



## Costs Lawyer Standards Board

### AGENDA

Wednesday 20 October 2021 @ 10:30am  
Remotely via videoconference

|                       |  |   |
|-----------------------|--|---|
| <b>Board:</b>         | Rt Hon David Heath CBE<br>Stephanie McIntosh<br>Paul McCarthy<br>Andrew Harvey<br>Andrew McAulay | Lay NED (Chair)<br>Lay NED (Vice-Chair)<br>Non-Lay NED<br>Lay NED<br>Non-Lay NED                |
| <b>In attendance:</b> | Kate Wellington<br>Jacqui Connelly<br>Prof Carl Stychin  | CEO and Company Secretary<br>Director of Operations<br>Independent Education Adviser (Item 3.2) |

*Note: Agenda items in blue are standing items*

|   | Agenda item  | Paper                | Publish <sup>1</sup> | Lead     |
|---|--|----------------------|----------------------|----------|
| 1 | <b>Opening matters</b><br>1.1 <a href="#">Quorum and apologies</a><br>1.2 <a href="#">Declarations of interest on agenda items</a> | -<br>-               |                      | DH<br>DH |
| 2 | <b>Minutes</b><br>2.1 <a href="#">Approval of minutes (21 July 2021)</a><br>2.2 <a href="#">Matters arising (21 July 2021)</a>     | Item 2.1<br>-        | Yes                  | DH<br>DH |
| 3 | <b>Strategy</b><br>3.1 <a href="#">Progress against Business Plan: Q3 2021</a><br>3.2 Education                                    | Item 3.1<br>Item 3.2 | Yes<br>No (B, D)     | KW<br>KW |
| 4 | <b>Board matters</b><br>4.1 Staff working arrangements   | -                    |                      | DH       |
| 5 | <b>Finance</b><br>5.1 <a href="#">Quarterly report: Q3 2021</a><br>5.2 Outcome of PCF application                                  | Item 5.1<br>Item 5.2 | No (D, E)<br>Yes     | JC<br>KW |
| 6 | <b>Risk management</b><br>6.1 <a href="#">Review of risk registers</a>   | Item 6.1             | Yes                  | 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><br>7.1 Guidance Notes<br>7.2 Supervision Policy and final supervision framework<br>7.3 Innovation project update<br>7.4 Proposal for virtual diversity event | Item 7.1A-C<br>Item 7.2A-C<br>Item 7.3<br>Item 7.4 | Yes<br>Yes<br>Yes<br>Yes | KW<br>KW<br>KW<br>KW |
| 8  | <b>Legal Services Board (LSB)</b><br>8.1 Proposed statutory policy statement<br>8.2 Other workstreams  | -<br>Item 8.2                                      | <br>Yes                  | <br>KW<br>KW         |
| 9  | <b>Stakeholder updates<sup>2</sup></b><br>9.1 <a href="#">ACL Council meeting minutes</a><br>9.2 Work updates  | Item 9.1<br>Item 9.2                               | Yes<br>Yes               | KW<br>KW             |
| 10 | <b>Operations</b><br>10.1 H&S policy and risk assessment<br>10.2 CPD dispensation policy   | Item 10.1A+B<br>-                                  | Not A (A)                | KW<br>JC             |
| 11 | <b>Publication</b><br>11.1 <a href="#">Confirmation that papers can be published</a>   | -  |                          | DH                   |
| 12 | <b>AOB</b>   | -  |                          | DH                   |
| 13 | <b>Next meeting</b><br><a href="#">Date: 26 January 2022 @ 10.30am</a><br><a href="#">Venue: To be agreed</a>  | -  |                          | DH                   |

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

Company number: 04608905

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

**MINUTES**  
**Costs Lawyer Standards Board Ltd**  
**Wednesday 21 July 2021 at 11 am**  
**Remotely by videoconference**

**Present:** Rt Hon David Heath CBE (Lay Chair)  
Stephanie McIntosh (Lay Vice Chair)  
Paul McCarthy (Non-Lay NED)  
Andrew Harvey (Lay NED)  
Andrew McAulay (Non-Lay NED)

**In attendance:** Kate Wellington (CEO and Company Secretary)  
Jacqui Connelly (Operations Director)

**1. OPENING MATTERS**

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

**2. MINUTES**

**2.1 Minutes dated 21 April 2021**

The board considered the minutes of its last scheduled quarterly meeting on 21 April 2021. The board agreed the minutes as being a true record for signing.

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

**2.2 Matters arising**

The board considered the matters arising from the minutes of its meeting on 21 April 2021. There were no matters arising that had not been scheduled as agenda items or otherwise dealt with. One of the actions arising under Item 7.3 of the April minutes (approval of policy documents relating to supervision) was postponed until the next board meeting, to make time for the governance strategy session that would take place at the end of today's meeting.

**3. STRATEGY**

**3.1 Progress against Business Plan: Q2 2021**

The board was provided with a progress update against the 2021 Business Plan. Kate noted that three additional priorities had been achieved during Q2, meaning that five of the 15 priorities in the plan had been achieved so far, with many more underway.

**3.2 Education**

Between meetings, the board received information about the outcome of ACL's education review, including the final report prepared by the ACL Council working

party. ACL had engaged a consultancy, Hook Tangaza, to assist with implementing governance changes following the review and Kate reported on several constructive conversations with Hook Tangaza following their appointment.

The board discussed whether and how the outcome of the review was being communicated by ACL to its membership, noting that two Council members had resigned around the time that the review was concluded. The latest available ACL Council minutes dated back to April, so it was possible that more recent minutes, once published, would shed light on the decision-making process. The board discussed additional ways of ensuring the regulated community was sighted on decisions about education and appreciated the distinction between the roles of ACL and the CLSB in relation to the professional qualification.

The board also considered the outcome of the CLSB's recent audit of the qualification. Board members were provided with the CLSB's audit report, a course overview document that had been helpfully provided by ACLT to give context, and a draft action plan prepared by ACLT in collaboration with Hook Tangaza setting out how the audit recommendations would be addressed and the timescales for doing so. The board agreed that the direction of travel set out in the action plan was a good start in addressing the audit recommendations. The board was also content with the proposed timescales, given the need to align these with the milestones in Hook Tangaza's ongoing governance project.

### **3.3 Draft competency framework**

Kate introduced this item, summarising the work that had been done in producing the draft competency framework. She noted that comments from the Expert Panel were being collated and these would be incorporated into the consultation version, but otherwise all stages of the project plan (up to consultation) had been completed.

The board was impressed by the quality of the output and the rigour of the project methodology, particularly given the limited resources and time available to the team. The board agreed that the structure and presentation of the framework worked well; the Non-Lay NEDs felt they recognised the role that was being described through the framework, while the Lay NEDs felt that as non-lawyers they could easily understand the concepts and different elements. Board members provided comments and suggestions on various aspects of the detail, which Kate would address in producing the consultation version.

The board discussed the framing for the consultation and agreed that any controversial or novel areas should be proactively highlighted to promote an open debate with the profession and other stakeholders. The board discussed the need to capture the client perspective through the consultation – in terms of the expectations of end consumers and professional intermediaries – and considered which representative bodies and other stakeholder groups might be able to provide that input.

The board noted that the breadth of the framework highlighted the urgency of updating the current qualification, to ensure newly qualified Costs Lawyers have been

assessed as competency across a range of skills using a variety of methods. With that in mind, it would be helpful to get the consultation underway as soon as possible. The board agreed that it did not need to formally approve the consultation document prior to launch, given the detailed discussion at this meeting, but that Kate should circulate the consultation immediately prior to publication in case board members wanted to raise any final thoughts.

***Actions: Address board member comments and suggestions in consultation version of the framework; prepare consultation following Expert Panel feedback; circulate to board members immediately prior to publication.***

### **3.4 2022 Business Plan**

Kate presented the draft Business Plan for 2022, explaining that by the end of 2022 the CLSB should be close to achieving the vision and objectives set out in its mid-term strategy (which runs to 2023). In preparing the draft, the executive had been mindful of meeting the CLSB's new commitment to focusing on good consumer outcomes; the Business Plan priorities had therefore been linked to the promotion of one or more of the consumer outcomes identified in the policy statement.

The board discussed the proposals, including how they were supported by the proposed budget (considered at Item 5.3), and agreed that the programme of work was comprehensive and well aligned to the strategy. The draft Business Plan for approved for consultation.

***Action: Publish the draft 2022 Business Plan alongside the practising fee consultation.***

## **4. BOARD MATTERS**

### **4.1 Meeting dates for 2022**

The board agreed the following meeting dates for 2022:

- 26 January
- 20 July
- 19 October

A convenient date for April 2022 could not be found and it was agreed that Kate would follow up with board members after the meeting.

The board discussed whether and when in-person board meetings should resume. Some board members expressed a preference for holding two in-person and two virtual meetings per year, while others felt that one in-person meeting would be more practical given how far the NEDs have to travel, perhaps structured around a strategy or vision day. Either way, it was agreed that meeting agendas should be crafted to get the most out of the format.

***Action: Publish meeting dates on the CLSB website; follow up to agree April date.***

## **5. FINANCE**

### **5.1 Quarterly report: Q2 2021**

Jacqui introduced the quarterly finance report, noting that the overspend projected in Q1 had been largely offset. She also explained changes to the telephone answering

system that were being explored, which would deliver significant cost savings on that budget line going forward.

The board noted the financial position in the report.

## **5.2 Reserves Policy**

In April, the board had discussed the LSB's expectation under its new Practising Fee Rules that a reserves target of more than three to six months' operating expenditure would require justification by the legal regulators. The CLSB's size meant that aiming for 12 months of operating expenditure was considered justifiable and it was assumed that three to six months' operating expenditure would not be sufficient to cover high-cost risks. The board had agreed that a selection of risks should be costed-up to test this assumption and, if the assumption was not correct, the board would have the opportunity at this meeting to readjust the target.

In light of the above, several hypothetical scenarios had been costed during Q2. The scenario carrying the highest level of financial risk involved a data breach and/or cyber attack. However, Kate explained that the CLSB's insurance cover would soon be expanded to insure against a wider range of foreseeable risks, including cyber risks. The board was therefore presented with calculations for the next most expensive hypothetical scenario, which involved the CLSB being unable to continue as the regulator of Costs Lawyers following an unsuccessful judicial review of a third party's decision. The costing was based on advice taken from the CLSB's accountants as well as data drawn from internal financial records and public sources. The total estimated cost came out at just over 6 months' operating expenditure (acknowledging that assumptions had to be made and the actual cost might be higher or lower depending on the exact circumstances).

The board considered the calculation in detail and explored the assumptions made. Board members raised alternative scenarios to test whether they might create an additional financial burden, but it was agreed that there was a limited pool of costs that could be met through practising fee reserves, which could only be spent on permitted purposes under the Practising Fee Rules.

It was acknowledged that there might be exceptional, unforeseeable circumstances that are not accommodated by the Reserves Policy, but the board's focus had to be on mitigating known and foreseeable risks that had some likelihood of materialising. Reserves were funded by the profession, and thus ultimately the public where the cost of regulation was passed on, so it was important to strike the right balance. On this basis, the board approved an updated version of the Reserves Policy that reduced the target level of uncommitted reserves from 12 to 6 months of operating expenditure.

As the purpose of the uncommitted reserves was to mitigate risk (in line with the LSB's guidance) – rather than paying for one-off projects that could not reasonably be funded through an annual increase in practising fees – it was agreed that a committed reserve for future IT development was also necessary. The next phase of planned development of the CLSB database had been priced at just over £30,000 for the build, testing, implementation and integration with other systems. The board therefore

agreed to adopt a £30,000 committed reserves target, with the aim of contributing £5,000 per year over the next five years (being the anticipated technological lifespan of the current database software).

**Action: Adopt updated Reserves Policy.**

### **5.3 2022 budget**

### **5.4 2022 practising fee consultation**

Kate explained the budget setting process and how this was linked to the priorities in the draft 2022 Business Plan. The board considered the budget alongside the proposed practising fee for 2022 of £281, as well as the draft consultation on the level of the fee. The budgetary items that placed upward and downward pressure on the level of the fee were discussed.

In terms of perception, the Non-Lay NEDs felt that the profession would be receptive to a small increase in the fee given that they have seen tangible improvements in service, for example through the online practising certificate renewal process.

The board approved the 2022 budget and draft practising fee consultation for publication.

**Action: Launch practising fee consultation with associated documents.**

### **5.5 2020 accounts for approval**

The board approved the 2020 accounts, prepared by AGP Chartered Accountants, for signing.

**Action: Arrange for signing of accounts and publish on website.**

## **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 approved the changes that had been made to the registers during Q2, as requested at the April board meeting, to mirror the updated Reserves Policy. This included the addition of new risks OP7 and OP8.

The board noted that further changes were needed to reflect the reduction in the uncommitted reserves target from 12 to 6 months' operating expenditure as agreed under Item 5.2.

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

## **7. REGULATORY MATTERS**

### **7.1 New guidance notes**

The board considered a new guidance note on closing down a practice as well as guidance for unregulated employers of Costs Lawyers, which had been developed in Q2 in line with priority 3 in the 2021 Business Plan.

In relation to closing down a practice, the board discussed whether there was any evidence of practitioners having difficulty obtaining run-off insurance in the current

market. Kate explained the initiatives that were underway which might uncover such evidence, but noted that there was no suggestion of difficulties thus far.

In relation to the guidance for unregulated employers, the board felt this was particularly important for highlighting that whilst employers might not be responsible to the regulator for what Costs Lawyers do in their professional capacity, they should not put their employees in a position that runs counter to their regulatory obligations. The guidance would give practitioners something to point to if they felt under pressure. Work on the competency framework project suggested this would be welcome, particularly for junior lawyers.

The board approved the guidance notes for adoption.

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

## **7.2 Proposals for diversity and inclusion next steps**

The board considered a paper setting out the findings of a desk research exercise to explore evidence of effectiveness of different types of diversity interventions. The board approved the work areas proposed in the paper by way of next steps.

The board was also asked to consider how the CLSB should approach its next diversity survey. Several difficulties had emerged with the proposed approach for 2021 and Jacqui had asked a small group of practitioners for feedback on the options available (in terms of perceived privacy implications, likely response rates etc). Essentially the options were running an anonymous survey or a non-anonymous survey with pre-populated data, each having distinct benefits and drawbacks. The board discussed the pros and cons of each approach.

It was agreed that a hybrid approach should be investigated, to see if the software could support a choice for individual practitioners between an anonymous or non-anonymous survey. Kate and Jacqui would also reach out to the LSB and other regulators (particularly those that do not regulate entities) to seek feedback on the approach.

**Actions: Test viability of hybrid approach; Discuss with LSB and relevant regulators.**

## **7.3 Consumer engagement strategy – review and refresh**

The board considered a paper setting out proposals for year 2 of the consumer engagement strategy (which runs from mid-2021 to mid-2022). The proposals update the strategy to ensure it is aligned with the CLSB's policy statement on good consumer outcomes and builds on learnings from year 1.

The board approved the proposals and noted that the work programme for year 3 would be firmed up toward the end of year 2.

**Action: Update the published consumer engagement strategy to reflect the approach agreed for year 2.**

## **7.4 Regulators' Pioneer Fund bid**

Between meetings, the board was informed that a bid was being worked up for project funding from the Regulators' Pioneer Fund. Board members had asked to see the final bid, which was provided for noting. The board felt the project was interesting and well-positioned. Kate noted that, whether or not the bid was successful, it had been a useful exercise to identify opportunities for the CLSB in the innovation space.

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

### **8.1 Learnings from BSB review against well-led standard**

Kate introduced this item. She reminded the board that the LSB had been carrying out a targeted review of the governance processes used by the Bar Standards Board (BSB) and the Faculty Office against the LSB's "well-led" performance standard. For the BSB, this had culminated in the publication of a report that identified various governance issues at board and executive level. There was an opportunity for the CLSB to apply the learnings from the report in its own governance review, which was scheduled to begin in Q3. Kate presented a paper drawing out themes from the report and making recommendations for where and how the CLSB could make changes informed by the report.

The board considered and agreed the actions recommended in the paper, noting that some would be discussed in more detail in the governance strategy session scheduled for the end of the meeting.

