



**Costs Lawyer Standards Board**

**AGENDA**

**Wednesday 20 January 2021 @ 10.30am**  
**Remotely via videoconference**

<b>Board:</b>	Steve Winfield	Lay NED (Chair)
	Stephanie McIntosh	Lay NED (Vice-Chair)
	Paul McCarthy	Non-Lay NED
	Andrew Harvey	Lay NED
	Andrew McAulay	Non-Lay NED
<b>In attendance:</b>	Kate Wellington	Company Secretary and CEO
	Jacqui Connelly	Administration Manager
	David Heath CBE	Incoming Chair
	Stephen Gowland	NED, Legal Services Board (item 1.3)
	Steve Violet	Policy Manager, Legal Services Board (item 1.3)

*Note: Agenda items in blue are standing items*

	<b>Agenda item</b>	<b>Paper</b>	<b>Publish<sup>1</sup></b>	<b>Lead</b>
1	<b>Opening matters</b> 1.1 <a href="#">Quorum and apologies</a> 1.2 <a href="#">Declarations of interest on agenda items</a> 1.3 Roundtable with Stephen Gowland, LSB Board Lead	- - -		SW SW All
2	<b>Minutes</b> 2.1 <a href="#">Approval of minutes</a> (20 October 2020) 2.2 <a href="#">Matters arising</a> (20 October 2020)	Item 2.1 -	Yes	SW SW
3	<b>Strategy</b> 3.1 <a href="#">Progress against Business Plan: 2020 roundup</a> 3.2 Annual progress against performance indicators 3.3 Education and competency	Item 3.1 Item 3.2A+B -	Yes Yes	KW KW KW
4	<b>Board matters</b> 4.1 Appointment of incoming Chair	-		SW
5	<b>Finance</b> 5.1 <a href="#">Quarterly report: Q4 2020</a> 5.2 Cost of living wage rise	Item 5.1 -	No (D, E)	JC/KW KW

<sup>1</sup> The letters used in this column indicate the reason for any non-publication of papers. They correspond to the reasons set out in our publication policy, which can be found on the [What we Publish](#) page of our website.

6	<b>Risk management</b> 6.1 <a href="#">Review of risk registers</a> 6.2 Coronavirus	Item 6.1 -	Yes	KW KW
7	<b>Regulatory matters</b> 7.1 Case Manager guidance under the DR&P 7.2 Guidance note on ATE insurance 7.3 Recognition of European qualifications post-Brexit 7.4 Implementation of new CPD Rules 7.5 CMA review of market study recommendations	Item 7.1 Item 7.2A+B Item 7.3 - Item 7.5	Yes Yes Yes  Yes	KW KW KW KW KW
8	<b>Legal Services Board (LSB)</b> 8.1 Updated regulatory assessment 8.2 State of the nation report and strategy consultation 8.3 Other workstreams	Item 8.1A+B - Item 8.3	Yes  Yes	KW KW KW
9	<b>Stakeholder updates<sup>2</sup></b> 9.1 <a href="#">ACL Council meeting minutes</a> 9.2 Work updates	Item 9.1 -	Yes	KW KW
10	<b>Operational matters</b> 10.1 Review of practising certificate renewal process	Item 10.1	Yes	JC/KW
11	<b>Publication</b> 11.1 <a href="#">Confirmation that papers can be published</a>	-		SW
12	<b>AOB</b>	-		SW
13	<b>Next meeting</b> <a href="#">Date: 21 April 2021 @ 10.30am</a> <a href="#">Venue: To be agreed</a>	-		SW

---

<sup>2</sup> This agenda item is used to update the board on significant developments relating to the work of the Legal Services Consumer Panel, Association of Costs Lawyers, ACL Training, Legal Ombudsman (including exception reporting on service complaints) and other relevant stakeholders.

Company number: 04608905

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

**MINUTES**  
**Costs Lawyer Standards Board Ltd**  
**Tuesday 20 October 2020 at 10.30 am**  
**Remotely by videoconference**

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

**In attendance:** Kate Wellington (Company Secretary and CEO)  
Jacqui Connelly (Administration Manager) (for items 1 to 5, 7.3 and 10)

**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.

**2. MINUTES**

**2.1 Minutes dated 21 July 2020**

The board considered the minutes of its last scheduled quarterly meeting on 21 July 2020. The board agreed the minutes as being a true record for signing.

***Action: Publish approved minutes on CLSB website.***

**2.2 Matters arising**

The board considered the matters arising from the minutes of its meeting on 21 July 2020. There were no matters arising that had not been scheduled as agenda items or otherwise dealt with.

**3. STRATEGY**

**3.1 Progress against Business Plan**

The board was provided with a progress update against the 2020 Business Plan, including a summary of activity to the end of Q3 and a RAG rating of each priority in the plan. Kate noted that a further five priorities had been achieved in Q3, leaving five priorities remaining for completion by year end.

The board discussed whether it remained feasible to achieve item 10, relating to collaborating with ACL to capture data. The intention had been to do this through large-scale ACL events – particularly the annual conferences – attended by a significant proportion of the profession, giving representative data from across the market. Due to COVID-19, the ACL conferences had been cancelled. The board agreed to mark this

item as “deprioritised / delayed” with the intention of returning to it once the impact of coronavirus lessened, hopefully in 2021.

Kate confirmed that all other Business Plan priorities were on track for completion by year end.

### **3.2 Education and competency**

Kate provided the board with details of various developments relating to education, including:

- ongoing collaboration with ACL Training to develop a refreshed audit framework for the Costs Lawyer Qualification, for use in 2020 and beyond;
- likely student numbers for the course in 2021, noting that these numbers might be insufficient to warrant an intake of new students;
- governance and viability issues relating to the course that had been raised by ACL in recent discussions;
- new data showing how the size of the regulated community has changed over time, demonstrating the impact of new qualifiers on overall numbers;
- potential options and opportunities arising out of the above.

The board discussed these issues in detail. Board members supported the refreshed approach to audit, including the possibility of accrediting the course for three to five years subject to annual reporting on targeted matters. Board members noted the risk of changes being made to the course during the period of accreditation without CLSB approval and agreed that the framework should make the scope of accreditation as clear as possible. While it was not yet known whether ACL would accept new students onto the course in 2021, the board agreed that the audit should go ahead as planned to safeguard existing students and assess any threats to successful delivery.

The board referred to a roundtable that took place with ACL and ACL Training in August 2019 at which the future of the course had been discussed. Board members noted that significant progress had been made on some issues raised at the roundtable, while less progress had been made on others, particularly marketing the course. The board discussed the division of responsibilities relating to education – including communicating with students, the profession and the public – as between ACL, ACL Training and the CLSB.

The board considered potential risks to the long term future of the course that were presented by the governance and viability issues reported by ACL. Board members agreed there was scope for ACL to adjust the way it took on students in future, for example by having an intake every second year, but this should be communicated clearly and upfront, to give certainty to prospective applicants. The board discussed the risks associated with a rigid intake structure, including students finding other avenues to qualification, and considered how those risks might be mitigated.

Board members discussed the perception of the course within the profession. The Non-Lay NEDs reported on their experience as employers and supervisors. The board

considered potential sources of demand outside the profession, including law students and school graduates, and examined options for reaching those people.

Board members emphasised the vital importance of education in the maintenance of professional standards and trust in the profession. The board asked Kate to have further discussions with ACL about how it is addressing immediate and longer term issues with the course, and to liaise with any other stakeholders as appropriate, reporting back in January.

***Actions: Proceed with development of audit framework and conduct 2020 audit; Arrange further talks with ACL and others; List as an agenda item for further discussion in January 2021.***

## **4. BOARD MATTERS**

### **4.1 Chair recruitment update**

Kate updated the board on recruitment for the new Chair. She noted the advertising channels that had been selected to attract high quality candidates from a variety of backgrounds. Applicants had been asked to complete a diversity survey to help monitor the breadth of the search and inform future campaigns.

The board noted that the campaign had attracted a good selection of candidates to date and that applications closed on 1 November 2020. Kate reminded the board that she would be in touch about forming interview panels in due course.

***Action: Finalise recruitment and appointment process with the aim of the incoming Chair attending the January board meeting.***

### **4.2 Reappointments**

Four reappointments were considered in line with the Board Appointment Rules, namely:

- Stephanie – reappointment from 4 December 2020 for a period of three years;
- Paul – reappointment from 25 January 2021 for a period of three years;
- Andrew H and Andrew M – reappointment from 23 January 2021 for a period of two years.

The board dealt with all the reappointments, even though some would not take effect until after the next board meeting, because there would be insufficient time to recruit an alternative if any director was not reappointed at the January meeting.

The directors confirmed their ongoing eligibility and desire to seek reappointment. Each reappointment was discussed without the input of the relevant individual. The remaining board members unanimously confirmed each reappointment.

***Actions: Issue letters of reappointment on the terms agreed; Update governance schedules and registers of interests.***

## **5. FINANCE**

### **5.1 Quarterly report: Q3 2020**

Jacqui introduced the quarterly finance report. The board considered the financial position at the end of Q3 and noted the projected underspend.

The board affirmed its intention to transfer at least £10,000 to reserves, in accordance with the budget provision, and noted that it might be appropriate to make a higher contribution (in line with the Reserves Policy) at year end.

In light of the projected surplus, the board discussed a proposal to expand the executive team by recruiting a dedicated policy manager, with a particular focus on (i) equality, diversity and inclusion (ii) building the CLSB's evidence base, including by delivering the Consumer Engagement Strategy, and (iii) enforcement strategy and delivery. These areas were aligned to key priorities in the 2021 Business Plan. Kate put forward options in relation to salary, working arrangements and tenure for the board's consideration.

The board supported the proposal, feeling that additional resource would accelerate change and help the CLSB meet the LSB's performance expectations in these specific areas. Board members felt this could be an exciting proposition for the right candidate and were optimistic the role would attract high-calibre applicants, especially in the current job market where employees were rethinking their ways of working. To that end, the board agreed the role should be advertised on a flexible basis in terms of days and working arrangements. The board agreed a title of "Director of Policy", which could encompass enforcement and supervision functions as necessary.

The board was confident that the position could be funded on an ongoing basis, but was also mindful that the scope of the role addressed a current business need which might change over time. The board therefore agreed to offer the role as a 24-month contract, allowing the organisation to take stock after 18 months and reassess the support required at that time.

***Actions: Develop job spec and person description for Director of Policy role; Begin recruitment on agreed terms.***

## **5.2 Legal Choices funding update**

Steve introduced this item and reminded the board of previous discussions about funding for the Legal Choices website. In July, the board had considered the funding contribution sought from the CLSB, which represented around 2% of the total Legal Choices budget, and noted that the CLSB was being asked to make the same contribution as regulators that had significantly larger budgets. The board had expressed concerns about the disproportionate financial burden this placed on Costs Lawyers and had asked Kate to see what progress could be made on revisiting the funding model. Kate updated the board on discussions with the LSB, CLC and other members of the Legal Choices Governance Board (LCGB) during Q3.

The board noted that agreement had been reached by all members of the LCGB to (i) affirm their commitment to the Legal Choices project for three further years (ii) fund the next project year (2020/21) on the proposed terms and (iii) agree funding in principle for a further two years. In coming to this arrangement, the CLSB's concerns (along with the concerns of three other regulators) had been recognised and taken into account. Kate confirmed that she would continue to work constructively with the LCGB to ensure the CLSB's voice was heard and the project was able to proceed satisfactorily into the next phase.

Board members asked when the next round of usage figures for the Legal Choices website would be available. Kate confirmed that these were being prepared by the SRA for a LCGB meeting in November. Board members were keen to see usage data relating specifically to costs issues and Kate noted that there might be scope to get more meaningful data from the project team during the next year of development.

### **5.3 Outcome of practising fee application**

Kate informed the board that the CLSB's application for the 2021 practising fee had been approved by the LSB. The board was provided with the LSB's decision letter, which set expectations for the year and rehearsed the LSB's concerns about the CLSB's overall level of resource and longer term viability. The board discussed the issues raised in the letter and agreed they mirrored the latest regulatory assessment and were not novel considerations.

The board also discussed a press article that had covered the decision, noting the supportive statement given by ACL in response and reflecting on stakeholder perception.

## **6. RISK MANAGEMENT**

### **6.1 Review of risk registers**

The board reviewed the risk registers and considered whether any new risks should be added, any existing risks removed or any risk scores changed. The board agreed to:

- update the controls around risk OP1 (*more leave than enter the profession*) to reflect opportunities from the Mayson report to pursue broader regulation of costs work and to remove superseded evidence of risk;
- increase the probability rating for OP3 (*insufficient numbers of new qualifiers such that regulated numbers fall to an unsustainable level*) from 2 to 3 and raise the priority rating from medium to high to reflect difficulties with the 2021 student intake;
- decrease the probability rating for OP4 (*ACL becomes insolvent*) and update the evidence and controls to reflect that there had been no recent suggestion of financial instability;
- increase the probability rating for OP6 (*communication breakdown with ACL/ACL Training*) and recouch it to incorporate the risk of communications breaking down between ACL and ACL Training inter se;
- update OP7 (*a no deal Brexit undermines regulatory structures*) to note that this risk would come to a head in Q4 2020;
- update the controls for R1 (*regulatory standards set by the CLSB do not achieve positive consumer outcomes*) to include the risk project in the 2021 Business Plan;
- update the controls for R2 (*Costs Lawyer accepts client money*) and increase the control adequacy rating from 3 to 4 to reflect implementation of new guidance;
- update the references to Legal Choices in R4 (*insufficient evidence about the consumer dimension of the Costs Lawyer market*);
- add a new regulatory risk, R5, in relation to diversity and inclusion.

The board also discussed whether OP5 (*failure to comply with data protection obligations*) remained a live risk, given the recent data audit and updated measures that were put in place as a consequence. The board concluded that OP5 should remain on the register given the intrinsic risk of a data breach or cyber attack. That risk should be revisited over time to ensure controls remain adequate and to address any changes in the external data landscape.

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

## 6.2 Coronavirus

The board discussed the ongoing impact of coronavirus on the profession and its clients. Paul and Andrew M provided feedback on the state of the market. Some redundancies were noted in firms that employed high volumes of staff to attend in-person hearings, particularly where this involved travel. Board members agreed that the next quarter would be significant for the profession and would determine whether new ways of working remained effective in further periods of lockdown.

The board discussed whether risk OP1 on the register (*more leave than enter the profession*) remained red in this context and agreed it did, at least for the next quarter.

The board considered when to conduct the next coronavirus impact survey. Board members felt there would be uncertainty during Q4, which could cause an over- or under-estimation of longer term impact. The board also noted that Costs Lawyers would be asked to engage with other important CLSB communications during Q4 – including the new practising certificate renewal process and launch of the new CPD regime – and did not want the survey to be overlooked. The board therefore agreed that the next survey should be conducted in Q1 2021. The precise timing and any additional questions would be agreed at the January 2021 board meeting, taking account of the situation at the time.

**Action: Include as agenda item for the January board meeting.**

## 7. REGULATORY MATTERS

### 7.1 Guidance – final Handbook audit items

Kate reminded the board that five guidance notes from the Costs Lawyer Handbook had been subject to routine review during Q2. All five notes required updating and specialist advice had been sought in relation to two of the notes. That advice was received during Q3, allowing the updates to be finalised.

The board considered and approved new guidance notes relating to:

- Referral arrangements and referral fees;
- Contingency retainers in contentious matters.

**Action: Update Handbook with approved guidance notes.**

### 7.2 Guidance – client money

The board had considered issues relating to client money at its July meeting. It had agreed that a staged policy approach was appropriate for addressing existing evidence of potential consumer harm in this area. The first stage was to develop guidance on:

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

This had been actioned during Q3 and draft guidance was put to the board for consideration.

The board agreed that the draft guidance delivered the policy intention. Board members felt the guidance note was practical and easy to follow, addressing the issues comprehensively by reference to the Code of Conduct, without straying beyond the CLSB's regulatory reach.

The board discussed the risk that the guidance could alert practitioners to ways of working that were legitimate but did not lead to the best possible consumer outcomes. The board concluded there was a greater risk from practitioners adopting such practices of their own accord, without having the benefit of guidance that would help them to do so safely and in accordance with their professional obligations.

The board reiterated its intention to assess the impact of the guidance over the coming year. If evidence from consumer complaints or practitioner feedback suggested that further intervention was warranted, the board would look at the issue again.

Kate recommended that deliberations on this issue be recorded in a Board Decision Note (BDN), in accordance with the Transparent Decisions Policy, given that deliberations had taken place across three board meetings in 2020. The board considered a draft BDN which had been prepared for that purpose and agreed it as a true record of the decision-making process.

***Actions: Update Handbook with approved guidance note; Publish Board Decision Note as agreed.***

### **7.3 CPD dispensation policy**

In July, the board had resolved to produce an operational policy for handling CPD dispensation requests in 2020, to ensure consistency of treatment in relation to coronavirus. The board considered draft dispensation guidelines prepared for that purpose.

Kate noted that the document was predominantly for internal use, as a decision-making framework, but included a proposed communication to Costs Lawyers. Kate also noted that the LSB had confirmed the guidelines did not change the CLSB's regulatory arrangements and thus did not require a rule change application.

The board considered whether, as per paragraph 16 of the draft guidelines, the CLSB would in all cases expect Costs Lawyers to have avoided work entirely during a period of leave to benefit from the exemption in CPD Rule 1.4. Board members discussed the terms of the government's furlough schemes, as well as existing CLSB guidance on CPD for part-time workers, and agreed that paragraph 16 was accurate as drafted. The board also considered whether the dispensation for exceptional circumstances gave sufficient flexibility.

The board acknowledged that not all circumstances could be covered expressly by the guidelines, but agreed that the guidelines provided a clear path for handling the kinds of enquiries that could be reasonably foreseen at the time. The board approved the guidelines for adoption.

***Actions: Adopt CPD Dispensation Guidelines into Internal Handbook; Publish annex on the website.***

#### **7.4 CMA review of market study recommendations**

Kate drew the board's attention to the CMA's review of its 2016 market study recommendations. The board was provided with a press release summarising the purpose and scope of the project. Kate explained how the CLSB was engaging with the review and the evidence provided to the CMA to date. The board discussed possible areas of structural market change that might emerge from the review and the likely outcomes.

The board was also provided with a copy of the LSB's response to the CMA's call for inputs. Board members discussed paragraphs 57 and 58 in particular, which affirmed the LSB's ambition for a single legal services regulator, reiterated its concerns about the resources of the smaller regulators, and noted its power to cancel a body's designation as an approved regulator. The board discussed the LSB's likely approach within the current statutory framework, in light of the CMA's work. Board members considered the merits of a single legal regulator, and the opportunities and risks it presented for the Costs Lawyer profession, consumers and the public.

Kate agreed to continue engaging on these issues and to report the outcomes of the CMA's review in January.

***Action: Report on outcomes of CMA review at the January meeting.***

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

#### **8.1 Response to Practising Fee Rules consultation**

The board was provided with a copy of the CLSB's response to the LSB's consultation on reforms to its Practising Fee Rules. Steve introduced the item and highlighted the main areas of concern that had been drawn out in the CLSB's response.

The board discussed the practical implications of the proposed changes for the CLSB and other regulators, and thanked Kate for preparing a considered consultation response.

#### **8.2 Regulatory assessment**

The board was provided with the published version of the LSB's latest regulatory assessment, having received an earlier draft by email between meetings. The board welcomed the assessment, noting that the CLSB had moved from "amber" (not met – action being taken) to "green" (met) against five standards. Board members considered this a major achievement in the timeframe.

The board was also confident of the CLSB's ability to continue improving against the four remaining "amber" standards. Board members noted that the amber standards were already a focus of the 2021 Business Plan and would benefit from the new resourcing agreed under agenda item 5.1. There were robust plans in place for next steps, supported by an open dialogue with the LSB and growing confidence from stakeholders.

Kate explained that the regulatory assessment was due to be updated again in November and the LSB was seeking up-to-date information on several of the "green" standards, particularly RA1, S4 and WL7. The CLSB was in a good position to provide the information requested.

Kate also updated the board on discussions with the LSB about their longer-term intentions for the regulatory assessment, involving targeted reviews into specific standards for individual regulators combined with thematic reviews where there was evidence of sub-standard performance across the market.

### **8.3 Other workstreams**

Kate provided feedback on the LSB's strategy development, including outputs and themes from a senior summit attended in September.

Kate also reported that Stephen Gowland had been appointed as the LSB's "board lead" for the CLSB under a new board-level liaison initiative. The board felt it could be useful to invite Stephen to the January board meeting for a meet-and-greet with both the outgoing and incoming Chairs in attendance.

**Action: Invite Stephen to a session at the January board meeting.**

## **9 STAKEHOLDER UPDATES**

### **9.1 ACL Council meeting minutes**

The board noted the minutes of ACL Council meetings held in July and August 2020.

### **9.2 Work update**

Kate explained that she had restructured this part of the agenda to consolidate five standing items into a single item, following feedback at the July meeting. New item 9 would be used to update the board on any significant developments in the work of the Legal Services Consumer Panel, ACL, ACL Training, the Legal Ombudsman (including exception reporting on service complaints) and any other relevant stakeholders. This would be explained in the published agenda so it was clear to readers. The board agreed this was a sensible approach.

Updates were provided in relation to:

- a new CPD initiative that had been launched by ACL, providing incentives for Accredited Costs Lawyers to deliver CPD activities to peers; and
- progress on reforming the Legal Ombudsman, including appointment of the new senior management team.

## **10 OPERATIONAL MATTERS**

### **10.1 Practising certificate renewals process**

Kate explained that the team had been working hard in Q3 to finalise and test the new electronic practising certificate (PC) renewal form. She noted that testing had revealed some email systems direct CLSB communications to spam or a “promotions” tab and explained the measures that had been put in place to mitigate this risk.

Board members asked about the nature and outcomes of the testing process. Jacqui described the process and gave examples of issues that had been identified. Kate explained that a belt-and-braces approach was being taken to mitigating all foreseen risks this year, but that inevitably there would be some unforeseen glitches. Success would be measured by how quickly the team resolved those glitches and how they were used to inform the CLSB’s approach in future years.

Kate also explained that a comprehensive diversity survey had been developed for launch alongside the PC renewal form, with the aim of improving response rates and data quality. The diversity data would be anonymous and not linked to the PC application. The LSB had been invited to provide feedback on the new survey prior to launch.

## **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**

There was no other business raised.

## **13 NEXT SCHEDULED QUARTERLY MEETING**

When: Wednesday 20 January 2020 at 10.30am

Where: TBC

The board reaffirmed its preference for the January meeting to be held in person if it was safe to do so and agreed to revisit the issue around a month prior to the meeting.

