan;
- note the impact of coronavirus on new qualifiers – both in terms of delays to exams and less employer funding for the course – under OP3 (*insufficient numbers of new qualifiers such that regulated numbers fall to unsustainable level*);
- downgrade the probability rating for OP5 (*failure to comply with data protection obligations*) from 2 to 1 to reflect completion of final actions from the audit.

Kate noted that the registers had been consolidated into a single document, to avoid duplication and to give readers a more holistic picture of key risks. Steve explained that the registers had previously been split out at the suggestion of the LSB and therefore queried whether the change would be acceptable to them. The board discussed the presentation of the registers and agreed that the CLSB's approach to risk had moved on considerably since the LSB's comments were made. The registers needed to operate as an effective tool for the board to manage risk now and consolidating the registers helped with this, so the board was confident that it could manage any objection that might arise to this change.

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

6.2 Business Continuity Plan

The board was provided with a draft Business Continuity and Disaster Recovery Plan for consideration. Kate explained that the measures in the plan had been in place since May when the plan was finalised from an operational perspective.

The board discussed the plan and considered whether additional eventualities should be covered, including whether specific contingency measures were needed for conducting disciplinary hearings remotely under the Disciplinary Rules and Procedures. It was agreed that adequate provision could be made for such eventualities within the framework of the Rules and further contingency planning was not required. The board approved the plan.

7. REGULATORY MATTERS

7.1 CPD Rules

The board was provided with the LSB's decision notice approving changes to the CPD Rules, as well as additional responses provided to the LSB during the rule change application process that built upon board-approved policy positions. These were noted.

The board discussed the plan for implementing the new CPD regime. The updated rules were due to come into force on 1 January 2021 for the new practising year. Board

members acknowledged that there was scope for confusion if the new regime was rolled out before Costs Lawyers submitted their 2020 CPD returns under the old regime. The changes therefore needed to be communicated clearly and carefully, and timing would be important.

The board anticipated that most practitioners would not begin to focus on the new requirements until the new CPD year had started, so communicating too much detail early on was likely to do more harm than good. It was agreed that detailed communications should be held back until after the practising certificate renewal window had closed and the holiday period had passed; around mid-January 2021. Any CPD that Costs Lawyers carried out in early January (in compliance with the old rules) would count toward the 12 point minimum requirement under the new rules in any event.

In terms of communication routes, the board felt it was important to communicate the key messages through a variety of channels to engage as many practitioners as possible. This would include usual channels, such as email and newsletter communications, but could also include video, written blogs and/or podcasts.

The board then considered consequential amendments to the Accredited Costs Lawyer Rules, which reflected the fact that the accreditation regime would become voluntary under the new CPD Rules. The board approved the updated rules for implementation alongside the new CPD Rules.

Actions: Develop communications plan for changes to CPD requirements taking board feedback into account; Implement Accredited Costs Lawyer Rules alongside new CPD Rules.

7.2 Practising Rules

The board noted that the LSB had approved the proposed changes to the CLSB's Practising Rules. The board approved a new guidance note relating to the imposition of practising conditions, which had been submitted to the LSB in draft with the rule change application.

7.3 Guidance

Kate introduced this item and explained that five guidance notes from the Costs Lawyer Handbook had been the subject of routine review during Q2. All five notes required updating, however specialist advice had been sought in relation to two of the notes and that advice was still pending.

The board approved updated versions of the other three guidance notes, which related to:

- anti-money laundering;
- indemnity insurance; and
- retention of client data and files.

Actions: Update Handbook with approved guidance notes.

7.4 Handling of client money

At the April board meeting, Kate had updated the board on two recent developments – one arising from a disciplinary investigation and one from a public enquiry – which suggested an emerging need to revisit the CLSB’s prohibition against Costs Lawyers handling client money. As an action from the April meeting, Kate had produced a report summarising discussions with various stakeholders on this issue, including on the use of third party managed accounts (TPMAs) as an alternative to handling client money.

The board discussed the report and its recommendations for next steps. The board considered the evidence of potential consumer harm in this area as well as evidence of demand from practitioners for safe ways to deal with client money. Board members discussed the functionality, risks and costs associated with TPMAs and the various models available in the market. They discussed opportunities for the CLSB to proactively step in to fill a gap, for example by establishing an umbrella TPMA for use by any member of the regulated community, and considered the respective roles of the CLSB and ACL in this regard. They discussed the efficacy of the current rules on client money and whether the issues could be addressed through targeted guidance and education.

Ultimately the board concluded that a staged solution was appropriate. The existing evidence of consumer detriment could be addressed in the first instance by developing guidance on:

- safeguarding client assets for Costs Lawyers who practise in unregulated entities, linking this to existing obligations in the Code of Conduct; and
- the safe use of TPMAs as an alternative to handling client money.

The take-up of TPMAs should be monitored following implementation of the guidance and feedback could be sought from practitioners about any barriers to use. The need for further intervention could then be assessed once the impact of the guidance was understood.

Action: Develop guidance as agreed for the board’s consideration in October.

7.5 Mayson report

The board discussed the findings of Professor Stephen Mayson’s final report on reforming legal services. The board noted that the main section of the report relating to Costs Lawyers (section 5.4.2) aligned with the CLSB’s views on the problems with under-regulation of costs practice within the Legal Services Act 2007 framework.

Board members acknowledged that the Ministry of Justice was unlikely to act on the report in the near future, but agreed that the CLSB should take steps to address the findings as and when opportunities arose. This might include, for example, the LSB’s upcoming review of the reserved legal activities list in the Legal Services Act.

