



## Costs Lawyer Standards Board

### AGENDA

**Wednesday 20 July 2022 @ 9:30am**  
**Institute of Advanced Legal Studies, London**

<b>Board:</b>	Rt Hon David Heath CBE Stephanie McIntosh Andrew Harvey Andrew McAulay Paul McCarthy	Lay NED (Chair) Lay NED (Vice-Chair) Lay NED Non-Lay NED Non-Lay NED
<b>In attendance:</b>	Kate Wellington Jacqui Connelly Heather Clayton	CEO and Company Secretary Director of Operations Director of Policy (Item 3.2)

*Note: Agenda items in blue are standing items*

	Agenda item	Paper	Publish <sup>1</sup>	Lead
1	<b>Opening matters</b> 1.1 Quorum and apologies 1.2 Declarations of interest on agenda items	- -		DH DH
2	<b>Minutes</b> 2.1 Approval of minutes (19 May 2022) 2.2 Matters arising (19 May 2022)	Item 2.1 -	Yes	DH DH
3	<b>Strategy</b> 3.1 Progress against Business Plan: Q2 2022 3.2 Strategy session: Defining our regulatory approach	Item 3.1 Item 3.2	Yes No (G)	KW DH/HC
	<b>BREAK</b>			
4	<b>Board matters</b> 4.1 Dates for 2023 meetings 4.2 Remuneration Committee report 4.3 Governance review tracker: New consultation process document	- Item 4.2A+B Item 4.3A+B	Not A (A, B) Yes	DH AH 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.

5	<b>Finance</b> 5.1 <a href="#">Quarterly report: Q2 2022</a> 5.2 2021 accounts 5.3 2023 Business Plan and budget 5.4 PCF consultation	Item 5.1 Item 5.2A+B Item 5.3A-C Item 5.4A-C	No (D, E) No (D, E) Not C (D, E) Yes	JC JC KW/JC KW
6	<b>Risk management</b> 6.1 <a href="#">Review of risk registers</a>	Item 6.1	Yes	KW
7	<b>Regulatory matters</b> 7.1 Two year review of Disciplinary Rules and Procedures 7.2 Consumer Engagement Strategy: Year 2 report 7.3 Accredited Study Provider Scheme Handbook 7.4 Diversity survey report	Item 7.1 Item 7.2 Item 7.3 Item 7.4	Yes Yes Yes No (G)	KW KW KW KW
8	<b>Legal Services Board (LSB)</b> 8.1 Regulatory performance framework consultation 8.2 Feedback from All Chairs meeting	Item 8.1 -	Yes	KW DH
9	<b>Stakeholder updates<sup>2</sup></b> 9.1 Annual review of MOU and OP with ACL	-		KW
10	<b>Publication</b> 10.1 <a href="#">Confirmation that papers can be published</a>	-		DH
11	<b>AOB</b>	-		DH
12	<b>Next meeting</b> Date: <a href="#">19 October 2022</a> Venue: <a href="#">Remote via videocall</a>	-		DH

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<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.

**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**  
**Thursday 19 May 2022 at 10:30 am**  
**Remotely by videoconference**

<b>Board:</b>	Rt Hon David Heath CBE	Lay NED (Chair)
	Stephanie McIntosh	Lay NED (Vice-Chair)
	Andrew Harvey	Lay NED
	Paul McCarthy	Non-Lay NED
	Andrew McAulay	Non-Lay NED
<b>In attendance:</b>	Kate Wellington	CEO and Company Secretary
	Jacqui Connelly	Director of Operations
	Heather Clayton	Director of Policy (Item 7.1)
	Jack Ridgway	ACL (Item 1.3)
	Sarah Hutchinson	ACL Training (Item 3.2)
	Kirsty Allison	ACL Training (Item 3.2)

**1. OPENING MATTERS**

- 1.1** The Chair declared the meeting quorate. There were no apologies.
- 1.2** There were no declarations of interest on any agenda item.

**1.3 Meet and greet with incoming ACL Chair**

David welcomed Jack to the meeting and congratulated him on his recent appointment as Chair of ACL. Following introductions, Jack gave the board an overview of his plans and aspirations for his tenure. Board members had been provided with a copy of the new ACL Business Plan by way of background, and commented that it was very helpful to see ACL's values and vision set down in writing. The focus for the coming year would be to: ensure ACL has a sound understanding of what its members want; stabilise and modernise the back office function; and focus on activities that promote the values in the Business Plan, particularly diversity.

Jack noted that ACL was keen to collaborate closely with the CLSB where this was permitted by the LSB's Internal Governance Rules, and to ensure each organisation had sight of what the other was doing and why. The board agreed and discussed with Jack potential areas for collaboration, including in reshaping the Costs Lawyer Qualification, diversity (particularly social mobility), potential chartered status for ACL, and Costs Lawyers taking on judicial roles.

David thanked Jack for his time and emphasised that that the CLSB was keen to continue an open dialogue throughout his tenure.

## **2. MINUTES**

### **2.1 Minutes dated 2 February 2022**

The board considered the minutes of its last scheduled quarterly meeting on 2 February 2022. 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 2 February 2022. 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: Q1 2022**

The board was provided with a progress update against the 2022 Business Plan. Kate noted that four priorities had been achieved during Q1, with many more underway. Board members asked about activities against priority 9 (diversity) and priority 2 (Costs Lawyer Qualification), and Kate provided further details.

The board discussed timings for finalising the new Accredited Study Provider Handbook and associated documents under priority 2. Kate explained that the Handbook would come back to the board in July for approval. She would aim to also have draft Training Rules available at that stage and, in the best case scenario, a draft consultation document, however this would be a stretch. The board agreed that the draft consultation could be considered by correspondence in Q3.

### **3.2 Roundtable discussion with ACL Training**

Kirsty joined the meeting for this item. Sarah was detained in another meeting.

The board was provided with a report setting out the results of an ACL Training (ACLT) survey designed to gather views on the current structure and content of the Costs Lawyer Qualification. Kirsty took the board through highlights from the survey results as well as several roundtables held by ACLT. She noted that, based on the responses, ACLT was leaning away from a complete redesign of the course and focusing instead on improving what was already there. Board members asked questions about several survey findings and were pleased to see that there had been a decent number of responses from unregulated persons who were prospective purchasers of the course in the future.

Kirsty outlined next steps on ACLT's side, including the intention to take a core proposal to the ACLT board – with a draft course structure and indicative pricing – at its next meeting on 29 June. A key aim was to design a pathway that could be more flexible in terms of timing, while retaining the current credit value. Following that meeting, timing would depend on the CLSB's work, including the consultation outcome and subsequent rule change application to the LSB.

Kirsty highlighted some other improvements that had been made at ACLT, including moving the registry function to a new provider, looking at business development opportunities, business planning, and implementation of the approved governance

changes. The board discussed various issues with Kirsty, such as how the new structure was working from her perspective, how the design of the course could impact on diversity, and how work experience should be taken into account.

David thanked Kirsty for her time and reiterated the importance of ACLT and the CLSB working in parallel on the course for the benefit of the profession and its clients.

Sarah joined the meeting at the end of this item, introduced herself to board members and apologised for being detained on other matters. She thanked the CLSB board and executive for their open and collaborative approach, which helped ACLT take the CLSB's proposals into account in its own thinking.

#### **4. BOARD MATTERS**

##### **4.1 Annual declaration of interests**

David introduced this item and asked board members whether they considered any risk of a real or perceived conflict of interests to arise from the consolidated register of interests. It was agreed that no such risk arose.

The board discussed whether and how the register should be published. In the interests of transparency and accountability, the board agreed that the register should be published both in the board pack and on the CLSB's website.

**Action: Publish consolidated register of interests on website.**

##### **4.2 Scheduled review of staff working arrangements**

At its October meeting, the board agreed to the CEO working from Australia, with the arrangement to be reviewed after six months to ensure it remained suitable for everyone. David sought feedback from board members and the executive, all of which supported the ongoing suitability of the arrangement, and the board agreed to its continuation. David noted that Kate had raised an issue in relation to national insurance contributions arising from her residency. This would be considered at the first meeting of the Remuneration Committee, scheduled for June.

#### **5. FINANCE**

##### **5.1 Quarterly report: Q1 2022**

Jacqui introduced the quarterly finance report. She noted that the current projection was for a surplus, attributable to higher than expected income levels, with spending largely as predicted. The surplus would be allocated to new workstreams that had arisen since the budget was drafted, so it remained likely that the year-end position would be balanced.

The board noted the financial position in the report. Board members discussed the amount in the committed reserves account and agreed this accorded with the approach set out in the Reserves Policy.

#### **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 considered risk OP6 (*breakdown in communication between any of ACL, ACLT and CLSB*), particularly whether the positive recent developments within ACL and ACLT meant that the probability rating should be downgraded. It was agreed that the improved relationships should be given time to bed in, and OP6 would be reviewed again next quarter.

The board discussed whether there was still a risk that the tail-end of the covid-19 pandemic would impact risk OP1 (*more leave than enter the profession*). Kate provided the board with the most recent data on this issue and the board discussed the general state of the legal market post-pandemic as well as the impact in other parts of the profession. Paul and Andrew provided observations on the Costs Lawyer market from their own experience, and commented on the likely impact of the MoJ's new implementation date for extension of the fixed costs regime (April 2023). It was also noted that numerous Costs Lawyers were moving into roles in organisations based a long way from their residential address, suggesting that the pandemic had made the workforce more virtually mobile. Overall, it was agreed that the threat from covid-19 recorded under OP1 had now passed, and OP1 should be updated to reflect this. If new risks arose from long-term impacts of covid-19, these could be dealt with afresh.

The board agreed to:

- update the evidence of risk OP1 to reflect the de-escalated risk from covid-19;
- update the controls for risk OP2 (*CLSB's size means business continuity cannot be assured*) to reflect the risk costing exercise undertaken when updating the Reserves Policy;
- update the controls for risk OP4 (*ACL becomes insolvent*) to reflect the forward-looking measures in the new ACL Business Plan.

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

Stephanie dropped out of the meeting at this point due to technical difficulties and could not reconnect before the meeting ended.

## **6.2 Compliance with government sanctions on Russia**

Kate introduced this item. She explained that the MoJ had become increasingly interested in how the legal regulators were monitoring compliance with the Russian sanctions amongst their regulated communities, to protect both the effectiveness of the sanctions regime and the reputation of the UK's legal sector. She explained the approach that the CLSB had been taking, including that:

- based on the CLSB's data, it was believed that the risk of Costs Lawyers acting for sanctioned clients directly was extremely low; and
- since Costs Lawyers were not permitted to handle client money, there was negligible risk of Costs Lawyers inadvertently diverting or laundering the assets of sanctioned parties.

Kate noted that the CLSB had been cooperating with the LSB and MoJ, and had pledged to support any sector-wide efforts. The board was provided with correspondence between the CLSB and the Lord Chancellor, which summarised the MoJ's expectations and the CLSB's responses.

The board agreed that the approach struck the right balance based on the risk profile of the Costs Lawyer community.

## **7. REGULATORY MATTERS**

### **7.1 Innovation project report**

The board was provided with the final report for the research project entitled *How could Costs Lawyers reduce the cost of legal services?* (funded by the Regulators' Pioneer Fund (RPF)), along with a cover paper explaining key findings and proposed next steps. Heather introduced the report and confirmed that all obligations attaching to the funding had been met and the project had been completed on time and within budget. She thanked consultancy Hook Tangaza for their hard work on the project.

There were three remaining workstreams:

- The project had been chosen for evaluation by RPF, which would be a useful process, and Heather was working on this with colleagues at BEIS.
- The report would be published after key stakeholders had advanced sight of the findings.
- A session would be curated at the July board meeting for board members to consider the strategic questions raised by the report.

The board discussed the key messages outlined in the cover paper. It was noted that some findings were as expected, while others were surprising, particularly the extremely low volume of work undertaken by Costs Lawyers for individual clients. The regulatory model adopted by the CLSB should reflect this, and thus the findings provided an important opportunity to pause, reflect, and think creatively about what kind of regulator the CLSB should be going forward.

The board then discussed plans for publication of the report and made suggestions for involving key stakeholders, headlines to draw out, and framing for the press. Heather agreed to pick up with Andrew H on communications, and David offered his availability for follow-up press work if needed.

**Action: Carry out final workstreams on project; Work up materials for July strategy session**

### **7.2 Complaint triage process**

Kate explained that, in line with priority 4 in the 2022 Business Plan, a review of the CLSB's new Disciplinary Rules and Procedures (DR&P) had been carried out. A report setting out recommendations for tweaks to the DR&P would be brought to the board in July, with a rule change application to follow.

The review also identified a need for a documented, step-by-step triage process for inbound complaints made to the CLSB about Costs Lawyers. A proposed process document was provided to the board for consideration. Kate explained that the triage process would:

- improve transparency and consistency around handling inbound complaints;

- ensure that early-stage decisions – particularly in relation to the CLSB’s jurisdiction to investigate complaints – were properly documented and recorded;
- allow the CLSB to better capture and analyse data on early-stage complaints;
- promote business continuity, by ensuring each role in the triage process can be undertaken by more than one person (to accommodate sickness, holidays and capacity, given the unpredictable timing of inbound complaints).

Kate noted that additional resource for disciplinary matters had also been secured on a flexible basis.

The board considered the proposal. Board members asked about use of the term “professional conduct” and discussed whether and how conduct in an individual’s personal life (such as criminal convictions) were taken into account in the disciplinary process. Kate noted that the DR&P review would make one recommendation for change to the CLSB’s policy statement on enforcement and sanctions in relation to this issue. In addition, a sector-wide statement on taking disciplinary action against counter-inclusive behaviour (to which the CLSB was a signatory) would also be published soon. The board approved the triage process for adoption.

***Action: Adopt triage process into Internal Handbook; Bring report on review of the DR&P to the board in July.***

### **7.3 Costs Lawyer profession in 2021**

The board noted the trends identified in the latest annual report compiling statistics about the Costs Lawyer profession in 2021, which were mainly derived from the “regulatory return” data collected as part of practising certificate renewals.

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

### **8.1 Continuing competence**

The board was provided with the CLSB’s response to the LSB’s recent consultation on a draft policy statement to implement the findings of its work on continuing competence. Kate drew out key elements of the response and shared feedback from conversations with the LSB and other regulators. She indicated several areas where, if the policy statement was not changed following consultation, the CLSB would need to devote resource in order to comply.

The board discussed the response and the overlap between the CLSB’s views and those of others. Likely consultation outcomes and timings were considered, and the board noted the resource that would likely be needed.

### **8.2 Policy statement on empowering consumers**

The board considered the final published version of the LSB’s policy statement on empowering consumers. Kate explained that the CLSB was working with other regulators to look for opportunities to collaborate on implementation. There was no implementation period specified in the statement, and the LSB had not said by when it expected all regulators to comply.



One area that warranted early attention was paragraph 23 of the policy statement, which necessitated changes to the online Register of Costs Lawyers, since that work would have a lead time and incur development costs. The board was provided with a proposed action plan for implementing paragraph 23, which included an assessment of the CLSB's current level of compliance, planned changes, and additional (optional) improvements that could be made now or in the future.

The board discussed opportunities for collaborating with others on amending the Register and Kate provided background to the MTCOG task and finish group that was looking at this issue, noting the complexities involved and likely timescales. It was agreed that any opportunity to collaborate in order to reduce cost and improve consistency for consumers should be seized, but that the CLSB's plans should not be delayed.

The board approved the action plan and noted the additional development costs required.

**Action: Implement action plan.**

### **8.3 Other consultations**

The board received updates in relation to recent LSB consultations (and the CLSB's engagement with them) on:

- the LSB's 2022/23 business plan and budget;
- a new regulatory performance framework.

## **9 STAKEHOLDER UPDATES**

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

The board noted the minutes of ACL Council meetings held in December 2021 and January, February and March 2022. Kate flagged a continuity risk arising from the February minutes, relating to the resignation of Council members. This could have an impact in the area of policy affairs in particular. Kate would pick up with ACL on how policy matters would be staffed going forward once Jack had settled in.

### **9.2 Work updates**

The board was updated on the Legal Ombudsman's consultation on its budget and workplan and board members were provided with a letter setting out how the scheme had addressed consultation feedback in shaping its final proposals.

## **10 OPERATIONAL MATTERS**

### **10.1 2021 CPD audit outcomes**

The board received a report of the recent audit of 2021 CPD records. Jacqui introduced the report, noting that this was the first audit under the new CPD regime implemented in 2021, and explained the benefits that had been gained from the new approach. For example, the audit provided the CLSB with insights into how the nature of Costs Lawyers' work was changing and how practitioners thought about professionalism. The board was pleased to see a high level of engagement with the new regime from practitioners, as well as steps that had been taken to communicate learnings from the audit back to the wider regulated community.

## 10.2 New exit survey

The board was provided with a copy of a new exit survey that had been trialled in Q1. This was designed to help the CLSB better understand Costs Lawyers' experience of the profession, why they leave, and the role that regulation plays in their decisions.

Anecdotal evidence from survey responses was summarised for the board. Board members discussed how the survey was presented and response rates to date. Jacqui noted that the exit survey had been trialled following the last practising certificate renewal round and that it would be sent out earlier in the next round to improve the response rate further.

## 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.

## 13 NEXT SCHEDULED QUARTERLY MEETING

The next meeting was scheduled for 20 July 2022 in London. Jacqui updated the board on joining arrangements. The board agreed that the meeting should begin at 9:30am.

There being no further business, the Chair declared the meeting closed at 12:42.

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Chair

## Related documents

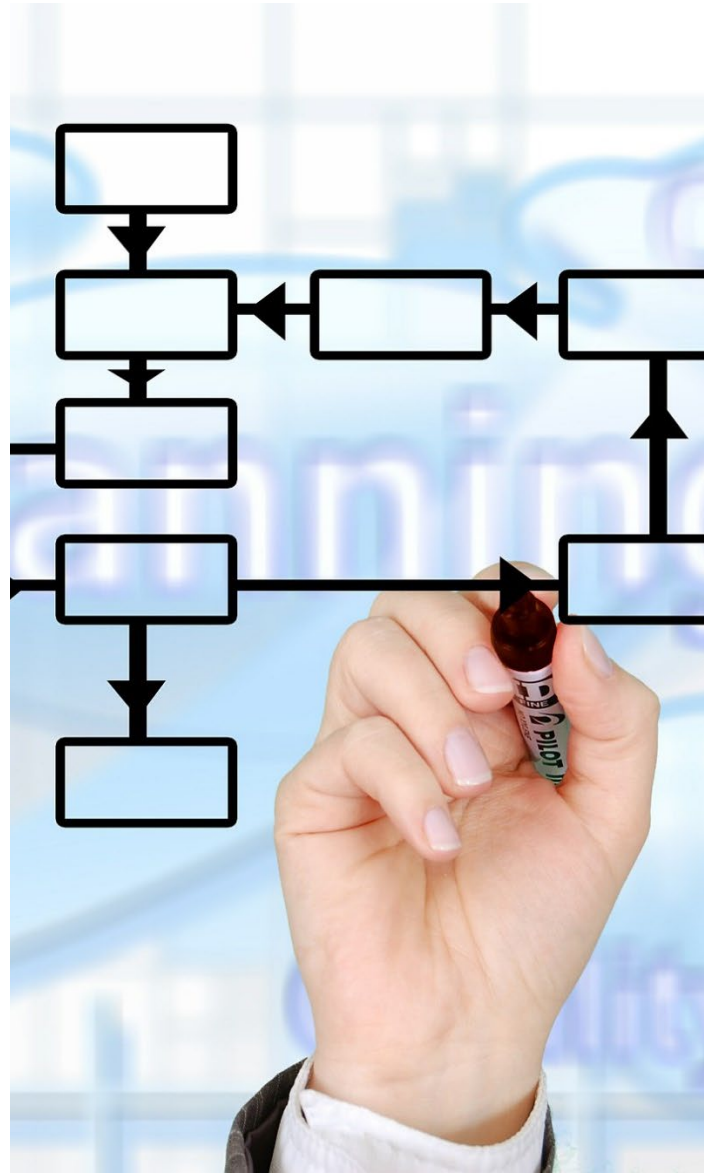
Item	Document	Publication location (CLSB website)
2.1	Board minutes (2 February 2022)	About ⇒ Our board
4.1	Consolidated register of interests	About ⇒ Our board
6.1	Risk registers	About ⇒ Strategy and governance
6.2	Information about Russian sanctions	CLSB website <a href="#">here</a>
7.1	Innovation project webpage	CLSB website <a href="#">here</a>
7.3	Costs Lawyer profession in 2021 report	CLSB website <a href="#">here</a>
8.1	Response to LSB continuing competence consultation	Regulatory ⇒ Consultations