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

.....  
Chair

## Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes (21 July 2020)	About us ⇒ Our board
6.1	Risk registers	About us ⇒ Strategy and governance
7.1, 7.2	Guidance notes	For Costs Lawyers ⇒ Costs Lawyer Handbook
7.2	Board Decision Note on client money	About us ⇒ Our board
7.3	CPD dispensation statement	For Costs Lawyers ⇒ CPD
8.1	Response to LSB consultation on Practising Fee Rules	Regulatory matters ⇒ Consultations
10.1	FAQs on practising certificate renewals	For Costs Lawyers ⇒ Practising certificates
Item	Document	Publication location (other)
5.3	Practising fee application and decision	LSB website <a href="#">here</a>
7.4	CMA call for inputs in review of market study recommendations	Government website <a href="#">here</a>
8.2	Updated assessment of CLSB regulatory performance (August 2020)	LSB website <a href="#">here</a>



# Annual priorities

## Improving our regulatory arrangements

	Initiative	Progress status / expected completion
1.	<p>Complete the review of our Disciplinary Rules and Procedures following consultation in 2019 by:</p> <ul style="list-style-type: none"> <li>• implementing revised rules;</li> <li>• producing associated guidance for Conduct Committee members, including in relation to financial penalties;</li> <li>• articulating parameters for ad hoc recruitment of Panel members;</li> <li>• creating an operating framework for the new Case Manager role;</li> <li>• reviewing our policy on the publication of outcomes.</li> </ul>	<p><b>Achieved (Q4)</b></p> <p><i>New Disciplinary Rules and Procedures, along with associated guidance and policies, were implemented in May. The operating framework for the Case Manager role has now been created and is on the agenda for approval at this meeting. We have also begun using a new precedent Letter of Appointment for Panel Members, incorporating updated provisions around termination and compliance with the Code of Conduct. This completes all actions for 2020.</i></p>
2.	<p>Complete the review of our approach to Continuing Professional Development (CPD) by:</p> <ul style="list-style-type: none"> <li>• consulting on proposed changes;</li> <li>• implementing new rules and guidance;</li> <li>• developing reporting templates and case studies to assist practitioners.</li> </ul>	<p><b>Achieved (Q3)</b></p> <p><i>Rule change application was approved in June and supporting materials (including amended Accredited Costs Lawyer Rules) have been published. The board has agreed to implement in early 2021 to avoid confusion – a comms plan for implementation has been developed and an introductory video has been commissioned. There are no further actions for 2020.</i></p>
3.	<p>Review our Practising Rules and Practising Certificate Reinstatement Procedure, with the aim of bringing them into line with updates made to other regulatory arrangements and acting upon insights gained from our supervision and disciplinary activities.</p>	<p><b>Achieved (Q3)</b></p> <p><i>Rule change application was approved in Q3 and new rules have now been implemented, along with updated guidance on insurance and a new policy statement on practising conditions.</i></p>
4.	<p>Deliver the phase 2 actions identified in the 2019 Handbook Audit, in particular</p>	<p><b>Achieved (Q4)</b></p> <p><i>Three of the five guidance notes were approved by the board in July and have been implemented. Advice was</i></p>

	<p>conducting a routine substantive review of our guidance relating to:</p> <ul style="list-style-type: none"> <li>• Damages-Based Agreements and Conditional Fee Agreements;</li> <li>• Insurance;</li> <li>• Anti-money laundering;</li> <li>• Referral arrangements; and</li> <li>• Retention of a client’s file.</li> </ul>	<p><i>taken in relation to the referral arrangements and fee agreements guidance. Those guidance notes were approved by the board in October and have now been implemented, concluding phase 2 of the Handbook Audit.</i></p>
5.	<p>Revisit our diversity action plan to ensure it reflects prevailing best practice and addresses issues that impact upon the Costs Lawyer profession in particular.</p>	<p><b>Achieved (Q1)</b></p> <p><i>Diversity action plan has been completed. Additional activities have been undertaken to address the new LSB approach and expectations. A progress report was provided to the LSB in April. Further work on diversity and inclusion will be prioritised in 2021.</i></p>
6.	<p>Examine our evidence base in relation to new and emerging policy developments, our regulated community and the regulated market.</p>	<p><b>Achieved (Q3)</b></p> <p><i>This priority was aimed at addressing concerns raised by the LSB in the context of its regulatory assessment. Having demonstrated to the LSB how we have examined our evidence base to inform our regulatory arrangements throughout 2020, the LSB updated its assessment in Q3 to acknowledge the progress made and set new actions in relation to (i) delivering our Consumer Engagement Strategy (ii) improving diversity data and (iii) achieving our 2021 Business Plan priorities. We have the framework in place to meet those expectations in 2021.</i></p>

## Protecting the interests of consumers and promoting professional standards

	Initiative	Progress status
7.	<p>Build on research undertaken in 2019 to deliver:</p> <ul style="list-style-type: none"> <li>• a final report on consumer use of Costs Lawyers’ services;</li> <li>• a revised consumer engagement strategy; and</li> </ul>	<p><b>Achieved (Q1)</b></p> <p><i>A revised <a href="#">Consumer Engagement Strategy</a> was published in Q1 2020. The interim report was published as an annex to a Board Decision Note. Actions under the new strategy commenced in H2 2020 and are due to be completed during H1 2021.</i></p>

	<ul style="list-style-type: none"> <li>a framework for aligning risk assessment and regulatory approach to consumer need and expectations.</li> </ul>	
8.	Review our guidance on vulnerable consumers.	<p><b>Deprioritised / superseded</b></p> <p><i>This has been identified as an action for year 2 of the Consumer Engagement Strategy, so it will now be delivered in the 2021/22 cycle. In 2020, we will begin delivering the actions identified in the first strategy cycle.</i></p>
9.	Work with ACL Training on delivery of the refreshed Costs Lawyer Qualification, building on preliminary analysis and development of materials in 2019.	<p><b>Achieved (Q4)</b></p> <p><i>The qualification reopened in January 2020. We have been working with ACL, ACLT and our education adviser to agree a new approach to audit of the course and a reporting framework. This has now been agreed and the audit process is in train. We will continue to work with ACLT next year to respond to the new viability challenges that arose in relation to the 2021 intake.</i></p>
10.	Collaborate with the Association of Costs Lawyers (ACL) on identifying touchpoints for the collation and analysis of data relating to the profession, including sources of instructions.	<p><b>Deprioritised / delayed</b></p> <p><i>Initial data was gathered at an event prior to the coronavirus outbreak, enabling us to consider how to approach future activity. However further opportunities for this type of data capture have been severely limited by the impact of Covid-19 on large scale events. We will return to this workstream once large events are possible (and are being run by ACL) and will continue to consider other options / avenues.</i></p>
11.	Engage with Professor Mayson's review of legal services regulation and collaborate with ACL to promote understanding of what Costs Lawyers do and the relative risks to consumers from over- and under-regulation of the market.	<p><b>Achieved (Q2)</b></p> <p><i>Input was provided as the report was developed. The final report has now been <a href="#">published</a>, with positive recommendations relating to costs work and the profession.</i></p>
12.	Develop and agree a new memorandum of understanding with ACL to implement the Legal Services Board's internal governance reforms and establish an improved framework that appropriately	<p><b>Achieved (Q2)</b></p> <p><i>The new MOU and OP were executed in Q2 and the CLSB submitted comprehensive compliance documentation to the LSB. We considered this priority to be achieved from the CLSB's perspective in Q2, and</i></p>

	balances cooperation, oversight and independence.	<i>ACL's rule change application was subsequently approved by the LSB in Q3.</i>
13.	Explore with ACL how we can improve the content or format of the regulatory information that we publish for the benefit of the profession and other stakeholders.	<p><b>Achieved (Q4)</b></p> <p><i>A new <a href="#">data webpage</a> has been created to host all data in one place. Regulatory return data has been updated for 2019 and published. Diversity survey data has been published for the first time. Results of our coronavirus impact survey have been published in a new report format, using graphical illustrations and identifying key themes. We have struggled to obtain meaningful feedback from ACL on the presentation of the data, but other stakeholders (such as the LSB) have been able to use our data in their own work.</i></p>

## Modernising our organisation

	Initiative	Progress status
14.	Refresh the CLSB website, with a focus on user experience, legals and transparency, enabling Costs Lawyers, consumers and other stakeholders to easily access the information they need.	<p><b>Achieved (Q1)</b></p> <p><i>New website was launched in March with upgraded functionality, new design, improved user experience and refreshed content. Improvements will be made on an ongoing basis where needed.</i></p>
15.	Review the effectiveness of our new operating structure to identify whether and where further improvements can be made.	<p><b>Achieved (Q1)</b></p> <p><i>This was brought forward to Q4 2019 with the departure of the HoO. We do not intend to formally review the structure again in 2020 but are keeping resourcing requirements under review.</i></p>
16.	Update and retest our business continuity arrangements to reflect potential improvements identified in 2019 testing.	<p><b>Achieved (Q2)</b></p> <p><i>Significant improvements have been made in our business continuity arrangements, particularly around IT systems and in the context of Covid-19. We are working within the parameters of an updated Business Continuity and Disaster Recovery Plan, approved by the board in July.</i></p>
17.	Explore whether there is scope to share services with other approved regulators or similar organisations, to improve efficiencies and save costs.	<p><b>Achieved (Q3)</b></p> <p><i>Discussions have taken place with two ARs, resulting in follow-up conversations with several service providers. We pursued several live leads during Q3. Discussions have not led to any viable opportunities so we have</i></p>

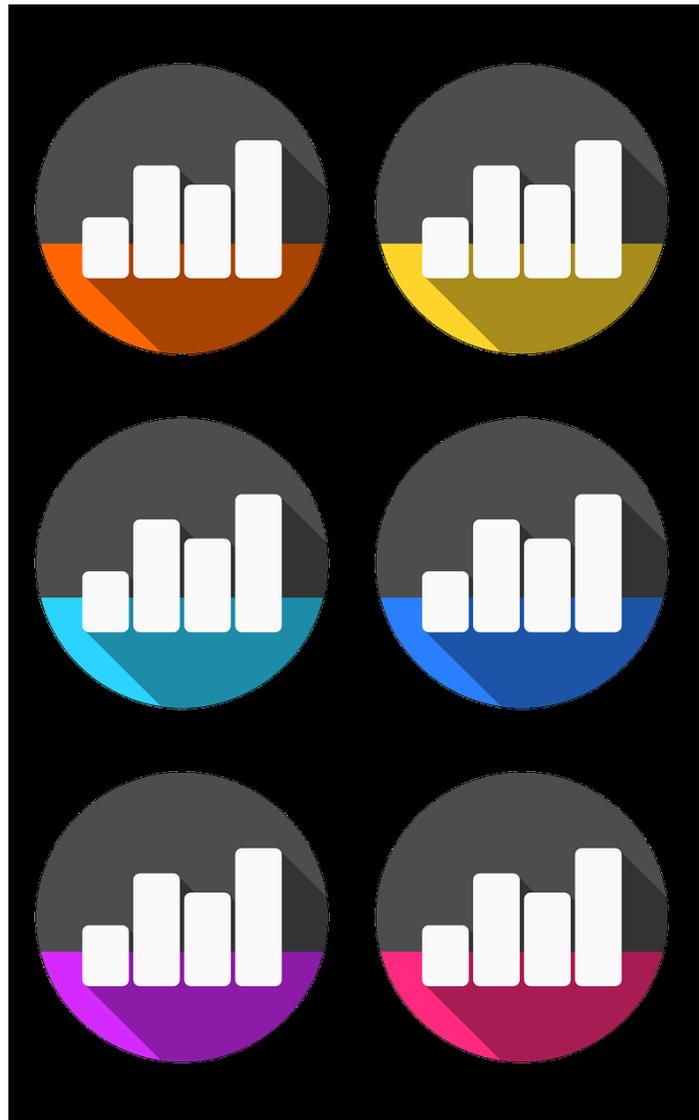
		<i>decided not to expend further resource on speculative approaches. We will continue to explore opportunities going forward, but on a reactive basis.</i>
18.	Assess the impact of moving our practising certificate renewal process to a digital platform to improve data security, minimise manual processes and save resource.	<p><b>Achieved (Q4)</b></p> <p><i>Assessment of the 2019 manual renewal process was carried out in Q1. The risk/cost/resource profile led us to conclude that a digital platform is essential. By Q3, electronic forms had been finalised and tested, the new database had been developed and deployed, and we had begun using our new mass mailing system. The amended Practising Rules, facilitating the changes, were also implemented in Q3. Digital renewals went live in November. We have carried out a reflective exercise to measure success, and a report of the key findings will be considered by the board in January.</i></p>
19.	Develop a policy for the publication of complaints against the CLSB, augmenting our existing Internal Complaints Handling Policy, covering the type of information that will be published, at what stage and where.	<p><b>Achieved (Q1)</b></p> <p><i>This has been developed and incorporated into our new website on a <a href="#">standalone page</a> for complaints against the CLSB.</i></p>
20.	Assess the effectiveness of our Transparent Decisions Policy as implemented in 2019 and consider whether any additional transparency measures are necessary.	<p><b>Achieved (Q2)</b></p> <p><i>The board considered a report on ARs' approaches to publishing board papers in April and agreed to implement a new approach to publication, as detailed on the <a href="#">What we Publish</a> webpage. This will complement the continued operation of the Transparent Decisions Policy, and the effectiveness of the combined approach will be monitored going forward.</i></p>

---

# Performance indicators

## 2020 stock take

---



January 2021

---

Costs Lawyer Standards Board

CLSB  
|||

---

# Regulatory metrics

As part of its oversight role, the Legal Services Board asks all approved regulators of legal services to provide an annual performance management dataset. The dataset for the 2019 practising year is published in our [Performance Indicators](#) document (PID). In Q1, the PID will be updated with the statistics below for the 2020 practising year, which have recently been finalised.

## AUTHORISATION

### Applications

Number of authorisations processed	714
Outcomes of applications for authorised persons	714 approved
Type of application:	
Newly Qualified	17
Annual Renewal	677 (processed in 2020 for 2021 practising year)
Reinstated	20

### Timeliness

From date of completed application:	(day 1 being the day of receipt)
Median time taken	1.79 days
Longest time taken	23 days
Shortest time taken	1 day

### Appeals

Number of appeals received and concluded	0
Number of appeals where a decision has been made to overturn the initial decision	N/A

## SUPERVISION: ACCREDITATION

### Accredited Costs Lawyer Application

Number of applications processed	28
----------------------------------	----

### Timeliness (Accredited Costs Lawyer Application)

From date of completed application:	(day 1 being the day of receipt)
Median time taken	2.11 days
Longest Time Taken	4 days
Shortest Time Taken	1 day

## SUPERVISION: ENFORCEMENT

### Conduct Cases

Number of cases received	1
Number of those cases concluded	1
Number outstanding	0

### Timeliness

From acceptance of complaint to final decision	
Number of cases considered	1
Median time taken	6.3 weeks
Longest time taken	6.3 weeks
Shortest time taken	6.3 weeks

### Decision Type

By CEO (level 1)	1
By Conduct Committee (level 2)	0

### Appeals

Number of appeals (level 1)	0
Outstanding	N/A
Where decision was overturned	N/A
Where decision was upheld	N/A
Settled by consent	N/A
Number of appeals (level 2)	0
Outstanding	N/A
Where decision was overturned	N/A
Where decision was upheld	N/A
Settled by consent	N/A

## GOVERNANCE AND LEADERSHIP

### Organisational Health

Board membership turnover	2
Executive employee turnover	0
Reasons for increase/decrease	Two board members retired at end of term, as planned

### Complaints

Number of justified complaints about the regulator	0
The subject matter of the justified complaints	N/A
Timeliness (Complaints)	
Median time taken	N/A
Longest Time Taken	N/A
Shortest Time Taken	N/A

# Governance metrics

## Robust management and oversight

As explained in the PID, the purpose of the metrics below is to help us identify and address any emerging risks or potential weaknesses in our governance processes. The first three columns (in blue) are taken from the PID. The fourth column (in red) provides an overview of progress in 2020 against each metric. The final column suggests possible updates to the metrics for 2021, for consideration by the board.

Oversight area	Metric	Outcome	Progress in 2020	Proposal for 2021
Sound financial management	Level of reserves	One year's operating budget as reserves by 2023	We contributed £20k to reserves in 2020, which was twice the budgeted amount. That takes reserves to circa £130k, requiring another £45k to reach the target level.	Adjust the outcome to aim for full reserves by 2025, reflecting our intention to contribute £10k per year.
Appropriate resourcing	Stakeholder comfort that our operating structure is sustainable and appropriate for our size	Meet the LSB's standards in the regulatory assessment under outcome WL:GL2	Considerable inroads were made on WL:GL2 in 2020, as summarised in the LSB's December assessment, and we are still assessed as "progress being made" as opposed to "not met". But the LSB remains concerned about our resources and scale in the longer-term.	Retain the outcome from 2020 and continue to work towards a "met" assessment in 2021. Achieve this through meeting the LSB's actions in the December regulatory assessment, onboarding new policy resource, and delivering the 2021 Business Plan.
Business continuity and succession planning	Degree of business interruption from personnel changes at board and executive level	No material business interruption incidents arise from retirement of Chair, Vice Chair and Non-Lay NED, or from unplanned attrition from the executive team or board	There was no material business interruption in 2020 from personnel changes (or otherwise). We successfully recruited new NEDs with the right capabilities, by reference to our skills matrix, and there has been no unplanned attrition. We are also working within the parameters of a new Business Continuity and Disaster Recovery Plan.	Our business continuity and succession planning is now much more robust than when the PID was developed. This outcome is now business-as-usual, which demonstrates our success in this area. Consider reframing this outcome for 2021 to align with current risks.

Risk management and mitigation	Level of impact on the organisation when risks, of which the board was or should have been aware, materialise	None of the regulatory, governance or strategy metrics in this document is detrimentally impacted by materialisation of one or more risks of the kind described	Risks relating to the longer term viability of the Costs Lawyer Qualification resurfaced in late 2020, putting the final strategy metric below ( <i>facilitator of trust</i> ) in jeopardy. This will be an area of focus in 2021. Otherwise, none of the metrics in the PID has been detrimentally impacted by materialisation of the described risks.	This remains an important indicator of whether our risk registers and controls are operating effectively. Retain this metric as it is in 2021.
Cultural alignment and accountability	Level of NED satisfaction with the CLSB on cultural indicators, including receptiveness to challenge, inclusivity, and openness to change	All NEDs report, in half-yearly survey, being satisfied or very satisfied with the CLSB on cultural indicators	The survey showed that all NEDs were entirely satisfied across 7 of the cultural indicators, and entirely or mostly satisfied on the remaining 2 indicators. The results signal a highly constructive and inclusive culture that can be built upon in 2021.	Given the cultural shift within the organisation at an operational level, this metric is becoming less important. Perhaps retain this outcome in 2021, given the change of Chair, and revisit it for 2022. In the meantime, change it to an annual (rather than half-yearly) survey.

## Strategy metrics

### Successful implementation of our mid-term strategy

As explained in the PID, the purpose of the metrics below is to help us track progress against the goals in our mid-term strategy. If outcomes are not being achieved, this will prompt us to consider the reasons why, how we can improve, and what the consequences might be for achievement of our strategy. The fourth column in the table (in red) provides a status update at as December 2020. As these metrics are aligned to our mid-term strategy, the intention is to retain them until that strategy concludes in 2023, subject to feedback from the board.

Strategy area	Metric	Outcome	Status at end of 2020
Collaborative relationships	Regulatory or operational developments that could not have been achieved by the CLSB acting alone	At least two significant developments in 2020, rising to at least three in 2021 and 2022, and at least four in 2023	<p>Examples of developments this year are:</p> <ul style="list-style-type: none"> <li>• A significantly improved relationship with ACLT allowed us to understand and address difficulties with the structure of the Costs Lawyer Qualification, bring it back online and agree a new audit framework in 2020.</li> <li>• Creation of a pathway for referring disciplinary issues to the SRA with a feedback loop so we can track outcomes for Costs Lawyers, based on new senior level relationships within the SRA.</li> </ul> <p>The biggest challenge in proactively pursuing this metric is that the outcome relies on the priorities and willingness of others. This can mean a high time investment for an unpredictable level of impact.</p>
Robust approach to evidence	Stakeholder comfort in the way evidence is used to inform our regulatory arrangements and board level decision-making	Meet or exceed the LSB's standards in the regulatory assessment under outcomes RA3, RA4, WL:GL3 and WL:GL4	<p>In the December regulatory assessment, the LSB commended the CLSB for its improvements across the board and we are now assessed as meeting standard WL:GL3. Our assessment against standards RA3, RA4 and WL:GL4 remains "progress being made" (as opposed to "not met" or "met"). Continuing to demonstrate how our evidence base informs our decision making will be a key priority in 2021.</p>
Bespoke risk-based regulatory approach	Prevalence of detrimental consumer outcomes, combined with the burden imposed on Costs Lawyers by our regulatory arrangements	No detrimental consumer outcomes that are not resolved at first tier, combined with at least 95% of Costs Lawyers considering the CLSB to be an effective regulator	<p>We have taken steps in 2020 to actively encourage first tier resolution of complaints. Excluding complaints that were successfully resolved in that way, as well as complaints that were not from clients or the public (such as those from fellow practitioners), we considered six complaints during the year. One was investigated and no misconduct was found, four were service complaints for the Legal Ombudsman, and one was assessed as being out of jurisdiction.</p> <p>In 2020, 97.1% of Costs Lawyers considered the CLSB to be an effective regulator. This is up from 92% in 2018 and 95% in 2019.</p> <p>In 2021, it would help to adjust this outcome to refer to detrimental consumer outcomes arising from professional conduct, as opposed to service quality, to more clearly differentiate our role from that of the Ombudsman. We also need to consider the veracity of our data on whether we are effective, because the stated percentage</p>

			currently excludes Costs Lawyers who didn't answer the question in their annual return. We intend to include a free text box in next year's return to capture more meaningful feedback.
Facilitator of trust	Level of integration into the regulated community	There is a sustainable route of entry into the profession, with long-term viability, by 2023	The Costs Lawyer Qualification reopened in 2020 and will run again in 2021. We have redesigned the audit process and will finalise the audit early in the new year. The focus in 2021 must be on sustainability, including governance and marketing issues, and defining the CLSB's role.

## Results of satisfaction survey

For measuring progress against KPI metrics relating to cultural alignment and accountability

January 2021

### Participants

The survey was completed by the five non-executive directors on the CLSB board in January 2021.

### 1. How satisfied are you that the CLSB board has the following characteristics?

Respondents could indicate that they were: not satisfied; somewhat satisfied; neither satisfied nor dissatisfied; mostly satisfied; entirely satisfied. The Chair did not respond in relation to the third characteristic below.

Characteristic	Mostly satisfied	Entirely satisfied
I have the opportunity to share my views in board meetings.		100%
I feel respected and listened to by my fellow NEDs.		100%
I feel comfortable speaking up when I disagree with the Chair.		100%
I feel comfortable speaking up when I disagree with a fellow NED.		100%
The board reaches decisions through a collaborative process.		100%
The board is open to new ideas and suggestions.	20%	80%
The board values my unique perspective, skills and traits.	20%	80%
The CEO is open to feedback and constructive challenge.		100%
The CEO acts on the board's feedback and constructive challenge.		100%

### 2. What three words would you use to describe the CLSB's culture?

Ambitious	Collaborative	Collegiate
Committed	Considered	Constructive
Determined	Embracing	Forward thinking
Modern	Open	Supportive
Supportive (again)	Thoughtful	Transforming

3. Are there any changes that could be made to improve the culture of the board / organisation?

No

No

A mix of personal (x2) and online meetings (x2) when we can.

Massive and vital changes have been made which now bring to mind the three words above [...]¹. Continue to build on this and be receptive to the skills and opportunities that the recent NED and chair appointments will bring.

**END**

---

¹ Redacted to preserve anonymity.

**COSTS LAWYER STANDARDS BOARD LTD**  
**RISK REGISTERS**  
**As at 20 October 2020**

**1. RISK SCORING**

**(i) Nature of risk**

Our operational risks are categorised as:

- Legal
- Financial
- Operational continuity
- Capacity
- Reputational
- Stakeholder

Our reputational risks are categorised as having the potential to impact one or more of the following regulatory objectives:

- Protecting and promoting the public interest.
- Supporting the constitutional principle of the rule of law.
- Improving access to justice.
- Protecting and promoting the interests of the consumer.
- Promoting competition in the provision of services.
- Encouraging an independent, strong, diverse and effective legal profession.
- Increasing public understanding of the citizen’s legal rights and duties.
- Promoting and maintaining adherence to the professional principles, namely: independence and integrity; proper standards of work; acting in a client’s best interests; duty to the court; confidentiality of client affairs.

**(ii) Gross risk: Impact x Probability**

<b>Impact (I)</b>	<b>Probability (P)</b>
<p>The consequences of an event occurring. The event will have:</p> <p><b>Negligible (1):</b> Very little consequence</p> <p><b>Slight (2):</b> Some consequences, but none serious</p> <p><b>Moderate (3):</b> Some consequences which could be serious</p> <p><b>Serious (4):</b> Serious consequences</p> <p><b>Severe (5):</b> Very serious consequences</p>	<p>The likelihood of an event occurring. The event is:</p> <p><b>Low (1):</b> Very unlikely to occur</p> <p><b>Medium low (2):</b> Unlikely to occur</p> <p><b>Medium high (3):</b> Likely to occur</p> <p><b>High (4):</b> Very likely to occur</p>

IMPACT	5	5 YELLOW	10 YELLOW	15 RED	20 RED
	4	4 GREEN	8 YELLOW	12 YELLOW	16 RED
	3	3 GREEN	6 YELLOW	9 YELLOW	12 YELLOW
	2	2 GREEN	4 GREEN	6 YELLOW	8 YELLOW
	1	1 GREEN	2 GREEN	3 GREEN	4 GREEN
		1	2	3	4
PROBABILITY					

(iii) Adequacy of controls

Descriptor	Score	Description
<b>Fully effective</b>	5	Controls are well designed for the risk and address the root causes. The Executive and Board are comfortable that controls are effectively applied, monitored and assured
<b>Substantially effective</b>	4	Most controls are designed correctly and are in place and effective. Some more work to be done to improve operating effectiveness, or doubts about operational effectiveness and reliability
<b>Partially effective</b>	3	Controls in place but are not sufficient to fully mitigate risk. There are potential weaknesses in the application of controls and limited assurance or reporting available
<b>Largely ineffective</b>	2	Significant control gaps. Either controls do not treat root causes or they do not operate at all effectively
<b>None or totally ineffective</b>	1	No credible control and limited confidence in the application or oversight of risk activity

## 2. OPERATIONAL RISK REGISTER

<b>Logged by board:</b> 6/4/2011	<b>Reference:</b> OP1	<b>Risk score: I(5) x P(4) = 20</b>
<b>Risk to operation</b>	<b>Changes to the profession impact CLSB viability as more leave than enter the profession</b>	
<b>Nature</b>	Financial, operational continuity	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• Increase in fixed costs (from April 2019): MoJ announcement of implementation of fixed costs on cases up to £100k.</li> <li>• Coronavirus (from May 2020): Results of our coronavirus impact survey suggest a significant minority of Costs Lawyers are concerned about their ability to carry on practising; positive impacts for some, e.g. through delays to costs reforms and increased workload.</li> <li>• Link to OP3 in terms of numbers entering the profession.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Monitor impact on the profession via impact assessment surveys, including coronavirus impact surveys in Q2 2020 and Q1 2021.</li> <li>• Respond to proposals/consultations to help stakeholders understand the Costs Lawyer market and ensure policy developments are in the public interest.</li> <li>• Implement regulatory arrangements that support safe innovation and diversification, to promote ongoing competition and choice.</li> <li>• Pursue recommendations in the Mayson report for expansion of costs regulation.</li> <li>• Mitigate risks around route to entry – see OP3.</li> <li>• Review of historic termination and reinstatement data carried out in 2020 and new processes put in place for communicating with potential returners.</li> <li>• Retain one year's operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	High	
<b>Actions outstanding/status</b>	Monitor reasons for leaving the profession at PC renewal and respond to new factors. Impact of coronavirus on regulated numbers being kept under close review.	

<b>Logged by board:</b> 13/1/2015	<b>Reference:</b> OP2	<b>Risk score: I(5) x P(2) = 10</b>
<b>Risk to operation</b>	<b>The CLSB's organisational structure is not sufficient to ensure business continuity</b>	
<b>Nature</b>	Operational continuity, capacity, reputational	

<b>Evidence of risk</b>	Being a small organisation, institutional knowledge and operational capacity of the CLSB rests with a small number of individuals.
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Assessment of continuity risks in light of coronavirus (including retaining core functions in the absence of a key staff member).</li> <li>• Updated Business Continuity and Disaster Recovery Plan adopted in July 2020 following restructure and reflecting changes for coronavirus.</li> <li>• Move to a paperless organisation, including via electronic processes and cloud storage.</li> <li>• Minimisation and logging of paper archives, with joint access to storage.</li> <li>• Joint signatories to bank account.</li> </ul>
<b>Control adequacy</b>	3
<b>Priority area of risk</b>	High
<b>Actions outstanding/status</b>	<ul style="list-style-type: none"> <li>• Rehousing or safe destruction of paper archives over coming years.</li> <li>• Knowledge transfer of all systems, processes, data and knowhow between staff and into internal policies and manuals.</li> </ul>

<b>Logged by board:</b> 25/7/2017	<b>Reference:</b> OP3	<b>Risk score: I(5) x P(3) = 15</b>
<b>Risk to operation</b>	<b>There are insufficient numbers of newly qualified Costs Lawyers such that regulated numbers fall to an unsustainable level</b>	
<b>Nature</b>	Reputational, financial, operational continuity	
<b>Evidence of risk</b>	<p>There is only one means of entry into the profession (three-year course) and one provider (ACLT).</p> <ul style="list-style-type: none"> <li>• In 2017, due to financial concerns, the CLSB authorised ACLT's course to the end of 2020 for current trainees only (i.e. a suspension on new intakes). The course reopened to new students in January 2020 but ACL has indicated that the course might not run again in 2021.</li> <li>• In 2017, CLSB considered applying to the government apprenticeship scheme, but concluded this was not an option.</li> <li>• In early 2019, CLSB applied to the LSB for approval of an alternative qualification that would remove historical barriers to entry, but following feedback the application was ultimately withdrawn.</li> <li>• Coronavirus may impact the number of new qualifiers, due to assessment delays and reduced employer funding.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Work within the parameters of the new Protocol agreed with ACLT.</li> <li>• Nurture relationship with ACLT to ensure early notification of any future issues and ensure current learners are protected.</li> </ul>	

	<ul style="list-style-type: none"> <li>Implement regulatory arrangements within the current framework that modernise the three-year qualification as far as possible.</li> <li>Retain one year's operating budget as reserves.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	High
<b>Actions outstanding/status</b>	<ul style="list-style-type: none"> <li>Monitor success of course in 2020.</li> <li>Reconsider longer-term approach to competency, taking learnings from the SQE experience.</li> </ul>
<b>Commentary</b>	There is a general shift across the legal services regulators toward outcomes-based qualifications, but difficulties faced by other regulators in implementing those qualifications mean this is likely to be a longer term solution for the CLSB.