**Action: Implement agreed recommendations.**

### **8.2 Other workstreams**

The board was provided with updates in relation to:

- positive press coverage of the latest assessment by the LSB of the CLSB's regulatory performance (the board was provided with the assessment itself between meetings);
- the CLSB's proposed response to the LSB's consultation on new rules for applications to alter regulatory arrangements.

## **9 STAKEHOLDER UPDATES**

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

The board noted the minutes of ACL Council meetings held in March and April 2021.

The board discussed extracts relating to the collection of a mandatory practising fee by ACL from regulated Costs Lawyers. The board felt that any decision to pursue this course of action should be driven by principle rather than the need for a new income stream. Kate agreed to inform the board if the matter was raised further.

### **9.2 Work updates**

The board was informed that the first annual review of the MOU and Operating Protocol (OP) between ACL and the CLSB had taken place in May. The organisations had worked together to consider what actions had been taken under the protocols throughout the year, whether the parties had received the information they needed and any perceived threats to regulatory independence. It was agreed that the protocol was working well and that no changes to the documents were necessary at this stage.

The board noted the outcome and Kate confirmed that the versions of the MOU and OP published on the CLSB website had been annotated to show the date of last review.

## **10 OPERATIONAL MATTERS**

### **10.1 Complaints procedure audit outcomes**

The board considered a paper on the outcomes of the first complaints procedure audit, which was completed in Q2. Kate noted that the number of problems found suggested that the audit was an effective use of supervision resource, and presented an opportunity to significantly improve compliance in the first year. The board noted the outcomes and approved the proposed next steps. Jacqui explained that the webpage which would be used to communicate learnings from the audit was nearly ready for publication.

Kate also noted that the time was right to begin more structured promotion of the CLSB's messaging through social media. This would start with LinkedIn, which could be used to support other communication channels (such as email circulars) and engage practitioners who preferred bite-sized interactions.

## **11 PUBLICATION**

### **11.1 Confirmation that papers can be published**

The board agreed that all board papers for the meeting should be published, other than those noted on the agenda for the reasons stated.

**Action: Publish board papers on website in accordance with agenda notations.**

## **12 AOB**

There was no other business.

## **13 NEXT SCHEDULED QUARTERLY MEETING**

When: Wednesday 20 October 2021 at 10.30am

Where: Virtual

There being no further business, the Chair declared the meeting closed at 12:51.

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Chair

## **Related documents**

| <b>Item</b>         | <b>Document</b>   | <b>Publication location (CLSB website)</b> |
|---------------------|---|--|
| 2.1                 | Board minutes (21 April 2021)   | About ⇨ Our board                          |
| 3.4,<br>5.3,<br>5.4 | 2022 practising fee consultation with annexes, including the proposed 2022 budget and Business Plan | Regulatory ⇨ Consultations                 |
| 4.1                 | Board meeting dates   | About ⇨ Our board                          |

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|-------------|--|--|
| 5.5         | 2020 accounts  | Regulatory ⇨ Cost of regulation ⇨ Cost of CLSB |
| 6.1         | Risk registers   | About ⇨ Strategy and governance                |
| 7.1         | Guidance notes   | For Costs Lawyers ⇨ Costs Lawyer Handbook      |
| 7.3         | Consumer engagement strategy   | About ⇨ Strategy and governance                |
| 9.2         | MOU and OP with ACL  | About ⇨ Who we are                             |
| 11.1        | Board papers   | About us ⇨ Our board                           |
| <b>Item</b> | <b>Document</b>  | <b>Publication location (other)</b>            |
| 8.1         | LSB review of BSB against the well-led standard                                  | LSB website <a href="#">here</a>               |
| 8.2         | Updated LSB assessment of the CLSB's regulatory performance                      | LSB website <a href="#">here</a>               |
| 8.2         | Consultation on proposed rules for applications to alter regulatory arrangements | LSB website <a href="#">here</a>               |

DRAFT



# Annual priorities

## Improving our regulatory arrangements

|    | Initiative   | Progress status / expected completion  |
|----|--|--|
| 1. | Work with ACL Training to consider whether improvements are required to the Training Rules, informed by learnings from the first year of the refreshed Costs Lawyer Qualification.   | <p><b>In train (expected – Q4)</b></p> <p><i>Achieved: The consultation on the new competency statement has been launched and will close just prior to this board meeting, which will provide evidence to underpin changes to our Training Rules. Work on a new regulatory structure for the qualification is underway, in close consultation with stakeholders.</i></p> <p><i>Outstanding: Translation of the competency statement into the assessment framework and learning outcomes will be a priority for Q4 and into 2022. Consultation on proposed changes will happen in the new year.</i></p> |
| 2. | Update the Guidance Notes in the Costs Lawyer Handbook that were not subject to review following the 2019 Handbook Audit.  | <p><b>Achieved (Q3)</b></p> <p><i>Three updated guidance notes were approved by the board in April and another was approved between meetings in Q2. Proposed amendments to the guidance notes on Executing Legal Documents and Vulnerable Consumers will be put to the board at this meeting, implementation of which will complete this priority.</i></p>   |
| 3. | Develop new guidance that draws together themes identified across various aspects of our work, such as: <ul style="list-style-type: none"> <li>• guidance for unregulated employers of Costs Lawyers;</li> <li>• guidance on closing down a practice.</li> </ul>     | <p><b>Achieved (Q2)</b></p> <p><i>Themes for the guidance were developed in Q1. Both guidance notes have now been drafted and will be put to the board for consideration at this meeting.</i></p>  |
| 4. | Carry out an initial evaluation of our revised approach to Continuing Professional Development (CPD) – informed by feedback and enquiries from the profession and other stakeholders – and produce targeted additional support materials where a need is identified. | <p><b>Achieved (Q1)</b></p> <p><i>We captured learnings from the launch of our new CPD regime by tracking email enquiries, feedback and questions raised at our Virtual Q&amp;A session held in February. Those learnings allowed us to supplement our CPD supporting materials (particularly our website FAQs) and informed our approach to developing the new supervision framework for the regime (priority 8). The next touchpoints for further evaluation will be</i></p>   |

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|    |  | <i>during PC renewals in November and then during the first audit in 2022, which may lead to additional improvements next year.</i>   |
| 5. | Review the regime for accrediting Costs Lawyers to provide CPD training, to assess whether the accreditation criteria and the approach to implementation remain fit for purpose.     | <p><b>Achieved (Q2)</b></p> <p><i>We have implemented new Accredited Costs Lawyer Rules, reviewed the accreditation criteria and updated the information we seek from applicants (both when they first apply for accreditation and upon renewal). We have developed a new supervision framework for the scheme, as an adjunct to our planned supervision project (priority 8). New webforms implementing the changes to the application process went live in Q2. We sought feedback from those Costs Lawyers choosing not to renew their accreditation this year and the follow-up work from that exercise has been completed. We will make routine improvements to the regime on an ongoing basis.</i></p>   |
| 6. | Consider our diversity and inclusion initiatives against the Legal Services Board’s characteristics of a well-performing regulator to identify and address any gaps in our approach. | <p><b>Near completion (expected – Q4)</b></p> <p><i>Achieved: We launched a new diversity survey alongside the 2021 PC renewal application. We have analysed and published data from that survey, including in a <a href="#">comparative report</a>, and have made further improvements to align our data with the sector’s. We have stepped up engagement with the regulators’ EDI forum and liaison with the LSB and SRA on diversity. We have also compiled a set of actions aimed at further improving our data and exploring particular characteristics. We have assessed the merits of different regulatory interventions aimed at promoting EDI and a paper on this was considered by the board in July. We have conducted an outreach project with the profession to understand how they feel about the collection of diversity data, to identify the collection method most likely to improve survey response rates, and have built a targeted survey on the pay gap between men and women for 2021.</i></p> <p><i>Outstanding: Work to take forward the set of actions for improving our data is underway. Wider sector engagement will continue throughout the year.</i></p> |

## Protecting the interests of consumers and promoting professional standards

|    | Initiative  | Progress status   |
|----|---|---|
| 7. | Deliver the first year of priority activities in our Consumer Engagement Strategy   | <p><b>Achieved (Q2)</b></p> <p><i>We delivered a number of initiatives under the first year of the strategy, such as improving our web content, securing improvements to the costs questions in the LSCP tracker survey, and reviewing our regulatory return questions relating to client profiles. We have refreshed our client survey and have asked Costs Lawyers who reported having lay clients to send the survey directly to those clients. We have carried out a research project with Community Research and Panelbase. Our new <a href="#">policy statement on good consumer outcomes</a> has been developed and published. A paper on recommendations for year 2 of the strategy will be put to the board for consideration at this meeting.</i></p> |
| 8. | <p>Develop our approach to supervision by:</p> <ul style="list-style-type: none"> <li>• planning and documenting an updated CPD audit programme under the new CPD Rules;</li> <li>• implementing a structured audit of complaint procedures;</li> <li>• formalising our “point of complaint” targeted supervision activities, drawing evidence from our new database;</li> <li>• updating our Supervision Policy to capture the above.</li> </ul> | <p><b>Achieved (Q3)</b></p> <p><i>We have developed new supervision frameworks, using a consistent approach and format, for supervising compliance with the Accredited Costs Lawyer Rules, our guidance on complaints procedures, and the CPD Rules. These were approved by the board in April and are now operational. An audit of complaints procedures was carried out under the framework in Q2. A framework for point-of-complaint supervision and a new Supervision Policy describing our approach will be put to the board at this meeting and implemented thereafter, completing this priority.</i></p>   |
| 9. | <p>Take an in-depth look at three key areas in which we have identified risks of poor consumer outcomes, namely:</p> <ul style="list-style-type: none"> <li>• under-insurance;</li> <li>• handling of client money; and</li> <li>• communication of complaint procedures,</li> </ul>  | <p><b>Near completion (expected – Q4)</b></p> <p><i>Achieved: We have completed our review in relation to Costs Lawyers handling client money and updated our guidance note accordingly, with the decision-making process being recorded in a published board decision note. We have looked at how complaints procedures are developed and communicated through the lens of our new audit framework and reported back to the board in July. We have built a webpage communicating</i></p>   |

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|     | <p>in order to:</p> <ul style="list-style-type: none"> <li>improve our understanding of the risk profile across the profession in each area, making use of our new audit and data capture processes;</li> <li>ensure we accurately record these risks, for transparency and monitoring purposes;</li> <li>assess whether our current regulatory arrangements in these areas appropriately mitigate the risks, informed by evidence from consumer complaints;</li> <li>consider whether there are more proportionate, targeted or innovative ways to address the risks, particularly in the context of market developments and technological change.</li> </ul> | <p><i>learnings from that audit to mitigate risk throughout the broader regulated community.</i></p> <p><i>Outstanding: Work on under-insurance has commenced and will be completed during Q4.</i></p>  |
| 10. | Consider how we can improve consumer information in relation to the regulatory status of the organisations in which Costs Lawyers practise.  | <p><b>Pending (expected – Q4)</b></p> <p><i>Work on this priority is scheduled for Q4.</i></p>  |
| 11. | Test the efficacy of the new interim suspension order (ISO) powers in our Disciplinary Rules and Procedures, based on our early experience of disciplinary proceedings in which the imposition of an ISO was considered.   | <p><b>Pending (expected – Q4)</b></p> <p><i>No opportunities have yet arisen to test the ISO power in practice. We will wait for a suitable case to present itself during the year, but this is of course a contingent piece of work.</i></p> |

## Modernising our organisation

|     | Initiative   | Progress status  |
|-----|--|--|
| 12. | Measure the success of the electronic practising certificate renewal process implemented in 2020 against five key metrics (cost; resource implications; user feedback; data security; and data | <p><b>Achieved (Q1)</b></p> <p><i>We carried out a comprehensive review of the new electronic PC renewal process against the five metrics. A report was considered by the board in January. A number of improvements to the PC application form and database have been identified through that process</i></p> |

|     |  |  |
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|     | quality) and identify any adjustments needed for the 2021 renewal period.  | <i>and a workplan has been put in place to deliver those improvements before PC renewals begin again in November.</i>  |
| 13. | <p>Deliver the second phase of our digital workplan, including:</p> <ul style="list-style-type: none"> <li>• reviewing how we use IT for financial management;</li> <li>• creating e-forms for processes other than annual practising certificate renewals;</li> <li>• building add-on functionality for the Costs Lawyer database, informed by learnings from the 2020 practising certificate renewal process.</li> </ul> | <p><b>Achieved (Q3)</b></p> <p><i>The first version of our new financial management system has been built and is being used for financial recording and reporting. Development of the new online application forms was carried out in Q2; all our application forms are now available as updated e-forms via the website. A new client survey e-form has been successfully launched. A major upgrade of the Costs Lawyer database, with enhancements informed by learnings from the 2020 PC renewal process, has been completed and fully tested. Bug-fixes and further changes to reflect improvements to the annual PC renewals process will continue on an ongoing basis.</i></p>   |
| 14. | <p>Review our governance arrangements, including our suite of governance documents, to ensure they provide a robust framework for oversight and accountability and continue to meet the standards of the Corporate Governance Code 2018.</p>   | <p><b>In train (expected – Q4)</b></p> <p><i>Achieved: Work on this priority began in Q3 with the governance strategy session at the July board meeting. Research and review have commenced with a view to developing a consolidated governance manual. The agreed actions arising out of the LSB’s review of the BSB’s governance arrangements are being implemented and tracked. We have appointed an independent consultancy to ensure the outcome of the review reflects current best practice.</i></p> <p><i>Outstanding: Final recommendations from the review will be brought to the board at year end. All actions from the BSB report will be implemented either as part of those recommendations or on a standalone basis during Q4. The LSB reported on its review of the Faculty Office’s governance arrangements in Q3 and learnings from that report also need to be taken into account.</i></p> |
| 15. | <p>Revisit the effectiveness of our new operating structure to identify whether and where further improvements can be made.</p>  | <p><b>In train (expected – Q4)</b></p> <p><i>Achieved: Ongoing review of the effectiveness of our operating structure led to the recruitment of additional policy and education resource in 2021. Our Business Continuity and Disaster Recovery Plan was reviewed in February 2021 to take account of the changes.</i></p>   |



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|  |  | <i>Outstanding: The constitution and remit of the board will be considered as part of the governance review (priority 14).</i> |
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## **Approval of 2022 Practising Certificate Fee (PCF) application made by the Costs Lawyer 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 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 practising fee – PCF – is 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 and rule 8 of the Practising Fee Rules 2021 (Rules)<sup>1</sup>.
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. The Association of Costs Lawyers (ACL) is an approved regulator, and the CLSB is the regulatory body to which the ACL has delegated its regulatory functions.
4. In making an application, an approved regulator must comply with the provisions of the Rules. The Rules provide a framework for the practising fee application and approval process. The Rules specify the permitted purposes that the practising fee may be applied to, the criteria and material the LSB will consider before deciding to grant an approved regulator's application in whole or part, the information approved regulators are required to submit and the application process and procedure. An approved regulator must also have regard to the LSB's Guidance on the Practising Fee Rules 2021 (Guidance)<sup>2</sup> which gives guidance on each of the Rules.
5. This notice sets out the decision taken, including an assessment of the PCF application.

### **Summary and overview of PCF application and decision**

6. The application submitted by the CLSB proposes that the PCF charged to individuals in 2022 be increased by £6 to £281 from £275. This is an increase of approximately 2% over the previous year.
7. The CLSB projects total PCF income for 2022 of £191,020, based on the assumption of 670 individuals paying a PCF. This is a slight reduction from the 675 who paid a

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<sup>1</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/02/PCF-Final-Rules-2021-Accessible.pdf>

<sup>2</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/01/PCF-Final-Guidance-for-publication-accessible.pdf>

PCF this past year. CLSB has explained its approach to its estimate at Paragraph 16 of the application and we are satisfied with its reasoning.

