

Company number: 04608905

**MINUTES**  
**Costs Lawyer Standards Board Ltd**  
**Wednesday 22 January 2020 at 10.30 am**  
**The Studio, 7 Cannon Street, Birmingham**

**Present:** Steve Winfield (Chair): Lay NED  
Gillian Milburn (Vice-Chair): Lay NED  
Tracyanne Ayliffe: Non-Lay NED  
Stephanie McIntosh: Lay NED  
Paul McCarthy: Non-Lay NED

**In attendance:** Kate Wellington (Company Secretary and CEO)  
Andrew Harvey (incoming Lay NED)  
Andrew McAulay (incoming Non-Lay NED)

**1. QUORUM, APOLOGIES, DECLARATIONS OF INTEREST & GUESTS**

- 1.1 The Chair declared the meeting quorate. There were no apologies.
- 1.2 There were no declarations of interest on any agenda item.
- 1.3 Steve introduced the two incoming board members. He welcomed them to the meeting as observers and encouraged them to ask questions on any agenda items.

**2. MINUTES**

**2.1 Minutes dated 23 October 2019**

The board considered the minutes of its last scheduled quarterly meeting on 23 October 2019. The board approved two minor amendments and agreed the minutes as being a true record for signing.

**Action: Publish minutes on CLSB website**

**2.2 Matters arising**

The board considered the matters arising from the minutes of its meeting on 23 October 2019. There were no matters arising that had not been scheduled as agenda items or otherwise dealt with.

**3. STRATEGY**

**3.1 Structure and resourcing**

Kate updated the board on resourcing requirements following structural changes in November 2019. She noted that, despite resourcing challenges during the period, the changes had been successful and the CLSB had continued to exercise its core functions and meet all its additional commitments to the LSB and other stakeholders.

Kate also provided feedback on her recent review of operational performance and highlighted a number of areas in which reform and modernisation were necessary. She highlighted the challenges to the CLSB in resolving these issues in 2020 while continuing to improve regulatory performance (through delivery of the Business Plan)

and carrying out core functions within budget. Success would require the organisation to be disciplined and focused in its prioritisation, and to implement a structure that is nimble and responsive.

Kate put forward short-term staffing proposals, including bringing in more IT expertise on a consultancy basis and potentially increasing the working days of the newly appointed Administration Manager (to assist with the implementation of operational reforms). The board discussed how resource requirements were being impacted by the ongoing practising certificate renewals process and how other workstreams would be prioritised once that process was complete. Overall, the board supported Kate's proposals and was content for them to be implemented without the need for further board approval of specific budget items prior to the April board meeting.

Kate also conveyed concerns that had been raised by the LSB about the CLSB's resources immediately following the structural changes in November. The LSB was understandably keen to ensure that the CLSB continued to perform its regulatory functions during the transition period. The board was provided with correspondence from the LSB as well as Kate's response, which offered reassurance and detailed the steps taken to mitigate risk and procure new support.

The board noted the concerns raised. Although adequate resourcing would remain a key focus for the board in 2020, it considered the immediate issues to have been successfully resolved. The board thanked Kate for her work in steering the organisation through the transition period.

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

##### **4.1 Formal appointment of board members**

The board was provided with feedback on the interview and selection process for the appointment of the new board members. The interview panels unanimously recommended the appointment of Andrew McAulay and Andrew Harvey as Non-Lay and Lay NEDs respectively, for an initial period of one year commencing 23 January 2020 with the possibility of reappointment for up to six years. Those appointments were confirmed by the board.

***Action: Update Companies House details and internal registers to reflect retirements and appointments as approved***

##### **4.2 KPI monitoring**

The board considered updates to the Performance Indicators document that had been adopted at the October meeting. The intention was to report on performance against the governance and strategy metrics toward the end of 2020, however the board had discussed in October whether the operational metrics (service standards) required updating.

The board was concerned that the operational metrics had been self-selected, and thus may be biased toward areas where standards are likely to be high. The purpose of, and audience for, the metrics was discussed and the board concluded that: success against a number of the metrics was likely to have little practical impact on the regulated community; the metrics did not paint a holistic picture of what the CLSB does and how;

the metrics were overly focused on delivering service to Costs Lawyers (in terms of application processing times etc) rather than consumers or the public. There was a desire to identify more objective measures covering a broader range of activity.

The board felt that the regulatory data requested by the LSB would better serve this purpose, since the LSB monitored all Approved Regulators on areas that the LSB had identified as being in the public interest. The board therefore agreed to replace the operational metrics with the more objective regulatory data as soon as data could be collated for the 2019 practising year. This would “rerack” the Performance Indicators document for the new year and provide benchmark data for comparison in 2020.

***Actions: Collate regulatory data for 2019 and update Performance Indicators as agreed; Publish on website***

#### **4.3 Appointment of new Vice Chair**

The retirement of Gill Milburn from the board left a vacancy for the position of Vice Chair. Steve thanked Gill for her service in the role and recommended the appointment of Stephanie as Gill’s successor, Stephanie being the more senior of the Lay NEDs. The board approved Stephanie’s appointment as Vice Chair.

#### **4.4 2020 board meeting dates**

To accommodate the diaries of newly appointed members, the board reconsidered its meeting dates for the remainder of 2020. The board agreed to hold the July meeting on Tuesday 21 July 2020 in London and the October meeting on Tuesday 20 October 2020 in Leeds.

### **5. FINANCE**

#### **5.1 Quarterly report: Q4 2019**

The board considered the financial position at the end of Q4 and noted the overspend against budget. This was primarily due to organisational restructuring which was not anticipated at the time the budget was set in June 2018. The board was conscious that an overspend may be perceived negatively by stakeholders, but that the contextual narrative of organisational change and progress was very positive. The cost of restructuring was a necessary part of the journey toward significant reform and improvement. The board agreed that this should be communicated openly to the regulated community when consulting on the 2021 PCF.

The board discussed the most prudent way of funding the overspend. It was agreed that it should be partially met from the operating account surplus and partially from the reserve account, in line with the CLSB’s Reserves Policy. The board noted that this approach would be appropriate under both the existing Reserves Policy and the proposed amended Reserves Policy that would be discussed at Item 5.3.

#### **5.2 2020 practising certificates**

The board was provided with the LSB’s formal decision approving the 2020 PCF and Kate updated the board on the practising certificate renewal process. As at 16 January, 614 applications had been processed and 584 practising certificates issued (the delta being due to late payments or missing documents).

Kate identified a number of significant difficulties that were created by the timing of the renewal process and its manual nature, including the use of hard copy forms sent by post. Kate put forward proposals for reforming the process going forward, designed to save cost, minimise risk, and improve efficiency and data security. These reforms would involve: introducing digitalised application forms for the 2021 renewals process; moving the application deadline forward to 30 November from 31 December; reworking the Register of Costs Lawyers.

The board supported the proposed reforms and discussed their likely impact, including how they might be perceived by the profession. The board discussed whether a transitional approach was necessary for the first one or two years of a new system. The Non-Lay NEDs were of the view that the regulated community should be experienced with electronic processes, given the need for Costs Lawyers to be familiar with electronic bills or online systems used in legal aid cases. Electronic forms would likely be preferable for many, as they could be accessed from the home or office, and shared with finance departments for payment. On balance, the board concluded that transitional arrangements were unlikely to be necessary, particularly given the complexity they would add, but agreed that applicants should be informed that reasonable adjustments could be made where necessary (for example on the basis of disability).

The board discussed what the ideal system might look like, but appreciated the need for proportionality and cost effectiveness. Thus, the CLSB would need to prioritise the functionality that would make the most difference in terms of user experience, cost and time savings, and risk mitigation. The board was keen to ensure clarity of purpose from the outset of developing a new system with a comprehensive plan in place for delivery this year.

The board discussed whether it was appropriate to move the application deadline to November from December, or whether more wholesale change was required (such as changing the practising year dates). The pros and cons of the various options were considered, and on balance the board agreed that the deadline should be moved to November in conjunction with streamlining the operational aspects of the process; together, these changes should see considerable efficiency improvements. This would be reviewed after the next renewal process.

Consequential issues were considered, such as whether the November deadline would impact CPD attainment and how the payment process could be enhanced. Kate noted the board's suggestions, which would feed into planning for the reforms.

### **5.3 Amended Reserves Policy**

The LSB's decision on the 2020 PCF application highlighted the need for the CLSB to amend its Reserves Policy to reflect the new PCF level. Kate had taken the opportunity to reconsider the Policy more broadly, as it had not been recently updated, and the board was provided with an amended version for consideration.

The board discussed the proposed amendments. It was agreed that the reserves target should be framed as a concept not a fixed amount, given that expenditure and

income (and thus reserve requirements) would inevitably change over time. In practice, at the time of setting the budget and again at year end the board would consider the most recent annual expenditure figure against the existing level of reserves and assess what further contribution, if any, needed to be made to the reserves. The description of the operating reserves target should be amended to reflect this.

The board adopted the amended Reserves Policy subject to this amendment, to supersede the previous version dated 24 October 2018.

**Action: Adopt amended Reserves Policy into CLSB Operations Manual**

#### **5.4 Cost of living wage increase**

The board considered the annual standing item of a pay rise across all employees to reflect the increasing cost of living. Projected inflation for 2020 was 2.1%, with inflation in 2019 being reported as 1.8%. On this basis, Kate recommended a salary increase of 1.95% (the average of the two figures) for all staff, implemented from 1 March 2020.

The board approved the increase of 1.95%, noting that the day rate for Panel Members and NEDs should be rounded to the nearest £5 for simplicity.

**Action: Liaise with payroll to implement approved cost of living wage increase from 1 March 2020**

## **6. RISK MANAGEMENT**

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

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

The board discussed risk OP2 (*unavailability of CEO or HoO on an unexpected or unplanned basis*) in detail. The board agreed that the description of the risk should be updated to cover all business continuity risks flowing from the CLSB's evolving organisational structure, rather than being focused on the absence of an individual. The impact score should remain at 5 and the probability score at 3, but with controls meaning the probability score should fall over time.

The board considered risk OP5 (*sanction for data protection non-compliance*) in detail given agenda item 6.2 (*data protection compliance review*). The board agreed that the risk was wider than the imposition of a sanction and should be couched around non-compliance generally, the potential consequences of which included sanctions but also reputational damage and harm to the public or the regulated community. The impact score remained high (given the potential level of fines) but the probability score should also increase, given that there was scope for non-compliance while the outcomes of the data protection compliance review were actioned during Q1. The board agreed that this risk was now "red", but should be "amber" or "green" by the next board meeting. The controls for the risk should be updated to reflect the workstreams identified under the compliance review.

The board considered whether risks R1 (*first tier complaints procedure not communicated*), R2 (*Costs Lawyers receiving client monies*) and R3 (*insurance*) remained relevant, given the lack of evidence of the risks materialising over a long period of time. It was agreed that risk R2 (*Costs Lawyers receiving client monies*) remained a standalone risk, particularly as the proportion of lay client instructions was increasing. However, the board felt that R1 and R3 were just two examples of how a regulatory failure might manifest; a broader risk should be registered (encompassing R1 and R3) covering the CLSB's overall responsibility for setting and maintaining standards. The controls in the register should record the steps taken to prevent poor consumer outcomes and, where they cannot be prevented, to ensure the CLSB can take clear and decisive action.

The board also agreed the following amendments to the registers:

- adjust the wording of OP3 (*no means of entry into the profession*) to reflect that this risk had become about ongoing take-up of the qualification rather than the existence of a route of entry (agenda item 12.1);
- reduce the probability score for OP6 (*breakdown in communications between ACL/ACL Training and CLSB*) from 3 to 2, to reflect ongoing improvements in those relationships;
- update the controls for OP7 (*no-deal Brexit*) following the LSB's approval of the CLSB's proposed new regulatory arrangements for MRPQ (agenda item 7.4);
- update the controls for OP8 (*retirement of board members in close succession*) to reflect new NED appointments, dropping the probability rating to 1 with a view to removing this risk altogether once the board has been able to assess whether the skills mix is adequate over the course of the new members' first year;
- reduce the probability score for R4 (*CLSB cannot generate sufficient evidence about the consumer dimension of the market*) to level 2, to reflect implementation of the new Consumer Engagement Strategy (agenda item 7.5).

The Non-Lay board members agreed there had not been any practice area developments that necessitated changes to risk OP1. The implementation of fixed recoverable costs proposals had been delayed and the status of the reforms was not yet clear.

**Actions: Update risk ratings as agreed; Post updated versions of the risk registers on the website**

## **6.2 Data protection compliance review**

The board had agreed at its October meeting that the impact and probability rating for risk OP5 (*sanction for data protection non-compliance*) should increase and that a routine compliance review was warranted.

Kate updated the board on progress with the review and presented a proposed new Data Protection Manual, drawing all the CLSB's data protection policies and procedures into a single up-to-date document. This would render the existing Data Security Policy obsolete.

The board agreed the timeline for the proposed actions arising out of the review. The board felt the new Data Protection Manual was comprehensive and easy to follow, and approved it for adoption at an appropriate juncture prior to the next board meeting.

***Actions: Revoke Data Security Policy and replace with Data Protection Manual; Progress actions from review***

## **7. REGULATORY MATTERS**

### **7.1 Disciplinary Rules and Procedures consultation**

Kate noted that the Disciplinary Rules and Procedures consultation had closed on 15 November 2019 and provided the board with a summary of the substantive responses received. The responses were supportive of the proposals, offering useful feedback on points of detail. Kate also noted that a response had been received from a Costs Lawyer who felt the consultation contained too much detail. This feedback would need to be balanced against the LSB's requirement to adopt a more thorough consultation process, and the LSCP's request for the inclusion of more detail in future consultations. Tracyanne noted that a summary of the consultation questions on a single page would be a helpful addition to future consultation papers.

Kate explained that, for the first time, the CLSB would publish a consultation outcome document to ensure transparency and accountability around the consultation process. This would become usual CLSB practice going forward.

Kate updated the board on progress with the rule change application following the consultation. The aim was to introduce the new rules by May, with further guidance to complement the rules being ready for the board's consideration in April. The board noted the position.

***Actions: Prepare guidance for board consideration in April; Include a summary of consultation questions in future consultation documents***

### **7.2 Practising Rules review**

Kate presented the findings of a recent review of the CLSB's practising arrangements, including proposals for amendments to the Practising Rules. She explained that the review had taken into account upcoming changes to the CLSB's Disciplinary Rules and Procedures and CPD Rules, and that the new rules sought to refresh what had become outdated and inconsistent requirements.

The board discussed the proposed new rules. Board members agreed that the disclosure requirements should be reordered so they were grouped by subject matter, helping to ensure that the forms which supported the Practising Rules would be clear for practitioners. It was also agreed that the definition of ACL was confusing and should be simplified.

The board identified other possible inconsistencies or redundancies in the Rules (for example, whether it was correct to distinguish between a Costs Lawyer and an applicant). The board discussed these issues and agreed that the language used was correct and appropriate, subject to any confusion identified through the consultation process.

Subject to the above, the board approved the proposed Practising Rules for consultation.

**Action: Launch consultation on new Practising Rules**

### **7.3 Handbook Audit: Phase 1**

Kate updated the board on progress against the workstreams arising from the audit of the Costs Lawyer Handbook that was carried out in 2019. Phase 1 of the content review was due to be completed by the end of the year and Kate reported that this had been achieved.

In addition to progress on the Disciplinary Rules and Procedures (agenda item 7.1) and Practising Rules (agenda item 7.2), a consultation on new CPD arrangements was launched in November 2019 mirroring the report provided to the board in October and including a new template form for recording CPD with a worked example. Kate noted that the consultation was due to close on 2 February 2020 and provided initial feedback from the four responses received to date. The board noted the position.

Two guidance documents, relating to Alternative Dispute Resolution (ADR) and Reserved Legal Activity (RLA) Rights, were also considered under Phase 1. Kate explained that the current ADR guidance was prepared in 2015 upon implementation of The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. Those Regulations had become well established and many of the issues addressed in the guidance had either been resolved or were not directly relevant to Costs Lawyers. Kate recommended revoking the guidance and replacing it with more relevant guidance around the intersection between the Legal Ombudsman and approved ADR schemes under the Regulations. This could be done in the course of updating the guidance on Complaints Procedures. The board considered this recommendation and approved the proposal.

The guidance on RLA Rights had been flagged for updating due to a discrete point that was raised by an industry commentator in relation to whether RLA Rights can be delegated. Kate explained that a review of the recent case law had been carried out. This indicated that the existing RLA Rights guidance was accurate but could be augmented to make the position clearer.

The board agreed that clarification was warranted and that there was a real risk of poor consumer outcomes if the rules around delegation were not properly understood. The board discussed how the guidance could be more clearly linked to the Code of Conduct on this point and whether other issues should be expressly addressed, such as insurance provision and responsibility for the oversight of delegated tasks. The Non-Lay board members provided input on understanding and perception of this issue within the regulated community. The board asked Kate to ensure that these elements were captured in the updated guidance and suggested that awareness of the issue be raised in a communication to Costs Lawyers.

***Actions: Revoke ADR guidance; Publish updated RLA Rights guidance***

#### **7.4 Changes to MRPQ rules upon a no-deal Brexit**

Kate updated the board on progress with preparations for Brexit. In the event of a no deal Brexit, changes would be required to the CLSB's regulatory arrangements relating to the mutual recognition of professional qualifications (MRPQ) for lawyers with EU qualifications.

Kate explained that the LSB had now approved proposed amendments to the MRPQ regime, which would take effect in a no deal scenario, under Exemption Direction 133. The LSB had confirmed that its approval remained valid unless and until new information about the exit negotiations came to light. The board noted the position.

#### **7.5 Consumer Engagement Strategy**

Steve introduced this item. In October, the board had considered an interim report on Costs Lawyers and Consumers. The next phase of that project was to develop a new Consumer Engagement Strategy, establishing a framework for building on and utilising the CLSB's consumer evidence base going forward. The board was asked to consider a draft Consumer Engagement Strategy, covering the same period as the wider organisational strategy (2020 to 2023), highlighting priorities for each year and the anticipated outcome by the end of the period.

The board considered the proposal and discussed the envisaged activities and timings. Board members agreed that the document was accessible and concise. They supported the staged approach, allowing adjustment of the strategy to reflect continual learning. The strategy would also directly address risk R4 in the risk register, bringing down the rating for this risk over time.

The board agreed to adopt the Consumer Engagement Strategy. It also agreed to revoke the existing Consumer and Potential Consumer Engagement Strategy that was developed in 2016, which relied on a notion of consumers that had been superseded by recent work.

The board felt that this issue met the criteria for a Board Decision Note (BDN) as set out in the Transparent Decision Policy and asked Kate to prepare a draft BDN for approval at the April meeting. The board considered whether any other matters on the agenda had resulted in a final decision that warranted a BDN. Board members identified a number of candidates for future BDNs, but it was agreed that none were necessary at this stage.

***Action: Publish Consumer Engagement Strategy on website; Revoke previous Consumer and Potential Consumer Engagement Strategy; Prepare BDN on consumer engagement for approval at April board meeting***

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

### **8.1 Updated regulatory assessment**

The board was provided with the LSB's latest assessment of the CLSB's regulatory performance, published in December 2019, as well as a summary report of all the Approved Regulators' (ARs') performance for context.

The board noted that the CLSB's performance scores were contextualised by the LSB's commentary that: *"CLSB has made considerable progress since the transitional review and the LSB has maintained close contact with CLSB throughout the year. The work of the new Chief Executive with support from the Board has resulted in very positive progress on each of the unmet outcomes. At this stage in the reform of the CLSB procedures and practices, none of the [outstanding] outcomes have yet been met. This is not surprising given the extent of the changes required but the LSB recognises the amount of effort which has contributed to a noticeable difference in the performance of CLSB."*

The board agreed that this reflected the significant reforms the CLSB was undertaking and board members were pleased with the breadth of progress that had been achieved in a short time period. Board members hoped that the pace of progress would see some of the scores upgraded in coming months.

The board noted the suggestion in the regulatory assessment that the CLSB's scores against standards WL3 and WL4 were unlikely to improve unless and until the CLSB published board papers, in addition to detailed board minutes and Board Decision Notes. The board considered again the pros and cons of publishing board papers. Board members felt that publication was neither proportionate to the CLSB's resources nor necessary for transparency (given other effective measures), and could in some cases create unnecessary concern or instability within the sector. These factors did not, however, apply to publication of board meeting agendas, and the board agreed to publish agendas (in advance) from April 2020 onward.

The board also considered the approach taken by certain other ARs that had achieved a "met" rating against standards WL3 and WL4, and noted that several of those ARs did not appear to publish board papers at all. The board therefore asked Kate to collate information on the approaches taken by other ARs, tracked against their

regulatory assessment scores, to facilitate further consideration of the issue at the April meeting.

***Actions: Publish agenda for April board meeting on website in advance; Compile report on ARs' approach to board paper publication as against WL3 and WL4 assessment scores***

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

Kate updated the board on progress with agreeing an updated MOU between ACL and the CLSB, which was a necessary step in complying with the IGRs. There had been some delay in ACL producing and sharing a first draft, but Kate envisaged this would come to the board for consideration and approval in April. The board noted the position.

***Action: Bring draft MOU to April board meeting***

## **8.3 LSB business plan consultation**

The board was informed that the LSB was consulting on its business plan and budget for 2020 to 2021, with responses due by 14 February 2020. The board noted that a budget increase of 3.3% was proposed, which would take the LSB's total budget from £3.798 million to £3.923 million. The levy per regulated Costs Lawyer would therefore increase and the board considered the potential impact of this.

The board noted other key workstreams proposed in the business plan, particularly in relation to contingency planning, but agreed that a formal response to the consultation was not warranted given competing priorities.

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

### **9.1 Work update**

The board received an update on the LSCP's work on quality indicators. Kate also noted that the LSCP had engaged constructively with recent CLSB consultations. The board was pleased that the relationship was proving fruitful.

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

### **10.1 Service complaints position**

The board was informed that there had been no service complaints against Costs Lawyers made to LeO during the last quarter.

### **10.2 Work update**

The board was informed that the Office for Legal Complaints was consulting on its mid-term strategy and business plan for 2020 to 2021, with responses due by 14 February 2020. Kate noted that a number of new initiatives were being proposed, primarily aimed at further reducing front-end wait times for users and improving the feedback loop to the regulated community. While consumers of Costs Lawyers' services rarely complain to LeO, the CLSB would support these initiatives both in principle and in practice insofar as relevant.

Kate noted that to fund the initiatives LeO was proposing a 20% budget increase for the coming year, with the budget then falling slightly for the following two years, and that the consultation was silent as to the impact this would have on the levy paid by

the ARs to fund LeO's activities. Kate had discussed this with LeO and it seemed the £5,000 de minimis contribution that applied to the CLSB would not change. The board noted the position and Kate agreed to keep it under review.

## **11. REPRESENTATION (ACL)**

### **11.1 Council minutes**

The board noted the minutes of ACL Council meetings on 16 August 2019 and 17 October 2019.

### **11.2 Work update**

Kate reported that the ACL Vice Chair would be deputising for the ACL Chair over the coming months and should be the CLSB's primary point of contact during that period. Kate also noted that she would be speaking at the ACL Legal Aid Group's conference in March, covering CLSB's strategy and priorities with a focus on how they might affect Costs Lawyers in practice. The board noted these matters.

## **12. EDUCATION**

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

Kate confirmed that there has been sufficient interest for ACLT to run the Costs Lawyer Qualification in 2020. Inductions had recently taken place and were reportedly a success. The board was provided with statistics and information in relation to the new intake.

Tracyanne mentioned that she was aware of some students who had been interested in the course but could not start in January, and the board considered whether a September intake (realigning the course to the academic year) would be beneficial. Kate agreed to provide feedback to ACLT on this issue.

The board noted that the number of exemption applications had been positively impacted by adjustments to the course running order and board members were pleased to see that this had made the course more accessible to a wider range of students. It was hoped that more prospective students would appreciate how their existing legal qualifications could help them become a Costs Lawyer in future years.

The board agreed that sustainability of the course would need to be monitored, but that the 2020 intake was a positive development for the future of the profession.

**Action: Provide feedback to ACLT**

## **13. OPERATIONAL MATTERS**

### **13.1 Website usage**

In October, the board asked Kate to explore options for changing the CLSB domain suffix away from .info to .org.uk or .co.uk or similar. Kate reported that domain names which include the term "clsb" are already owned by the City of London School and provided alternative options. The board discussed the options. It was agreed that any domain with the root costslawyerstandardsboard would be too long and other options were less attractive than the current domain. The .info suffix should therefore be retained and usage statistics should be reconsidered following wider review of the website as a whole.

