

Company number: 04608905

**MINUTES**  
**Costs Lawyer Standards Board Ltd**  
**Wednesday 23 January 2019 at 10.30 am**  
**The Studio, Cannon Street, Birmingham**

**Present:** Steve Winfield (Chairman/Chair): Lay NED  
Gillian Milburn (Vice-Chair): Lay NED  
Richard Allen: Non-Lay NED  
Tracyanne Ayliffe: Non-Lay NED  
Stephanie McIntosh: Lay NED

**In attendance:** Lynn Plumbley (Chief Executive)  
Paul McCarthy (observer)

**1. QUORUM, APOLOGIES, DECLARATIONS OF INTEREST & GUESTS**

- 1.1 The Chair declared the meeting quorate.
- 1.2 There were no apologies.
- 1.3 There were no declarations of interest on any agenda item.
- 1.4 The Chair welcomed Stephanie McIntosh to her first CLSB board meeting as a lay NED following her appointment on 3 December 2018.
- 1.5 The Chair welcomed Paul McCarthy as an observer.

**2. MINUTES**

**2.1 Minutes dated 20 November 2018**

The board (Stephanie excluded as she was not appointed at the time) agreed the minutes dated 20 November 2018 under which it had approved the proposed appointment of Stephanie as a true record for signing.

**Action: LP: Post minutes dated 20 November 2018 on the CLSB website**

**2.2 Minutes dated 24 October 2018**

The board considered the minutes of its last scheduled quarterly board meeting on 24 October 2018 and noted all actions had been undertaken. There were no matters arising that had not been scheduled as an agenda item. The minutes were agreed as being a true record for signing.

**Action: LP: Post minutes dated 24 October 2018 on the CLSB website**

**3. BOARD MATTERS**

**3.1 Appointment of Paul McCarthy**

Paul was asked to leave the meeting for this agenda item. The board was advised that following a recruitment process which had attracted eight Costs Lawyer applicants, two Costs Lawyers had been interviewed and the interview panel recommended the appointment of Paul to replace Richard on 24 January 2019. The board approved the appointment of Paul McCarthy as a non-lay NED commencing 24 January 2019 subject to a six-month probation period.

**Action: LP: Advise Companies House of appointment of Paul McCarthy**

### **3.2 The CLSB CEO**

The board was aware that on 9 November 2018, Lynn had indicated she no longer wished to continue in the role of full-time CEO. Since then, the Chair had been working on an alternative staffing structure. The board agreed with the Chair's proposal to divide the current full-time role of CEO into a part-time CEO and part-time HoO. It was noted that Lynn had indicated she would be willing to remain with the CLSB in the role of part-time HoO, subject to agreed contract terms. The board agreed this would provide the CLSB with the following comfort:

- Over eight years knowledge and experience would be retained within the CLSB.
- The CLSB would have a person capable of "stepping up" into the role of CEO on an interim basis should the need arise.
- It would provide for a controlled handover to the new part-time CEO.

Discussion on a draft contract for the HoO role was adjourned to be discussed at a future board meeting.

**Action: SW: Arrange further board meeting to discuss contract**

## **4. FINANCE**

### **4.1 Q4 report**

The board was pleased to note the financial position at Q4 end of 2018 and that continued sound financial management throughout 2018 had enabled a transfer of £10k to the CLSB reserve account.

### **4.2 2018 year-end budget**

The board was pleased to note that including the transfer to the CLSB reserve account referred to above, the CLSB was within budget for 2018 by £816.50.

### **4.3 2019 cost of living rise**

The board was advised that inflation was reported as being 2.2% in October 2018. Accordingly, the board agreed 2.2% as the annual cost of living rise across the executive, board and panel members effective 1 March 2019.