<b>Logged by board:</b> 24/10/17	<b>Reference:</b> OP4	<b>Risk score: I(5) x P(1) = 5</b>
<b>Risk to operation</b>	<b>ACL, named in the Legal Services Act 2007 as approved regulator (role undertaken by CLSB under delegation), becomes insolvent</b>	
<b>Nature</b>	Regulatory, operational continuity, reputational (for CLSB and the profession)	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>Coronavirus may impact regulated numbers or Costs Lawyers' ability to pay membership fees.</li> <li>Inherent risk for any regulatory body acting under the delegated authority of its parent company.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>Open dialogue with ACL to give us early warning of financial issues.</li> <li>Ongoing engagement with the LSB's contingency planning initiative.</li> <li>Retain one year's operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	3	
<b>Priority area of risk</b>	Low	
<b>Actions outstanding/status</b>	Financial instability in 2017-2018 appears to have subsided.	

<b>Logged by board:</b> 24/1/18	<b>Reference:</b> OP5	<b>Risk score: I(4) x P(1) = 4</b>
<b>Risk to operation</b>	<b>Failure to comply with data protection obligations</b>	
<b>Nature</b>	Legal, financial, reputational	
<b>Evidence of risk</b>	Increased risk under new GDPR arrangements, including a significant increase in the level of fine that can be imposed. CLSB handles the	

	personal data of Costs Lawyers, employees, agents and (to a limited extent) some members of the public.
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Data protection compliance review carried out in Q4 2019, leading to adoption of a new Data Protection Manual and implementation of updated processes for ensuring compliance in 2020.</li> <li>• Updates to IT systems with a focus on data security.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	Low
<b>Actions outstanding/status</b>	Updates to IT systems ongoing throughout 2020.

<b>Logged by board:</b> 23/1/19	<b>Reference:</b> OP6	<b>Risk score: I(4) x P(3) = 12</b>
<b>Risk to operation</b>	<b>Breakdown in communications between any of ACL, ACL Training and the CLSB</b>	
<b>Nature</b>	Operational continuity, reputational	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• Previous difficulties in securing ACL/ACLT engagement with CLSB, due to lack of resource or appetite.</li> <li>• Governance and oversight complications as between ACL and ACLT in relation to the Costs Lawyer Qualification.</li> <li>• A breakdown of any of the bilateral relationships could adversely impact the qualification and the CLSB.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Nurture a constructive relationship with new ACL Chair.</li> <li>• Contingency planning for operational areas that require ACL input.</li> <li>• New MOU and OP agreed with ACL in 2020.</li> <li>• Work with the LSB to help ACL engage with its regulatory obligations as a designated body under the new IGRs.</li> <li>• Extend engagement beyond ACL Chair to foster understanding within the Committee as a whole.</li> <li>• Work within the parameters of the new Protocol agreed with ACLT.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	Medium	
<b>Actions outstanding/status</b>		

<b>Logged by board:</b> 23/1/19	<b>Reference:</b> OP7	<b>Risk score: I(1) x P(3) = 3</b>
<b>Risk to operation</b>	<b>A no deal Brexit undermines current regulatory structures</b>	
<b>Nature</b>	Legal, capacity, stakeholder	
<b>Evidence of risk</b>	Brexit may impact on current arrangements for mutual recognition of professional qualifications.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• LSB approval obtained under ED133 for draft regulatory arrangements, in line with published statutory instruments, that would apply in the event of a no deal Brexit.</li> <li>• Monitoring MoJ and BEIS developments to ensure we can deal with implementation by end of 2020.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	Low - there are currently no European Costs Lawyers (or their equivalent) registered under MRPQ with the CLSB.	
<b>Actions outstanding/status</b>	The LSB has confirmed that, subject to further developments from government, we can continue to rely on existing approval under ED133 for proposed regulatory arrangements. Keep negotiations under review.	

### 3. REGULATORY RISK REGISTER

<b>Logged by board:</b> 23/01/2020	<b>Reference: R1</b>	<b>Risk score I(4) x P(1) = 4</b>
<b>Risk</b>	<b>The professional standards set by the CLSB do not achieve positive consumer outcomes or, where poor consumer outcomes cannot be prevented, the CLSB is unable to take action</b>	
<b>Risk to objectives</b>	Regulatory objective: Protecting and promoting the public interest. Regulatory objective: Protecting and promoting the interests of consumers. Professional principle: Proper standards of work. Professional principle: To act in the best interest of the client.	
<b>Evidence of risk</b>	There is limited evidence of actual risk, although there are theoretical risks that must be controlled, for example: <ul style="list-style-type: none"> <li>• Risk of complaints processes not being properly communicated: While the very low level of complaints about Costs Lawyers to the CLSB or LeO could suggest that either few complaints arise at first-tier or those that are raised are handled well, this may also suggest that consumers are unaware of how to complain to their Costs Lawyer.</li> </ul>	

	<ul style="list-style-type: none"> <li>• Risk of under-insurance: Costs Lawyers are free to select an insurance provider from the open market, as this promotes competition and keeps fees at a sustainable level, but this may carry a risk of a Costs Lawyer not purchasing the right type of cover.</li> </ul>
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Practising Rules and CPD Rules reviewed in 2019.</li> <li>• Disciplinary Rules and Procedures reviewed in 2019, including to increase deterrent effect of financial penalties.</li> <li>• Guidance subject to systematic review during 2019 and 2020 following Handbook Audit.</li> <li>• Filing requirements with practising certificate applications (evidence of insurance, complaints procedures).</li> <li>• Targeted questions in client survey.</li> <li>• Supervision of first tier complaints through reporting in regulatory return.</li> <li>• Priority projects in relation to three key risk areas and approach to supervision included in the 2021 Business Plan.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	Low – no evidence of risk having materialised to date
<b>Actions outstanding/status</b>	2021 Business Plan priorities to be completed by the end of the year.

<b>Logged by board:</b> 31/10/2011	<b>Reference: R2</b>	<b>Risk score: I(5) x P(2) = 10</b>
<b>Risk</b>	<b>Costs Lawyer (not working for SRA regulated firm) accepting client monies</b>	
<b>Risk to objectives</b>	Regulatory objective: Protecting and promoting the public interest Professional principle: To act with integrity Professional principle: To act in the best interests of the client	
<b>Evidence of risks</b>	As Costs Lawyers are not permitted to handle client monies, they will not have systems and processes in place to ensure proper handling in the event they do inadvertently or deliberately accept monies in breach of our rules. No evidence from client survey (October 2016 to date) or from complaints that a Costs Lawyer has handled client monies. However a complaint in Q1 2020 suggested there is scope for poor client outcomes even where a Costs Lawyer does not handle client money directly.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Covered under Principle 3.6 of Code of Conduct and associated guidance, updated in 2020 following a targeted review.</li> </ul>	

	<ul style="list-style-type: none"> <li>• Client survey asks: “Did you send any monies to your Costs Lawyer other than in payment of an invoice?”</li> <li>• Information sharing arrangement with LeO in relation to complaints involving client monies that fall within CLSB jurisdiction.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	Medium
<b>Actions outstanding/status</b>	

<b>Logged by board:</b> 24/07/2019	<b>Reference: R4</b>	<b>Risk score: I(4) x P(2) = 8</b>
<b>Risk</b>	<b>CLSB cannot generate sufficient evidence about the consumer dimension of the Costs Lawyer market, resulting in regulatory arrangements that are misaligned to consumer need</b>	
<b>Risk to objectives</b>	Regulatory objective: Protecting and promoting the public interest. Regulatory objective: Increasing public understanding of citizens’ legal rights and duties.	
<b>Evidence of risk</b>	It has historically proven difficult to generate statistically significant data on the consumer experience with the Costs Lawyer market. Engagement with client surveys is low, as are complaint volumes, making traditional methods of data capture insufficient. It is intended that the Legal Choices project will provide additional data and insights into the way consumers interact with the market, although there have been threats to the success of that project including withdrawal of the Bar Standards Board.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Consumer Engagement Strategy covering the period of our mid-term organisational strategy (2020 – 2023), establishing workstreams for building consumer-related evidence base.</li> <li>• Data sharing arrangements with LeO in relation to complaints about Costs Lawyers.</li> <li>• Participation in the Legal Choices Governance Board, which oversees the project’s risk register, to identify early warning signs that the project will not deliver as expected.</li> </ul>	
<b>Control adequacy</b>	4 – a forward plan is in place, as set out in the Strategy, but work will be ongoing for some time	
<b>Priority area of risk</b>	Medium, so long as we remain on target to deliver Strategy	
<b>Actions outstanding/status</b>	Implement Consumer Engagement Strategy.	

<b>Logged by board:</b> 20/10/2020	<b>Reference: R5</b>	<b>Risk score: I(4) x P(3) = 12</b>
<b>Risk</b>	<b>CLSB cannot promote all aspects of diversity within the profession given the small size of the regulated community and trainee population</b>	
<b>Risk to objectives</b>	Regulatory objective: Encouraging an independent, strong, diverse and effective legal profession.	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• There is only one route of entry into the profession and, in some years, there may be no new students accepted through that route (linked to OP3).</li> <li>• Statistically the size of the profession makes it more difficult to strive for a composition that is reflective of wider society.</li> <li>• The LSB has provisionally assessed existing data that we capture on the diversity of the profession as insufficient.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• New diversity and inclusion survey developed for roll out with practising certificate applications in Q4 2020.</li> <li>• New reporting framework for the Costs Lawyer Qualification being agreed with ACL Training.</li> <li>• Targeted diversity initiatives planned for 2021.</li> <li>• Seeking opportunities to collaborate with other regulators and organisations in this area.</li> </ul>	
<b>Control adequacy</b>	2 – plans are in place but it will take time to implement and then assess these during 2021	
<b>Priority area of risk</b>	Medium, so long as we are able to deliver planned initiatives	
<b>Actions outstanding/status</b>	Assess impact of new data capture methodology in early 2021. Delivery of controls during 2021.	

## Guidance for the Case Manager

in proceedings under the CLSB's Disciplinary Rules and Procedures

20 January 2021

---

### 1 Introduction

- 1.1 This guidance describes the role of the Case Manager and sets out the obligations of a Case Manager in disciplinary proceedings carried out by the Costs Lawyer Standards Board (CLSB) under its Disciplinary Rules and Procedures (DR&P).

### 2 Background and fundamental principles

- 2.1 The CLSB aims to conduct disciplinary proceedings in a manner which promotes the Regulatory Objectives in the Legal Services Act 2007 and is fair, consistent, transparent and proportionate. The Regulatory Objectives that are particularly relevant are:
- Protecting and promoting the public interest
  - Supporting the constitutional principle of the rule of law
  - Protecting and promoting the interests of consumers
  - Encouraging an independent, strong, diverse and effective legal profession
  - Promoting and maintaining adherence to the professional principles
- 2.2 It is also vital that the disciplinary process is defensible; that is, the process can withstand a legal challenge by individuals involved in it. Making sure the process is fair, consistent, transparent, proportionate, timely and confidential<sup>1</sup> increases the likelihood that it will withstand legal challenge.
- 2.3 In addition, the CLSB must at all times maintain its independence from the Association of Costs Lawyers. The Legal Services Board's Internal Governance Rules 2019 (IGR) require each approved regulator to: "have arrangements in place to separate its regulatory functions from any representative functions it may have and maintain the independence of its regulatory function". Further information on this can be found in the CLSB's IGRs Quick Guide, in the Internal Handbook.
- 2.4 A Case Manager must have regard to these fundamental principles in undertaking their role.

---

<sup>1</sup> Hearings are generally held in public and disciplinary decisions may be published under DR&P 3, but proceedings are not generally made public until the hearing stage.

### 3 Case Manager role

3.1 A Case Manager is defined in the DR&P as a “person appointed by the CLSB to assist in the administration of a disciplinary matter at level two or three, who may be a person employed by the CLSB”.

3.2 As stated in the definition, the Case Manager assists parties with administrative and procedural elements of a case such as convening the level two Conduct Committee stage (and if needed, the level three Conduct Appeal Committee stage). The Case Manager’s role is restricted to these administrative functions and a Case Manager is not involved in deliberations or substantive determinations of the relevant Committee. This is illustrated by the responsibilities of the Case Manager under the DR&P (see below) and also by the fact that the Case Manager essentially serves all parties in the proceedings. The Case Manager does not determine the outcome of proceedings at any level.

3.3 The difference between the functions of the Case Manager and those of the Committees at levels two and three can be seen as follows:

Level	Case Manager	Conduct Committee	Conduct Appeal Committee
Two	<ul style="list-style-type: none"> <li>• Advises Complainant that Conduct Committee is to be convened</li> <li>• Gives notice to Costs Lawyer of Conduct Committee</li> <li>• Fixes the date of the hearing</li> <li>• Seeks to establish which facts are agreed between CLSB and Costs Lawyer</li> <li>• Assists Conduct Committee to source legal advice</li> <li>• Notifies Costs Lawyer of order made by Conduct Committee</li> <li>• Notifies Complainant of publication of Conduct Committee’s order</li> </ul>	<ul style="list-style-type: none"> <li>• Takes legal advice (if necessary)</li> <li>• Hears the case of both parties at a public hearing</li> <li>• Determines the outcome in accordance with DR&amp;P 6.5</li> </ul>	
Three	<ul style="list-style-type: none"> <li>• Notifies Complainant of filing of an appeal from Conduct Committee</li> <li>• Fixes the review date</li> <li>• Provides CLSB with a copy of Costs Lawyer’s appeal</li> <li>• Provides Costs Lawyer with any response to the appeal from CLSB</li> <li>• Assists Conduct Committee to source legal advice</li> <li>• Notifies Costs Lawyer, Complainant and CLSB of order made by Conduct Committee</li> </ul>		<ul style="list-style-type: none"> <li>• Takes legal advice (if necessary)</li> <li>• Considers the case of both parties in private on the papers</li> <li>• Determines the outcome in accordance with DR&amp;P 7.3</li> </ul>

## 4 Principles of procedural fairness that could impact administrative matters

4.1 CLSB proceedings must uphold the principles of natural justice. This means that:

- decision-makers must come to the proceedings without bias or a reasonable perception of bias;
- each party has the right to a fair hearing – meaning, in particular, that the subject of the proceedings understands the allegations against them, and has the opportunity to present their case and to hear and respond to allegations;
- reasons are given for decisions;
- there is a right of appeal from initial decisions;
- proceedings take place expeditiously, without jeopardising the fairness of the proceedings.

4.2 The Case Manager contributes to procedural fairness in a number of ways, as follows.

### (a) Time limits and notice requirements

4.3 Timeliness is a fundamental aspect of natural justice. It is therefore vital that all deadlines in the DR&P are adhered to. Failure to do so could leave the disciplinary process open to legal challenge.

4.4 The core timeframes relevant to the disciplinary process are set out in Annex 1 and 2 to this guidance. While the Annexes provide an overview, the Case Manager should refer closely to the specific provisions of the DR&P throughout each stage of disciplinary proceedings.

### (b) Fair hearings

4.5 A key part of procedural fairness is that the subject of disciplinary proceedings understands the case against them and has the opportunity to respond. The Case Manager assists by:

- setting dates for hearings using all reasonable endeavours to accommodate the availability of the Costs Lawyer (DR&P 6.3.4);
- keeping the parties informed by notifying them of hearing dates and other matters within the required deadlines;
- seeking to establish agreed facts, which ensures that hearings are conducted in a timely and transparent manner;
- notifying the Costs Lawyer of the outcome of a hearing and of their right (if relevant) of appeal.

### (c) Discrimination

4.6 The Case Manager must act at all times without discrimination towards a Costs Lawyer who is the subject of proceedings under the DR&P. The relevant Costs Lawyer must be treated in the same manner as all persons subject to such proceedings – and with respect and courtesy – regardless of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, and sexual orientation.

(d) [Independent decision-making](#)

4.7 Section 5 below details how the process for appointing Panel Members ensures that individuals invited by a Case Manager to form a Committee have no actual or apparent conflicts of interest and are independent of the profession’s representative body and the CLSB.

(e) [Adjustments](#)

4.8 In some cases, it is necessary to make adjustments to procedures – for example because a Costs Lawyer, a witness or a Panel Member is a person with a disability and/or is vulnerable – in order to ensure procedural fairness.

4.9 A vulnerable person may be described as someone who “due to their personal circumstances, is especially susceptible to detriment”.<sup>2</sup> This vulnerability “can manifest itself in either physical or mental form (knowingly or otherwise) and is dynamic in nature (short-lived, longer term, sometimes permanent, often fluctuating over time)”.<sup>3</sup> Examples of vulnerability include:

- physical disability
- severe or long term illness
- mental health issues
- caring responsibilities
- suffering cognitive impairment or a sensory impairment such as hearing or sight
- change in circumstances (job loss, bereavement, divorce)
- lack of English language skills

4.10 The CLSB has published a [guidance note](#) in the Costs Lawyer Handbook on identifying vulnerable consumers, which might also be of assistance in considering vulnerability in this context.

4.11 It is important that a Case Manger is attentive to any particular needs and wherever possible tailors the presentation of information, methods of communication, choice of venue and so on, to address those needs. Examples of adjustments that might be required are:

- considering the appropriateness of the venue for a Conduct Committee hearing and, in particular, accessibility for a person with a disability;
- taking into account the presentation of information for a Costs Lawyer with low vision by discussing this with the individual or their representative;
- accommodating additional support for a vulnerable individual in the presentation of their case, such as the presence of a friend or relative;
- conducting all or part of a hearing in private (see DR&P 6.4.3).

4.12 What is important is that the needs of any vulnerable individual are considered and, where appropriate and possible, accommodated. It will often be appropriate to

---

<sup>2</sup> From the Financial Conduct Authority’s definition of a vulnerable consumer.

<sup>3</sup> See the [Personal Finance Society’s Good Practice Guide](#) on meeting the needs of vulnerable clients.

discuss any proposed adjustments with the Chair of the relevant Committee, once appointed.

(f) [Reasons for decisions](#)

- 4.13 Although the Case Manager does not make decisions, it is their responsibility to ensure that the outcomes of hearings are communicated to the Costs Lawyer and the Complainant.

## 5 [Appointing Panel Members](#)

(a) [Appointment criteria](#)

- 5.1 To be appointed, Panel Members must have the requisite skills and experience to carry out their role effectively. The general credentials required of a Panel Member are set out in the CLSB's [Panel Member Appointment Policy and Code of Conduct](#) (PMAP).

- 5.2 Permanent Panel Members can be invited to convene a Conduct Committee at any time, as they have already been assessed by the CLSB as meeting the appointment criteria. When considering which permanent Panel Members to contact, the Case Manager should keep in mind that Panel Members may need to have specific expertise to assist them in understanding unique aspects of a case (over and above the general appointment criteria). Contact details for permanent Panel Members can be found in the CLSB's Operations Files.

- 5.3 It is also possible, under the DR&P and the PMAP, to appoint "ad hoc" Panel Members to serve on a Conduct Committee or Conduct Appeal Committee on a one-off basis. Ad hoc appointments must be publicly advertised and successful applicants must meet the appointment criteria in the PMAP, sign the Panel Member declaration in the PMAP, and enter into a letter of appointment on the CLSB's standard terms.

(b) [Appointing Panel Members to a Committee](#)

- 5.4 The Case Manager must ensure that all aspects of the PMAP are followed when selecting Panel Members to form a Conduct Committee or Conduct Appeal Committee. This means (among other things):

- the availability of permanent Panel Members must be checked before candidates for ad hoc appointments are sought;
- other than in exceptional circumstances, a Conduct Committee or Conduct Appeal Committee should include at least one permanent Panel Member.

The Case Manager should consult the PMAP carefully whenever they undertake duties relating to appointment.

- 5.5 Before appointing a Panel Member to a particular Conduct Committee or Conduct Appeal Committee, the Case Manager should also verify that the appointee does not have a conflict of interest in relation to the subject matter of the proceedings, and should obtain confirmation of that in writing. Examples of conflicts include:

- having an interest in a firm that employs a Costs Lawyer who is the subject of the proceedings;

- being related to, or a friend of, the Costs Lawyer who is the subject of the proceedings;
- being related to, or a friend of, the Complainant in a matter;
- having a financial interest that would be affected by the outcome of the matter.

5.6 In addition, the Case Manager should check that they will not, by appointing a Panel Member, render the CLSB in breach of the IGR, in particular Regulation 5 (Dual Roles) which provides:

*No person, whether remunerated or not, who is involved in decisions relating to regulatory functions may also be involved in the representative functions of the approved regulator, unless that person's role is within a shared service in accordance with Rule 11.*

#### (c) Composition of Committees

5.7 Panel Members are divided into Lay Person Panel Members and Non-Lay Person Panel Members. The definition of a Lay person is taken from Schedule 1 paragraph 2(4) of the Legal Services Act 2007, and a Non-Lay person is construed accordingly. Lay persons are essentially individuals who have never been authorised to conduct reserved legal activity or claims management activity or who have been members of the legal profession in Scotland or Northern Ireland. Anyone who does not fall within this definition is a Non-Lay person.

5.8 Conduct Committees and Conduct Appeal Committees (both of which are convened by the Case Manager) are comprised of:

- two Lay Person Panel Members, one of whom will act as Chair of the Committee; and
- one Non-Lay Person Panel Member.

5.9 Panel Members sitting on a Conduct Committee or Conduct Appeal Committee should have had no prior involvement in the matter which is the subject of the disciplinary proceedings and a person who has been a member of the Conduct Committee in relation to a matter cannot be a member of the Conduct Appeal Committee in relation to the same matter. This is to ensure the independence of their decision making. The only exception to this is that a Lay Person Panel Member who was appointed under DR&P 4.3 to consider matters relating to an interim suspension order may be appointed to the Conduct Committee in relation to that matter.

5.10 Panel Members, however qualified, should not be appointed to a Conduct Committee if they do not have availability to attend the hearing.

## 6 Procedural good practice

### (a) Rooms

6.1 The Costs Lawyer and the CLSB should have access to rooms in which they – along with their representatives and witnesses – can prepare for a hearing in private.

6.2 Witnesses whose evidence has not been agreed and who are giving oral testimony should sit outside the room in which the hearing is being held and should be called by the Case Manager at the point when their evidence is to be given. Witnesses should understand that the CLSB’s representative, the Costs Lawyer (or their representative) and Panel Members have the right to question witnesses.

(b) Administration of oaths

6.3 Any person giving evidence as part of a Conduct Committee hearing should either take an oath or give an affirmation that their evidence is true. The Case Manager should make arrangements for administering oaths and affirmations.

(c) Absence of Costs Lawyer or witness

6.4 It is possible that a Costs Lawyer or witness is unable to attend the hearing on the day for reasons beyond their control. In such circumstances, the matter should be raised by the Case Manager with the Chair of the Committee, who will make a determination as to whether to:

- permit the individual to attend by video call;
- proceed in the absence of the individual, for example if both parties can agree the substance of a witness’ evidence;
- postpone the hearing, and the process for doing so.

(d) Document bundles

6.5 The Case Manager should prepare document bundles for Conduct Committee hearings and Conduct Appeal Committee reviews. The Case Manager should determine in good time prior to the hearing, in consultation with the parties and the Chair of the Committee, whether bundles will be prepared electronically or in hard copy. Electronic bundles might be particularly appropriate where, for example, there is a significant volume of materials.

6.6 The document bundle should include the materials listed in the table below, as appropriate. In relation to the document bundle for the Conduct Appeal Committee, the nature and extent of the materials included in the bundle will depend on the grounds of appeal and whether new evidence (which is admissible in limited circumstances under the DR&P) is relied upon.

<b>Conduct Committee</b>	<b>Conduct Appeal Committee</b>
Notice of appeal from level one decision	Notice of appeal from level two decision
CLSB investigation report	Conduct Committee decision
Skeleton argument	Skeleton argument
Response to skeleton argument	Response to skeleton argument
A case summary and chronology where appropriate	A case summary and chronology where appropriate
All witness statements to be relied on as evidence	All witness statements to be relied on as evidence
Any witness summaries	Any witness summaries
Any expert reports	Any expert reports

Any notices of intention to rely on evidence (such as a photograph) which is not: (a) contained in (or annexed to) a witness statement or expert report; (b) being given orally at the hearing; (c) hearsay evidence.	Any notices of intention to rely on evidence (such as a photograph) which is not: (a) contained in (or annexed to) a witness statement or expert report; (b) being given orally at the hearing; (c) hearsay evidence.
All material evidence that was available to a Lay Person Panel Member who considered matters relating to an interim suspension order in the case	Any material evidence relating to an interim suspension order that is relevant to the appeal
Summary of facts not agreed	Summary of facts not agreed
Any order made in advance of the hearing, such as an interim suspension order or directions	Any order made following the level one decision, and any other procedural history relevant to the appeal
Application for hearing to be held in private	Application for hearing to be held in private
Any other necessary documents	Any other necessary documents

- 6.7 Each bundle should be paginated (continuously) throughout and indexed with a description of each document and the page number. For hard copy bundles, where the total number of pages is more than 100, numbered dividers should be placed at intervals between groups of documents. For electronic bundles, links/bookmarks should be created from the index to each document.
- 6.8 A hard copy bundle should normally be contained in a ring binder or lever arch file. Where more than one bundle is supplied, they should be clearly distinguishable, for example by different colours or letters. An electronic bundle should normally be supplied as a password protected PDF, or series of PDFs where it is appropriate to distinguish between bundles. In either case, if there are numerous bundles, a core bundle should be prepared containing the key documents essential to the proceedings, with references to the supplementary documents in the other bundles.
- 6.9 If a document to be included in the hearing bundle is illegible, an agreed typed copy should be included, suitably cross-referenced.
- 6.10 The Case Manager should ascertain the extent to which the contents of the hearing bundle are agreed. The parties should also agree where possible:
- that the documents contained in the bundle are authentic;
  - that documents in the bundle may be treated as evidence of the facts stated in them.
- Where it is not possible to agree the contents of the bundle, a summary of the points on which the parties are unable to agree should be included.
- 6.11 The originals of documents contained in the bundle should be available at the hearing where their authenticity has been brought into question.

