

Costs Lawyer Standards Board

AGENDA

Tuesday 21 July 2020 @ 10.30am
Remotely via videoconference

Board:

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

In attendance:

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

Note: Agenda items in blue are standing items

	Agenda item	Paper	Publish ¹	Lead
1	Opening matters 1.1 Quorum and apologies 1.2 Declarations of interest on agenda items	- -		SW SW
2	Minutes 2.1 Approval of minutes (22 April 2020) 2.2 Matters arising (22 April 2020)	Item 2.1 -	Yes	SW SW
3	Strategy 3.1 Progress against Business Plan 3.2 Approach to coronavirus 3.3 2021 Business Plan	Item 3.1 Item 3.2 Item 3.3	Yes Yes Yes	KW KW KW
4	Board matters 4.1 Chair recruitment 4.2 Meeting dates for 2021	Item 4.1 -	No (A)	KW SW
5	Finance 5.1 Quarterly report: Q2 2020 5.2 2019 accounts 5.3 Legal Choices funding 5.4 2021 budget 5.5 2021 practising fee 5.6 Policy on handling disciplinary income	Item 5.1 Item 5.2 Item 5.3 Item 5.4A+B Item 5.5 Item 5.6	No (D, E) Yes No (B) Not 5.4B (A, D) Yes Yes	JC KW KW KW KW KW

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

6	Risk management 6.1 Review of risk registers 6.2 Business Continuity Plan	Item 6.1 Item 6.2A+B	Yes No (A, F)	KW
7	Regulatory matters 7.1 CPD Rules 7.2 Practising Rules 7.3 Guidance 7.4 Handling of client money 7.5 Mayson report 7.6 CPD audit	Item 7.1A-D Item 7.2A+B Item 7.3A-C Item 7.4 Item 7.5 -	Yes Yes Yes No (F, G) Yes	KW KW KW KW KW
8	Legal Services Board (LSB) 8.1 Internal Governance Rules 8.2 Other workstreams	- Item 8.2	Yes	KW KW
9	Legal Services Consumer Panel (LSCP) 9.1 Work update	-		KW
10	Legal Ombudsman (LeO) 10.1 Complaints position 10.2 Work update	- Item 10.2	Yes	KW KW
11	Representation (ACL) 11.1 Council minutes 11.2 Work update	Item 11.1 -	Yes	KW KW
12	Education 12.1 Costs Lawyer Qualification coronavirus update	-		KW
13	Operational matters 13.1 Database demo	-		JC
14	Publication 14.1 Confirmation that papers can be published	-		SW
15	AOB	-		SW
16	Next meeting (i) Date: Tuesday 20 October 2020 @ 10.30am (ii) Venue: Leeds or videoconference (TBC)	- -		SW SW

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 22 April 2020 at 10.30 am
Remotely by videoconference

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

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

1. OPENING MATTERS

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

2. MINUTES

2.1 Minutes dated 22 January 2020

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

Action: Publish minutes on CLSB website

2.2 Matters arising

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

3. STRATEGY

3.1 Progress against Business Plan

The board was provided with an update on progress against the 2020 Business Plan, including a summary of Q1 activity and a RAG rating of each priority in the plan. The board was invited to provide feedback on both the progress that had been made and the method of reporting.

The board discussed the progress update and agreed that it was a useful oversight tool. The board requested a similar update for each quarter going forward.

Action: Add Business Plan progress update as a standing agenda item

3.2 Approach to coronavirus

Kate provided an overview of the CLSB's response to the coronavirus pandemic, building on earlier updates provided to the board by email. She explained the impact on internal resourcing, including the continuity planning that had been carried out. Resources were being diverted to priority tasks such as: producing COVID-19 advice and communications for the regulated community; liaising with oversight bodies on continuity issues; keeping abreast of developments in government guidance; and monitoring impact across all the legal professions. The executive had therefore revisited Q1 priorities by reference to a priority cascade, shown below. Using the cascade, the CLSB had achieved all but three of its scheduled milestones for Q1.

Rank	Work area	Descriptor	Examples
1.	Core regulatory functions	Areas where we have a statutory duty to act, or where there is a risk of harm to the public interest if we delay acting	Disciplinary matters; complaint handling; application processing
2.	Crisis response	Areas that facilitate our ability to respond to the coronavirus pandemic	New website; situation monitoring
3.	CLSB compliance	Areas where non-compliance with our legal or regulatory obligations creates reputational and/or financial risk	IGRs compliance deadline; data protection
4.	Improvements to regulatory arrangements	Areas where delays in updating regulatory arrangements could cause knock-on inefficiencies or problems later in the year	Rule change applications; proactive guidance development
5.	Regulatory performance	Areas that impact the outcome of our regulatory assessment scores	Diversity initiatives; governance measures

The board agreed that the outstanding milestones from Q1 should be prioritised for Q2, noting that the risks from delay were very low given the considered approach to prioritisation that had been taken.

Kate explained how the CLSB was assisting the regulated community to meet its professional obligations during the crisis. Measures included allowing for CPD to be obtained exclusively through e-learning in 2020, a dedicated advice webpage, and bespoke assistance to individual enquirers on ethical issues. The board was also provided with an overview of how ACL and the LSB were responding to the crisis.

Paul and Andrew M described their experience of market impact:

- Most Costs Lawyers were already familiar with agile working, although further guidance on IT security and data protection when working from home might be useful.
- Many clients (law firms) were less sophisticated with technology and were not able to send papers electronically, particularly where admin staff had been furloughed. This was causing delays and, for smaller firms and independents, could impact cashflow.
- There was some evidence of late or non-payment of invoices, perhaps also due to furlough of admin staff or because clients were starting to encounter their own

cashflow problems (particularly where law firms were not being paid by the ultimate client).

- In terms of work volume, there had been a noticeable decrease in commercial litigation already. Open proceedings were commonly being stayed or settled.
- PI cases, on the other hand, were based on work-in-progress and it was taking longer to see an impact in this area. However, in the medium term there would be less PI work, due to a decrease in the number of road traffic and workplace accidents during the lock down period.
- Given that less litigation was being instigated during this period, the impact on back-end costs work would likely emerge slowly over the next 12 to 36 months.
- There would inevitably be disputes directly related to COVID-19 over the coming months, however not all clients would have the cashflow to move such claims forward at pace. This could give rise to solicitors asking Costs Lawyers to do more work on a deferred or contingent fee basis, and costs firms would need to ensure they retain sufficient working capital.
- The larger defendant costs firms were seeing the most furloughed staff, including some Costs Lawyers.
- Many practitioners, clients and industry bodies (including APIL and FOIL) were viewing coronavirus as a reason to “down tools” across the board. There were concerns in the market about COVID-19 being used as an excuse to shed staff or delay litigation where this was not necessary.

The board discussed when and how to obtain more detailed feedback about the impact of coronavirus on the regulated community. It was agreed that a short, targeted survey would be the most appropriate approach. The survey should be aimed at: assessing the short-term impact on practitioners and consumers; predicting the longer-term impact on businesses and jobs; and flushing out emerging concerns to give the CLSB focus in its next phase of activity.

Factors affecting the timing of the survey included HMCTS’s progress with virtual hearings, the ability for respondents to make accurate long-term projections, and any relevant ACL activity. It was agreed that an initial survey should be issued in the next few weeks, with outcomes being reported back to the regulated community in the newsletter. Given the pace of change with the pandemic, a follow-up survey should be carried out in several months’ time to assess how things were progressing and capture delayed impact.

It was also agreed that communications should have a practical purpose for recipients, given the volume of email traffic about COVID-19 in the current environment.

Action: Issue survey on coronavirus impact

4. BOARD MATTERS

4.1 Publication of board papers

In January, the board had asked for a report summarising how other approved regulators approached the publication of board documents, to help identify best practice and agree a way forward. Steve took the board through the findings in the report and invited views. Board members reiterated that openness and transparency

were paramount. While the risks associated with publication of board documents (as canvassed at the January meeting) remained real, the report contained useful examples of how those risks could be effectively mitigated. In identifying best practice, the board was particularly interested in approaches that had been assessed as meeting the LSB's expectations under regulatory outcome WL3.

The board noted that the practices of some approved regulators could be perceived as opaque, even where this was not the intention or stated policy position. Such practices included heavy redaction of documents, failure to indicate the topics discussed during confidential sessions of board meetings, and lack of clarity as to what documents had been withheld from publication. The board was keen to avoid these practices in order to promote public trust.

The board agreed that, going forward, it would publish: board meeting dates; agendas; papers; minutes; and Board Decision Notes. All documents would be published as early as possible to facilitate timely scrutiny. Papers would be published within 14 days of the relevant meeting. Draft minutes approved by the Chair would be published at the same time, rather than waiting for formal approval of the minutes at the board's next meeting, to provide readers with context and help stakeholders understand the meeting outcomes.

This approach would be supported by a policy statement setting out what documents the CLSB publishes and when, as well as the exceptional circumstances in which information would be withheld from publication. It should be clear to the public where a document has been withheld and why, for example by an indication in the published agenda. The board would confirm at each meeting that papers were appropriate for publication in line with the policy statement.

The board asked Kate to implement this approach with effect from the current board meeting. Kate agreed to circulate a draft publication policy for consideration by email. Once that had been approved, the papers and draft minutes would be published.

Finally, the board discussed the possibility of introducing an annual open meeting. There was appetite to consider open meetings, but board members felt that a staged approach was preferable. This would allow the board to assess the impact of publishing board papers before determining whether further transparency measures were needed. The board noted that the LSB was still considering whether open meetings reflected best practice.

Action: Prepare publication policy for approval by email; Update website with agreed publication policy; Publish board documentation for this meeting, including papers and draft minutes

4.2 Updated notification of CEO interests

Kate provided an updated list of her current professional interests outside the CLSB. None of these gave rise to any actual or potential conflicts of interest.

The board agreed that, while there was a register of interests for board members, there was merit in also making an annual declaration that no conflicts existed. The board

considered whether to publish this, but decided publication was not necessary so long as conflicts were being properly managed. This position would be kept under review.

Action: Diarise annual declaration

5. FINANCE

5.1 Quarterly report: Q1 2020

Jacqui introduced the quarterly finance report and sought feedback on the new report format, which included a clearer assessment of expenditure against budget and year end projections for each line item.

The board considered the financial position at the end of Q1. Board members asked about how the projections had been calculated and Jacqui explained the degree of certainty attaching to the different line items. The board found the new format helpful and agreed that it should be used going forward.

5.2 Legal Choices funding

Kate explained the background to the Legal Choices project for the newer board members and updated the board on recent developments. This included a letter from the Solicitors Regulation Authority (SRA) asking the LSB to take on responsibility for the website. Kate reported the outcome of a recent Legal Choices Governance Board meeting at which this proposal had been opposed by the other approved regulators. At the same meeting, approved regulators had been asked to commit to covering a proportion of the funding shortfall created by the Bar Standards Board's withdrawal. They were also asked to commit to continued funding of the website following the end of the initial three-year project term. The board discussed the issues raised.

The board strongly agreed that the CLSB would not support the SRA's request for the LSB to take over the website. There were concerns around the LSB's capacity to run the site and the associated implications for funding and level of input. The board also discussed the potential outcomes if the LSB declined the invitation.

In relation to the funding shortfall, Kate noted she was still awaiting confirmation of the precise amount of the expected contribution. The board agreed that if the 2020 budget would bear it, the amount should be paid. However, the board was keen to make clear that, as a matter of principle, approved regulators could not be expected to prop up the budget where other parties withdrew from the project. Kate agreed to revert to the board if the contribution sought was materially higher than expected.

In relation to future funding of Legal Choices, the proposed contribution split was again still pending, making it difficult for the board to consider this issue in detail. The CLSB had already indicated it would be reluctant to commit further funding to the project without seeing tangible benefits. The board noted the progress made with the site, including to hit rates, but was concerned that the significant increase in traffic which was being driven by COVID-19 content was not an indication of longer-term viability. However, the board also recognised that it would lose the ability to input into the project if it did not provide some level of funding. The board agreed to review the matter again once the proposed contribution for 2021 had been communicated.

Action: Pay top-up contribution if manageable and revert to board by email if not

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 discussed whether it was necessary to add a specific risk in relation to coronavirus. The board agreed it was not; rather, the crisis fed into the recorded risks, either by increasing their probability or as additional evidence of risk. The board therefore agreed the following amendments to the registers:

- add the impact of coronavirus as further evidence of risk OP1 (*more leave than enter the profession*) in relation to job security in the short and longer term;
- note that there could be some positive impact of coronavirus on risk OP1 – for example, it had been announced that the MoJ's whiplash reforms were being further delayed;
- include the impact survey of the regulated community as a new control under risk OP1;
- add a control under risk OP2 (*organisational structure not sufficient to ensure business continuity*) around assessing continuity risks in light of coronavirus;
- add the potential impact of coronavirus on regulated numbers and practitioners' disposable income as further evidence of risk OP4 (*ACL becomes insolvent*).

At this stage, it was considered too early to adjust the probability scores for most risks, as the longer term impact of coronavirus was hard to quantify. The board agreed to reconsider this at its July meeting, taking account of the evidence available at that time. The impact of coronavirus on all risks in the register would be kept under review.

Otherwise, the board agreed to:

- downgrade the probability rating for OP5 (*failure to comply with data protection obligations*) from 4 to 2, reflecting follow-up work from the recent audit;
- increase the probability score for R2 (*Costs Lawyer accepting client money*) from 1 to 2 to reflect issues raised in a recent complaint, and update the evidence of risk accordingly;
- remove risk OP8 (*retirement of board members in close succession*) to reflect that, following new NED appointments in January, the board was now satisfied that its skills mix was adequate and institutional knowledge was protected.

Action: Update risk registers as agreed and publish on website

7. REGULATORY MATTERS

7.1 Disciplinary Rules and Procedures

Kate informed the board that the CLSB's rule change application in relation to its Disciplinary Rules and Procedures (DR&P) had been approved and the new regulatory arrangements would be implemented on 1 May. The board received a copy of the LSB's decision letter and notice. Kate noted that the one outstanding issue raised by

the LSB in its decision letter had been addressed by an addition to the internal guidance for Conduct Committees and Conduct Appeal Committees.

The board was invited to consider three new policy documents that had been drafted to supplement the rules, namely:

- a) Panel Member Appointment Policy and Code of Conduct
- b) Guidance for Conduct Committee and Conduct Appeal Committee on decision making and penalties
- c) Policy statement on publication of disciplinary decisions

It was recommended that documents (a) and (c) be published in full, while an extract from document (b) would be published covering enforcement and mitigating/aggravating factors, with the intention of providing guidance to the profession and ensuring transparency of approach.

The board discussed the documents. In relation to (a), the board agreed that the requirement for former CLSB board members to wait at least two years before being eligible for Panel membership should also apply to former CLSB staff, and the appointment criteria should be amended to reflect this. The board also discussed the evidence that ought to be obtained from a prospective Panel Member before concluding that he or she met the appointment criteria. It was agreed that at least two of the evidence sources in paragraph 7 should be required. In relation to the Code of Conduct in document (a), the board discussed the timing of Panel Members disclosing conflicts of interest, but it was agreed that the drafting was adequate on this point.

In relation to document (b), the board noted that two items in the table of mitigating and aggravating factors had been transposed. The board also discussed the need to ringfence income from financial penalties and costs awards to ensure they were allocated exclusively to dealing with disciplinary matters. Kate agreed to explore with the accountants whether additional internal processes were required.

Subject to the agreed amendments, the board approved the new policy documents for publication as recommended. The board also agreed to revoke guidance documents relating to the existing DR&P, which had been superseded.

Actions: Implement new DR&P and related policy documents (amended as agreed) on 1 May 2020; Revoke guidance documents relating to the outgoing DR&P; Liaise with accountants re funds from disciplinary matters

7.2 Consultation outcomes

The board was provided with outcome reports for the CLSB's recent consultations on the CPD Rules and Practising Rules. The board discussed how the challenges presented by coronavirus heightened the need for a more flexible approach to CPD.

7.3 Guidance

Kate updated the board on changes to guidance that had been implemented under Phase 1 of the Costs Lawyer Handbook audit (including guidance on ADR, Complaints Procedures and Reserved Legal Activity Rights).

Kate also informed the board that all CLSB guidance materials had been reformatted for the new website. This process had revealed some areas where content would be better housed on a webpage: as FAQs or a policy statement. A good example was the Guidance Note for Client / Potential Client of a Costs Lawyer. This had been housed in the Costs Lawyer Handbook, which was aimed at practitioners, and it was unlikely that a client would seek out guidance of this kind. The board therefore agreed to revoke this guidance and transfer any relevant content to the section of the website entitled "For the public". This would better allow the content to be updated over time to address trends in enquiries from the public and other evidence of consumer need.

Kate introduced a new guidance note covering the interplay between the Costs Lawyer Code of Conduct and the SRA's Code of Conduct for Firms. The SRA's Code applied to Costs Lawyers working in solicitors' firms and, while the Codes were similar, they were not identical and contained overlapping duties. A need for clarification had been identified through the CLSB's ongoing work, and the note was aimed at addressing that need. Kate noted that the draft had been approved by the SRA, who had been very helpful in reaching an agreed position.

The board discussed the guidance note and agreed that it would be useful for practitioners. A query was raised around whether certain statistics in the guidance could be updated for the practising year just passed. Subject to that update, the guidance was approved.

Actions: Revoke Guidance Note for Client / Potential Client of a Costs Lawyer and incorporate into website content; Implement new Guidance Note for Costs Lawyers in SRA regulated firms (updated as agreed)

7.4 Consumer engagement Board Decision Note

At its January meeting, the board agreed that a Board Decision Note (BDN) should be published on the development of its consumer engagement strategy. Kate presented a draft BDN for this purpose, drawing together deliberations of the board over several meetings. The board agreed that this was a helpful summary of the decision-making process and approved the draft for publication.

Action: Publish BDN on consumer engagement

7.5 Handling of client money

Kate updated the board on two recent developments – one arising from a disciplinary investigation and one from a public enquiry – which suggested an emerging need to

revisit the CLSB's prohibition against Costs Lawyers handling client money. The board discussed whether the current regulatory arrangements in the Code of Conduct provided adequate consumer protection in all circumstances and/or whether additional guidance was warranted in light of learnings from the CLSB's recent work.

The board canvassed various options for addressing this complex issue and agreed that no obvious solution presented itself whereby better consumer outcomes could be guaranteed (within the limited scope of the CLSB's regulatory jurisdiction). The board discussed possible sources of comparative evidence and advice, and agreed that a mix of legal, policy and practical expertise were required. Kate agreed to have further discussions with contacts and advisers during Q2 and report back to the board at its July meeting.

Action: Discuss options with advisers and stakeholders and revert in July

8. LEGAL SERVICES BOARD (LSB)

8.1 Diversity

The board was provided with a letter from the LSB (sent to all approved regulators) in relation to its emerging policy approach to diversity and inclusion. The letter set out revised expectations on regulators and sought a progress report on performance by 1 May 2020. The board was provided with a draft progress report for the CLSB and invited to provide feedback.

The board agreed that the CLSB's approach to diversity was appropriate to the organisation's resources and the size of the profession. The draft progress report rightly celebrated the CLSB's initiatives in this area and drew together various strands of activity. It was agreed that the CLSB should publish its progress on diversity at an appropriate point in the future, in the interests of transparency.

The board also agreed to revoke the existing guidance note on equality and diversity in the Costs Lawyer Handbook; the content was more suited to a webpage dedicated to diversity issues, and this had already been incorporated into the new CLSB website.

Kate explained that the CLSB had collaborated with the SRA during Q1 to develop a guide for Costs Lawyers on the business case for diversity. This built on existing SRA research, tailored to the CLSB's regulated community. The board agreed that this was a positive example of how the CLSB could work with the larger regulators to develop quality outputs for Costs Lawyers in important areas.

Action: Revoke guidance note on equality and diversity; Submit progress report to LSB on diversity initiatives

8.2 Internal Governance Rules

Kate presented a draft Memorandum of Understanding (MOU) and Operational Protocol (OP) that had been agreed in principle with the Association of Costs Lawyers (ACL). The new MOU did not change the relationship between the parties, but had been expanded to ensure compliance with the LSB's Internal Governance Rules 2019. Kate also provided updates from a recent conversation between the CLSB, LSB and

ACL. The LSB had indicated that paragraph 4.4 of the OP should more clearly specify when information would be provided to enable ACL to perform its residual role.

The board was also provided with draft documentation describing how the CLSB complies with the Internal Governance Rules 2019. Under the LSB's regulatory arrangements, the CLSB was required to certify its compliance at board level and submit a compliance certificate by 24 July 2020. Kate explained that ACL would need to make a rule change application to the LSB for approval of the new MOU and OP (following agreement between the parties), however the LSB had informed the CLSB that its compliance documentation could be submitted on the basis that it was conditional upon the outcome of that rule change application.

The board discussed the MOU, OP and compliance documentation. Board members considered what assistance could be provided to ACL in making the rule change application, as this task usually fell to the regulatory body. Kate confirmed that she was facilitating discussions and sharing documentation wherever possible.

The board approved the MOU and OP, subject to an amendment to paragraph 4.4 of the OP as noted above. The board certified that the CLSB complied with the Internal Governance Rules 2019, for the reasons set out in the certificate of compliance. This certification was conditional upon the LSB approving the new MOU and OP following ACL's pending rule change application.

The board also approved minor amendments to the CLSB Board Terms of Reference to refer to the updated Internal Governance Rules. Board members noted an inconsistency on the face of the Terms of Reference in relation to voting in writing, however it was understood that this inconsistency was derived from the CLSB's Articles of Association. It was agreed that a more holistic review of the organisation's governance documents should be included in the draft 2021 Business Plan that would be considered by the board in July.

Actions: Execute MOU and OP (amended as agreed) with ACL; Submit compliance documentation to LSB, including this minute as evidence of board certification; Adopt amended Board Terms of Reference; Include wider review of governance documents in draft 2021 Business Plan

8.3 Practising fee approval process

Kate updated the board on the LSB's ongoing review of its processes for determining practising fee applications under section 51 of the Legal Services Act. The board was provided with a letter from the LSB outlining the proposed changes.

Kate explained that she had significant concerns about the proposals for refusing applications. She noted that the LSB appreciated the significant risks associated with refusal, but the only proposed solution was to allow regulators to collect an interim practising fee while the matter was resolved. The CLSB considered this untenable in practice for many reasons (including logistical, financial and reputational difficulties). It had recently become clear that these concerns were shared by other regulators.

The LSB was now exploring other potential solutions, including regulators relying on financial reserves for cashflow while waiting for a fresh application to be determined. Kate's view was that this approach was equally problematic, given the many difficulties in pushing back the renewals process at all, which she had communicated to the LSB.

The board noted that the CLSB was at particular risk of harm if this aspect of LSB policy was not properly thought through. Kate agreed to continue to engage with the review and report any significant developments to the board by email, and otherwise update the board at its scheduled meeting in July.

Action: Kate to report on progress as appropriate

8.4 Other workstreams

Kate noted that the LSB was working on several stakeholder projects, which the CLSB was engaging with via bilateral meetings or workshops. These included: a listening exercise to gather feedback on LSB performance; collating views on priorities within the legal services sector to feed into LSB strategy; and a call for evidence on continuing competency. The board noted the position and encouraged ongoing engagement as appropriate.

The board was also provided with an article that had been published in the ACL bulletin in March, based on a comment from the LSB CEO that questioned the future of the smaller legal services regulators. Steve noted that, while the CEO's comments had been taken out of context, they were nevertheless unhelpful and undermined the relationship-building process between the two organisations. The issue had been raised with the LSB.

9. LEGAL SERVICES CONSUMER PANEL (LSCP)

9.1 Work update

Kate noted that the LSCP had provided useful feedback on the CLSB's Consumer Engagement Strategy and explained how this was being actioned. The board was grateful for the Panel's input.

10. LEGAL OMBUDSMAN (LeO)

10.1 Service complaints position

The board was informed that the CLSB had referred two service complaints to LeO in Q1. In one case, LeO had initially told the complainant that it did not have jurisdiction to determine the complaint and the CLSB had intervened to establish jurisdiction. The board discussed whether this was evidence of a more systemic issue. The board also noted that the CLSB was likely to have an increasing role in assisting complainants with LeO processes over time, linked to the rise in lay client instructions.

10.2 Work update

The board was provided with a Gazette article reporting that the proposed 21% increase in LeO's budget – which the board had considered at its January meeting – was not approved by the LSB. Kate noted that she was due to speak to the new Chair of the Office for Legal Complaints (which oversees LeO) and would enquire about plans for the budget and short term priorities. The board noted the position.

11. REPRESENTATION (ACL)

11.1 Council minutes

Paul volunteered to provide minutes of ACL Council meetings going forward, following the departure of Tracyanne from the board in January. Kate agreed to circulate the most recent minutes to board members following the meeting.

Action: Circulate latest ACL Council minutes by email

11.2 Work update

The board welcomed the news that the ACL Chair had returned to post following a period of leave.

12. EDUCATION

12.1 Costs Lawyer Qualification coronavirus update

Kate informed the board that she had been liaising with ACL Training around ensuring continuity in delivery of the Costs Lawyer Qualification in light of coronavirus. The board noted that, due to the course running from January to December in 2020, it was less likely that final exams would be impacted. There was, however, a small cohort undertaking the final year of the old course who were due to sit an exam in June. This had been cancelled, but students were being accommodated during the resit cycle (in August).

Otherwise, the course remained on track for current learners. ACL Training was aiming for all students to successfully complete their studies in 2020 to allow them to progress to the next year of the course, or qualify, in the usual timeframe. The course was being run online, including seminars and revision sessions, while government restrictions were in place. Adjustments had been made to other policies and regulations (for example, around requests for extensions and deferrals) to take account of current circumstances. ACL Training was proactively keeping the CLSB updated where changes were made. The board noted these matters and discussed the need to keep the exam position under review.

13. OPERATIONAL MATTERS

13.1 IT update

Kate explained that a new IT consultant has been retained in Q1 and provided the board with an overview of the IT workplan that was currently in delivery. The program of work for 2020 included:

- (i) Development of a new website
- (ii) Transition to a better, cheaper, integrated email system
- (iii) Commissioning and deployment of various software, including new cloud storage and mail distribution systems
- (iv) Development of a new Costs Lawyer database, which would power the CLSB's online register and practising certificate renewal process
- (v) E-forms for practising certificate renewals

Projects (i) to (iii) had already been largely delivered, on budget and earlier than anticipated. Significant progress had been made on projects (iv) and (v), which would be delivered later in the year.

Kate explained that the new website had been launched in late March; this was slightly earlier than expected, but was needed to facilitate timely communication with the regulated community during the coronavirus crisis. Kate outlined the work that had been done in considering the site's purpose, its key audiences and branding. This informed both the structure and style of the new site.

In summary, the project team had:

- Redesigned the site's look and feel, incorporating previous board feedback on different audiences and their likely needs.
- Improved navigation around the site, so materials were more clearly signposted and there were more pathways leading to key information.
- Redrafted the content of every page, using plain language and a consistent tone.
- Incorporated FAQs across the site, giving it a more practical focus.
- Brought older PDF documents into the new house style.
- Published more material and data than previously, in a more accessible format.
- Made application forms available as writable PDFs, which could be downloaded, filled in and signed electronically (previously all forms had to be requested and were sent out by post). The intention was to move to full e-forms over time.
- Designed the site to comply with the accessibility requirements for public bodies that would apply from September 2020.

While there was insufficient budget to carry out extensive formal testing, the site's navigation and user experience had been informally tested on solicitors and lay members of the public who looked at the site from the perspective of a client. Their feedback was incorporated wherever possible at proportionate cost. Feedback was also sought from stakeholders such as ACLT (in relation to student use) and Costs Lawyers generally (via an email communication).

The board felt that the website, as well as the e-forms for practising certificate renewals (which were in development), were a vast improvement on the previous offering and would help the organisation move into the modern era. The board acknowledged that the old website would have placed the CLSB at a significant disadvantage in responding to COVID-19 issues and was pleased that the organisation had been nimble in bringing publication of the new website forward. Board members gave feedback on specific aspects of the website and forms, which Kate agreed to action.

Action: Implement board feedback on website and forms

14. AOB

The board agreed that the virtual format for the meeting had worked well and all business had been dispensed with effectively. The board discussed whether there was merit in moving all future meetings to a virtual platform, to save cost and avoid travel time. It was agreed that a mix of formats was likely to be appropriate, with some meetings held in person and some held virtually throughout the year. The board agreed to hold its July meeting by videoconference and take stock after that.

