

## Costs Lawyer Standards Board

### AGENDA

**Tuesday 20 October 2020 @ 10.30am**  
**Remotely via videoconference**

**Board:**

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

**In attendance:**

Kate Wellington	Company Secretary and CEO
Jacqui Connelly	Administration Manager (for initial items)

*Note: Agenda items in blue are standing items*

	Agenda item	Paper	Publish <sup>1</sup>	Lead
1	<b>Opening matters</b> 1.1 <a href="#">Quorum and apologies</a> 1.2 <a href="#">Declarations of interest on agenda items</a>	- -		SW SW
2	<b>Minutes</b> 2.1 <a href="#">Approval of minutes (21 July 2020)</a> 2.2 <a href="#">Matters arising (21 July 2020)</a>	Item 2.1 -	Yes	SW SW
3	<b>Strategy</b> 3.1 <a href="#">Progress against Business Plan</a> 3.2 Education and competency	Item 3.1 -	Yes	KW KW
4	<b>Board matters</b> 4.1 Chair recruitment update 4.2 Reappointments	- -		KW SW
5	<b>Finance</b> 5.1 <a href="#">Quarterly report: Q3 2020</a> 5.2 Legal Choices funding update 5.3 Outcome of practising fee application	Item 5.1 Item 5.2 Item 5.3A+B	No (D, E) Yes Yes	JC/KW KW KW
6	<b>Risk management</b> 6.1 <a href="#">Review of risk registers</a> 6.2 Coronavirus	Item 6.1 -	Yes	KW KW

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

7	<b>Regulatory matters</b> 7.1 Guidance – final Handbook audit items 7.2 Guidance – client money 7.3 CPD dispensation policy 7.4 CMA review of market study recommendations	Item 7.1A-D Item 7.2A-C Item 7.3 Item 7.4	Yes Not 7.2C (G) Yes Yes	KW KW KW KW
8	<b>Legal Services Board (LSB)</b> 8.1 Response to Practising Fee Rules consultation 8.2 Regulatory assessment 8.3 Other workstreams	Item 8.1 Item 8.2A+B -	Yes Yes	KW KW/SW KW
9	<b>Stakeholder updates<sup>2</sup></b> 9.1 <a href="#">ACL Council meeting minutes</a> 9.2 Work updates	Item 9.1 -	Yes	KW KW
10	<b>Operational matters</b> 10.1 Practising certificate renewals process	-		KW
11	<b>Publication</b> 11.1 <a href="#">Confirmation that papers can be published</a>	-		SW
12	<b>AOB</b>	-		SW
13	<b>Next meeting</b> (i) <a href="#">Date: 20 January 2020 @ 10.30am</a> (ii) <a href="#">Venue: To be agreed</a>	- -		SW SW

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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**  
**Tuesday 21 July 2020 at 10.30 am**  
**Remotely by videoconference**

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

**In attendance:** Kate Wellington (Company Secretary and CEO)  
Jacqui Connelly (Administration Manager) (for items 1 to 5 and 13)

**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. Steve noted that item 5.1 touched on issues relating to Kate and Jacqui's working hours, but their attendance did not give rise to any conflict of interest.

**2. MINUTES**

**2.1 Minutes dated 22 April 2020**

The board considered the minutes of its last scheduled quarterly meeting on 22 April 2020. The board agreed the minutes as being a true record for signing.

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

**2.2 Matters arising**

The board considered the matters arising from the minutes of its meeting on 22 April 2020. There were no matters arising that had not been scheduled as agenda items or otherwise dealt with.

**3. STRATEGY**

**3.1 Progress against Business Plan**

The board was provided with a progress update against the 2020 Business Plan, including a summary of H1 activity and a RAG rating of each priority in the plan. Kate noted that around half of the priorities had been fully achieved during H1 and significant progress had been made on others.

The board noted in particular the importance of having delivered on priorities 14 (new website), 16 (business continuity) and 18 (digitalisation). These were all big projects that had a major impact on performance and risk mitigation.

Andrew H noted that the new practising certificate renewal forms (priority 18) should be tested broadly, not just by individuals who knew the CLSB's processes well.

### **3.2 Approach to coronavirus**

Steve introduced this item and asked the Non-Lay NEDs for an update on their experience of the market. They reported that pilots were under way to test the impact of bringing staff back into offices. Different firms were intending to take different approaches in the longer-term, with some intending to allow (or require) staff to work from home permanently.

The board considered the outcomes of the coronavirus impact survey carried out by the CLSB in May. Kate provided an update on how the survey report had been received by stakeholders and what steps other regulators were taking in relation to coronavirus.

The board discussed the timing of a follow-up impact survey. It was agreed that another survey should be carried out at some point during Q4 once the "new normal" had bedded in, or a second spike in infections had occurred, either of which would affect the results. The board agreed to reconsider the issue at its October meeting and fix a timeframe for the next survey then, based on up-to-date information.

The board discussed the themes around CPD that had emerged from the impact survey. Kate explained the steps that the CLSB had taken so far to mitigate practitioners' concerns about accessing affordable, relevant CPD online during the crisis. Jacqui also provided feedback on the number and nature of enquiries received on the topic.

The board commended the efforts that had been made to broker discounts from training providers and collate free resources to assist Costs Lawyers in meeting their CPD obligations. The board considered carefully whether there was sufficient evidence to warrant a reduction in the required number of CPD points for 2020. All board members agreed strongly that there was not. The board felt it was essential for Costs Lawyers to continue to learn and maintain their competency during the crisis, unless they were prevented from doing so by their individual circumstances (such as long-term illness caused by the pandemic). ACL's feedback had also been that there were sufficient CPD opportunities online. The CLSB should send a clear message that learning and development remains mandatory in 2020.

The board also agreed that it would be useful to produce an operational policy for handling CPD dispensation requests in 2020, to ensure consistency of treatment in relation to coronavirus. This policy would need to be approved by the board in advance of the practising certificate renewal window opening. Given the timing of this year's renewals (with the application deadline being in November instead of December), the board was content to consider a draft policy by email prior to its October meeting if needed.

***Actions: Add an agenda item for October board meeting to consider timing of next coronavirus impact survey; Communicate to regulated community that there will be no change to CPD points requirement for 2020; Prepare CPD dispensation policy for approval at or before October board meeting.***

### **3.3 2021 Business Plan**

Kate introduced this item and explained the rationale behind the proposed key projects for 2021. The board discussed the proposals and agreed that the Business Plan set the right priorities for achievement of the CLSB's mid-term strategy by 2023. The board approved the Plan, subject to any feedback provided in the context of the practising fee consultation.

The board also discussed the timing of Business Plan development generally. Board members noted that the process took place earlier in the year than it would in a commercial setting (due to the need for LSB approval of the practising fee) and this caused some difficulties with predicting precisely when projects would start and end. The board acknowledged that Business Plan priorities might need to be adjusted forward or backward to account for changing circumstances, but this did not prevent the Business Plan from establishing the broad framework for what the CLSB intended to achieve by the end of 2021.

**Action: Publish proposed 2021 Business Plan with practising fee consultation.**

## **4. BOARD MATTERS**

### **4.1 Chair recruitment**

The board discussed logistical issues relating to appointment of a new Chair when Steve's term expires in early 2021. The board agreed that it was desirable for the incoming Chair to attend the January 2021 board meeting by way of handover and a recruitment timetable should be set with this in mind.

In terms of recruitment criteria, board members were provided with an updated version of the board capabilities matrix and they discussed skills gaps that remained following the last round of NED recruitment. While it was desirable to fill those gaps where possible, the board agreed that those skills were secondary to strong leadership qualities and an ability to successfully chair a regulatory body.

The board discussed options for advertising the role, considering the depth and breadth of reach offered by various channels, balanced against cost. A key consideration was the need to promote diversity, ensuring that the constitution of the board was reflective of the regulated community and the wider public. Stephanie and Kate made suggestions for niche advertising channels that target specific demographics and agreed to investigate the viability of these for chair-level recruitment.

The board discussed the approach to interview within the constraints of the Board Appointment Rules. The board agreed that the constitution of interview panels could be determined by email closer to the time. Interviews could be carried out fairly and robustly by videocall – particularly given the board's intention to conduct more meetings via videocall in the future – so first-round interviews (at least) should be held remotely.

**Action: Prepare updated job specification to begin recruitment in the autumn; Contact NEDs about participation in process closer to the time.**

### **4.2 Meeting dates for 2021**

The board considered its meeting dates for 2021. Board members agreed that meetings would be held:

- in person on 20 January, for a handover with the incoming Chair;
- remotely on 21 April;
- in person on 21 July, to facilitate a strategy day;
- remotely on 20 October.

A venue for the in person meetings would be determined once the new Chair was appointed.

**Action: Publish 2021 board meeting dates on website.**

## **5. FINANCE**

### **5.1 Quarterly report: Q2 2020**

Jacqui introduced the quarterly finance report and highlighted changes that had been made to the budget categories to better reflect current expenditure streams. The board considered the financial position at the end of Q2. The projected underspend, and the consequent decision to increase staff hours temporarily to push forward priority projects in 2020, were noted.

### **5.2 2019 accounts**

The board approved the 2019 accounts for filing with Companies House. The notes to the accounts would not usually be made public, but the board agreed they should be published in the board pack in the interests of transparency.

**Action: File accounts with Companies House and publish on website.**

### **5.3 Legal Choices funding**

Steve updated the board on discussions with the LSB, SRA and CLC in relation to the funding of Legal Choices. Kate provided an additional update from a recent Legal Choices Governance Board meeting and shared the proposed financial contribution breakdown for the next three years of the project with the board. The board noted that, following its approval in April, the CLSB had agreed to pay a top-up contribution for 2020 to cover part of the funding shortfall created by the Bar Standards Board's withdrawal from the project.

The board discussed the funding contribution sought from the CLSB, which represented around 2% of the total Legal Choices budget. The board noted that the CLSB was being asked to make the same contribution as regulators that had significantly larger budgets, and the board had concerns around the disproportionate financial burden this placed on Costs Lawyers as compared to other legal practitioners.

The board reiterated its commitment to the Legal Choices project both in principle and practice, and approved a contribution of 1% of the Legal Choices budget (rather than the 2% sought). The board asked Kate to have further discussions with the other approved regulators to see how the gap might be bridged. It was agreed that the practising fee consultation should be issued on the basis of the approved 1% contribution.

**Action: Feed back to other regulators on approved level of contribution and discuss how this might be accommodated.**

#### **5.4 2021 budget**

Kate explained how the budget had been set for 2021, including a detailed line-by-line expenditure review. Information about the budget setting process had also been shared with the LSB for the purpose of the upcoming regulatory assessment.

The board scrutinised a summary budget, which would be published with the practising fee consultation, as well as a full budget breakdown. Board members agreed it was helpful to have sight of both versions, and felt the public version was user-friendly and pitched at the right level for its purpose. Board members were particularly pleased to see how the cost savings generated by the 2019 organisational restructure had been allocated to priority projects that would further improve efficiency and performance going forward. The board approved the proposed budget, subject to consultation.

**Action: Publish summary budget on website with practising fee consultation.**

#### **5.5 2021 practising fee**

The board considered the executive's recommendation to maintain the practising fee at £275 for 2021. The 2021 budget had been developed using fully costed projections and informed assumptions to ascertain the level of income needed to meet performance expectations. Based on anticipated Costs Lawyer numbers for 2021, this income level could be achieved without increasing the practising fee, which the board considered to be a welcome outcome in the current economic climate.

Kate noted that she had sought early feedback from the LSB on the proposed fee. The LSB had indicated (without fettering its discretion) that it did not foresee any significant concerns about the level of the fee, given the information it had received about the budget setting process.

Board members discussed the likely impact of the fee on different types of practitioners and business models, and agreed that a differential or disproportionate impact was unlikely.

The board then considered a draft consultation on the practising fee. Board members discussed how factors relating to the fee had been presented in the consultation paper and agreed that the level of detail was appropriate. The board approved the proposed practising fee and the draft consultation for publication.

**Action: Issue consultation on a practising fee of £275 for 2021.**

#### **5.6 Policy on handling disciplinary income**

In April, the board had identified a need (in the context of implementing the new Disciplinary Rules and Procedures) for an internal process to allocate income derived from disciplinary sources to expenditure on discipline-related activities. The board considered a draft policy for this purpose.

The board agreed that the policy was appropriately straightforward, given that the CLSB derived income from disciplinary sources only occasionally, and approved it for adoption.

## 6. RISK MANAGEMENT

### 6.1 Review of risk registers

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

- update the evidence of risk OP1 (*more leave than enter the profession*) to reflect the findings of the recent coronavirus impact survey;
- downgrade the probability rating for OP2 (*organisational structure not sufficient to ensure business continuity*) from 3 to 2, and update the controls, to reflect implementation of the new Business Continuity Plan;
- note the impact of coronavirus on new qualifiers – both in terms of delays to exams and less employer funding for the course – under OP3 (*insufficient numbers of new qualifiers such that regulated numbers fall to unsustainable level*);
- downgrade the probability rating for OP5 (*failure to comply with data protection obligations*) from 2 to 1 to reflect completion of final actions from the audit.

Kate noted that the registers had been consolidated into a single document, to avoid duplication and to give readers a more holistic picture of key risks. Steve explained that the registers had previously been split out at the suggestion of the LSB and therefore queried whether the change would be acceptable to them. The board discussed the presentation of the registers and agreed that the CLSB's approach to risk had moved on considerably since the LSB's comments were made. The registers needed to operate as an effective tool for the board to manage risk now and consolidating the registers helped with this, so the board was confident that it could manage any objection that might arise to this change.

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

### 6.2 Business Continuity Plan

The board was provided with a draft Business Continuity and Disaster Recovery Plan for consideration. Kate explained that the measures in the plan had been in place since May when the plan was finalised from an operational perspective.

The board discussed the plan and considered whether additional eventualities should be covered, including whether specific contingency measures were needed for conducting disciplinary hearings remotely under the Disciplinary Rules and Procedures. It was agreed that adequate provision could be made for such eventualities within the framework of the Rules and further contingency planning was not required. The board approved the plan.

## 7. REGULATORY MATTERS

### 7.1 CPD Rules

The board was provided with the LSB's decision notice approving changes to the CPD Rules, as well as additional responses provided to the LSB during the rule change application process that built upon board-approved policy positions. These were noted.

The board discussed the plan for implementing the new CPD regime. The updated rules were due to come into force on 1 January 2021 for the new practising year. Board

members acknowledged that there was scope for confusion if the new regime was rolled out before Costs Lawyers submitted their 2020 CPD returns under the old regime. The changes therefore needed to be communicated clearly and carefully, and timing would be important.

The board anticipated that most practitioners would not begin to focus on the new requirements until the new CPD year had started, so communicating too much detail early on was likely to do more harm than good. It was agreed that detailed communications should be held back until after the practising certificate renewal window had closed and the holiday period had passed; around mid-January 2021. Any CPD that Costs Lawyers carried out in early January (in compliance with the old rules) would count toward the 12 point minimum requirement under the new rules in any event.

In terms of communication routes, the board felt it was important to communicate the key messages through a variety of channels to engage as many practitioners as possible. This would include usual channels, such as email and newsletter communications, but could also include video, written blogs and/or podcasts.

The board then considered consequential amendments to the Accredited Costs Lawyer Rules, which reflected the fact that the accreditation regime would become voluntary under the new CPD Rules. The board approved the updated rules for implementation alongside the new CPD Rules.

***Actions: Develop communications plan for changes to CPD requirements taking board feedback into account; Implement Accredited Costs Lawyer Rules alongside new CPD Rules.***

## **7.2 Practising Rules**

The board noted that the LSB had approved the proposed changes to the CLSB's Practising Rules. The board approved a new guidance note relating to the imposition of practising conditions, which had been submitted to the LSB in draft with the rule change application.

## **7.3 Guidance**

Kate introduced this item and explained that five guidance notes from the Costs Lawyer Handbook had been the subject of routine review during Q2. All five notes required updating, however specialist advice had been sought in relation to two of the notes and that advice was still pending.

The board approved updated versions of the other three guidance notes, which related to:

- anti-money laundering;
- indemnity insurance; and
- retention of client data and files.

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

#### **7.4 Handling of client money**

At the April board meeting, Kate had updated the board on two recent developments – one arising from a disciplinary investigation and one from a public enquiry – which suggested an emerging need to revisit the CLSB’s prohibition against Costs Lawyers handling client money. As an action from the April meeting, Kate had produced a report summarising discussions with various stakeholders on this issue, including on the use of third party managed accounts (TPMAs) as an alternative to handling client money.

The board discussed the report and its recommendations for next steps. The board considered the evidence of potential consumer harm in this area as well as evidence of demand from practitioners for safe ways to deal with client money. Board members discussed the functionality, risks and costs associated with TPMAs and the various models available in the market. They discussed opportunities for the CLSB to proactively step in to fill a gap, for example by establishing an umbrella TPMA for use by any member of the regulated community, and considered the respective roles of the CLSB and ACL in this regard. They discussed the efficacy of the current rules on client money and whether the issues could be addressed through targeted guidance and education.

Ultimately the board concluded that a staged solution was appropriate. The existing evidence of consumer detriment could be addressed in the first instance by developing guidance on:

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

The take-up of TPMAs should be monitored following implementation of the guidance and feedback could be sought from practitioners about any barriers to use. The need for further intervention could then be assessed once the impact of the guidance was understood.

***Action: Develop guidance as agreed for the board’s consideration in October.***

#### **7.5 Mayson report**

The board discussed the findings of Professor Stephen Mayson’s final report on reforming legal services. The board noted that the main section of the report relating to Costs Lawyers (section 5.4.2) aligned with the CLSB’s views on the problems with under-regulation of costs practice within the Legal Services Act 2007 framework.

Board members acknowledged that the Ministry of Justice was unlikely to act on the report in the near future, but agreed that the CLSB should take steps to address the findings as and when opportunities arose. This might include, for example, the CLSB’s upcoming review of the reserved legal activities list in the Legal Services Act.

#### **7.6 CPD audit**

The board was presented with the outcomes of the 2019 CPD audit. Kate explained the limitations of the existing audit process and the opportunities for change when the new CPD Rules are implemented. It was intended that a detailed audit programme

would be developed and documented during 2021 and implemented in 2022 (covering the 2021 practising year). This was reflected in the 2021 Business Plan.

The audit suggested there was confusion amongst the regulatory community about how the existing CPD Rules applied, particularly around the activity categories and points caps, despite those rules having been in place for many years. The board felt this further highlighted the need to clearly communicate the upcoming CPD changes and reinforced the importance of moving away from arbitrary caps and restrictions.

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

### **8.1 Internal Governance Rules (IGRs)**

Kate updated the board on progress with ACL's rule change application to facilitate compliance with the IGRs. The application had recently been approved by the LSB, subject to minor amendments to the agreed MOU and Operational Protocol between ACL and the CLSB. Kate would liaise with ACL to ensure those amendments were made. The board noted the position.

### **8.2 Other workstreams**

Kate updated the board on several LSB workstreams, including:

- progress on the next regulatory assessment;
- feedback provided to the LSB on the scope of its contingency planning project;
- recent correspondence about the LSB's enforcement review, which would require input from the CLSB;
- assessment of the approved regulators' performance on diversity; and
- follow up work on the CMA's market study, including a statutory policy statement expected from the LSB in the autumn.

## **9 LEGAL SERVICES CONSUMER PANEL (LSCP)**

### **9.1 Work update**

Kate updated the board on the Panel's latest tracker survey results, as well as its liaison with HMCTS, which was of relevance to Costs Lawyers.

## **10 LEGAL OMBUDSMAN (LeO)**

### **10.1 Service complaints position**

LeO reported two service complaints relating to Costs Lawyers in Q2, neither of which had a conduct element. Kate noted that she was aware of a third complaint which had not been included in the report and she was following this up with LeO. The board noted the position.

### **10.2 Work update**

The board was provided with an update on the current restructuring and personnel changes at LeO. While this would create some uncertainty in the short term, it seemed an essential step in rectifying LeO's performance issues in the longer term.

## **11 REPRESENTATION (ACL)**

### **11.1 Council minutes**

The board noted the minutes of ACL Council meetings held in May and June 2020.

## **11.2 Work update**

Part 4 of the ACL Council minutes from May explained that a working party had been established to review the ACL/ACL Training structure and relationship. Kate updated the board on feedback she had provided to the working group about different structure options.

The board noted that its overriding concern was to ensure that, whatever the structure, the entity providing the qualification was financially stable. The board also discussed: the need to ensure that access to the qualification was not dependent upon ACL membership; whether there were any benefits from economies of scale under different structures; and the ability to safeguard the interests of students.

Overall, the board did not have a strong view on structure and agreed this was primarily an issue for ACL, but noted that ACL would do well to consult the CLSB on the practical implications of any structure change it was considering (given the need to obtain CLSB accreditation to provide the qualification). Kate noted that the working group had approached the CLSB with that in mind and, to date, the dialogue had been constructive.

## **12 EDUCATION**

### **12.1 Costs Lawyer Qualification coronavirus update**

Kate updated the board on recent discussions with ACL Training around continuity planning for the Costs Lawyer Qualification in light of coronavirus. Kate shared ACL Training's plans for the final exam and noted that an alternative assessment structure might need to be considered and approved by the CLSB board prior to its October meeting under certain contingency scenarios.

The board discussed ACL Training's contingency plans and agreed that fairness to candidates was of paramount importance. Fairness extended to accommodating various types of students, including those who could not sensibly take an exam from home and those who were shielding (or living with someone who was shielding) and could not attend an exam in person. The board noted that other regulators had been criticised for potentially discriminatory impacts of changes to their assessment structures, and agreed that the CLSB must learn from others' experience.