**Action: LP: Implement 2.2% 2019 cost of living rise**

### **4.4 Lloyds bank**

It was noted that after eight years of issue free banking with Lloyds, in December 2018 they had phoned to advise that unless certain personal information was given about each CLSB director, they would serve two months' notice to close CLSB accounts. Following legal advice, we were advised Lloyds were being "over-zealous" and that the CLSB was within its rights to request that Lloyds identify the risk factors pursuant to R18 and R28(13) present on which they based a request for information beyond that required by regulation. The CLSB was advised that if Lloyds could not provide a useful answer, then the matter should be referred to the financial regulator in accordance with R28. This disclosure request was made of Lloyds, as a result Lloyds agreed to only request that information about CLSB directors that had been registered with Companies House.

## 5. RISK MANAGEMENT

### 5.1 Regulatory risk

The board reviewed the regulatory risk register, no new risks were added. Risk 4 was amended to reflect that the ACL had increased its membership fee to £350.00 for 2019 and had advised on 17 January 2019 they had received approx. 500 membership applications for 2019 which would hopefully support it financially during 2019.

**Actions: LP: Post January 2019 version of regulatory risk register on the CLSB website**

### 5.2 Operational risk

#### (i) Capped costs pilot

A pilot on capped costs of £80k for High Court cases worth up to £250k was recorded under OP1. The board was advised that the CLSB had emailed the ACL Chair on 20 December 2018 for a view on the potential risk of this pilot, and that no response had been received.

#### (ii) Communication (ACL)

The concern that ACL is not communicating with the CLSB was discussed and logged as a risk.

#### (iii) Brexit (deal or no deal)

The only risk identified in relation to Brexit is the implication to mutual recognition of qualifications arrangements. That said, the CLSB had no one currently on its MRPQ register to whom this applied.

#### (iv) Board member recruitment

This risk was added as requested by the LSB following their assessment of the CLSB during 2016 and 2017. However, as a review of arrangements had taken place during 2018, this risk was only attributed a score of 4.

**Action: LP: Post January 2019 version of operational risk register on the CLSB website**

### 5.3 Risk scoring

Stephanie asked why the impact was scored one, three and five. The rationale was explained. Stephanie advised she would share the scoring method adopted by the Parole Board with the April 2019 board meeting so this can be considered as an alternative option.

**Action: SM: Copy Parole Board risk scoring mechanism to the CLSB CEO for inclusion in the April 2019 agenda**

## 6. REGULATORY MATTERS

### 6.1 CMA: Change to the CLSB website

The board was advised that in November 2018, the CLSB home page had been split into two to create a new consumer page. The board requested a report on usage of the CLSB website.

**Action: LP: Request a report from IT on usage of the CLSB website**

## 6.2 CMA: Review by the LSB of Approved Regulator (AR) actions

In October 2018, the LSB issued a report on progress of the ARs against their action plans on the implementation of CMA (Competition & Markets Authority) recommendations. The board noted all ARs had rejected the suggestion of publishing first-tier data information. It states *'We note that those regulators that planned to consider publishing quality data, such as complaints data, have all reached the conclusion not to mandate the publication of such data.'* The report also notes good progress has been made on developing the Legal Choices website (an expensive joint initiative between all the Approved Regulators over three years).

It was noted the CLSB has now actioned all bar one of its proposed actions following the CMA report. The proposal not actioned was a guidance note to Costs Lawyers on the publication of pricing information. Based on the 2018 year-end Costs Lawyer number of 733:

- 308 out of that 733 worked for an SRA regulated entity and this requirement would therefore be captured by the SRA.
- 17 out of that 733 did not provide services direct to the public e.g. worked in-house for insurance company.

Out of the 408 Costs Lawyers remaining:

- 298 of the 408 worked for a costs law firm. As an employee they would have limited if not no influence over the website of their employer.
- 108 out the 408 were sole practitioners.

It was also noted that the requirement to be transparent on pricing had been captured by the CLSB under its guidance on client care letters.

