



## Costs Lawyer Standards Board

### AGENDA

Wednesday 21 July 2021 @ 11am

Remotely via videoconference

<b>Board:</b>	David Heath CBE	Lay NED (Chair)
	Stephanie McIntosh	Lay NED (Vice-Chair)
	Paul McCarthy	Non-Lay NED
	Andrew Harvey	Lay NED
	Andrew McAulay	Non-Lay NED
<b>In attendance:</b>	Kate Wellington	CEO and Company Secretary
	Jacqui Connelly	Administration Manager

*Note: Agenda items in blue are standing items*

PART 1: Scheduled board meeting				
	Agenda item	Paper	Publish <sup>1</sup>	Lead
1	<b>Opening matters</b> 1.1 <a href="#">Quorum and apologies</a> 1.2 <a href="#">Declarations of interest on agenda items</a>	- -		DH DH
2	<b>Minutes</b> 2.1 <a href="#">Approval of minutes</a> (21 April 2021) 2.2 <a href="#">Matters arising</a> (21 April 2021)	Item 2.1 -	Yes	DH DH
3	<b>Strategy</b> 3.1 <a href="#">Progress against Business Plan</a> : Q2 2021 3.2 Education 3.3 Draft competency framework 3.4 2022 Business Plan	Item 3.1 Item 3.2A-C Item 3.3 Item 3.4	Yes No (B) No (G) Yes	KW KW KW KW
4	<b>Board matters</b> 4.1 Meeting dates for 2022	-		DH
5	<b>Finance</b> 5.1 <a href="#">Quarterly report</a> : Q2 2021 5.2 Reserves Policy	Item 5.1 Item 5.2	No (D, E) Yes	JC KW

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

	5.3 2022 budget 5.4 2022 practising fee consultation 5.5 2020 accounts for approval	Item 5.3A+B Item 5.4A-C Item 5.5	Not A (A) Yes No (E)	KW / JC KW KW / JC
6	<b>Risk management</b> 6.1 <a href="#">Review of risk registers</a>	Item 6.1	Yes	KW
7	<b>Regulatory matters</b> 7.1 New guidance notes 7.2 Proposals for diversity and inclusion next steps 7.3 Consumer engagement strategy – review and refresh 7.4 Regulators’ Pioneer Fund bid	Item 7.1A+B Item 7.2 Item 7.3 Item 7.4	Yes Yes Yes Yes	KW KW KW KW
8	<b>Legal Services Board (LSB)</b> 8.1 Learnings from BSB review against well-led standard 8.2 Other workstreams	Item 8.1 Item 8.2	Yes Yes	KW KW
9	<b>Stakeholder updates<sup>2</sup></b> 9.1 <a href="#">ACL Council meeting minutes</a> 9.2 Annual review of MOU and OP with ACL	Item 9.1 -	Yes	KW KW
10	<b>Operations</b> 10.1 Complaints procedure audit outcomes	Item 10.1	Yes	JC
11	<b>Publication</b> 11.1 <a href="#">Confirmation that papers can be published</a>	-		DH
12	<b>AOB</b>	-		DH
13	<b>Next meeting</b> <a href="#">Date: 21 October 2021 @ 10.30am</a> <a href="#">Venue: To be agreed</a>	-		DH
<b>Lunch break</b>				
<b>PART 2: Governance strategy session</b>				
	Presentation and workshop format			

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

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

**MINUTES**  
**Costs Lawyer Standards Board Ltd**  
**Wednesday 21 April 2021 at 10.30 am**  
**Remotely by videoconference**

- Present:** Rt Hon David Heath CBE (Lay Chair)  
Stephanie McIntosh (Lay Vice Chair)  
Paul McCarthy (Non-Lay NED)  
Andrew Harvey (Lay NED)  
Andrew McAulay (Non-Lay NED)
- In attendance:** Kate Wellington (CEO and Company Secretary)  
Jacqui Connelly (Administration Manager)  
Professor Carl Stychin (Independent Education Adviser – item 1.2)  
Heather Clayton (Director of Policy – item 1.3)

**1. OPENING MATTERS**

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

**2. MINUTES**

**2.1 Minutes dated 20 January 2021**

The board considered the minutes of its last scheduled quarterly meeting on 20 January 2021. The board agreed the minutes as being a true record for signing.

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

**2.2 Matters arising**

The board considered the matters arising from the minutes of its meeting on 20 January 2021. There were no matters arising that had not been scheduled as agenda items or otherwise dealt with.

**3. STRATEGY**

**3.1 Progress against Business Plan: Q1 2021**

The board was provided with the first progress update against the 2021 Business Plan. Kate noted that two priorities had been achieved so far, with nine more underway.

Board members asked about the proposed timing for completion of priorities with a “red” rating. Kate explained that these were scheduled to commence later in the year and, at this stage, no priorities were at risk of non-completion. However, priority 11 (which involves testing new interim suspension order powers) was contingent on an appropriate disciplinary case arising during the year.

### 3.2 Education and competency

Kate updated the board on delivery of the competency framework project, following the board's approval of the project plan by email between meetings. The project was progressing very positively and the team had already:

- completed the one-to-one interview stages;
- convened and were working with the Expert Panel;
- hosted the Subject Matter Expert (SME) focus group;
- developed and circulated work diaries for completion; and
- begun to analyse the emerging evidence.

Input had been secured from senior industry figures, academics and educators, as well as unique perspectives from the Legal Services Consumer Panel and LawCare, and the quality and level of engagement so far had been very encouraging. The intention was to consult on the proposed framework in the summer.

The CLSB's Independent Education Adviser, Professor Carl Stychin, attended for this item to assist the board in considering options for the competency framework project and future initiatives around education and competency. Carl introduced himself and explained how his professional background and expertise could inform the work the CLSB was doing.

Carl gave his views on how a regulator can and should go about: (i) periodically reviewing professional competencies, reflecting the dynamic nature of professions; (ii) building the requirements for validation or accreditation of a training course from those competencies; (iii) setting parameters for what is expected of the organisation providing the course; and (iv) undertaking ongoing quality assurance of a provider and course, including through external oversight and annual reporting. The aim would be "right touch" regulation of the training provision, taking a risk-based approach, and creating the conditions for flexibility, diversity and responsiveness to student need. Carl discussed the challenges presented by the size of the market, but put forward suggestions for raising the profile of the profession with students and trainers.

David thanked Carl for his interesting observations and invited questions. Board members discussed with Carl:

- the CLSB's size and scale, and how it could best focus its resources in the areas Carl had described;
- how the Costs Lawyer Qualification was positioned in the wider education market and opportunities for growth;
- trends in how professional qualifications were being delivered, particularly against the backdrop of Covid-19, and what that meant for Costs Lawyers.

Kate then updated the board on the ongoing qualification audit. Progress had been slow but in mid-March, after various conversations, ACL had permitted the CLSB to obtain the required audit materials directly from ACL Training. ACL Training had provided the materials prior to the board meeting. The board also considered ACL's viability report for the course and two reports of an ACL Council working party on education that had

been shared in confidence by ACL. Finally, Kate noted that Rachael Wallace (ACL Council member) had recently been appointed to the ACL Education Executive.

The board discussed the implications of these developments and documents in detail. They highlighted a number of risks of particular concern, particularly around governance structures and oversight of the course. The board discussed the need to put plans in place to safeguard students in the event of unexpected suspension of course provision for any reason. Board members expressed their hope that Rachael would have the support of the ACL Council in making necessary changes to the structure and nature of the relationship between ACL and ACL Training. The board also considered how these issues fed into the risk register.

Board members discussed recent feedback from students and the wider profession on the quality of training, opportunities for ACL Training, and perception of the ACL brand. The board agreed that education and training issues were likely to be the CLSB's primary focus – for both the board and the wider organisation – over the coming months and probably years.

### **3.3 Consumer outcomes**

Kate provided a high-level update on progress against the Consumer Engagement Strategy and noted that a more detailed report would be provided in July, at the end of the first year of the strategy. She then introduced two areas of emerging policy work – relating to consumer outcomes and consumer research – which would shape the organisation's approach to delivering the second year of the strategy. The board was provided with a working draft of the consumer outcomes framework and an annotated version of a new client survey e-form that had been developed to support this work.

Heather joined for this item, introduced herself to the board and provided further context in relation to the two emerging areas. She explained how the consumer outcomes framework would: (i) be used to align all policy interventions with the promotion of specified outcomes; (ii) ensure the CLSB did not focus inappropriately on outputs; and (iii) provide tangible benchmarks against which to measure impact.

The board welcomed the approach. Board members asked about the challenges that arise from only a small proportion of Costs Lawyers being instructed directly by individual consumers. Heather explained how proportionality is built into the model, and the helpfulness of the framework in assessing whether the burden and financial cost of an intervention is justified by the intended outcome(s). Board members also asked about how best to provoke engagement from what is a small regulated community and an even smaller pool of lay clients. Kate and Heather explained the work that was underway to find and interact with these groups, including through a project with Community Research and the newly launched client survey.

The Non-Lay NEDs felt there would be interest from the profession in understanding the outcomes we are aiming to benchmark, particularly around price, accessibility and satisfaction, to help individual practitioners improve their offering and meet client need. This presented an opportunity for a two-way conversation, with Costs Lawyers both

helping the CLSB to collect data on outcomes and then improving outcomes through commercial application of the collated data.

**Action: Report on year 1 of Consumer Engagement Strategy at July meeting.**

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

##### **4.1 Input for strategy day agenda**

David reminded the board that a strategy day had been scheduled for July and explained that this was now looking infeasible for two main reasons. First, the timetable for the LSB approving the 2022 practising certificate fee meant that the 2022 Business Plan and budget had to be approved by the board in July, making it difficult to meaningfully incorporate outputs from the strategy discussion into the upcoming Business Plan. Second, it seemed unlikely that the July board meeting could be held in person.

It was therefore proposed to split the strategy day into two parts, with governance strategy being considered in July (and feedback from that session informing the governance review scheduled for H2), and wider organisational strategy being considered in January or April 2022 (with feedback informing the 2023 Business Plan and budget, and setting the tone for the next mid-term strategy). Board members were asked for their views.

The board agreed that this was a sensible way forward. Board members discussed when meetings were likely to be convened in person again and, while there was an appetite to have an in-person meeting once it was safe, it was agreed this was unlikely to be in July. The governance aspect of the strategy discussion was the easiest element to consider virtually, so that session should go ahead in July.

**Action: Plan governance strategy session for July and diarise wider organisational strategy session for early 2022.**

#### **5. FINANCE**

##### **5.1 Quarterly report: Q1 2021**

Jacqui introduced the quarterly finance report, which was the first report to be generated using new finance software developed specifically for the CLSB, integrating with the organisation's bank records and internal database.

She noted that two new business savings accounts had been opened to house the reserves, meeting the requirements of the LSB's new Practising Fee Rules (discussed at Item 5.2). The projected value of reinstatement was also slightly overstated due to the new parental leave remission policy, but this would not have a significant effect on income and would be rectified going forward.

The board noted the financial position in the report.

##### **5.2 Practising Fee Rules and updated Reserves Policy**

The board was provided with a summary of the key changes introduced by the LSB's new Practising Fee Rules. Kate explained that some of the issues identified by the CLSB and others during the consultation process had led to changes in the final version of the Rules, while others had not, and the board considered the implications of this.

Overall, it was noted that the practising certificate fee (PCF) application process would be significantly more complicated and time consuming than in previous years, and resources would need to be diverted away from other projects to meet the LSB's requirements.

The new Practising Fee Rules also changed the requirements for holding reserves and the CLSB's Reserves Policy therefore required amending. A draft of the amendments was provided for the board's consideration. As noted above, steps had already been taken to split out the share capital reserves from the PCF reserves, as required, by opening new accounts.

The board discussed the LSB's expectation that a reserves target of more than three to six months' operating expenditure would require justification. Board members agreed that the CLSB's size meant aiming for 12 months of operating expenditure in reserves was not only justifiable but essential. For a high-cost risk, it was assumed that three to six months of operating expenditure would not be sufficient to cover that risk alone, leaving aside the possibility of several related risks materialising at once.

The board agreed that a selection of risks should be costed-up to test this assumption. If the assumption was correct, the costings could be used in the PCF application as further justification for the reserves target. If the assumption was not correct, the board would have the opportunity in July (before the PCF application was made) to readjust the target. The updated Reserves Policy was approved on that basis.

The board also agreed that a cross-check was warranted between the risks outlined in the updated Reserves Policy and the risk registers. Kate would make any adjustments to the risk registers that she considered necessary and the board would review these in July.

**Action: Adopt updated Reserves Policy; Carry out risk costing exercise; Cross-check risks against risk registers.**

## **6. RISK MANAGEMENT**

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

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

- update the evidence of risk OP1 (*more enter than leave the profession*) to reflect the results of the follow-up coronavirus impact survey;
- update the controls around risk OP3 (*insufficient numbers of new qualifiers*) to include the competency framework project;
- update the controls around risk R4 (*regulatory arrangements misaligned to consumer need*) to include the consumer outcomes framework and research projects;
- update the registers to ensure they align with the Reserves Policy, as discussed at Item 5.2.

The board discussed the significance of the risks canvassed under Item 3.2 above. The board agreed that the probability rating for risk OP6 (*breakdown in communications*

*between any of ACL, ACL Training and CLSB*) should be increased to the highest level, reflecting uncertainty around the relationship between ACL and ACL Training. The probability rating for risk OP4 (*ACL becomes insolvent*) should increase for the same reasons.

Board members also discussed the strong progress being made on the controls around R4 (*CLSB cannot generate sufficient evidence about the consumer dimension of the Costs Lawyer market*). The board agreed it was premature for this risk to become “green”, but it was moving in the right direction.

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

## **6.2 Coronavirus impact survey report**

Kate explained that, further to the board’s steer in January, a follow-up coronavirus impact survey was carried out in Q1. The questions were adjusted to cover: impacts that had actually played out during 2020; updated predictions for the near future; and trends in relation to home working. The board was provided with a report analysing the survey findings. Kate noted that overall the outlook was positive and the level of concern about the future had fallen. However, there were pockets where the outlook was less optimistic. This was particularly true for legal aid practitioners.

The board discussed the ongoing impact of coronavirus on the profession and its clients in light of the survey findings. Paul and Andrew M provided feedback on their impressions of the market. Both noted that the most adversely affected practice areas seemed to be those in which ADR could not be used to circumvent court delays and where a court determination was unavoidable. Legal aid costs was one such example. In other areas, where a court determination could be avoided and/or technology could be used to expedite a resolution, cases were proceeding to the costs stage quicker. This work was “forward filling” the instructions that had been pushed back due to delays in substantive hearings, meaning revenue was stable for many firms.

Commentators were also predicting a rise in general commercial litigation as the moratorium on winding up petitions lifts and the furlough scheme ends, with a spike in insolvency and debt recovery proceedings expected in the next few years. Costs Lawyers with expertise in commercial costs would be well positioned to pick up that work.

Board members discussed the survey results relating to the use of technology, noting that less practitioners reported embracing new technologies than those predicting they would do so during the first survey in May 2020. There were anecdotal reports of technologies being abandoned if their ongoing use was not mandated. Conversely, it was noted that videoconferencing software may have become so embedded that it is no longer considered a new technology.

In relation to the differential in statistics for legal aid practitioners, the board discussed whether there was a case for engaging with the MoJ, to provide evidence and data on the impact of legal aid reforms. Board members agreed that issues in legal aid might be self-correcting as they worked through the system, but this would not prevent cashflow problems which could lead to insolvency and thus unmet legal need in the



short or medium term. Kate agreed to explore the survey data with the ACL Legal Aid Group (LAG) in the first instance, supplement the data if necessary and then engage with the MoJ as appropriate.

**Action: Publish survey report; Engage with LAG on legal aid data and then MoJ as appropriate.**

## **7. REGULATORY MATTERS**

### **7.1 Updated guidance notes**

The board considered updated guidance notes on conflicts of interest, client care letters and price transparency. Kate thanked Andrew M for his assistance in working through various conflict scenarios during development of the conflicts guidance. The board considered the guidance notes and approved them for adoption.

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

### **7.2 2020 CPD audit outcomes**

Jacqui introduced this item and explained that the annual CPD audit had been carried out in Q1. Despite the concerns expressed by Costs Lawyers during 2020 about not being able to meet the CPD requirements, everyone passed the audit.

The board considered the audit report. It was noted that this would be the last audit under the old CPD regime and plans for next year's audit would be covered under the next agenda item.

### **7.3 Supervision frameworks**

Kate drew the board's attention to priority 8 in the Business Plan, which involves developing the CLSB's approach to supervision. Kate explained that the team had begun tackling the project by looking across the organisation's core supervision areas and considering:

- the purpose of the supervision activity (what outcomes is the CLSB trying to achieve? what risks is it trying to mitigate?)
- the practicalities of supervision (what data is available? what are the key intervention points?)
- supervision resources (how does the CLSB best align resources to risk? what resources can it use or create to aid compliance and thus minimise interventions?)

For each area, the answers to these questions were used to develop a supervision framework that clearly described the key supervision processes that would be adopted. The frameworks were intended to be internal documents, giving the reader practical guidelines for carrying out a supervision activity (such as an audit) in a way that is consistent, fair and in line with regulatory rules, in pursuit of the identified purpose.

Kate explained that three frameworks had been developed so far – for supervising compliance with the CPD Rules, Accredited Costs Lawyer Rules and guidance on complaints procedures – and drafts were provided to the board for consideration. In Q2, a further supervision framework would be developed, following which a public-facing Supervision Policy would be drafted to summarise the overall approach.

In addition to the draft supervision frameworks, the board was also provided with an updated version of the guidance note on Complaints Procedures, which had been augmented to include a model procedure. Kate explained that spot checks during the last practising certificate renewal process had highlighted that some firms' complaints procedures were not compliant with the guidance, creating a risk that consumers were not being properly informed of their right to complain or to escalate a complaint to second-tier. Anecdotally, poor practice was most often seen in smaller firms, but the nature of the poor practice did not suggest deliberate avoidance of responsibility; rather it suggested a lack of understanding of what was required, perhaps due to a lack of dedicated compliance resource at firm level.

The model complaints procedure was designed to help individual Costs Lawyers and small firms improve their procedures. This would complement the supervision framework for complaints procedures, allowing the team to target specific examples of non-compliance during the first full complaints procedure audit in 2021, using the model procedure as a tool to educate non-compliant firms and improve standards going forward.

The board considered the draft frameworks and model complaints procedure. Board members discussed the process for selecting audit participants and queried whether this was accurately described as a random selection exercise. Kate and Jacqui explained the criteria applied during selection for audit across the three frameworks. While selection of individual practitioners was random, there were filters applied to whittle down the pool of people who might be selected (for example, based on practice area or organisation type). It was agreed that this should be set out more clearly in the frameworks.

The board discussed the need for all practitioners to learn from the audits, whether or not they had been individually audited. It was also important for the risk of audit to be real, and for all Costs Lawyers to appreciate that they could be selected for audit in any practising year (subject to spreading the regulatory burden of audit fairly across the profession).

In relation to the supervision framework for complaints procedures, the board discussed the point at which the CLSB should check that non-compliant procedures had been sufficiently improved. Kate and Jacqui explained that two main options had been considered; namely that complaint procedures be re-reviewed when the practitioner next applied for a practising certificate, or re-reviewed during the following year's audit. The latter had been selected for logistical reasons, but with an option for practitioners to submit their revised procedure at any time during the year for feedback and advice. It was agreed that this approach would be tested in the first year and, if there was evidence of delay in Costs Lawyers updating their procedures, the framework would be revisited.

***Actions: Adopt supervision frameworks into the Internal Handbook, amended as agreed; Bring the final supervision framework and draft Supervision Policy to the board in July.***

#### 7.4 Guidelines for complainants

Kate explained that the LSB recently asked the CLSB to consider whether its “Policy on Expectations of a Complainant” required review. The LSB was concerned that the policy appeared to impose obligations on complainants (i.e. people approaching the CLSB with a complaint about a Costs Lawyer) and might have a chilling effect on complaints. The request was triggered by the LSB’s consideration of a similar issue in a decision about proposals put forward by ICAEW.

Kate noted that the policy had not been reviewed since 2017 and, while the CLSB did not believe it imposed obligations on complainants, a review was worthwhile. It was therefore proposed that the policy be replaced with a shorter note – published as web-based guidelines rather than a standalone policy document – which reflected the underlying intentions of the policy, namely that:

- complainants should behave reasonably; and
- complaints that the CLSB devotes effort to investigating should have some merit.

The board considered and approved the guidelines and associated web content, and agreed that the former policy should be revoked.

**Action: Upload agreed web content and revoke policy.**

#### 7.5 Feedback from Accredited Costs Lawyers

The board was reminded that the Accredited Costs Lawyer scheme became voluntary when new CPD Rules were introduced in January. Improvements to the scheme were being made and tested throughout the year, including via the supervision framework, new e-forms, a new accreditation certificate, and additions to the register to make it more commercially attractive.

As part of that work, feedback had been sought from Costs Lawyers who chose not to renew their accreditation during Q1. Jacqui reported statistics in relation to renewals and reasons for non-renewal. Overall, the shift to a voluntary scheme did have some impact on uptake, although most Accredited Costs Lawyers were still renewing, and not all non-renewers cited the changes as their reason for lapsing.