## **13 OPERATIONAL MATTERS**

### **13.1 Database demo**

The board was given a virtual demonstration of the new Costs Lawyer database. The board agreed that the database provided exceptional functionality for the build cost, and should greatly improve efficiency, data security, quality of interaction and data reporting going forward.

## **14 PUBLICATION**

### **14.1 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.**

## 15 AOB

The board noted that the introduction of fixed costs reforms had been pushed back further. Legal commentators were now predicting they would not come in until October 2021.

## 16 NEXT SCHEDULED QUARTERLY MEETING

When: Tuesday 20 October 2020 at 10.30am

Where: By videoconference

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

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Chair

### Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes (22 April 2020)	About us ⇒ Our board
3.1	2020 Business Plan	About us ⇒ Strategy and governance
3.2	Coronavirus impact survey	For Costs Lawyers ⇒ Covid-19 advice
3.3	2021 proposed Business Plan	About us ⇒ Strategy and governance
4.2	Board meeting dates	About us ⇒ Our board
5.2	2019 accounts	Regulatory matters ⇒ Cost of regulation
5.4	2021 proposed budget	About us ⇒ Strategy and governance
5.5	2021 practising fee consultation	Regulatory matters ⇒ Consultations
6.1	Risk registers	About us ⇒ Strategy and governance
7.2	Practising Rules and guidance note re practising conditions	For Costs Lawyers ⇒ Costs Lawyer Handbook
7.3	Guidance notes	For Costs Lawyers ⇒ Costs Lawyer Handbook
Item	Document	Publication location (other)
7.1	CPD Rules rule change application and outcome	LSB website <a href="#">here</a>
7.2	Practising Rules rule change application and outcome	LSB website <a href="#">here</a>
7.5	Mayson report	UCL website <a href="#">here</a>



# Annual priorities

## Improving our regulatory arrangements

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

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

## Protecting the interests of consumers and promoting professional standards

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

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

	balances cooperation, oversight and independence.	<i>ACL's rule change application was subsequently approved by the LSB in Q3.</i>
13.	Explore with ACL how we can improve the content or format of the regulatory information that we publish for the benefit of the profession and other stakeholders.	<p><b>In train (expected – Q4)</b></p> <p><i>Achieved: A new <a href="#">data webpage</a> has been created to host all data in one place. Regulatory return data has been updated for 2019 and published. Diversity survey data has been published for the first time. Results of our coronavirus impact survey have been published in a new report format, using graphical illustrations and identifying key themes.</i></p> <p><i>Outstanding: ACL to be asked for further feedback on approach.</i></p>

## Modernising our organisation

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

		<i>to expend further resource on speculative approaches. We will continue to explore opportunities going forward, but on a reactive basis.</i>
18.	Assess the impact of moving our practising certificate renewal process to a digital platform to improve data security, minimise manual processes and save resource.	<b>Achieved (Q3)</b> <i>Assessment of the 2019 manual renewal process has been carried out. The risk/cost/resource profile led us to conclude that a digital platform is essential. Electronic forms have been finalised and tested, new database has been developed and deployed, and we have begun using our new mass mailing system. The amended Practising Rules, facilitating the changes, have been implemented. We are set to go live with digital renewals in October.</i>
19.	Develop a policy for the publication of complaints against the CLSB, augmenting our existing Internal Complaints Handling Policy, covering the type of information that will be published, at what stage and where.	<b>Achieved (Q1)</b> <i>This has been developed and incorporated into our new website on a <a href="#">standalone page</a> for complaints against the CLSB.</i>
20.	Assess the effectiveness of our Transparent Decisions Policy as implemented in 2019 and consider whether any additional transparency measures are necessary.	<b>Achieved (Q2)</b> <i>The board considered a report on ARs' approaches to publishing board papers in April and agreed to implement a new approach to publication, as detailed on the <a href="#">What we Publish</a> webpage. This will complement the continued operation of the Transparent Decisions Policy, and the effectiveness of the combined approach will be monitored going forward.</i>



# **LEGAL CHOICES**

summary report 2017 - 20

## Acknowledgements

The joint legal service regulators would like to thank the following organisations and individuals for their help and support:

- Sheila Kumar, Chief Executive of the Council for Licensed Conveyancers and Chair of the Legal Choices Governance Board for her leadership throughout
- Solicitors Regulation Authority delivery team including its Digital Communications and General Counsel teams
- Legal Services Consumer Panel and Legal Services Ombudsman for their work on the Legal Choices Steering Group
- The member organisations of the Legal Choices Advisory Panel: AdviceUK, Age UK, British Chambers of Commerce, Citizens Advice, Citizenship Foundation, Federation of Small Businesses, Grapevine, Just for Kids Law, Law Centres Network, Mind, National Alliance of Women's Organisations, National Association of Gypsy Traveller Officers, Personal Support Unit, Race Equality Foundation, Refugee Action, The Office of the Immigration Services Commissioner and Which?
- The Plain English Campaign for permission to use its work in the Legal Choices law dictionary beta
- Lisa Haythorne of Derbyshire Law Centre for her expert advice on 'no fault' eviction product
- Alterline Research, marketing partners DTW and Digital Allies and our lead product development partner, IE Digital.

Finally, we thank the hundreds of thousands of members of the public who have taken part in Legal Choices research, testing and beta activities. Without their participation and involvement, there would not be much to say.

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## Executive summary

All the legal services regulators in England and Wales work have a clear commitment to public legal education, so in 2014 we established Legal Choices, a website and social media presence offering independent, objective and factual information that helps people to get to grips with legal services. In response to recommendations in the December 2016 Competition and Marketing Authority report on how the legal sector was working for consumers, the regulators agreed a three-year development plan for Legal Choices. This report sets out what we did and looks ahead to the next stages.

The regulators invested £750,000 over the three years, refreshing the look of the website, scaling up marketing, developing four new products and achieving target visitor numbers of 2-3 million well within the timeframe. Importantly, we took a user-centred approach throughout, with every step of the way built on public engagement and input. Of course, not everyone can access an online resource, so a particular area of work was to support vulnerable consumers and the digitally excluded by developing a product that could be used by advice givers.

We have also improved how Legal Choices links to, and is linked to, other resources of value to the public, including GOV.UK and organisations in Scotland and Northern Ireland.

For much of this year, we have used Legal Choices to provide key information for the public in relation to the Covid-19 pandemic. Legal Choices does not provide legal advice, but it signposts to expert information. And the many hundreds of thousands of people reading our dedicated information shows just how valuable this type of quick and responsive service can be.

The three-year development programme has been a resounding success, demonstrating that there is a real appetite for authoritative, public interest information that helps people to navigate the sector.

We are now looking ahead to further development to make sure that Legal Choices realises its potential to make a positive contribution to wider public legal education.

## Introduction and background

Legal Choices ([www.legalchoices.org.uk](http://www.legalchoices.org.uk)) aims to be an agent of change, sharing information through a website and social media to help make consumer access to the legal services market work better. Run and funded by regulators, Legal Choices supports people who are navigating the legal sector and helps them to make informed choices and purchasing decisions.

It supports the Legal Services Act regulatory objectives:

- improving access to justice
- protecting and promoting the interests of consumers
- increasing public understanding of the citizen's legal rights and duties.

It is proportionate, transparent and targeted, in line with the better regulation principles.

The Legal Choices website makes a contribution to the legal regulators' [public legal education \(PLE\) work](#). Each regulator undertakes wider PLE work in addition to supporting the website.

Legal Choices is positioned as 'just in time' [public legal education](#). It does not itself offer legal advice, but signposts sources of information and support as part of its value offer. Popular areas of the site include content about the different sources of legal advice (regulated and unregulated) and articles written for interest-based audiences, which are promoted on social media to attract visitors to the site.

The Legal Choices website dates from early 2014. In its first year, basic engagement work was carried out with a range of organisations such as the Law Centres Network and AdviceUK, which helped to increase traffic to the website. From summer 2015, we used social media marketing techniques to increase our social presence and build traffic. In the three years 2014-2017, visits to Legal Choices totalled some 164,000.

The Competition and Markets Authority (CMA) published a legal services market study report in December 2016. The report recognised the Legal Choices website had value for users of legal services and made recommendations about developing it as a regulatory information remedy.

The CMA said:

### **'Development of a consumer education hub.**

The Legal Choices platform should be overhauled to ensure that it can play a major role in empowering legal services consumers, particularly when they first engage with the sector. The redevelopment should include input from consumer and business groups, with a clear focus on the needs of consumers, to help consumers navigate and interact with the sector. The content should reflect the purchasing journey for common legal needs, in addition to general public legal information. This improved content should also be actively promoted through effective marketing directly by regulators and consumer groups. Providers should also be encouraged to make consumers aware of it.'

The CMA went on to set out a series of detailed recommendations on the development of Legal Choices:

### **Recommendations on helping consumers navigate the sector**

We recommend to the **BSB, CILEX Regulation, CLC, CLSB, IPREG, The Master of the Faculties** and **SRA** that they should:

- **Review and further develop the content of the Legal Choices website to:**
  - present a comprehensive **whole of market overview** of different types of provider including those not regulated by frontline regulators;
  - provide information and practical guides on comparing and choosing a legal services provider; and
  - provide guidance on what information consumers and small businesses should reasonably expect from legal services providers on engagement and during the course of ongoing cases.
- **Identify how best to support the vulnerable** and those who are either unable or do not have confidence to access the Legal Choices website.
- **Actively consult** the LeO, the LSCP, the LSB, relevant consumer and small business groups such as Which?, Citizens Advice, and the FSB, ICAEW and self-regulatory bodies on content and focus. Furthermore, the frontline regulators should consider how to meet ongoing consumer and business needs in future changes to editorial content.
- **Engage with government** including the MoJ, BEIS and the Government Digital Service to improve signposting to Legal Choices and consistency of content between Legal Choices and GOV.UK.
- **Engage with relevant bodies in Northern Ireland and Scotland** to consider how to ensure individual consumers and small businesses across the UK can be signposted to appropriate information.

We recommend to the **BSB, CILEX Regulation, CLC, CLSB, ICAEW, IPREG, The Master of the Faculties** and **SRA** to:

- **Actively promote Legal Choices** from their websites and on published materials.
- **Encourage legal services providers** to make consumers aware of Legal Choices.
- **Explore other channels** to promote awareness of the Legal Choices website including paid search.

We recommend to the **MoJ** that it coordinates changes to content on GOV.UK and introduces signposting to the Legal Choices website across its content.

In 2017, the Legal Choices delivery team created a three-year plan that, among other things, sought to respond to the CMA's key recommendations. The plan was agreed by the joint regulators and delivery of the programme began in the legal year starting 1 November 2017. As we near the end of the three-year work programme, this close-out report offers an overview of activities, achievements and challenges, and considers the next steps for Legal Choices.

## Our approach

### Goals

The Legal Choices development plan described three main goals for the three-year period to October 2020:

- redevelop the **content offering** based on rigorous user research
- scale up and diversify **marketing** activities, aiming for 2-3 million visits over 2017-2020
- consolidate internal governance and extend **stakeholder engagement**.

The plan, which reflected a set of goals agreed with the CMA, identified a target audience of individual members of the public, small and medium-sized business, potential users of legal services, and intermediaries who support them in England and Wales.

### Funding

Based on the scope of work outlined in the plan, in mid-2017 the joint regulators (at the time, a group of seven) agreed a funding package for the three-year development programme of around £750,000. Contributions over the life of the plan were based on a funding split originally agreed in 2014, with the subsequent addition of a contribution from ICAEW and an ongoing commitment to in-kind support from the regulators. That in-kind support includes a contribution to content generation by all regulators and, for the SRA, delivery of the development programme including provision of all the technical services, management oversight, day-to-day running, governance support, procurement support, legal services and digital and marketing expertise.

The table below sets out the financial contributions agreed by the regulators in 2017.

Regulator	Y1 funds	Y1 share	Y2 funds	Y2 share	Y3 funds	Y3 share	Total budget	Overall share
Solicitors Regulation Authority	£110,000	55%	£137,500	55%	£137,500	55%	£385,000	55%
Bar Standards Board	£42,000	21%	£52,500	21%	£52,500	21%	£147,000	21%
CILEx Regulation	£18,000	9%	£22,500	9%	£22,500	9%	£63,000	9%
Council for Licensed Conveyancers	£18,000	9%	£22,500	9%	£22,500	9%	£63,000	9%
Faculty Office	£4,000	2%	£5,000	2%	£5,000	2%	£14,000	2%
Costs Lawyers Standards Board	£4,000	2%	£5,000	2%	£5,000	2%	£14,000	2%
Intellectual Property Regulation Board	£4,000	2%	£5,000	2%	£5,000	2%	£14,000	2%
<b>Total</b>	<b>£200,000</b>	<b>100%</b>	<b>£250,000</b>	<b>100%</b>	<b>£250,000</b>	<b>100%</b>	<b>£700,000</b>	<b>100%</b>
ICAEW	£10,000		£18,000		£18,000		£46,000	
<b>Revised budget (inc. ICAEW)</b>	<b>£210,000</b>		<b>£268,000</b>		<b>£268,000</b>		<b>£746,000</b>	

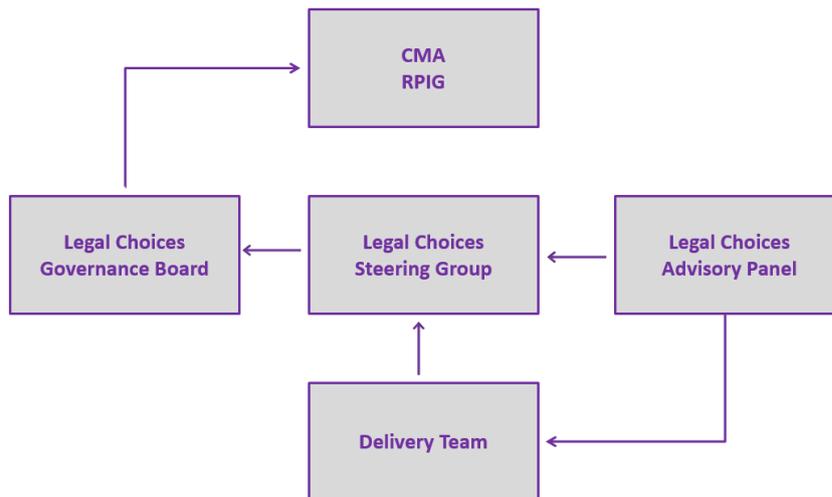
The Bar Standards Board withdrew from Legal Choices at the end of Year 2 – October 2019. The remaining regulators contributed further funds to ensure the delivery of the project.

### Governance

The governance of Legal Choices was reviewed in line with the development programme and significantly increased funding. A new Legal Choices Governance Board chaired by the Chief Executive of the Council for Licensed Conveyancers and made up of the chief

executives of each participating regulator was established to provide strategic and budgetary oversight. The editorial board that was put in place in 2014 was refreshed, enhanced and relaunched as the Legal Choices Steering Group, chaired by the SRA Executive Director External and Corporate Affairs, with a wider membership including the Legal Ombudsman and the Legal Services Consumer Panel. A wider Legal Choices Advisory Panel was set up to provide review and insight, with a membership of some 20 consumer and business groups. In 2020 a standing Legal Choices Steering Group marketing group was put in place to meet monthly to monitor progress and look at content generation.

## Legal Choices Governance Structure



Progress in delivering the Legal Choices 2017-20 development plan has been reported to the Remedies Programme Implementation Group, which co-ordinates the regulators' response to the CMA recommendations.

## Engagement

### Third sector stakeholders and consumer organisations

Legal Choices Advisory Panel is a key mechanism for extending stakeholder engagement. Members include a range of intermediary and consumer groups; among them are groups that represent people with protected characteristics, with an interest in increasing access to legal services and expertise in their areas.

#### Legal Choices Advisory Panel member organisations

- AdviceUK
- Age UK
- British Chambers of Commerce
- Citizens Advice
- Citizenship Foundation
- Federation of Small Businesses
- Grapevine
- National Alliance of Women's Organisations
- National Association of Gypsy Traveller Officers
- Personal Support Unit
- Race Equality Foundation
- Refugee Action

- Just for Kids Law
- Law Centres Network
- Mind
- The Office of the Immigration Services Commissioner
- Which?

The Legal Choices Advisory Panel was established as a LinkedIn group so that it could operate as a discussion forum. The panel’s terms of reference are annexed to this report.

Panel members sent representatives to participate in a two-day workshop to generate product ideas in June 2018, which formed the starting point of efforts to redevelop the Legal Choices content offering based on the results of rigorous, applied research. The workshop, designed after the completion of a desk review of relevant existing research (annexed to this report), took a design thinking approach to generate a large number of ideas for digital solutions for the Legal Choices website which could educate and empower users, and substantially increase the number of visitors to the site. Participants were guided through a range of group activities to encourage them to empathise with the users of key legal areas; generate a list of user needs; share examples of solutions to these needs which already exist within and outside the legal world; and generate ideas to be taken into research, prototyping, development and testing.

Key areas covered were as follows:

- will-writing and probate
- conveyancing
- housing – evictions
- asylum claims
- family - divorce/separation
- legal needs of small and medium enterprises (SMEs).

More than 300 product ideas were discussed; 20 ideas were elaborated at the end of the two-day session and selected for SWOT analysis. An account of the workshop and its outputs is annexed to this report.

### Product ideas workshop attendees addressed ‘How can I...?’ questions



One of the four product ideas eventually selected for prototyping is a tool for advice givers. This addresses the CMA recommendation to ‘**identify how best to support the vulnerable** and those who are either unable or do not have confidence to access the Legal Choices website.’ Frontline advice givers from Legal Choices Advisory Panel member organisations participated in several rounds of user testing of the tool, providing constructive and positive

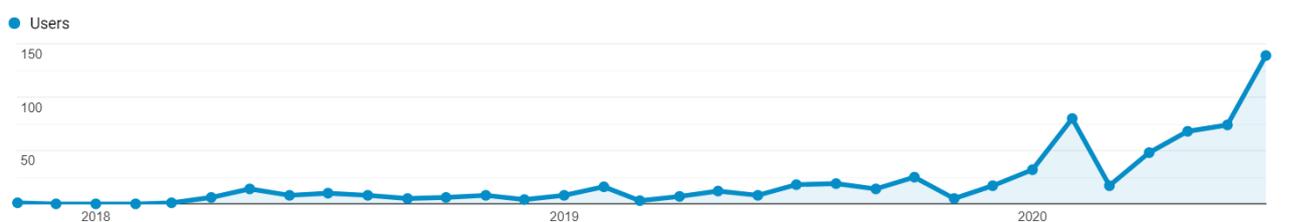
feedback. An account of the initial round of user testing conducted with advice givers is annexed to this report.

## Linking to Government and other resources

Legal Choices has also engaged with representatives of the Ministry of Justice at several points over the past three years, primarily with the aim of increasing referrals from GOV.UK to legalchoices.org.uk in line with the CMA recommendation “we recommend to the MoJ that it coordinates changes to content on GOV.UK and introduces signposting to the Legal Choices website across its content”. We have shared progress and perspectives, too, in order to identify and avoid potential duplication.

A key element of the Legal Choices offer – explanation of the different types of legal adviser – is currently positioned on four GOV.UK web pages that together are viewed by more than 500 users per day on average. And monthly referrals from GOV.UK to legalchoices.org.uk are rising, as shown below.

### Unique users referred to Legal Choices from GOV.UK per month, 2017/18 to 2019/20



Legal Choices covers England and Wales, and it signposts people to relevant bodies in Scotland and Northern Ireland, in line with the CMA recommendation: “Engage with relevant bodies in Northern Ireland and Scotland to consider how to ensure individual consumers and small businesses across the UK can be signposted to appropriate information.”

## Developing content

### Objective

Our goal in redeveloping the content offering of Legal Choices was to increase consumer engagement in the legal market and contribute to consumer empowerment by helping consumers to

- identify that they have a legal need
- shop around
- understand the differences between legal services providers
- understand quality measures that might influence their decisions
- make better comparisons and good choices.

### Approach

The delivery team’s approach to the development of the Legal Choices content offering for the past three years has been thoroughly user-centric. To inform every design decision and development choice, we have sought evidence of relevant user need. Our approach has

been inspired by the Government Digital Service, and in our view aligns with the latest published Service Standard (<https://www.gov.uk/service-manual/service-standard>).

Following the June 2018 ideas workshop, 10 ideas and 10 variant ideas were subjected to stress testing and SWOT analysis. The 10 highest-scoring ideas were selected for inclusion in the research phase of the project.

The research phase of the project ran for four months in 2018. The main intent of the research was not to choose the strongest of the 10 product ideas as they stood, but to define a list of needs that successful products should address (whatever their form).

The research design (annexed to this report) was reviewed by specialist teams at several of the participating regulators before being approved by the Legal Choices Steering Group. The research included a mix of qualitative and quantitative methods. The qualitative phase was conducted before the quantitative stage to inform questionnaire design.

## Qualitative research

A total of 10 online focus groups with five to six people were conducted across five areas of law (two focus groups in each area).

Participants were asked to complete a short pre-task drawing out their most recent legal experience as a journey with prompts to ensure they focus on key parts of the journey:

- recognising a legal need
- finding a legal services professional
- experience of legal services
- resolution of the legal issue.

Participants were asked to indicate 'high' and 'low' points of the journey.

The research questions in this stage of the study were as follows:

- What are the typical user journeys to see a legal problem to its resolution?
- What behaviours are typical amongst legal users?
- What are the audience's support needs?
- What are the audience's information needs?
- What would help audiences make more effective decisions (at the start of the process and during)?
- What visual imagery builds trust among legal service users and potential legal service users?

## Quantitative research

The quantitative research used two main instruments:

- a 15-minute online questionnaire with 1,000 members of the public
- an online questionnaire with 400 senior decisionmakers at small and medium-sized businesses.