15. NEXT SCHEDULED QUARTERLY MEETING

When: Tuesday 21 July 2020 at 10.30am

Where: By videoconference

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

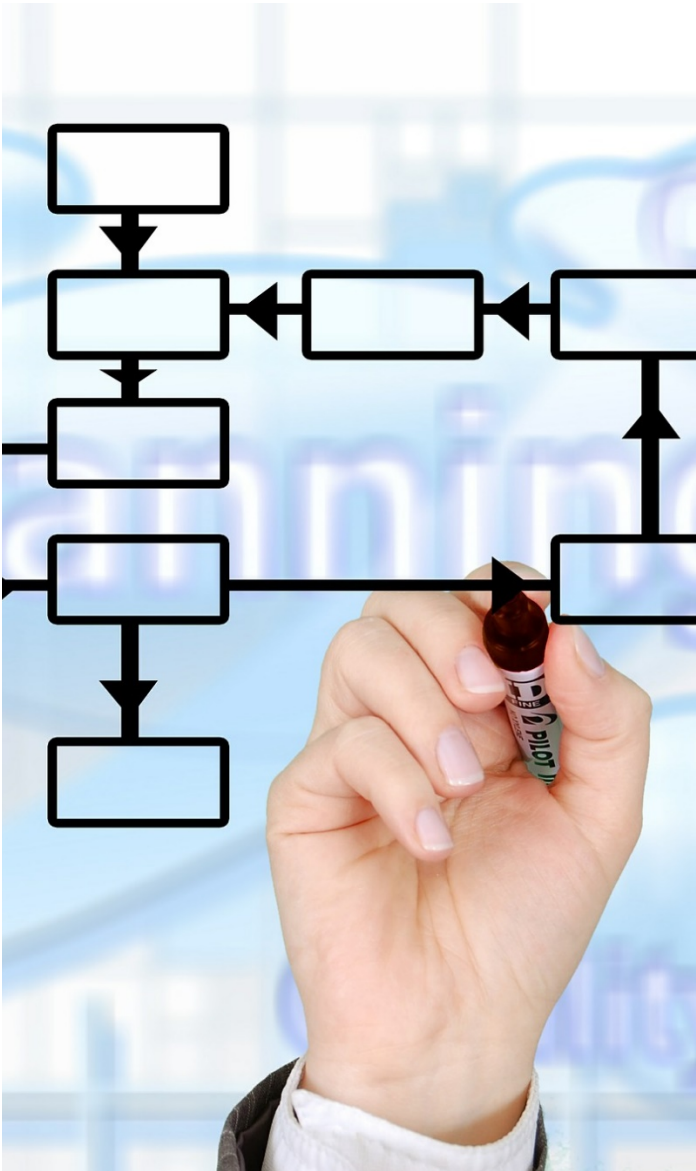
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Chair

Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes (22 January 2020)	About us ⇨ Our board
3.1	2020 Business Plan	About us ⇨ Strategy and governance
4.1	Board documents	About us ⇨ Our board
4.1	Policy statement on publishing board documentation	About us ⇨ Our board ⇨ What we publish
6.1	Risk registers	About us ⇨ Strategy and governance
7.2	Consultation outcome reports	Regulatory matters ⇨ Consultations
7.3	Guidance notes	For Costs Lawyers ⇨ Costs Lawyer Handbook
7.4	Board Decision Note	About us ⇨ Our board
8.1	Guide for Costs Lawyers on the business case for diversity	Regulatory matters ⇨ Equality and diversity
8.2	Memorandum of Understanding and Operational Protocol with ACL	About us ⇨ Who we are ⇨ CLSB and the Association of Costs Lawyers
Item	Document	Publication location (other)
7.1	Disciplinary Rules and Procedures rule change application and outcome	LSB website here
8.2	Internal Governance Rules 2019	LSB website here

Business Plan 2020

Q2 board update



July 2020

Costs Lawyer Standards Board



Annual priorities

Improving our regulatory arrangements

	Initiative	Progress status / expected completion
1.	<p>Complete the review of our Disciplinary Rules and Procedures following consultation in 2019 by:</p> <ul style="list-style-type: none"> • implementing revised rules; • producing associated guidance for Conduct Committee members, including in relation to financial penalties; • articulating parameters for ad hoc recruitment of Panel members; • creating an operating framework for the new Case Manager role; • reviewing our policy on the publication of outcomes. 	<p>Near completion (expected – Q3)</p> <p><i>Achieved: New Disciplinary Rules and Procedures, along with associated guidance and policies, were implemented in May.</i></p> <p><i>Outstanding: The operating framework for the Case Manager role needs to be created.</i></p>
2.	<p>Complete the review of our approach to Continuing Professional Development (CPD) by:</p> <ul style="list-style-type: none"> • consulting on proposed changes; • implementing new rules and guidance; • developing reporting templates and case studies to assist practitioners. 	<p>Near completion (expected – Q4)</p> <p><i>Achieved: Our rule change application was approved in June and our supporting materials are ready for publication.</i></p> <p><i>Outstanding: Communications plan for implementation to be developed. Introductory video to be commissioned. Amended Accredited Costs Lawyer Rules to be considered by the board at this meeting.</i></p>
3.	<p>Review our Practising Rules and Practising Certificate Reinstatement Procedure, with the aim of bringing them into line with updates made to other regulatory arrangements and acting upon insights gained from our supervision and disciplinary activities.</p>	<p>Near completion (expected – Q3)</p> <p><i>Achieved: Review has been completed and a rule change application has been made.</i></p> <p><i>Outstanding: Final approval from the LSB is pending. Updated guidance on insurance and a new policy statement on practising conditions to be considered by the board at this meeting. Changes to be implemented.</i></p>
4.	<p>Deliver the phase 2 actions identified in the 2019 Handbook Audit, in particular conducting a</p>	<p>Near completion (expected – Q3)</p> <p><i>Achieved: Four of the five guidance notes have been reviewed and amendments</i></p>

	<p>routine substantive review of our guidance relating to:</p> <ul style="list-style-type: none"> • Damages-Based Agreements and Conditional Fee Agreements; • Insurance; • Anti-money laundering; • Referral arrangements; and • Retention of a client’s file. 	<p><i>drafted. Advice is being taken on a discrete point in relation to referral arrangements.</i></p> <p><i>Outstanding: Four updated guidance notes to be considered by the board at this meeting. Review of the referral arrangements guidance note to be completed in Q3.</i></p>
5.	<p>Revisit our diversity action plan to ensure it reflects prevailing best practice and addresses issues that impact upon the Costs Lawyer profession in particular.</p>	<p>Achieved (Q1)</p> <p><i>Diversity action plan has been completed. Additional activities have been undertaken to address the new LSB approach and expectations. A progress report was provided to the LSB in April.</i></p>
6.	<p>Examine our evidence base in relation to new and emerging policy developments, our regulated community and the regulated market.</p>	<p>Pending (expected – Q4)</p> <p><i>This is a second stage activity following our consumer engagement work. It is scheduled for H2 2020.</i></p>

Protecting the interests of consumers and promoting professional standards

	Initiative	Progress status
7.	<p>Build on research undertaken in 2019 to deliver:</p> <ul style="list-style-type: none"> • a final report on consumer use of Costs Lawyers’ services; • a revised consumer engagement strategy; and • a framework for aligning risk assessment and regulatory approach to consumer need and expectations. 	<p>Achieved (Q1)</p> <p><i>A revised Consumer Engagement Strategy was published in Q1 2020. A decision was taken to publish the interim report as an annex to a Board Decision Note. Actions under the new strategy will commence in H2 2020.</i></p>
8.	<p>Review our guidance on vulnerable consumers.</p>	<p>Deprioritised / superseded</p> <p><i>This has been identified as an action for year 2 of the Consumer Engagement Strategy, so it will now be delivered in the 2021/22 cycle. In 2020, we will begin</i></p>

		<i>delivering the actions identified in the first strategy cycle.</i>
9.	Work with ACL Training on delivery of the refreshed Costs Lawyer Qualification, building on preliminary analysis and development of materials in 2019.	<p>In train (expected – Q4)</p> <p><i>Achieved: The qualification reopened in January 2020. We continue to receive and provide feedback, in open dialogue with ACLT. We are liaising with potential audit providers, looking to commission in Q3.</i></p> <p><i>Outstanding: Audit of the first year of the new course to be undertaken later in the year. Diversity opportunities at point of entry into the profession to be assessed. Any improvements for 2021 to be identified.</i></p>
10.	Collaborate with the Association of Costs Lawyers (ACL) on identifying touchpoints for the collation and analysis of data relating to the profession, including sources of instructions.	<p>In train (expected – Q4)</p> <p><i>Achieved: Initial data gathered at a recent event, enabling us to consider how to approach future activity.</i></p> <p><i>Outstanding: Identification of further opportunities for data capture, although noting challenges presented by Covid-19.</i></p>
11.	Engage with Professor Mayson’s review of legal services regulation and collaborate with ACL to promote understanding of what Costs Lawyers do and the relative risks to consumers from over- and under-regulation of the market.	<p>Achieved (Q2)</p> <p><i>Input was provided as the report was developed. The final report has now been published, with positive recommendations for Costs Lawyers, as will be reported to the board at this meeting.</i></p>
12.	Develop and agree a new memorandum of understanding with ACL to implement the Legal Services Board’s internal governance reforms and establish an improved framework that appropriately balances cooperation, oversight and independence.	<p>Achieved (Q2)</p> <p><i>The new MOU and OP were executed by ACL and the CLSB in Q2 and the CLSB has submitted comprehensive compliance documentation to the LSB. While ACL’s rule change application has not yet been approved by the LSB, we consider this priority achieved from the CLSB’s perspective.</i></p>
13.	Explore with ACL how we can improve the content or format of the regulatory information that we publish for the benefit of the profession and other stakeholders.	<p>In train (expected – Q3)</p> <p><i>Achieved: A new data webpage has been created to host all data in one place. Regulatory return data has been updated</i></p>

		<p>for 2019 and published. Diversity survey data has been published for the first time.</p> <p>Outstanding: Data to be published in different formats, e.g. infographics. ACL to be asked for feedback on approach.</p>
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Modernising our organisation

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

		<i>during Q3 and will then take a more reactive approach to this workstream.</i>
18.	Assess the impact of moving our practising certificate renewal process to a digital platform to improve data security, minimise manual processes and save resource.	<p>Near completion (expected – Q3)</p> <p><i>Achieved: Assessment of the 2019 manual renewal process has been carried out. The risk/cost/resource profile led us to conclude that a digital platform is essential. Electronic forms have been finalised. The new database is being tested in a beta environment and the board will receive a demo at this meeting. We have begun using our new mailing system.</i></p> <p><i>Outstanding: Forms to be tested in a live environment. Database to be finalised and deployed. New Practising Rules to be implemented (see priority 3 above). Further comms with the regulated community to be carried out.</i></p>
19.	Develop a policy for the publication of complaints against the CLSB, augmenting our existing Internal Complaints Handling Policy, covering the type of information that will be published, at what stage and where.	<p>Achieved (Q1)</p> <p><i>This has been developed and incorporated into our new website on a standalone page for complaints against the CLSB.</i></p>
20.	Assess the effectiveness of our Transparent Decisions Policy as implemented in 2019 and consider whether any additional transparency measures are necessary.	<p>Achieved (Q2)</p> <p><i>The board considered a report on ARs' approaches to publishing board papers in April and agreed to implement a new approach to publication, which is now detailed on the What we Publish webpage. This will complement the continued operation of the Transparent Decisions Policy, and the effectiveness of the combined approach will be monitored going forward.</i></p>

Costs Lawyer Standards Board

28 May 2020

Impact of coronavirus on Costs Lawyers Survey results

In May 2020, we surveyed Costs Lawyers about the impact of coronavirus on their practice and their clients. We received responses from practitioners with a variety of practising arrangements, including those working in solicitors' firms (47% of respondents), in costs law firms (33%), as sole practitioners or consultants (17%) and in-house (3%). Overall, 21% of the profession contributed to the survey.

In general, the profession is cautiously optimistic, but there is uncertainty about what the future holds. Some Costs Lawyers have experienced a drop in their workload, while others have more work to do than before the crisis. A small (but not insignificant) minority are worried about the viability of their practice or their ability to continue as a Costs Lawyer. The majority have embraced new technologies or innovations and are working from home for the first time. This has brought benefits, through increased flexibility, but also challenges, ranging from managing paper-based systems to the health impacts of isolation. The courts have been slow to adapt, which is causing delays and difficulties with hearings. Some Costs Lawyers are concerned about being able to obtain enough CPD points in 2020.

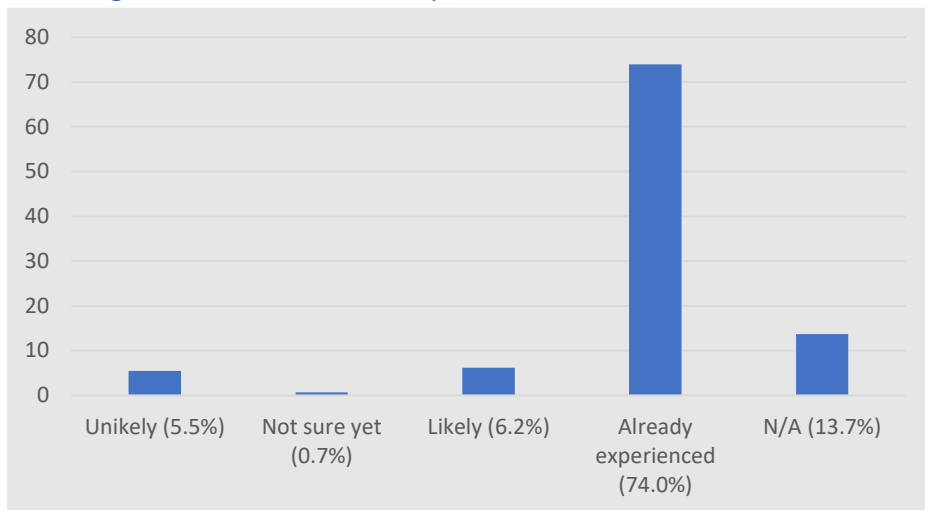
This report contains a detailed analysis of the survey results. If you would like more information about the survey or our findings, please email enquiries@clsb.info. Readers should be aware of limitations in the survey data, due to sample sizes for some categories. These are explained on page 11.

Personal impacts during 2020

We asked Costs Lawyers how likely it was that they (personally) would experience the following impacts of coronavirus during 2020.

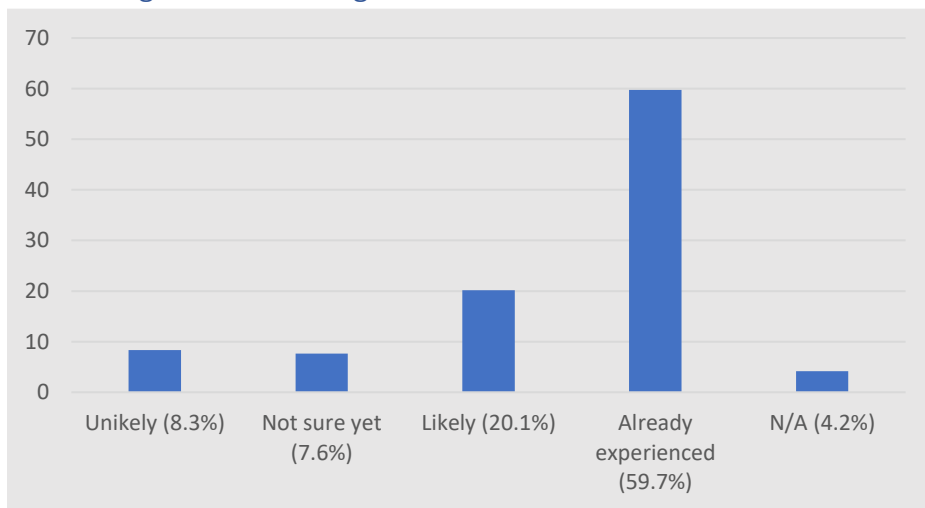
74% of Costs Lawyers have begun working from home due to coronavirus. The profession has shown considerable resilience in its ability to provide services remotely. Home working also comes with risks that need to be considered, like data security issues and supervision of junior team members.

Working from home when they weren't before



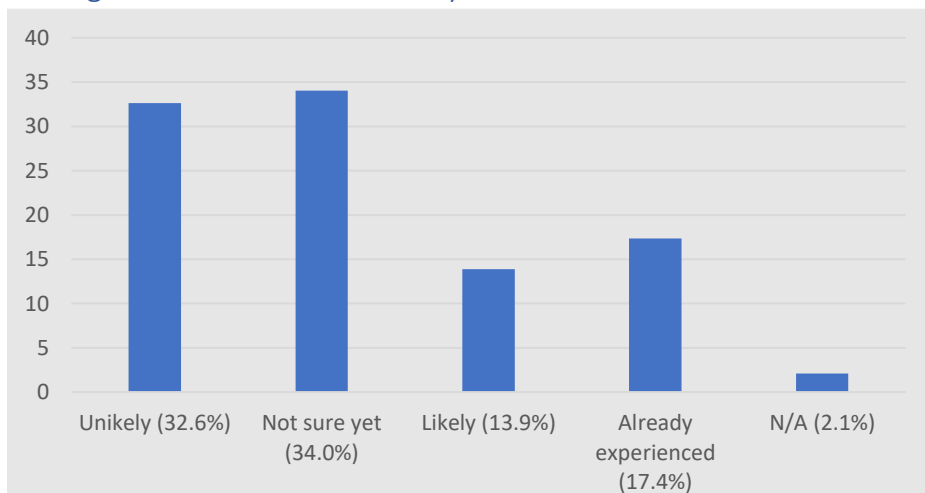
100% of Costs Lawyers working in-house have either already embraced new technologies due to coronavirus or are likely to do so in 2020. 83% of Costs Lawyers working in costs law firms, and 84% of those in solicitors' firms, can say the same. Only 34.8% of sole practitioners have embraced new technology, but this might be because uptake was already high.

Embracing new technologies or innovations

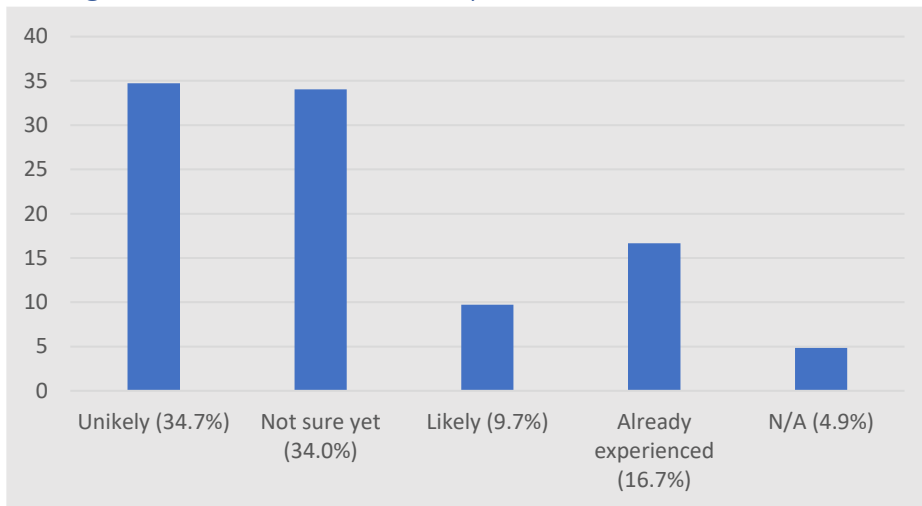


34% of Costs Lawyers are not yet sure whether their workload will rise or fall due to coronavirus. This statistic increases to 36% for those working in legal aid costs and 44% for those who specialise in commercial litigation costs.

Having less work to do than they had before



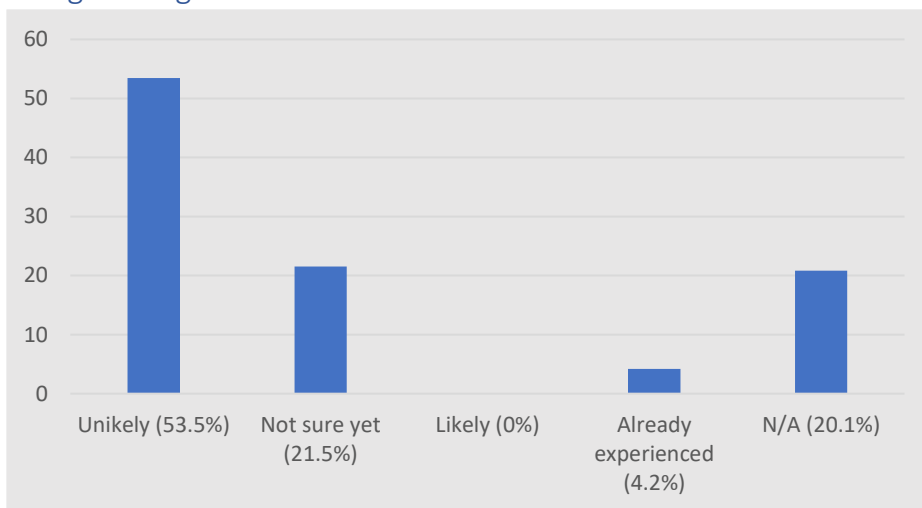
Having more work to do than they had before



35% of sole practitioners have already experienced a decrease in workload and a further 13% believe that a decrease is likely in 2020.

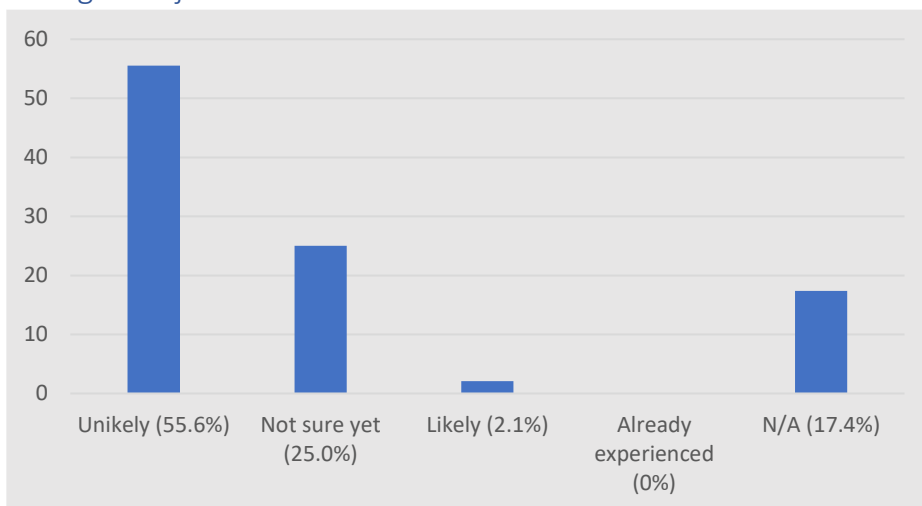
39% of Costs Lawyers working in solicitors' firms think a decrease in workload this year is unlikely, while only 26% of Costs Lawyers who work as sole practitioners or in costs law firms feel the same.

Being furloughed



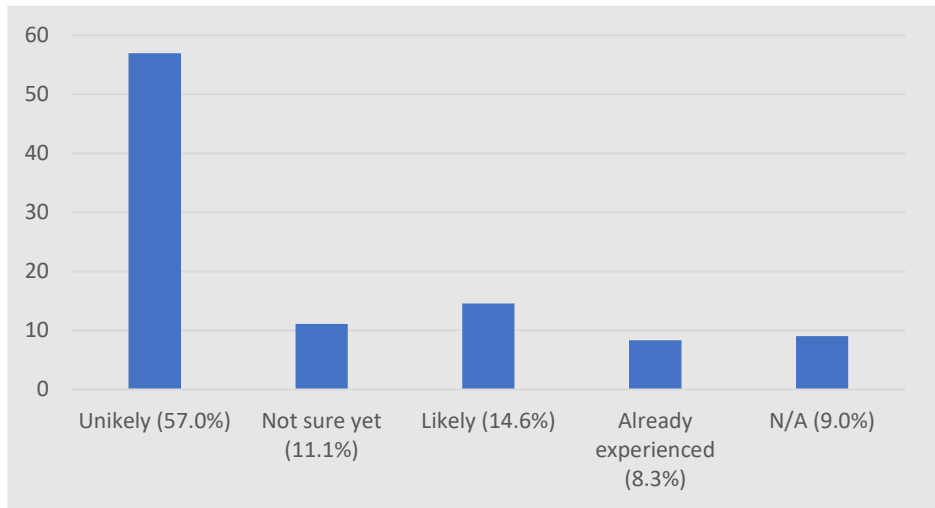
62% of Costs Lawyers working in solicitors' firms are confident that they are unlikely to be furloughed this year, while only 53% of Costs Lawyers working in costs law firms are equally confident. The prevalence of furlough in costs law firms is slightly higher than in other practice types, at 6% (compared to 4% in solicitors' firms).

Losing their job



5% of Costs Lawyers who specialise in commercial litigation costs believe it is likely they will lose their job in 2020, compared to 2% of Costs Lawyers working in personal injury or clinical negligence (PI/CN) costs.

Experiencing difficulties in providing a full or timely service to their clients



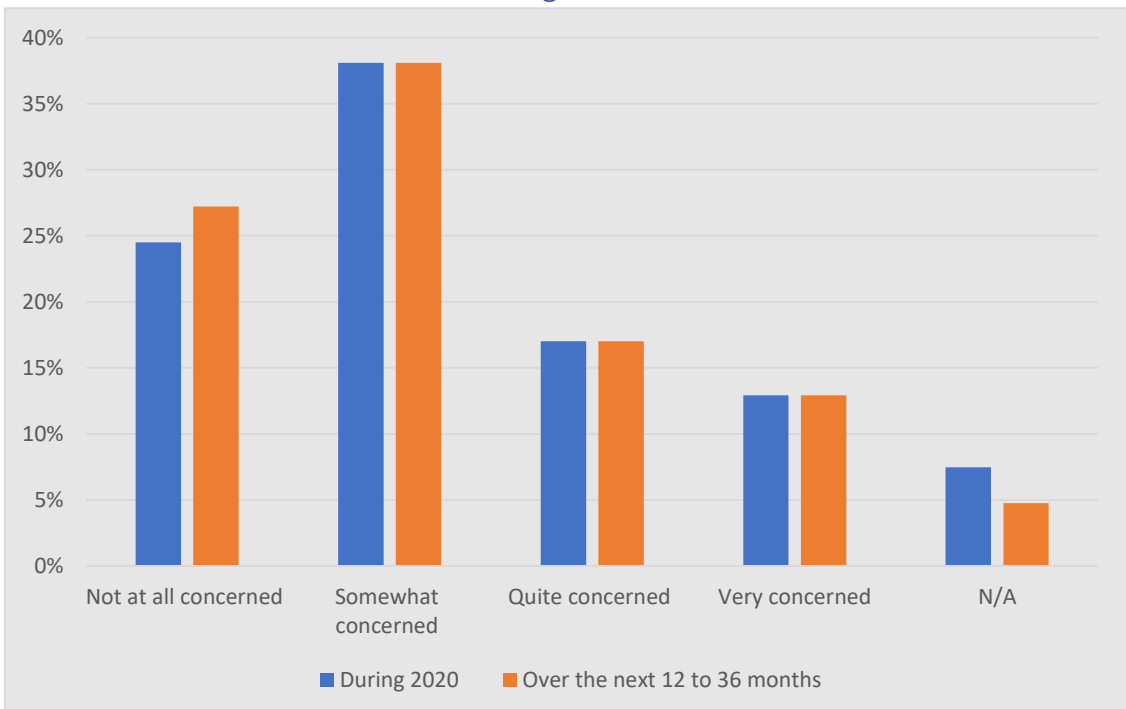
13% of sole practitioners have already experienced difficulties providing their usual level of service to their clients. This statistic falls to 9% for those working in solicitors' firms and 4% for those in costs law firms.

52% of Costs Lawyers working in solicitors' firms find it unlikely they will experience difficulties in providing services to clients in 2020. This means that just under half have at least some doubt about their ability to ensure service continuity.

Practice area impacts in the short and medium-term

We asked Costs Lawyers how concerned they were about the following impacts of coronavirus – during 2020 and over the next 12 to 36 months – on their own area of practice.

The number of client instructions falling



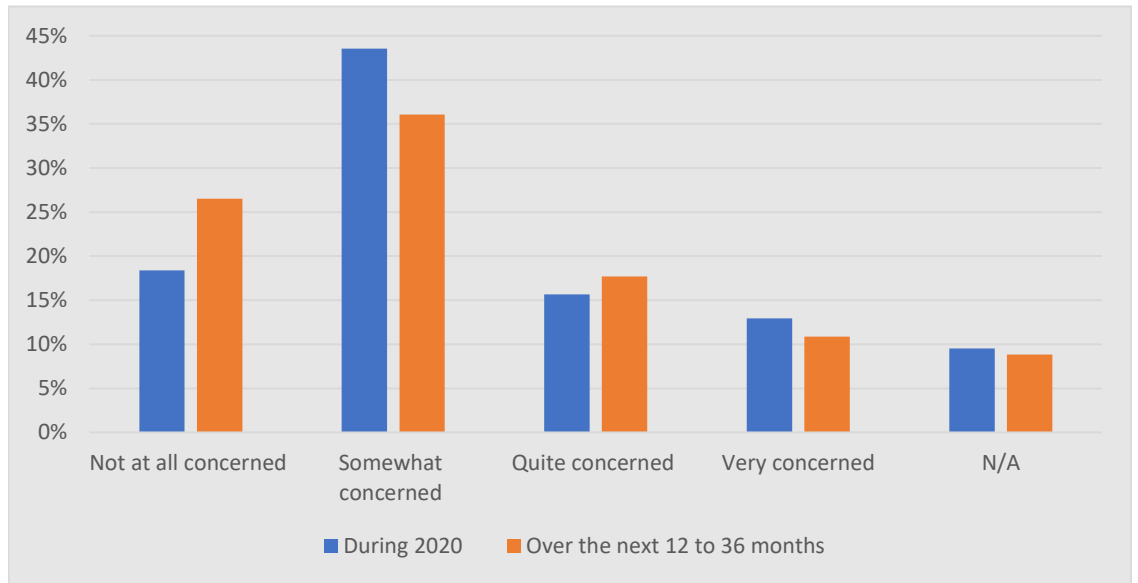
43% of legal aid Costs Lawyers were not at all concerned about falling client instructions, either in 2020 or in the medium-term.