6.12 The Case Manager should supply identical bundles to all the parties, to Panel Members, and for the use of witnesses.

(e) [Legal advisers](#)

6.13 The Conduct Committee and Conduct Appeal Committee may seek legal advice in order to consider particular points of law and to assist in deliberations. In such circumstances, the Chair of the Committee may ask the Case Manager to assist in sourcing appropriate advice (DR&P 6.4.9 and 7.3.5).

6.14 The Case Manager should apply the same general principles when seeking legal advice as when appointing Panel Members and convening Committees regarding experience and expertise, conflicts of interest, availability (usually immediate availability will be required) and compliance with the IGR. The Case Manager should advise the Chair of the Committee in the event that it becomes clear that obtaining the legal advice will necessitate an adjournment of the hearing.

## 7 [Assisting the parties and the public at a hearing](#)

7.1 The Case Manager should assist the parties (including the Costs Lawyer and witnesses) by briefing them in advance in terms of what they should expect to happen before, during and after the hearing. This could be done by preparing instructions for attendees. Attendees should also be informed of any health and safety procedures for the hearing venue.

7.2 In providing assistance, the Case Manager must take care never to discuss a witness' evidence with them; any assistance must relate to procedural and practical matters only.

7.3 The Case Manager should prepare the hearing room, making it clear where all of the parties will sit, setting out bundles (if hard copy bundles are used) and ensuring all technology is operating effectively. In advance of the hearing, the Case Manager should ask if any of the parties require special adjustments (see section 4 above).

7.4 The Case Manager should be available during the hearing to assist parties with administrative needs and answer procedural questions.

7.5 Members of the public are permitted to attend and observe hearings (DR&P 6.4.2) but they are not permitted to speak at the hearing. Should any member of the public behave in a manner that is unacceptable, the Committee may ask the person to leave. The Case Manager should ensure that they do so, but should never put themselves (or others) at risk of harm. If the Case Manager requires assistance in dealing with a member of the public, they should notify the Chair immediately; the hearing may be adjourned while the situation is managed.

7.6 In preparing for a hearing, and during the hearing, the Case Manager should be familiar with the CLSB's Disaster Recovery and Business Continuity Plan, particularly the Case Manager's role within that plan in relation to ongoing disciplinary matters. The current version of the Disaster Recovery and Business Continuity Plan is available

in the Internal Handbook. Hard copies are also held by the Administration Manager, CEO and Chair of the CLSB for use in an emergency.

## 8 Confidentiality and data protection considerations

- 8.1 All records relating to disciplinary proceedings are confidential. It is essential that confidentiality is maintained before any hearing in order to ensure procedural fairness and protect the reputation of the Costs Lawyer. The Case Manager should be mindful of confidentiality at all times.
- 8.2 In relation to disciplinary hearings, Conduct Committee hearings are generally held in public (DR&P 6.4.2). However, in certain circumstances, it may be appropriate for all or part of the hearing to be held in private. Regardless of whether the hearing is in private or in public, the Case Manager should remind witnesses of the need to maintain confidentiality in relation to the hearing. Conduct Appeal Committees, unlike Conduct Committees, meet in private and consider appeals on the papers as a matter of course.
- 8.3 The fact that a Conduct Committee hearing will take place is not usually confidential. The Case Manager should (not less than 14 days before a hearing) arrange for a notice to be published on the CLSB website that a Conduct Committee has been convened. This notice should state the name of the Costs Lawyer, as well as the date, time and location of the hearing (DR&P 6.4.1).
- 8.4 In addition, disciplinary decisions are not usually confidential. Details of what the CLSB will publish in relation to disciplinary matters can be found in the CLSB's [policy statement on publication of disciplinary decisions](#).
- 8.5 In addition to maintaining confidentiality, the Case Manager should be familiar with, and comply with, the CLSB's Data Protection Manual, which can be found in the Internal Handbook. The CLSB's [Privacy Policy](#) also contains information on how personal data will be used in the context of disciplinary proceedings.

## 9 Escalation of matters

- 9.1 In certain circumstances, it will be necessary for the Case Manager to escalate matters within the CLSB or the Conduct Committee. These circumstances are likely to raise issues relating to the fairness of proceedings, practical matters which jeopardise the proceedings or concerns regarding the Costs Lawyer.
- (a) **Fairness**
- 9.2 Any issue which jeopardises the fairness of proceedings should be raised immediately with the CLSB if it arises prior to a Committee being convened, or otherwise with the Chair of the relevant Committee. Examples of such issues include:
- the Case Manager becoming aware that an appointed Panel Member has a conflict of interest that was not disclosed;
  - a breach of confidentiality relating to the proceedings;

- the CLSB not adhering to the deadlines within the DR&P, jeopardising the ability of the Costs Lawyer to understand the allegations made against them and respond to them.

#### (b) Practical matters

9.3 Practical difficulties should also be escalated to the CLSB or Committee Chair, as appropriate. Examples of practical difficulties include:

- inability to source Panel Members or legal advisers with the requisite expertise to deal with the particular case;
- failure of the Costs Lawyer or a witness to attend a hearing for reasons beyond their control;
- a need to adjust processes under the DR&P to account for exceptional circumstances, such as the coronavirus pandemic.

#### (c) Concerns regarding the Costs Lawyer

9.4 Disciplinary hearings can be stressful for all parties involved, and particularly for the Costs Lawyer. The Case Manager will be liaising with the Costs Lawyer or their representative and, in the course of that correspondence, might become concerned for the wellbeing of the Costs Lawyer and their ability to respond to the allegations made against them.

9.5 Whilst it is not the responsibility of the Case Manager to ensure the wellbeing of the Costs Lawyer, should they become concerned about the Costs Lawyer's ability to present their case this should be raised with the CEO of the CLSB on a confidential basis prior to the hearing. If such concerns arise immediately prior to, or during, a hearing, the Chair of the relevant Committee should be consulted.

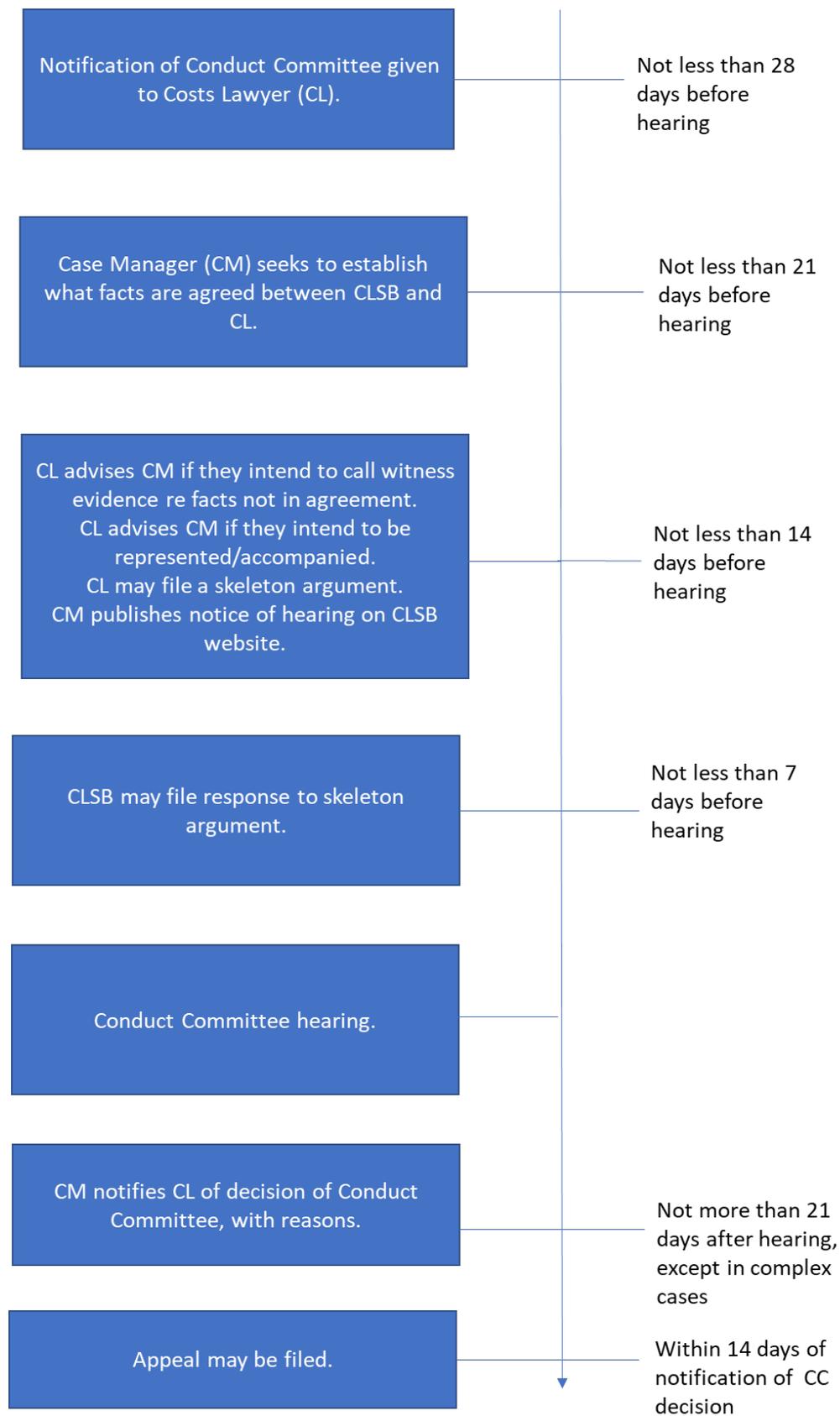
9.6 Similarly, if the Case Manager is concerned for the safety of CLSB staff or Panel Members due to the behaviour of the Costs Lawyer (or others), such matters should be escalated to the CEO of the CLSB.

## 10 Inability to fulfil duties

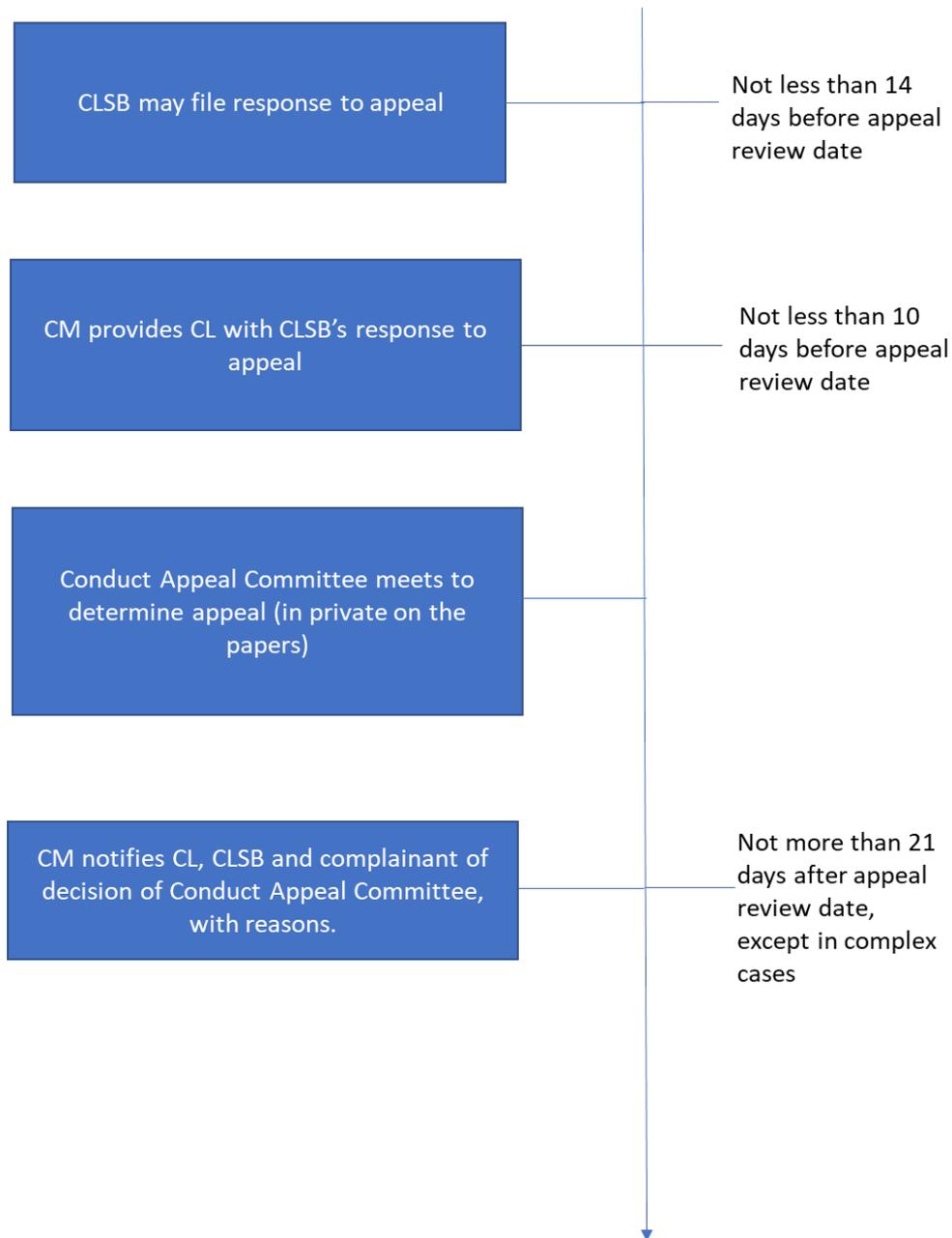
10.1 If the individual who is acting as Case Manager in relation to particular disciplinary proceedings is temporarily unavailable – for example, due to short term ill health – the CEO of the CLSB will fulfil the Case Manager's functions until that individual is available again.

10.2 If the individual becomes unavailable on a longer-term basis, the CLSB will appoint an alternative Case Manager as soon as possible, with the aim of minimising disruption for those involved in the proceedings.

## Annex 1 – timeline for Conduct Committee hearings



## Annex 2 – timeline for Conduct Appeal Committee reviews





---

## Purpose of this guidance

1. This guidance is for Costs Lawyers seeking to recommend and arrange After the Event (ATE) insurance for their clients.
2. The regulatory context for recommending and arranging ATE insurance is complex and sits within the broader context of the regulation of financial services. This guidance first explains the concept of ATE insurance and then sets out the circumstances in which ATE insurance can be recommended and arranged by Costs Lawyers.

## What is ATE insurance?

3. ATE insurance – sometimes referred to as litigation protection insurance – is a type of insurance policy that provides cover for certain legal costs and expenses incurred in the pursuit or defence of litigation or arbitration in England and Wales.
4. Unlike other forms of legal expenses insurance, an ATE insurance policy is purchased after a legal dispute has arisen. ATE insurance can be purchased for nearly all types of litigation with the exception of disputes relating to matrimonial or criminal law, although there are some situations in which cover might not be available for commercial reasons (such as in cases involving novel legal issues). It is normally arranged by lawyers on behalf of their clients.

## Are the costs of ATE insurance recoverable?

5. The general rule is that where an ATE insurance policy was taken out on or after 1 April 2013, insurance premiums are not recoverable from an opponent except in limited circumstances (for example, in disputes relating to clinical negligence, insolvency or defamation).
6. Also, as a general rule, claimants no longer have to notify defendants of the details of an ATE insurance policy that has been purchased in relation to a dispute. However, the court may order disclosure of such details in certain situations. For

---

example, a claimant might be required to disclose the identity of a commercial litigation funder or insurer in the context of a security for costs application.

## Who can recommend or arrange ATE insurance for a client?

7. Certain activities relating to recommending and arranging insurance are regulated. The Insurance Distribution Directive (IDD) defines both the scope of the regulated activities and the requirements for carrying out those activities. The IDD was implemented by amendments to the Financial Services and Markets Act (FSMA), the Regulated Activities Order (RAO) and the Financial Conduct Authority's (FCA's) Handbook. Since the IDD has been implemented in the domestic law of England and Wales, the position is not affected by the UK's exit from the European Union.
8. The IDD defines "insurance distribution" as the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. The detail of what constitutes a regulated activity is technical and is set out in the RAO. Guidance relating to general insurance (including ATE insurance) can be found in the [FCA Handbook](#), particularly chapter 5 of the FCA's Perimeter Guidance Manual (PERG) which contains specific guidance on insurance distribution activities.
9. Any person intending to conduct insurance distribution activities in relation to ATE insurance must either be:
  - exempt from the need to be authorised by the FCA; or
  - authorised by the FCA.

## Exemptions from the need to be authorised by the FCA

10. There are two exemptions from the need to be authorised by the FCA that might be relevant to a Costs Lawyer, namely the exemptions for:
  - certain regulated professionals; and
  - appointed representatives.

---

## **Exempt professional firms**

11. Under Part XX of FSMA, firms and sole practitioners authorised by certain regulators can conduct insurance distribution activities (and other financial services activities) without the need to be authorised by the FCA. These regulators (which include the Solicitors Regulation Authority (SRA), the Council for Licensed Conveyancers (CLC) and the Institute of Chartered Accountants of England and Wales) are known as “designated professional bodies”.
12. Firms and sole practitioners authorised by designated professional bodies can conduct financial services activities without being authorised by the FCA provided that:
  - they fall within the scope of the exemption (which might not include a licensed ABS – see further below);
  - they comply with the rules of their designated professional body for the conduct of the financial services activity; and
  - the financial services activity arises out of, or is complementary to, the provision of a particular professional service to a particular client (section 332(4) of FSMA).
13. Firms, including law firms authorised by the SRA, that carry out insurance distribution activities on this basis are referred to as “exempt professional firms” (EPFs). Costs Lawyers who are regulated by the CLSB will not benefit from this exemption through their regulatory status, because the CLSB is not a designated professional body. However, they might be able to take advantage of the exemption if they work within an EPF. Paragraph 25 below provides further information about what this means if you are employed by an SRA regulated firm.

## **Appointed representatives**

14. A firm can also be exempt from the need for authorisation by the FCA if it is an appointed representative (AR) of a firm authorised by the FCA (such as an insurance company). Essentially, this means that the authorised firm – known as the principal – takes regulatory responsibility for the AR, and the AR conducts its

---

financial services activities under the umbrella of the principal's authorisation. This is often an attractive option for a firm that does not want to apply for authorisation in its own right, bearing in mind the regulatory burden which that brings.

15. The principal must notify the FCA of its intention to appoint an AR and have undertaken due diligence to satisfy itself of the fitness and propriety of the intended AR. By the same token, you should undertake due diligence on the standing of any principal with whom you consider working, to ensure the firm's ethics and manner of doing business align with yours.
16. If you are an AR, you must comply with the FCA's Handbook. Your principal takes responsibility for ensuring that you have complied with these requirements in the context of the FCA's regulatory framework. However, if you are an AR, you will be responsible for demonstrating to the CLSB that you have met any regulatory obligations and professional standards relating to your own conduct if the need arises (for example, in the context of a complaint). You should inform the CLSB if you become an AR.
17. It is also possible to be an "introducer appointed representative", in which case your activities would be limited to:
  - effecting introductions to your principal; and
  - distributing certain types of marketing material (known as financial promotions) that relate to products available from your principal.Being an introducer AR means that you can do less, but in turn have fewer regulatory responsibilities.

## Authorisation by the FCA

18. A firm, including a sole practitioner with an unincorporated business, can apply to be authorised by the FCA. When the FCA receives a completed application, they have six months to decide whether or not to authorise the firm. If you apply for authorisation, you should notify the CLSB of the outcome.

- 
19. If you apply to the FCA and are authorised, you must comply with the relevant provisions in the FCA's Handbook, including conduct of business rules, capital resources and professional indemnity requirements, and reporting requirements. You will also need to pay annual fees.

### Is there an alternative to being authorised or exempt?

20. It is possible for you to explain to a client, in general terms, the nature and availability of ATE insurance. Indeed, it may be in your client's best interests that you do so. In such circumstances, you could suggest that your client investigates their options and takes the advice of an insurance broker authorised by the FCA if they are interested in purchasing a policy.
21. However, you must be careful not to recommend a specific product (that is, a product offered by a particular insurer) to your client. To protect yourself and your client, you should avoid providing any information about specific products. Conducting regulated insurance activities without the necessary authorisation (or a relevant exemption) is a criminal offence.

### I am a sole practitioner Costs Lawyer. Can I recommend or arrange ATE insurance for a client?

22. As a sole practitioner, you can recommend or arrange an ATE insurance policy for a client if you:
- act as an AR of an authorised principal; or
  - are authorised by the FCA to undertake insurance distribution activities.
23. Information about these options is set out at paragraphs 14 to 19 above.

### I am a Costs Lawyer working for a costs law firm. Can I recommend or arrange ATE insurance for a client?

24. Yes, if your employer is authorised by the FCA to undertake insurance distribution activities or is an AR of an authorised principal.

---

I am a Costs Lawyer working for a firm of solicitors regulated by the Solicitors Regulation Authority (SRA). Can I recommend or arrange ATE insurance for a client?

25. As explained at paragraphs 11 to 13 above, the SRA is a designated professional body under section 326 of FSMA. This means that firms authorised by the SRA are permitted to undertake certain financial services activities – including the distribution of insurance policies – without being regulated by the FCA, although they still need to be registered with the FCA. The scope of permitted activities is governed by the SRA’s Financial Services (Scope) Rules. In addition, some SRA regulated firms, which conduct more extensive financial services activities, have opted to be dual-authorised by both the SRA and the FCA.
26. If you work for an SRA regulated solicitors’ firm and intend to offer ATE insurance, you must ensure that your firm has notified the SRA of its intention to conduct financial services activities, is registered with the FCA and complies with the SRA’s Financial Services (Conduct of Business) Rules, or alternatively is authorised directly by the FCA. You can check whether your firm is on the [FCA’s financial services register](#) by visiting the FCA’s website.

I am a Costs Lawyer working for a firm licensed as an Alternative Business Structure (ABS). Can I recommend or arrange ATE insurance for a client?

27. This depends on the application of FSMA to this type of entity, the approach of the body that regulates the ABS and the consequent terms of the ABS licence. Please refer to the regulator of your employer for further guidance.

What elements of the CLSB Code of Conduct apply to the offering of ATE insurance?

28. Although the CLSB does not regulate insurance distribution, including the recommending and arranging of ATE insurance, you should be mindful of your duties in the CLSB Code of Conduct when carrying out such activities.

- 
29. There are seven principles that you must uphold as a Costs Lawyer to ensure public confidence in you and the profession. The following principles are most relevant to recommending or arranging ATE insurance. You must:
1. Act with integrity and professionalism.
  3. Act in the best interests of your client.
  4. Provide a good quality of work and service to each client.
30. You must not allow any arrangement that you enter into for the purpose of offering ATE insurance to your clients – including an arrangement to act as an AR – to jeopardise your independence or the quality of your service.
31. In offering ATE insurance to your clients, you must always act in the best interests of your client and avoid conflicts between your client’s interests and your own interests, as well as your client’s interests and the interests of your principal if you are acting as an AR. Clients should be given sufficient information to make an informed decision about their insurance options, including details of your relationship with a principal where relevant. If you are not confident that you can provide such information yourself, you should recommend that your client seeks independent advice before purchasing (or choosing not to purchase) an ATE insurance policy.
32. While the CLSB does not directly supervise compliance with the FCA’s regulatory requirements that apply to individual Costs Lawyers from time to time, a material breach of the FCA’s rules is likely to demonstrate a lack of integrity and professionalism, falling short of the standards required under the CLSB Code of Conduct.

**END**

## **GUIDANCE NOTE: ATE INSURANCE**

### **Regulator: Costs Lawyer Standards Board**

**Issued: 10 April 2013**

These notes seek to offer a greater understanding of what a Costs Lawyer can and cannot do in relation to ATE insurance provision and the reasons why. Reference in this guidance to a Costs Lawyer refers to a Costs Lawyer with a current practising certificate.

#### **What is ATE insurance?**

ATE insurance is short for After the Event Insurance, it is also sometimes referred to as "litigation protection insurance". ATE insurance is a type of legal expenses insurance policy that provides cover for the legal costs incurred in the pursuit or defence of litigation and arbitration. The policy is purchased after a legal dispute has arisen. ATE insurance can be purchased for nearly all areas of litigation with the exception of matrimonial or criminal law.

#### **Are the costs of ATE insurance recoverable?**

The general rule is that where an ATE insurance policy was taken out on or after 1 April 2013 insurance premiums are no longer recoverable from an opponent except in limited circumstances e.g. clinical negligence, insolvency & defamation.

#### **What are the practical implications for a client with an ATE insurance policy?**

ATE insurance constitutes a "funding arrangement" and therefore, in accordance with CPR 44.15, notification must be filed at court and served on the other parties to the litigation so that all parties are aware of the existence of the ATE policy.

#### **I am a sole practitioner Costs Lawyer can I source, recommend, put in place, take commission for an ATE policy for a client?**

Only if you are registered with and authorised by either the Financial Conduct Authority (FCA) for solo regulated firms or the Prudential Regulation Authority (PRA) for dual regulated firms. Both these bodies replaced the Financial Services Authority on 1 April 2013. An application to either carries a fee and if successful, there will be annual reporting arrangements and an annual fee payable to FCA/PRA based on permissions/ATE income.

Without FCA/PRA registration and authority a Costs Lawyer may therefore only recommend to a client that they look into such a policy via an insurance broker registered and authorised by the FCA. That broker will then source the best insurance options for a client in order to enable them to make an informed decision based on the advice of an FCA/PRA regulated professional.

**I am a Costs Lawyer working for a Costs Lawyer firm can I source, recommend, put in place or take commission for an ATE policy for a client?**

Only if your firm is registered with and authorised by either the FCA or PRA (see above). The Financial Services and Markets Act 2000 (“FSMA”) sets out that any person wishing to carry on one or more Regulated Activity by way of business must apply for authorisation unless they can abide by the terms of exclusion or are exempt.

Regulated Activities: In relation to ATE insurance:

- effecting or carrying out contracts of insurance as principal; and
- assisting in the administration and performance of a contract of insurance (insurance mediation activity).

Exclusions: Provisions that turn activities that would otherwise be regulated activities into unregulated activities, examples include introducer exclusion, overseas person’s exclusion. These exclusions would not apply to Costs Lawyers.

