

Company number: 04608905

MINUTES
Costs Lawyer Standards Board Ltd
Monday 23 October 2023 at 10:30 am
Remotely via Teams

Board:	Rt Hon David Heath CBE	Lay NED (Chair)
	Stephanie McIntosh	Lay NED (Vice-Chair)
	Andrew Harvey	Lay NED
	Andrew McAulay	Non-Lay NED
	Paul McCarthy	Non-Lay NED
In attendance:	Kate Wellington	CEO
	Jacqui Connelly	Director of Operations
	Lori Frecker	Director of Policy (Item 1)

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.
- 1.3 Lori was introduced to the board and provided an overview of the policy areas that she would be prioritising in the short term.

2. MINUTES

2.1 Minutes dated 28 June 2023

The board considered the minutes of its last scheduled quarterly meeting on 28 June 2023. 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 28 June 2023. 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: Q3 2023

The board was provided with a progress update against the 2023 Business Plan for Q3. Kate noted that all projects were now underway, with four more priorities having been completed in Q3. The main focus for Q4 would be on planning the three remaining policy projects in the Business Plan (priorities 5, 7 and 9) with Lori's support. Depending on capacity and scope, delivery of those projects was likely to continue into 2024. The board considered and approved the executive's proposed strategic priorities for Q4 of 2023.

3.2 Consultation feedback on strategy and Business Plan

Kate thanked the board for considering and approving a new mid-term organisational strategy for the CLSB by email following the board's strategy session in June. Kate confirmed that the new strategy was published alongside the practising fee consultation together with the 2024 Business Plan, and both documents were now available on the CLSB's website.

Kate explained that as part of the practising fee consultation, a survey was conducted with the Advisory Panel asking for feedback on the strategy and 2024 Business Plan, and the results provided an interesting steer as to which aspects of the CLSB's upcoming work were most likely to resonate with practitioners. Amongst other things, this would help the CLSB develop its new communications plan early next year.

The board was provided with a report setting out the full results of the survey and Kate provided a summary of highlights and key take-aways. The board discussed the findings, keeping in mind the relatively limited sample size and nature of the survey.

Board members noted the importance that respondents placed on success of the new Costs Lawyer Professional Qualification, both as a priority in 2024 and in the medium term. The board also noted that the only Business Plan priority that no respondents selected as being important to them (i.e. not within their top five most important priorities) was publishing the next Annual Risk Outlook. The board discussed whether this meant the Risk Outlook project should be abandoned, but on balance felt that it should not, particularly given the positive feedback on the 2023 Risk Outlook that was received from other sources. The focus in 2024 should therefore be on promoting engagement with the Risk Outlook, including getting the report in front of sole practitioners and business owners/managers as well as potentially drawing from the report to create "bite sized" risk publications on discrete topics throughout the year. Kate agreed to capture this approach in the communications plan.

The board also discussed the constitution and purpose of the Advisory Panel and Jacqui provided examples of how it had been used recently.

Actions: Ensure communications plan captures different ways of presenting the CLSB's work on strategic items including risk.

3.3 Education – launch of new CLPQ

The board was informed that the new Costs Lawyer Professional Qualification was successfully launched in September. Kate reported on student numbers and feedback, as well as the CLSB's role in the induction day and professional ethics module.

The board was also updated on the work the executive was doing with ACL Training to develop a proposal for a Costs Lawyer Occupational Standard, which would set the parameters for an apprenticeship route of entry into the profession tied to the regulatory framework and qualification. Board members were excited by the progress that had been made on this workstream and continued to support the initiative.

4. BOARD MATTERS

4.1 Amendment to Board Appointment Policy

At its June meeting, the board noted that the Board Appointment Policy allowed individual board members to be reappointed no more than twice. The board agreed that this was counter to its aim of having the flexibility to appoint members for shorter terms, to help stagger appointments and thus promote continuity. It was therefore agreed that a proposed amendment to the Board Appointment Policy be brought to this meeting for consideration, removing the limit on the number of times a member could be reappointed but retaining the overall term limit of seven years.