35% of Costs Lawyers specialising in PI/CN costs were quite concerned or very concerned about falling client instructions in 2020, rising to 39% in the medium-term.

33%

of Costs Lawyers specialising in commercial litigation costs were not at all concerned about disputes taking longer than usual to conclude in 2020, rising to 43% in the mid-term. This compares to just 13% of Costs Lawyers specialising in PI/CN costs being not at all concerned about litigation delays in 2020 (and 18% in the medium-term).

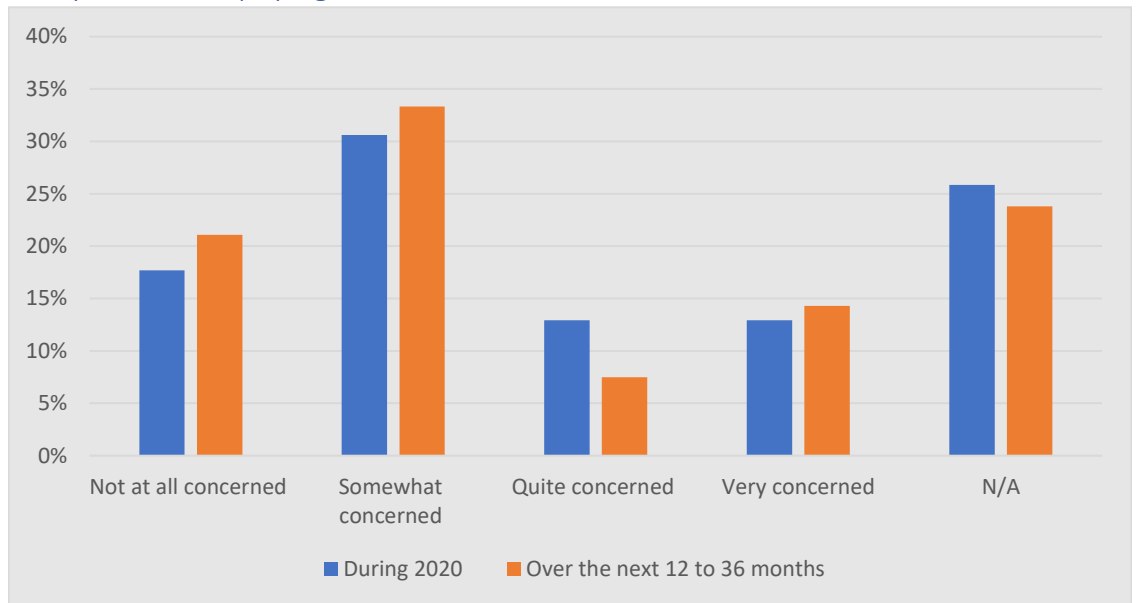
Disputes taking longer than usual to conclude



42%

of Costs Lawyers working in costs law firms are quite concerned or very concerned about delays in receiving their fees during 2020, dropping to 36% in the medium-term. This compares to just 28% of sole practitioners and 15% of those in solicitors' firms having the same concerns about being paid (dropping to 24% and 13% respectively in the medium-term).

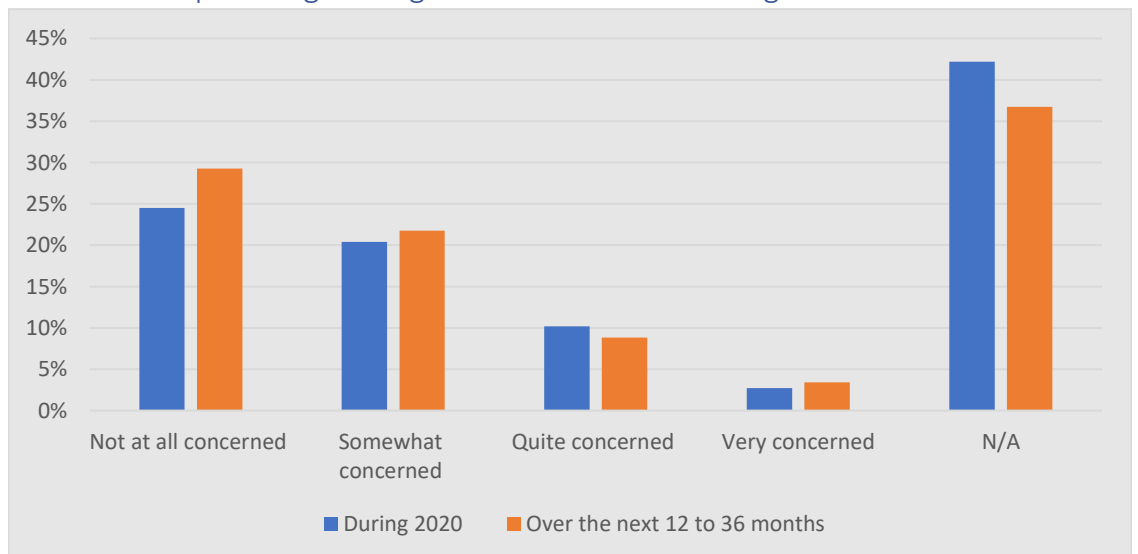
Delays in clients paying fees



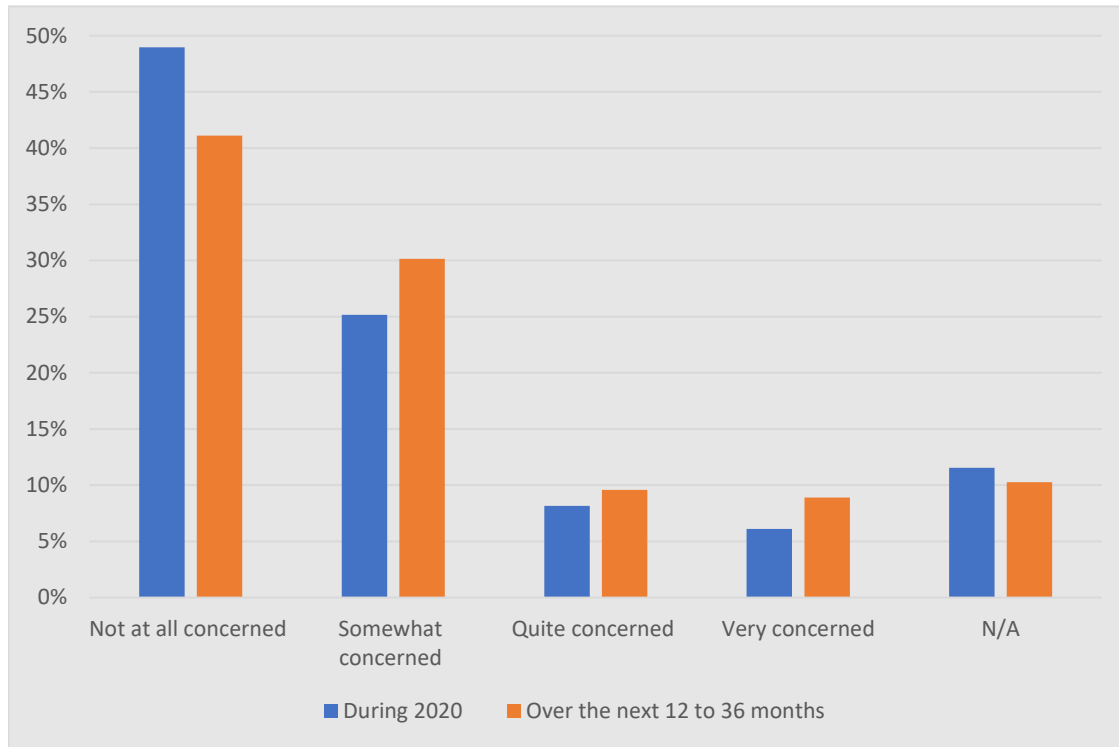
19%

of Costs Lawyers working in costs law firms are quite concerned or very concerned about supervising colleagues during home working in the medium-term, compared to just 9% in solicitors' firms.

Difficulties supervising colleagues due to home working



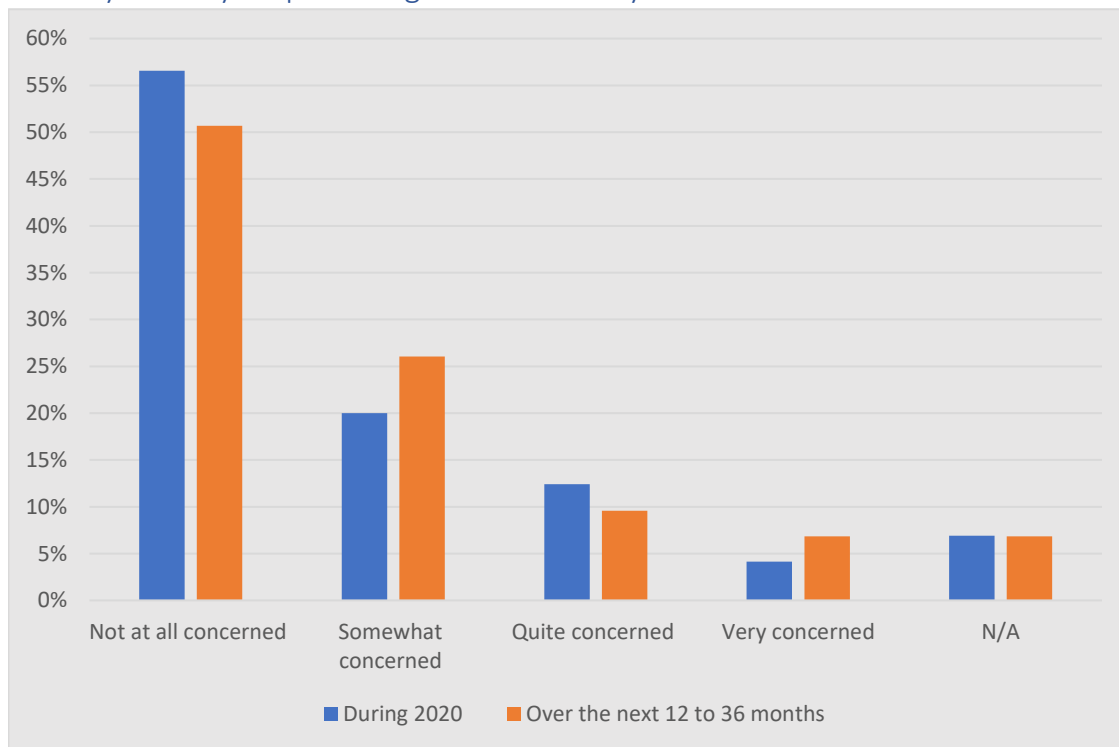
My firm or business ceasing to trade



10%

of Costs Lawyers working in costs law firms are very concerned about their firm's viability in 2020, compared to just 4% of sole practitioners and 4% of those working in solicitors' firms. This rises to 15% in the medium-term (compared to 8% for sole practitioners and 6% for those in solicitors' firms).

Inability to carry on practising as a Costs Lawyer



4%

of legal aid Costs Lawyers are quite concerned or very concerned about being able to carry on practising due to coronavirus. This statistic is significantly higher for those practising in the PI/CN area (10% in 2020 and 19% in the medium-term) and even higher for those specialising in commercial litigation costs (24% in 2020 dropping to 20% in the medium term).

General impacts of coronavirus on Costs Lawyers

We asked Costs Lawyers to tell us about any other impacts of coronavirus (positive or negative) on their practice, their clients or their ways of working. Five themes can be drawn out from the responses. Below is a sample of comments in relation to each theme.

Theme 1: The profession has embraced technological change more quickly than it would have done in the absence of coronavirus.

"The embracing of technology is a positive step forward and perhaps many of us needed it forced upon us to really engage with it."

"Creates new ways of adapting and learning for the better."

"The legal world has not been ready for the technological shift required to operate properly remotely."

"Forced practice to embrace remote working technology."

"More electronic files being received in place of papers files, which is a positive step in my opinion."

"Working from home has the plus of no commuting but there is the minus of social isolation."

"Working from home has many disadvantages, not least the fact that there is no collaborative working which adds to administration."

"Video hearings are good - saves travel and early starts. Isolation is bad. Face to face meetings are better. I prefer an office environment."

"I have found working from home to be a positive change - less stress around commute."

"Not experienced any real difficulties in working from home full time. Most opponents have been willing to provide extensions for deadlines and accept service by email."

"Communications are very difficult as many firms were not set up to deal with everybody working from home."

"Data security of people working from home and potential breaches of GDPR."

"Physical movement of documents and lack of admin support causes difficulties."

"Difficulty in managing team anxiety and performance."

Theme 2: There are advantages to working from home, but there are challenges too. Generally, balance and flexibility are preferable.

"The impact on working patterns has been instant and has caused many to rethink the way they work and, in particular, whether office working is necessary ... There are some difficult questions to tackle moving forward because we have been able to demonstrate full time office working is not required, but flexibility will be impacted by restrictions on hot-desking and the need to maintain social distancing at work."

"The swift changeability of Covid-19 affecting personal and work responsibilities and practices impacts upon physical and mental health."

Theme 3: Sole practitioners are insulated from some of the practical impacts of coronavirus given their existing ways of working.

"I am 74 years of age and have worked from home since 1979 so other than receipt and delivery of paper files there has been little impact or change on my day to day practice."
[sole practitioner]

"Nothing has changed for me at all." [sole practitioner]

"I have been a sole trader for about 18 years. Working mainly from my office at home is 'the norm' for me." [sole practitioner]

Theme 4: There is some concern about decreasing instructions and job security, but not across the board.

"Salaries have been cut across the board in my firm."
[solicitors' firm]

"There has been at least a 50% reduction in instructions which is very worrying, so how we work going forward is the least of our worries." [costs law firm]

"My working days have been reduced from 5 to 2 days a week." [solicitors' firm]

"At the moment I have been furloughed so cannot answer all questions." [costs law firm]

"Apart from budgeting instructions falling there has been no huge impact as I work for a full service law firm."
[solicitors' firm]

"I would imagine it is pure coincidence but I have found my workload significantly increase since lockdown began."
[sole practitioner]

"I am fortunate in working for a good well-resourced employer." [solicitors' firm]

"Hard to predict the future as it is more dependent upon my clients ceasing to trade ... I really do not know what the future holds. Also need to look at increased fixed costs (Intermediate Track etc) and what happens with that."
[sole practitioner]

"Solicitor clients haven't yet realised that cash flow is key. When they do the floodgates of work will open."
[sole practitioner]

Related theme:

Pressures facing clients in the current environment are having knock-on effects for Costs Lawyers.

"Clients take longer to respond/give instructions and more importantly pay for work done."

"The impact of Coronavirus on my clients' businesses has focussed their minds on billing and making that a priority."

“Hearings are 'clunky' and amateurish with (particularly Claimant) solicitors losing connection with their mobile phones.”

“The Court has made a good effort to embrace technology, at least in the Senior Courts Costs Office and Queen's Bench Division. However it is apparent that some Masters in the SCCO won't do full detailed assessment via video unless absolutely necessary.”

“Concern over delays in court hearings and conducting a detailed assessment hearing over telephone or video call.”

“It is surprising how paper reliant we remain. For example, whilst some Courts may wish to try and continue to do shorter costs hearings remotely, the practicalities of getting either paper files or complete electronic bundles to the Court are very challenging.”

“Remote paperless working is becoming the norm. I wonder how this will work at Detailed Assessments.”

“Bills being sent to the Court are experiencing a delay in getting assessed.”

“Lack of guidance from courts and courts struggling in the long run with capacity.”

Theme 5: Courts are trying to keep up with technological change, but there is still uncertainty, delay and practical challenges (particularly in relation to detailed assessment hearings).

“Remote hearings are more tricky than in person. Great to not spend time travelling but one needs a decent broadband signal for video conferencing and communications between client, judge and representatives at the hearing [and this] can be quite difficult. Also harder to gauge the judge's reaction to submissions if we can't see his or her face! The different modes of video conference are confusing. Zoom? Teams? Skype? These are taking some getting used to, but will probably work very well once we are all used to them.”

Key messages for the CLSB

We asked Costs Lawyers what else the CLSB could do to support them in meeting their professional obligations in the current circumstances. We were encouraged by respondents' positive feedback about the measures we have already taken to provide assistance and guidance.

Otherwise, one clear message emerged from responses to this question.

18% of respondents expressed concern about achieving 12 CPD points (as required under the CLSB's Continuing Professional Development Rules) in 2020.

What we have done about CPD in 2020 so far.

In March 2020, we issued a [Policy Statement](#) about how we would supervise and enforce CPD requirements in 2020. It says that in 2020 we will not enforce:

- the 6-point cap on e-learning activities; or
- the restriction on the type of e-learning activities that qualify for CPD points.

This means that a Costs Lawyer can obtain all 12 of their required CPD points through online learning activities in 2020 if they need to.

Survey respondents welcomed the changes made.

“Allowing all CPD to be obtained remotely is a very helpful step - thank you for that.”

“The expansion of online seminars for CPD was a good idea.”

“All good so far.”

But some Costs Lawyers are still finding it difficult to access CPD resources this year.

There appear to be two main reasons why Costs Lawyers are still having difficulties meeting their CPD requirements in 2020.

Lack of budget for learning and development in the current climate.

“Obviously money is tight with myself and my firm, which is a small / medium sized firm. As such currently there is limited funds available for training. I am looking into free forms of training but this is proving difficult.”

“I am not sure my Company will pay for webinars in order for me to obtain sufficient CPD points when attendance at one ACL Conference would have gained 5-6 CPD points for significantly less than we would have to pay for 5-6 hours on webinars.”

“CPD points and training [are difficult to obtain] when there is no budget at present in the firm and no courses face to face where more than 2 points can be gained. Most online are 1 point.”

Difficulties accessing relevant, cost effective e-learning activities.

“[You should] reduce the number of CPD points required to reflect the reduced availability of seminars and training sessions that are costs law specific.”

“I haven't found any online courses that aren't really expensive. It would help if the CPD requirement was either reduced for this year or if some free / inexpensive online courses were arranged.”

“We are finding it hard to gather useful CPD. There are plenty of online offerings but they are dear and many are not on topics which we find useful.”

“Webinars are being cancelled. CPD may become a struggle as I'm usually well ahead of where I currently am this year.”

“[T]he opportunities for CPD are limited to online offerings that have decreased substantially since March.”

How we will respond.

We will act on this feedback by:

- Approaching service providers to identify relevant CPD that is available for free (or at low cost) and inform Costs Lawyers about the resources available.
- Encouraging ACL to add to their online CPD resources.
- Considering whether, when and how it might be appropriate to further adjust our CPD requirements for 2020.

Other messages for the CLSB

One survey respondent suggested we should **reduce practising fees** for the next 12 to 36 months. We can assure the profession that we will take account of the financial impact of coronavirus on Costs Lawyers and firms when setting our budget (and thus the practising fee) for 2021. Ultimately, our ability to adjust the practising fee is constrained by the Practising Fee Rules set by the Legal Services Board (LSB). Each year's fee is subject to [LSB approval](#).

Individual respondents made several other suggestions that fall within the representative role of the Association of Costs Lawyers (ACL) rather than the regulatory role of the CLSB. We will ensure that ACL is aware of Costs Lawyers' views, so ACL can respond accordingly.

- Asking **employers to pay for practising certificates** for employees.
- Making representations to government in relation to the **financial assistance available to workers**, particularly to extend cover to sole practitioners who work within a limited company structure (taking their remuneration as salary and dividend payments).
- Enabling Costs Lawyers to gain **CPD that is relevant to the profession** and providing additional guidance for practitioners on how to manage detailed assessments during this time.
- Advocating the **use of qualified Costs Lawyers** over the use of unregulated costs draftsmen to the public at large.

Endnote: Limitations of the survey data

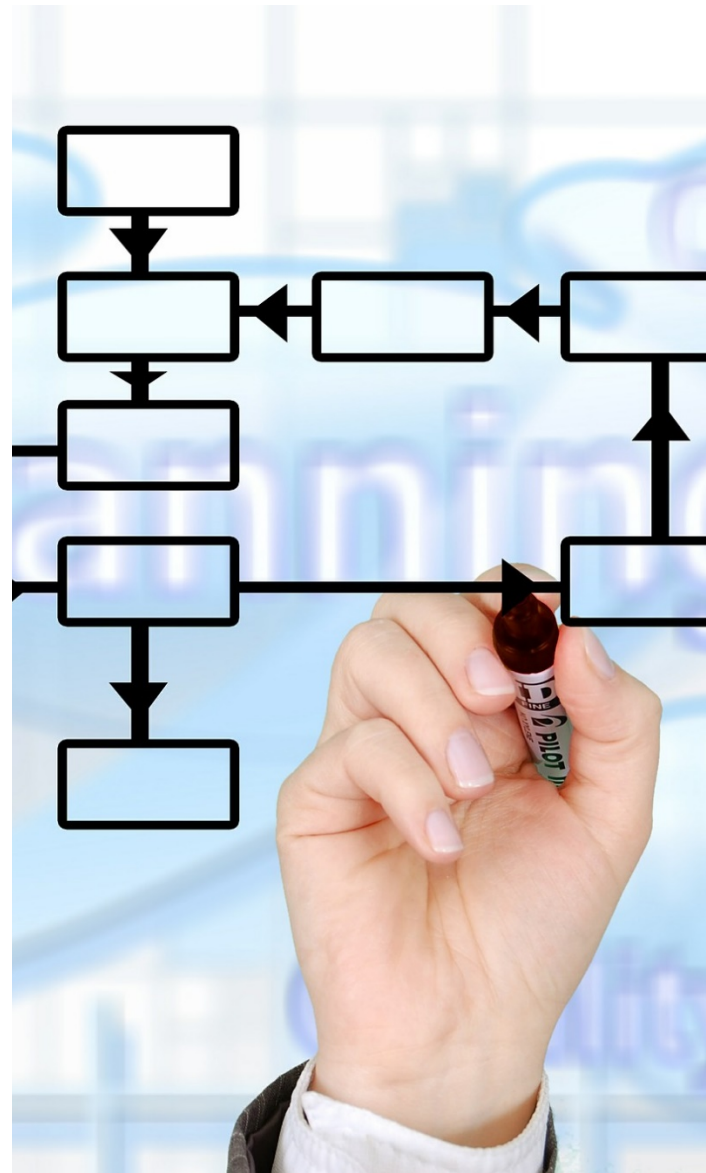
Readers of this report should be aware of limitations in the survey data. The sample size for certain types of practitioners – particularly those working in-house and those specialising in own-client costs – were inevitably small, due to the small population of Costs Lawyers to draw from in these areas.

While all Costs Lawyers were invited to complete the survey, it is possible that the Costs Lawyers who responded were particularly interested in the survey because they felt personally impacted by coronavirus. This may lead to an overstatement of impact in some areas.

While we have tried to ensure that all Costs Lawyers received the survey – including through alternative channels where we received an “out of office” response via email – it is possible that some Costs Lawyers who have been furloughed did not receive the survey. This may lead to an understatement of impact in some areas.

Despite these limitations, the composition of respondents broadly reflected the demographics of the profession as a whole, in terms of both practice areas and working arrangements. The survey therefore provides a helpful indication of where challenges and opportunities might lie for Costs Lawyers over the coming months and years, as we all respond to these unprecedented times.

Business Plan 2021



PROPOSED: July 2020

Costs Lawyer Standards Board

CLSB
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Foreword

Steve Winfield, Chair

Around the world, 2020 was marked by one theme: a coronavirus pandemic that has changed the way we work and live, perhaps forever. As a virtual organisation, the CLSB was well-placed to respond quickly to the crisis, adopting new technologies and ensuring business continuity. We implemented support measures to help practitioners continue to meet their professional obligations during turbulent times, and have taken the profession's temperature through impact surveys aimed at assessing the immediate and longer-term effects of the crisis on practice viability, working arrangements, regulatory barriers and risk.

Responding to the crisis inevitably required flexibility and diversion of our limited resources, but we did not let this eclipse our core regulatory work or progress against our strategic aims. Despite the pandemic, we achieved significant organisational improvements against a variety of measures, as planned. From a governance perspective, we have continued to enhance our oversight processes, through better use of KPIs and strategic reporting, and have further improved transparency by [publishing more board documents at an earlier stage](#).

We were also joined in 2020 by two new [Non-Executive Directors](#) – Andrew Harvey and Andrew McAulay – who bring a wealth of valuable insights and experience to our board. My thanks go to our outgoing directors, Gill Milburn and Tracyanne Ayliffe, for their dedication, contribution and support over many years.

In January 2021, the CLSB will also welcome a new Chair, at the conclusion of my seven-year term. While the events of 2020 remind us that our lives, our businesses and our economic systems can change overnight in unexpected ways, I will leave the CLSB secure in the knowledge that it has the right processes and personnel in place to weather such storms. I feel privileged to have been part of the organisation's journey and I am confident that I leave a legacy that sees a bright future ahead.

Introduction

Kate Wellington, CEO

When the calendar turns to 2021, I will have been at the CLSB for a little over 18 months. The organisational change we have achieved in that period has been genuinely transformational. I am enormously proud of the efforts of my colleagues, our board and our external stakeholders in providing the support, open-mindedness and hard graft required to make such meaningful progress.

As anticipated, 2020 was a year of rapid evolution for the CLSB. We overhauled our IT functions, resulting in a new website, new communications systems and better document storage solutions. We built a bespoke database to power the Register of Costs Lawyers, improving data security and regulatory supervision. And we implemented an online process for practising certificate renewals, saving considerable time and cost while also reducing risk. As a result we have become a truly digital organisation, allowing us to respond nimbly and efficiently to an ever-changing marketplace.

We also focused on enhancing our regulatory performance in 2020. We delivered a comprehensive regulatory action plan, aimed at securing immediate and much needed improvements to our regulatory approach. We adopted a new [Consumer Engagement Strategy](#) for 2020 to 2023. We modernised our CPD Rules, Practising Rules and Disciplinary Rules and Procedures, as well as introducing new guidance to help Costs Lawyers and consumers navigate the regulatory environment. And we collaborated with other organisations to seek out best practice. Through these initiatives, we have organically developed a more holistic, risk-based, creative and proactive approach to regulating the Costs Lawyer community, for everyone's benefit.

While 2021 will inevitably involve some consolidation and reflection, we have no intention of taking our proverbial foot off the pedal. Our key annual priorities are set out in this Business Plan. As in 2020, we will prioritise initiatives that help us achieve the vision and objectives in our [mid-term strategy](#). We have created a strong foundation for another successful year. I look forward to leading the CLSB into 2021.

Strategic objectives

Pursuing our strategy

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

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

Annual priorities

Improving our regulatory arrangements

	Initiative	Link to strategy
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.	A, B, E
2.	Update the Guidance Notes in the Costs Lawyer Handbook that were not subject to review following the 2019 Handbook Audit.	B
3.	Develop new guidance that draws together themes identified across various aspects of our work, such as: <ul style="list-style-type: none"> • guidance for unregulated employers of Costs Lawyers; • guidance on closing down a practice. 	B, D
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.	B, E
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.	B, E
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.	B, E

Protecting the interests of consumers and promoting professional standards

	Initiative	Link to strategy
7.	Deliver the first year of priority activities in our Consumer Engagement Strategy .	C

8.	<p>Develop our approach to supervision by:</p> <ul style="list-style-type: none"> • planning and documenting an updated CPD audit programme under the new CPD Rules; • implementing a structured audit of complaint procedures; • formalising our “point of complaint” targeted supervision activities, drawing evidence from our new database; • updating our Supervision Policy to capture the above. 	B, D, E
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"> • under-insurance; • handling of client money; and • communication of complaint procedures, <p>in order to:</p> <ul style="list-style-type: none"> • improve our understanding of the risk profile across the profession in each area, making use of our new audit and data capture processes; • ensure we accurately record these risks, for transparency and monitoring purposes; • assess whether our current regulatory arrangements in these areas appropriately mitigate the risks, informed by evidence from consumer complaints; • consider whether there are more proportionate, targeted or innovative ways to address the risks, particularly in the context of market developments and technological change. 	C, D
10.	<p>Consider how we can improve consumer information in relation to the regulatory status of the organisations in which Costs Lawyers practise.</p>	C, D
11.	<p>Test the efficacy of the new interim suspension order (ISO) powers in our Disciplinary Rules and Procedures, based on our early experience of disciplinary proceedings in which the imposition of an ISO was considered.</p>	B, D

Modernising our organisation

	Initiative	Link to strategy
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 quality) and identify any adjustments needed for the 2021 renewal period.	B, E
13.	Deliver the second phase of our digital workplan, including: <ul style="list-style-type: none"> • reviewing how we use IT for financial management; • creating e-forms for processes other than annual practising certificate renewals; • building add-on functionality for the Costs Lawyer database, informed by learnings from the 2020 practising certificate renewal process. 	Facilitates all
14.	Review our governance arrangements, including our suite of governance documents, to ensure they provide a robust framework for oversight and accountability and continue to meet the standards of the Corporate Governance Code 2018.	Facilitates all
15.	Revisit the effectiveness of our new operating structure to identify whether and where further improvements can be made.	Facilitates all

Our budget for 2021, which will allow delivery of this Business Plan, can be [found on our website](#).