10.1	Lessons learned from CPD audit	CLSB website <a href="#">here</a>
11.1	Board papers	About ⇒ Our board
<b>Item</b>	<b>Document</b>	<b>Publication location (other)</b>
1.3	ACL Business Plan	ACL website <a href="#">here</a>
8.2	LSB response to its consultation on empowering consumers	LSB website <a href="#">here</a>
8.3	LSB consultations on business plan and regulatory performance framework	LSB website <a href="#">here</a>

# Business Plan 2022 Q2 board update

**July 2022**

## Costs Lawyer Standards Board



CLSB

# Annual priorities

## Improving our regulatory arrangements

	Initiative	Progress status / expected completion
1.	<p>Review the Costs Lawyer Code of Conduct to ensure it aligns with:</p> <ul style="list-style-type: none"> <li>• our consumer outcomes framework;</li> <li>• our research into the competencies expected of a qualifying Costs Lawyer;</li> <li>• learnings from our risk deep-dive exercise carried out in 2021;</li> <li>• the better regulation principles, and in particular that it does not impose unnecessarily broad regulatory burdens;</li> <li>• recent updates to our other regulatory arrangements;</li> <li>• evidence of good practice across the wider professional services sectors.</li> </ul>	<p><b>Pending (expected Q4)</b></p> <p><i>Work on this priority is scheduled for H2, with any necessary rule changes being implemented following consultation and application to the LSB.</i></p>
2.	<p>Implement changes to the Training Rules and other regulatory arrangements relating to education – informed by evidence from our competencies project in 2021 – to modernise the requirements for becoming a Costs Lawyer and facilitate a wider range of flexible pathways to qualification.</p>	<p><b>In train (expected Q4)</b></p> <p><i>Achieved: The board considered the first draft of the new Accredited Study Provider Handbook in January. A final draft, incorporating assessment outcomes and a series of new annexes, will be put to the board at this meeting along with proposed new Training Rules.</i></p> <p><i>Outstanding: Following the board's consideration and approval of the drafts, consultation materials will be developed and published in Q3. Consultation will take place during Q3/Q4 with a rule change application to the LSB in Q4 (depending on the consultation outcome). This is a significant workstream that will demand ongoing attention and resource throughout the year.</i></p>
3.	<p>Using our new supervision framework, evaluate the extent to which our revised approach to Continuing Professional Development (CPD) has been understood and adopted by Costs Lawyers, and</p>	<p><b>Achieved (Q1)</b></p> <p><i>An audit of CPD for the 2021 practising year – being the first year in which the new CPD Rules were in force – was carried out in Q1. A report of the findings, as well as actions taken to provide feedback to the regulated</i></p>

	develop communications to address any areas of difficulty or other themes identified.	<i>community and further embed the approach, was presented to the board at its May meeting.</i>
4.	Evaluate the success of our new Disciplinary Rules and Procedures two years after implementation.	<b>Achieved (Q2)</b> <i>A review of our experience in applying the new DR&amp;P was carried out in Q1 and several recommended adjustments were identified, mainly to clarify the relationship between complaints to the CLSB and complaints to LeO. A report setting out these recommendations will be put to the board at this meeting. Consultation and a rule change application to the LSB will follow in H2 by way of implementation. The review also identified a need for a documented, step-by-step triage process, which was approved by the board in May.</i>

## Protecting the interests of consumers and promoting professional standards

	Initiative	Progress status
5.	Update our <a href="#">Consumer Engagement Strategy</a> to capture learnings from the first year, and deliver the updated priority activities for the second year.	<b>Achieved (Q2)</b> <i>Our Consumer Engagement Strategy was updated for year 2, reflecting learnings from year 1 and bringing it into line with our policy statement on consumer outcomes. A report on delivery of the year 2 activities will be put to the board at this meeting, along with recommendations for our approach to the third and final year of the strategy.</i>
6.	Embed a culture of considering consumer outcomes in all of our regulatory work, seeking evidence of effectiveness where possible. In line with this culture: <ul style="list-style-type: none"> <li>gather evidence of whether and how consumer outcomes differ when clients use regulated advisers and unregulated advisers, so we can better assess the risks to consumers of under-</li> </ul>	<b>In train (expected Q4)</b> <i>Achieved: A large part of this priority was delivered through our project “How could Costs Lawyers reduce the costs of legal services?”, with funding from the Regulators’ Pioneer Fund. In this work we explored the differences between regulated and unregulated advisors, and the impacts of under and over regulation. The research phase of the project concluded in March and the project report was published in June.</i> <i>Outstanding: Following our RPF funded work, we now have a much better idea about the type of work Costs Lawyers do, what kind of clients they serve, and what</i>

	<p>or over-regulation in the market for costs law services;</p> <ul style="list-style-type: none"> <li>based on evidence, evaluate how far we can tackle any issues raised in the areas of price; innovation; access; privacy; and fairness.</li> </ul>	<p><i>our regulatory priorities should be. We will curate a session at this board meeting to cover taking forward recommendations around price, innovation and fairness. Access and privacy will be covered separately (see below).</i></p>
7.	<p>Carry out a research project to better understand the pricing structures used by Costs Lawyers and to benchmark prices for different types of costs services.</p>	<p><b>Deprioritised (Q2)</b></p> <p><i>We have changed our expectations of the work we should do in this area, in light of findings from our RPF funded project in relation to the nature of Costs Lawyers' clients. We will be taking further steps to investigate pricing and prices under year 3 of our Consumer Engagement Strategy.</i></p>
8.	<p>Investigate consumers' expectations in relation to privacy – including by reference to learnings from existing research in related markets – and assess whether there is any evidence that expectations are not being met.</p>	<p><b>Achieved (Q2)</b></p> <p><i>We have completed an evaluation of privacy and commercial clients of Cost Lawyers, and have set out a plan to reinforce the importance of considering privacy and cyber security in the context of B2B relationships.</i></p>
9.	<p>Deliver the next phase of our diversity and inclusion work program in the three broad areas identified in our 2021 comparative report, namely:</p> <ul style="list-style-type: none"> <li>further improving our data collection;</li> <li>enhancing engagement with our regulated community;</li> <li>assessing the likely effectiveness of potential regulatory interventions to improve diversity and inclusion.</li> </ul>	<p><b>In train (expected Q4)</b></p> <p><i>Achieved: We have analysed the results of our recent survey on pay and earnings, comparing female and male Costs Lawyers, and a report on the outcomes will be put to the board at this meeting. We will take forward this work by engaging with our regulated community to explore the reasons for a (apparently) substantial pay gap between men and women, and differences by region.</i></p> <p><i>Outstanding: We have decided against holding an event to explore social mobility, as recent similar events struggled to get traction, but our data analysis on pay and earnings should provide us with a head start to further explore social mobility and progression of Costs Lawyers going forward, in line with LSB priorities for the sector. Activities under the three workstreams will continue until the end of the year.</i></p>
10.	<p>Deliver a project to benchmark the level of innovation in the profession and to explore any regulatory or statutory arrangements that might hinder or assist</p>	<p><b>Achieved (Q1)</b></p> <p><i>This priority was delivered through our project "How could Costs Lawyers reduce the costs of legal services?", with funding from the Regulators' Pioneer Fund. The</i></p>

	innovation in the market for Costs Lawyers' services.	<i>research phase of the project concluded in March and the final project report was published in June.</i>
11.	Engage with the other legal services regulators to identify and act on opportunities for collaboration that have the potential to deliver: <ul style="list-style-type: none"> <li>• material cost savings;</li> <li>• new evidence or learnings that we could not access on our own; and/or</li> <li>• unique benefits from taking a whole-sector approach.</li> </ul>	<b>In train (expected Q4)</b> <i>Achieved: We identified a number of areas for collaboration in H1 and joined a number of cross-sector initiatives. Examples include work on PLE, a joint statement on counter-inclusive behaviours, and sanctions compliance.</i> <i>Outstanding: This will continue to be a priority throughout 2022 as we identify and act on new opportunities during the year.</i>

## Modernising our organisation

	Initiative	Progress status
12.	Begin to consider a vision for our organisation beyond the current <u>mid-term strategy</u> that ends in 2023, focused around a board strategy day informed by the views of stakeholders.	<b>Pending (expected Q3)</b> <i>The strategy session will take place at this meeting under agenda Item 3.2, drawing on learnings about the market from our RPF project which captured the views of a wide range of stakeholders.</i>
13.	Review our methodology for measuring, recording, monitoring and responding to risk in light of changes to our regulatory approach and organisational culture since our existing methodology was introduced.	<b>Pending (expected Q4)</b> <i>Work on this priority is scheduled for H2.</i>
14.	Test the measures in our Business Continuity and Disaster Recovery Plan to ensure they remain fit for purpose following changes to our organisational design.	<b>Achieved (Q2)</b> <i>Testing was carried out in Q2 by running through a hypothetical test scenario with key staff. Updates and adjustments have been made to the Plan based on the outcomes of the test, as well as to systems that support it. A new version of the Plan has been distributed to holders.</i>
15.	Deliver the next phase of our digital workplan, including: <ul style="list-style-type: none"> <li>• automating the analysis of routinely captured data;</li> </ul>	<b>Achieved (Q1)</b> <i>In Q1 we added functionality to the database to:</i> <ul style="list-style-type: none"> <li>• record complaints procedure audit outcomes</li> <li>• track all contacts with individual Costs Lawyers</li> </ul>



	<ul style="list-style-type: none"> <li>building add-on functionality for the Costs Lawyer database, such as bespoke report generation.</li> </ul>	<ul style="list-style-type: none"> <li><i>auto-fill address fields to save admin time</i></li> </ul> <p><i>We decided that adding a bespoke reports option was not cost effective. We also made the following upgrades to the PC renewal application form:</i></p> <ul style="list-style-type: none"> <li><i>automatic calculation of fee remission</i></li> <li><i>provision of invoices rather than Fee Notes to facilitate bulk payments in large firms</i></li> <li><i>changes to make the form easier to follow, and more user friendly, in line with user feedback</i></li> </ul> <p><i>Back-end improvements meant that we were quickly and easily able to analyse the data captured in the Regulatory Return and for performance indicators, without needing external support as anticipated.</i></p>
16.	Review and modernise our internal staff policies to ensure they are fair, relevant and reflect our current ways of working.	<p><b>Pending (expected Q3)</b></p> <p><i>Work on this priority is scheduled for Q3.</i></p>
17.	Consider whether additional or different advisory appointments are necessary to fill any skill gaps at board or executive level.	<p><b>Achieved (Q1)</b></p> <p><i>We incorporated this work into our wider governance review which was carried out in H2 2021. The recommendations from the governance review were implemented in Q1, following board approval in February 2022, and the RemCom held its inaugural meeting in June.</i></p>

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# Purpose

1. This policy has been adopted by the CLSB Board on the recommendation of the Remuneration Committee. The Remuneration Committee's Terms of Reference are set out in the CLSB's Board Governance Policy and include developing appropriate remuneration policies and practices. This policy adopts the definitions used in the Terms of Reference.
2. The policy establishes a framework for determining the remuneration of the CLSB's Directors and executive staff. It is intended to be used by the Remuneration Committee, as well as by the CEO when making delegated decisions about remuneration.
3. The CLSB is:
  - a small organisation, employing only a few individuals and having no full-time staff;
  - a regulatory body that operates within a statutory framework and seeks to promote transparency and accountability in its activities;
  - funded by Costs Lawyers through the payment of compulsory practising fees.Against that background, the policy seeks to give rise to simple, clear and fair remuneration structures which can be easily understood and scrutinised by Costs Lawyers, other external stakeholders and members of the public.
4. The policy is intended to ensure that remuneration structures within the CLSB:
  - support its strategic aims and promote long term sustainable success, with remuneration being aligned to the CLSB's vision and objectives;
  - are likely to attract, retain and motivate individuals of the quality required to run the CLSB successfully, without paying more than is necessary.
5. This policy does not cover the reimbursement of expenses or additional remuneration for Directors who take on extra responsibilities from time to time. Those matters are covered in separate policies, located in the CLSB's Internal Handbook.

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# Remuneration principles

## General principles

6. As a baseline, remuneration will always be set at a level that meets or exceeds the National Living Wage, as published by the UK government for the relevant year. In addition, the CLSB will always pay interns.
7. Other than in exceptional circumstances, such as financial vulnerability of the organisation, all staff can expect an annual increase in their remuneration of at least the prevailing rate of inflation, to maintain the stability of real wages.
8. Changes to an individual's remuneration structure should be documented by way of a side letter to their contract, signed on behalf of the CLSB and the individual. Straightforward increases in remuneration can be communicated to individuals without the need for a contractual amendment, but this should be done in writing (which may be by email).
9. Decisions about remuneration should be based on the factors set out in this policy, free from discrimination or bias, and made in line with the CLSB's obligations under the Equality Act 2010.
10. To promote transparency, remuneration of the Chair, other Directors and CEO will be published annually on the CLSB website. Total staffing costs will be published by way of a separate line item in the annual budget (projected costs) and accounts (actual costs).

## Principles for executive remuneration

11. Given the CLSB's size, all staff are considered to be members of the executive for the purposes of this policy. This currently comprises the CEO, Operations Director and Director of Policy.
12. The remuneration of the CEO is set by the Remuneration Committee. The remuneration of other executives is set by the CEO, with board approval being sought where required under the Board Governance Policy.

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13. The highest paid member of the executive should not earn, when all aspects of remuneration are taken into account (pro rata), more than three times the remuneration of the lowest paid member of the executive.
  14. Remuneration for any given role should be considered on a case by case basis, using analysis and discretion, so that remuneration is proportionate to the scope and complexity of the specific remit. While advice may be taken from agencies or other third parties, decisions on remuneration should be made internally.
  15. Initial remuneration, and any changes to remuneration over time, should be determined by reference to the following factors:
    - The specific skills, experience and competencies that the CLSB requires and the competitiveness of the current market for procuring those resources.
    - Assessment of an individual's performance against expectations in achieving the organisation's objectives.
    - Any recent or planned significant increase in responsibilities or major change in job description.
    - Likely impact of the decision on the regulatory objectives.
    - Likely impact of the decision on the practising fee for Costs Lawyers.
    - Likely impact of the decision on other staff and internal culture.
    - Likely impact of the decision on the reputation of the CLSB or the Costs Lawyer profession.
    - Anticipated future operational and regulatory needs of the CLSB.
    - Long-term sustainability of the decision, including by reference to any foreseeable risks to financial stability.
    - The CLSB's track record in recruiting and retaining high-performing staff, including the outcome of recent recruitment campaigns.
    - Relevant available information on remuneration in comparable organisations (benchmarking).
  16. While benchmarking should be taken into account, remuneration should not necessarily be set to meet the benchmark or exceed it by a certain percentage.

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Rather, the following factors should be taken into account (as relevant) to contextualise benchmarked salaries:

- The benefits and drawbacks of working exclusively from a home office.
- The attractiveness or otherwise of a part-time role.
- The degree of flexibility, autonomy, fulfilment, development opportunity and work-life balance offered by the role.
- The fact that the CLSB's size requires individuals to take on a wide variety of tasks and/or have specialist expertise that would not usually be required for their role in a different organisation.

17. Benefits may be offered to executive staff to make the overall remuneration package more attractive, so long as these are aligned to the purposes of this policy, are lawful, and do not make the remuneration package unduly complex. Benefits could include:

- private health insurance or other insurances;
- additional employer pension contributions;
- salary sacrificed benefits;
- education or professional development opportunities;
- wellbeing entitlements, memberships or subscriptions; and/or
- additional leave entitlements.

18. The CLSB should take care when considering offering bonuses for performance related achievements. While bonuses can be effective in aligning an individual's objectives with the organisation's, for a small organisation with low turnover bonuses can also create budgetary uncertainty. Given that there is a statutory approval process for the CLSB's budget, this has the potential to introduce unnecessary risk. Generally, the CLSB will use cultural rather than financial incentives to encourage alignment of objectives.

19. Where the Remuneration Committee decides that, notwithstanding paragraph 18 above, a bonus is the most appropriate way to further the purposes of this policy, the bonus should be related to clear performance criteria, and should be discretionary and/or contingent upon available funds.

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## Additional principles for Directors

20. The remuneration of the Directors, including the Chair, is set by the Remuneration Committee.
21. In making decisions about Director remuneration, the Remuneration Committee must keep in mind section 11 of its Terms of Reference, which relates to independence. In particular, section 11 provides that no Director may be involved in any decision as to their own remuneration outcome, but where the Committee determines that there should be a single decision as to the remuneration of a group of three or more Directors, a Director who is part of that group may be involved in a decision about the group members' remuneration.
22. Usually, Directors other than the Chair will receive the same remuneration as one another, regardless of their time served on the Board. This reflects the equal expectations on each Director to contribute to the organisation's objectives by drawing on their individual experiences and perspectives. From time to time, the Remuneration Committee may decide that the purposes of this policy are best served by departing from this general principle, for example if special expertise are needed on the Board and the market dictates higher remuneration for those expertise.
23. Remuneration for the Chair will be set by way of an annual salary or stipend. Remuneration for the other Directors will be set by way of a day rate, with preparation for and attendance at a Board meeting attracting one day's pay.
24. Otherwise, the general principles above, as well as the principles for executive remuneration, should be taken into account (insofar as relevant) in setting the overall level of Director and Chair remuneration.

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## Review

25. The ongoing appropriateness and relevance of this policy will be reviewed by the Remuneration Committee at least once every two years.
26. This policy is non-contractual and may be updated or amended by the CLSB at any time.



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# Purpose

1. This document describes how, when and why the CLSB consults with its stakeholders about proposed changes to its regulatory rules or policy approach.
2. The document aims to help interested parties understand our consultation processes and how they can engage with us so their views are taken into account. This document also helps ensure that the CLSB's approach to consultation is consistent, fair and transparent.
3. The term "consultation" can refer to a wide variety of activities, from having informal discussions and taking soundings, to convening advisory panels and interest groups, to a formal written process addressing the public at large. The CLSB undertakes all these activities from time to time, depending on what is relevant and proportionate for a particular issue.
4. However, the focus of this document is on formal consultation, whereby a proposal is set out in a detailed consultation document and responses are sought from any interested parties within a specified timeframe.

## Why we consult

5. The CLSB's overarching purpose is to promote the regulatory objectives in the Legal Services Act 2007 through the regulation of Costs Lawyers. The regulatory objectives include aims such as protecting and promoting the public interest, improving access to justice, and maintaining adherence to professional principles.
6. In promoting the regulatory objectives, our regulatory activities must also be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. This means that, in order to regulate effectively, we need to gather robust evidence of the problem we are trying to solve, understand the impact that our intervention will have on affected parties, and consider how best to maximise positive impacts and minimise negative ones. In order to do that, we

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need to clearly explain what we propose to do and why, to enable people to give us feedback and share their views. This is primarily done through consultation.

7. We recognise that our regulatory rules and interventions can have an impact on a range of individuals and organisations, each with their own interests and needs. Consultation allows us to better understand and factor into our decision-making the views of practitioners, the knowledge of experts, the experience of minority groups, and the interests of consumers and citizens. This helps us identify unintended consequences of our decisions, assess risk, gain exposure to ideas and benefit from best practice.
8. The guiding principle that we apply when consulting is that we will always remain open-minded. Through consultation, we are looking for ways to improve our proposals so that they further the regulatory objectives in the most effective way.

## How we consult

9. We aim to take a tailored and considered approach to each formal consultation we carry out; there is no single consultation methodology that will be appropriate in every case.
10. Factors that affect our approach to consultation on a particular proposal include:
  - the complexity of the issues and evidence;
  - the likely extent (depth and breadth) of the impact of the proposal;
  - the nature of the proposal, including whether it involves a significant policy shift or more technical changes;
  - whether stakeholders will need to take positive action to implement the proposal;
  - the scope for discretion, including whether the proposal is tied to external factors such as legislation;
  - the extent of informal consultation already undertaken, particularly with those who are likely to be impacted.

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11. While there is a need for flexibility, we will usually follow the principles below when carrying out formal consultation, unless the circumstances make it necessary to depart from them (for example, because a change is critically urgent).
- (i) We will publish a written document setting out, in plain language, the changes we propose to make and why. We will consider whether it is necessary to publish different consultation documents for different audiences.
  - (ii) We will summarise or cross-refer to the key evidence upon which we rely, so that consultees can evaluate our reasoning.
  - (iii) We will explain how we think our proposal will impact upon:
    - the regulatory objectives;
    - consumers; and
    - equality and diversity,and seek feedback on our understanding.
  - (iv) We will allow a proportionate timeframe for responding to the consultation, taking into account the nature and impact of the proposal, in line with [Cabinet Office guidance](#). In most cases, we will allow at least four weeks for consultees to provide a written response, with longer periods of up to 12 weeks for more complex proposals. We will be mindful of holidays in setting consultation deadlines.
  - (v) We will consider requests for extensions of time on a case by case basis and will not impose a blanket prohibition on extensions.
  - (vi) We will be mindful of other CLSB and sector consultations – as well as other activities for which we are seeking stakeholder involvement – when setting consultation timetables.
  - (vii) We will welcome responses by any method, including verbal and email responses, and will make reasonable adjustments for consultees with disabilities.

