

Company number: 04608905

MINUTES
Costs Lawyer Standards Board Ltd
Wednesday 24 July 2019 at 10.30 am
GMCC, Manchester

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

In attendance: Kate Wellington (Company Secretary and CEO)
Claire Green (ACL Chair) for Item 1 only

1. QUORUM, APOLOGIES, DECLARATIONS OF INTEREST & GUESTS

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 Roundtable with Claire Green

Steve congratulated Claire on her recent appointment as Chair of the Association of Costs Lawyers (ACL) and thanked her for attending the meeting. Steve explained the purpose of the discussion, namely to introduce Claire to the wider board, for Claire to update the CLSB on the ACL's priorities, and to discuss options for the future of the Costs Lawyer qualification.

Claire indicated that her priorities as ACL Chair included reinstating the qualification, growing ACL's membership and implementing the LSB's new Internal Governance Rules (IGR). It was acknowledged that it would be necessary and beneficial for the ACL and CLSB to collaborate in these areas.

In relation to the Costs Lawyer qualification, Claire explained that ACLT was still in the process of carrying out a viability study around potential reinstatement of the three-year course. Claire had not yet been able to convene a Council meeting to discuss the issue further. Steve set out the level of comfort that the CLSB would require before reinstatement would be possible, with a focus on ensuring that students could be confident the course would run through to completion. Claire emphasised that the ACL took its commitments to current students very seriously and would not take on a new cohort without certainty that students could finish the course. She noted that ACL's reserves could be relied upon if that became necessary.

Claire explained that ACL had registered interest in the course from 72 prospective students. The board discussed with Claire the level of uptake needed to make the course viable; Claire indicated that an intake of over 50 each year should make the

course comfortably sustainable for those cohorts over a three year period. Options for boosting numbers were discussed, such as opening the course to new students only once every two years or doing more to recognise practical experience, including by way of exemptions. Claire indicated that there would be a greater focus on marketing the course and updating its content in order to attract new entrants in future years.

In relation to ACL membership numbers, the current membership stands at around 500 Costs Lawyers. It was acknowledged that there is a link between the ACL's objective of growing its membership and the CLSB's objective of raising standards and improving consumer outcomes by bringing more unregulated costs advisers into the regulated community. Achieving these objectives relies, in turn, on there being a viable route of entry into the profession. Claire noted that she is considering affiliate ACL membership for non-regulated costs advisers, one benefit of which might be an increased understanding of the benefits of regulation and thus increased interest in becoming a Costs Lawyer.

In relation to IGR, the board was informed that the LSB's new rules had been published earlier that day (24 July 2019). It was acknowledged that the ACL and CLSB would need to work together to ensure their arrangements were compliant by the end of the 12-month transitional period.

The board thanked Claire for joining the meeting and looked forward to maintaining an open and collaborative dialogue with the ACL on all matters going forward.

2. MINUTES

2.1 Minutes dated 26 April 2019

The board considered the minutes of its last scheduled quarterly meeting on 26 April 2019. Paul noted an inaccuracy at item 7.1 and an amendment was proposed. Subject to that amendment, the minutes were agreed as being a true record for signing. There were no matters arising that had not been scheduled as agenda items or otherwise dealt with.

Action: Post minutes on the CLSB website

2.2 Minutes dated 7 June 2019

The board considered the minutes of its ad hoc board meeting on 7 June 2019 and agreed the minutes as being a true record for signing.

Action: Post minutes on the CLSB website

3. STRATEGY

3.1 Meetings with LSB Chair, CEO and policy team

Steve updated the board on a series of meetings with representatives of the LSB, including the LSB's Chair, CEO and policy team.

Steve explained that, over the course of those meetings, it had become clear that the CLSB was labouring under a misapprehension in relation to the LSB's position, including what was being sought from the CLSB under the LSB's transitional regulatory assessment. A collaborative relationship was therefore in the best interests of all parties, as this would foster greater understanding going forward.

The board endorsed this approach, reiterating the key importance for the CLSB of building strong relationships with stakeholders.