Costs Lawyer Standards Board Limited
Unaudited Financial Statements
31 December 2019

AGP
Chartered Accountants
Sycamore House
Sutton Quays Business Park
Sutton Weaver
Runcorn
Cheshire
WA7 3EH

Costs Lawyer Standards Board Limited

Financial Statements

Year ended 31 December 2019

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Costs Lawyer Standards Board Limited

Directors' Report

Year ended 31 December 2019

The directors present their report and the unaudited financial statements of the company for the year ended 31 December 2019.

Principal activities

The principal activity of the company during the period was that of a regulatory body for Costs Lawyers.

Directors

The directors who served the company during the year were as follows:

G Milburn	
S H Winfield	
T Ayliffe	
S McIntosh	
P McCarthy	(Appointed 24 January 2019)
R Allen	(Resigned 24 January 2019)

Small company provisions

This report has been prepared in accordance with the provisions applicable to companies entitled to the small companies exemption.

This report was approved by the board of directors on and signed on behalf of the board by:

K Wellington
Company Secretary

Registered office:
Sycamore House
Sutton Quays Business Park
Sutton Weaver
Runcorn
Cheshire
WA7 3EH

Costs Lawyer Standards Board Limited

Statement of Income and Retained Earnings

Year ended 31 December 2019

	Note	2019 £	2018 £
Turnover		176,863	178,313
Gross profit		<u>176,863</u>	<u>178,313</u>
Administrative expenses		223,669	153,916
Other operating income		14,370	—
Operating (loss)/profit		<u>(32,436)</u>	<u>24,397</u>
(Loss)/profit before taxation	6	<u>(32,436)</u>	<u>24,397</u>
Tax on (loss)/profit		—	—
(Loss)/profit for the financial year and total comprehensive income		<u>(32,436)</u>	<u>24,397</u>
Retained earnings at the start of the year		<u>206,529</u>	<u>182,132</u>
Retained earnings at the end of the year		<u>174,093</u>	<u>206,529</u>

All the activities of the company are from continuing operations.

The notes on pages 4 to 7 form part of these financial statements.

Costs Lawyer Standards Board Limited

Statement of Financial Position

31 December 2019

	Note	2019 £	£	2018 £
Fixed assets				
Tangible assets	7		709	1,318
Current assets				
Debtors	8	2,132		2,629
Cash at bank and in hand		<u>315,910</u>		<u>367,063</u>
		318,042		369,692
Creditors: amounts falling due within one year	9	<u>129,658</u>		<u>149,481</u>
Net current assets			188,384	<u>220,211</u>
Total assets less current liabilities			189,093	<u>221,529</u>
Net assets			189,093	<u>221,529</u>
Capital and reserves				
Called up share capital	10		15,000	15,000
Profit and loss account			<u>174,093</u>	<u>206,529</u>
Shareholders funds			189,093	<u>221,529</u>

These financial statements have been prepared in accordance with the provisions applicable to companies subject to the small companies' regime and in accordance with Section 1A of FRS 102 'The Financial Reporting Standard applicable in the UK and Republic of Ireland'.

For the year ending 31 December 2019 the company was entitled to exemption from audit under section 477 of the Companies Act 2006 relating to small companies.

Directors' responsibilities:

- The members have not required the company to obtain an audit of its financial statements for the year in question in accordance with section 476;
- The directors acknowledge their responsibilities for complying with the requirements of the Act with respect to accounting records and the preparation of financial statements.

These financial statements were approved by the board of directors and authorised for issue on, and are signed on behalf of the board by:

S H Winfield
Director

Company registration number: 04608905

The notes on pages 4 to 7 form part of these financial statements.

Costs Lawyer Standards Board Limited

Notes to the Financial Statements

Year ended 31 December 2019

1. General information

The company is a private company limited by shares, registered in England and Wales. The address of the registered office is Sycamore House, Sutton Quays Business Park, Sutton Weaver, Runcorn, Cheshire, WA7 3EH.

2. Statement of compliance

These financial statements have been prepared in compliance with Section 1A of FRS 102, 'The Financial Reporting Standard applicable in the UK and the Republic of Ireland'.

3. Accounting policies

Basis of preparation

The financial statements have been prepared on the historical cost basis, as modified by the revaluation of certain financial assets and liabilities and investment properties measured at fair value through profit or loss.

The financial statements are prepared in sterling, which is the functional currency of the entity.

Judgements and key sources of estimation uncertainty

The preparation of the financial statements requires management to make judgements, estimates and assumptions that affect the amounts reported. These estimates and judgements are continually reviewed and are based on experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances.

Revenue recognition

Turnover is measured at the fair value of the consideration received or receivable for goods supplied and services rendered, net of discounts and Value Added Tax.

Revenue from the sale of goods is recognised when the significant risks and rewards of ownership have transferred to the buyer (usually on despatch of the goods); the amount of revenue can be measured reliably; it is probable that the associated economic benefits will flow to the entity; and the costs incurred or to be incurred in respect of the transactions can be measured reliably.

Tangible assets

Tangible assets are initially recorded at cost, and subsequently stated at cost less any accumulated depreciation and impairment losses. Any tangible assets carried at revalued amounts are recorded at the fair value at the date of revaluation less any subsequent accumulated depreciation and subsequent accumulated impairment losses.

An increase in the carrying amount of an asset as a result of a revaluation, is recognised in other comprehensive income and accumulated in equity, except to the extent it reverses a revaluation decrease of the same asset previously recognised in profit or loss. A decrease in the carrying amount of an asset as a result of revaluation, is recognised in other comprehensive income to the extent of any previously recognised revaluation increase accumulated in equity in respect of that asset. Where a revaluation decrease exceeds the accumulated revaluation gains accumulated in equity in respect of that asset, the excess shall be recognised in profit or loss.

Costs Lawyer Standards Board Limited

Notes to the Financial Statements *(continued)*

Year ended 31 December 2019

3. Accounting policies *(continued)*

Depreciation

Depreciation is calculated so as to write off the cost or valuation of an asset, less its residual value, over the useful economic life of that asset as follows:

Fixtures and fittings	-	over 3 years
Equipment	-	over 3 years

Impairment of fixed assets

A review for indicators of impairment is carried out at each reporting date, with the recoverable amount being estimated where such indicators exist. Where the carrying value exceeds the recoverable amount, the asset is impaired accordingly. Prior impairments are also reviewed for possible reversal at each reporting date.

For the purposes of impairment testing, when it is not possible to estimate the recoverable amount of an individual asset, an estimate is made of the recoverable amount of the cash-generating unit to which the asset belongs. The cash-generating unit is the smallest identifiable group of assets that includes the asset and generates cash inflows that largely independent of the cash inflows from other assets or groups of assets.

For impairment testing of goodwill, the goodwill acquired in a business combination is, from the acquisition date, allocated to each of the cash-generating units that are expected to benefit from the synergies of the combination, irrespective of whether other assets or liabilities of the company are assigned to those units.

Financial instruments

The company only has financial assets and financial liabilities of a kind that qualify as basic financial instruments. Basic financial instruments are initially recognised at transaction value and subsequently measured at their settlement value with the exception of banks loans which are subsequently measured at amortised cost using the effective interest method.

Defined contribution plans

Contributions to defined contribution plans are recognised as an expense in the period in which the related service is provided. Prepaid contributions are recognised as an asset to the extent that the prepayment will lead to a reduction in future payments or a cash refund.

When contributions are not expected to be settled wholly within 12 months of the end of the reporting date in which the employees render the related service, the liability is measured on a discounted present value basis. The unwinding of the discount is recognised as a finance cost in profit or loss in the period in which it arises.

Debtors

Short term debtors are measured at transaction price, less any impairment. Loans receivable are measured initially at fair value, net of transaction costs, and are measured subsequently at amortised cost using the effective interest method, less any impairment.

Costs Lawyer Standards Board Limited

Notes to the Financial Statements *(continued)*

Year ended 31 December 2019

3. Accounting policies *(continued)*

Creditors

Short term trade creditors are measured at the transaction price. Other financial liabilities, including bank loans, are measured initially at fair value, net of transaction costs, and are measured subsequently at amortised cost using the effective interest method.

4. Taxation

No provision for corporation tax has been included in the accounts as the company is a professional association which derives its income from members' subscriptions. As such the directors consider that the company is not carrying on a trade and therefore not liable to corporation tax.

5. Employee numbers

The average number of persons employed by the company during the year amounted to 4 (2018: 6).

6. Profit before taxation

Profit before taxation is stated after charging:

	2019 £	2018 £
Depreciation of tangible assets	<u>842</u>	<u>1,384</u>

7. Tangible assets

	Fixtures and fittings £	Equipment £	Total £
Cost			
At 1 January 2019	1,793	6,554	8,347
Additions	144	859	1,003
Disposals	<u>(1,937)</u>	<u>(2,111)</u>	<u>(4,048)</u>
At 31 December 2019	<u>–</u>	<u>5,302</u>	<u>5,302</u>
Depreciation			
At 1 January 2019	1,533	5,496	7,029
Charge for the year	168	674	842
Disposals	<u>(1,701)</u>	<u>(1,577)</u>	<u>(3,278)</u>
At 31 December 2019	<u>–</u>	<u>4,593</u>	<u>4,593</u>
Carrying amount			
At 31 December 2019	<u>–</u>	<u>709</u>	<u>709</u>
At 31 December 2018	<u>260</u>	<u>1,058</u>	<u>1,318</u>

Costs Lawyer Standards Board Limited

Notes to the Financial Statements *(continued)*

Year ended 31 December 2019

8. Debtors

	2019	2018
	£	£
Other debtors	<u>2,132</u>	<u>2,629</u>

9. Creditors: amounts falling due within one year

	2019	2018
	£	£
Other creditors	<u>129,658</u>	<u>149,481</u>

10. Called up share capital

Issued, called up and fully paid

	2019		2018	
	No.	£	No.	£
Ordinary shares of £1 each	<u>15,000</u>	<u>15,000</u>	<u>15,000</u>	<u>15,000</u>

11. Related party transactions

In March 2013, Costs Lawyer Standards Board Limited received a contribution of £25,000 towards a joint project. The amount was not expected to be repayable, however a financial provision was made to account for any potential claim for repayment. During the year ended 31 December 2019 the sixth anniversary of the contribution being received passed and therefore the balance of £14,370 that was previously shown as deferred income as at 31 December 2018 has now been written off to other operating income during the year. This is on the basis that any contractual claim on the money would now be time barred.

12. Controlling party

The directors regard The Association of Law Costs Draftsmen Limited (trading as Association of Costs Lawyers) to be the ultimate parent company by virtue of its ownership of 100% of the issued share capital of the company. However, pursuant to the Legal Services Act 2007 the two companies act separately.

The ultimate parent company is a company limited by guarantee registered in England & Wales, company number 01330762. The registered office is 16 Broad Street, Eye, Suffolk IP23 7AF.

Costs Lawyer Standards Board Limited

Management Information

Year ended 31 December 2019

The following pages do not form part of the financial statements.

Costs Lawyer Standards Board Limited

Chartered Accountants Report to the Board of Directors on the Preparation of the Unaudited Statutory Financial Statements of Costs Lawyer Standards Board Limited

Year ended 31 December 2019

In order to assist you to fulfil your duties under the Companies Act 2006, we have prepared for your approval the financial statements of Costs Lawyer Standards Board Limited for the year ended 31 December 2019, which comprise the statement of income and retained earnings, statement of financial position and the related notes from the company's accounting records and from information and explanations you have given us.

As a practising member firm of the Institute of Chartered Accountants in England and Wales (ICAEW), we are subject to its ethical and other professional requirements which are detailed at www.icaew.com/en/membership/regulations-standards-and-guidance.

This report is made solely to the Board of Directors of Costs Lawyer Standards Board Limited, as a body, in accordance with the terms of our engagement letter dated 21 July 2016. Our work has been undertaken solely to prepare for your approval the financial statements of Costs Lawyer Standards Board Limited and state those matters that we have agreed to state to you, as a body, in this report in accordance with ICAEW Technical Release 07/16 AAF as detailed at www.icaew.com/compilation. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than Costs Lawyer Standards Board Limited and its Board of Directors, as a body, for our work or for this report.

It is your duty to ensure that Costs Lawyer Standards Board Limited has kept adequate accounting records and to prepare statutory financial statements that give a true and fair view of the assets, liabilities, financial position and loss of Costs Lawyer Standards Board Limited. You consider that Costs Lawyer Standards Board Limited is exempt from the statutory audit requirement for the year.

We have not been instructed to carry out an audit or a review of the financial statements of Costs Lawyer Standards Board Limited. For this reason, we have not verified the accuracy or completeness of the accounting records or information and explanations you have given to us and we do not, therefore, express any opinion on the statutory financial statements.

AGP
Chartered Accountants

Sycamore House
Sutton Quays Business Park
Sutton Weaver
Runcorn
Cheshire
WA7 3EH

Costs Lawyer Standards Board Limited

Detailed Income Statement

Year ended 31 December 2019

	2019 £	2018 £
Turnover		
Sales	176,863	178,313
Gross profit	<u>176,863</u>	<u>178,313</u>
Overheads		
Administrative expenses	223,669	153,916
Other operating income	14,370	–
Operating (loss)/profit	<u>(32,436)</u>	<u>24,397</u>
(Loss)/profit before taxation	<u><u>(32,436)</u></u>	<u><u>24,397</u></u>

Costs Lawyer Standards Board Limited

Notes to the Detailed Income Statement

Year ended 31 December 2019

	2019 £	2018 £
Administrative expenses		
Directors salaries	15,250	13,901
Wages and salaries	74,131	45,705
Employers national insurance contributions	3,293	1,651
Staff pension contributions	30,419	29,179
Rent and room hire	2,981	3,464
Insurance	2,081	2,591
Repairs and maintenance	–	282
IT and database costs	2,779	1,608
Travel and subsistence	9,089	6,210
Telephone	1,680	1,992
Printing, postage and stationery	6,204	6,281
Sundry expenses	30,555	681
Use of home as office	219	156
Subscriptions	–	360
Advertising	1,607	–
Legal and professional fees	20,520	16,736
Legal Services Board levy	13,381	12,907
Legal Ombudsman levy	5,000	5,000
Education audit fee	–	1,000
Accountancy fees	2,284	2,108
Depreciation of tangible assets	842	1,384
(Gain)/loss on disposal of tangible assets	770	173
Bank charges	584	547
	<u>223,669</u>	<u>153,916</u>
Other operating income		
Deferred project income	<u>14,370</u>	<u>–</u>

2021 Budget



PROPOSED: July 2020

Costs Lawyer Standards Board

CLSB
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Budget for the 2021 practising year

Category	Budget provision (£)
Staff costs	92,041
Travel and subsistence	3,590
Rent and room hire	2,100
Telephone	1,673
Printing, postage and stationery	610
Equipment	800
Levies and contributions (LSB, LeO, Legal Choices)	22,775
Licences, subscriptions and fees	1,548
Office services	2,831
Consultancy services	20,400
IT services	2,454
Development projects	16,030
Miscellaneous	500
Contingency	5,000
TOTAL EXPENDITURE	172,352
Transfer to reserves	10,000
TOTAL DEBITS	182,352
Practising fee	275
Estimated number of Costs Lawyers	665
ESTIMATED INCOME	182,875

Consultation

2021 practising fee



DRAFT: [x] July 2020

Costs Lawyer Standards Board

CLSB
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Proposed fee

This year we must determine the practising fee for Costs Lawyers against the backdrop of the coronavirus pandemic. Costs Lawyers, like many other professionals, are embracing new ways of working while also grappling with uncertainty about the future. Our aim during this period is to ensure that our regulatory framework promotes safe innovation, supports business stability and encourages continued high standards of professional service, regardless of the external environment.

At the same time, the CLSB must continue to deliver its ongoing programme of organisational improvement and regulatory reform. This is essential for ensuring that the Costs Lawyer profession has a modern, effective regulator that can meet the needs of practitioners and their clients. It is also essential that we find cost-effective ways to make these improvements, so that regulation remains affordable and proportionate for all Costs Lawyers, regardless of their practising arrangements. This has been at the forefront of our minds in developing our plans for 2021.

In this context, we propose to retain the practising fee at £275 for the 2021 practising year. This consultation paper provides information about why the fee has been set at that level and how the money raised through practising fees will be used. At the end of this consultation there are some questions you might like to consider as part of your response, but we would welcome any feedback you wish to provide.

Consultation responses should be sent to enquiries@clsb.info by **5pm on 6 September 2020**.

How we set the practising fee

The process

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

- First, we develop a **business plan** for the coming practising year, setting out our annual priorities for achieving our [mid-term strategy](#).

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

2021 Business Plan

Our proposed Business Plan for 2021 is available [on our website](#). [\[link\]](#) Building on our work in 2020, we intend to focus on initiatives in three main areas:

- Improving our regulatory arrangements
- Protecting the interests of consumers and promoting professional standards
- Modernising our organisation

Levies and contributions

Our proposed budget for 2021 is also available [on our website](#). [\[link\]](#)

You will see that a portion of our budget is made up of levies and contributions that we must pass on to other organisations – namely the Legal Services Board, the Legal Ombudsman and the Legal Choices website – to fund their activities. Each of the legal

services regulators is required to make contributions on behalf of the lawyers they regulate.

In 2021, the cost per Costs Lawyer of these contributions will be:

- £21.81 for the Legal Services Board (8% of your practising fee)
- £7.33 for the Legal Ombudsman (3% of your practising fee)
- £4.25 for Legal Choices (1.5% of your practising fee) [based on £2,900 – TBC]

Other information about practising fees

Permitted purposes

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

All our income is allocated to expenditure on so-called “permitted purposes”. Permitted purposes are prescribed regulatory activities as listed in Rule 6 of the Legal Services Board’s [Practising Fee Rules](#). They include activities like regulation, accreditation, education, training, raising professional standards, providing advice and guidance, participating in law reform and furthering public legal education.

The Association of Costs Lawyers

Your practising fee exclusively funds the CLSB. It is not used to fund the profession’s representative body, the Association of Costs Lawyers (ACL). If you choose to be a member of ACL, a membership fee is payable separately.

Tax relief

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

Reserves

We hold financial reserves to provide a buffer against unexpected events; the coronavirus crisis is a salutary reminder of the importance of having adequate reserves. We want the level of our reserves to be neither too low nor too high, so our Reserves Policy provides for a target level of one year's operating expenditure, which equates roughly to one year's gross income from annual practising fees. By the end of 2019, our reserves were around 60% of this target. We will continue to gradually increase our reserves until we meet the target level.

As you can see from our 2019 [audited accounts](#), we recently used some of our reserves to fund an organisational restructure, in line with our Reserves Policy. The restructure was an essential part of the CLSB's transformation into a more efficient, modern and resilient regulator. As anticipated, the restructure has also allowed us to make significant cost savings, not only in 2020 but into the foreseeable future. We are on track to recoup the entire cost of the restructure through savings by the end of 2021.

Practising certificates

Practising Rules

The practising fee must be paid before we can issue you with a practising certificate for the relevant year. This is established under our Practising Rules, which you can find in the [Costs Lawyer Handbook](#). The Practising Rules are due to be updated later this year, but the changes will not affect the practising fee.

Practical advice and information

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

You can also find information on this webpage about fee remissions. You might be entitled to a reduction in your practising fee if, for example, you are a newly qualified

Costs Lawyer, you are applying for reinstatement to the register part-way through the year, or you have recently taken parental leave.

Benefits of having a Costs Lawyer practising certificate

Benefits of holding a practising certificate issued by the CLSB include:

- The right, under the Legal Services Act 2007, to conduct the following reserved legal activities:
 - The exercise of a right of audience
 - The conduct of litigation
 - The administration of oaths
- Inclusion of your name and professional details in the [register of Costs Lawyers](#).
- The ability to claim a better hourly rate grade than unauthorised advisers.
- Recognition by the courts and other practitioners of your status as a qualified legal services professional.
- Eligibility to use the CLSB [Mark of Regulation](#).
- Enhanced trust and confidence from your clients, who know that you must meet regulatory standards, carry adequate insurance, handle complaints properly and undertake continuing professional development (CPD).
- Access to guidance and services for yourself and your clients, including the dispute resolution scheme of the Legal Ombudsman and the support services of LawCare.

Consultation questions

Main question

Question 1: Do you agree with the proposed practising fee of £275 for 2021? Why or why not?

Other questions you might like to consider

Question 2: Do you agree with the CLSB's proposed business plan and budget for 2021? If not, what aspects would you suggest we change and why?

Question 3: Are you adversely impacted by the level of the practising fee due to a protected characteristic under the Equality Act 2010 (such as age, disability or race) or due to your individual practising arrangements? If so, please tell us why and how we could meet your needs.

Question 4: What do you perceive to be the main benefits of regulation? Do you think we place sufficient focus on those benefits?

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

Consultation responses should be sent to enquiries@clsb.info by **5pm on 6 September 2020**.

DRAFT

POLICY ON HANDLING INCOME DERIVED FROM DISCIPLINARY PROCESSES

Costs Lawyer Standards Board

Effective Date: 21 July 2020

Introduction

This policy sets out how the Costs Lawyer Standards Board (“CLSB”) will handle income derived from its disciplinary processes. The CLSB’s Disciplinary Rules and Procedures (“DR&P”) provide for two types of disciplinary income:

- financial penalties, which can be imposed upon a Costs Lawyer who is found to be in breach of our regulatory arrangements; and
- fixed costs, which a non-compliant Costs Lawyer must pay to the CLSB in specified circumstances.

This policy should be read in conjunction with the DR&P, which are published on the CLSB website.

Purpose

The purpose of this policy is to ensure that income derived under the DR&P is invested in activities that relate to disciplinary matters. There are two main reasons why the CLSB wants to achieve this purpose.

First, we want to mitigate the financial burden on compliant Costs Lawyers who would otherwise fund the disciplinary process through their practising fees. In this way, fixed costs orders under the DR&P are intended to ensure that non-compliant Costs Lawyers cover a fair proportion of our costs of administering the disciplinary proceedings in which they are involved.

Second, to augment the deterrent effect of financial penalties, we want to use the income derived from financial penalties to fund activities that increase awareness and understanding of, and compliance with, our regulatory arrangements. This will improve consumer outcomes and reduce the prevalence of conduct complaints, further decreasing our costs of dealing with non-compliance.

Procedure

To achieve the purpose described above, we treat income derived under the DR&P (“disciplinary income”) as follows:

1. Disciplinary income is recorded separately from other income in our internal bookkeeping records.
2. Total disciplinary income is monitored and reported to the board on a quarterly basis.
3. Where disciplinary income is derived in a given financial year, a discrete expenditure line is added to the annual budget for the following financial year (a “disciplinary

expenditure line”). The value of the disciplinary expenditure line equates to the value of the disciplinary income in the previous year.

4. The budgeted funds in the disciplinary expenditure line are ringfenced to pay for activities that relate to disciplinary matters. This could include, for example, funding a specific project, covering the fees of investigators or Panel Members, or reallocating a proportion of staff salaries that reflects time spent on dealing with complaints.
5. Any unused budget in the disciplinary expenditure line is rolled into a further disciplinary expenditure line in the budget for the following financial year. If there is an underspend against the disciplinary expenditure line for more than two years in a row, we will review the level of fixed costs and financial penalties imposed under the DR&P to assess whether they should be reduced.
6. This policy does not change the way our financial accounts are presented.

Review of this policy

This policy will be reviewed by the CLSB board from time to time to ensure it remains current and fit for purpose.

END

COSTS LAWYER STANDARDS BOARD LTD

RISK REGISTERS

As at 22 April 2020

1. RISK SCORING

(i) Nature of risk

Our operational risks are categorised as:

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

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

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

(ii) Gross risk: Impact x Probability

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

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

(iii) Adequacy of controls

Descriptor	Score	Description
Fully effective	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
Substantially effective	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
Partially effective	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
Largely ineffective	2	Significant control gaps. Either controls do not treat root causes or they do not operate at all effectively
None or totally ineffective	1	No credible control and limited confidence in the application or oversight of risk activity

2. OPERATIONAL RISK REGISTER

Logged by board: 6/4/2011	Reference: OP1	Risk score: I(5) x P(4) = 20
Risk to operation	Changes to the profession impact CLSB viability as more leave than enter the profession	
Nature	Financial, operational continuity	
Evidence of risk	<p>(i) Electronic bills of costs April 2018: New electronic bill of costs came into effect 6 April 2018 for work done after that date.</p> <p>(ii) Capped costs January 2019: Pilot introduced on capped costs of £80k for High Court cases worth up to £250k.</p> <p>(iii) Increase in fixed costs April 2019: MoJ announcement of implementation of fixed costs on cases up to £100k.</p> <p>(iv) Coronavirus April 2020: Decreasing appetite and cashflow for clients to engage in disputes generally; furloughing of Costs Lawyers; risks to longer term job security and viability of firms; some positive impact, e.g. through delays to whiplash reforms.</p>	
Controls	<ul style="list-style-type: none"> • Monitor impact on the profession via impact assessment surveys, including a coronavirus impact survey in Q2. • Respond to proposals/consultations to help stakeholders understand the Costs Lawyer market and ensure policy developments are in the public interest. • Implement regulatory arrangements that support safe innovation and diversification, to promote ongoing competition and choice. • Mitigate risks around route to entry – see OP3. • Retain one year’s operating budget as reserves. 	
Control adequacy	4	
Priority area of risk	High	
Actions outstanding/status	Monitor reasons for leaving the profession at PC renewal and respond to new factors.	
Commentary	<ul style="list-style-type: none"> • LSB being kept informed of changes and potential impact. • ACL encouraging Costs Lawyers to diversify. 	

Logged by board: 13/1/2015	Reference: OP2	Risk score: I(5) x P(3) = 15
Risk to operation	The CLSB's organisational structure is not sufficient to ensure business continuity	
Nature	Operational continuity, capacity, reputational	
Evidence of risk	Being a small organisation, institutional knowledge and operational capacity of the CLSB rests with a small number of individuals.	
Controls	<ul style="list-style-type: none"> • Assessment of continuity risks in light of coronavirus (including retaining core functions in the absence of a key staff member). • Disaster Recovery & Business Continuity being redeveloped following restructure. • Move to a paperless organisation, including via electronic processes and cloud storage. • Minimisation and logging of paper archives, with joint access to storage. • Joint signatories to bank account. 	
Control adequacy	3	
Priority area of risk	High	
Actions outstanding/status	<ul style="list-style-type: none"> • DR&BC plan is still in development as all operational systems and processes are reviewed. • Continued move to paperless so all records are in one place, secure and accessible. • Knowledge transfer of all systems, processes, data and knowhow between staff and into internal policies and manuals. 	
Commentary		

Logged by board: 25/7/2017	Reference: OP3	Risk score: I(5) x P(2) = 10
Risk to operation	There are insufficient numbers of newly qualified Costs Lawyers such that regulated numbers fall to an unsustainable level	
Nature	Reputational, financial, operational continuity	
Evidence of risk	<p>There is only one means of entry into the profession (three-year course) and one provider (ACLT).</p> <ul style="list-style-type: none"> • 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. • In 2017, CLSB considered applying to the government apprenticeship scheme, but concluded this was not an option. 	