8. We are satisfied that the CLSB's activities for 2022 which will be funded by the PCF fall within the permitted purposes, in compliance with section 51(2) of the Act.
9. Further, the application enables the LSB to be confident that the CLSB has carefully and properly planned its financial position for the forthcoming year. The CLSB has also updated its reserves policy and we are satisfied it complies with the requirements of the Rules.
10. The CLSB has provided us with a level of detail that demonstrates transparency and accountability for its regulatory activities and the allocation of its resources. We note that the CLSB's consultation on the proposed PCF included detailed information on its planned regulatory activities and how it will assess the benefits of activities. It has also set out the benefits to its regulated community associated with the PCF paid for 2020. The consultation enabled more meaningful engagement as it attracted 21 responses, an increase from 17 last year.
11. The application considers the estimated impact of the proposed PCF on persons with protected characteristics under the Equality Act 2010 and the impact of Covid-19 on authorised persons and firms' income for 2022. It concludes that, on the evidence held, there is no indication that the proposed level of PCF will adversely impact persons with protected characteristics other than in the areas of pregnancy and maternity and gender. In those areas CLSB has policies in place to mitigate any impact. In addition, the evidence held indicates there is no adverse impact because of Covid-19.
12. The LSB's decision is to approve in full the levels of the PCF for 2022 to be charged to individuals as set out in the application.

## **LSB assessment**

### Allocation of practising fee to permitted purposes

13. The CLSB's programme of activity is linked to its mid-term organisational strategy for 2020-23<sup>3</sup> and its 2022 Business Plan<sup>4</sup> which adopted the strategic objectives identified in the mid-term strategy. All PCF income will be used for permitted purposes that are regulatory functions, with the majority for the regulation, accreditation, education and training activities. The CLSB has also set out the level of funding required to deliver its programme of activity.
14. The CLSB intends to distribute the cost of the level of PCF funding required using a proposed fee structure consistent with previous years, with the entire fee to be collected from individuals on a flat fee basis.
15. The CLSB has explained how it assessed the expected benefits of these activities at the point that the programme of activity was determined and how it will assess the

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<sup>3</sup> <https://clsb.info/download/mid-term-strategy/?wpdmdl=1060&refresh=6125e4272fc321629873191>

<sup>4</sup> <https://clsb.info/download/annex-a-proposed-2022-business-plan/?wpdmdl=26422&refresh=6140b41b6d5831631630363>

actual benefits after the activity has been completed. This can be found at pages 6 to 11 of its application which sets out the expected benefits of its activities and the relevant regulatory objectives.

16. We are satisfied that the CLSB has complied with the two guiding principles in setting the PCF, that is, that the PCF must be allocated solely for permitted purposes set out in section 51 of the Act and rule 8 of the Rules, and that it will discharge its regulatory functions in a way that is compatible with the regulatory objectives set out in section 28 of the Act. We are also satisfied that the CLSB has set out how it has measured the expected benefits of these regulatory activities at the point at which the activities were determined and how it will assess the actual benefits after the activities have been completed.
17. We consider the summary of activity funded by the 2020 practising fee (Annex 3 to the application) provides transparency concerning the work undertaken last year including expected benefits measured against the actual benefits achieved. We commend the CLSB for assessing the benefits of the activities which it conducted in 2020.

#### Budget for 2022 and financial information

18. The CLSB has provided its draft budget and the income and expenditure for the previous year. Paragraph 16 of the application notes that the 2022 draft budget takes the following into consideration:
  - fixed CLSB expenditure and variable core expenditure
  - inflation linked to CPI forecasts for the year
  - costed priorities in the CLSB's 2022 Business Plan
  - estimated number of PCF renewals
  - contingency funding for unpredictable expenditure such as any enforcement functions
  - transfer to reserves
19. We note that CLSB has been successful in obtaining funding from the Regulator's Pioneer Fund for a research project considering how Costs Lawyers may be able to reduce the costs of legal services. This means the project will be 100% funded by the grant and will be offset by expenditure. The application mentioned this project but we note that income and expenditure relating to this work is understandably not represented on the budget supplied and we accept that the overall impact will not affect the proposed deficit.
20. We are satisfied that the application provides transparency to the regulated community about the allocation of the CLSB's resources (including PCF income) and enables the LSB to be confident that the CLSB has carefully and properly planned its financial position for the forthcoming year.

#### Reserves and financial resilience

21. The CLSB updated its reserves policy earlier this year. Changes included:
  - the target level of uncommitted reserves was reduced from 12 months to 6 months' operating expenditure. This change followed CLSB's consideration of

the policy and likely cost associated with scenarios that would carry financial risk.

- a reduction in the yearly contribution to reserves from £10,000 to £5,000.
22. The application confirms that uncommitted reserves held are £110,000 which meets the target of 6 months' operating expenditure in the Guidance. Committed reserves at the time of application are £5,545 with a target of £30,000 to be met through annual £5,000 contributions to reserves which are budgeted for. Committed reserves will be used for future IT development projects.
23. The reserves policy (provided at annex 6 to the application) clearly articulates the risks mitigated through the reserves and confirms that the policy will be considered on an annual basis.

### Consultation and engagement

24. The CLSB consulted on its proposed PCF, seeking comment on the fee, proposed programme of activity for 2022, the benefits of regulation and any equality impact associated with the level of PCF. earlier this year.
25. The consultation included information on CLSB's proposed Business Plan, benefits from last year's activities funded by the PCF, the proposed budget, accounts and an initial equality impact assessment.
26. There were 21 respondents to the consultation, with the majority of respondents supporting the proposed level of PCF. The CLSB did not get significant engagement on its proposed business plan. It may wish to consider alternative routes to obtaining input from the profession beyond its consultation document.
27. The LSB welcomes the CLBS's transparency and accountability on its activities in its engagement with its regulated community. This all serves to promote a meaningful discussion regarding the costs, benefits and value of regulation. Further, we note that the application also provides transparency on the consultation responses received and how these have been considered.

### Impact assessments

#### *Equality Impact assessment*

28. The application included a summary of the CLSB's initial Equality Impact Assessment ("EIA") on the impact of the level of the proposed PCF on legal services carried out by authorised persons, in particular those with protected characteristics. Under the EIA the CLSB identified potential adverse impacts related to maternity and sex but had clear mitigating action through the CLSB's fee remissions policy.
29. The CLSB's PCF consultation included a copy of the EIA and invited comments on whether respondents would be adversely impacted by the level of PCF. There were no responses that indicated any groups of practitioners would be disproportionately impacted.
30. We consider that the application provides meaningful consideration of equality issues, which are particularly relevant to the regulatory objective of encouraging an

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independent, strong, diverse and effective profession. We are content that a full EIA was not required for the proposed minor increase in PCF.

*Wider impact assessment*

31. The CLSB states it had been mindful of the impact of Covid-19 over the last 18 months when considering the impact on of the proposed PCF on the provision of legal services by authorised persons. Its latest coronavirus impact survey shows impact had in fact been less than anticipated.
32. The CLSB states it engaged with the Legal Aid Group in assessing the impact of the PCF, as adverse impact from Covid-19 on legal aid practitioners has been more significant than elsewhere in the sector. Despite this, the CLSB has not seen evidence that the level of PCF is causing a significant impact to legal aid practitioners.
33. We note the CLSB has given appropriate consideration to the impact of the level of the PCF on the conduct of legal services by their regulated community in setting the PCF for 2022.

**Decision**

34. The LSB has approved the PCF application submitted by the CLSB for 2022 under section 51 of the Act.

**Summary of expectations for next application**

- CLSB to consider alternative routes to obtaining input from the profession beyond its consultation document and to seek to further increase engagement.

**Matthew Hill, Chief Executive**

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

**11 October 2021**

## COSTS LAWYER STANDARDS BOARD LTD

### RISK REGISTERS

As at 21 July 2021

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

|        |   |             |              |              |              |
|--------|---|-------------|--------------|--------------|--------------|
| IMPACT | 5 | 5<br>YELLOW | 10<br>YELLOW | 15<br>RED    | 20<br>RED    |
|        | 4 | 4<br>GREEN  | 8<br>YELLOW  | 12<br>YELLOW | 16<br>RED    |
|        | 3 | 3<br>GREEN  | 6<br>YELLOW  | 9<br>YELLOW  | 12<br>YELLOW |
|        | 2 | 2<br>GREEN  | 4<br>GREEN   | 6<br>YELLOW  | 8<br>YELLOW  |
|        | 1 | 1<br>GREEN  | 2<br>GREEN   | 3<br>GREEN   | 4<br>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><br>6/4/2011 | <b>Reference:</b><br>OP1   | <b>Risk score: I(5) x P(4) = 20</b> |
| <b>Risk to operation</b>            | <b>Changes to the profession impact CLSB viability as more leave than enter the profession</b>   |                                     |
| <b>Nature</b>                       | Financial, operational continuity  |                                     |
| <b>Evidence of risk</b>             | <ul style="list-style-type: none"> <li>• Increase in fixed costs (from April 2019): MoJ announcement of implementation of fixed costs on cases up to £100k.</li> <li>• Coronavirus (from May 2020 and April 2021): Results of our first coronavirus impact survey suggested a significant minority of Costs Lawyers were concerned about their ability to carry on practising, while the outlook from our second survey was more optimistic, other than for legal aid practitioners.</li> <li>• Whiplash reforms (from January 2021): could reduce work in low value PI claims, but may also increase complexity of instructions.</li> <li>• Link to OP3 in terms of numbers entering the profession.</li> <li>• Actual net attrition of 12 practitioners over 2020.</li> </ul>  |                                     |
| <b>Controls</b>                     | <ul style="list-style-type: none"> <li>• Monitor impact on the profession via impact assessment surveys, including coronavirus impact surveys in Q2 2020 and Q1 2021.</li> <li>• Respond to proposals/consultations to help stakeholders understand the Costs Lawyer market and ensure policy developments are in the public interest.</li> <li>• Implement regulatory arrangements that support safe innovation and diversification, to promote ongoing competition and choice.</li> <li>• Pursue recommendations in the Mayson report for expansion of costs regulation.</li> <li>• Mitigate risks around route to entry – see OP3.</li> <li>• Review of historic termination and reinstatement data carried out in 2020 and new processes put in place for communicating with potential returners.</li> <li>• Retain six months' operating budget as reserves.</li> </ul> |                                     |
| <b>Control adequacy</b>             | 4  |                                     |
| <b>Priority area of risk</b>        | High   |                                     |
| <b>Actions/status</b>               | Monitor reasons for leaving the profession at PC renewal and respond to new factors. Impact of coronavirus on regulated numbers being kept under close review.   |                                     |

|                                      |  |                                     |
|--------------------------------------|--|-------------------------------------|
| <b>Logged by board:</b><br>13/1/2015 | <b>Reference:</b><br>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. Duplication of staffing costs in the event of a long term absence could have a disproportionate impact given the number of staff.   |                                     |
| <b>Controls</b>                      | <ul style="list-style-type: none"> <li>• Increase in policy support resource from February 2021.</li> <li>• Updated Business Continuity and Disaster Recovery Plan adopted in July 2020 following restructure and reflecting changes for coronavirus.</li> <li>• Reassessment of continuity risks in light of coronavirus (including retaining core functions in the absence of a key staff member).</li> <li>• Move to a paperless organisation, including via electronic processes and cloud storage.</li> <li>• Minimisation and logging of paper archives, with joint access.</li> <li>• Joint signatories to bank account.</li> <li>• Retain six months' operating budget as reserves.</li> </ul> |                                     |
| <b>Control adequacy</b>              | 3  |                                     |
| <b>Priority area of risk</b>         | High   |                                     |
| <b>Actions/status</b>                | <ul style="list-style-type: none"> <li>• Rehousing or safe destruction of paper archives over coming years.</li> <li>• Knowledge transfer of all systems, processes, data and knowhow between staff and into internal policies and manuals.</li> </ul>   |                                     |

|                                      |  |                                     |
|--------------------------------------|--|-------------------------------------|
| <b>Logged by board:</b><br>25/7/2017 | <b>Reference:</b><br>OP3   | <b>Risk score: I(5) x P(3) = 15</b> |
| <b>Risk to operation</b>             | <b>There are insufficient numbers of newly qualified Costs Lawyers such that regulated numbers fall to an unsustainable level</b>  |                                     |
| <b>Nature</b>                        | Reputational, financial, operational continuity  |                                     |
| <b>Evidence of risk</b>              | <p>There is only one means of entry into the profession and one provider (ACLT).</p> <ul style="list-style-type: none"> <li>• In 2017, due to financial concerns, the CLSB authorised ACLT's course to the end of 2020 for current trainees only (i.e. a suspension on new intakes). The course reopened to new students in January 2020 and ACL did not confirm a 2021 intake until December 2020.</li> <li>• In 2017, CLSB considered applying to the government apprenticeship scheme, but concluded this was not an option.</li> </ul> |                                     |

|                              |   |
|------------------------------|---|
|                              | <ul style="list-style-type: none"> <li>• In early 2019, CLSB applied to the LSB for approval of an alternative qualification that would remove historical barriers to entry, but following feedback the application was ultimately withdrawn.</li> <li>• Coronavirus may impact the number of new qualifiers, due to assessment delays and reduced employer funding.</li> </ul>   |
| <b>Controls</b>              | <ul style="list-style-type: none"> <li>• Flagship project launched in 2021 to create a new competency framework, providing a basis upon which to modernise regulatory requirements for the qualification.</li> <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>• Retain six months' operating budget as reserves.</li> </ul> |
| <b>Control adequacy</b>      | 4   |
| <b>Priority area of risk</b> | High  |
| <b>Actions/status</b>        | <ul style="list-style-type: none"> <li>• Ongoing course audit.</li> <li>• Delivery competency framework project and consequential rule changes.</li> </ul>  |
| <b>Commentary</b>            | Establishing a stable, modern, flexible qualification is the CLSB's highest priority for the short and medium term.   |

|                                     |   |                                     |
|-------------------------------------|---|-------------------------------------|
| <b>Logged by board:</b><br>24/10/17 | <b>Reference:</b><br>OP4  | <b>Risk score: I(5) x P(3) = 15</b> |
| <b>Risk to operation</b>            | <b>ACL, named in the Legal Services Act 2007 as approved regulator (role undertaken by CLSB under delegation), becomes insolvent</b>  |                                     |
| <b>Nature</b>                       | Regulatory, operational continuity, reputational (for CLSB and the profession)  |                                     |
| <b>Evidence of risk</b>             | <ul style="list-style-type: none"> <li>• Coronavirus may impact regulated numbers or Costs Lawyers' ability to pay membership fees.</li> <li>• Lack of communicated value proposition for membership over the medium and longer term.</li> <li>• Inherent risk for any regulatory body acting under the delegated authority of its parent company.</li> </ul> |                                     |
| <b>Controls</b>                     | <ul style="list-style-type: none"> <li>• Open dialogue with ACL to give us early warning of financial issues.</li> <li>• Ongoing engagement with the LSB's contingency planning initiative.</li> <li>• Retain six months' operating budget as reserves.</li> </ul>  |                                     |
| <b>Control adequacy</b>             | 3   |                                     |
| <b>Priority area of risk</b>        | Low   |                                     |
| <b>Actions/status</b>               | Financial instability in 2017-2018 appears to have subsided.  |                                     |

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

|                                    |  |                                     |
|------------------------------------|--|-------------------------------------|
| <b>Logged by board:</b><br>23/1/19 | <b>Reference:</b><br>OP6   | <b>Risk score: I(4) x P(4) = 16</b> |
| <b>Risk to operation</b>           | <b>Breakdown in communications between any of ACL, ACL Training and the CLSB</b>   |                                     |
| <b>Nature</b>                      | Operational continuity, reputational   |                                     |
| <b>Evidence of risk</b>            | <ul style="list-style-type: none"> <li>• Previous difficulties in securing ACL/ACLT engagement with CLSB, due to lack of resource or appetite.</li> <li>• Governance and oversight complications as between ACL and ACLT in relation to the Costs Lawyer Qualification.</li> <li>• Highly strained relations between ACL and ACLT in early 2021.</li> <li>• A breakdown of any of the bilateral relationships could adversely impact the qualification and the CLSB.</li> </ul>  |                                     |
| <b>Controls</b>                    | <ul style="list-style-type: none"> <li>• Nurture a constructive relationship with new ACL Chair.</li> <li>• Contingency planning for operational areas that require ACL input.</li> <li>• New MOU and OP agreed with ACL in 2020.</li> <li>• Work with the LSB to help ACL engage with its regulatory obligations as a designated body under the new IGRs.</li> <li>• Extend engagement beyond ACL Chair to foster understanding within the Committee as a whole.</li> <li>• Work within the parameters of the new Protocol agreed with ACLT.</li> </ul> |                                     |
| <b>Control adequacy</b>            | 4  |                                     |
| <b>Priority area of risk</b>       | Medium   |                                     |
| <b>Actions/status</b>              |  |                                     |

|                                    |   |                                     |
|------------------------------------|---|-------------------------------------|
| <b>Logged by board:</b><br>21/4/21 | <b>Reference:</b><br>OP7  | <b>Risk score: I(5) x P(2) = 10</b> |
| <b>Risk to operation</b>           | <b>A significant, unexpected fall in practising fee income</b>  |                                     |
| <b>Nature</b>                      | Operational continuity  |                                     |
| <b>Evidence of risk</b>            | <ul style="list-style-type: none"> <li>The ability to collect practising fees is subject to LSB approval, which may be withheld for various reasons as outlined in the LSB's Practising Fee Rules.</li> <li>The coronavirus pandemic reminds us of the potential for an economic crisis to occur without warning, affecting practitioners' ability to pay.</li> </ul> |                                     |
| <b>Controls</b>                    | <ul style="list-style-type: none"> <li>Early engagement with the LSB on practising fee applications and budget setting.</li> <li>Retain six months' operating budget as reserves.</li> </ul>  |                                     |
| <b>Control adequacy</b>            | 4   |                                     |
| <b>Priority area of risk</b>       | Medium  |                                     |
| <b>Actions/status</b>              |   |                                     |