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- (viii) We will publish consultation documents on an easily identifiable page of the CLSB website in a format that meets current accessibility standards. We will use annexures and hyperlinks to keep consultation documents as simple and clear as possible.
  - (ix) We will make our regulated community and key stakeholders aware of consultations by direct email, and will promote consultations through our social media channels, newsletters, website and sector press.
  - (x) We will consider on a case by case basis whether and how consultations should be promoted to particular individuals or interest groups, for example where there might be a differential impact.
  - (xi) We will consider on a case by case basis whether additional communications or events would be beneficial to supplement the consultation, for example to reach a more varied audience or encourage responses to key questions. This could include unilateral communications such as videos or podcasts, or multilateral communications such as webinars, roundtables or workshops. Proportionality will be a key consideration when deciding whether to supplement a consultation in this way.

## When we consult

- 12. We will always undertake formal consultation in relation to:
  - setting the annual practising fee;
  - making significant changes to our regulatory arrangements;
  - making minor changes to our regulatory arrangements that necessitate Costs Lawyers taking positive action within a short timeframe.
- 13. We will consider whether formal consultation would be useful and proportionate in relation to:
  - making other minor changes to our regulatory arrangements, particularly those that could have a disproportionate impact on a particular group;
  - publishing new or amended regulatory guidance or policy statements;
  - emerging policy positions or milestones in policy development;

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- any other proposal upon which formal consultation might be warranted to ensure a fair and transparent process of engagement.

## Who we consult

14. Formal consultation is a particularly important part of stakeholder engagement because it is universal and transparent; it gives everyone an opportunity to provide feedback on the same issues and questions, and hear what others have to say. For this reason, we will always open our consultations to the public at large, even if we target communications at impacted people or groups.
15. We will send all CLSB consultations directly by email to regulated Costs Lawyers.
16. We will also send bespoke communications about consultations to the following consultees on a case by case basis, where they might have feedback, evidence or expertise that could contribute to the consultation (even if they may not be directly impacted by our proposal):
  - Association of Costs Lawyers (ACL);
  - ACL Training;
  - trainee Costs Lawyers;
  - Legal Services Board;
  - Legal Services Consumer Panel;
  - consumer and other third sector bodies, such as Citizens' Advice;
  - Solicitors Regulation Authority, which regulates the firms in which many Costs Lawyers work;
  - other legal services regulators;
  - groups representing the professionals who instruct Costs Lawyers, such as the Litigation Section of The Law Society;
  - public bodies and government departments, such as the Ministry of Justice, HM Courts and Tribunals Service or the Legal Aid Agency;
  - judicial bodies, such as the Senior Courts Costs Office;
  - legal academics and commentators;
  - legal training providers.

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## How we take feedback into account

17. The most important part of the consultation process is determining how best to take account of feedback from respondents to improve the proposals set out in the consultation.
18. The CLSB reviews every individual consultation response as a standalone document, to identify implicit themes (such as overall support for or objection to the proposals) and to capture any feedback that is not directly responsive to the consultation questions. A question-by-question compendium is also produced, collating all respondents' answers to each consultation question.
19. We then consider how to act upon each item of feedback, taking into account:
  - whether the feedback is supported by our own evidence or evidence supplied by the respondent;
  - the likely impact of actioning the feedback on (where relevant) the regulated community, the regulatory objectives, consumers, and equality and diversity;
  - any complementary or contradictory feedback from other respondents (although being mindful to give equal weight to all feedback, for example by recognising that one group's views should not be given more weight just because more people from that group responded to the consultation).
20. We could act on feedback by, for example, making changes to the text of a proposed publication, making a commitment to do something in the future (like reviewing changes after a certain period), or taking action in a different area of our work. We recognise that, in some cases, making changes in response to feedback will necessitate further formal consultation.
21. We set out our response to consultations in a consultation outcome report, which is published on our website and communicated through our social media channels,

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newsletters and the sector press.<sup>1</sup> In the report, we summarise the feedback received from consultees and explain how we have taken it into account. This could involve explaining how we have acted on the feedback, or explaining why we chose not to act. Either way, every item of feedback is carefully considered and addressed with equal weight.

22. We aim to publish consultation outcome reports within 12 weeks of the consultation closing. We often publish these sooner, but in some cases it might take longer, for example if there is a very high volume of responses or if we intend to make changes that require the approval of the CLSB board.

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<sup>1</sup> By way of exception, we do not publish a consultation outcome report in response to the annual practising fee consultation. This is because the consultation responses, along with a description of how we have taken them into account, are summarised in our application to the Legal Services Board (LSB) for approval of the fee under section 51 of the Legal Services Act 2007. Our application is [published on the LSB's website](#).



# Learnings from the LSB's reviews of the BSB and Faculty Office under the well-led standard

Internal tracker – as at 9 June 2022

	Thematic lesson	Recommended actions	Status
	BSB review		
1.	The regulatory objectives should be at the heart of decision-making and the way that a regulator thinks about risk	<ul style="list-style-type: none"> <li>Consider during the governance strategy session whether we can better evidence how we take account of the regulatory objectives in our day-to-day decision-making.</li> </ul>	Complete (Q4 2021) <ul style="list-style-type: none"> <li>Discussed at strategy session and kept in mind when producing new board manual.</li> </ul>
		<ul style="list-style-type: none"> <li>As part of delivering priority 13 in our 2022 Business Plan, review our approach to measuring and recording risks to the regulatory objectives.</li> </ul>	Pending (expected 2022) <ul style="list-style-type: none"> <li>To be addressed in the project plan for Business Plan priority 13.</li> </ul>
		<ul style="list-style-type: none"> <li>Develop our approach to project-specific risk registers by more explicitly linking identified risks to the regulatory objectives.</li> </ul>	Complete (Q3 2021) <ul style="list-style-type: none"> <li>Implemented in the risk register for the RPF project and the template for use going forward.</li> </ul>
2.	All relevant stakeholder views and needs should be given due weight when taking key decisions	<ul style="list-style-type: none"> <li>We could better document our approach to gathering stakeholder views, for example by setting out which type of stakeholders we will engage with on which type of issue. This would provide a more objective and transparent framework for the board to assess the adequacy of engagement prior to taking a decision. Consider this proposal during the <b>governance strategy session</b>.</li> </ul>	<b>Complete (Q2 2022)</b> <ul style="list-style-type: none"> <li>Covered in the new consultation process document approved by the board in July 2022.</li> </ul>

3.	The board must be provided with sufficient information to support key regulatory decisions	<ul style="list-style-type: none"> <li>During the <b>governance strategy session</b>:               <ul style="list-style-type: none"> <li>(i) reflect on whether we are making sufficient use of Board Decision Notes or whether we have missed any opportunities to report on significant decisions;</li> <li>(ii) seek feedback from board members as to the volume, nature and quality of materials provided to the board by the executive.</li> </ul> </li> </ul>	<p>Complete (Q3 2021)</p> <ul style="list-style-type: none"> <li>Discussed at strategy session – reflected that BDNs will only be relevant once or twice per year and this is appropriate. Board members to ensure the policy is kept in mind and executive to suggest opportunities for use.</li> <li>Feedback provided at strategy session – quality of papers has significantly improved in recent years. The volume of reading can be substantial, but this allows for efficiency and discussions to be focused appropriately on complex or contentious issues.</li> </ul>
4.	The board must have oversight of, and responsibility for, the organisation's regulatory performance	<ul style="list-style-type: none"> <li>No actions identified.</li> </ul>	N/A
5.	A regulator's governance framework should be coherent and up-to-date	<ul style="list-style-type: none"> <li>Implement a comprehensive, single-source governance manual that captures the outcomes of our governance review and incorporates stand-alone policies. Consider this proposal during the <b>governance strategy session</b>.</li> </ul>	<p>Complete (Q4 2021)</p> <ul style="list-style-type: none"> <li>Discussed at strategy session – agreed that a new single-source board manual should draw together and update standalone policies. This has been developed as the primary output of the governance review.</li> </ul>
6.	Ancillary issues re board meetings	<ul style="list-style-type: none"> <li>Decisions taken with a non-lay member in the Chair =&gt; No actions identified.</li> </ul>	N/A

		<ul style="list-style-type: none"><li>There must be appropriate time for meaningful discussion =&gt; Keep this in mind during the <b>governance strategy session</b> when reviewing the number and length of meetings and whether the agenda should include indicative timings.</li></ul>	<p>Complete (Q3 2021)</p> <ul style="list-style-type: none"><li>Discussed at strategy session – agreed that the number of meetings was appropriate, particularly as there was no end time and matters could be discussed for as long as needed. The executive should feel comfortable seeking approval of urgent or routine issues by email between meetings.</li><li>While there were differing views on the merits of agenda timings, it was agreed that for a small board setting timings would increase the risk that time was inappropriately allocated between items and could undermine robust discussion.</li></ul>
		<ul style="list-style-type: none"><li>No notice of extraordinary meetings on the website =&gt; Going forward, give notice of any extraordinary meetings by publication on the website as early as possible. Update our <a href="#">What we Publish</a> webpage to reflect this change.</li></ul>	<p>Complete (Q3 2021)</p> <ul style="list-style-type: none"><li>Webpage updated to include notice provisions for extraordinary meetings.</li></ul>
Faculty Office review			
7.	Governance processes should be fully documented	<ul style="list-style-type: none"><li>Ensure we have policies for managing conflicts of interest, recruitment, delegation of decision-making authority, appointments to committees and boards.</li></ul>	<p>Complete (Q4 2021)</p> <ul style="list-style-type: none"><li>All covered in new board manual.</li></ul>
8.	Decision-making processes should be fully documented	<ul style="list-style-type: none"><li>Ensure we have policies for documenting how decisions are made, how they take account of the regulatory objectives and risks, how they are recorded and communicated to the regulated community, wider stakeholders and consumers.</li></ul>	<p>Complete (Q4 2021)</p> <ul style="list-style-type: none"><li>All covered in new board manual, which incorporates the former Transparent Decisions Policy and the publication policy (which was previously only recorded in website content).</li></ul>

9.	All staff should have written role descriptions	<ul style="list-style-type: none"> <li>We have a standalone role description for the Chair, however the NEDs' responsibilities are described in their LoE which is not published. Bring the NED role description up to date and into a publishable format.</li> </ul>	<p>Pending (expected 2022)</p> <ul style="list-style-type: none"> <li>This is a standalone task that needs attention in 2022.</li> </ul>
10.	Regulators should document how they consult and how they respond to consultations	<ul style="list-style-type: none"> <li>We do not currently have a written policy covering these matters. This should be remedied through a new consultation process document, covering how widely we consult and how we demonstrate that we have taken account of responses.</li> </ul>	<p>Complete (Q2 2022)</p> <ul style="list-style-type: none"> <li>Covered in the new consultation process document approved by the board in July 2022.</li> </ul>
Other			
11.	Board members should each take responsibility for promoting the regulatory objectives	<ul style="list-style-type: none"> <li>Link board member performance to the regulatory objectives in board appraisals.</li> </ul>	<p>Complete (Q4 2021)</p> <ul style="list-style-type: none"> <li>Included in new board manual.</li> </ul>

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# Foreword

Rt Hon David Heath CBE, Chair

2023 holds exciting prospects for the Costs Lawyer profession. While the covid-19 pandemic brought personal hardships for many, it also opened legal professionals' eyes to the potential benefits to be gained by adopting more flexible and efficient working practices. Many Costs Lawyers are now employed remotely by firms and are servicing clients in a range of locations, allowing wider public access to the talent within our regulated community. Training and development resources have also moved online, increasing the relevance and variety of the CPD activities that Costs Lawyers can access.

But it is not all plain sailing. Reforms to legal aid, the expansion of fixed recoverable costs in civil cases, and other policy shifts have created uncertainty in the market. Despite its many benefits, remote working can also put pressure on families, teams and individuals, threatening important aspects of professional life such as wellbeing and on-the-job training. And more broadly, research consistently shows that citizens and small businesses in England and Wales still have significant legal needs that are not being met by the sector. Our regulatory approach must respond to all these factors, and many more.

In 2022 we were able to invest heavily in research, thanks in large part to the Regulators' Pioneer Fund (an initiative of the Department for Business, Enterprise and Industrial Strategy), which supported our project that asked: How could Costs Lawyers reduce the cost of legal services? Through the project, we have developed a much clearer picture of the barriers and contributors to innovation in the market for costs services, the untapped benefits that Costs Lawyers could bring to the sector, and how our regulatory framework could promote better outcomes.

In 2023, we will apply this evidence to our thinking around a number of risks, challenges and difficult questions, with the aim of making Costs Lawyers' specialist expertise more widely understood and available to those who need it most.

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# Introduction

Kate Wellington, Chief Executive

How time flies. 2023 marks the final year of our [mid-term organisational strategy](#) and my fourth year at the CLSB.

The first two years of delivering our strategy involved a whirlwind of change and modernisation, as we upgraded every aspect of our operations and improved our regulatory framework. In 2022 we took stock and consolidated our progress, by evaluating the success of earlier initiatives and making adjustments to ensure they remain relevant and impactful. We also launched a series of new projects, digging deeper into important areas that we see as critical to the success of the strategy. This involved, for example, developing a modern regulatory framework for the Costs Lawyer Qualification, re-evaluating our approach to risk, and expanding our evidence base through research and engagement.

When we developed our mid-term strategy, our focus was on building the necessary foundations for the CLSB to regulate Costs Lawyers effectively into the future. By the end of 2022, we wanted to be “nearly there” in terms of achieving that strategy, and our 2022 Business Plan was designed with that in mind. The foundations are now in place. So what’s next?

A key priority for 2023 will be developing a successor mid-term strategy, setting new ambitions and updating our vision for the coming four years. Through our 2023 Business Plan priorities, we will explore important questions about what kind of regulator is really needed for the Costs Lawyer profession, how we can address structural issues in the market, and how we (and the profession) could add value to the legal sector as a whole.

This represents the next phase in securing the CLSB’s future as a stable, efficient and thoughtful regulatory body.

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# Our objectives

## Pursuing our strategy

Below are the CLSB's strategic objectives for 2020 to 2023, as set out in our [mid-term strategy](#). Each strategic objective is assigned a letter, A through E. These letters are used in the remainder of this Business Plan to demonstrate how our annual priorities for 2023 are linked to achievement of our wider strategic goals.

- A. *We will have collaborative working relationships with key stakeholders in the costs law market and across the wider legal services landscape, including the Association of Costs Lawyers, the Legal Services Board and other Approved Regulators. Through these relationships, we will identify best practice, harness evidence and data, and draw from the learnings of others, to deliver a rigorous approach at proportionate cost.*
- B. *We will consider and act upon evidence in a consistent, structured and documented way, furthering our ability to implement highly tailored regulatory arrangements.*
- C. *We will have an advanced understanding of the consumer dimension of the market we regulate, and we will regularly revisit and update our perception of the risks posed by the profession to the public.*
- D. *We will have a deep comprehension of the risk framework within which we operate, and our stakeholders will be confident that we are delivering robust risk-based regulation that is bespoke to Costs Lawyers.*
- E. *Costs Lawyers will view the CLSB as facilitating a trusted and evolving profession, responding proactively to new challenges and needs.*

## The regulatory objectives

All of our activities must be compatible with, and promote, the regulatory objectives set out in section 1 of the [Legal Services Act 2007](#). The regulatory objectives are reproduced below, and each is assigned a number, 1 through 7. These numbers are used in the remainder of this Business Plan to demonstrate how our annual priorities for 2023 are linked to promotion of the regulatory objectives.



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The regulatory objectives are:

1. *protecting and promoting the public interest;*
2. *supporting the constitutional principle of the rule of law;*
3. *improving access to justice;*
4. *protecting and promoting the interests of consumers;*
5. *promoting competition in the provision of legal services;*
6. *encouraging an independent, strong, diverse and effective legal profession;*
7. *increasing public understanding of the citizen's legal rights and duties;*
8. *promoting and maintaining adherence to the professional principles.*

The professional principles referred to at 8 above are:

- that authorised persons should act with independence and integrity;
- that authorised persons should maintain proper standards of work;
- that authorised persons should act in the best interests of their clients;
- that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice; and
- that the affairs of clients should be kept confidential.

## Promoting consumer outcomes

In line with our commitment to consider consumer outcomes in all of our regulatory work, we have also indicated in this Business Plan how each initiative is linked to the promotion of one or more of the consumer outcomes that we are interest in, namely: price; quality; access; innovation; privacy; fairness; and/or diversity.

# Annual priorities

	Initiative	Link to objectives	Fit with consumer outcomes
1.	Work with internal and external stakeholders to develop a new mid-term strategy for the CLSB, building on the learnings and successes from our first strategy covering the period 2020 to 2023.	<b>Strategic</b> Supports all <b>Regulatory</b> Supports all	Supports all
2.	Deliver the priority activities for the final year of our <a href="#">Consumer Engagement Strategy</a> , and consider what successor initiatives should be put in place going forward.	<b>Strategic</b> B, C <b>Regulatory</b> 1, 3, 4, 7	Supports all
3.	Develop a programme of work to promote the outcomes in the Legal Services Board's policy statement on empowering consumers in a way that takes into account the unique nature of the market for costs services.	<b>Strategic</b> A, B, C <b>Regulatory</b> 1, 3, 4, 5	Price Access Innovation Fairness
4.	Using our new regulatory framework for the Costs Lawyer Qualification, work with ACL Training to accredit a new course that meets the standards for delivery and competency assurance set by the CLSB.	<b>Strategic</b> B, E <b>Regulatory</b> 1, 4, 6, 8	Quality Access Diversity
5.	Deliver a programme of work aimed at harnessing the unique insights that Costs Lawyers can bring, to stimulate discussion across all the legal regulators about how legal costs can be better controlled.	<b>Strategic</b> A, B, E <b>Regulatory</b> 3, 4, 5, 6	Price Access Fairness
6.	Investigate the risks and benefits of entity regulation amongst costs firms, including whether there is a cost effective version of entity regulation that may be practical for the CLSB to implement.	<b>Strategic</b> D, E <b>Regulatory</b> 1, 4, 5, 6	Innovation

7.	<p>Explore ways of encouraging competition in the market for legal services and promoting the interests of consumers through considering:</p> <ul style="list-style-type: none"> <li>• how the CLSB's branding is used by the sector;</li> <li>• how our competency frameworks can ensure the profession provides the best value to end users; and</li> <li>• how our overall framework of regulation could best support the positive role that Costs Lawyers can play.</li> </ul>	<b>Strategic</b> C, D, E <b>Regulatory</b> 4, 5	Quality Access Innovation
8.	<p>Consider whether and how to implement measures to more strongly distinguish between the interests of intermediaries (professionals who instruct Costs Lawyers on a client's behalf) and the interests of the Costs Lawyer's ultimate client in our regulatory arrangements.</p>	<b>Strategic</b> C, E <b>Regulatory</b> 4, 6, 8	Quality Access Innovation Fairness
9.	<p>Design a project that looks at how the regulation of Costs Lawyers should evolve into the future, taking into account how the profile of our regulated community may change.</p>	<b>Strategic</b> Supports all <b>Regulatory</b> Supports all	Supports all
10.	<p>Develop a programme of work to align the CLSB's approach to ensuring continued competency with the Legal Services Board's policy statement on ongoing competence.</p>	<b>Strategic</b> B, D, E <b>Regulatory</b> 4, 6, 8	Quality
11.	<p>Continue to improve our diversity data collection and, specifically for this year, look at how working cultures and professional environments for Costs Lawyers impact on good equality, diversity and inclusion (EDI) outcomes.</p>	<b>Strategic</b> A, B, E <b>Regulatory</b> 6	Diversity

12.	<p>Deliver the next phase of our digital workplan, including by:</p> <ul style="list-style-type: none"> <li>• improving the visibility of supervision issues in the database;</li> <li>• creating a single repository for complaints data in the database;</li> <li>• adding action prompts to functionality;</li> <li>• revising application forms and adding database functionality resulting from enhancements to the Register of Costs Lawyers made in 2022;</li> <li>• capturing regulatory history of individual Costs Lawyers in the database to consolidate and safeguard all available information.</li> </ul>	<p><b>Strategic</b> E <b>Regulatory</b> Supports all</p>	Supports all
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Our budget for 2023, which will facilitate delivery of this Business Plan, can be [found on our website](#).