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

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

Logged by board: 24/1/18	Reference: OP5	Risk score: I(4) x P(2) = 8
Risk to operation	Failure to comply with data protection obligations	
Nature	Legal, financial, reputational	
Evidence of risk	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.	
Controls	<ul style="list-style-type: none"> • 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. • Use of electronic board papers rather than circulation by regular post. • Updates to IT systems with a focus on data security. 	
Control adequacy	3	
Priority area of risk	Medium	
Outstanding actions (status)	Implementation of final outcomes from data protection compliance review during Q2 2020. Updates to IT systems ongoing throughout 2020.	
Commentary		

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

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

2. REGULATORY RISK REGISTER

Logged by board: 23/01/2020	Reference: R1	Risk score I(4) x P(1) = 4
Risk	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	
Risk to objectives	Regulatory objective: Protecting and promoting the public interest. Regulatory objective: Protecting and promoting the interests of consumers. Professional principle: Proper standards of work. Professional principle: To act in the best interest of the client.	
Evidence of risk	There is limited evidence of actual risk, although there are theoretical risks that must be controlled, for example: <ul style="list-style-type: none"> • 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- 	

	<p>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.</p> <ul style="list-style-type: none"> • 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.
Controls	<ul style="list-style-type: none"> • Practising Rules and CPD Rules reviewed in 2019. • Disciplinary Rules and Procedures reviewed in 2019, including to increase deterrent effect of financial penalties. • Guidance subject to systematic review during 2019 and 2020 following Handbook Audit. • Filing requirements with practising certificate applications (evidence of insurance, complaints procedures). • Targeted questions in client survey. • Supervision of first tier complaints through reporting in regulatory return.
Control adequacy	4
Priority area of risk	Low – no evidence of risk having materialised to date
Actions outstanding/status	Finalisation of rule changes following reviews. Completion of phased guidance reviews under Handbook Audit during 2020.
Commentary	

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

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

Logged by board: 24/07/2019	Reference: R4	Risk score: I(4) x P(2) = 8
Risk	CLSB cannot generate sufficient evidence about the consumer dimension of the Costs Lawyer market, resulting in regulatory arrangements that are misaligned to consumer need	
Risk to objectives	Regulatory objective: Protecting and promoting the public interest Regulatory objective: Increasing public understanding of citizens' legal rights and duties.	
Evidence of risk	It has historically proven difficult to generate statistically significant data on the consumer experience with the Costs Lawyer market. Engagement with client surveys is low, as are complaint volumes, making traditional methods of data capture insufficient. It was hoped that the Legal Choices upgrade project would provide additional data and insights into the way consumers interact with the market. However, progress against the objectives for the Legal Choices website has been slower than expected and the BSB announced in July 2019 that it would not be making its funding contribution for 2020.	
Controls	<ul style="list-style-type: none"> New Consumer Engagement Strategy has been published covering the period of our mid-term organisational strategy (2020 – 2023), building on earlier consumer research project and establishing workstreams for building consumer-related evidence base. Data sharing arrangements are in place with LeO in relation to complaints about Costs Lawyers. Participate in the Legal Choices Governance Board to identify early warning signs that the project will not deliver as expected. 	
Control adequacy	4 – a forward plan is in place, as set out in the Strategy, but work will be ongoing for some time	
Priority area of risk	Medium, so long as we remain on target to deliver Strategy	

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

Summary of decision

The purpose of this summary sheet is to provide a high level and accessible overview of the Legal Services Board's ("LSB") decision. Readers are recommended to read the formal decision notice below for further detail. **This summary is not and should not be taken as a formal part of the LSB's decision notice under the Legal Services Act 2007 (the "Act").**

The LSB's decision is to grant in full the application from the Costs Lawyer Standards Board ("CLSB") to make changes to its regulatory arrangements in respect of its Continuing Professional Development ("CPD") Rules, which are rules contained in the CLSB Handbook.

The amended rules seek to:

- Give discretion to Cost Lawyers to undertake appropriate CPD activity, by (i) removing a list of activities that count towards CPD and (ii) removing caps on the number of points attainable for each type of activity.
- Reframe the mandatory requirement for Costs Lawyers to achieve 12 CPD hours (or points) of training per year, as a minimum standard.
- Clarify that normal practice does not contribute to CPD.
- Remove the list of organisations and persons able to provide CPD training.
- Remove the requirement for mandatory accreditation for Costs Lawyers to provide training and introduce a voluntary training register.
- Introduce random audits to check Costs Lawyers' own records and CPD objectives.

Following the assessment of the CLSB's application, the LSB has concluded that the changes do not trigger any of the refusal criteria set out within paragraph 25(3) of Schedule 4 to the Act.

Decision notice

The CLSB application for approval of changes to its regulatory arrangements in respect of its CPD Rules.

1. The LSB has granted an application from the CLSB for alterations to its CPD Rules.
2. This decision notice sets out the decision taken, including a description of the changes.
3. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Association of Costs Lawyers (“ACL”) is an approved regulator for the costs lawyer profession and the CLSB is the regulatory arm to which the ACL has delegated its regulatory functions.
4. This notice sets out the decision taken, including a description of the changes. The notes at page 7 of this notice explain the statutory basis for the decision.
5. The chronology of the LSB’s handling of this application is set out below.

Chronology

- The LSB confirmed receipt of an application from the CLSB on 28 April 2020.
- The 28-day initial decision period for considering the application ended on 25 May 2020.
- On 19 May 2020, the LSB issued an extension notice¹, which extended the initial decision period to 26 July 2020.
- This decision notice is effective from 17 June 2020.
- The decision notice will be published on the LSB’s website by 19 June 2020.

Background

6. The CPD Rules are published in the CLSB Handbook and determine how a Costs Lawyer should continuously develop their knowledge and skills throughout their career. In the current regulations, Costs Lawyers are encouraged to plan and evaluate their CPD activity according to their development requirements as these emerge from their practice. Nevertheless, CLSB set out in its application that in late 2019 it reviewed its CPD approach to ensure these Rules provide sufficient reassurance that Costs Lawyers embrace continuing competency throughout their career. The CPD rules were last amended in June 2017.
7. The CLSB is proposing to introduce targeted changes to the current CPD Rules to make them more outcomes-focused and to ensure they remain fit for purpose. This is proposed to be achieved by encouraging Costs Lawyers to focus on their individual professional developmental needs, while also providing a practical framework for Costs Lawyers to follow.

¹ https://www.legalservicesboard.org.uk/wp-content/uploads/2020/05/CLSB_Extension-notice-on-CPD-rules-application.pdf

8. In considering the proposed amendments to the CPD Rules, the CLSB has taken into account the LSB's current guidance on regulatory arrangements for education and training,² and also the LSB's regulatory performance assessment of the CLSB in 2019³. In the latter, the LSB highlighted that the CLSB needs "to consider implementation of a revised approach to CPD".
9. The CLSB also took into consideration the LSB's current call for evidence on the ongoing competence of legal professionals.⁴ The CLSB decided that it would proceed with its CPD reforms prior to the LSB publishing its conclusions from the analysis of the evidence in 2020/21. The CLSB explained that its reforms would facilitate a rapid and positive change for a refreshed outcomes-based approach to CPD, and this would in turn align with the CLSB's regulatory performance objectives. Notwithstanding this, the CLSB aims to re-evaluate its approach when the LSB has published conclusions from its ongoing competence work.
10. In its current application, the CLSB seeks to permit Costs Lawyers to determine the subjects for their learning and development that count towards their CPD. There would no longer be a cap on the number of points that each subject may carry. Other amendments are also proposed to clarify the minimum CPD hours' required, to highlight which activities may contribute to CPD and to set out the procedures to follow to be able to provide CPD training as a non-CLSB accredited Costs Lawyer or other legal professional.
11. Consultation on the proposed changes took place from 4 December 2019 to 2 February 2020. Respondents were largely in support of the proposals. In March 2020, the CLSB published a consultation outcome report and a copy has been provided with the application. The report provides details on the CLSB's consideration of consultation responses, including its rationale for revising its proposals or maintaining its existing position.
12. The CLSB intends to implement the changes from 1 January 2021.

Summary of proposed changes

CPD activities

13. The CLSB will remove the list of specified activities that contribute to CPD for Costs Lawyers. Further, there will no longer be a cap on the number of points that Costs Lawyers obtain from any single activity. New Rule 3 will instead set out a non-exhaustive list of activities that Costs Lawyers can choose to include within their CPD. It also stipulates that a Costs Lawyer will be given discretion to undertake activities which better reflect their individual needs. CLSB states that is in keeping with other developments concerning CPD in the legal sector and aligns with the LSB's guidance on a more flexible and outcomes focused approach.

Minimum CPD hours/points requirement

14. Revisions to Rules 1 to 3 reframe the points/hours minimum standard that a Costs Lawyer should obtain within a CPD year. In particular, Rule 1.3 now states that CPD activity needs to be

²https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf

³ Outcome RA1 (Regulatory Approach 1): <https://www.legalservicesboard.org.uk/wp-content/uploads/2019/09/Final-CLSB-Regulatory-Performance-Assessment-Update.pdf>

⁴ <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/04/LSB-ongoing-competence-call-for-evidence-1.pdf>

obtained in accordance with Rules 2 and 3. Rule 2 now requires Costs Lawyers to set objectives for their CPD training, evaluate against such objectives and maintain corresponding records. Rule 3.1 now sets out a non-exhaustive list of activities that may count towards CPD, while Rule 3.3 sets out the activities that may not. Notwithstanding these broadening changes, Rule 1 still retains the requirement to obtain a minimum of 12 CPD training hours.

Costs lawyers' normal practice does not count towards CPD

15. New Rules 3.3(a)-(b) clarifies that normal practice (such as routine practice and work that is charged to a client) cannot count towards CPD. The CLSB decided upon this rule because it considers that CPD training ought to be separate and distinct from day to day work. In reaching this decision, the CLSB considered and reflected upon evidence from the different CPD approaches adopted by the BSB and the SRA⁵.

Removal of list of organisations and persons providing CPD training

16. According to current Rule 2.2, the CLSB retains a list of organisations and persons that are licenced to provide CPD training. The CLSB proposes to remove this list, which it considers has become too broad to serve any regulatory purpose. The new regulatory arrangements will instead allow Costs Lawyers to choose from a wider range of external training providers. Nevertheless, the CLSB will still expect Costs Lawyers to assess for themselves that any external training is appropriate to individual development needs.

Removal of requirement for mandatory accreditation for Costs Lawyers for CPD purposes

17. The CLSB is proposing to remove the requirement for mandatory accreditation for Costs Lawyers providing CPD training. The application notes that this is to remove an accreditation barrier which does not exist in other legal professions. This will be replaced by a voluntary register, which may continue to provide reassurance of the quality of training but, at the same time, will not impose a restriction on the provision of training by other participants in the market. The application also sets out that the switch to a voluntary accreditation scheme will not require any material changes, i.e. the fee of £100 for receiving accreditation for three years will remain the same and the Costs Lawyers already on the mandatory accreditation scheme will be transferred to the voluntary register for the duration of their three-year accreditation. The CLSB plans to reassess any further requirements for the voluntary scheme in the next 12 to 18 months.

Audits of individual costs lawyers' evidence on CPD and waiver

18. The CLSB proposes a new Rule 4 that will require Costs Lawyers to submit upon request by the CLSB, a written record of CPD undertaken in the CPD year. New Rule 4 will also provide the CLSB with a discretion to waive all parts of the Rules if it considers that exceptional circumstances have justifiably prevented a Costs Lawyer from meeting their CPD requirements.

Key issues considered in the assessment of the application

19. We welcome the CLSB's approach in making these changes to provide greater flexibility for Costs Lawyers to adopt a more outcomes focused approach for their CPD activities.

⁵ Further rationale is documented within paragraphs 34 to 35 of the CLSB's application:

<https://www.legalservicesboard.org.uk/wp-content/uploads/2020/04/CLSB-rule-change-application-with-annexes-CPD-Rules-28-April-2020.docx.pdf>

20. We recognise that these changes are being made in part to address concerns identified by the LSB in its assessment of the CLSB's regulatory performance, particularly in relation to outcome RA1 under our framework.⁶ Following this application, the LSB will continue to follow up with the CLSB through the LSB's regulatory performance framework.

CPD activities

21. We acknowledge the greater flexibility that the proposed CPD framework offers to Costs Lawyers. The switch to a more flexible approach for achieving CPD removes the rigid incentive to attain 12 CPD points without considering whether the substance of the training is fully appropriate and relevant for each Costs Lawyer.
22. We considered the implication of there being no requirement for the Costs Lawyers to engage with all the learning categories that would have previously been covered during a CPD year. We sought assurances from the CLSB as to how it will remedy the risk that Costs Lawyers might undertake training from within the least challenging CPD categories.
23. In its response, the CLSB explained that the reforms also intend to require Costs Lawyers to identify their learning objectives and demonstrate how they have materialised. Primarily this will happen through the annual CPD process. If an inaccurate CPD record is produced by a Costs Lawyer, the CLSB will consider whether disciplinary action should be taken. Also, the CLSB noted that discouraging less challenging CPD training could be facilitated by providing guidance to employers (currently the CLSB cannot impose obligations on employers as it does not regulate entities). The CLSB aims to include advice to assist employers to promote the new approach to CPD when it comes into effect from 2021. We are satisfied with this explanation.
24. We also asked the CLSB to provide details about its proposal in Rule 3.2 to retain its current approach to award two CPD points for membership of the Association of Costs Lawyers (ACL) and six points for attendance at ACL conferences. We considered that the CLSB's removal of the exhaustive list of CPD course providers from Rule 2.2 should have additionally extended to any reference to the ACL conference specifically. We also did not agree that ACL membership alone should be a sole basis for awarding CPD points. In its reply, the CLSB agreed to delete proposed Rule 3.2. The CLSB has also proposed to amend its guidance to address the concerns we raised regarding the ACL conference, and to provide a general indication as to how a Costs Lawyer may use their ACL membership to obtain CPD points.
25. We are satisfied with CLSB's explanation and removal of the rule which made explicit reference to the award of CPD points from ACL membership and conferences.

Minimum CPD hours/points requirement

26. We asked the CLSB about the minimum mandatory 12hour (or point) CPD standard and to demonstrate how it will further encourage Costs Lawyers to go beyond this requirement where it would be beneficial. The CLSB explained that their rationale is to present a reformed CPD approach that combines a minimum hours requirement with guidance and materials that encourages Costs Lawyers to plan their individualised CPD activities. In addition, by maintaining the minimum requirement of 12 CPD hours, the CLSB noted that it would mitigate the risk of falling below this duration. The CLSB also considered that the review scheduled to take place

⁶ <https://www.legalservicesboard.org.uk/our-work/regulatory-performance#regulatory-performance-assessment-process>

after three to four years will provide an opportunity to revisit the imposition of this minimum hours requirement.

Monitoring and evaluation

27. The CLSB will review the effectiveness of the new arrangements through its annual audit process. In addition, over the first three years, the audit process will gather valuable evidence that could help identify specific patterns that Costs Lawyers follow in choosing CPD and will enable the CLSB to devise strategies to address any concerns as they arise. Further, the CLSB has stated that it will take into account the results of the LSB's forthcoming review of ongoing competence and determine whether any further reforms of its regulatory arrangements for CPD will be required. We consider this approach to be reasonable.

Decision

28. The LSB has considered the CLSB application against the refusal criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application and accordingly, the application is granted.

29. **Annex A** of this decision notice contains a copy of the amended CPD rules which have been approved by the LSB (amendments shown in red).

Matthew Hill, Chief Executive

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

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that:
 - (a) granting the application would be prejudicial to the regulatory objectives
 - (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
 - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are:
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules⁷ about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

⁷ LSB's Rules for applications to alter regulatory arrangements – Version 2 April 2018

[https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20\(2\)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(2)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf)

Annex A

Continuing Professional Development (CPD) Rules



Effective date: 1 January 2021



Costs Lawyer Standards Board

These rules relate to the continuing professional development (CPD) of a Costs Lawyer authorised and regulated by the Costs Lawyer Standards Board (CLSB) and replace all other CPD rules previously issued by the CLSB. A Costs Lawyer is required to continuously develop their knowledge and practical skills to ensure they operate to the standard expected of them in the Costs Lawyer Code of Conduct. These rules should be read in conjunction with prevailing guidance on CPD issued by the CLSB.

1. Achieving CPD

- 1.1 CPD is activity undertaken in accordance with these rules over and above a Costs Lawyer's routine practice to develop their skills, knowledge and professional standards as a Costs Lawyer.
- 1.2 The CPD year is a calendar year (1 January to 31 December).
- 1.3 A Costs Lawyer must achieve a minimum of 12 CPD points in a CPD year, unless rule 1.4 applies. CPD points can be achieved by carrying out CPD activity, in accordance with rules 2 and 3.
- 1.4 In the event that a Costs Lawyer:
 - (a) qualifies part way through a CPD year;
 - (b) is reinstated part way through a CPD year; or
 - (c) takes long term leave during a CPD year,the Costs Lawyer will be required to achieve a minimum of one CPD point for each full month worked during that CPD year.
- 1.5 In accordance with the CLSB's Practising Rules, the CLSB may refuse to renew a Costs Lawyer's practising certificate or may issue the practising certificate subject to conditions where a Costs Lawyer has failed to comply with CPD requirements.

2. Planning, evaluating and maintaining records

A Costs Lawyer is required to:

- 2.1 Identify their training needs and set objectives for their CPD in light of their responsibilities and of the principles in the Code of Conduct.
- 2.2 Evaluate the effectiveness of the CPD carried out against those objectives.
- 2.3 Keep a written record of the matters required by rules 2.1 and 2.2 and of the CPD undertaken during a CPD year.

- 2.4 Submit a CPD record on the prescribed form to the CLSB upon request and co-operate fully with the CLSB in the annual CPD audit process, including by providing the CLSB with the written records required to be kept under rule 2.3.
- 2.5 Keep evidence of CPD achieved for two years from the end of the CPD year.

3. CPD activities

- 3.1 The following is a non-exhaustive list of activities that can be included within CPD, with each full hour engaged on an activity counting as one CPD point:
 - (a) attending a conference, seminar or roundtable discussion;
 - (b) attending training, including in-house, external or web-based training;
 - (c) preparing for and delivering training;
 - (d) researching and drafting a publication;
 - (e) supervising a Trainee Costs Lawyer undertaking the Costs Lawyer qualification;
 - (f) research and reading.
- 3.2 The following activities cannot count towards CPD:
 - (a) work, research or reading that is part of routine practice or casework;
 - (b) any work for which the client is charged (unless the Costs Lawyer is providing training or a seminar for that client);
 - (c) following social media or maintaining a social media account.
- 3.3 Each CPD activity should be at a level appropriate to the Costs Lawyer's professional development needs.

4. Waiver

The CLSB may waive all or part of these rules if it considers that exceptional circumstances have justifiably prevented a Costs Lawyer from meeting their CPD obligations during any CPD year.

CLSB – Rule change application: Continuing Professional Development

The table below identifies additional queries that we request CLSB considers and to provide a response, in order to enable the LSB to assess the application against the refusal criteria under Schedule 4 of the Legal Services Act 2007.

Issues
<p>I. CPD Guidance for Cost Lawyers</p>
<p>The CPD Guidance (Annex C) and CPD rule 3.4 set out that Costs Lawyers are expected to link their CPD needs to suggested categories of development. This in turn should assist in aligning any development activities to the Code of Conduct principles. As the proposals put the onus on Costs Lawyers to identify their development needs, we would be interested in the following:</p> <ol style="list-style-type: none"> 1) How will the CLSB ensure that Costs Lawyers consistently develop in all the learning categories over time? <p>We do not intend to ensure that individual Costs Lawyers consistently develop in all the learning categories over time. The learning categories are neither mandatory nor exhaustive; they are intended to help individual practitioners think about the development areas that might be relevant to them, including by linking these to the principles in the Code of Conduct. By way of example: over time an in-house Costs Lawyer might have more weighty development needs in the category of legal and technical competence than dealing appropriately with clients; a sole practitioner might require more training on practice management than people management; and so on. This is explained in the guidance as follows:</p> <p style="color: red;"><i>There is no need to take CPD in a particular category if you consider that you do not have training or development needs in that category for the year in question. For example, you may not be involved in practice management in your role, or you may have focused on a particular category and principles last year and met your objectives. However, given the constantly evolving nature of costs law, it is likely that you will always need to undertake some activity in relation to your legal and technical competence if you are to meet your obligations under the Code of Conduct.</i></p> <p style="color: red;"><i>Adoption of these particular categories is not compulsory – but you must ensure that your needs are assessed and objectives set in light of the principles in the Code of Conduct (CPD rule 2.1).</i></p> <p>Rather than ensuring consistent development across learning categories, our aim is to promote appropriately balanced learning that is aligned to individual needs, ensuring each practitioner is competent to provide a professional service in their particular role at any given time.</p> <p>We consider the main threat to our success in achieving this aim to be inertia. Our current rules overemphasise legal and technical competence to the exclusion of other equally important competency areas. As noted in our consultation, the activities that currently attract CPD points focus exclusively on substantive law other than one category that relates to practice management. It may take time to move some practitioners away from this mindset. Our guidance, as well as the worked example of the template CPD record, are intended to be the starting point for this. We will get an initial indication of whether the guidance has had the intended effect during our first annual audit.</p> <p>The audit process is discussed further under the next question. Of relevance here is that, as part of the audit, we will collate data to allow us to identify trends in Costs Lawyers' approaches to planning and evaluating their professional development over time. We will track the number of CPD hours spent on the different learning categories (or categories other than those included in our guidance) against audited Costs Lawyers' level of experience and practising arrangements.</p> <p>By the time we review the new rules (as described in paragraph 76 of the rule change application), we will have evidence from several years' worth of audits. We can use what we know about the</p>

demographics of the profession as a whole (see our monitoring report published [here](#), for example) and external influences (such as the introduction of significant new procedural reforms) to make informed assumptions about the trends we would expect to see in learning activities, and compare these to the trends we identify from the audits. As our guidance explains, we would expect all Costs Lawyers to have some development needs in the area of legal and technical competence. However, an overemphasis on this category across the profession as a whole, to the exclusion of other development areas, would suggest further intervention may be required. The nature of the intervention would depend on the reason for the overemphasis. For example, a tailored survey might reveal that our guidance needs improving, that practitioners are finding it difficult to access a broad range of learning activities, or that employers tend to undervalue non-legal aspects of competency.

However, our starting point is that the rules and guidance have been developed with the intention of encouraging Costs Lawyers to think more broadly about their development needs and identify the learning categories that are of most relevance to them as individuals.

- 2) Is there a risk that Cost Lawyers will forgo more challenging CPD courses for less challenging ones? If so, how can this be mitigated?

What constitutes a more challenging or less challenging course will depend on the individual Costs Lawyer. Factors such as the Costs Lawyer's previous experience, the nature of their practice and their existing skill set will determine whether they find a particular learning activity challenging or not. It is therefore difficult to objectively assess the degree of challenge involved in an activity. Our proposed approach recognises this, by aiming to allow Costs Lawyers to make individualised, subjective assessments of whether any particular learning opportunity meets their needs.

Your question could be read as meaning: is there a risk that Costs Lawyers will choose courses that cover areas in which they are, personally, already competent (i.e. courses that are not subjectively challenging), so that once they have signed the attendance register they can tune out? This could be described as "lazy" CPD, i.e. viewing CPD as a tick box exercise rather than an essential part of proactively retaining and growing one's professional capability. Again, our proposals are intended to address the risk of lazy CPD, by requiring Costs Lawyers to plan and record (and thus demonstrate to us) what objectives their learning activities are designed to meet and evaluate whether those objectives are in fact met. Our current rules – which mandate narrow categories of CPD, mainly relating to technical legal expertise, and contain little incentive to consider areas in which development is required – import a considerable risk of lazy CPD. The new rules are designed to remedy this.

While the risk of lazy CPD is significantly diminished under our proposed rules, we acknowledge that there is an inherent risk of disengagement with CPD requirements by individuals in any profession. The main way we intend to mitigate this is through our approach to the annual CPD audit. Currently, our audit involves taking a random sample of practitioners' annual CPD returns and verifying whether the information in those returns is true. Where misreporting is discovered, we consider whether disciplinary or other action is appropriate. Other than the deterrent effect of disciplinary sanctions, there is no positive feedback loop by which learnings are used to benefit the wider profession and its clients. This approach has many limitations, one of which is that it does not discourage lazy CPD.

Under the new rules, the focus of our audit will be on assessing the practitioner's level of engagement with the identified purpose and outcomes of their CPD activity. We will review their records with the aim of assessing: whether they have understood what is required of them; the factors that have fed into their objective setting; whether their objectives appear balanced and appropriate to their individual circumstances; and the quality of their reflection. We will talk to audited Costs Lawyers about the process they undertook in planning and evaluating their CPD and whether they encountered any difficulties. This will allow us to build up a picture of the level of genuine engagement with CPD across the profession and (amongst other things) understand whether the risk of lazy CPD is materialising in practice. We will provide feedback and assistance to audited practitioners on how they might augment or improve their individual processes in future years, with the aim of improving outcomes for them and their clients. But more broadly our learnings from the audit process will inform what additional guidance, support or materials we provide to the

wider profession as the regime beds in. Where there is evidence of lazy CPD, it can be specifically addressed through this process.

Another effective way of discouraging lazy CPD is by ensuring that employers are informed of, and engage with, their employees' CPD obligations. Embedding CPD into internal appraisal processes (in terms of objective setting and performance evaluation) can create a particularly strong disincentive against lazy CPD. As the CLSB does not regulate entities, we do not have the regulatory reach to place obligations directly on employers. However, we are at the early stages of developing guidance for unregulated employers of Costs Lawyers, covering a variety of issues that we have identified through our work. We will include advice to help employers incorporate an outcomes-focused approach to CPD into performance management frameworks for employed Costs Lawyers. We anticipate the guidance being available for the first CPD year in which the proposed new rules will have effect (2021).

II. ACL membership and the minimum CPD hours standard

- 3) As regards rule 3.2, we would be interested to know what the rationale is for awarding two CPD points to Costs Lawyers simply because of their membership with ACL. Please also provide justification for attendance at an ACL conference being worth six CPD points, as set out in the Guidance.

This is primarily a practical issue. The current rules allow 2 CPD points for ACL membership and a maximum of 6 points for attendance at an annual conference. These numbers are based on the hours of CPD that are likely to be delivered by engagement in the relevant activities: reading ACL updates and newsletters is likely to amount to around (for the average Costs Lawyer) 2 hours a year and a conference usually comprises around 6 hours of learning sessions. Retaining these rules was not aimed at capping or limiting points claimable for activities related to ACL membership. Rather, given that the vast majority of Costs Lawyers claim CPD points for ACL membership and conference attendance each year, retaining these rules was intended as a consistent, transparent answer to the question that will inevitably be asked annually by numerous practitioners: "How many points can I claim for ACL membership and conference attendance"?

The following extract from page 8 of the consultation outcome report might be helpful in explaining our perspective:

Another of the individual Costs Lawyers, whilst agreeing that the guidance was clear, felt that accrediting two CPD points for ACL membership as we proposed is "more than a little nepotistic" and that there was no guarantee that members read the information that ACL sends round. The respondent stated those Costs Lawyers working in solicitors' firms had access to materials (for example the Law Society Gazette) and queried why two points were not accredited for this.

... We note the comments made in relation to ACL membership. The two points allowance is based on an appropriate use of the materials supplied by ACL. Those Costs Lawyers that do not read the ACL materials should not include the two points in their record. Costs Lawyers working in solicitors' firms may also have access to materials which will provide reading and research which might form part of their CPD and they can record the time as CPD points appropriately. Given the number of regulated Costs Lawyers who are also ACL members, the two point attribution is intended to give Costs Lawyers a ready-reckoner for the likely level of CPD attained through active membership; on balance, we feel it is useful to retain this.

This was our aim. However, we do accept that:

- (i) Rule 3.2 does not in itself provide that 2 points for ACL membership can only be claimed on the basis of active engagement with the learning materials that membership provides (this is set out in the guidance, but not in the rule).
- (ii) The guidance could be clearer in relation to when and how 6 points can be claimed for attending an ACL conference.
- (iii) Retention of a points "indicator" in the rules could be perceived as out of step with the broader policy approach of removing points caps for specified activities.

On this basis, we would welcome the LSB's feedback on a proposal to delete rule 3.2 and amend the relevant paragraph of the guidance to read as follows:

ACL membership

We know that many Costs Lawyers are members of the profession's representative body, the Association of Costs Lawyers (ACL). Membership of ACL involves regular updates on costs law, procedure and professional matters. ACL also holds annual conferences for the benefit of members.

You can claim CPD points for the time you spend using and engaging with the materials and training opportunities supplied by ACL in meeting your CPD objectives. To give you a general indication, an active member of ACL is likely to attain:

- two CPD points through spending around two hours a year engaging with ACL materials that are relevant to their CPD objectives; and*
- six CPD points through fully participating in an annual conference where most elements of the conference are relevant to their CPD objectives.*

This is indicative only and the number of CPD points attained through ACL membership will vary from member to member. An ACL member who does not engage with the materials provided would obtain no CPD through membership, while a particularly active member with detailed CPD objectives might attain more than eight CPD points through their membership.

Based on the number and nature of queries we currently receive about compliance with CPD requirements, we would be reluctant to give no indication at all as to the number of points that might be obtained through ACL membership and conference attendance. Removing this from the rules themselves should provide more flexibility to update our indication if, for example, the nature of ACL's membership or conference offerings change over time.

- 4) The proposal is for a more outcomes-focused approach, yet there is a minimum mandatory 12 hour (or point) CPD standard. Please can the CLSB explain how it will encourage Cost Lawyers to go beyond this?

