

Company number: 04608905

**MINUTES**  
**Costs Lawyer Standards Board Ltd**  
**Friday 26 April 2019 at 10.30 am**  
**The Studio, Cannon Street, Birmingham**

**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:** Lynn Plumbley (Chief Executive)

**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.

**2. MINUTES**

**2.1 Minutes dated 23 January 2019**

The board considered the minutes of its last scheduled quarterly meeting on 23 January 2019 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 23 January 2019 on the CLSB website**

**2.2 Minutes dated 18 February 2019**

The board considered the minutes of its additional board meeting on 18 February 2019 and agreed them as being a true record for signing.

**Action: LP: Post minutes dated 18 February 2019 on the CLSB website**

**3. BOARD MATTERS**

**3.1 Next board evaluation date**

The board noted its next self-evaluation date was January 2020. Lynn advised she had logged this on the date schedule for the new CEO.

**3.2 KPI policy**

The board discussed the KPI policy as presented, subject to changes discussed and agreed it was approved for immediate implementation. Following research, it was agreed that a KPI must be:

- crucial to achieving a business goal (hence, key performance indicator); and
- be well quantified and defined; and
- be communicated throughout the organisation/department.

### **3.3 KPI data**

Based on the KPIs identified, the board noted the position for Q1 of 2019 and noted all had been complied with.

**Action: LP: Populate KPI data table backdated to 2018 if possible**

### **3.4 2020 board dates**

The board agreed the following board dates for 2020 (Wednesday):

22 January 2020

22 April 2020

22 July 2020

21 October 2020

### **3.5 New CEO recommendation**

Steve advised 48 applications had been received for the role of part-time CEO. 10 had been shortlisted and 6 interviewed on Thursday 25 April. Two candidates had been identified as being equally suitable for the role. It was therefore agreed to invite those two candidates in for a second interview by Stephanie and Paul, the CLSB newest board members and that an offer would be made based on their decision.

**Action: LP: Arrange second interviews**

## **4. FINANCE**

### **4.1 Q1 2019 report**

The board noted the financial position at end of Q1, there were no issues arising.

### **4.2 LSB levy increase**

The board was advised that the annual levy payable by the CLSB to the LSB had increased for 2018/19.

2017/18: £18.87 per Costs Lawyer

2018/19: £20.21 per Costs Lawyer

This had been queried and Lynn had been advised by the LSB *“There has been a slight drop in total numbers of authorised persons declared from 176k last year to 170k this year. This is mainly due to a drop in the biggest contributor to those numbers – Law Soc. If other regulators’ numbers don’t change that much, as is the case, the burden falls more on the rest in the year of the change.”*

### **4.3 Regulated numbers as at 1 April 2019**

As required for the annual levy calculation, the LSB had been advised there were 684 CLSB authorised and regulated Costs Lawyers as at 1 April 2019. The board considered a report on the reasons why Costs Lawyers had not renewed their practising certificate each year (2012 to 2019). It was noted that unemployment only started to figure from 2017 onwards. The year-end position in relation to those who did not apply at the beginning of the year, or for reinstatement during the year, was as follows:

2013: -23

2014: -18  
2015: -18  
2016: -27  
2017: -37  
2018: -42

The authorised and regulated number of Costs Lawyers at the end of 2018 was 733. Authorised and regulated numbers at 1 April 2019 was 684. This drop in regulated number did not have any financial implications for the CLSB as its 2019 budget had been based on 662 regulated Costs Lawyers.

## **5. RISK MANAGEMENT**

### **5.1 Regulatory risk**

The risk scores were revisited to ensure they reflected the current position following control measures.

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

### **5.2 Operational risk**

The risk of no means of entry into the profession had already been risk scored at the highest level. This situation had however been made significantly more serious following the LSB warning letter dated 24 April 2019 indicating it was minded to refuse approval of the CLCA. With no viable means of entry into the profession, coupled with the serious threat to Costs Lawyer numbers following the MoJ announcement on increased fixed costs in cases up to £100k, the future long-term viability of the CLSB was now under threat. It was noted an urgent meeting had been requested with the ACL to discuss options for the future.

***Action: LP: Arrange meeting with ACL to discuss these two risks.***

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

### **5.3 Approach by Parole Board**

The board discussed how under a review of risk management, the impact scoring of 1-5 had been revised to 1, 3 or 5. It was agreed that scoring would be considered when the CLSB approach to risk management is reviewed at a later date.