The board discussed the feedback and improvements that were being made. The Non-Lay NEDs welcomed the idea of a network or forum for Accredited Costs Lawyers, if that could be achieved at proportionate cost. This would help Accredited Costs Lawyers better understand what kind of training others were delivering, share good practice and identify opportunities.

**Action: Explore options for an Accredited Costs Lawyer network.**

#### 7.6 The Costs Lawyer profession in 2020 report

The board was provided with an annual report compiling statistics about the Costs Lawyer profession in 2020. Comparisons had been drawn with historic data where possible, but Kate noted that the real value of the 2020 data was in providing a robust benchmark against which to make comparisons in the future.

The report also included headline results of the new diversity survey, which was run alongside the practising certificate renewal process last year, and Kate updated the

board on the CLSB's ongoing policy work on equality, diversity and inclusion. The board agreed that the report provided a good starting point for further analysis

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

### **8.1 Outcome of strategy and business plan consultation**

Kate updated the board on the outcomes of two stakeholder events relating to the LSB's recent strategy and business plan consultation. In particular, she conveyed the LSB's position on reviewing the list of reserved legal activities in the Legal Services Act 2007 and the initial mapping exercise of unregulated activities that would be carried out this year.

The board noted the outcome of the consultation, including that the LSB had its proposed 4.4% budget increase approved by the MoJ.

### **8.2 Other workstreams**

The board was provided with updates in relation to:

- the CLSB's submission for the next regulatory performance assessment and timings for next steps;
- a letter from Dr Helen Phillips (LSB Chair) about collaboration between the legal services regulators;
- David's introductory chat with Helen, which he reported as being positive and constructive.

The board discussed the proposals for collaboration in Helen's letter. Board members reiterated their support for collaboration and its importance in delivering required outcomes at proportionate cost. However, it was equally important to ensure that collaboration was targeted in the right areas, did not detract from delivery of the CLSB's own priorities, and did not subsume disproportionate resource for the return. In particular, where there was a suggestion of back-office savings from collaboration, board members felt it was unlikely that any further savings could be made on the CLSB's already highly streamlined budget.

**Action: Incorporate board member views in responding to Helen's letter.**

## **9 STAKEHOLDER UPDATES**

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

The board noted the minutes of ACL Council meetings held in December 2020 and February 2021.

### **9.2 Work updates**

Updates were provided in relation to:

- the outcome of the Legal Ombudsman's business plan and budget consultation;
- a draft consultation under consideration by the ACL Council in relation to the future of its membership structure.

The board discussed the draft consultation and proposals to increase ACL membership numbers. Board members noted that the consultation did not include consideration

of the membership's needs and preferences, or how ACL's value proposition could be strengthened over time. This could be fed back to ACL at this stage, or by way of consultation response if the CLSB was invited to respond.

## **10 OPERATIONAL MATTERS**

### **10.1 Digital work programme update**

The board was provided with an update on progress against the digital work programme, including:

- reviewing how IT is used for financial management;
- migrating all application forms to e-forms;
- improving and upgrading the Costs Lawyer database;
- final updates to the practising certificate renewal forms.

## **11 PUBLICATION**

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

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

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

## **12 AOB**

The Non-Lay NEDs reported on several structural changes in the market, including a high profile takeover of two firms by Frenkel Topping. The board discussed the opportunities from this kind of consolidation, as well as the potential impact on ACL membership and on ACL Training now that firms were beginning to partner with training providers to deliver their own learning and development sessions.

The board also discussed the interconnectivity between the Costs Lawyer market and other niche professions, such as quantity surveyors. Board members considered opportunities to partner with and learn from regulators of those professions, including around education and qualification.

In closing, David thanked the board members for their input and engagement during his first meeting as Chair, and invited feedback on any aspects of the board meetings or the organisation more widely.

## **13 NEXT SCHEDULED QUARTERLY MEETING**

When: Wednesday 21 July 2021 at 10.30am  
Where: Virtual

There being no further business, the Chair declared the meeting closed at 12:53.

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Chair

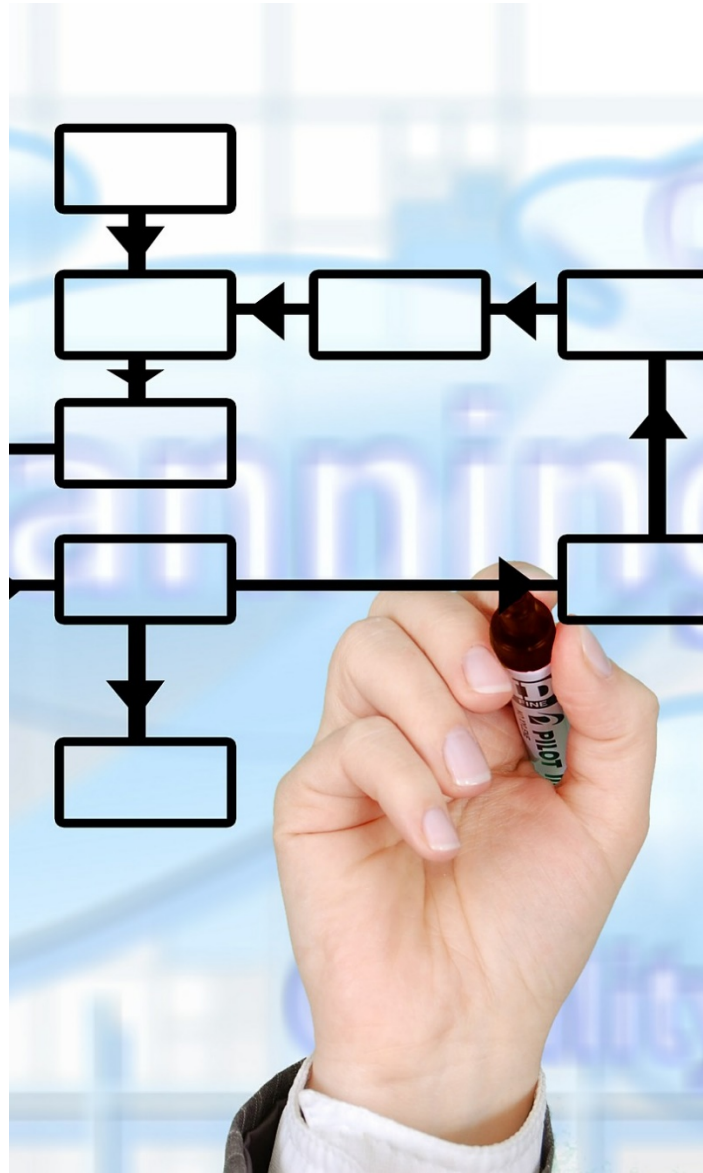
## Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes (20 January 2021)	About us ⇒ Our board
6.1	Risk registers	About us ⇒ Strategy and governance
6.2	Coronavirus impact survey report	Regulatory ⇒ Data about Costs Lawyers
7.1	Guidance notes	For Costs Lawyers ⇒ Costs Lawyer Handbook
7.4	Guidelines for complainants	Make a complaint ⇒ Complain about a Costs Lawyer
7.5	Accredited Costs Lawyer scheme information	For Costs Lawyers ⇒ Accreditation to provide CPD training
7.6	The Costs Lawyer profession in 2020	Regulatory ⇒ Data about Costs Lawyers
11.1	Board papers	About us ⇒ Our board
Item	Document	Publication location (other)
5.2	Practising Fee Rules	LSB website <a href="#">here</a>
8.1	Outcome of strategy and business plan consultation	LSB website <a href="#">here</a>
9.2	Legal Ombudsman business plan 2021-22	LeO website <a href="#">here</a>

# Business Plan 2021 Q2 board update

## July 2021

## Costs Lawyer Standards Board



CLSB

# Annual priorities

## Improving our regulatory arrangements

	Initiative	Progress status / expected completion
1.	Work with ACL Training to consider whether improvements are required to the Training Rules, informed by learnings from the first year of the refreshed Costs Lawyer Qualification.	<b>In train (expected – Q4)</b> <i>Achieved: Work is well underway on the new competency framework, which will provide evidence to underpin changes to our Training Rules later in the year. The consultation draft will be put to the board for consideration at this meeting.</i> <i>Outstanding: Open consultation on the framework in Q3 and translation of the framework into the course structure and outcomes.</i>
2.	Update the Guidance Notes in the Costs Lawyer Handbook that were not subject to review following the 2019 Handbook Audit.	<b>In train (expected – Q3)</b> <i>Achieved: Three updated guidance notes were approved by the board in April and another was approved between meetings in Q2.</i> <i>Outstanding: There are two further guidance notes to be reviewed in order to complete this priority. They are scheduled to be looked at during Q3.</i>
3.	Develop new guidance that draws together themes identified across various aspects of our work, such as: <ul style="list-style-type: none"> <li>• guidance for unregulated employers of Costs Lawyers;</li> <li>• guidance on closing down a practice.</li> </ul>	<b>Achieved (Q2)</b> <i>Themes for the guidance were developed in Q1. Both guidance notes have now been drafted and will be put to the board for consideration at this meeting.</i>
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>Achieved (Q1)</b> <i>We captured learnings from the launch of our new CPD regime by tracking email enquiries, feedback and questions raised at our Virtual Q&amp;A session held in February. Those learnings allowed us to supplement our CPD supporting materials (particularly our website FAQs) and informed our approach to developing the new supervision framework for the regime (priority 8). The next touchpoints for further evaluation will be during PC renewals in November and then during the</i>



		<i>first audit in 2022, which may lead to additional improvements next year.</i>
5.	Review the regime for accrediting Costs Lawyers to provide CPD training, to assess whether the accreditation criteria and the approach to implementation remain fit for purpose.	<p><b>Achieved (Q2)</b></p> <p><i>We have implemented new Accredited Costs Lawyer Rules, reviewed the accreditation criteria and updated the information we seek from applicants (both when they first apply for accreditation and upon renewal). We have developed a new supervision framework for the scheme, as an adjunct to our planned supervision project (priority 8). New webforms implementing the changes to the application process went live in Q2. We sought feedback from those Costs Lawyers choosing not to renew their accreditation this year and the follow-up work from that exercise has been completed. We will make routine improvements to the regime on an ongoing basis.</i></p>
6.	Consider our diversity and inclusion initiatives against the Legal Services Board's characteristics of a well-performing regulator to identify and address any gaps in our approach.	<p><b>In train (expected – Q4)</b></p> <p><i>Achieved: We launched a new diversity survey alongside the 2021 PC renewal application. We have analysed and published data from that survey, including in a <a href="#">comparative report</a>, and have made further improvements to align our data with the sector's. We have stepped up engagement with the regulators' EDI forum and liaison with the LSB and SRA on diversity. We have also compiled a set of actions aimed at further improving our data and exploring particular characteristics. We have assessed the merits of different regulatory interventions aimed at promoting EDI; a paper on this will be put to the board for consideration at this meeting and shared with other regulators. We are conducting an outreach project with the profession to understand how they feel about the collection of diversity data, to identify the collection method most likely to improve survey response rates.</i></p> <p><i>Outstanding: Work to take forward the set of actions for improving our data is underway. Next steps on the identified regulatory interventions will begin in Q3. We will take a final decision in Q3 on the best way to collect diversity data next year. Wider sector engagement will continue throughout the year.</i></p>

## Protecting the interests of consumers and promoting professional standards

	Initiative	Progress status
7.	Deliver the first year of priority activities in our Consumer Engagement Strategy	<p><b>Achieved (Q2)</b></p> <p>Achieved: We delivered a number of initiatives under the first year of the strategy, such as improving our web content, securing improvements to the costs questions in the LSCP tracker survey, and reviewing our regulatory return questions relating to client profiles. We have refreshed our client survey and have asked Costs Lawyers who reported having lay clients to send the survey directly to those clients. We have carried out a research project with Community Research and Panelbase. Our new <a href="#">policy statement on good consumer outcomes</a> has been developed and published. A paper on recommendations for year 2 of the strategy will be put to the board for consideration at this meeting.</p>
8.	<p>Develop our approach to supervision by:</p> <ul style="list-style-type: none"> <li>planning and documenting an updated CPD audit programme under the new CPD Rules;</li> <li>implementing a structured audit of complaint procedures;</li> <li>formalising our “point of complaint” targeted supervision activities, drawing evidence from our new database;</li> <li>updating our Supervision Policy to capture the above.</li> </ul>	<p><b>Near completion (expected – Q3)</b></p> <p>Achieved: We have developed new supervision frameworks, using a consistent approach and format, for supervising compliance with the Accredited Costs Lawyer Rules, our guidance on complaints procedures, and the CPD Rules. These were approved by the board in April and are now operational. An audit of complaints procedures was carried out under the framework in Q2.</p> <p>Outstanding: A framework for point-of-complaint supervision, and a new public-facing Supervision Policy describing our approach, have been postponed until the October board meeting to allow time for the governance strategy session in July.</p>
9.	<p>Take an in-depth look at three key areas in which we have identified risks of poor consumer outcomes, namely:</p> <ul style="list-style-type: none"> <li>under-insurance;</li> <li>handling of client money; and</li> <li>communication of complaint procedures,</li> </ul>	<p><b>In train (expected – Q4)</b></p> <p>Achieved: We have completed our review in relation to Costs Lawyers handling client money and updated our guidance note accordingly, with the decision-making process being recorded in a published board decision note.</p> <p>Outstanding: Work on the other areas has commenced and will be completed during H2.</p>

	<p>in order to:</p> <ul style="list-style-type: none"> <li>• improve our understanding of the risk profile across the profession in each area, making use of our new audit and data capture processes;</li> <li>• ensure we accurately record these risks, for transparency and monitoring purposes;</li> <li>• assess whether our current regulatory arrangements in these areas appropriately mitigate the risks, informed by evidence from consumer complaints;</li> <li>• consider whether there are more proportionate, targeted or innovative ways to address the risks, particularly in the context of market developments and technological change.</li> </ul>	
10.	Consider how we can improve consumer information in relation to the regulatory status of the organisations in which Costs Lawyers practise.	<b>Pending (expected – Q4)</b> <i>Work on this priority is scheduled for H2.</i>
11.	Test the efficacy of the new interim suspension order (ISO) powers in our Disciplinary Rules and Procedures, based on our early experience of disciplinary proceedings in which the imposition of an ISO was considered.	<b>Pending (expected – Q4)</b> <i>No opportunities have yet arisen to test the ISO power in practice. We will wait for a suitable case to present itself during the year, but this is of course a contingent piece of work.</i>

## Modernising our organisation

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

	quality) and identify any adjustments needed for the 2021 renewal period.	<i>and a workplan has been put in place to deliver those improvements before PC renewals begin again in November.</i>
13.	<p>Deliver the second phase of our digital workplan, including:</p> <ul style="list-style-type: none"> <li>• reviewing how we use IT for financial management;</li> <li>• creating e-forms for processes other than annual practising certificate renewals;</li> <li>• building add-on functionality for the Costs Lawyer database, informed by learnings from the 2020 practising certificate renewal process.</li> </ul>	<p><b>In train (expected – Q3)</b></p> <p><i>Achieved: The first version of our new financial management system has been built and is being used for financial recording and reporting. Development of the new online application forms was carried out in Q2; all our application forms are now available as updated e-forms via the website. A new client survey e-form has been successfully launched.</i></p> <p><i>Outstanding: The next version of the Costs Lawyer database, with enhancements informed by learnings from the 2020 PC renewal process, is in the late stages of development. Testing will continue into Q3 up to the PC renewal window opening in November.</i></p>
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.	<p><b>Pending (expected – Q4)</b></p> <p><i>Work on this priority will kick-off with the governance strategy session at this board meeting. The review will be undertaken and the outcomes implemented during H2.</i></p>
15.	Revisit the effectiveness of our new operating structure to identify whether and where further improvements can be made.	<p><b>In train (expected – Q4)</b></p> <p><i>Achieved: Ongoing review of the effectiveness of our operating structure led to the recruitment of additional policy and education resource in early 2021. Our Business Continuity and Disaster Recovery Plan was reviewed in February 2021 to take account of the changes.</i></p> <p><i>Outstanding: We will assess the success of the changes in H2 once they have bedded in. The constitution and remit of the board will be considered as part of the governance review in H2 (priority 14).</i></p>



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# Foreword

Rt Hon David Heath CBE, Chair

2021 has been a year of unprecedented change. As we emerge from the grip of a global pandemic, it is clear that new ways of working, living and interacting are here to stay. Our [research](#) suggests that Costs Lawyers have not only risen to the challenges of the past year, but have also embraced opportunities to look at their practice with fresh eyes and help more clients navigate the complex landscape of legal costs.

At a personal level, 2021 has also been a year of change and opportunity for me. I hung up my hat as Senior Independent Director of the Solicitors Regulation Authority and began a new chapter as Chair of the CLSB. I arrived here at an exciting and pivotal moment in the organisation's history. In mid-2019, a fresh [vision](#) for the CLSB was set out by the incoming CEO, supported by a forward-thinking and passionate board. I see that vision coming to fruition in many ways; from our collaborative relationships to our careful use of evidence and data, from our creative application of limited resources to our tailored regulatory interventions. This provides a springboard from which the CLSB can grow, innovate and make meaningful change for years to come.

We now find ourselves better placed than ever before to tackle a number of structural barriers to effective consumer protection in the costs law market. One such barrier is the fact that unauthorised costs advisers are able to use the title of "Costs Lawyer", making it difficult for consumers to recognise who is regulated and who is not, and thus make informed choices. In 2022, we will deepen our understanding of the unregulated part of the market for costs law services, examining whether clients experience different outcomes depending on the regulatory status of their adviser, and asking what this means for the way we regulate.

Together with my board, and with the CLSB's outstanding executive team, I look forward to answering these important questions and helping to secure the public's justified trust in the Costs Lawyer profession into the future.

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# Introduction

Kate Wellington, CEO

I always enjoy the process of developing a Business Plan for the upcoming year. It is a moment to examine our culture, to check that we are listening and responding, and to imagine what the future might look like. It is also a moment to check-in with Costs Lawyers and the wider community, encouraging an ongoing conversation about the purpose of regulation, what benefits it should bring, and how much it should cost.

Our last two Business Plans – for 2020 and 2021 – were designed to lay the groundwork for achieving the vision and objectives in our [mid-term strategy](#). They ignited a period of genuinely transformational change for our organisation, during which we modernised almost every aspect of what we do. To pick out a few examples, in 2021 we delivered the second year of our digital work program, moving exclusively to web-based forms and developing a bespoke financial management system. We expanded our team, adding resource in the areas of consumer policy and education, to provide deeper expertise and fresh perspectives. We launched a flagship project to map the competencies we expect of newly qualified practitioners. And we enhanced our regulatory approach, through the development of new guidance, a new supervision methodology, and a new consumer outcomes framework that will underpin all our regulatory interventions going forward.

I am buoyed by the positive feedback we have received about these changes and the enthusiasm shown for our initiatives. This feedback comes in many guises, be it statistical (such as a 97% effectiveness rating from our regulated community), anecdotal (like messages of thanks from people using our services) or more formal (such as our oversight regulator’s complimentary assessment of our performance).

Our current mid-term strategy takes us through to 2023, which means that by the end of 2022 we want to be “nearly there”. Our 2022 Business Plan is therefore designed to help us consolidate our successes so far while also launching new projects that are relevant and impactful. With particular focus on education, consumer outcomes and core standards, we will concentrate our resources on the things that matter most.