Board members noted that consumers and members of the public were unlikely to search for the regulator by name in any event. Tests showed that clsb.info appeared in the first page of results for likely consumer searches, so long as the term “Costs Lawyer” was used in the search. Other hits included the Legal Ombudsman and ACL websites, which linked back to the CLSB website. It was agreed that, in development of the new website, thought should be given to potential searches that do not include the term “Costs Lawyer”.

Kate asked the board for early feedback on how the new website should look and feel. The board discussed the branding, user journey, accessibility and SEO optimisation aspects of the new site. It was agreed that detailed thought must be given to the different audiences for the site (Costs Lawyers, consumers, students, the wider public etc), their level of assumed knowledge and their likely pathway through the site. Andrew H and Stephanie offered to assist with testing and development as lay users.

**14. AOB**

Steve thanked the outgoing board members (Gill and Tracyanne) for their support, effort and commitment to the CLSB over many years. The board also thanked Kate for her continued efforts in reforming the organisation’s ways of working and the progress made to date.

**15. NEXT SCHEDULED QUARTERLY MEETING**

Date: Wednesday 22 April 2020 @ 10.30am  
 Location: The Studio, Cannon Street, Birmingham

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

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 Chair

**Related documents**

Item	Document	Publication location (CLSB website)
2.1	CLSB board minutes – 23 October 2019	About us ⇨ Our board
4.2	Performance Indicators	About us ⇨ Strategy and governance
6.1	Risk registers	About us ⇨ Strategy and governance
7.1	DR&P consultation outcome	Regulatory matters ⇨ Consultations
7.3	CPD consultation	Regulatory matters ⇨ Consultations
7.3	Guidance notes	For Costs Lawyers ⇨ Costs Lawyer Handbook
7.5	Consumer Engagement Strategy	About us ⇨ Strategy and governance
Item	Document	Publication location (other)
5.2	PCF application decision letter	LSB website <a href="#">here</a>
8.1	Updated regulatory assessment	LSB website <a href="#">here</a>



# Annual priorities

## Improving our regulatory arrangements

	Initiative	Progress status
1.	<p>Complete the review of our Disciplinary Rules and Procedures following consultation in 2019 by:</p> <ul style="list-style-type: none"> <li>• implementing revised rules;</li> <li>• producing associated guidance for Conduct Committee members, including in relation to financial penalties;</li> <li>• articulating parameters for ad hoc recruitment of Panel members;</li> <li>• creating an operating framework for the new Case Manager role;</li> <li>• reviewing our policy on the publication of outcomes.</li> </ul>	<p><b>Near completion</b></p> <p><i>Achieved: Rule change application has been approved by the LSB. Review of guidance has been carried out and new guidance has been produced for approval at the April board meeting.</i></p> <p><i>Outstanding: Operating framework for the Case Manager role to be created. Approved changes to be implemented.</i></p>
2.	<p>Complete the review of our approach to Continuing Professional Development (CPD) by:</p> <ul style="list-style-type: none"> <li>• consulting on proposed changes;</li> <li>• implementing new rules and guidance;</li> <li>• developing reporting templates and case studies to assist practitioners.</li> </ul>	<p><b>Near completion</b></p> <p><i>Achieved: Consultation has been run and an outcome report has been published. Rule change application has been drafted. Reporting templates have been developed.</i></p> <p><i>Outstanding: Rule change application to be formally submitted. Approved changes to be implemented.</i></p>
3.	<p>Review our Practising Rules and Practising Certificate Reinstatement Procedure, with the aim of bringing them into line with updates made to other regulatory arrangements and acting upon insights gained from our supervision and disciplinary activities.</p>	<p><b>In train</b></p> <p><i>Achieved: Rule review has been completed. Consultation has been run and an outcome report has been published. Rule change application is being drafted.</i></p> <p><i>Outstanding: Rule change application to be formally submitted. Approved changes to be implemented.</i></p>
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>	<p><b>Pending</b></p> <p><i>This was originally scheduled for delivery in Q1 2020. It was deprioritised due to</i></p>

	<ul style="list-style-type: none"> <li>• Damages-Based Agreements and Conditional Fee Agreements;</li> <li>• Insurance;</li> <li>• Anti-money laundering;</li> <li>• Referral arrangements; and</li> <li>• Retention of a client's file.</li> </ul>	<p><i>pressure on resources from coronavirus. It has been rescheduled for delivery in Q2.</i></p>
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.	<p><b>Achieved</b></p> <p><i>Diversity action plan has been completed. Additional activities have been undertaken to address the new LSB approach and expectations. A progress report (requested by the LSB) has been produced for approval at the April board meeting.</i></p>
6.	Examine our evidence base in relation to new and emerging policy developments, our regulated community and the regulated market.	<p><b>Pending</b></p> <p><i>This is a second stage activity following our consumer engagement work. It is scheduled for H2 2020.</i></p>

## Protecting the interests of consumers and promoting professional standards

	Initiative	Progress status
7.	Build on research undertaken in 2019 to deliver: <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</b></p> <p><i>A revised <a href="#">Consumer Engagement Strategy</a> was published in Q1 2020. A decision was taken to publish the interim report as an annex to a Board Decision Note. Actions under the new strategy will commence in H2 2020.</i></p>
8.	Review our guidance on vulnerable consumers.	<p><b>Deprioritised / superseded</b></p> <p><i>This has been identified as an action for year 2 of the Consumer Engagement Strategy, so it will now be delivered in the 2021/22 cycle. In 2020, we will begin delivering the actions identified in the first strategy cycle.</i></p>

9.	Work with ACL Training on delivery of the refreshed Costs Lawyer Qualification, building on preliminary analysis and development of materials in 2019.	<p><b>In train</b></p> <p>Achieved: <i>The qualification reopened in January 2020. We continue to receive and provide feedback, in open dialogue with ACLT.</i></p> <p>Outstanding: <i>Audit of the first year of the new course to be undertaken later in the year. Diversity opportunities at point of entry into the profession to be assessed. Any improvements for 2021 to be identified.</i></p>
10.	Collaborate with the Association of Costs Lawyers (ACL) on identifying touchpoints for the collation and analysis of data relating to the profession, including sources of instructions.	<p><b>In train</b></p> <p>Achieved: <i>Initial data gathered at a recent event, enabling us to consider how to approach future activity.</i></p> <p>Outstanding: <i>Identification of further opportunities for data capture.</i></p>
11.	Engage with Professor Mayson’s review of legal services regulation and collaborate with ACL to promote understanding of what Costs Lawyers do and the relative risks to consumers from over- and under-regulation of the market.	<p><b>In train</b></p> <p>Achieved: <i>Engagement with the interim report findings.</i></p> <p>Outstanding: <i>Further input at appropriate stages prior to final report.</i></p>
12.	Develop and agree a new memorandum of understanding with ACL to implement the Legal Services Board’s internal governance reforms and establish an improved framework that appropriately balances cooperation, oversight and independence.	<p><b>Near completion</b></p> <p>Achieved: <i>A new MOU has been developed, agreed at executive level, approved by ACL Council and provided for approval at the April board meeting. Draft compliance documentation has been drafted for board approval and shared with the LSB.</i></p> <p>Outstanding: <i>MOU to be formally executed. Compliance documentation to be formally submitted and assessed.</i></p>
13.	Explore with ACL how we can improve the content or format of the regulatory information that we publish for the benefit of the profession and other stakeholders.	<p><b>In train</b></p> <p>Achieved: <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.</i></p>

		Outstanding: <i>Data to be published in different formats, e.g. infographics. ACL to be asked for feedback on approach.</i>
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## Modernising our organisation

	Initiative	Progress status
14.	Refresh the CLSB website, with a focus on user experience, legals and transparency, enabling Costs Lawyers, consumers and other stakeholders to easily access the information they need.	<b>Achieved</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>
15.	Review the effectiveness of our new operating structure to identify whether and where further improvements can be made.	<b>Achieved</b> <i>This was brought forward to Q4 2019 with departure of the HoO. We do not intend to formally review the structure again in 2020 but are keeping resourcing requirements under review.</i>
16.	Update and retest our business continuity arrangements to reflect potential improvements identified in 2019 testing.	<b>In train</b> <i>Achieved: Significant improvements have been made in our business continuity arrangements, particularly around IT systems.</i> <i>Outstanding: Documenting the improvements in a new Business Continuity Policy was originally scheduled for Q1 2020. This has been postponed for delivery in Q2.</i>
17.	Explore whether there is scope to share services with other approved regulators or similar organisations, to improve efficiencies and save costs.	<b>In train</b> <i>Achieved: Discussions have taken place with two ARs, resulting in follow-up conversations with several service providers.</i> <i>Outstanding: Discussions have not led to any viable opportunities. View to be taken on benefit of expending further resource on speculative approaches.</i>
18.	Assess the impact of moving our practising certificate renewal process to a digital platform	<b>In train</b> <i>Achieved: Assessment of the 2019 manual process has been carried out. The</i>

	to improve data security, minimise manual processes and save resource.	<p><i>risk/cost/resource profile led us to conclude that a digital platform is essential. Prototype forms have been created and are being tested. A new database is at the early stages of development. Various mailing platforms have been tested. We have begun to message the changes to the regulated community.</i></p> <p><i>Outstanding: Forms to be finalised and tested in a live environment. Final decision to be made on mailing platform. Database to be deployed. Further comms with regulated community.</i></p>
19.	Develop a policy for the publication of complaints against the CLSB, augmenting our existing Internal Complaints Handling Policy, covering the type of information that will be published, at what stage and where.	<p><b>Achieved</b></p> <p><i>This has been developed and incorporated into our new website on a <a href="#">standalone page</a> for complaints against the CLSB.</i></p>
20.	Assess the effectiveness of our Transparent Decisions Policy as implemented in 2019 and consider whether any additional transparency measures are necessary.	<p><b>In train</b></p> <p><i>Achieved: Two Board Decision Notes have been created, providing initial evidence against which we can assess effectiveness. A report on ARs' approaches to publishing board papers has been produced for consideration at the April board meeting.</i></p> <p><i>Outstanding: Assessment of effectiveness later in the year once more evidence is available.</i></p>

Cost Lawyers Standards Board  
Kate Wellington, CEO



The Chair's Office  
The Rookery (3<sup>rd</sup> Floor)  
2 Dyott Street  
London  
WC1A 1DE

T 020 7271 0043

[www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk)

06<sup>th</sup> April 2020

Dear Kate,

### **Covid-19 – Legal Services Board priorities and support to regulators**

I know from conversations with many of you, and from discussions between our organisations, how hard you are working to contribute effectively to the country's response to the Covid-19 crisis.

In particular, I would like to commend all regulators on the advice and information that you are providing to the profession and the public online and over the telephone. We know you are experiencing a considerable increase in enquiries resulting from the impact from Covid-19 and that this is clearly consuming a considerable degree of resource. We appreciate that you are dealing with some issues which are specific to your area of the profession but that you are also dealing with common issues across all regulators. We would encourage you to share information and sign-post good advice from other regulators which should hopefully relieve the pressure on those of you with more limited resources.

In order, hopefully, to assist and support you and your teams, I wanted to set out the general approach the LSB expects to take during this period, and to provide some clarity about what we are likely to see as priority issues and activities. Before I do so, I should make the broader point that we will be pursuing even higher levels of flexibility and pragmatism than usual, and that where undue pressures arise in delivering against deadlines set by our work, it will always be worth an early conversation with us and we will dispose ourselves to be as helpful as we can be.

The first point I would seek to make – although you will need no reminder of this – is that regulation is carried out first and foremost in the interests of the public. In the current circumstances, there is a great deal of focus, quite rightly, on supporting businesses. It is important, however, not to lose sight of the public in general, and consumers in particular, as the response to the crisis continues to develop. Indeed, the term vulnerable consumer has taken on arguably much greater significance than it has ever had.

In a similar vein, you will all, as are we, be thinking about the role regulation has to play in supporting post-Covid-19 recovery. Again, it will be important for regulators to think of recovery in terms of the market's ability to meet the needs of society and large and consumers in particular. And those needs are likely to be amplified significantly in a wide range of areas.

Turning to specifics, as you know the LSB this week published its business plan for 2020/21 (and many thanks to you and colleagues for your contributions to its development). It is inevitably, however, a pre-Covid-19 plan. Nevertheless, it remains the central guide to our ambitions this year and we will seek to deliver as much of it as we can.

To provide you and your teams with some insight into how we will manage ourselves against this ambition, we will be adopting the following scheme of priorities, based on delivering our statutory obligations under the Act:

- 1 Statutory decisions, compliance with the Internal Governance Rules 2019 (IGR) and other core regulatory functions;
- 2 Oversight of Office of Legal Complaints and Solicitors Disciplinary Tribunal;
- 3 Regulatory performance oversight of regulatory bodies, including concluding our current IGR consultation; and
- 4 Our wider policy areas such as LSB strategy, ongoing competence, and technology where we are taking a more measured approach to our external engagement.

Much of our policy work is underway and we will flex our approach as described earlier to ensure that we can get the best out of each other.

Looking further ahead, we are also flexing the work on developing the next three-year strategy for the legal services market to consider how best to address the issues that the sector is likely to face when we enter the Covid-19 recovery phase. We will be turning our minds to considering the wider role that regulation might play in supporting economic recovery and reshaping services to better meet the needs of society and we will do that together with you.

We are also developing our own contribution to the Covid-19 response. Two early components of that response include:

- A fast track approvals mechanism for changes to regulatory arrangements that may become necessary as a result of Covid-19. This is in the process of being shared with all regulators and we expect it to be implemented very shortly. We have built on experience with preparation for no-deal EU Exit and colleagues will recognise elements of the new mechanism from that exercise
- We are beginning to build-up a set of common sector issues emerging from the crisis and we will continue to monitor the developing picture to ensure that we are able to support you as best we can in addressing regulatory challenges. Some emerging themes include:
  - a) Relaxation of some regulatory requirements such as on continuing professional development (CPD) requirements but also other regulations
  - b) Cancellation of exams with rescheduling or seeking alternative means of assessment
  - c) Deferring collection of practicing certificate fees
  - d) Areas of law where the current government guidance on social distancing and self-isolation, in particular, inhibits or prevents the delivery of legal services eg attendance to individuals in custody and in court, will writing requiring signatures witnesses; where wet signatures are required; where other in-person presence is required
  - e) Cancellation of events: rescheduling until later in the year or converting to online or teleconferencing.

We are encouraged by your rapid response to these and other issues and we are confident that pragmatic solutions will be found to ensure that consumers can continue to rely on regulation to protect their interests.

We will maintain contact with your teams and ensure that we share information swiftly to deal with any significant issues which may develop.

Finally, I have been very fortunate to have established relatively informal and very helpful discussions with some of you over the last few weeks. I would like to extend the opportunity to all Chairs and my office will be in touch over the next few days. I should add, however, that none of you should feel under any obligation to participate; but I would be delighted if you did.

I am sending a copy of this letter to your respective Chief Executives or equivalent.

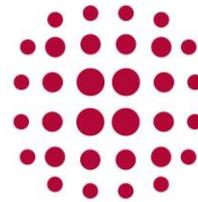
Yours sincerely

A handwritten signature in cursive script that reads "Helen Phillips".

**Dr Helen Phillips**

Chair

E [Helen.Phillips@legalservicesboard.org.uk](mailto:Helen.Phillips@legalservicesboard.org.uk)



Solicitors  
Regulation  
Authority

**From the Chief Executive**

Mr Matthew Hill  
Chief Executive  
Legal Services Board  
3<sup>rd</sup> Floor, The Rookery  
2 Dyott Street  
London  
WC1A 1DE

The Cube  
199 Wharfside Street  
Birmingham B1 1RN

DX: 720293 BIRMINGHAM 47  
UK 0370 606 2555  
Int + 44 (0)121 329 6800  
F + 44 (0)121 616 1999  
sra.org.uk

Sent by email only to: [matthew.hill@legalservicesboard.org.uk](mailto:matthew.hill@legalservicesboard.org.uk)

4 March 2020

Dear Matthew

**Re: Legal Choices**

I am writing in relation to the future development and management of the Legal Choices website. We have real confidence in the website and its potential to help individual consumers and as a sector wide contribution to public legal education. But our experience to date suggests that the current co-ownership model is neither effective nor efficient.

As you are aware, we run the website on behalf of the joint regulators and manage the £750,000 three-year development plan that was jointly agreed to meet the CMA recommendation on Legal Choices.

Since the development programme started in 2017/18, the regulators have worked together to deliver a new look website and three new tried and tested products into beta. One further product is held up because of delays with most regulators signing the data processing agreement that supports the product. We are now in the marketing phase of the programme.

The withdrawal of BSB in July 2019 caused significant delays in progressing the project as the other regulators considered their position. There is no agreement as yet on filling the 2019/20 £52,000 funding gap left by the BSB withdrawal, despite discussion over the last eight months. This is essential if we are to deliver to the commitments the joint regulators have made. I should add that we have been clear that we will contribute our portion of the shortfall.

The current development programme completes at the end of October 2020. In our view, and I hope this is a shared aspiration, we must continue to develop Legal Choices to meet the needs of the public and indeed the expectations of the CMA and others, such as the Solicitor General's public legal education panel. That means updating and building on products, the creation of new products and ongoing marketing. To that end, the regulators have been looking at a future funding and development model since June 2019 without reaching a decision on what should happen in a few months time.

We are continuing to press for progress on the post BSB withdrawal funding shortfall, the final product, the future funding and development of the website.

However, we are increasingly concerned that the completion of the development programme and the future of the Legal Choices website are now at risk. The fundamental issue, in the view of our Board, is the collective ownership model is no longer appropriate for managing a sector wide, high-profile digital property, which needs to be both responsive and have a clear forward programme of work.

We believe that Legal Choices needs to be run by an organisation that has sector wide reach and the powers to require the co-operation and funding needed to ensure its future, in a way that we, as one of the front-line regulators, do not.

Our preferred model is for the Legal Services Board to take ownership of Legal Choices, as the oversight regulator for the sector. That would resolve issues about the purpose, sustainability, future development, decision making and funding of the website, securing a service for the public that is, we believe, genuinely valuable and well regarded in the sector.

I would be happy to meet to discuss the future of Legal Choices.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Philip', written in a cursive style.

**Paul Philip**  
**Chief Executive**  
**Solicitors Regulation Authority**



Regulating  
Property  
And  
Probate  
Lawyers

WeWork  
131 Finsbury Pavement  
London EC2A 1NT  
DX36603 Finsbury  
Switchboard: 0203 859 0904  
w: [clc-uk.org](http://clc-uk.org)  
e: [@clc-uk.org](mailto:@clc-uk.org)

Mr Matthew Hill  
Chief Executive  
Legal Services Board  
3rd Floor, The Rookery  
2 Dyott Street  
London  
WC1A 1DE

Sent by email only to: [matthew.hill@legalservicesboard.org.uk](mailto:matthew.hill@legalservicesboard.org.uk)

9<sup>th</sup> April 2020

Dear Matthew

### **Legal Choices**

Following a meeting of the Legal Choices Governance Board (LCGB), of which I am the Chair, on Friday 3rd April and further to Paul Phillip's letter to you of 4th March, I am writing to update you on the progress of the Legal Choices website.

As you and I have discussed, the withdrawal of the Bar Standards Board (BSB) from the project, and the failure so far to secure their return, has caused delay and concern among the other regulators that continue to fund and deliver the project. The Legal Choices project might be described as being delivered by a 'coalition of the willing' and as chair, I have no power to compel the member organisations to reach agreement.

However I am pleased that, at last week's meeting of LCGB, we made very significant progress collectively. All of the regulators taking part confirmed their continued commitment to the project and its funding. We are committing collectively to investing in the project to ensure that we build on the investments of time and money already made. We will need to establish the new funding envelope for coming years and make some adjustments to the costs split between regulators to reflect that then BSB is no longer participating and that ICAEW has come on board since the original formula was devised.

The very strong consensus is a reflection in large part of the success so far of the latest phase of the project. The LCGB received reports on the impact of the new marketing plan on visitor numbers and the reach of the Legal Choices website. These are very encouraging indeed in relation to the work that was already planned at the beginning of the year to promote the new products on the website.

Equally positive has been the value of the site during the current pandemic. Material aimed at helping citizens who are facing difficulties as a result of the coronavirus and the restrictions put in place for its control have seen very high visitor numbers to the site. During the six-week pilot phase for the new digital marketing approach over February and March, we saw well over one-third of a million visits to the site. This is a very powerful demonstration of the value and impact of this collaboration between the regulators.

My thanks go to the SRA team, headed by Jane Malcolm, for the immense amount of work that they have done to deliver this project so successfully. Each of the other front line

regulators has committed to providing in-kind support in the development of content, for example, in addition to funding and to make timely progress on all the actions that might be required of them to continue to deliver the project.

In view of Paul Phillip's letter to you and the progress that Legal Choices is making, I think it would now be helpful for me as Chair of the Legal Choices Governance Board to arrange a meeting with you and Paul Phillip to discuss the challenges that arise from the current governance approach and work out a way forward.

Kind regards

A handwritten signature in cursive script that reads "Sheila A. Kumar".

Sheila Kumar  
Chief Executive

**OPERATIONAL RISK REGISTER**

**As at 22 January 2020**

**1. RISK SCORING**

**(i) Risk to operation (and ultimately delivering on regulatory objectives)**

Legal, financial, operation/continuity, capacity/capability, security, reputation, stakeholder.

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

<p><b><u>Impact (I):</u></b> 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</p>	<p><b><u>Probability (P):</u></b> 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</p>
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<b>IMPACT</b>	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
		<b>PROBABILITY</b>			

**(iii) Adequacy of controls**

Descriptor	Score	Description
Fully effective	5	Controls are well designed for the risk and address the root causes. The Executive and Board are comfortable that controls are effectively applied, monitored and assured

<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	Virtually no credible control and limited confidence in the application or oversight of risk activity

## 2. 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>Impact</b>	Financial, operation continuity	
<b>Evidence of risk</b>	<p><b>(i) Electronic bills of costs</b> April 2018: New electronic bill of costs came into effect 6 April 2018 for work done after that date.</p> <p><b>(ii) Capped costs</b> January 2019: Pilot introduced on capped costs of £80k for High Court cases worth up to £250k.</p> <p><b>(iii) Increase in fixed costs</b> April 2019: MoJ announcement of implementation of fixed costs on cases up to £100k.</p>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Monitor impact on the profession via impact assessment surveys.</li> <li>• Respond to proposals/consultations to help stakeholders understand the Costs Lawyer market and ensure policy developments are in the public interest.</li> <li>• Implement regulatory arrangements that support safe innovation and diversification, to promote ongoing competition and choice.</li> <li>• Mitigate risks around route to entry – see OP3.</li> <li>• Retain one year's operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	High	
<b>Actions outstanding/status</b>	Monitor reasons for leaving the profession at PC renewal and respond to new factors.	

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

<b>Logged by board:</b> 25/7/2017	<b>Reference:</b> OP3	<b>Risk score: I(5) x P(2) = 10</b>
<b>Risk to operation</b>	<b>There are insufficient numbers of newly qualified Costs Lawyers such that regulated numbers fall to an unsustainable level</b>	
<b>Impact</b>	Reputational, financial, operation continuity	
<b>Evidence of risk</b>	<p>There is only one means of entry into the profession (three-year course) and one provider (ACLT).</p> <ul style="list-style-type: none"> <li>• In 2017, due to financial concerns, the CLSB authorised ACLT's course to the end of 2020 for current trainees only (i.e. a suspension on new intakes). The course reopened to new students in January 2020.</li> <li>• In 2017, CLSB considered applying to the government apprenticeship scheme, but concluded this was not an option.</li> </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> </ul>
<b>Controls</b>	<ul style="list-style-type: none"> <li>Work within the parameters of the new Protocol agreed with ACLT.</li> <li>Nurture relationship with ACLT to ensure early notification of any future issues and ensure current learners are protected.</li> <li>Implement regulatory arrangements within the current framework that modernise the three-year qualification as far as possible.</li> <li>Retain one year's operating budget as reserves.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	Medium
<b>Actions outstanding/status</b>	<ul style="list-style-type: none"> <li>Monitor success of course in 2020.</li> <li>Reconsider longer-term approach to competency, taking learnings from the SQE experience.</li> </ul>
<b>Commentary</b>	There is a general shift across the legal services regulators toward outcomes-based qualifications, but difficulties faced by other regulators in implementing those qualifications mean this is likely to be a longer term solution for the CLSB.