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# Budget for the 2023 practising year

Category	Budget provision (£)
Staff costs	112,545
Travel and subsistence	5,000
Rent and room hire	1,984
Telephone	642
Printing, postage and stationery	353
Equipment	1,200
Levies and contributions (LSB, LeO, Legal Choices)	26,536
Licences, subscriptions and fees	3,613
Office services	2,826
Consultancy services	18,000
IT services	3,322
Business Plan priorities	16,150
Miscellaneous	500
<b>TOTAL EXPENDITURE</b>	<b>192,671</b>
Transfer to reserves	5,000
<b>TOTAL DEBITS</b>	<b>197,671</b>
<i>Practising fee</i>	281
<i>Estimated number of renewals</i>	677
Renewal income	190,237
Other practising fee income (reinstatements, new qualifiers and late payment fees)	7,375
<b>ESTIMATED INCOME</b>	<b>197,612</b>





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# Proposed fee

We propose to keep the practising fee for Costs Lawyers static in 2023, at £281.

Last year, the practising fee rose by approximately 2% (or £6) from £275 to £281. This was driven primarily by a slight reduction in the size of the Costs Lawyer profession over and above the usual level of natural attrition, caused by the Covid-19 pandemic, meaning that the cost of regulation was spread across fewer practitioners. This year, no Costs Lawyers have reported leaving the profession because of factors relating to Covid-19 and the number of practitioners within our community has stabilised at a healthy level.

Like everyone in England and Wales, the CLSB is currently facing increased costs. We have seen year-on-year increases in the levies that we pay on your behalf, particularly a 4.6% increase in the Legal Services Board's budget (to £4.287 million) for the coming year. More generally, inflation is running at a 40 year high. This is impacting the CLSB's running costs, but we are conscious that it will also affect business costs for lawyers, potentially placing a disproportionate burden on sole practitioners. We are mindful that any increase in the cost of regulation could increase that impact further.

Against that background, we have worked hard to offset rising prices in 2022 through our ongoing programme of cost saving initiatives. For example, in a post-covid world we have been able to move on from our virtual office in Manchester to using an online PO Box service, saving hundreds of pounds per year. We have also leveraged thousands of pounds in government funding, and sought out opportunities for collaboration with others, to obtain the data and evidence we need at a lower cost to the profession. We are passing these costs savings on to Costs Lawyers by keeping the practising fee stable.

This consultation paper provides further information about the level of the practising fee and how the money raised through your fees will be used. At the end of this consultation there are some questions you might like to consider as part of your response, but we would welcome any feedback you wish to provide. Consultation responses should be sent to [enquiries@clsb.info](mailto:enquiries@clsb.info) by **5pm on Monday 5 September 2022**.



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# How we set the practising fee

## The process

The process for determining the practising fee starts in May each year.

- First, we develop a **Business Plan** for the coming practising year, setting out our annual priorities for achieving our [mid-term strategy](#).
- Next, we develop a **budget** that reflects our fixed costs (such as salaries and overheads), the variable costs of our core regulatory work (such as supervision and enforcement) and the cost of delivering the annual priorities in the Business Plan.
- The budget determines our total anticipated expenditure for the year; that is, the funding we need to operate effectively. Anticipated expenditure is then divided by the **number of Costs Lawyers** that we estimate will be practising during the year. This gives us the proposed practising fee. The fee is agreed by the **CLSB's board**.
- We ask Costs Lawyers for feedback on the proposed fee through this **consultation process**. The fee is adjusted as appropriate in response to feedback received.
- The fee must then be **approved by the Legal Services Board (LSB)** under its [Practising Fee Rules](#). This involves a detailed application process whereby the fee is explained and justified to our oversight regulator. Our application is [published](#) by the LSB.
- In early October, the LSB issues its decision and the practising fee is **confirmed to Costs Lawyers**.
- We are then able to finalise the **practising certificate renewal form** based on the approved fee. You will receive an email when your online renewal form, which is unique to you, is available for completion.

## 2023 Business Plan

The bulk of our income from practising fees is spent on fulfilling our core regulatory duties. These activities can be broadly summarised as:

- establishing policy, rules and guidance in relation to the professional conduct expected of Costs Lawyers;
- setting the outcomes for, and accrediting training providers to deliver, the Costs Lawyer Qualification;
- supervising compliance with our regulatory requirements;

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- dealing with complaints about Costs Lawyers' conduct and taking disciplinary action where conduct falls short of the required standard;
  - helping consumers and the wider public understand issues relating to legal costs and how Costs Lawyers can assist them;
  - assisting practitioners in navigating ethical issues and treating their clients fairly;
  - gathering evidence and data about all aspects of the regulated market to inform our activities.

Our annual Business Plan establishes additional projects and priority work areas that are specific to the practising year. Each priority in the Business Plan is linked to the achievement of one or more of the objectives in our [mid-term strategy](#), to the regulatory objectives in the [Legal Services Act 2007](#), and the improvement of specified [consumer outcomes](#). Our proposed Business Plan for 2023 is available [with this consultation](#). The priorities in the Business Plan, together with the core regulatory work described above, constitute the full programme of activity that is funded through your practising fees.

In 2021, we delivered all of our Business Plan priorities, except for two (one was deprioritised for reasons outside our control, the other was delivered in early 2022). A summary of the anticipated and actual benefits of our 2021 work programme is available [with this consultation](#).

## Levies and contributions

Our proposed budget for 2023 is also available [with this consultation](#). You will see that a portion of our budget is made up of levies and contributions that we must pass on to other organisations – namely the Legal Services Board, the Legal Ombudsman and the Legal Choices website – to fund their activities. Each of the legal services regulators is required to make contributions on behalf of the lawyers they regulate.

In 2023, the cost per Costs Lawyer of these contributions will be approximately:

- £23 for the Legal Services Board (8.2% of your practising fee)
- £7 for the Legal Ombudsman (2.6% of your practising fee)
- £9 for Legal Choices (3.0% of your practising fee)

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# Other information about practising fees

## Permitted purposes

The CLSB derives almost all of its income from practising fees. Other minor sources of income include accreditation fees and fixed costs awarded under our Disciplinary Rules and Procedures.

All our income is allocated to expenditure on so-called “permitted purposes”. Permitted purposes are prescribed regulatory activities as listed in Rule 8 of the Legal Services Board’s [Practising Fee Rules](#). They include activities like regulation, accreditation, education, training, raising professional standards, providing advice and guidance, participating in law reform and furthering public legal education.

## The Association of Costs Lawyers

Your practising fee exclusively funds the CLSB. It is not used to fund the profession’s representative body, the Association of Costs Lawyers (ACL). If you would like to be a member of ACL, a membership fee is payable separately. You can [contact ACL](#) to understand more about the benefits of membership.

## Tax relief

Tax relief on your practising fee can be claimed under SI 1126/2013: The Income Tax (Professional Fees) Order 2013. This covers “fees payable to the Costs Lawyer Standards Board on applying for a costs lawyer practising certificate”.

## Reserves

We hold financial reserves to provide a buffer against unexpected events. We want the level of our reserves to be neither too low nor too high, so our Reserves Policy provides for a target level of reserves. In 2021, we revised our target level of uncommitted reserves downward, following a review of the financial risks we face and the extent to which those risks are insurable. Our target is now six months’ operating expenditure (or

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roughly six months' gross income from annual practising fees). The level of our uncommitted reserves currently meets this target.

We also hold separate reserves reflecting the amount of our paid up share capital, as well as committed reserves for planned future IT development projects. Our target level of committed reserves is £30,000. We have achieved 35% of this target so far and we will make further contributions over the next five years to reach the target level.

The level of our reserves is recorded in our audited accounts, which are available [with this consultation](#).

## Practising certificates

### Practising Rules

Your practising fee must be paid before we can issue you with a practising certificate for the relevant year. This is established under our Practising Rules, which you can find in the [Costs Lawyer Handbook](#).

### Practical advice and information

The [practising certificates](#) page of our website contains advice on a range of topics relating to practising certificates and the practising fee. It includes information about who needs a practising certificate, how to renew your certificate, how to pay the practising fee and how your application will be dealt with.

You can also find information on this webpage about fee remissions. You might be entitled to a reduction in your practising fee if, for example, you are a newly qualified Costs Lawyer, you are applying for reinstatement to the register part-way through the year or you have recently taken parental leave.

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## Benefits of having a Costs Lawyer practising certificate

Your practising certificate gives you the right, under the Legal Services Act 2007, to conduct the following reserved legal activities:

- The exercise of a right of audience
- The conduct of litigation
- The administration of oaths

In addition you will:

- Appear on the [Register of Costs Lawyers](#) on the CLSB website.
- Be able to use, in line with the terms, the CLSB [Mark of Regulation](#) on communications to publicise that you are authorised and regulated by the CLSB.
- Have access to the support of [LawCare](#). This is a confidential service which supports the mental health and wellbeing of legal professionals and their families.
- Receive regular CLSB newsletters with the latest updates for Costs Lawyers.

Having a CLSB practising certificate also evidences to clients, the courts and fellow lawyers that you are qualified, regulated, have professional indemnity insurance in place, follow a complaints handling procedure (including access to the Legal Ombudsman) and undertake continuing professional development. You may also be able claim a better hourly rate than unregulated costs draftsmen and increase potential client instructions.

## Consultation questions

### Main question

**Question 1:** Do you agree with our proposal to keep the practising fee static at £281 for 2023? Why or why not?

### Other questions you might like to consider

**Question 2:** Do you agree with the CLSB's proposed Business Plan and budget for 2023? If not, what aspects would you suggest we change and why?

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**Question 3:** What do you perceive to be the main benefits of regulation? Do you think we place sufficient focus on those benefits? Do you think we are delivering those benefits?

**Question 4:**

- (a) Are you adversely impacted by the level of the practising fee due to a protected characteristic under the Equality Act 2010 (such as age, disability or gender) or due to your individual practising arrangements? If so, please tell us why and how we could meet your needs.
- (b) Do you agree with our initial Equality Impact Assessment (EIA) of the practising fee, which we have provided [with this consultation](#)?

**Question 5:** Is there anything else you would like to know about the practising fee that we should include in next year's consultation?

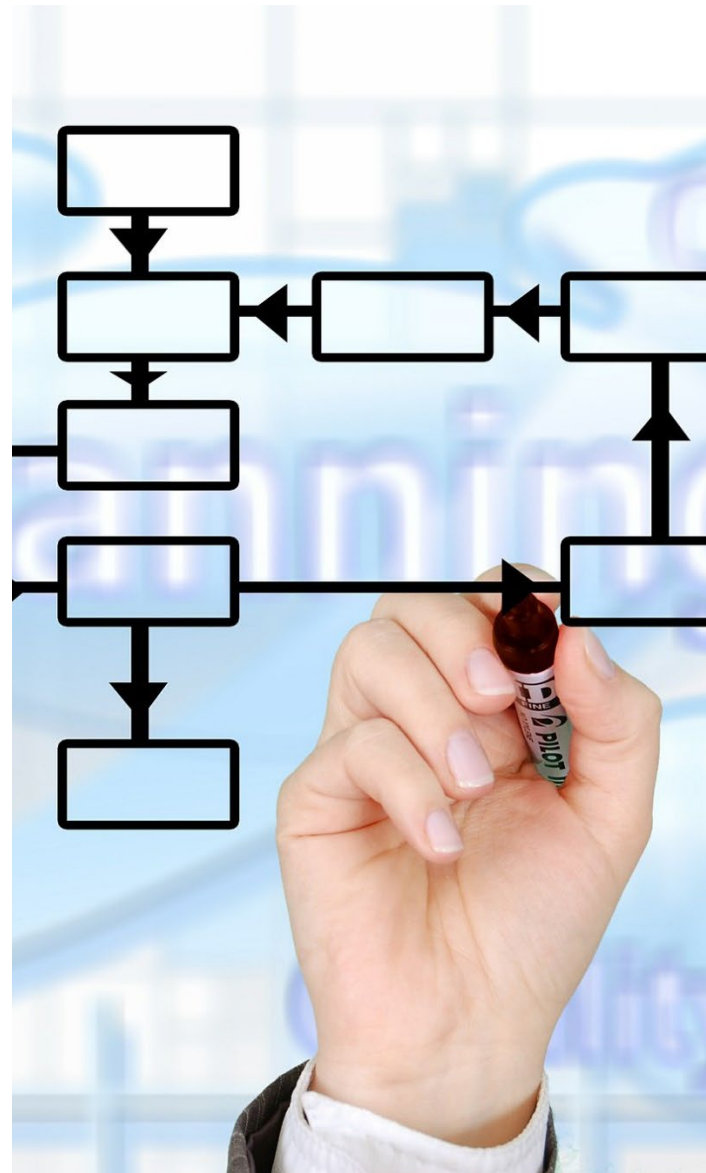
Consultation responses should be sent to [enquiries@clsb.info](mailto:enquiries@clsb.info) by **5pm on Monday 5 September 2022**.

# Consultation

## 2023 practising fee: Summary of activity funded by the 2021 practising fee

**DRAFT: 20 July 2022**

## Costs Lawyer Standards Board

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# Purpose

This document is intended to help Costs Lawyers better understand the programme of activity that was funded through their practising fees in 2021, as well as the benefits of that activity, in line with the Legal Services Board's [Guidance on its Practising Fee Rules](#).

In particular, this document:

- describes the annual priorities in the CLSB's 2021 Business Plan;
- explains whether, when and how they were achieved;
- summarises their intended benefits, by reference to our strategic goals and the regulatory objectives in the Legal Services Act 2007; and
- provides examples of indicators that we believe demonstrate they had the benefits we anticipated.

You might like to consider this document alongside the CLSB's [consultation](#) on the proposed Costs Lawyer practising fee for 2023, which closes on 5 September 2022.

## Regulatory objectives

Below are the regulatory objectives established by the Legal Services Act 2007, which the legal regulators (including the CLSB) must promote through their work. Each regulatory objective is assigned a number, 1 through 8. These numbers are used in the remainder of this document to demonstrate how our annual priorities for 2021 were intended to promote the regulatory objectives.

1. *Protecting and promoting the public interest.*
2. *Supporting the constitutional principle of the rule of law.*
3. *Improving access to justice.*
4. *Protecting and promoting the interests of consumers.*
5. *Promoting competition in the provision of legal services.*
6. *Encouraging an independent, strong, diverse and effective legal profession.*
7. *Increasing public understanding of the citizen's legal rights and duties.*
8. *Promoting and maintaining adherence to the professional principles.*



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# Strategic objectives

Below are the CLSB's strategic objectives for 2020 to 2023, as set out in our [mid-term strategy](#). Each objective is assigned a letter, A through E. These letters are used in the remainder of this document to demonstrate how our annual priorities for 2021 were intended to help us achieve our wider strategic goals.

- A. *We will have collaborative working relationships with key stakeholders in the costs law market and across the wider legal services landscape, including the Association of Costs Lawyers, the Legal Services Board and other Approved Regulators. Through these relationships, we will identify best practice, harness evidence and data, and draw from the learnings of others, to deliver a rigorous approach at proportionate cost.*
- B. *We will consider and act upon evidence in a consistent, structured and documented way, furthering our ability to implement highly tailored regulatory arrangements.*
- C. *We will have an advanced understanding of the consumer dimension of the market we regulate, and we will regularly revisit and update our perception of the risks posed by the profession to the public.*
- D. *We will have a deep comprehension of the risk framework within which we operate, and our stakeholders will be confident that we are delivering robust risk-based regulation that is bespoke to Costs Lawyers.*
- E. *Costs Lawyers will view the CLSB as facilitating a trusted and evolving profession, responding proactively to new challenges and needs.*

# Annual priorities

## Improving our regulatory arrangements

	Initiative	Status (by end of 2021)	Intended benefits	Example indicators of the benefits achieved
1.	Work with ACL Training to consider whether improvements are required to the Training Rules, informed by learnings from the first year of the refreshed Costs Lawyer Qualification.	<p><b>Achieved (Q4)</b></p> <p><i>A detailed programme of research and engagement was carried out to develop a new competency statement, providing evidence to underpin changes to our Training Rules. A consultation on the competency statement closed in October. The outcome report and final version of the statement were put to the board for approval and then published.</i></p> <p><i>Work also began on a new regulatory structure for the qualification, with the first draft of a new provider accreditation scheme being put to the board for input. Translation of the competency statement into assessment outcomes will be a priority in 2022.</i></p> <p><i>This Business Plan priority became a core workstream for us in 2021; the pace and scope of our progress accelerated far beyond what we envisaged when the Business Plan was developed.</i></p>	<p><b>Strategic objectives:</b> A, B, E</p> <p><b>Regulatory objectives:</b> 6, 8</p>	<ul style="list-style-type: none"> <li>The detailed research behind the competency statement has provided a robust evidence base for building a new framework for the Costs Lawyer Qualification from first principles.</li> <li>Widespread engagement with the competency statement project allowed us to gather input and evidence from a diverse range of stakeholders.</li> <li>A collaborative approach with ACL Training allowed us to align timings for our respective work programmes, benefitting current and future students.</li> </ul>
2.	Update the Guidance Notes in the Costs Lawyer Handbook that were not subject to review following the 2019 Handbook Audit.	<p><b>Achieved (Q3)</b></p> <p><i>Three updated guidance notes were approved by the board in April, another was approved between meetings in Q2 and two more in October. Implementation of the final guidance notes in Q4 completed this priority.</i></p>	<p><b>Strategic objectives:</b> B</p> <p><b>Regulatory objectives:</b> 1, 4, 6, 8</p>	<ul style="list-style-type: none"> <li>Practitioners and the public can now be confident that all CLSB guidance is relevant and based on the latest evidence, with each publication having been either developed or reviewed in the last two years.</li> </ul>

				<ul style="list-style-type: none"> <li>We have been able to draw upon our up-to-date guidance in developing other regulatory processes, such as a new complaints procedure audit (see priority 8).</li> </ul>
3.	<p>Develop new guidance that draws together themes identified across various aspects of our work, such as:</p> <ul style="list-style-type: none"> <li>guidance for unregulated employers of Costs Lawyers;</li> <li>guidance on closing down a practice.</li> </ul>	<p><b>Achieved (Q2)</b></p> <p><i>Themes for the guidance were developed in Q1 and two new guidance notes were approved by the board in July.</i></p>	<p><b>Strategic objectives:</b> B, D</p> <p><b>Regulatory objectives:</b> 1, 4, 6, 8</p>	<ul style="list-style-type: none"> <li>Having clear guidance on closing down a practice allowed us to respond quickly to the risk of firm insolvency posed by covid-19.</li> <li>We have been able to point junior practitioners to our guidance for unregulated employers to facilitate open conversations about regulation with their line managers, in response to queries raised.</li> </ul>
4.	<p>Carry out an initial evaluation of our revised approach to Continuing Professional Development (CPD) – informed by feedback and enquiries from the profession and other stakeholders – and produce targeted additional support materials where a need is identified.</p>	<p><b>Achieved (Q1)</b></p> <p><i>We captured learnings from the launch of our new CPD regime by tracking email enquiries, feedback and questions raised at our Virtual Q&amp;A session held in February. Those learnings allowed us to supplement our CPD supporting materials (particularly our website FAQs) and informed our approach to developing the new supervision framework for the regime (see priority 8).</i></p>	<p><b>Strategic objectives:</b> B, E</p> <p><b>Regulatory objectives:</b> 4, 6, 8</p>	<ul style="list-style-type: none"> <li>Our 2022 CPD audit showed a high degree of engagement with the new regime and positive feedback about the impact of the changes, suggesting that the support provided through this priority was valuable for practitioners and helped to promote the objectives of the regime.</li> </ul>
5.	<p>Review the regime for accrediting Costs Lawyers to provide CPD training, to</p>	<p><b>Achieved (Q2)</b></p> <p><i>We implemented new Accredited Costs Lawyer Rules, reviewed the accreditation criteria and updated the</i></p>	<p><b>Strategic objectives:</b></p>	<ul style="list-style-type: none"> <li>The new forms have allowed us to seek more targeted information and evidence from</li> </ul>