The general public sample included people who have never used legal services (or used legal services outside the core areas) and people who have used legal services for the following in the last five years: conveyancing, writing a will, probate, divorce.

The quantitative stage of research set out to address the following questions:

- What impact will the ideated products have on users' empowerment?
- What impact will the ideated products have on users' education?
- How likely are the ideated products to be used?
- Who do ideated products have the most impact on?

## Research findings

The research study identified five product ideas suitable to take forward to piloting stage:

1. A tool that guides me through the process of dealing with a legal problem
2. A website with people's reviews of legal service providers
3. A tool that allows me to look up legal jargon and turn it into plain English
4. A quick way of finding out if legal services would be right for my situation, without having to do lots of research
5. A set of resources for advice givers

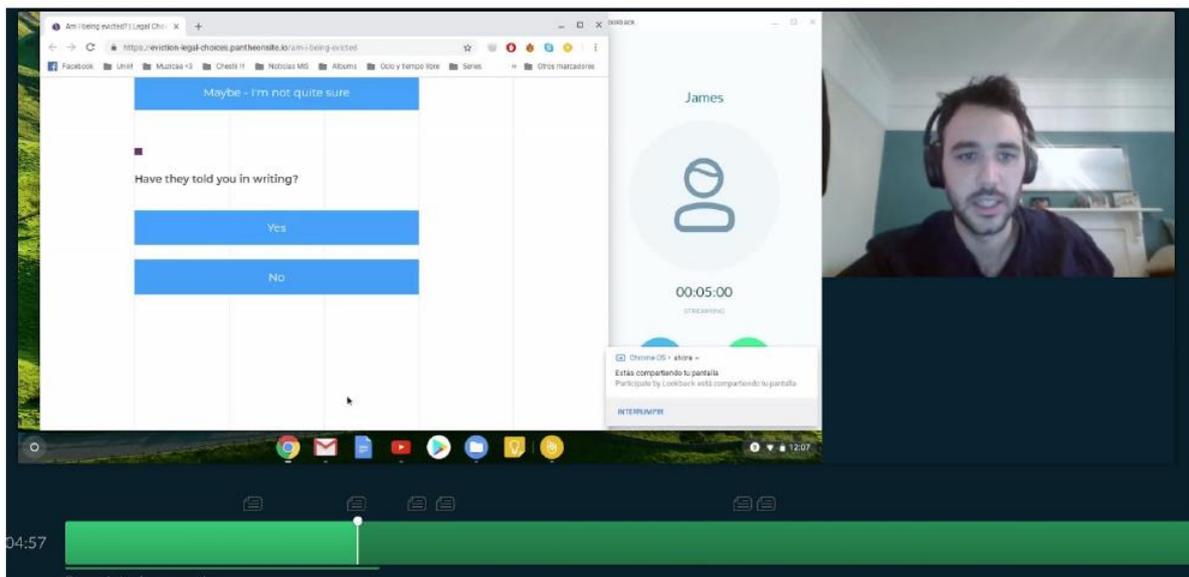
The final research report, annexed to current report, details the evidence discovered in relation to each product idea.

## Prototyping, user testing, build and beta

Four product ideas were taken forward into the next stage of work:

1. Help me understand the process
2. Help me trust my lawyer
3. Help me understand legal terms
4. Help me give good advice

In each case, work began with prototyping the product on screen. Prototypes went through a minimum of two major design iterations and user testing cycles before going into build. The culmination of the build phase for each product was the launch of a beta version – either privately or publicly.



## The four products: Progress, challenges, next steps

A description of each product follows, along with an overview of progress, challenges and next steps.

### Product 1: Help me understand the process

#### Description

An evolving suite of chatbots focused on different processes and groups

#### User need

*As a user, I need to understand how the process will work in my circumstances so that I feel in control.*

#### Success criteria

- I understand the value that a legal service provider could add.
- I know what activities to expect and what's expected of me – at each stage.
- I know what questions to ask and what should be happening at any point.

#### Status

- Public beta version released in February 2020, providing chatbot-style help to users facing 'no fault' eviction proceedings
- Almost 100,000 pages views to date, with an average duration of 3 minutes, 44 seconds per view

#### Challenges

- Engaging subject matter experts to create and maintain chatbot content on a voluntary basis is difficult, and the approach will be reviewed.
- Government ban on evictions introduced shortly after beta release due to Covid-19 outbreak
- Queen's speech 2020 announced intention to abolish 'no fault' evictions

#### Next steps

- Refine eviction variant based on user feedback and observed behaviour
- Commission the development of at least two more chatbots; proposals include one in immigration/asylum law and one in family law

In order to evict you, your landlord must write to you to let you know when you are expected to leave.

The amount of time they must give you depends on the agreement you have with them, how long you've been there and how often you pay rent.



Does the landlord need to write to me in a certain way?

What should I do when they write to me?

Thanks. That's all I need for now.

## Product 2: Help me trust my lawyer

### Description

A meta-search of disciplinary and regulatory decisions about legal services providers

### User need

*As a user, I want reassurance there are no regulatory issues with my legal services provider, so that I feel more confident in my relationship with them.*

### Success criteria

I can easily and quickly check whether a given provider is the subject of regulatory or disciplinary decisions published by any legal services regulator.

### Status

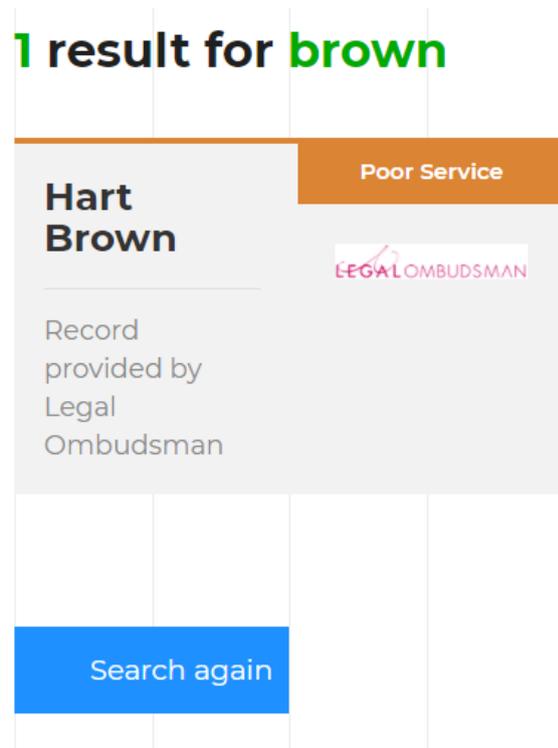
- Search experience prototyped and user tested at high fidelity
- Solution design completed
- First build completed and tested
- Data processing agreement (or alternative arrangements) reached with participating regulators after obtaining legal advice
- Build changes in progress to accommodate data publication changes made by regulators prior to public beta release

### Challenges

- Perceived data processing constraints meant obtaining the agreement of participating regulators to process their data took more than 12 months; one regulator has not yet granted approval, and the BSB withdrew from the Legal Choices venture; discussions continue
- This product emerged from user research and is not part of the feasibility work undertaken by the joint regulators through the Regulators Programme Implementation Group in 2017 to look at whether a single register for the legal sector was an option.

### Next steps

- Complete changes and release beta version of product
- Refine beta based on user feedback and observed behaviour
- Seek and obtain consent and/agreement to include data from ICAEW and BSB
- Scope work required to expand the range of data covered by the product to include non-disciplinary data, offering single register type functionality for the overwhelming majority of the legal services market. If agreed, this offers a solution to the separate CMA recommendation on the potential for a single register.



## Product 3: Help me understand legal terms

### Description

A searchable plain English dictionary of terms, signposting related Legal Choices content, extending to a tool that suggests alternatives to complex terms in uploaded content

### User need

*As a user, I want to make sure I understand the documents written by my legal service provider so that I'm confident I have what I need.*

### Success criteria

- I get documents that I can understand.
- I get independent, reliable definitions of terms that I can trust.

### Status

- Permission secured to use Plain English Campaign dictionary
- Dictionary experience prototyped and user tested at high fidelity
- Public beta released in February 2020
- More than half a million page views to date, with an average page view duration of 4 minutes, 8 seconds

### Challenges

- This product has not yet posed any challenges to the project.

### Next steps

- Refine beta based on user feedback and observed behaviour
- Extend product with copy-and-paste tool that offers in-context definitions of (or replacements for) terms used in an email or contract, for example
- Create and publish on YouTube rich/multimedia dictionary entries for key and/or gateway terms

## Search our dictionary

tenancy protected

 Search

### 1. Protected tenancy

Dictionary term

A tenancy agreement for a house. It gives the tenant the right to a fair rent and protection from eviction as long as the terms and conditions of the tenancy agreement are kept to.

## Product 4: Help me give good advice

### Description

A set of information packs, collated from published Legal Choices content, that can be customised by advice givers and easily shared with those they provide advice to

### User need

*As an advice giver, I want a simple way to share relevant, reliable information with those who I advise in order to help them.*

### Success criteria

- I can tailor information (from a trusted source) to the needs of my client.
- I can easily compile the information and share it with my client in different ways.

### Status

- Three iterations prototyped and tested with advice givers
- First build complete and tested
- Currently in private beta

### Challenges

- More difficult than expected to find frontline advice givers willing to act as user test participants, due to resource pressures
- Concerns about the GDPR implications raised (post build) by information governance specialists, now resolved

### Next steps

- Refine beta based on user feedback and observed behaviour
- Work with Legal Choices Advisory Panel to further develop content offering so that there is demand for the content-sharing tool

Page

Notes/Summary

Paralegals

paralegals x

Add tags

Useful for Fred to understand what paralegals can do

Remove x

Separate the tags with a comma.

How would you like to share pages with your client?

I would like to print a set of pages

I would like to email a PDF with the information

I'd like to email links

Share selected links

## User experience and visual identity

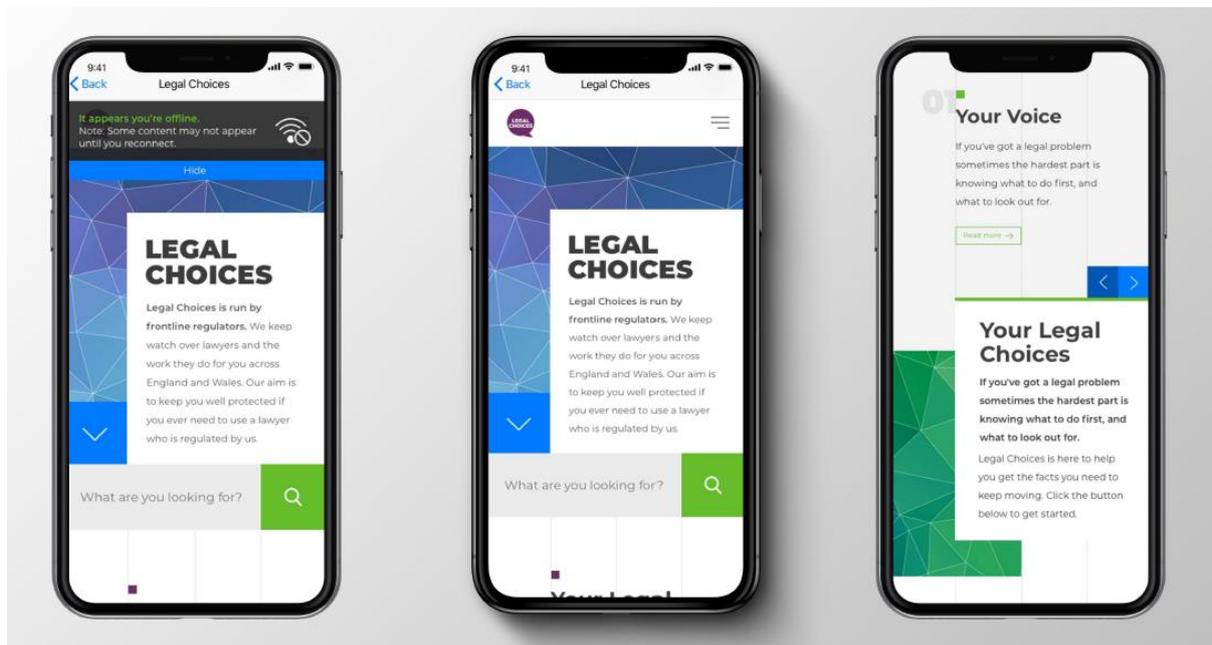
In parallel to product development, a piece of work on user experience and visual identity was completed.

Participants in the online focus groups for the primary research were asked to review two concepts for the Legal Choices website. Users wanted a balance between 'professional' and 'friendly' for the website, with too friendly a feel indicating a lack of experience and too professional a feel being too alienating.

Anecdotal evidence from product ideas workshop participants suggested that Legal Choices website users may feel pressured, stressed or confused, and may find themselves in a state of emotional agitation or anxiety.

Meanwhile, user testing of a range of visual concepts for the website showed that designs featuring images of people generated strong and varied responses – both positive and negative.

With this in mind, a design concept was elaborated using images of fractals, patterns that repeat themselves at various scales across a single structure. Studies have shown that viewing fractal patterns can substantially reduce stress levels, as humans are habituated to viewing and making sense of fractal patterns in nature.



The concept became the centerpiece of a responsive, 'mobile first' user experience that was designed, developed and tested in autumn 2018, and deployed to live in early 2019. An expert heuristic evaluation ahead of scaled up digital marketing activities in early 2020 found that the user experience of Legal Choices was not a blocker to marketing activities. Meanwhile, user testing of prototypes embedded in the Legal Choices UX repeatedly generated positive user feedback.

The next major step in improving Legal Choices user experience is a review of key user journeys and consideration of evidence to determine whether site navigation and information architecture should be redeveloped.

## Digital marketing activity

A key objective for the 2017-2020 period was to scale up and diversify Legal Choices marketing activities. Indeed, this change was necessary in order to achieve the goal of 2 million to 3 million visits for the period. In the preceding three-year period, visits to Legal Choices totalled 164,000, so the ambition was significant.

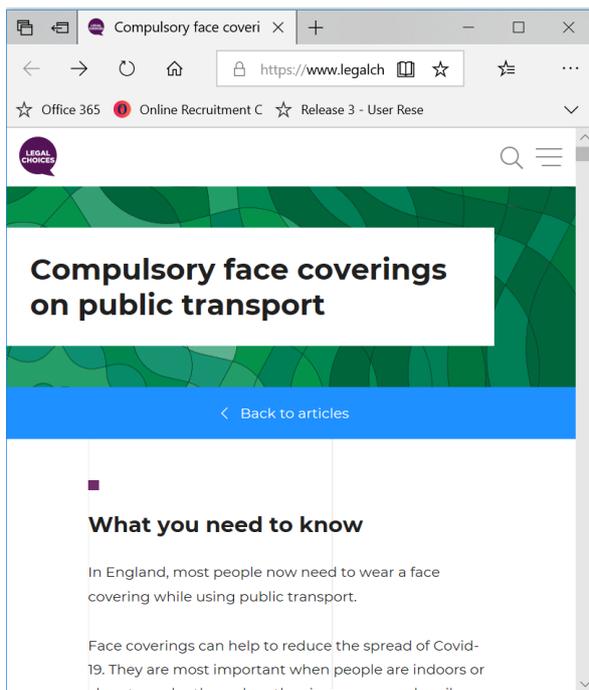
By the end of October 2020, baseline traffic will have more than tripled to around 500,000 visits over three years, driven by organic search traffic. Meanwhile, a digital marketing campaign that began in February 2020 had generated almost 1.9 million visits by August and may well generate another half a million or more by November 2020. It should be noted that the campaign has focused on topical Covid-19 related content, appropriately so in line with very significant public interest and concern and may, therefore, not reflect a 'typical' pattern of traffic.

The majority of the £135,000 placement spend to date has been split between Facebook 'featured articles' and the Google Display Network, with an overall cost per click of approximately £0.07, excluding creative management costs.

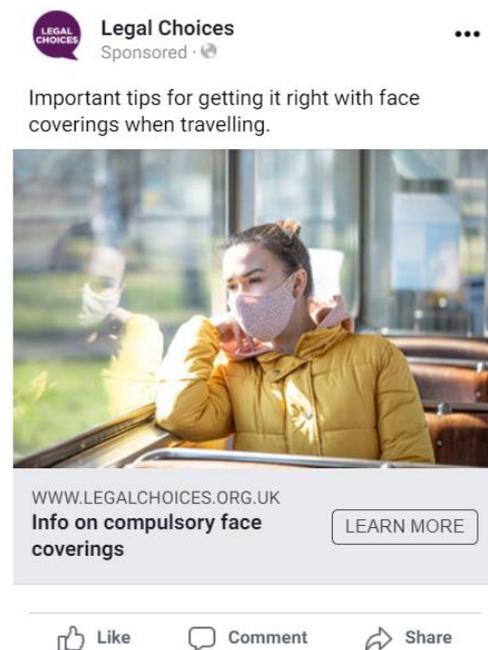
## Facebook and Facebook Audience Network

An article on the requirement to wear face coverings on public transport illustrates how we used Facebook and its audience network to create traffic for legalchoices.org.uk. A short article about the topic was published on Legal Choices in mid-June and promoted on Facebook (both on platform and through the Facebook Audience Network) for 16 days, generating more than 150,000 visits to Legal Choices at a cost per click of £0.04.

### Legal Choices website

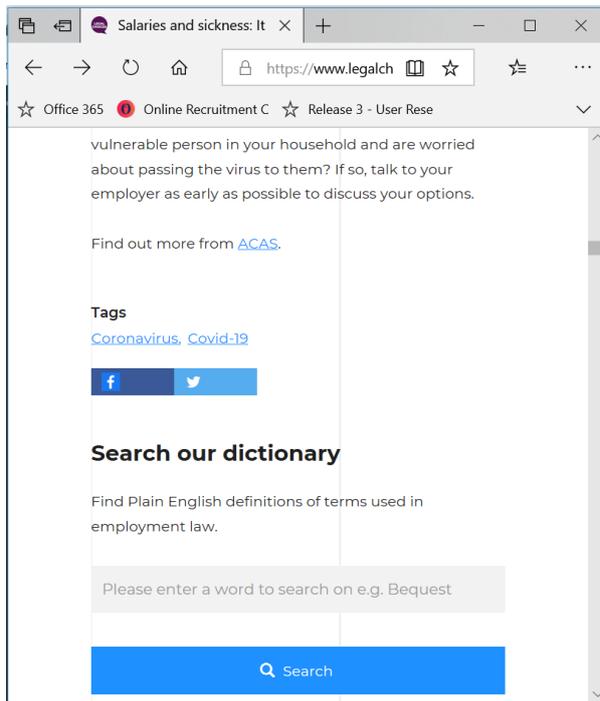


### Facebook

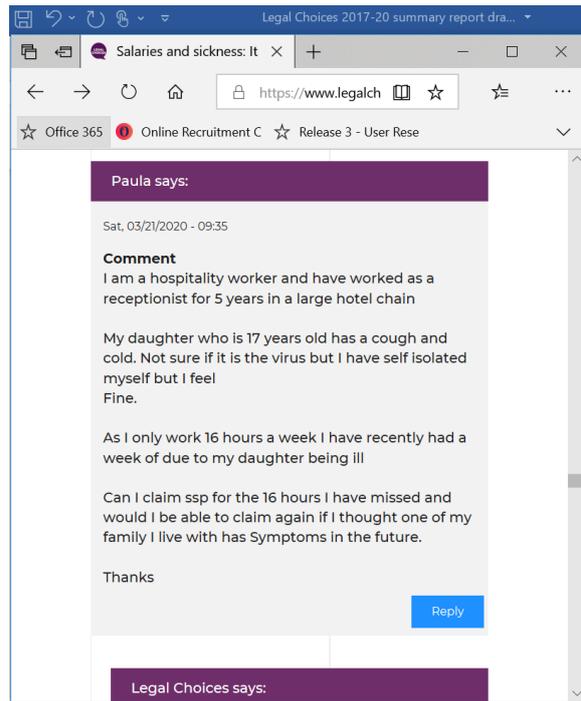


Legal Choices articles featured on Facebook promoted relevant elements of our broader Legal offer to readers, including the *Help me understand legal terms* beta product, and encouraged further engagement with Legal Choices via moderated on-site discussion.

## Cross-selling in featured articles



## Moderated discussion



## Google Display

The most important of our several Google Display ad groups has promoted the *Help me understand legal terms* beta product to members of an affinity audience, based on browsing history. Users with a browsing history that suggests interest in legal definitions are displayed ad content such as the banner below (a gif with three alternating states). Between February and September 2020, this ad group generated almost 0.5 million visits to Legal Choices at an average cost per click of £0.08.



A small portion of the overall placement budget has also been spent on the Google Search Network as a pilot to test its utility but auction-based system drives a higher cost per click – around £0.50 – which we do not consider offers good value for money, even if the resulting traffic is of a higher quality.

Traffic has also been driven to Legal Choices through a range of regulator activities, for example, all participating regulators link to Legal Choices from their own websites. The regulators also promote Legal Choices through their own social media channels. And events are used to promote Legal Choices to law firms and legal services providers. For example, the SRA has a dedicated Legal Choices marketplace stand at its annual Compliance Officer conference, which was in 2019 attended by some 1,400 people. This encourages firms to link their own websites to Legal Choices. The SRA also uses its stand and main theatre two-day presence at the annual LegalEx event at the Excel centre in London to encourage providers to link to Legal Choices as a way of supporting their clients and prospective clients.

## Outcomes

By the end of period covered by the 2017-20 delivery plan, Legal Choices will have four evidence-based content products in public beta and a considerable volume of data from users – both feedback and behavioural – to inform future product iterations.

Legal Choices has also intensified and broadened engagement activities with a range of stakeholders – users, consumer and other third sector organisations, and government. It has linked to GOV.UK and also to resources in Scotland and Northern Ireland.