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

### 3. REGULATORY RISK REGISTER

|  |   |                                   |
|--|---|-----------------------------------|
| <b>Logged by board:</b><br><b>23/01/2020</b> | <b>Reference: R1</b>  | <b>Risk score I(4) x P(1) = 4</b> |
| <b>Risk</b>                                  | <b>The professional standards set by the CLSB do not achieve positive consumer outcomes or, where poor consumer outcomes cannot be prevented, the CLSB is unable to take action</b>   |                                   |
| <b>Risk to objectives</b>                    | Regulatory objective: Protecting and promoting the public interest.<br>Regulatory objective: Protecting and promoting the interests of consumers.<br>Professional principle: Proper standards of work.<br>Professional principle: To act in the best interest of the client.  |                                   |
| <b>Evidence of risk</b>                      | There is limited evidence of actual risk, although there are theoretical risks that must be controlled, for example: <ul style="list-style-type: none"> <li>• Risk of complaints processes not being properly communicated: While the very low level of complaints about Costs Lawyers to the CLSB or LeO could suggest that either few complaints arise at first-tier or those that are raised are handled well, this may also suggest that consumers are unaware of how to complain to their Costs Lawyer.</li> <li>• Risk of under-insurance: Costs Lawyers are free to select an insurance provider from the open market, as this promotes competition and keeps fees at a sustainable level, but this may carry a risk of a Costs Lawyer not purchasing the right type of cover.</li> <li>• Risks from lack of supervision: The shift to remote working during 2020 could have long-term consequences for proper supervision and training of junior Costs Lawyers. As we do not regulate entities, we cannot address this at firm/system level.</li> </ul> |                                   |
| <b>Controls</b>                              | <ul style="list-style-type: none"> <li>• New Practising Rules, CPD Rules and Disciplinary Rules and Procedures implemented in 2020, including to increase the deterrent effect of financial penalties.</li> <li>• Guidance subject to systematic review from 2019, with all Handbook content due to have been reviewed by the end of 2021.</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 self-reporting.</li> <li>• 2021 Business Plan includes priority projects in relation to: (i) three key risk areas; (ii) approach to supervision; (iii) developing guidance for</li> </ul>  |                                   |

|                              |  |
|------------------------------|--|
|                              | employers of Costs Lawyers, which will cover emerging risks from remote working. |
| <b>Control adequacy</b>      | 4  |
| <b>Priority area of risk</b> | Low – no evidence of risk having materialised to date                            |
| <b>Actions/status</b>        | 2021 Business Plan priorities to be completed by the end of the year.            |

|  |   |                                     |
|--|---|-------------------------------------|
| <b>Logged by board:<br/>31/10/2011</b> | <b>Reference: R2</b>  | <b>Risk score: I(5) x P(2) = 10</b> |
| <b>Risk</b>                            | <b>Costs Lawyer (not working for SRA regulated firm) accepting client monies</b>  |                                     |
| <b>Risk to objectives</b>              | Regulatory objective: Protecting and promoting the public interest<br>Professional principle: To act with integrity<br>Professional principle: To act in the best interests of the client   |                                     |
| <b>Evidence of risks</b>               | <ul style="list-style-type: none"> <li>• As Costs Lawyers are not permitted to handle client monies, they will not have systems in place to ensure proper handling in the event they do inadvertently or deliberately accept monies in breach of our rules.</li> <li>• No evidence from client survey or complaints that a Costs Lawyer has handled client monies. However a complaint in Q1 2020 suggested there is scope for poor client outcomes even where a Costs Lawyer does not handle client money directly.</li> <li>• Pending whiplash reforms could increase the prevalence of direct instructions – including complex instructions – from lay clients with a likely increase in the desire for funds on account.</li> </ul> |                                     |
| <b>Controls</b>                        | <ul style="list-style-type: none"> <li>• Covered under Principle 3.6 of Code of Conduct. Associated guidance updated in 2020 following a targeted review, including to promote the use of TPMAs to safely deal with client monies.</li> <li>• Client survey asks: “Did you send any monies to your Costs Lawyer other than in payment of an invoice?”</li> <li>• Information sharing arrangement with LeO in relation to complaints involving client monies that fall within CLSB jurisdiction.</li> </ul>  |                                     |
| <b>Control adequacy</b>                | 4   |                                     |
| <b>Priority area of risk</b>           | Medium  |                                     |
| <b>Actions/status</b>                  |   |                                     |

|                                       |  |                                    |
|---------------------------------------|--|------------------------------------|
| <b>Logged by board:</b><br>24/07/2019 | <b>Reference: R4</b>   | <b>Risk score: I(4) x P(2) = 8</b> |
| <b>Risk</b>                           | <b>CLSB cannot generate sufficient evidence about the consumer dimension of the Costs Lawyer market, resulting in regulatory arrangements that are misaligned to consumer need</b>   |                                    |
| <b>Risk to objectives</b>             | Regulatory objective: Protecting and promoting the public interest.<br>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.<br>It is intended that the Legal Choices project will provide additional data and insights into the way consumers interact with the market, although there have been threats to the success of that project including withdrawal of the Bar Standards Board.  |                                    |
| <b>Controls</b>                       | <ul style="list-style-type: none"> <li>• Consumer Engagement Strategy covering the period of our mid-term organisational strategy (2020 – 2023), establishing workstreams for building consumer-related evidence base.</li> <li>• Consumer outcomes framework developed in 2021 to inform strategy and overall approach to regulatory interventions.</li> <li>• Research projects launched in 2021 to directly target individual clients.</li> <li>• Data sharing arrangements with LeO in relation to complaints about Costs Lawyers.</li> <li>• Participation in the Legal Choices Governance Board, which oversees the project's risk register, to identify early warning signs that the project will not deliver as expected.</li> </ul> |                                    |
| <b>Control adequacy</b>               | 4 – a forward plan is in place, as set out in the Strategy, but work will be ongoing for some time   |                                    |
| <b>Priority area of risk</b>          | Medium, so long as we remain on target to deliver Strategy   |                                    |
| <b>Actions/status</b>                 | Implement Consumer Engagement Strategy.  |                                    |

|                                       |  |                                     |
|---------------------------------------|--|-------------------------------------|
| <b>Logged by board:</b><br>20/10/2020 | <b>Reference: R5</b>   | <b>Risk score: I(4) x P(3) = 12</b> |
| <b>Risk</b>                           | <b>CLSB cannot promote all aspects of diversity within the profession given the small size of the regulated community and trainee population</b> |                                     |
| <b>Risk to objectives</b>             | Regulatory objective: Encouraging an independent, strong, diverse and effective legal profession.  |                                     |

|                              |   |
|------------------------------|---|
| <b>Evidence of risk</b>      | <ul style="list-style-type: none"> <li>• There is only one route of entry into the profession and, in some years, there may be no new students accepted through that route (linked to OP3).</li> <li>• Statistically the size of the profession makes it more difficult to strive for a composition that is reflective of wider society.</li> <li>• The LSB has provisionally assessed existing data that we capture on the diversity of the profession as insufficient.</li> </ul> |
| <b>Controls</b>              | <ul style="list-style-type: none"> <li>• New diversity and inclusion survey developed for roll out with practising certificate applications in Q4 2020.</li> <li>• New reporting framework for the Costs Lawyer Qualification being agreed with ACL Training.</li> <li>• Targeted diversity initiatives planned for 2021.</li> <li>• Seeking opportunities to collaborate with other regulators and organisations in this area.</li> </ul>  |
| <b>Control adequacy</b>      | 2 – plans are in place but it will take time to implement and then assess these during 2021   |
| <b>Priority area of risk</b> | Medium, so long as we are able to deliver planned initiatives   |
| <b>Actions/status</b>        | Assess impact of new data capture methodology in early 2021. Delivery of controls during 2021.  |



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1. The concept of consumer vulnerability has many dimensions. It might be permanent or transitory. It might stem from a characteristic of the individual or it might stem from the circumstances a person is experiencing at a particular time.
  2. This guidance note aims to help Costs Lawyers identify vulnerability in their clients, gives examples of how to make adjustments to help, and provides a list of resources that may be useful in deciding how best to respond to the needs of a vulnerable client.

## Why does vulnerability matter?

3. The Legal Services Act 2007 defines eight regulatory objectives. These include improving access to justice, and protecting and promoting the interests of consumers of legal services.
4. Access to legal services – access for everyone – is important. This includes access to legal advice about costs. Without access, people may not be able to exercise their rights or be heard. Protecting the users of legal services, and maintaining confidence in using legal services, means the market works better for everyone.
5. Principle 6 of the [Costs Lawyer Code of Conduct](#) requires Costs Lawyers to treat everyone with dignity and respect. Taking account of the particular needs of your clients is part of what you need to do to meet this requirement.
6. You may also have relevant obligations under other legislation, for example:
  - avoiding unlawful discrimination as required by the Equality Act 2010; and
  - complying with The Mental Capacity Act 2005 by, if you think a client or potential client lacks capacity, assessing their capacity prior to taking any instructions.

## What is vulnerability?

7. Some personal circumstances, such as illness or disability, may make a person vulnerable and put them at a disadvantage when buying legal services. Distressing

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life events such as a divorce or bereavement can impact on a person's ability to make decisions, as can stress caused by worrying about money. This is likely to be particularly relevant for lawyers who specialise in costs. A low level of experience in dealing with legal issues or trouble understanding complex documents or processes may also mean people are vulnerable when buying legal services.

8. The Legal Services Consumer Panel suggests that the following individual characteristics are risk factors for vulnerability:

|                                       |                        |
|---------------------------------------|------------------------|
| Age                                   | Low income             |
| Inexperience                          | Low literacy           |
| Learning disabilities                 | Cultural barriers      |
| Physical disabilities                 | Mental health issues   |
| English or Welsh as a second language | Health problems        |
| Location                              | Being a carer          |
| Lack of internet access               | Leaving care           |
| Lone parent                           | Bereavement            |
| Loss of income                        | Relationship breakdown |
| Living alone                          | Release from prison    |

9. This is an illustrative, not an exhaustive, list. It highlights relevant characteristics and circumstances that might point to a person being vulnerable. There are other factors that could be added such as, for example, dependency on someone else for care or housing or money, sensory impairments, experiencing a form of abuse, or suffering from an addiction.
10. Not everyone with one or more of the risk factors listed above will be vulnerable, but they may be more likely to have additional needs when buying legal services. Costs Lawyers should take action to meet these needs so that their clients are able to make effective decisions and look after their own interests.
11. In addition to the individual risk factors listed in the table above, the Legal Services Consumer Panel also considers that the very nature of legal services adds additional factors that are relevant to most individuals seeking legal advice:

- 
- there is a big knowledge gap between members of the public and legal professionals;
  - people often need legal advice when they are experiencing stressful difficulties;
  - it can be hard for people to judge the quality of legal services, even after they have received them.
12. People will not often identify with a label of “vulnerable” or self-identify as vulnerable. It will therefore rarely be appropriate for you to use the label of “vulnerable” in your dealings with clients or other people. Instead, first focus on exploring and understanding the circumstances of people who come to you for advice, and then think about how you should respond to any factors that might indicate you are dealing with a vulnerable person.

## Working with vulnerable people

13. Once you are aware of risk factors, you should think about ways to make sure a client can:
- explain what they want and give you instructions;
  - understand your advice;
  - act on your advice.
14. In order to do this, you should think about how best to meet your client’s particular needs. For example, consider whether your client needs:
- help to access your services, for example to overcome difficulties around physical limitations, hearing or sight;
  - different ways to communicate with you;
  - to be in an environment suitable for them, for example free from noise or distractions or with adjusted lighting;
  - help to understand you, for example simple summaries of key points, more verbal explanations, or an advocacy service or interpreter.
15. Other things to think about include whether a person:

- 
- is able to access the internet, including your website, or deal with electronic communications;
  - needs you to be particularly flexible about appointment times, including whether remote meetings might be helpful or unhelpful;
  - has really understood your client care letter, advice and information about the cost of your services;
  - needs you to allow extra time so you can check understanding or give explanations in a different way, or allow them time to take breaks or rest;
  - needs you to find other people to help such as sign language interpreters or deaf-blind communicators;
  - needs to be able to speak to you and cannot make requests or complaints in writing.

16. The lists above do not, of course, cover all the ways you might need to take action to help someone who may be vulnerable – they are examples of the types of ways you might need to help.

## Key points

17. Key points to take away from this guidance are:
- be aware of the kinds of factors that should alert you to think about vulnerability;
  - explore your client’s circumstances and do not expect them to self-identify as vulnerable;
  - once you are aware of risk factors, take action to meet your client’s particular needs.

## More resources

[The Advocate’s Gateway](#)

[Age UK](#)

[Alzheimer's Society](#)

[Equality and Human Rights Commission – Guidance for businesses](#)

[Foundation for People with Learning Disabilities](#)

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General Medical Council – Learning disability resources

Legal Services Consumer Panel – Guidance on vulnerable consumers

Mencap

Mental Capacity Act Code of Practice

Mind

National Autistic Society

RNIB

Royal Association for Deaf People

Sense

**END**

## **GUIDANCE NOTES: VULNERABLE CONSUMERS**

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

**Effective date: 11 October 2016**

This guidance note has been issued by the Costs Lawyer Standards Board (“CLSB”) to assist Costs Lawyers authorised and regulated by the CLSB (“Costs Lawyers”) in recognising their responsibility to a vulnerable consumer and managing increased expectations. Reference herein to a consumer is reference to a client.

#### **Introduction**

Objectives set out in the Legal Services Act 2007 include improving access to justice and protecting and promoting the interests of consumers of legal services. It is important therefore that Costs Lawyers address the issue of the vulnerability or potential vulnerability of consumers to ensure that their services are accessible to all.

#### **Regulation and other prevailing legal requirements**

The Costs Lawyer code of conduct sets out the seven principles of regulation, these include:

- Principle 1. Act with integrity and professionalism.
- Principle 3: Act in the best interests of your client.
- Principle 4: Provide a good quality of work and service to each client.
- Principle 6: Treat everyone with dignity and respect.

Principle 6.3 requires a Costs Lawyer to “*make reasonable adjustments for those with a disability to ensure they are not at a disadvantage in comparison with those without a disability*”.

Under the Equality Act 2010, businesses providing services to the public have a duty to anticipate and make reasonable adjustments so that someone who is disabled is not disadvantaged. Examples of reasonable adjustments include:

- A Costs Lawyers office being accessible (door width, step free entrance) or in the alternative arrange a meeting place with appropriate access.
- Arranging for a sign language interpreter during face-to-face meetings with a client who is deaf.
- Arranging for key written documents e.g. client care letter to be made available in braille or by audio recording for those visually impaired.

Under the Mental Capacity Act 2005 (“MCA 2005”) Costs Lawyers have to question whether a prospective or current client has the required capacity to instruct them. It is necessary for a Costs Lawyer to consider what it means to act in the best interests of a client who may lack capacity. In the event a Costs Lawyer believes a client lacks capacity, they should assess their capacity prior to taking any instructions, taking into account the principles set out in

the MCA 2005. There may be a need for a client to have the safeguard of an IMCA (Independent Mental Capacity Advocate) or IMHA (Independent Mental Capacity Advocate).