3.2 Revised LSB action plan

Kate introduced the item. She explained that, during the recent meetings with the LSB, it had also become clear that the CLSB's existing action plan (setting out the steps the CLSB was taking to meet the LSB's performance standards) had not achieved its intended purpose. A revised action plan was therefore submitted to the LSB on 25 June 2019. The new action plan was submitted on the basis that it was supported by Steve and Kate, but had not yet been considered by the wider board. Kate reported that the LSB's initial feedback (pending CLSB board approval of the plan) was positive.

The board discussed the revised action plan, including the level of resourcing required for its delivery. The board agreed that it was a positive shift and conveyed their support in particular for its constructive tone and proactive approach.

The board thanked Kate for her work on the new action plan and approved it for formal adoption and implementation.

Action: Confirm board adoption of the action plan to LSB

3.3 Strategy for 2020 to 2023

Steve introduced the draft strategy for 2020 to 2023. The board's attention was drawn to the commitment made in the revised action plan to publish a medium-term strategy document, providing context for the CLSB's annual priorities as set out in the business plan. The aim of the strategy is to clearly and concisely convey the CLSB's vision, strategic goals, and path to achievement.

The board discussed the draft strategy and welcomed the approach of articulating the organisation's medium-term objectives in a succinct strategy document. Board members felt that the strategy provided a clear reference point against which to measure success and to scrutinise progress made by the executive.

The board noted that collaborative working relationships would be vital to the success of the strategy, and looked forward to welcoming guests from the LSB to the October board meeting.

The board approved the strategy and agreed that it should be published on the website to help the CLSB clearly communicate its vision to the regulated community and other stakeholders.

Action: Share approved strategy with LSB; Publish on CLSB website

4. BOARD MATTERS

4.1 KPI monitoring

Board members received data against the CLSB's existing KPIs dating back to 2017. Steve encouraged the board to consider the KPIs from the perspective of external stakeholders, to assess whether they provided valuable information that enabled the public to form a view of how the CLSB was performing.

The board felt that the KPIs may not have been pitched at the right level, given that the historic data showed they had been consistently achieved over time. It was agreed that both the approach to KPIs, and the content of the KPIs themselves, should be aligned to the new strategy (including the indicators of success in the strategy document).

The board discussed how best to achieve this, including how to add more qualitative measures to the existing KPIs, which are currently based on quantitative data only. Steve noted that the original purpose of publishing KPIs was to facilitate a public assessment of the ARs' performance. The CLSB therefore needed to be mindful of its audience and ensure that any new KPIs are accessible to lay individuals.

The board agreed that a hybrid approach was likely to be most appropriate; namely retaining (and updating) the existing KPIs for public reference, while adding further categories of KPIs aimed at monitoring progress against the CLSB's forward-looking ambitions. These new categories would be beneficial for internal use and may be of interest to more sophisticated external stakeholders. This would also help to demonstrate improvement over time, in addition to showing that the CLSB has consistently met its operational targets.

The board asked Kate to give this issue further consideration and put forward a proposal for discussion at the October board meeting.

Action: Prepare new KPIs for board consideration in October

4.2 Board recruitment planning

The board noted that both Gill and Tracyanne were due to retire from the board in March 2020 and Steve was due to retire in March 2021. The board discussed the need to ensure that these retirements do not impact business continuity.

In terms of timing for the transitions, it was agreed that the ability to have a "handover" board meeting – at which both the outgoing and incoming board members were present – had been valuable for Stephanie and Paul. It was therefore agreed that both Gill and her replacement should attend the January 2020 board meeting and both Tracyanne and her replacement should attend the April 2020 board meeting if possible. The board also agreed that new board members may be appointed for terms of differing lengths (to the extent permissible under the CLSB's internal policies) to better stagger retirements going forward.