Finally, Legal Choices has achieved a target of 2-3 million visits well ahead of schedule and may well exceed the upper limit of the target range by November 2020. Importantly, it has provided a responsive and effective resource for the public during the Covid-19 pandemic.

The programme has achieved all its objectives, addressed all the CMA recommendations in relation to Legal Choices and demonstrated that Legal Choices has the potential to make a positive contribution to wider public legal education.

## Next steps

Funding from all the partner legal regulators (all the regulators except for the BSB) has now been agreed for the first year of the next three-year development programme, with the funding for the balance of the programme agreed by most regulators and further discussion taking place. Based on the approach so successfully used to date and modelled for the joint regulators in mid-2019, the proposed next steps for Legal Choices are as follows:

- Continue social and digital display marketing, although at a somewhat lower cadence than in 2020, based on a pipeline of fresh, topical, relatable content, including rich/multimedia content
- Through person-to-person meetings, build stronger relationships with existing and potential affiliates in the third and public sectors as a basis for a sustained, sophisticated affiliate marketing campaign
- Complete at least two cycles of user research, design and testing to refine the user journeys on the Legal Choices website, and complete the copywriting and design work that flows from the findings of this activity
- Refine and extend three of the four content products as follows:
  - **Help me understand legal terms** – introduce a copy-and-paste tool that will offer in-context definitions of (or replacements for) terms used in an email or

contract; create and publish on YouTube rich/multimedia dictionary entries for key and/or gateway terms

- **Help me understand the process** – commission the development of at least two more chatbots, including one in immigration/asylum law and one in family law
- **Help me trust my lawyer** – scope the work required to expand the range of data covered by the index to include non-disciplinary data
- Revisit alternative product ideas from primary research and assess potential to generate traffic and meet established user need



## **Approval of 2021 Practising Certificate Fee (PCF) application made by the Cost Lawyers Standards Board (CLSB) to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)**

1. The LSB has approved an application made by the Cost Lawyers Standards Board (“**CLSB**”) to the LSB under section 51 of the Act. Section 51 of the Act relates to the control of PCF charged by approved regulators.
2. A PCF is a fee payable by a person under an approved regulator's regulatory arrangements, in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities. An approved regulator may only apply amounts raised by PCF for one or more of the permitted purposes which are set out in section 51(4) of the Act.
3. A PCF is payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee required by section 51 of the Act.
4. In making an application, an approved regulator must comply with the provisions of the Practising Fee Rules 2016 (Rules)<sup>1</sup>. The Rules<sup>2</sup> set out the criteria against which the LSB will assess PCF applications, as well as the evidence required for the LSB to be satisfied the criteria is met. The LSB's [Guidance to Approved Regulators on PCF applications](#) (Guidance) provides approved regulators with the detailed criteria and evidence it requires to consider such an application<sup>3</sup>.
5. This notice sets out the decision taken, including an assessment of the PCF application.

### **Overview of PCF application and decision**

6. The CLSB PCF application for the approval of practising fees for 2021, sets out that the PCF for Costs Lawyers will remain static at £275 for 2021.
7. The proposed PCF level is expected to result in a PCF income of £182,875 for 2021. This is based on the estimation that there are 665 regulated Costs Lawyers.

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<sup>1</sup> [https://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/2016/20160601\\_Practising\\_Fee\\_Rules\\_2016.PDF](https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_Practising_Fee_Rules_2016.PDF)

<sup>2</sup> Ibid, Rules 10 and 11.

<sup>3</sup> [https://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/2016/20160601\\_PCF\\_Rules\\_Guidance\\_June\\_2016.PDF](https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_PCF_Rules_Guidance_June_2016.PDF)

8. The LSB's decision is to approve in full the levels of the 2021 fee determinations for practising certificates charged to individual Cost Lawyers as set out in the CLSB application for the approval of 2021 fees.

## **LSB assessment**

### Development of the overall budget and application

#### *Evidence that the regulatory body has led the development of the application*

9. The CLSB has no representative function. The CLSB's income and expenditure are entirely separate from the income and expenditure of the representative body (ACL). ACL, both as an Association and through its individual members, was however invited to provide feedback on the budget through the PCF consultation.
10. We are satisfied from the information provided in the application that the regulatory body has led the development of the budget and application.

#### *Clarity and transparency of overall budget setting*

11. The budget setting process is well-documented. The annual budget for the CLSB is relatively small, but considerable thought has been put into its construction. Fixed costs are identified first, then known or assumed variable costs, then projects to be undertaken. Essentially, the budget follows the activities outlined in the business plan, which is a logical approach. Flexibility is built into the budget by including a flexible staff provision and a £5k contingency. £10k is set aside for transfer to reserves.
12. Income is almost exclusively derived from the PCF. A balanced budget has been set, with income virtually equal to annual expenditure. This is based on an assumed register of 665 lawyers at £275.
13. The CLSB asserts that it has been given sufficient funds to carry out its regulatory functions. These relate wholly to permitted purposes, and a breakdown of costs by category of permitted purposes is detailed in the application.
14. For 2021, the assumed number of costs lawyers has been estimated at 665. The application acknowledges that this is a conservative estimate.
15. The CLSB collects funds in December used in the year to follow. During the course of considering the application, we asked the CLSB whether they could provide further clarification about how resources are deployed. In its response the CLSB provided the following clarifications:
  - actual income is assessed against its budgeted income at the end of January, which is when the Register for the new practising year is updated. Planned expenditure is then amended accordingly if actual income is substantially different to budgeted income

- CLSB uses a bookkeeping ledger to track expenditure throughout the year in real time. This is considered by its CEO on a monthly basis and it is reported to the board on a quarterly basis
- in the course of quarterly reporting, CLSB considers and addresses any areas of under- or over-spend between (i) budgeted expenditure against actual expenditure and (ii) budgeted expenditure against a current expenditure projection to year end. This is considered by the CLSB an equivalent of a cashflow statement.

*Evidence that immediate and medium term needs have been taken into account*

16. The CLSB's new three-year strategy began in 2020 and its application confirms its strategic goals for the time period. The application further explains how its annual priorities for 2021 are set to achieve its wider strategic objectives.
17. We note that while the CLSB budget does not provide for an increase, the way in which resources are deployed does provide some additional resourcing and resilience in practice, when compared to previous years. However, the LSB continues to be concerned about whether the CLSB has sufficient resources and scale in the longer-term to be able to demonstrate that it can meet the outcomes and standards that we expect of well performing regulators. The CLSB is currently undergoing a programme of improvement to address previous performance issues identified by the LSB and we are concerned that the planned resourcing may prove to be insufficient for the CLSB to continue the progress the CLSB has made towards meeting our regulatory performance standards in a timely manner.
18. CLSB has made arguments to us to the effect that because costs lawyers may practise without being regulated, increasing fees may drive some practitioners to leave the regulated space altogether. While we recognise and understand this argument, it remains a source of concern to us that a regulator's discretion may be fettered in this way. This is a matter we are likely to take forward into broader considerations of the regulatory framework.
19. In addition whilst the CLSB has built a measure of flexibility into its budget, we consider that there is limited scope for further scaling back its expenditure and resources if registrants are significantly reduced, for example as a result of risks associated with the Covid-19 pandemic. We will be monitoring this situation closely.
20. We expect the CLSB to keep the LSB informed of significant developments in relation to its resourcing. We have set out in our latest performance assessment that the CLSB is to submit an update on progress by March 2021 which will include details on progress made as regards its 2021 Business plan priority for modernising the CLSB. In an event that resources or capacity impact on the CLSB's longer-term performance outlook, we will expect to be provided with insights from any CLSB board discussion along with agreed plans and mitigations.

*Reserves arrangements*

21. In our decision issued on 23 October 2019 we set an expectation that by the time of this year's application that the CLSB would have updated its reserves policy. The CLSB confirmed in its application that the policy was updated in January 2020 and provided a copy of the policy as an annex to the application.
22. The CLSB has a policy of maintaining reserves at a level equivalent to twelve months of operating expenditure. The application recognises that this would be an unusually high level of cover for a larger organisation, but cites its small size as justification for this, on the basis that a large outflow of funds would disproportionately affect its ability to operate.
23. By the end of 2019, reserves stood at around 60% of target, so the plan is to add a further £70k to accumulated reserves to bring them within policy, The target will be met within 7 years based upon an annual contribution to reserves of £10k per year. However, CLSB also intends to transfer any underspend to its reserves which may reduce the time taken to meet the target.

### Consultation on PCF

#### *Summary*

24. On 22 July 2020, the CLSB issued a consultation on the proposed PCF increase. The consultation was published on the CLSB website and was promoted to the regulated community by email. Reminders were also sent to the regulated community through web news items and newsletter articles. The LSB acknowledges the CLSB's attempts to raise awareness of the consultation.
25. The consultation closed on 6 September 2020 (open for over 6 weeks), and received 17 responses, a response rate that fell compared to the previous year's 30 responses. The CLSB considered this to be an outcome of the PCF remaining at the same level, which may have attracted less participation.
26. The consultation mainly asks whether respondents agree with the proposed 2021 PCF of £275. We set an expectation last year that the CLSB should consult more widely on its propositions. We explained that this should be considered in the interests of receiving more feedback on the fee proposals and an enhanced engagement from the profession. While the main question of the consultation was still on the proposed level of the PCF, the CLSB included additional follow-up questions in line with our expectations.

#### *Consultation responses and consideration of responses*

27. The application states that the respondents to the consultation were in general, in support of the fee increase, as 15 out of the 17 respondents agreed with the proposed fee. The remaining two respondents were of the view that the fee should be reduced in the light of the pandemic.
28. The CLSB considered the consultation responses and is of the view that the proposed level of PCF at £275 is appropriate. As regards the respondents who raised that the

PCF could have been decreased due to Covid-19, the CLSB confirmed it took this into account when considering the impact to the profession more generally. It further considered the limited responses to questions 2 to 5.

### Permitted purposes

#### *Allocation to permitted purposes*

29. All PCF income received by the CLSB is used to undertake permitted purposes. The application outlines a high-level breakdown of the estimated proportion of expenditure allocated to each permitted purpose activity. As a result, aside from levies, all PCF income generated by the CLSB covers:

- regulatory policy (e.g. developing standards, guidance, evidence gathering and risk analysis)
- sector engagement (e.g. ACL, enquiries, communications, and press)
- supervision
- disciplinary activities
- education and training
- governance

30. The CLSB provide broad breakdowns of the proportion of PCF income spent on each of the above activities. It is noted that the figures provided are estimates and will vary from year to year depending on demands on its resources. The CLSB further outlined that the differences in these estimations from last year are an outcome of:

- Specific development of projects in accordance with its business plan;
- Resources used to work with ACLT in order to reopen and audit the Costs Lawyer Qualification in 2020;
- Reviewing regulatory arrangements;
- Efficiencies deriving from process amendments;
- Needs to reach out to the profession due to the outbreak of Covid-19.

#### *LSB targeted review*

31. In our 2019/20 Business Plan<sup>5</sup> we set out an intention to conduct a review of the PCF approval process, including a targeted review of the regulators' approach to non-regulatory permitted purposes as set out in section 51 of the Act.

32. Having engaged closely with approved regulators and their regulatory bodies, including the CLSB, the LSB published a consultation on the new draft practising rules and guidance on 30 July 2020. We look forward to receiving the CLSB's response to the consultation.

### Transparency of PCF information to fee paying members

#### *Clarity of information provided*

33. The CLSB sets out how it intends to communicate the proposed level of the 2021 PCF. A fee note will be provided to practitioners and will include the level of the PCF as well as will explain when and how payment may be made. The level of PCF is also

communicated as a news item, newsletter post and by email when this is approved by the LSB.

34. Concerning the provision of information as regards how the PCF is set and on the proposition that goes to the LSB and Office for Legal Complaints (OLC) levies, the CLSB explains that this becomes available as part of the online application process and all the relevant information can be accessible through the FAQs on the Practising Certificates section of CLSB's website.

#### Regulatory and Equality Impact assessment

35. The application sets out a description of the applicability of the regulatory objectives and the ways in which the CLSB has taken into account the better regulation principles.
36. A formal regulatory and equality impact assessment has not been carried out as part of the CLSB application. We set out an expectation in last year's decision for CLSB to either carry out full impact assessments this year or to provide an explanation of why they were not considered appropriate. The CLSB application explains that it does not consider it necessary or proportionate this year, and sets out that this decision was made due to the following reasons:
- As part of the consultation responses review, no evidence was provided to suggest that an adverse differential impact was likely at the proposed level of the PCF.
  - The review on the impact of last year's fee increase suggested that the current fee, which is to remain static for 2021, is not causing a differential impact.
  - Taking the above into account, considering the better regulation principles and the fact that the fee level is the same as last year and, it does not believe that it would be proportionate to undertake a full impact assessment this year.
37. The CLSB considered the impact associated with Covid-19 and the emerging evidence that a differential impact could take place on the profession. The CLSB's view is that a collective method for estimating the impact of the pandemic on individual Cost Lawyers is unrealistic. In addition, the CLSB notes that an effort to address any perceived impact for a number of Costs Lawyers, by reducing the level of PCF, may inherently lead to an adverse impact for other groups of the profession. That said, it is of the view that lessening the fee is not justifiable at this stage.
38. It should be noted that proposals on the LSB's future expectations in respect of equality impact assessments are set out in our consultation on the draft new Practising Fee Rules. The draft Rules provide a greater focus on the importance of equality and regulatory impact assessments in future PCF applications. All approved regulators and regulatory bodies will be required to comply with these Rules when they are finalised following consultation.

#### **Decision**

2 October 2020

39. The LSB has approved the PCF application submitted by the CLSB for 2021 under section 51 of the Act.

**Summary of expectations for next application**

- We expect the CLSB to keep the LSB informed of significant developments in relation to its resourcing. The CLSB is to submit an update on progress by March 2021 which will include details on progress made as regards its 2021 Business plan priority for modernising the CLSB (Paragraph 20)
- LSB's future expectations in respect of equality impact assessments are set out in our consultation on the draft new Practising Fee Rules. All approved regulators and regulatory bodies will be required to comply with these Rules when they are finalised following consultation. (Paragraph 38)

**Matthew Hill, Chief Executive**

**Acting under delegated authority granted by the Board of the Legal Services Board  
2 October 2020**

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## Costs News

08 OCTOBER 2020

[go back](#)

### Legal Services Board approves PC fee but questions long-term viability of CLSB

The Legal Services Board (LSB) has fired a shot across the bows of the Costs Lawyer Standards Board (CLSB) by questioning its long-term future at the same time as approving next year's practising fee of £275.

The ACL has come to the regulator's defence, arguing that the CLSB is improving and able to meet the LSB's requirements.

Issuing its decision notice on the [application to approve the fee](#), the LSB praised the CLSB's budget process, saying "considerable thought has been put into its construction".

While recognising that there was “a measure of flexibility” in the budget, the oversight regulator said there was limited scope for further scaling back the CLSB’s expenditure and resources if the number of Costs Lawyers it expects to be practising next year – 665 – was significantly lower, for example as a result of the impact of Covid-19. “We will be monitoring this situation closely,” said chief executive Matthew Hill.

But he highlighted too that the LSB “continues to be concerned about whether the CLSB has sufficient resources and scale in the longer term to be able to demonstrate that it can meet the outcomes and standards that we expect of well-performing regulators”.

Mr Hill explained: “The CLSB is currently undergoing a programme of improvement to address previous performance issues identified by the LSB and we are concerned that the planned resourcing may prove to be insufficient for the CLSB to continue the progress the CLSB has made towards meeting our regulatory performance standards in a timely manner.

“The CLSB has made arguments to us to the effect that because Costs Lawyers may practise without being regulated, increasing fees may drive some practitioners to leave the regulated space altogether. While we recognise and understand this argument, it remains a source of concern to us that a regulator’s discretion may be fettered in this way. This is a matter we are likely to take forward into broader considerations of the regulatory framework.”

The notice was published shortly after the LSB made public its latest assessment of how the CLSB has done in relation to its performance framework, which measures each regulatory body against five standards and 26 underpinning outcomes.

The CLSB initially struggled to achieve the required outcomes, but was praised at the end of last year by the LSB for **making “considerable progress”**. The latest update recorded that the CLSB now meets five on the nine outcomes previously assessed as ‘Not met – action being taken’.

The outstanding outcomes deal with building the evidence base and “learnings” from its work to support CLSB decisions, as well as the concern around resources.

CLSB chief executive Kate Wellington (*pictured*) told *Costs Lawyer*: “We believe the practising fee must be set at a level that is proportionate for all Costs Lawyers, regardless of their practising arrangements. We don’t shy away from the need to make regulation accessible to all who meet the requirements of being a Costs Lawyer.

“The equation is simple: when more practitioners choose regulation, we can raise professional standards across the board, and improve outcomes for more clients and the public. That is our aim.

Given the extraordinary events of this year, it is more important than ever before that regulation is proportionate and inclusive.

“When approving the practising fee, the LSB noted that the CLSB faces resourcing challenges because we are the smallest legal regulator. This is no surprise, and it forms part of the ongoing debate about the structure of legal regulation. The LSB’s stated ambition is for there to be a single regulator in the legal services market. Whether or not you agree with that ambition, it will not be realised any time soon.

“For now, we continue to work harder and smarter with the resources we do have, building on the transformational progress we have made in the last year.”

ACL vice-chairman Francis Kendall said that although the association understood “the obvious scepticism” from the LSB, they were “on the whole based on historic issues”.

He continued: “We remain confident that the CLSB is both improving and will continue to meet the requirements set by the LSB. Great strides have already been made and the continued work should see the regulated arm of the profession flourish.

“We strongly believe that, although regulation itself is subject to continued overhaul and change, the profession remains as strong as ever and we are hopeful that regulation could become an absolute necessity given the recommendations made in the Mayson report.”

Applications for 2021 practising certificates will be online this year, and forms will be sent to Costs Lawyers by email in early November.

## Comments

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There are no comments. Why not be the first?

### Add your comment

**Your email (we will not display this):**

**Your name (This is displayed with your message):**

**Your comment:**

## COSTS LAWYER STANDARDS BOARD LTD

### RISK REGISTERS

As at 21 July 2020

#### 1. RISK SCORING

##### (i) Nature of risk

Our operational risks are categorised as:

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

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

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

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

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>	<p><b>(i) Electronic bills of costs</b> April 2018: New electronic bill of costs came into effect 6 April 2018 for work done after that date.</p> <p><b>(ii) Capped costs</b> January 2019: Pilot introduced on capped costs of £80k for High Court cases worth up to £250k.</p> <p><b>(iii) Increase in fixed costs</b> April 2019: MoJ announcement of implementation of fixed costs on cases up to £100k.</p> <p><b>(iv) Coronavirus</b> May 2020: Results of our coronavirus impact survey suggest a significant minority of Costs Lawyers are concerned about their ability to carry on practising; positive impacts for some, e.g. through delays to costs reforms and increased workload.</p>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Monitor impact on the profession via impact assessment surveys, including coronavirus impact surveys in Q2 and Q4.</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>• Mitigate risks around route to entry – see OP3.</li> <li>• Retain one year’s operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	High	
<b>Actions outstanding/status</b>	Monitor reasons for leaving the profession at PC renewal and respond to new factors.	
<b>Commentary</b>	Impact of coronavirus on regulated numbers being kept under close review.	

<b>Logged by board:</b> 13/1/2015	<b>Reference:</b> OP2	<b>Risk score: I(5) x P(2) = 10</b>
<b>Risk to operation</b>	<b>The CLSB's organisational structure is not sufficient to ensure business continuity</b>	
<b>Nature</b>	Operational continuity, capacity, reputational	
<b>Evidence of risk</b>	Being a small organisation, institutional knowledge and operational capacity of the CLSB rests with a small number of individuals.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Assessment of continuity risks in light of coronavirus (including retaining core functions in the absence of a key staff member).</li> <li>• Updated Business Continuity and Disaster Recovery Plan adopted in July 2020 following restructure and reflecting changes for coronavirus.</li> <li>• Move to a paperless organisation, including via electronic processes and cloud storage.</li> <li>• Minimisation and logging of paper archives, with joint access to storage.</li> <li>• Joint signatories to bank account.</li> </ul>	
<b>Control adequacy</b>	3	
<b>Priority area of risk</b>	High	
<b>Actions outstanding/status</b>	<ul style="list-style-type: none"> <li>• Rehousing or safe destruction of paper archives over coming years.</li> <li>• Knowledge transfer of all systems, processes, data and knowhow between staff and into internal policies and manuals.</li> </ul>	
<b>Commentary</b>		

<b>Logged by board:</b> 25/7/2017	<b>Reference:</b> OP3	<b>Risk score: I(5) x P(2) = 10</b>
<b>Risk to operation</b>	<b>There are insufficient numbers of newly qualified Costs Lawyers such that regulated numbers fall to an unsustainable level</b>	
<b>Nature</b>	Reputational, financial, operational continuity	
<b>Evidence of risk</b>	<p>There is only one means of entry into the profession (three-year course) and one provider (ACLT).</p> <ul style="list-style-type: none"> <li>• In 2017, due to financial concerns, the CLSB authorised ACLT's course to the end of 2020 for current trainees only (i.e. a suspension on new intakes). The course reopened to new students in January 2020.</li> <li>• In 2017, CLSB considered applying to the government apprenticeship scheme, but concluded this was not an option.</li> <li>• In early 2019, CLSB applied to the LSB for approval of an alternative qualification that would remove historical barriers to entry, but following feedback the application was ultimately withdrawn.</li> </ul>	

	<ul style="list-style-type: none"> <li>• Coronavirus may impact the number of new qualifiers, due to assessment delays and reduced employer funding.</li> </ul>
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Work within the parameters of the new Protocol agreed with ACLT.</li> <li>• Nurture relationship with ACLT to ensure early notification of any future issues and ensure current learners are protected.</li> <li>• Implement regulatory arrangements within the current framework that modernise the three-year qualification as far as possible.</li> <li>• Retain one year's operating budget as reserves.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	Medium
<b>Actions outstanding/status</b>	<ul style="list-style-type: none"> <li>• Monitor success of course in 2020.</li> <li>• Reconsider longer-term approach to competency, taking learnings from the SQE experience.</li> </ul>
<b>Commentary</b>	There is a general shift across the legal services regulators toward outcomes-based qualifications, but difficulties faced by other regulators in implementing those qualifications mean this is likely to be a longer term solution for the CLSB.