The regime as a whole is designed to encourage Costs Lawyers to go beyond the minimum requirement, as explained in (most relevantly) paragraphs 32 and 33 of the rule change application.

The purpose of the changes is to allow each Costs Lawyer the flexibility to shape a consistent approach to their development, suited to and responding to their individual development needs. To that extent, we do not intend to micro-manage each Costs Lawyers' time spent on CPD (which we do not believe is practically possible or expected of us as an approved regulator). However, we understand the need for Costs Lawyers as a profession to carry out sufficient CPD to retain and build their competency. This is why we have taken the approach of combining a minimum hours threshold with guidance and materials that aim to encourage and assist Costs Lawyers to plan their annual CPD activities based on their personal training needs. The minimum hours requirement should be seen as part of a holistic regulatory framework that emphasises a broader concept of competency and firmly encourages Costs Lawyers to take a more proactive approach to their development.

We do not expect retention of the minimum standard to have a dulling effect on CPD attainment. Rather, we believe that retaining the minimum hours requirement will have the opposite effect, preventing those who are not currently engaged with the outcomes of their CPD activity from "falling out the bottom" of a more flexible, individualised regime during the bedding-in years. There is a small but real risk that removing a previously-existing minimum hours requirement could be perceived by some practitioners as an invitation to significantly reduce their CPD activity (and not as a result of considered reflection and planning). Retaining the 12 point threshold addresses this risk, while our new rules and guidance reframe the requirement as a clear minimum (not target) standard.

As noted in our consultation outcome report, our evaluation of the regime after three to four years will include an assessment of whether the outcomes-focused process has sufficiently bedded in to render the 12 point requirement no longer necessary.

III. Monitoring and review of CPD policy

- 1) Please provide further details on your plans for monitoring and evaluating the proposed CPD policy. Please include how you will measure success and ensure that Cost Lawyers consistently develop in all the learning categories, as also set out in section I, question 1 above.

The ultimate aim of these proposals is to ensure that Costs Lawyers are competent to perform all aspects of their role throughout their career. Success will involve Costs Lawyers proactively considering and then effectively addressing their development needs across a range of learning categories, as appropriate to their individual role, level of experience and practising arrangements. Success will not necessarily involve an increase in the number of hours spent undertaking CPD, but in the alignment of that CPD to the individual practitioner's learning needs (which should, in turn, reflect the needs of their ultimate clients).

Our primary evidence base for assessing success will be the annual audit, as described throughout this response. In the first year, our focus will be on making an initial assessment of engagement with the reforms: have Costs Lawyers attempted to carry out the CPD planning and evaluation required of them and have they understood the requirements. This will allow us to develop additional, targeted support materials if required. Data that is collated from the audit over the first three years will enable us to identify more specific trends – including any overemphasis on learning categories or impact of the retained minimum hours requirement – to assess whether the changes are having the intended effect. As also mentioned above, findings from the audits will inform whether and what additional evidence we need to obtain as part of the review (for example, through surveys or a focus group).

Additional evidence of impact could also be drawn from existing sources, such as client or public complaints where competency is brought into question. In evaluating the success of the changes, we will draw on relevant evidence from our wider work.

As referred to in the application, we would also want to take account of outcomes from the LSB's Review of Ongoing Competence in the Legal Profession, to ascertain whether there are any emerging measures or benchmarks we should incorporate into our review criteria.

Accredited Costs Lawyer Rules



DRAFT: 1 January 2021 (version 4)

Costs Lawyer Standards Board

CLSB
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These rules apply to a Costs Lawyer who is, or who is applying to become, accredited by the Costs Lawyer Standards Board (CLSB) for the purpose of providing continuing professional development (CPD) to other practitioners. A Costs Lawyer who is accredited under these rules is referred to as an Accredited Costs Lawyer.

Rule 1: Application for accreditation

- 1.1 An application for accreditation must be submitted to the CLSB on the specified application form with all requested information and payment of the administration fee that applies from time to time.
- 1.2 The CLSB may approve an application only if the applicant:
 - (i) holds a current Costs Lawyer practising certificate; and
 - (ii) has held a practising certificate for at least four years (whether consecutively or not) prior to making the application.
- 1.3 The CLSB may refuse an application if:
 - (i) required information or documentation has not been provided to the satisfaction of the CLSB (including on any audit carried out by the CLSB); or
 - (ii) any of the grounds for termination of accreditation in rule 2.2 would apply.
- 1.4 If an application is approved, the CLSB will confirm the accreditation and its duration to the Costs Lawyer in writing. The Costs Lawyer's name will appear in the register of Accredited Costs Lawyers on the CLSB website for the period of accreditation.

Rule 2: Period of accreditation

- 2.1 Accreditation will be for a period of three years from the date the application is approved by the CLSB.
- 2.2 An accreditation will terminate in the event the Accredited Costs Lawyer:
 - (i) voluntarily relinquishes their accreditation by notice in writing to the CLSB;
 - (ii) does not renew their Costs Lawyer practising certificate during the period of accreditation;

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- (iii) is found by the CLSB not to have complied with the CPD Rules during the period of accreditation;
 - (iv) has their practising certificate suspended or revoked under the Disciplinary Rules and Procedures during the period of accreditation;
 - (v) fails to co-operate fully with a CLSB audit in breach of rule 5.1; or
 - (vi) otherwise fails to comply with these rules and the CLSB believes that the non-compliance is sufficiently serious or irremediable to require termination of the accreditation in the public interest.

Rule 3: CPD points

- 3.1 Costs Lawyers who participate in CPD activities provided by Accredited Costs Lawyers can claim one CPD point per hour of participation, in accordance with the CPD Rules.
- 3.2 An Accredited Costs Lawyer can claim one CPD point per hour spent on the preparation and delivery of CPD activities, insofar as the Accredited Costs Lawyer is in fact learning and gaining professional development from this process, in accordance with the CPD Rules.
- 3.3 An Accredited Costs Lawyer must co-operate fully with the CLSB and other professional services regulators in responding to requests for information about CPD they have delivered.

Rule 4: Preparing and delivering CPD

In preparing and delivering a CPD activity or collection of related CPD activities (referred to in this rule as “training”) to other legal practitioners (referred to in this rule as “participants”), an Accredited Costs Lawyer must:

- 4.1 Consider the following matters and communicate these to participants:
 - The purpose and intended outcomes of the training.
 - The intended audience, including level of assumed prior knowledge.
 - The knowledge and understanding that should be achieved on completion.

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- 4.2 Ensure the content of the training is:
- Sufficient to meet the purpose and outcomes identified under rule 4.1.
 - Relevant to the professional development needs of the intended audience.
 - Set at an appropriate level for the intended audience.
 - Up to date and accurate.
- 4.3 Ensure the method of delivering the training is:
- Appropriate for meeting the purpose and outcomes identified under rule 4.1.
 - Safe (particularly if the training is delivered in a physical venue).
 - Secure (particularly if the training is delivered virtually).
 - User friendly, taking into account the needs of participants.
 - Inclusive and non-discriminatory, including by making reasonable adjustments for those with a disability.
- 4.4 Ensure the training is supported by clear and accurate written materials, which are made available to participants in a convenient format.
- 4.5 Inform participants how many CPD points are attributable to the training.
- 4.6 If fees are charged for the training, make the costs clear to participants upfront.
- 4.7 Ensure that any person who assists in providing the training (such as a guest speaker) has:
- Relevant qualifications and current experience of the subject matter.
 - The necessary skills to deliver the content effectively.
- 4.8 Request written feedback from participants in relation to the content and delivery of the training.
- 4.9 Keep a record of all training delivered for a period of two years to assist the CLSB in the event of an audit under rule 5 or under the CPD Rules, including:
- The date, duration and method of delivery.
 - The purpose and intended outcomes of the training.
 - Names and qualifications of those who delivered the training.

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- The number of CPD points attributed to full completion of the training.
 - A list of participants, including where possible a record of those attendees who did not complete the training in full.
 - A copy of the written materials provided to participants.
 - A record of the feedback provided by participants.

Rule 5: Auditing

- 5.1 The CLSB may audit CPD provided by an Accredited Costs Lawyer against the requirements in rule 4 at any time during the period of accreditation or upon an application for accreditation.
- 5.2 A Costs Lawyer must co-operate fully with the CLSB in relation to any audit under rule 5.1.

END

Accredited Costs Lawyer Rules



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DRAFT: 1 January 20182021 (version 3)

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Costs Lawyer Standards Board

CLSB
|||

These rules apply to a Costs Lawyer ~~with a current practising certificate issued~~ who is, or who is applying to become, accredited by the Costs Lawyer Standards Board (CLSB) ~~applying to become an Accredited Costs Lawyer~~ for the purpose of providing ~~continued~~ continuing professional development (CPD). ~~They will continue~~ to apply ~~during the term of accreditation. These~~ other practitioners. A Costs Lawyer who is accredited under these rules ~~become effective on the date above and replace all other~~ is referred to as an Accredited Costs Lawyer ~~Rules previously issued.~~

Rule 1: Application for accreditation ~~+~~ **continued accreditation**

1.1 An application for ~~accreditation or continued~~ accreditation must be submitted to the CLSB on the specified application form with all requested information and payment of the administration fee that applies from time to time.

~~1.2 In the event an application is approved the CLSB will issue a letter or email confirming the period of accreditation. The Accredited Costs Lawyer is required to keep a copy of this written communication for production as proof of their accreditation, upon request, by any party requesting sight of it.~~

~~1.3 An administration fee of £100 will be payable to the CLSB on application for accreditation or continued accreditation.~~

1.2 The CLSB may approve an application only if the applicant:

(i) holds a current Costs Lawyer practising certificate; and

(ii) has held a practising certificate for at least four years (whether consecutively or not) prior to making the application.

~~1.4~~ 1.3 The CLSB may refuse an application ~~on one or more of the following grounds~~ if:

~~(i) qualifying criteria in rule 4 have not been fully met;~~

~~(ii) on an application for a further period of accreditation insufficient evidence that CPD had been given by the applicant during the previous period of accreditation;~~

(i) required information or documentation has not been provided to the satisfaction of the CLSB- (including on any audit carried out by the CLSB); or

(ii) any of the grounds for termination of accreditation in rule 2.2 would apply.

~~(iii)~~1.4 If an application is approved, the CLSB will confirm the accreditation and its duration to the Costs Lawyer in writing. The Costs Lawyer's name will appear in the register of Accredited Costs Lawyers on the CLSB website for the period of accreditation.

Rule 2: Period of accreditation

2.1 ~~Each accreditation~~Accreditation will be for a period of three years from the date ~~of the application approval~~is approved by the CLSB.

2.2 An accreditation will terminate in the event the Accredited Costs Lawyer:

(i) voluntarily ~~resigns~~relinquishes their accreditation by notice in writing to the CLSB;

(ii) ~~fails to~~does not renew their Costs Lawyer practising certificate during ~~at the~~the period of accreditation;

~~(iii) breaches these rules (in the opinion of the CLSB);~~

~~(iv) is found by the CLSB Chief Executive, CLSB Conduct Committee or CLSB Conduct Appeal Committee not to have achieved all required~~complied with the CPD pointsRules during ~~a practising year whilst they are accredited;~~

~~(v)(iii) retires from the profession;~~period of accreditation;

~~(vi)(iv) has their practising certificate suspended or revoked by a CLSB Conduct Committee or CLSB Conduct Appeal Committee; under the Disciplinary Rules and Procedures during the period of accreditation;~~

~~(v) fails to co-operate fully with a CLSB audit in breach of rule 5.1; or~~

~~(vii)(vi)~~ otherwise fails to comply with a CLSB audit under rule 8. these rules and the CLSB believes that the non-compliance is sufficiently serious or irremediable to require termination of the accreditation in the public interest.

Rule 3: Register of CPD points

~~3.1~~ ~~Costs Lawyers who participate in CPD activities provided by Accredited Costs Lawyers can claim one CPD point per hour of participation, in accordance with the CPD Rules.~~

~~3.13.2~~ ~~In applying to be become an An Accredited Costs Lawyer the applicant is agreeing to publication of their name can claim one CPD point per hour spent on the preparation and delivery of CPD activities, insofar as the Accredited Costs Lawyer register which appears on the CLSB website. is in fact learning and gaining professional development from this process, in accordance with the CPD Rules.~~

~~3.2~~ ~~An Accredited Costs Lawyer will notify the CLSB within seven days in the event of a change of details e.g. surname, employer, email etc. to enable the CLSB to update both the Costs Lawyer register and Accredited Costs Lawyer register.~~

Rule 4: Qualification criteria for Accredited Costs Lawyer status

~~4.1~~ ~~An applicant must be a fully qualified Costs Lawyer for a minimum period of four years on the date of their application.~~

~~4.2~~ ~~In the event an applicant is applying for a further period of accreditation then it is a requirement that they prove to the satisfaction of the CLSB that they have used their previous period of accreditation for the purposes of providing CPD.~~

Rule 5: Charging for CPD

~~5.1~~ ~~An Accredited Costs Lawyer may charge, at their discretion, a reasonable sum for any CPD they provide.~~

Rule 6: CPD points

~~6.1~~ ~~Those attending a CPD event provided by an Accredited Costs Lawyer can claim 1 CPD point per hour of the event. A maximum of 6 CPD points per calendar year may be claimed by a Costs Lawyer receiving Accredited Costs Lawyer CPD.~~

~~6.2 An Accredited Costs Lawyer can claim up to 4 CPD points per calendar year for the preparation and delivery of CPD on costs law and practice.~~

~~6.33.3 An Accredited Costs Lawyer will co-operate fully with the CLSB and other professional services regulators of other legal professions in responding to whom requests for information about CPD they have provided CPD e.g. solicitors (SRA), barristers (BSB), Legal Executives (Cilex) under reciprocal arrangements delivered.~~

Rule 74: Preparing and delivering CPD

~~An Accredited Costs Lawyer will:~~

~~In preparing and delivering a CPD, undertake activity or collection of related CPD activities (referred to as in this rule as “training”) to other legal practitioners (referred to in this rule as “participants”), an Accredited Costs Lawyer must:~~

~~7.14.1 Consider the following aims and objectives matters and communicate these to participants:~~

- ~~• The training content and purpose and intended outcomes of the training.~~
- ~~• Who the course is designed for (• The intended audience, including level of assumed prior knowledge assumed of attendees).~~
- ~~• The level of knowledge and understanding that should be achieved on completion.~~
- ~~• Whether Ensure the subject should be taught in depth or dealt with as an overview.~~

~~4.2 Undertake to ensure CPD content meets of the aims and objectives above and is: training is:~~

~~7.2 • Sufficient to meet the purpose and outcomes identified under rule 4.1.~~

- ~~• Relevant and suitable to the work professional development needs of the attendees intended audience.~~
- ~~• Set at the correct an appropriate level for attendees the intended audience.~~
- ~~• Up to date and factual accurate.~~
- ~~• Concisely and clearly set out.~~

7.34.3 Ensure the method of ~~CPD delivery~~ delivering the training is:

- ~~Appropriate to meet aims~~ for meeting the purpose and objectives ~~outcomes~~ identified under rule 4.1.
- ~~Relevant to~~ Safe (particularly if the training is delivered in a physical venue).
- Secure (particularly if the training is delivered virtually).
- User friendly, taking into account the needs of attendees. ~~participants.~~
- ~~Properly thought out.~~
- ~~Set at the correct level.~~
- ~~Where possible, varied to encourage learning.~~
- ~~Be clear to attendees~~ Inclusive and non-discriminatory, including by making reasonable adjustments for those with a disability.

4.4 Ensure the training is supported by clear and accurate written materials, which are made available to participants in a convenient format.

7.44.5 Inform participants how many CPD points are attributable to ~~full attendance~~ the training.

4.6 If fees are charged for the training, make the costs clear to participants upfront.

4.7 Ensure attendees sign in ~~to~~ that any person who assists in providing the training (such as a register ~~guest speaker)~~ has:

- Relevant qualifications and current experience ~~of attendance, which must be kept~~ the subject matter.
- The necessary skills to deliver the content effectively.

4.8 Request written feedback from participants in relation to the content and delivery of the training.

7.54.9 Keep a record of all training delivered for a period of two years to assist the CLSB in the event of a CPD ~~an audit, which states~~ under rule 5 or under the CPD Rules, including:

- ~~The title~~ The date, duration and method of delivery.

-
- ~~The purpose and intended outcomes~~ of the training.
 - ~~The date, time~~ Names and ~~venue~~ qualifications of those who delivered the training.

- The number of CPD points attributed to full ~~attendance~~.
- ~~The name~~ completion of the ~~Accredited Costs Lawyer~~ providing the training.
- A list of ~~the delegates, with provision for them to sign in alongside their name~~ participants, including where possible a record of those attendees who did not complete the training in full.
- A copy of the written materials provided to participants.
- A record of ~~those who failed to attend the full training session~~.

~~7.6 Ensure all CPD over one hour in duration is supported by written material which may be the feedback provided to attendees by email or by hand. Copies of Power Point presentations which simply summarise topics will not meet requirements in relation to written material by participants.~~

~~7.7 Ensure CPD material covers the aims and objectives and is:~~

- ~~Clearly organised.~~
- ~~Up to date.~~
- ~~Well presented.~~
- ~~Accurate~~
- ~~Comprehensive.~~

~~7.8 Ensure CPD material does not:~~

- ~~Infringe copyright.~~
- ~~Include any defamatory material.~~

~~7.9 Ensure speakers have:~~

- ~~Relevant qualifications and current experience on the subject matter.~~
- ~~The necessary skills and experience to present the CPD effectively.~~

~~7.10 Ensure the training venue and accommodation:~~

- ~~• Is set out appropriately for the number of delegates and method of presentation to be used.~~
- ~~• Is free from interruptions.~~
- ~~• Is easily accessible with facilities for the disabled.~~
- ~~• Is well ventilated and temperature controlled.~~
- ~~• Offers good acoustics.~~
- ~~• Provides good audio visual/sound equipment (if required).~~
- ~~• Provides comfortable seating.~~
- ~~• Where training exceeds one hour, offers appropriate refreshments.~~

~~7.11 Start CPD by explaining emergency exit procedures for the venue.~~

Rule 85: Auditing

~~8.15.1 The CLSB reserves the right to may audit any CPD provided by an Accredited Costs Lawyer against the requirements in rule 4 at any time during the period of accreditation or upon an application for accreditation.~~

~~8.2 For the purposes of any audit, an Accredited A Costs Lawyer must retain all course material, attendance sheets etc. for a period of two years from the date of delivery.~~

~~8.35.2 An Accredited Costs Lawyer will co-operate fully with the CLSB on in relation to any audit under rule 5.1.~~

Rule 9: General

~~9.1 The CLSB will review these rules from time to time to ensure they are fit for purpose.~~

~~9.2 The CLSB reserves the right to amend these rules as it considers appropriate.~~

END



Summary of decision

The purpose of this summary sheet is to provide a high level and accessible overview of the Legal Services Board's ("LSB") decision. Readers are recommended to read the formal decision notice below for further detail. **This summary is not and should not be taken as a formal part of the LSB's decision notice under the Legal Services Act 2007 (the "Act").**

The LSB's decision is to grant in full the application from the Costs Lawyer Standards Board ("CLSB") to make changes to its regulatory arrangements in respect of its Practising Rules, which are rules contained in the CLSB Handbook.

The amended rules seek to:

- Remove excessive administrative details relating to practising certificate applications
- Amend the list of events that Costs Lawyers must disclose to the CLSB, in order to remove duplication within the same Rules (this leads to a consequential change in Training Rules to reflect the updated list)
- Introduce a more transparent and accountable decision-making framework for practising certificates
- Remove the need for a separate Practising Certificate Reinstatement Procedure
- Introduce a fairer system of fee reductions for Costs Lawyers returning from parental leave
- Align with other CLSB regulatory arrangements.

Following the assessment of the CLSB's application, the LSB has concluded that the changes do not trigger any of the refusal criteria set out within paragraph 25(3) of Schedule 4 to the Act.

Decision notice

The CLSB application for approval of changes to its regulatory arrangements in respect of its Practising and Training Rules.

1. The LSB has granted an application from the CLSB for alterations to its Practising Rules and a consequential minor change to its Training Rules.
2. This decision notice sets out the decision taken, including a description of the changes.
3. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Association of Costs Lawyers (“ACL”) is an approved regulator for Costs Lawyers and the CLSB is the regulatory arm to which the ACL has delegated its regulatory functions.
4. This notice sets out the decision taken, including a description of the changes. The notes at page 6 of this notice explain the statutory basis for the decision.
5. The chronology of the LSB’s handling of this application is set out below.

Chronology

- The LSB confirmed receipt of an application from the CLSB on 17 June 2020.
- The 28-day decision period for considering the application ends on 14 July 2020.
- This decision notice is effective from 13 July 2020.
- The decision notice will be published on the LSB’s website by 15 July 2020.

Background

6. The Practising Rules are published in the CLSB Handbook and govern the practice of Costs Lawyers as well as the process relating to practising certificates that are issued or revoked by the CLSB. Under current arrangements, the Rules cover various requirements as regards the practising certificate application process, most of which are administrative by nature, as well as a list of events that an applicant must disclose in their application, relating to their fitness to practise (Rule 4). CLSB set out in its application that in 2019/2020 it reviewed its Practising Rules to ensure these Rules are sufficiently updated. The Practising Rules were last amended in 2014.
7. Following its review, the CLSB is proposing to introduce targeted changes to the current Practising Rules framework to ensure they remain fit for purpose. That is in order to address conflicts and inconsistencies observed within the Rules due to the administrative features of the application process. Further, it is also amending its supporting guidance and developing a Frequently Asked Questions (FAQs) page on the CLSB’s website, to give Costs Lawyers more comprehensive and practical guidance on the various requirements the practising framework imposes.
8. Consultation on the proposed changes took place from 13 February 2020 to 29 March 2020. Respondents were largely in support of the proposals. In April 2020, the CLSB published a consultation outcome report and a copy has been provided with the application. The report

provides details on the CLSB's consideration of consultation responses, including its rationale for revising its proposals or maintaining its existing position.

9. Subject to the timing of the LSB's approval, the CLSB intends to implement the changes with immediate effect from July 2020. This is to allow the launch of the digital practising renewal process for 2021.

Summary of proposed changes

Amending administrative details of the practising certificate process

10. Under new Rule 2 of the Practising Rules, the CLSB will prescribe when an applicant for a practising certificate must send the application form, fee and information. This would replace more prescriptive existing rules, which set out issues related to form, fee and information required within the rules themselves. CLSB has explained that the existing prescriptive rules do not accurately reflect current practice. It does not believe that this level of prescription is required within the rules. Rather, its proposed changes will allow for additional flexibility to amend the application form and respond to feedback from Costs Lawyers, when needed over time. The CLSB states that this flexibility will allow for reductions to processing costs, a saving which can be passed onto Costs Lawyers by reducing the administrative fee for in-year applications¹. The additional flexibility also allows for digitisation of the process for practising applications and practicing certificate renewals.²

List of disclosable events and alteration to the Training rules

11. The proposed changes reframe the list of disclosable events that a Costs Lawyer should include within a practising certificate application and which might affect their fitness to practice, such as, being subject to any criminal charge, conviction or caution, or an adjudication of bankruptcy.³ In particular, new Rule 4 introduces a single non-exhaustive list of disclosable events and accordingly removes the confusion of having two separate lists of events within the current Rules. In particular, these requirements:
 - set out that Costs Lawyers need to inform the CLSB of any disclosable events that might have an impact on their fitness to practise;
 - set out the conditions as to when an applicant must disclose the events to the CLSB;
 - explicitly require Costs Lawyers to promptly inform the CLSB about changes to what has previously been submitted, including updating information on the register⁴ when necessary.
12. The amended list of disclosable events must also be harmonised within the corresponding wording of the CLSB's Training Rules referring to the list of events that an applicant trainee must

¹ The administrative fee is expected to fall from £30 to £25. Further rationale is documented within paragraph 5 of the CLSB's application, https://www.legalservicesboard.org.uk/wp-content/uploads/2020/06/CLSB-rule-change-application-Practising-Rules-17-June-2020_compressed.pdf

² CLSB sets out that it is planning to digitalise the process from the 2021 practicing year.

³ See Annex A for the complete list in new Rule 4.1

⁴ That is the register of Costs Lawyers who hold a current Practising Certificate

declare in their application.⁵ As a result, CLSB has proposed changes to Rule 5.1 of the Training Rules, so that it has the same list of disclosable events as the amended Practising Rules.

Decision-making framework for applications

13. New Rules 3.3. and 3.4 of the Practising Rules introduce a decision-making framework that clarifies the criteria against which the CLSB might revoke an application or impose conditions. Notwithstanding this, the CLSB will retain full discretion when determining whether an application is successful or not, after assessing it on an individual basis each time, due to the unique nature of the disclosable events. These changes are set to increase transparency and promote consistency on how the CLSB may decide to refuse an application and/or to set conditions.
14. In order to support this framework, the CLSB developed both guidance and a statement of policy. The guidance establishes the conditions and factors that the CLSB makes when assessing an application to practice. The statement of policy sets out how the CLSB will consider any disclosable events that are declared by an applicant and applies to decision-making under both the Practising Rules and the DR&P. These documents were both submitted as part of the CLSB's application but are not regulatory arrangements that would require the LSB's approval.

Practising Certificate Reinstatement Process

15. Under the current Rules, the Practising Certificate Reinstatement Procedure supplements the Practising Rules with instructions on how to proceed with in-year applications for practising certificates, for example when returning from a period of parental leave. The CLSB proposes to amend Rule 12, to remove from the practising framework a separate procedural document that relates to in-year applications. The CLSB considers that this document is duplicative and adds nothing that is not already provided for by other regulatory arrangements. The new regulatory arrangements will instead allow Costs Lawyers to rely on the information within the general provisions of the Rules. CLSB considers that this will allow for a more streamlined process which will allow it to reduce the administrative fees charged for this process.

Parental leave

16. Under the current Rules, the fee dispensation that a Cost Lawyer will receive for parental leave can differ significantly dependent on when their parental leave begins. This is because there is no pro-rata dispensation for a Costs Lawyer intending to take parental leave. The CLSB is proposing to replace the existing provisions with a fee dispensation that will apply for (i) the period of parental leave and (ii) the remainder of the practising year which takes place after the period of leave has ended. As such, there should be greater consistency as anyone who takes parental leave will receive a dispensation for the whole period of their leave.⁶

Alignment with other regulatory amendments

⁵ The Training Rules were last amended in 2017. These cover the rules that a Trainee Costs Lawyer has to follow when applying for the Cost Lawyer qualification.

⁶ The *Parental leave* section of FAQ guidance provides further explanations on how the fee dispensation is calculated, <https://clsb.info/for-costs-lawyers/practising-certificates/>

17. The CLSB proposes changes that, along with enhancing accessibility, will align the Practising Rules with the recent amendments in the CPD Rules and the Discipline Rules and Procedures (DR&P). In particular, as regards the CPD Rules, there will be no detailed reference to the list of requirements for CPD, as this already appears in the CPD Rules. Nevertheless, in the revised Rule 1 of the Practising Rules, there will be a general requirement for compliance with the CPD Rules.

Key issues considered in the assessment of the application

18. We welcome the CLSB's intention to provide a more flexible and proportionate practising framework for Costs Lawyers.

19. We recognise that these changes are being made in part to address concerns identified by the CLSB in its review of the Practising Rules and from feedback it received from Costs Lawyers. We also acknowledge that these changes will allow the modernisation and digitalisation of the practising certificate process, which will also support a reduction in the administrative fee. We also welcome the changes to the method of calculating the fee dispensation for parental leave. We note this as a positive change which allows for a more proportionate and fairer practising fee for Costs Lawyers returning to practice.

20. No issues of significance were raised in our assessment. We note from the application that the CLSB consulted on the changes and there was no opposition raised. We also note that, as a result of a response from one consultee, the wording of Rule 3.6 was amended to confirm that consumer interest is a separate consideration to public interest. The LSB welcomes this clarification, which in turn harmonises with the regulatory objectives at section 1 of the Act.

21. The CLSB plans to review the Rules in the next three to four years in order to assess whether there is evidence that further alterations are needed. It also intends to closely monitor the impact of the digitalisation process, mainly through testing the process in advance. The CLSB will keep the LSB informed as to the outcome of any such reviews and monitoring.

Decision

22. The LSB has considered the CLSB application against the refusal criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application and accordingly, the application is granted.

23. **Annex A** and **Annex B** of this decision notice contain a copy of the amended Practising and Training Rules respectively, which have been approved by the LSB (amendments shown in red).