The board considered a capabilities matrix, which had been prepared to assist the board in identifying skills that should be prioritised when recruiting new NEDs. Board members provided feedback on existing capabilities and agreed focus areas for recruitment, particularly digital / IT capabilities (which would help the CLSB to continually modernise its ways of working) and data analytics (which would help the CLSB achieve its strategic objectives around evidence capture and use).

It was agreed that recruitment for Gill and Tracyanne's replacements should take place at the same time to ensure the right mix of skills is achieved.

Action: Update capabilities matrix based on feedback; Produce NED job specs based on priorities identified; Undertake recruitment in line with agreed timings

4.3 Transparent Decisions Policy

Steve introduced this item. He explained that, during meetings with the LSB, it had become apparent that external stakeholders lacked insight into how the CLSB makes decisions. To address this, it was proposed that a new Transparent Decisions Policy be adopted under which significant board-level decisions would be explained and recorded in a Board Decision Note. This process would also be useful internally, providing an audit trail for how decisions have been made so that they can more readily be reviewed when new information or evidence comes to light.

The board welcomed the proposed approach. The board considered when and how Board Decisions Notes should be published and felt that transparency should be paramount. It was therefore agreed that the draft Policy be amended to state that all Board Decision Notes would be published on the CLSB website once approved, as a matter of course.

The board discussed how best to define the parameters of the Policy, particularly how to identify when a Board Decision Note should be used. It was agreed that trying to define, in the abstract, those decisions that did (or did not) warrant a Board Decision Note was an inappropriate approach, leading to either over- or under-inclusion. Given the wide range of decisions taken by the board, the most appropriate course was for the board to make a case-by-case assessment of whether a Board Decision Note should be created.

The board also agreed that the template Board Decision Note be amended to include a record of the legislative provision under which the relevant decision was made.

The Policy was approved subject to the noted amendments.

Action: Finalise Transparent Decisions Policy in line with board amendments; Adopt into Operations Manual; Implement from October 2019 board meeting

5. FINANCE

5.1 Q2 2019 report

The board noted the financial position at the end of Q2; there were no issues arising. Given the move to electronic board packs, the board asked for the quarterly financial position to be more clearly displayed against the budget projection going forward.

Action: Change layout of data for October board meeting

5.2 LSB levy 2019/20

At its April meeting, the board had been advised that the annual levy payable by the CLSB to the LSB had increased for 2018/19 to £20.21 from £18.87 the previous year. The board was updated on exchanges with the LSB as to the rationale for the increase in the levy. The board noted the position.

5.3 2018 accounts

The board approved the accounts for signing.

5.4 2020 budget; and
5.5 2020 PCF consultation

The board considered the draft budget for 2020. Steve expressed concern that there was no proposed provision for contingency and no contribution to reserves. Given that there is currently no route of entry into the profession, but there is natural attrition out of the profession, the size of the regulated community will inevitably fall over the coming years. In that context, Steve felt the CLSB should be cautious about running a budget with no contingency to account for regulated numbers being lower than expected.

The board discussed the various circumstances under which the CLSB might need to draw on reserves and the likely level of depletion in those circumstances. The board reaffirmed its strategy of building its reserves over time to a level that would cover at least one year's operating costs.

The board noted that this issue was linked to Item 5.5 (the 2020 Practising Certificate Fee or PCF). The proposed budget envisaged an increase in the PCF of £10. The board discussed whether it was financially prudent to increase the PCF by more than this and, if so, the level of increase that would be needed to ensure an appropriate contingency and reserves contribution.

The board concluded that an increase in the PCF of £25, to £275, was most appropriate. Given that the PCF had not been increased since the CLSB's inception, this increase was still well below the rate of inflation when considered over the longer term. The board also noted that around 10% of the PCF went to supporting other organisations (such as the LSB, Legal Ombudsman and the Legal Choices website) and these costs had risen significantly.

The board agreed that it did not, at this stage, intend to increase the PCF further in 2021 or 2022 other than in line with inflation. This position would need to be assessed again in 2020, when the budget was being set for 2021, taking into account the size of the regulated community at that time.

The 2020 PCF consultation document was approved subject to adjustment for a proposed PCF of £275.