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# 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 2022 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.*

## Promotion of consumer outcomes

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



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# Annual priorities

## Improving our regulatory arrangements

	Initiative	Link to strategy	Fit with consumer outcomes
1.	<p>Review the Costs Lawyer Code of Conduct to ensure it aligns with:</p> <ul style="list-style-type: none"><li>• our consumer outcomes framework;</li><li>• our research into the competencies expected of a qualifying Costs Lawyer;</li><li>• learnings from our risk deep-dive exercise carried out in 2021;</li><li>• the better regulation principles, and in particular that it does not impose unnecessarily broad regulatory burdens;</li><li>• recent updates to our other regulatory arrangements;</li><li>• evidence of good practice across the wider professional services sectors.</li></ul>	B, D	Price Quality Innovation Privacy Fairness
2.	<p>Implement changes to the Training Rules and other regulatory arrangements relating to education – informed by evidence from our competencies project in 2021 – to modernise the requirements for becoming a Costs Lawyer and facilitate a wider range of flexible pathways to qualification.</p>	B, E	Quality Access Diversity
3.	<p>Using our new supervision framework, evaluate the extent to which our revised approach to Continuing Professional Development (CPD) has been understood and adopted by Costs Lawyers, and develop communications to address any areas of difficulty or other themes identified.</p>	B, E	Quality Access

4.	Evaluate the success of our new Disciplinary Rules and Procedures two years after implementation.	B	Quality
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## Protecting the interests of consumers and promoting professional standards

	Initiative	Link to strategy	Fit with consumer outcomes
5.	Update our <a href="#">Consumer Engagement Strategy</a> to capture learnings from the first year, and deliver the updated priority activities for the second year.	C	Evidence collection to promote all outcomes
6.	<p>Embed a culture of considering consumer outcomes in all of our regulatory work, seeking evidence of effectiveness where possible.</p> <p>In line with this culture:</p> <ul style="list-style-type: none"> <li>gather evidence of whether and how consumer outcomes differ when clients use regulated advisers and unregulated advisers, so we can better assess the risks to consumers of under- or over-regulation in the market for costs law services;</li> <li>based on evidence, evaluate how far we can tackle any issues raised in the areas of price; innovation; access; privacy; and fairness.</li> </ul>	A, B, C, D, E	Price Quality Access Innovation Privacy Fairness Diversity
7.	Carry out a research project to better understand the pricing structures used by Costs Lawyers and to benchmark prices for different types of costs services.	B, C	Price
8.	Investigate consumers' expectations in relation to privacy – including by reference to learnings from existing research in related markets – and assess	A, B, C, D, E	Privacy

	whether there is any evidence that expectations are not being met.		
9.	<p>Deliver the next phase of our diversity and inclusion work program in the three broad areas identified in our 2021 report, <a href="#">link</a> namely:</p> <ul style="list-style-type: none"> <li>• further improving our data collection;</li> <li>• enhancing engagement with our regulated community;</li> <li>• assessing the likely effectiveness of potential regulatory interventions to improve diversity and inclusion.</li> </ul>	A, B, E	Diversity
10.	Deliver a project to benchmark the level of innovation in the profession and to explore any regulatory or statutory arrangements that might hinder or assist innovation in the market for Costs Lawyers' services.	B, E	Innovation
11.	<p>Engage with the other legal services regulators to identify and act on opportunities for collaboration that have the potential to deliver:</p> <ul style="list-style-type: none"> <li>• material cost savings;</li> <li>• new evidence or learnings that we could not access on our own; and/or</li> <li>• unique benefits from taking a whole-sector approach.</li> </ul>	A	Better regulation to support all outcomes

## Modernising our organisation

	Initiative	Link to strategy
12.	Begin to consider a vision for our organisation beyond the current <a href="#">mid-term strategy</a> that ends in 2023, focused around a board strategy day informed by the views of stakeholders.	Facilitates all

13.	Review our methodology for measuring, recording, monitoring and responding to risk in light of changes to our regulatory approach and organisational culture since our existing methodology was introduced.	D
14.	Test the measures in our Business Continuity and Disaster Recovery Plan to ensure they remain fit for purpose following changes to our organisational design.	D
15.	Deliver the next phase of our digital workplan, including: <ul style="list-style-type: none"> <li>• automating the analysis of routinely captured data;</li> <li>• building add-on functionality for the Costs Lawyer database, such as bespoke report generation.</li> </ul>	Facilitates all
16.	Review and modernise our internal staff policies to ensure they are fair, relevant and reflect our current ways of working.	E
17.	Consider whether additional or different advisory appointments are necessary to fill any skill gaps at board or executive level.	Facilitates all

Our budget for 2022, which will facilitate delivery of this Business Plan, can be [found on our website](#).

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# Reserves Policy

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**DRAFT Updated: 21 July 2021 (version 5)**

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**Costs Lawyer Standards Board**

**CLSB**  
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## Purpose

1. The Costs Lawyer Standards Board (CLSB) holds financial reserves to ensure it has sufficient capital to respond appropriately to risks and maintain business continuity, as well as to fund projects that are planned for the future. This policy sets out the CLSB's current approach to accumulating and managing reserves.

## Type of reserves

2. The CLSB primarily holds uncommitted reserves. Uncommitted reserves are not allocated or ring-fenced for a specific purpose, and they are not required to meet "business as usual" annual expenditure. The CLSB may also hold committed reserves from time to time, as set out at paragraph 17~~6~~ below. ~~When this policy was last reviewed, the CLSB had no committed reserves.~~
3. The CLSB's uncommitted reserves are divided into two categories based on the sources from which they are derived, namely practising fee reserves and share capital reserves.
4. Share capital reserves reflect the value of the share capital paid up by the CLSB's parent company and sole shareholder, The Association of Law Costs Draftsmen Limited (trading as the Association of Costs Lawyers (ACL)). The level of share capital reserves is maintained at £15,000.
5. ~~P~~Uncommitted practising fee reserves (as well as any committed reserves held from time to time) are derived from the practising fees paid annually by regulated Costs Lawyers.<sup>1</sup>

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<sup>1</sup> The CLSB's income is generated almost exclusively from practising fees and therefore all budget items, including transfers to reserves, are met with practising fee funds. The CLSB generates a de minimis amount of income from accrediting Costs Lawyers to provide CPD activities. Given the small size and unpredictable nature of that income, it is not allocated to any particular item of expenditure and is not included in budgeted income.



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6. Reserves derived from practising fees ~~reserves~~ are used only in fulfilment of the CLSB's regulatory functions and for the permitted purposes set out in the Legal Services Board's Practising Fee Rules 2021.

## Holding reserves

7. The CLSB holds its practising fee reserves, ~~and~~ share capital reserves and committed reserves in designated accounts, separate from each other and separate from the CLSB's operating (current account) funds.
8. The CLSB, through its officers and employees, has exclusive management and control of its reserves. All reserve accounts are held in the CLSB's name. ACL may not access the CLSB's ~~practising fee~~ reserves nor direct how they are used.
9. Reserves may be invested (for example, in interest bearing accounts) at the discretion of the CLSB's executive. However, any investment will be very low risk and will ensure funds are kept sufficiently liquid to be called upon if required.

## Practising fee reserves target

10. ~~R~~Practising fee reserves are accumulated up to a target level, which is set to insure against reasonable risks without unnecessarily inflating costs.
11. The CLSB's target level of practising fee reserves is ~~one year's~~ six months' operating expenditure, ~~—~~ which equates to roughly ~~to~~ half of one year's gross income from annual practising certificate fees (net of any contribution to reserves) ~~— plus a 10% contingency to account for annual fluctuations in expenditure~~. When this policy was last reviewed, the reserves target was ~~£172,100,000~~ plus a 10% contingency (£110,000 in total).
12. In setting the target, the CLSB ~~was~~ has been mindful that it is a small organisation. ~~that its target is higher than the level recommended by the Legal Services Board as a proportion of annual expenditure. This is a consequence of the CLSB's size; While the target is at the upper end of the range recommended by the Legal Services Board as a proportion of annual expenditure, it is~~ not high in absolute

terms. A minimum level of reserves is needed to ensure financial resilience in the face of major risks, many of which create the same liability for a small regulator as they do for a larger one. The ~~reserves~~ target is set at a level that will ensure the CLSB can deliver its full regulatory remit and/or meet its obligations in the event that a major risk materialises.

~~13. The reserves target is a total target for all uncommitted reserves. The level of share capital reserves is maintained at £15,000. The reserves target is therefore reached through the accumulation of practising fee reserves above this level year on year.~~

~~14.~~13. To achieve the target level of practising fee reserves ~~target~~, the CLSB will make provision in its annual budget for a contribution to reserves each practising year until the target is met. The CLSB may also make contributions to practising fee reserves from any underspend on its annual budget.

~~15.~~14. When this policy was last reviewed, the CLSB had achieved the target level of practising fee reserves and was no longer making annual contributions.

## Risks mitigated through practising fee reserves

~~16.~~15. ~~Reserves are necessary to ensure adequate financial resources at all times, providing a cushion against the materialisation of reasonably foreseeable risks. The CLSB's practising fee reserves target has been set at a level that is adequate to insure against, but is not disproportionate to, the risks recorded in the CLSB's risk register. These include the~~ following major strategic risks:

~~(i) Risks OP1, OP3 and OP4 in the CLSB's risk register.~~

~~(ii)(i)~~ (i) An unexpected decrease in practising fee income (because, for example, an economic crisis restricts Costs Lawyers' ability to pay practising fees or the Legal Services Board refuses to approve the annual practising fee).

~~(iii)(ii)~~ (ii) The CLSB ceasing to exist or being unable to act as an approved regulator under the Legal Services Act 2007 ~~for a reason not covered by risk OP4~~ (with potential costs including redundancy, contract terminations, LSB



and Legal Ombudsman levies which are paid one year in arrears, accounting and Companies House liabilities).

~~(iv)~~(iii) Involvement in litigation (for example, a decision of the CLSB being challenged by way of judicial review, an action for damages being brought by or against the CLSB or injunctive relief being sought for a breach of the Legal Services Act 2007).

~~(v)~~(iv) Duplication of staffing costs in the event of long term absence.

~~17.16.~~ The CLSB will consider the extent to which any major strategic risks are insurable and .The CLSB will balance the cost and availability of insurance against the cost to the regulated community of accumulating reserves.

### Committed reserves target

~~18.17.~~ In addition to insuring against risks, reserves may be used to meet one-off items of expenditure that cannot be met appropriately through an increase in the practising fee for the relevant year. Such items of expenditure might include, for example, the cost of implementing significant new systems or processes, responding to legislative changes or purchasing substantial assets. Where plans are made to use reserves in this way, the relevant funds ~~will be~~are ring-fenced as committed reserves.

18. The CLSB currently holds committed reserves for planned future IT development work. That work has been costed at approximately £30,000 and, accordingly, our target level of committed reserves is £30,000.

19. To achieve the target level of committed reserves, the CLSB will make provision in its annual budget for a contribution to reserves each practising year until the target is met. The CLSB may also make contributions to committed reserves from any underspend on its annual budget.~~The CLSB will consider the extent to which any major strategic risks are insurable. The CLSB will balance the cost and availability of insurance against the cost to the regulated community of accumulating reserves.~~

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## Review of this policy

20. This policy will be reviewed by the CLSB's board annually and when ~~the~~all reserves targets ~~have~~s been achieved.

## Costs Lawyer Standards Board



# Budget for the 2022 practising year

Category	Budget provision (£)
Staff costs	106,603
Travel and subsistence	5,000
Rent and room hire	2,327
Telephone	1,699
Printing, postage and stationery	310
Equipment	500
Levies and contributions (LSB, LeO, Legal Choices)	25,856
Licences, subscriptions and fees	3,125
Office services	2,861
Consultancy services	14,200
IT services	2,575
Business Plan priorities	15,515
Miscellaneous	500
Contingency	5,000
<b>TOTAL EXPENDITURE</b>	<b>186,071</b>
Transfer to reserves	5,000
<b>TOTAL DEBITS</b>	<b>191,071</b>
<i>Practising fee</i>	281
<i>Estimated number of renewals</i>	670
Renewal income	188,270
Other practising fee income	2,750
<b>ESTIMATED INCOME</b>	<b>191,020</b>



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# Proposed fee

We propose to set the practising fee for Costs Lawyers at £281 in 2022. This represents an increase of 2% (or £6) from the current practising fee and is in line with the predicted rate of inflation for 2022.

Last year, we had the difficult task of setting the practising fee for Costs Lawyers amidst widespread uncertainty, with the long-term impact of Covid-19 on the profession and the economy being largely unknown. This year, we have [more information](#) about how Costs Lawyers and their clients have fared during the pandemic. In general, we know that only a small minority of practitioners have less work to do than before the crisis, and the level of concern about the future has reduced overall.

However, we also know that approximately 1% of Costs Lawyers stopped practising this year for reasons related to Covid-19. We have therefore seen a decrease in the size of our profession over and above the usual level of natural attrition, meaning that the cost of regulation is spread across a smaller group of practitioners. At this stage, we don't know what the impact of Covid-19 will be on the size of our community in 2022. A key factor driving the proposed practising fee is therefore our best estimate of the number of Costs Lawyers we will regulate next year.

Other factors that impact the proposed fee include:

- an anticipated increase in supplier costs – including the cost of insurance – following relatively static costs in 2020 and 2021 due to the pandemic;
- an increase in the levies that we pay on your behalf, such as a 4.4% increase in the Legal Services Board's budget;
- a proposed decrease in the CLSB's usual contribution to financial reserves (which is explained below).

This consultation paper provides further information about the level of the practising fee and how the money raised through your fees will be used. At the end of this consultation there are some questions you might like to consider as part of your response, but we would welcome any feedback you wish to provide. Consultation responses should be sent to [enquiries@clsb.info](mailto:enquiries@clsb.info) by **5pm on 6 September 2021**.



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# How we set the practising fee

## The process

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

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

## 2022 Business Plan

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

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

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

Our annual Business Plan establishes additional projects and priority work areas that are specific to the practising year. Each priority in the Business Plan is linked to the achievement of one or more of the objectives in our [mid-term strategy](#), as well as the improvement of various [consumer outcomes](#). Our proposed Business Plan for 2022 is available [with this consultation](#). The priorities in the Business Plan, together with the core regulatory work described above, constitutes the full programme of activity that is funded through your practising fees.

In the previous practising year – despite the very challenging circumstances that we all faced in 2020 – we delivered all of our Business Plan actions, except for two that were deprioritised early in the year. A summary of the anticipated and actual benefits of our 2020 work programme is available [with this consultation](#).

## Levies and contributions

Our proposed budget for 2022 is also available [with this consultation](#). You will see that a portion of our budget is made up of levies and contributions that we must pass on to other organisations – namely the Legal Services Board, the Legal Ombudsman and the Legal Choices website – to fund their activities. Each of the legal services regulators is required to make contributions on behalf of the lawyers they regulate.

In 2022, the cost per Costs Lawyer of these contributions will be approximately:

- £22.84 for the Legal Services Board (8% of your practising fee)
- £7.35 for the Legal Ombudsman (2.5% of your practising fee)
- £8.53 for Legal Choices (3% of your practising fee)



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# Other information about practising fees

## Permitted purposes

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

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

## The Association of Costs Lawyers

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

## Tax relief

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

## Reserves

We hold financial reserves to provide a buffer against unexpected events. We want the level of our reserves to be neither too low nor too high, so our Reserves Policy provides for a target level of reserves. In 2021, we revised our target level of uncommitted reserves downward, following a review of the financial risks we face and the extent to which those risks are insurable. Previously, our target level of committed reserves was one year’s operating expenditure (or roughly one year’s gross income from annual

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practising fees). This has been revised down to approximately six months' operating expenditure. The level of our uncommitted reserves currently meets this target.

We also hold separate reserves reflecting the amount of our paid up share capital, as well as committed reserves for planned future IT development projects. Our target level of committed reserves is £30,000. We have achieved 17% of this target so far and we will make further contributions over the next five years to reach the target level. Those contributions will be smaller than previously, given the reduction in our target level of overall reserves. This means you will pay less for your practising fee.

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

## Practising certificates

### Practising Rules

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

### Practical advice and information

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

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

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## Benefits of having a Costs Lawyer practising certificate

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

- The right, under the Legal Services Act 2007, to carry out 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 £281 for 2022? 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 2022? If not, what aspects would you suggest we change and why?

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

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**Question 4:**

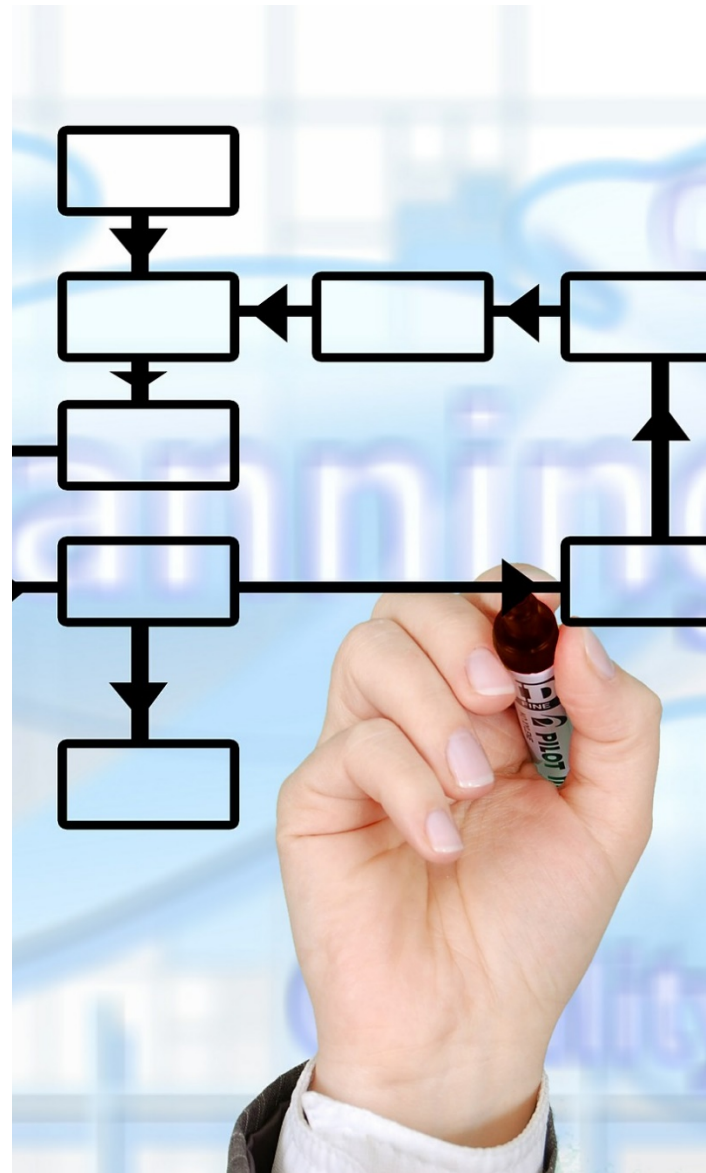
- (a) Are you adversely impacted by the level of the practising fee due to a protected characteristic under the Equality Act 2010 (such as age, disability or gender) or due to your individual practising arrangements? If so, please tell us why and how we could meet your needs.
- (b) Do you agree with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

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

Consultation responses should be sent to [enquiries@clsb.info](mailto:enquiries@clsb.info) by **5pm on 6 September 2021**.

# Business Plan 2020

## Summary of benefits



**DRAFT: July 2021**

## Costs Lawyer Standards Board

**CLSB**

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# Purpose

This document is intended to help Costs Lawyers better understand the programme of activity that was funded through their practising fees in 2020, as well as the benefits of that activity, in line with the Legal Services Board's [Guidance on its Practising Fee Rules](#).

In particular, this document:

- describes the annual priorities in the CLSB's 2020 Business Plan;
- explains whether, when and how they were achieved;
- summarises their intended benefits, by reference to our strategic goals and the regulatory objectives in the Legal Services Act 2007; and
- provides examples of indicators that we believe demonstrate they had the benefits we anticipated.

You might like to consider this document alongside the CLSB's [consultation](#) on the proposed Costs Lawyer practising fee for 2022, which closes on 6 September 2021.

## Regulatory objectives

Below are the regulatory objectives established by the Legal Services Act 2007, which the legal regulators (including the CLSB) must promote through their work. Each regulatory objective is assigned a number, 1 through 7. These numbers are used in the remainder of this document to demonstrate how our annual priorities for 2020 were intended to promote the regulatory objectives.