<b>Logged by board:</b> 24/10/17	<b>Reference:</b> OP4	<b>Risk score: I(5) x P(2) = 10</b>
<b>Risk to operation</b>	<b>ACL, named in the Legal Services Act 2007 as Approved Regulator (role undertaken by CLSB under delegation), becomes insolvent</b>	
<b>Nature</b>	Regulatory, operational continuity, reputation (for CLSB and the profession)	
<b>Evidence of risk</b>	ACL minutes, ACL accounts, ACL discussion paper to members and ACL EGM on 21 February 2018 raised concerns about ACL's ongoing financial viability at that time. Coronavirus may further impact regulated numbers or Costs Lawyers' ability to pay membership fees.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Monitoring of controls put in place by ACL to give us early warning of financial issues.</li> <li>• Document LSB advice that CLSB funds cannot be used by ACL for non-permitted purposes.</li> <li>• Retain one year's operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	3	
<b>Priority area of risk</b>	Medium	
<b>Actions outstanding/status</b>	Discussions with LSB on contingency planning are ongoing.	
<b>Commentary</b>		

<b>Logged by board:</b> 24/1/18	<b>Reference:</b> OP5	<b>Risk score: I(4) x P(1) = 4</b>
<b>Risk to operation</b>	<b>Failure to comply with data protection obligations</b>	
<b>Nature</b>	Legal, financial, reputational	
<b>Evidence of risk</b>	Increased risk under new GDPR arrangements, including a significant increase in the level of fine that can be imposed. CLSB handles the personal data of Costs Lawyers, employees, agents and (to a limited extent) some members of the public.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Data protection compliance review carried out in Q4 2019, leading to adoption of a new Data Protection Manual and implementation of updated processes for ensuring compliance in 2020.</li> <li>• Updates to IT systems with a focus on data security.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	Low	
<b>Outstanding actions (status)</b>	Updates to IT systems ongoing throughout 2020.	
<b>Commentary</b>		

<b>Logged by board:</b> 23/1/19	<b>Reference:</b> OP6	<b>Risk score: I(4) x P(2) = 8</b>
<b>Risk to operation</b>	<b>Breakdown in communications between ACL/ACL Training and CLSB</b>	
<b>Nature</b>	Operational continuity	
<b>Evidence of risk</b>	Previous difficulties in securing ACL/ACLT engagement with CLSB, due to lack of resource or appetite.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Build a constructive relationship with new ACL Chair in 2019.</li> <li>• Contingency planning for operational areas that require ACL input.</li> <li>• Work with the LSB to help the ACL engage with its regulatory obligations as a designated body under the new IGRs.</li> <li>• Extend engagement beyond ACL Chair to foster understanding within the Committee as a whole.</li> <li>• Work within the parameters of the new Protocol agreed with ACLT.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	Medium	
<b>Outstanding actions (status)</b>	Revisit Memorandum of Understanding with ACL to implement the LSB's new IGRs, to clarify aspects of the relationship and support smoother communications and co-working.	
<b>Commentary</b>		

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

### 3. REGULATORY RISK REGISTER

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

	<p>that consumers are unaware of how to complain to their Costs Lawyer.</p> <ul style="list-style-type: none"> <li>• Risk of under-insurance: Costs Lawyers are free to select an insurance provider from the open market, as this promotes competition and keeps fees at a sustainable level, but this may carry a risk of a Costs Lawyer not purchasing the right type of cover.</li> </ul>
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Practising Rules and CPD Rules reviewed in 2019.</li> <li>• Disciplinary Rules and Procedures reviewed in 2019, including to increase deterrent effect of financial penalties.</li> <li>• Guidance subject to systematic review during 2019 and 2020 following Handbook Audit.</li> <li>• Filing requirements with practising certificate applications (evidence of insurance, complaints procedures).</li> <li>• Targeted questions in client survey.</li> <li>• Supervision of first tier complaints through reporting in regulatory return.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	Low – no evidence of risk having materialised to date
<b>Actions outstanding/status</b>	Finalisation of rule changes following reviews. Completion of phased guidance reviews under Handbook Audit during 2020.
<b>Commentary</b>	

<b>Logged by board:</b> 31/10/2011	<b>Reference:</b> R2	<b>Risk score:</b> I(5) x P(2) = 10
<b>Risk</b>	<b>Costs Lawyer (not working for SRA regulated firm) accepting client monies</b>	
<b>Risk to objectives</b>	<p>Regulatory objective: Protecting and promoting the public interest</p> <p>Professional principle: To act with integrity</p> <p>Professional principle: To act in the best interests of the client</p>	
<b>Evidence of risks</b>	As Costs Lawyers are not permitted to handle client monies, they will not have systems and processes in place to ensure proper handling in the event they do inadvertently or deliberately accept monies in breach of our rules.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Covered under Principle 3.6 of Code of Conduct and associated guidance, updated in 2018 and the subject of a targeted review in 2020.</li> <li>• Client survey asks: “Did you send any monies to your Costs Lawyer other than in payment of an invoice?”</li> </ul>	

	<ul style="list-style-type: none"> <li>Information sharing arrangement with LeO in relation to complaints involving client monies that fall within CLSB jurisdiction.</li> </ul>
<b>Control adequacy</b>	3
<b>Priority area of risk</b>	Medium
<b>Actions outstanding/status</b>	Targeted review to be completed in 2020.
<b>Commentary</b>	No evidence from client survey (October 2016 to date) or from complaints that a Costs Lawyer has handled client monies. However a complaint in Q1 2020 suggested there is scope for poor client outcomes even where a Costs Lawyer does not handle client money directly.

<b>Logged by board: 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>	It has historically proven difficult to generate statistically significant data on the consumer experience with the Costs Lawyer market. Engagement with client surveys is low, as are complaint volumes, making traditional methods of data capture insufficient. It was hoped that the Legal Choices upgrade project would provide additional data and insights into the way consumers interact with the market. However, progress against the objectives for the Legal Choices website has been slower than expected and the BSB announced in July 2019 that it would not be making its funding contribution for 2020.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>New Consumer Engagement Strategy has been published covering the period of our mid-term organisational strategy (2020 – 2023), building on earlier consumer research project and establishing workstreams for building consumer-related evidence base.</li> <li>Data sharing arrangements are in place with LeO in relation to complaints about Costs Lawyers.</li> <li>Participate in the Legal Choices Governance Board to identify early warning signs that the project will not deliver as expected.</li> </ul>	
<b>Control adequacy</b>	4 – a forward plan is in place, as set out in the Strategy, but work will be ongoing for some time	
<b>Priority area of risk</b>	Medium, so long as we remain on target to deliver Strategy	

<b>Actions outstanding/status</b>	Implement Consumer Engagement Strategy. Consider whether to continue to fund the Legal Choices project beyond 2020, based on progress toward the end of the initial three-year period, and divert funding to other data sources.
<b>Commentary</b>	



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This guidance note is intended to help Costs Lawyers understand their obligations in relation to referral arrangements and referral fees.

## What are referral arrangements and referral fees?

1. In broad terms, a referral arrangement is any arrangement whereby one party introduces or refers a potential client to another party, or recommends the services of the other party to the potential client. (Note, however, there is a narrower definition of a referral arrangement for the purposes of the ban on referral fees in personal injury cases – see below). As a Costs Lawyer you could either receive the referral or refer your client to a third party.
2. It follows that referral fees are payments (including money or other consideration) made in connection with a referral arrangement.

## Background to referral fees

3. The subject of referral fees within the legal profession continues to polarise opinion. A report by the Legal Services Board published in May 2011 identified no regulatory reason for a complete ban on referral fees but concluded there should be better disclosure, so that consumers know exactly how much money is changing hands and between whom. However, in 2013 a ban on referral fees in personal injury cases was introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). This was part of a raft of measures aimed at balancing the need to ensure access to justice with the need to reduce the cost of civil litigation.

## As a Costs Lawyer, may I enter into a referral arrangement and pay referral fees?

4. Under the CLSB Code of Conduct, there are seven principles to which Costs Lawyers must conform to ensure public confidence in you and the profession. The following principles are most relevant to referral arrangements and referral fees:

Principle 1: You must act with integrity and professionalism.

Principle 3: You must act in the best interests of your client.

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Principle 4: You must provide a good quality of work and service to each client.

5. The Code of Conduct also contains the following provisions which are specifically relevant to referral arrangements:
  - 1.5 You must not ... accept referrals from a third party who made an unsolicited approach to the private individual (lay person) being referred.
  - 1.6 You must not enter into any fee arrangements which are unlawful.
  - 4.6 You must ensure that clients are able to make informed decisions about the work being undertaken on their behalf and the cost of that work.
6. Therefore, you may enter into referral arrangements and pay or receive referral fees provided that:
  - the party you enter into the arrangement with is reputable;
  - the arrangement is disclosed to your client as soon as reasonably practicable, including the amount of the referral fee paid;
  - the arrangement does not influence or impinge upon your duties and responsibilities to your client;
  - the arrangement is in the best interests of your client;
  - the referral is not the result of an unsolicited approach to a private individual;
  - the arrangement is lawful; and
  - the arrangement does not result in a third party being in breach of their legal or regulatory obligations.

## Does the ban in LASPO apply to Costs Lawyers?

7. Not directly, because Costs Lawyers are not “regulated persons” for the purposes of section 56 of LASPO. However, the Act could prevent some arrangements that you may wish to have with regulated persons such as solicitors or barristers. In particular, the Act prevents a regulated person, in the course of conducting a personal injury claim, being paid for arranging for another person to provide services to the client. So this would be likely to, for example, prevent you paying

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a referral fee to a solicitor who instructed you to act for one of their clients on costs issues connected with a personal injury claim.

8. You should also bear in mind that any agreement which breaches LASPO will be unenforceable.
9. Note that the definition of a “referral” in LASPO is very specific and is narrower than the interpretation generally applied for regulatory purposes. Therefore, if you are considering entering into a referral arrangement in respect of personal injury matters, we would encourage you to carefully consider the application of LASPO to your individual circumstances and to seek specialist advice if necessary.

### Do referral fee arrangements have to be in writing?

10. There is no specific requirement for your referral arrangements to be in writing. However, having a written agreement will enable you to demonstrate compliance with the law and with the CLSB Code of Conduct, and is of course good business practice.
11. Likewise, the information provided to the client concerning the arrangement should be in writing.

### Can I pass on the cost of a referral fee to a client as a disbursement?

12. A referral fee that you pay to a third party is not a disbursement and should not be charged to a client as such. This is because a referral fee is not a liability you have incurred on the client’s behalf in the course of acting for them; it is your liability incurred by you before the client instructed you.

### What if I work in a solicitors’ firm or regulated ABS?

13. If you work in a firm or organisation regulated by the Solicitors Regulation Authority (SRA), you will be subject to the SRA’s Standards and Regulations – in particular the Principles and Code of Conduct for Firms – in addition to your obligations as a regulated individual under the CLSB Code of Conduct. There is

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unlikely to be any conflict in our requirements and those of the SRA in relation to referral arrangements. See our separate guidance note on Costs Lawyers in SRA Regulated Firms for more information.

14. However, if your organisation is involved in personal injury work, it will be subject to the provisions of LASPO and you must not do anything that would cause the organisation or its managers to breach that Act.

**END**



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This guidance note is intended to help Costs Lawyers understand their obligations and options in relation to making Conditional Fee Agreements (CFAs) and Damages Based Agreements (DBAs) with clients when dealing with contentious work.

## Context

1. CFAs and DBAs are forms of contingency agreement entered into between a lawyer and their client. Under a contingency agreement, the amount you are paid for your professional services depends on a stated outcome; usually a “win” in a contentious matter, as defined in the agreement.
2. The main difference between a CFA and a DBA is the method by which remuneration is calculated once the “win” is triggered. In general, under a CFA you would be remunerated by way of a fixed fee or hourly rate multiplied by the number of hours worked, whereas a DBA provides for remuneration as a percentage of a financial benefit secured by the client.
3. Historically, all forms of contingency fee retainers in contentious litigation were considered unlawful, based largely on an outdated belief that such a stake in the affairs of others was immoral. This is no longer the case.
4. We are conscious that many Costs Lawyers will have a detailed understanding of the legal requirements for CFAs and DBAs, and will have advised on costs matters that relate to contingency agreements. This guidance note focuses on situations in which you might enter into a CFA or DBA with your own client, including factors you should think about when doing so.

## Legal framework

5. Statutory provision for lawful CFAs was first made by the insertion of section 58 of the Courts and Legal Services Act 1990 (CLSA 1990). DBAs for employment claims followed in 2009 with section 154 of the Coroners and Justice Act 2009 inserting a new section 58AA into the CLSA 1990. DBAs for wider civil litigation were permitted from 1 April 2013 with section 45 of the Legal Aid Sentencing and

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Punishment of Offenders Act 2012 (LASPO) amending section 58AA of the CLSA 1990.

6. You should consider the relevant sections of the above legislation, together with The Damages Based Agreements Regulations 2013 (SI/2013/609) if relevant, before entering into a CFA or DBA with a client.
7. It is important to note that the legal framework is only concerned with contentious matters (and employment law cases). Non-contentious business agreements are outside the scope of this framework.

## Legal requirements

8. There are some types of claims in relation to which a CFA or DBA retainer cannot lawfully be used. These mainly relate to family and criminal matters.
9. The CLSA 1990 also contains requirements as to the form and substance of contingency retainers. For example, they must be made in writing. See sections 58 to 58AA of the CLSA 1990 in the first instance.
10. There are additional formal requirements for DBAs in Regulation 3 of The Damages Based Agreements Regulations 2013.

## What is a CFA?

11. Section 58(2) of the CLSA 1990 defines a CFA as: “an agreement with a person providing advocacy or litigation services which provides for his [or her] fees and expenses, or any part of them, to be payable only in specified circumstances”.
12. Broadly, this means that a retainer will be a CFA if it provides for different sums (fees and/or disbursements) to be paid for different outcomes.
13. In addition, upon a “win”, a CFA may provide for an “uplift” or “success fee” over and above the basic level of remuneration. The success fee is usually a percentage

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of the base fee rate and is intended to reflect the risk that you would be wholly or partly unremunerated in the event of a “loss”.

14. Success fees are subject to a statutory cap of 100% of the base fee rate. That is, you cannot receive more than twice your base fee rate in the event of a “win”. Case law suggests that you should take care to ensure that any success fee is set at a percentage that properly reflects the actual risk of being wholly or partly unremunerated (see for example *Herbert v HH Law Ltd* [2019] EWCA Civ 527).

## Can a Costs Lawyer enter into a CFA with a client?

15. Yes, so long as the subject matter of the retainer does not render the CFA unlawful (broadly, it must not relate to family or criminal matters).
16. You can enter into a CFA with a lay client or with an instructing legal professional, such as a solicitor.
17. When drafting a CFA, the relevant “outcome” would be a future event (“win”, “lose”, “more advantageous than a Part 36 offer” etc). Remuneration under the CFA can be by way of a fixed fee or via multiples of a specified hourly rate. The CFA can be drafted as a “discounted CFA” that allows for a full fee in the event of a “win” but a lesser fee in the event of a “lose”.
18. As explained below, a CFA is more flexible than a DBA in facilitating “no win no fee” or “no win some fee” arrangements. It is also relevant that under a CFA it is usual for the client to remain liable to pay your professional fees regardless of what they recover from the other side. It is the triggering of the “win” that obliges the client to pay you, not the actual recovery of the sums “won” or associated costs. This is not usually the case for DBAs.
19. If you work in a solicitors’ firm, your fees for advising on the costs elements of a contentious matter can be covered by a broader CFA between your firm and the client in relation to the claim. You should ensure that the CFA includes costs work (usually by including a provision in the CFA extending the agreement to

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negotiations about, and proceedings to recover, costs) and that any definition of a fee earner includes a Costs Lawyer.

## What is a DBA?

20. Section 58AA(3) of the CLSA 1990 defines a DBA as: “an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services which provides that (i) the recipient is to make a payment to the person providing the services if the recipient obtains a specified financial benefit in connection with the matter in relation to which the services are provided, and (ii) the amount of that payment is to be determined by reference to the amount of the financial benefit obtained”.
21. Broadly, this means that a retainer will be a DBA if it provides for remuneration by reference to a financial benefit obtained by the client.
22. Regulation 4 of The Damages Based Agreements Regulations 2013 provides that a DBA must not require the client to pay any other fees to their lawyer, except expenses. This means that remuneration under a DBA is intended to be confined only to a percentage of the financial benefit obtained by the client and nothing more.

## Can a Costs Lawyer enter into a DBA with a client?

23. Yes, so long as the subject matter of the retainer does not render the DBA unlawful (broadly, it must not relate to family or criminal matters).
24. As for CFAs, you can enter into a DBA with a lay client or with an instructing legal professional, such as a solicitor.
25. When drafting a DBA, the triggering “outcome” will be a future event that involves a specifically identified financial benefit to your client, usually money paid by the losing party.

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26. Remuneration would be a percentage of the financial benefit, calculated net of any costs recovered or payable from the other side. Under a DBA costs awarded are credited to the benefit of the client and lower the sum actually deducted from the financial benefit the client obtained.
  27. At first instance, the remuneration charged by you under a DBA must not exceed 50% (including VAT) of the relevant financial benefit. There is no equivalent cap in appeals.
  28. If the client is unsuccessful then you will not be remunerated.

## CFA or DBA?

29. CFAs are well known and, when properly drafted, allow for flexibility as to payment. Generally, DBAs lack that flexibility and a failure to comply with The Damages Based Agreements Regulations 2013 will render the DBA unenforceable.
30. The government periodically reviews this situation and could consider amendments to the Regulations in the future. For now, you should be alive to the fact that the legislative framework governing DBAs is generally considered to be unclear in a number of respects and, while it will be appropriate to use DBAs in some circumstances, there is a risk that they could create uncertainty for you or your client.
31. You can choose whether, as part of your practising arrangements, you offer clients a CFA, DBA or neither. However, in offering any particular fee arrangement, you should consider what is in the best interests of your client and advise them accordingly. If you feel a CFA or DBA is the most appropriate retainer for your client in their individual circumstances, but you do not generally use that type of contingency agreement, you should advise the client of all their options.

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## Treating your clients fairly

32. As for all other aspects of your work, you should consider your obligations under the CLSB Code of Conduct when advising your clients about potential remuneration structures for your work. The following provisions of the Code of Conduct are of particular relevance:
- 1.6 You must not enter into any fee arrangements which are unlawful.
  - 1.7 You must not act in any way which is likely to diminish the trust the public places in you or in the profession of Costs Lawyers.
  - 2.1 You must at all times act within the law.
  - 3 You must act in the best interests of the client.
  - 3.4 You must advise new clients in writing when instructions are first received of ... details of your charging structure.
  - 4.6 You must ensure that clients are able to make informed decisions about the work being undertaken on their behalf and the cost of that work.
33. In the context of contingency retainers, this means you should:
- not enter into an unlawful CFA or DBA with a client;
  - comply with the legal requirements for entering into a CFA or DBA;
  - advise a client about their options in relation to entering into a CFA or DBA in sufficient detail to allow them to make an informed decision;
  - advise a client to enter into a CFA or DBA only if it is in the client's best interests to do so;
  - be alive to and manage the potential for conflicts between your client's interests and your own interests (or your organisation's interests) when advising a client in relation to a CFA or DBA.
34. You should make sure that, before your client signs a CFA or DBA, they understand when they will be liable to pay you and how your remuneration will be calculated. If you have any doubt about your client's understanding, you should encourage them to seek independent legal advice.

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35. In considering whether a CFA is the right arrangement for your client, you should keep in mind that any success fee element of your remuneration in the event of a “win” will not usually be recoverable by your client from their unsuccessful opponent. This means that your client must bear the full cost of the success fee. You should ensure that your client understands the implications of this prior to entering into the CFA.
  36. Finally, you should keep up to date with any legal requirements that might be put in place from time to time in relation to prescribed information that lawyers must provide to their clients before entering into a CFA or DBA.

**END**

**GUIDANCE NOTES: REFERRAL FEES, REFERRAL ARRANGEMENTS  
& FEE SHARING**

**Regulator: Costs Lawyer Standards Board**

**Effective date: 3 October 2012**

These notes offer guidance on the current legal position on referral fees, referral arrangements and fee sharing.

**What is a referral fee?**

The payment service providers make to third parties in return for recommending their services or sending potential clients to them.

**What is fee sharing?**

Also known as “fee splitting.” It is an arrangement with a third party who introduces business to you and/or with whom you share your fees.

**Background to referral fees**

The debate on referral fees in the legal profession remains as heated today as it was in 2004 when the Law Society, under pressure from the Office of Fair Trading, first allowed Solicitors to pay so-called referral fees. A report by the Legal Services Board issued in May 2011 identified no regulatory reason for a ban but concluded there should be better disclosure, so that consumers know exactly how much money is changing hands and between whom.

**As a Costs Lawyer, may I enter into a referral fee arrangement?**

Yes, provided:

- the party you enter into the arrangement with is reputable; and
- it is disclosed to your client as soon as reasonably practicable, including the amount of the referral fee paid; and
- it does not impinge upon your duties and responsibilities to your client; and
- the arrangement is lawful.