Action: Revise budget to account for contingency and reserves; Issue PCF consultation on the basis of agreed level

6. RISK MANAGEMENT
6.1 Operational risk; and
6.2 Regulatory risk

The risk registers were considered. The board noted and agreed the revised approach to recording risk, which seeks to simplify the information in the registers while expanding the scope of the risks and mitigating actions included.

The risk score against each risk was considered and updates were agreed where circumstances had changed. The board agreed to hold the risk score of OP6 (risk of breakdown in communication with ACL) at level 20. The board noted that the dialogue with Claire Green earlier in the board meeting had been constructive and, assuming relations continued in that manner, the risk score against OP6 might be decreased in the future. As for all the risk scores, this would be kept under review.

The board agreed that a new risk – R4 – should be added to the regulatory risk register, reflecting recent issues with the Legal Choices upgrade project and ongoing difficulties in capturing meaningful consumer data.

The board discussed whether a new risk item should appear, on either the operational or regulatory risk register, relating to a possible failure to meet the standards set by the LSB under the regulatory assessment regime. Given the LSB's positive response to the CLSB's revised action plan, it was agreed that this did not represent a live risk unless factors emerged to suggest that the CLSB would be unable to deliver against the action plan. The board agreed to keep this under review.

The board agreed to expand the "impact" measures in the risk registers to a five-tier rather than three-tier metric, to allow for more meaningful gradation of risk scores. Impact ratings would be reassessed over time to make use of the new tiers.

Actions: Post the July 2019 versions of operational and regulatory risk registers on the website; Update risk registers and the Risk Framework to reflect expanded "impact" measure

7. REGULATORY MATTERS

7.1 2018 CPD Audit

Steve explained the CPD audit process for the benefit of the newer board members. The board noted the outcome of the 2019 audit, which related to the 2018 CPD year. Two issues were identified during the audit. One appeared to be a misunderstanding about the number of points that could be claimed for a certain CPD activity due to a recent change in policy. The other related to a Costs Lawyer who had not cooperated with the audit.

In the latter case, disciplinary proceedings had been commenced under the CLSB's Disciplinary Rules and Procedures. Kate updated the board on the outcomes of the disciplinary investigation, noting the opportunities that the Costs Lawyer had been given to comply with the rules. Separate to that investigation, the failure of the Costs Lawyer to provide evidence of CPD meant that he/she did not meet the criteria for holding a practising certificate. The board agreed that it was in the public interest to revoke the Costs Lawyer's practising certificate, to ensure that the Costs Lawyer did not hold him/herself out to consumers as meeting the regulatory requirements. Kate

noted that the Costs Lawyer had been notified of this proposed course of action and was given an opportunity to comment, but had not done so.

7.2 Diversity survey evaluation 2019

The board discussed the evaluation of the 2019 diversity survey. The data would be further considered when looking at evidence sources more broadly under the CLSB's action plan (under RA4).

7.3 UK and Ireland MoU

The board received and noted a communication from BEIS relating to a new MoU between the UK and Ireland governing mutual recognition of professional qualifications following Brexit. The board agreed that no changes to the risk score for item OP7 on the operational risk register (relating to a no deal Brexit) were required based on the information provided.

7.4 Response to MoJ proposals on FRC

The board received a copy of the CLSB's response to the MoJ's proposals on fixed recoverable costs. Steve explained that the response mirrored the feedback the CLSB received via its survey of Costs Lawyers on the issue. The matter was noted.

7.5 Revised Disciplinary Rules and Procedures

The board considered proposed revisions to the CLSB's Disciplinary Rules and Procedures (DRP), aided by a report produced by the Head of Operations (HoO).