Exempt Professional Firms: Some professional firms are permitted to perform limited Regulated Activities in addition to their normal professional services e.g. solicitors, accountants and chartered surveyors without authorisation, however:

- they must be members of a professional body which sets the standards they have to meet by way of supervision and regulation; and
- the firm must be covered by complaint and compensation arrangements of their appropriate professional body as clients of an Exempt Professional Firm will not have access to the Financial Ombudsman Service or the Financial Services Compensation Scheme if things go wrong.

Costs Lawyer firms are not Exempt Professional Firms because:

1. At present CLSB regulates individuals not firms/entities.
2. Compensation arrangements would be too high to be sustainable.

Without FCA/PRA registration and authorisation a Costs Lawyer may therefore only recommend to a client that they look into such a policy via an insurance broker authorised and regulated by the FCA/PRA. That broker will then source the best insurance options for your client in order to enable them to make an informed decision based on the advice of an FCA/PRA regulated professional.

**I am a Costs Lawyer working for a firm of Solicitors regulated by the SRA. Can I source, recommend, put in place or take commission for an ATE policy for a client?**

You will be covered by the rules of the Solicitors Regulatory Authority, please refer to and comply with those rules.

**I am a Costs Lawyer working for a firm licensed as an ABS. Can I source, recommend, put in place or take commission for an ATE policy for a client?**

Please refer to the provider of your employers ABS licence.

---

# Recognition of European Professional Qualifications Rules

---



**31 December 2020 (version 2)**

---

**Costs Lawyer Standards Board**

**CLSB**  
|||

---

## Introduction

These Rules govern the process by which the CLSB will consider an application for recognition of an EEA or Swiss professional qualification as being equivalent to the Costs Lawyer Qualification. A person who makes a successful application under these rules will, despite not having completed the Costs Lawyer Qualification, be entitled to apply for a practising certificate to practise as a Costs Lawyer in England and Wales.

## Definitions

Applicant	A person who makes an Application under these Rules
Application	An application made under these Rules for recognition of a Professional Qualification as being comparable to the Costs Lawyer Qualification in level, content and scope
CLSB	Costs Lawyer Standards Board
Costs Lawyer	A person who, when they hold a valid Practising Certificate, is authorised by the CLSB to carry on the following reserved legal activities: <ul style="list-style-type: none"><li>• The exercise of a right of audience</li><li>• The conduct of litigation</li><li>• The administration of oaths</li></ul>
Costs Lawyer Qualification	The prescribed means of entry into the Costs Lawyer profession as established in the Training Rules and associated course documentation, as they apply at the time the Application is made
EEA	The European Economic Area, with references to an EEA state being a reference to any of the member states of the European Union, Iceland, Liechtenstein or Norway
Practising Certificate	A certificate issued annually allowing a person to practise as an authorised Costs Lawyer and carry on reserved legal activities
Practising Rules	The CLSB's rules and requirements governing the practice of Costs Lawyers and the issue and revocation of Practising Certificates, as they apply at the time an Application is made

Professional Qualification	A qualification attested by a diploma, certificate or other evidence issued by an authority in the UK or in an EEA state or Switzerland certifying successful completion of professional training obtained mainly in the UK or one or more EEA states or Switzerland
Register	The register of Costs Lawyers who hold a current Practising Certificate as published on the CLSB website
Regulatory Arrangements	The CLSB Handbook (including the Code of Conduct) and associated CLSB guidance, policies and procedures as amended from time to time
Training Rules	The CLSB's rules and requirements for training and qualification, as they apply at the time an Application is made
UK-Swiss Citizens' Rights Agreement	The agreement between the UK and the Swiss Confederation on citizens' rights following withdrawal of the UK from the European Union and the Free Movement of Persons Agreement
2015 Regulations	The European Union (Recognition of Professional Qualifications) Regulations 2015, as amended

## **RULE 1: Applicability of these Rules**

- 1.1 These Rules implement the provisions of the 2015 Regulations, which have been amended by the Recognition of Professional Qualifications (Amendment etc) (EU Exit) Regulations 2019 to account for the UK's exit from the European Union on 31 January 2020 and the end of the associated transition period on 31 December 2020.
- 1.2 In relation to Applicants who are not Swiss nationals within the scope of the UK-Swiss Citizens' Rights Agreement, these Rules take effect from 11pm on 31 December 2020 and replace the CLSB's Rules Relating to the Recognition of the Costs Lawyer Qualification Within the EU.

- 
- 1.3 In relation to Applicants who are Swiss nationals within the scope of the UK-Swiss Citizens' Rights Agreement, these rules take effect from 11pm on 31 December 2024. The CLSB's Rules Relating to the Recognition of the Costs Lawyer Qualification Within the EU continue to have effect in relation to Swiss nationals until that time.
  - 1.4 A person must hold a Professional Qualification to be eligible to make an Application.
  - 1.5 Third country qualifications (that is, non-EEA and non-Swiss qualifications) will not be considered under these Rules. However, an Applicant may be a citizen of any country.

## **RULE 2: Recognition of professional qualifications**

- 2.1 The CLSB is the approved regulator of Costs Lawyers in England and Wales (under the delegated authority of the Association of Costs Lawyers) pursuant to the Legal Services Act 2007 and is a competent authority for the purposes of the 2015 Regulations.
- 2.2 In accordance with Practising Rule 1.1(a), no person shall be entitled to practise as a Costs Lawyer in England and Wales unless they (amongst other things) have qualified as a Costs Lawyer in accordance with the Training Rules. The Training Rules provide for qualification as a Costs Lawyer by completion of a training course known as the Costs Lawyer Qualification.
- 2.3 These Rules allow an Applicant to make an Application to the CLSB for recognition of a Professional Qualification as being comparable to the Costs Lawyer Qualification in level, content and scope, and thus sufficient to meet the requirements of Practising Rule 1.1(a).
- 2.4 An Applicant may make an Application on the basis that they hold multiple Professional Qualifications which, together, are comparable to the Costs Lawyer Qualification in level, content and scope. In such cases, references to a

---

Professional Qualification in these Rules should be read as a reference to the multiple Professional Qualifications upon which the Applicant seeks to rely.

- 2.5 To facilitate the comparison of a Professional Qualification with the Costs Lawyer Qualification by a prospective Applicant, the CLSB will publish details of the Costs Lawyer Qualification on its website.
- 2.6 Upon a successful Application, an Applicant will become eligible to apply for a Practising Certificate, following which their name will appear on the Register.
- 2.7 A Costs Lawyer who holds a Practising Certificate must comply with the Regulatory Arrangements.

### **RULE 3: Point of single contact**

- 3.1 The CLSB will act as the point of single contact for the Costs Lawyer profession, in accordance with the description of that role in the 2015 Regulations.
- 3.2 The CLSB will make available all relevant information in relation to the Costs Lawyer profession, the Costs Lawyer Qualification and the requirements, procedures and formalities for making an Application via a dedicated page on its website.
- 3.3 In the event an Applicant requires further information or assistance in making an application, the CLSB will provide such information or assistance. It will do so in collaboration with the UK's national information centre for professional qualifications where appropriate. For this purpose, the CLSB can be contacted using the details on the contact page of its website.
- 3.4 The CLSB will use all reasonable endeavours to respond to a request for information or assistance from an Applicant or prospective Applicant within five working days of receipt of the request by the CLSB.

---

## **RULE 4: The assessment process**

- 4.1 An Application must be made to the CLSB using the electronic form provided on the CLSB website. Where a prospective Applicant is unable to use that form due to a disability, the CLSB will work with the Applicant to identify appropriate reasonable adjustments to facilitate making an Application.
- 4.2 An Applicant must provide the information requested in the electronic form and pay the application fee as prescribed by the CLSB from time to time. The requested information will include at least the following in relation to the Applicant:
- (a) a copy of evidence of their Professional Qualification, such as a diploma or certificate;
  - (b) a copy of any documents associated with their Professional Qualification, such as documents formally recognising their training or experience;
  - (c) information and evidence to enable the CLSB to determine the level, content and scope of their Professional Qualification, including any training and experience elements;
  - (d) information relating to their fitness to practice, professional standing and financial standing.
- 4.3 Information and evidence must be provided in the English or Welsh language. Where original documents are not in English or Welsh, an official translation must be provided.
- 4.4 The CLSB will acknowledge receipt of an Application in writing within one month of receipt. If an Application is considered to be incomplete in any respect, the CLSB will notify the Applicant of this when acknowledging receipt and invite the Applicant to submit further information in order to complete the Application.
- 4.5 Once the Application is complete, the CLSB will consider the Application as soon as reasonably practicable and will advise the Applicant in writing of the likely timeframe for determining the Application, based on the CLSB's initial assessment of the Application's complexity. In all cases, a decision will be made no later than four months from receipt of a complete Application.

---

4.6 The CLSB will assess the level, content and scope of the Applicant's Professional Qualification against the level, content and scope of the Costs Lawyer Qualification to determine whether they are comparable. In making this assessment, the CLSB will consider at least the following factors:

- (a) Content: Has the training that the Applicant received covered substantially similar matters (including knowledge, skills and competencies), or achieved substantially similar learning outcomes, to the Costs Lawyer Qualification?
- (b) Scope: Does the Applicant's Professional Qualification relate to the carrying out of activities of a substantially similar kind to the reserved legal activities that Costs Lawyers are authorised to carry out?
- (c) Scope: Does the Costs Lawyer Qualification involve training in areas that do not form part of the Applicant's Professional Qualification?
- (d) Level: Is the academic level of the Applicant's Professional Qualification equivalent to that of the Costs Lawyer Qualification?

4.7 In relation to the supervised practice element of the Costs Lawyer Qualification, the CLSB will:

- (a) recognise professional traineeships that have been carried out to a comparable standard in an EEA state or Switzerland; and
- (b) take account of traineeships that have been carried out to a comparable standard in a third country,

where the professional traineeship has been undertaken over a period of not less than three years in total (not necessarily consecutively) and has been supervised by one or more legal practitioners authorised to practise in England and Wales or in the country where the traineeship was carried out.

4.8 The CLSB may request additional information, documents or evidence from the Applicant at any time during the process of considering an Application.

## **RULE 5: Justified doubt**

5.1 The CLSB may, in the event of justified doubt, request from an EEA or Swiss competent authority at any time during the process of considering an Application one or more of the following:

- 
- (a) confirmation of the authenticity of the evidence of a Professional Qualification awarded in that EEA state or Switzerland;
  - (b) where evidence of a Professional Qualification includes training received in a different country to that in which the Professional Qualification was awarded, verification of matters relating to that training as set out in Regulation 39 of the 2015 Regulations;
  - (c) confirmation that the Applicant is not suspended or prohibited from the pursuit of the profession as a result of serious professional misconduct or conviction of criminal offences relating to the pursuit of any of the Applicant's professional activities.
- 5.2 If the relevant EEA or Swiss competent authority does not provide the requested information before expiry of the time for notifying the Applicant of the outcome of the Application, the CLSB may refuse the Application.
- 5.3 The CLSB may request certified copies of any documents provided by the Applicant in support of their Application, or confirmation by others means of the authenticity of such documents, in the event of justified doubt or as otherwise necessary.

## **RULE 6: Outcome of an Application**

- 6.1 The outcome of an Application will be a decision that either:
- (a) the Applicant's Professional Qualification is comparable to the Costs Lawyer Qualification, in which case the Applicant will be deemed to meet the requirement in Practising Rule 1.1(a); or
  - (b) the Applicant's Professional Qualification is not comparable to the Costs Lawyer Qualification.
- 6.2 The CLSB will notify an Applicant in writing of its decision within four months of receipt of a complete Application.
- 6.3 The CLSB will set out the reasons for its decision in writing and will advise the Applicant of their right to appeal.

- 
- 6.4 In accordance with the 2015 Regulations, failure by the CLSB to make a decision within four months of receiving a complete Application will be deemed to be a decision that the Applicant's Professional Qualification is not comparable to the Costs Lawyer Qualification.
- 6.5 Applicants may appeal a decision (including a deemed decision under Rule 6.4) on a matter of fact or law (or both) to the County Court within four months of being notified of the decision, or at a later date with the permission of the County Court. The County Court may, for the purposes of determining the appeal:
- (a) authorise the Applicant to practise as a Costs Lawyer and impose any conditions on practising that may be imposed by the CLSB; or
  - (b) refer the matter to the CLSB with such directions as the County Court sees fit.

## **RULE 7: Title**

- 7.1 There are no designatory letters for the Costs Lawyer Qualification and there is no statutory restriction on use of the Costs Lawyer title, save that an unauthorised person must not hold themselves out as being a regulated Costs Lawyer authorised to carry out reserved legal activities or otherwise mislead consumers.
- 7.2 A successful Applicant may use their home state professional title or designatory letters in addition to the title of Costs Lawyer, however any title or designatory letters must be used in a way that does not mislead consumers and should indicate the country in which the Professional Qualification was attained.

## **RULE 8: Sharing information**

- 8.1 Applicants should be aware that the CLSB has certain obligations under the 2015 Regulations to share information and statistics relating to Applications.
- 8.2 The CLSB will collate information and statistics relating to Applications received and decisions taken. It will provide the information and statistics to the UK government upon request.

- 
- 8.3 The CLSB will maintain and publish a register of successful Applicants.
- 8.4 The CLSB will co-operate fully with the UK's national information centre for professional qualifications and provide all relevant information about individual Applications to that centre on request (subject to data protection legislation as defined by section 3(9) of the Data Protection Act 2018).
- 8.5 The CLSB may share information about criminal sanctions and disciplinary action with competent authorities and other relevant government bodies in EEA states and Switzerland, and with the European Commission, in accordance with the current law on data protection in England and Wales.
- 8.6 In the event the CLSB is in receipt of information about criminal sanctions or disciplinary action from a competent authority in an EEA state or Switzerland or from the European Commission, the CLSB will (insofar as required by the 2015 Regulations):
- (a) examine the veracity of the circumstances;
  - (b) decide on the nature and scope of the investigations which are required and carry them out accordingly; and
  - (c) inform that competent authority of the conclusions which it has drawn from the information available.

## **RULE 9: General**

- 9.1 In the event of any irreconcilable inconsistency between these Rules and the 2015 Regulations, or in the event that the 2015 Regulations make provision for a matter on which these Rules are silent, the 2015 Regulations will apply.
- 9.2 Costs incurred by an Applicant under these Rules will be met by the Applicant.

**END**

## Summary

1. This report sets out the findings of a three-month review (the Review) undertaken by the Competition and Markets Authority (CMA) to assess the extent to which its recommendations in the 2016 Legal Services market study (the Market Study) have been taken forward and the impact that these changes have had to date. It follows our commitment in the final report of the Market Study to carry out such an assessment.<sup>1</sup>
2. The Review is divided into two parts. The first assesses the impact of the Market Study recommendations aimed at increasing the transparency of price, service and quality information to enable consumers of legal services to make informed choices, the sort of choices that help to drive effective competition. The second assesses the impact of the Market Study recommendations concerning reform of the regulatory framework. For each part, the Review considers progress since the Market Study and sets out the CMA's recommendations for how the interventions may be further developed and monitored in future by the Legal Services Board (LSB), working with the regulatory bodies, and the Government.<sup>2</sup>

### Improving consumer outcomes by increasing transparency

3. The Market Study found that there was not enough information available on price, quality and service to help those needing legal support to choose the best option for them. This limited transparency made it more difficult for consumers to compare providers, thereby weakening competition. This may have contributed to the large differences in the prices charged by different providers for the same services, meaning that some consumers were likely to be paying more than they should. Information shortcomings, including limited consumer understanding of the sector and the lack of transparency offered by providers, also led to some consumers believing they could not afford legal advice and resorting to doing nothing or attempting to resolve their issue themselves. In addition, the Market Study found that consumers could be losing out in the long term due to limited innovation in the provision of legal services.

---

<sup>1</sup> See CMA (2016), [Legal services market study: Final report](#). ('Market Study').

<sup>2</sup> The LSB is the oversight regulator for all approved legal services regulators in England and Wales. The regulatory arms of these other regulators are referred to as the 'regulatory bodies'. As now defined in Rule 2(1) of the LSB (2019), [Internal Governance Rules 2019](#), a regulatory body is one which has been delegated the regulatory functions of an approved regulator. The regulatory bodies are equivalent to the 'frontline regulators' referred to in the Market Study. See paragraphs 2.13 to 2.15.

4. The CMA made several recommendations to the regulatory bodies to improve transparency, including that they:
  - (a) introduce rule changes requiring legal services providers to publish information on price, service, redress and regulatory status ('price and service' information);
  - (b) promote the provision of information on quality by legal services providers and issue guidance for providers on engaging with online reviews;
  - (c) make available relevant information on legal services firms and professionals to consumers, digital comparison tools (DCTs) and other intermediaries; and
  - (d) review and develop the content of the Legal Choices website to enable consumers to navigate the sector more easily and actively promote it through effective marketing to make consumers aware of it.
5. The Market Study anticipated that these measures, taken together, would deliver a necessary step change in transparency, competition and consumer engagement in the legal services sector. However, the CMA recognised that the measures, once implemented, would take time to have an impact on sector outcomes, and might need to be refined or added to progressively over time to enable consumers to make the sorts of informed choices that drive competition.
6. Since the Market Study, all of the regulatory bodies have taken steps to introduce minimum requirements for price and service transparency, mostly through the adoption of regulatory requirements. The result has been a very substantial increase in the availability of such information. For instance, the LSB's recent prices research commissioned jointly with the CMA and Ministry of Justice (MoJ)<sup>3</sup> shows that the proportion of providers surveyed that displayed information on prices online has increased from 11% in 2017 to 73% in 2020. There is also some evidence that more consumers are able to locate the information and are finding it useful. Recent research by the Solicitors Regulation Authority (SRA) found that 67% of recent users of solicitors looked at a provider's website before engaging a provider.<sup>4</sup> However, the Legal Services Consumer Panel (LSCP)'s 2020 tracker survey

---

<sup>3</sup> LSB, CMA (2020), *Prices of Individual Consumer Legal Services in England and Wales 2020: Wave 3 of a survey of prices for commonly used legal services*. ('LSB Prices Research'.)

<sup>4</sup> SRA (2020), *Better Information in the Legal Services Market – Year One Evaluation of the Transparency Rules*. ('SRA Year One Evaluation'.)

found that only 6% of recent users of legal services first heard about price from the provider website.<sup>5</sup>

7. It is important that consumers of legal services have access to information on price, service and quality before purchase so that they can make informed choices. This information is a necessary starting point for allowing consumers to make the sort of informed choices that drive competition. Therefore, we are encouraged by the marked improvement in the availability of price and service information since the Market Study.
8. These improvements in transparency have only recently come into effect, with new rules being implemented by the regulatory bodies from late 2018 onwards. Based on the evidence to date, there has been a limited impact on the intensity of competition between providers and on sector outcomes. In particular, the recent LSB Prices Research finds no evidence yet of a significant change in the level of price dispersion since the implementation of price and service transparency measures and there is limited evidence of increased shopping around. We would expect the current measures to have greater impact over time. However, to ensure they have the best chance of success, we also believe that it is important for the LSB and the regulatory bodies to continue to build on the reforms so far. Furthermore, we believe they should address the other aspects of the transparency remedies that the CMA outlined in its Market Study that have not progressed as much as we would have liked, such as providing more information on quality.
9. First, while the regulatory bodies have all taken steps to introduce greater price and service transparency, levels of compliance with the transparency rules and guidance put in place by some regulatory bodies appear to be fairly low. It is important that regulatory bodies take action to ensure high levels of compliance.
10. Second, the current rules are generally principles-based, and therefore allow providers a significant amount of flexibility in how they provide price and service information to consumers. While this flexibility has some benefits – in terms of allowing adaptation over time or to different contexts – it may make it more difficult for consumers to compare providers. Regulators should now aim to improve the clarity and comparability of information through better promotion of best practice, developing their approaches to monitoring and compliance and through refining the rules and guidance now in place.

---

<sup>5</sup> LSCP (2020), [How consumers are choosing legal services](#). ('LSCP Tracker Survey 2020'.) This is the most recent in a series of tracker surveys carried out annually by YouGov plc on behalf of the LSCP in two parts, on a sample of people who have used legal services in the last two years.

11. Third, several stakeholders submitted that price information alone, without corresponding information on service quality, may not be sufficient to drive effective competition. There has been limited progress by the regulatory bodies on the development of information on the quality of legal services providers in response to the Market Study recommendations. In line with our recommendations, the regulatory bodies have issued guidance to providers on engagement with online reviews. However, only a few providers have adopted their use. Similarly, and unsurprisingly given the limited engagement by providers, consumers appear to have limited trust in reviews and only engage with them to a very limited extent. The LSB is now considering a range of options on quality indicators, following roundtable discussions with the regulatory bodies, the Legal Services Consumer Panel (LSCP), the CMA and the Legal Ombudsman (LeO). This is a key area where further progress is needed, and where we think that the LSB should take the lead in coordinating action by the regulatory bodies.
12. Fourth, there is scope for further measures to enable consumers to engage with the price and quality information that is available online. Intermediaries, such as DCTs, have a key role here. To date, the growth of DCTs in the legal services sector has been very limited and surveys suggest that consumers are using them only to a limited extent. Improvements need to be made to better facilitate the role of DCTs in the sector, including to address the lack of standardised pricing information, limited information on quality indicators and limited engagement with online reviews by both providers and consumers (including the resolution of issues around consumer trust). In addition, while a number of regulatory bodies have introduced digital registers identifying regulated entities and professionals, these only cover basic regulatory information and, as yet, there is no single source for this information covering all regulated legal services as envisaged by the Market Study.
13. There has been progress with the Market Study recommendation to redevelop Legal Choices as a tool for consumers to navigate the sector more easily. In particular, there has been some success in attracting website visits through digital marketing activity and the cross-promotion of Legal Choices by other consumer organisations. However, many of the stakeholders that responded to the call for inputs (CFI) to this Review suggested that more could be done in this area and some suggested that the content on the website could be further improved.
14. Fifth, while we have provided regulators with some suggested approaches and have identified relevant considerations to take into account when developing price, service and quality information, we have not carried out a detailed review and as such we recognise that our recommendations require further development. In order to support the implementation of measures

based on our recommendations, we think that there would be significant value in regulators conducting consumer research and testing to determine what solutions are the most appropriate, and to adapt their interventions over time based on ongoing testing and trialling.

15. Finally, it is clear that material differences in the characteristics of different legal services mean that the scope for greater transparency to drive competition varies across those legal services. Some legal services, such as conveyancing, are relatively commoditised and hence particularly amenable to comparison by consumers across price and quality dimensions. For other legal services, providing clear and transparent information that is sufficient to enable a consumer to judge the likely cost and quality of that service in advance may be more difficult.<sup>6</sup> In our view, there is greater scope to tailor the transparency recommendations to account for these differences across different legal services. It is, of course, important to achieve a base level of transparency across the sector and there has been very material progress towards this objective. However, we consider that it is now appropriate for the regulators to focus their efforts on enhancing transparency further on those legal services where there is scope for increased transparency to have the greatest impact on competition and sector outcomes.
16. Our recommendations aim to build on the progress made by the regulatory bodies to date and to address the factors described above which in our view have been limiting the impact of the previous recommendations on competition and sector outcomes. The aim of these recommendations is to provide a high-level framework to be overseen and developed further by the LSB and implemented by the regulatory bodies. More detail is provided in Chapter 4 of this report.

---

<sup>6</sup> For example, because the full scope of the work required may only become apparent as the legal process evolves. An example would be contentious work, which can vary significantly in scale and complexity.

<b>Recommendations on transparency</b>	<b>Specific actions</b>
Ensure that there are high levels of compliance with the minimum standard of transparency across the legal services sector	<ul style="list-style-type: none"> <li>• Take action to ensure compliance with the current rules on minimum standards of transparency</li> <li>• Review the scope of services covered by the minimum level of transparency</li> <li>• Review the effectiveness of a guidance approach and introduce rules if levels of transparency are low</li> </ul>
Improve the clarity, comparability and prominence of disclosures on providers' websites in relation to price, service, redress and regulatory status	<ul style="list-style-type: none"> <li>• More actively promote best practice in meeting the regulatory rules</li> <li>• Develop monitoring and compliance within the current rules</li> <li>• Enhance the rules for price and service transparency</li> <li>• Drive improvements in product standardisation and pricing</li> </ul>
Improve the provision of information on quality of legal services providers to consumers	<ul style="list-style-type: none"> <li>• Identify, design and implement effective quality indicators</li> <li>• Measures to improve engagement with customer reviews</li> </ul>
Develop initiatives to help consumers engage actively with information on price, service and quality	<ul style="list-style-type: none"> <li>• The introduction of triggers or prompts to encourage shopping around</li> <li>• Improving access to regulatory information, including through the development of a single digital register</li> <li>• Further development of the Legal Choices site</li> <li>• Encouraging participation by DCTs</li> </ul>
Develop an ongoing programme of consumer research and testing to determine the information on price, service and quality that is most useful for consumers	<ul style="list-style-type: none"> <li>• Testing of best practice guidance and formats for price and service transparency to consumers</li> <li>• Testing consumers' understanding of questions and prompts used to gather feedback</li> <li>• Testing to measure the impact of interventions</li> <li>• Testing with vulnerable consumers</li> </ul>

## Regulation

17. The Market Study also found concerns with legal services regulation, stemming from the way that the regulatory framework is structured around professional titles and reserved activities, rather than according to the risk profile of the activities being undertaken. The Market Study found that this has the potential to restrict competition unnecessarily or lead to unnecessary costs for some legal services. For others it may leave a regulatory gap, where consumers are unaware of the risks and lack of protection they face when using unauthorised providers. The Market Study also identified that the complex regulatory structure of multiple regulatory bodies overseen by the LSB may lead to practical difficulties in coordinating regulatory changes. It also highlighted residual concerns about the independence of regulation from the representation of the legal professions.
18. To address these concerns, the Market Study included a series of recommendations to target regulation at legal services activities that posed the greatest risk to consumers, rather than applying regulations solely on the basis of title and reserved activities. These included a recommendation to the MoJ to conduct a review of the regulatory framework, based on a set of principles that were articulated in the Market Study. That review would consider whether wholesale reform was necessary to ensure that regulation was targeted to risk and that issues with the complex regulatory structure were addressed. The Market Study also included more short-term recommendations for the MoJ to consider the case for extending redress to consumers using unauthorised providers; to address the evidence gap we identified by working with other bodies to build evidence on the unauthorised part of the sector; to undertake its planned review of regulatory independence; and for the regulators to take actions to reduce regulatory costs.
19. There has been little progress with these recommendations to date. The Government has acknowledged the case for reform, but a review of the Legal Services Act 2007 (the Act) has not taken place.<sup>7</sup> Our recommendations to review the extension of redress or to systematically gather new evidence on the unauthorised sector have only progressed to a limited extent. The Government has not undertaken its planned review of regulatory independence, although the LSB has since undertaken work on strengthening the Internal Governance Rules (IGRs) that seek to ensure an adequate split between the regulators' regulatory and representative functions.