The MCA 2005 provides that a person will lack capacity if they are unable to make a decision for themselves because of mental incapacity. Someone lacks the capacity to make decisions under the MCA 2005 Act if they are unable to:

- understand the information relevant to the decision;
- retain that information;
- use or weigh that information as part of the process of making the decision; or
- communicate their decision (whether by talking, using sign language or any other means).

If a Costs Lawyer believes their client lacks capacity under the MCA 2005 they may want to get an expert opinion.

### **What is a vulnerable consumer?**

A vulnerable consumer extends beyond that of a person with a disability. Consumers of legal services are often dealing with life-changing events and will feel vulnerable as a result. Some, such as litigants in person, will have limited knowledge of the legal situation they find themselves in. It is possible, and important, for a Costs Lawyer to consider and to reduce client vulnerability.

### **Categories of vulnerability**

Permanent vulnerability e.g. persons with learning difficulties.

Fluctuating vulnerability e.g. persons with mental health issues.

Short term vulnerability e.g. persons going through a bereavement.

### **Identifying a vulnerable consumer**

Circumstances in which a consumer might be vulnerable are listed below. It may not be immediately obvious and there is an onus on the Costs Lawyer to give their client adequate time to identify potential vulnerabilities and to consider how to overcome barriers to accessing advice.

- Age
- Low income
- Inexperience
- Low literacy
- Learning disabilities
- Cultural barriers
- Physical disabilities
- Mental health issues
- English as a second language
- Health problems
- Location
- Being a carer

- Lack of internet access
- Leaving care
- Lone parent
- Bereavement
- Loss of income
- Relationship breakdown
- Living alone
- Release from prison

### **Good practice by a Costs Lawyer**

Examples of good practice include:

- Ensure easy access to buildings.
- Consider the communication needs of certain vulnerable consumers; such clients may need advice which is more easily understood or might need specific methods of communication.
- Be aware that a client with a learning difficulty might find everyday tasks difficult; such as filling in forms, concentrating for long periods and remembering or explaining things. In such circumstances take simple steps such as allowing extra time for meetings, finding a quiet space to meet without noise or distractions and explaining things using clear and simple language.
- Be aware that short-term characteristics causing vulnerability could be things related to sudden changes in circumstances; examples include loss of employment or income, bereavement, relationship breakdown or caring responsibilities. These situations are often strongly linked to the legal services market. It is therefore important to help consumers overcome a sense of powerlessness and enable them to access legal services with confidence.

What a Costs Lawyer should ask themselves:

- Have you been trained to recognise and respond to the needs of vulnerable consumers?
- Have you been trained to recognise and respond when carers want to deal with a problem in place of your vulnerable consumer?
- Are websites and other consumer-facing communications accessible?
- Are standard communications which are sent to vulnerable consumers appropriate?
- Does the court need to be notified of any special needs?
- Are feedback mechanisms in place to check whether the needs of vulnerable consumers are being met?
- Is there a process for assessing how effectively the needs of vulnerable consumers are addressed?



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## Providing pro bono services

1. Pro bono work is legal work done by lawyers for free. It can include giving advice at drop-in clinics, helping a charity with a piece of legal work or representing someone in court proceedings.
2. We encourage all Costs Lawyers to allocate a portion of their professional time to providing pro bono services. This is not a regulatory obligation, but a voluntary way of using your unique and privileged position of being a lawyer to give back to the community and improve access to justice. Pro bono work can also increase job satisfaction and help you expand your networks.

## Linking up with others

3. While Costs Lawyers can provide pro bono services on their own account, it can often help to link up with other organisations that specialise in providing free advice, as they can identify the relevant needs of prospective pro bono clients and fit a Costs Lawyer's contribution into a package of services.
4. The [National Pro Bono Centre](#) (NPBC) has a list of volunteering opportunities. You can also get in touch with your local [Citizens Advice Bureau](#) or [Law Centre](#).
5. The NPBC also runs a Pro Bono Week each year. You can visit the [Pro Bono Week webpage](#) to find out about ways to get involved.

## Standard of pro bono work

6. The fact that a service is provided for free does not, of course, mean that the standard of service should differ from that which you provide to fee-paying clients.
7. The [Costs Lawyer Code of Conduct](#) will continue to apply to any work you carry out. If you are providing the work on your own account, then check to ensure it is covered by your professional indemnity insurance policy and that an appropriate

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client care letter is in place. If you are providing the work through another organisation, for example as part of a law clinic, it will usually be reasonable to rely on their insurance arrangements although you should check that it extends to cover Costs Lawyers and advice about costs.

8. The NPBC has developed a [handbook](#) with guidance for lawyers carrying out pro bono work. This includes useful advice about how to run pro bono matters and issues you should consider before you begin.
9. LawWorks, one of the leading free advice charities, has developed a [protocol for carrying out pro bono work](#) which we would encourage you to sign up to.

## Pro bono costs orders in proceedings

10. Pro bono costs orders (also called section 194 orders, after section 194 of the Legal Services Act 2007) are the same as ordinary legal costs orders but they apply where a party has received free legal representation by any lawyer in the proceedings.
11. If you are successful on behalf of your client in proceedings where you have acted on a pro bono basis, the court can order the losing party to make a payment that:
  - is based on what a paying client would receive;
  - covers any period when free representation was provided.
12. The costs are paid to the Access to Justice Foundation, a charity that distributes money to agencies and projects which give free legal advice. See the [LawWorks website](#) for further guidance.

## Legal aid and other sources of funding

13. As the LawWorks protocol states, the availability of appropriate publicly funded legal advice or representation, and opportunities for alternative funding, should always be considered before a lawyer undertakes pro bono work for an individual.

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Whilst legal aid will often not be available for the types of dispute that Costs Lawyers are involved with, alternative sources of funding could include insurance policies.

**END**

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# Supervision Framework

Point of complaint monitoring

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**DRAFT: 20 October 2021 (version 1)**

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**Costs Lawyer Standards Board**

**CLSB**  
||| ||| ||| ||| ||| ||| ||| ||| ||| |||

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## Introduction

1. This framework sets out how the CLSB supervises compliance by a Costs Lawyer with CLSB rules and regulations at the point when a complaint is received about that Costs Lawyer.
2. This framework forms part of a wider supervision programme, which involves the use of similar frameworks for other supervision activities. It should be read in conjunction with the CLSB's [Supervision Policy](#).

## Regulatory context

3. Costs Lawyers who hold a current practising certificate are required to comply with the CLSB's regulatory rules, including the Code of Conduct and Practising Rules. Those rules, along with supporting guidance, are collated in the [Costs Lawyer Handbook](#).
4. The CLSB proactively supervises compliance with certain rules – as set out in its Supervision Policy – through, for example, annual audits and checking documents submitted with practising certificate applications. The CLSB also collects general compliance data about Costs Lawyers, to allow for targeted supervision where there is an increased risk of noncompliance with the rules.
5. One indicator that there is an increased risk of noncompliance by an individual practitioner is that a complaint or allegation of unprofessional conduct has been made against that person. The CLSB deals with complaints in accordance with its [Disciplinary Rules and Procedures](#). Complaints may be instigated by a third party complainant or on the CLSB's own initiative (for example, following a routine audit).
6. Even where a complaint is not ultimately upheld, or falls outside the CLSB's jurisdiction (as established by the Disciplinary Rules and Procedures), the complaint might indicate that something has gone wrong in the provision of a service to a client or suggest that the Costs Lawyer does not have the right systems and processes in place to ensure compliance in all cases.

7. Therefore, when a complaint is received that relates to a practising Costs Lawyer, the CLSB carries out additional supervision of that practitioner. The additional supervision is aligned to the nature of the complaint and targeted at the heightened risk of non-compliance indicated by the complaint. This is referred to as “point of complaint monitoring”.
8. The aim of this type of supervision is to use our resources and data in a way that is most likely to identify and tackle instances of noncompliance, keeping the cost of regulation proportionate to the beneficial outcomes achieved.

## Approach to point of complaint monitoring

9. Upon receipt of a complaint, the CLSB will consider which of the following supervisory checks should be carried out, depending on the nature of the complaint and the risks of noncompliance that the complaint highlights.

|    | Supervisory check   | Carry out the check when a complaint indicates (for example):  |
|----|---|--|
| 1. | Compliance with any conditions on practising  | <ul style="list-style-type: none"> <li>• Failure to provide a good quality of work and service</li> </ul>  |
| 2. | Nature, prevalence and age of any disclosures                                       | <ul style="list-style-type: none"> <li>• Unethical or financially imprudent conduct</li> <li>• Lack of integrity or professionalism</li> </ul>   |
| 3. | Compliance with CPD Rules in the preceding two years                                | <ul style="list-style-type: none"> <li>• Failure to meet the expected technical standard and apply up to date knowledge</li> <li>• Client did not understand information communicated to them</li> </ul> |
| 4. | Nature, prevalence and outcomes of first tier complaints since commencing practice  | <ul style="list-style-type: none"> <li>• Client was not treated with dignity and respect</li> <li>• Client was not provided with important information upfront</li> </ul>                                |
| 5. | Nature, prevalence and outcomes of second tier complaints since commencing practice | <ul style="list-style-type: none"> <li>• Complaint was not appropriately handled at first tier</li> </ul>  |

|     |  |   |
|-----|--|---|
|     |  | <ul style="list-style-type: none"> <li>• General lack of awareness of regulatory obligations</li> </ul>   |
| 6.  | Professional indemnity insurance cover is appropriate to the Costs Lawyer's risk profile | <ul style="list-style-type: none"> <li>• Insurance cover details not provided to client</li> <li>• Insurance cover does not extend to the complaint</li> </ul>                              |
| 7.  | Compliance of complaints procedure with CLSB guidance                                    | <ul style="list-style-type: none"> <li>• Client did not understand when, how or to whom they could complain</li> </ul>  |
| 8.  | Disciplinary outcomes relating to the Costs Lawyer's organisation (where regulated)      | <ul style="list-style-type: none"> <li>• Failure to properly onboard the client</li> <li>• Improper or confusing billing</li> </ul>   |
| 9.  | Periods of unauthorised practice   | <ul style="list-style-type: none"> <li>• Costs Lawyer held themselves out as something they were not</li> <li>• Costs Lawyer was acting outside the remit of their authorisation</li> </ul> |
| 10. | Compliance with the Accredited Costs Lawyer Rules  | <ul style="list-style-type: none"> <li>• Poor quality training or supervision</li> </ul>  |

10. Where a supervisory check reveals noncompliance, suspected noncompliance or poor practice that falls short of noncompliance, the CLSB will write to the Costs Lawyer setting out the results of the point of complaint monitoring. The Costs Lawyer will be asked (as appropriate in the circumstances) to:
- provide further information about the results;
  - explain how and when they will remedy the results; and/or
  - explain why no such remedy is warranted.
11. Depending on the Costs Lawyer's response, the CLSB will pursue a supervision outcome as set out below.

## Supervision outcomes

12. The purpose of point of complaint monitoring is not to punish or single out noncompliant practitioners. Rather, the objective is to identify and remedy substandard practice before it leads to any (or any further) poor outcomes for consumers. The CLSB will support practitioners in making changes in pursuit of this objective.

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13. However, point of complaint monitoring may, in some cases, lead to an additional or related complaint being made on the CLSB's own initiative under the Disciplinary Rules and Procedures. Action is most likely to be taken under the Disciplinary Rules and Procedures where:
- a serious failure to comply with the CLSB's rules is identified (for example, a failure that involves conduct which is dishonest or discriminatory, or which renders a Costs Lawyer ineligible to hold a practising certificate);
  - the Costs Lawyer fails to remedy substandard practice within a reasonable timeframe; or
  - the Costs Lawyer otherwise fails to cooperate with the CLSB, in breach of the Code of Conduct.
14. Issues identified through point of complaint monitoring will only be taken into account in investigating and determining the complaint that triggered the monitoring where those issues are directly relevant to that complaint and constitute admissible evidence under the Disciplinary Rules and Procedures.
15. Any noncompliance identified through point of complaint monitoring will be dealt with in line with the CLSB's [policy statement on enforcement and sanctions](#).

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# Supervision Policy

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**DRAFT: 20 October 2021 (version 2)**

**Costs Lawyer Standards Board**

**CLSB**  
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## Approach to supervision

### Scope

1. This policy sets out how the CLSB supervises compliance by Costs Lawyers with the CLSB’s regulatory rules, as contained in the [Costs Lawyer Handbook](#). Those rules include the Costs Lawyer Code of Conduct, Practising Rules and CPD Rules. All Costs Lawyers who hold a current practising certificate issued by the CLSB must comply with those rules.
2. This policy does not cover how we handle complaints about individual Costs Lawyers. More information can be found on the [complaints page](#) or the [disciplinary outcomes page](#) of our website.

### Aims of supervision

3. Supervising compliance with our rules helps us to promote the regulatory objectives that are set out in the Legal Services Act 2007, especially:
  - protecting and promoting the public interest;

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- protecting and promoting the interests of consumers;
  - encouraging an independent, strong, diverse and effective legal profession;
  - promoting and maintaining adherence to the professional principles.
4. The purpose of our supervision activities is to:
- identify and respond to risks to the regulatory objectives posed by the Costs Lawyer profession as a whole, in line with our regulatory risk framework;
  - identify and respond to risks to the regulatory objectives posed by the conduct of individual Costs Lawyers;
  - promote good consumer outcomes, in line with our [commitment to focusing on good consumer outcomes](#) in all our regulatory work;
  - identify good practice and compliant ways of working, and share this knowledge amongst our regulated community;
  - disincentivise noncompliance with our regulatory rules;
  - understand the impact and effectiveness of our regulatory rules in achieving their intended purpose.
5. We aim to carry out supervision activities that are proportionate to, and directly targeted at, the above purposes. We do this in three main ways:
- through random checks and sampling to identify areas of risk;
  - through monitoring and audit activities that are designed to mitigate the risks we know about, as documented in our risk registers;
  - by collecting general compliance data to allow for targeted supervision where an increased risk of noncompliance by a particular individual is identified.
- The specific supervision activities we carry out are described further below.

## If our supervision activities indicate noncompliance

6. Our primary aim is to identify and mitigate risks before they materialise, to avoid or minimise poor outcomes for consumers. In pursuit of this objective, we will support practitioners to make changes to their conduct or ways of working rather than pursuing enforcement action insofar as appropriate. We also collate and publish learnings from our supervision activities – for example, on our website, in

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newsletters and via social media – to help all practitioners improve compliance and to promote the regulatory objectives.

7. In some cases, we might identify noncompliance that warrants investigation under our [Disciplinary Rules and Procedures](#). Action is most likely to be taken under the Disciplinary Rules and Procedures where:
  - a serious failure to comply with our rules is identified (for example, a failure that involves conduct which is dishonest or discriminatory, or which renders a Costs Lawyer ineligible to hold a practising certificate);
  - a Costs Lawyer fails to remedy substandard practice within a reasonable time;
  - a Costs Lawyer otherwise fails to cooperate with us, in breach of the Code of Conduct.
8. Further information about our approach to enforcement can be found in our [policy statement on enforcement and sanctions](#).
9. As we do not regulate entities within which Costs Lawyers work, we do not specifically supervise organisation-wide controls (such as policies or procedures put in place to minimise the risk of regulatory noncompliance). However, where a failure of organisation-wide controls has an impact on an individual’s compliance with our rules, we may offer advice and guidance to the organisation as a whole.