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

<b>Logged by board:</b> 24/1/18	<b>Reference:</b> OP5	<b>Risk score: I(4) x P(4) = 16</b>
<b>Risk to operation</b>	<b>Failure to comply with data protection obligations</b>	
<b>Impact</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.</li> <li>• Use of electronic board papers rather than circulation by regular post.</li> <li>• Updates to IT systems with a focus on data security.</li> </ul>	
<b>Control adequacy</b>	3	
<b>Priority area of risk</b>	High	
<b>Outstanding actions (status)</b>	Implementation of all outcomes from data protection compliance review during Q1 2020. Updates to IT systems ongoing throughout 2020.	
<b>Commentary</b>		

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

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

<b>Logged by board:</b> 23/1/19	<b>Reference:</b> OP8	<b>Risk score: I(3) x P(1) = 3</b>
<b>Risk to operation</b>	<b>Retirement of board members in close succession leads to loss of institutional knowledge and creates a skills gap</b>	
<b>Impact</b>	Operation	
<b>Evidence of risk</b>	The CLSB Chair, one lay NED and one non-lay NED will reach the end of their tenures by 2021.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Use of a skills matrix to map the capabilities of outgoing and existing board members against our organisational priorities, informing our approach to recruitment.</li> <li>• Move to paperless procedures for the board, including electronic board packs, to enable consistent record keeping.</li> <li>• Adoption of Board Decision Notes to improve business continuity and transparency.</li> </ul>	
<b>Control adequacy</b>	5	
<b>Priority area of risk</b>	Low	

<b>Outstanding actions (status)</b>	Recruitment for the new Chair (which is the only remaining appointment) will take place in H2 2020.
<b>Commentary</b>	

## REGULATORY RISK REGISTER

As at 22 January 2020

### 1. RISK SCORING

#### (i) Risk to regulatory objectives

1. Protecting & promoting the public interest.
2. Supporting the constitutional principle of the rule of law.
3. Improving access to justice.
4. Protecting & promoting the interests of the consumer.
5. Promoting competition in the provision of 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, 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

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

(iii) Adequacy of controls

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

2. RISK REGISTER

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

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

<b>Logged by board:</b> 31/10/2011	<b>Reference:</b> R2	<b>Risk score:</b> I(5) x P(1) = 5
<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>	As Costs Lawyers are not permitted to handle client monies, they will not have systems and processes in place to ensure proper handling in the event they do inadvertently or deliberately accept monies in breach of our rules.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Covered under Principle 3.6 of Code of Conduct and associated guidance, updated in 2018.</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>	Low	

<b>Actions outstanding/status</b>	No evidence from client survey (October 2016 to date) or from complaints that a Costs Lawyer has ever handled client monies.
<b>Commentary</b>	

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

## CLSB – Rule change application: Disciplinary Rules and Procedures

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

Responses are provided in green.

Issues
<b>I. Appointment of ad-hoc Panel Members</b>
<p>1) We see the value in having panel members who are available on short notice which is of course part of the rationale for ad-hoc panel members. Can you provide further details on how the CLSB plans to find, assess and train ad hoc panel members quickly enough to enable panels to be formed in a timely manner?</p> <p>In terms of finding ad hoc Panel Members, paragraph 16 of the proposed Panel Member Appointment Policy provides: “Where the need for an ad hoc appointment arises, the role will be publicly advertised in appropriate places (such as the CLSB website) until a suitable candidate is found”. In practice, this will include our usual recruitment avenues (such as LinkedIn networks) which tend to yield candidates within the first few days. In addition, when we have struggled with Panel Member availability in previous cases, we have had suggestions or recommendations from permanent Panel Members for alternates (for example, Panel Members who are not available have recommended colleagues or contacts appointed to similar disciplinary bodies within other organisations). In the past, we have been unable to act on these recommendations, but the amended rules would allow us to move such candidates through to assessment quickly.</p> <p>Assessment of suitability will be based on the appointment criteria established in paragraphs 5 and 6 of the Panel Member Appointment Policy, based on the evidence categories noted in paragraph 7. In practice, recruitment decisions would be taken by the CEO in consultation with the Chair of the CLSB board. We would ask for a resume and references from candidates in the first instance to establish suitability at a threshold level. We would then require supporting evidence (of the kinds mentioned in paragraph 7) as appropriate in the circumstances (for example, to verify claims made in a resume or to test practical skills where these cannot be demonstrated via pre-existing documents).</p> <p>In terms of timing, as soon as we have identified a suitable candidate who we assess as meeting the appointment criteria, we would appoint that person. Unlike for a permanent role, we would not leave the application window open for a defined time period (as noted in paragraph 16 of the Panel Member Appointment Policy). Our small size makes us nimble, and this recruitment process can be prioritised and carried out quickly but robustly.</p> <p>In terms of training, one of the benefits of ad hoc appointments is that we can appoint Panel Members with an existing skill set that complements the particular issues raised in the case at hand and ensure that appointees have relevant and up-to-date expertise as required. The appointment criteria are designed to ensure that significant upskilling and general training are not needed. The focus of training will therefore be on areas specific to the CLSB, including our DR&amp;P, policies and processes. This training will be delivered by way of a document pack that ad hoc Panel Members are required to read and understand. This is provided for at paragraph 10 of the Panel Member Appointment Policy. Panel Members are also required to inform the CLSB of any identified additional training needs on an ongoing basis (paragraph 11) so we can source appropriate online training to meet those needs (from ACL Training or ACAS where possible,</p>

otherwise from a reputable provider).

## II. ISOs

- 1) We note that as drafted there is no upper limit on the length of an ISO. In the interests of balancing risk in a fair way, we would strongly encourage the CLSB to at least require a review point to be set for ISOs. If you disagree then please provide further information on the rationale for your chosen approach.

Under our regime, a practitioner who is subject to an ISO can apply at any time to have that order reconsidered. Rule 4.6 provides: “The Costs Lawyer may apply in writing to have an interim suspension order revoked at any time while such an order is in force if new evidence becomes available that is material to the decision.”

In the context of our regime, we consider this to be a better way of fairly balancing risk than imposing an upper limit on the length of an ISO or mandating review at an arbitrary point, because:

- (i) the Costs Lawyer can have the issue reconsidered immediately if circumstances change, rather than waiting for a scheduled review (applications for review must be determined within 14 days under Rule 4.6);
- (ii) unless there is new evidence or information available, it is difficult to see why the risk profile upon which the ISO is based will change;
- (iii) the Costs Lawyer is the most likely party to have access to any new evidence or information, meaning they are best placed to trigger a review at an appropriate juncture;
- (iv) if the CLSB does receive information suggesting that a review is warranted (for example, from the complainant), a review will take place anyway (Rule 4.5(iii) provides that an ISO shall remain in force until such time as (amongst other things) “the CLSB has reasonable grounds to believe that the criteria in rule 4.2 for imposition of an interim suspension order are no longer met, in which case the CLSB will revoke the interim suspension order and notify the Costs Lawyer in writing”);
- (v) if there is no new evidence or information available, or a review is not otherwise necessary (for example because the Costs Lawyer does not wish to restart practising, which is not uncommon in our sector), then a mandatory review at an arbitrary point is a waste of time and resource.

The same points apply in relation to an upper limit on the length of an ISO, since a review would be required at the end of that limited term to assess whether a fresh ISO was warranted.

We also note that, in response to our consultation question about whether our proposed ISO provisions struck the right balance between proportionality, procedural fairness and workability, we received no feedback from respondents (including ACL and individual Costs Lawyers) suggesting that a mandatory review was necessary or appropriate.

We of course do not wish to ignore your strong encouragement to implement a mandatory review point for ISOs. We are therefore most happy to consider any additional reasoning, in the context of our explanation above, as to why risk would be more fairly balanced by a mandatory review than by the approach we have taken within the framework of our regime as a whole.

### III. Case Manager

- 1) Rule 6.3.9 indicates that a Costs Lawyer will notify the Case Manager if they intend to be accompanied/represented. If the time limit of 14 calendar days is not met by the Cost Lawyer, please could you advise how the CLSB would proceed? Would the Case Manager have any role in this process?

As for any procedural irregularity by a Costs Lawyer involved in disciplinary proceedings, the Costs Lawyer could request an extension of time if they wished to be represented and the 14 day window had closed. They would let the Case Manager know of their request (as their primary source of contact) and the Case Manager would liaise with the Conduct Committee members to communicate their determination of the request to the Costs Lawyer.

Given the small number of cases we handle, we felt it would be disproportionate to set out extensive rules and evidentiary requirements for all the various types of formal applications that could potentially be made in a contentious context, including extensions of time. In practice, these kinds of requests will be coordinated by the Case Manager and determined on paper by the Conduct Committee. Unless agreeing to the request would materially impact the Conduct Committee's ability to deal properly with the case in the public interest (for example, because it would cause significant and unwarranted delay), the Conduct Committee's obligations under its Code of Conduct will mean that reasonable requests are granted.

- 2) There is reliance on the Case Manager to carry out a number of procedural duties. To give some examples: providing the CLSB with the Cost Lawyer's appeal notice (7.2.2) and providing the CLSB's response to the appeal notice (7.2.3). Please could you explain how the CLSB would manage duties such as these if the Case Manager were to be unexpectedly absent (say due to illness). What governance/continuity arrangements would be in place in this regard?

In the absence of the appointed Case Manager, these tasks would fall to the CLSB's Administration Manager for the period of the absence under supervision of the CEO. Given that the CEO will have detailed knowledge of:

- (i) all disciplinary cases that proceed to a Conduct Committee (since the CEO is, in practice, responsible for Level 1 proceedings);
  - (ii) progress of the case, having been the recipient of updates from the Case Manager on behalf of the CLSB; and
  - (iii) the role and duties of the Case Manager under the DR&P,
- we are well placed to manage any absence.

The likelihood of us having more than one Conduct Committee convened at any one time is extremely low (see historic data provided previously), so capacity is not an issue. Since the Case Manager role is administrative, there would also be no conflict of interest risk from the approach described above.

- 3) With reference to our second point on Case Manager reliance, you may wish to consider updating the drafting to give effect to or make clear arrangements in the event of Case Manager absence.

Given that the Case Manager is a role rather than a person (i.e. there is not a full-time appointed Case Manager – any appropriate person could step into the role as described in the DR&P), we do not believe it is necessary to make a provision for absence in the rules themselves. We feel that doing so could in fact give a misleading impression of the role. However, we understand the need for continuity and will address this point in the Case

Manager guidance to ensure that we retain the correct internal processes and resources as time goes on and that parties are promptly notified of alternative arrangements if an absence does occur.

**IV. Conduct Committee hearing**

- 1) Rule 6.4.3 (iii) gives “*the need to secure the proper administration of justice*” as a factor which will be taken into account in determining whether to make an order for a private hearing or for confidential identity of any person involved. We would be interested to know if this is intended to be a catch-all provision or if there are any specific scenarios you consider would fall under this provision?

Rule 6.4.3 was added following consultation, because a number of respondents felt that there might be circumstances in which it would be appropriate for a hearing to be conducted in private. You can see the summary of responses to our consultation question on this issue at pages 4-5 of our [consultation outcome report](#). One respondent helpfully suggested drawing from the recently updated CPR 39.2, which provides (in Rule 39.2(3)) a list of circumstances in which it might be appropriate for a hearing to be conducted in private. This includes where the “court considers for any reason this to be necessary to secure the proper administration of justice” (at subparagraph (g)).

In developing our provision, we considered the evidence available from the consultation on the proposed changes to CPR 39.2 that was run by the Ministry of Justice in 2018. The consultation document noted that “the situations in (a)-(g) are well recognised categories where it may be unjust to sit in public”. Respondents were asked in Question 5: Is it necessary to further define what is meant by the term “secure the proper administration of justice”? No further clarification was included in the final version of the rules, suggesting respondents agreed that no further clarification was required.

You will see from our consultation outcome report that different respondents identified different reasons why, in any particular case, there could be a need to depart from the usual position that hearings are held in public. We therefore felt that, as in CPR 39.2(3)(g), our rule 6.4.3(iii) was necessary to ensure that we were not obliged to hold a hearing in public when this would undermine – for an unforeseen reason – the proper administration of justice.

**V. Drafting Comments**

- 1) 3.2 – The drafting includes use of “may”, we consider that a) “will” should be used in place of “may” or b) if “may” is used, then the CLSB should explain the factors that would guide the application of discretion.

We will amend this to “will”.

- 2) 3.2 – The drafting here uses the wording “significant risk of a breach” in reference to Article 8 of the Human Rights Act. Are you able to clarify why this drafting was used instead of “would breach”.

We are conscious that there could be circumstances in which there is a lack of certainty as to whether publication would breach the HRA, for example because the prevailing case law is unclear in the relevant area. While our starting point would always be publication, in such cases we would want the ability to withhold publication if there was a real prospect of a breach, to mitigate our own exposure to the financial and reputational risks of breaching the HRA.

These cases will be very rare and this provision operates at the periphery of the regime. So if you don’t share our concerns, we can amend this provision to read “would breach”.

- 3) 3.3 – The drafting includes use of “may”, we consider that a) “will” should be used in place of “may” or b) if “may” is used, then we ask that CLSB explain the factors that would guide the application of discretion.

We will amend this to “will”.

- 4) 6.3.5 (i) – The drafting states “the **principle** alleged...”. Can the Costs Lawyer have breached more than one principle? If so, the CLSB may wish to consider revising the wording for clarification that more than one principle may be relevant here.

We define the term “Principle” in the definitions section as meaning any one *or more* of the seven principles, to avoid referring to “Principle(s)” throughout the rules (which can get messy grammatically). Our view is that 6.3.5(i) therefore already covers more than one Principle.

BY EMAIL (under section 203 of Legal Services Act 2007)

Kate Wellington  
Chief Executive  
Cost Lawyer Standards Board  
Centurion House  
129 Deansgate  
Manchester  
M3 3WR



The Chief Executive's Office  
3<sup>rd</sup> Floor, The Rookery  
2 Dyott Street  
London  
WC1A 1DE

T 020 7271 0043

[www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk)

6 April 2020

Dear Kate,

**Decision notice for the Cost Lawyer Standards Board (CLSB) application for approval of changes to regulatory arrangements in relation to its Disciplinary Rules and Procedures**

Please find enclosed our decision notice granting the CLSB's application for approval of changes to regulatory arrangements to amend regulatory arrangements in relation to its Disciplinary Rules and Procedures.

This decision notice should be considered effective as of today, 6 April 2020. A copy of the decision notice will be published on our website within the next two business days.

We welcome the introduction of ISOs but would ask you to consider placing a time limit on the order. A power of this nature can end up being a means of exercising summary justice without proper mitigation and due process. Typically in other similar schemes, mechanisms are put in place to constrain the power which tend to involve placing a time limit on the order in the expectation that the regulator would complete the full disciplinary process in this time. If it turns out that an order needs to be extended then there is a clear process by which that can be done, in which the individual subject to the order has a say. We accept that the risk here is one for CLSB to manage, however.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Matthew Hill', is written over a thin vertical yellow line.

**Matthew Hill**  
Chief Executive

**E [matthew.hill@legalservicesboard.org.uk](mailto:matthew.hill@legalservicesboard.org.uk)**

## Summary of decision

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

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

The most significant change is to give effect to the introduction of Interim Suspension Orders, which allow the CLSB to suspend a costs lawyer from practice while they are subject to disciplinary investigation.

The amended rules also:

- introduce the role of a Case Manager to facilitate the administrative running of proceedings
- introduce the ability to appoint ad hoc Panel Members to the existing Panel
- revise the value of fixed costs and financial penalties
- provide for the publication of details of pending Conduct Committee hearings and enable the observation of hearings
- provide for the publication of disciplinary outcomes
- stipulate that the CLSB's jurisdiction does not extend to complaints by litigants or professionals on the other side of proceedings that are ongoing before the courts
- clarify key roles and responsibilities

## Decision notice

### **The Costs Lawyer Standards Board (CLSB) application for approval of changes to its regulatory arrangements in respect of its Disciplinary Rules and Procedures**

1. The Legal Services Board (“**LSB**”) has granted an application from the Costs Lawyer Standards Board (“**CLSB**”) for alterations to regulatory arrangements to amend its Disciplinary Rules and Procedures.
2. This decision notice sets out the decision taken, including a description of the changes.
3. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (“the **Act**”) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Association of Costs Lawyers (“**ACL**”) is an approved regulator for the costs lawyer profession and the CLSB is the regulatory arm to which the ACL has delegated its regulatory functions.
4. This notice sets out the decision taken, including a description of the changes. The notes at page 7 of this notice explain the statutory basis for the decision.
5. The chronology of the LSB’s handling of this application is set out below.

## Chronology

- The LSB confirmed receipt of an application from the CLSB on 20 February 2020.
- The 28-day initial decision period for considering the application ends on 18 March 2020.
- On 17 March 2020 the LSB issued an extension notice<sup>1</sup> which extended the decision period to 19 May 2020.
- This decision notice is effective from 6 April 2020.
- The decision notice will be published on the LSB’s website by 8 April 2020.

## Background

6. The Disciplinary Rules and Procedures (DR&P) are published in the CLSB Handbook and govern its processes for determining whether a costs lawyer has breached a Principle within the Code of Conduct and/or an associated rule, and set out the penalties in the event of a breach.
7. The DR&P were last amended in April 2013. The CLSB is now proposing “targeted alterations” to the rules which are aimed at clarifying, streamlining and improving existing processes. In amending the DR&P, the CLSB has considered papers published by the LSB in the time since the rules were last amended and the approaches of other legal services regulators and says that it is seeking to take steps to align with best practice.

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<sup>1</sup> <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/03/20200317-Extension-Notice-CLSB.pdf>

8. Currently, the CLSB does not have the power to impose interim suspension orders (ISOs). In our assessment of the CLSB's regulatory performance published in January 2019<sup>2</sup> we highlighted this as an area where its approach was not consistent with that across legal services more widely. We asked the CLSB to consider the assurance it is able to offer the public and others in the absence of having such powers.
9. Further to the LSB's assessment, the CLSB conducted analysis of previous disciplinary proceedings. The application notes that this exercise did not identify any cases where, in the CLSB's view, an ISO should or could have been imposed, had such a power existed. Notwithstanding, the CLSB recognises the possibility that such a case could arise in the future and it is seeking to put the appropriate protections in place.
10. Through this application, the CLSB seeks to introduce the ability to impose ISOs, which would enable it to suspend a costs lawyer from practice while they are subject to a disciplinary investigation. Some other amendments are also being proposed to increase transparency around the disciplinary process, improve administrative procedures and revise the level of fixed costs and financial penalties.
11. Consultation on the proposed changes took place from 26 September to 15 November 2019. Respondents were largely in support of the proposals. In January 2020, the CLSB published a consultation outcome report and a copy has been provided with the application. The report provides details on the CLSB's consideration of consultation responses, including its rationale for revising its proposals or maintaining its initial position in light of feedback from respondents.
12. The CLSB intends to implement the changes with effect from May 2020.

## **Summary of proposed changes**

### *ISOs*

13. New Rule 4 which provides for the imposition of ISOs. The new Rule 4 stipulates that the CLSB will appoint a Lay Person Panel Member to consider the relevant facts and make a recommendation as to whether an ISO should be imposed. Where an ISO is imposed, the relevant costs lawyer will be notified of the reasons in writing and the decision will be published by the CLSB in accordance with a new Rule 3. Rule 4.5 provides the conditions on when an ISO shall automatically lapse or will be revoked by the CLSB. Rule 4.6 stipulates that the costs lawyer may apply to have the ISO revoked at any time while it is in force (if new evidence comes to light to support such revocation). Processes and timescales for the handling of applications of this kind are covered within the amended rules.

### *New Transparency framework*

14. New Rule 3 which revises existing procedures for the publication of disciplinary outcomes (prescribed in Rule 14) to harmonise such procedures with the amendments proposed through this application.

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<sup>2</sup> Outcome E2: <https://www.legalservicesboard.org.uk/wp-content/uploads/2019/09/Final-CLSB-Regulatory-Performance-Assessment-Update.pdf>

15. New Rule 6.4 which introduces a new procedure to publish pending Conduct Committee hearings on the CLSB website and provides for interested parties to observe hearings.

#### *Changes around the administration of processes*

16. Revisions to Rule 6 to introduce the role of a Case Manager for disciplinary proceedings. Rule 6 stipulates that the Case Manager's role will be administrative only; they will not be involved in deliberations or substantive determinations of the committees. The CLSB intends to implement internal guidance for Case Managers which will come into effect at the same time as the amended DR&P. Paragraph 16 of the application sets out the headline areas which the guidance is intended to cover.
17. The CLSB's proposal to introduce a Case Manager as part of the framework for its disciplinary proceedings into its framework takes into account:
  - (i) the LSB's Regulatory Performance Framework (Enforcement standard)
  - (ii) the fact that the concept of a Case Manager is used by other regulators and;
  - (iii) feedback from Panel Members on conclusion of previous cases, where a key theme was the need for a single point of contact for those involved in the disciplinary proceedings.

#### *Appointment of additional ad hoc Panel Members*

18. The CLSB retains a pool of permanent Panel Members upon whom it may call to sit on a Conduct Committee or Conduct Appeal Committee. It is proposing to introduce the ability to appoint additional members to the existing Panel on an *ad hoc* basis. This is because the existing pool of Panel Members is small (on account of a low volume of cases), but the small pool has also caused difficulties when arranging disciplinary hearings. The CLSB anticipates that being able to recruit additional Panel Members on an ad hoc basis should enable the disciplinary process to be more flexible, responsive and timely. We asked the CLSB to provide further information regarding this aspiration and in respect of the proposals (see key issues section).
19. All Panel Members, whether permanent or ad hoc will be subject to a Code of Conduct and declaration. Prior to appointment, they will receive guidance and training from the CLSB.

#### *Fixed costs and penalties*

20. The CLSB is proposing revisions to fixed costs and financial penalties to be paid by a costs lawyer to the CLSB, where a disciplinary finding is made against them. The application notes that this is to better reflect actual costs in managing disciplinary proceedings and to account for inflationary pressure. Revisions to fixed costs are being proposed for the first time since 2011. Within the proposed revisions to financial penalties, the CLSB seeks to remove the power of the Conduct Appeal Committee (the level three appeal stage) to increase the value of a financial penalty imposed by the Conduct Committee (level two stage). This change is intended to prevent a possible barrier to appeals against Conduct Committee decisions.

21. The proposed revisions to the value of fixed costs are as follows:

Level of proceedings	Current (£)	Proposed (£)
Level one	250	500
Level two	1,000	1,250
Level three	1,500	1,250 (level 2) + 1,250 (level 3) = 2,500

22. The proposed revisions proposed revisions to the value of financial penalties are as follows:

Level of proceedings	Current (£)	Proposed (£)
Level one	Nil	Up to 500 (only where agreed)
Level two	Up to 2,000	Up to 5,000
Level three	Up to 4,000	Up to 5,000 (and no greater than the amount imposed at level two)

*Complaints made in the conduct of proceedings*

23. Addition of Rule 1.5. to stipulate that the CLSB’s jurisdiction does not extend to complaints by litigants or professionals on the other side of proceedings that are ongoing before the courts.

*Clarification of roles and responsibilities*

24. Some drafting amendments are being proposed to make it clear that decisions and actions are taken by the CLSB as opposed to individual members of staff. However, where it remains appropriate to refer to individuals (for example a senior staff member or external investigator in a level one investigation), references to these individuals remain within the rules.

**Key issues considered in the assessment of the application**

25. We welcome the CLSB’s approach in making these changes to provide greater transparency and clarity in its disciplinary procedures.

26. We recognise that the CLSB has made progress on actions in respect of regulatory performance outcomes ‘E2’ and ‘E3’, which we assessed as *Not Met – action being taken*. The application provides detailed information on current disciplinary procedures and steps taken to develop amendments to the rules. While we acknowledge that the CLSB’s review of previous disciplinary hearings did not identify any cases where an ISO should or could have been imposed, had such powers existed, we are pleased that a new framework is being introduced which offers better public protection and consistency with other regulators. We will continue to follow up with the CLSB through the LSB’s regulatory performance framework.

27. We considered the support mechanisms and advisory tools available to Lay Person Panel Members when considering whether an ISO should be imposed and asked the CLSB to provide additional information in this regard. The CLSB acknowledged our comments and advised that as a result of the LSB highlighting the issue it will ensure that this area is accounted for within its guidance for Panel Members. Additionally, with there being no upper limit on the length of an ISO, we sought assurance from the CLSB that it is balancing risk in a fair way. In its response, the CLSB explained how it sees Rule 4.6 (regarding applications to have an ISO revoked) as a mechanism for fairly balancing risk and also noted that Rule 4.5 (iii) enables it to act on information which suggests that a review of an ISO is warranted. Further, the CLSB said that

none of the consultation responses (which included ACL and individual costs lawyers) suggested that a mandatory review was necessary or appropriate.