***Action: LP: Log a review of risk management approach for January 2020***

### **5.4 Revised disaster recovery & business continuity plan**

The board considered and approved the revised version of the plan subject to a few minor changes.

## **6. REGULATORY MATTERS**

### **6.1 Review of legal regulation by Professor Stephen Mayson**

The board was advised a second review had been launched, and the CLSB very much welcomed this. It is however an independent review. Concern was raised that due to Brexit, the much-needed review by the MoJ of legal regulation would simply keep getting knocked back. The timescale was noted as being:

Launch: July 2018  
Phase 2: March- June 2019 (research)  
Phase 3: September - December 2019 (interim report on issues and findings)  
Final report: January 2020

**Action: LP: Continue to engage with this review as appropriate**

## **6.2 CMA: Guidance note on costs transparency on websites and educational material**

Such a guidance note had not been issued as, based on the 2018 year-end Costs Lawyer number of 733:

- 308 out of 733 worked for an SRA regulated entity and this requirement would therefore be captured by the SRA.
- 17 out of 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 and unlikely to have a website.

Despite this rationale, the CLSB had been criticised by the LSB for not producing such a guidance note under their recent assessment of CLSB performance. One has therefore been produced the board approved the same.

**Action: LP: Post new guidance note on CLSB website**

## **6.3 CMA: Traffic to Costs Lawyer section of Legal Choices website**

The board noted the analytical information give. Between 1 January 2013 and 23 January 2019 (6 years) there had only been 3,685 views of the Costs Lawyer section. There had been 6,761 searches on the subject matter of costs. The board was concerned that its significant investment in Legal Choices following the CMA recommendation did not appear to be good value for money and once the end of the current three-year financial commitment had completed, continued inclusion would be reconsidered.

## **6.4 Revised guidance note: CPD**

The board considered and approved the revised guidance note.

**Action: LP: Post on CLSB website**

## **6.5 Policy statement on equality & diversity**

The board approved the new statement on equality & diversity.

**Action: LP: Post policy statement on CLSB website**

## **6.6 Revised guidance note: Equality & diversity**

Under the recent LSB diversity report, it is a requirement the CLSB reviews its current guidance note on equality & diversity. In undertaking this review, the CLSB researched the duty imposed on a public authority by the Equalities Act 2010. S.150 of that Act states “a public authority is a person who is specified in Schedule 19.” Neither the ACL or the CLSB is listed under Schedule 19. That said, the CLSB will act as if it were a public authority named under the Act. The board considered the revised guidance note and approved the same.

**Action: LP: Post revised guidance note on CLSB website**

#### **6.7 Operations manual: Revised internal policy on equality & diversity**

The board considered and approved the revised version of CLSB internal policy on equality & diversity.

#### **6.8 Government intended fixed costs plans**

On 4 April 2019, the board had been copied in on an ACL news article which highlighted that the Government had announced its intention to introduce fixed recoverable costs (FRC) across the rest of the fast-track and for many claims worth up to £100,000. In an impact assessment published by the MoJ alongside its consultation it stated the reforms “should mean less time is spent arguing over costs, resulting in cases being settled quicker”. It continued “A further benefit would be that solicitors would no longer have to “maintain documentation required for costs assessment or spend time arguing about costs”.

On 5 April 2019, the CLSB emailed the ACL Chair suggesting “both organisations (as the ACL is the named AR under the LSA) must now work together on a five-year forecast on the future sustainability of the profession, the ACL and the CLSB. Can you please delegate an ACL Council member to work with the CLSB on this going forward.” It was noted the ACL declined to work with the CLSB on a proposed five-year plan, but that they had indicated they would accept a CLSB Costs Lawyer board member on its working group addressing the implications of the proposal. The board agreed that Paul be put forward to ACL to be that working party member.

Lynn advised the board she was working on an impact questionnaire, the outcome of which would allow the CLSB to forward plan for the future.

**Board action: LP: Email ACL putting Paul forward as working party member**

**Board action: LP: Continue work on impact questionnaire, issue to the profession and report back to July board**

#### **6.9 Use of CLSB website**

The board was advised that on 5 February 2019, IT had set up google Analytics to monitor use of the CLSB website going forward.