**Do referral fee arrangements have to be in writing?**

No.

**Can I pass on the cost of a referral fee to a client?**

No, in line with rules applicable to Solicitors a referral fee paid cannot be charged directly to a client. A referral fee is not a disbursement and may not be charged to a client as such. A

referral fee paid is not a liability you have incurred on the clients behalf in the course of acting for them, it is your liability incurred by you before the client instructed you.

**GUIDANCE NOTE**  
**DAMAGE BASED AGREEMENTS (DBA)**  
**CONDITIONAL FEE ARRANGEMENTS (CFA) & SUCCESS FEES**

**Regulator: Costs Lawyer Standards Board**

**Effective date: 10 July 2013**

This guidance note sets out the current position of the Costs Lawyer Standards Board on DBA's, CFA's and Success Fees.

**What is a DBA?**

A client can choose between a CFA and a DBA. A DBA is an agreement whereby a lawyer is paid so long as the client obtains a specified financial benefit with the lawyer's payment being determined by reference to the amount of that benefit.

**Can a Costs Lawyer enter into a DBA?**

Section 58AA of the Courts and Legal Services Act 1990 (CLSA) provides for DBA's in employment matters. Section 45(1)-(5) of the Legal Aid, Sentencing & Punishment of Offenders Act 2012 (LASPO) widens the permissibility of DBA's to all matters save those which cannot presently be subject of a CFA.

DBA's in relation to non-contentious business agreements (other than those relating to employment matters) are specifically exempt.

Any sums received "between the parties" by way of costs will be taken into account as part of the total fee the lawyer is allowed to charge the client. In brief, a lawyer will not be allowed to keep costs recovered "between the parties" over and above the contingency fee.

A DBA must be in writing and Costs Lawyers have a duty to provide prescribed information and explain the implications of any DBA to their client (in accordance with the duty to provide an estimate and explain charging structures under Principle 3.4(i) of the Costs Lawyer Code of Conduct).

Section 55AA(4)(b)-(d) of the CLSA as amended by Section 45(6)-(7) of LASPO requires:

- (i) a DBA can only be made after the lawyer has provided prescribed information to the client; and
- (ii) regulations to cap the lawyers remuneration.

There is currently a cap of 35% on a lawyer's fees in employment tribunal cases.

### **What is a CFA?**

A CFA is a type of funding arrangement which may be entered into where the level of fees payable is dependent upon a particular event. A CFA may either provide that fees are only payable if a "successful" outcome is achieved or alternatively that a reduced fee is received if the outcome is "unsuccessful". A CFA may include a "Success Fee", which will involve a percentage "uplift" being added to the fees payable, in circumstances where a successful outcome is achieved.

### **Can a Costs Lawyer enter into a CFA?**

Yes, it is a matter for the Costs Lawyer as to whether they chose to enter into this arrangement. However, a CFA may only be entered into which is dependent upon a particular event which has not yet occurred. In relation to the work of Costs Lawyers, this will normally depend on the outcome of the costs proceedings rather than the proceedings as a whole (depending upon the particular arrangements and whether a Costs Lawyer is instructed internally or is independent and instructed by a Solicitor or directly by an unrepresented client).

A CFA cannot be used in criminal or family proceedings. A CFA must be in writing and Costs Lawyers have a duty to provide prescribed information and explain the implications of any CFA to their client (in accordance with the duty to provide an estimate and explain charging structures under Principle 3.4(i) of the Costs Lawyer Code of Conduct)

### **In-house Costs Lawyers and CFA's**

The work of an in-house Costs Lawyer may be covered by a Solicitor's CFA with a client, which will usually be stated to include negotiations about and/or a court assessment of the costs of a claim. In these circumstances, a Solicitor who is "successful" in a case may recover the reasonable costs of preparing the Bill of Costs and the costs of negotiating the Bill and/or any Detailed Assessment proceedings. As the fees form part of the overall service provided by the firm, the recovery of fees and attachment of any Success Fee will apply to the overall fees.

### **Independent Costs Lawyers and CFA's**

An independent Costs Lawyer will usually be instructed to deal purely with the costs aspect of a case, where costs are awarded, usually at the end of a case. A Costs Lawyer could either be instructed by a Solicitor to deal with the preparation of or opposition to a costs claim or directly by the lay client. Any CFA already entered into between a Solicitor and their client in relation to funding of the original claim (even where this extends to Detailed Assessment proceedings) will not apply to the Costs Lawyer's fees charged to their instructing Solicitor (although the instructing Solicitor would be entitled to recover these base fees and any additional liability from a paying party – see *Crane -v- Canons Leisure Centre* [2007] EWHC Civ 1352). A Costs Lawyer must therefore enter into a separate

agreement with the instructing party (whether Solicitor or client) in relation to payment of their fees and this agreement may be a CFA.

### **Can a Costs Lawyer receive a Success Fee?**

It is not clear whether a Costs Lawyer can receive a Success Fee, as the law links Success Fees to "damages" in proceedings. A Costs Lawyer may act "in-house" under a Solicitor's CFA, which includes a Success Fee where their fees will appear in the Bill of Costs as a Profit Costs item. A Success Fee will not apply in circumstances where the Costs Lawyer's work is claimed "between the parties" as a disbursement. However, an independent Costs Lawyer's fees can be included in a Bill of Costs as a profit costs item (see - *Smith Graham -v- The Lord Chancellor's Department (Regina -v- Carr) High Court of Justice, Queen's Bench Division - 30 July 1999* and *Stringer -v- Copley (2002)*) upon which a Success Fee can be applied in accordance with the terms of the CFA between the Solicitor and their client (see – *Crane* above). This will however be the Solicitors' Success Fee and not belong to the Costs Lawyer. If a Costs Lawyer enters into a CFA including a Success Fee, which relates solely to the provision of costs services, they will need advice on whether such a fee/CFA as a whole would be unenforceable.

### **In conclusion**

It should be noted on reading this guidance note (effective 10 July 2013) that this is a developing area of law with many technical challenges and it is for the Costs Lawyer to establish prevailing law at the time.



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**Principle 3.6 of the Costs Lawyer Code of Conduct reads: “You must not accept client money save for disbursements and payment of your proper professional fees”.**

## **1. Why can a Costs Lawyer not accept client money?**

Transitional arrangements under Schedule 5 of the Legal Services Act 2007 (LSA) allow Costs Lawyers to provide reserved legal activities through an unauthorised body, such as a company or partnership. In this context, “unauthorised” means a body that is not authorised under the LSA by one of the legal services regulators.

This contrasts with other regulated lawyers, such as solicitors and barristers, who cannot provide reserved legal services through a body that is not authorised under the LSA.

These transitional arrangements, which can be terminated by the Lord Chancellor (on the recommendation of the Legal Services Board), continue to apply to Costs Lawyers because their activities are seen as lower risk. This is in large part because they do not traditionally handle client money. As a result, requirements such as the need to have a compensation fund, and for all costs firms to be authorised by a regulator, do not apply.

If Costs Lawyers were to hold client money then it might be necessary for the transitional arrangements to be brought to an end and, regardless of those arrangements, the CLSB would need to introduce new protections for Costs Lawyers’ clients. These would likely include accounts rules, a requirement for external audit, one-off finance from the profession to establish a compensation fund, and annual payments-in by Costs Lawyers to maintain that compensation fund.

At the time of publishing this guidance note, we do not have sufficient evidence of:

- demand from Costs Lawyers to directly handle client money; or
- consumer harm from Costs Lawyers handling client money in breach of our rules,

to justify a lifting of the existing prohibition against Costs Lawyers handling client money, given the additional regulatory burden this would place on practitioners. We keep this position under review.

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## 2. What are the exceptions to the principle that you cannot accept client money?

Costs Lawyers are of course entitled to be paid their professional fees and reimbursed for disbursements they have paid on their client's behalf. So, you can receive payment from clients for:

- your invoices for professional services that you have already carried out; and
- disbursements that you have already incurred.

A disbursement is a sum that you pay on behalf of your client, including the VAT element. Disbursements include, but are not limited to, court fees, counsel's fees, travel costs and some administrative costs. You would usually agree these costs with your client before they are incurred, to ensure that you have clear instructions to make the payment on the client's behalf. A failure to do so could mean you are unable to recover the disbursement from your client. You should always inform your client in advance if you intend to charge separately for items that the client might expect to be included in your professional fees, such as printing or postage.

Disbursements do not include costs such as hourly rates, success fees or general office overheads.

The prohibition against accepting client money means that Costs Lawyers cannot directly receive payments from clients in advance for professional fees that are not yet due or for disbursements that have not yet been paid on the client's behalf. Professional fees will not generally be due until an invoice is rendered.

Options to minimise your exposure to unpaid fees and disbursements include:

- interim billing;
- setting a fixed fee for the service – this can be invoiced immediately and be payable before the work commences;
- inviting clients to pay disbursements directly to the relevant third party;
- payments being held in a third party managed account (see section 7 below).

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### **3. How does this apply in the context of costs disputes?**

Examples of types of client money that you cannot directly accept in the context of a costs dispute include:

- funds from an opponent to satisfy a costs award made in your client's favour;
- funds from your client to satisfy a costs award made against that client;
- money on account of your own costs and disbursements.

### **4. What about Costs Lawyers in solicitors' firms or other firms authorised under the LSA?**

Around half of Costs Lawyers work in solicitors' firms. If you do, then provided any client money is held by the firm itself, the prohibition in Principle 3.6 is not relevant. The money will be protected under the terms of the Solicitors Regulation Authority's Accounts Rules and insurance and compensation fund provisions.

The same principles will apply for Costs Lawyers who work in firms authorised by other LSA regulators, such as CILEx Regulation.

### **5. What about Costs Lawyers practising on their own or in partnership with others?**

The prohibition in Principle 3.6 will apply if you are a sole practitioner. In the case of a simple partnership, the money will be held on behalf of all the partners and this will include each Costs Lawyer partner so the prohibition will also apply.

Under these practicing arrangements, you have the options discussed in section 2 above to reduce your exposure to unpaid bills and disbursements. These options include the use of a third party managed account (see section 7 below).

### **6. What about Costs Lawyers practising through an unauthorised legal entity?**

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Where a Costs Lawyer is practising through a body that is not authorised under the LSA and has its own legal identity (usually a limited company or LLP), then if any client money is held by that body it will not be held by the Costs Lawyer themselves.

In such a case the prohibition in Principle 3.6 is not directly relevant. However, it is vital that if you work through such a body you safeguard clients' money and maintain the trust in the profession which allows the transitional arrangements to continue.

You should consider the following obligations under the Code of Conduct:

- 1.1 You must act honestly, professionally and with integrity in all your dealings in your professional life and not allow yourself to be compromised.
- 1.7 You must not act in any way which is likely to diminish the trust the public places in you or in the profession of Costs Lawyers.
- 3.1 You must act at all times to ensure the client's interest is paramount.
- 3.7 You must provide required documentation and information on an application for a practising certificate and in the event of any complaint investigation conducted by CLSB or the Legal Ombudsman.
- 3.8 You must ensure that you maintain professional indemnity insurance which complies with the requirements of the CLSB. See Practising Rule 9.
- 4.5 You must keep the client regularly informed as to the progress of work and keep accurate records of that work.

In order to comply with these obligations, you should take appropriate measures to protect client money and maintain records. These measures should, in the CLSB's view, at least include:

- Keeping client money separate from your organisation's own money at all times in a bank or building society account in England and Wales.
- Ensuring clients' money is not used for the running expenses of your organisation.
- Keeping appropriate records of all transactions.

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- Restricting who has access to your clients' money and having other appropriate security arrangements in place.
  - Making sure that the professional indemnity insurance that you have in place is adequate to cover the risks of failing to account for the client money that is held by your organisation. You should consider the risks of the money being inadvertently misdirected or being fraudulently taken from the account (either by a member of your organisation or a third party, through cybercrime for example). See our [Guidance Note on indemnity insurance](#).

You should also inform clients of how their money is being held and account to them at all appropriate times.

One way to help meet your obligations is to arrange for your organisation to pay clients' money into a safe third party managed account.

## **7. What is a third party managed account (TPMA)?**

A TPMA is an account that is held at a bank or building society in the name of a third party, where that third party is regulated by the Financial Conduct Authority as:

- an authorised payment institution;
- a small payment institution that has adopted voluntary safeguarding arrangements to the same level as an authorised payment institution; or
- an EEA authorised payment institution.

Money in a TPMA is owned beneficially by the third party. The account operates on terms between the third party, the client and the service provider (which in this case would be you or your organisation) as an escrow payment service.

Because the money is held by the third party, a Costs Lawyer who uses a TPMA does not accept or handle the client's money directly, and so does not breach Principle 3.6.

If you choose to use a TPMA you must ensure that the client is made aware of the terms and conditions, including when money can be withdrawn by the client and when money can be paid to you. The client should be told about any fees or charges that they may

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incur through use of the TPMA. Under Principle 4.6 of the Code of Conduct you must ensure that clients are able to make informed decisions about the work being undertaken on their behalf and the cost of that work. You are also required (under Principle 3.4 (i) of the Code of Conduct) to keep the client updated as to fees and charges.

You should monitor the TPMA (for example, through monthly statements) to make sure that your clients' funds are protected and ensure that appropriate records of all transactions are available.

**END**

## **GUIDANCE NOTES: PRINCIPLE 3.6**

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

**Effective date: 24 October 2018**

Principle 3.6 of the Costs Lawyer Code of Conduct reads: ***“you must not accept client money save for disbursements and payment of your proper professional fees”***.

#### **1. Why can a Costs Lawyer not accept client monies?**

By virtue of this principle, the Costs Lawyer profession is deemed by the CLSB board to be lower risk than other legal professions where practitioners can accept client monies on account. If a Costs Lawyer (not working for a firm regulated under the Legal services Act 2007) were permitted to accept client monies in advance of the service having been provided or the disbursement having been incurred, the CLSB would have to introduce a greater level of regulatory arrangements e.g. audited attendances, increased practising certificate fees, one-off finance to establish a considerable indemnity fund and annual payments in by Costs Lawyers to maintain that indemnity fund.

#### **2. What is the definition of “proper professional fees”?**

Fees incurred on having complied with a client instruction, made up of payment for:

- services provided; and
- disbursements paid on behalf of the client.

#### **3. Services**

##### **3.1 Can a Costs Lawyer request payment in advance for their services?**

Yes, where a Costs Lawyer is employed (PAYE) by, or is a partner in a firm authorised and regulated under the Legal Services Act 2007. For example, a firm of solicitors regulated by the SRA, in such circumstances prevailing SRA rules & regulations apply.

No, where a Costs Lawyer is:

- (i) working for a firm not authorised & regulated under the Legal Services Act 2007; or
- (ii) is a sole practitioner.

An interim billing arrangement can be agreed with a client to reduce financial exposure on payment for services provided and reimbursement for disbursements.

#### **4. Disbursements**

##### **4.1 What is the definition of a “disbursement”?**

A disbursement is a sum that a Costs Lawyer spends on behalf of their client including the VAT element.

Disbursements' include, but are not limited to court fees, Counsels fees, travel costs, postal costs (if exceptional sum e.g. courier), photocopying cost (if exceptional sum).

Disbursements' do not include hourly rates, telephone calls made or received, faxes made or received, general office overheads.

A Costs Lawyer must not:

- Charge for items as disbursements when they do not amount to such.
- Increase the amount of a disbursement by adding on an element of fees.

#### **4.2 Can a Costs Lawyer request payment in advance from a client of a disbursement to be incurred by them?**

Yes, where a Costs Lawyer is employed (PAYE) by or is a partner in a firm authorised and regulated under the Legal Services Act 2007. For example, a firm of solicitors regulated by the SRA, in such circumstances prevailing SRA rules & regulations apply.

No, where a Costs Lawyer is:

- (i) working for a firm not authorised & regulated under the Legal Services Act 2007; or
- (ii) is a sole practitioner.

A cheque should be requested from the client for that disbursement, made payable to the relevant payee e.g. the court service in respect of a court fee. In the event this is not possible, or where a Costs Lawyer considers themselves financially more vulnerable e.g. lay client instruction, an interim billing arrangement can be agreed with a client to reduce financial exposure on payment for services and reimbursement for disbursements.

## **5. Costs orders**

### **5.1 Can a Costs Lawyer receive monies on behalf of their client under a costs order in their clients favour?**

Yes, where a Costs Lawyer is employed (PAYE) by or is a partner in a firm authorised and regulated under the Legal Services Act 2007. For example, a firm of solicitors regulated by the SRA, in such circumstances prevailing SRA rules & regulations apply.

No, where a Costs Lawyer is:

- (i) working for a firm not authorised & regulated under the Legal Services Act 2007; or
- (ii) is a sole practitioner.

In such circumstances, the paying party should be requested to:

- (i) make the payment direct to the client; or
- (ii) send a cheque, made payable to the client.

**5.2 Can a Costs Lawyer receive monies from their client to pay a costs order against their client?**

Yes, where a Costs Lawyer is employed (PAYE) by or is a partner in a firm authorised and regulated under the Legal Services Act 2007. For example, a firm of solicitors regulated by the SRA, in such circumstances prevailing SRA rules & regulations apply.

No, where a Costs Lawyer is:

- (i) working for a firm not authorised & regulated under the Legal Services Act 2007; or
- (ii) is a sole practitioner.

In such circumstances, the client should be requested to:

- (i) make the payment direct to the relevant payee; or
- (ii) send a cheque, made payable to the relevant payee.

**END**

## DRAFT FOR BOARD APPROVAL

### Internal Guidelines

Dispensation from CPD requirements for reasons relating to COVID-19  
20 October 2020

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#### Purpose and application

1. The purpose of these guidelines is to assist the CLSB in determining requests for dispensation from CPD requirements for the 2020 practising year, for reasons relating to COVID-19. The guidelines have been adopted in response to a growing number of enquiries from Costs Lawyers about how the CPD Rules apply to their individual circumstances this year.
2. The guidelines aim to:
  - a. promote fairness and consistency of treatment, in line with the spirit of the CPD Rules;
  - b. ensure the maintenance of professional standards within the regulated community, recognising the importance of continued learning in promoting ongoing competency.
3. The guidelines address the exceptional impacts of COVID-19 in 2020, and they apply to CPD requirements in the 2020 practising year only. We will consider whether additional guidelines are required for the 2021 practising year – under the new CPD Rules that will come into effect on 1 January 2021 – as the situation develops.

## How a request for dispensation can be made

4. We expect the majority of requests for dispensation to be made by Costs Lawyers when applying for their 2021 practising certificate.
5. Applicants will be able to make their request by using a dedicated box in the online application form, which appears when a Costs Lawyer does not enter sufficient CPD activities (i.e. less than 12 points) in the CPD section of the form. Costs Lawyers who seek a dispensation can upload evidence in support of their request in the Documentation section of the application form.
6. We will also consider ad hoc requests for dispensation made by email or post. If a request is made by phone, we will ask the Costs Lawyer to describe their circumstances in writing.
7. These guidelines also apply to applications for reinstatement received during 2021, where there is a requirement on the Costs Lawyer to have obtained CPD points in 2020. The reinstatement application form does not contain a dedicated box for seeking dispensation, but requests can be made on an ad hoc basis. (A new online reinstatement form is due to be developed in 2021.)

## Publication

8. Due to the internal nature and purpose of these guidelines, we will not publish them on our website. However, they are not confidential and will be published with the papers for the CLSB board meeting on 20 October 2020. They will also be provided to anyone who requests them.
9. We will publish the notice in Annex 1 on our website (adjusted as necessary over time) to communicate the key messages to Costs Lawyers.

## Guidelines

### A. General

10. Costs Lawyers are expected to comply with the CPD Rules. Rule 1.2 requires Costs Lawyers to achieve 12 CPD points per practising year. This is the default obligation that will be applied unless a Costs Lawyer can demonstrate that they should be granted a dispensation.
11. If a Costs Lawyer has substantively failed to meet their CPD obligations, and cannot demonstrate that a dispensation should be granted, they will not be entitled to practise as a Costs Lawyer in line with Practising Rule 1.1. Accordingly, their application for a practising certificate will be refused. Where possible, we will work with Costs Lawyers to help them identify relevant CPD opportunities that they can carry out before the year ends, to avoid ineligibility for a practising certificate.
12. Where a Costs Lawyer has, in good faith, attempted to comply with their CPD obligations but has not done so (for example, because they believed they would be entitled to a dispensation but they are not), we may grant their application for a practising certificate subject to conditions, as provided for in Practising Rule 3.4(c). Those conditions are likely to involve additional reporting or monitoring around CPD attainment in 2021.

13. Any dispensation that is granted will be noted against the relevant Costs Lawyer's record in the internal database, to ensure it is properly logged and to promote consistency at the point of audit.

#### B. Long term leave

14. Costs Lawyers who have been absent from work due to COVID-19 may rely upon CPD Rule 1.4, which provides that Costs Lawyers who have taken "long term leave" during the practising year need only attain 1 CPD point for each full month worked.
15. Examples of long term leave relating to coronavirus include:
  - a. absence due to being ill with COVID-19;
  - b. absence due to caring for someone who is ill with COVID-19;
  - c. being furloughed;
  - d. taking a break from work due to a lack of client demand caused by COVID-19.
16. For a period of absence to qualify as long term leave, we would expect a Costs Lawyer not to work at all during that period.
17. Where a request for dispensation under Rule 1.4 is made using the practising certificate renewal form, we will consider that request as part of determining the Costs Lawyer's application for a practising certificate. If we are satisfied on the evidence that the request falls within Rule 1.4, the request will be granted and a practising certificate will be issued.
18. We will consider all requests for dispensation on the basis of long term leave in line with Rule 1.4, whether or not the Costs Lawyer specifically refers to that rule in making their request.