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

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# Strategic objectives

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

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

# Annual priorities

## Improving our regulatory arrangements

	Initiative	Status (by end of 2020)	Intended benefits	Example indicators of the benefits achieved
1.	<p>Complete the review of our Disciplinary Rules and Procedures following consultation in 2019 by:</p> <ul style="list-style-type: none"> <li>implementing revised rules;</li> <li>producing associated guidance for Conduct Committee members, including in relation to financial penalties;</li> <li>articulating parameters for ad hoc recruitment of Panel members;</li> <li>creating an operating framework for the new Case Manager role;</li> <li>reviewing our policy on the publication of outcomes.</li> </ul>	<p><b>Achieved (Q4)</b></p> <p><i>New Disciplinary Rules and Procedures, along with associated guidance and policies, were implemented in May. The operating framework for the Case Manager role has been created. We have also begun using a new precedent Letter of Appointment for Panel Members, incorporating updated provisions around termination and compliance with the Code of Conduct. This completes all actions for 2020.</i></p>	<p><b>Strategic objectives:</b> B, E</p> <p><b>Regulatory objectives:</b> 1, 2, 4, 6, 8</p>	<ul style="list-style-type: none"> <li>Increased ability to safeguard the public through new interim suspension powers.</li> <li>Greater scope for resolution of complaints at early stage – all complaints were resolved satisfactorily prior to the full investigation stage in 2020 following implementation of the new regime.</li> <li>Renewed interest in and commitment to Panel membership, with all existing Panel Members (and one new member) signing up to our guidance and policies.</li> </ul>
2.	<p>Complete the review of our approach to Continuing Professional Development (CPD) by:</p> <ul style="list-style-type: none"> <li>consulting on proposed changes;</li> <li>implementing new rules and guidance;</li> </ul>	<p><b>Achieved (Q3)</b></p> <p><i>Our rule change application was approved in June and supporting materials (including amended Accredited Costs Lawyer Rules) have been published. A comms plan for implementation (in January 2021) has been developed and</i></p>	<p><b>Strategic objectives:</b> A, B, E</p> <p><b>Regulatory objectives:</b> 4, 6, 8</p>	<ul style="list-style-type: none"> <li>We were able to accelerate changes to meet Costs Lawyers' need for flexibility and choice in online CPD during the coronavirus pandemic, demonstrating that</li> </ul>



	<ul style="list-style-type: none"> <li>developing reporting templates and case studies to assist practitioners.</li> </ul>	<i>an introductory video has been commissioned. There are no further actions for 2020.</i>		<p>the new CPD model reflects modern ways of working.</p> <ul style="list-style-type: none"> <li>Early feedback points to increased breadth and relevance of training activities being chosen by Costs Lawyers. A full evaluation will take place after two years.</li> </ul>
3.	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><b>Achieved (Q3)</b></p> <p><i>Our rule change application was approved in Q3 and new rules have now been implemented, along with updated guidance on insurance and a new policy statement on practising conditions.</i></p>	<p><b>Strategic objectives:</b> B, E</p> <p><b>Regulatory objectives:</b> 1, 4, 6, 8</p>	<ul style="list-style-type: none"> <li>All Costs Lawyers made fresh disclosures under the new rules, giving us complete historic data so we can better identify risks to the public.</li> <li>We have been able to give consistent, clear and fair answers to enquiries from prospective qualifiers about when disclosures might lead to the imposition of practising conditions.</li> </ul>
4.	<p>Deliver the phase 2 actions identified in the 2019 Handbook Audit, in particular conducting a routine substantive review of our guidance relating to:</p> <ul style="list-style-type: none"> <li>Damages-Based Agreements and Conditional Fee Agreements;</li> <li>Insurance;</li> <li>Anti-money laundering;</li> <li>Referral arrangements; and</li> <li>Retention of a client's file.</li> </ul>	<p><b>Achieved (Q4)</b></p> <p><i>Three of the five guidance notes were approved by the board in July and have been implemented. Advice was taken in relation to the referral arrangements and fee agreements guidance. Those guidance notes were approved by the board in October and have now been implemented, concluding phase 2 of the Handbook Audit.</i></p>	<p><b>Strategic objectives:</b> B, E</p> <p><b>Regulatory objectives:</b> 1, 4, 6, 8</p>	<ul style="list-style-type: none"> <li>Three quarters of our guidance has been either produced or updated in the last 18 months, meaning that Costs Lawyers have access to current, relevant materials and recent good practice examples from across the sector and beyond.</li> </ul>

5.	Revisit our diversity action plan to ensure it reflects prevailing best practice and addresses issues that impact upon the Costs Lawyer profession in particular.	<b>Achieved (Q1)</b> <i>The 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, summarising our initiatives. Further work on diversity and inclusion will be prioritised in 2021.</i>	<b>Strategic objectives:</b> A, B, E <b>Regulatory objectives:</b> 6	<ul style="list-style-type: none"> <li>Significant improvements in our data collection (both response rates and data quality) have allowed us to compare the profession to other groups and identify where change is most needed going forward.</li> </ul>
6.	Examine our evidence base in relation to new and emerging policy developments, our regulated community and the regulated market.	<b>Achieved (Q3)</b> <i>This priority was aimed at addressing concerns raised by the LSB in the context of its regulatory assessment. Having demonstrated to the LSB how we examined our evidence base to inform our regulatory arrangements throughout 2020, the LSB updated its assessment in Q3 to acknowledge the progress made and set new actions in relation to (i) delivering our Consumer Engagement Strategy (ii) improving diversity data and (iii) achieving our 2021 Business Plan priorities. We have the framework in place to meet those expectations in 2021.</i>	<b>Strategic objectives:</b> A, B, D <b>Regulatory objectives:</b> 1, 4, 5, 6, 8	<ul style="list-style-type: none"> <li>Improvements to the data we hold on the profession has enabled us to transform our approach to supervision in 2021.</li> <li>We have made use of existing market evidence held by the SRA, LSCP, LSB and others to deliver targeted regulation for Costs Lawyers without increasing our research budget.</li> <li>Our stakeholder networks have allowed us to gather evidence on specific issues – e.g. handling client money – comprehensively and efficiently when needed.</li> </ul>

## Protecting the interests of consumers and promoting professional standards

	Initiative	Progress status	Intended benefits	Example indicators of the benefits achieved
7.	<p>Build on research undertaken in 2019 to deliver:</p> <ul style="list-style-type: none"> <li>a final report on consumer use of Costs Lawyers' services;</li> <li>a revised consumer engagement strategy; and</li> <li>a framework for aligning risk assessment and regulatory approach to consumer need and expectations.</li> </ul>	<p><b>Achieved (Q1)</b></p> <p><i>A revised <a href="#">Consumer Engagement Strategy</a> was published in Q1 2020. The interim report was published as an annex to a Board Decision Note. Actions under the new strategy commenced in H2 2020 and are due to be completed during H1 2021.</i></p>	<p><b>Strategic objectives:</b> B, C</p> <p><b>Regulatory objectives:</b> 1, 3, 4</p>	<ul style="list-style-type: none"> <li>Actions from year 1 of the consumer engagement strategy improved our consumer evidence base, enabling us to make a <a href="#">commitment to focusing on consumer outcomes</a> in all our work from 2021 onward.</li> </ul>
8.	Review our guidance on vulnerable consumers.	<p><b>Deprioritised / superseded</b></p> <p><i>This has been identified as an action for year 2 of the Consumer Engagement Strategy, so it will now be delivered in the 2021/22 cycle. In 2020, we will begin delivering the actions identified in the first strategy cycle.</i></p>	<p><b>Strategic objectives:</b> B, C</p> <p><b>Regulatory objectives:</b> 3, 4</p>	N/A
9.	Work with ACL Training on delivery of the refreshed Costs Lawyer Qualification, building on preliminary analysis and development of materials in 2019.	<p><b>Achieved (Q4)</b></p> <p><i>The qualification reopened in January 2020. We have been working with ACL, ACLT and our education adviser to agree a new approach to audit of the course and a reporting framework. This has now been agreed and the audit process is in</i></p>	<p><b>Strategic objectives:</b> E</p> <p><b>Regulatory objectives:</b> 3, 6</p>	<ul style="list-style-type: none"> <li>Through this work, we have identified aspects of our framework for regulating the Costs Lawyer Qualification that are out of date and need improving, to ensure that our expectations of newly qualified Costs Lawyers meets</li> </ul>

		<i>train. We will continue to work with ACLT next year to respond to the new viability challenges that arose in relation to the 2021 intake.</i>		the needs of (all types of) clients. This has triggered a flagship competency project in 2021.
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.	<b>Deprioritised / delayed</b> <i>Initial data was gathered at an event prior to the coronavirus outbreak, enabling us to consider how to approach future activity. However further opportunities for this type of data capture have been severely limited by the impact of Covid-19 on large scale events. We will return to this workstream once large events are possible (and are being run by ACL) and will continue to consider other options / avenues.</i>	<b>Strategic objectives:</b> A, B, C <b>Regulatory objectives:</b> 3, 4, 5, 6	N/A
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.	<b>Achieved (Q2)</b> <i>Input was provided as the report was developed. The final report has now been <u>published</u>, with positive recommendations relating to costs work and the profession.</i>	<b>Strategic objectives:</b> A, C <b>Regulatory objectives:</b> 1, 3, 4, 5	<ul style="list-style-type: none"> <li>The review has captured evidence of risks to the public from underqualified advisors doing costs work. We are able to draw on this evidence base in future work, e.g. when considering revisions to the list of reserved legal activities.</li> </ul>
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.	<b>Achieved (Q2)</b> <i>The new MOU and OP were executed in Q2 and the CLSB submitted comprehensive compliance documentation to the LSB. We considered this priority to be achieved from the CLSB's perspective in Q2, and</i>	<b>Strategic objectives:</b> A, D <b>Regulatory objectives:</b> 1, 4, 6	<ul style="list-style-type: none"> <li>The arms-length relationship between ACL and CLSB is now clearly documented, with a process for escalating disputes, giving all stakeholders confidence in our independence.</li> </ul>

		<i>ACL's rule change application was subsequently approved by the LSB in Q3.</i>		<ul style="list-style-type: none"> <li>A routine review of the MOU and OP in 2021 found that the arrangements are working well in practice.</li> </ul>
13.	Explore with ACL how we can improve the content or format of the regulatory information that we publish for the benefit of the profession and other stakeholders.	<p><b>Achieved (Q4)</b></p> <p><i>A new <a href="#">data webpage</a> has been created to host all data in one place. Regulatory return data has been updated for 2019 and published. Diversity survey data has been published for the first time. Results of our coronavirus impact survey have been published in a new report format, using graphical illustrations and identifying key themes. We have struggled to obtain meaningful feedback from ACL on the presentation of the data, so have relied on the views on other stakeholders to inform our work.</i></p>	<p><b>Strategic objectives:</b> A, D</p> <p><b>Regulatory objectives:</b> 4, 7, 8</p>	<ul style="list-style-type: none"> <li>Stakeholders have been able to easily access and use our data, e.g. the LSB has incorporated our diversity and Covid-19 impact data into its sector dashboards.</li> <li>Disciplinary data is now more clearly displayed, with practising conditions noted on the register, to help consumers make informed choices about their adviser.</li> </ul>

## Modernising our organisation

	Initiative	Progress status	Intended benefits	Example indicators of the benefits achieved
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.	<b>Achieved (Q1)</b> <i>New website was launched in March with upgraded functionality, new design, improved user experience and refreshed content. Improvements will be made on an ongoing basis where needed.</i>	<b>Strategic objectives:</b> C, E <b>Regulatory objectives:</b> 3, 7, 8	<ul style="list-style-type: none"> <li>The website now meets good practice standards and rules, such as the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018, ensuring everyone can access our content.</li> <li>We are now able to publish information so that it can be accessed via different user pathways (for practitioners and members of the public), meaning we can tailor the user journey to meet the needs of different groups.</li> </ul>
15.	Review the effectiveness of our new operating structure to identify whether and where further improvements can be made.	<b>Achieved (Q1)</b> <i>This was brought forward to Q4 2019 with the departure of the former Head of Operations. We do not intend to formally review the structure again in 2020 but are keeping resourcing requirements under review.</i>	<b>Strategic objectives:</b> Facilitates all <b>Regulatory objectives:</b> Facilitates all	<ul style="list-style-type: none"> <li>Significant improvements to processes as well as increased efficiency and cost saving have been made possible through our restructure, as evidenced in our 2020 accounts and budgets for 2021 and 2022.</li> </ul>
16.	Update and retest our business continuity arrangements to reflect	<b>Achieved (Q2)</b> <i>Significant improvements have been made in our business continuity</i>	<b>Strategic objectives:</b> Facilitates all	<ul style="list-style-type: none"> <li>This work meant that we were able to deliver all regulatory services, as well as the</li> </ul>

	potential improvements identified in 2019 testing.	<i>arrangements, particularly around IT systems and in the context of Covid-19. We are working within the parameters of an updated Business Continuity and Disaster Recovery Plan, approved by the board in July.</i>	<b>Regulatory objectives:</b> Facilitates all	priorities in this Business Plan and other projects, with no disruption despite the significant challenges caused by Covid-19.
17.	Explore whether there is scope to share services with other approved regulators or similar organisations, to improve efficiencies and save costs.	<b>Achieved (Q3)</b> <i>Discussions have taken place with two ARs, resulting in follow-up conversations with a number of service providers, and we pursued several further leads during Q3. Discussions have not led to any viable opportunities so we have decided not to expend further resource on speculative approaches. We will continue to explore opportunities going forward, but on a reactive basis.</i>	<b>Strategic objectives:</b> A <b>Regulatory objectives:</b> Facilitates all	<ul style="list-style-type: none"> <li>This exploration has meant we are well positioned to take up opportunities for collaboration in 2021, in circumstances where larger regulators are starting to look at sharing services and expertise.</li> </ul>
18.	Assess the impact of moving our practising certificate renewal process to a digital platform to improve data security, minimise manual processes and save resource.	<b>Achieved (Q4)</b> <i>Assessment of the 2019 renewal process was carried out in Q1. The risk/cost/resource profile led us to conclude that a digital platform is essential. By Q3, electronic forms had been finalised and tested, the new database had been developed and deployed, and we had begun using our new mass mailing system. The amended Practising Rules, facilitating the changes, were also implemented in Q3. Digital renewals went live in November.</i>	<b>Strategic objectives:</b> E <b>Regulatory objectives:</b> 6, 8	<ul style="list-style-type: none"> <li>The extensive benefits achieved by moving our practising certificate renewal process to a digital platform were set out in a board paper in January 2021, available <a href="#">on our website</a>.</li> <li>Benefits were achieved across all key metrics, namely: cost, resource implications, user feedback, data security, and data quality.</li> </ul>



19.	Develop a policy for the publication of complaints against the CLSB, augmenting our existing Internal Complaints Handling Policy, covering the type of information that will be published, at what stage and where.	<b>Achieved (Q1)</b> <i>This has been developed and incorporated into our new website on a <a href="#">standalone page</a> for complaints about the CLSB.</i>	<b>Strategic objectives:</b> E <b>Regulatory objectives:</b> 1	<ul style="list-style-type: none"> <li>Stakeholders now have a clear understanding of how they can complain about us, how we will handle the complaint and what we will publish, building confidence in us as a fair and transparent regulator and mitigating any perception of corporate hypocrisy.</li> </ul>
20.	Assess the effectiveness of our Transparent Decisions Policy as implemented in 2019 and consider whether any additional transparency measures are necessary.	<b>Achieved (Q2)</b> <i>The board considered a report on ARs' approaches to publishing board papers in April and agreed to implement a new approach to publication, as detailed on the <a href="#">What we Publish</a> webpage. This will complement the continued operation of the Transparent Decisions Policy, and the effectiveness of the combined approach will be monitored going forward.</i>	<b>Strategic objectives:</b> B, D <b>Regulatory objectives:</b> 1, 6	<ul style="list-style-type: none"> <li>Anecdotal feedback suggests that key stakeholders (such as ACLT and the LSB) are making use of our published board documents to understand our decision-making.</li> </ul>





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# Initial Equality Impact Assessment (EIA)

This document supports, and should be read with, the CLSB's [consultation](#) on the practising fee for Costs Lawyers in 2022. The consultation closes on 6 September 2021.

The Legal Services Board's [Guidance](#) on its Practising Fee Rules states that a regulator must carry out an equality impact assessment (EIA) in relation to its proposed practising fee, and the EIA should be informed by consultation with the regulated community. Below is a preliminary EIA setting out how we anticipate the level of the proposed practising fee for 2022 (£281) will affect practitioners with protected characteristics. We have used the summary format recommended by the Legal Services Board.

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

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

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

Religion or belief	No	44% of Costs Lawyers report having no religion or being atheist and a further 42% identify as Christian. The proportion of practitioners from other faith groups is small – around 1% or less per group – although a relatively high number of practitioners preferred not to report their religion so these groups might be larger than recorded. While we are working to reduce the number of practitioners who prefer not to report their religion, our data does not suggest any differential impact of the practising fee on smaller faith groups. Questions in previous practising fee consultations also revealed no evidence of this.	Not applicable
Sexual orientation	No	6% of Costs Lawyers identify as lesbian, gay or bisexual compared to 2.7% of the population. While we have strong LGB representation within the profession, there is no evidence that a practising fee which is the same for all practitioners has any differential impact on this group. Questions in previous practising fee consultations also revealed no evidence of this.	Not applicable
Sex (gender)	Yes	There is potential for women to be disproportionately impacted by incurring practising fees whilst on parental leave. Our data shows that, to date, all Costs Lawyers who have been reinstated to the register part way through a practising year due to taking parental leave have been women.	This is addressed through our remissions policy – see above under “pregnancy and maternity”.
Age	No	Due to the profile of qualifying Costs Lawyers, only a small proportion (4%) are under the age of 30, and 9% are above 60. The vast majority of Costs Lawyers fall in the middle age ranges. There is no evidence to suggest that a practising fee which is the same for all practitioners has any differential impact	Not applicable

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		on the younger or older groups. Questions in previous practising fee consultations also revealed no evidence of this.	
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## COSTS LAWYER STANDARDS BOARD LTD

### RISK REGISTERS

As at 21 April 2021

#### 1. RISK SCORING

##### (i) Nature of risk

Our operational risks are categorised as:

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

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

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

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

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

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

(iii) Adequacy of controls

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

## 2. OPERATIONAL RISK REGISTER

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



<b>Logged by board:</b> <b>13/1/2015</b>	<b>Reference:</b> <b>OP2</b>	<b>Risk score: I(5) x P(2) = 10</b>
<b>Risk to operation</b>	<b>The CLSB's organisational structure is not sufficient to ensure business continuity</b>	
<b>Nature</b>	Operational continuity, capacity, reputational	
<b>Evidence of risk</b>	Being a small organisation, institutional knowledge and operational capacity of the CLSB rests with a small number of individuals. Duplication of staffing costs in the event of a long term absence could have a disproportionate impact given the number of staff.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Increase in policy support resource from February 2021.</li> <li>• Updated Business Continuity and Disaster Recovery Plan adopted in July 2020 following restructure and reflecting changes for coronavirus.</li> <li>• Reassessment of continuity risks in light of coronavirus (including retaining core functions in the absence of a key staff member).</li> <li>• Move to a paperless organisation, including via electronic processes and cloud storage.</li> <li>• Minimisation and logging of paper archives, with joint access.</li> <li>• Joint signatories to bank account.</li> <li>• Retain one year's operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	3	
<b>Priority area of risk</b>	High	
<b>Actions/status</b>	<ul style="list-style-type: none"> <li>• Rehousing or safe destruction of paper archives over coming years.</li> <li>• Knowledge transfer of all systems, processes, data and knowhow between staff and into internal policies and manuals.</li> </ul>	

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

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

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

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

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

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

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

### 3. REGULATORY RISK REGISTER

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

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

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

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

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

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



## Costs Lawyer Standards Board



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## Who is this guidance for?

1. This guidance is for Costs Lawyers who:
  - are sole practitioners; or
  - are owners or officers (for example, shareholders, directors or partners) of a business that employs Costs Lawyers or otherwise provides the services of Costs Lawyers to clients, and who are closing down the relevant practice or business.
2. This guidance does not apply if the practice is authorised by another regulator under the Legal Services Act 2007 – such as the Solicitors Regulation Authority – as that regulator will have its own rules governing closure of the practice. However, a Costs Lawyer who is involved in the disorderly closure of such a business may still face regulatory action from the CLSB, particularly if clients' interests are harmed.

## Core considerations

3. The following Principles in the CLSB Code of Conduct should be at the forefront of your mind if you are involved in closing a practice:
  - Principle 1: Act with integrity and professionalism
  - Principle 2: Comply with your duty to the court in the administration of justice
  - Principle 3: Act in the best interests of your client
  - Principle 5: Deal with the regulators and Legal Ombudsman in an open and co-operative way
  - Principle 7: Keep your work on behalf of your clients confidential
4. Protecting your clients' best interests should be paramount. This means:
  - an orderly closure, giving as much notice to clients and others as possible if you are not going to complete their work;
  - ensuring that any client money held by the business is properly safeguarded;
  - ensuring that client data and files are stored or transferred securely; and
  - maintaining insurance for an appropriate run-off period.Each of these considerations is covered in more detail below.

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5. Failure to close your practice in an orderly fashion can have the following types of consequences:
- clients are prejudiced, as they are left without representation, and court proceedings are disrupted or compromised;
  - confidential client files and information, including personal data, are not properly safeguarded;
  - client money is put at risk; and
  - you face regulatory action from the CLSB as well as complaints or civil action from your clients.

## Who to inform of the closure

6. Clients for whom you are currently acting should be told of the closure as soon as possible so that they can make arrangements to instruct someone else if you are not going to complete their matter.
7. The courts will need to be informed if you are no longer acting for clients. You will need to make arrangements to come off the court record where relevant.
8. Past clients for whom you hold files or other documents should also be informed if your arrangements for archiving or processing personal data are going to change.
9. Your professional indemnity insurers should be informed.
10. You should let the CLSB know of your change of practice so that the register can be updated and to ensure we have your current contact details for important communications.
11. You should inform others who deal with your business, regulate it or provide services to it – such as your bank, accountants, HMRC, any Third Party Managed Account providers, the Information Commissioner’s Office, Companies House and so on.

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## Client files and information

12. You must ensure that client files are kept confidential and secure, and that client assets and information are safeguarded. Continuing to store client files in hard copy after closure can be extremely expensive and you have a number of options open to you.
13. The files can be given back to the former client. If the client is instructing a new firm, the file can be passed to them.
14. Scanning files into electronic format will allow for cheaper storage, but adequate information security measures will need to be put in place.
15. Old files can be destroyed. However, you should bear in mind that many of the papers on the file will belong to the client. Any original documents, such as deeds that the client may need, should be returned to them. Your client care letter may have told the client that files will be destroyed after a certain period (commonly six years after the matter closing). If not, you will need to evaluate the risk of destroying files without the client's consent, bearing in mind the possibility that you will need to refer to the file in the event of a claim against you or a complaint to the Legal Ombudsman. Any destruction of personal data will also need to comply with data protection laws.
16. For more information, see our [Guidance Note](#) on retention of client data and files.

## Client money

17. Whilst Costs Lawyers are not allowed to accept client money (under Principle 3.6 of the Code of Conduct), it might be that your business is holding client money in its own name. See our [Guidance Note](#) on handling client money for more information. Client money must be safeguarded in the event of closure and returned to clients or otherwise dealt with in accordance with your agreement with the client.