The board unanimously agreed to amend section 6 of the Board Appointment Policy as shown in red: *After their initial appointment, a Director may be re-appointed for ~~up to two~~ further periods of up to three years each, but will not serve for a total period in excess of seven years.*

Action: Amend Board Appointment Policy in the Internal Handbook as agreed.

4.2 NED reappointments

Stephanie and Paul left the meeting. The remaining board members were invited to consider reappointing Stephanie for a further two years to 3 December 2025 and reappointing Paul for a further two years to 24 January 2026 (or other such periods as the board saw fit). The board unanimously agreed both appointments.

Stephanie and Paul returned to the meeting and were notified of the outcome. David thanked them for their continued service to the CLSB.

Action: Take administrative steps to formalise reappointments.

5. FINANCE

5.1 Quarterly report: Q3 2023

Jacqui introduced the quarterly finance report. The board noted the financial position, including a projected budget deficit for the year, and discussed the executive's recommendations as to how that deficit should be managed.

The board agreed that it would be inappropriate to make a contribution to reserves in a deficit year and thus agreed that the projected reserves contribution of £5k should be reduced to £0 to manage the projected deficit for 2023. The board was comfortable with this approach as the CLSB's uncommitted and committed reserves were both healthy, and refraining from making a contribution to reserves for a single year carried no material risk.

The board also noted an increase in expenditure on complaint handling/investigations. Board members discussed whether this was indicative of an increase in upheld complaints and thus whether any learnings or themes should be proactively addressed.

Action: Adjust down 2023 budget projection for contribution to reserves.

5.2 Outcome of practising fee application

The board was informed that, following consultation, the CLSB's practising fee application was submitted to the LSB in September in line with the LSB's new Practising Fee Rules. Kate explained that the LSB's Decision Notice had been received shortly before the board meeting and the proposed fee had been approved.

The board noted the LSB's recommendation for the CLSB to consider having its accounts audited on a periodic basis, even though this was not formally required by Companies House. The board asked the executive to look into the feasibility of doing so.

Actions: Look into audit recommendation.

5.3 Interest bearing account options

Jacqui introduced this item. In light of rising interest rates and the CLSB's increasing financial reserves, the executive had begun to investigate financial products that would allow interest to be earned on funds that were currently held in regular business banking accounts and would also spread the CLSB's exposure to risk across a larger number of financial institutions.

The board was provided with a paper setting out factors to consider. In particular, the board was asked to give a steer on its appetite for moving funds to an interest bearing account, including the extent to which immediate accessibility and risk spreading were factors that should be taken into account. The executive would then explore specific product options and select a way forward, in line with the parameters indicated by the board.

The board discussed the issues raised in the paper. Overall, board members agreed that the time was right to move some of the CLSB's reserves to higher interest bearing accounts. The board indicated that a graduated approach should be taken, comprised of a prudent mix of lower-interest/higher-accessibility accounts and higher-interest/lower-accessibility accounts. The board agreed that "no access" products (such as term deposits that could not be accessed until maturity, even upon payment of a penalty) should not be included in the mix. Otherwise, the board delegated authority to the executive to determine an appropriate allocation and products, based on annual cash flow and projected expenditure per quarter.

Action: Proceed with changes to investment strategy based on the board's steer.

6. RISK MANAGEMENT

6.1 Review of risk register

The board carried out its quarterly review of the risk register and discussed whether any amendments were required.

In June, the board had discussed some of the risks to Costs Lawyers, solicitors and clients from the new fixed recoverable costs regime. Kate provided an update on that issue based on developments in Q3. ACL had been particularly active, including by arranging a webinar about the impact of the new rules, supporting training efforts by firms and responding to the Ministry of Justice's latest consultation, and the board was provided with a copy of ACL's consultation response. The board discussed the

boundaries of the CLSB's role, and Kate noted that she had discussed the issues and risks with the ACL Council's Policy Sub-committee and offered the CLSB's support where risks were identified that crossed into the regulatory space.

7. REGULATORY MATTERS

7.1 Code of Conduct consultation outcome

Kate reported that the consultation on proposed changes to the Code of Conduct closed in mid-July. Helpful responses were received from the Legal Services Consumer Panel, ACL and five individual Costs Lawyers, and most of the respondents' comments had been taken on board. An outcome report was published explaining how the feedback was addressed in producing a final version of the amended Code.