28. We asked the CLSB to provide detail about how its proposal to appoint ad hoc Panel Members would work in practice. In return, the CLSB informed us of the steps it intends to take to find individuals promptly, deliver training to them and ultimately form panels in a timely manner. We also considered the CLSB's policies and safeguards over ad hoc appointments, particularly the minimum requirements to become a Panel Member and steps the CLSB will take to ensure that, once recruited, ad hoc Panel Members are appropriately trained. We are satisfied with the information provided in the application and the further information provided by the CLSB in response to our requests. Additionally, the CLSB explained to us that it retains Permanent Panel Members (no set term) in the interest of continuity given the low volume of cases it handles. The CLSB further confirmed that it intends to transfer a condition for terminating appointments from the Code of Conduct to letters of appointment.
29. We considered there to be significant reliance on the Case Manager and asked the CLSB to explain how duties led on by the Case Manager would continue if they were unexpectedly absent. The CLSB affirmed that the Case Manager is a role as opposed to a person and that the DR&P is framed to allow any appropriate person to step into the role and that it has arrangements for a period of absence. It did not wish to make a provision of Case Manager absence in the rules but acknowledged us pointing out the area of continuity and advised that it will address this and the need to follow correct internal processes in its guidance for Case Managers. While the LSB does not approve guidance that does not fall within the definition of regulatory arrangements under section 21 of the Act, we ask that once the guidance for Case Managers has been finalised, the CLSB provides us with a copy for information. On the guidance itself, we are assured that the CLSB is considering appropriate and targeted areas based on the high-level information provided at paragraph 16 of the application.
30. We asked the CLSB about the proposed Rule 6.4.3, specifically its inclusion of "*the need to secure the proper administration of justice*" as a factor to take into account when considering whether all or part of a hearing should be held in private or the identity of a person involved in the hearing should be kept confidential. The CLSB explained that its consultation included views on different reasons why there may be a need to depart from the usual position on holding hearings in public and ultimately it chose to mirror the Civil Procedure Rules to capture unforeseen circumstances in which a public hearing would undermine the proper administration of justice.
31. The application confirms that the CLSB will review the effectiveness of the new arrangements two years after implementation. It has opted for this as opposed to an annual review in view of the low number of disciplinary cases heard within a typical 12-month period. The CLSB anticipates that a review after two years should provide greater evidence to assess. We consider this approach to be reasonable. Should there be an upward trajectory in cases, we would expect the CLSB to assess whether the frequency of its review remains appropriate.
32. We queried some of the decisions the CLSB had taken in drafting its proposed rules and suggested it consider making some alterations. As a result of our suggestions, the CLSB replaced "*may*" with "*will*" in both Rule 2.3 and Rule 3.3 and replaced "*significant risk of a*

*breach*” with “*would breach*” in Rule 2.3 to enhance the clarity of the rules. The amended DR&P appended to this notice reflect these changes.

### **Decision**

33. The LSB has considered the CLSB application against the refusal criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application and accordingly, the application is granted.
34. **Annex A** of this decision notice contains a copy of the amended DR&P which have been approved by the LSB (amendments shown in red).

**Matthew Hill, Chief Executive**

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

*Notes:*

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

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<sup>3</sup> LSB's Rules for applications to alter regulatory arrangements – Version 2 April 2018

[https://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/New%20folder%20\(2\)/FINAL\\_Rules\\_for\\_applications\\_to\\_alter\\_regulatory\\_arrangements.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(2)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf)

**Annex A**

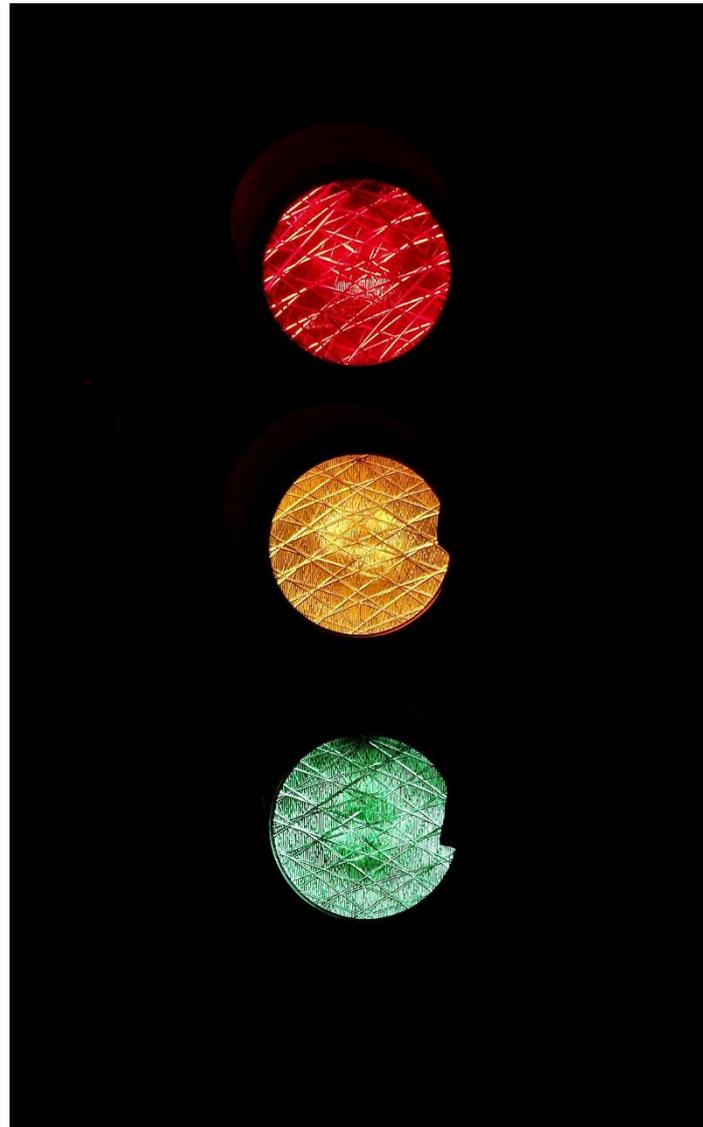
# **Disciplinary Rules and Procedures**

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**Effective date: xx May 2020**

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**Costs Lawyer Standards Board**



**CLSB**  
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## Definitions

The definitions below form part of these Disciplinary Rules and Procedures.

ACL	Association of Costs Lawyers (named in the LSA as the Association of Law Costs Draftsmen).
Case Manager	Person appointed by the CLSB to assist in the administration of a disciplinary matter at level two or three, who may be a person employed by the CLSB.
CLSB	Costs Lawyer Standards Board, acting as an approved regulator under the LSA following delegated authority by the ACL on 31 October 2011.
CoC	Costs Lawyer Code of Conduct effective at the time a Principle might have been breached.
Complaint	Information established by the CLSB under its supervision arrangements or information received from a third party (natural, legal or commercial) which relates to a potential breach of a Principle by a Costs Lawyer.
Complainant	The CLSB, or a person (natural, legal or commercial) who brings information to the attention of the CLSB that a Principle might have been breached by a Costs Lawyer.
Costs Lawyer	A Costs Lawyer authorised and regulated by the CLSB.
DR&P	These Disciplinary Rules and Procedures.
Lay Person / Non-Lay Person	As defined in Schedule 1 paragraph 2(4) of the LSA.
LSA	Legal Services Act 2007.
Panel Member	An individual appointed by the CLSB (including on an ad hoc basis) to serve on a Conduct Committee or Conduct Appeal Committee who: <ul style="list-style-type: none"> <li>• is independent of the CLSB;</li> <li>• has been neither an ACL Council member nor a non-executive director of the CLSB for a period of two years before being appointed as a Panel Member; and</li> <li>• has agreed in writing to adhere to the terms of the CLSB’s Panel Member Code of Conduct and any</li> </ul>

	<p>procedural guidance that the CLSB may issue for Panel Members from time to time.</p>
<p>Principle</p>	<p>Any one or more of the seven principles a Costs Lawyer must comply with under the CoC, namely:</p> <ol style="list-style-type: none"> <li>1. Act with integrity and professionalism</li> <li>2. Comply with your duty to the court in the administration of justice</li> <li>3. Act in the best interests of your client</li> <li>4. Provide a good quality of work and service to each client</li> <li>5. Deal with the regulators and Legal Ombudsman in an open and co-operative way</li> <li>6. Treat everyone with dignity and respect</li> <li>7. Keep your work on behalf of your client confidential</li> </ol> <p>The Principles are underpinned by CLSB rules, such as Practising Rules and CPD Rules, contained in the CLSB Handbook. A potential breach of a Principle may therefore involve breach of a rule and a potential breach of a rule may indicate the breach of a Principle. For this reason, a reference to a Principle in these DR&amp;P includes a reference to any associated CLSB rule.</p>
<p>Regulatory Objectives</p>	<p>As defined in section 1(1) of the LSA.</p>

## Background

These DR&P are made pursuant to the LSA, which requires the CLSB to act in a way that it considers most appropriate for the purposes of meeting the Regulatory Objectives. The CoC sets out the Principles that a Costs Lawyer must uphold in order to meet the fundamental professional standards required of a Costs Lawyer. The Principles are underpinned by CLSB rules, such as Practising Rules and CPD Rules. These DR&P establish processes for determining whether a Costs Lawyer has breached a Principle and/or an associated rule, as well as the consequences of any such breach. These DR&P are published in the CLSB Handbook.

## Objectives

The main aim of these DR&P is to promote the Regulatory Objectives, in particular:

- protecting and promoting the public interest;
- supporting the constitutional principle of the rule of law;
- protecting and promoting the interests of consumers;
- encouraging an independent, strong, diverse and effective legal profession;
- promoting and maintaining adherence to the professional principles.

These DR&P aim to be fair, consistent, transparent and proportionate procedures for considering the conduct of Costs Lawyers. They also aim to provide a credible deterrent to non-compliance with professional standards.

The desired outcome under these DR&P is that consumers of Costs Lawyers' services, the general public, the regulated community and individual Costs Lawyers are confident that the CLSB takes appropriate action where a Costs Lawyer has acted or continues to act in a way which breaches a Principle.

## RULE 1: Jurisdiction

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

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

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

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

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

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

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

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

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

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

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

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

- 2.1 A Complaint about service provided by a Costs Lawyer falls within the jurisdiction of the Legal Ombudsman. A Complaint about the conduct of a Costs Lawyer (i.e. breach of a Principle) falls within the jurisdiction of the CLSB.
- 2.2 In the event the CLSB receives a Complaint that falls within the jurisdiction of the Legal Ombudsman and not the jurisdiction of the CLSB, the CLSB will inform the Complainant of this and provide the Complainant with contact information for the Legal Ombudsman.
- 2.3 In the event a Complaint relates to both the service and conduct of a Costs Lawyer the CLSB will allow the Legal Ombudsman to conclude the service element of that Complaint before the CLSB considers the conduct element of that Complaint, unless the CLSB deems the conduct element so serious in nature that it requires the immediate attention of the CLSB. For the purposes of rule 1.3, the CLSB will treat the date of notification to the CLSB as being the date the Complaint was made to either the CLSB or Legal Ombudsman.

## **RULE 3: Publication of an outcome**

- 3.1 The purposes of publishing a disciplinary outcome are to protect the public and to promote high standards across the Costs Lawyer profession. The CLSB will be guided by these purposes in determining whether and how to publish.
- 3.2 In the event a breach of a Principle has been established under these DR&P, the finding and any associated disciplinary outcome **will** be published by the CLSB unless publication would prejudice other proceedings or investigations (whether of

a legal or regulatory nature) or **would breach** Article 8 of the Human Rights Act 1998.

- 3.3 Publication **will** be on the CLSB website and in any other location that the CLSB deems appropriate for achieving the purposes in rule 3.1. A note will also appear against the name of the Costs Lawyer on the register of authorised and regulated Costs Lawyers.
- 3.4 Imposition of an interim suspension order under rule 4 will be noted against the name of the Costs Lawyer on the register of authorised and regulated Costs Lawyers for the period that the interim suspension order is in force.
- 3.5 Other than where an interim suspension order has been imposed, publication will only occur where a breach of a Principle has been established against a Costs Lawyer and following expiry of the time for an appeal under these DR&P. In the event the Costs Lawyer appeals, publication of the finding under appeal will be withheld pending the outcome of that appeal.
- 3.6 Publication will be in accordance with the Data Protection Act 2018, as amended from time to time. The CLSB may rely upon any exemptions from general data protection rules relating to the processing of personal data in connection with regulatory activities.

## **RULE 4: Interim suspension orders**

- 4.1 On receipt of a Complaint, the CLSB shall consider whether or not the Costs Lawyer's practising certificate should be subject to an interim suspension order. The effect of an interim suspension order is to impose a condition on the Costs Lawyer's practising certificate that the Costs Lawyer does not have the right to practice as a Costs Lawyer pursuant to the CLSB's Practising Rules while the interim suspension order has effect.
- 4.2 An interim suspension order must be fair, just and reasonable in all the circumstances and may only be imposed if the CLSB is satisfied that such a course of action is justified having regard to:
- (i) the risk posed to the public if such an interim suspension order was not implemented; and

(ii) the Regulatory Objectives.

4.3 If the CLSB is of the view that there are grounds for imposing an interim suspension order, the CLSB will appoint a Lay Person Panel Member to consider the relevant facts and make a recommendation as to whether an interim suspension order should be imposed. The Lay Person Panel Member will consider whether it is appropriate, in all the circumstances, to seek further information from the Costs Lawyer before making the recommendation.

4.4 An interim suspension order will:

- (i) be imposed by the CLSB only where recommended by the Lay Person Panel Member appointed under rule 4.3;
- (ii) be notified in writing to the Costs Lawyer, including reasons why the criteria in rule 4.2 for imposition of an interim suspension order are considered to be met; and
- (iii) be published in accordance with rule 3.

4.5 An interim suspension order shall remain in force until such time as:

- (i) an investigation has been undertaken in accordance with rule 5 and a finding has been made as provided for in rule 5.2, in which case the interim suspension order shall automatically lapse;
- (ii) the relevant Complaint is fully determined following a finding at level one, level two or level three and the time for any appeal has expired, in which case the CLSB will revoke the interim suspension order and notify the Costs Lawyer in writing; or
- (iii) the CLSB has reasonable grounds to believe that the criteria in rule 4.2 for imposition of an interim suspension order are no longer met, in which case the CLSB will revoke the interim suspension order and notify the Costs Lawyer in writing.

4.6 The Costs Lawyer may apply in writing to have an interim suspension order revoked at any time while such an order is in force if new evidence becomes available that is material to the decision. The Lay Person Panel Member appointed under rule 4.3 will determine the application within 14 calendar days of receipt, taking into account the new evidence provided. The CLSB will notify the Costs Lawyer in writing of the Lay Person Panel Member's determination. If the Lay Person Panel Member

determines that the application should be allowed, the CLSB will revoke the interim suspension order.

- 4.7 The Costs Lawyer may, within 14 calendar days of receiving written notification of a determination under rule 4.6, appeal against that determination. The appeal will be considered by a Conduct Appeal Committee appointed under rule 7.2. The Lay Person Panel Member appointed under rule 4.3 shall not be a member of that Conduct Appeal Committee.
- 4.8 An appeal under rule 4.7 must be made in writing, setting out the reasons why the Costs Lawyer believes the interim suspension order should be revoked. The Conduct Appeal Committee will consider the issue afresh. The CLSB will notify the Costs Lawyer in writing of the outcome of the appeal. If the appeal is allowed, the CLSB will revoke the interim suspension order as soon as practicable.
- 4.9 There will be no order for costs against the Costs Lawyer in relation to the imposition of an interim suspension order, including in relation to any application to have the interim suspension order revoked or any appeal. This rule does not impact the power to impose fixed costs orders in relation to other aspects of disciplinary proceedings, as set out elsewhere in these DR&P.

## **RULE 5: Level one procedure**

### **5.1 Investigation**

- 5.1.1 In the event the CLSB accepts jurisdiction in respect of a Complaint, it will carry out an investigation in relation to the Complaint. The investigation will be conducted by a senior member of CLSB staff or by an external investigator appointed by the CLSB who is considered to have the requisite expertise. The CLSB will use all reasonable endeavours to ensure an investigation is completed within three calendar months from the date an investigator is instructed or, in the event a CLSB staff member conducts the investigation, from the date the CLSB accepts jurisdiction.
- 5.1.2 The person carrying out the investigation will at all times:
- (i) act independently;
  - (ii) maintain confidentiality; and

- (iii) subject to (i) and (ii) above, make all enquiries and gather all evidence required to enable them to draw accurate conclusions.

5.1.3 The CLSB or investigator will send a copy of the Complaint and any documents to the Costs Lawyer inviting them to provide, within 28 calendar days, a response which sets out concise observations (which may include admissions), supported by evidence relevant to the investigation. The Costs Lawyer may make a written request to the CLSB or investigator for an extension of time for responding, setting out reasons why the extension is required. Only one extension will be permitted other than where the CLSB is satisfied that there are exceptional circumstances, in which case it may exercise its discretion to grant a further extension, taking into account the public interest in the prompt investigation of Complaints.

5.1.4 The CLSB may consider multiple Complaints, or multiple potential breaches of a Principle, as part of a single investigation so long as this is consistent with rule 5.1.2.

5.1.5 In making a finding and recommending an outcome, the CLSB or the investigator will consider, without limitation:

- (i) whether the alleged facts are disputed by the Costs Lawyer;
- (ii) whether the alleged conduct is isolated or systemic in nature;
- (iii) the extent of any prejudice or loss caused or likely to be caused because of the alleged conduct;
- (iv) whether the alleged conduct involved the integrity or honesty of the Costs Lawyer;
- (v) the Costs Lawyer's standard of care and conduct leading up to the alleged conduct;
- (vi) whether the Costs Lawyer's handling of the matter under their first-tier complaints handling procedure was reasonable, and what steps, if any, the Costs Lawyer had taken to address the issue;
- (vii) whether any material harm has been caused to the standing of the Costs Lawyer profession;
- (viii) the disciplinary record of the Costs Lawyer;
- (ix) whether it is a case which involves a matter of wider public interest;
- (x) whether the Costs Lawyer complied with Principle 5 throughout the investigation.

5.1.6 All evidence that is relevant will be admissible in the investigation, unless disclosing it to the CLSB or the investigator would be unlawful. The weight given to any particular evidence or category of evidence will depend on what is fair and reasonable in the circumstances.

5.1.7 At the conclusion of an investigation, the CLSB or the investigator will produce a written report. It will set out the evidence considered as part of the investigation and the conclusions drawn from the evidence. Conclusions will be reached on the balance of probabilities.

5.1.8 The investigation report will contain one of the following findings:

- (i) no breach of a Principle occurred; or
- (ii) a breach of a Principle occurred.

In the event of a finding that a breach of a Principle occurred, the investigation report will also recommend that the CLSB implements one of the outcomes set out in rule 5.3.1.

5.1.9 If the investigation report was prepared by an investigator appointed by the CLSB, it will be evaluated by the CLSB to ensure it is thorough and fair. It will be at the discretion of the CLSB as to whether further investigation is carried out before the finding in the investigation report is acted upon. In such event, the Costs Lawyer will be notified that further investigation will be undertaken and completed within a period of 21 calendar days.

## 5.2 Investigation finding: No breach of a Principle occurred

5.2.1 If the investigation report includes a finding that no breach of a Principle occurred then:

- (i) no further disciplinary action will be taken by the CLSB in relation to the Complaint; and
- (ii) there will be no costs payable by either the Costs Lawyer or the CLSB to the other.

5.2.2 The CLSB will inform the Costs Lawyer and Complainant of the finding in writing as soon as reasonably practicable.

## 5.3 Investigation finding: Breach of a Principle occurred

5.3.1 If the investigation report includes a finding that a breach of a Principle occurred, the CLSB may implement any of the following outcomes:

- (i) issue a warning letter, specifying conduct that the Costs Lawyer is expected to engage in or avoid in the future;
- (ii) agree a written undertaking with the Costs Lawyer, specifying actions that the Costs Lawyer has agreed to take or conduct that the Costs Lawyer has agreed to avoid in the future;
- (iii) refer the matter to a Conduct Committee (level two procedure) in accordance with rule 6.

5.3.2 The CLSB will inform the Costs Lawyer and Complainant of the finding and associated outcome in writing as soon as reasonably practicable.

5.3.3 The CLSB will pursue whichever of the outcomes under rule 5.3.1 best promotes, in the CLSB's view, the objectives of these DR&P. In doing so, the CLSB will take into account any recommendations in the investigation report, but will not be bound by those recommendations.

5.3.4 The CLSB will always consider referring the matter to a Conduct Committee where, without limitation:

- (i) the alleged breaches are, or have the potential to be, very serious or sensitive;
- (ii) the conclusions of the investigation are finely balanced or the facts are unclear;
- (iii) the person carrying out the investigation feels they have not been able to obtain all relevant evidence within the parameters set out in rule 5.1.2;
- (iv) the CLSB is of the view that issuing a warning letter or agreeing a written undertaking would not serve the objectives of these DR&P;
- (v) the matter otherwise raises an issue of significant public interest.

5.3.5 Where the CLSB determines that a written undertaking is the most appropriate outcome, it will seek to agree that written undertaking with the Costs Lawyer promptly following conclusion of the investigation. Once the terms of the undertaking have been agreed, the CLSB will provide the proposed written undertaking to the Costs Lawyer for the Costs Lawyer to sign and return within 14 calendar days. A written undertaking will have effect from the date of the Costs Lawyer's signature.

- 5.3.6 A warning letter or written undertaking will set out in brief the finding of the investigation, including the Principle breached and the circumstances of the breach.
- 5.3.7 A fixed costs order in the sum of £500, payable within 21 calendar days, will be included in any warning letter or written undertaking. A written undertaking may also include:
- (i) an undertaking to pay a financial penalty not exceeding £500;
  - (ii) the imposition of a condition on the Costs Lawyer's practising certificate for a specified period.
- 5.3.8 Where an investigation relates to more than one Complaint, or finds that more than one breach of a Principle occurred, the CLSB may implement any combination of the outcomes under rule 5.3.1 as are considered appropriate.
- 5.3.9 In the event the Costs Lawyer:
- (i) expresses to the CLSB that they do not intend to comply with the terms of a warning letter;
  - (ii) does not comply with the terms of a warning letter;
  - (iii) does not sign and return a proposed written undertaking within 14 calendar days of receipt; or
  - (iv) does not comply with the terms of an agreed written undertaking,
- the CLSB may refer the matter to a Conduct Committee (level two procedure) and will notify the Costs Lawyer of this in writing. The Conduct Committee may consider the original Complaint that gave rise to the warning letter or written undertaking, as well as the Costs Lawyer's conduct that led to the matter being referred to the Conduct Committee under this rule 5.3.9 in making its findings.
- 5.3.10 The CLSB will not issue any further Costs Lawyer practising certificates to a Costs Lawyer until such time as fixed costs and any financial penalty at level one have been paid in full by the Costs Lawyer to the CLSB.

## 5.4 Breach of a Principle occurred: Right of appeal

- 5.4.1 A finding at level one may not be appealed by a Complainant.
- 5.4.2 The Costs Lawyer may appeal against a finding, following a level one investigation, that a breach of a Principle occurred. The Costs Lawyer may also appeal against the content of a warning letter issued under rule 5.3.1(i).

- 5.4.3 An appeal by the Costs Lawyer under rule 5.4.2 must be made to the CLSB in writing, within 14 calendar days of:
- (i) receipt of written notification of a finding against the Costs Lawyer following a level one investigation; or
  - (ii) receipt of a warning letter (where the appeal relates to the content of that warning letter).
- 5.4.4 The appeal should identify one or more of the following grounds for appeal and attach any evidence in support of those grounds:
- (i) there was a material error of law;
  - (ii) there was a failure to take into account material information;
  - (iii) the decision was irrational or based on irrelevant considerations;
  - (iv) there was a material failure to comply with these DR&P;
  - (v) the decision is unlawful, for example because it infringes a person's human rights;
  - (vi) new evidence has been obtained which could not have been made available when the decision was made and which will be material to the decision.
- 5.4.5 An appeal under rule 5.4.2, which meets the criteria in rules 5.4.3 and 5.4.4, will be determined by a Conduct Committee convened in accordance with rule 6.