**Action: LP: Schedule usage report for October 2019 board meeting**

#### 6.10 SRA actions against Costs Lawyers working for SRA regulated firm

The board noted that on 11 April 2019 the SRA had advised “... we do not have a way, currently, to identify in our systems individuals who are Cost Lawyers. We are made aware of this information if:

1. *The complainant or the subject individual has told us about the other organisation at some point during the investigation. We will then, on a case by case basis, go through a disclosure exercise to consider a proactive or reactive disclosure, using the SRA First Principles of Disclosure [www.sra.org.uk/sra/how-we-work/disclosure-policy.page](http://www.sra.org.uk/sra/how-we-work/disclosure-policy.page)*

2. *If they have not told us voluntarily the subject individual should disclose this information to us on request when we send a letter raising formal allegations during our investigation, there is a standard section in the letter which reads: **Other professional body:** If you are regulated by another professional body please tell us who. Please also tell us whether or not you have told them about your conviction/your conduct at the firm and if so provide a copy of your notification to them. If you have not told your other regulator, please tell us why not. We may decide to tell them but we will take your views into account before doing so.*

*We do keep a record of disclosure decisions we make but these have been checked as part of your previous request and none of them relate to CLSB. I hope this reassures you that if we were to get a case relating to a Cost Lawyer, that leads to formal allegations, we should be notified and at that point disclose in line with our policy.*

The board noted the SRA position and was grateful for its assistance in this matter.

#### 6.11 Profession satisfied with CLSB performance

The board was please to note that the CLSB continued to have a high satisfaction rate within the profession, no board actions were identified.

Practising year 2017: 96.73% satisfaction rate

Practising year 2018: 97.28% satisfaction rate

#### 6.12 Analysis: Gender

It was reported that at 2018 year end the regulated Costs Lawyer profession was made up of:

Male: 58%

Female: 42%

The change between 2012 and 2018 had therefore been:

Male: -7.2%

Female +7.2%

The board noted that the gap between male and female Costs Lawyers had been narrowed over the years. No board actions were identified.

### 6.13 Analysis: Part-time

The board noted that the % of regulated Costs Lawyers working part-time had remained fairly static since 2015. No board actions were identified as the hours a Costs Lawyer works is at their discretion.

Year	% Full-Time	% Part-Time
2015	89.4	10.6
2016	88	12
2017	89.1	10.9
2018	89.8	10.2

### 6.14 Analysis: Diversification

The board noted there had been a slight dip in the very small number of Costs Lawyers reporting they undertake ADR or mediation, and in training (but this was only to be expected due to suspension of new entry onto the Costs Lawyer qualification). No board actions were identified as diversification is at the discretion of the Costs Lawyer.

### 6.15 Analysis: First-tier complaints

The board noted that three first-tier complaints had been self-reported during 2018. On analysis, only one of those complaints was a justifiable complaint. The board was advised that first-tier complaint had been logged on the supervision schedule, no board actions were identified.

### 6.16 Analysis: pro-bono work

The board noted the number of pro-bono instructions undertaken during 2018 had dropped since the sharp increase reported for practising year 2017. No board actions were identified as pro-bono work is at the discretion of the Costs Lawyer.

Number of pro-bono instructions undertaken	2015	2016	2017	2018
1	-	-	14	6
2	-	2	9	8
3	-	-	3	3
4	-	-	4	1
5	-	-	5	-
6	-	-	-	1
10	-	-	-	2
<b>TOTAL</b>	<b>Nil</b>	<b>2</b>	<b>35</b>	<b>21</b>

### 6.17 Geographical location of work

The CLSB has historically monitored where Costs Lawyers work, and has noted a slight migration year on year from south to north. Under the new Data Protection Policy implemented to ensure compliance with the GDPR, Costs Lawyers were given the option as to whether they gave their employers name and address for the database and public domain register. As a result, the board noted undertaking this analysis was no longer meaningful as the CLSB does not have a 100% data set to base this analysis on.

**6.18 Analysis: Vulnerable consumers**

The board noted the number of vulnerable consumers reported, and the reasons for their vulnerability. As the number reported had increased, the board was of the view its work in this area had raised awareness of what constitutes a vulnerable consumer.

2016: 2

2017: 4

2018: 16

The board will continue to highlight the vulnerable consumer where possible e.g. newsletters.

**6.19 Analysis: Legal-aid**

The board noted that since CLSB monitoring began in 2012, there has been virtually no change in that part of the profession whose practice is 100% legal aid.

2012: 2.5%

2018: 2.8%

It was however noted that there had been a marked change in those Costs Lawyers who do not undertake any legal-aid, an increase of 16.4%.

2012: 38.8%

2018: 55.2%

No board actions were identified, as legal aid is a matter outside the remit of the CLSB.