Kate explained that, alongside the consultation, a survey was run with the Advisory Panel asking about practitioner engagement with the Code. This included questions about how often practitioners referred to the Code, on what issues, whether the Code assisted them, what other supporting material could be provided, and how awareness could be raised. The board was provided with a report of the survey responses and Kate noted areas of particular interest.

The board discussed the potential for publishing ethical case studies and drew comparisons to their experience in other sectors. It was agreed that any case studies should make clear that they were illustrative and not instructive, and did not relieve practitioners from considering carefully how the Code applied to their particular situation.

Board members also discussed the interplay between personal accountability and firm accountability, particularly where a manager or employer (who might not be regulated) puts pressure on a regulated Costs Lawyer to behave in an unethical way. Anecdotal experience of such behaviour in the legal profession was discussed, including evidence from LawCare's recent well-being surveys and data gathered from the CLSB's exit survey for Costs Lawyers who leave regulation. The board agreed that the CLSB had a role in supporting practitioners to make ethical choices in this kind of scenario, including through reporting to other regulators – such as entity regulators and the regulatory bodies of associated professions, like expert witnesses or accountants – and this should form part of the supporting material produced for the Code in due course.

Action: Consider supporting materials for the Code in line with the board's comments and survey outcomes upon implementation.

7.2 New guidance on providing services to consumers

Kate introduced this item. She explained that the CLSB's plan for complying with the LSB's policy statement on consumer empowerment involved identifying Costs Lawyers who provide services directly to end consumers and developing guidance for those Costs Lawyers on their consumer law obligations. The board was provided with draft guidance for consideration and approval.

Kate noted that two aspects of the guidance remained outstanding – namely a section on further resources and an annex setting out further detail on the underlying

legislation – but these were standalone aspects with no bearing on the existing drafting or the usability of the guidance so could be added following board approval.

The board approved the guidance for publication and agreed that the outstanding sections were not controversial and could be added without requiring further board approval. While it was agreed that a composite PDF of the guidance should be published for immediate use, board members also discussed how the information could be presented in a navigable format – such as web content broken down into modules or themes – to help with accessibility and engagement. It was agreed that this should also be considered under the communications plan due for development in early 2024.

Actions: Publish guidance for immediate use; Consider longer term publication options as part of communications plan.

7.3 Progress update on ongoing competency

The board was provided with a progress update against the CLSB's ongoing competency work plan.

At its June meeting, the board had considered an amendment to the CLSB's policy statement on enforcement and sanctions, covering competency issues and how they would be treated in a disciplinary context. The board approved the proposed amendments, subject to adding guidance on the regulatory impact of a temporary lack of competency or capacity where there was no issue with underlying professional knowledge and skills. The board was provided with an updated version of the statement with new wording to cover this issue. The board approved the additional text, however Andrew H noted a minor issue with the existing drafting that he agreed to raise by email with the executive after the meeting.

The board was also updated on the project to expand the Costs Lawyer Competency Statement from the point of authorisation to extend throughout a Costs Lawyer's career, including plans for a workshop for interested Costs Lawyers on 15 November.

Action: Publish updated version of policy statement on enforcement and sanctions.

7.4 Regulatory Information Service

Kate provided the board with an update on a sector-wide project that aims to collate information from all the regulators' online registers into a single accessible data source which is searchable by the public. Kate explained that the concept was currently being termed the Regulatory Information Service, having had various former names such as the Single Digital Register. The board was provided with information on:

- the history of the project, deriving from a recommendation in the CMA's first legal services market study in 2016;
- recent developments, including the outputs of a research project commissioned by the LSB to look at possible delivery models and next steps, and discussions at a recent meeting of MTCOG (the Market Transparency Co-ordination and Oversight Group);
- a report by the SRA which scoped development options and costings, as presented to the Legal Choices Governance Board;

- the various regulators' views on next steps and the approach the CLSB had taken to date in executive level discussions.