#### C. Non-compliance with points caps

19. The reduction in training opportunities caused by COVID-19 might result in a Costs Lawyer achieving 12 CPD points from a narrower range of activities than usual. Under the CPD Rules, the points caps on certain types of activities could prohibit the Costs Lawyer from claiming all 12 CPD points, meaning they would not meet their CPD obligations for the practising year.
20. Where a Costs Lawyer has achieved all 12 CPD points from online activities (e-learning) in 2020, this will be sufficient to meet their CPD obligations, as we have already made clear that we will not enforce the points cap (or subject matter limitations) for e-learning in 2020. Full details are provided in our [policy statement](#) published in March 2020.
21. Where a Costs Lawyer wishes to claim CPD points in excess of the points cap for other types of activities (i.e. other than e-learning), the CLSB will consider requests for dispensation on a case by case basis taking into account the following factors:
  - a. the reasonableness of the Costs Lawyer's explanation as to why they were unable to comply with the points caps;
  - b. understanding demonstrated by the Costs Lawyer of their professional obligations and the importance of undertaking meaningful CPD;
  - c. alignment of the Costs Lawyer's approach with the spirit of the new CPD Rules that will apply from 2021, which do not impose points caps;
  - d. any other factors considered relevant to the individual case.

22. Requests for dispensation from the points caps which are made at the time of applying for a practising certificate will be considered at that time, in the same way as requests for dispensation under Rule 1.4. Otherwise, requests for dispensation from the points caps (whether explicit or implicit) will be considered at the point of audit.

D. Other reasons for requesting dispensation

23. The only other circumstances in which the CPD Rules provide for dispensations are where a Costs Lawyer is newly qualified or applying for reinstatement. Despite this, the CPD Guidance provides (at paragraph 15):

*“Should exceptional circumstances occur e.g. bereavement, serious illness of a family member, which has impacted on the ability to achieve CPD for the CPD year, a Costs Lawyer should contact the CLSB who will consider those circumstances. A Costs Lawyer will provide any documentary evidence reasonably requested by the CLSB in the event of exceptional circumstances. The CLSB will advise in writing if a dispensation is permitted in an exceptional circumstance. The full CLSB board may consider a written appeal against the decision of the CLSB, but there is no right of appeal thereafter.”*

This covers exceptional circumstances that do not fall within Rule 1.4; that is, circumstances that have impacted a Costs Lawyer’s ability to attain 12 CPD points but have not resulted in the Costs Lawyer taking long term leave.

24. While this Guidance is not supported by the Rules, we will apply it to requests for dispensation relating to COVID-19 that do not fall within Rule 1.4, as Costs Lawyers can legitimately expect their request to be dealt with in line with the published Guidance. This approach is consistent with Rule 4.1 of the new CPD Rules that will come into force on 1 January 2021. New Rule 4.1 incorporates an express power for the CLSB to waive CPD requirements in individual cases.
25. Exceptional circumstances relating to COVID-19 might include, for example:
- a. bereavement or serious illness of an immediate family member, without associated carer responsibilities;
  - b. a withdrawal of all relevant CPD for a Costs Lawyer who practises in a highly niche area of costs;
  - c. a significant and unexpected decrease in the time available for work, for example due to childcare responsibilities during periods of lockdown;
  - d. ongoing physical or mental health complications from COVID-19, such that a reduced workload is necessary.
26. Where a request for dispensation for exceptional circumstances is made using the practising certificate renewal form, we will consider that request as part of determining the Costs Lawyer’s application for a practising certificate. If we are satisfied on the evidence that the dispensation should be allowed, the request will be granted and a practising certificate will be issued.
27. In considering whether the request should be allowed, we will take the following factors into account:
- a. the reasonableness of the Costs Lawyer’s explanation as to why they were unable to attain 12 CPD points;

- b. understanding demonstrated by the Costs Lawyer of their professional obligations and the importance of undertaking meaningful CPD;
  - c. whether the circumstances cited by the Costs Lawyer are truly exceptional and individual to them;
  - d. any other factors considered relevant to the individual case.
28. The general impact of COVID-19 on the legal services market, the wider economy or the availability of CPD activities is *not* an exceptional circumstance within paragraph 15 of the Guidance, unless a Costs Lawyer can show that those general impacts have had a unique or disproportionate effect on them personally, due to their individual circumstances or situation.

#### E. Requirement for evidence

29. Requests for dispensation should be supported by evidence.
30. There is no prescribed form of evidence, although evidence should be in writing to facilitate record-keeping.
31. Evidence should be from a third party where possible. Such evidence will not be interrogated or independently verified by us, unless there is a reason to do so (for example, where there is doubt about the veracity of a document). Examples of evidence from a third party include a note from a doctor, a letter from an employer or accountant, or a statement from a person who has received the care of the Costs Lawyer.
32. If the Costs Lawyer does not provide evidence from a third party in circumstances where we would expect such evidence to be available, we will ask for it. If that evidence is still not provided, we will seek an explanation from the Costs Lawyer. If the explanation is considered unreasonable, the request for dispensation will be refused.
33. If the explanation is considered reasonable, we may accept the Costs Lawyer's own account of their exceptional circumstances as sufficient evidence. We may request that the Costs Lawyer provides a comprehensive formal statement explaining their exceptional circumstances if this is considered necessary (for example, if the explanation has been provided through a series of email exchanges or if the reasoning is unclear).
34. Evidence will be handled in line with the CLSB's Privacy Policy. Note in particular that all evidence containing sensitive health data relating to an identifiable individual will be securely destroyed after it has been considered and a decision on the dispensation request has been made.

#### F. Additional factors to be taken into account

35. We will also take into account the following information – insofar as we are aware of it – to ensure fairness and consistency of decision making:
- a. published CLSB advice and guidance;
  - b. advice given to a Costs Lawyer by another regulator (such as the Solicitors Regulation Authority, if the Costs Lawyer works in a regulated firm);
  - c. previous individualised advice given by the CLSB to the Costs Lawyer;
  - d. previous individualised advice given by the CLSB to another Costs Lawyer in a substantially similar situation;

- e. government guidance in relation to COVID-19 issues prevailing throughout the year, as relevant to the request for dispensation.

## Annex 1: Communication to regulated Costs Lawyers

*We recognise that the COVID-19 pandemic has presented unprecedented challenges for everyone. Our [COVID-19 advice](#) has been kept up to date throughout the year.*

*We know that social distancing measures have made it hard to attend CPD events in person, and that some scheduled events have been cancelled or postponed. We therefore introduced a policy to enable Costs Lawyers to obtain all their CPD points for the 2020 practising year from remote learning activities (e-learning) where necessary. Full details are in our [policy statement](#).*

*Responses to our Coronavirus Impact Survey showed that some Costs Lawyers were concerned about achieving 12 CPD points in 2020, due to availability and affordability of training during the pandemic. We responded by sourcing and publishing on our website a list of free or low-cost CPD opportunities for Costs Lawyers.*

*Our Board is confident that in spite of the restrictions in force during the year there are adequate opportunities for obtaining relevant, quality and affordable CPD available to Costs Lawyers, and that it should be possible for everyone to obtain sufficient CPD points, unless there are additional individual circumstances that should be taken into account.*

*We recognise that the pandemic has resulted in particular difficulties for some Costs Lawyers, including sickness, the sickness of someone they have had to care for, bereavement and furlough.*

*The [Costs Lawyer Continuing Professional Development Rules](#) make provision for Costs Lawyers who take long term leave – such as parental leave, sick leave or a career break – to obtain a dispensation from their usual CPD obligations. Those Costs Lawyers are required to “achieve 1 CPD point for each full month worked during that CPD year” (Rule 1.4). This provision can be relied upon by Costs Lawyers whose individual circumstances resulting from the pandemic mean they have not been able to work for the full year.*

*For anyone claiming such dispensation, we will ask for evidence of your time away from work (such as a letter from your employer or a medical note) to ensure everyone is treated fairly. Applications for 2021 practising certificates, which includes the submission of a 2020 CPD record, will be made online and evidence of any long-term leave should be uploaded as part of the application.*

*We realise that some Costs Lawyers have been impacted uniquely by COVID-19, even where they have not been absent from work. For example, some Costs Lawyers work in such specialist areas of costs that the removal of one or two key conferences and seminars has had a disproportionate impact on the amount of relevant CPD available. Where individual circumstances do not fit precisely within the provisions in the CPD Rules, we will consider requests for dispensation in line with the spirit of the Rules to ensure they do not lead to unfair or inconsistent outcomes.*

## **CMA to assess progress in legal services sector**

The CMA is reviewing the legal services sector in England and Wales to assess whether transparency of price, quality and service have improved.

In 2016, the CMA carried out a market study into the supply of legal services in England and Wales, concluding that competition for individual consumers and small businesses was not working well. In particular, there was not enough information available on price, quality and service to help those who need legal support choose the best option.

It also found that obtaining the right service at good value can be challenging as consumers face wide variations in the cost of similar services. They can also struggle to find enough information to help them identify their legal need in the first place.

The CMA made recommendations to industry regulators to improve transparency by legal firms on price, quality and service, and to enable customers to navigate the market more easily and get value for money. It also made recommendations on regulatory reform, including to the Ministry of Justice to consider whether consumers of unregulated services need stronger protections and to review the regulatory framework for the longer term.

The CMA indicated in its market study report that it would assess progress in the sector after several years and is now doing so. Its short, focused review will assess the extent to which the market study recommendations have been taken forward and the impact that these changes have had on competition.

The 3-month long review will help the CMA examine if further measures are necessary to increase consumer engagement and help drive increased competition. It will look at existing evidence from regulatory monitoring and other available research, as well as submissions from interested parties.

As part of its review, the CMA has put out a call for inputs. Further information is available on the legal services case page.



## Consultation response

### Legal Services Board consultation on proposed Practising Fee Rules

5 October 2020

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#### Introduction

The Costs Lawyer Standards Board (CLSB) welcomes the LSB's review of its approach to considering applications for approval of practising fees under section 51 of the Legal Services Act 2007 (the Act).

The process of setting and collecting practising fees is of critical importance to regulatory and representative bodies, as well as the practitioners and firms that are subject to the fee. It is therefore important that the arrangements in place for seeking feedback and approval of each year's proposed fee from the LSB are clear and streamlined. We have found the template application form used by the LSB in recent years to be a helpful tool in clarifying expectations for applicants. The review of the underlying Rules builds on that work and has the potential to positively impact everyone involved in the process. We hope this consultation response will assist the LSB in finalising the Rules and ensuring they are workable in practice.

In responding to this consultation, we have focused on areas where we have first-hand experience of the section 51 process. We do not, for example, share services with our profession's representative body, spend income on non-permitted purposes, or earn any material level of income from sources other than the practising fee. As such, we have limited evidence to offer in relation to certain aspects of the proposed Rules, and other stakeholders will be better placed to respond to consultation questions in those areas. Against that background, we have responded to questions 2, 4, 6 and 7.

Question 2: Does the overarching criteria in draft Rule E13 adequately set out the LSB's expectations of Approved Regulators when considering a practising fee application? Are there other criteria which should be included? Do you have any comments on the associated draft Guidance?

We agree that it is helpful to establish overarching criteria for the determination of section 51 applications, to provide a frame of reference for decision-making and to clarify expectations. However, we note that the scope of the proposed criteria is very broad. It appears to us that aspects of the criteria reach beyond the factors that are directly relevant to the LSB's role in overseeing (rather than itself setting) the practising fee for the various legal professions.

Consider, for example, the "accountability" criterion. We can, of course, see why it is appropriate to ensure that regulators have engaged effectively with relevant authorised persons when setting the fee; this is an integral part of obtaining evidence of impact and ensuring transparency. We can also see why it might be necessary for regulators to report on how previous years' fees have been spent, to ensure regulators have used funds in the way envisaged and drive retrospective accountability. These issues are directly relevant to whether or not the proposed fee level should be approved, securing the regulator's accountability to its regulated community and the wider public.

We might also see how the requirement to "address any areas of concern raised by the [LSB]" could properly fall within the accountability criterion, if this was targeted at addressing areas of concern

about compliance with section 51 procedure. But the consultation paper states that this requirement relates to “how an Approved Regulator has addressed concern raised ... in relation to the regulatory performance assessment framework during that year”, and paragraph 41 of the guidance states that regulators will be “expected to address these [concerns] in the application”. This appears to us to take the criterion beyond the scope and purpose of the power in section 51. There is an established statutory framework for addressing regulatory failings, as set out in sections 31 to 48 of the Act. The proposed accountability criterion would, if introduced, circumvent that framework by introducing a new – and arguably much more powerful – lever to punish poor performance, by severing a regulator’s source of income. Reading Part 4 of the Act as a whole, this was clearly not the intention of parliament when enacting section 51.

The proposed “proportionality” criterion provides a further example. That criterion requires that the practising fee is adequate to “effectively” discharge the approved regulator’s regulatory functions in an “efficient and cost-effective” way. There is nothing in the guidance that gives an indication as to how the LSB will determine whether the regulator is effective, or assess the efficiency and cost-effectiveness of its work.

We would see such assessment as being the role and remit of the regulatory body’s board – or even its executive management team, depending on intended scope of the criterion – in ensuring that the operations of the regulator are aligned with organisational strategy, business need and the obligations in section 28 of the Act. And there is already a separate framework in place for providing assurance to the LSB on these matters. The Internal Governance Rules 2019 provide (in Rule 9) that “each approved regulator must provide such resources as are reasonably required for its regulatory functions to be efficiently and effectively discharged”. The Internal Governance Rules contain standalone provisions for ensuring compliance. Again, the draft Practising Fee Rules appear to use section 51 as an enforcement vehicle for obligations that are external to the practising fee approval framework.

It is also clear from the draft Rules that this criterion will be applied to justify – in and of itself – the refusal of a section 51 application. Rule 31(d) expressly provides that a regulator must satisfy the LSB that “the fees to be allocated to regulatory functions are sufficient to effectively discharge those functions” and the guidance states (in paragraph 139) that the LSB is likely to refuse the application if the regulator has not satisfied the LSB that the practising fee complies with Rule 31(d).

Like the frontline regulators, the LSB must make regulatory interventions that are proportionate and targeted to performing its role as an oversight regulator. We share the concerns of other stakeholders that the proposed criteria in Rule E do not conform to these principles because they go beyond the scope of what is required to achieve the purpose of section 51. We would encourage the LSB to recouch the criteria so that they are focused on ensuring that the regulators’ processes for setting, collecting and spending the practising fee are transparent and fair to the regulators’ stakeholders.

Question 4: Are draft rules H19 to 23 clear? Do you have other comments on these draft Rules or comments on the associated draft Guidance?

Proposed rule 18 requires financial information to be provided on an accruals basis, rather than a cash basis, if reasonably practicable. At an LSB workshop on the proposed Rules, we identified a potential practical issue with this requirement and you asked us to reiterate that issue in our written consultation response. We have done so below.

Our accounting year runs from January to December, in line with our practising year. This means that we receive practising certificate fee (PCF) income for one practising year across two accounting years. The bulk of the income is received in November and December of the preceding practising year, with

income from late applications received in January of the current practising year, and then income from reinstatements and new qualifiers (i.e. in-year applications for a practising certificate) received on an ad hoc basis throughout the current practising year.

If we report our income on an accruals basis as required by the draft Rules, the LSB will receive information about how much income we generate in a financial year but not how much income we generate for the relevant practising year. That is, you will not receive data on how much income was derived from the previous year's approved PCF. This will also make a comparison of actual income against budgeted income difficult, as we set our annual budgets on neither a cash nor accruals basis, but on the basis of total income expected from the relevant year's PCF (whenever collected).

You might, therefore, gain little benefit from us reporting on an accruals basis. It is worth noting that we would not fall within the exemption in draft Rule 18, as it would still be "reasonably practicable" for us to report on an accruals basis (at least for past income, although not for future income). We understand that a number of the regulators might be in a similar position.

On this basis, there is a risk that mandating the way all regulators must report financial information will not produce the outcome you desire. Reflecting the LSB's preferences in the guidance could be a more agile approach. Either way, it would be helpful if the guidance could explain what the LSB is trying to achieve here, so that regulators can understand what would be most useful to you within the parameters of their own financial systems.

In relation to reserves, we believe that paragraph 90 of the guidance would benefit from clarification. That paragraph (the substance of which is also reflected in paragraph 103) provides that any accrued practising fee reserves in excess of the target level ought to be returned to the regulated community by a corresponding reduction in the practising fee for the following year. Presumably this does not mean that if the practising fee is £100 in year 1, and the excess reserves in year 1 equate to £1 per practitioner, then the practising fee in year 2 must be £99. We assume the intended policy position is that the excess reserves from year 1 should be applied to meet envisaged expenditure in the year 2 budget, such that the year 2 PCF – which might be £100 or £50 or £150 depending on a variety of factors – would be £1 per practitioner less than it would have been in the absence of excess reserves in year 1. If that is correct, we feel this would be better expressed by referring to a regulator using the excess reserves to offset planned expenditure in the following year rather than stating that there must be a "corresponding reduction" in the practising fee, which could be read as mandating the level of the fee.

Question 6: Are Rules J 26 to 30 regarding initial and full impact assessments clear? Do you have any comments on the associated draft Guidance?

We would encourage the LSB to provide more direction to regulators, either through the guidance or by the early publication of good practice examples, as to the level of detail it expects in both initial and full impact assessments. The term "impact assessment" can take a variety of meanings. The regulatory impact assessment for the Legal Services Bill, for example, ran to 81 pages of detailed analysis. The regulatory impact assessment for this consultation, by way of another example, runs to two paragraphs. This demonstrates the broad spectrum of approaches that could be taken to assessing and communicating impact. While the draft guidance provides some high level bullet points in relation to the scope of an assessment, these give only limited insight into the degree of investigation and analysis the LSB envisages.

We note that, under the government's Better Regulation Framework guidance (republished in March 2020), the threshold for a full impact assessment is a net direct cost to business of ±£5 million. Even if

we increased our practising fee by 50%, from £275 to £413, the net cost to business would be under £100,000 – or £4.9m short of the government’s threshold for a full assessment. It might be that the LSB is not expecting the regulators to ever produce a full assessment of the kind undertaken within the Better Regulation Framework, but if that is the case then we would encourage the LSB to make this clear in the guidance.

The use of financial thresholds in the Better Regulation Framework guidance also highlights the risk that a blanket policy approach – mandated across all the regulators regardless of the size of their regulated community – could result in a disproportionate requirement. The relative regulatory burden of carrying out detailed impact assessments (whether initial or full) on smaller regulators – and thus the resulting financial burden on their regulated community – does not appear to have been addressed by the LSB in its review of this aspect of the Rules.

We would encourage the LSB to consider taking a risk-based approach to impact assessments, by (for example) making clear in its guidance that the scope of any impact assessment carried out by a regulator as part of a section 51 application should be proportionate to the level of potential (cumulative market) harm that the assessment is designed to address.

Question 7: Does the criterion set out at draft Rule K 31 adequately explain the matters which the LSB requires to be satisfied to approve a practising fee application? Are you content that the Rule on the interim collection of practising fees has been omitted from the draft Rules? Do you have any comments on draft Rules K 32 and 33?

We were pleased to see that the existing Rule on the interim collection of practising fees has been omitted from the draft Rules, and take reassurance from the LSB’s acknowledgement that collection of an interim fee is unworkable in practice.

The proposed new solution (in draft Rule 33) is to place an obligation on regulators to put forward their own contingency plans for a refusal scenario. While it is positive that the LSB recognises that a diversity of approach across the regulators might be necessary, we are concerned that this solution gives a false sense of comfort that a refusal is a routine matter that can simply be managed through proper planning.

The draft guidance provides as follows at paragraph 140:

“There should be arrangements in place for the continued operation of the approved regulator in the event that the practising fee is not approved and as a consequence, collection of practising fees is not possible within the intended timeframe. The arrangements could include reliance on uncommitted reserves, and/or allowing extra time when submitting the application in case it is refused, to allow for it to be resubmitted in whole or in part for approval.”

The LSB’s focus appears to be on a regulator having sufficient cashflow to continue operating for a few months while the issue is sorted out. While we do not purport to speak for other regulators, our understanding is that most regulators would have either sufficient reserves or sufficient operating capital to cover a short interim period. But this overlooks the significant financial, logistical and reputational impacts of a refusal decision.

For example, the logistics of moving our renewal process back in light of a refusal would be very challenging. The process subsumes the majority of one staff member’s time for around six weeks and we procure additional resource for the period as well as an additional back-up server and IT support.

Our resourcing plans for the process are set well in advance, and we schedule other activity around it. Moving the process would incur significant cost and put other workstreams in jeopardy.

Another key issue is that practitioners would not hold a valid practising certificate while the issue was being resolved. This time period could be lengthy, particularly if further public consultation was required. In exploring this issue with the LSB at pre-consultation stage, there was a suggestion that we might seek to renew practising certificates but defer payment until the practising fee was approved. That approach would import real practical difficulties for us. As well as requiring a change to our Practising Rules (which we could not, of course, make unilaterally), we would also face a risk of widespread non-payment. Under normal circumstances, the incentive for practitioners to make timely payment of the PCF is the need to obtain a new practising certificate. Practising certificates are never normally issued until payment is made and, without a certificate, a practitioner's name is removed from the register at the start of the practising year. The practitioner must then apply for reinstatement if they wish to return to the register, which attracts an administrative fee.

If a practitioner is already in possession of a practising certificate, there is limited incentive to make timely payment. Threatening to revoke a practitioner's certificate if they did not pay on time would be unpalatable from a reputational perspective, given that it is likely to be perceived as the regulator's fault that payment was not collected upfront in the usual way. And if there was widespread non-payment, we could not justify a mass removal of Costs Lawyers from the register for a variety of reasons (including the public and consumer interests). The most likely outcome would be an absorption of the loss and a decrease in our operating budget. If the relevant application had been refused by the LSB because the proposed fee was considered too low, such an outcome would be particularly perverse.