	<p>assess whether the accreditation criteria and the approach to implementation remain fit for purpose.</p>	<p><i>information we seek from applicants (both when they first apply for accreditation and upon renewal). We developed a new supervision framework for the scheme, as an adjunct to our planned supervision project (see priority 8). New webforms implementing the changes to the application process went live in Q2. We sought feedback from those Costs Lawyers choosing not to renew their accreditation during the year and the follow-up work from that exercise has been completed.</i></p>	<p>B, E <b>Regulatory objectives:</b> 4, 5, 6</p>	<p>applicants, helping to identify issues early on and work with applicants to make improvements.</p> <ul style="list-style-type: none"> <li>The robust requirements for reaccreditation caused some practitioners not to renew where they could not meet the criteria. This has raised standards overall, promoting the value and credibility of accredited status.</li> </ul>
6.	<p>Consider our diversity and inclusion initiatives against the Legal Services Board's characteristics of a well-performing regulator to identify and address any gaps in our approach.</p>	<p><b>Achieved (Q4)</b></p> <p><i>Work on this priority was ongoing throughout the year. We launched a new diversity survey alongside the 2021 PC renewal application. We analysed and published data from that survey, including in a <a href="#">comparative report</a>, and made further improvements to align our data with the sector's. We stepped up engagement with the regulators' EDI forum and liaison with the LSB and SRA on diversity. We also compiled a set of actions aimed at further improving our data and exploring particular characteristics. We assessed the merits of different regulatory interventions aimed at promoting EDI and a paper on this was considered by the board in July. We conducted an outreach project with the profession to understand how they feel about the collection of diversity data, to identify the collection method most likely to improve survey response rates, and built a targeted survey on the pay gap between men and women. We reported a summary of our progress to the LSB in November 2021.</i></p>	<p><b>Strategic objectives:</b> B, E <b>Regulatory objectives:</b> 6</p>	<ul style="list-style-type: none"> <li>Improvements to the data we hold on the profession has enabled us to better assess the impact of our decisions on certain groups, for example by preparing an Equality Impact Assessment for the practising fee.</li> <li>We were able to make use of existing evidence (held by regulators and others) to assess what mechanisms are likely to have the greatest impact in the Costs Lawyer market, allowing us to save resource and be targeted in our approach to promoting diversity and inclusion.</li> </ul>

## Protecting the interests of consumers and promoting professional standards

	Initiative	Progress status	Intended benefits	Example indicators of the benefits achieved
7.	Deliver the first year of priority activities in our Consumer Engagement Strategy.	<b>Achieved (Q2)</b> <i>We delivered a number of initiatives under the first year of the strategy, such as improving our web content, securing improvements to the costs questions in the LSCP tracker survey, and reviewing our regulatory return questions relating to client profiles. We refreshed our client survey and asked Costs Lawyers who reported having lay clients to send the survey directly to those clients, and we carried out a research project with Community Research and Panelbase. A paper on recommendations for year 2 of the strategy was considered by the board in July and the strategy has been extended accordingly.</i>	<b>Strategic objectives:</b> C <b>Regulatory objectives:</b> 1, 3, 4	<ul style="list-style-type: none"> <li>Actions from year 1 of the consumer engagement strategy improved our consumer evidence base, enabling us to make a <a href="#">commitment to focusing on consumer outcomes</a> in all our work going forward.</li> </ul>
8.	Develop our approach to supervision by: (i) planning an updated CPD audit programme under the new CPD Rules; (ii) implementing a structured audit of complaint procedures; (iii) formalising our “point of complaint” targeted supervision activities; (iv) updating our Supervision Policy to capture the above.	<b>Achieved (Q3)</b> <i>We developed new supervision frameworks, using a consistent approach and format, for supervising compliance with the Accredited Costs Lawyer Rules, our guidance on complaints procedures, and the CPD Rules. These were approved by the board in April and are now operational. An audit of complaints procedures was carried out under the framework in Q2. A framework for point-of-complaint supervision and a new Supervision Policy describing our approach were approved by the board in October and the full suite of documents is now available on the <a href="#">supervision page</a> of our website.</i>	<b>Strategic objectives:</b> B, D, E <b>Regulatory objectives:</b> 4, 6, 8	<ul style="list-style-type: none"> <li>Implementation of the supervision framework for complaints procedures allowed us to secure substantial improvements to 20 procedures (covering numerous Costs Lawyers) in the first year alone, for the benefit of clients.</li> <li>Our supervision processes are now consistent and transparent, allowing practitioners and the public to understand and scrutinise our approach.</li> </ul>

9.	<p>Take an in-depth look at three key areas in which we have identified risks of poor consumer outcomes, namely:</p> <ul style="list-style-type: none"> <li>• under-insurance;</li> <li>• handling of client money; and</li> <li>• communication of complaint procedures.</li> </ul>	<p><b>Achieved (Q4)</b></p> <p><i>We completed our review in relation to Costs Lawyers handling client money early in the year and updated our guidance note accordingly, with the decision-making process being recorded in a published Board Decision Note. We looked at how complaints procedures are developed and communicated through the lens of our new audit framework and reported to the board in July. We built a webpage communicating learnings from that audit to mitigate risk across the regulated community. In Q4 we reviewed evidence of risks relating to under-insurance. Recommendations for future work to address discrete issues were adopted by the board.</i></p>	<p><b>Strategic objectives:</b> C, D</p> <p><b>Regulatory objectives:</b> 4, 8</p>	<ul style="list-style-type: none"> <li>• This work has allowed us to tailor our regulatory <a href="#">risk register</a> to focus on specific risks to consumer outcomes, rather than general risks of non-compliance.</li> <li>• Our detailed review of client money issues allowed us to contextualise and address feedback about client money that we received during the research phase of our Regulators' Pioneer Fund project (see priority 10).</li> </ul>
10.	<p>Consider how we can improve consumer information in relation to the regulatory status of the organisations in which Costs Lawyers practise.</p>	<p><b>Achieved (Q1 2022)</b></p> <p><i>We wrapped this priority into our successful bid for grant funding from the Regulators' Pioneer Fund, which meant that it was delivered in 2022 rather than 2021. Work on the research programme concluded in March 2022 and a final project report was published in June on <a href="#">our website</a>. We have begun developments to the Register of Costs Lawyers to display the regulatory status of firms, which will go live later in 2022.</i></p>	<p><b>Strategic objectives:</b> C, D</p> <p><b>Regulatory objectives:</b> 1, 4, 5</p>	<ul style="list-style-type: none"> <li>• Understanding the questions we wanted to ask in this area allowed us to integrate the research into a wider project, and then implement our findings alongside other reforms to the Register, helping us use resources efficiently and take a holistic approach.</li> </ul>
11.	<p>Test the efficacy of the new interim suspension order (ISO) powers in our Disciplinary Rules and Procedures, based on our early experience of disciplinary proceedings in which the imposition of an ISO was considered.</p>	<p><b>Deprioritised / delayed</b></p> <p><i>No opportunities arose during 2021 to test the ISO power in practice. We will carry out this work when a suitable disciplinary case presents itself in future years. To ensure this workstream is not forgotten, we have embedded consideration of ISOs into a new triage process for handling inbound complaints about Costs Lawyers' conduct.</i></p>	<p><b>Strategic objectives:</b> B, D</p> <p><b>Regulatory objectives:</b> 1, 8</p>	<p>Not applicable</p>



## Modernising our organisation

	Initiative	Progress status	Intended benefits	Example indicators of the benefits achieved
12.	Measure the success of the electronic practising certificate (PC) 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.	<b>Achieved (Q1)</b> <i>We carried out a comprehensive review of the new electronic PC renewal process against the five metrics. A report was considered by the board in January. A number of improvements to the PC application form and database were identified through that process and a workplan was put in place to deliver those improvements before PC renewals began again in November.</i>	<b>Strategic objectives:</b> B, E <b>Regulatory objectives:</b> Facilitates all	<ul style="list-style-type: none"> <li>Measuring success against objective metrics allowed us to demonstrate the significant benefits arising from this work, including long term cost savings for practitioners.</li> <li>The review process helped us make informed choices about which further improvements to prioritise for the greatest impact, taking user feedback into account.</li> </ul>
13.	Deliver the second phase of our digital workplan, including: <ul style="list-style-type: none"> <li>reviewing how we use IT for financial management;</li> <li>creating e-forms for processes other than annual practising certificate renewals;</li> <li>building add-on functionality for the Costs Lawyer database, informed by learnings from the 2020 practising certificate renewal process.</li> </ul>	<b>Achieved (Q3)</b> <i>The first version of our new financial management system was built early in the year and has since been used for financial recording and reporting. Development of new online application forms was completed in Q2 – all forms are now available as updated e-forms via the website – and a new client survey e-form was successfully launched. A major upgrade of the Costs Lawyer database, with enhancements informed by learnings from the 2020 PC renewal process, was completed and tested.</i>	<b>Strategic objectives:</b> Facilitates all <b>Regulatory objectives:</b> Facilitates all	<ul style="list-style-type: none"> <li>The new financial management system has significantly improved efficiency and reduced the risk of human error in reporting management information to the board each quarter.</li> <li>The development of consistent, comprehensive e-forms for all applications has improved the quality and security of the data we hold about the regulated community.</li> </ul>

14.	Review our governance arrangements, including our suite of governance documents, to ensure they provide a robust framework for oversight and accountability and continue to meet the standards of the Corporate Governance Code 2018.	<b>Achieved (Q4)</b> <i>Work on this priority began in Q3 with a governance strategy session at the July board meeting. We appointed an independent consultancy to ensure the outcome of the review reflected current best practice standards. The outcome of the review – a proposed new suite of governance documents and arrangements – was approved by the board at the end of the year and implemented thereafter.</i>	<b>Strategic objectives:</b> Facilitates all <b>Regulatory objectives:</b> Facilitates all	<ul style="list-style-type: none"> <li>This work gave us a mechanism for responding nimbly to recommendations from the LSB's review of the governance arrangements of two other regulators, and allowed us to provide assurance to the oversight regulator that our governance processes were up-to-date and robust.</li> </ul>
15.	Revisit the effectiveness of our new operating structure to identify whether and where further improvements can be made.	<b>Achieved (Q4)</b> <i>Ongoing review of the effectiveness of our operating structure led to the recruitment of additional policy and education resource in early 2021. Our Business Continuity and Disaster Recovery Plan was reviewed to take account of the changes. The constitution and remit of the board were considered as part of the governance review (see priority 14).</i>	<b>Strategic objectives:</b> Facilitates all <b>Regulatory objectives:</b> Facilitates all	<ul style="list-style-type: none"> <li>This process allowed us to think creatively about how to access desirable skills and expertise within our limited resources, for example by appointing an education expert on an 'on call' basis to advise the board on key strategic decisions.</li> </ul>



# Consultation

## 2023 practising fee: Initial equality impact assessment

**DRAFT: 20 July 2022**

## Costs Lawyer Standards Board



CLSB

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# Initial Equality Impact Assessment (EIA)

This document supports, and should be read with, the CLSB's [consultation](#) on the practising fee for Costs Lawyers in 2023. The consultation closes on 5 September 2022.

The Legal Services Board's [Guidance](#) on its Practising Fee Rules states that a regulator must carry out an equality impact assessment (EIA) in relation to its proposed practising fee, and the EIA should be informed by consultation with the regulated community. Below is a preliminary EIA setting out how we anticipate the level of the proposed practising fee for 2023 (£281) will affect practitioners with protected characteristics. We have used the summary format recommended by the Legal Services Board.

We welcome your input, particularly if you have evidence which suggests that the practising fee could create barriers to access or progression for certain groups of Costs Lawyers.

Protected characteristic group	Is there a potential for positive or negative impact?	Please explain and give examples of any evidence / consultation / data used	Actions to address negative impact
Disability	No	7% of Costs Lawyers report having a disability, which is higher than in other parts of the sector (for example, 3% of solicitors). Our data suggests that Costs Lawyers can sometimes experience differential impacts due to disability, such as problems accessing court buildings. However there is no data to suggest that practising fees affect this group disproportionately and questions in previous practising fee consultations revealed no evidence of differential impact.	Not applicable
Gender reassignment	No	Our latest diversity survey included a question on gender identity, but the percentage of "prefer not to say" answers compared to the percentage of respondents who we might expect to answer "no" to the question (is your gender identity the same	Not applicable

		as that which you were assigned at birth?) means the data is unreliable. Nevertheless, we expect that the percentage of our regulated community with a different gender identity to that assigned at birth is likely to be very small or zero.	
Marriage or civil partnership	No	We do not collect data on the marital status of practitioners, however as our fee is set at the same level for all practitioners and marital status does not impact ability to practise, we have not identified any risk of differential impact based on this characteristic.	Not applicable
Pregnancy and maternity	Yes	In 2020 we identified that, due to the way we calculate practising fees for Costs Lawyers who reinstate their authorisation part way through the year, practitioners who took parental leave were incurring different practising fees depending on the time of year that their leave commenced. After consulting, we implemented a remissions policy that ensures practitioners receive a reduction in their fee for the whole period they are on parental leave, regardless of the start date.	We will apply the remissions policy again this year (and going forward). More information is available in the parental leave section of our <a href="#">practising FAQs</a> .
Race	No	7% of Costs Lawyers identify as Black, Asian or Minority Ethnic, compared to 21% of lawyers in SRA regulated law firms. As part of our EDI work programme, we are investigating whether there are barriers to entry for these groups which are driving the above statistic. However, none of our research to date suggests that the practising fee presents such a barrier and questions in previous practising fee consultations revealed no evidence of differential impact.	Not applicable
Religion or belief	No	44% of Costs Lawyers report having no religion or being atheist and a further 42% identify as Christian. The proportion of practitioners from other faith groups is small – around 1% or less per group –although a	Not applicable

		relatively high number of practitioners preferred not to report their religion so these groups might be larger than recorded. While we are working to reduce the number of practitioners who prefer not to report their religion, our data does not suggest any differential impact of the practising fee on smaller faith groups. Questions in previous practising fee consultations also revealed no evidence of this.	
Sexual orientation	No	6% of Costs Lawyers identify as lesbian, gay or bisexual compared to 2.7% of the population. While we have strong LGBT representation within the profession, there is no evidence that a practising fee which is the same for all practitioners has any differential impact on this group. Questions in previous practising fee consultations also revealed no evidence of this.	Not applicable
Sex (gender)	Yes	There is potential for women to be disproportionately impacted by incurring practising fees whilst on parental leave. Our data shows that, to date, all Costs Lawyers who have been reinstated to the Register part way through a practising year due to taking parental leave have been women.	This is addressed through our remissions policy – see above under “pregnancy and maternity”.
Age	No	Due to the profile of qualifying Costs Lawyers, only a small proportion (4.1%) are under the age of 30, and 7.6% are above 60. The vast majority of Costs Lawyers fall in the middle age ranges. There is no evidence to suggest that a practising fee which is the same for all practitioners has any differential impact on the younger or older groups. Questions in previous practising fee consultations also revealed no evidence of this.	Not applicable

## COSTS LAWYER STANDARDS BOARD LTD

### RISK REGISTERS

As at 19 May 2022

#### 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

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

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 September 2021): MOJ confirmation that it will expand fixed costs regime.</li> <li>• Whiplash reforms (from January 2021): could reduce work in low value PI claims, but may also increase complexity of instructions.</li> <li>• Link to OP3 in terms of numbers entering the profession.</li> <li>• Actual net attrition of 2 practitioners over 2021, down from 12 in 2020.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Monitor impact of shocks on the profession via impact assessment surveys, such as 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 six months' operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	High	
<b>Actions/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(1) = 5</b>
<b>Risk to operation</b>	<b>The CLSB's size means that business continuity cannot be assured in all possible circumstances</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. Duplication of staffing costs in the event of a long term absence could have a disproportionate impact given the number of staff.
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Increase in policy support resource from February 2021.</li> <li>• Updated Business Continuity and Disaster Recovery Plan adopted in July 2020 following restructure and reflecting changes for coronavirus.</li> <li>• Reassessment of continuity risks in light of coronavirus (including retaining core functions in the absence of a key staff member).</li> <li>• Move to a paperless organisation, including via the database, electronic processes and cloud storage.</li> <li>• Minimisation and logging of paper archives, with joint access.</li> <li>• Systematic documentation of all processes.</li> <li>• Joint signatories to bank account.</li> <li>• Retain six months' operating budget as reserves, based on costed risk analysis in 2021 taking into account various continuity scenarios.</li> </ul>
<b>Control adequacy</b>	5
<b>Priority area of risk</b>	Low
<b>Actions/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 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 and ACL did not confirm a 2021 intake until December 2020.</li> <li>• In 2017, the CLSB considered applying to the government apprenticeship scheme, but concluded this was not an option.</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>Flagship project in 2021 to create a new competency statement, providing a basis upon which to modernise regulatory requirements for the qualification.</li> <li>Work closely with new ACLT board, appointed in January 2022, to effect sustainable change.</li> <li>Nurture relationship with ACLT to ensure early notification of any future issues and ensure current learners are protected.</li> <li>Retain six months' operating budget as reserves.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	High
<b>Actions/status</b>	<ul style="list-style-type: none"> <li>Final delivery of consequential rule changes following Competency Statement.</li> </ul>
<b>Commentary</b>	Establishing a stable, modern, flexible qualification is the CLSB's highest priority for the short and medium term.

<b>Logged by board:</b> 24/10/17	<b>Reference:</b> OP4	<b>Risk score:</b> I(5) x P(3) = 15
<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>Economic climate may impact regulated numbers or Costs Lawyers' ability to pay membership fees.</li> <li>Lack of communicated value proposition for membership over the medium and longer term.</li> <li>Succession planning challenges.</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>Engagement with ACL in developing its new business plan for 2022-23.</li> <li>Retain six months' operating budget as reserves, and committed reserves account for paid up share capital.</li> </ul>	
<b>Control adequacy</b>	3	
<b>Priority area of risk</b>	Medium	
<b>Actions/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:</b> I(4) x P(1) = 4
<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/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(4) = 16</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>• Highly strained relations between ACL and ACLT during 2021.</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>• Contingency planning for operational areas that require ACL input.</li> <li>• New MOU and OP agreed with ACL in 2020.</li> <li>• Help ACL engage with its regulatory obligations as a designated body under the 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>	2 – relations between ACL and ACLT could significantly impact CLSB but are largely outside of the CLSB's control	
<b>Priority area of risk</b>	High	
<b>Actions/status</b>		
<b>Logged by board:</b> 21/4/21	<b>Reference:</b> OP7	<b>Risk score: I(5) x P(2) = 10</b>
<b>Risk to operation</b>	<b>A significant, unexpected fall in practising fee income</b>	

<b>Nature</b>	Operational continuity
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• The ability to collect practising fees is subject to LSB approval, which may be withheld for various reasons as outlined in the LSB's Practising Fee Rules.</li> <li>• The coronavirus pandemic reminds us of the potential for an economic crisis to occur without warning, affecting practitioners' ability to pay.</li> </ul>
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Early engagement with the LSB on practising fee applications and budget setting.</li> <li>• Retain six months' operating budget as reserves.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	Medium
<b>Actions/status</b>	

<b>Logged by board:</b> 21/4/21	<b>Reference:</b> OP8	<b>Risk score: I(3) x P(1) = 3</b>
<b>Risk to operation</b>	<b>Unplanned involvement in litigation results in the payment of significant legal costs and/or damages</b>	
<b>Nature</b>	Legal, financial, reputational	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• Decisions of the CLSB are subject to judicial review.</li> <li>• The CLSB may choose to seek an injunction for breach of the Legal Services Act 2007.</li> <li>• A private law action for damages could be brought against the CLSB at any time.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Risk is partially insured (including legal expenses insurance).</li> <li>• Retain six months' operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	5	
<b>Priority area of risk</b>	Low	
<b>Actions/status</b>	Insurance cover is scheduled for review in 2022.	