---

<sup>7</sup> As the Government indicated in its response to the Market Study, it did not consider that it was the right time to consult on legislative change, and it further considered that there was scope to make more progress within the existing framework. See [CMA's Legal Services Market Study - Government Response, December 2017](#).

20. As a consequence, the issues we identified in the Market Study largely remain. In our view there remains a strong case for wholesale reform. If anything, it is stronger now than at the time of the Market Study. This is because there are signs that the unauthorised sector has continued to grow through developments in lawtech<sup>8</sup> and will continue to do so in the future, potentially accelerated by the trend towards greater remote service provision driven by the coronavirus (COVID-19) pandemic. The increasing significance of the unauthorised sector exacerbates the issues arising from a regulatory framework that is aligned with professional titles rather than activities. The need to address this will become more urgent over time.
21. Since the Market Study, the UCL Centre for Ethics & Law has undertaken an independent review of legal services regulation (the IRLSR), led by Professor Stephen Mayson.<sup>9</sup> The IRLSR provides a detailed assessment of how an alternative regulatory regime could work. We are broadly supportive of its proposals, which build on the concerns we identified in the Market Study.
22. In our view the main question now is how to make progress towards the goal of a more risk-based regulatory framework. Our preferred approach would be for the MoJ to carry out a wholesale review in order to reform the Act. However, we believe that in the meantime, there is merit in taking shorter-term steps which deliver reform in stages, where these are consistent with a long-term strategy of moving towards a more risk-based approach.
23. In practice, we think there are at least three actions which could be taken within the existing regime. The first is to address the regulatory gap for unauthorised providers by creating a mandatory public register of unauthorised providers for certain legal services and mandating that these providers offer redress options for consumers. Such a registration model is a relatively low cost and proportionate way of addressing the regulatory gap. It has the additional benefits of providing a framework upon which additional regulatory protections could be added if required and allowing more evidence to be gathered on the potential for harm from using unauthorised providers, which would inform the approach to further reform over time.
24. The second is that the LSB should carry out a review of the reserved activities to better align them to risk. This could reduce the restrictions and

---

<sup>8</sup> For the purposes of this report, in line with the [IRLSR](#), lawtech is defined as 'technology that provides self-service direct access to legal services for consumers. As such, it substitutes for a lawyer's input, and can be experienced by the consumer without the need for any human interaction in the delivery of the service.'

<sup>9</sup> The IRLSR was undertaken by the Centre for Ethics & Law in the Faculty of Laws at University College London. It was intended to explore the longer-term and related issues raised by the CMA Market Study and its recommendations, and therefore to assist government in its reflection and assessment of the current regulatory framework.

unnecessary costs on lower-risk activities, by allowing certain activities to be removed from reservation or for their scope to be redefined to better align with risk. If this review were carried out alongside the introduction of a register, activities removed from reservation could be added to that register in order to safeguard a continued degree of redress for such activities. This review would also help in clarifying what a more risk-based system focused on activities might look like.

25. Finally, on the independence of regulation from professional representation, we understand that significant improvements have been made as a result of the revised IGRs. While we still consider that wholesale reform may be the clearest and most comprehensive way to deal with this issue, we recommend that the LSB evaluate the impact of the revised IGRs before deciding on whether further measures are required and, if so, what they might be.

### **Recommendations on regulation**

We recommend that the MoJ should undertake the review of the current framework for legal services, as recommended in the Market Study.

As part of developing the long-term strategy for the regulation of legal services, we recommend in the short term that:

- The MoJ should create, or empower the creation of, a mandatory public register for unauthorised providers.
- The LSB should carry out a review of the reserved activities.
- The LSB should evaluate the impact of the revised IGRs before deciding on further action.

Kate Wellington  
By e-mail only:



Legal Services Board  
3<sup>rd</sup> Floor, The Rookery  
2 Dyott Street  
London  
WC1A 1DE

T 020 7271 0050

[www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk)

18 December 2020

Dear Kate

### **Regulatory Performance Assessment 2020 – CLSB**

We are now in the closing stages of this year's performance assessment exercise and we are preparing to publish our report.

In line with our general practice, please find attached an **embargoed** copy of the LSB's Annual Regulatory Performance Assessment Report for 2020. Please treat the report as **confidential** ahead of its publication. We intend to publish the report at 10 am on Monday 21 December 2020, after which you are welcome to share the report publicly.

The report follows a similar format to previous years. One aspect that we hope will come through is that we have reflected on the feedback we received at the CEO seminar on 26 November about the way we describe our role and our expectations. In this report we have more clearly placed the emphasis to address "not met" outcomes on the regulatory body, which we have reflected in the recommended actions. This should make it clear that it is for regulatory bodies and their boards to take ownership and responsibility for addressing performance concerns. Our role will be to assess the effectiveness and adequacy of regulatory bodies' responses to the concerns we have identified.

I would also like to thank you for responding to our request to fact-check the draft assessment that we sent to you on 8 December 2020. The final version of your assessment is attached below and in Annex B of the attached report.

The Report confirms our assessment that CLSB is continuing to work towards meeting the remaining 'not met' outcomes RA3, RA4, WL2 and WL4, and that it continues to meet all other outcomes, including WL7, which was introduced this year. We also wish to

acknowledge your cooperative approach to your relationship with us, which I and my colleagues very much appreciate.

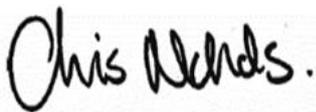
Of course, we will continue to monitor the CLSB's performance against all the outcomes through our relationship management work and other activities.

You will note that the report identifies some general issues, on the broad theme of transparency, which we intend to follow up with all the regulatory bodies through our regular relationship management meetings during 2021:

- regulatory bodies should not only take account of the regulatory objectives in the Legal Services Act 2007 in carrying out their work, making decisions and monitoring performance, they should also actively explain and demonstrate how they do so.
- regulatory bodies should demonstrate a commitment to public accountability and transparency in respect of their decision-making and how their Boards hold their Executives to account.
- regulatory bodies should ensure that information published on their websites is up to date, whether it concerns their policies and guidance or disciplinary actions.

Again, we thank you for your cooperation over the past year, and we look forward to working with you in 2021.

Yours sincerely

A handwritten signature in black ink that reads "Chris Nichols." The signature is written in a cursive, slightly slanted style.

Chris Nichols  
Director, Policy and Regulation

## Regulatory Performance Assessment November 2020 for CLSB

### Costs Lawyer Standards Board (CLSB)

REGULATORY APPROACH					AUTHORISATION					SUPERVISION				ENFORCEMENT						WELL-LED						
1	2	3	4	5	1	2	3	4	5	1	2	3	4	1	2	3	4	5	6	1	2	3	4	5	6	7

Met		Not met - action being taken		Not met - action required	
-----	--	------------------------------	--	---------------------------	--

### Overview

The last regulatory performance assessment of the CLSB was published in August 2020 and reflected the continued progress since its previous assessment in November 2019. As a result of that progress, we have assessed CLSB as now meeting five of the nine outcomes previously assessed as *not met – action being taken* (RA1, RA2, E2, E3 and WL3). We commend CLSB for its efforts.

Further updates on the four remaining not met outcomes are expected in March 2021 and we expect CLSB will wish to focus on demonstrating its delivery against each of these. We will want to see the CLSB provide ongoing evidence that it can meet the not met outcomes and sustain its improvements across all the *met* outcomes. We recognise that as a regulator with a smaller regulatory community (and therefore fewer feepayers among which to distribute the associated costs), CLSB may face particular challenges in continuing its progress. It may wish to consider forming collaborations to share fixed costs and in so doing unlock capability that may not currently be available.

For the avoidance of doubt, the assessments listed below are as updated in July 2020. However, for the purpose of this update we have added an assessment against outcome WL7, which relates to regulatory independence. The CLSB meets this outcome.

## Met

<b>Outcome</b>		<b>WL7: The approved regulator/regulatory body meets the outcome to ensure regulatory independence:</b> <ul style="list-style-type: none"><li>▪ The approved regulator has the necessary delegation arrangements in place and gains assurance that its regulatory functions are effectively carried out in line with the IGR.</li><li>▪ The regulatory body carries out its regulatory functions in line with the IGR and provides assurance to its approved regulator as required by Section 28 of the Legal Services Act 2007</li></ul>
<b>November 2020</b>	<b>LSB assessment</b>	CLSB was asked to provide an update on any relevant actions or developments following the submission of its Certificate of Compliance with the new IGR and the end of the transition period on 23 July 2020. CLSB has confirmed that it has now <a href="#">published</a> the updated memorandum of understanding and operational protocol with ACL. It has confirmed there have been no instances of non-compliance, it has been disseminating its IGR Quick Guide to new contractors and will be providing information to ACL at the end of the year.
	<b>Action needed</b>	N/A
	<b>Timing</b>	Ongoing monitoring.

## Not met: action being taken

Outcome		RA3: The regulator has a robust evidence base from a range of sources on: (a) consumers' needs and use of legal services (b) new and emerging policy developments (c) the regulated community and (d) the market(s) regulated by it which informs its regulatory arrangements and approach.
July 2020	LSB assessment	<p>The action for CLSB was to evidence its learning from engagement, the work it has done in relation to consumers and other policy developments. We highlighted that evidence would come from rule changes, board decision notes and actions flowing from its interim report on costs lawyers and consumers.</p> <p>CLSB has made progress with this action, particularly in relation to rule change applications with three approved by the LSB so far in 2020. However, it needs to continue to build its evidence base and demonstrate making use of it. To date it has produced two board decision notes and while it has now developed a Consumer Engagement Strategy it will need to provide evidence of progress against its priority activities that inform its regulatory approach.</p> <p>It is also notable that CLSB is among the regulators that have had challenges in building a reliable understanding of the diversity profile of their regulated community. We will expect CLSB to evidence progress in obtaining diversity data that will help inform its regulatory approach.</p>
	Action needed	<p>CLSB to provide ongoing evidence of building its evidence base and use of that evidence base to inform its regulatory approach.</p> <p>CLSB to demonstrate progress by obtaining a clear and thorough understanding of the diversity profile of its regulated community that will inform its regulatory approach.</p> <p>In particularly we would expect to receive:</p> <ul style="list-style-type: none"> <li>• substantive feedback on the work undertaken so far in the first year of its Consumer Engagement Strategy</li> <li>• an update on its review of its diversity and inclusion initiatives against the three characteristics of a well-performing regulator</li> <li>• relevant progress against its proposed Business Plan priorities, specifically improving its regulatory arrangements and protecting the interests of consumers and promoting professional standards.</li> </ul>
	Timing	CLSB to provide a progress update by 31 March 2021

Outcome		RA4: Regulatory arrangements and associated guidance documentation are informed by learning gathered from all of the regulator's work including its risk assessment and enforcement work.
July 2020	LSB assessment	<p>We set an action for CLSB to complete the work it had done in developing new CPD arrangements and new Disciplinary Rules and Procedures. Our expectation was for the CLSB to consult and then apply to the LSB for any alterations as needed. We also stated that CLSB must continue to demonstrate the impact of its learning on its regulatory arrangements and guidance. This will be demonstrated as it takes forward its proposals on both CPD and its Disciplinary Rules as well as in how it makes use of the consumer engagement strategy that is being developed.</p> <p>CLSB has made significant progress against this outcome by reaching a point where we have approved rule change applications and the new rules are now in place or due to come into force shortly. To meet this outcome CLSB will need to show sustained learning from all of its work.</p>
	Action needed	CLSB must demonstrate active use of its consumer engagement strategy and continue to regularly evidence the application of learning from its own work. In particular, its planned 2021 annual priorities for improving its regulatory arrangements.
	Timing	CLSB to provide a progress update by 31 March 2021

<b>Outcome</b>		<b>WL2: The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented.</b>
<b>July 2020</b>	<b>LSB assessment</b>	<p>In our previous assessment we concluded that the level of CLSB’s internal fixed resources continued to be a concern. We explained that we would maintain close contact with CLSB on their interim resourcing solutions to ensure they are sufficient.</p> <p>CLSB has since provided an updated Business Continuity Policy setting out how it would ensure continuity of regulation in a range of scenarios including the sudden unavailability of the CEO. In addition, CLSB has provided the LSB with a detailed resourcing plan setting out its proposed actions and steps for the 2020 PCF cycle.</p> <p>The plan has been developed considering the impact of Covid-19 and CLSB contends that it will allow it to continue with a progressive programme of work. CLSB has also implemented a new format for a quarterly financial report to its board to ensure the board are better sighted on expenditure against budget. CLSB’s proposed budget planning does not provide for an increased budget but, in practice does increase its resourcing and resilience to some extent as compared to previous years.</p> <p>However, the LSB continues to be concerned about whether the CLSB has sufficient resources and scale in the longer-term to be able to demonstrate that it can meet the outcomes and standards that we expect of well performing regulators. For example, to continue to operate effectively it is crucial that CLSB can quickly demonstrate a better understanding of the risk profile of its regulatory community, and to gather and use meaningful diversity data to inform its policies. We know that it has plans to address these areas but are concerned that the planned resourcing may be insufficient to do so appropriately and in a timely way with such a small resource base, alongside the wider policy development, supervision and enforcement work that also requires ongoing attention.</p> <p>We also see significant risks associated with its current operating model, in that there is little resilience or scope for further scaling back. This is brought into the light in particular by events such as the COVID-19 pandemic.</p>

		<p>Given our ongoing concerns in this area, we will maintain a strong focus on this through the annual PCF approval process. We will also require ongoing updates from CLSB around its income and resources.</p> <p>In the event that a lack of resources or capacity impact on the CLSB's ability to continue to progress towards achieving an adequate level of performance across the performance standards, we will be extremely concerned if we are not presented with evidence of the CLSB Board having given this adequate consideration and having put in place appropriate plans and mitigations.</p>
	<p><b>Action needed</b></p>	<p>CLSB to keep the LSB informed of significant developments in relation to its resourcing, in particular increased risks to its ability to deliver the improvements required.</p> <p>In the event that resources or capacity impact on the CLSB's longer-term performance outlook, LSB to be provided with evidence of CLSB Board discussion and agreed plans and mitigations.</p> <p>We expect the next update from CLSB to include details of any progress made against its proposed 2021 Business Plan priority for Modernising the CLSB. In particular, its intention to revisit the effectiveness of its new operating structure.</p>
	<p><b>Timing</b></p>	<p>CLSB to submit an update on progress by 31 March 2021 to coincide with its Q1 report to its Board.</p>

Outcome		WL4: The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work.
July 2020	LSB assessment	<p>We set an expectation that CLSB's progress against other outcomes should allow CLSB to meet this outcome over time. We explained that it would need to continue to make use of its developing evidence base and that board decision notes and publication of board papers would further assist.</p> <p>We additionally explained that CLSB needed to take action to progress its work to better understand consumers of costs lawyer services.</p> <p>It is clear CLSB has made progress here but we will need to continue to demonstrate its learning from across the sector and beyond.</p>
	Action needed	<p>CLSB must demonstrate its use of its consumer engagement strategy and continue to regularly evidence the application of learning from its own work and others. We expect this to be clear as it builds a greater catalogue of published board papers and board decision notes.</p> <p>We would also expect to receive:</p> <ul style="list-style-type: none"> <li>• substantive feedback on the work undertaken so far in the first year of its Consumer Engagement Strategy</li> <li>• an update on its review of its diversity and inclusion initiatives against the three characteristics of a well-performing regulator</li> <li>• relevant progress against its proposed Business Plan priorities, specifically improving its regulatory arrangements and protecting the interests of consumers and promoting professional standards.</li> </ul>
	Timing	CLSB to provide a progress update by 31 March 2021

# Regulatory performance: Performance assessment November 2020

---

A report on progress of each legal services regulatory body and approved regulator against the LSB regulatory performance standards

21 December 2020

## Contents

<b>Executive summary</b> .....	<b>3</b>
Summary of assessments .....	3
<b>Introduction</b> .....	<b>5</b>
New well-led 7 outcome .....	6
<b>November 2020 assessments</b> .....	<b>7</b>
<b>Regulatory bodies</b> .....	<b>7</b>
Outcomes: reassessed as <i>met</i> .....	7
Outcomes: <i>not met - action being taken</i> .....	8
Outcomes: <i>not met - action required</i> .....	9
Overall assessment.....	10
<b>Approved regulators</b> .....	<b>10</b>
<b>Our focus in 2021</b> .....	<b>12</b>
<b>Annex A: Regulatory performance framework</b> .....	<b>14</b>
<b>Annex B: Assessments of regulatory bodies' performance November 2020</b> .....	<b>15</b>
<b>Bar Standards Board (BSB)</b> .....	<b>15</b>
<b>CILEx Regulation (CILEx Reg)</b> .....	<b>21</b>
<b>Costs Lawyer Standards Board (CLSB)</b> .....	<b>25</b>
<b>Council for Licensed Conveyancers (CLC)</b> .....	<b>32</b>
<b>Faculty Office (FO)</b> .....	<b>35</b>
<b>Institute of Chartered Accountants in England &amp; Wales (ICAEW)</b> .....	<b>42</b>
<b>Intellectual Property Regulation Board (IPReg)</b> .....	<b>47</b>
<b>Solicitors Regulation Authority (SRA)</b> .....	<b>53</b>

## Executive summary

1. The Legal Services Board's (LSB) vision is legal services that everyone can access and trust. A key component of this is ensuring that consumers can rely on good quality regulation by good quality regulators.
2. In January 2018, the LSB introduced the regulatory performance framework to assess the performance of regulatory bodies across a common set of standards and outcomes. Each body regulates a different set of regulated practitioners, has different numbers of practitioners, and carries out its responsibilities in different ways. Nevertheless, each one carries out the same role under the Legal Services Act 2007 ("the Act") and that is the focus for the LSB.
3. The LSB subsequently carried out assessments of regulatory bodies' performance in November 2018 and in June and November 2019. During 2020 we received information from the BSB, CLC, CLSB, ICAEW and SRA which has enabled us to reassess our assessments of their respective performance against one or more outcomes.
4. In July 2020 we also introduced a new outcome, WL7, which assesses regulatory independence and, unlike the other outcomes, covers both regulatory bodies and approved regulators.
5. This report sets out the LSB's latest annual assessment of regulatory bodies' and, in the case of outcome WL7, approved regulators' progress in meeting the standards and outcomes set by the LSB's regulatory performance framework.
6. The approved regulators and their respective regulatory bodies are as follows:

Approved regulators	Regulatory bodies
Association of Costs Lawyers (ACL)	Costs Lawyer Standards Board (CLSB)
The Bar Council (BC)	The Bar Standards Board (BSB)
The Chartered Institute of Legal Executives (CILEx)	CILEx Regulation (CILEx Reg)
Chartered Institute of Patent Attorneys (CIPA) Chartered Institute of Trade Mark Attorneys (CITMA)	Intellectual Property Regulation Board (IPReg)
Council of Licensed Conveyancers (CLC)	
The Faculty Office (FO)	
Institute of Chartered Accountants in England & Wales (ICAEW AR)	Institute of Chartered Accountants in England & Wales (ICAEW)
The Law Society (TLS)	Solicitors Regulation Authority (SRA)

## Summary of assessments

7. Five of the seven regulatory bodies have made progress on the actions agreed in the November 2019 assessments. The highlights are:
  - Two regulatory bodies have been rated as having *met* all the outcomes required across all standards: CLC and SRA.

- Actions in relation to ten previously *not met* outcomes have been completed and performance has been reassessed as *met*. BSB (1), CLC (1), CLSB (5), ICAEW (1), SRA (2).

*Not met – action being taken*

- Thirteen outcomes have been assessed as *not met – action being taken*:
  - Eight outcomes remain unchanged as *not met – action being taken*: BSB (1), CILEx Reg (1), CLSB (4), ICAEW (1).
  - Four outcomes have been reassessed as *not met – action being taken*: CILEx Reg (1), FO (1), IPReg (2).
  - One outcome has been re-assessed from *not met – action required* to *not met – action being taken*: ICAEW (1).

*Not met – action required*

- Five outcomes have been assessed as *not met – action required*:
  - Four outcomes remain unchanged as *not met – action required*: BSB (1), FO (2), ICAEW (1).
  - One outcome has been reassessed as *not met – action required*: IPReg (1).

8. The table below sets out the current ratings for all regulatory bodies.

REG BODIES	REGULATORY APPROACH					AUTHORISATION					SUPERVISION						ENFORCEMENT						WELL-LED						
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	1	2	3	4	5	6	1	2	3	4	5	6	7		
BSB	Met	Not met - action being taken	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	
CILEx Reg	Met	Not met - action being taken	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Not met - action being taken	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met
CLSB	Met	Met	Not met - action being taken	Not met - action being taken	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Not met - action being taken	Met	Not met - action being taken	Met	Met	Met	Met
CLC	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met
FO	Met	Not met - action being taken	Met	Met	Not met - action being taken	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Not met - action required	Not met - action required	Met	Met	Met
ICAEW	Met	Not met - action being taken	Met	Met	Met	Met	Met	Met	Met	Not met - action being taken	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Not met - action required	Met	Met	Met	Met
IPReg	Met	Not met - action being taken	Not met - action required	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Not met - action being taken	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met
SRA	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met

Met	Not met - action being taken	Not met - action required
-----	------------------------------	---------------------------

9. In 2020 we have seen an improvement in some regulatory bodies' performance. However, this has not been reflected across all the regulatory standards. While regulatory bodies are generally performing well against the authorisation, supervision and enforcement standards, there is a lower level of achievement in meeting the standard required for outcomes under the regulatory approach and well-led standards.

10. As noted in paragraph 5, the LSB has also assessed the performance of both regulatory bodies and approved regulators against the new outcome, WL7, and considers that all have *met* the standard required.
11. In last year's report, we highlighted our concern that some regulatory bodies had not fully embedded the regulatory performance framework into their governance arrangements and noted that we would consider either targeted or thematic reviews to address this issue. Subsequently, we launched targeted reviews of two regulatory bodies (BSB and FO) on performance against the well-led standard. These reviews formally began in September and are scheduled to conclude in early 2021. We delayed commencing the reviews to allow the BSB and FO to deal with the immediate actions required due to the Covid-19 pandemic. As these reviews are ongoing, we have not updated our assessments of the BSB and FO's performance against these outcomes in this report.
12. As there are still several *not met* outcomes under the regulatory approach standard, we will consider undertaking a thematic review in the coming year, depending on regulatory bodies' progress in meeting the standard required. A number of the *not met* ratings are associated with the quality of applications for statutory approval of changes to regulatory arrangements. While some regulators appear to be experiencing little difficulty in meeting these standards, we are nonetheless reviewing our rules and guidance in this area with a view to further improving clarity of expectation.
13. We are also currently considering whether to conduct a review of our overall regulatory performance framework during 2021.

## Introduction

14. The LSB introduced the current framework to assess the regulatory performance of legal service regulatory bodies in January 2018 and conducted performance assessments in January, June and November 2019. This report covers the progress made by regulatory bodies since publication of the LSB's December 2019 assessment report. The regulatory performance framework is set out at Annex A.
15. In our November 2019 assessment, we explained that we had not assessed the performance of the Association of Chartered Certified Accountants (ACCA) as it had only recently begun licensing probate activities. Subsequently, ACCA notified us of its intention to leave the legal services regulation market, so we do not include an assessment in this report.
16. Since the LSB's last assessment in November 2019 we have monitored regulatory bodies' performance against the framework through regular contact with chairs, chief executives and relationship managers.
17. In our November 2019 assessment, we also requested further information from the BSB, FO, ICAEW and SRA as to how they would meet their remaining *not met* outcomes. Following receipt and our review of this information we decided (1) to launch our targeted reviews of the BSB and FO (see paragraph 11) and (2) to continue to monitor ICAEW and the SRA's progress in meeting their respective outstanding outcomes.

## New well-led 7 outcome

18. In July 2020, the LSB introduced a new outcome, WL7, to the framework following the full implementation of the new Internal Governance Rules (IGR) in July 2020.
19. The Act does not create a framework in which a regulatory body is structurally separate from its representative body. Rather, it creates approved regulators which may have both representative and regulatory functions. The Act then gives the LSB responsibility for their oversight, but only in relation to regulatory functions and, in particular, the separation of those functions from any representative functions which the approved regulator may have.
20. Section 30 of the Act obliges the LSB to make internal governance rules which set out requirements for each approved regulator to ensure the separation of regulatory and representative functions (amongst other obligations). These requirements must ensure that:
  - a) the exercise of regulatory functions by an approved regulator is not prejudiced by its representative functions or interests; and
  - b) decisions relating to the exercise of regulatory functions by an approved regulator are, so far as reasonably practicable, taken independently from decisions relating to the exercise of any representative functions.
21. As required under the Act, the LSB introduced the first set of IGR in 2009, subsequently amended in 2014. In 2017 the LSB launched [a full review of the IGR](#) as there was evidence that they were not as effective as they could be in securing regulatory independence. This review concluded in July 2019, with the issue of [revised IGR](#) and [statutory guidance](#). Both approved regulators and regulatory bodies then had until 23 July 2020 to confirm their arrangements for ensuring regulatory independence by submitting a certificate of compliance with the new IGR, which they all did.
22. To enable the LSB to ensure that the new IGR are working effectively and to provide assurance that both approved regulators and regulatory bodies ensure regulatory independence, the LSB following a consultation in Spring 2020, added the following outcome to its regulatory performance framework in July 2020.

### **WL7: The approved regulator/regulatory body meets the outcome to ensure regulatory independence:**

- **The approved regulator has the necessary delegation arrangements in place and gains assurance that its regulatory functions are effectively carried out in line with the Internal Governance Rules (IGR).**
  - **The regulatory body carries out its regulatory functions in line with the IGR and provides assurance to its approved regulator as required by Section 28 of the Legal Services Act 2007.**
23. Unlike the regulatory performance framework's other outcomes, which only place requirements on regulatory bodies, this new outcome places complementary requirements on both regulatory bodies and approved regulators, and we include our assessment of both the approved regulators' and the regulatory bodies' performance against this outcome in this report.