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## Professional indemnity insurance

18. Under [Practising Rule 9.1](#), Costs Lawyers must ensure that they:
  - (a) practise 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 (including loss of documents insurance) is in place in excess of the minimum at a level commensurate with that risk.
19. You should bear in mind that claims may be received after you have closed and that most professional indemnity insurance is provided on a “claims made” basis. This means that your current insurance covers you on the basis that the claim is made during the insurance period not on the basis that the cause of action arose during the insurance period.
20. For this reason, assessing financial risk associated with your work and purchasing appropriate professional indemnity insurance in excess of the minimum will require you to purchase run-off cover for work that you carried out before closure where a claim has not yet been made. Given the six-year limitation period for breach of contract and negligence, this would be the most prudent period for which to purchase run-off cover.

## Financial difficulties

21. If your practice or business is in financial difficulties, you should take steps as quickly as possible to protect clients’ interests as set out above.
22. Under [Practising Rule 4.2](#), you are obliged to inform the CLSB if you have (amongst other things):
  - been subject to an adjudication of bankruptcy;
  - been granted a debt relief order;
  - entered into an individual voluntary arrangement or a partnership voluntary arrangement; or

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- been a director of any company or partner in an LLP or partnership that has been the subject of a winding up order, an administrative order or an administrative receivership, or has otherwise been wound up or put into administration in circumstances of insolvency.
23. If any of these events occur, the CLSB may revoke your practising certificate under [Practising Rule 8.1](#).
  24. It is therefore vital that you seek to address the situation as soon as possible if you are in financial difficulties. You may need expert advice from an insolvency practitioner.
  25. You can contact the [Association of Costs Lawyers](#) for further information and support. For help in relation to the personal impact of financial difficulties on your mental health and wellbeing, as a Costs Lawyer you have access to the services provided by [LawCare](#).

**END**



## For unregulated employers of Costs Lawyers



## Costs Lawyer Standards Board

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# Who is this guidance for?

1. You should read this guidance if you have responsibility for a business that:
  - employs Costs Lawyers or has officers (such as partners or directors) who are Costs Lawyers; and
  - is not authorised by a regulator (such as the Solicitors Regulation Authority) under the Legal Services Act 2007 (LSA).

We refer to such businesses as “unregulated employers” because they are not regulated specifically under the LSA, although they are likely to be regulated in other ways, not least under general consumer protection legislation.

2. Many Costs Lawyers have established partnerships, limited liability partnerships, limited companies or other vehicles through which they work. Because the CLSB only regulates individuals and not organisations, these too are “unregulated employers”.
3. This guidance is advisory; the CLSB has no direct regulatory reach over unregulated employers. However, the more control a Costs Lawyer has over their unregulated employer (for example, if they are a director or partner) the more we will hold that Costs Lawyer responsible for ensuring that the unregulated employer puts in place procedures that enable Costs Lawyers who work for the business to comply with the Code of Conduct and their other regulatory obligations.
4. Of course, a Costs Lawyer will always remain liable for their personal conduct within an unregulated employer. Where the practices or arrangements of an unregulated employer conflict with the regulatory obligations of a Costs Lawyer, then if the Costs Lawyer is unable to resolve that conflict it is likely that they will need to leave their employment.
5. It is therefore very important that you understand the professional obligations to which a Costs Lawyer is subject. Employers should not create an environment where a Costs Lawyer cannot comply with their obligations and should not



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penalise a Costs Lawyer for complying with them. Contracts of employment should reflect the Costs Lawyers' professional obligations.

6. There is more detailed guidance on what many of these issues mean for Costs Lawyers in the rules and guidance set out in the [Costs Lawyer Handbook](#).

## Reserved legal activities

7. Under the LSA, certain legal activities are reserved to authorised persons, meaning that only qualified, regulated practitioners – such as Costs Lawyers – can undertake those activities.
8. Costs Lawyers are authorised to carry out the following reserved legal activities in unauthorised businesses:
- conducting litigation in relation to costs;
  - appearing before and addressing a court (exercising a right of audience) in proceedings or on issues that relate to costs;
  - administering oaths.
- See our [Guidance Note](#) on reserved legal activity rights for more information.
9. The above reserved legal activities can be undertaken by a Costs Lawyer for the benefit of their unregulated employer. For example, a Costs Lawyer might work in a bank and conduct costs litigation on behalf of that bank. This is generally referred to as being an “in-house” Costs Lawyer, and the unregulated employer will be regarded as the Costs Lawyer's client for regulatory purposes. Alternatively, a Costs Lawyer can carry out the above reserved legal activities directly to or for the unregulated employer's external clients.
10. Costs Lawyers cannot delegate their right to carry on reserved legal activities to non-authorised members of staff, such as costs draftsmen. It is an offence under the LSA for anyone who is not authorised or not an exempt person (under Schedule 3 of the LSA) to carry on a reserved legal activity.

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11. However, Costs Lawyers may, for example, bring a non-authorised person with them to court to take notes, and courts may also allow non-authorised persons to address them in certain hearings.
  12. Costs Lawyers may also delegate ancillary tasks (such as preparing a draft of a document) to non-authorised persons, providing it is the Costs Lawyer who is conducting any litigation and, for example, approving and signing any documentation filed with the court.
  13. A Costs Lawyer who chooses to delegate a task to a colleague remains responsible for regulatory compliance and for client outcomes. The Costs Lawyer must therefore retain proper oversight of the matter and supervise their colleague appropriately. This includes ensuring that:
    - delegated tasks are carried out in accordance with the CLSB's regulatory arrangements;
    - the client understands in advance that the task will be delegated to a person who is not an authorised Costs Lawyer;
    - the delegation complies with the Costs Lawyer Code of Conduct, in particular that delegating the task is in the client's best interests; and
    - the insurance policy upon which the Costs Lawyer relies extends to cover the outcome of any delegated tasks.

## Some core obligations

14. Costs Lawyers are obliged to follow the seven principles of professional conduct set out in the [Code of Conduct](#). They must:

Principle 1: Act with integrity and professionalism.

Principle 2: Comply with their duty to the court in the administration of justice.

Principle 3: Act in the best interests of their client.

Principle 4: Provide a good quality of work and service to each client.

Principle 5: Deal with the regulators and the Legal Ombudsman (LeO) in an open and co-operative way.

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Principle 6: Treat everyone with dignity and respect.

Principle 7: Keep their work on behalf of their clients confidential.

15. Under Principle 2, a Costs Lawyer's duty to the court means that (amongst other things) Costs Lawyers cannot mislead the court, or knowingly allow their clients or their employer to do so, even inadvertently.
16. Under Principle 5, Costs Lawyers have duties of disclosure to the CLSB. As an employer, you should be aware that Costs Lawyers might need to disclose matters relating to your work or business to us if they relate to compliance with our regulatory rules. Your contracts with Costs Lawyers should not prohibit disclosure by them of information in accordance with their professional obligations. Costs Lawyers also have duties of disclosure to LeO; these are dealt with below (see "Complaints about a Costs Lawyer").
17. Costs Lawyers are also required, under our Practising Rules and Continuing Professional Development (CPD) Rules in the [Costs Lawyer Handbook](#), to maintain their knowledge and undertake ongoing training to ensure they remain competent to fulfil their role. As an employer, you should provide Costs Lawyers with the time and opportunity to maintain and build on their professional skills. While you are not obliged to pay for a Costs Lawyer's CPD training, you should keep in mind the benefits to your organisation and your clients of Costs Lawyers having access to high quality, relevant learning activities. You can read more about Costs Lawyers' CPD obligations in our [Guidance Note](#) on CPD.

## Supervision

18. You should have an effective system of supervision in place within your organisation to help ensure that Costs Lawyers meet their own regulatory obligations when they are carrying out work, and that Costs Lawyers themselves supervise staff appropriately, as explained at paragraph 13 above.

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19. An effective system of supervision is even more important if a large proportion of your staff are working at home for some or all of the time. This will include maintaining regular contact and checking work online where possible.

## Requirements when the Costs Lawyer is providing services to external clients

20. When the Costs Lawyer is not purely “in-house”, and is providing services to or for external clients, then there are additional obligations and considerations to take into account.

### Professional indemnity insurance

21. Costs Lawyers are required to have professional indemnity insurance (PII) to cover claims against them for negligence.
22. Practising Rule 9 provides that they 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 their work and ensure they have PII in excess of the minimum at a level commensurate with that risk.
23. The insurance policy will normally be in the name of the organisation. As an employer you should make sure that the policy meets the above conditions and covers all work undertaken by the Costs Lawyer, including any delegated work for which the Costs Lawyer is responsible. This will include a regular review of the financial risks to be insured – something that a prudent business will do in any event.

### Client money

24. Costs Lawyers are not allowed to hold client money, pursuant to Principle 3.6 in the Code of Conduct. So, if as an unregulated employer you do hold money that

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belongs to your clients, the relevant account should not be in a Costs Lawyer's name.

25. By client money we mean, for example, money:
  - from an opponent in contentious proceedings, to satisfy a costs award made in the client's favour;
  - from your client to satisfy a costs award made against that client; or
  - money paid in advance on account of charges for your services or disbursements such as court fees.
26. Costs Lawyers can however receive payment in their own name from clients in settlement of an invoice for services or for disbursements already incurred. They can also make use of a Third Party Managed Account (TPMA), whereby a reputable financial institution handles the client's money in a pre-agreed way.
27. Where an unregulated employer has its own legal identity (usually a limited company or LLP), then if any client money is held by that body it will not be held by the employed Costs Lawyer. In such cases, the prohibition in Principle 3.6 is not directly relevant. However, Costs Lawyers who work under this kind of arrangement still need to uphold their professional obligations, which will include safeguarding clients' money where relevant. See our [Guidance Note](#) on handling client money for further information.

## Complaints about a Costs Lawyer

28. Under the Code of Conduct, a Costs Lawyer must provide for an effective complaints procedure which is simple and transparent, ensures that a complaint can be made by any reasonable means, and takes into account the individual needs of clients (in particular the needs of vulnerable clients).
29. They must ensure that complaints are dealt with promptly (within a maximum eight-week period from date of receipt) openly and fairly, and that appropriate provisions for redress exist.

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30. If a complaint is not resolved to the satisfaction of the complainant, or is not resolved within eight weeks, individual clients have the right to take a complaint about the standard of service provided by the Costs Lawyer to LeO. Complaints about a Costs Lawyer's professional conduct can also be considered by the CLSB. The Costs Lawyer must tell clients about the right to escalate a complaint to LeO or the CLSB both at the time of engagement and when any complaint is made, and provide contact details for those organisations.
  31. If LeO upholds a complaint it has a range of options available to it, including ordering a Costs Lawyer to reduce a bill or to pay compensation. As well as looking at the substance of the complaint, LeO will look at the way in which the complaint was handled and this will be a factor in its determination, including whether to charge the Costs Lawyer the case fee for the matter.
  32. If you do not already have one, your business will need to establish a complaints procedure that complies with these provisions as far as the work of the Costs Lawyer and any work that they supervise is concerned.
  33. You should ensure that your employment contract with the Costs Lawyer permits them to disclose relevant information to LeO and the CLSB.
  34. Issues may arise where a client complains about a matter where the Costs Lawyer did not perform all of the work and some of it was carried out by a non-authorised person such as a costs draftsman. LeO only has authority to deal with complaints in relation to authorised persons under the LSA. LeO may therefore decide to deal with only part of the complaint, or may decide to treat the whole case as the Costs Lawyer's responsibility where the Costs Lawyer was in charge of the matter or supervising the unqualified staff.

## Information to clients

35. The Code of Conduct requires Costs Lawyers to ensure that clients are able to make informed decisions about the work being undertaken on their behalf and the cost of that work.

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36. This means that a Costs Lawyer must give an estimate of fees and details of their charging structure to clients in advance of instruction. Where that estimate subsequently becomes inaccurate or that charging structure changes, the Costs Lawyer must provide an updated estimate or notice of revised charges.
  37. The Costs Lawyer must also let the client know what steps will be taken in the matter and the likely timetable. For more detailed information, see our [Guidance Notes](#) on price transparency and client care letters.
  38. Any publicity of your business must not be misleading or inaccurate insofar as it concerns the Costs Lawyer or their work.
  39. It is important that clients are clear as to which work is going to be carried out by a Costs Lawyer and which work will be undertaken by staff who are not authorised under the LSA, and what the consequences are for the client. In particular:
    - Whilst the client will have a right to complain about the Costs Lawyer's service to LeO or about their conduct to the CLSB, they will have no such rights in relation to the unauthorised person.
    - Whilst professional indemnity insurance will be in place to cover any claim relating to the Costs Lawyer's work, that insurance might not extend to the work of unauthorised persons who are not supervised by the Costs Lawyer.

## Conflicts of interest

40. A Costs Lawyer must decline to act if it would not be in the client's best interests to do so, including where that client's interests conflict with the Costs Lawyer's interests or with the interests of another client. See Principle 3.1 of the Code of Conduct and our [Guidance Note](#) on conflicts of interest.
41. Examples of such situations include:
  - Providing costs services to opposing parties in a costs dispute or other litigation.

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- Providing costs services to both an instructing solicitor and a third-party funder in negotiating funding terms for the same proceedings.
42. A Costs Lawyer must also decline to act for a client if the client has a conflict of interest with you, as the Costs Lawyer's employer, or with a fellow employee. This may mean, for example, that if the Costs Lawyer considers that a fellow employee at your firm has been negligent in relation to the client's case then the Costs Lawyer may be obliged to inform the client and to stop acting for them.

## Confidentiality

43. Under Principle 7.1 of the Code of Conduct, a Costs Lawyer must keep the affairs of clients and former clients confidential unless disclosure is required or allowed by law or if the client consents in writing to disclosure, having had the consequences of such consent explained to them.
44. You will want to ensure as an employer that you have appropriate arrangements in place to help the Costs Lawyer meet their obligations in relation to confidentiality. This will also assist you in complying with the requirements of data protection legislation. For example:
- Information should not be passed to third parties (for example, for marketing purposes) without the client's consent.
  - Personal data should not be used for a purpose other than for which it was supplied (for example, for cross-selling of services) without consent.
  - Client records should be held securely.
45. Confidential information regarding one client should not be shared with another.

**END**



# Next steps in our equality, diversity and inclusion work programme

## Board update

5 July 2021

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We have recently published improved data on diversity in the Costs Lawyer profession, comparing the results of our survey to the SRA's data and UK population data [here](#).

The LSB has also recently published a dashboard comparing the diversity survey results from the legal regulators [here](#).

These results show that the Costs Lawyer profession:

- scores relatively well on metrics relating to gender, disability, and sexual orientation compared to other sectors of the legal profession, but (apart from the proportion of women practitioners) falls below a benchmark using UK population data;
- scores about average or above average on social mobility compared to most other sectors of the legal profession;
- scores particularly poorly on ethnicity compared to other sectors of the legal profession and against benchmarks using UK population data.

In May 2020, alongside the [publication of a literature review](#) of measures to promote diversity and inclusion, the LSB [said](#):

- legal regulators should use the data they collect about the professionals they regulate to inform and evaluate their diversity and inclusion initiatives;
- similar challenges face regulators in other sectors, indicating that the legal services sector is no different to other professional sectors in the slow pace of change in improving diversity;
- to improve the limited evaluation of initiatives the report recommends the use of the theory of change model, or similar, for a more systematic approach.

Evaluation of diversity and inclusion initiatives is extremely difficult. The challenges include accurately identifying cause to observed effect, and the very long timescales over which evaluation must take place.

The literature review published by the LSB contains a table of diversity and inclusion interventions in the legal sector and comments on the available evidence of effectiveness against each type of intervention – this is included at Annex A for convenience.

Most of these interventions are aimed at firms and so are not relevant to the CLSB's regulation of individual lawyers. Nevertheless, we have considered each intervention and whether it is likely the CLSB could develop an effective intervention for Costs Lawyers. A summary of this analysis is set out at table one.

Table one: List of possible regulatory interventions on EDI and relevance to CLSB

Intervention	Is this applicable, given the regulation of individual lawyers and not firms?	Evidence of effectiveness?	Comments
1. Quotas	X	Mixed	
2. Targets	X	X	
3. Data monitoring and transparency	✓	Mixed	Analysis of pay gaps in the profession (in itself and as a proxy for progression) combined with items 14 and 15 may lead to new avenues worthy of exploration
4. Qualification routes and associated funding models	✓	✓	Key area for CLSB – given oversight role of qualification provider(s)
5. Written statement on equality and diversity policy and a written plan	X	X	
6. Named equality and diversity officer and/or committee	X	✓	

7. Diversity training	✓	X	Diversity training could be delivered at a practitioner level, e.g. as part of CPD requirements, although there is little evidence of effectiveness
8. Round tables and task forces (eg race equality, disability)	✓	X	Round tables and task forces could be implemented at a profession level, although there is little evidence of effectiveness
9. Flexible and part-time work	X	Mixed (in law firms)	
10. Early outreach and wider approaches to attraction	✓	X	Could be implemented at a profession level, in combination with item 4, although there is little evidence of effectiveness
11. Collaborative advocacy groups	✓	✓	Could be implemented at a profession level, although it is not clear how effective this would be
12. CV Blind Recruitment	X	✓	
13. Contextual Recruitment	X	Mixed	
14. Work allocation systems	✓	Mixed	It may be worth looking at how sole practitioners obtain work – and related to this area mentoring, coaching and sponsorship

15. Mentoring, Coaching and Sponsorship	✓	Mixed	programmes implemented across the profession could be considered. There is also scope to collaborate with the BSB and others on work allocation
16. High Potential Programmes	X	✓	
17. Employee Resource and Affinity Groups	X	X	

This analysis leads us to focus our next steps in the following three areas:

**1) Collecting data on the interaction between characteristics, opportunities, progression and pay or earnings**

We have designed new survey questions aimed at capturing this information for our 2021/22 survey.

**2) Ensuring, via our audit of ACLT, that the route into the profession is used effectively to promote EDI objectives**

We have intervened to recommend that ACLT:

- put in place better data collection, and align its questions to ours so a more complete picture of students coming into the profession can be compared to the profile of the profession;
- capture better data on academic achievements and social mobility, protected groups and successful progression through the course;
- implement a comprehensive policy covering its approach to EDI;
- consider how best to encourage applications from a wide pool of potential candidates, especially where representation is disproportionately low, and take steps to improve diversity - where appropriate - tracking progress through future data collection exercises;
- ensure that ACLT meets the particular needs of individuals from protected groups where these are different from the needs of others and works to eliminate any barriers to success;
- ensure that teaching and assessment provide an equal opportunity for all students to achieve and demonstrate their full academic potential.

**3) Engagement with our regulated community**

In particular to explore whether there may be a useful role for the CLSB to play in facilitating or supporting profession wide initiatives in the areas of collaborative advocacy groups, and mentoring, coaching and sponsorship programmes.

We plan to begin this targeted engagement in the Autumn of 2021 with a discussion event, and would welcome both the Board's attendance and input into the design of the session.

## Annex

Extract from: Legal regulation to promote diversity and inclusion: literature review, Bridge Group, May 2021

### Quotas

Quotas have been used in a range of jurisdictions and sectors worldwide, perhaps most famously to improve female board member representation. Quotas have been successful in many areas, and this is most likely where they are associated with clear negative consequences for non-compliance, such as fines. Downsides are that they are perceived as unfair by some groups which can lead to a backlash and it is not clear whether changes can be sustained over the longer term.<sup>xxiii</sup> In countries such as Norway, quotas have apparently led to an issue of 'golden skirts' where a small number of women are present on numerous boards. There is some evidence that quotas are likely to be more successful overall where societal is already more equal. This has important implications for the UK which is one of the most unequal societies of all industrialised Western economies.

The FCA have considered whether to make diversity requirements a part of the premium listing rules (similar to the approach taken by NASDAQ in the US).

### Targets

Quotas have not been adopted in the UK (where positive discrimination is not legal though its close relation positive action is). In the UK to date, the preferred approach has been to use targets, once again, especially to increase the percentage of women in senior positions, including corporate boards. There is some mixed evidence that this approach has been successful. For example, the Davis Review and now the Hampton-Alexander report constructed targets for female representation on boards and this does appear to have had some effect. It was expected that the 33% target for women on boards in the FTSE100 would be met in 2020. This is positive and might be attributed to both reputational pressures caused by this high-profile initiative and the threat of more draconian measures including quotas if organisations do not comply. It is unclear whether these improvements can be sustained however, if pressures are relaxed. Targets adopted by organisations have had less success overall suggesting that without this external oversight they may have less impact. Over the past ten years many law firms as well as peers in sectors such as investment banking have implemented targets though a key feature is that these have been repeatedly missed.

Requirements or considerations can also feature as an integral part of procurement and commissioning in some supply chains, with the practice most prominent in the public sector. This can include minimum requirements in relation to diversity (e.g. % of females in senior positions) to diversity interventions featuring as part of the wider scoring methodology for procuring services. There is, however, minimal evidence for a) the extent to which this practice is apparent, b) the extent to which any requirements and considerations are actually implemented in the procurement process, c) correspondingly, whether this really has any

positive overall effect. Overall, while client demand is often framed as a key part of the business case, it is not often clear whether clients do in fact hold organisations to account.