**6.20 Analysis: Insurance**

The board was advised the annual analysis of insurance cover undertaken does not include those Costs Lawyers who work for an SRA regulated entity. The board was pleased to note that in relation to those working for a costs law firm, policies of less than £1m continue to fall year on year with only 10.6% holding the minimum level of insurance of £100k. No board actions were identified as no failure to comply with minimum insurance levels had been identified.

	2013	2014	2015	2016	2017	2018
Policies of £1m or less	80.4%	77.8%	70.4%	69.7%	65.8%	62.7%

### 6.21 Analysis: Number of years in the profession

The board noted the outcome of this new analysis introduced for practising year 2017. No board actions were identified as a result.

Years	2017	2018
1-5	50	48
6-10	134	158
11-15	106	97
16-20	122	130
21-25	87	90
26-30	72	67
31-35	38	35
36-40	26	25
41-45	8	10
46-50	3	4
51-55	1	2
Answer not given	14	14
	<b>661</b>	<b>680</b>

### 6.22 Analysis: Age of the profession

The board noted the outcome of the age demographic analysis introduced from practising year 2017. No board actions were identified as a result.

Age Range	2017	2018
20 – 29 inclusive	8.5%	9.5%
30 – 39 inclusive	37%	36.7
40 – 49 inclusive	26%	27%
50 – 59 inclusive	18%	16.6%
60+	8%	8.5%
Info not given	2.5%	1.5%

### 6.23 Analysis: How Costs Lawyers are employed

It was noted the number of sole practitioners in 2018 was reported as being 14.1%. The trend towards working for a firm of Solicitors as opposed to a costs law firm continues. In 2011, 26.5% reported they worked for a firm of Solicitors, this was up to 41% in 2018, an increase of 3.2% within a year and an overall increase of 14.5% since 2011. No board actions were identified as where a Costs Lawyer chooses to work is at their discretion.

### 6.24 Analysis: Client instructions

Despite this question being re-worded for greater clarity, there is still concern that it is not being answered correctly. Some Costs Lawyers may be answering the number

they have oversight of in their managerial capacity as reported numbers can range wildly. The following number of lay client instructions were reported.

Number of lay client instructions	2017	2018
1 – 10	99	135
11-20	7	-
21 – 30	1	1
31 – 40	-	-
41 – 50	-	1
51 – 60	-	1
61 – 70	-	-
71 – 80	-	-
81-90	-	-
91-100	-	3
100+	-	5

#### 6.25 Costs Lawyer supervision schedule

The board noted the most recent version of the Costs Lawyer supervision schedule, no issues of concern were identified.

### 7. LEGAL SERVICES BOARD (LSB)

#### 7.1 Outcome of CLSB complaint

The board unanimously rejected the findings of the LSB investigation into the complaints made by the CLSB. The board shared the view of the CLSB legal advisor that:

- The veil of secrecy, rather than transparency, continues. The LSB has not set out what it did to reflect the outcome of the complaints. The outcome should have been fully explained, with the trail of investigation clearly set out.
- The LSB has still not, despite repeated requests, stated what evidence is relied upon to change the assessment outcome. Under the complaint outcome, it now names certain documents e.g. CLSB risk registers and CLSB business plan, but does not state what in those documents caused the LSB to change its view of the CLSB.
- The LSB offers no appeal facility on a complaint. The LSB imposes an appeal facility on ARs yet it does not offer one itself.

The board was advised the CLSB had the option of seeking judicial review. This was discussed and whilst the board was of the view the approach by the LSB had damaged the profession as well as the CLSB, using income from practising certificate fees to fund such an expensive course of action was not an appropriate way forward. The CLSB had also been advised that any cause for concern about LSB conduct could be reported to Robert Neill MP. It was agreed that in the first instance Steve would arrange a 1:1 with the LSB Chair, and a public statement would be issued.

**Action: SW: Arrange 1:1 with LSB Chair**

**Action: LP: Draft public statement**

## **7.2 Progress against actions following LSB assessment**

The board noted that virtually all the actions on the CLSB response to the LSB assessment had been completed, except for a review of Disciplinary Rules & Procedures (DR&P) which had been researched but not yet put before the board for approval. The board was advised that on 18 April 2019, a letter had been received from the LSB stating *“we recognise the complaints process may have resulted in additional demands on your resources and so would like to offer an extension to allow you more time to deliver on this work. We propose that an additional 4 weeks would be proportionate.”* Lynn advised this extension was more likely as a result of the LSB knowing a warning letter was imminent on our application for approval of the proposed new Costs Lawyer Competence Assessment which in itself has created a further tranche of work for the CLSB.