## **RULE 6: Level two procedure (Conduct Committee)**

### **6.1 Jurisdiction of a Conduct Committee**

6.1.1 A Conduct Committee will have jurisdiction under these DR&P in the events outlined in rule 5.3.1(iii), rule 5.3.9 and rule 5.4.5. Where a Conduct Committee has jurisdiction, the CLSB will convene the Conduct Committee in accordance with these DR&P as soon as reasonably practicable.

### **6.2 Conduct Committee composition**

6.2.1 A Conduct Committee will comprise of two Lay Person Panel Members, one of whom will act as Chair of the Conduct Committee, and one Non-Lay Person Panel Member.

6.2.2 Before appointing a Panel Member to a Conduct Committee, the CLSB will confirm that the Panel Member does not have any conflict of interest in relation to the matter.

6.2.3 A Lay Person Panel Member who was appointed under rule 4.3 to consider matters relating to an interim suspension order may also be appointed to the Conduct Committee. The Conduct Committee will be provided with all material evidence that was made available to the Lay Person Panel Member.

## 6.3 Convening a Conduct Committee

6.3.1 The CLSB may appoint a Case Manager to assist in convening the Conduct Committee. The role of the Case Manager is administrative only; they will have no involvement in the substantive deliberations or determination of the Conduct Committee.

6.3.2 The Costs Lawyer and Complainant will be notified of the name and contact details of any Case Manager appointed.

6.3.3 The Case Manager will advise the Complainant that a Conduct Committee is to be convened. A Complainant is not a party to disciplinary proceedings, but the Complainant may attend the Conduct Committee hearing as a member of the public.

6.3.4 The Case Manager will, not less than 28 calendar days before the Conduct Committee hearing, issue a written Notice of Conduct Committee to the Costs Lawyer. Whilst the Case Manager will use all reasonable endeavours to accommodate the availability of the Costs Lawyer, the Case Manager may set a Conduct Committee hearing date they consider appropriate in the circumstances.

6.3.5 The Notice of Conduct Committee will include the following information:

- (i) the Principle alleged to have been breached which the Conduct Committee is being asked to consider;
- (ii) date, time and location of the Conduct Committee;
- (iii) the Panel Members who will form the Conduct Committee;
- (iv) the Costs Lawyer's right to call witness evidence that has not been agreed between the CLSB and the Costs Lawyer; and
- (v) the Costs Lawyer's right to be accompanied or represented at their own expense.

6.3.6 The Notice of Conduct Committee will annex the following:

- (i) a copy of the investigation report;
- (ii) a copy of the CoC and any associated rules it is alleged have been breached;
- (iii) a copy of these DR&P; and

- (iv) any other documentation the Case Manager considers appropriate in the circumstances.

6.3.7 The Case Manager will, not less than 21 calendar days before the Conduct Committee hearing, seek to establish what facts are agreed between the CLSB and the Costs Lawyer.

6.3.8 The Costs Lawyer and the CLSB will, not less than 14 calendar days before the Conduct Committee hearing, advise the Case Manager if they intend to call witness evidence in relation to facts that have not been agreed between the CLSB and the Costs Lawyer.

6.3.9 The Costs Lawyer will, not less than 14 calendar days before the Conduct Committee hearing, advise the Case Manager if they intend to be accompanied/represented.

6.3.10 The Costs Lawyer may, not less than 14 calendar days before the Conduct Committee hearing, file a skeleton argument with the Case Manager under which they set out a brief synopsis of the matter before the Conduct Committee outlining both issues that are agreed and issues that are not agreed between the CLSB and the Costs Lawyer. The CLSB may, not less than 7 days before the Conduct Committee hearing, file a reply to the skeleton argument addressing any issues raised in the skeleton argument that are not dealt with in the investigation report.

## 6.4 Conduct Committee hearing

6.4.1 The CLSB will, not less than 14 calendar days before a Conduct Committee hearing, publish a notice on the CLSB website that a Conduct Committee has been convened. This notice will state the name of the Costs Lawyer, date, time and location of the Conduct Committee hearing.

6.4.2 The Conduct Committee hearing will be open to observation by the public. No member of the public will be heard unless prior permission is granted by the Conduct Committee. The Conduct Committee may ask any member of the public to leave in the event their conduct is considered unacceptable during the Conduct Committee hearing.

6.4.3 On the application of a party, or on the Conduct Committee's own initiative, the Conduct Committee may make an order for all or part of a hearing to be held in private or for the identity of any person involved in the matter to be kept

confidential. The Conduct Committee will take the following factors into account in determining whether to make such an order:

- (i) the hearing involves confidential information (including sensitive personal data) and publicity would damage that confidentiality;
- (ii) the need to protect the interests of a vulnerable person;
- (iii) the need to secure the proper administration of justice.

6.4.4 Where the Conduct Committee makes an order under Rule 6.4.3 it will produce reasons for its decision, which will be published on the CLSB website. If publication of reasons would defeat the purpose of making the order, the Conduct Committee will produce a non-confidential version of its reasons, which explains the Conduct Committee's decision as transparently as is possible in the circumstances of the case, for publication on the CLSB website.

6.4.5 The CLSB may be represented at the Conduct Committee hearing by a staff member and/or other representative.

6.4.6 The Conduct Committee will act impartially. Members of the Conduct Committee may ask questions of any witness, the Costs Lawyer and the CLSB's representative.

6.4.7 Any witness, whose evidence has not been agreed and who has therefore been called to give oral testimony, may be asked questions by the Costs Lawyer and/or the CLSB's representative at the direction of the Conduct Committee.

6.4.8 All evidence which is relevant will be admissible in a Conduct Committee hearing, unless its disclosure would be unlawful.

6.4.9 If deemed appropriate in all the circumstances the Conduct Committee may take legal advice from an independent lawyer, adjourning to take such advice if required. The Case Manager may assist the Conduct Committee in sourcing appropriate legal advice.

6.4.10 Any finding reached by a Conduct Committee will be on the balance of probabilities and will be by majority.

## 6.5 Conduct Committee finding

6.5.1 Following the Conduct Committee hearing, the Conduct Committee will make an order setting out its finding as to whether or not a breach of a Principle occurred. The Conduct Committee may, if it considers it appropriate to do so, take into account further written submissions from the Costs Lawyer as to any mitigating

circumstances prior to making an order for the imposition of sanctions under rule 6.5.2.

6.5.2 Where the Conduct Committee finds that a breach of Principle occurred, the Conduct Committee may order one or more of the following sanctions:

- (i) a warning, specifying action the Costs Lawyer must take or must avoid in the future, which may include sanctions that apply automatically upon non-compliance with the terms of the warning;
- (ii) **a financial penalty not exceeding £5,000;**
- (iii) imposition of a condition on the Costs Lawyer's practising certificate for a specified period;
- (iv) suspension of the Costs Lawyer's practising certificate for a period not exceeding two years and suspension of the Costs Lawyer's name from the register of authorised and regulated Costs Lawyers for the same period (and any such order may require the Costs Lawyer to return their current practising certificate to the CLSB until the period of the suspension has passed);
- (v) permanent revocation of the Costs Lawyer's practising certificate and removal of the Costs Lawyer's name from the register of authorised and regulated Costs Lawyers (and any such order may require the Costs Lawyer to return their current practising certificate to the CLSB).

6.5.3 Where the Conduct Committee was convened to consider an appeal from a finding at level one (under rule 5.4.5), the Conduct Committee's order shall stand in place of the level one finding and any associated outcomes. Where the appeal related to the content of a warning letter, the Conduct Committee's order must not include the sanctions in rule 6.5.2 (ii), (iii), (iv) or (v).

**6.5.4 A fixed costs order in the sum of £1,250, payable within 21 calendar days, will be included in any order made by the Conduct Committee where it finds that a breach of a Principle occurred.**

6.5.5 In the event the Conduct Committee orders that a financial penalty must be paid, it shall stipulate a timeframe for payment.

6.5.6 The Case Manager will, within 21 calendar days of the Conduct Committee hearing, notify the Costs Lawyer in writing of the Conduct Committee's order and reasons for its finding. In complex cases, it may take longer for the Conduct Committee to reach a finding and articulate its reasons. In such cases the Case Manager will keep

the Costs Lawyer updated on the likely timeframe for communication of the Conduct Committee's order.

6.5.7 The Case Manager will, upon publication of a Conduct Committee's finding, notify the Complainant.

6.5.8 The CLSB will not issue any further practising certificates to the Costs Lawyer until such time as fixed costs and any financial penalty imposed at level two have been paid in full to the CLSB by the Costs Lawyer.

## 6.6 Right of appeal

6.6.1 There is no right of appeal by the Costs Lawyer where the Conduct Committee hearing was convened to consider an appeal relating to a level one finding or the content of a warning letter. In all other circumstances the Costs Lawyer may, within 14 calendar days of notification of the Conduct Committee's order, file a written appeal with the Case Manager in relation to any aspect of that order, identifying one or more of the following grounds for the appeal and attaching any evidence in support of those grounds:

- (i) there was a material error of law;
- (ii) there was a failure to take into account material information;
- (iii) the decision was irrational or based on irrelevant considerations;
- (iv) there was a material failure to comply with these DR&P;
- (v) the decision was unlawful, for example because it infringes a person's human rights;
- (vi) new evidence has been obtained which could not have been made available prior to the Conduct Committee making its order and which will be material to the decision.

6.6.2 A Case Manager appointed under level two may continue to act on the same basis under an appeal at level three. The Case Manager will notify the Complainant in the event an appeal is filed.

6.6.3 The finding of a Conduct Committee may not be appealed by the Complainant or the CLSB.

6.6.4 Where an appeal is filed, any fixed costs or financial penalty included in the Conduct Committee's order at level two will not become payable until the appeal has been determined, in accordance with rule 7.3.

## **RULE 7: Level three procedure (Conduct Appeal Committee)**

### **7.1 Conduct Appeal Committee composition**

- 7.1.1 The Conduct Appeal Committee will comprise of two Lay Person Panel Members, one of whom will act as Chair of the Conduct Appeal Committee, and one Non-Lay Person Panel Member.
- 7.1.2 A Panel Member who was a member of the Conduct Committee that considered the matter being appealed will not be a member of the Conduct Appeal Committee.
- 7.1.3 Before appointing a Panel Member to a Conduct Appeal Committee, the CLSB will confirm that the Panel Member does not have any conflict of interest in relation to the matter.

### **7.2 Convening a Conduct Appeal Committee**

- 7.2.1 The Costs Lawyer will be advised of the date that the Conduct Appeal Committee will consider the appeal (the review date).
- 7.2.2 The Case Manager will provide the CLSB with a copy of the Costs Lawyer's appeal notice and any documents submitted by the Costs Lawyer in support.
- 7.2.3 The CLSB may, not less than 14 calendar days before the Conduct Appeal Committee review date, file a response to the appeal notice. The Case Manager will provide this to the Costs Lawyer not less than 10 calendar days before the review date.

### **7.3 Conduct Appeal Committee process**

- 7.3.1 The Conduct Appeal Committee will meet in private and consider the appeal on the papers.
- 7.3.2 The Conduct Appeal Committee will consider whether, on the balance of probabilities, any valid ground for appeal has been made out by the Costs Lawyer. If it has not, the Conduct Appeal Committee will uphold the Conduct Committee's order. If it has, the Conduct Appeal Committee will review the evidence that was before the Conduct Committee as well as any new evidence and decide whether to uphold or overturn the Conduct Committee's order.

- 7.3.3 Where a ground of appeal has been made out, the Conduct Appeal Committee may uphold or overturn the order of the Conduct Committee in full or in part. The Conduct Appeal Committee may set aside any part of an order made by a Conduct Committee and may substitute its own order, incorporating any of the sanctions set out in rule 6.5.2, **except that it may not impose a higher financial penalty than that imposed by the Conduct Committee.**
- 7.3.4 The finding of the Conduct Appeal Committee will be by majority.
- 7.3.5 If deemed appropriate in all the circumstances the Conduct Appeal Committee may take legal advice from an independent lawyer, adjourning to take such advice if required. **The Case Manager may assist the Conduct Committee in sourcing appropriate legal advice.**
- 7.3.6 In the event the Conduct Appeal Committee:
- (i) finds that no valid ground for appeal has been made out by the Costs Lawyer;
  - or
  - (ii) upholds the Conduct Committee's order in full,  
**the Costs Lawyer will be ordered to pay fixed costs at level three in the sum of £1,250 (in addition to the £1,250 fixed costs ordered by the Conduct Committee at level two and any financial penalty imposed at level two).** Level two and level three fixed costs, and any financial penalty imposed at level two, will be payable to the CLSB within 14 calendar days of the Costs Lawyer receiving written notification of the Conduct Appeal Committee's order.
- 7.3.7 In the event the Conduct Appeal Committee overturns the Conduct Committee's order in full, the Costs Lawyer will not be liable for any costs of the Conduct Committee at level two or of the Conduct Appeal Committee at level three.
- 7.3.8 In the event the Conduct Appeal Committee overturns the Conduct Committee's order in part, the Costs Lawyer will be liable to pay fixed costs ordered at level two, and any financial penalty ordered at level two and upheld by the Conduct Appeal Committee, within 14 calendar days of receiving written notification of the Conduct Appeal Committee's order. The Costs Lawyer will not be liable for any fixed costs at level three.
- 7.3.9 The Conduct Appeal Committee may, by order, deal with any interim suspension order that is in force in relation to the Costs Lawyer.**

## 7.4 Following a Conduct Appeal Committee review

- 7.4.1 The Case Manager will, within 21 calendar days of the review date, notify the Costs Lawyer, the Complainant and the CLSB in writing of the Conduct Appeal Committee's order and reasons for its finding. In complex cases, it may take longer for the Conduct Appeal Committee to agree an order and articulate its reasons. In such cases the Case Manager will keep the parties updated on the likely timeframe for communication of the Conduct Appeal Committee's order.
- 7.4.2 The CLSB will not issue any further practising certificates to the Costs Lawyer until such time as fixed costs and any financial penalty ordered at level two or level three have been paid in full to the CLSB by the Costs Lawyer.

## **RULE 8: Provision of information**

- 8.1 Where these DR&P require or permit the provision of documents, notice or other information, that information may be provided by email unless the receiving party has requested in advance that information be provided by post.

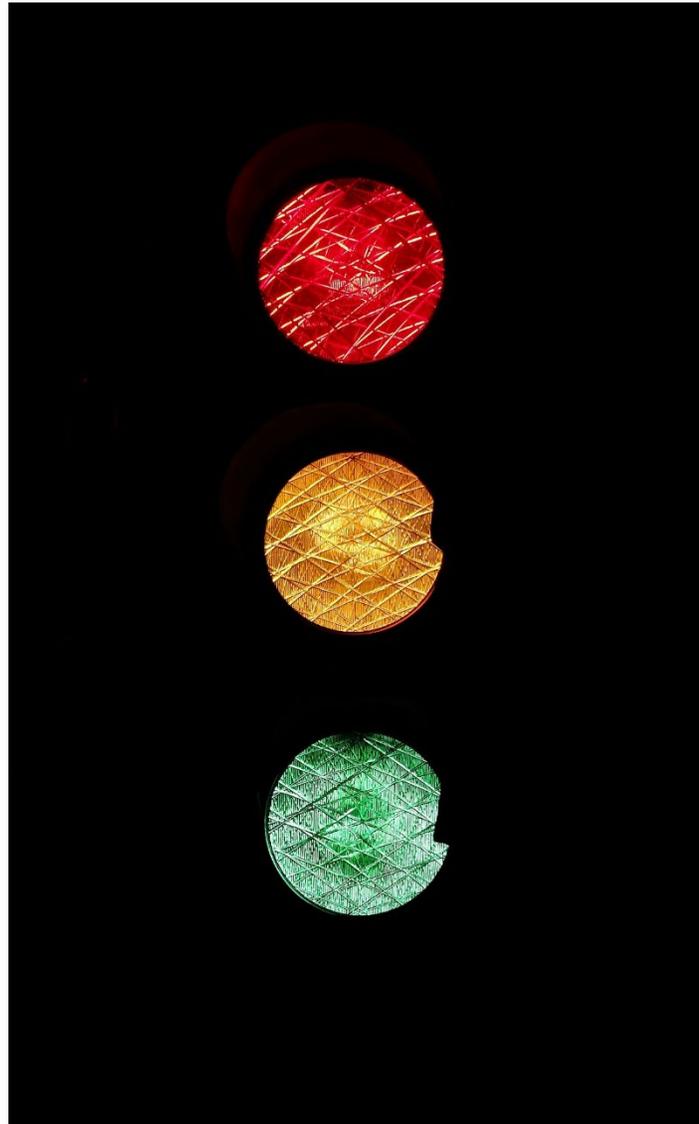
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# Disciplinary Rules and Procedures

## Panel Member Appointment Policy and Code of Conduct

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**DRAFT** Effective date: xx May 2020

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**Costs Lawyer Standards Board**

**CLSB**  
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## Overview

1. This policy sets out the criteria for the appointment of Panel Members under the CLSB's Disciplinary Rules and Procedures (DR&P). Terms in this policy have the same meaning as in the DR&P.
2. Panel Members have various roles under the DR&P, including being part of a Conduct Committee (Rule 6), being part of a Conduct Appeal Committee (Rule 7) and considering matters relating to interim suspension orders (Rule 4).
3. A Panel Member is defined in the DR&P as an individual appointed by the CLSB (including on an ad hoc basis) to serve on a Conduct Committee or Conduct Appeal Committee who:
  - is independent of the CLSB;
  - has been neither an ACL Council member nor a non-executive director of the CLSB for a period of two years before being appointed as a Panel Member; and
  - has agreed in writing to adhere to the terms of the CLSB's Panel Member Code of Conduct and any procedural guidance that the CLSB may issue for Panel Members from time to time.
4. The purpose of this policy is to ensure that all Panel Members have the requisite level of expertise, training, independence and ethical responsibility to perform the role effectively.

## Appointment criteria

### Minimum requirements

5. All Panel Members must meet certain minimum requirements to be considered for appointment. Those minimum requirements are set out in the table below. Some requirements apply only to Lay Person Panel Members and some apply only to Non-Lay Person Panel Members. Further details of the difference between Lay and Non-Lay Person Panel Members, and their roles, can be found in the DR&P.

**A Panel Member must:**

Lay Person Panel Members	Eligibility	Meet the description of a lay person as set out in Schedule 1 paragraph 2(4) of the LSA.
	Skills and experience	Have at least three years' experience as a member of the disciplinary panel (however described) of a regulatory or professional body, or of an equivalent institution (such as a Tribunal).
Non-Lay Person Panel Members	Eligibility	Not be a lay person as described in Schedule 1 paragraph 2(4) of the LSA.
	Skills and experience	Have at least five years' experience of providing legal services relating to costs (this may be as a Costs Lawyer, solicitor, barrister, member of the judiciary or other non-lay profession).
All Panel Members	Eligibility	Have been neither an ACL Council member nor a non-executive director of the CLSB for a period of two years before being appointed as a Panel Member.
		Not be a CLSB staff member.
		Have no inherent conflict of interest in relation to serving as a Panel Member.
	Skills and experience	Have prior understanding of the nature and purpose of regulatory arrangements in a professional services context.  Have strong written communication skills, including the ability to provide succinct reasons in plain language.
Personal attributes	Possess:	<ul style="list-style-type: none"> <li>• the ability to analyse complex information quickly</li> <li>• the ability to work constructively with others</li> <li>• sound judgement and reasoning</li> <li>• objectivity and willingness to listen to views</li> <li>• respect for diversity</li> <li>• the ability to inspire respect and confidence, and maintain authority when challenged</li> </ul>

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6. In relation to appointment as a Panel Member in a particular disciplinary case, a Panel Member must also meet the following criteria.

**A Panel Member must:**

All Panel Members	Have no undisclosed actual or perceived conflict of interest in relation to the particular case.
	Not have conducted a level one investigation in relation to the case.
	In terms of appointment to a Conduct Appeal Committee, not have been a decision-maker in relation to the decision under appeal (for example, as a member of a Conduct Committee or by imposing an interim suspension order).
Non-Lay Person Panel Members	Not work within an organisation (such as a firm or chambers) that has an undisclosed actual or perceived conflict of interest in relation to the case.

7. Evidence that these requirements are met by a prospective Panel Member may be obtained by any combination of the following means:

- resume;
- references;
- supporting documents;
- interview;
- sample work outputs;
- written exercise or mock scenario;
- any other methods that the CLSB considers appropriate.

## Commitments

8. Panel Members must also make the commitments set out in the Panel Member Declaration prior to appointment. A signed copy of the Panel Member Declaration must be provided to the CLSB before an appointment will take effect.

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9. Panel Members will also be required to sign a letter of appointment, covering issues such as the processing of personal data, liability for conduct, remuneration and termination of appointment.

## **Provision of assistance, training and materials**

10. Prior to appointment, Panel Members will be provided with guidance and training documents to assist them in performing their role effectively and ensure they comply with CLSB policies and procedures. While the precise materials may change over time, they will include documents such as:

- Costs Lawyer Handbook (including the Costs Lawyer Code of Conduct and DR&P)
- CLSB Workbook on Conducting Hearings
- Disciplinary Process Notes (levels one, two and three)
- Templates for the production of documents
- Guidance on the role of the Case Manager
- Guidance on Decision Making and Penalties
- Policy on Publication of Disciplinary Outcomes
- Panel Member Travel and Subsistence Policy
- Equality and Diversity Policy
- Data Protection Manual
- Jargon buster

The Case Manager can also assist Panel Members with the administrative elements of their role in the context of a disciplinary case.

11. Panel Members should inform the CLSB prior to appointment, or promptly if the appointment has already taken place, if they become aware of an area in which additional training or guidance is required. Panel Members are also expected to maintain their own professional development and ensure their skills and expertise are current.

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## Ad hoc Panel Members

12. If a person meets the criteria set out in this policy, they may be appointed as a Panel Member. Given the low volume of disciplinary cases involving Costs Lawyers, the CLSB's current policy is to retain a small pool of permanent Panel Members and to recruit additional Panel Members on an ad hoc basis where required. The terms of this policy apply equally to permanently appointed Panel Members (including Panel Members who were appointed prior to this policy coming into effect) and Panel Members appointed on an ad hoc basis.
13. The term of a Panel Member's appointment will be set out in the relevant letter of appointment. Where a Panel Member is permanently appointed, there will be no limit on the number of disciplinary cases they may be involved in during their tenure. The CLSB will make checks from time to time, as it considers appropriate, to ensure that permanently appointed Panel Members still comply with the requirements of this policy.
14. Ad hoc Panel Members will be appointed in relation to one disciplinary case at a time. If they wish to be appointed in relation to additional cases, they must demonstrate continued compliance with this policy on each occasion. If a Panel Member is appointed on an ad hoc basis more than three times, the CLSB will consider (in consultation with the Panel Member) whether a permanent appointment would be appropriate.
15. The CLSB will check the availability of permanently appointed Panel Members before seeking candidates for ad hoc appointments. Other than in exceptional circumstances, a Conduct Committee or Conduct Appeal Committee should include at least one permanent Panel Member. Exceptional circumstances might include, for example, lack of availability of all permanent Panel Members such that waiting for availability would cause substantial delay. Where a Conduct Committee or Conduct Appeal Committee includes one or more permanent Lay Person Panel Members, a permanent Lay Person Panel Member will act as Chair.

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16. Where the need for an ad hoc appointment arises, the role will be publicly advertised in appropriate places (such as the CLSB website) until a suitable candidate is found. Panel Members appointed on an ad hoc basis may deal with any matter that is within the remit of a Panel Member under the DR&P.

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# Panel Member Code of Conduct

All Panel Members must conduct themselves in accordance with this Code of Conduct.

## 1. Act with honesty and integrity

Honesty is concerned with being open and transparent. Panel Members must:

- a) Express genuine views clearly and in plain language.
- b) Be truthful and disclose all relevant matters.
- c) Make reasoned decisions and be prepared to explain those reasons.

Integrity is concerned with motive and being consistent with espoused values. Panel Members must:

- a) Avoid actual and perceived conflicts of interest wherever possible.
- b) Disclose any actual or perceived conflicts of interest that cannot be avoided to the CLSB, or to those involved in disciplinary proceedings, as appropriate.
- c) Withdraw from acting as a Panel Member if an actual or perceived conflict of interest cannot be appropriately managed.
- d) Not accept gifts or favours which may influence, or be perceived to influence, decision making.
- e) Not misuse the role of Panel Member for personal gain or other improper motive.
- f) Be mindful that conduct in all aspects of life can reflect on standing as a Panel Member and the reputation of the CLSB.