### **Data Monitoring and Transparency**

Data monitoring and transparency has also been widely used, including by the LSB itself. As noted in this report, the effect has been limited, in part as a result of limited compliance, and in part because data monitoring and reporting has not been associated with accountability for change. This can be attributed to limited knowledge and understanding of how to drive change, but organisations have not been required to be transparent about how they have responded to inequalities, or to provide granular information, such as who applies to the firm and who gets in. This sort of transparency is though recommended because it helps to illuminate mechanisms of exclusion and how they relate to unequal power. A key driver for many organisations including in the legal sector is legitimacy and this is partly secured by suggesting that hiring and promotion take place on the basis of merit, which in turn helps to justify claims to expertise and high rewards. Where data demonstrates this is not the case, this undermines the legitimacy of organisations, and may represent one motivation to act.

Of the legal regulators, the BSB is perhaps most advanced in this area, since it expects Chambers to take action with respect to findings from data monitoring, to monitor “the number and percentages of its workforce from different groups” and where disparities are seen in workforce data, to take “appropriate remedial action.” However, there is relatively little evidence demonstrating how this has been operationalised by Chambers and acted on and especially, whether or how it has led to change.

Another example of data monitoring and transparency outside the legal sector is the use of gender pay gap reporting in the UK. The effect again is ambiguous. While some reports suggest that this has caused organisations to act, others suggest that in many companies the gap has widened following the introduction of reporting.<sup>7</sup> Clearly, the efficacy of this approach can only be determined over a longer timescale than this, but it is by no means guaranteed. However, there is evidence that transparency in pay implemented at the organisational level can be effective. For example, a US study published in 2015 looked at individual compensation before and after management implemented organizational procedures aimed at increasing pay accountability and pay transparency in the company’s performance- reward system. This included a performance reward task force responsible for monitoring and analysing pay decisions and ensuring that only performance- related factors were used to inform the distribution of rewards. As a result, gender-, minority-, and nationality-based gaps in the distribution of performance-based bonuses were significantly reduced.

### **Qualification routes and associated funding models**

Qualification and entry routes are especially important in the law in determining who gets in, and how this relates to SEB. The legal sector has recently introduced the new Solicitors Qualification Exam (SQE) which purports to reduce costs and qualification barriers. Research by the Bridge Group suggests that the SQE could help to address diversity challenges in the profession, including by providing more dependable data, and to help better understand diversity issues and inform potential solutions, and help both employers and aspiring

solicitors make choices. The SQE could increase the range and choice of legal training, while also driving down the costs through competitive pressures. However, there are some risks that the SQE could exacerbate a two— tier profession where certain qualification routes are considered more prestigious than others, and that this is mapped on to SEB.

Notably, however, the law is one of only a few professions where to qualify people must borrow large amounts of money at significant personal risk, and many are shut out by the high cost of training. While the SRA has not advocated for public funding for the SQE, it has lobbied in relation to the reduction in the Disabled Students Allowance and noted that it will affect access. Further diversification at entry may rely on different and more equitable funding models as well as attention to legal apprentices though again, it is important that alternative entry routes do not exacerbate issues of social stratification within the profession.

### **Written statement on equality and diversity policy and a written plan**

Amongst legal regulators, the BSB is the only one that expects Chambers to provide a written statement on equality and diversity policy or a written plan. Again, there is limited information on the efficacy of this approach in driving change, perhaps because once again, it is not associated with accountability. This is perhaps one area where the LSB could act, to expect regulated entities across the sector to devise more coherent and actionable plans and make it a requirement that they report on progress on an annual basis. This could be facilitated using the Theory of Change approach outlined above.

### **Named equality and diversity officer and/or committee.**

Again, having a named equality and diversity officer is a policy required of Chambers by the BSB, and again, there is no specific evidence on its impact in this context. A wider evidence base does suggest though that organisations which have a named diversity officer, along with a dedicated committee, may also on average demonstrate better outcomes for otherwise under-represented groups. A seminal study here was conducted by Dobbin, Kelly and Kalev in the US, based on statistical analysis of over 800 organisations.

### **Diversity Training**

Diversity and especially unconscious bias training is very widely used by large corporates including entities within the legal sector. Evidence suggests that this is one of the least effective practices in driving change. One issue here is of course that it is very difficult to measure the impact of diversity training, including where it relates to unconscious bias, as there are many confounding variables that get in the way. However, evidence that does exist suggests that at best any positive effect is short-lived and at worst it may exacerbate the issues as trainees are more likely to enact their biases, rather than less. Overall, UB training is a highly individualised approach which is problematic not only because it is very difficult to debias individuals but also because discrimination also arises from systems and structures. The study mentioned above (Dobbin et al) found that diversity training was one of the practices least associated with improved outcomes for under-represented groups.

### **Round Tables and Task Forces (eg Race Equality, Disability)**



As an example, the BSB have used roundtables and have set up various task forces in order to help educate regulated entities, and use their convening power to help share information, knowledge and support. There is again little evidence of their efficacy and for the BSB it is perhaps too early to say. This is also a strategy increasingly used by a wider range of regulators outside the legal sector but again, there is little clear evidence of the effect on interventions by regulated entities, or outcomes, as yet. There is a willingness to, and interest in, engaging more with activities of this type across the regulator community, but with some reticence regarding the seniority of those who participate, and by extension the likelihood of direct impact within regulated bodies.

### **Flexible and Part-Time Work**

Flexible and part-time work has been one of the primary interventions implemented by organisations to enable gender equality, and it is widely used in the legal sector. Alternative working patterns (AWP) aim generally to recognise the impact of maternity and women's historical greater responsibility for care, and respond, though increasingly this approach is aimed at all parents and those who need it. AWP are positioned as a structural intervention on this table, though are notionally focused on changing cultures too, especially the culture of long hours which permeates many institutions, including law firms. Providing AWP can be relatively resource intensive, though the impact has been marked as good here. This does though come with caveats. Depending on the organisation and job role, alternative working patterns have helped women, especially, remain in the workforce.

However, AWP have had a less obvious impact on enabling equality of outcome, because many organisations – especially leading firms in the legal sector - remain defined by extreme competition and very long hours. This means that those working AWP tend to be characterised as a deviating from the full- time, always available, ideal 'norm' and the adoption of these patterns is often seen as extremely career limiting. This is an example of where diversification conflicts with commercial concerns. A more productive approach would be to fundamentally change structures and working patterns for all, and perhaps change leverage ratios so that there are more people available to complete work. However, in law firms especially, leverage ratios between partners and associates are generally arranged to maximise profit, and changes that would enable better work/life balance across the board are often resisted.

### **Early outreach and wider approaches to attraction**

A progressive recruitment policy means reaching out to inspire talented individuals whose backgrounds might have prevented them from applying to the organisation, and providing innovative paths of entry to a rewarding career. Over many years, organisations, regulators and membership bodies have delivered outreach activities with schools and community groups – including open days, talks and informal work experiences. These are though often organised ad hoc, and rarely evaluated. Measurement of the effect is difficult here including because where interventions take a relatively broadcast approach it may not be possible to follow career outcomes for participants. It is likely that this sort of intervention is life-changing for some participants, but there is also a danger that aspirations are raised for young people who have limited opportunity to realise these goals, as a result of a range of factors including

educational disadvantage. Overall, it is recommended that firms take both broadcast and targeted approaches, with the latter focusing on young people aspiring to the particular sector, and providing more intensive and focused support. Related to this, there has been a strengthening lobby opposing unpaid and unadvertised internships. This is an important development and many organisations are now offering 1+1 programmes, where for every internship offered through networks of clients and colleagues, another must be offered to a young person from an under-represented group. This has been an effective way to distribute opportunity more widely.

### **Collaborative advocacy groups**

The role of collaborative groups within sectors have become increasingly prominent. At their most effective they have multiple purposes, including: the collection and benchmarking of data; engendering peer pressure between organisations to advance positive change; building a collective lobby for change in specific areas; sharing best practice; and developing collaborative programmes. Examples of these initiatives include Access Accountancy, PRIME (in the legal sector) and the recently established government taskforce on diversity in the professional services.

### **CV Blind Recruitment**

CV-blind recruitment is often used by organisations wishing to diversify on the basis of ethnicity, socio- economic background and sometimes gender. It works on the basis that selectors often have biases against certain groups, and that these can be reduced where names which indicate ethnicity and gender, and educational background, are removed at the point of selection. This originates in the behavioural insights approach sometimes known as nudge theory. CV blind recruitment techniques have been found successful in reducing bias, although outcomes do vary. Some firms have found for example that this technique exacerbates issues, perhaps because in the absence of other information, recruiters are more likely to actively seek out signals of suitability which relate perhaps to class. Equally, some firms claim that it is important to be aware of an individual's background in order to compensate for relative disadvantage for example. This is a practice that like many others can be successful, but requires careful evaluation in the particular context to determine the impact.

### **Contextual Recruitment**

Contextual recruitment is another technique often used in the context of SEB. It comprises systems which are used in graduate and other forms of recruitment to assess a candidate's performance against the performance of their school and in relation to a range of other factors signalling relative disadvantage. This has been relatively widely adopted and providers of systems suggest that firms that use it have been able to eliminate the negative impact of background on outcomes. However, there is less information currently available from firms on whether this has caused them to substantially diversify their intake as a result, or on the career outcomes for people appointed in this way.

### **Work allocation systems**

An important challenge in professional services is that historically career enhancing work has been allocated more often to white men, compared for example to women and minorities. With respect to gender, this is partly because of stereotypes, as women have been seen as better equipped for 'housekeeping' work on large transactions, while men have been seen as more suitable for the client-facing work which is high profile and helps build networks, reputation and thus careers. Similar processes may happen with respect to people who are ethnically diverse, as a result of bias and favouritism amongst senior lawyers. Firms have often made repeated attempts to introduce systems which address this issue, for example by using centralised work allocation systems, so that decisions are taken away from partners and based on individual availability and gaps in skills and knowledge. Again, the impact is likely to have been variable with perhaps more success in organisations which already have a more corporate structure, and less so in partnerships, where senior leaders continue to have a great deal of autonomy and personal discretion in how they build teams, and are often able to evade formal rules.

### **Mentoring, Coaching and Sponsorship**

Mentoring and coaching has been used to support people from under-represented groups including with respect to improve confidence and to understand both the formal and informal rules required for promotion. More recent approaches have been reverse mentoring whereby under-represented groups help senior leaders understand the challenges they face. Mentoring and coaching have met with variable success in relation to outcomes. One problem has been that it is very difficult to replicate the informal networks that generate 'success' using formal processes. Partly in response, more recent attempts have been aimed at more direct forms of sponsorship, where senior figures intervene more actively to support people's careers, including to provide them with career building projects and introductions to supporters and people who can facilitate their progress. Robust research analysing the impact of these interventions is lacking but this approach does seem to have had more impact overall.

### **High Potential Programmes**

Many firms have used high potential programmes to identify potential leaders from under-represented groups and provide them with intensive support. Again, these programmes do appear to have had some success. As just one example, in 2010 leading Big Four firm PwC reported having put together a Female Partner Sponsorship programme which identified 26 female partners with senior leadership potential<sup>9</sup>. They were matched with senior male executives who introduced them to their contacts and involved them in high-profile assignments. Three years later, the firm reported that it was (pleasantly) surprised at the results: 60 per cent of the women had moved into a leadership role, such as joining the executive board, or were running a business unit; 90 per cent had been promoted. This does seem promising although of course no control group and it is though difficult to know what percentage of these senior women might have achieved promotion without this support, especially given that they had been selected for this programme precisely because they had already been identified as having significant potential. Nevertheless, while overall PwC has just 20% female partners, this is a definite improvement since 2006 when the equivalent figure was 13% and in a recent promotion round, 40% of new equity partners were female.

This does suggest some improvements though it is difficult to isolate which interventions work, and this is likely to rest on a combination of several.

### **Employee Resource and Affinity Groups**

Employee resource and affinity groups have been increasingly popular in large corporates over the past ten to fifteen years. They are aimed at providing information and support for under-represented and minority groups and in the City are also often used for business generation purposes, as a means to network across organisations and firms. Again, it is difficult to discern or isolate the impact of this sort of intervention which may be more marked in relation to the experience of inclusion rather than numerical outcomes. However, this is difficult to know for certain as there has been limited research examining outcomes.

# Refreshing our consumer engagement strategy

## Board update

12 July 2021

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In our consumer engagement strategy, published in January 2020, we committed to reviewing the strategy on a regular basis. The published strategy document can be found [here](#).

We have recently published our commitment to focus on good consumer outcomes [here](#).

In reviewing our consumer engagement actions we have aligned our plans to fit with our consumer outcomes framework, and our draft business plan for 2022 (Item 3.3 in your pack).

### Our objectives

Our consumer engagement strategy has three objectives, to:

- ensure that our policy development reflects the needs of consumers;
- help consumers find out about Costs Lawyers' services; and
- help Costs Lawyers better understand and engage with consumers.

### The consumers of Costs Lawyers' services

In line with the framework that guides our approach to good consumer outcomes:

- when we use the term **consumer** we mean the end user or beneficiary of Costs Lawyers' services, regardless of whether those consumers are individuals or businesses, and regardless of whether they are direct clients of a Costs Lawyer or are clients of other professionals who are responsible for instructing a Costs Lawyer;
- where we specifically mean an end user that is a business, we use the term **business consumer**, and
- where we mean an end user that is a person we use the term **individual consumer**.

### Collaborating with others

As we progress our consumer engagement work, we are committed to engaging with existing stakeholders to benefit from their research and learnings, and explore opportunities for collaboration. These stakeholders include:

- The Association of Costs Lawyers (ACL)
- Regulated Costs Lawyers
- Consumer groups and not-for-profit organisations
- The Legal Services Consumer Panel (LSCP)
- The Legal Services Board (LSB)
- The Legal Ombudsman

- Other regulatory and representative bodies, such as the Solicitors Regulation Authority (SRA), The Law Society (TLS) and the Competition and Markets Authority (CMA).

We regularly review published data sources and research, such as the LSCP's tracker survey and the LSB's individual legal needs survey.

### **Ensuring that our policy development reflects the needs of consumers**

The small size of the regulated Costs Lawyer community has posed some challenges for our efforts to directly engage with consumers via surveys. We have devoted resources to exploring and designing surveys, including using Panelbase, to identify individual consumers with experience of using the services of Costs Lawyers but these efforts have not resulted in a sufficient sample to make the exercise worthwhile.





So we have revised our approach, and are now focused on seeking the assistance of our regulated community to reach consumers who we know have used the services of a Costs Lawyer and, where we are successful, carrying out individual interviews to build a qualitative picture of consumer experiences.

We believe this approach is likely to yield the best results, and it is where we will focus most of our resources. This is, however, both time consuming and resource intensive. Our work on this exercise is ongoing and will continue through the second half of 2021 and likely into 2022.

We will, of course, continue to draw on existing research and lessons from other sectors, particularly in exploring consumers' needs and experience around fairness, vulnerability and privacy.

The table below shows how the evidence we are seeking aligns with our planned projects guided by our consumer outcomes framework.

**Our consumer engagement action plan – 2021 to 2022 – aligned with our consumer outcomes framework**

Type of outcome	What information are we seeking?	Engagement with consumers
<p><b>Price, quality, access</b></p> 	<p>Do consumers think they get good value for money?</p> <p>Do consumers understand the price they will pay?</p> <p>How do consumers access and use information before making a choice?</p> <p>Do consumers think the services they bought were good quality?</p>	<p>Update CLSB's client survey to align with our outcomes framework and explore consumer ranking of price and quality.</p> <p>Follow up with any consumers who agree to take part in further research, and explore experiences across all outcomes.</p> <p>Audit, and seek feedback from Costs Lawyers on, the presentation of prices and consumers' understanding of these (as set out in our guidance note on price transparency <a href="#">here</a>), drawing on lessons from other sectors where relevant.</p>
<p><b>Privacy</b></p> 	<p>What are the expectations of individual consumers', and is there any evidence these are not being met?</p>	<p>Investigate expectations around privacy – drawing on existing research in similar markets – and assess whether there is any evidence that expectations are not being met.</p>
<p><b>Fairness</b></p> 	<p>What is the incidence of vulnerability markers in the users of Costs Lawyers' services?</p>	<p>Refresh and promote CLSB's client survey to collect data on the characteristics of individual consumers using Costs Lawyers.</p>
<p><b>Diversity</b></p> 	<p>Do consumers experience equal outcomes regardless of their characteristics?</p>	<p>Refresh and promote CLSB's client survey to collect data on the characteristics of individual consumers using Costs Lawyers, and draw on lessons from other sectors where possible.</p>

## **Helping consumers find out about Costs Lawyers and helping Costs Lawyers engage with consumers**

Drawing on the evidence collection set out above, our planned actions for 2021 to 2022 under this objective include:

- refreshing and promoting our guidance on vulnerable individual consumers;
- exploring opportunities for and potential barriers to pro-bono work and publishing guidance to support Costs Lawyers in undertaking pro bono work for individual consumers;
- identifying ways to improve consumer information about the regulatory status of the organisations in which Costs Lawyers practise.

### **Looking forwards to 2022 – 2023 (year 3 of the strategy)**

In the same way that our learnings from year 1 of the strategy have informed our approach to year 2, it is clear that the outcomes of our work in year 2 will dictate our direction of travel in year 3.

In line with our commitment to reviewing the strategy regularly, we will assess in mid-2022 which of the original actions planned for year 3 should be taken forward and which further actions should be added, in order to best achieve the objectives of the strategy by the end of the period.



# Regulators' Pioneer Fund: Pathfinder

COSTS LAWYER STANDARDS BOARD



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# Application details

The lead applicant must complete this section. **Your answers to these questions will not be scored by assessors.**

Project title: How could Costs Lawyers reduce the costs of legal services in the UK?

Start date: September 2021

Duration: 6 months

## Project summary

Describe your project briefly and be clear about what makes it an innovative and an innovation-supporting venture. Set out the challenge you wish to tackle and what the intended gains and learnings from your project will be and for whom. Explain how your proposed project reflects the purpose of the RPF programme. Your summary should be accessible and clear to a person who is not a specialist in your sector or field. List any organisations you have identified as partners or subcontractors. Your answer may be up to 400 words long. **If your proposal does not reflect the eligibility criteria of the RPF programme, it will be rejected and not be sent for assessment.** We will provide feedback.

This is a research project aimed at exploring whether, if regulation or legislation were different, Costs Lawyers could bring about downward pressure on the cost of legal services.

Costs Lawyers are specialist lawyers that deal with all aspects of legal costs. In addition to being skilled lawyers, they are skilled at financial analysis.

Costs Lawyers are regulated by the CLSB. The current legal regulatory framework in the UK is based on professional titles and reserved activities. The CMA has found that this has the potential to restrict competition unnecessarily or leave a regulatory gap.

We intend to carry out this research based on the types of services lawyers (regulated or unregulated) specialising in costs are, or might be, involved in. We will then go on to consider whether any regulatory or legislative change might remove barriers to innovation or encourage innovation, including redrawing or removing current boundaries between regulated and unregulated lawyers specialising in costs.

This type of analysis is standard practice in some other sectors but not in legal services where the current framework of regulation often becomes the lens through which a regulator looks at markets for legal services.

We intend to carry out research based on the types of services lawyers (regulated or unregulated) specialising in costs might be involved in:

- finding the right price for legal services before buying;
- resolving disputes about the price of legal services after buying;
- obtaining the best advice on controlling costs when that advice is bought via another lawyer.

The main questions we are exploring in each of these areas is:

1. How might lawyers specialising in costs drive services in a way that exerts a downward pressure on the costs of legal services?
2. Would any regulatory or legislative change relevant to Costs Lawyers remove barriers to capturing this benefit or capture greater benefits?

Our project is innovative (in the regulated legal services sector) because it:

- discards boundaries drawn by current regulation and takes an economic approach of defining the services of interest – this could serve as an example and speed up the pace of regulatory change in the regulatory legal sector; and
- is about the removal of barriers to innovative services on an aspect – the cost of services – that has the potential to benefit all businesses (and potentially small businesses and individuals) that use the £37bn legal services market of the UK.

## Public description

Describe your project in detail, and in a way that you would be prepared to see published. Do not include information that is commercially sensitive or confidential to your organisation. If your proposal is awarded funding, we will publish this description. This could happen before the start of your project. Your answer may be up to 250 words long.

This is a short research project aimed at exploring whether, if regulation or legislation were different, Costs Lawyers could bring about downward pressure on the cost of legal services.

Costs Lawyers are specialist lawyers that deal with all aspects of legal costs. In addition to being skilled lawyers, they are skilled at financial analysis. Today, they often work in situations where costs are recovered between parties in litigation.

We intend to carry out research based on the types of services that lawyers specialising in costs are providing, or might provide in the future. The services of interest are those that help businesses and consumers:

- choose the right price for the right legal services before they buy;
- resolve disputes about the price of legal services they have bought;
- obtain the best advice on controlling legal costs when they buy that advice via another lawyer.

The main questions we are exploring in each of these areas is:

1. How might lawyers specialising in costs drive services in a way that exerts a downward pressure on the costs of legal services?
2. Would any regulatory or legislative change relevant to Costs Lawyers remove barriers to capturing this benefit or capture greater benefits?