### 3. REGULATORY RISK REGISTER

<b>Logged by board:</b> <b>23/01/2020</b>	<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> <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> <li>• Risks from lack of supervision: The shift to remote working during 2020 could have long-term consequences for proper supervision and training of junior Costs Lawyers. As we do not regulate entities, we cannot address this at firm/system level.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• New Practising Rules, CPD Rules and Disciplinary Rules and Procedures implemented in 2020, including to increase the deterrent effect of financial penalties.</li> <li>• Guidance subject to systematic review from 2019, with all Handbook content reviewed by the end of 2021 (other than Code of Conduct, which will be reviewed in 2022).</li> <li>• New Supervision Policy and four supporting supervision frameworks adopted in 2021.</li> <li>• Risk reviews carried out on complaints procedures and under-insurance in 2021 with follow-up actions identified.</li> <li>• Data collected during year 2 of the Consumer Engagement Strategy to benchmark consumer outcomes across our areas of focus.</li> </ul>	
<b>Control adequacy</b>	4	

<b>Priority area of risk</b>	Low – no evidence of risk having materialised to date	
<b>Actions/status</b>	Year 2 of the Consumer Engagement Strategy to be delivered by the end of H1 2022. Recommendations from the review of under-insurance to be carried out in 2022. Expansion of complaints procedure audit in 2022.	
<b>Logged by board:</b> <b>31/10/2011</b>	<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>	<ul style="list-style-type: none"> <li>As Costs Lawyers are not permitted to handle client monies, they will not have systems in place to ensure proper handling in the event they do inadvertently or deliberately accept monies in breach of our rules.</li> <li>No evidence from client survey or 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.</li> <li>Pending whiplash reforms could increase the prevalence of direct instructions – including complex instructions – from lay clients with a likely increase in the desire for funds on account.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>Covered under Principle 3.6 of Code of Conduct. Associated guidance updated in 2020 following a targeted review, including to promote the use of TPMAs to safely deal with client monies.</li> <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/status</b>		

<b>Logged by board:</b> <b>24/07/2019</b>	<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>	<p>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.</p> <p>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.</p>
<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>• Consumer outcomes framework developed in 2021 to inform strategy and overall approach to regulatory interventions.</li> <li>• Research projects launched in 2021 to directly target individual clients.</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/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>• Testing of approaches to new diversity and inclusion survey.</li> <li>• Diversity work programme developed in 2021, with delivery in 2021 and 2022.</li> <li>• Audit recommendations made to ACLT on promoting diversity.</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 2022
<b>Priority area of risk</b>	Medium, so long as we are able to deliver planned initiatives
<b>Actions/status</b>	Further work on survey response rates in 2022. Delivery of second stage of work programme in 2022.

# Two year review of the Disciplinary Rules and Procedures

Board report

30 May 2022

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## 1. Introduction

In May 2020, the board approved a new set of [Disciplinary Rules and Procedures](#) (DR&P). The DR&P establish processes for determining whether a Costs Lawyer has breached the CLSB's regulatory rules and, if so, the sanctions that apply.

The new DR&P were designed to clarify and streamline our disciplinary processes, ensuring they are fit for the modern age and incorporate best practice from across the legal sector. They were supplemented by a number of new policy documents, some of which are internal-facing but most of which are available on the [Disciplinary Outcomes](#) page of the website.

In the [report summarising the outcomes of our consultation](#) on the new DR&P, we made the following commitment (page 8):

*A common theme across the responses was that the new arrangements should be reviewed for effectiveness after an initial bedding-in period. We agree that it would be prudent to review the new arrangements after an initial period and to learn from the experience of all those involved in the process.*

*Some respondents suggested an annual review, however the size and nature of our regulated community means that we carry out only a handful of disciplinary investigations in a typical year. For this reason, we feel it would be more valuable to review how the processes are working after a two-year period, to ensure we have sufficient evidence from which to draw meaningful conclusions. As part of that review, we will look in particular at the effectiveness of the ISOs procedure, how the clarification of roles and recruitment of ad hoc Panel members has operated in practice, and whether the level of costs and penalties remains adequate.*

This report sets out the findings of the two year review.

## 2. Impact of complaint volumes on scope of review

The table below shows the number of complaints handled by the CLSB in relation to Costs Lawyers' conduct in the two year period between May 2020 and May 2022. (Note that this data only includes complaints that were escalated to the CEO for consideration. Complaints that did not meet a threshold test for jurisdiction – in particular, complaints that were not about regulated Costs Lawyers – and complaints that were not pursued by the complainant are not included.)



Type of complaint	Number
Referred to Legal Ombudsman under the MOU	3
Referred to SRA under the MOU	1
Otherwise did not fall within the CLSB's jurisdiction	2
Resolved through pre-investigation correspondence	1
Referred for formal investigation	0
Referred to Conduct Committee	0
Interim suspension order (ISO) considered	0
Disclosures by Costs Lawyers	5

It is clear there has been an insufficient number of disciplinary cases over the last two years to carry out a review of the scope initially envisaged. In particular, we cannot review the effectiveness of the ISOs procedure, the use of ad hoc Panel members or the level of costs and penalties. We will diarise to return to these issues in 2024, or sooner if case levels change.

What the cases have allowed, however, is consideration of how incoming complaints are initially handled, up to the stage of escalation to a formal investigation. From our experience at this initial stage of a case, it is clear that two things are needed:

1. A clear triage framework for handling inbound complaints; and
2. Better alignment of our processes with those of the Legal Ombudsman, to facilitate referrals under the MOU.

A triage process was developed in Q1 and approved by the board at its May meeting. This paper therefore focuses on the second aspect.

### **3. Alignment with Legal Ombudsman (LeO)**

Where a complaint relates to the service provided by a Costs Lawyer, or has both service and conduct elements, it is referred in the first instance to LeO.<sup>1</sup> We will usually direct the complainant to LeO, rather than contacting LeO ourselves, to ensure LeO has access to the necessary information. We will sometimes intervene on a complainant's behalf, for example if LeO has misunderstood the regulatory status of the Costs Lawyer involved. LeO then provides the CLSB with quarterly updates on all open cases relating to Costs Lawyers.

Putting aside the well-known problems that LeO is experiencing (which mean complainants often come to the CLSB seeking an explanation for long delays), the referral process works reasonably well. However, we have identified several areas where we could be more aligned with LeO's procedure to ensure the smooth running of complaints that have both service and conduct aspects (known as hybrid complaints).

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<sup>1</sup> See DR&P 2, reproduced at Annex 1.

### *Interplay between time limits and first tier complaint procedures*

Currently, our DR&P provide that complaints must be made to the CLSB within one year of the alleged misconduct or one year from the date on which the complainant first became aware that misconduct may have occurred.<sup>2</sup> Outside of these limits, we can only consider a complaint if there is a reasonable explanation for the delay (without unfair prejudice to the Costs Lawyer involved) or if it is otherwise in the public interest. Conversely, LeO's rules allow complainants to bring a complaint within six years of an alleged service failing, or within three years of finding out about an issue.

This misalignment does not cause difficulties in itself. We effectively “stop the clock” on our time limits while we wait for the Ombudsman to investigate a hybrid complaint, because the complaint is deemed to have been made to us at the time it was made to LeO.<sup>3</sup> Where a complaint is made to LeO that would be out of time under the DR&P – i.e. where the complaint is more than one year old but less than six years old – and LeO makes a finding of misconduct, this can be picked up by the CLSB under the public interest exception described above.

LeO is also consulting on changes to its rules which would reduce its own time limit to one year for all new cases. Its main rationale is that older cases are more challenging to investigate due to difficulties in gathering evidence, particularly where a firm has since closed.

For these reasons, we do not believe it is necessary to align our time limits with LeO's. However, an issue that does require attention is the interplay between these time limits and the requirement for a complainant to participate in a practitioner's internal (“first tier”) complaint handling process. LeO's rules (derived from section 126 of the Legal Services Act 2007) require a complainant to exhaust the first tier process before escalating the complaint to LeO, allowing the practitioner at least eight weeks to sort out the issue. Until the first tier has been exhausted, a complaint cannot be formally made to LeO, and consequently the CLSB cannot formally pause its own time limit by reference to LeO's investigation during this period.

Conversely, the DR&P do not require a complainant to exhaust the practitioner's first tier process before escalating a conduct complaint to the CLSB. The clear policy intention in the Legal Services Act is that practitioners should deal with both service and conduct complaints internally in the first instance; their first tier complaints procedures must cover both service and conduct issues.<sup>4</sup> Other legal services regulators reflect this in their disciplinary rules. For example, the SRA provides that complainants will “usually” have to complain to the relevant solicitor or firm before the SRA will consider the complaint.

Given that the majority of complaints handled by the CLSB during the review period were referred to either LeO or the SRA under the respective MOUs, and given the clear policy intention in the LSA, **it is recommended that the DR&P be amended to introduce a requirement for a complainant to exhaust the Costs Lawyer's first tier complaint handling**

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<sup>2</sup> See DR&P 1.3, reproduced at Annex 1.

<sup>3</sup> DR&P 2.3 provides that “the CLSB will treat the date of notification to the CLSB as being the date the complaint was made to either the CLSB or Legal Ombudsman”.

<sup>4</sup> See sections 112 and 127(2), taken together.

**process before escalating a complaint to the CLSB.** This requirement would only apply to complainants who are clients, and not, for example, to fellow practitioners who are not covered by a Costs Lawyer's internal complaints procedure.

We also need to ensure that our time limits do not undermine the prospect of successful early resolution of complaints. There is some risk that an imminent deadline could cause complainants to prematurely escalate their issue up from the first tier, so as not to fall foul of our time limits. In addition, we want to avoid causing confusion for consumers in hybrid complaints, where participating in a first tier process could mean that their complaint is time-barred vis-a-vis the CLSB but not LeO.

It is therefore **recommended that the DR&P be amended to expressly state that active participation in a first tier complaint process is likely to constitute a "reasonable explanation for delay", thus falling within an exception to the time limits in the DR&P.**

### ***Clarification of LeO jurisdiction***

DR&P 2.1 states:

*A Complaint about service provided by a Costs Lawyer falls within the jurisdiction of the Legal Ombudsman. A Complaint about the conduct of a Costs Lawyer (i.e. breach of a Principle) falls within the jurisdiction of the CLSB.*

This is not strictly accurate. A conduct complaint falls within the jurisdiction of *both* the CLSB and LeO.<sup>5</sup> This inaccuracy is carried through to DR&P 2.3, which provides that LeO will first consider the service element of a hybrid complaint (only) and then the CLSB will consider the conduct element.

It is therefore **recommended that DR&P 2 be amended to ensure that the full scope of LeO's jurisdiction is accurately represented.**

## **4. Update to policy statement on enforcement and sanctions**

One of the documents created to support the DR&P was a [policy statement on enforcement and sanctions](#). Its purpose is to promote proportionate, consistent and fair decision-making by the CLSB on disciplinary issues. It sets out our approach to enforcement as well as the various mitigating and aggravating factors that could influence the sanction imposed.

Recently, the legal services regulators made new commitments under a joint statement on tackling counter-inclusive misconduct through disciplinary action. At the time of writing, the joint statement was yet to be published by the LSB but publication should occur before the board meeting. The final version of the joint statement is at Annex 3.

We have reviewed both our public-facing policy statements and internal guidelines on disciplinary processes, and do not believe that any amendments are strictly necessary for ensuring consistency with the joint statement. However, it would be beneficial to cross-refer

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<sup>5</sup> Section 127(2) of the LSA provides that LeO's rules cannot exclude complaints that have been or could be dealt with under the disciplinary rules of the regulators.

to the joint statement when describing our approach to enforcement, both to raise awareness of the issues and to ensure transparency for Costs Lawyers who may be affected by our decision-making. It is therefore **recommended that the policy statement on enforcement and sanctions be updated to refer to the newly adopted joint statement.**

## **5. Next steps**

The board is asked to consider and approve the amendments set out in Annexes 1 and 2, which implement the recommendations made in this paper.

The amendments to the DR&P will require a rule change application to the LSB. We have taken soundings on the process, given that the changes are relatively minor. The LSB's advice is that a full rule change application is likely to be necessary (rather than an abridged application under an exemption direction) and they would expect to see consultation/engagement of some kind, even if not a formal written consultation. We will therefore consider what kind of engagement would be appropriate in Q3.

The LSB has confirmed that amendments to the policy statement on enforcement and sanctions can be made without further approval.

## Annex 1 – Proposed amendments to DR&P

### RULE 1: Jurisdiction

1.1 These DR&P come into effect on the effective date above and replace any other disciplinary rules and procedures previously issued by the CLSB. These DR&P govern Complaints made on or after the effective date.

1.2 These DR&P apply where the following three criteria are met:

- (i) there is reason to suspect that a Costs Lawyer has been or is in breach of a Principle;
- (ii) the Costs Lawyer held a practising certificate issued by the CLSB at the time the alleged breach of a Principle occurred; and
- (iii) the Costs Lawyer holds a practising certificate issued by the CLSB at the time the Complaint is made to the CLSB.

1.3 Where the Complainant is not the CLSB, for these DR&P to apply a Complaint must be made in writing to the CLSB:

- (i) within one calendar year from the date on which the matters giving rise to the Complaint occurred; or
- (ii) within one calendar year from the date on which the Complainant first became aware that a breach of a Principle may have occurred.

1.4 In the event that a Complaint is made outside of the time limits in rule 1.3 above, then the CLSB may only consider the Complaint if:

- (i) the Complainant provides a reasonable explanation for the delay in making the Complaint and that delay does not cause unfair prejudice to the Costs Lawyer involved; or
- (ii) if it is otherwise in the public interest to consider the Complaint.

1.5 The CLSB will not consider a Complaint by a litigant in person or a solicitor on the other side of proceedings involving the Costs Lawyer, whilst those proceedings are ongoing. The court has powers to consider conduct issues in the context of ongoing proceedings.

1.6 The CLSB will not consider a Complaint by a Complainant to whom the Costs Lawyer's first tier complaints procedure applies unless:

- (i) the Complainant has raised the issue with the Costs Lawyer under the terms of the complaints procedure, and either the procedure has been exhausted or a period of eight weeks has passed;
- (ii) the Complainant demonstrates, to the CLSB's reasonable satisfaction, that it would cause unfair prejudice to the Complainant to use the Costs Lawyer's complaints procedure; or
- (iii) it is otherwise in the public interest not to require the Complainant to use the Costs Lawyer's complaints procedure.

For the purposes of rule 1.4(i), active participation by a Complainant in a process under a first tier complaints procedure is likely to constitute a reasonable explanation for delay.

~~1.6~~1.7 In the event the CLSB accepts jurisdiction to investigate an alleged breach of a Principle then the CLSB will confine itself to that alleged breach and to documents and witness evidence which relate to that breach. If in the course of an investigation the CLSB obtains information relating to another potential breach of a Principle, the CLSB will treat that information as a fresh Complaint.

~~1.7~~1.8 The CLSB has entered into agreements with other regulatory bodies to govern situations in which more than one regulatory body might have jurisdiction to handle a Complaint. The CLSB will only exercise its jurisdiction under these DR&P in accordance with such agreements. The CLSB will notify a Complainant if a Complaint falls within this rule ~~1.8~~7.

~~1.8~~1.9 If a person to whom these DR&P apply has a disability, the CLSB will consider a request by that person to make reasonable adjustments to the processes set out in these DR&P. The CLSB will use best efforts to agree in advance suitable reasonable adjustments, which are consistent with the objectives of these DR&P, to address any substantial disadvantage the person might suffer. Where the CLSB determines it is not possible or not appropriate to make the reasonable adjustments requested, the CLSB will provide reasons in writing.

## **RULE 2: The Legal Ombudsman (service complaints)**

2.1 A Complaint about the service provided by a Costs Lawyer falls within the jurisdiction of the Legal Ombudsman. A Complaint about the conduct of a Costs Lawyer (i.e. breach of a Principle) falls within the jurisdiction of both the CLSB and the Legal Ombudsman.

2.2 In the event the CLSB receives a Complaint that falls within the jurisdiction of the Legal Ombudsman and not the jurisdiction of the CLSB, the CLSB will inform the Complainant of this and provide the Complainant with contact information for the Legal Ombudsman.

2.3 In the event a Complaint relates to both the service and conduct of a Costs Lawyer the CLSB will allow the Legal Ombudsman to ~~conclude the service element of that Complaint before the CLSB considers the conduct element of that~~ investigate the Complaint in the first instance, unless the CLSB deems the conduct element so serious in nature that it requires the immediate attention of the CLSB. Once the Complaint has been determined by the Legal Ombudsman, the CLSB will (where it has the jurisdiction to do so under these DR&P) deal with any matters relating to the conduct element of the Complaint that have not been fully disposed of by the Legal Ombudsman. In doing so, the CLSB will adopt any relevant findings of fact made by the Legal Ombudsman in its determination. For the purposes of rule 1.3, the Complaint will be deemed to have been made to the CLSB ~~will treat the date of notification to the CLSB as being on~~ the date the Complaint was made to either the CLSB or Legal Ombudsman, whichever is earlier.

## Annex 2 – Proposed amendment to policy statement on enforcement and sanctions

### Approach to enforcement

7. The CLSB is primarily concerned with taking enforcement action against serious breaches, not those which are merely trivial. Behaviour involving dishonesty, lack of integrity or significant harm to consumers, or posing a high risk to the public interest, to the reputation of the profession or to the administration of justice will always be serious.
8. Whilst the CLSB's core concern is the regulation of Costs Lawyers' professional conduct, in some circumstances it will be appropriate to take action in relation to conduct that occurs outside of practice – the most obvious example being where a Costs Lawyer is convicted of a criminal offence in their private life. We are particularly concerned with the impact of conduct outside of practice (including in the private lives of Costs Lawyers) where:
  - the matter is so serious that it is capable of damaging public confidence in the profession; or
  - the behaviour implies a risk to the safe delivery of Costs Lawyer services by the individual in the future.
9. The CLSB is party to a joint statement issued by all the legal services regulators [link] setting out a commitment to tackling counter-inclusive misconduct through disciplinary processes. Counter-inclusive misconduct is behaviour that intentionally or unintentionally has the effect of narrowing or denying opportunities to people because of their background or characteristics. It extends to behaviour such as discrimination, sexual harassment and bullying. In particular, when considering alleged counter-inclusive misconduct, we will make decisions in line with the following principles:
  - counter-inclusive misconduct is serious and will be challenged and dealt with appropriately;
  - we will take every opportunity to ensure that its seriousness is reflected in a consistent way in our approach to disciplinary action, including through consistency with the approaches of other legal services regulators; and
  - we will support efforts across the legal sector to promote understanding that counter-inclusive misconduct will be tackled effectively wherever it is found.

### **Annex 3 – Final version of joint statement (pending publication as at 30 May 2022)**

#### **A STATEMENT FROM ALL LEGAL SERVICES REGULATORS AND A STATEMENT FROM LEGAL DISCIPLINARY TRIBUNAL PROVIDERS**

##### **TACKLING COUNTER-INCLUSIVE MISCONDUCT THROUGH DISCIPLINARY PROCESSES**

###### A Statement from all Legal Service Regulators

As legal regulators, we are committed to doing everything we can to support an independent, strong, diverse and effective legal services sector; one in which anyone can succeed, and the profession is enriched by practitioners who reflect the diversity of the society and consumers that they serve.

While there have been some improvements in diversity and inclusion in the sector, there remains a great deal of work to be done. It is still more difficult to progress as a lawyer – sometimes much more difficult – if you are, for example, a woman, or if you are from an ethnic minority, or if you are a disabled person, LGBTQ+, or are from a lower socio-economic background. This needs to change much further and faster than it has in the past.

We know the reasons for this are complex and differ from group to group and within groups but do not accept that complexity should be used as a reason not to act.

We know that regulation is not the whole answer, or even most of the answer. But we also know that it can be an important part of the answer.

For example, as legal service regulators, we have considerable influence over how legal professionals behave and in helping shape shared professional values. We oversee the way lawyers are trained and educated. We set standards of conduct and expectations of professional behaviour. And we have powers to act where conduct falls below those expectations and through our disciplinary processes. The signatories to this statement commit to using these levers to bring meaningful change to the experiences of all those in and served by the legal services sector.

Many of the barriers to a successful legal career arise from the conduct – or indeed misconduct – of legal professionals. A workplace in which misconduct or harassment of any kind occurs, that tolerates racial discrimination, or where people are bullied or excluded because of disability, sexuality or gender identity in most cases will be unlawful. It will not provide a fair chance of success for individuals from diverse backgrounds which is essential to create the strong and diverse legal profession we all want to see.

The legal services regulators therefore embrace the following principles in regard to tackling counter-inclusivity:

- Counter-inclusive misconduct, which is conduct which intentionally or unintentionally has the effect of narrowing or denying opportunities to people because of their background or characteristics, is serious and will be challenged and dealt with appropriately
- We will take every opportunity to ensure that its seriousness is reflected in a consistent way within our standards and codes and in our approaches to disciplinary action
- We will support each other in ensuring a consistent message to promote understanding across the whole sector that counter-inclusive misconduct and behaviour must and will be tackled effectively wherever it is found.



We know that the vast majority of legal professionals will agree with and welcome these principles and will want to make their own contribution to ensuring a strong and diverse legal profession.

A Statement from Legal Service Disciplinary Tribunal Providers

Recognising our individual independence, and that of disciplinary panels and tribunals, we will ensure that management, training, procedures and policies are in place to enable tribunals to impose sanctions that mark the seriousness of sexual misconduct, racial or other discrimination or bullying, act as a deterrent and encourage the reporting of misconduct. Such behaviour undermines public trust and confidence in lawyers and the law and has a negative impact on diversity, recruitment, and retention.

The undersigned endorse the principles set out in their statements and commit to pursuing the elimination of counter-inclusive practices through embedding these principles into regulatory and disciplinary policies, activities and decisions.