## 2. Act fairly and impartially

Fairness and impartiality are concerned with being objective and unbiased in the pursuit of justice. Panel Members must:

- a) Consider all relevant facts objectively and avoid making assumptions that are not supported by evidence.
- b) Treat everyone with dignity and respect and foster a culture that is free from intimidation and bullying.
- c) Make reasonable adjustments where this is needed to ensure equality of treatment.
- d) Exercise powers in the public interest, free from malice.

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### 3. Use information appropriately

Using information appropriately is concerned with respecting confidentiality and using discretion and prudence. Panel Members must:

- a) Only use information gained as a Panel Member for the purposes intended by the CLSB.
- b) Handle information in line with internal CLSB policies and procedures.
- c) Recognise sensitive or confidential information and treat it accordingly.
- d) Not seek any unfair benefit from information obtained as a Panel Member.

### 4. Exercise due care, skill and diligence

Exercising due care, skill and diligence are concerned with being prudent, committed and professional. A Panel Member must:

- a) Be focused on the matter under consideration.
- b) Read papers and prepare adequately for hearings.
- c) Consider issues in their entirety, taking into account all relevant evidence.
- d) Be professional in all dealings with fellow Panel Members and participants in the disciplinary process, including by considering the views of others.
- e) Comply with applicable policies, procedures and laws, including in relation to:
  - data protection and privacy;
  - equality and non-discrimination;
  - human rights.
- f) Act in accordance with the CLSB's responsibilities under the Legal Services Act 2007.
- g) Uphold the Nolan Principles of public life.

### 5. Be and remain of good character

A Panel Member must disclose certain events relating to their character to the CLSB at the first available opportunity. This obligation applies to events that occur both prior to and during a Panel Member's appointment. The events that a Panel Member must disclose are that they have:

- a) been subject to any criminal charge, conviction or caution, subject to the Rehabilitation of Offenders Act 1974;

- 
- b) been subject to an adjudication of bankruptcy;
  - c) been granted a debt relief order;
  - d) entered into an individual voluntary arrangement or a partnership voluntary arrangement;
  - e) 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;
  - f) been disqualified from being a company director or the trustee of a charity;
  - g) been the subject of disciplinary proceedings by any regulatory or professional body;
  - h) been the subject of an adverse order or finding of a civil court or employment tribunal; or
  - i) become aware of any other matter that might reasonably be expected to be disclosed in affecting their fitness to become or remain a Panel Member.

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## Panel Member Declaration

I declare as follows in relation to my role as a Panel Member under the Disciplinary Rules and Procedures (DR&P) of the Costs Lawyer Standards Board (CLSB).

- a) I will act in accordance with the Panel Member Code of Conduct at all times when carrying out my role.
- b) I will act in accordance with the DR&P at all times when carrying out my role.
- c) I have informed the CLSB of any disclosable events (as defined in paragraph 5 of the Panel Member Code of Conduct) that apply to me and I will inform the CLSB of any disclosable events that arise while I am a Panel Member.
- d) I will comply with all CLSB internal policies and procedures that have been provided to me, insofar as they are relevant to my role.
- e) I will keep my knowledge of the Costs Lawyer Handbook up to date while I am a Panel Member.
- f) I will make use of the training materials and workbooks provided by the CLSB and will follow any procedural guidance that applies to Panel Members or to CLSB disciplinary proceedings generally.
- g) I will promote the CLSB's independence from the Association of Costs Lawyers and comply with the Legal Services Board's Internal Governance Rules.

Signed \_\_\_\_\_

Name \_\_\_\_\_

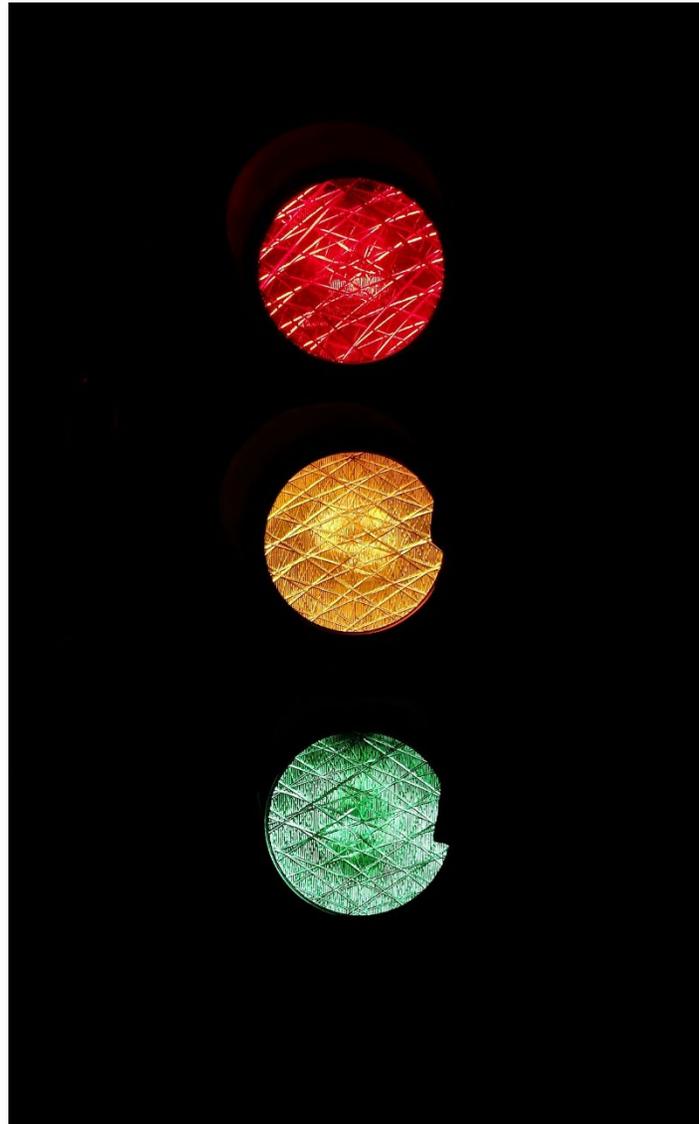
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# Guidance for Conduct Committee and Conduct Appeal Committee

## Decision Making and Penalties

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**Effective date: xx May 2020**

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**Costs Lawyer Standards Board**

**CLSB**  
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# Introduction

## How to use this guidance

This guidance has been written to promote proportionate, consistent and fair decision making by a Conduct Committee or Conduct Appeal Committee (Committee) convened by the Costs Lawyer Standards Board (CLSB). It provides a framework for making decisions and should be considered in conjunction with the prevailing Disciplinary Rules and Procedures and, where relevant, any of the following:

- Process notes for disciplinary procedures
- Costs Lawyer Code of Conduct
- Practising Rules
- CPD Rules
- Guidance for practitioners in the Costs Lawyer Handbook

This guidance does not override or replace anything in the Disciplinary Rules and Procedures or the CLSB's other published regulatory arrangements. It should be taken into account when considering a disciplinary matter, but is not binding on a Committee (except to the extent it refers to requirements that are mandated elsewhere).

Unless otherwise stated, references in this guidance to rule numbers are to rules in the Disciplinary Rules and Procedures. References to the various disciplinary levels are to:

- Level 1: Investigation stage (initial consideration of a complaint)
- Level 2: Conduct Committee (initial consideration of a complaint or appeal from a Level 1 outcome)
- Level 3: Conduct Appeal Committee (appeal from a Level 2 outcome)

## Overarching requirement of independence

The CLSB's independence from the Association of Costs Lawyers (ACL) is assured through a Memorandum of Understanding and Operational Protocol, both of which are available on the CLSB website. Panel Members must act in accordance with these documents and the Legal Services Board's [Internal Governance Rules](#) at all times to ensure independence is maintained.

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In particular, since Panel Members are involved in regulatory decision making on behalf of the CLSB, they must not be involved in the representative functions of ACL and they must take regulatory decisions free from any influence of ACL. All Panel Members should ensure they have read and understood the CLSB's quick guide to the Internal Governance Rules.

## Purpose of the disciplinary process

Conduct complaints are typically made by a Costs Lawyer's client (the consumer), however they can be raised by an employer, third parties in legal proceedings or the CLSB as a result of its supervision activities. Our disciplinary processes and procedures seek to:

### Promote:

- good practice by Costs Lawyers;
- public awareness of the standards that can be expected of a Costs Lawyer;
- confidence that the CLSB will take appropriate action where poor conduct is identified and hold individuals to account; and
- confidence in the profession on the part of all involved in the administration of justice.

### Protect:

- consumers;
- the public interest;
- the reputation of the Costs Lawyer profession and the CLSB; and
- the rights of Costs Lawyers to have a complaint dealt with fairly and promptly.

In particular, the purpose of imposing sanctions is to protect an infringing Costs Lawyer's current and future clients from poor outcomes, help prospective clients make informed purchasing decisions, and deter additional conduct breaches from the same Costs Lawyer or others in the profession.

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# Findings

## General

The standard of proof in a disciplinary matter before a Committee is the balance of probabilities (civil standard). The Committee is required to carefully consider all the facts and evidence and set out:

- its findings of fact in relation to the circumstances of each allegation, and evidence accepted in support of each finding of fact;
- where the evidence of the Costs Lawyer has not been preferred, an explanation as to why.

## Interaction between dishonesty, recklessness and lack of integrity

These are overlapping but distinct concepts, each with their own tests:

- All dishonest conduct involves a lack of integrity.
- Some, but not all conduct lacking integrity is dishonest.
- Some but not all dishonest conduct is reckless.
- Some but not all reckless conduct is dishonest.
- It would be rare for reckless conduct not to involve a lack of integrity.

## *Dishonesty*

The Supreme Court in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 established a two stage test for dishonesty:

- First, what was the individual's genuine knowledge or belief as to the facts at the time?
- Second, in view of their knowledge or belief at the time, was their conduct dishonest by the standards of ordinary decent people?

The first question requires the Committee to ascertain what the individual genuinely knew or believed at the time. The reasonableness of their belief or knowledge is relevant to the Committee determining whether it is genuinely held, but there is no additional requirement that it must be objectively reasonable.

Once the Committee has determined the individual's state of mind, it must then consider their conduct in light of it. The test is to objectively judge if the individual acted

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dishonestly by the standards of ordinary, decent people. There is no additional requirement that the individual had to appreciate that what they were doing was dishonest either by those standards or by their own. This second test means that while a person's state of mind is relevant, they cannot escape a finding of dishonesty based on a warped personal belief that they were honest.

### *Recklessness*

A person who genuinely does not perceive a risk might be incompetent but not reckless. It was held in *R v G* [2004] 1 AC 1034 (at 41) that: "A person acts recklessly ... with respect to:

- (i) a circumstance when he is aware of a risk that it exists or will exist;
- (ii) a result when he is aware of a risk that it will occur, and it is, in circumstances known to him, unreasonable to take that risk".

Reckless conduct may be dishonest. In the same case, it was held that: "The most obviously culpable state of mind is no doubt the intention to cause the injurious result, but knowing disregard of an appreciated and unacceptable risk of causing an injurious result or a deliberate closing of the mind to such risk would be readily accepted as culpable also. It is clearly blameworthy to take an obvious and significant risk of causing injury to another. But it is not clearly blameworthy to do something involving a risk of injury to another if .... one genuinely does not perceive the risk."

Guidance can also be drawn from the judgment in *Royal Brunei Airlines v Tan* (1995) 2 AC 378 (at 389G): "Nor does an honest person in such a case deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather not know, and then proceed regardless".

### *Lack of integrity*

One can act with a lack of integrity without being dishonest. Want of integrity is not to be confused with incompetence. Integrity is not capable of a precise definition and will depend on the facts of the case.

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However, Jackson LJ gave guidance on the term in *Wingate v SRA* [2018] ECWA Civ 3666: “In professional codes of conduct the term ‘integrity’ is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members ... Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the public in daily discourse. The duty to act with integrity applies not only to what professional persons say, but to what they do.”

Factors that might lead a Committee to consider that there has been a lack of integrity include:

- Where there has been a wilful or reckless disregard of the rules, including an indifference to what the applicable provisions are or to the impacts or consequences of a breach.
- Where the Costs Lawyer took unfair advantage of clients or third parties or allowed others to do so.
- Where the Costs Lawyer has knowingly or recklessly caused harm or distress to another.
- Where clients or third parties have been misled or were allowed to be misled (except where this is a result of simple error that the Costs Lawyer has corrected as soon as they became aware of it).

### *Incompetence*

An incompetent Costs Lawyer is one lacking the qualities needed to discharge obligations and duties. A finding of incompetence alone cannot support a finding of lack of honesty, recklessness or lack of integrity, but might indicate that a Costs Lawyer has not met other professional obligations.

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## Seriousness, mitigating and aggravating factors

### Approach to enforcement

This section of the guidance includes a table (under the heading “Mitigation and aggravation” below) listing the main factors that the Committee will want to take into account as mitigating or aggravating the breach in question. These – and any other relevant factors specific to the case – will determine the nature and level of sanction imposed.

The CLSB is only concerned with taking enforcement action against serious breaches, not those which are merely trivial, and the factors in the table can also be used in deciding whether the breach was serious enough to warrant action at all. Behaviour involving dishonesty, lack of integrity or significant harm to consumers, or posing a high risk to the public interest, to the reputation of the profession or to the administration of justice will always be serious.

Whilst the CLSB’s core concern is the regulation of Costs Lawyers’ professional conduct, in some circumstances we will wish to take action in relation to conduct that occurred outside of practice – the most obvious example being where a Costs Lawyer is convicted of a criminal offence in their private life. We are particularly concerned with the impact of conduct outside of practice (including in the private lives of Costs Lawyers) if:

- (a) the matter is so serious that it is capable of damaging public confidence in the profession; or
- (b) the behaviour implies a risk to the safe delivery of Costs Lawyer services by the individual in the future.

### Purpose of sanctions

When imposing penalties the Committee should bear in mind the comments of Sir Anthony Clarke MR in *General Medical Council v Meadow* [2007] 1 QB 462: “The purpose is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The committee thus looks forward, not back. However, in order to form a view as to the fitness of a person to

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practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past.”

In considering mitigating factors the Committee should also have regard to further comments in the same case: “In relation to sanction, it may have consequences for the individual and his or her family which are deeply unfortunate and even unintended but that does not make the sanction wrong if it is otherwise right because the reputation of the professions is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price.”

Further guidance can be taken from *Bolton v Law Society* [1993] ECWA Civ 32 (at [15]): “There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention ... In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence ... The second purpose is the most fundamental of all: to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth.”

## Mitigation and aggravation

The table below sets out the main mitigating and aggravating factors that the Committee will want to take into account in determining the appropriate nature and level of sanction.

<b>Less serious/mitigating factor</b>	<b>More serious/aggravating factor</b>
The conduct was of low risk to the public interest	The conduct was of high risk to the public interest
The conduct was of low risk to the reputation of the profession	The conduct was of high risk to the reputation of the profession

The conduct was of low risk to the administration of justice	The conduct was of high risk to the administration of justice e.g. it led to an obstruction of justice or a court being misled
The conduct was a simple mistake or poor service with no evidence of knowingly or recklessly breaching applicable rules or ignoring ethical issues	There is evidence of dishonesty, lack of integrity, recklessness or deliberate breach
The Costs Lawyer profited or intended to profit from the conduct	There was no profit made or intention to profit from the conduct
There was no loss or detriment to the complainant or third parties	There was loss or detriment to the complainant or third parties
The client was a sophisticated or professional client appropriately advised of risks	There was poor client information and/or client vulnerability was not addressed
The conduct was an isolated incident (unless a very serious one)	There was a pattern of minor or serious failings
The conduct was self-reported and/or remedial action was promptly implemented and steps taken to prevent recurrence	There was no self-reporting and/or no steps were taken to remedy the breach or prevent recurrence
Remorse and genuine insight into the conduct has been demonstrated	No remorse or genuine insight into the conduct has been demonstrated
The Costs Lawyer was junior or inexperienced and/or had no control over the circumstances leading to the breach	The Costs Lawyer was senior or experienced and/or had responsibility for the circumstances leading to the breach
The Costs Lawyer collaborated with the CLSB and provided full information	The Costs Lawyer did not collaborate or provide information and/or attempted to conceal information
There have been no prior findings relating to the Costs Lawyer by the CLSB or other regulator	There have been prior findings relating to the Costs Lawyer by the CLSB or other regulator

In respect of any prior finding by the CLSB or other regulator, the Costs Lawyer addressed sanctions imposed	There was a failure by the Costs Lawyer to address a previous sanction (for example, comply with a warning letter or pay a financial penalty)
Any criminal conviction was for a low level offence	A criminal conviction was for a more serious offence (including those involving dishonesty or lack of integrity, violence or sexual misconduct) and/or there was a pattern of low level offences

The Committee should record, in relation to mitigating and aggravating factors:

- factors considered;
- factors taken into account;
- where a factor was not taken into account, why not.

## Type of sanctions

### Level 2 Committee (Rule 6.5.2)

The Committee may impose sanctions on the Costs Lawyer by way of:

- a warning, specifying actions the Costs Lawyer must take or must avoid in the future, which may include sanctions that apply automatically upon non-compliance with the terms of the warning;
- a financial penalty not exceeding £5,000;
- a condition on the Costs Lawyer’s practising certificate for a specified period;
- suspension of the Costs Lawyer’s practising certificate for a period not exceeding two years and suspension of the Costs Lawyer’s name from the register of authorised and regulated Costs Lawyers for the same period;
- permanent revocation of the Costs Lawyer’s practising certificate and removal of the Costs Lawyer’s name from the register of authorised and regulated Costs Lawyers.

Where the Conduct Committee directs a penalty to be paid it shall also direct the time in which it is to be paid.

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## Level 3 Committee (Rule 7.3)

Where a ground of appeal has been made out the Level 3 Committee may:

- uphold or overturn the order of the Level 2 Committee in full or in part;
- set aside any part of an order made by a Level 2 Committee;
- substitute its own order, incorporating any of the sanctions available to the Level 2 Committee, except that it may not impose a higher financial penalty than was imposed by that Committee.

## Publication of outcomes

Rule 3 makes provision for the publication of outcomes. Ultimately, it is for the CLSB executive to take decisions on the publication of outcomes under Rule 3 and the associated Policy Statement on Publication of Disciplinary Decisions, which is available on the CLSB website. However, a Committee may, if it considers it appropriate or if requested by the CLSB, make a non-binding recommendation in relation to publication or non-publication in line with the criteria in Rule 3 and the Policy Statement.

## Costs

### Purpose of a costs award

The Disciplinary Rules and Procedures provide for the payment of fixed costs by a Costs Lawyer who is found to have breached the CLSB's regulatory arrangements. This is not a sanction; it is a contribution to the CLSB's costs of dealing with the proceedings, with the aim of ensuring that those costs are not disproportionately borne by compliant practitioners.

The award of fixed costs is not discretionary. An order made by a Committee should include an order as to fixed costs wherever the Disciplinary Rules and Procedures specify that fixed costs are payable.

### Amount of fixed costs

At Level 2, the Committee will impose a fixed costs order of £1250 payable to the CLSB within 21 days where it finds that a breach of a Principle has occurred (Rule 6.5.4).

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Fixed costs at Level 3 are dealt with in Rules 7.3.6 to 7.3.8. If the Committee:

- finds that no valid ground for appeal has been made out by the Costs Lawyer; or
- upholds the Level 2 Committee's order in full,

the Costs Lawyer will be ordered to pay fixed costs at Level 3 in the sum of £1,250 (as well as the fixed costs ordered by the Conduct Committee at Level 2).

If the Committee overturns the Level 2 Committee's order in part, the Costs Lawyer will be liable to pay fixed costs ordered at Level 2 but not any fixed costs at Level 3.

Level 2 and Level 3 fixed costs, and any financial penalty imposed at Level 2 and upheld, will be payable to the CLSB within 14 calendar days of the Costs Lawyer receiving written notification of the Level 3 Committee's order.

If the Level 3 Committee overturns the Level 2 Committee's order in full, the Costs Lawyer will not be liable for any costs at Levels 2 and 3.

## **Appeals**

### **Grounds for appeal**

A Costs Lawyer may appeal to a Level 2 Committee against a finding, following a Level 1 investigation, that a breach of a Principle occurred or against the content of a warning letter issued at Level 1. In these circumstances there is no further appeal following the Level 2 decision.

A Costs Lawyer may however appeal to a Level 3 Committee against a finding of a Level 2 Committee where the latter was the first line decision maker i.e. in relation to decisions that were referred at Level 1 to the Level 2 Committee under Rule 5.3.1.

In the event the matter before the Committee is an appeal, the Committee must first consider whether grounds for the appeal have been substantiated.

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The only grounds for appeal against a decision at Level 1 or Level 2 are (Rules 5.4.4 and 6.6.1):

- there was a material error of law;
- there was a failure to take into account material information;
- the decision was irrational or based on irrelevant considerations;
- there was a material failure to comply with the Disciplinary Rules and Procedures;
- the decision is unlawful, for example because it infringes a person's human rights;
- new evidence has been obtained which could not have been made available when the decision was made and which will be material to the decision.

## Appeal outcomes

Under Rule 6.5, a Level 2 Committee may:

- find that no breach of a Principle occurred and overturn the original decision, sanction and costs order;
- find that a breach of a Principle occurred and order one or more of the sanctions set out in Rule 6.5.2.

However, where the appeal related to the content of a warning letter, the Level 2 Committee's order can only include the first sanction (a warning).

Where the Conduct Committee directs a penalty to be paid it will also direct the time in which it has to be paid.

Under Rule 7.3, a Level 3 Committee may:

- uphold the Level 2 Committee order;
- overturn the Level 2 Committee order in full or in part and, if it decides that a sanction is appropriate, impose any of the sanctions available to the Level 2 Committee under Rule 6.5.

However, the Level 3 Committee cannot impose a higher financial penalty than that imposed by the Level 2 Committee.

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## Interim suspension orders

Under Rule 4, the CLSB may impose an order suspending a Cost Lawyer's practising certificate for the duration of the order. This may only be done upon the recommendation of a Lay Panel Member.

The Costs Lawyer may apply at any time for the interim suspension order to be removed. This application will be considered on paper by the same Lay Panel Member who made the original recommendation. The Costs Lawyer may appeal any decision by the Lay Panel Member not to remove the interim order to the Level 3 Committee who will consider the matter afresh.

Imposing an interim suspension order is not a sanction. It is an exceptional, temporary measure to protect the public whilst an investigation into a breach or breaches of a Principle is carried out and a decision made. However, it will have a very serious impact on the Costs Lawyer concerned and this needs to be borne in mind.

An interim suspension order can only be imposed or maintained if the decision maker is satisfied that such a course of action is fair, just and reasonable in all the circumstances and is justified having regard to:

- the risk posed to the public if such an interim suspension order was not implemented; and
- the regulatory objectives.

Before imposing or refusing an application to remove such an order, the decision maker should therefore be satisfied that:

- it is likely that a serious breach of a Principle has occurred;
- if the breach is established the likely penalty would include suspension or revocation of the Costs Lawyer's practising certificate; and
- the risk of harm to the public if the Costs Lawyer continued to practise pending the decision is such that suspension should take place whilst the investigation is continuing and the decision is being made.

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The decision maker should also consider any other factors arising from the regulatory objectives set out in section 1(1) of the Legal Services Act 2007 that impact on the decision (for example any threat to the constitutional principle of the law by not imposing the suspension). The CLSB has a duty to act fairly, justly and reasonably and the decision maker will need to consider the likely impact of the suspension on the Costs Lawyer against the other factors.