The board discussed whether it was necessary or appropriate to retain a formal Panel of individuals who could serve on a Conduct Committee or Conduct Appeal Committee under the DRP. Given the small number of Conduct Committees convened by the CLSB, the board accepted that it was impractical to have a large number of Panel members, yet the HoO's report noted that this was causing availability issues for hearings. An ad hoc Panel arrangement – whereby a Conduct Committee could comprise of any suitable individuals – would allow the CLSB to draw from a wider pool of expertise and ensure urgent matters could be dealt with quickly (particularly under the proposed interim orders procedure). Gill and Stephanie noted other contexts in which decision-making panels were successfully convened in this manner. It was also noted that no existing Panel members had such specialist skills that their availability needed to be protected via a permanent Panel appointment.

It was agreed that the concept of a Panel should be retained in the DRP, but that membership of the Panel should be liberated so that a Panel member could be any suitable individual who met the requirements on a case-by-case basis. The board asked Kate to draft the relevant rule change and to include an explanation in the consultation document as to why the change was necessary.

There was also a discussion around the level of financial penalties that could be imposed under the DRP and whether it should be possible for a financial penalty to be increased at level 3. It was agreed that no change to the proposed DRP was required in this regard.

The board approved the revised DRP for consultation, subject to the amendment noted.

Action: Make agreed amendment to the revised DRP; Proceed with next steps for consultation

7.6 Continued funding of Legal Choices website

Steve introduced this item and explained that the BSB had recently withdrawn its funding for the third and final year of the planned Legal Choices upgrade project. Kate updated the board on the Legal Choices work program and strategy, including recent discussions at the Legal Choices Governance Board about how the budget gap created by the BSB's withdrawal would be addressed.

The board discussed the risks to the project generated by the BSB's withdrawal. The board expressed concerns around the ability to drive traffic to the site without significant investment, particularly because of the level of investment in SEO that was continually being undertaken by commercial legal services providers. The board considered the greatest organisational risk to be that the CLSB's investment in the project did not yield the evidence that was envisaged (namely insights into how consumers find Costs Lawyers and make purchasing decisions).

The board agreed that the CLSB would meet its funding commitment to Legal Choices for 2020, given that a plan was in place for addressing the funding shortfall. The board agreed to revisit this position if any other ARs withdrew, as this would necessitate a fresh assessment of whether the project remained viable. Any future funding of the project (past 2020) would be considered in due course.

7.7 Consistency audit of the Costs Lawyer Handbook

Steve introduced this item. The board received the audit report, noted the outcomes and approved the proposed timings for the substantive review of Handbook content.

8. LEGAL SERVICES BOARD (LSB)

8.1 Relationship management

Kate updated the board on the relationship management arrangements used by the LSB, including feedback from recent, constructive discussions with the CLSB's relationship manager.

The board noted that the Chair and new CEO of the LSB would be attending the CLSB's October board meeting for a meet-and-greet session and the board looked forward to welcoming them.

8.2 Forward work plan

The board was provided with a forward work plan that had been shared by the LSB. The board asked to be notified of any significant relevant developments to that document.

8.3 Revised Internal Governance Rules (IGR)

The board was updated on progress of the LSB's IGR review. The board noted that the final IGR had been published earlier on the day of the board meeting, so had not yet been assessed by the CLSB. The board discussed the possible impact of the IGR and noted that the MOU and OP with ACL would require updating to ensure compliance.

Action: Kate to liaise with ACL on amendments to documented governance arrangements

9. LEGAL SERVICES CONSUMER PANEL (LSCP)

9.1 Meeting update

Kate updated the board on a recent meeting with the Chair of the LSCP and one of the LSCP's policy advisers. The discussions had helped to improve the LSCP's understanding of what Costs Lawyers do and the unique characteristics of the market. Kate reported that the nature of the meeting had been open and productive and the board hoped that relations with the LSCP would be positive going forward.

10. LEGAL OMBUDSMAN (LeO)

10.1 Service complaints

In April 2019, LeO began reporting whether there had been any service complaints against Costs Lawyers. The board was informed that there had been no such complaints during the last six months.

11. REPRESENTATION (ACL)

11.1 Minutes of Council meeting – 11 February 2019; and

11.2 Minutes of Council meeting – 29 March 2019

The board considered the minutes of the ACL Council meetings on 11 February 2019 and 29 March 2019. It was noted that these meetings took place prior to Claire Green taking over the Chairmanship, such that the ACL's priorities may have changed from those reflected in the minutes.