## **7.3 Enforcement process report on SRA & BSB**

The board was advised in that in March 2019, the LSB issued a report on its findings of an end to end review of the BSB and SRA enforcement functions and the LSB’s new strategic priorities on enforcement. In brief, the LSB expects DR&P will achieve the six outcomes set out in the LSB’s regulatory performance framework (E3), namely that the processes are accessible and clear and are:

1. Consistent;
2. Independent;
3. Risk- and evidence-based;
4. Documented;
5. Transparent; and
6. Focused on:
  - consumer protection;
  - maintaining professional principles; and
  - protecting the public interest.

In addition, the LSB expects regulators to have procedures in place which review and prioritise complaints, and that the procedures are transparent; that all of the parties involved are kept up to date on progress and the outcome of investigations. It found that the SRA and BSB procedures achieved these outcomes. The outcome will be considered when CLSB DR&P are reviewed in May 2019.

## **8. LEGAL SERVICES CONSUMER PANEL (LSCP)**

### **8.1 LSCP blog dated 21 January 2019**

Following concerns about the content of the LSCP Chair blog minuted at the least meeting, concerns shared by the MoJ at a meeting with them, the CLSB was of the view the LSCP Chair had done herself and the organisation she presides over no favours in the long run. Accordingly, it was decided that no further resource would be wasted in addressing this matter.

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

### **9.1 Service complaints**

In April 2019, after many complaints, LeO finally started reporting whether there had been any service complaints against Costs Lawyers. The CLSB has been advised there have been no such complaints during the last six months.

## **9.2 Meeting with Chief Legal Ombudsman**

The board was advised that on 1 February 2019, Lynn had a phone meeting with the Rebecca March, Chief Legal Ombudsman. Rebecca has been in post for a year. Various issues were discussed, and we had received her assurance monthly complaint reporting would be reinstated.

## **9.3 Meeting with Chair of LeO**

Steve advised he had a phone meeting with Wanda Goldwag, Chair of LeO. Various matters were discussed and she accepted LeO had not covered itself in glory on its reporting to stakeholders on key complaint information and that this would be addressed.

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

### **10.1 Minutes 26 October 2018**

The board considered the minutes of the ACL Council meeting on 26 October 2018.

### **10.2** It was agreed to invite Claire Green to the July CLSB board meeting as she would by then be the ACL Chair, for a 20-minute meet and greet.

**Action: LP: Issue invite to Claire Green**

## **11. EDUCATION**

### **11.1 Costs Lawyer competence assessment (CLCA)**

On 24 April 2019, the LSB had issued a warning notice indicating it was minded to refuse approval of the proposed new CLCA. The day before it was issued, Lynn had received a message to call the LSB urgently. She did so, and was shocked to be told of this intended warning letter and that once a warning letter had been issued the LSB then had up to one year to decide upon the application. During the conversation Lynn had questioned whether this was simply a tactic to afford the LSB more time and reiterated that the Costs Lawyer profession currently had no means of entry. Whilst the CLSB would respond to that raised in the warning letter within the deadline set, there was serious concern the LSB would likely refuse the application no matter what the CLSB said or did. The board was advised the ACL had been approached to work through the implications and options.

## **12. ANY OTHER BUSINESS**

There was no other business.

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

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

Date & time: Wednesday 24 July 2019 @ 10.30am

Location: Manchester, venue TBA

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

.....  
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 23 January 2019	CLSB website: <ul style="list-style-type: none"><li>• Internal governance</li><li>• Board minutes</li></ul>
CLSB minutes 18 February 2019	CLSB website: <ul style="list-style-type: none"><li>• Internal governance</li><li>• board minutes</li></ul>
Risk register (regulatory risk) 26 April 2019	CLSB website: <ul style="list-style-type: none"><li>• Policy outcomes</li><li>• Risk management</li></ul>
Risk register (operational risk) 26 April 2019	CLSB website: <ul style="list-style-type: none"><li>• Policy outcomes</li><li>• Risk management</li></ul>
Guidance note: Costs Transparency on websites	CLSB website: <ul style="list-style-type: none"><li>• Costs Lawyer handbook</li><li>• Guidance notes</li></ul>
Revised guidance note: CPD	CLSB website: <ul style="list-style-type: none"><li>• Costs Lawyer handbook</li><li>• Guidance notes</li></ul>
Equality & Diversity Statement	CLSB website: <ul style="list-style-type: none"><li>• Internal Governance</li><li>• Equality &amp; Diversity Statement</li></ul>