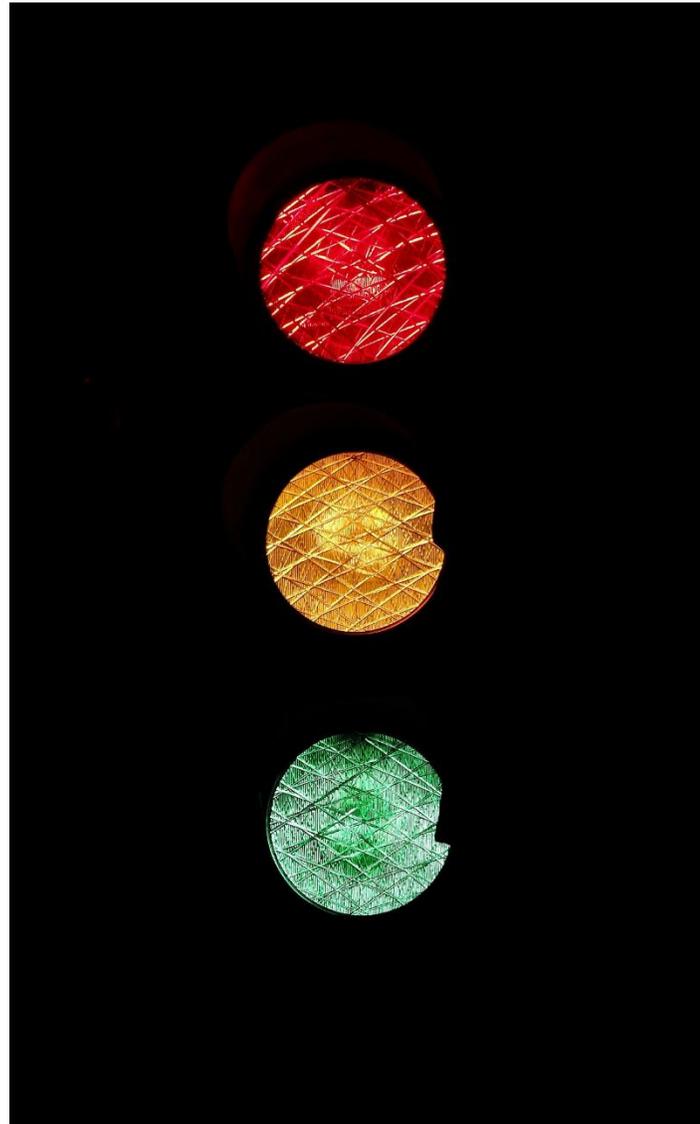
The decision maker should also consider, in imposing an interim suspension order, whether the order should be time limited or provide for a mandatory review after a specified period. Such a provision would ensure that the impact of the suspension on the Costs Lawyer does not extend beyond the period originally envisaged for conclusion of the disciplinary proceedings. A commonly imposed time limit on interim suspension orders (in the context of professional services regulation) is 18 months. The decision maker may consider representations made by the Costs Lawyer in this regard.

**END**

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# Policy statement on publication of disciplinary decisions

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Effective date: xx May 2020

Costs Lawyer Standards Board

CLSB  
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## Definitions

The definitions below form part of this policy.

Appeal	An appeal under the DR&P to the Conduct Committee or Conduct Appeal Committee.
CLSB	Costs Lawyer Standards Board.
Costs Lawyer	A Costs Lawyer authorised and regulated by the CLSB.
DR&P	The Disciplinary Rules and Procedures.
Outcome	A sanction or order imposed, or an agreement made, under the DR&P including: <ul style="list-style-type: none"><li>• A warning letter</li><li>• A written undertaking</li><li>• Condition(s) on a practising certificate</li><li>• Payment of a financial penalty</li><li>• Suspension of a practising certificate for a fixed term</li><li>• Permanent revocation of a practising certificate</li></ul>
Principle	Any one or more of the seven Principles a Costs Lawyer must comply with under the Costs Lawyer Code of Conduct namely: <ol style="list-style-type: none"><li>1. Act with integrity and professionalism</li><li>2. Comply with your duty to the court in the administration of justice</li><li>3. Act in the best interests of your client</li><li>4. Provide a good quality of work and service to each client</li><li>5. Deal with the regulators and Legal Ombudsman in an open and co-operative way</li><li>6. Treat everyone with dignity and respect</li><li>7. Keep your work on behalf of your client confidential</li></ol>

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	The Principles are underpinned by CLSB rules, such as Practising Rules and CPD Rules, contained in the CLSB Handbook. A potential breach of a Principle may therefore involve breach of a rule and a potential breach of a rule may indicate the breach of a Principle. For this reason, a reference to a Principle in this policy includes a reference to any associated CLSB rule.
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## Purpose of this policy

1. This policy sets out the approach we take when deciding whether to publish disciplinary decisions. A disciplinary decision encompasses both a finding under the DR&P that a breach of a Principle has occurred and any associated Outcome.
2. We publish disciplinary decisions in the public interest to:
  - protect consumers by allowing them to see disciplinary information before making purchasing decisions; and
  - drive higher standards and compliance across the profession (DR&P 3.1).

## What disciplinary decisions will we publish?

3. We will publish:
  - a finding under the DR&P that a breach of a Principle has occurred; and
  - any associated disciplinary Outcome.

This will include a finding and Outcome at level one of the disciplinary process (subject to any Appeal that is lodged) or a finding and Outcome following an Appeal to the Conduct Committee or the Conduct Appeal Committee.

4. We will assume that it is in the public interest to publish a disciplinary decision unless:
  - publication would prejudice other proceedings or investigations (whether of a legal or regulatory nature), in which case we may delay publication until after the proceedings or investigations have been completed; or

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- publication would involve a significant risk of a breach of Article 8 of the Human Rights Act 1998 (DR&P 3.2).
5. Any imposition of an interim suspension order will be noted against the name of the Costs Lawyer on the register of authorised and regulated Costs Lawyers (DR&P 3.4).

## **When will we publish a disciplinary decision?**

6. A finding that a breach of a Principle has occurred and any associated Outcome will be published promptly after the notification of the decision to the Costs Lawyer. If there is a right of Appeal, publication will not be before expiry of the time limit for making an Appeal. If an Appeal is made within the time limit, publication will not be before notification of the final decision to the Costs Lawyer (DR&P 3.5).
7. An interim suspension order will be published as soon as practicable after it has been imposed.

## **Where will we publish a disciplinary decision?**

8. A finding of a breach of a Principle and any associated Outcome will be published on our website in sufficient detail to meet the purposes of publication.
9. This will include the name of the Costs Lawyer, the nature of the breach or breaches, the Outcome and the date of decision.
10. There will also be a note on the register entry for the Costs Lawyer concerned that a disciplinary decision has been made.
11. We may also publish in any other location deemed appropriate (DR&P 3.3). Such publication will include making the information available on request. Publication may also be by way of notice to another person or body whom it is in the public interest to inform, such as the Legal Ombudsman, or the Solicitors Regulation

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Authority where the Costs Lawyer concerned manages or is employed by a firm that they regulate. Publication may be replicated on other websites, such as Legal Choices.

12. An interim suspension order will appear by way of note against the Costs Lawyer's entry on the register (DR&P 3.4).

## For how long will we publish a disciplinary decision?

13. The table below establishes the period of publication by Outcome.

<b>Outcome</b>	<b>Period of publication from date of Outcome</b>
A warning letter or written undertaking	2 years
Condition(s) on a practising certificate	Whilst the condition remains in place plus 2 years
Payment of a financial penalty only	3 years
Interim suspension of a practising certificate	During the period of suspension
Suspension of a practising certificate for a fixed term (with or without payment of a financial penalty)	During the period of suspension plus 4 years from the end of the suspension
Permanent revocation of a practising certificate	Indefinitely

## How do we comply with the Data Protection Act?

14. Publication and retention of data will be in accordance with the Data Protection Act 2018, as amended from time to time. The lawful bases upon which we obtain, process and publish data relating to disciplinary decisions will include carrying out our regulatory tasks in the public interest and legitimate interests in the performance of those regulatory tasks.
15. An internal record of disciplinary decisions will be retained by the CLSB for an indefinite period, as long as the CLSB considers it necessary to facilitate the

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performance of its regulatory tasks. Any Costs Lawyer subject to a disciplinary decision will be advised of this when the CLSB notifies them of that decision.

16. A person subject to this policy can exercise their individual rights under the General Data Protection Regulation (GDPR) as set out in our Privacy Policy. Note that the right to ask to erase personal data does not apply to data processed for the purpose of carrying out our tasks in the public interest (DR&P 3.6).

**END**

**CODE OF CONDUCT**  
**CONDUCT COMMITTEE/CONDUCT APPEAL COMMITTEE**  
**PANEL MEMBERS**

**Costs Lawyer Standards Board**

All Panel Members, both lay and non-lay including the Chair, are required to accord with the following level of expected conduct:

**1. To act with honesty & integrity**

Panel Members should act with honesty and integrity in all aspects of their duties. Honesty is concerned with being open and transparent. Panel Members should:

- Express genuine views clearly and without ambiguity.
- Respect laws, policies and generally accepted standards of behaviour.
- Explain reasons for views.
- Be truthful.

Integrity is concerned with motive and being consistent with espoused values, Panel Members should:

- Avoid actual and perceived conflicts of interest.
- Declare any actual or perceived conflicts of interest.
- Withdraw from a Conduct Committee where an actual or perceived conflict of interest arises.
- Make reasoned decisions.

**2. Duty to act in good faith**

Good faith is concerned with being co-operative and reasonable. Panel Members should:

- Be professional in all dealings with fellow Committee Members, the Chief Executive and the Costs Lawyer before them.
- Exercise powers responsibly and in the best interest of the profession of the Costs Lawyer.
- Not accept gifts and favours of any kind which may influence, or be perceived to influence, decision making.
- Be mindful that their conduct in all aspects of their life can reflect on their standing as a Panel Member and the reputation of the CLSB.

**3. Duty to act fairly and impartially**

Fairness and impartiality is concerned with being objective and acting with balance and justice. Panel Members should:

- Behave in a manner that is free from favouritism, self- interest and preference.
- Consider all relevant facts objectively.

- Act in accordance with anti-discrimination legislation.
- Respect human dignity and foster a culture that is free from intimidation and bullying.

#### **4. Duty to use information appropriately**

Using information appropriately is concerned with respecting confidentiality and using discretion, prudence and good judgement. Panel Members should:

- Only use information gained as a Panel Member for the purposes intended by CLSB.
- Be conscious that strict rules of confidentiality apply to that information.
- Be well informed about privacy, freedom of information, data protection and whistleblowing legislation.

#### **5. Duty to use your position appropriately**

Using your position appropriately is concerned with not abusing the influence or access to information that your role provides. Panel Member should:

- Not misuse or abuse the powers for personal gain or some other motive.
- Not take decisions with any intention of malice.
- Never seek to gain undue benefit from any party from information gained as a Panel Member.

#### **6. Duty to exercise due care, diligence and skill**

Due care, diligence and skill are concerned with being prudent, having commitment and acting responsibly and professionally. A Panel Member should:

- Comply with all prevailing policies and procedures.
- Read papers and prepare to ask questions at a Conduct Committee.
- Be focused on the matter under consideration.
- Consider issues completely, taking into account all relevant information and evidence.
- Listen to and respect the views of others.
- Ensure full compliance with legal, ethical and policy obligations.

#### **7. Misconduct**

A Panel Member may be considered to be unsatisfactory when a breach of this code, letter of appointment or any legal obligation has occurred. Where conduct is considered unsatisfactory, CLSB will terminate the appointment on one week's written notice.

#### **8. Duty to disclose**

The following (and any other matter that might reasonably be expected to be disclosed as affecting the Panel Members fitness to act) must be disclosed to CLSB by a Panel Member should any of the circumstances below have occurred before or during their appointment.

The Panel Member:

- (a) Is an un-discharged or discharged bankrupt.

- (b) Has entered into an individual Voluntary Arrangement under the Insolvency Act 1986 as amended.
- (c) Has been committed to prison in civil or criminal proceedings or has been convicted of an indictable offence (subject to the Rehabilitation of Offenders Act).
- (d) Has been charged with an indictable offence.
- (e) Lacks capacity within the meaning of the Mental Capacity Act 2005.
- (f) Has been made the subject of an order under section 43 of the Solicitors Act 1974.

**9. Personal liability of Panel Members**

CLSB will indemnify Panel Members against liability incurred in connection with claims or proceedings brought against them in relation to anything done or omitted to be done in the discharge or purported discharge of their duties. This indemnity is not available where the Panel Members actions or omissions are:

- Done or were omitted to be done in bad faith.
- Outside the scope of or inconsistent with the responsibilities of a Panel Member.
- Wilful or culpably negligent.

**I acknowledge receipt of and confirm that I have read the Code of Conduct set out above.**

**Signed** .....

**Name** .....

**Dated** .....

## **GUIDANCE FOR CONDUCT COMMITTEE & CONDUCT APPEAL COMMITTEE ON DECISION MAKING & PENALTIES**

**Costs Lawyer Standards Board**

**Effective date: 24 October 2018**

This guidance has been written to promote proportionate, consistent and fair decision making by a Conduct Committee or Conduct Appeal Committee (“Committee”) convened by the Costs Lawyer Standards Board (“CLSB”). It provides a framework for decision making and should be used in conjunction with prevailing Disciplinary Rules & Procedures, and where appropriate any of the following:

- Level 2 Conduct Committee process notes
- Level 3 Conduct Appeal Committee process notes
- Costs Lawyer Code of Conduct
- Costs Lawyer Practising Rules
- Costs Lawyer Training & CPD Rules

This guidance does not override or replace anything in current Disciplinary Rules & Procedures, and is not binding on a Committee.

### **Disciplinary Levels**

Level 1: CLSB CEO

Level 2: Conduct Committee (A complaint or appeal from Level 1 outcome)

Level 3: Conduct Appeal Committee (An appeal from a Level 2 outcome)

### **The purposes of disciplinary processes and procedures**

Conduct complaints are typically made by a Costs Lawyer’s client (the consumer), however they can be raised by an employer, third parties in legal proceedings or the CLSB as a result of its supervision processes and procedures. Disciplinary processes and procedures seek to:

#### Promote:

- good practice by Costs Lawyers; and
- public awareness of the standards they can expect of a Costs Lawyer; and
- confidence in the profession on the part of all involved in the administration of justice.

#### Protect:

- consumers; and
- the public interest; and
- the reputation of Costs Lawyers and the CLSB.

## **Disciplinary process notes**

These have been written to guide the Committee through the matters they are required to consider and record (in blue text), following case law.

### **1. FINDING(S)**

#### **Level 2 and Level 3 Committee**

The test in a disciplinary matter before a Level 1 or Level 2 Committee is one of balance of probabilities (civil standard) and not beyond all reasonable doubt (criminal standard). The Committee is required to carefully consider all the facts and evidence and set out:

- (i) Its findings of fact in relation to the circumstances of each allegation, and evidence accepted in support of each finding of fact.
- (i) Where the response of the Costs Lawyer has been discounted, an explanation as to why.

#### **Intersection between dishonesty, recklessness and lack of integrity**

These are overlapping but distinct concepts, each with their own tests:

- All dishonest conduct involves a lack of integrity.
- Some, but not all conduct lacking integrity is dishonest (applying 2 stage test).
- Some but not all dishonest conduct is reckless.
- Some but not all reckless conduct is dishonest.
- Probably all reckless conduct involves a lack of integrity.

#### **Dishonesty**

##### **Ghosh: A two stage test**

The test established in the criminal case of R v Ghosh (1982) QB 1053 was the appropriate test, modified to reflect the different context of professional disciplinary proceedings, in which civil standards of proof applies. Thus, a Committee has to determine whether:

- (a) Objective limb: On the balance of probabilities, what was done by the Costs Lawyer was dishonest by the standards of reasonable and honest people; and
- (b) Subjective limb: On the balance of probabilities, the Costs Lawyer realised that what they were doing was dishonest by those standards.

By applying both stages of this test, it enables the moral spectrum to be fully covered.

Acting contrary to the ordinary standards of reasonable and honest people is bad (and may lack integrity) but to do so knowingly is worse.

##### **Twinsectra: An accessory**

In *Twinsectra v Yardley* (2002) UKHL 12, the House of Lords considered whether the Ghosh test applied to the element of dishonesty required for liability as an accessory to a breach of trust; or, alternatively, whether mere objective dishonesty sufficed. The majority opted for the former, concluding that the Ghosh test applied. Lord Hutton said "*dishonesty requires knowledge by the defendant that what he was doing would be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he sets his*

*own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct”*

### **Recklessness**

A person who genuinely does not perceive the risk may be incompetent but not reckless.

*“A person acts recklessly ..... with respect to:*

- (i) a circumstance when he is aware of a risk that it exists or will exist;*
- (ii) a result when he is aware of a risk that it will occur, and it is, in circumstances known to him, unreasonable to take that risk”.* (R v G 2004 1 AC 1034 at 41 (Lord Bingham)).

Reckless conduct may be dishonest. *“The most obviously culpable state of mind is no doubt the intention to cause the injurious result, but knowing disregard of an appreciated and unacceptable risk of causing an injurious result or a deliberate closing of the mind to such risk would be readily accepted as culpable also. It is clearly blameworthy to take an obvious and significant risk of causing injury to another. But it is not clearly blameworthy to do something involving a risk of injury to another if .... One genuinely does not perceive the risk”* (R v G 2004 1 AC 1034 at 41 (Lord Bingham)).

*“Nor does an honest person in such a case deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather not know, and then proceed regardless”.* Royal Brunei Airlines v Tan (1995) 2 AC 378, 389G (Lord Nicholls)

### **Lack of Integrity**

One can act with a lack of integrity without being dishonest. Want of integrity is not to be confused with incompetence. Integrity is not capable of a precise definition. *“In our view, “integrity” connotes moral soundness, rectitude and steady adherence to an ethical code. A person acts with integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards. (This presupposes, of course, circumstances where ordinary standards are clear. Where there are genuinely grey areas, a finding of lack of integrity would not be appropriate)”* Hoodless and Blackwell v FSA (Financial Services and Markets Tribunal 2003

*Whilst often cited, it is not fully comprehensive “We do not disagree with what is said about integrity in Hoodless & Blackwell but we do not take Paragraph 19 as being a comprehensive test which is of application beyond the facts of that case. In any area of life giving rise to circumstances of great variety and complexity there may well be many other circumstances in which the FSA could fairly have concluded that an applicant lacked integrity, a concept elusive to define in a vacuum but still readily recognisable”* Vukelic v Financial Services Authority 2009 UKFSM FSM067.

Recent cases steer clear of seeking to define integrity.

## Incompetence

An incompetent Costs Lawyer is one lacking the qualities needed to discharge obligations and duties. A finding of incompetence alone cannot support a finding of lack of honesty, recklessness or lack of integrity.

## 2. MITIGATION

### Level 2 and Level 3 Committee

The Committee should bear in mind the comments of Sir Anthony Clarke MR in *General Medical Council v Meadow* [2007] 1 QB 462; *'The purpose is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The committee thus looks forward, not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past.'*

However, in considering mitigating factors the Committee should have regard to the further comments of Sir Anthony Clarke MR in *General Medical Council v Meadow*; *"In relation to sanction, it may have consequences for the individual and his or her family which are deeply unfortunate and even unintended but that does not make the sanction wrong if it is otherwise right because "the reputation of the professions is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that this part of the price."*

To assist in considering the degree and nature of each code and/or rule breach, a Committee would benefit from working through mitigation and aggravating factors. General mitigating factors include health (e.g. stress), family (e.g. divorce) and personal issues (e.g. bereavement). The following table lists additional factors (not exhaustive) to assist the Committee in achieving balance.

<b>Mitigation factor</b>	<b>Aggravating factor</b>
In the event of a criminal act, no action has been taken by the CPS (consider reasons why)	Criminal proceedings pending/completed
Criminal conviction or caution is spent	Unspent criminal conviction or caution
Long period of time since criminal conviction or caution	Criminal conviction or caution was recent
The conduct of the Costs Lawyer did not result in any financial gain	The conduct of the Costs Lawyer did result in financial gain (secret profit)
There have been no prior finding(s) by the CLSB or other approved regulator against the Costs Lawyer	There have been prior finding(s) by the CLSB or other approved regulator against the Costs Lawyer
In respect of any prior finding(s) by the CLSB or other approved regulator the Costs Lawyer addressed penalties imposed	There was a failure by the Costs Lawyer to address previous penalties e.g. undertaking, warning letter, payment of fine and costs
There was no loss/detriment to the complainant	There was loss/detriment to complainant
The conduct did not include dishonesty	The conduct included dishonesty

The conduct did not involve violence	The conduct included violence
The conduct did not lead to an obstruction of justice	The conduct led to an obstruction of justice
The conduct was an isolated incident	There was a pattern of minor or serious consistent failings
The conduct was as a result of error or omission	The conduct included false/misleading statements being made
The conduct was of low risk to reputation of the profession	The conduct was of high risk to reputation of the profession
The conduct was of low risk to public interest	The conduct was of high risk to public interest
The Costs Lawyer made appropriate use of the complaints procedure	The Costs Lawyer did not make appropriate use of the complaints procedure
The Costs Lawyer provided an apology/expressed remorse	The Costs Lawyer made no apology/expressed no remorse
The Costs Lawyer provided recompense/showed a willingness to use ADR	The Costs Lawyer failed to correct behaviour promptly/resisted the use of ADR
The Costs Lawyer demonstrated insight	The Costs Lawyer demonstrated no insight
Information provided to consumer was clear and transparent	Information provided to consumer was not clear and transparent
The Costs Lawyer took immediate remedial action/revised controls	The Costs Lawyer failed to take remedial action/revise controls
The Costs Lawyer adequately assessed and addressed the needs of the consumer e.g. vulnerable consumer	The Costs Lawyer failed to assess and address the needs of the consumer
The Costs Lawyer had adequate professional indemnity insurance in place	The Costs Lawyer had inadequate professional indemnity insurance in place
The Costs Lawyer co-operated with the CLSB	The Costs Lawyer did not co-operate with the CLSB
The Costs Lawyer provided full disclosure to the CLSB	The Costs Lawyer concealed facts from the CLSB

The Committee should record, in relation to mitigating and aggravating factors:

- (i) Factors considered.
- (ii) Factors accepted.
- (iii) Where a factor was not accepted, why not.

### **3. PENALTY (Rule 11)**

#### **Level 2 Committee**

The Committee may impose sanction(s) on the Costs Lawyer by way of:

- (i) a warning letter to be signed by the Costs Lawyer which may also include a requirement that the cause of the complaint be remedied within a defined time period, and/or;
- (ii) a proposed undertaking to be signed by the Costs Lawyer to effect changes within a defined time period, and/or;

- (iii) payment of a penalty up to £2,000; and/or;
- (iv) suspension of the Costs Lawyer's Practising Certificate and name from the Register of Costs Lawyer for a fixed term not exceeding 2 years, and/or;
- (v) permanent removal of the Costs Lawyer's Practising Certificate and name from the Register of Costs Lawyers.

Where the Conduct Committee directs a penalty to be paid it shall also direct the time in which it is to be paid and the manner of payment.

#### **4. PENALTY (Rule 12)**

##### **Level 3 Committee**

The Committee may:

- (i) Dismiss the original decision, sanction and costs order.
- (ii) Uphold the original decision, sanction and costs order.
- (iii) Uphold the original decision, but reduce the sanction.
- (iv) Uphold the original decisions and revise the original sanction by way of:
  - (a) payment of a revised penalty up to £4,000, and/or;
  - (b) suspension of the Costs Lawyer's Practising Certificate and name from the Register of Costs Lawyer for a period of time at the discretion of the Conduct Appeal Committee, and/or;
  - (c) permanent removal of the Costs Lawyer's Practising Certificate and name from the Register of Costs Lawyers.

Where the Committee upholds or finds in favour of a revised penalty it shall state the time in which that penalty is to be paid.

#### **5. COSTS (Rule 13)**

##### **Level 2 and Level 3 Committee**

Under this rule a costs order will be payable to the CLSB within 21 days of the order being made. A costs order will be for a fixed sum depending on the disciplinary finding level

Level 2: £1,000

Level 3: £1,500

At Level 2 there will be no costs order if the Conduct Committee finds "*no case to answer*," the case has been "*unsubstantiated*" or is "*dismissed*." At Level 3, there will be no costs order if the appeal is successful in full or part.

#### **6. PUBLICATION OF SANCTIONS & COSTS ORDERS (Rule 14)**

##### **Level 2 and Level 3 Committee**

In the event the Committee makes a finding(s) against a Costs Lawyer, it is required to consider if there are any grounds for not publishing its outcome. The outcome would be

published in the Costs Lawyer Journal and/or on the ACL/CLSB websites unless publication would:

- (i) prejudice legal proceedings or investigations whether of a legal or regulatory nature; or
- (ii) disclose legally privileged information; or
- (iii) involve a significant risk of a breach of Article 8 of the European Convention on Human Rights.

## **7. GROUNDS FOR APPEAL (Rule 9)**

### **Level 2 and Level 3 Committee**

An outcome at Level 1 (CEO) can be appealed to a Level 2 Committee. An outcome at Level 2 Committee can be appealed to a Level 3 Committee. In the event the matter before the Committee is an appeal, the Committee must first consider whether grounds for the appeal have been substantiated. The only grounds for an appeal from either a Level 1 or Level 2 outcome under Disciplinary Rules & Procedures are:

- (i) there was a material error in law; and/or
- (ii) there was a failure to take into account material information; and/or
- (iii) the decision was irrational; and/or  
the decision was one which could not be made; and/or
- (iv) new evidence has been obtained which could not have been made available when the decision was made.