12. EDUCATION

12.1 Update on CLCA application

Steve updated the board on this issue, including discussions with the LSB relating to withdrawal of the CLCA application. He felt that there remains scope for a competency-based assessment to be introduced in the medium term. The board agreed that this would be the most effective way to bring unregulated but experienced costs advisers into the regulated community, in order to raise standards across the board and better protect the public interest.

In this context, the board discussed how the Costs Lawyer profession is perceived, the risks to that perception from improper conduct of unregulated costs advisers, and the CLSB's role in raising public awareness. The board revisited the division of responsibilities between the ACL and CLSB in terms of promoting entry into the profession. It was recognised that, while the CLSB's role is not to market any course or qualification, the CLSB does have a clear role in raising awareness of the benefits of regulation, both to promote consumer understanding and to encourage unregulated costs advisers to choose regulation (thus raising standards).

12.2 Update on three-year qualification

Steve introduced this item. He updated the board on ACL's recent contention that it might be financially viable for ACLT to accept a new intake onto the three-year Costs Lawyer qualification. The board considered the correspondence from ACL and the CLSB's initial response on this issue. The board discussed the need for a robust business plan for the course, as well as the need to update the content given that approval had been suspended for several years.

The board agreed that, if the CLSB could gain sufficient assurance that adequate safeguards were in place and that any students commencing the course would be able to see it through to completion, the board was in principle open to reinstating the three-year qualification. The board emphasised the importance of having an adequate route of entry into the profession, despite a competency-based assessment remaining the preferred route as a matter of policy.

The board agreed that any approval of the course would be for an initial intake (i.e. one cohort that would complete the course over three years). The board would have no objection in principle to approving the course for a further intake, but the CLSB would have to assess whether a second intake was viable based on all the circumstances at the relevant time. Approval would be on a rolling (i.e. intake-by-intake) basis depending on factors like volume of interest, continued financial viability and the usual course audit.

The board considered the issue of course exemptions, including the work that had previously been undertaken by the CLSB (prior to suspension of the course) in reviewing its policy approach to exemptions. The board discussed the types of students that had taken or were likely to take the course, including their likely professional experience and level of prior education. Structural options for the course were considered as a way to streamline exemptions (such as a foundation year or discretely assessed modules) and the board discussed learnings from other professions with modular training arrangements.

The board agreed that it was crucial for the CLSB to engage closely with the ACL, with the overriding objective of gaining the requisite level of confidence that the course is financially sustainable. The board concluded that a roundtable, attended by the ACL, the ACLT, CLSB board members and the CLSB CEO would be the most efficient means of agreeing a way forward.

The board asked that descriptions of the course modules be circulated for reference.

Action: Liaise with ACL to convene roundtable; Circulate course documents

13. NEXT SCHEDULED QUARTERLY MEETING

Date: Wednesday 23 October 2019 @ 10.30am

Location: The Studio, Cannon Street, Birmingham

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

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Chairman

Related documents

Item	Document	Publication location (CLSB website)
2.1	CLSB minutes - 26 April 2019	Internal governance ⇌ Board minutes
2.2	CLSB minutes - 7 June 2019	Internal governance ⇌ Board minutes
3.3	CLSB Strategy for 2020 to 2023	Internal governance ⇌ Strategy
6.1	Risk register (operational risk)	Policy outcomes ⇌ Risk management
6.2	Risk register (regulatory risk)	Policy outcomes ⇌ Risk management
4.1	KPI monitoring	Internal governance ⇌ Management
5.3	Accounts	Internal governance ⇌ Annual accounts
5.4	Budget	Internal governance ⇌ Management
5.5	PCF consultation	Policy outcomes ⇌ CLSB consultations
7.4	Response to MoJ proposals on FRC	News
7.5	DRP consultation	Policy outcomes ⇌ CLSB consultations