# Application questions

**Your answers to these questions will be scored by assessors.** You will receive feedback on your application.

**Your answer to each question may be up to 300 words long.** Do not include any URLs in your answers. Please provide clear, jargon-free, well-structured and well-reasoned answers.

## Question 1: Rationale or demand (20 marks)

What is the problem or challenge for business that your proposal addresses? What evidence is there of demand for the change in regulatory approach?

Describe or explain:

- the main motivation for the project, including the problem or challenge faced by businesses, the economic context, technological challenge and/or market opportunity
- the evidence, whether from the UK or overseas, that there is a demand for a change in regulatory approach
- any work you have already done to understand the issue, respond to this need, explaining whether your project will develop an existing capability or build a new one

Our motivation for the project is based on the following:

- the Competition and Markets Authority (CMA) found that the regulatory framework for legal services may raise barriers to competition and innovation [CMA, Review of the legal services market study in England and Wales, December 2020];
- the legal services market is of critical importance and makes a substantial contribution to the UK economy [KPMG, Contribution of the UK legal services sector to the UK economy, January 2020];
- there is a need to explore potential conflicts of interest that may arise when an individual or business pays for the services of a Costs Lawyer via another lawyer [CLSB, Good Consumer Outcomes, June 2021];
- the CMA found that the unregulated sector of legal services is growing in importance, and this means an analysis of both regulatory gaps or over regulation is becoming urgent [CMA, Review of the legal services market study in England and Wales, December 2020];
- research from the Legal Services Board (LSB) shows that a fifth of people who didn't try to get legal help when they needed it didn't try because they assumed it would be too expensive [LSB, Online survey of individuals' handling of legal issues in England and Wales, 2019];
- very few regulated Costs Lawyers serve the public directly [CLSB data] and this prompts the question of whether something is hindering regulated Costs Lawyers from developing services aimed at helping individuals pay the right price, or resolve disputes about price;

- we observe that unregulated services aimed at helping more people resolve disputes about costs are emerging in England and Wales, and in other countries services exist to help businesses (and individuals) find the right lawyer and pay the right price, and these services are not yet established in England and Wales.

## Question 2: Alignment (20 marks)

How is the proposal aligned to your organisation's priorities and/or the priorities of the UK Government?

Describe or explain:

- the wider economic, social, environmental, cultural or political challenges which are influential in creating the opportunity, such as incoming regulations
- which of the UK Government priorities this proposal relates to (where relevant) or which of your organisation's priorities
- how the proposal will help businesses and innovators to bring innovative products and services to market
- the potential for the project to contribute to addressing the UK Government's priorities.

The wider challenges are: that the CMA has found that the regulation of legal services in the UK may hamper competition and innovation; and the LSB has found that the state of innovation in legal services is static [LSB State of Legal Services Report 2020]. These findings prompt us to look hard at our own part of the regulatory framework for legal services in England and Wales.

Costs Lawyers are skilled and very unique lawyers. We believe they have the potential to make a greater contribution as the landscape of legal services changes, or even to accelerate these changes. If it is the case that regulation (or legislation) hinders them from engaging in innovative services that might leverage their unique combination of legal and financial skills to contribute to increased price competition, or better control of legal costs, the benefits could be substantial.

This project relates to the UK Government's following priorities:

- **Reduce regulatory burdens on businesses** – we are actively seeking ways that we can change, remove, or target regulation to see the sector we regulate better serve businesses and individuals;
- **Improve productivity** - by encouraging competition and innovation, and seeking to explore innovative ways of reducing the cost of a key input to almost every economic sector in the UK; and
- **Level up the UK** – this project may help individuals who think legal services are too expensive for them to use (although we think the main findings are likely to relate to corporate users of legal services);
- **Seizing opportunities arising from the UK's exit from the EU** – downward pressure on the price, and better control of costs, of legal services improves the

international competitiveness of our justice system, making England and Wales a more attractive jurisdiction for cross-border litigation.

### Question 3: Team and resources (20 marks)

What are the resources, equipment and facilities needed for your project and how will you provide or access them?

Describe or explain:

- the details of any vital external partners, including sub-contractors, who you will need to work with to successfully carry out the project
- (if your project is collaborative) the current relationships between project partners, senior buy-in for your proposal among project partners and how the working relationship for this project will be run/managed
- any roles you will need to recruit for or resources you will need to acquire to deliver the project successfully
- who in your organisation will be the Senior Responsible Owner (SRO) for this project – their name and designation

We are one of the smallest legal regulators - appropriately so as we regulate a relatively small community of lawyers. We are run extremely efficiently and effectively [ACL, Oversight Regulator commends CLSB, June 2021] by three part time executives – including the Chief Executive Officer and a Director of Policy (on part-time secondment from a consultancy specialising in regulation, competition, and consumer policy), with a network of freelance consultants and advisors who take on packages of work for us.

Our CEO is a skilled leader and lawyer, our Director of Policy has significant expertise in market analysis, our Board gives us access to industry expertise, as does our small size and small regulated community.

In order to run this project we need to add to our own resources: more hours of the Director of Policy to oversee the project day to day; resources to carry out a programme of interviews; and resources to carry out desk research and analysis.

We have several options for suppliers to carry out interviews, and would seek to appoint either an individual contractor with economic skills that could cover both the interviews and desk research, or outsource both as a package to an economic consulting firm. We would use our contacts in academia, other legal regulators, and the industry for challenge and review.

The SRO of this project would be Kate Wellington, Chief Executive Officer. As a small regulator, and a regulator proud of our efficiency and achievements, the project would have keen oversight from the SRO and the Board. It would be an extremely important project for us, would have a very high profile, and everyone at the CLSB would be committed to making it a success.



## Question 4: Governance and delivery (20 marks)

How will you manage the project effectively, ensuring timely progress, transparent reporting (including financial) and robust governance? **For this question you may also submit a project plan, no more than one side of A4, alongside your application form.**

Describe or explain:

A project plan is attached.

Our work packages, are:

### 1) International research

Are there innovative legal cost services that put downward pressure on legal costs in other countries that do not exist in England and Wales?

For example, in Australia, are lawyers that specialise in costs involved in Law Broker services? Do these services extend to complex packages of advice bought by corporations, or are they aimed at the consumer market?

### 2) Services in England and Wales

Scope: a review of services that help consumers and (small and large) businesses check or challenge legal costs focusing on the following questions:

- What innovative services are emerging that depend on lawyers (regulated and unregulated) who specialise in costs?
- Do these services contribute to exert a downward pressure on the costs of legal services? If so, why? If not, how could they evolve to do so?

Through interviews, explore the potential for conflicts of interest to arise (both in individual transactions and in the structure of the market) when Costs Lawyers are engaged via other lawyers, which could have the effect of dampening downward pressure on the costs of legal services. If conflicts of interest may be present, explore how these could be mitigated by different forms of regulation or obligations.

### 3) Analysis of how regulation and legislation may impact on the emergence of new services:

Where are new services, involving lawyers that specialise in legal costs, emerging or where are they likely to emerge?

If less/more in the unregulated or regulated sector why might this be? What benefits/costs does being unregulated bring, and what benefits/costs does regulation impose?

How could regulation (or legislation) change to bring about a level playing field – and deliver maximum benefits to end users – between regulated and unregulated lawyers specialising in the costs of legal services?

## Question 5: Added value (10 marks)

How will an injection of public funding by the RPF add value for the regulator or local authority?

Describe or explain:

- how your proposal differs from your existing regulatory activities
- the potential for your project to create positive cultural, systemic or institutional change in your organisation
- if this project could go ahead in any form without RPF funding, and, if so, the difference the public funding would make
- why you are not able to wholly fund the project from your own organisation's resources or other sources of funding, and what would happen if the application is unsuccessful
- what would constitute success for your project, including what metrics and indicators you would use to measure the project's impact
- the potential to scale up and spread best practice from your project to other regulators, including, where appropriate, internationally, beyond the duration of the project.

We are a small regulator in a complex landscape of legal regulators. This project would represent a significant expansion of our existing regulatory activities.

We are a regulator with more ideas than money, and that is a very satisfactory thing to be – much better than being a regulator with more money than ideas.

The project could not go ahead in the form we have outlined without funding. If we do not secure funding, we could –slowly – progress the work but at a pace that risks not keeping up with market developments.

Having a number of legal regulators is probably inefficient in some ways but it does mean that regulators such as ourselves focus very hard on how a narrow – but important – type of legal service should best be regulated. This does mean, however, that we are limited in the projects we can take on by the level of practising fee income we receive from a relatively small community.

The project would be a success if it:

- identifies changes we could make, or changes we could lobby for, so Costs Lawyers could play a wider part in controlling legal costs;
- benchmarks innovation in legal cost services that could drive down the costs of legal services;
- broadens our thinking on the interaction between innovation, and regulated and unregulated lawyers specialising in legal costs.

We are excited by the prospect that the project could spread best practice among the legal regulators. It has the potential to:

- demonstrate the advantages of an analysis of legal services across regulated and unregulated sectors, challenging any mindset of 'regulated is best' (it well may be, but we need to see the evidence this is the case); and
- promote the importance of legal regulators valuing competition and innovation, and good outcomes for the users of legal services.

## Question 6: Value for money (10 marks)

How does your proposal offer society and the economy value for money?

Describe or explain:

- how this project represents value for money
- what costs, if any, that you anticipate your project's outcomes will remove from business
- any sub-contractor costs and why they are critical to the project
- how the project will deliver the greatest possible benefit for the RPF's money

Our project explores how lawyers who specialise in legal costs could develop innovative services that drive down costs in the £37bn UK legal market.

We would only have to make a very small impact on such a large market for the project to represent excellent value for money.

Since this is a research project which is designed to explore potential changes to regulation or legislation to bring about benefits, it is difficult to anticipate what costs will be removed from businesses – but the entire thrust of the project is adjusting regulation (or legislation) with the aim to better regulate Costs Lawyers in order reduce costs to end users (particularly business users).

The proposal is seeking funding for sub-contractors to carry out work under our direction. This is what we need to complete the project. We are able to provide strategic direction, analytical frameworks, oversight of market analysis, industry contacts and expertise - we need help with an extensive and time consuming schedule of interviews and desk research.

## Project financial information

Please provide a monthly breakdown of your anticipated project costs for the length of the project. You should set out clearly administrative costs, costs associated with training, patent filing, subcontracting, labour and/or materials as applicable. Each organisation/partner/subcontractor in your project should complete their own project costs. Please include information on the matched funding your organisation will provide for your project.

	Days
<b>CLSB provided resources</b>	15
<b>Resources within CLSB covered by bid</b>	25
<b>Resources outside CLSB covered by bid</b>	32
<b>Month one September 2021</b>	£2,400
<b>Month two October 2021</b>	£10,300
<b>Month three November 2021</b>	£27,100
<b>Month four December 2021</b>	£11,200
<b>Month five January 2022</b>	£11,400
<b>Month six February 2022</b>	£1,600
	£64,000
<b>Resources provided by CLSB</b>	-£6,000
<b>Total required</b>	<b>£58,000</b>

Please refer to attached project plan for detailed activities associated with the resource days shown above.

We cannot appoint a subcontractor until/unless we secure funding, and the appointment of that contractor would be via a competitive process. So we are not now in a position to have a subcontractor submit a cost breakdown.

## Process after application

Please send your completed application form to [regulators.pioneerfund@beis.gov.uk](mailto:regulators.pioneerfund@beis.gov.uk). Only applications that meet the eligibility criteria will be sent for assessment. You will be notified if your application is out of scope with feedback.

Following an assessment of proposals with respect to the criteria set out, an awarding panel will make the final decision on funding. We aim to notify applicants about the awarding panel's decision by August 2021.

Successful projects will be required to work with BEIS's independent evaluation partner to participate in the evaluation of the programme. This could include being contacted at intervals throughout the project, providing project data and participating in interviews and/or surveys. Further information on the evaluation of the programme will be provided if your application for funding is successful.

You will be expected to report on your progress and financial spend to BEIS regularly.

If you require further information, please email [regulators.pioneerfund@beis.gov.uk](mailto:regulators.pioneerfund@beis.gov.uk).

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## CLSB - How could Costs Lawyers reduce the costs of legal services in the UK? **Project plan**

Project governance: Project Manager - CLSB's project director; SRO - CLSB's CEO; Challenge Board - drawn from other regulators and industry; CLSB Board has final sign off.

	Timescale	Output	Governance	Main risk	Risk mitigation	CLSB (days)	Contractor (days)
<b>Stage one - preparation and contracting</b>		Robust analytical approach with the right contractors appointed at a competitive price	SRO oversight	Suitable contractors are unavailable	Contact a wide range of contractors early, allow sufficient time for procurement		
Detailed scoping	Week 1					2	
Establish analytical framework for analysis	Week 2					3	
Preparing and issuing contractor ITT	Week 2					1	
Evaluating bids, securing resources	Week 5					2	
Onboarding contractors	Week 7					2	2
<b>Stage two - research</b>		Comprehensive and high quality research with analytical framework tested (in advance) by project board	SRO oversight, test and challenge by project board	Unregulated providers are unwilling to engage in research	Switch more resources into contacting a wider range of interviewees - eg academics, industry journalists and researchers		
Drawing up detailed research approach	Week 8					3	3
Test and challenge board	Week 9					2	1
Informal discussions with CLSB board members	Week 9					2	1
Field research - interviews	Week 10 – 15*						15
<b>Stage three - analysis and output</b>		Draft and final findings, effectively challenged and tested	SRO oversight, test and challenge by project board and CLSB board	Test and challenge points raise questions the research hasn't covered	We have built in an informal CLSB board consultation in stage two, and allowed time and resources to revisit points in research after test and challenge		
Finalise analytical framework informed by research	Week 15					5	2
Draft findings	Week 16					6	2
Research on regulation and legislation	Week 16					2	
Test and challenge board	Week 17					2	1
Test and challenge - CLSB board	Week 17					2	1
Follow up research (isolated points)	Week 18 - 20					2	4
Final output to CLSB board	Week 25					4	
						40	32

\* costs of contractors assigned to month 4 in financial plan

# Learnings from the LSB's review of the BSB under the well-led standard

## Board discussion paper

10 July 2021

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On 1 July 2021, the Legal Services Board published a report setting out the findings of its review of the Bar Standards Board (BSB) under the well-led standard in its performance assessment framework. The full report can be found [here](#) and the BSB's updated performance assessment is [here](#).

Alongside publication, Matthew Hill wrote to all the legal regulators noting that there were lessons from the review that should be applied across the sector. The purpose of this paper is to help us consider those lessons, identify any areas for improvement and agree how and when those areas will be addressed.

There are two planned CLSB projects that will benefit in particular from the lessons in the report, namely:

- our governance review, scheduled for H2 this year, which will kick-off with the governance strategy session at this board meeting; and
- priority 13 in our 2022 Business Plan, which is to *“review our methodology for measuring, recording, monitoring and responding to risk in light of changes to our regulatory approach and organisational culture since our existing methodology was introduced”*.

The table on the following pages draws out key themes from the LSB's report, along with three ancillary issues relating to board meetings. The board is asked to consider the themes and recommendations in the table.

Issues that are relevant to the governance strategy session are flagged **in bold** in the table, and will feature in the slides for the session.

	Thematic lesson	Specific issues identified for BSB	CLSB status	Recommended actions
1.	The regulatory objectives should be at the heart of decision-making and the way that a regulator thinks about risk	<ul style="list-style-type: none"> <li>• There was little evidence of meaningful consideration of the regulatory objectives when decisions were taken</li> <li>• There were instances where the BSB did not identify, assess or mitigate risks to the regulatory objectives in accordance with its risk policies</li> <li>• In the context of making key decisions, there was no evidence the board was provided with an assessment of the impact on or potential risks to the regulatory objectives</li> <li>• There were no risk registers for major projects, so there was no evidence of meaningful appreciation of risks to the regulatory objectives from failure of those projects</li> <li>• The BSB was overly focused on reputational risk rather than other risks, including risks to the regulatory objectives</li> </ul>	<ul style="list-style-type: none"> <li>• Explicit consideration of the regulatory objectives is required under our Transparent Decisions Policy (box 5 in the Board Decision Note template).</li> <li>• The Regulatory <a href="#">Risk Register</a> sets out which of the regulatory objectives (and professional principles) each risk relates to.</li> <li>• We have begun to implement risk registers for specific projects, starting with the Costs Lawyer competency framework, although these don't focus specifically on the regulatory objectives.</li> </ul>	<ul style="list-style-type: none"> <li>• Consider during the <b>governance strategy session</b> whether we can better evidence how we take account of the regulatory objectives in our day-to-day decision-making.</li> <li>• As part of delivering priority 13 in our 2022 Business Plan, review our approach to measuring and recording risks to the regulatory objectives.</li> <li>• Develop our approach to project-specific risk registers by more explicitly linking identified risks to the regulatory objectives.</li> </ul>
2.	All relevant stakeholder views and needs should be given due weight when taking key decisions	<ul style="list-style-type: none"> <li>• The BSB allowed the interests of the public and consumers to be outweighed unduly by those of the profession</li> <li>• The BSB places disproportionate weight on the impact of its work on the profession and pays insufficient regard to the impact on the public, including consumers</li> </ul>	<ul style="list-style-type: none"> <li>• Culturally, the CLSB is an organisation that pursues the public interest. This is due to a deliberate shift in emphasis over recent years. There are many examples of this in practice, from the mission and vision</li> </ul>	<ul style="list-style-type: none"> <li>• We could better document our approach to gathering stakeholder views, for example by setting out which type of stakeholders we will engage with on which type of issue. This would provide a more</li> </ul>



		<ul style="list-style-type: none"> <li>• There were instances of little to no engagement with key stakeholders identified by the BSB in its own engagement strategy</li> <li>• There was a lack of engagement with consumers and consumer representatives</li> <li>• Minutes showed that stakeholders were notified of decisions after they were made, rather than being consulted or engaged with on the impact of the decision</li> <li>• There was little evidence of meaningful analysis of affected stakeholders' views and failure to take sufficient account of those views</li> <li>• There are concerns about the BSB's ability to form a fully rounded view of the public interest in future regulatory decisions</li> </ul>	<p>statements in our <a href="#">Mid-term Strategy</a>, to our new resources for the public on our website, or our <a href="#">commitment to focusing on good consumer outcomes</a> in all our regulatory work.</p> <ul style="list-style-type: none"> <li>• Progress against our Consumer Engagement Strategy, including our benchmarking work on consumer outcomes, is designed to ensure we have a robust evidence base to draw from when considering the needs of stakeholders who might not respond to a specific consultation.</li> </ul>	<p>objective and transparent framework for the board to assess the adequacy of engagement prior to taking a decision.</p> <ul style="list-style-type: none"> <li>• Consider this proposal during the <b>governance strategy session</b>.</li> </ul>
3.	The board must be provided with sufficient information to support key regulatory decisions	<ul style="list-style-type: none"> <li>• There were concerns about the Board's apparent willingness to take decisions in the absence of supporting material and concerns about the confidence that could be placed in such decisions</li> <li>• The Executive did not consistently provide the Board with the information it needed to take effective decisions</li> <li>• Key decisions were taken in the absence of papers, or papers lacked an assessment of risk, impact, costings, value for money and/or different options (including</li> </ul>	<ul style="list-style-type: none"> <li>• Board papers are published on our website to ensure transparency around the information that the board has received. Additional information received from the executive is described in the published minutes.</li> <li>• Significant decisions are recorded in Board Decision Notes, so that the decision-making process and the</li> </ul>	<ul style="list-style-type: none"> <li>• During the <b>governance strategy session</b>: <ul style="list-style-type: none"> <li>(i) reflect on whether we are making sufficient use of Board Decision Notes or whether we have missed any opportunities to report on significant decisions;</li> <li>(ii) seek feedback from board members as to the volume, nature and</li> </ul> </li> </ul>

		compatibility of options with the regulatory objectives)	evidence relied upon can be scrutinised, and to ensure that all relevant considerations have been taken into account.	quality of materials provided to the board by the executive.
4.	The board must have oversight of, and responsibility for, the organisation's regulatory performance	<ul style="list-style-type: none"> <li>The Board did not take responsibility for the organisation's performance within the statutory framework of regulatory objectives and performance obligations within which it operates</li> <li>There was no evidence that the Board engaged with the issues raised in the LSB's formal assessments of its performance</li> <li>Information about the performance assessment was noted in the DG's report, but the minutes do not record any discussion of the issues raised</li> <li>Consideration of performance matters was delegated to a committee, meaning the Board carried out little oversight of performance</li> </ul>	<ul style="list-style-type: none"> <li>Regulatory performance has been a key focus for the board since the transitional performance assessment in 2019. The CLSB's assessments are always provided to the board in full, and key themes from other regulators' assessments are flagged and considered.</li> <li>As our published minutes demonstrate, issues raised in performance assessments are discussed in detail by the board, including plans and timeframes for making improvements.</li> <li>Assessment outcomes are built into the board's <a href="#">KPIs</a>.</li> </ul>	<ul style="list-style-type: none"> <li>No actions identified.</li> </ul>
5.	A regulator's governance framework should be coherent and up-to-date	<ul style="list-style-type: none"> <li>The BSB's governance architecture is fragmented and difficult to access, with some gaps and out-of-date components</li> </ul>	<ul style="list-style-type: none"> <li>Our governance architecture is also fragmented and a number of our policies need updating.</li> </ul>	<ul style="list-style-type: none"> <li>Implement a comprehensive, single-source governance manual that captures the outcomes of our governance review</li> </ul>

		<ul style="list-style-type: none"> <li>Currently, with a number of separate governance documents, the framework is disjointed and could be confusing for users</li> </ul>	<ul style="list-style-type: none"> <li>We recognise the need to remedy this, and will do so through our scheduled governance review.</li> </ul>	<p>and incorporates stand-alone policies.</p> <ul style="list-style-type: none"> <li>Consider this proposal during the <b>governance strategy session</b>.</li> </ul>
6.	Ancillary issues relating to board meetings	<ul style="list-style-type: none"> <li>In the absence of the lay Chair, decisions were taken with a non-lay member in the Chair</li> </ul>	<ul style="list-style-type: none"> <li>In the absence of our lay Chair, our lay Vice Chair assumes the role. We would not achieve a quorum in the absence of both the lay Chair and Vice Chair.</li> </ul>	<ul style="list-style-type: none"> <li>No actions identified.</li> </ul>
7.		<ul style="list-style-type: none"> <li>The focus of the Chair was on keeping to time and moving through the agenda with pace, however this must be balanced with the need to allow appropriate time for meaningful discussion</li> </ul>	<ul style="list-style-type: none"> <li>While we conduct meetings efficiently, there is no set end time for meetings, such that issues can be fully aired.</li> </ul>	<ul style="list-style-type: none"> <li>Keep this in mind during the <b>governance strategy session</b> when reviewing the number and length of meetings and whether the agenda should include indicative timings.</li> </ul>
8.		<ul style="list-style-type: none"> <li>The BSB conducts extraordinary meetings of its board but there is no clear record of any such meetings and no notice of those meetings on the website, which is a matter of concern</li> </ul>	<ul style="list-style-type: none"> <li>On the rare occasions that we convene extraordinary meetings, these are fully minuted and the minutes are published on the website.</li> <li>However we do not currently give notice of such meetings in advance.</li> </ul>	<ul style="list-style-type: none"> <li>Going forward, give notice of any extraordinary meetings by publication on the website as early as possible.</li> <li>Update our <a href="#">What we Publish</a> webpage to reflect this change.</li> </ul>

- Legal Futures - <https://www.legalfutures.co.uk> -

## LSB praises “impressive progress” made by smallest regulator

Posted By *Neil Rose* On June 22, 2021 @ 12:01 am In Latest news, Legal Services Board, Other lawyers | [No Comments](#)

The Legal Services Board (LSB) has commended the “impressive progress” made by the Costs Lawyer Standards Board (CLSB) – the smallest of the legal regulators – in meeting its performance framework.