We appreciate that firms might be more willing than individuals to pay on a deferred basis. However, given the timing of the practising certificate renewal process, a delay would push the payment into the next financial year. This would mean that larger firms which pay fees for multiple practitioners would incur two PCF payments in the same financial year (assuming the following year's PCF was collected under the usual timetable). As there is no reason to expect firms to have budgeted for such an occurrence, there is a real risk of firms refusing to absorb the liability – which they would be entitled to do – such that the obligation to pay would fall to individual practitioners.

There would also be tax implications for individuals if the payment was delayed by several months, depending on whether the tax relief available on the practising fee could be claimed twice in one tax year.

There has been a suggestion – including in the draft guidance – that regulatory bodies should move their internal processes earlier in the year to guard against these kinds of problems. In our view, this is untenable given the already lengthy nature of the engagement and approval process for the practising fee. Our organisation sets its budget and business plan in May/June for the following year. From an operational perspective, this is very early in the business plan cycle, making it difficult to account for successes and challenges in the current year when planning for the following year. Shifting the budget setting process even further forward would exacerbate these issues, making it less likely that regulators can produce meaningful business plans and budgets that are responsive to emerging risks and opportunities.

It is evident that many of the difficulties described above relate to timing. If a regulator is informed at the end of a section 51 application period that the application will be refused, the above problems are likely to crystallise. At that late stage, there is no prospect of “saving” the planned renewal timetable.

It seems to us, from our experience of participating in the approval process, that the most effective approach must be one of ongoing dialogue and early notice of perceived problems or issues. This kind of “early warning system” can be used to unpick any fundamental concerns the LSB might have about a regulator’s proposed fee level, allowing those concerns to be addressed upfront – ideally prior to consultation – and well before the application is due to be determined.

We appreciate, of course, the need for the LSB to retain a refusal power, otherwise the statutory duty to approve would be hollow. However, in our view that power should be a tool of last resort, used only where early dialogue has failed and all other options have been explored. If the process is working effectively, the refusal power should not be needed in practice; the prospect and consequences of refusal for both the regulator and the LSB (given the public impact) should provide a sufficient incentive to drive early engagement on both sides and, thus, an acceptable outcome.

Rather than requiring regulators to put forward contingency plans for a refusal situation, we would urge the LSB to encourage this culture of early resolution through the guidance (perhaps building out the sentence in paragraph 141) and, to the extent possible, in the Rules themselves.

## CLSB Regulatory performance assessment August 2020

REGULATORY APPROACH					AUTHORISATION					SUPERVISION				ENFORCEMENT						WELL-LED					
1	2	3	4	5	1	2	3	4	5	1	2	3	4	1	2	3	4	5	6	1	2	3	4	5	6
Met			Not met – action being taken							Not met – action required															

### Overview

The CLSB has continued to make progress in the time since the last assessment conducted by the LSB in November 2019.

The work done has translated into an assessment that shows the CLSB now meets five on the nine outcomes previously assessed as ‘Not met – action being taken’.

The focus for the CLSB must now be on demonstrating its delivery against each of the outcomes. We expect the CLSB to provide ongoing evidence that it can meet the outcomes that are yet to be met and sustain its improvements across all the ‘Met’ outcomes.

A key area for the LSB will be whether, considering its resourcing and structure, the CLSB will be able to demonstrate that it can meet the outcomes and standards that we expect of well performing regulators.

**Not met: action being taken**

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

		<ul style="list-style-type: none"> <li>• an update on its review of its diversity and inclusion initiatives against the three characteristics of a well-performing regulator</li> <li>• relevant progress against its proposed Business Plan priorities, specifically improving its regulatory arrangements and protecting the interests of consumers and promoting professional standards.</li> </ul>
	<b>Timing</b>	CLSB to provide a progress update by 31 March 2021

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

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

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

<b>Outcome</b>		<b>WL4: The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work.</b>
<b>Progress update (at July 2020)</b>	<b>LSB assessment</b>	<p>We set an expectation that CLSB's progress against other outcomes should allow CLSB to meet this outcome over time. We explained that it would need to continue to make use of its developing evidence base and that board decision notes and publication of board papers would further assist.</p> <p>We additionally explained that CLSB needed to take action to progress its work to better understand consumers of costs lawyer services.</p> <p>It is clear CLSB has made progress here but we will need to continue to demonstrate its learning from across the sector and beyond.</p>

	<b>Action needed</b>	<p>CLSB must demonstrate its use of its consumer engagement strategy and continue to regularly evidence the application of learning from its own work and others. We expect this to be clear as it builds a greater catalogue of published board papers and board decision notes.</p> <p>We would also expect to receive:</p> <ul style="list-style-type: none"> <li>• substantive feedback on the work undertaken so far in the first year of its Consumer Engagement Strategy</li> <li>• an update on its review of its diversity and inclusion initiatives against the three characteristics of a well-performing regulator</li> <li>• relevant progress against its proposed Business Plan priorities, specifically improving its regulatory arrangements and protecting the interests of consumers and promoting professional standards.</li> </ul>
	<b>Timing</b>	CLSB to provide a progress update by 31 March 2021

### Met (August 2020)

<b>Outcome</b>	<p><b>RA1: Regulatory arrangements and supporting guidance documentation are:</b></p> <ul style="list-style-type: none"> <li>• <b>outcomes-focused</b></li> <li>• <b>written in plain English</b></li> <li>• <b>maintain professional principles</b></li> </ul> <p><b>with detailed rules limited to where evidence and analysis justifies them</b></p>	
<b>Progress update (at July 2020)</b>	<b>LSB assessment</b>	<p>The actions for the CLSB were to consider implementation of a revised approach to CPD and to complete the review of its older handbook content.</p> <p>CLSB has reviewed and implemented changes to its CPD rules, Disciplinary Rules and Procedures and Practising Rules. These alterations have all included consultation, decision documents, successful applications to the LSB and publication of associated guidance where appropriate.</p>

		In looking at its older handbook material CLSB has issued updates to existing guidance based upon evidence, it has revoked guidance that we considered no longer relevant and updated its website to provide relevant material in an accessible way. In addition CLSB has issued new guidance in areas where it was receiving a lot of enquiries.
	<b>Action needed</b>	Action Complete
	<b>Timing</b>	Action complete

<b>Outcome</b>		<b>RA2: Regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base.</b>
<b>Progress Update (at July 2020)</b>	<b>LSB assessment</b>	<p>A key component for meeting this outcome is effective engagement with the LSB's rule approval process. In January of 2019 the CLSB applied to introduce a new Costs Lawyers Competency Assessment (CLCA). The application was later withdrawn but only after the LSB issued a warning notice.</p> <p>Despite significant engagement with the CLSB prior to the application, there were a number of significant issues which had an impact on the LSB's ability to assess the application. These issues ranged from a lack of:</p> <ul style="list-style-type: none"> <li>• information and evidence to support the stated rationale for the CLCA</li> <li>• detail in the competence and threshold standard being proposed</li> <li>• evidence on the potential equality impact or costs implications of the proposal</li> <li>• detail of the plan for implementation.</li> </ul> <p>Since the initial assessment based upon the above application the CLSB has undergone an organisational restructure and has altered the way in which it approached engagement with the LSB's rule approval process.</p>

	<p>In 2020 CLSB engaged significantly with the LSB on how to approach rule changes and has since made three rule change applications to the LSB. They have all been clearly drafted, with an understandable rationale and evidence base. All the proposed changes have been approved.</p> <p>Through 2020 CLSB has also progressed significant work in ensuring that its proposals are backed by evidence from both within and outside of the sector along with LSB policy statements. It has not only progressed rule changes but has also set in train a programme of work that has resulted in updates to several pieces of guidance.</p>
<b>Action needed</b>	Action Complete
<b>Timing</b>	Action Complete

<b>Outcome</b>		<b>E2: The regulator ensures that all complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.</b>
<b>Progress update (at July 2020)</b>	<b>LSB assessment</b>	<p>CLSB was asked to review whether, in the absence of interim orders powers, it is able to ensure consumers and others are protected should immediate suspension of a costs lawyer's authorisation be needed.</p> <p>CLSB has now amended its Disciplinary Rules and Procedures. The changes included the introduction of interim suspension orders and were approved by the LSB on 6 April 2020.</p> <p>Given the low incidence of disciplinary matters we note that it will take time for CLSB to produce evidence that it meets E2 in practice. In the circumstances we are willing to consider this outcome met provisionally. We expect to revisit this outcome as and when CLSB is in a position to provide further evidence based on its consideration of complaints it receives. It is noted that CLSB will be reviewing the effectiveness of all the changes made two years after implementation.</p>
	<b>Action needed</b>	Action complete.

	<b>Timing</b>	Action complete.
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<b>Outcome</b>		<b>E3: The enforcement process and any associated appeals process is: consistent; independent; risk-based; evidence-based; documented; transparent; proportionate; focused on consumer protection, maintaining professional principles and protecting the public interest.</b>
<b>Progress update (at July 2020)</b>	<b>LSB assessment</b>	<p>The action for CLSB was to undertake a review of its enforcement process against this standard and produce a report setting out its findings.</p> <p>CLSB has altered its disciplinary rules and procedures. It has also added a page to its website on disciplinary outcomes. It has also published its Panel Member Appointment Policy and Code of Conduct. In addition, it has published policy statements on enforcement and sanctions and publication of disciplinary decisions. Finally, it has produced internal guidance for its conduct committees and conduct appeal committees.</p> <p>This is significant progress and removes the active concerns held by the LSB. Given the low incidence of disciplinary matters we note that it will take time for CLSB to produce evidence that it is meeting E3 in practice. In the circumstances we are willing to consider this outcome met provisionally. We expect to revisit this outcome as and when CLSB is in a position to provide further evidence.</p>
	<b>Action needed</b>	Action complete.

<b>Outcome</b>		<b>WL3: The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community faces and how these are being mitigated; performance; regulated community and related markets; financial costs.</b>
<b>Progress update (at</b>	<b>LSB assessment</b>	<p>We set a requirement for CLSB to turn its attention to drafting and publishing board papers. Consequently, CLSB developed a policy statement setting out documents it would publish, the purpose</p>

<b>November 2019)</b>		of publication and the timing of publication. This includes publication of agendas, papers and minutes for meetings. Papers for April and July 2020 can now be found online, consistent with its new policy statement.
	<b>Action needed</b>	Action Complete. We will of course expect to see CLSB consistently building a larger catalogue of agendas, papers, minutes, and decisions now that it has a clear publication policy.
	<b>Timing</b>	Action Complete

**By email**

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8 October 2020

Dear Kate,

**Annual Regulatory Performance Assessments - November 2020**

As part of our ongoing monitoring of regulators' performance against the regulatory outcomes, we will be conducting our annual performance assessment in November. This letter explains the process and timelines, which should reflect relationship management discussions, and sets out the information that we will require from the CLSB.

*Scope*

Our annual assessment will consider the following:

- Progress made towards meeting any outcomes currently graded as 'not met';
- General performance in relation to the regulatory performance outcomes and any issues that have arisen since our last annual assessment in November 2019;
- Developments in relation to the new outcome WL7, introduced in July 2020, relating to regulatory independence.

*Information request*

For our assessment we will require a report from you setting out the steps you have taken to meet the actions set out in our last assessment including responses to the specific questions set out in the attached Annex.

As we have recently reviewed your progress update in August and revised and published our assessment of the actions you have taken since November 2019, we do not need you to provide an update on these areas at this time. Steve will continue to monitor your progress through your regular meetings.

Please provide us with your response to this information request by **6 November 2020**.

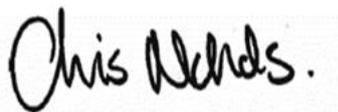
In addition to the information that you provide, our assessment of the CLSB's performance will take account of information the LSB has gathered since our last annual assessment in November 2019. This will include our contacts with you, such as relationship management meetings, CEO and Board-level meetings, applications that you have submitted to us for approval and any information you may have provided since the last assessment round.

*Next steps*

We will consider your response alongside the information we have already gathered and update our assessment and action plan. In doing so, as we have in previous reviews, we will work with you to agree any new actions and milestones. We will ensure that you have time to fact-check our final assessment before publication in mid-December.

If you have any questions about the assessment process or the specific questions set out in the Annex, please either contact me or your relationship manager.

Yours sincerely

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

Chris Nichols  
Director, Policy and Regulation

## Annex: Specific questions for CLSB

**Outcome RA1: Regulatory arrangements and supporting guidance documentation are:**

- **outcomes-focused**
- **written in plain English**
- **maintain professional principles**

**with detailed rules limited to where evidence and analysis justifies them.**

**Question:** We are aware that CLSB carries out an annual audit of the training provider (ACLT). Given the reintroduction of the course we would like to better understand how the arrangement and relationships with ACTL is working in practice. Please provide details in the following areas:

- a) The systems CLSB has in place to approve and monitor education and training providers?
- b) Whether CLSB gathers intelligence from students or information about student complaints made about education and training providers? If so, how is this information used to ensure appropriate standards are in place.

**Outcome S4: Those under review and the wider regulatory community have the opportunity to benefit from the learning and good practice identified from the supervisory activity.**

**Question:** We are aware that CLSB will be developing its approach to supervision in the coming year. With that in mind we look forward to being kept informed of progress. However, in the meantime we ask that CLSB provide us with information on any action it has taken to learn from and share lessons from its supervision work.

**Outcome WL7: The Approved Regulator/Regulatory Body meets the outcome to ensure regulatory independence:**

- **The Approved Regulator has the necessary delegation arrangements in place and gains assurance that its regulatory functions are effectively carried out in line with the IGR.**
- **The Regulatory Body carries out its regulatory functions in line with the IGR and provides assurance to its Approved Regulator as required by Section 28 of the Legal Services Act 2007**

**Question:** Please provide an update on any relevant actions or developments which have taken place since the submission of your certificate of compliance and the end of the transition period on 23 July 2020.

**Minutes of the ACL Council Meeting**  
**held on 13 July 2020**  
 by Conference Call



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

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

The meeting started at 11am

Item	
1	<b>Welcome and apologies</b>
	CG welcomed all to the meeting. Apologies were received from David Cooper (DC).
2	<b>Minutes of the council meeting held on 11 June 2020</b>
	The draft minutes of the council meeting held on 11 June 2020 were approved without amendment.
3	<b>Actions arising from the council meeting held on 11 June 2020</b>
3.1	The action list was discussed and updated.
4	<b>Working Party Report on ACL/ACLT structure and relationship</b>
4.1	CG thanked the working party for their revised report. She said that she had a number of concerns about some of the recommendations and invited council members to discuss the content of the report. A discussion followed and each recommendation was fully discussed. Due to the confidential nature of the discussion it is documented separately.
5	<b>ACL/ACLT 4 year projections</b>
5.1	CG raised a question regarding some of the costs projected for ACLT. DB informed council members that there were a number of items, tutor fees in particular, where significant savings have been made. DB will provide details of the savings.
5.2	FK reminded council members that the decision to re-open the training course was not a commercial one but because of the importance of having an entry route into the profession. He stressed that ACL was committed to training new students but this had a 'shelf life'. He also acknowledged that the working party had achieved its objective but that there needed to be sensible and realistic discussions about the future. He said that the ACLT projections needed to be discussed and fully understood. It was generally agreed that this was the responsibility of the directors, NS and DB.
5	<b>Manchester Conference</b>
	DP advised council that with social distancing measures, the venue originally planned was now too small and council members agreed that there may still be a reluctance by many to attend this type of event even later in the year. Discussion took place regarding the possibility of holding a virtual event. DP will look into options and report back at the next

	council meeting.
<b>6</b>	<b>In House training for costs firms</b>
6.1	A discussion took place regarding a request to offer in-house training (online). DB reiterated his view that training should be inclusive and felt it was a way to attract members. SA agreed that ACL should offer training to those outside the membership but that ACL members should benefit from a reduced rate. JR stated that it was in the interests of both companies to provide such training. He added that this should not be seen as setting a precedent. CG said that her vision had always been that training would be inclusive but that there should be a team of trainers. FK said that, as an ACLT Director, he would not disagree with providing training to non-costs lawyers. However, he said he felt that as a costs lawyer, training non-costs lawyers in how to undertake the functions of a costs lawyer did not sit well, could jeopardise the profession and was not in the interests of members. DB challenged this, saying that the training being asked for was more about showing people how the electronic bill operates and the mechanics of preparing the information.
6.2	Following a full discussion it was agreed that the training should go ahead, a caveat to this being that a costs lawyer should attend the training. NS and FK suggested that a skeleton of the training should be agreed by council in advance. CG asked DB and NS to ask KA to circulate the outline of the proposed training, together with timings. FK suggested that the pricing structure should be a flat fee for delivery rather than a rate per delegate. It was agreed that DB /NS would provide a skeleton of the course and a pricing strategy for CG and FK to review within a week.
<b>7</b>	<b>Policy Report</b>
	AG reported that a policy/regulations sub-committee had been formed comprising JR/KK/DC. He said that he would circulate minutes from the first meeting of the sub-committee and asked council for terms of reference. AG said one of the first things the committee wanted to do was set up a schedule to include activities and deadlines, together with a manual of policy documents to include code of conduct/register of conflicts etc. AG said that he would also like to have a structure in place for the process of responding to consultations.
<b>8</b>	<b>Date of next council meeting</b>
	The next council meeting will be held by conference call on Monday 17 August 11am.
<b>8</b>	<b>Any other business</b>
8.1	CG reported that she had received a letter from the MoJ – inviting her to a meeting to consider the impact of the covid-19 situation. All council members agreed that she should register to attend. There being no further business the meeting ended at 1.25pm.

**Minutes of the ACL Council Meeting**  
**held on 17 August 2020**  
 by Conference Call



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

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

The meeting started at 11am

Item	
1	Welcome and apologies
	CG welcomed all to the meeting.
2	Minutes of the council meeting held on 13 July 2020
	The draft minutes of the council meeting held on 13 July 2020 were discussed and approved.
3	Actions arising from the council meeting held on 13 July 2020
3.1	The action list was discussed and updated.
3.2	Points 9 – 11 regarding ACLT were discussed at length. DB gave his views on the current management of ACLT and on the role of the executive and directors. FK expressed frustration that the directors and executive had not had the opportunity to meet in the last month. NS/DB explained the reasons for the delay. NS said she believed that good progress had been made and suggested that she and DB be given the opportunity to provide a written report on the outstanding issues before the next council meeting. Council members agreed. FK added that whilst he acknowledged that the executive were working on the issues he wished to stress the importance of the executive communicating with the directors of ACLT and keeping them informed.
3.3	It was agreed that separate payrolls would be set up for ACL and ACLT. DP to action
4	ACL/ACLT 2019 accounts
	CG proposed that the 2019 end of year accounts should be signed off. All agreed.
5	CPD
5.1	CG said that she had always felt that CPD should be provided to members as a benefit and reminded council members of the recent commitment to provide CPD. She suggested that accredited trainers (Costs Lawyers) should be approached to offer free training this year and in return they would remain on a register to provide CPD for ACL in future, for which they would be remunerated.
5.2	SA proposed that members (costs lawyers) were emailed to establish interest in providing CPD. DC seconded the proposal and all council members agreed. CG asked NS/DB to make Kirsty Allison (KA) aware of the proposal and added that there would be

	further discussion regarding the training at the next education executive meeting.
<b>6</b>	<b>Training for external companies</b>
	CG referred to the the electronic bill training which was discussed at the last council meeting and confirmed that she felt that KA should deliver the training. FK argued that ACL should not train non-members to deliver bills. Discussion followed and council members were invited to express their views. JR reminded council that the training had previously been agreed, subject to ACLT directors seeing and agreeing to content. FK stressed that the prime duty of ACL was to protect its members but went on to say that subject to seeing the content of the proposed training he was in agreement that it could go ahead. CG asked NS and DB to provide the seminar details to FK/CG asap.
<b>7</b>	<b>Legal Aid Group/LAA</b>
	CG said that one of the committee members of the ACL Legal Aid Group had advised her that that the Legal Aid Agency had recently taken all legal aid billing from the SCCO in house. She added that the ACL LAG had proposed to the LAA that bills could be prepared by LAG members but that the proposal was not accepted. CG expressed her view that this was a serious issue for legal aid practitioners and said she believed that the ACL council should prepare a consultation paper. All council members agreed. KK agreed to take on the role and it was agreed that he should seek to work very closely with Paul Seddon from the ACL LAG.
<b>8</b>	<b>Policy report</b>
	AG advised that the LSB had asked for minor amendments to the MoU and that Kate Wellington (CEO, CLSB) will be asked to sign the revised version.
<b>9</b>	<b>PR report</b>
9.1	FK asked council members if his emails to members regarding PR reports and council minutes were appropriate. All agreed that they were.
9.2	FK referred to two responses to the last set of minutes regarding CPD. DP confirmed that whilst planned ACL LAG seminars for this year had been cancelled, the group is holding an online seminar on 7 September and planning a further two before the end of the year. DP to send FK details of the LAG seminars so that he can respond to the emails.
<b>10</b>	<b>Operations Report</b>
	DP advised that she had attended a demonstration of a platform that was able to deliver online seminars to a high standard. The ACL Legal Aid Group is using the platform to deliver a seminar in September. KK and FK asked to be added to the attendee list so they can understand what the platform can offer with a view to using it for CPD seminars later in the year.
<b>11</b>	<b>Any other business</b>
	CG said that the next LSB 3-way meeting is scheduled for 10 September. FK gave his apologies for not being able to attend and it was agreed that AG will attend in his place with CG.
<b>12</b>	<b>Date of next council meeting</b>
	The next council meeting will be held by conference call on Monday 14 September at 11am.

	There being no further business the meeting ended at 12.50
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