The board was advised that under newsletter 15 dated 28 November 2018 sent direct to Costs Lawyers by email, the following had appeared:

### ***Recommendations in CMA report dated 15 December 2016***

*Client care letters: The CMA recommended client care letters state the experience of the person handling an instruction, as well as their qualification. The requirement to state your qualification has always existed under our guidance note. The CLSB has therefore revised its guidance note to reflect the additional requirement that a Costs Lawyer sets out their years of experience.*

*Websites: The CMA recommended that pre-instruction pricing information and complaints procedures be published by Lawyers. The CMA has accepted the CLSB cannot make this a requirement as it does not regulate entities who generally own and operate their business websites. The CLSB has however agreed to recommend that where a Costs Lawyer has influence over website contents, they seek to ensure their complaints procedure and meaningful pre-instruction pricing information is published.*

***Board action: Note***

### **6.3 Disciplinary outcome: November**

Allegation:

- cold calling; and
- breach of Principle 5.1: *“You must be open, honest and co-operate in your dealings with the CLSB, ACL, other regulators and the Legal Ombudsman responding to any requests promptly and fully within 14 calendar days”*

Outcome: On 26 November 2018, a Conduct Committee convened and the Costs Lawyer (legally represented) was heard. The Conduct Committee concluded:

- Cold calling: Complaint not proven
- Breach of principle 5.1: Complaint proven

A warning letter was issued on compliance with principle 5.1 and the Costs Lawyer was ordered to pay the CLSB fixed costs in the sum of £1,000. The board noted this outcome had been posted on the CLSB website.

### **6.4 Disciplinary outcome: December**

Allegation: Incorrect understanding of reserved legal activity rights under the Legal Services Act 2007.

Outcome: On 3 December 2018, the Costs Lawyer finally agreed to sign the undertaking that had been offered at level one and to pay fixed costs in the sum of £250.00 to the CLSB. As a result, the scheduled Conduct Committee hearing (level two) was vacated. The board noted this outcome had been posted on the CLSB website.

### **6.5 Revised code of conduct on cold calling**

In response to the allegation made of cold calling by a Costs Lawyer, the CLSB had reacted by revising its Code of Conduct to ensure absolute clarity that cold calling of lay persons was not acceptable practice. The board was advised that on 5 December 2018, the LSB had approved the amended Code of Conduct to include an express provision under new principle 1.5 in relation to cold calling as follows:

*You must not:*

- (i) make an unsolicited approach by any means to a private individual (lay person) or to domestic premises (unless a business is being conducted from there) in order to publicise your service as a Costs Lawyer or your business; or*
- (ii) accept referrals from a third party who made an unsolicited approach to the private individual (lay person) being referred.*

The board was advised the new Code of Conduct had been posted on the CLSB website and a news item issued. The change had also been logged to be communicated out under the next CLSB newsletter.

## **6.6 Panel (Conduct Committee) member retirement**

The board was advised that lay panel member Kay Douglas had indicated her intention to retire at the end of January 2019. Kay has been on the CLSB panel since 31 October 2011 and the CLSB was sorry to see her leave. Kay had brought a wealth of experience in chairing disciplinary panels to the CLSB. The decision was made not to recruit for a replacement at this stage.

## **6.7 CMA: Legal Choices website**

The board was presented with statistical information on visits to the Legal Choices website for November and December 2018. The increased number of visitors was noted and welcomed. The board questioned whether those who had viewed and not returned did so because

- (i) they found it provided them with what they needed; or
- (ii) they were unimpressed by the site so did not return.

The board requested statistics in relation to the Costs Lawyer section so the board could consider what people are using it for and how many are looking at each page.

**Action: LP: Request information on Costs Lawyer section viewing over last 6 months**

## **6.8 Diversity assessment by LSB**

The board noted the LSB required the following of the CLSB:

- Inform LSB of response rates of next full diversity survey in 2019.
- Provide examples of how the board has considered diversity.
- Seek more opportunities to actively work and collaborate with other organisations on diversity initiatives.
- Review its guidance note on equality and diversity again in the future, to ensure it remains current and fit for purpose.