## Consumer engagement strategy - update

Board paper

July 2022

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Our recently published report [How could Costs Lawyers reduce the costs of legal services?](#) included a recommendation that the findings in that report should influence our [consumer engagement strategy](#).

This paper updates the Board on Year 2 of our consumer engagement strategy and proposes a change in focus for Year 3 in line with the recommendation from Hook Tangaza.

It is important to note that our consumer engagement strategy is specifically about individual consumers, whereas our consumer outcomes framework covers both individual consumers and business consumers.

Some of the key findings in Hook Tangaza's report have changed our perception of the likelihood that Costs Lawyers are serving individual consumers, or will increasingly serve them in the future (see the paper for the strategy discussion at Item 3.2). Our working assumption is now that Costs Lawyers rarely serve individual consumers, and are unlikely to involve themselves in growth areas serving consumers, such as Solicitor-Own cost disputes.

### Update on Year 2 consumer engagement actions

Our Year 2 consumer engagement strategy actions are set out below, followed by an update on progress against the intended activities, and in some cases an explanation of why further work in certain areas is no longer beneficial given Hook Tangaza's findings.

#### Update on *price, access, quality*

Type of outcome	What information are we seeking?	Intended engagement with consumers
<b><i>Price, quality, access</i></b>	Do consumers think they get good value for money? Do consumers understand the price they will pay? How do consumers access and use information before making a choice? Do consumers think the services they bought were good quality?	Update the CLSB's client survey to align with our outcomes framework and explore consumer ranking of price and quality. Follow up with any consumers who agree to take part in further research, and explore experiences across all outcomes. Audit, and seek feedback from Costs Lawyers on, the presentation of prices and consumers' understanding of these (as set out in our guidance note on price transparency).

We updated the CLSB's client survey to align with our outcomes framework, and promoted it heavily. We received very few survey returns from individual consumers and no consumer agreed to a follow up interview with us.

We contacted all Costs Lawyers who said they had more than 10% of their instructions from individual clients and asked them for interviews – none agreed to an interview, although some replied to us to explain that they did not serve individual clients themselves and apologised if they had made an error in returning information to us, which was helpful in improving the accuracy of our data. Our best interpretation of this is that some Costs Lawyers working in firms of solicitors gave us estimates about end clients based on the firm's profile of work, rather than them having direct experience of serving individual clients themselves. We have amended the question in the regulatory return to clarify this point.

We undertook a sample review of Costs Lawyers' websites (to look for pricing information), and found very few services aimed at individual consumers and so no relevant price information. Hook Tangaza took our initial work and expanded it to cover a large portion of the market, concluding that:

*There is little on offer from Costs Lawyers that is explicitly consumer facing. Less than one fifth of Costs Law firms advertise services directly to individuals or Litigants in Person (LiPs). In the latter case, further investigation suggests that this most frequently takes the form of advice about how to reduce a bill but without taking on the representation of that individual.*

In our 2022 Business Plan, we said (priority 7) that we would carry out a research project to better understand the pricing structures used by Costs Lawyers and to benchmark prices for different types of costs services. When we drafted this item for the Business Plan, we did expect that there would be some homogeneous services offered by Costs Lawyers, available to individual consumers, that we could reference to carry out this research. We no longer think this is the case, so we have considered pricing for business consumers instead. Our analysis is summarised at Annex 1 to this paper.

#### **Update on *privacy, fairness and diversity***

<b>Type of outcome</b>	<b>What information are we seeking?</b>	<b>Intended engagement with consumers</b>
<b><i>Privacy</i></b>	What are the privacy expectations of individual consumers', and is there any evidence these are not being met?	Investigate expectations around privacy – drawing on existing research in similar markets – and assess whether there is any evidence that expectations are not being met.
<b><i>Fairness</i></b>	What is the incidence of vulnerability markers in the users of Costs Lawyers' services?	Refresh and promote the CLSB's client survey to collect data on the characteristics of individual consumers using Costs Lawyers.
<b><i>Diversity</i></b>		

	Do consumers experience equal outcomes regardless of their characteristics?	Refresh and promote the CLSB's client survey to collect data on the characteristics of individual consumers using Costs Lawyers, and draw on lessons from other sectors where possible.
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When we set out our plans around privacy for individual consumers in our consumer engagement strategy, we had a specific idea in mind. We intended to look at whether individual consumers engage at all with information about data protection, and investigate whether we should require Costs Lawyers to implement data protection and privacy safeguards that were in line with what individual consumers would expect, not what they are told (in theory) about data protection and privacy of information.

In line with our explanation above about the findings in Hook Tangaza's report, we no longer consider that there are likely to be enough Costs Lawyers serving individual consumers to make this exercise worthwhile. We have, however, considered privacy and business consumers. Our analysis is summarised at Annex 2 to this paper.

At the same time as we refreshed the CLSB's client survey to collect information about price, access and quality, we updated it to collect data on fairness and diversity – with the same results as we describe previously.

## **Vulnerable consumers, pro-bono work and regulatory status of organisations**

Our Year 2 consumer engagement strategy also stated that we would:

- refresh and promote our guidance on vulnerable individual consumers;
- explore opportunities for and potential barriers to pro-bono work, and publish guidance to support Costs Lawyers in undertaking pro bono work for individual consumers; and
- identify ways to improve consumer information about the regulatory status of the organisations in which Costs Lawyers practise.

### ***Update on refresh and promote our guidance on vulnerable individual consumers***

We reviewed our guidance on vulnerable consumers in Q3 2021. Drawing on evidence provided by Costs Lawyers in their annual regulatory return about the nature of their clients' vulnerabilities, and incorporating best practice from publications across the sector, we developed [new guidance](#) for the profession.

The resulting publication is clearer, more comprehensive and more up-to-date than its predecessor, and includes links to external resources that will provide useful support for Costs Lawyers. The board approved the new guidance in October 2021 and it was subsequently publicised widely with the Costs Lawyer community through our website, social media channels and newsletter.

### ***Update on explore opportunities for and potential barriers to pro-bono work, and publish guidance to support Costs Lawyers in undertaking pro bono work for individual consumers***

We carried out a project in H2 2021 to review the data we hold about Costs Lawyers' provision of pro bono advice, and to identify specific areas in which Costs Lawyers can make an impact. We used this evidence to develop [a new guidance note](#) for Costs Lawyers in Q4.

We "took over" the November edition of the Costs Lawyer newsletter, which was published during National Pro Bono week, to launch the new guidance and promote opportunities to participate in pro bono work. We collaborated with LawWorks to develop bespoke material for Costs Lawyers and hosted a guest blog from a pro bono partner in a law firm, highlighting their positive personal experience.

We followed up with a blog from The Access to Justice Foundation in February 2022, explaining the benefits of pro bono costs orders to their work. We will analyse the data on pro bono participation from the 2022 regulatory return to evaluate the impact of these activities. We have also identified an opportunity to collaborate with ACL in relation to pro bono costs orders in H2 2022, which we will pursue.

### ***Update on identify ways to improve consumer information about the regulatory status of the organisations in which Costs Lawyers practise.***

We initially carried out desk research to assess how other regulatory bodies present this information and to learn from good practice in the sector. However, it became apparent that this is an issue that is unique to Costs Lawyers and their organisations (or has not otherwise been tackled by other regulators), most likely due to the statutory framework.

We therefore developed a bespoke field in the Register of Costs Lawyers that indicates to users whether the organisation in which a Costs Lawyer practises is regulated and, if so, by which regulator. A beta version is currently being tested and the new field will go live when testing is complete in 2022.

## **Year 3 consumer engagement strategy**

The Hook Tangaza report made a recommendation about how we should change the focus of our consumer engagement strategy going forward:

*[CLSB should] establish a 'user panel' and talking more directly to actual and potential institutional and corporate end-users of Costs Lawyers. To a large extent this is where the CLSB's "consumer engagement" could potentially have most impact.*

This recommendation reflects the findings of the report, that Costs Lawyers mainly serve business clients, and also reflects other recommendations in the report about opportunities for CLSB and Costs Lawyers to bring greater benefits to (overwhelmingly business) consumers.

We suggest that CLSB adopts this recommendation, and this becomes the main feature of our Year 3 consumer engagement strategy. Subject to the discussion during the strategy session (agenda Item 3.2), we will investigate how best to establish such a panel, draft terms of reference for it, and revert back to the Board with an implementation plan.

## Annex 1: Pricing of Costs Lawyers' services to business clients

Regulators promote price transparency:

- because it allows consumers to make informed purchasing decisions with the aim of improving the competitive processes by encouraging price competition; and
- as a form of consumer protection in terms of people knowing what they will pay for a service before they buy, and as a way of deterring unfair or misleading pricing practices (such as drip pricing).

Price transparency isn't, however, universally a good thing. There are some negative implications to price transparency which vary depending on the structure of a market. When pricing disclosures allow competitors to know what their rivals are charging this can dampen incentives to offer a lower price, or even encourage tacit collusion where prices converge to a settled level.

These are some of the reasons why, when regulators impose requirements around price transparency, it is important to also monitor what is happening to prices in a market. There are other good reasons to look at how prices are moving over time not least because looking at prices is one way of drawing conclusions about the state of competition.

[The LSB's prices research](#) has been focussed on services purchased by individual consumers based in England and Wales and has covered three areas of law: conveyancing; divorce and wills; trusts and probate. It has not touched on any services provided by Costs Lawyers.

The LSB's recent policy statement on empowering consumers includes an update on its expectations around price transparency. These measures are firmly aimed at individual consumers (and businesses small enough to be grouped with individual consumers).

When we set out our 2022 Business Plan, which reflected our then newly introduced consumer outcomes framework, we included a work item to look at the level of prices charged by Costs Lawyers and we intended this work to also look at the implementation of our [Price Transparency guidance](#).

As explained in the main body of this paper, however, we now have a different perspective around the likelihood that Costs Lawyers are regularly offering services to individuals. As part of the preparation for Hook Tangaza's work, we looked for any homogeneous services offered by Costs Lawyers, available to individual consumers, that we could reference to carry out research on prices but we didn't find any suitable candidates. Hook Tangaza concluded that:

*Costs Law firms, overall, tend to be more focused on attracting commercial work. This is largely because the majority of personal injury work is now dealt with by Costs Lawyers working in-house within solicitors' firms. But also reflects the fact that, according to our interviewees, commercial cases are becoming bigger and more complex (although also reducing in number which has other consequences for the market).*

It is unlikely to be productive or even possible for CLSB to take any measures aimed at improving price transparency of services offered by Costs Lawyers to corporate or professional clients, and it may even be harmful. Without the benefits of encouraging individual consumers to shop around, or the benefits of deterring unfair or misleading pricing practices (principles drawn from consumer protection legislation covering individual consumers), there is simply a risk that in a very small sector disclosure of pricing information would encourage convergence of prices.

Without price transparency for the majority of clients served by Costs Lawyers, we are unable to carry out any meaningful research into prices or price transparency around products sold to individual consumers.

The main body of this paper recommends that, in Year 3, our consumer engagement efforts switch towards corporate clients of Costs Lawyers. We propose that our efforts in exploring pricing are also best redirected into exploring the value added by Costs Lawyers through direct discussion with such clients.



## Annex 2: Privacy and business clients of Costs Lawyers

As we explain in the main body of this paper, when we set out our plans around privacy for individual consumers in our consumer engagement strategy, we had a specific idea in mind to look at consumer expectations (and by this we meant the expectations of individual consumers, not business clients). We have, however, considered what privacy concerns may arise for Costs Lawyers serving business clients.

The vast majority of Costs Lawyers have as their immediate customer a solicitor - a professional who is unlikely to require any particular safeguarding by a regulator such as CLSB in terms of specific requirements placed on Costs Lawyers (over and above the general obligations we already impose to keep client information confidential). It may be the case, however, that we could better help Costs Lawyers comply with relevant obligations.

Most Costs Lawyers (who do not work for a firm of solicitors) work in small firms, or extremely small firms. There is a great deal of research available ([here](#) and [here](#) for example) that shows small firms generally struggle to implement data protection measures. While we can expect Costs Lawyers to struggle less than the average SME in understanding their obligations, and those obligations will be lighter where clients are not individuals, we can expect small firms of Costs Lawyers to struggle with similar issues as for other SMEs in terms of lacking time or resources to improve on their data security practices (see this [research from the US](#) for example).

We have identified two specific areas where we may be able to help Costs Lawyers, and these are:

- a reminder that data protection measures to apply to B2B marketing; and
- the need to maintain adequate cyber security.

On the first of these, we will attempt to increase awareness by including an article in one of our Newsletters in 2022. The second aligns with our intention to continue working with material from the National Cyber Security Centre – a government agency that provides cyber security guidance and support – to raise awareness of cyber risks within our regulated community and promote free online training for small businesses. We will soon do another round of promoting the NCSC content (in August this year) and we will cover both data security and the need for Costs Lawyers to assess their need for cyber risks insurance (as discussed with the Board in May 2022).

We are also considering whether we should include additional training on cyber security as we work on our response to the LSB's emerging policy on continuing competence.

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# Diversity survey: Female and male pay and earnings

## 2021

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DRAFT PUBLICATION



July 2022

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Costs Lawyer Standards Board

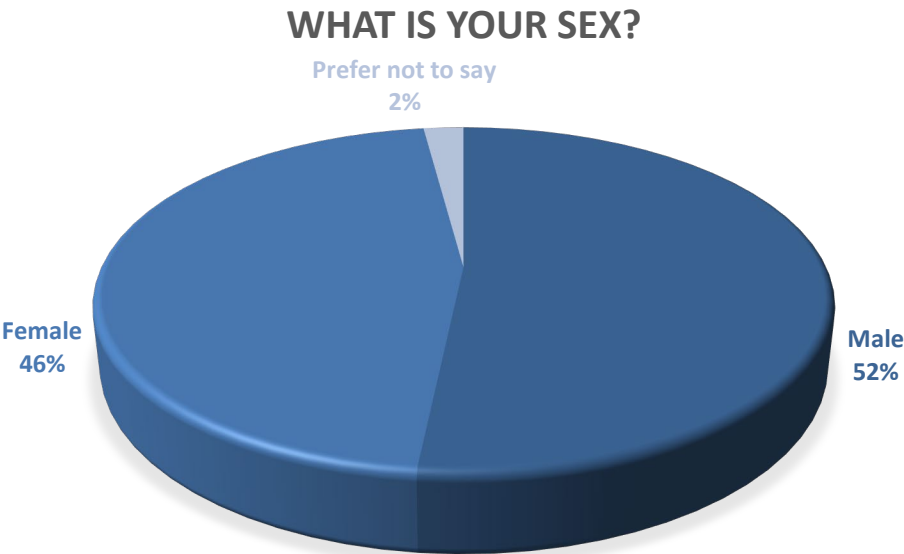


The data in this document was collected in a survey carried out in November and December 2021 as part of the annual practising certificate renewal process.

We collect diversity data from practitioners on a voluntary basis. This survey is an evolution of our normal diversity surveys, which were carried out every three years by the CLSB up to 2019, repeated in [2020](#), and going forward will be carried out every two years.

This survey is the first time the CLSB has looked at the differences between female and male Costs Lawyers. We decided on this topic because it is important in itself but also because it is a useful lens through which to start looking at pay and earnings, and we intend to build on this data in the future to look at how people progress through their careers as Costs Lawyers.

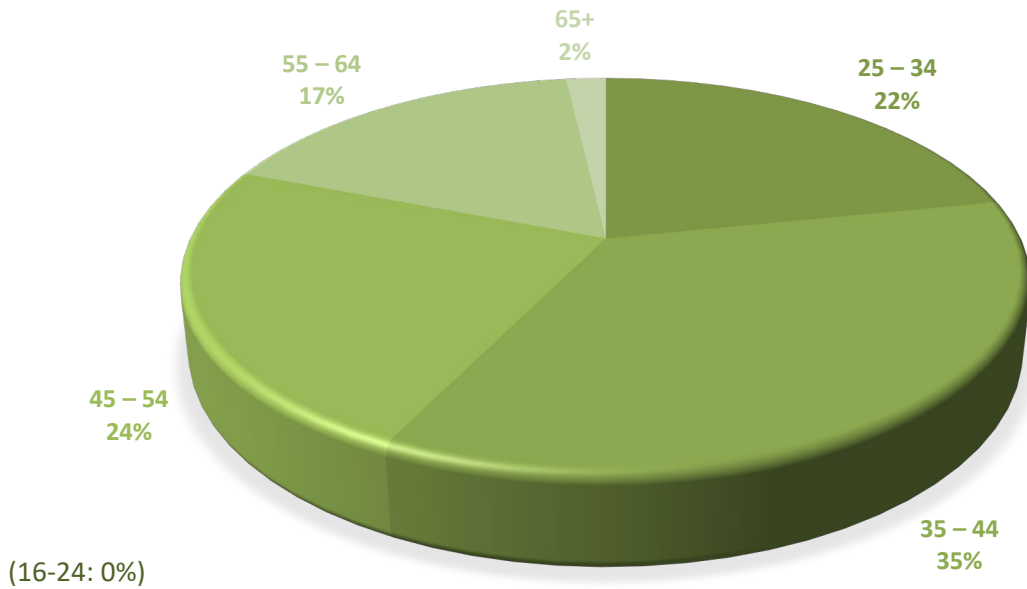
We have set out the key findings for each of the categories where we collected data.



Other preferred description: 0%

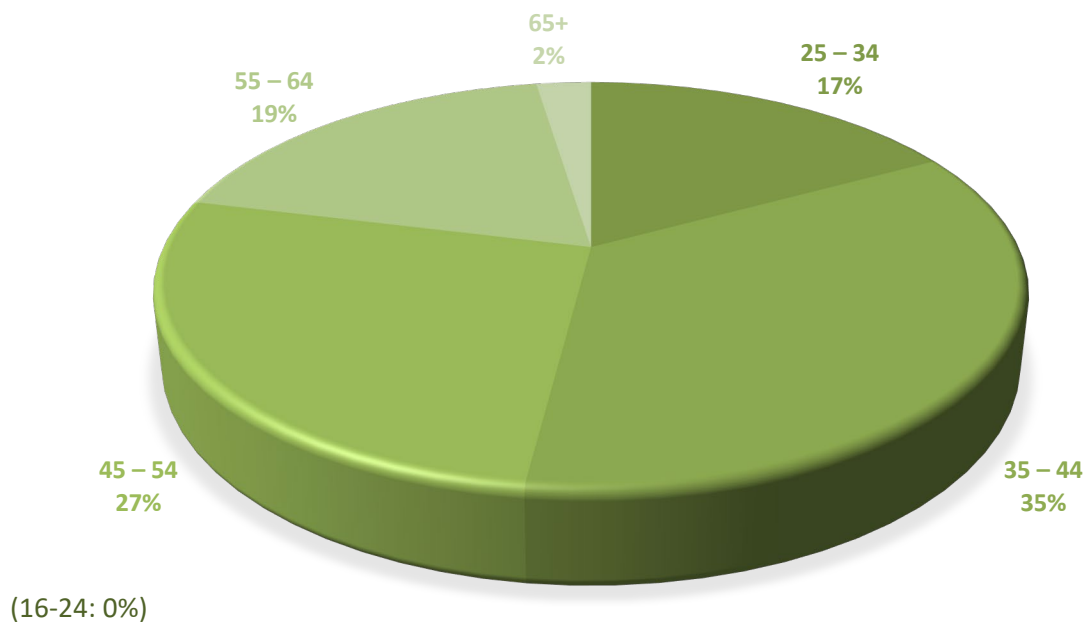
46% of Costs Lawyers are female, according to our [2020](#) diversity survey, and the responses to this 2021 survey was in line with the previous result.

## WHICH AGE CATEGORY ARE YOU IN? (FEMALE)



Female Costs Lawyers are slightly more likely to fall into a younger age category than male Costs Lawyers, with 22% of females falling into the 25 – 34 age category, compared to 17% of males.

## WHICH AGE CATEGORY ARE YOU IN? (MALE)



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In 2021, female Costs Lawyers were more likely than male Costs Lawyers to experience a significant reduction in earnings, often due to maternity leave, but also sick leave or compassionate leave.