## Supervision activities

### Monitoring and data collection

10. We collect data from individual Costs Lawyers, which we use for the supervision purposes described in the table below. The majority of this data is collected annually when a Costs Lawyer applies for a practising certificate for the coming year. Some data will not be collected from practitioners where compliance is monitored at firm-level by another regulator. The “supervision frameworks” referred to in the table are explained further at paragraph 12 below.

|    | Information collected from all Costs Lawyers  | Supervision purpose  |
|----|---|--|
| 1. | A CPD record demonstrating compliance with the minimum requirements in the CPD Rules  | <ul style="list-style-type: none"> <li>• Identify risks to the ongoing competency of individual practitioners and potential failure to meet the practising criteria under the Practising Rules</li> <li>• Identify individuals whose CPD record should be included in a full audit under the CPD supervision framework</li> </ul>  |
| 2. | Evidence of professional indemnity insurance cover, a statement of the value of that cover, and a declaration that an appropriate policy has been in place throughout the practising year | <ul style="list-style-type: none"> <li>• Ensure that every Costs Lawyer has professional indemnity insurance in place at or above the prescribed minimum value</li> <li>• Monitor trends in the nature of cover as an indicator of practitioners' perceived risk profile of their practice</li> <li>• Identify any indicators of weakening competition between insurers which could impact practitioners' ability to comply with insurance requirements</li> </ul> |
| 3. | A copy of the complaints procedure that applies to the practitioner   | <ul style="list-style-type: none"> <li>• Ensure that every Costs Lawyer has a procedure in place for handling complaints</li> <li>• Provide samples for the annual audit of the content of complaints procedures under the complaints procedure supervision framework</li> </ul>   |
| 4. | Disclosures of events that could impact fitness to practice (see Practising Rule 4)   | <ul style="list-style-type: none"> <li>• Identify and mitigate risks to the public or consumers indicated by an individual's past professional conduct (see our <a href="#">policy statement on enforcement and sanctions</a> for further details)</li> </ul>  |
| 5. | The number, nature and outcomes of first tier complaints about the practitioner   | <ul style="list-style-type: none"> <li>• Identify and mitigate risks to the public or consumers indicated by volume or theme of first tier complaints</li> <li>• Provide data for implementing the point of complaint supervision framework</li> </ul>   |
| 6. | Practising data, covering various aspects of a practitioner's work and clients  | <ul style="list-style-type: none"> <li>• Monitor trends in the risk profile of the profession (for example, direct engagement with lay clients and vulnerable clients)</li> <li>• Provide data for implementing the point of complaint supervision framework</li> </ul>  |
| 7. | (For Accredited Costs Lawyers only, collected every three years) Evidence, including examples and sample training   | <ul style="list-style-type: none"> <li>• Identify and mitigate risks to prospective recipients of a practitioner's training</li> </ul>   |

|   |   |
|---|---|
| materials, of compliance with the Accredited Costs Lawyer Rules | <ul style="list-style-type: none"> <li>• Provide evidence to support the proactive supervision activities set out in the Accredited Costs Lawyer supervision framework</li> </ul> |
|---|---|

11. Failure of a Costs Lawyer to cooperate with us in collecting the information described above is likely to constitute a breach of Principle 5 of the Code of Conduct and/or specific provisions of the Practising Rules, CPD Rules or Accredited Costs Lawyer Rules.

### Supervision frameworks

12. Alongside our monitoring and data collection activities, we follow detailed supervision frameworks that target risks in four key areas:

- compliance with the CPD Rules, predominantly through an annual audit;
- compliance with our rules relating to complaints procedures, predominantly through an annual audit;
- compliance with the Accredited Costs Lawyer Rules, predominantly through checks at the point of reaccreditation;
- additional monitoring at the point a complaint is made about a practitioner.

13. The activities that we carry out under the supervision frameworks make up our core programme of targeted, proactive supervision.

14. The four supervision frameworks are published on our [supervision webpage](#). Each supervision framework sets out the potential outcome(s) of our supervision activities in the relevant area.

### Working with others

15. The CLSB works with others to inform its supervision activities and collect data. We have Memoranda of Understanding (MOUs) in place with the following organisations which cover the proactive exchange of supervision information:

- the Association of Costs Lawyers, particularly in relation to the reporting of disclosures and information about students undertaking the Costs Lawyer Qualification;

- 
- the Legal Ombudsman, particularly in relation to regular reporting on complaints about Costs Lawyers;
  - the other legal services regulators, under a joint MOU.

## Personal data

16. Information used for supervision purposes is collated under the relevant practitioner's record in our internal database. This allows us to analyse information relating to an individual practitioner across all metrics, and also to generate data about the whole profession in relation to one metric. In this way, we can observe both vertical trends (per individual practitioner) and horizontal trends (profession-wide) to help us identify areas of risk.
17. We hold personal data in our database in accordance with our [privacy policy](#).

## SUPERVISION POLICY

### Costs Lawyer Standards Board

Effective date: 24 January 2017

#### **1. Background**

In writing this policy the CLSB took into consideration the statement by the LSB in its 2016 thematic review following assessment of approved regulators: *“the approach taken to supervision varies across the regulators which is entirely appropriate. This is because supervision systems should be proportionate, aligned with the risks identified and evidence gathered by the regulators, and should take account of the resources of a regulator”*.

#### **2. Informing the regulatory risk framework**

This policy sets out supervision activities undertaken by the Costs Lawyer Standards Board (the “CLSB”) in relation the activities of a Costs Lawyer with a current practising certificate issued by the CLSB (“Costs Lawyer”).

The outcomes from these activities will be reported to the CLSB board to inform future supervision activities and risk to regulatory objectives. Outcomes will provide required evidence of risk under the CLSB regulatory risk framework (identify and record stage) and will enable assessment of potential impact (assess and prioritise stage) to enable the CLSB to define suitable action (respond stage). It will also, over time, assist the CLSB in monitoring (monitor stage) and evaluating impact and adjusting action accordingly (evaluate and adapt stage).

#### **3. Re-active supervision activity**

##### **(i) Complaint handling**

The CLSB will continue to implement its disciplinary process where informal intervention is not considered appropriate or has not proven effective.

This will be achieved by:

- a) On-going monitoring of the Code of Conduct, Practising Rules and Disciplinary Rules to ensure they remain fit for purpose.
- b) Conducting investigations of consumer/third party led complaints.
- c) Conducting investigations of CLSB led complaints.
- d) Taking disciplinary action at CEO level if an investigation outcomes merits it.
- e) Referring a disciplinary matter to a Conduct Committee if an investigation outcome merits it.

##### **(ii) Complaint analysis**

The CLSB will continue to monitor complaints and their outcomes to establish risks.

This will be achieved by: Analysis and reporting to the CLSB board of:

- a) First-tier complaints and their outcome.
- b) Service complaints to the Legal Ombudsman and their outcome.
- c) Conduct complaints to the CLSB and their outcome.

### **(iii) Insurance claim analysis**

It should be noted that due to privity of contract and data protection issues, insurers and their brokers will not provide the names of their insured or the name of the Costs Lawyer working at their insured who caused the claim. CLSB will however continue to monitor thematic insurance claim experience for risks.

This will be achieved by: Annual reporting of claims experience to the CLSB board to establish any risks.

### **(iv) Consumer feedback**

The CLSB will consider consumer feedback and will analyse for any thematic risk.

This will be achieved by:

- (i) A client survey issued by Costs Lawyers and made available on the CLSB website.
- (ii) Link to client survey via Legal Choices website.
- (iii) Link to client survey via ACL website.

### **(v) Feedback from other ARs**

Considering any complaints to the SRA about a Costs Lawyer and will analyse for any thematic risk presented by that Costs Lawyer or the profession.

This will be achieved by: Asking the SRA to report any SRA actioned complaints about a Costs Lawyer working in an SRA regulated firm or licensed alternative business structure.

## **4. Pro-active (monitoring) supervision activities**

### **(i) Declarations (fitness to practice)**

The CLSB will consider information and declarations.

This will be achieved by: Issuing an annual regulatory return required to be completed by a Costs Lawyer when applying for a practising certificate. Information will be as deemed appropriate by the CLSB. Signed declarations will address, inter alia, bankruptcy, insolvency, administration, disqualification from being a company director, indictable offences, capacity under the Mental Health Act 2005, money judgments and orders under the Solicitors Act 1974.

### **(ii) Professional indemnity insurance**

The CLSB will continue to monitor Costs Lawyers practice with professional indemnity insurance at the minimum required by the CLSB.

This will be achieved by: Requiring a Costs Lawyer not working for an SRA regulated entity to file evidence of their professional indemnity insurance provision in place at the time of applying for an annual practising certificate.

### **(iii) Continuing professional development (CPD)**

The CLSB will continue to ensure CPD requirements are being met.

This will be achieved by:

- (i) Training & CPD Rules being monitored to ensure they remain fit for purpose.
- (ii) Costs Lawyers completing and signing an annual CPD record sheet.

- (iii) An annual random CPD audit of 5% of Costs Lawyer.

**(iv) Consumer recourse (complaints procedure)**

The CLSB will continue to monitor that Costs Lawyers have a complaints procedure in place.

This will be achieved by: Requiring a Costs Lawyer not working for an SRA regulated entity to file their complaints procedure with the CLSB at the time of applying for an annual practising certificate.

**(v) Accredited Costs Lawyer scheme (CPD)**

The CLSB will continue to accredit Costs Lawyers for the purposes of their providing CPD to ensure standards are maintained.

This will be achieved by:

- (i) Written application to the CLSB for a three year accreditation.
- (ii) On written application for renewal, the Costs Lawyers is required to state what CPD they have provided in the previous three years.
- (iii) Maintenance of the Accredited Costs Lawyer register on the CLSB website.

**(vi) Costs Lawyer mark of regulation**

The CLSB will continue to manage its mark of regulation, which identifies Costs Lawyers to the consumer as being authorised and regulated.

This will be achieved by:

- (i) The CLSB issuing individual licences upon request, for signing by both parties.
- (ii) Indicating on the regulated Costs Lawyer register whether they are licenced to us the mark of regulation.
- (iii) Taking action in the event of any breach of licence terms.

**(vii) Statistics**

The CLSB will continue to monitor changes in the profession by way of statistical analysis, the outcome of which will be used in considering policy.

This will be achieved by: Undertaking an annual statistical analysis of the profession on a needs basis on the following areas for example, and any other considered appropriate by the CLSB at the time.

- Diversity
- The profession (sole practitioner, working for SRA regulated firm or costs firm etc.)
- Number of instructions from a Solicitor client
- Number of instructions from a non-Solicitor client e.g. lay client, business, charity
- Part-time working
- Legal aid/non legal aid
- Vulnerable clients
- Geographical location
- Insurance
- Diversification e.g. mediation
- First tier complaints

- Complaints to CLSB
- Complaints to LeO

## **5. Options**

Based on the outcome of pro-active and re-active supervision activities set out herein, the CLSB will consider actions open to it e.g. surveys, mystery shopping, feedback from judiciary. In considering such options the CLSB will consider:

- Proportionate to risk profile.
- Cost/benefit.
- Best practice by other approved regulators.

## **6. Review**

The CLSB board will review, on an annual basis, the effectiveness, proportionality and value for money of activities undertaken under this policy. The review will also consider any lessons to be learned from the supervisory activity and improvements to be made.

# Update on RPF project

## Board update

13 October 2021

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On 16 September 2021, BEIS confirmed we had been successful with our bid for funding for our project “How could Costs Lawyers reduce the costs of legal services?”.

Following the [BEIS announcement](#), we issued a press release, communicated our success to key stakeholders via email and on LinkedIn and created a [project page on our website](#). Some industry news sites covered the announcement, for example:

- [Solicitors Journal](#)
- [Legal Futures](#)

We have completed the first round of interviews required with BEIS and its evaluation partner, and we are now engaged in appointing a supplier to support the research phase of the project.

In this phase, the key risk that we are managing is that “suitable contractors are unavailable for the budget we estimated and submitted in the bid” (around £50k including VAT). We are following the plan set out in our bid to mitigate this and have sent an invitation to tender to 4 small consultancy firms selecting these on the basis that we know they have carried out similar work in a similar budget range:

- Hook Tangaza
- WPI economics
- Economic Insights
- SEW consulting

We are maintaining contacts with these firms, and encouraging bids. In addition, we have reached out via our personal networks to contact freelancers who might carry out the work. Two have expressed an interest so far, and we continue to follow up leads to suitable individuals.

A high level project plan is set out below and the project is on track. The CLSB resources used (days worked by Heather which are mainly funded by the grant) are within budget.

Our next task is to appoint a supplier, and set up the governance meetings to ensure adequate oversight of the project as it progresses.

| High level project plan for RPF project                 | Timescale          | Gov   | Risk  | Mitigation   | Output   | Track       | CLSB (days) | Contract (days) |
|---|--------------------|---|---|--|--|-------------|-------------|-----------------|
| <b>Stage one - preparation and contracting</b>          | In the week of     | SRO oversight   | Suitable contractors are unavailable in the budget range              | Contact a wide range of contractors early, allow sufficient time for procurement   | Robust analytical approach with the right contractors appointed at a competitive price                 | ✓<br>✓<br>✓ |             |                 |
| Detailed scoping  | 27th September 21  |   |   |  |  |             | 2           |                 |
| Establish analytical framework for analysis             | 4th October 21     |   |   |  |  |             | 3           |                 |
| Preparing and issuing contractor ITT                    | 4th October 21     |   |   |  |  |             | 1           |                 |
| Evaluating bids, securing resources                     | 18th October 21    |   |   |  |  |             | 2           |                 |
| Onboarding contractors                                  | w/b 25th October   |   |   |  |  |             | 2           | 2               |
| <b>Stage two - research</b>                             |                    | SRO oversight, test and challenge by project board                | Unregulated providers are unwilling to engage in research             | Switch some resources into contacting a wider range of interviewees - academics, industry journalists, researchers                                       | Comprehensive and high quality research with analytical framework tested (in advance) by project board |             |             |                 |
| Drawing up detailed research approach                   | 1st November 21    |   |   |  |  |             | 3           | 3               |
| Progress reporting                                      |                    |   |   |  |  |             |             |                 |
| Governance reporting including test and challenge board | November 21        |   |   |  |  |             | 2           | 1               |
| Informal discussions with CLSB board members            | November 21        |   |   |  |  |             | 2           | 1               |
| Field research - interviews                             | 22nd Nov - January |   |   |  |  |             | 15          |                 |
| <b>Stage three - analysis and output</b>                |                    | SRO oversight, test and challenge by project board and CLSB board | Test and challenge points raise questions the research hasn't covered | We have built in an informal CLSB board consultation in stage two, and allowed time and resources to revisit points in research after test and challenge | Draft and final findings, effectively challenged and tested  |             |             |                 |
| Finalise analytical framework informed by research      | Early January 22   |   |   |  |  |             | 5           | 2               |
| Draft findings  | Mid January 22     |   |   |  |  |             | 6           | 2               |
| Research on regulation and legislation                  | Mid January 22     |   |   |  |  |             | 2           |                 |
| Governance reporting including test and challenge board | End January 22     |   |   |  |  |             | 2           | 1               |
| Test and challenge - CLSB board                         | End January 22     |   |   |  |  |             | 2           | 1               |
| Follow up research (isolated points)                    | Feb-22             |   |   |  |  |             | 2           | 4               |
| Final output to CLSB board, evaluation                  | Mar-22             | 4   |   |  |  |             |             |                 |

# Proposal for virtual diversity event: social mobility

## Board update

13 October 2021

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At the board meeting in July, we set out our next steps in our diversity programme, which are:

- 1) Collecting data on the interaction between characteristics, opportunities, progression and pay or earnings
- 2) Ensuring, via our audit of ACLT, that the route into the profession is used effectively to promote EDI objectives
- 3) Engagement with our regulated community

On item 1 we have designed and tested a new survey that will run alongside the next renewal of practising certificates.

On item 2 we have made a series of recommendations to ACLT aimed at aligning its data collection with ours, suggesting that it should set EDI objectives and implement an appropriate plan to meet them.

This note updates the board on item 3: engagement with our regulated community. We have previously mentioned our plans to run an online event focusing on one aspect of diversity, with future events covering other aspects.

We have taken note of the Law Society's activities in this area, which seem to be a good model. Although we would, of course, scale down these ideas to be proportionate to our resources and the size of our regulated community.

In 2021, the Law Society ran a [virtual diversity and inclusion conference](#). Running across three days, the conference covered different strands of diversity and inclusion, such as: mental wellbeing; LGBTQ+; disability; and so on. The events were made up of talks and panel discussions.

We propose that an appropriate way to adapt this model to suit Costs Lawyers is to take one topic, and run a one to two hour online event, with presentations from external speakers, a panel and plenty of time for attendees to comment and put forward ideas about any initiatives that we could run or support or assist.