**Action: LP: Review current guidance note on equality and diversity for the next board meeting**

## **6.9 2019 diversity survey**

The board agreed to explore using an electronic survey method for the 2019 survey to see if this increased response rates.

**Action: LP: Investigate electronic survey methods**

## **6.10 2019 practising certificate applications**

The board noted with concern the high number of Costs Lawyers who had not applied for a practising certificate as at 17 January 2019. 23 had advised they would not be renewing for reasons such as retirement, career break or maternity. It was noted a reminder email had been issued on 12 January 2019 and that on 22 January 2019, a letter had been sent to 50 who had not applied/advised of reasons why they had not applied as at that date.

**Action: LP: Updated board in April 2019 on current regulated numbers**

## **7. LEGAL SERVICES BOARD (LSB)**

### **7.1 Consultation on Internal Governance Rules (IGR)**

The CLSB had responded in December 2018 as follows: *Before responding, we sought an independent view. In summary, that view was this is an exercise in "patching holes in the bucket rather than getting a new bucket."*

Question 1: Do you agree that the proposed rules would enhance the independence of regulatory functions and improve clarity leading to fewer disputes and more straightforward compliance/enforcement? If not, why not?

Since 31 October 2011 the CLSB has acted as approved regulator of the Costs Lawyer profession under delegated authority of the ACL. The CLSB has managed to achieve a greater degree of separation than most e.g. separate fees for regulation and representation, despite this the CLSB has still experienced issues as a result of that delegated arrangement. Those issues have diverted focus and resource from the CLSB achieving its regulatory objectives. We cannot see how the proposed changes to the IGRs would prevent the issues the CLSB has experienced arising in the future.

Question 2: Does the proposed guidance provide sufficient detail to help you to interpret and comply with the proposed IGR? Please provide specific comments on any areas of the guidance where further information would improve clarity. At the end of the (6m) transition period the LSB will require a certificate of compliance from each approved regulator. This should include details of the steps the approved regulator has taken to review current practices against the new IGR and to provide a self-assessment of its own compliance. Where an approved regulator has a separate regulatory body, a separate certificate of compliance must be submitted to the LSB by the regulatory body which should include details of how the regulatory body is meeting the obligations in the IGR that apply to it

The guidance provides sufficient detail to enable the CLSB to interpret and comply with the proposed revised IGRs.

Question 3: Is there any reason that your organisation would not be able to comply with the proposed IGR within six months? Please explain your reasons. The initial work by approved regulators and regulatory bodies to comply with the proposed IGR is likely to be the most resource intensive part of implementing them. This work is likely to include:

- assessment of the new IGR against current practice to determine the scope of changes required and implementation of any changes needed.
- review of governance and assurance arrangements, operational practices, including shared services, and the roles of individuals

The LSB acknowledges that this is not an onerous task for ARs that have already delegated the regulatory function and who have an existing framework for a working relationship with the regulatory body. LSB acknowledges that there may be a need for increased resource to implement these changes.

At present, the CLSB envisages being able to comply with the proposed revised IGR within 6 months.

Question 4(a): Beyond the usual resources allocated to compliance with the IGR what, if any, additional resource do you anticipate you will need: (i) to assess compliance with the proposed IGR and then to make changes to come into compliance, if any are required; and (ii) to comply with the IGR on an ongoing basis? Based on the degree of separation already achieved between the ACL and the CLSB e.g. separate fees, no shared resources, it does not envisage requiring further resources to implement the proposed revised IGR.

Question 4(b): Do you agree with our assessment that the cost of compliance (which includes the costs of dealing with disputes and disagreements) will reduce under the proposed IGR?

No. As indicated above, as we cannot see how the proposed changes would prevent the particular issues the CLSB has experienced with the ACL arising in the future. We cannot therefore identify why the revised IGRs would provide a cost reduction for the CLSB.

Question 5: Please provide comments regarding equality issues which, in your view/experience, may arise from implementation of the proposed IGR.