## November 2020 assessments

### Regulatory bodies

24. We present a summary of the key points from our assessments of the regulatory bodies' performance below. Our full assessment for each regulatory body is set out in Annex B.

#### Outcomes: reassessed as *met*

25. Five of the seven regulatory bodies have had outcomes reassessed as *met* based on their progress on actions agreed in the November 2019 assessments. We have also assessed all seven regulatory bodies as having *met* the new outcome WL7. However, as this outcome was only introduced in July 2020, we do not include it in our year-on-year comparisons of regulatory bodies' performance, so for the 26 outcomes we assessed against in November 2019 the figures are set out below.

26. There have been ten outcomes re-assessed as *met* this year - BSB (1); CLC (1); CLSB (5) ICAEW (1), SRA (2).

- The BSB has *met* one outcome (**A4**) by bringing the process for authorising barristers to practice under its control, as opposed to the Bar Council's, in line with the IGR.
- The CLC has *met* its outstanding outcome (**WL3**) by publishing KPI data about its regulatory activities, complaints handling and compensation fund claims.
- The CLSB has *met* five of nine outstanding outcomes (RA1, RA2, E2, E3, WL3) by:
  - **RA1**: Reviewing and implementing changes to its CPD and practising rules and its disciplinary rules and procedures.
  - **RA2**: Improving the substance and presentation of its rule change applications.
  - **E2**: Amending its disciplinary rules and procedures to include interim suspension orders to enhance its ability to protect consumers and others.
  - **E3**: Amending its disciplinary rules and procedures and publishing more information about them.
  - **WL3**: Creating a publication policy and drafting and publishing Board papers in line with it.
- ICAEW has *met* one outcome (**WL1**) by making changes to its governance in line with the IGR.
- The SRA has *met* its two outstanding outcomes (**S3** and **WL3**) by:
  - **S3**: Following a consultation and analysis process, deciding on and providing a detailed plan for the implementation of changes to its advocacy standards and regulations.
  - **WL3**: (1) Providing more transparency about its decision-making processes via the publication of a range of policy documents and by publishing more Board papers with fewer redactions, and (2) providing further information about how its Board monitors

the SRA's performance including developing and publishing a set of KPIs and other information.

*Outcomes: not met - action being taken*

27. We have assessed 13 outcomes as *not met - action being taken* - BSB (1), CILEx Reg (2); CLSB (4), FO (2), ICAEW (2), IPReg (2). Of these, eight received the same assessment last year, four have been re-assessed from "met" and one has been re-assessed from "not met – action required".
28. The eight unchanged outcomes are: BSB (RA2), CILEX Reg (S3), CLSB (RA3, RA4, WL2 and WL4), FO.
- The CLSB has made progress during the past year towards meeting its four outstanding outcomes (RA3, RA4, WL2 and WL4) and will provide the LSB with further progress updates on all of them by 31 March 2021. Over the next year, we hope to see the CLSB maintain the momentum it has demonstrated during 2020 by meeting five outcomes.
  - The unchanged outcome for the BSB, FO and ICAEW is RA2, which requires that regulatory arrangements and supporting guidance are regularly reviewed and updated based on evidence. In the case of the BSB and FO, while they have both taken steps to improve the quality of their rule change applications, they have not had opportunities to submit full applications during the past year and so have not been able to provide evidence of the efficacy of these changes. ICAEW needs to demonstrate consistency in providing adequate evidence in support of its applications and by undertaking meaningful engagement or consultation.
  - To meet outcome S3, CILEx Reg will need to ensure that the changes it has proposed to its education and training framework include adequate procedures to deal with advocacy quality risks.
29. Four outcomes have been re-assessed from *met* to *not met - action being taken* – CILEx Reg (1), FO (1) and IPReg (2)
- Both CILEx Reg and IPReg have been re-assessed against RA2. In CILEx Reg's case, several of its applications for changes to regulatory arrangements have not provided sufficient information about how they will benefit the regulatory objectives, how CILEx Reg has assessed the risk or potential negative impacts of its proposals and how, once implemented, it will monitor and evaluate the impact of its proposed changes. IPReg needs to progress its review of regulatory arrangements, which has been pushed back.
  - IPReg has also been re-assessed against E2 as it has not conducted the review of its position on interim orders that it informed us of in 2018 and was rated as *met* on that basis. IPReg therefore needs to conduct this review and, should it conclude that introducing interim orders panels is unnecessary, provide its reasons for doing so and explain how it will address the potential public protection risks identified.
  - The FO has been re-assessed against RA5 as it currently is not able to demonstrate that it understands the impact of its regulatory arrangements on consumers and others. The FO

will need to provide the LSB with a plan for how it will meet this outcome, which is likely to include following through on its plans to recruit additional lay members with a consumer background.

30. One outcome has been re-assessed from *not met – action required* to *not met – action being taken* – ICAEW (1)

- ICAEW has been re-assessed against A5 as it has included disciplinary information about firms on its probate register, has published a separate list of probate firms with disciplinary findings and made probate a searchable activity on the FACA register. However, we do not consider that ICAEW meets this outcome as disciplinary information is not available on the FACA register for consumers to easily access, which we understand it plans to do in Q2 2021.

### Outcomes: *not met - action required*

31. We have assessed five outcomes as *not met – action required*. Of these, four received the same assessment last year, and one has been re-assessed from *met* this year.

- The four unchanged outcomes all relate to the well-led standard – BSB (WL5), FO (WL3, WL4) and ICAEW (WL3).
- Following our November 2019 assessment, neither the BSB nor the FO provided us with sufficient assurance in respect of our concerns on these outcomes. To better understand the position, we began targeted reviews of their performance against the wider well-led standard. These reviews are scheduled to conclude in early 2021. As they are ongoing, we have not reviewed the BSB's and FO's performance against these outcomes in this assessment.
- ICAEW continues to be assessed as *not met – action required* against WL3 as while it has begun publishing an annual report for its Regulatory Board and more information about regulation on its website, it still has no plans to publish papers or minutes of its Board meetings. Until ICAEW establishes a way of publishing relevant information about its decision making on legal regulatory matters, it will not meet the standard required of outcome.
- We have re-assessed IPReg from *met* to *not met – action required* on outcome RA3 as IPReg has not systematically collected diversity data about its profession for several years and has not conducted any consumer research or other thematic or benchmarking reviews in the last two years. We are therefore concerned that IPReg does not have sufficient information about new and emerging policy issues that may impact its regulated community, consumers and others. We understand that IPReg will launch a survey on the diversity of its profession in January 2021. Following the survey's completion, we expect IPReg to use that information to assess its performance against the LSB's diversity guidance and assist in demonstrating that it has evidence about its regulated community, consumers' needs, and policy developments. We also expect IPReg to draw up a plan for how it can develop its evidence base and understanding of its regulatory community and the consumers of these services.

## Overall assessment

32. In 2020 we have seen an improvement in some regulatory bodies' performance, with two regulatory bodies, the CLC and SRA, now meeting all outcomes. We have also seen significant improvements from CLSB, and we look forward to it making further progress during the next year. However, as a result of this exercise, some regulatory bodies are now assessed as not meeting more outcomes than in December 2019. We hope that the regulatory bodies to which this applies will endeavour to undertake the necessary actions and regain *met* assessments for these outcomes as soon as possible.
33. While regulatory bodies are generally performing well against the authorisation, supervision and enforcement standards, the picture is more mixed for the regulatory approach and well-led outcomes.
34. Several regulatory bodies are not meeting all outcomes within the regulatory approach standard, with RA2 proving particularly challenging. We are keen to see improvements from these regulatory bodies as we consider it vital that regulatory bodies' make decisions based on evidence and that they have the capacity to obtain and analyse the information they need to understand how their decisions will affect consumers, their regulated community, the market and the regulatory objectives.
35. For the BSB and FO, there has been a limited assessment of the outcomes under the well-led standard, as we began targeted reviews of the BSB's and FO's performance under this standard, which are due to finish in early 2021. Our report will set out what actions will be required by the BSB and FO to meet the standard required.
36. We are also concerned about ICAEW's lack of progress in meeting outcome WL3 and improving the transparency of its decision-making processes, especially given that most other regulatory bodies, and the LSB itself, have made significant improvements in the level of transparency they provide to the public and the regulated profession about how regulatory decisions are taken.

## Approved regulators

37. As noted in paragraph 21, in July 2020 we introduced a new outcome, WL7, to check that both regulatory bodies and approved regulators ensure regulatory independence. Under this outcome, approved regulators must demonstrate that they have the necessary delegation arrangements in place with their respective regulatory bodies and can gain assurance that their regulatory functions are effectively carried out by their regulatory bodies in line with the IGR. We currently consider that all the regulatory bodies and approved regulators have *met* this outcome. A summary of our assessments against this outcome for the approved regulators is set out in the table below. Our assessments for the regulatory bodies against WL7 are set out in Annex B alongside our assessments of their performance against the other outcomes.

Approved regulator	Assessment against WL7
Association of Costs Lawyers (ACL)	The LSB accepted the Association of Costs Lawyers' certificate of compliance with the IGR in July 2020. Since then further steps have been taken in respect of delegation arrangements and monitoring, and there is no indication that any issues relating to compliance with the

Approved regulator	Assessment against WL7
	IGR have arisen since 23 July 2020. We therefore consider that the ACL meets this outcome.
The Bar Council (BC)	The LSB accepted the Bar Council's certificate of compliance with the IGR in July 2020. The Bar Council has been making good progress in meeting its IGR duties. Since the submission of its certificate of compliance it has taken a number of steps, including: continuing its training programme on the working protocols; on its committees, it has dissolved the emoluments committee and introduced a new finance committee with equal members from the Bar Council and BSB; and it has a new shared services forum. The Bar Council is content with assurance from the BSB in carrying out its regulatory function and has reported no breaches of the IGR. We therefore consider that the Bar Council meets this outcome.
The Chartered Institute of Legal Executives (CILEx)	The LSB accepted the Chartered Institute of Legal Executives' (CILEx) certificate of compliance with the IGR in July 2020. Since then, we have seen evidence that both the delegation and monitoring arrangements are being carried out effectively, and that there is no indication that any issues relating to compliance with the IGR have arisen since 23 July 2020. We therefore consider that CILEx meets this outcome.
Chartered Institute of Patent Attorneys (CIPA)	The LSB accepted the Chartered Institute of Patent Attorneys' (CIPA) certificate of compliance with the IGR in July 2020. We have evidence that the delegation and monitoring arrangements are operating, and there is no indication that any issues relating to compliance with the IGR have arisen since 23 July 2020. CIPA has also provided the LSB with further assurance that the LSB's authorisation for non-compliance with Rule 5 of the IGR will not need to be extended beyond 31 December 2020. We therefore consider that CIPA meets this outcome.
Chartered Institute of Trade Mark Attorneys (CITMA)	The LSB accepted the Chartered Institute of Trade Mark Attorneys (CITMA) certificate of compliance with the IGR in July 2020. We have evidence that the monitoring arrangements are functioning as intended under the delegation agreement, and there is no indication that any issues relating to compliance with the IGR have arisen since 23 July 2020. We therefore consider that CITMA meets this outcome.
Institute of Chartered Accountants in England and Wales (ICAEW AR)	The LSB accepted the Institute of Chartered Accountants in England and Wales's (ICAEW AR) certificate of compliance with the IGR in July 2020. ICAEW provided assurance that it was taking steps in respect of delegation and monitoring. We therefore consider that ICAEW AR meets this outcome.

Approved regulator	Assessment against WL7
The Law Society (TLS)	<p>The LSB accepted the Law Society's (TLS) certificate of compliance with the IGR in July 2020. Since 23 July 2020, the main development for TLS has been in carrying out its stated aim to disestablish the SRA Board as a Board of the Law Society and delegate regulatory functions to the SRA as a private company limited by guarantee. TLS and SRA are now seeking to achieve this aim through establishing the SRA as a charity. The SRA is leading the work in pursuing charitable status and this process is continuing.</p> <p>The LSB has been involved in discussions on the charitable status proposal. We will continue to monitor this situation. There are no active concerns about TLS' compliance with WL7. We therefore consider that TLS meets this outcome.</p>

## Our focus in 2021

38. We consider that it is vital that all regulatory bodies ultimately meet all 27 of the regulatory outcomes in the framework so that they can demonstrate that they are meeting the regulatory objectives, which they and the LSB share. This will ensure that they are regulating in a way that benefits consumers, their respective professions and the overall legal services market. In 2021 we will continue to work with the regulatory bodies to help them achieve any remaining *not met* outcomes, and for those who already do, to ensure they continue to do so.
39. That said, we recognise that the regulatory bodies vary both in the size of the professions they regulate and their own size and capacity. While these differences do not absolve them from their obligation to meet all the regulatory performance outcomes, we do recognise that they may need to take different approaches to do so. Some smaller regulatory bodies may not currently have sufficient capacity to achieve all the objectives themselves, and we will encourage them to explore how they can cooperate with other regulatory bodies, whether smaller or larger, to combine their expertise and capacity to achieve any remaining *not met* outcomes.
40. We are already undertaking two targeted reviews of the BSB's and FO's performance against the well-led standard. Once these are complete, we will consider whether there are any other aspects of the framework which would benefit from an in-depth review.
41. In our 2019 report, we noted that our focus for regulatory assessment would shift from ensuring that regulatory bodies were meeting minimum requirements to looking for evidence that they were reflecting on their own performance on a yearly basis and looking at how they could improve it further.
42. Based on our assessments and our interaction with regulatory bodies over the past year, we have identified some general issues on the broad theme of transparency that we intend to focus on in 2021

- regulatory bodies should not only actively take account of the regulatory objectives in the Act in carrying out their work and in their decision-making and performance monitoring processes; they should also actively explain and demonstrate how this occurs.
- regulatory bodies should ensure that information published on their websites is up to date, whether it concerns their policies and guidance or disciplinary actions.
- regulatory bodies must demonstrate a commitment to public accountability and transparency in respect of their decision-making and how their Boards hold their Executives to account.

43. Of course, we also want to get better at overseeing the legal services market. In our 2019 report, we noted that we expected to review the effectiveness of the regulatory framework every three years. We currently intend to carry out this review in the latter part of 2021, and in doing so will consider developments and innovations in the legal services market as well as the CMA's review of the legal services market, the findings of our recently published State of the Legal Services Market Report, and the forthcoming Strategy for the Legal Services Sector, which we are currently consulting on.

## Annex A: Regulatory performance framework

<b>Regulatory Approach</b>	<p><b>RA1:</b> Regulatory arrangements and supporting guidance documentation are:</p> <ul style="list-style-type: none"> <li>• outcomes-focused</li> <li>• written in plain English</li> <li>• maintain professional principles</li> </ul> <p>with detailed rules limited to where evidence and analysis justifies them.</p>
	<p><b>RA2:</b> So they are effective and operate as intended, regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base.</p>
	<p><b>RA3:</b> The regulator has a robust evidence base from a range of sources on: (a) consumers' needs and use of legal services (b) new and emerging policy developments (c) the regulated community and (d) the market(s) regulated by it which informs its regulatory arrangements and approach.</p>
	<p><b>RA4:</b> Regulatory arrangements and associated guidance documentation are informed by learning gathered from all of the regulators work including its risk assessment and enforcement work.</p>
	<p><b>RA5:</b> The regulator understands the impact of its regulatory arrangements and guidance on consumers, the regulated community, the market and the regulatory objectives.</p>
<b>Authorisation</b>	<p><b>A1:</b> Only those who meet the regulator's standards are authorised to provide education and training.</p>
	<p><b>A2:</b> The regulator's standards of education and training set the competencies required for authorisation for entry to the profession.</p>
	<p><b>A3:</b> Only those who meet the regulator's standards are authorised to practise.</p>
	<p><b>A4:</b> The authorisation process, including the management of appeals, is fair, based on the regulator's standards, efficient and transparent.</p>
	<p><b>A5:</b> The regulator's list of those they regulate is accessible, accurate and provides information on the disciplinary records of those regulated.</p>
<b>Supervision</b>	<p><b>S1:</b> The regulator has an: outcomes-focused, evidence-based, transparent, risk-based and consumer-focused approach to supervisory activity. Supervisory activity is both proactive and reactive and uses a range of tools.</p>
	<p><b>S2:</b> Education and training providers are monitored to provide assurance that standards are met. If they are not, steps are taken to remedy this.</p>
	<p><b>S3:</b> The regulated community are monitored to provide assurance that standards are met. If they are not, steps are taken to remedy this.</p>
	<p><b>S4:</b> Those under review and the wider regulatory community have the opportunity to benefit from the learning and good practice identified from the supervisory activity.</p>
<b>Enforcement</b>	<p><b>E1:</b> The regulator has an accessible and clear process so that concerns can be raised about an authorised person which sets out who a person can complain to, the process that will be used and the possible outcomes.</p>

<b>Enforcement</b>	<p><b>E2:</b> The regulator ensures that all complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.</p>
	<p><b>E3:</b> The enforcement process and any associated appeals process is: consistent; independent; risk-based; evidence-based; documented; transparent; proportionate; focused on consumer protection, maintaining professional principles and protecting the public interest.</p>
	<p><b>E4:</b> The enforcement and any associated appeals process is timely taking into account the complexity and type of case, and the conduct of both sides.</p>
	<p><b>E5:</b> During the process, and at each key decision stage, the regulator keeps those involved and any others affected by the case (for example in cases of dual regulation, the regulator, the provider of information and those under investigation) informed of progress, unless it is not appropriate to do so.</p>
	<p><b>E6:</b> The regulator clearly explains the reasons for its decisions to take or not to take things forward at each stage of the process.</p>
	<b>Well-led:</b>
<p><b>WL2:</b> The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented.</p>	
<p><b>WL3:</b> The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community faces and how these are being mitigated; performance; regulated community and related markets; financial costs.</p>	
<p><b>WL4:</b> The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work.</p>	
<p><b>WL5:</b> The Board considers its own effectiveness in ensuring the regulator is a well-led, independent, transparent, and consumer-focused organisation, which acts in a way that is compatible with the regulatory objectives</p>	
<p><b>WL6:</b> The regulator communicates with a diverse range of stakeholders, for example its regulated community, the approved regulator, its representative body(ies), students, consumers, government, etc. to account for its plans, progress and performance and ensure appropriate and accurate information is effectively taken into account in its work.</p>	
<p><b>WL7:</b> The Approved Regulator/Regulatory Body meets the outcome to ensure regulatory independence:</p> <ul style="list-style-type: none"> <li>• The Approved Regulator has the necessary delegation arrangements in place and gains assurance that its regulatory functions are effectively carried out in line with the IGR.</li> <li>• The Regulatory Body carries out its regulatory functions in line with the IGR and provides assurance to its Approved Regulator as required by Section 28 of the Legal Services Act 2007:</li> </ul>	

**Kate Wellington**  
ceokw@clsb.info



**LEGAL SERVICES  
BOARD**

The Chief Executive's Office  
The Rookery (3<sup>rd</sup> Floor)  
2 Dyott Street  
London  
WC1A 1DE

T 020 7271 0043

[www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk)

18 December 2020

Dear Kate,

### **CEO Seminar follow up**

Thank you for attending and contributing to the CEOs seminar on 26 November 2020. It was good to hear your views.

One of the things we said we would do, in response to a suggestion from Duncan that was echoed by other colleagues, was to compare our functions across a range of analogous regulators. While this is something we do informally through our contacts with other bodies, I'm not aware that we have provided a formal analysis in the past, and we've attempted to set out our findings below.

As a reminder, the argument put forward was that the LSB asks for more information than various other regulators and/or our approach to oversight is more onerous. I said at the meeting that was likely to be a result of the fact that – as we accepted was the case with legal services regulators – all oversight regulators differ.

In essence, our statutory role is markedly different from other oversight bodies. The Act requires from the LSB particular responsibilities that, generally speaking, most other oversight regulators do not have. For example, in relation to approving practising certificate fees and changes to regulatory arrangements of approved regulators, to make rules with regard to separation of representative and regulatory functions as well as wide-ranging enforcement powers underpinning our monitoring of performance. So, to take an example raised at the meeting, other regulators with whom you might have a relationship do not ask for detailed information on fees because they do not have statutory responsibilities to approve them. To put it another way, it would be very surprising if we asked for as little information as a regulator that did not have this function.

Having said that, our goal is for us to need to exercise as little oversight as possible. Where boards are forming credible plans of action to promote the regulatory objectives, setting fees at a level that provides for adequate resourcing, and engaging in a debate with their regulated communities, the information they generate in making their decisions should be more than enough to satisfy our statutory processes. Indeed, that is what we see already in most cases, most of the time.

The table is set out below. It contains a non-exhaustive list of the statutory functions and powers we exercise as an oversight regulator set alongside other similar bodies.

Statutory functions	Oversight bodies				
	LSB	FRC	OPBAS	PSA	FCA
Statutory approval of practising certificate fees	Yes – s51 of the Act	No	No	No	No
Performance monitoring of frontline regulators	Yes s31 of the Act	Yes – but not statutory	No	Yes s26 of the Health Care Professions Act 2002	No
Statutory approval of regulatory arrangements	Yes Part 3 of Schedule 4 of the Act	No	No	No	No
Enforcement powers underpinning performance monitoring and statutory duties	Yes s32 and s34 of the Act	No	Yes - but not linked to performance monitoring	No	Yes - but not linked to performance monitoring
Internal governance rules, separation of representative and regulatory functions	Yes s30 of the Act	No	No	No	No

I hope this information is helpful.

Turning to another matter on which there was some moderate consensus at the meeting, we will press on with plans to convene similar seminars in 2021. I propose they replace the existing bi-annual CEO meetings, whose passing I should not think any of us are likely to mourn. I hope the difference between the two will be marked by a) the attendance not just of CEOs (and equivalents), but also of selected members of your senior teams and b) a more structured agenda focused on key issues, with a bias towards opportunities for collaboration. We will be in touch to set up a session in early summer.

Finally, I would like to wish you and colleagues a very merry Christmas and a happy and successful 2021.

Yours sincerely



**Matthew Hill**  
Chief Executive

E [Matthew.Hill@legalservicesboard.org.uk](mailto:Matthew.Hill@legalservicesboard.org.uk)

**Minutes of the ACL Council Meeting**  
**held on 14 September 2020**  
 by Conference Call



**Council members present:** Claire Green, Chairman (CG), Francis Kendall, Vice Chairman (FK), Stephen Averill (SA), David Cooper (DC), Kris Kilsby (KK), Jack Ridgway (JR), Adam Grant (AG), Natalie Swales (NS)

**Also present:** Diane Pattenden (DP), Head of Operations

The meeting started at 11am

Item	
1	Welcome and apologies
1.1	CG welcomed all to the meeting
2	Minutes of the council meeting held on 17 August 2020
	DC suggested making it more clear in the minutes who people, other than council members, were. Subject to putting such names in full, the minutes were agreed as being an accurate reflection of the meeting.
3	Actions arising from the council meeting held on 17 August 2020
3.1	The action list was discussed and updated.
3.2	It was agreed to add member benefits and subscription rates for 2021 to the agenda for the October meeting.
3.3	Council members were asked to provide feedback to JR on the draft email to members regarding indemnity insurance policy exclusions.
3.4	DC will report back following the GHR meeting on 13 October.
3.5	FK will respond to outstanding emails from members regarding CPD provision.
4	Increasing membership
4.1	Council members had provided their ideas ahead of the council meeting for increasing membership. CG commented that there were some common threads in the replies but she needed to give more thought to the issue. It was unanimously agreed that any ideas that are proposed must be put to members. A discussion took place on the merits of enabling non-qualified costs professionals to become members. DP will locate the minutes relating to the proposal some years ago and forward to CG who will provide a paper on her suggested approach to council members ahead of the next meeting. CG said she felt ACL should be trying to attract costs draftsmen to the Association but acknowledged that at the moment, the bye laws didn't allow for it. It was recognised that there were conflicting views within the membership on the issue.
4.2	A discussion took place regarding the promotion of the profession to schools and universities and in particular targeting careers advisors. It was agreed that this would be further discussed at the October council meeting.
5	Education Report

5.1	NS reported on the recent education executive meeting and sought approval on the draft letter of appointment and the management board role specification. It was agreed that further consideration was required before finalising the document. NS agreed to discuss the concerns with the executive committee and suggest referring to a member of the board throughout the appointment letter, rather than executive director. The reference to contract of services was discussed and it was agreed that it should be removed. JR suggested that point 10 may need to be expanded. All agreed. NS will discuss the suggested amendments with the education executive and email the final version to council members for approval.
5.2	The issue of marketing the ACLT Training course was discussed. FK suggested that contact is made with larger employers to encourage them to put forward new candidates for the training course in January. NS will discuss an approach with the executive and put together some wording for an email to employers.
5.3	NS said 2 people have expressed an interest in sitting on the ACLT management board. A discussion about the number of people required for the board took place. JR suggested names of some costs lawyers to approach as potential board members. NS will discuss this with the ACLT Head of Education (KA).
5.4	ACLT costs savings for 2020 were provided to council members ahead of meeting and council members questioned the reasons behind some of the savings. NS will discuss the reasons with KA and feed back to council members.
5.5	NS asked CG what level of information was required from the education executive for the budget and viability report for 2021. It was agreed to pass the revised projections to the ACL accountant to produce the report in the same format as in previous years. NS will discuss this with KA.
5.6	CG brought to the attention of council Derek Boyd's recent resignation from council and acknowledged his assistance and support. CG will write to DB to thank him for his valuable input on council.
5.7	It was agreed that DP would email members to start the nomination process for the vacancy on council.
5.8	NS confirmed she is happy to continue in her role on the education committee without the support of another council member sitting on the executive.
6	<b>Seminars and conferences for 2020/2021</b>
6.1	The idea of running an online conference on 13 November in place of the previously scheduled Manchester conference was discussed. It was agreed to run an online event to enable members to gain 4 hours CPD. CG will put together a list of speakers to approach. FK emphasised that delegates must have their camera on for CPD to be valid. Subject to costings, it was agreed the rate charged should be in the region of £150.
7	<b>Judicial Review Challenge by the Law Society</b>
	KK confirmed that since the last meeting he has had some helpful discussions with Bob Baker (BB), co-chair of the ACL legal aid group. He advised that within the ACL LAG there was some division about how involved ACL should be with the judicial review. CG said that she felt that for the good of the membership, it was something that ACL should be involved with. It was agreed that KK would contact Richard Miller at the Law Society to ask for details of the review. KK will also contact Kathy Wong (cc BB) to confirm that ACL will be approaching the Law Society. FK suggested adding that in principle ACL would be happy to support the right type of application.
8	<b>Policy report</b>