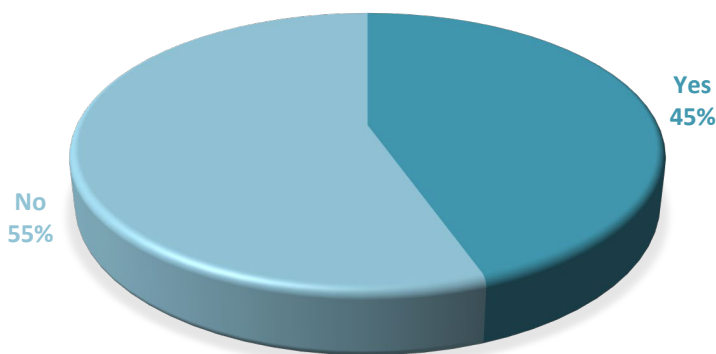
**In the last year, were your earnings significantly reduced due to (tick all that apply):**

Reason	Female	Male
Maternity or paternity leave	8%	2%
Sick leave or compassionate leave	6%	1%
Coronavirus Job Retention Scheme (furlough)	6%	7%
Redundancy	1%	2%
Planned extended leave for personal reasons or education	0%	1%
Not applicable - my earnings were not reduced	74%	80%
Prefer not to say	2%	2%
Other (please specify)	8%	6%

In 'other', for both female and male Costs Lawyers, the reasons given most often related to the Covid-19 pandemic.

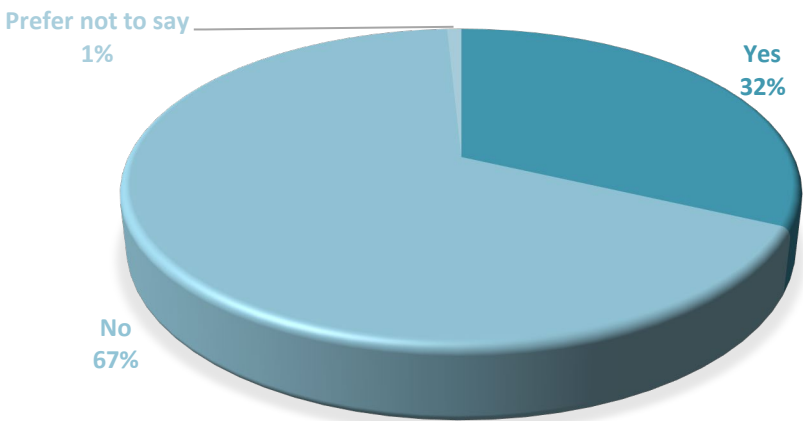
Male Costs Lawyers most often said they experienced a reduction in business, while female Cost Lawyers most often gave reasons relating to the need to home school children.

**ARE YOU A PRIMARY CARER FOR A CHILD OR CHILDREN UNDER 18? (FEMALE)**



Female Costs Lawyers are more likely than male Costs Lawyers to be a primary carer for a child of children under 18, with 45% of female Costs Lawyers and 32% of male Costs Lawyers saying they had these responsibilities.

**ARE YOU A PRIMARY CARER FOR A CHILD OR CHILDREN UNDER 18? (MALE)**



Female Costs Lawyers were, in 2021, less likely than male Costs Lawyers to work in London and the South East.

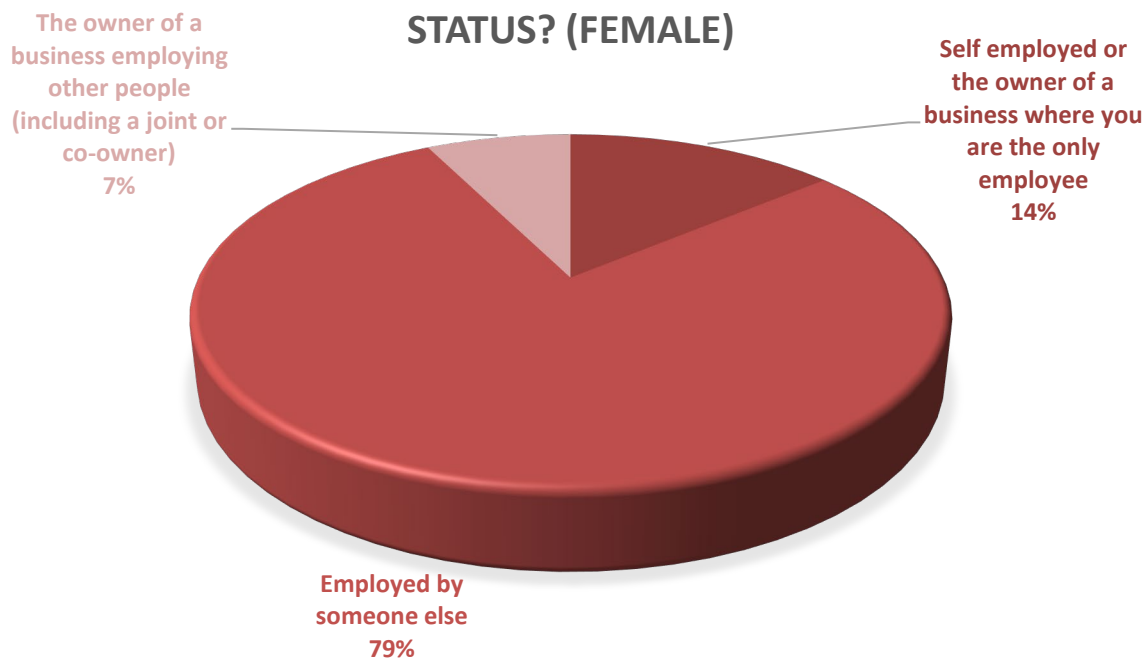
40% of male Costs Lawyers work in the South East or London, compared to 21% of female Costs Lawyers.

44% of female Costs Lawyers work in the North of England compared to 33% of male Costs Lawyers.

**In the last year, in which region did you work?**

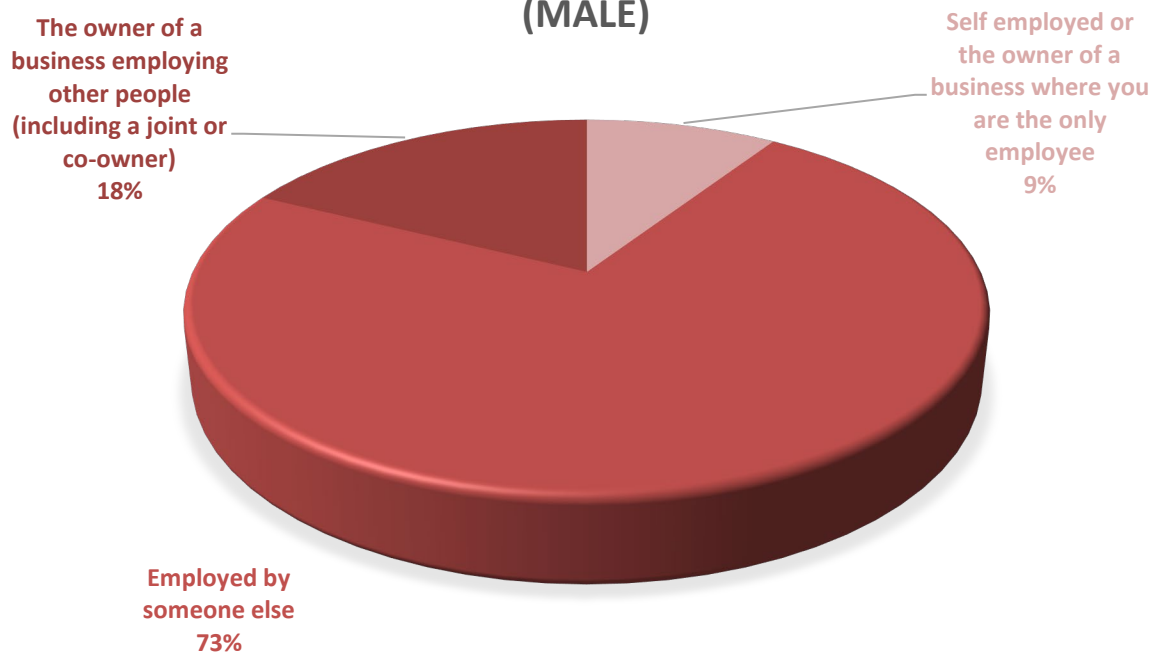
Region	Female	Male
North West	22%	26%
Yorkshire & Humber	22%	7%
South East	15%	23%
London	11%	17%
West Midlands	10%	5%
South West	7%	7%
East	4%	3%
East Midlands	4%	2%
Wales	2%	7%
North East	2%	2%
Other (please specify)	3%	0%
Prefer not to say	0%	1%

WHAT BEST DESCRIBES YOUR EMPLOYMENT STATUS? (FEMALE)



Female Costs Lawyers are less likely to be the owner of a business employing other people, with 7% of female Costs Lawyers describing themselves this way compared to 18% of male Costs Lawyers.

WHAT BEST DESCRIBES YOUR EMPLOYMENT STATUS? (MALE)





Apart from in the South East, our data shows that female Costs Lawyers earn less than male Costs Lawyers.

The average pay for female Costs Lawyers working full time is between 9% and 25% less than male Costs Lawyers, excluding the South East, depending on the region in which they work.

Of the 239 people who answered this question, 141 gave us a figure for gross pay and earnings: 65 males and 76 females. There was insufficient data for some regions to make comparisons.

**In the last year, what was your gross basic pay or earnings?  
People working full time as Costs Lawyers**

	London	North West	South East	South West	Yorkshire & Humber
Average female pay	£48,443	£41,951	£71,818	£41,142	£37,045
Average male pay	£58,214	£52,268	£70,236	£45,467	£40,500
(F pay - M pay) / F pay	-20%	-25%	2%	-11%	-9%
Based on number of responses	15	45	20	10	23

In this question, pay or earnings included dividend payments and equity distributions, but excluded overtime payments, bonuses, salary sacrifices, employer pension contributions and benefits in kind.

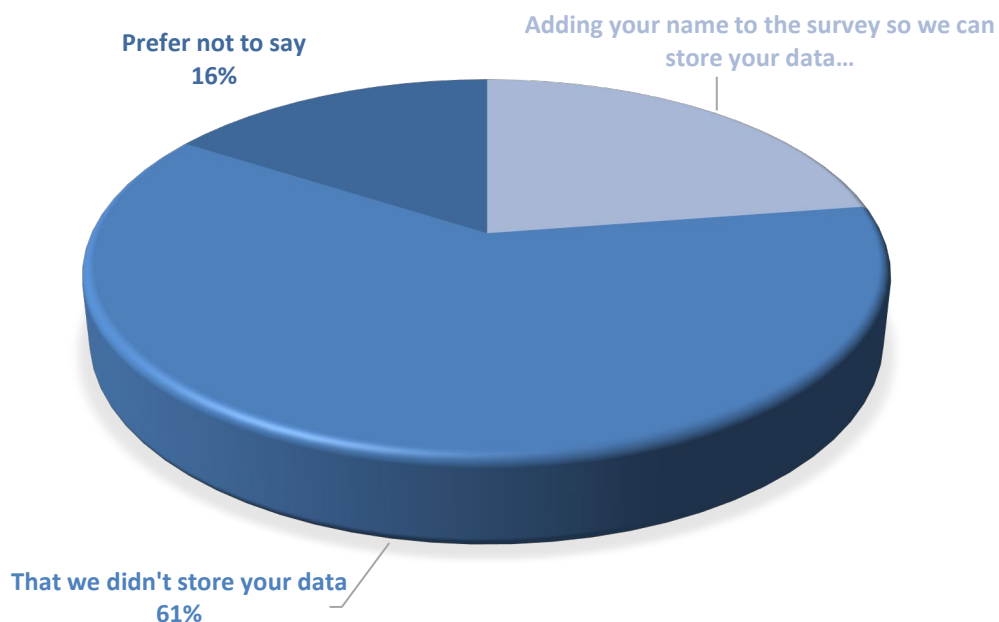
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The CLSB is seeking ways to improve its response rate for diversity surveys, and we included a question in this survey that explored whether Costs Lawyers would be happy for us to store their data, with the aim of making future surveys less time consuming to complete.

**The CLSB needs diversity data to fulfil its legal and regulatory responsibilities. We're considering how to run future diversity surveys to maximise responses. Surveys are likely to take place every 2 years.** Would you prefer:

1) adding your name to the survey so we can store your data (solely for diversity monitoring purposes), meaning you only need to tell us when things change; and

2) that we didn't store your data, meaning that you would answer the same or similar survey questions every 2 years.



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## Notes and next steps

240 Costs Lawyers completed the survey used to collect the data presented here.

### Next steps

On the face of it, this data shows a substantial gap in the pay between female and male Costs Lawyers in all regions apart from the South East.

There is no doubt that the CLSB's data could be improved - this is the first time we have attempted to collect and analyse data on pay and earnings and have learned much from the exercise, which will improve our efforts in the future. It is also the case that 2021 was a year when the Covid-19 pandemic affected pay and earnings. But, nevertheless, this result means that looking further at pay equality is one of the CLSB's top priorities in its equality and diversity work.

As a first next step we will reach out to our regulated community to try to verify our data and understand the reasons for the apparent pay gap between female and male Costs Lawyers – a critical step in formulating, with relevant partners, a plan of action.

## Consultation response

### LSB's proposed regulatory performance assessment framework

20 June 2022

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#### Introduction

The Costs Lawyer Standards Board (CLSB) welcomes the LSB's review of its framework for assessing the performance of the regulatory bodies that it oversees. We agree with the description in the consultation paper of the difficulties inherent in the existing framework and, overall, we support the LSB's proposed approach to reform.

We have had the opportunity to comment on the LSB's proposals at various stages of their development, including through one-to-one meetings with the project team and at the stakeholder event on 9 June. We have therefore already provided feedback as to the improvements we feel could be made to the existing scheme and some initial comments on the consultation paper. This written response focuses on a few remaining areas where we hope further feedback will be useful, responding to three of the questions posed in the consultation paper.

Q3. Do you agree that the proposed characteristics which support the standards are reasonable expectations of the skills and processes that an effective regulator will have? If not what changes would you propose and please explain your reasons?

#### Characteristic 3

We have concerns about two of the proposed characteristics. The first is characteristic 3 under standard 1, which reads:

*"Independent of the regulated professions but understands and collaborates effectively with the profession and representative groups to meet the regulatory objectives"*

We understand from the stakeholder event that the SRA has concerns about use of the phrase "collaborates effectively" in this characteristic, and has suggested that "collaborates appropriately" be used instead to reflect that collaboration between independent bodies who might disagree on certain issues from time to time will not always be appropriate. We agree with the SRA's reasoning.

However, we also wanted to highlight that it might not always be possible for regulatory bodies to collaborate *appropriately* with representative groups either. Collaboration is a two-way street, and even the best efforts of a regulatory body at collaboration might not be successful. From the CLSB's perspective, we are mindful that the Association of Costs Lawyers is run largely by a Council of volunteers with minimal resources. That organisation has its own strategic priorities that will (correctly) be narrow and focused. We appreciate that finding resource to collaborate on other priorities, however important from a regulatory standpoint, can be challenging for the Association.

We will continue to look for creative ways to collaborate with ACL, as well as individual practitioners, but we are concerned about being assessed against a characteristic that is couched in absolute terms, and which requires behaviour that is often outside our control (i.e. that we *do* collaborate

appropriately with ACL) rather than in terms that reflect behaviours within our control (e.g. we *take proactive steps with the aim of* collaborating appropriately).

In our view, characteristic 3 would be better focused solely on regulatory independence. It is through characteristic 3 that the LSB intends to assess the regulatory bodies' compliance with the Internal Governance Rules 2019,<sup>1</sup> and thus characteristic 3 carries substantial expectations even without reference to collaboration.

At the same time, effective collaboration is already covered elsewhere. In particular, characteristic 6 includes acting "through collaboration where relevant" and characteristic 7 refers to working "in collaboration with the LSB, other relevant authorities and other stakeholders". Both of these implicitly include collaboration with representative bodies, but without the difficulties posed by characteristic 3. Characteristic 9 also requires regulators to have "a comprehensive understanding of the market", which inevitably requires a degree of collaboration with the wider profession.

We would therefore suggest wording characteristic 3 as "Independent of the regulated professions" (or similar), without muddying the waters or creating duplication through further references to collaboration.

#### Characteristic 20

Characteristic 20 refers to maintaining "high" standards of conduct amongst authorised individuals. We wonder what is meant by "high" and how this will be measured. The very highest standards (which are in any event difficult to define objectively and universally) come at a price, which is ultimately borne by consumers.

Section 4 of the Legal Services Act 2007 refers to the LSB "assisting in the maintenance and development of standards", without assigning an adjective to those standards. In our view, standards are better couched in the language of the professional principles in section 1 of the Act, which ties them to the regulatory objectives. We would suggest replacing the term "high standards" with "appropriate standards", "relevant standards", "standards that promote adherence to the professional principles" or similar.

Q8. Do you agree that the regulatory performance assessment process document is sufficiently clear about our proposed approach to performance assessment and how we will use our assessment tools? If not, how could it be clearer?

More clarity is needed around the moment at which a "partial assurance" rating crystallises.

The description of this rating<sup>2</sup> states:

*"In this instance, the regulator would need to provide further information."*

The words "in this instance" appear to relate to an instance in which a partial assurance rating has already been given. It was not clear to us from the materials why the regulator would not be afforded the opportunity of providing such information before the rating crystallised, in order to receive an adequate assurance rating.

We raised this question at the stakeholder event in June. The LSB helpfully explained that, because the new process envisages a more detailed dialogue prior to publication of the ratings (in contrast to

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<sup>1</sup> As distinct from the approved regulators' compliance, which will be assessed separately, according to the first paragraph on page 10 of the consultation paper.

<sup>2</sup> See, for example, paragraph 43 of the consultation paper.

the limited fact-check that is currently offered), regulators would be put on notice that a partial assurance rating was likely and, consequently, they would have the opportunity to provide the further information before the rating crystallised. A partial assurance rating would therefore only be given in practice where a regulator failed to provide the requisite information in a timely fashion.

We suggest that this position be set out in the process document (Annex B to the consultation), because the LSB's intentions are not apparent from the current drafting. In our view, clarification is needed at:

- paragraph 16, where the document mentions that further information may be requested, but does not explain how this relates to a partial assurance rating;
- paragraph 21, where the partial assurance rating is described; and
- paragraph 25, which explains that the regulators will be provided with the draft assessment and given the opportunity to "respond and raise queries about the proposed ratings" – presumably this should also mention providing additional information in response to a proposed partial assurance rating, given the LSB's stated position (currently the provision of further information is not mentioned at all in the process described in paragraph 25).

This should also be taken into account in the LSB's proposed timetable for the first assessment under the new framework, as set out in the table at Figure 3 of the main consultation document. The table indicates that the following will happen in October, with no mention of the provision of additional information in response to a proposed partial assurance rating:

*"LSB sends draft assessments to regulators for their comments on the assessments' substance and factual accuracy. Regulators have three weeks to respond, including identifying any actions that are necessary to address the issues raised."*

We note that, on one view, you could say this is a semantic distinction; whether a regulator receives a partial assurance rating and later corrects misinformation, or corrects misinformation straight away and avoids the partial assurance rating, achieves the same outcome in the end. However the LSB will be aware that its ratings are often picked up and interpreted by sector commentators to give stakeholders information about the regulators' performance.<sup>3</sup> Indeed, making the assessments more informative for the public and interested stakeholders is one of the LSB's stated aims of these reforms.<sup>4</sup> It is therefore important that the ratings accurately reflect performance at the time of publication.

Q10. Do you have any comments about the proposed focus, timing and process for our assessments under the revised framework from 2023 onward?

We have a practical observation on this aspect of the proposals, relating to the time of year that regulators will be asked for information.

Figure 3 of the consultation document indicates that information requests will be issued at some point in June, with regulators being asked to respond within four weeks, at some point in July. At the stakeholder event we asked whether, if the LSB knows what the information requests are likely to

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<sup>3</sup> See for example: <https://www.legalservicesconsumerpanel.org.uk/blog/regulatory-performance-room-for-improvement-for-all>; <https://www.legalfutures.co.uk/latest-news/panel-questions-future-of-underperforming-regulator>; <https://www.associationofcostslawyers.co.uk/News/clsb-under-fire-from-oversight-regulator-and-consumer-panel-over-performance/220069> in relation to the CLSB's historic performance in 2019. To be clear, we view this type of commentary as useful and appropriate scrutiny, but it demonstrates the importance of accuracy.

<sup>4</sup> Paragraph 6 of the consultation document.

contain, the requests could be provided in advance so that regulators could compile evidence on an ongoing basis during the assessed period. The LSB responded that this would be difficult because the information request would be shaped by issues arising throughout the whole assessed period as well as discussions in relationship management meetings. We understand that response.

Against that background, we express our hope that the process can begin as early as possible in the proposed window, by issuing information requests at the start of June. If information requests are received at the end of June, the relatively short timeframe to respond will fall across the holiday period in July, with the potential to put unnecessary pressure on small regulators (with few staff) and large regulators (with complex approval processes) due to the absence of key personnel during that period.