The CLSB does not envisage any equality issues in completing implementation of the proposed revised IGR.

The board was advised this consultation had been discussed at the Chair & CEO meeting with the LSB on 18 January 2019, where other Approved Regulators had raised issues and concerns.

## **7.2 Report on technologies and innovation**

The board noted the outcome of this report issued November 2018, which advises 1,502 telephone interviews with legal services providers updated their 2015 study. The report appeared to have been based around Solicitors and Barristers. There was a section for “others regulated” and indeed “others unregulated.” It was noted that 51% of respondents agreed that technology gives rise to greater ethical problems for Lawyers and only 38% of those who used technology said it had reduced the cost of delivering services. No actions were identified as a result of this report as the CLSB is a regulator of individuals, not entities.

## **7.3 Response to LSB performance assessment (2016 and 2017)**

The board noted that the LSB had advised in its covering letter “*I am pleased to inform you that we have completed our transitional assessment and concluded that we have sufficient assurance that the CLSB has met a number of the required outcomes against the standards.*” The LSB then went on to state they had identified eight outcomes “*not met - action being taken.*” When in July 2018 the LSB had asked the CLSB for evidence of compliance, they had advised the CLSB:

### ***“Sufficient assurance***

*We have sufficient assurance on the performance of the CLSB to provisionally assess the performance against the following outcomes as met:*

- RA1
- A2-3
- S3
- E1,4 and 5
- WL: GL2”

Despite this, in January 2019 the published LSB report stated that in relation to RA1 and WL:GL2 those outcomes were “not met, action being taken”. The board was of

the view this evidenced a fundamental failing of LSB process and discredited the LSB outcome. Further, on reading the detail of the outcome the board did not consider it serious enough to warrant the CLSB being singled out. Further concern was expressed that the LSB continued to misrepresent the facts. For example, they refer to “a single member of staff supporting” when in fact the CLSB has a documented organisational structure of 24 individuals who make the CLSB operative.

**Action: SW & LP: Seek legal advice via Counsel and action accordingly, making appropriate representation to Helen Philips (Chair) and Neil Buckley (CEO)**

The board approve the following response at the beginning of the action plan in response to the LSB assessment:

***Serious issue of concern***

*Under the assessment process, in July 2018 the CLSB received a request for information (which the CLSB complied with) under which we were advised:*

***“Introduction***

*This request details where we consider we have sufficient assurance of the CLSB’s performance against the outcomes set out under the five function based standards in the new framework. It also sets out where we require further information to assist in our assessment of performance and where we do not have sufficient assurance of the CLSB’s performance.*

***Sufficient assurance***

*We have sufficient assurance on the performance of the CLSB to provisionally assess the performance against the following outcomes as met:*

- *RA1*
- *A2-3*
- *S3*
- *E1,4 and 5*
- *WL: GL2”*

*Despite this, the LSB issued a report to the public in December 2018 stating that in relation to RA1 and WL:GL2 those outcomes were not met, action being taken. This was in our view a fundamental failing of the process and this erroneous finding is now in the public domain. An urgent reassurance is required this public perception will be corrected.*

***Board action: LP: File response with the LSB and post on CLSB website under news item***

The board noted with concern a letter sent by Neil Buckley to the CLSB Chair dated 21 January 2019 and requested the same be referred to a Barrister for legal advice and that action be taken in accordance with that legal advice.

**Action: SW & LP: Seek legal advice via Counsel on LSB letter dated 21 January 2019**

- 8. LEGAL SERVICES CONSUMER PANEL (LSCP)
- 8.1 LSCP blog dated 21 January 2019

The board was shocked that the Chair of the LSCP, who has made no effort to introduce herself to the CLSB, understand the CLSB as a regulator or the profession it regulates used the LSB Regulatory Performance Report (January 2019) to write in her blog referring to the alleged “urgency of the LSB findings” and continued “the situation with the CLSB calls into question the continued existence of regulators whose competence is found wanting. At what point should the LSB begin to call into question a regulators fitness to regulate.”