The framework measures each regulatory body against five standards and 27 underpinning outcomes.

The CLSB is the smallest of the legal regulators in terms of its regulated community – 707 costs lawyers as at the end of last year, according to LSB figures. The Faculty Office oversaw 728 notaries.

While the Institute of Chartered Accountants in England and Wales regulates fewer individuals (for probate work) – 546 – it also supervises 339 practices.

The CLSB initially struggled to achieve the standards and in January 2019 it was identified as the poorest-performing regulator, with nine unmet outcomes at one stage. But a change of leadership led to an improvement plan being put in place.

Four were still outstanding at the turn of the year, but an [updated assessment](https://legalservicesboard.org.uk/wp-content/uploads/2021/05/20210507-CLSB-performance-assessment.pdf) <sup>[1]</sup> said there was now only one – that “regulatory arrangements and associated guidance documentation are informed by learning gathered from all of the regulator’s work including its risk assessment and enforcement work”.

The LSB said “considerable progress” has been made towards meeting this too, and it would assess a further update in October.

Alongside this outcome, “we expect CLSB to demonstrate how it has used ongoing reflection and evaluation across all the standards to improve its performance year-on-year”.

LSB chief executive Matthew Hill, who has previously expressed concern about the viability of the smaller regulators, said: “This is welcome progress for one of the legal services sector’s smallest regulators. CLSB has demonstrated its commitment to addressing the weaknesses identified through our performance assessments.

“There remains work to do, and we expect CLSB to maintain this pace of improvement and demonstrate how it will evaluate and learn from its progress to increase performance year-on-year in pursuit of the regulatory objectives.

“This means the public and the profession can have confidence that, among other things, the regulator is consumer-focused, well-led, makes evidence-based decisions and is committed to improving diversity and inclusion.”

CLSB chair David Heath, the former government minister [appointed earlier this year](https://www.legalfutures.co.uk/latest-news/former-government-minister-takes-helm-at-costs-lawyer-regulator) <sup>[2]</sup>, said: “This assessment puts the CLSB toward the top of the LSB’s league table, confirming that smaller regulators can be just as effective as their larger counterparts.

“Our size requires us to be creative and resourceful in finding solutions to problems, and it’s great to see the LSB acknowledging that there is more than one way to meet the standards it sets for the sector.”

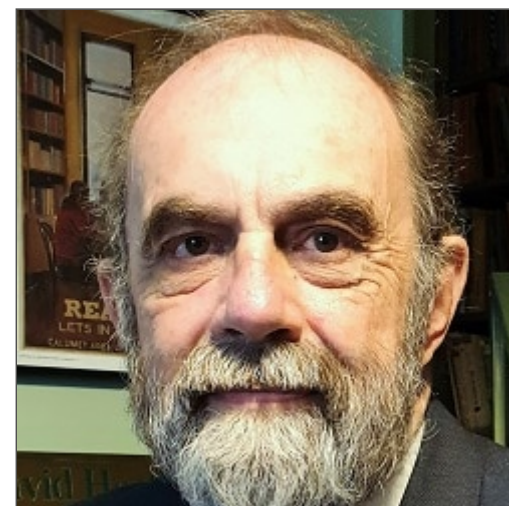
Chief executive Kate Wellington added: “Over the last two years we have made wholesale changes to our culture, operations and regulatory approach. The LSB’s performance assessment is the latest indication that these changes are having the impact we hoped for.

“Costs Lawyers play an important role in the legal market and they deserve a well-performing regulator. I’m very pleased to be able to say that the CLSB more than fits that bill.”

Claire Green, chair of the Association of Costs Lawyers – the profession’s representative body – commented: “We recognise the importance of a strong and capable regulator for the reputation of, and confidence in, the Costs Lawyer profession.

“The CLSB should be commended for the work that has gone into meeting the LSB’s requirements, which reinforces the value of solicitors and others instructing fully trained and regulated Costs Lawyers.

“Our working relationship with the CLSB has never been better and the recent appointment of David Heath as chair shows that its trajectory continues upwards.”



*Heath: Smaller regulators can be just as effective as larger counterparts*

**Minutes of the ACL Council Meeting**  
**held on 11 March 2021**  
 by Conference Call



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

**Also present:** Diane Pattenden (DP), Head of Operations, Kerry Jack (Black Letter), Neil Rose (Editor, *Costs Lawyer*)

**Apologies for absence:** Natalie Swales (NS)

The meeting started at 11am

Item	
1	Welcome and apologies
	CG welcomed all to the meeting. NS's apology for absence was noted.
2	Minutes of the council meeting held on 5 February 2021
	The minutes of the council meeting held on 5 February were agreed for publication.
3	Actions arising from the council meeting held on 5 February 2021
3.1	The actions arising (with the exception of Item 16) were carried over.
3.2	Item 16 - NR will ask Frenkel Topping to write an article for the Costs Lawyer.
4	Education update/working party report
4.1	In the absence of NS the education report was carried over to the April meeting.
4.2	CG reported that she had recently had conversations with Kate Wellington and Carol Cook to discuss the audit process.
4.3	JR reported that the working party was considering the best way to deliver the training product. Discussion on the structure of the current course took place. CG clarified that the role of the working party was to look at education as it currently stands and its future viability in order to provide recommendations for the way forward.
4.4	CG advised that two current tutors had not renewed their membership for 2021. CG said she felt strongly that only qualified costs lawyers and members of the Association should be tutors and asked council members for their views. A general discussion followed and it was agreed that this would be revisited with NS with a view to ensuring that a higher proportion of tutors are members of the Association
5	PR Review
5.1	FK acknowledged that several council members had not previously met Kerry Jack and Neil Rose and introduced them for the benefit of the newer members of council. KJ delivered an annual review which included a summary of Black Letter's work with ACL over the years and an outline for 2021. During the presentation KJ suggested that she and NR attended more council meetings in order to aid 'news' gathering.
5.2	A discussion followed regarding social media and KJ suggested that the lack of presence

	on LinkedIn should be rectified as a matter of priority. KJ proposed two options to help ACL raise its profile through social media. Council members will review these and discuss the options at the next council meeting.
5.3	RW raised her idea of having a weekly or monthly topic for discussion to try to encourage use of the ACL Forum. She went on to speak about her ideas to raise the profile of the costs lawyer profession and her views regarding the procurement of legal services which she believed to be largely inefficient. RW added that she felt there was a potentially large market and a PR challenge to persuade those responsible for buying legal services to become informed about the work of costs lawyers.
5.4	KJ commented that many years ago the ACL Forum was thriving and that there was a real demand from members. A discussion followed on whether there was an issue with members being able to access the Forum. DP said she would investigate. Other council members confirmed that whilst they could access the Forum, there were aware of some members who had issues. KJ suggested that a news story was created for the Forum to give members a reason to log on in an attempt to reintroduce members to the Forum. RW felt that take up would be better if members could be anonymous. DP will look into this. NR added that in every issue of the magazine there could be a page highlighting some of the Forum discussions. KJ asked council to let her know what was required of her to help and added that she would like to spend some time with RW to hear more about her ideas for raising the profile of the profession.
5.5	CG raised a question about Legal 500. KJ will make some enquiries with Legal 500 and Chambers.
5.6	FK asked if NR would write some advertising copy for the ACL April seminar. DP will provide details to NR.
5.7	NR suggested, that on the basis that the Costs Lawyer journal was remaining online the use of 'turning pages' was reviewed. The idea of adding the content of the journal to the website as a feature was discussed and NR suggested that if ACL was committed to the journal being online, further thought should be given to being more creative. Several ideas were discussed including the option of integrating the newsletter with the magazine and spreading out content over the year within a sub domain of the main website. It was agreed that this should be discussed further.
5.8	CG reported that KW had recently set up an SME (subject matter experts) focus group, the purpose being to gather a variety of opinions and data to be used to create an up to date competency framework setting out the standards expected of newly qualified costs lawyers. CG has been asked to join the group for a discussion on 25 March.
	CG thanked KJ and NR for their input and both left the meeting.
5.9	A general discussion regarding the Costs Lawyer journal and NR's ideas followed. Council will consider NR's ideas. It was agreed that FK would confirm to NR that the council decision is that there is no plan for a paper journal in the near future and that council would like to discuss his proposals further.
6	<b>PI Policies for Costs Lawyers</b>
	It was agreed that this item would be carried over to the next meeting.
7	<b>Options for attracting non-qualified costs professionals</b>
	It was agreed that this item would be carried forward to the next meeting.
8	<b>Policy Report</b>
8.1	AG confirmed that following the last council meeting a GHR review working party consisting of AG, Dale Gibbons and Ian Curtis-Nye was set up. He reported that the group



8.2	<p>felt an element of frustration regarding the evidence base used by the CJC which it is seen as being too narrow. He went on to say that whilst some of the issues raised in the consultation were straightforward, ACL, as a membership body, could not comment on some of the issues. It was however felt that ACL could express views on the methodology. AG asked for council members' views on how controversial ACL should be in its response. <i>DC asked for it to be recorded in the minutes that he needed to abstain from the discussion due to his involvement with the GHR Committee.</i></p>
8.3	AG said that a draft was being prepared and would be circulated to council members for their input. CG stressed the importance of their feedback on the draft.
8.4	AG informed council members that he and CG attended a meeting of the ACL Legal Aid Group on 10 March and that a response to a LAA consultation was being prepared. He said that from a policy position the response should be from ACL, even if much of the input was from the ACL Legal Aid Group.
8.5	KK reported that he had been to a number of meetings with the ACL Legal Aid Group in recent weeks and gave a summary of key outcomes. He said that the LAG would be sending out a survey to members in order to help with the response to the consultation paper from the MoJ as to the abolition of Court Assessments in legal aid cases.
8.6	AG acknowledged that at the last council meeting he was asked to raise the subject of having a separate Practising Certificate fee. He has a relationship management meeting with the LSB in the next few weeks and will raise the issue. CG will also attend the meeting.
8.7	AG reported on a meeting that he and CG attended with the LSB in December. The LSB was keen to obtain some data from the ACL regarding its BAME members. AG went on to say that the LSB had acknowledged that Costs Lawyers as a profession had the highest percentage of any legal professional body in terms of BAME members. It was agreed that an article covering this is written for the <i>Costs Lawyer</i> journal. RW suggested that any such information should also be given to NR/KJ to use in PR. AG will email NR with details of what the LSB would like to see in the article.
8.8	The LSB has invited AG to a round table meeting on 12 April regarding quality indicators in the legal services market.
9	<b>Operations Report</b>
9.1	DP confirmed that the next ACL seminar has been booked for 30 April. The format will replicate the last seminar held in November 2020 ie 2 hours in the morning, 2 hours in the afternoon (including a panel session). Most speakers are now confirmed but CG said she would like 2 Costs Lawyers to be included. FK agreed to take a speaking slot and CG said that she would like a female Costs Lawyer to take the other slot and asked for suggestions.
9.2	It was agreed that it should be planned to hold an 'in person' conference in November. CG expressed a wish to reinstate the gala dinner after the event if practical. It was decided to source a venue but to ensure that there would be no financial penalty for cancelling if it was unable to be held due to further government advice or lockdown.
9.3	Discussion took place regarding the online networking meetings that had been agreed at the meeting in February and whether the meetings should attract CPD. After some discussion it was agreed not to offer CPD. FK suggested that depending on take up members should be limited to attending one meeting per month. CG will confirm the date and agenda for the first meeting.
10	<b>Any other business</b>
	DC referred to an email circulated ahead of the meeting regarding reference documents relating to court fees to be added to the website. All agreed with DC's suggestion. DP will arrange for the documents to be uploaded to the website.

11	Date of next council meeting
	The next council meeting will be held by conference call on Friday 16 April at 11am
	There being no further business the meeting ended at 13.40pm



**Minutes of the ACL Council Meeting**  
**held on 16 April 2021**  
 by Conference Call



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

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

**Apologies for absence:** Stephen Averill (SA), Francis Kendall, Vice-Chairman (FK)

The meeting started at 11am

Item	
1	Welcome and apologies
	CG welcomed all to the meeting and apologies from SA and FK were accepted.
2	Minutes of the council meeting held on 11 March 2021
	The draft minutes of the council meeting held on 11 March were approved without amendment and agreed for publication.
3	Actions arising from the council meeting held on 11 March 2021
3.1	The actions arising were reviewed and discussed.
3.2	Item 5 – JR provided an overview of the working party's work to date and confirmed that the report should be available by 23 April.
3.3	Item 8 – DP confirmed that it was possible for all members to post on the Forum anonymously but it was a large task to change all their details and it was not possible for members to choose when to post anonymously and when to attribute their name to a post. RW felt that discussions were often more useful and productive if members could post anonymously. It was agreed to run a poll on the website to gauge the views of members.
3.4	Item 12 – CG reported that there had been good progress regarding investigating opportunities with Legal 500 and Chambers. David Wright is liaising with Kerry Jack and CG will report back on progress at the next council meeting.
4	Education update/working party report
4.1	CG asked RW to join NS on the education executive. RW also agreed to join the education working party.
4.2	JR suggested that members should be consulted on a number of things including what they consider to be core skills of a Costs Lawyer, their views on the current electives and whether there are areas of study that should be options but are not currently available. It was agreed that the working party would draft a consultation paper by the 23 April.
4.3	CG reported on a recent conversation with Kate Wellington (KW) regarding the audit framework and confirmed that KA had provided the report which will be reviewed by the CLSB.

5	Options for attracting non-qualified costs professionals
	This item will be carried forward to the next meeting
6	Marketing the profession
	It was agreed that the first 3 recommendations in the working party's report on marketing the profession would be progressed.
7	Social media
	RW suggested approaching Black Letter for a proposal and a 'menu of options' for discussion at the next council meeting. CG will organise a zoom call with FK, NR and KJ.
8	PI cover for Costs Lawyers
8.1	Carried forward to the next council meeting.
9	Policy Report
9.1	AG reported that the GHR consultation response had been submitted and thanked everyone for their input.
9.2	AG confirmed that the consultation regarding taking assessments in-house was currently being considered ahead of the deadline in May.
9.2	AG reported on a recent meeting with the LSB at which he raised the issue of separation of the practising fee and advised that the LSB anticipated being able to confirm ACL's obligations by the end of April.
9.3	The LSB has asked to have greater visibility of content on the ACL website. AG will liaise with DP to review this with a view to making the protected areas accessible and providing log in credentials.
9.4	AG reported that Heather Clayton, Policy Officer, CLSB had been in touch regarding PI cover for Costs Lawyers and in particular cyber related cover. AG will work with JR and RW to progress this.
10	Operations Report
10.1	DP reported that bookings for the conference on 30 April were in line with expectations and that a run through for speakers would take place at 11am on 26 April.
10.2	Conference evaluation will be managed via survey monkey and DP suggested adding in questions to gauge interest in the proposed event pencilled in for November. Council members agreed.
10.3	Council members approved DP's recommendation regarding JG's annual salary review.
11	Any other business
11.1	CG reported that she had received an email recently from a member regarding an assessment at the SCCO and remuneration for costs lawyers. CG will forward the email to DC to raise the issue, if he feels it appropriate, at the next meeting of the GHR working party committee on 24 April.
11.2	RW will put together a list of providers of costs management and costs control software with a view to approaching them regarding opportunities for sponsoring ACL events.
12	Date of next council meeting
	Subject to the availability of SA and FK, the next council meeting will be held by conference call on 1pm on 13 May.
	There being no further business the meeting ended at 12.05

# Complaints Procedure Audit 2021

## Board report on outcomes

17 June 2021

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Following the board's approval in April of our new supervision framework for complaints procedures, we carried out our first audit of complaints procedures during May and June. This paper summarises the outcomes and proposed next steps arising from the audit.

### Outcomes summary

1. 20 Costs Lawyers were selected for audit. All of them had complaints procedures noted as being non-compliant with the [Guidance Note on Complaints Procedures](#) when they applied for a 2021 practising certificate.
2. The table on the next page shows how many of the 20 audited did not comply (or had out of date information) in each of the areas checked.
3. The response to the audit from practitioners was extremely positive. By the end of the day on which emails were sent out, 10 Costs Lawyers had acknowledged the action required (we gave them 2 weeks to do this), and 3 of those had already sent revised procedures.
4. Comments included "thank you for bringing this important issue to my attention" and "CLSB audit/input is much appreciated here". When thanked for responding promptly a Costs Lawyer replied "Such things need urgent addressing so no time like the present!".
5. Two Costs Lawyers did not reply by the deadline. One had been on holiday, and replied instantly to a chaser, and the other had left the profession, but a colleague in the firm agreed to deal with the audit.
6. The final responses were:

Acknowledged that they have already/will take action	11
Submitted revised procedure for approval	8
Now working in-house and do not require procedure	1
Total	20
7. 3 of the procedures submitted for approval required minor changes; the others were in compliance with the Guidance.
8. All the revised procedures submitted used (completely or largely) the model policy provided in our revised Guidance Note approved at the April board meeting.

## Audit checklist – Number of policies *not* complying

Section A: Requirements		
1	State date effective or last updated	18
2	Be clear and simple with as few steps as possible	1
3	Identify the person to whom the complaint should be made	8
4	Be reasonable, fair, proportionate and responsive	0
5	Encourage complaints to be made as soon as possible, and set out the time limits for raising unresolved complaints with CLSB and the Legal Ombudsman	20
6	State clearly the timeframe for a complaint to be resolved	13
7	Advise that if the complainant is not satisfied with the outcome of the complaint under the complaints procedure, or the complaint has not been resolved within eight weeks, then the complainant has the right to refer a service complaint to the Legal Ombudsman, or refer a conduct complaint to the CLSB, and provide the timeframes for referral	15
8	Provide contact details for the Legal Ombudsman and CLSB	20
9	Advise the complainant of an approved alternative dispute resolution (ADR) body and state whether you agree to use that body's services	20
Section B: Recommendation		
10	Complaints procedure published on website (as recommended by the Competition and Markets Authority)	20

## Future work

1. The revised complaints procedures not yet seen will be checked after submission with applications for a 2022 practising certificate.
2. To encourage compliance with the Guidance more quickly we will be developing a webpage highlighting the audit outcomes, how many did not comply with each part of the checklist, and what to do to ensure compliance. This will be promoted in newsletters both following this board meeting and prior to future practising certificate application rounds.
3. Currently the CLSB regulates individuals in 165 costs law firms/sole practices required to submit a complaints procedure. Auditing 20 per year will take over 8 years to get through all of them. Providing feedback to the profession to ensure that everyone learns from each year's audit is therefore of central importance.