7.6 CPD audit

The board was presented with the outcomes of the 2019 CPD audit. Kate explained the limitations of the existing audit process and the opportunities for change when the new CPD Rules are implemented. It was intended that a detailed audit programme

would be developed and documented during 2021 and implemented in 2022 (covering the 2021 practising year). This was reflected in the 2021 Business Plan.

The audit suggested there was confusion amongst the regulatory community about how the existing CPD Rules applied, particularly around the activity categories and points caps, despite those rules having been in place for many years. The board felt this further highlighted the need to clearly communicate the upcoming CPD changes and reinforced the importance of moving away from arbitrary caps and restrictions.

8 LEGAL SERVICES BOARD (LSB)

8.1 Internal Governance Rules (IGRs)

Kate updated the board on progress with ACL's rule change application to facilitate compliance with the IGRs. The application had recently been approved by the LSB, subject to minor amendments to the agreed MOU and Operational Protocol between ACL and the CLSB. Kate would liaise with ACL to ensure those amendments were made. The board noted the position.

8.2 Other workstreams

Kate updated the board on several LSB workstreams, including:

- progress on the next regulatory assessment;
- feedback provided to the LSB on the scope of its contingency planning project;
- recent correspondence about the LSB's enforcement review, which would require input from the CLSB;
- assessment of the approved regulators' performance on diversity; and
- follow up work on the CMA's market study, including a statutory policy statement expected from the LSB in the autumn.

9 LEGAL SERVICES CONSUMER PANEL (LSCP)

9.1 Work update

Kate updated the board on the Panel's latest tracker survey results, as well as its liaison with HMCTS, which was of relevance to Costs Lawyers.

10 LEGAL OMBUDSMAN (LeO)

10.1 Service complaints position

LeO reported two service complaints relating to Costs Lawyers in Q2, neither of which had a conduct element. Kate noted that she was aware of a third complaint which had not been included in the report and she was following this up with LeO. The board noted the position.

10.2 Work update

The board was provided with an update on the current restructuring and personnel changes at LeO. While this would create some uncertainty in the short term, it seemed an essential step in rectifying LeO's performance issues in the longer term.

11 REPRESENTATION (ACL)

11.1 Council minutes

The board noted the minutes of ACL Council meetings held in May and June 2020.

11.2 Work update

Part 4 of the ACL Council minutes from May explained that a working party had been established to review the ACL/ACL Training structure and relationship. Kate updated the board on feedback she had provided to the working group about different structure options.

The board noted that its overriding concern was to ensure that, whatever the structure, the entity providing the qualification was financially stable. The board also discussed: the need to ensure that access to the qualification was not dependent upon ACL membership; whether there were any benefits from economies of scale under different structures; and the ability to safeguard the interests of students.

Overall, the board did not have a strong view on structure and agreed this was primarily an issue for ACL, but noted that ACL would do well to consult the CLSB on the practical implications of any structure change it was considering (given the need to obtain CLSB accreditation to provide the qualification). Kate noted that the working group had approached the CLSB with that in mind and, to date, the dialogue had been constructive.

12 EDUCATION

12.1 Costs Lawyer Qualification coronavirus update

Kate updated the board on recent discussions with ACL Training around continuity planning for the Costs Lawyer Qualification in light of coronavirus. Kate shared ACL Training's plans for the final exam and noted that an alternative assessment structure might need to be considered and approved by the CLSB board prior to its October meeting under certain contingency scenarios.

The board discussed ACL Training's contingency plans and agreed that fairness to candidates was of paramount importance. Fairness extended to accommodating various types of students, including those who could not sensibly take an exam from home and those who were shielding (or living with someone who was shielding) and could not attend an exam in person. The board noted that other regulators had been criticised for potentially discriminatory impacts of changes to their assessment structures, and agreed that the CLSB must learn from others' experience.

13 OPERATIONAL MATTERS

13.1 Database demo

The board was given a virtual demonstration of the new Costs Lawyer database. The board agreed that the database provided exceptional functionality for the build cost, and should greatly improve efficiency, data security, quality of interaction and data reporting going forward.

14 PUBLICATION

14.1 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.

15 AOB

The board noted that the introduction of fixed costs reforms had been pushed back further. Legal commentators were now predicting they would not come in until October 2021.

16 NEXT SCHEDULED QUARTERLY MEETING

When: Tuesday 20 October 2020 at 10.30am

Where: By videoconference

There being no further business, the Chair declared the meeting closed.

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Chair

Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes (22 April 2020)	About us ⇒ Our board
3.1	2020 Business Plan	About us ⇒ Strategy and governance
3.2	Coronavirus impact survey	For Costs Lawyers ⇒ Covid-19 advice
3.3	2021 proposed Business Plan	About us ⇒ Strategy and governance
4.2	Board meeting dates	About us ⇒ Our board
5.2	2019 accounts	Regulatory matters ⇒ Cost of regulation
5.4	2021 proposed budget	About us ⇒ Strategy and governance
5.5	2021 practising fee consultation	Regulatory matters ⇒ Consultations
6.1	Risk registers	About us ⇒ Strategy and governance
7.2	Practising Rules and guidance note re practising conditions	For Costs Lawyers ⇒ Costs Lawyer Handbook
7.3	Guidance notes	For Costs Lawyers ⇒ Costs Lawyer Handbook
Item	Document	Publication location (other)
7.1	CPD Rules rule change application and outcome	LSB website here
7.2	Practising Rules rule change application and outcome	LSB website here
7.5	Mayson report	UCL website here