8.1	AG confirmed that he is awaiting the final consolidated copy of the MOU and operations protocols from the CLSB.
8.2	DC confirmed that the next meeting on guideline hourly rates is due to take place on 13 October, at which it is hoped there will be a consideration of the material that has been submitted. He confirmed that he had no recent no update as to how things were progressing in terms of the flow of responses. CG suggested including a reminder of the deadline to members in the next e-bulletin. DP will liaise with Neil Rose on this.
8.2	CG said that Paul Seddon (PS) has asked if the ACL council had any contacts in the MoJ dealing with consideration of pending fixed costs in the fast track. DC said he would discuss this with one of his contacts and pass on the information to PS.
9	PR report
9.1	Nothing to report
10	Operations Report
10.1	DP updated council members on the amount currently held in investments and sitting in current accounts and advised that there would not be any need to make any withdrawals from investments before the end of the year.
10.2	Following a request from a member of the Cambridge University Pro-Bono Project, it was agreed that a questionnaire could be circulated to members.
10.3	DP asked council members if they felt there was a need to review the website as there were some sections that were now out of date. CG will review the process for maintaining some of the sections.
10.4	DP confirmed that 3 email responses had been received following the email to members inviting them to register to deliver CPD training. CG suggested sending another reminder to members. FK felt that the focus should be on the November online event but agreed that there was merit in sending a reminder to members.
11	Any other business
11.1	CG informed council members that she had been invited to attend an online seminar on 17 September with the Lord Chancellor under Chatham House rules about the effects of COVID on the legal profession. There is an opportunity to raise questions and CG asked council members to email her if they wanted her to put forward any questions.
11.2	SA asked to record the Council's thanks to DB who stood down on 11 September.
12	Date of next council meeting
	The next council meeting will be held by conference call at 11am on 15 October
	There being no further business the meeting ended at 13.10

**Minutes of the ACL Council Meeting**  
**held on 4 November 2020**  
 by Conference Call



**Council members present:** Claire Green, Chairman (CG), Francis Kendall, Vice Chairman (FK), Stephen Averill (SA), David Cooper (DC), Kris Kilsby (KK), Jack Ridgway (JR), Adam Grant (AG), Natalie Swales (NS), Rachel Wallace (RW)

**Also present:** Diane Pattenden (DP), Head of Operations

The meeting started at 11am

Item	
1	Welcome and apologies CG welcomed all to the meeting.
2	Minutes of the council meeting held on 14 September 2020 Slight revisions were made to the minutes and subject to these, the minutes were approved for publication.
3	Actions arising from the council meeting held on 14 September 2020
3.1	The actions arising were discussed and updated.
3.2	Item 5. Copies of some policies have been provided by Kerry London. It was decided that members should be emailed, as previously agreed. JR to provide the final version of the wording for the email to DP. Discussion took place regarding whether members were asked to provide a copy of their insurance document to the CLSB. DP will ask the CLSB if in house costs lawyers in an SRA regulated organisation have to produce a copy of their insurance policy on renewal of their practising certificate.
3.3	Item 6. DC advised that there was nothing of significance to report on guideline hourly rates and that a further meeting will be held in December.
3.4	Item 9. Responses to two queries from members regarding CPD have not yet been sent. FK will reply.
3.5	Item 22. CG commented there had been little response from members to the request to register to deliver CPD training and that a further request may be made next year if needed.
4	Increasing membership numbers
4.1	Prior to the meeting CG had circulated a draft consultation paper on increasing membership numbers and invited council members to discuss her recommendations.
4.2	AG agreed to make any amendments to the draft following council discussion, to format it as appropriate and circulate it to council members for approval.
4.3	It was agreed that it would be useful to understand why members, over the years, had not renewed. DP confirmed that data is available and that she would provide it to CG. CG advised that she is working on providing further data about costs lawyers who hold a practising certificate but are not members. RW said it would be useful to know how many employers pay for members renewals. DP will identify those who are currently self-funding. AG said that the CLSB collects data each year about those who work in-house and that KW was happy to provide the information to ACL. This information should be

	available in January.
4.4	CG acknowledged that further information was required prior to being able to consult with members. FK said he believed that the key issue was that although the profession was booming 20 or more years ago there has been a natural attrition, due to retirement and to the reduction in students. He added that there was clearly a need to encourage more people to undertake the training qualification course.
4.5	SA and RW both confirmed that they had lapsed their membership in recent years, at the point at which a discount was offered to members working for companies with 5 or more costs lawyer members. SA agreed with FK that there was a need to encourage more people to qualify as costs lawyers.
4.6	FK suggested there was a potential opportunity to work with the CLSB in order to address the number of costs lawyers who hold a practising certificate but are not members of ACL. RW said she believed there was a huge market for non-litigation costs. She felt that most businesses relied on their procurement department to buy in legal services and were not aware of the existence of Costs Lawyers. She suggested a number of ideas including offering training to members about the role of procurement professionals and making members aware of legal costs management software. RW said she felt there was a large market for the skills of costs lawyers that has barely been tapped and that as a professional body ACL should investigate this.
4.7	CG thanked all for their contributions and asked council members for their views on which of her recommendations should be explored further.
4.8	It was unanimously agreed to explore affiliate membership although acknowledged that the market for this is restricted under the ACL bye laws. DC agreed to progress this and will put forward recommendations.
4.9	All agreed that marketing the training course was vital. NS will lead a group to look into this. RW and SA offered their assistance. It was agreed that DP and KA should be included in the group.
4.10	Discussion took place on whether trying to attract non-qualified costs lawyers was an option and if so, whether it should be as a separate organisation or as a category within ACL. All council members voted in favour of investigating opportunities to attract costs draftsmen but agreed that consultation with members was essential. AG /FK and JR will form a working party to consider the options.
4.11	The deadline for submitting the consultation to members was set as the end of November.
4.12	FK said conversations had already taken place with the CLSB regarding incentives for those not currently members to become members. DC questioned whether this would present a conflict of independence. All agreed that there was merit in having a discussion with the CLSB and that CG and FK would take some ideas to them.
<b>5</b>	<b>2021 membership fee</b>
5.1	Discussion on membership fees for 2021 took place and it was unanimously agreed to leave all rates the same as 2020.
<b>6</b>	<b>Education Report</b>
6.1	Discussion took place on whether it would be possible to hold the student exams on 5 December and it was agreed that it should be rescheduled for early in 2021. NS confirmed that there are a small number of students who are scheduled to re-sit the exam in December and need to pass in order to continue with the course next year and explained the implications, under current rules, of delaying the exam to early 2021. NS agreed to ask KA for a proposal.
6.2	NS informed council that KA has asked for clarity regarding the format of the viability report. FK confirmed that it should be the same as last year.

6.3	Following discussion, it was unanimously agreed that training to external parties who were not members of the Association would not be offered. It was agreed that this may be revisited in the future. DP will respond to the individual who enquired and advise that that training is currently under review and whilst it will be revisited at this point in time the Association is not able to consider offering training to individual companies unless all attendees are costs lawyers.
7	Policy Report
7.1	AG reported on a recent policy committee meeting and stated that DC has made a list of policies that ACL should have in place, to be brought to council by the end of 2020. He confirmed he has also had recent conversations with Kate Wellington about the CLSB's requirements going forward and will speak with the LSB regarding their expectations from ACL.
7.2	KK updated council on recent discussions with the ACL Legal Aid Group and Legal Aid Association.
8	PR Report
	FK commented that the ACL social media accounts currently fairly inactive and that he would discuss this with the PR team at a meeting scheduled for 5 November.
10	Operations Report
	DP updated council members on the arrangements for the ACL online seminars being held on 13 November.
11	Any other business
11.1	CG said that 16 people attended the online Yorkshire Regional Group meeting on 3 November and expressed the view that more regional meetings should be encouraged. It was agreed that this would be discussed further at the next council meeting.
11.2	RW raised some questions regarding the use of the ACL forum. FK said that the forum was not a place for council to respond or to get involved in contentious debates. RW will present her ideas for development of the forum at the next council meeting. FK said there was clearly a need to remind members about the forum and its purpose and that he would discuss this with Black letter.
11.3	RW said she had recently been asked by DP, to declare if, as a council member, she needed to declare any conflict of interest and ask for clarification of what should be declared. DC clarified that council members needed to declare if they were involved in any activity that could be construed as being against the interests of the Association for example, if they were engaged in any activity outside of ACL that may affect what ACL is doing.
12	Date of next council meeting
	The next council meeting will be held by conference call at 4 <sup>th</sup> December 11am
	There being no further business the meeting ended at 1.55pm



## Board report

### Review of the new electronic practising certificate renewal process

13 January 2021

---

#### Purpose

Priority 12 in our 2021 Business Plan is to:

*Measure the success of the electronic practising certificate renewal process implemented in 2020 against five key metrics (cost; resource implications; user feedback; data security; and data quality) and identify any adjustments needed for the 2021 renewal period.*

This report sets out our learnings from the 2020 process and suggestions for future improvements.

#### How the process went

Overall, the process was a resounding success. Numerous Costs Lawyers (CLs) commented on how quick and easy it was to renew online. We had significantly less CLs who did not renew compared to previous years, and very few who did not respond at all. More detailed statistics are set out in the next section.

In terms of the technology, we did not experience any major problems. There were several minor issues, most notably:

- some emails were not delivered to inboxes (about 35);
- some application form links either did not work or said they were unsafe to open for individual CLs (about 5);
- some CLs completed the application form but did not click the “finish” button so thought they had successfully applied, but their application was not received (about 11).

The first two issues are due to the settings in the CL’s firm/personal email account and are outside of our control. The third issue can be fixed for next year by making tweaks to the form.

Other minor issues arose throughout the renewal window, and we are indebted to our excellent IT consultant who fixed these within a matter of minutes on each occasion at minimal cost. With each year that passes, the need for these fixes will diminish until the point where a whole system upgrade is needed.

We have also identified, through our experience of running the process for the first time this year, a number of improvements to the database that will make the “back end” of the process even more efficient for 2021. We are agreeing a workplan with our IT consultant to implement these improvements in addition to our planned extensions. By prioritising appropriately, we expect to deliver the workplan within the existing 2021 budget.

## Statistics

### Regulated numbers

As a starting point for interpreting the statistics below:

- There were 704 CLs on the register on 1 November 2020, at the start of the renewal process.
- 4 CLs were added to the register for 2020 during the process, by way of reinstatement.
- This gives us a high-water mark of 707 CLs on 31 December 2020, against which we can measure terminations / attrition.
- There was then 1 reinstatement and 2 new qualifiers added to the register from 1 January 2021.

Regulated numbers	Renewals	Terminations	Total
By end Nov	640 <sup>1</sup>	22	662
By end Dec	675	32	707

Other data	Parental Fee Remission	CPD Remission	CPD Dispensation (special circumstances)	Hard copy PC requested	Hard copy application
Total	5 <sup>2</sup>	47	4	16	1.5

CPD Remission	Furlough	Newly qualified	Reinstatement	Parental leave	Sick leave
	12	13	3	16	3

Terminations	COVID related	Retirement	Left profession	Parental leave	Other <sup>3</sup>	Not known	No response
	7 <sup>4</sup>	2	4	5	7	2	5

Terminations	2020	2019	2018	2017	2016	2015
Total	32	47	58	61	43	35

### Diversity

Given the LSB's concerns about the completeness of our diversity data, we decided to ask CLs to complete the diversity survey alongside their application for a practising certificate for the first time this year. The survey was run through Survey Monkey rather than being embedded in the application form so that the data was anonymous and we could avoid holding sensitive personal data about identifiable individuals, which is preferable from a data protection perspective.

Using this approach, we saw a significant increase in the response rate. Of the 675 CLs who applied for a practising certificate, 294 CLs responses to the survey, giving a response rate of 43.6%. This

<sup>1</sup> Complete or received in part.

<sup>2</sup> 7 revised fee notes issued. 2 of these then paid in full anyway.

<sup>3</sup> Mainly unemployment or ill-health (excluding COVID related).

<sup>4</sup> One each of: leaving the profession, unemployment, bereavement, uncertainty, full-time childcare, long COVID, insufficient CPD.

compares to previous response rates of 28% (2014), 32% (2016) and 23% (2019). However, we still received data from less than half the profession; we need to push this response rate up further.

For 2021, we are proposing to explore options that will allow CLs to provide their diversity information to us just once, rather than every year. This will allow us to make responses compulsory (always with a “prefer not to say” option) and chase up CLs who do not respond. However it will involve storing sensitive personal data in the database, which has data protection implications. We will also need to identify ways of allowing CLs to update their data; this is more difficult for us than other regulators, as we don’t have a platform where CLs can log into an online account and make changes. But notwithstanding these difficulties, it is clear that we need more comprehensive approach. We will work on this in advance of the 2021 renewal process.

A report analysing the diversity statistics from the 2020 survey will be produced in Q1 for the board to review in April.

## Assessment of the new process against the five key metrics (cost, resource implications, user feedback, data security, data quality)

### Metric 1: Cost

<i>Costs expended on development and delivery</i>
<p>2020 PC renewals costs:</p> <ul style="list-style-type: none"> <li>• Project development costs: £8,145</li> <li>• IT support during renewals: £150</li> <li>• Reminder postcards to all CLs: £392</li> <li>• Stationery and postage (e.g. for requested hard copy certificates): £15</li> <li>• IT services (e.g. back-up server): £125</li> <li>• Admin Manager extra hours during the period: £2,000</li> </ul> <p>Total: £10,827</p> <p>Total, net of one-off development costs (as an indicator of ongoing costs): <b>£2,682</b></p>
<i>Costs saved by comparison to paper process</i>
<p>2019 PC renewals costs:</p> <ul style="list-style-type: none"> <li>• Admin support: £2,000</li> <li>• Stationery and postage: £2,129</li> <li>• Printing: £2,351</li> <li>• Post redirection from Centurion House (for incoming applications): £850</li> </ul> <p>Total: <b>£7,330</b></p>
<i>Cost implications for 2021 and beyond</i>
<ul style="list-style-type: none"> <li>• Improvements and upgrades to the database, plus the next wave of online form development, budgeted for 2021: £4,250</li> <li>• Likely annual costs based on experience in 2020: <ul style="list-style-type: none"> <li>○ Admin support / extra hours: £2,000</li> <li>○ IT services (e.g. back-up server): £125</li> <li>○ IT support during renewals: £150</li> <li>○ Postcards: £392 (we intend to run this down over time)</li> <li>○ Total: £2,667</li> </ul> </li> <li>• Expected annual saving compared to paper process: <b>£4,663</b></li> <li>• Additional long term savings through a reduction in physical archive space required.</li> </ul>

### *Overall outcome*

- Even if we consider “cost” solely in financial terms, the ongoing cost savings from the electronic process are significant, particularly in the context of our limited budget. We will fully recover the cost of our upfront investment through savings within two years. Going forward, we can prioritise areas for further improvement / development on an annual basis, aligned to income.

## Metric 2: Resource implications

### *Internal resources expended on delivery*

- We had a flexible budget provision for additional resource during the renewal period. We lined up external support in case it was needed, but ultimately we decided to keep the process fully in-house so we could take a holistic view of how well it was working. We therefore used the flexible budget provision to buy more of Jacqui’s time during the period.
- In terms of how that time was spent, for CLs who follow the online process and pay promptly, without additional emails or calls, processing applications takes around 5 minutes. In this way, 90% of the applications take 10% of the time.
- Additional time is predominantly spent on the following activities:
  - Resending the renewal email to people who didn’t receive it / lost it / want it to a different email address.
  - Answering queries about the process, most of which are already covered in the information sent out, many relating to CPD.
  - Issuing revised Fee Notes for CLs who had been on parental leave.
  - Liaising internally about disclosures and complaints, with sit with the CEO.
  - Sending receipts to CLs who have paid personally and want to claim back the fee as an expense.
  - Confirming bank details to firms who won’t pay without this confirmation.
  - Investigating payments that are sent with no reference or an incorrect reference.
  - Chasing missing information, particularly evidence that should be uploaded with the application, and (after 30 Nov) payment.
- More time than anticipated was spent tweaking the database and liaising with IT support. Our extensive testing picked up universal issues, but nothing compares to using a new system for the first time with over 700 users, each with a different combination of hardware and software.
- Dealing with Lloyds Bank is becoming increasingly time consuming.

### *Resources saved by comparison to paper process*

- Significant time was saved through:
  - Not having to stuff envelopes with the various items that make up the renewal pack.
  - Not having to create, print and send individualised practising certificates to every CL. Practising certificates are now auto-generated through the database and sent by email.
  - Not having to create, collate and resend paper forms to people who didn’t receive them.
  - Tracking the progress of each application in the database, so that reports could be generated showing everyone who hadn’t applied, hadn’t paid, had missing information etc. Previously this was all tracked manually using lists and logs.
  - Being able to match ancillary information (such as email enquiries and evidence sent by email) with the main application using the database.
  - Extracting management information and other data (CL statistics, monitoring data etc) in an automated way through database reports.
- Physical resources were also saved through the electronic process, particularly paper and stationery, and we avoided the environmental impact of postage and delivery.

### *Potential ways to further reduce resource*

- We have identified a number of upgrades to the database and forms through our learnings in 2020 which we will implement in 2021, such as:
  - Auto-generation of receipts alongside the Fee Note.
  - Increasing the amount of data that can be imported to the database using drag-and-drop rather than being rekeyed.
  - Additional prompts for attaching relevant evidence.
- While we don't have hard data, the ability to link to information through the online form did (anecdotally) seem to reduce enquiries. We will look at the nature of enquiries received and use that information to add or reposition links for 2021.
- While the new CPD Rules will generate more enquiries in 2021, we expect enquiries about CPD to significantly reduce over time as most of the enquiries we currently get (about activity categories and points caps) won't be relevant under the new regime.
- We are considering how to structure the fee for late applications to better incentivise CLs to complete applications by the end of December.
- We are investigating moving to a different bank, but are reluctant to change our account details for incoming payments unless absolutely necessary.

### *Overall outcome*

- The annual renewal of practising certificates is always going to be a significant task in terms of resource. Under the new system, that resource is focused on more valuable activities than stuffing envelopes and typesetting forms. The new database and online application has provided opportunities to automate and streamline parts of the process that were labour intensive and improvements planned for 2021 will help further.
- The biggest remaining element of "low value" time is chasing up outstanding items (late payments, missing evidence etc). In a larger organisation, we could introduce an automated process that simply terminates all practitioners who don't complete their application on time. Given our size and our need to maintain a good relationship with all regulated practitioners, we must accept that a certain amount of chasing is part of the process. In 2021, we will look at ways to automate the chasing, even if it can't be avoided.

## Metric 3: User experience

### *Direct user feedback about the process*

- Most CLs said nothing about the changes to the process.
- A handful of positive comments were received, such as:
  - *Thank you! That's saved a 67p stamp hasn't it – not to mention the cost of paper and printing. Like it – that's what we're about – saving costs!*
  - *It was a very easy process by the way, doing the application online.*
- Lots of brief "thank you" emails were received from CLs on receipt of their PC, as they could simply reply to the CLSB email, which gave us another touchpoint for flushing out any dissatisfaction.
- Many CLs commented on the speed with which they received their PC / response to an enquiry:
  - *Thank you for the quick turnaround of sending me my new practicing certificate.*
  - *Thanks for the certificate and your prompt response.*
  - *Thank you very much for dealing with this so quickly.*
  - *Thankyou. Very efficient!*
  - *Thanks Jacqui. Glad to receive it so quickly.*
- A small minority of the CLs who had technical difficulties with the form (primarily because of their firm's IT settings or because they did not press the "finish" button to submit the

application) were unhappy. The majority were grateful for the prompt and personal support to resolve any difficulties, and we apologised for errors and inconvenience. Feedback included:

- *I am most grateful to you for the help that you have given to me in relation to my application and you have been most helpful.*
- *Thank you so much for your help Jacqui, it's much appreciated.*

#### *Our perception of user experience with the process*

- A minority of CLs (less than 20) thought they would need to have 12 CPD points by the end of November (the application deadline) and were not happy about this. Most were fine once they understood that CPD booked but not yet attended could be included. This was noted prominently in the form, but we will need to think about how we can make this clearer in 2021.
- Some CLs (less than 20) had difficulty with certain text boxes in the CPD Record section of the online form. We are still trying to identify the cause of this.
- The new process means that each CL must have access to their firm's PI insurance policy and complaints procedure, and a small minority found these hard to obtain. This should settle as the new system becomes the norm.
- The vast majority of applications were dealt with before the Christmas closure on 23 December. We have completely eliminated the issue of CLs complaining about being on leave, or their finance department being closed, due to the holidays.

#### *Potential ways to further improve user experience*

- In time for the 2021 renewal process (for 2022 PCs), we will improve the system so that:
  - The need to click "submit" at the end of the process is clearer, and the ability to download a Fee Note will be removed, so that CLs know if they don't have an acknowledgement email their application is not submitted.
  - A receipt is provided automatically alongside the practising certificate.
  - A question about a CL's "practice type" – to which we received several confused or inconsistent answers from CLs – is removed from the application form, and the database is redesigned to capture this elsewhere.
  - The new finance package is linked to the database, minimising the risk of human error and ensuring that CLs who have paid are not chased for payment.
  - Google auto-fill doesn't overwrite pre-populated contact information.
- We had several (less than 10) requests to pay by credit card. Accepting credit cards would be both labour and cost intensive. Given the relatively low number of requests, we don't propose to move to accepting credit cards at this stage. We will keep this under review if requests increase.
- Otherwise, we're conscious that we could significantly improve user experience by pre-populating more data in the application form. This would also improve the consistency of data we receive year-on-year. But this option is not currently open to us within the constraints of the software we use. We will investigate this further during 2021.

#### *Overall outcome*

- The vast majority of CLs found the new system quick and easy to use. Our intention is to continually upgrade and improve the database and application form, learning from our experience and adding functionality as we can afford it.
- The online process is also changing the dynamic of the relationship with CLs, making it less formal and distant. CLs can quickly and easily reply to emails and the CLSB is more accessible. Even where outstanding items have to be chased up, we do this in a way that we hope will build good relations and understanding. Whilst a small number of CLs were disgruntled about certain aspect of the process, it was an opportunity for Jacqui in particular to develop / extend positive relationships with a great many more.

## Metric 4: Data security

### *New data security risks created*

- The system keeps information from the application form on a local server for around 30 minutes while the application is in process, and deletes it after this time, or immediately on submission. Despite this, we had one CL who got another CL's data when they clicked on their personal link. This was due to using a shared computer very shortly after a previous user who had neither logged out nor submitted their own application. The covering email containing the link to individual application forms clearly states that if a CL is using a shared computer they should log out after use.

### *Data security risks eliminated or mitigated*

- The new system removes the risk of errors in sending application packs with pre-populated data, as well as data breaches through applications lost in the post (a surprisingly high proportion in 2019; the virtual office means the forms had 3 postal journeys rather than 2).
- We also remove the risks inherent in sharing personal data with third party service providers (such as the printers) under the old system for the purpose of pre-populating hard copy forms.
- Personal data that is pre-populated in the online application form is accessible only through a personal link sent to each CL's nominated email address (and anyone they choose to share this with).
- The database is stored on a remote web server, with automatic back up. We also procure additional server redundancy during the renewals process to minimise the risk of the system being overwhelmed by high demand.
- Wider risks of a system failure or general data breach are mitigated using the controls set out in the CLSB Data Protection Manual and Business Continuity and Disaster Recovery Plan, both of which were developed in 2020 with the new online application process in mind.
- After the 6 year retention period we will no longer have any physical storage of past applications containing personal data.

### *Potential further improvements to data security*

- We have not identified any material improvements needed to our data security measures for 2021.

### *Overall outcome*

- The one data security problem we experienced was a result of a CL not following the instructions. We will consider whether we need to do more to promote this aspect of the instructions next year.
- Overall, data security is vastly improved through the new online system.

## Metric 5: Data quality

### *Improvements to data quality*

- We have improved both the volume and accuracy of data we hold under the new system. For example:
  - Before the renewals process we had 155 CLs for whom we had no organisation address and 167 for whom we had no organisation telephone number. By making certain fields in the online form compulsory, we have been able to capture all this information. The vast majority of those providing this information for the first time were also happy for it to be published on the online register.

- All regulatory return data is automatically transitioned to the database (using drag-and-drop), and captured for future analysis of trends and themes. We do not have the raw data for previous years, only the collated monitoring report.
- The database can provide accurate management information on metrics like the time taken to process applications, which makes reporting to the LSB more straightforward.
- Previously we had individual spreadsheets of practising CLs for each year, with separate schedules for newly qualified CLs, terminations, reinstatements, and information on disciplinary issues and complaints, all held in different locations. The database brings together data held in over 30 separate files for the first time, giving a holistic view of a practitioner's conduct, practising history and communication with us. We can use this information in all sorts of contexts, including making decisions about whether to issue a practising certificate.
- We can track terminations and reinstatements – including the reasons for those – and thus follow up with individuals at appropriate junctures.

#### *Potential ways to further improve data quality*

- A key issue is ensuring we have comprehensive diversity data going forward. As discussed in the introductory sections of this report, we will look at ways of integrating diversity questions into the practising certificate application in 2021.
- We will also improve the way disclosures are recorded in the database. Disclosures currently form part of the practising certificate application, but this makes it difficult to record ad hoc disclosures or disclosures by unregulated individuals (such as prospective students) in a way that enables accurate searching and analysis.
- We will review the questions in the regulatory return aspect of the application form. Where possible, we will move away from asking for this information annually and find automated ways of ensuring the information remains up to date.
- There is scope for further improving data quality in relation to payments, by linking the database to our new finance system that we will adopt in 2021. This should reduce the scope for human error by tracking bank deposits against individual applications.

#### *Overall outcome*

- The improvements to data quality are arguably the single most important benefit of the new database and online application system. They will increase our ability to meet the LSB's expectations around evidence, and will transform the way we engage with and supervise the profession.

## Major technical developments scheduled for 2021

Following the 2020 renewal process, and in line with our 2021 Business Plan, our priorities for further technical developments in 2021 are as follows:

- Improvements to the database and online application form arising from learnings in 2020
- Converting other application forms to webforms:
  - Application for reinstatement
  - First application for a practising certificate
  - Certificate of good standing
  - Application to become an Accredited CL
  - Application to remain an Accredited CL
- Creating a webform for the client survey and developing the database to link these to CL records
- Automating the issue of receipts with practising certificates
- Configuring the database to drive the online register of Accredited CLs
- Implementing a new finance and bookkeeping package, which links to the database to avoid double entry of payments received