Given that one of our advantages (over other regulators) is our close involvement in the entry route into the profession, and this is likely to be an area where EDI activities have a good chance of having an impact, we propose a theme of social mobility for the first event. We think this is a theme that fits particularly well with looking at what we could do around entry routes into the profession.

We propose a date in early December 2021 – we will be in contact to secure time in your calendars – and the following outline format:

- Introduction by CLSB Chair
- Talk one: experiences from the Law Society's social mobility ambassador programme
- Talk two: examples of impactful programmes or initiatives
- Chaired panel discussion: [theme tbd]

Questions, comments and suggestions could be submitted in advance, via chat functions in Teams or Zoom, or by participants in the video room. The event will of course be free to attend. It will be recorded and the recording made available following the event.

Once we have secured external speakers, we will promote the event to the Costs Lawyer community in the month before the event.

We have made initial approaches to the following people and organisations asking for their participation:

- [Shameem Ahmad – a Law Society social mobility ambassador](#)
- [Justin Farrance – a Law Society social mobility ambassador](#)
- [Connie Rwankote – a Costs Lawyer and member of the Government Legal Department's social mobility network](#)
- [The social mobility foundation](#)
- [The Bridge Group](#)

We would be grateful for further suggestions from board members for appropriate external speakers or panel members, with introductions if possible, as we expect we may have to reach out to more people than we need in order to secure people with space in their calendars that match our plans.

**End**

**By email only**

Kate Wellington  
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Costs Lawyers Standards Board  
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30 September 2021

Dear Kate

**2021 Annual Regulatory Performance Assessment**

As part of our ongoing monitoring of regulators' performance against the regulatory standards and 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:

- Progress towards meeting any outcomes currently graded as 'not met',
- General performance in relation to the regulatory performance standards and outcomes and any issues that have arisen since our 2020 annual assessment.
- Regulators' approaches to the following aspects of transparency that in our [2020 report](#) (paragraph 42) we said we would be focusing on in 2021:
  - regulatory bodies actively taking account of the regulatory objectives in the Act in carrying out their work, in decision-making and performance monitoring processes; and actively explaining and demonstrating how this occurs.
  - regulatory bodies ensuring that information published on websites is up to date, whether it concerns policies and guidance or disciplinary actions.
  - regulatory bodies demonstrating a commitment to public accountability and transparency in respect of decision-making and how Boards hold Executives to account.

- How regulators have taken account of the [findings of our targeted review](#) of the BSB's performance against the Well-led standard, which we published in July 2021.

### *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 against outcome RA4 including responses to the specific questions set out in the attached Annex.
- an update on the actions flowing from the CLSB's audit of the training course provided by ACL Training including a response to the specific question set out in the attached Annex.
- your approach to the aspects of transparency set out above
- how you have taken account of the findings of the LSB's targeted review of the BSB's performance against the Well-led standard and the actions that you have taken, particularly in respect of governance and consumer engagement.

When preparing your report, in line with the Well-led standard and your Board's role in monitoring the CLSB's performance, we would be happy for you to use information in the form that you have already provided to your Board, supplemented by any additional information needed to deal with our specific points.

Please provide us with your response to this information request by **29 October 2021**.

In addition to the information that you provide, our assessment of the CLSB's performance will take account of information that the LSB has gathered since our last annual assessment in November 2020. 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, any information you may have provided since the last assessment round and information from other sources including publicly available material.

### *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 December.

### *Update on actions on Diversity and Inclusion (D&I) outcomes*

[Our Guidance for legal services regulators on encouraging a diverse workforce \(February 2017\)](#) noted that we would be monitoring regulators performance on equality and diversity actions annually. We last sought an update in June 2020. This

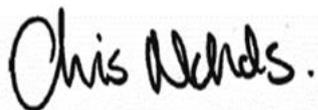
year, rather than commissioning a separate update from the CLSB we thought it more efficient to include an update request within the annual performance assessment progress update. Please provide a short summary of the actions you have taken this year to meet the outcomes in our D&I guidance and the three expectations you reported on in June 2020 on demonstrating:

- a. An understanding of the composition of their regulated community;
- b. An understanding of the barriers to entry and progression within the regulated community, and a programme of activity to mitigate those barriers with measures in place to evaluate effectiveness; and
- c. Measures in place to understand any differential impact on protected characteristics within their disciplinary/enforcement procedures.

This information will provide an up-to-date view on the actions and activities carried out by regulatory bodies and will inform our current work programme, including our plans to work more collaboratively across all regulators. For the avoidance of doubt, I confirm that we will not be reporting on your performance against the D&I outcomes in our annual performance assessment.

If you have any questions about the assessment process or the requests for information set out in this letter and its 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: Information request for the CLSB

### Specific questions relating to outcomes

#### Outcome RA4

**Question:** How has the CLSB made use of its consumer engagement strategy, in particular its consumer outcomes framework, since the last update provided at the end of March 2021?

#### Outcome RA4

**Question:** Please provide an update on the further progress the CLSB has made against its 2021 business plan priorities for improving its regulatory arrangements.

#### Outcome A1

**Question:** We understand that the 2021 audit of the training course provided by ACL Training reported in May 2021 and included recommendations for action. Please provide us with an update on any actions that have been taken and an account of how ACL Training was able to assure the CLSB that it meets the required standards for education and training.

### Transparency matters

**Question:** Please explain how you:

- actively take account of the regulatory objectives in the Act in carrying out your work, in your decision-making and performance monitoring processes; and actively explain and demonstrate how this occurs.
- ensure that information published on your websites is up to date, whether it concerns your policies and guidance or disciplinary actions.
- demonstrate a commitment to public accountability and transparency in respect of your decision-making and how your Board hold your Executive to account.

### Consideration of LSB targeted review of BSB performance against the Well-led Standard

**Question:** Please explain how you have taken account of the findings of the LSB's targeted review of the BSB's performance against the Well-led standard, particularly in respect of governance and consumer engagement.

Minutes of the ACL Council Meeting  
held on 13 May 2021  
by Conference Call



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

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

The meeting started at 1.05pm

| Item |   |
|------|---|
| 1    | Welcome and apologies   |
|      | CG welcomed all to the meeting.   |
| 2    | Minutes of the council meeting held on 16 April 2021  |
|      | The draft minutes of the council meeting held on 16 April 2021 were approved without amendment and agreed for publication.  |
| 3    | Actions arising from the council meeting held on 16 April 2021  |
| 3.1  | The actions arising were reviewed, discussed and updated.   |
| 4    | Education update/working party report   |
| 4.1  | CG thanked the working party for their time and work on the viability report.   |
| 4.2  | SA briefly guided council members through the structure of and background to the report and the two options being proposed to council.  |
| 4.3  | JR provided an overview of the thinking behind option 1. This was to, in effect, look at  |
| 4.4  | streamlining the management structure and to reduce the costs of running the course, thus making it financially viable with the current level of intake.  |
| 4.5  | RW took members through the rationale behind option 2. This was to continue with the course as it was currently structured but to make a concerted effort, using the reserves held by ACLT to increase the level of intake to make the course financially viable. A review would then take place after 2 years.   |
| 4.6  | CG invited all council members in turn to offer their views on each option. A discussion followed regarding the process of appointing the directors of ACLT. CG invited council members to vote for one of the options. Council voted in favour of option 1.  |
| 4.7  | CG asked council members to vote on three further recommendations as set out in the working party's report.   |
|      | <ol style="list-style-type: none"> <li>1. <i>For the immediate implementation of governance structure.</i><br/>Unanimously agreed.</li> <li>2. <i>For the development and implementation of collaborative marketing strategy.</i><br/>Unanimously agreed.</li> <li>3. <i>Permission for ACLT to utilise reserves for course and platform development and marketing.</i></li> </ol> <p>It was agreed that whilst this was required to a degree, further clarification was needed. It was unanimously agreed that ACLT should, without delay, put forward</p> |

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|      | proposals for consideration.  |
| 4.8  | JR explained that when drafting option 1 he had envisaged a soft reset and at some point, a change of directors. He went on to say that for the following few months, continuity was needed. CG and FK asked for time to consider whether they wished to remain as directors of ACLT. JR suggested that for the next academic year there should be a change of directors. This was broadly met with agreement.  |
| 5    | <b>Options for attracting non-qualified costs professionals</b>   |
|      | CG acknowledged that this agenda item had been put on hold for a number of months as ACLT had been an ongoing priority.   |
| 6    | <b>Marketing the profession</b>   |
|      | RW suggested that ACL and ACLT worked with Black Letter to progress a marketing strategy and implementation plan.   |
| 7    | <b>ACL/ACLT structure, roles and responsibilities</b>   |
| 7.1  | RW suggested that an introductory pack should be made available to new council members. AG confirmed that such a pack was being worked on by the Policy committee and should be available by the end of the summer.   |
| 7.2  | SA added that the education working party had reflected on the fact that whilst DP was not a serving council member, her thoughts and opinions should more actively be sought. Council members agreed.  |
| 8    | <b>Social media</b>   |
| 8.1  | FK reported that he was waiting on proposals from Black Letter.   |
| 8.2  | RW reported that at the last council meeting she was charged with progressing marketing proposals for ACLT but made the point that FK, as he held the responsibility on council for marketing should speak with Black Letter regarding options for marketing support.   |
| 8.3  | Following discussion it was agreed that the ACLT course should be marketed asap. RW will approach KA for key points to be used in marketing. KK agreed to write some testimonial copy to be included in the marketing literature.   |
| 9    | <b>Update on research into PI Policies</b>  |
|      | This item was carried forward to the next council meeting   |
| 10   | <b>Policy Report</b>  |
|      | AG confirmed that there were no issues to report  |
| 11   | <b>Operations Report</b>  |
| 11.1 | DP reported that 33 delegates at the virtual conference held on 30 April provided feedback. 34% rated the event as excellent, 60% as good and 6% as adequate. 97% said they would recommend the event. A question was included in the evaluation survey to gauge interest in an in person event in November. 53% said they would prefer to attend in person whilst 47 % said they would prefer to attend 'virtually'. Asked about interest in attending a gala dinner if they attended a conference in person in November, 50% said they would be interested. |
| 11.2 | Council members agreed unanimously that DP should work towards organising a live event followed by a gala dinner. The option for making the event available to purchase online after the event will be investigated.  |
| 12   | <b>Any other business</b>   |
| 12.1 | CG confirmed that DC's paper on the development of affiliate membership would be carried forward and fully discussed at the next council meeting.   |
| 12.2 | There being no further business the meeting ended at 16.05.   |
| 13   | <b>Date of next council meeting</b>   |
|      | The next council meeting will be held by conference call at 11am on Friday 18 June.   |



Council members present: Claire Green, Chairman (CG), Francis Kendall, Vice-Chairman (FK) David Cooper (DC), Kris Kilsby (KK), Jack Ridgway (JR), Adam Grant (AG), David Bailey-Vella (DB), John Pennington-Jones (JPJ), Victoria Morrison-Hughes (VMH) and Richie Young (RY).

Also present: Alison Hook (AH) and Nankunda Tangaza (NK) from Hook Tangaza.

Apologies: Natalie Swales (NS) and Diane Pattenden (DP)

The meeting started at 11.00am

| Item |   |
|------|---|
| 1    | Welcome and apologies<br>CG welcomed all to the meeting including newly elected members DBV, VMH, RY and JPJ. Apologies from DP and NS.   |
| 2    | Presentation by Hook Tangaza<br>AH and NT delivered a presentation to Council outlining the schedule for completing the work requested of Hook and Tangaza and indicated the anticipated timeframe. Work in relation to ACLT between now and September and for ACL September to November with a view to delivering the report and recommendations prior to Council's November meeting.  |
| 3    | Minutes of the council meetings held on 13 May 2021 and 18 May 2021   |
| 3.1  | The draft minutes of the council meeting held on 13 May 2021 were approved subject to revision of wording of Item 4. Suggested wording to be prepared by KK and circulated to members for approval and subsequent publication of the minutes.   |
| 3.2  | Every council member had not yet seen the draft minutes of the interim meeting held on 18 May 2021. Approval of these is adjourned to the next meeting and DP will be requested to circulate the draft.   |
| 4    | Actions arising from the council meeting held on 13 May 2021  |
| 4.1  | The actions arising were reviewed, discussed and updated.   |
| 4.2  | Specific items:<br>(I) Regional meetings still under review with particular regard to publicising events. JPJ will provide a report of the meeting he attended to DP.<br>(II) Cost Lawyer insurance. AG reported that the CLSB has expressed the view that it cannot compel Costs Lawyers to have a particular policy or specific cover for cyber risks. Research is ongoing.<br>(III) VMH to prepare an article for the Costs Lawyer in relation to Cyber cover.<br>(IV) CLSB to be given access to Members section on website to reflect openness and transparency with regulator. AG reminded Council of obligation to maintain oversight of CLSB. |

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| 5   | Education update/working party report  |
|     | Concern expressed with regard to low student numbers and discussion took place as to possible options but it was agreed that further consideration must await the report and recommendations from Hook Tangaza.  |
| 6   | Public Relations Report  |
|     | Consideration given to proposal to instruct Black Letter (BL) to assist and manage social media accounts and provide marketing support. The proposal presented by BL was considered constructive and financially beneficial. DP to be requested to review and report in relation to existing contractual arrangements with Archant and terms relating to termination.  |
| 7   | Committees   |
| 7.1 | Discussion took place regarding structure and membership of committees taking into account the newly elected members on Council.   |
| 7.2 | It was agreed that the committees required and its members will be:<br>(i) Education – JR, NS and VMH.<br>(ii) Policy – AG, DC and KK<br>(iii) PR and Marketing – DBV and RY<br>(iv) Finance – FK and JPJ  |
| 8   | Policy   |
| 8.1 | New members to be provided with existing introductory documentation by DP.   |
| 8.2 | The MOU and Protocol of CLSB needs to be reviewed annually. AG has done this and reported that it is working and no changes are necessary at present.  |
| 8.3 | A suggestion has been made for formation of a focus group to consider changes, minor developments and diversity. Emphasis again on transparency. AG will review and consult with KW at CLSB to establish areas where support can be provided to CLSB by ACL.   |
| 8.4 | AG reported that LSB is happy with ACL set up, structure and management but do seek clarification regarding contingency and succession planning. This will be reviewed with DP and report prepared for Council in due course.  |
| 8.5 | AG advised that an invitation had been received via Bob Baker in the Legal Aid Group (as a member of the Specialist Practitioners Group of the Law Society) to attend an online focus group on Open Justice. AG was unable to attend the meeting but CG attended in his place. CG advised she attended meeting, but was primarily focused on criminal cases in magistrates/crown court and the listing of cases. Good contacts made with other attendees. Future meetings will hopefully cover telephone cover for hearings and in contacting the courts, which should be of some interest to members. CG feels it is positive development in raising ACL's profile. |
| 9   | Upper Tribunal Costs   |
|     | Discussion took place following enquiry from a member in relation to the issue of interest on costs awarded by a First Tier Tribunal. FK has reviewed the position and advised that the First Tier Tribunal-Lands Chamber does have power to award interest per paragraph 51 (A) of the Regulations issued on 21.07.2020 but which contains the interest provision added on 01.07.2013. FK and DBV will liaise and prepare a response to the member. It was considered that ACL are able to galvanise Costs Lawyers into action to seek clarification or changes but are not able to become involved in individual cases.  |

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| 10   | Operations Report   |
|      | Adjourned until DP available  |
| 11   | Any other business  |
| 11.1 | CG confirmed that DC's paper on the development of affiliate membership would be held in abeyance pending the report from Hook Tangaza.   |
| 11.2 | CG Reminded Council members that Chatham House Rules apply until minutes approved for publication.  |
| 11.3 | CG reported that KW will work with the Head of Education and Hook Tangaza in respect of the Audit Report being undertaken by CLSB.  |
| 11.4 | FK reminded Council that in relation to mediators and the request to support a presentation by Kain Knight that CADR do provide free online seminars to members. In view of limited             |
| 11.5 | number of Costs Lawyer Mediators and present take up this is not something Council can support. FK will contact Kain Knight.<br>There being no further business the meeting ended at 13.00 hrs. |
| 12   | Date of next council meeting  |
|      | The next council meeting will be held by conference call at 10am on Friday 23 July 2021.  |