Matthew Hill, Chief Executive

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

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that:
 - (a) granting the application would be prejudicial to the regulatory objectives
 - (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
 - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are:
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules⁷ about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

⁷ LSB's Rules for applications to alter regulatory arrangements – Version 2 April 2018

[https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20\(2\)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(2)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf)

Guidance Note

Conditions on practising



DRAFT: [xx] 2020 (version 1)

Costs Lawyer Standards Board

CLSB
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General

1. This guidance note should be read in conjunction with the CLSB's Practising Rules, which can be found in the [Costs Lawyer Handbook](#).
2. Under Practising Rule 3.4, the CLSB may impose a condition or conditions on a practising certificate either when the certificate is issued or during its currency. In addition, Conduct Committees and Conduct Appeal Committees have the power to impose conditions on a practising certificate under the CLSB's Disciplinary Rules and Procedures.
3. We are only likely to impose conditions under Rule 3.4 where:
 - the relevant facts are not in dispute;
 - we do not consider it necessary or proportionate to bring disciplinary proceedings in order to impose, or ask a Conduct Committee to impose, a disciplinary sanction; and
 - in the case of an application for a practising certificate, we do not consider it more appropriate to refuse the application.
4. Broadly speaking there are two types of conditions:
 - those that restrict the Costs Lawyer's ability to practise; and
 - those that specify steps that the Costs Lawyer must follow.

Grounds for imposing a condition

5. There are several grounds upon which the CLSB can impose conditions on a practising certificate, as set out in Practising Rule 3.4. Note that a condition may be imposed on more than one ground, and more than one condition may be imposed at any given time.
6. Below are examples of situations in which we might impose conditions, relating to each of the grounds in Rule 3.4. The most common situation in which we might

impose conditions is where a Costs Lawyer (or a non-Costs Lawyer applicant for a practising certificate) discloses an event as required under Practising Rule 4.

7. The examples given below are indicative only, aimed at helping practitioners and their clients to understand the nature and purpose of conditions on practising. We will always treat each case individually and consider all material facts before imposing conditions. We will also give the Costs Lawyer an opportunity to provide additional evidence or information in writing before we make a decision about conditions.

Ground (a): The lawyer is unsuitable to undertake certain activities or engage in certain business or practising arrangements

8. **EXAMPLE:** Prior to qualifying as a Costs Lawyer, an applicant for their first practising certificate entered into an individual voluntary arrangement in relation to their personal debts. The event is disclosed to us under Practising Rule 4, as part of the practising certificate application process.
9. **CONSIDERATIONS:** The event occurred before we regulated the applicant, so it does not constitute a breach of our regulatory rules. Nevertheless, we have concerns about the applicant's financial management capabilities. The applicant confirms to us that they have a job offer as a Costs Lawyer with a solicitors' firm and will not be running their own business. They also provide us with information about steps they have taken to better manage their finances in the future. We do not believe that we should refuse to allow the applicant to practise altogether.
10. **OUTCOME:** We grant the application but impose a condition that the applicant can only practise as a Costs Lawyer as an employee, and not on their own account, for a period of 12 months. After that period, we will ask for further information from the applicant and assess whether a condition should be imposed on their following year's practising certificate. The condition is shown on their practising certificate when issued.

Ground (b): The lawyer is putting, or is likely to put, at risk the interests of clients, third parties or the public

11. **EXAMPLE:** The Information Commissioner's Office (ICO) has investigated a data breach involving a Costs Lawyer and has made a number of regulatory determinations. These determinations are immediately disclosed to us by the Costs Lawyer, as required by Practising Rule 4.
12. **CONSIDERATIONS:** In general, we are likely to refuse an application for a practising certificate where the applicant is putting someone else's interests at risk, unless we are satisfied that conditions can deal with the risk adequately. A regulatory finding against a practitioner by another regulator is a good example of a situation in which the relevant risk might have been mitigated to a large extent already, through processes outside of our regulatory framework.
13. **OUTCOME:** We are content that the ICO has dealt with the disciplinary aspects of the Costs Lawyer's conduct and decide that there is no need for us to duplicate the ICO's processes by conducting a further disciplinary investigation. However, we consider that conditions on practising are appropriate for the ongoing protection of the Costs Lawyer's current and prospective clients. We impose conditions relating to the handling and security of clients' personal data. We issue the Costs Lawyer with a replacement practising certificate, showing the conditions imposed.

Ground (c): The lawyer will not comply with the CLSB's regulatory arrangements and/or will require monitoring in relation to compliance with the CLSB's regulatory arrangements

14. **EXAMPLE:** An audit reveals that a Costs Lawyer has not been complying properly with the CLSB's continuing professional development (CPD) requirements. The Costs Lawyer acknowledges their error, explains that they had misunderstood their obligations and asks for help in putting things right.

-
15. **CONSIDERATIONS:** The Costs Lawyer’s explanation is consistent with the information they provided to the CLSB in their annual CPD records. There is no evidence that they have been dishonest or tried to cover up their mistake. We do not consider that the problem is yet placing clients at risk in terms of the Costs Lawyer’s competency.
 16. **OUTCOME:** We impose a condition that the Costs Lawyer must submit evidence of their CPD attainment to us annually, in addition to the usual CPD record.

Grounds (d) and (e): The lawyer should take specified steps conducive to the regulatory objectives, or it is otherwise in the public interest to impose a condition in light of the regulatory objectives

17. **EXAMPLE:** The Legal Ombudsman has reported to us the outcome of a recent complaint against a Costs Lawyer. Ultimately, the case was determined in favour of the Costs Lawyer. However, the Legal Ombudsman’s findings show that the Costs Lawyer did not follow their internal complaints procedure properly when handling the complaint. When we approach the Costs Lawyer about this, they acknowledge that they sometimes take an early assessment of the merits of a complaint and, if they think it has no merit, dismiss it without following their complaints procedure. On reflection, they recognise that this could lead to unsatisfactory outcomes for their clients. They promise to make changes to their internal processes so this does not occur again.
18. **CONSIDERATIONS:** In order to promote the regulatory objective of “protecting and promoting the interests of consumers”, Costs Lawyers should follow their internal complaints procedure in all cases, regardless of whether they subjectively believe a complaint to have merit. We are therefore concerned that the Costs Lawyer’s approach is not conducive to the regulatory objectives. We note that no other conduct issues were identified by the Legal Ombudsman in the context of the complaint, and that the Costs Lawyer appreciates the need to address shortcomings in their processes.

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19. **OUTCOME:** We impose conditions requiring the Costs Lawyer to follow their internal complaints procedure in all cases, to notify the CLSB of any complaints received during the year, and to explain how those complaints are being handled. We work with the Costs Lawyer to support them in improving their approach to complaint handling.

The effect of a condition

20. Where a condition on practising is imposed, this is published against a Costs Lawyer's entry on the register of Costs Lawyers (Practising Rule 5.3). This means that members of the public who search the register will be alerted to the fact that a condition on practising exists. Further information about the nature of the condition can be accessed on our website.
21. A Costs Lawyer must comply with any conditions imposed. Failure to do so is likely to lead to a disciplinary sanction – which could include suspension or revocation of the practising certificate – and/or refusal of an application for renewal of the certificate. A Costs Lawyer may be asked to provide evidence of compliance with a condition, either when they apply to renew their practising certificate or at appropriate junctures throughout the practising year.

The duration of a condition

22. A condition will remain in place for such period as the CLSB considers necessary to meet its original purpose. This means that we may reimpose the condition when the practising certificate is renewed. We may amend the condition if we consider this appropriate, provided that the amended condition meets one or more of the grounds for imposition. A condition may be imposed for less than a full practising year, such that it expires on a specified date or upon completion of a specified event.
23. Under Practising Rule 3.6, the CLSB may remove a condition on a practising certificate if it considers, on written application of the Costs Lawyer or on its own

initiative, that there has been a change of circumstances such that it is no longer satisfied that any of the grounds in Rule 3.4 apply.

24. Under Practising Rule 10, a Costs Lawyer also has a right of appeal against the CLSB's decision to impose a condition or to refuse to remove one.

END

Guidance Note Anti-Money Laundering



DRAFT: 21 July 2020 (version 2)

Costs Lawyer Standards Board

CLSB
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What is money laundering?

1. Money laundering is generally considered to be the process by which the proceeds of crime, and the true ownership of those proceeds, are changed so that the proceeds appear to come from a legitimate source. Under the Proceeds of Crime Act 2002 (POCA) the definition is broader and includes even passive possession of criminal property.
2. The Legal Sector Affinity Group (LSAG), which includes all the legal sector supervisors for money laundering, has produced detailed guidance for lawyers which can be found [here](#).

What is the position of Costs Lawyers?

3. Costs Lawyers do not fall into the regulated sector for money laundering and the CLSB is not a supervisor for those purposes. Therefore, the risk management and client identification regime established by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the regulations) does not apply to Costs Lawyers directly.
4. However, you might work in an organisation to which the regulations do apply (such as a solicitors' firm), in which case you should follow any guidance provided by your employer and your employer's regulator.
5. Costs Lawyers like anyone else are subject to POCA and the Terrorism Act 2000, which set out offences and reporting obligations in relation to money laundering. These are summarised below.
6. If you are involved in money laundering, or otherwise commit an offence in relation to money laundering, you are likely to also be in breach of the following provisions of the CLSB Code of Conduct:
 - You must act honestly, professionally and with integrity in all your dealings in your professional life and not allow yourself to be compromised (paragraph 1.1).

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- You must not act in any way which is likely to diminish the trust the public places in you or in the profession of Costs Lawyers (paragraph 1.7).
 - You must at all times act within the law (paragraph 2.1).

Proceeds of Crime Act 2002

7. POCA creates a number of offences which also apply to those outside of the regulated sector for money laundering, including Costs Lawyers. When considering the principal money laundering offences, it is important to be aware that it is also an offence to conspire or attempt to launder the proceeds of crime, or to counsel, aid, abet or procure money laundering. You should keep this in mind in the context of your client work.
8. The principal money laundering offences under POCA relate to:
 - **Concealing** (section 327) – you commit an offence if you conceal, disguise, convert, or transfer criminal property, or remove criminal property from England and Wales, Scotland or Northern Ireland.
 - **Arrangements** (section 328) – you commit an offence if you enter into or become concerned in an arrangement which you know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person.
 - **Acquisition, use or possession** (section 329) – you commit an offence if you acquire, use or have possession of criminal property.
9. You will have a defence to a principal money laundering offence if:
 - You make an authorised disclosure to the National Crime Agency prior to the offence being committed and gain appropriate consent.
 - You intended to make an authorised disclosure but had a reasonable excuse for not doing so.

In relation to section 329, you will also have a defence if adequate consideration was paid for the criminal property.
10. There are also “failure to disclose” offences that apply to those in the regulated sector for money laundering. Those offences are committed when someone fails

to provide information to their organisation's nominated officer, or when a nominated officer fails to disclose information to the appropriate authorities.

11. An organisation that does not carry out relevant activities (and so is not in the regulated sector for money laundering) may nevertheless decide, on a risk-based approach, to set up internal disclosure systems and appoint a person as the nominated officer to receive internal disclosures. A nominated officer in the non-regulated sector commits an offence under section 332 of POCA if, as a result of a disclosure, they know or suspect that another person is engaged in money laundering and they fail to make a disclosure as soon as practicable to the National Crime Agency.
12. For further details, see chapter 6 of the LSAG guidance.

Terrorism Act 2002

13. Terrorist organisations require funds to plan and carry out attacks, train militants, pay their operatives and promote their ideologies. The Terrorism Act 2000 (as amended) criminalises not only participation in terrorist activities but also the provision of monetary support for terrorist purposes.
14. The main offences under the Terrorism Act concerning monetary support relate to:
 - **Fundraising** (section 15) – it is an offence to be involved in fundraising if you have knowledge or reasonable cause to suspect that the money or other property raised might be used for terrorist purposes.
 - **Use or possession** (section 16) – it is an offence to use or possess money or other property for terrorist purposes, including when you have reasonable cause to suspect the money or property might be used for these purposes.
 - **Money laundering** (section 18) – it is an offence to enter into or become concerned in an arrangement facilitating the retention or control of terrorist property by, or on behalf of, another person (unless you did not know, and had no reasonable cause to suspect, that the arrangement related to terrorist property).

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15. The main defences under the Terrorism Act are contained in sections 21ZA to 21ZC as follows:
- **Prior consent defence** – you make a disclosure to an authorised officer before becoming involved in a transaction or an arrangement, and you act with the consent of an authorised officer.
 - **Consent defence** – you are already involved in a transaction or arrangement and you make a disclosure, so long as there is a reasonable excuse for your failure to make a disclosure in advance.
 - **Reasonable excuse defence** – you intended to make a disclosure but have a reasonable excuse for not doing so.
16. Section 19 provides that anyone, whether they are a nominated officer or not, must make a disclosure to the authorities as soon as reasonably practicable if they know or suspect that another person has committed a terrorist financing offence based on information which came to them in the course of a trade, profession or employment. The test is subjective.
17. For further details, see chapter 8 of the LSAG guidance.

Making a report to the National Crime Agency

18. Guidance on making a report to the National Crime Agency (known as a Suspicious Activity Report or SAR) is set out in chapter 9 of the LSAG guidance. It is important to consider issues of legal privilege, which are discussed in chapter 7.
19. Reports can be made via a dedicated online system on the [National Crime Agency website](#).

How to protect yourself against involvement in money laundering

20. Whilst a Costs Lawyer's practice will usually be low risk for money laundering, this might not always be the case. As well as making a report to the National Crime Agency in appropriate cases, you can help protect your practice by voluntarily

undertaking some of the measures required of the regulated sector for money laundering under the regulations. These could include:

- Carrying out a money laundering and terrorist finance risk assessment on the practice, if you are in a position to do so (see chapter 2 of the LSAG guidance).
- Obtaining evidence of identity if you are not familiar with a client and cannot verify their authenticity through other means (see chapter 4 of the LSAG guidance).
- Nominating someone within the practice to receive internal disclosures.

21. We also recommend that you undertake training on money laundering issues at a level of detail that is commensurate with your role and the risk profile of your practice.

END

GUIDANCE NOTES: MONEY LAUNDERING (AVOIDING/DISCLOSING)
COSTS LAWYERS

Regulator: Costs Lawyer Standards Board

Effective date: 31 October 2011

These notes have been based on legal advice and seek to offer an understanding of what money laundering is to enable you to be aware of warning signs, to reinforce your duty as a Costs Lawyer not to be involved in such activities and to report any suspicions you may have about such activities.

What is Money Laundering?

There are various definitions available which describe the phrase 'money laundering'. Article 1 of the draft European Communities (EC) Directive of March 1990 defines it as *"the conversion or transfer of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence or offences to evade the legal consequences of his action, and the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime"*.

A more simple definition is that it is the process by which large amounts of illegally obtained money (from drug trafficking, terrorist activity or other serious crimes) is given the appearance of having originated from a legitimate source.

Money laundering allows criminals to maintain control over their proceeds and ultimately to provide a legitimate cover for their source of income.

A "money mule" is a term used to describe someone who is recruited by criminals needing to launder funds they have obtained illegally.

What are my obligations as a Costs Lawyer?

Your obligations as a Costs Lawyer are set out in the Costs Lawyer Code of Conduct. You must ensure you do not facilitate money laundering even when money does not pass through the accounts of your firm.

Am I required to put in place due diligence provisions e.g. identity checks, as required under the Regulations?

You are a sole practitioner: No.

You work for a firm of Costs Lawyers: No, provided the firm is not registered as an ABS.
You work for a firm of Solicitors: Yes, you will be obliged to comply with SRA requirements.
These requirements can be established via the SRA or discussion with your employer.

What are the consequences of a Costs Lawyer involving themselves in money laundering?

- Disciplinary action by CLSB, and/or
- criminal prosecution

Would I commit the offence of “tipping off” if I were to raise money laundering concerns with the CLSB?

No.

What do I do if I have any money laundering concerns?

Consider making an official disclosure to the Serious Organised Crime Agency (SOCA), it is at your discretion as to whether you seek legal advice before doing so.

An email can be sent by registering on their secure site at www.ukciu.gov.uk/saroline.aspx
Alternatively, they can be contacted 24/7 by phone on 0370 496 7622 or by post at:

Serious Organised Crime Agency
PO Box 8000
London
SE11 5EN

Guidance Note

Retention of client data and files



DRAFT: 21 July 2020 (version 2)

Costs Lawyer Standards Board

CLSB



What are my main obligations?

1. Under Principle 7 of the CLSB [Code of Conduct](#), you must keep client information confidential. This is your primary regulatory obligation in relation to your clients' data.
2. If you are obtaining a client's personal data for the purpose of providing them with legal advice or other services, you will also be a data controller under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018. Personal data is any information about an individual from which that individual can be identified.
3. Where the GDPR applies, you must ensure that you process your clients' personal data lawfully in accordance with the [seven data protection principles](#). This includes having appropriate security measures in place to protect the personal data you hold, which will also be necessary to meet your obligation to keep client information confidential.
4. Under the GDPR, you must not keep personal data for longer than you need it. In particular:
 - You will need to think about – and be able to justify – how long you keep different categories of personal data. This will depend on the purposes for which the data was collected.
 - You will need a policy that establishes standard retention periods for each category of personal data you hold.
 - You should periodically review the data you hold and ensure you erase or anonymise it when you no longer need it.
 - You must carefully consider any challenges to your retention of data, as individuals have a right to erasure if you no longer need to process their personal data.
5. All these obligations are the same whether you hold your clients' information electronically or in paper files.

How long should I keep client data and files?

6. There is no set time period for retaining a client's file. You should follow the principles set out above in establishing appropriate internal policies. Whatever approach you take, you should ensure it is documented and communicated to your clients.
7. When setting retention periods, the following factors will be relevant:
 - You will need sufficient information to properly resolve any complaints relating to a matter.
 - You will want to retain certain information to protect yourself in the event of legal action arising from a matter.
 - Your professional indemnity insurer is likely to require you to keep information for a certain period.
 - You might be required by the CLSB to demonstrate compliance with our rules in the event of an audit or if there is a complaint.
 - It could be in the best interests of your client for you to retain certain documents for the client's future use.
8. With those considerations in mind (and subject to any specific insurance requirements), it is common to retain client files for six years after the end of the matter, as this is the usual limitation period for breach of contract and negligence claims.
9. However, you should take the following into account, particularly in relation to personal data that might be included in a client's file:
 - If you never carried out work for the client (for example, the file relates to an enquiry only), then you are unlikely to be able to justify retaining personal data for the full retention period.
 - It might not be necessary to retain all data for the full retention period.
 - You must consider any requests from individuals for their personal data to be erased and, if necessary, justify why you are retaining their personal data for the full retention period.

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- There might be other laws or rules applying to specific types of data, such as client identity records in organisations covered by anti-money laundering legislation.

What happens when the retention period ends?

10. At the end of the retention period you should ensure that the client's file is disposed of securely. This is necessary to meet your obligations under the GDPR (in relation to any personal data in the file) and to ensure the client's information remains confidential.
11. For hard copy files, this might be achieved by shredding physical documents or using a service provider that safely destroys confidential waste. For electronic data, you must ensure that the data is destroyed in such a way that it can no longer be read by an operating system or application, and cannot be recovered and used for unauthorised purposes. Simply deleting the data is unlikely to be sufficient.
12. If you hold any original documents, these should be returned to the client when they are no longer needed by you and should not be destroyed without the client's consent.

What do I need to tell clients?

13. Individuals have the right to be informed about the collection and use of their personal data. This is a key transparency requirement under the GDPR.
14. You must provide individuals with information about the purposes for which you will retain their personal data, your retention periods and who the data will be shared with. In relation to sharing data, you should inform clients that you might need to share information about their matter with the CLSB for regulatory purposes, such as reporting on complaints.

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15. For a checklist of the information that you are required to give clients in relation to their personal data, visit the [Information Commissioner's Office](#) website.

Other GDPR rights and obligations

16. Individual clients have [a number of other rights](#) under the GDPR of which you need to be aware, including the right to access their data and the right to have errors rectified. For more detailed guidance on complying with the GDPR, including your wider obligations beyond retention of client data, see the resources on the [Information Commissioner's Office](#) website.

END

GUIDANCE NOTE
RETENTION OF A CLIENTS FILE

Regulator: Costs Lawyer Standards Board

16 July 2014

Insurance terms prevail

Any retention period stated under your professional indemnity insurance policy must prevail over the retention period set out herein. This note is for guidance only in the event an insurance policy is silent on the matter.

Background to this guidance

As a matter of law, many of the papers on a client file belong to your client. The CLSB is currently consulting on entity regulation arrangements (Authorised Body) to be introduced April 2015, under which it proposes a rule that Authorised Bodies retain a client's file for a minimum of six years after closure.

Six year retention

Until this rule is introduced, CLSB would request that it is voluntarily followed. If not, it is good practice to agree with your client the right to destroy the file after a specified period of time either at the outset of the instruction or before placing the file into storage.

Client consent

In the absence of any agreement, you need to assess the risk involved if you destroy files without your clients' consent. This might involve, for example, a possible claim on your indemnity policy and a complaint to the Legal Ombudsman on the grounds that you have provided an inadequate professional service. It may therefore be advisable in these circumstances to ask your insurer's views.

Scanned files

Many Costs Lawyers are faced with limitations in terms of space and as a consequence look to remove files from the office that are classified as closed matters. As an alternative, you may wish to consider whether it would be more practicable for you to hold scanned copies of these client files to help address the risks identified above.

Confidentiality

You have a continuing duty of confidentiality to former clients, make sure when destroying files you do so without breaching that confidentiality.

Other points you should consider

- Original documents should not be destroyed without the owner's consent.
- The likely statutory limitation period for any action which may arise.
- You must retain certain documents for specified periods (e.g. for VAT purposes or under the Money Laundering Regulations.)

Guidance Note Indemnity Insurance



DRAFT: 21 July 2020 (version 3)

Costs Lawyer Standards Board

CLSB
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Professional indemnity insurance (PII) requirements

1. All Costs Lawyers regulated by the CLSB must have appropriate professional indemnity insurance (PII) in place. This is a condition of practising, as set out in Practising Rule 9.
2. Practising Rule 9 provides that you must:
 - have PII cover at a minimum level of £100,000 (for any one claim), to include loss of documents; and
 - on an ongoing basis, assess all financial risk associated with your work and ensure you have PII in excess of the minimum at a level commensurate with that risk.
3. This guidance is intended to help you meet the requirements of Practising Rule 9. If you are a sole practitioner, or are responsible for purchasing PII for a firm or company, this guidance will be relevant to you.
4. Many Costs Lawyers are covered by their organisation's PII. It is your responsibility, as a regulated individual, to check that your organisation's PII policy adequately covers the work that you do.
5. If you practise in a firm or company that is regulated by the Solicitors Regulation Authority (SRA), this guidance will be less relevant to you. This is because, under Rule 3.1 of the [SRA's Indemnity Insurance Rules](#), all organisations regulated by the SRA must take out and maintain PII in accordance with those rules. If you work for such an organisation, you are unlikely to require additional insurance to meet the CLSB's PII requirements. However, you should confirm this with your organisation and ensure that the firm's PII policy covers your individual role and employment status.

Why you need to have PII

6. The reason we require Costs Lawyers to have appropriate PII in place is to ensure that you can meet any civil liability incurred in the course of providing regulated

services. This protects your business from financial harm, including potential insolvency, and ensures that compensation is available to your clients where needed. It is one of the ways that we build confidence in the profession, giving clients assurance that a regulated Costs Lawyer will be able to put things right if something goes wrong.

7. The CLSB is required to promote certain regulatory objectives under the Legal Services Act 2007. The requirement for all Costs Lawyers to have PII helps us to address the regulatory objectives of:
 - Protecting and promoting the public interest
 - Protecting and promoting the interests of consumers
 - Encouraging an independent, strong, diverse and effective legal profession
 - Promoting and maintaining adherence to the professional principles

8. Having appropriate PII in place will also help you meet your obligations under our [Code of Conduct](#). Paragraph 3.8 of the Code of Conduct requires you to maintain PII and provide evidence of that insurance cover if requested by a client, the CLSB, the Association of Costs Lawyers or the Legal Ombudsman. More generally, having appropriate PII in place will help you to:
 - act with integrity and professionalism
 - act in the best interests of your client
 - provide a good quality of work and service to each client

Choosing an insurer and policy terms

9. We have an open market policy with regard to Costs Lawyers choosing an insurer. This means we do not hold a list of participating insurers or have a recommended pool of insurers. This is intended to encourage competition in the market and give you the flexibility to choose a product that is right for you and your practice.

10. We encourage you to research the market and choose an insurer that can provide suitable PII to cover your regulated activities. You can consult the Association of Costs Lawyers for advice on identifying an appropriate insurance company or broker.

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11. Given the wide range of insurance products available and the different practising arrangements of Costs Lawyers, we do not specify minimum terms for your PII cover (other than the value of the cover and the requirement to insure loss of documents, as set out in Practising Rule 9). You should consider whether it is necessary for your PII to include terms that relate specifically to the type of work you do. For example, your policy might need to cover risks that are unique to the legal profession, such as monetary awards made by the Legal Ombudsman.
 12. You will also need to check that your PII policy does not contain restrictions that could affect your ability to provide regulated services. If the policy terms are inconsistent with your regulatory obligations, the policy will not be suitable for your needs. An example of this would be a policy term that prevents you from dealing with a complaint in line with your internal complaints procedure or prevents you from being open and honest with the Legal Ombudsman or the CLSB.

Run-off cover

13. Run-off cover provides insurance for claims made against you after you cease to practise. Having run-off cover means that both you and your clients are protected for a reasonable, but limited, period if you exit the profession.
14. Arrangements for run-off cover are not specifically regulated by the CLSB. However we recommend that you obtain PII insurance that will cover claims for at least six years after you cease to practice. You should discuss run-off cover with your insurer or broker, including run-off arrangements in circumstances where a successor practice takes over your client matters.

Amount of cover

15. We require you to have a minimum level of PII cover. The minimum level is established in Practising Rule 9 as £100,000 for any one claim. This level is broadly commensurate with the needs of a costs practice that carries out relatively low-risk work.

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16. We would emphasise that this is a minimum standard and that you must, under Practising Rule 9.1(b), assess the financial risk associated with your work and ensure that your PII cover is commensurate with that risk. In practice, this means that the majority of Costs Lawyers have PII cover that exceeds the minimum value; our data shows that around 90% of Costs Lawyers procure cover above the minimum level.
17. There are no hard and fast rules for gauging the amount of cover you will require, but the following section on risks associated with costs work might help you decide on the scope and level of PII cover that is appropriate for you. In principle, you must always ensure that:
- your insurance is sufficient to at least meet the CLSB's PII requirements
 - your insurance will adequately cover the risks associated with your particular business activities
- You should discuss your activities and associated risks with your insurer or broker.

Risks associated with Costs Lawyer activity

18. Below is a list of factors that you could take into account when discussing your PII needs with your insurer or broker. It is not an exhaustive list; you will be best placed to assess the risks associated your individual practice.
- Consider the number of clients you have and their typical client profiles
 - Estimate the value of client work for your typical client and probable maximum loss if something went wrong
 - Consider the parties to whom you might be liable, for example you might be liable to an instructing solicitor and/or their underlying client
 - If you have been practising for a period of time, consider your previous claims experience, in particular the value and types of claims made
 - Identify the typical risks that are associated with Costs Lawyer work, as well as any that are unique to your practice, such as:

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- missing court deadlines or otherwise failing to comply with procedural rules, resulting in the imposition of sanctions
 - making an error in a bill, resulting in the client’s costs entitlement being undervalued
 - failing to identify and raise a valid point of dispute
 - not providing continuity of service, for example by failing to attend a hearing
 - underestimating costs when preparing a budget, limiting the costs that could be recovered by a successful client (or by their advisers, depending on the fee arrangement in place)
- Consider other potential losses that could be incurred by your clients in the course of their relationship with you, for example if you experienced a data breach
 - Consider how aspects of your operating model, such as supervision arrangements for junior colleagues, impacts the likelihood of a risk materialising
 - Assess the risks associated with any outsourcing arrangements you have in place for client work

Informing clients about your PII arrangements

19. You need to tell your clients about the PII arrangements you have in place. Our [guidance on client care letters](#) notes that you should provide information on your PII cover in the client care letter or in a separate document if more appropriate (see the table in section 8 of the guidance). Specifically, you should advise clients of your current level of PII (including cover for loss of documents) and that adequate PII will be in place throughout the instruction to cover the risks associated with the work.

Supervision of PII compliance

20. Unless you work in an organisation that is regulated by the SRA, we will ask you to provide evidence of your PII cover each year when you renew your practising certificate. We might ask for additional information about your insurance during the practising year, for example if there is a complaint.
21. While we proactively ask for this information once a year, you should ensure that your PII cover remains valid and appropriate throughout the practising year and inform us of any problems with obtaining insurance.
22. In addition to supervising your compliance with our rules, we also use the information you provide about your level of PII cover to monitor trends across the profession and ensure our rules remain fit for purpose.

END

GUIDANCE NOTE: INSURANCE

Regulator: Costs Lawyer Standards Board

Issued: 22 April 2014

These notes seek to offer a greater understanding of current requirements surrounding the insurance expectations of a Costs Lawyer with a current practising certificate, referred to herein as Costs Lawyers.

What is the current insurance requirement?