The board noted how the project was progressing, including the potentially significant costs involved, and discussed the CLSB's role and approach. In summary – and subject to ongoing monitoring and any unforeseen issues – the board agreed that the executive should be guided by the following general principles when engaging with the project:

- As this is a sector wide initiative, it is appropriate and beneficial for the CLSB to participate and help ensure full sector coverage.
- However, the benefits of the project to the CLSB, Costs Lawyers and their clients are likely to be marginal since the Regulatory Information Service is aimed primarily at the public and Costs Lawyers are primarily instructed by other professionals. This means that the CLSB's involvement needs to be proportionate and should not require an unjustifiable level of internal or financial resource.
- The CLSB's involvement should therefore focus on contributing to the project logistically, particularly by adapting systems and processes to allow data to be captured by the Regulatory Information Service.
- If the CLSB is required to make a financial contribution to the project, it will not be able to do so under the existing Legal Choices funding model, which requires the CLSB to pay proportionately more than any other regulator (whether measured by organisation size, budget or number of regulated practitioners). If a financial contribution does become necessary, the CLSB's preference will be for the LSB to take on the project and fund it through the LSB's statutory levy, which is fairer to the regulators and thus to regulated individuals.

Action: Continue to engage with the project on the basis of the above guiding principles.

8. LEGAL SERVICES BOARD (LSB)

8.1 Work updates

The board received updates in relation to:

- engagement with LSB consultations on first tier complaints and technology and innovation;
- the LSB's project on enforcement and investigative tools.

8.2 2023 regulatory performance assessment

Kate noted at this item was included in the agenda following an indication from the LSB that a draft performance assessment might be available for comment by the time of the meeting. As the assessment had not been received, this item was vacated.

9 STAKEHOLDER UPDATES

9.1 ACL Council meeting minutes

The board noted the minutes of ACL Council meetings held in May, June and July. The board discussed the current nature of the relationship with ACL, noting the open and constructive tone, and David thanked the executive for the time and effort that had been put into interactions with ACL recently. Andrew M also provided positive feedback from the ACL conference that he had attended the previous week.

9.2 Judicial appointments update

Andrew H introduced this item and updated the board on recent meetings with the Judicial Appointments Commission and the Ministry of Justice. Kate provided feedback on the likely process for enabling Costs Lawyers to apply for judicial appointment and the evidence that would be required by the Ministry of Justice to take the matter further.

Board members discussed the potential scope of roles that Costs Lawyers might be qualified to fill and the benefits this could bring for the justice system. The board also considered what support practitioners would need in applying and how the CLSB could ensure this was delivered in conjunction with ACL and potentially other representative bodies.

Overall the board agreed that this was an exciting opportunity for progressing a number of the recommendations from the Regulators' Pioneer Fund project and helping to promote Costs Lawyers as independent actors in the justice system.

10 OPERATIONS

10.1 Practising history data project

Jacqui introduced this item. She explained that the 2023 digital workplan included a project to consolidate all regulatory information about individual Costs Lawyers in the database, aiming to:

- have a single point of reference for understanding an individuals' regulatory history;
- understand and document gaps in the CLSB's historic data to identify and (where necessary) mitigate any risks.

The board was presented with a report on the findings of the project. Board members noted the outcomes and the steps taken to minimise any impact of the gaps identified.

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 declared a new interest as a partner in Ad Tech Collective Action LLP for the purposes of the standing register of interests. She explained the nature of the interest and confirmed it did not give rise to any conflict with her role at the CLSB.

13 NEXT SCHEDULED QUARTERLY MEETING

The next meeting was scheduled for 30 January 2024, remotely by Teams.

There being no further business, the Chair declared the meeting closed at 12:22.

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Chair

Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes	About ⇨ Our board
3.1	2023 Business Plan	About ⇨ Strategy and governance
3.2	New mid-term strategy and 2024 Business Plan	About ⇨ Strategy and governance
6.1	Risk register	About ⇨ Strategy and governance
7.1	Code of Conduct consultation outcome report	Regulatory ⇨ Consultations
11.1	Board papers	About ⇨ Our board
Item	Document	Publication location (other)
5.2	CLSB’s practising fee application for 2024	LSB website here
8.1	LSB consultation on first tier complaints	LSB website here
8.1	LSB consultation on technology and innovation	LSB website here