Council members present: Francis Kendall, Vice-Chairman (FK) David Cooper (DC), Adam Grant (AG), Kris Kilsby (KK), Victoria Morrison-Hughes (VMH), John Pennington-Jones (JPJ), Jack Ridgway (JR), Richie Young (RY)

Also present: Diane Pattenden (DP)

Apologies: Claire Green (CG), David Bailey-Vella (DBV)

The meeting started at 11.00am

| Item |   |
|------|---|
| 1    | Welcome and apologies   |
| 1.1  | Apologies were accepted from CG and DBV. NS sent her apologies ahead of the meeting but subsequently (22 July) resigned from council.   |
| 1.2  | In CG's absence FK agreed to chair the meeting and asked JR for a summary of the latest position regarding the Hook Tangaza proposal. JR advised that the education steering committee was in agreement with the proposal and action log. He confirmed that Hook Tangaza had been asked to prepare the documentation relating to the education board so that board members could be recruited. The board will consist of an independent Chairman and four Costs Lawyers, two of whom will be council members. |
| 1.3  | FK reported that NS had resigned from council and it was agreed to seek nominees for the vacancy.   |
| 2    | Minutes of the council meetings held on 13 May 2021, 18 May 2021 and 25 June 2021   |
| 2.1  | The amendment to section 4 of the minutes of 13 May was agreed and the minutes were approved subject to replacing reference to individual voting in item 4.6 with the outcome of the vote.  |
| 2.2  | The minutes of the council meeting of 18 May were approved.   |
| 2.3  | The minutes of the council meeting held on 25 June were approved, subject to replacing the initials KA with Head of Education.  |
| 3    | Actions arising from the council meeting held on 25 June 2021   |
| 3.1  | Item 4. There will be a meeting of the Yorkshire Regional Costs Group on 11 August. JPJ said he and other colleagues had not received an email regarding this. He will speak with his IT department to see if the emails had been marked as 'spam'.   |
| 3.2  | Item 5. VMH reported that she is collaborating with a firm of insurers to help write the article on cyber related cover.  |
| 3.3  | Item 10. It was agreed that notice would not be given until there is a clear timeline and understanding of how the new version of Costs Lawyer would be delivered. DP will set up a meeting with DP, RY, DBV and Black Letter to discuss the timeframes and details with a view to launching in January.  |
| 3.4  | Item 14. FK reported that he had made an initial contact with the ACL member who raised a question regarding First Tier Tribunal costs and interests. FK will follow this up via a phone  |

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|      | call during the early part of August.  |
| 4    | 2020 Accounts  |
|      | Prior to the council meeting, the 2020 final accounts had been sent to council members for information. In CG's absence, this item will be carried forward to the next meeting. FK asked council members to comment, or raise questions if they wished, by mid-August at the latest. The latest date for submission to Companies House is 30 September 2021. |
| 5    | Education update/working party report  |
|      | JR confirmed that the issue of students who had started Unit 2 but failed the Unit 1 exam had been discussed with the Head of Education and that arrangements had been agreed.   |
| 6    | Policy Report  |
| 6.1  | AG confirmed that he is working on the preparation of an induction pack for new council members.   |
| 6.2  | AG reported that he has received a quality indicators discussion paper from the LSB and will report back to council once he has reviewed it.   |
| 6.3  | The CLSB have launched a consultation on the practising fee for 2022. A brief discussion on whether it was necessary to seek the views of members took place and it was agreed that there was no requirement for this.   |
| 6.4  | AG noted that the CLSB have published their business plans, budgets and accounts. He will review these with DC and KK and will report back to council.   |
| 7    | Finance Report   |
|      | It was agreed to hold a conference call between FK/JPJ/DP in early August.   |
| 9    | PR and Marketing   |
|      | RY agreed to read the draft for the e-bulletin each week and approve it for publication.   |
| 10   | Operations Report  |
| 10.1 | DP acknowledged that it had been agreed at a previous council meeting to hold an in person conference and reported that having spoken with a number of potential venues, hotels in general were not being flexible with their cancellation policies.   |
| 10.2 | DP reported that the date of 19 November was on hold with a conference venue, which has the ability to live stream or switch to a virtual event should it be necessary. DP will continue to speak with alternative venues and prepare options ahead of a meeting to be arranged with FK/CG in early August.  |
| 10.3 | The LAG are yet to confirm if they will hold a seminar in 2021.  |
| 10.4 | ACL 5 year projections were circulated ahead of the meeting for information and will be discussed in detail at the meeting of the finance committee.   |
| 11   | Any other business   |
|      | VMH raised the question of whether terms of reference for committees existed. DP to provide a copy of the terms of reference for several committees, drafted by the former CEO, to AG for the policy committee to review.  |
|      | There being no further business the meeting ended at 11.25   |
| 12   | Date of next council meeting   |
|      | It was agreed that the August council meeting should be held after the Education Steering Committee had next met with Hook Tangaza. DP to confirm the date.  |

23 September 2021

Dear Kate

We are now almost halfway through the year, a year in which the impact of Covid both personally and professionally has continued to have an impact for LeO's people.

In LeO's Business Plan for 21/22 we set out the plans for the scheme over the next two years, creating much needed stability before moving on to recovery. The Plan includes a mid-year review and in recent weeks both the OLC Board and the LeO Executive have been giving considerable thought to this, whilst recognising that we are still not at the six-month mark. You will see the outcome of this in the consultation document which will be shared with you in November and which will include both a mid-year review of 21/22 and a draft and high level Business Plan for 22/23.

From the outset both of us have committed to being open, honest and in regular communication with your organisation. I hope you feel we have been true to our word. It is against this backdrop of increased accountability that the mid-year review particularly matters – providing a chance to set out what LeO has achieved against the Business Plan; what it hasn't and why not; and to set out what it plans to do about this during the remaining part of the year.

In keeping with our commitment to openness we have included below the main feedback on our dataset figures for August. These were only shared with the OLC Board, the LSB and the MoJ earlier this week. They set out how LeO's business is being stabilised alongside the extent of organisational turnaround required this year. As one sector leader recently put it "you are clearly motoring". Yes we are but what's clear to both the OLC and LeO is that the problems facing the organisation are multi-dimensional and considerable. Some of the assumptions made about LeO's people were wrong but as we move into the second half of the year we collectively understand the causes of the problems and are already working on the solutions.

The logo for the Legal Ombudsman, featuring the word "LEGAL" in a stylized, pink, cursive font above the word "OMBUDSMAN" in a bold, black, sans-serif font.

LeO is putting the right foundations in place but this continues to be a significant undertaking and the focus has rightly been on organisation-wide change. It is these changes which are less visible and not all of them have yet had an impact on what is most visible to you – LeO’s case holdings and the size of its backlog. Sustainability takes longer but lasts longer.

If you have any questions or insight to share about the dataset commentary then do please share this. If it could be useful to arrange a meeting, let us know. Please don’t wait until the consultation to be in touch – we are ready to answer your questions and to take account of your feedback now.

Best wishes



Elisabeth Davies  
OLC Chair



Paul McFadden  
Chief Ombudsman

## **LeO's August performance dataset: Commentary**

### **The overview**

Year one activities set out under Priority One and Two in the 2021/22 Business Plan predominantly focus on the backlog recovery and continuing to progress to a point where the Legal Ombudsman recovers and is providing a sustainable level of service to consumers and service providers. Our Business Plan sets out a two year improvement trajectory with incremental growth in case closures month by month to stabilise the backlog and reduce it in the second half of the year and into 2022/23.

The focus continues on stabilising the business, recognising the extent of organisational recovery and turnaround required. Putting the right foundations in place for the scheme is proving to be a significant undertaking and is resulting in not just a more detailed and forensic understanding of multi-dimensional and complex problems but the development of solutions that will be sustainable for both consumers and providers. Progress continues to be made in delivering the Business Plan in its entirety, recognising the importance of making changes now that will deliver benefits and improvements in the longer term and this has continued this month, addressing behaviours as well as people and numbers.

### **August highlights**

The highlights to be drawn from the Legal Ombudsman's performance in August include:

- Backlog recovery work has continued with projects focusing on cases where a reasonable offer has been made, or where guided negotiation can encourage early resolution between parties, identifying customers whose journey will end with a Chapter 5.7 dismissal earlier. The pilot has been successful and is being transitioned into business as usual.
- Customer Journey time for both low and medium complexity cases are performing better than the Business Plan assumption.
- High complexity case queue reduced in August from 69 cases to 55 cases.
- 6 GET Investigator (GETi) roles will deliver investigator ready files to a selected pilot team of investigators with the aim of reducing waiting times in the investigation process and at a lower cost. The aim is to quantify the deliverables from both pilots which will be reported on in future months. The first investigator ready files will be with investigators later this month.

- The Pre-Assessment Pool (PAP) has increased; however this is not believed to be due to a change in core demand but is in part due to new recruits facilitating a swifter flow through from General Enquiries, coupled with investigators progressing cases that needed to be reallocated as a result of investigators leaving their roles leading to reduce 'takes' from the PAP.
- Case closure and investigator productivity assumptions remain below assumption levels despite 100 more cases having been closed in August 2021 than August 2020 and does not include 62 cases closed at early resolution and outside of the PAP. It is worth noting that the investigator resourcing in August 2021 meant that case closure assumptions could not have been achieved. The reasons for the underperformance are well understood and include attrition. YTD investigator attrition is currently at 10.3 against a YTD BP assumption of 11.9 The average length of service remained static at 4.9 years.

### **In Month Performance**

With the investigation resource currently in place, Business Plan case closure assumptions are not being achieved at the present time. However, there is continued improvement on performance from last year with less resource. Only 76.7 FTE investigators were in place against a Business Plan assumption of 85.9 FTE for August. The significant below assumption investigative FTE continues to be the main contributing factor to the below case closure performance. Recruitment therefore remains a priority but work continues on delivering this alongside greater use of innovation and reviewing current business processes to drive efficiency.

There has been a slight increase in cases moved from the pre-assessment pool. 93 more cases were closed in August 2021 (with 76.7 FTE) than in August 2020 which saw 299 closures (with 94.81 FTE). The in-month total however is still below the 12-month rolling average. The volume of cases being added to the pre-assessment pool is back to a stable number of 593, however there is still an increase to the backlog due to the lower number removed, meaning the total remains above the Business Plan forecast.

Having enough investigators in the business is critical to achieving the Business Plan assumptions and, to address this, a proposal to establish a managed recruitment service was issued to the MOJ in August. Issues have been encountered in how the managed recruitment partner service could be contracted and the consequent delays meant that a decision was taken to progress with LeO's internally managed recruitment

for this round. The managed recruitment option continues to be progressed and once contracted will either supplement current live November recruitment or additional recruitment ahead of January. As well as allowing access to a wider recruitment pool to ensure the business is bringing in strong candidates, this approach will alleviate the resource pressure internal recruitment places on operational teams.

### **LeO's people and addressing behaviours**

Having the number of investigators in the business upon which the Business Plan is built is clearly critical and there have been two rounds of recruitment so far this year, and another which has started. Significant recruitment this year, with starters in July and September, has helped boost investigator numbers though those investigators will, as per Business Plan assumptions, take some time to reach productive levels. Despite early success in achieving recruitment numbers, subsequent rounds have failed to deliver the numbers required to keep pace with attrition in order to meet the budgeted FTE in the Business Plan.

It was assumed there would be 85.9 FTE in August however the actual 76.7 FTE represents a shortfall of 9.2 FTE. This has a significant impact on the number of case closures that can be delivered. The case closure assumption for August was 600 based on a forecast of an available 85.9 FTE. 393 case closures were achieved with 76.7 FTE., plus the 62 closures achieved through early resolution and currently outside of the PAP. Investigator productivity has slightly decreased from 4.95 cases in July to 4.86 in August.

Work continues by the operational management team to both diagnose and manage performance variation for the active FTE available to drive an improvement in productivity. There is a continued focus on sickness and absence levels to do more with what we have and this will support the ongoing recruitment of new investigative staff. Both are critical to meeting Business Plan figures.

This year, LeO's people are more engaged with the workforce actively committed to and involved in change initiatives. This leads to a common purpose to the Business Plan objectives.

### **LeO's processes and working differently**

We continue to work to implement a range of initiatives and improvements including through our backlog reduction project. There are activities and positive changes at the mid-year point that are not always visible but still go a long way in helping our customers.

In August, as a result of Pre-Assessment backlog reduction initiatives, 62 cases were resolved before investigation in August and removed from the backlog. These closures are in addition to the 393 investigation closures for August. This is a total of 455 customers helped during August. As these 62 cases were not closed in the investigation stage, they do not currently count towards investigator productivity or cost per case but this is being addressed.

The newly created GET Investigator (GETi) role has been piloted and recruited for. This streamlines the process, preparing cases for speedier investigator review and creates a 'do more for less approach' which supports the reduction of costly investigative resource.

### **The next quarter**

Investigator case holdings decreased from 12.81 (1 July) to 12.76 (1 August). The split shows that new non established investigators are building their caseloads and established investigator case holdings are the highest they have been since May 20. Team Leaders continue to work with investigation staff to ensure they hold enough cases to achieve or exceed performance expectations. Increased holidays taken by staff during the month due to school holidays impacted case holdings significantly, caused also in part by high levels of covid-related leave carried over from 2020/21, so improvements are expected as we move into latter part of Q2 and into Q3.

Recruitment continues for 13 investigators to start in September. Due to the increased attrition being seen, even with the expected new teams factored into the Business Plan, the investigator cohort will remain under the resource level required to deliver Business Plan assumptions. However, we will continue to deliver more than 2020/21 with less FTE resource. To support productivity and reduce the risk of attrition, the September new starters will experience an alternative approach to onboarding, coaching, and mentoring which will see the cohort grouped together with additional

designated support. This aims to minimise attrition and maximise retention whilst increasing productivity more quickly. New investigators take on average 6 - 9 months to become effective. The investigator workforce will shift from 100% established investigators, to 83% established and 17% new. We expect this ratio will continue to reduce as more recruits are brought into the business.

With known September recruitment, and assumed attrition, September will have a workforce mix of 73% established and 27% non-established and by November possible 58% established and 42% non-established. This is an unprecedented workforce mix for LeO and will need careful, active leadership and management. The leadership and management challenges this will bring are being planned for.

To support recruitment, backlog innovation work will be a focus to drive the reduction of the PAP, increase closure and productivity. Some of the key areas will be PAP project initiatives and continued early resolution, Scheme Rules review and consideration of LEAN. Closer management of earned annual leave is essential and the impact this has on the assumptions is being built in.

A review of the assumptions will be introduced monthly to ensure that the year-end position remains accurate and transparent.

Yours sincerely

<<Joe Bloggs>>  
<<Head of a Department>>  
<<Joe.bloggs@legalombudsman.org.uk>>

## **HEALTH & SAFETY POLICY**

### **Costs Lawyer Standards Board**

#### **1. Statement of intent**

Whilst Costs Lawyer Standards Board Ltd (“CLSB”) is considered a low risk operation by the nature of its business, the health & safety (“H&S”) of employees and visitors remains of paramount importance. This policy sets out its commitment to good practice, high standards and responsibilities for H&S.

#### **2. Risk management**

CLSB is committed to excellence in H&S and achieving effective identification, management and control of risk. It will continuously monitor, plan and change policy and practices to ensure the highest standards of H&S are met and relevant legislation and codes of practice are complied with.

#### **3. Duties**

Each employee, visitor or otherwise has a duty in law to take care of their own H&S, to take due consideration for the H&S of others and not interfere with or misuse facilities that are there in the interests of H&S. Each individual must comply with this policy, standards and arrangements for H&S.

#### **4. Good practice**

- Competent advice on H&S matters will be taken where considered appropriate.
- Appropriate H&S training will be provided where required.
- A risk assessment will be undertaken where a potential H&S risk has been identified, or an incident has occurred.
- An incident of H&S will be recorded in an incident book, fully investigated and reported on to the Board.
- Any incident reportable under the requirements of RIDDOR will be reported to the HSE in the prescribed form.
- This policy and H&S arrangements will be reviewed annually, and in the interim on a needs be basis.
- Ownership of H&S will be encouraged amongst employees.
- Employees will be consulted on and informed on H&S issues affecting them.

#### **5. Responsibility**

Ultimate responsibility for H&S rests with the Board. The Board will review this policy annually or on a needs be basis.