Practising Rule 10 was revised on 9 April 2014 to read as follows:

RULE 10: Indemnity insurance

10.1 Costs Lawyers shall ensure that they:

- (a) practice with the benefit of professional indemnity insurance of a minimum £100,000 (any one claim) to include loss of documents; and
- (b) on an ongoing basis, assess all financial risk associated with work being undertaken by them and ensure that professional indemnity insurance and loss of documents insurance is in place in excess of the minimum set out in rule 10.1(a) at a level commensurate with that work.

Why was the insurance rule amended?

The CLSB became aware following significant Civil Procedure Rule changes on 1 April 2013 and subsequent case law that financial risk had increased for those Costs Lawyers undertaking costs budgeting and costs management work.

On 16 October 2013, the CLSB sought an Exemption Direction from the Legal Services Board (LSB) under the provisions of Schedule 4, Part 3, Para 19 (2) (c) & (3) of the Legal Services Act 2007 to allow CLSB to revise its insurance rules with immediate effect. On 4 November 2013, the LSB advised *“the exemption notice is not appropriate it does not mean that we would reject a full application should you chose to submit it.”*

A full application procedure was therefore initiated, which included a consultation process open between 10 December 2013 and 4 March 2014. On 9 April 2014 the LSB approved the revised rule for immediate implementation.

Costs Lawyer assessment of financial risk

A blanket increase in the minimum level of insurance was not an option as regulatory expectations are now required to be targeted and proportionate.

The revised rule therefore makes it the responsibility of the Costs Lawyer to evaluate each client instruction and ensure a level of insurance is in place commensurate with the financial risk of the work being undertaken, in excess of the minimum £100k (any one claim) to include loss of documents.

Run off insurance

The CLSB is advised that Professional Indemnity Insurance is underwritten on a 'claims made' basis meaning that insurance must be in force at the time of the claim and or notification for it to be covered. Therefore, when an Insured ceases to trade a 'run-off' policy is offered.

Insurers recommend this is carried normally for periods of 6 or 12 years, the required period is usually stated in Insured's contracts. If it has never been stipulated in any insurance contract then it should be bought until the client feels there is effectively no risk of issues that will occur from past work.

UCL Press release

For immediate release on Thursday 11 June 2020, 9am UK time.

Measures to address ‘unregulated’ legal services will level playing field and enhance consumer protection

All providers of legal services in the UK, whether legally qualified or not, should be registered and regulated according to a major review of legal services, conducted by Stephen Mayson, Honorary Professor of Law at UCL.

The report *‘Reforming Legal Services: Regulation beyond the echo chambers’*, which has been submitted to the Lord Chancellor, is the outcome of a two-year independent review* into the regulation of legal services in England and Wales. More than 340 interested parties were consulted, including regulators, professional bodies, consumer groups, judges, in-house lawyers, academics and parliamentarians.

Among other proposals is the recommendation for a single, sector-wide regulator of all legal providers, and a single point of entry for complaints and redress mechanism for consumers and small businesses.

Professor Mayson (UCL Centre for Ethics & Law) said: “Many people assume that all providers of legal services are in some way regulated and that relevant protection is available, but they are mistaken. There are many providers of legal advice and assistance, beyond regulated qualified lawyers, providing services from wills and estate administration to online advice and bespoke documents.

“The current regulatory structure provides an incomplete and limited framework for legal services that is not able in the near-term and beyond to meet the demands and expectations placed on it, particularly with the emergence and rapid development of alternative providers and lawtech.

“The recommendations in this report seek to create a level playing field for legal services and enhance consumer protection, through targeted and proportionate regulation.”

Key report recommendations:

- **All ‘providers’ of legal services, whether qualified or not, should be subject to registration and regulation.** This includes those who are currently unregulated, as well as providers of technology-based legal services. A YouGov survey of almost 30,000 adults published earlier this year reported that 60% of respondents had a legal issue in the past four years. Two-thirds of them had received help but only half of them received it from a regulated lawyer. This exposes consumers to risks that they are often not aware of.
- The current arrangement of ten front-line regulators plus an oversight regulator is cumbersome. The report recommends **a single, independent regulator of legal services (the Legal Services Regulation Authority)** to ensure a common and consistent approach across the legal sector. **The Authority should be established as an arm’s length regulatory agency.**
- **Regulation should be targeted and proportionate, and should take account of risk, burden and cost.** The current legal activities reserved only to qualified lawyers

should be reviewed and replaced with legal services that require prior authorisation because of their high public importance or high risk to consumers.

- The **Authority should maintain a public register of providers**. Regulatory requirements and enforcement would be appropriate to the importance and risk of particular legal services or the relative vulnerability of the clients concerned. Defined low-risk services would only require registration. Higher-risk services would carry additional regulatory conditions.
- The minimum protections for consumers would include standards of expected performance, indemnity insurance, and access to a revised and more extensive **legal services ombudsman acting as a single point of entry for investigation and redress for complaints** made by individual consumers or small businesses.
- The report also addresses **the emergence and rapid development of lawtech**, which is capable of offering legal advice and services independently of any human or legally qualified involvement. The report recommends that lawtech should fall within a future definition of 'legal services' and an appropriate person should be registered as a 'provider'.
- **All legal professional titles should have the benefit of statutory protection**. It should be an offence for someone who is not on the register or a title-holder to pretend or imply that they are, or to use any description that suggests so.
- Consequently, the Legal Services Regulation **Authority should have the power to approve the requirements for registration, regulation and the award and removal of professional titles**. However, professional bodies should continue to have the ability to require higher standards of their members than those imposed by regulation.

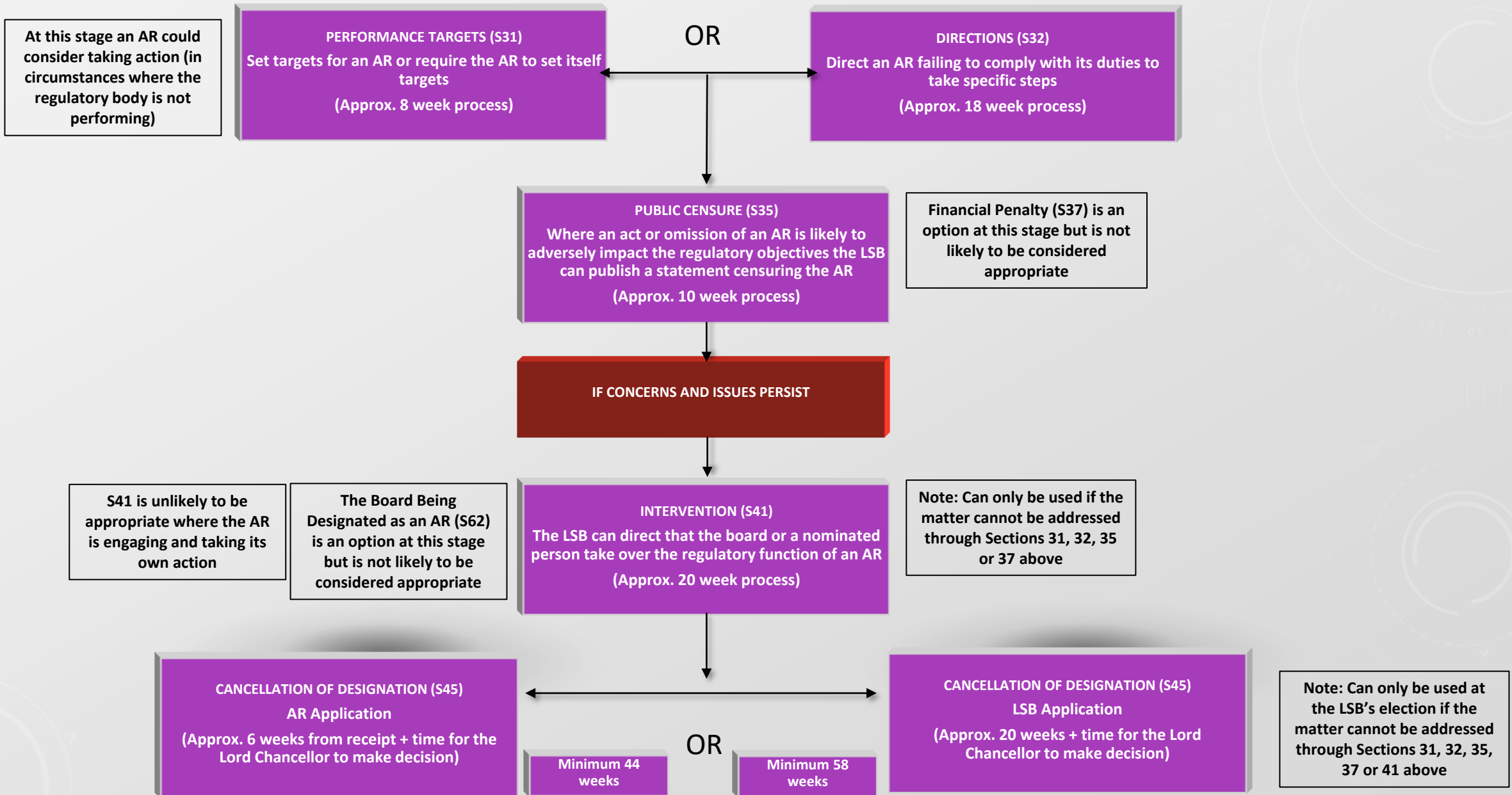
Implications for legal services regulation in the context of Covid-19

The publication of the report is particularly timely given increasing and changing demand for legal services during the Covid-19 crisis. As such, the report also proposes reforms that could be made in the short-term. This includes a 'parallel' new structure, fast-tracking a public register for currently unregulated providers of legal services.

Professor Mayson explains: "The prospect of increased use of 'unregulated' legal services at a time of personal, social and economic instability in the lives and circumstances of both consumers and regulated providers suggests a more pressing need for short-term reform of regulation.

"The report therefore also recommends a parallel structure that would leave the currently regulated untouched, but bring the unregulated, including those who provide online services, within **a short-term version of registration and access to the Legal Ombudsman for investigation and redress** of complaints about registrants."

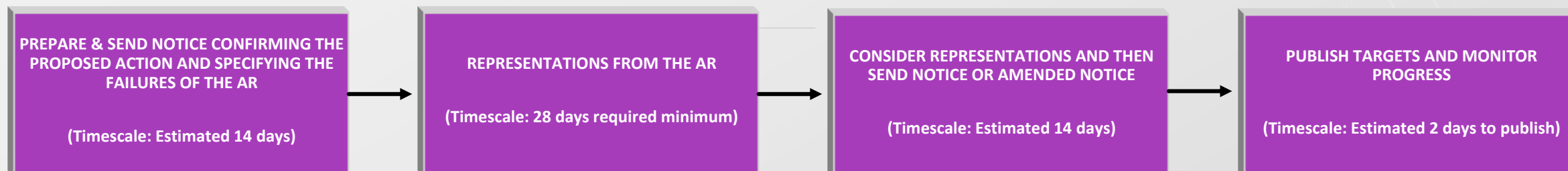
CONTINGENCY – ENFORCEMENT POWERS LSA 2007 OVERVIEW



ENFORCEMENT POWERS LSA 2007 – S31 PERFORMANCE TARGETS

PERFORMANCE TARGETS (S31)

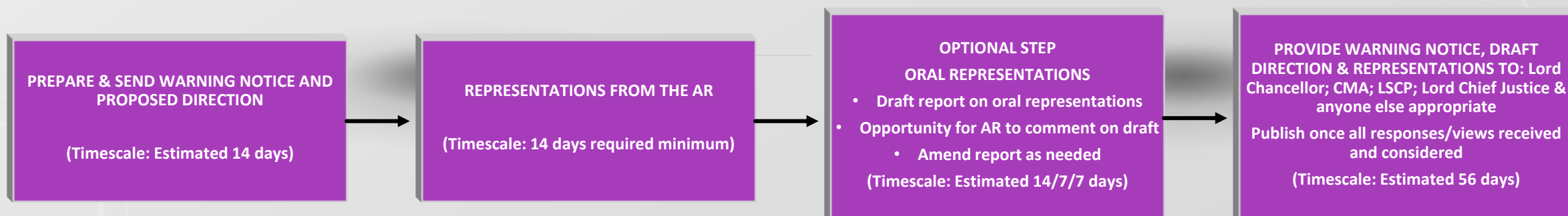
Set targets for an AR or require the AR to set itself targets
(Approx. 8 week process)



ENFORCEMENT POWERS LSA 2007 – S32 DIRECTIONS

DIRECTIONS (S32)

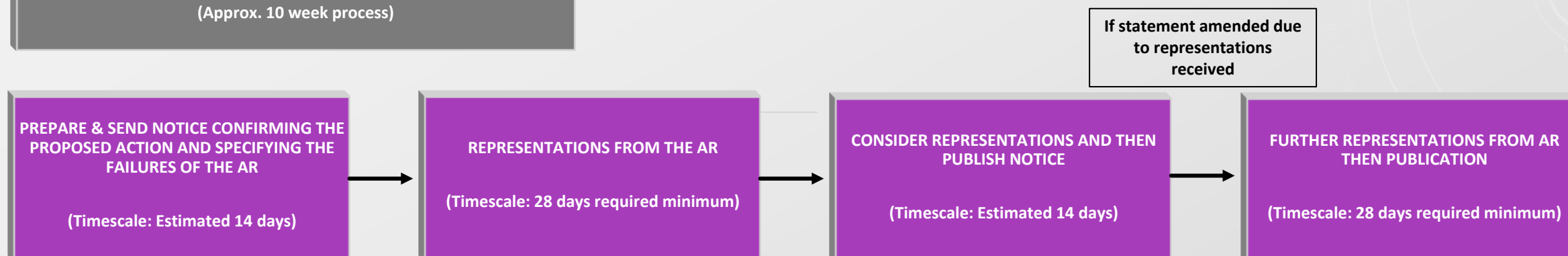
Direct an AR failing to comply with its duties to take specific steps
(Approx. 18 week process)



ENFORCEMENT POWERS LSA 2007 – S35 PUBLIC CENSURE

PUBLIC CENSURE (S35)

Where an act or omission of an AR is likely to adversely impact the regulatory objectives the LSB can publish a statement censuring the AR
(Approx. 10 week process)



ENFORCEMENT POWERS LSA 2007 – S41 INTERVENTION

INTERVENTION (S41)

The LSB can direct that the board or a nominated person take over the regulatory function of an AR
(Approx. 20 week process without oral representations)

PREPARE & SEND WARNING NOTICE AND PROPOSED INTERVENTION DIRECTION

(Timescale: Estimated 14 days)

REPRESENTATIONS FROM THE AR

(Timescale: 28 days required minimum)

OPTIONAL STEP

ORAL REPRESENTATIONS

- Draft report on oral representations
 - Opportunity for AR to comment on draft
 - Amend report as needed
- (Timescale: Estimated 14/7/7 days)

PROVIDE WARNING NOTICE, DRAFT DIRECTION & REPRESENTATIONS TO: Lord Chancellor; CMA; LSCP; Lord Chief Justice & anyone else appropriate
Publish once all responses/views received and considered

(Timescale: Estimated 56 days)

SEND ADVICE RECEIVED TO AR AND AWAIT REPRESENTATIONS

(Timescale: 28 days required minimum)

OPTIONAL STEP

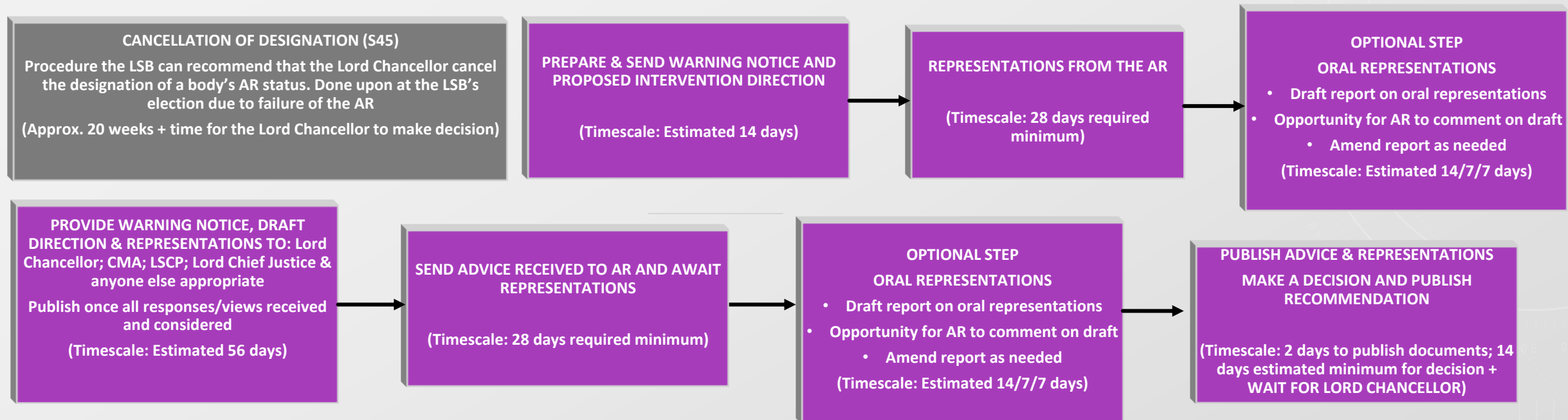
ORAL REPRESENTATIONS

- Draft report on oral representations
 - Opportunity for AR to comment on draft
 - Amend report as needed
- (Timescale: Estimated 14/7/7 days)

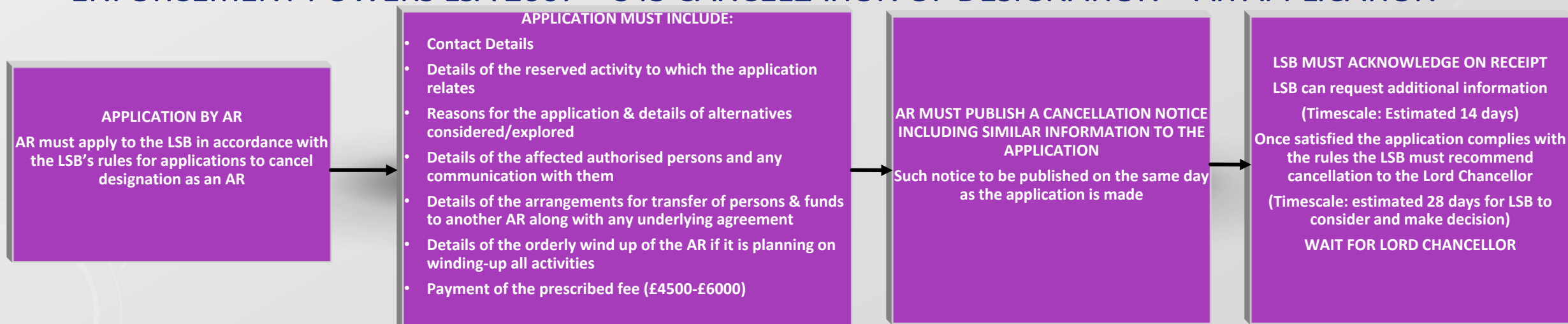
PUBLISH ADVICE & REPRESENTATIONS
MAKE A DECISION AND PUBLISH DECISION NOTICE

(Timescale: 2 days to publish documents; 14 days estimated minimum for decision)

ENFORCEMENT POWERS LSA 2007 – S45 CANCELLATION OF DESIGNATION – LSB DECISION



ENFORCEMENT POWERS LSA 2007 – S45 CANCELLATION OF DESIGNATION – AR APPLICATION



From: Elisabeth Davies
Sent: 04 June 2020 16:19
To: Kate Wellington
Subject: Staffing update from the OLC

Dear Kate

I do hope you and the team are keeping well and thank you again for our recent conversation which was helpful and appreciated.

When I wrote to you in early April, and on my arrival eight weeks ago, I don't think any of us would have thought that we would still be negotiating the challenges of the lockdown, and yet here we are.

Like the CLSB, the Legal Ombudsman has had to quickly work through what this means for its priorities and indeed what can and can't be put on hold. For me this is absolutely the case when it comes to developing LeO's senior leadership team sitting beneath the Chief Ombudsman. Changes are now needed to strengthen operational capacity and capability and to better manage risks.

Rebecca Marsh has been working through the detail of these changes and I also have some news to share about her plans. In October Rebecca will be leaving the Legal Ombudsman to take up a new role as the Property Ombudsman. I am very grateful to Rebecca for all she has contributed to date and indeed for her ongoing commitment to overseeing this change programme.

I would be happy to provide more detail in relation to the changes but there are perhaps two developments that it's particularly worth sharing and which go to the heart of the dual function of being an Ombudsman.

The first is in relation to the strengthening of senior operational leadership and capability through the recruitment of a new Chief Operating Officer. Single leadership will be retained through the Chief Ombudsman – who will still be the Accounting Officer - but with increased support for delivery of the actual business provided through the Chief Operating Officer.

The second is that the new Chief Ombudsman will be responsible for ensuring a stronger external focus, providing more effective feedback to the sector and learning the lessons from the complaints handled by LeO. The Head Ombudsman with responsibility for impact, policy, and external affairs will report directly to them, in order to strengthen the Chief Ombudsman's grip on such an important function.

For the OLC Board, it's critically important to push ahead with recruitment given both Rebecca's departure plans and the operational performance issues facing the scheme. These changes will be unsettling for staff, not least in the current context, and bring with them risks. Nonetheless the greater risk is to do nothing. The last eight weeks have shown me that whilst LeO must improve its processes and systems, unless it has good and valued people it will not be able to deliver the quality of service that is necessary. A strengthening and enhancement of the senior leadership team through a focussed restructure is an essential part of this.

Please do not hesitate to contact me with any further questions or queries.

With best wishes

Elisabeth

Elisabeth Davies
Chair, Office for Legal Complaints

Minutes of the ACL Council Meeting
held on 7 May 2020
 by Conference Call



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

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

The meeting started at 11am

Item	
1	Welcome and apologies
	CG welcomed all to the meeting and thanked KK for nominating himself for the position of council member.
2	Minutes of the council meeting held on 30 March 2020
	The draft minutes of the council meeting held on 30 March 2020 were approved without amendment.
3	Actions arising from the council meeting held on 30 March 2020
3.1	The list of actions arising from the minutes was discussed and updated.
3.2	CG suggested it may be helpful to members to add information on the website regarding secure conference calls. DC agreed to consider whether ACL should put together a list of providers of conference call facilities for members to refer to.
3.3	DB confirmed that student exams have been postponed to August.
4	ACL/ACLT structure and relationship
4.1	CG reported that she had a conference call recently with FK/NS/DB to discuss the structure of ACL/ACLT and their relationship.
4.2	A full discussion took place regarding the extent of ACLT's autonomy, the reporting line and role of the Executive. DB referred to a paper he had presented to council in November and said that he felt a review of the structure of both companies was required. He then referred to a discussion document which the Executive had prepared as a starting point for consideration of a number of issues and suggested that a working party was set up to review the operation of and relationship between ACL and ACLT and specifically to agree parameters for ACLT to function with a degree of independence. DB said that his goal was to create a lasting framework. AG reminded council members that the directors of ACLT are CG and FK.
4.3	CG asked all council members for their views on the relationship between ACL and ACLT and a full discussion followed. It was agreed that SA, JR and KK would form a working party and that they should liaise with AG from a regulatory viewpoint, DP on an operational level and KA. FK said that he had a number of thoughts he would like to share with the working party. AG referred to a report prepared by the ACL accountant a number of years ago and

	suggested that the working party revisited it as part of the review. The report with findings and recommendations should be available to council members a week prior to the next council meeting for review and discussion at the meeting.
5	ACLT CPD Strategy
	DB said that the executive have done as much work as they can regarding CPD and that the focus should be on the students. Plans for CPD will therefore be on hold, pending the outcome of the working party.
6	Policy Report
6.1	AG confirmed that the information requested by SM recently was provided . CG asked that a copy of SM's report be circulated to council members.
6.2	AG advised that the MOU/Operations protocol has been endorsed by the CLSB Board and said that an application needs to be made to the LSB for permission to alter the current regulatory arrangements. The first draft of the application has been sent to the LSB for discussion with their IGR Team.
6.3	AG advised that compliance certificates need to be drafted to send to the LSB. AG asked if the wording recently emailed to council members and shown below was acceptable. <i>"ACLT notes its role as the Approved Regulator of the Costs Lawyers' profession under the Legal Services Act 2007 and the Internal Governance Rules 2019. It further notes that to comply with its obligations under these Rules, it must separate its regulatory functions from any representative functions it may have. ACLT thus delegates all regulatory activities to the CLSB. ACLT resolves to maintain a regulatory role only to the extent that is reasonably necessary to be assured that the CLSB is discharging the regulatory functions in compliance with section 28 of the Legal Services Act 2007 or as otherwise required by law. ACLT will however continue to fully exercise its representative function in the promotion of the interests of Costs Lawyers"</i>
6.4	DC proposed that the wording was accepted. JR seconded the proposal. All council members agreed.
6.4	CG referred to a consultation paper on the impact of covid 19 measures on the civil justice system. The deadline for responses is 15 May. DC said he felt that the consultation was seeking examples of experiences where the measures were working/not working and asked if it was therefore a question for members. CG said she felt ACLT should be asking the membership for feedback and that there should be a council response. FK agreed and said the information would be useful to ACLT. It was agreed to send out an email to members, directing them to the link to the consultation and seeking feedback. Depending on the feedback received ACLT will put together a response by the deadline of 15 May.
6.5	AG advised council members of a meeting with the LSB in January regarding a potential overhaul of CPD . The LSB has called for evidence on ongoing competence but the questions are still unknown. DC agreed to check the current position and confirmed that the deadline is 26 June.
7	Operations Report
7.1	DP said that the venue was still on hold for the Manchester Conference. This will be reviewed at the next council meeting.
7.2	DP said that she is currently working with the bookkeeper on revised financial projections for 2020 and these will be available at the next council meeting.
8	Date of next council meeting
	The next council meeting will be held by conference call on 18 June

9	Any other business
	There being no further business the meeting ended at 12.20pm

Minutes of the ACL Council Meeting
held on 11 June 2020
 by Conference Call



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

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

The meeting started at 12 noon

Item	
1	Welcome and apologies
	CG welcomed all to the meeting
2	Minutes of the council meeting held on 7 May 2020
	The draft minutes of the council meeting held on 7 May 2020 were approved without amendment.
3	Actions arising from the council meeting held on 7 May 2020
3.1	Action point 11 (consultation on the impact of covid-19) CG confirmed that an email was sent to members requesting feedback. CG stated that in the absence of any feedback, she had responded with (largely) her own views by the due date and asked council members whether it was appropriate to put the response on the website. SA suggested that it should be published, with a preliminary explanatory paragraph. It was agreed that CG would circulate her response to council members for a decision.
3.2	Action point 12 (LSB call for evidence) DC said that he had established what the questions were but it was unclear whether ACL could provide the evidence and suggested it may be a question for the membership rather than just council members. DC will speak with KW (CLSB) to determine whether there should be a holding response.
4	Working Party Report on ACL/ACLT structure and relationship
4.1	CG thanked the working party for putting together their initial report.
4.2	A confidential discussion took place regarding the content of the working party's draft report and a final report with recommendations will be provided to council members for discussion at the next council meeting.
5	CLSB Coronavirus Impact Survey
	CG said she was aware that some members have raised issues with the CLSB about their ability to obtain CPD. She expressed some surprise as she believed there were currently many opportunities for costs lawyers to obtain CPD. FK asked CG to reiterate to members in the next e-bulletin that ACL will ensure that members will have the

	opportunity to gain CPD.
6	Manchester Conference
6.1	It was agreed that the provisional booking with the venue is kept on hold for as long as possible with a view to making a decision by the end of July. FK questioned if there was scope for a virtual conference. This will be considered at the point when an informed decision can be made.
	Policy Report
7	AG updated council on IGR compliance. He advised that the MoU has been redrafted and agreed with the CLSB. The operations protocol has also been agreed. An application to the LSB to alter regulatory arrangements has been drafted. This has been approved in principle by the LSB and will be circulated to council members once signed by CG. An implementation date should be known by 23 July.
7.1	AG confirmed that Professor Stephen Mayson's final report on regulation has been published and that it recommends the work of costs lawyers should only be carried out by qualified and regulated costs lawyers. FK said that the report went so far as to say that solicitors should not be doing costs work. CG said it was a step in the right direction and very positive for the profession.
8	Date of next council meeting
	The next council meeting will be held by conference call on 10 July 11am.
9	Any other business
9.1	JR suggested that there may be benefit in reviewing a number of documents that would assist in the management of ACL and ACLT. CG asked that JR/AG/DP create a list of documents that exist and/or are required for discussion at the next council meeting.
9.2	One member has asked if council minutes can be circulated in the same way that the PR reports are circulated. FK said he was happy to do this if council members agreed. DC pointed out that minutes were published on the website. FK suggested that they were circulated for the next few months and then the position reviewed.
9.3	DC asked where ACL and ACLT stood with regard to financial projections. DP will circulate the projections to 2024 for discussion at the next council meeting. There being no further business the meeting ended at 2.25pm