**Action: SW & LP: Take legal advice in relation to the LSCP Chair blog and action accordingly**

## **9 LEGAL OMBUDSMAN (LeO)**

### **9.1 Service complaints**

The board noted that monthly reporting by LeO had stopped once again. LeO were contacted on 5 October 2018 and we were advised the information would be sent by the end of the week, but it had still not been received. This is of concern as service complaints as well as conduct complaints inform CLSB supervision arrangements. Failure by LeO to provide this information impacts on the ability of CLSB to effectively supervise its regulated community.

**Action: LP: Write again to LeO about this failure to report**

### **9.2 LeO failing to meet expectations of stakeholders**

The board noted that the Chairs and CEOs meeting in January 2019 had been advised that LeO had recently posted a notice on its website that there was a six-month delay in considering service complaints. Steve and Lynn advised the board they had been deeply concerned to hear at that meeting that the LSB Chair advised she had contacted LeO about removing this notice and that she would contact them again about doing so after an AR Chair advised it still appeared. Such actions being contrary to statutory principles of transparency. The board noted the considerable focus the LSB has placed on CLSB performance, regulator of the smallest and lowest risk profession, and questioned whether the CLSB was being used as a diversion from major failings at the Legal Ombudsman.

## **10. REPRESENTATION (ACL)**

### **10.1 Minutes 7 September 2018**

The board considered the minutes of the ACL Council on 7 September 2018, it noted that no minutes had been posted since that date.

### **10.2 Financial position for 2019**

The board noted that ACL had increased its membership fee to £350.00 for year 2019. On 17 January 2019, the CLSB had been advised that approximately 500 applications had been received which was encouraging.

## **11. EDUCATION**

### **11.1 Number of current trainees**

It was noted that the CLSB had been advised that for academic year 2018/19 there were currently 18 trainees on year two and 22 trainees on year three.

## **11.2 Costs Lawyer Competence Assessment (CLCA)**

The board was advised that LSB comments on the proposed application were under consideration.

**Action: LP: Consider LSB comments on draft application**

## **12. ANY OTHER BUSINESS**

### **12.1 Article for Legal Choices website**

The board considered and approved the article written by Paul for submission to the Legal Choices editorial panel. Costs Lawyers on the CLSB board were asked to identify costs related subject matter for further articles.

**Action: LP: Submit article to Legal Choices editorial panel**

### **12.2 Thanks to Richard Allen**

Richard was thanked for his many years of service as a Non-Executive Director.

Richard had offered sound and sensible support through an eight-year journey from establishing the CLSB to present day.

## **13. NEXT SCHEDULED QUARTERLY MEETING**

### **13.1 Date, time and location**

Date: Friday 26 April 2019 @ 10.30am

Location: Birmingham

Venue: The Studio, Cannon Street, Birmingham

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

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Chairman

### **Board document disclosure**

The following documents were not considered confidential, sensitive or subject to prevailing data protection laws and have therefore been published in the location stated.

<b>Paper</b>	<b>Publication location</b>
CLSB minutes 24 October 2018	CLSB website: Under "internal governance" then "board minutes"
CLSB minutes 20 November 2018	CLSB website: Under "internal governance" then "board minutes"
Risk register (regulatory risk) 24 October 2018	CLSB website: Under "policy outcomes" then "risk management"
Risk register (operational risk) 24 October 2018	CLSB website: Under "policy outcomes" then "risk management"
CLSB newsletter number 15 28 November 2018	CLSB website: Under "news" then "newsletters to Costs Lawyers"

Disciplinary outcome November 2018	CLSB website: Under "complaints" then "complaints to CLSB"
Disciplinary outcome December 2018	CLSB website: Under "complaints" then "complaints to CLSB"
Code of Conduct 5 December 2018	CLSB website: Under "Costs Lawyer handbook" then "code of conduct"