## **8. APPEAL OUTCOME**

### **Level 2 Committee**

The Committee may:

- (i) Dismiss the original decision, sanction and costs order.
- (ii) Uphold the original decision, sanction and costs order.
- (iii) Uphold the original decision, but reduce the sanction.
- (iv) Uphold the original decisions and revise the original sanction by way of:
  - issuing a warning letter, and/or
  - requiring the Costs Lawyer sign an undertaking; and/or
  - payment of a revised penalty up to £2,000, and/or;
  - suspension of the Costs Lawyer's Practising Certificate and name from the Register of Costs Lawyer for a period of time at the discretion of the Conduct Appeal Committee, and/or;
  - permanent removal of the Costs Lawyer's Practising Certificate and name from the Register of Costs Lawyers.

## **9. APPEAL OUTCOME**

### **Level 3 Committee**

The Committee may:

- (i) Dismiss the original decision, sanction and costs order.
- (ii) Uphold the original decision, sanction and costs order.

- (iii) Uphold the original decision, but reduce the sanction.
- (iv) Uphold the original decisions and revise the original sanction by way of:
  - payment of a revised penalty up to £4,000, and/or;
  - suspension of the Costs Lawyer's Practising Certificate and name from the Register of Costs Lawyer for a period of time at the discretion of the Conduct Appeal Committee, and/or;
  - permanent removal of the Costs Lawyer's Practising Certificate and name from the Register of Costs Lawyers.

Where the Conduct Appeal Committee upholds or finds in favour of a revised penalty it shall state the time in which that penalty is to be paid.

**END**

**POLICY ON PUBLICATION OF A DISCIPLINARY OUTCOME  
WHICH FOUND AGAINST A COSTS LAWYER**

**Costs Lawyer Standards Board**

**Effective Date: 12 April 2016**

**Definitions**

ACL	Association of Costs Lawyers
CLSB	The Costs Lawyer Standards Board, acting as an approved regulator under the Legal Services Act 2007
Conduct Committee	Conduct Committee and Conduct Appeal Committee convened by the CLSB
Costs Lawyer	A Costs Lawyer authorised and regulated by the CLSB
Publication of a disciplinary outcome which found against a Costs Lawyer	(i) Publication in the Costs Lawyer journal; and/or (ii) publication on the CLSB website; and/or (iii) endorsement of the Register
Register	The register of Costs Lawyers who are authorised and regulated by the CLSB, which is available for public inspection on the CLSB website

**Purpose of this policy**

Publication is not a sanction, it is a course of action that may be taken if it is considered necessary to:

- (i) protect the public; and/ or
- (ii) promote high standards across the profession.

This policy sets out how the CLSB will proceed in relation to Publication and takes into account the requirement that the CLSB provides a service to the public and to the Costs Lawyer profession. It complies with Article 6(1) of European Court of Human Rights as applied by Human Rights Act 1998 s6 (1) which provides for 'judgement [to] be pronounced publically'. Any Publication will also be in accordance with S31 of the Data Protection Act 1998.

**Background**

Rule 14 of the Costs Lawyer Disciplinary Rules & Procedures (effective 24 April 2013) states in relation to the publication of sanctions and costs orders:

*14.1 CLSB may publish the findings of any Conduct Committee or Conduct Appeal Committee decision at its discretion in the Costs Lawyer Journal and/or on the ACL/CLSB websites unless publication would:*

- (a) *prejudice legal proceedings or investigations whether of a legal or regulatory nature; or*
- (b) *disclose legally privileged information; or*
- (c) *involve a significant risk of a breach of Article 8 of the European Convention on Human Rights.*

14.2 *In the event a warning letter or undertaking is issued and accepted by the Costs Lawyer it shall be recorded against the Costs Lawyers name on the Register of Costs Lawyers (available for public inspection) and will be removed on expiry / completion in accordance with terms stated therein.*

14.3 *In the event a sanction is issued by the Conduct Committee or Conduct Appeal Committee it shall be recorded against the Costs Lawyers name on the Register of Costs Lawyers (available for public inspection) for the period stipulated in the sanction.*

### **The ACL website**

The ACL is the representative body of the Costs Lawyer profession and membership is voluntary. Whilst rule 14.1 states publication could occur on the ACL website, it is unlikely the CLSB would ever recommend this due to separation of representation and regulation achieved by the ACL and CLSB respectively, in accordance with the Legal Services Act 2007. That said, in the event of Publication, the CLSB has no authority over any other party in relation to reproduction of that Publication.

### **When will Publication be made?**

Where there is no prevailing CLSB rule, law or other persuasive factor e.g. duty of care that prevents Publication, Publication will be undertaken by the CLSB within 7 working days, or as soon as reasonably practicable thereafter as in the case of the Costs Lawyer journal, editorial deadlines are not within the control of the CLSB.

### **Considerations**

The CLSB, through its Conduct Committee, considers:

- (a) the public naming of the Costs Lawyer; and
- (b) Publication.

It does so having the benefit of all the facts before them. In reaching their decisions a Conduct Committee is expected to consider, in relation to (a) and (b) above, the factors set out under Rule 14.1, all other prevailing laws and its duty of care. Factors therefore under consideration would be, inter alia:

- (i) The circumstances leading to the outcome.
- (ii) The seriousness of the matters leading up to the outcome.
- (iii) Matters of legitimate public concern or interest.
- (iv) The importance of transparency in the regulatory and disciplinary process to the consumer (on instructing a Costs Lawyer), the profession (on employing and dealing with a case against a Costs Lawyer) and the judiciary.
- (v) Previous disciplinary outcomes whether private or published.
- (vi) Its duty of care e.g. in the event of mental illness of the Costs Lawyer.

- (vii) In all the circumstances, whether the impact of Publication on the Costs Lawyer would be disproportionate.

### **Period of Publication**

Once published in the Costs Lawyer journal, there will be no further re-publishing by the CLSB. The period of Publication in relation to a warning letter or undertaking is set out under Rule 14.2. In relation to all other disciplinary outcomes (to include outcomes at level 1, 2 and 3) the period of Publication is dealt with in the table below.

<b>Outcome</b>	<b>Period of Publication</b>
Condition(s) on a practising certificate	Until condition(s) complied with
Payment of a financial penalty only	2 years from date of financial penalty
Suspension of a practising certificate for a fixed term only	Until the period of suspension has been completed.
Suspension of a practising certificate for a fixed term and payment of a financial penalty	2 years from the date of financial penalty
Permanent removal of a practising certificate	Indefinitely

### **Retention of disciplinary outcomes**

An internal record of disciplinary outcomes will be retained by the CLSB indefinitely subject to data protection law. Any Costs Lawyer subject to a disciplinary outcome against them, will be advised of this when the CLSB notifies them of that outcome.

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# Consultation outcome

## CPD for Costs Lawyers

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19 March 2020

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Costs Lawyer Standards Board

CLSB  
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## Overview

The Continuing Professional Development (CPD) Rules 2017 establish requirements for Costs Lawyers to maintain their professional competence during their career. In 2019 the CLSB developed proposals to amend the CPD Rules to better reflect:

- Legal Services Board (LSB) policy and requirements;
- changes in the wider legal sector;
- the need for clarification of the current rules.

A [consultation](#) on the revised CPD Rules and associated guidance was issued on 4 December 2019 and closed on 2 February 2020.

Under the reforms, we proposed maintaining a twelve-hour minimum CPD requirement whilst greatly increasing the flexibility for Costs Lawyers to decide how best to meet their training needs. We proposed a process whereby Costs Lawyers were required to identify their training needs, set objectives and evaluate the success of their training against those objectives. We provided draft rules and guidance, and a suggested (non-

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compulsory) template that could be used by Costs Lawyers for planning and recording their continued development together with a worked example.

We received responses to the consultation from ACL Training (the training arm of the Association of Costs Lawyers), six individual Costs Lawyers, the Solicitors Regulation Authority (SRA) and the Legal Services Consumer Panel (LSCP). The responses were largely supportive of the changes overall. There was some disagreement on individual issues, which will be discussed below, together with other comments and helpful suggestions. This paper sets out how the CLSB will take forward the proposals in light of respondents' feedback. We would like to thank all those who took the time to respond to the consultation.

It is worth noting that the LSB issued a [call for evidence](#) in relation to ongoing competence on 21 January 2020. Their initial findings on the regulated legal sector are that whilst there is a focus on education and training on qualification, there is less focus on assuring competence post qualification, except for CPD which is largely based on self-assessment. They also find that there is some evidence of legal professionals not maintaining competence or acting beyond their competence.

The LSB's own policy on CPD (to which our consultation was in part a response) has been to encourage regulators to move away from an approach that requires practitioners to spend set hours on accredited courses towards a more flexible outcome-based approach. Although the LSB's current work on competency is at an early stage, there is as yet no indication that the review will lead the LSB to move away from its outcome-based approach to CPD. Rather, the focus appears to be on the way in which those outcomes are then verified by regulators and competency is assured. The review mentions, for example, that in some other sectors professionals (such as doctors) are required to undertake periodic formal reassessments and that these measures have had some success.

We considered whether to delay a decision on these reforms in light of the LSB review. However, we have decided that we will proceed with the changes now because we believe that they represent an improvement to the current system and will help practitioners to take a more flexible and thoughtful approach to their continuing

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development. This in turn will, in our view, place Costs Lawyers in a better position in any debate over whether some form of compulsory reassessment or reaccreditation is necessary or justified.

## Responses to consultation questions

In this section we summarise respondents' views on each question and set out the CLSB's decision in light of the responses received.

### Overall approach

**Consultation question 1: Do you agree that the proposed approach strikes the right balance between outcomes-focused learning and provision of a practical framework within which Costs Lawyers can track and report their ongoing training? If not, why?**

The proposed approach was generally supported.

ACLT felt that the proposals reached the right balance between focused learning and the provision of a practical framework. They felt that the proposal makes the standards expected explicit, and makes it clear what will be looked at on audit. ACLT said that the proposal to maintain a minimum points system was the right approach because practitioners quite often benefitted from a clear guide to the minimum required.

ACLT stated that lawyers in other branches of the profession have found needs assessments, outcome setting, and reflection difficult. They agreed that the proposal helpfully includes some categories that can be used as a guide by Costs Lawyers upon which their development objectives can be based. However, they recommended that there should be further consideration as to how easy it is for a Costs Lawyer to conceptualise what they are being asked to do and referred to their response to consultation question 3.

The LSCP felt that the proposed rules brought a welcome flexibility around the content and development of the training. For example, the LSCP supported the removal of a rigid list of activities that count towards CPD and any cap on the number of points available

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for each type of activity. It also supported the view that activities carried out as part of normal practice cannot count towards CPD activity.

The LSCP agreed that the twelve CPD hours should not be a target but a minimum requirement. However, it said that the CLSB should consider how it can encourage Costs Lawyers to go beyond this minimum requirement.

Of the three individual Costs Lawyers that responded to this question, one agreed and another agreed in part but had suggestions as to what else could be included in the proposals.

The draft guidance had suggested four learning categories that Costs Lawyers might wish to use to assess their needs and set objectives, as follows:

- Legal and technical competence
- Professional ethics and behavior
- Dealing appropriately with your client and third parties
- Practice management

The respondent suggested that “technical” should also include the technicalities of doing your job such as using certain IT software, social media and writing skills. They also suggested that “professional ethics and behaviour” should include areas such as equality and diversity training, time management and areas to help Costs Lawyers stay mentally well under pressure. This respondent supported the inclusion of management skills as a category, stating that these are critical to a good working environment.

The third Cost Lawyer respondent disagreed with the approach because they said that the majority of Costs Lawyers do not engage in practice management and this should not therefore be included as a compulsory CPD requirement.

The SRA felt that the CLSB’s proposals were positive and agreed with the move towards a less prescriptive, more reflective and outcomes-focused approach to ensure the continuing competence of Costs Lawyers. The CLSB proposals linked continuing competence to the professional standards and this was valuable. The SRA noted that the draft rules require Costs Lawyers to continuously develop their knowledge and practical

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skills to help them meet the standards set out in the Costs Lawyers' Code of Conduct and considered this to be positive.

However, the SRA stated that it considered maintaining a twelve-hour minimum requirement to be unnecessary. Further it did not feel that "on the job learning" (routine casework and work for which the client is charged) should be excluded from CPD. The SRA said that it believes that solicitors learn best if they have freedom to choose the most appropriate learning for them and that it provides a broad range of examples, including workplace learning (for example via secondment within a firm) as part of its continuing competence toolkit.

### **CLSB decision**

We have decided to maintain the overall approach; based on responses received, we remain of the view that the proposals achieve the right balance between flexibility and a practical framework. This will include maintaining the twelve-hour minimum CPD requirement as a part of that balance.

We considered carefully whether, as suggested by the SRA, we should allow for "on the job" learning through normal casework for which the client is charged to count towards the twelve-hour minimum. We feel that this would place insufficient emphasis on the need for a Costs Lawyer to "step out" from their daily work in order to consider their training needs. That is not to say that we minimise the importance of taking on new areas and types of work, and working in new environments, as part of professional development. In our view preparation for new challenges by appropriate learning will only assist that development. We remain open to new evidence in relation to this point, and we will follow with interest any future evaluation that the SRA carries out of its scheme once it has been in operation for long enough to draw firm conclusions.

We are not proposing that practice management is a compulsory part of CPD if the Costs Lawyer has no such role or involvement. Our draft guidance stated:

*"There is no need to take CPD in a particular category if you consider that you do not have training or development needs in that category for the year in question."*

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*For example, you may not be involved in practice management in your role, or you may have focused on a particular category and principles last year and met your objectives. However, given the constantly evolving nature of costs law, it is likely that you will always need to undertake some activity in relation to your legal and technical competence if you are to meet your obligations under the Code of Conduct.*

*Adoption of these particular categories is not compulsory – but you must ensure that your needs are assessed and objectives set in light of the principles in the Code of Conduct (CPD rule 2.1).”*

It may be that the individual Costs Lawyer who responded under the misunderstanding that CPD in practice management was compulsory for all Costs Lawyers read the proposed CPD template in isolation from the guidance, and assumed that all categories had to be completed. We appreciate the risk that other practitioners could take the same approach upon implementation of the new guidance; we will therefore amend the template (which is itself not compulsory) to put the position beyond doubt.

Finally, we agree with the Costs Lawyer respondent who stated that acquiring certain practical skills as well as training in some of the “softer” skills can be important and we will emphasise this in the guidance.

## Guidance

**Consultation question 2: Is the guidance clear as to what activities will qualify as CPD? Should the guidance cover any other topics?**

ACLT and the SRA agreed the guidance was clear and had no further suggestions.

The three Costs Lawyers who responded to this question agreed that the guidance is clear. One raised an important query in relation to the when research and reading will count towards CDP, given that draft Rule 3.3(a) says that “work, research or reading that is part of routine practice or casework” will not count towards CPD, whilst draft Rule 3.1(f) indicates that “research and reading” generally will form part of CPD. The

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respondent confirmed that having been out of the profession for some years they recently needed to spend a number of hours familiarising themselves with new regulations before working on their files and queried whether this research would count towards CPD.

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

### **CLSB decision**

We agree that research done in order to prepare to return to casework or to take up a new role (as opposed to working on the files themselves) can and should count as CPD and we will amend the guidance to remove any doubt. Recognising the need for such preparation is an important part of the continuing competence process. We emphasise however that the twelve-hour requirement is a minimum – and in these circumstances a Costs Lawyer may find that they require more than the twelve hours in this particular year in order to be satisfied that they are able to meet the appropriate competencies.

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

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## Supporting materials

### **Question 3: Are the template and worked example useful? Are there any other materials that would help practitioners in implementing the proposals?**

ACLT felt that the suggested template for the CPD process and the worked example were useful but supplied some suggested additional materials. They stated that reflective practice is a continuous process with all learners bringing their own knowledge, ideas and beliefs to the process. The CLSB proposals seek to introduce this cyclical approach to development and ACLT felt that Costs Lawyers may benefit from this being made more explicit within the guidance. ACLT supplied a draft process map which it suggested should be included in the guidance to reinforce the idea that the process will have no clear beginning and end, that learning goes beyond the reporting requirements and requires continual review by the learner.

ACLT felt that the four guideline categories of development could be better presented to enable Costs Lawyers to conceptualise the categories for learning purposes. They stated that learning or development is an acquisition of concepts and it is helpful to think of existing knowledge in these terms because it allows the building of mental structures which can act as scaffolding for building a broader or deeper knowledge base. ACLT submitted a draft document which they suggested could be introduced into the guidance to promote the idea that the four guideline categories are concepts upon which learning can be built.

ALCT also suggested that it may assist Costs Lawyers if they were provided with clear guidance as to how to set outcomes and objectives.

Of the three individual Costs Lawyers that responded to this question, two agreed that the materials were useful. One Costs Lawyer respondent pointed out that when CILEX and the SRA changed their CPD arrangements they offered talks and presentations to firms to assist in implementation. As an example, the respondent stated that CILEX has regional branches which organise talks, including talks on management (which are paid for from branch subscriptions).

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A fourth Costs Lawyer provided additional comments on the template, which they felt was far too onerous. They stated that the form reminded them of the Personal Development Plan previously used by ACL which took a very unreasonable length of time to think through and reflect on. The respondent felt that the reflection process is something professionals would do in any event; but being asked to write those reflections is condescending, bearing in mind that solicitors are not required to fill in proof of CPD points anymore and are just required to keep on-top of their continual development.

The SRA agreed that the template and case study were helpful.

### **CLSB decision**

We will publish the template and case example given that they were generally seen as helpful. We will amend the documents to stress that obtaining CPD in any particular category is not compulsory and should be based on need. For some Costs Lawyers thinking about training in this way will be new and the materials will support them through that process. Other regulators such as the SRA and the BSB also publish draft CPD templates to assist their regulated communities. However, as the template states, its use is not compulsory. The important point is that practitioners should go through the right reflection and action process and should be able to demonstrate their compliance with this as necessary on audit – but how they record this is up to them.

We agree that the process map and table provided by ACLT are helpful and we will consider how we might publish them as part of the guidance package.

We understand that ACLT is in the process of developing CPD modules, but it will often be the case, as now, that Costs Lawyers may need to use courses from other providers, including from fellow legal practitioners and from outside the legal profession. In fact, the new rules provide much greater flexibility as to the ways that CPD can be carried out in future.

We will also consider what other supporting materials we can supply in the run up to implementation. The CLSB is not in a position to provide bespoke regional assistance, as

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it does not benefit from a regional structure. However, events such as the ACL conference (held annually in both Manchester and London) could be a good forum for providing additional assistance to all practitioners, for example via a presentation and Q&A session. ACL also has regional groups that might be better placed to disseminate information to members.

## Accreditation

**Consultation question 4: Do you agree that the requirement for Costs Lawyers to be accredited before they can deliver CPD training should be removed? Is the accreditation scheme still valuable as an indicator of quality?**

Under our current regulatory arrangements, Costs Lawyers must be accredited by the CLSB before they can provide training which counts as CPD. This contrasts with other legal professionals and unregulated training companies which can deliver CPD to Costs Lawyers without any such restriction. We proposed the removal of the accreditation requirement but floated the idea of maintaining a voluntary register of Costs Lawyers who were accredited to provide CPD training.

ACLT agreed that the requirement for Costs Lawyers to be accredited before they can deliver CPD training should be removed. However, ALCT felt it would be a welcome addition to the proposals if all Costs Lawyers delivering CPD were required to keep records of evaluation for any CPD session that they delivered as this would encourage the fostering of reflective practice in all learning and development activities by both the learners and the facilitators.

ALCT did not feel that it can be said with any certainty that a voluntary register of CPD providers would be of benefit; such a register may suggest a quality benchmark of the provider that cannot be assured. Further information would be needed regarding how this register would operate in order to form a view on this.

Of the three individual Costs Lawyers that replied to this question, two agreed, with a comment being made that being qualified as a Costs Lawyer should be sufficient to train others. One Costs Lawyer respondent disagreed. They felt that a requirement to provide

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CPD training materials to the CLSB for audit is a good way to assess the quality of the accredited CPD provider, on the presumption that if the material is sub-standard or incorrect, the accreditation is removed. They said that Costs Lawyers continue to struggle with the wider view that Costs Lawyers are generally not “a proper profession” like legal executives or solicitors. They felt the accreditation scheme is therefore necessary to try and instill confidence in the profession.

The SRA agreed that the removal of the requirement could open up the market and lead to a wider variety of training.

### **CLSB decision**

We will remove the requirement for Costs Lawyers to be accredited by the CLSB before training they deliver can count toward minimum CPD attainment. As set out above, the existing requirement for accreditation applies only to Costs Lawyers; that is, it applies only to the group of professionals who are arguably in the best position to train their peers on legal and technical competence in costs law. In our view, mandating additional accreditation for Costs Lawyers to train their colleagues, while not mandating that accreditation for solicitors, barristers or legal executives, undermines rather than supports a positive perception of the Costs Lawyer profession.

Our current intention is to retain a voluntary registration scheme for Costs Lawyers that provide CPD training, but we will discuss the issue further with stakeholders and keep the position under review as the wider changes come into effect.

## **Evidence**

**Consultation question 5: Do you agree that it is disproportionate to ask all Costs Lawyers to submit evidence of their assessment, objective setting and evaluation process every year and that, instead, this evidence should be asked for only as part of the random CPD audit?**

We proposed to continue, as now, to ask Costs Lawyers to report their CPD activities and points they obtain as part of the practising certificate renewal process, but did not

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propose that they would have to submit the evidence in support as a matter of course. ACLT agreed that it would be disproportionate to ask Costs Lawyers to submit this evidence. However, it had concerns that if the current reporting system was maintained that the desired shift in approach to learning and development may not be achieved. Some Costs Lawyers may simply undertake twelve hours of CPD and take the chance that their objective setting will never be audited. However, ACLT noted that there is a secondary stage of reporting (full reporting) which should encourage a change of approach to learning.

One Costs Lawyer respondent agreed with the question. Two Costs Lawyer respondents disagreed, with one stating that they do not think it would be a hardship for anyone to document their assessment, objectives and evaluation of each CPD event and the template document that is being proposed makes this easy to action. They felt it would focus the mind on what is needed and hopefully avoid the last-minute rush that often happens when trying to gain relevant CPD. The other Costs Lawyer respondent stated while it was more onerous to provide the objective-setting, they did not consider it to be disproportionate, subject to the caveat that Costs Lawyers should not be obliged to undertake training on practice management if it was not relevant.

The SRA stated that it has taken the approach of requiring all solicitors to make an annual declaration to confirm that they have met the SRA's continuing competence requirements.

The LSCP agreed with the approach of asking for the evidence as part of the random audit.

### **CLSB decision**

We will not require Costs Lawyers to submit evidence of the assessment, objective setting and evaluation process as part of the practising certificate renewal process. Given responses to other consultation questions, we are concerned that such an approach could drive the misconception that our suggested template is compulsory. We will, however, check Costs Lawyers' records via random audits which will require full

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reporting. It is worth noting that we may need to review this position in due course as a result of the LSB review of ongoing competence.

## Other comments

We received a small number of additional comments on the proposals overall. One Costs Lawyer respondent saw no reason to change the status quo. Another agreed that the approach overall was reasonable, but had the concerns about the template form detailed above in relation to question 3.

A third Costs Lawyer respondent stated that changes to the CPD requirements are another area where there is a disconnect between the CLSB and regulated Costs Lawyers “working at the coal face”. The old approach was able to be accommodated because keeping up to date in connection with one’s own area(s) of professional work could account for twelve CPD points per annum. However, the respondent stated that under the proposals Costs Lawyers are supposed to engage with training that is irrelevant to their own area(s) of professional practice.

Finally, the LSCP recommended that the CLSB undertakes a review after three to four years in order to assess the results of these new rules overall. The LSCP has previously stated that legal services professionals need effective and appropriate interpersonal skills when delivering services to consumers, especially vulnerable consumers. The LSCP was therefore supportive that the regime covered “dealing appropriately with your client and third parties” and felt that it should also include emotional competence as an essential skill for lawyers at all stages of their career.

The LSCP recognised that the use of legal technology in practices is becoming more prevalent and encouraged the CLSB to consider proposals around training in law tech.

## CLSB decision

We wish to reiterate that under these reforms Costs Lawyers only need to undertake CPD in areas relevant to their practice. In fact, the reforms will provide greater flexibility to allow Costs Lawyers to focus on their individual needs. We therefore do not intend to

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amend the rules or guidance in this regard, but it is apparent that we will need to communicate the nature of the changes very clearly and at multiple touchpoints throughout the practising year.

We agree that the skills referred to by the LSCP can form an important part of continuing development, and will include reference to them in the guidance.

Finally, we confirm that it our intention to undertake a review after three to four years in order to assess whether, for example, the outcomes-focused process has sufficiently bedded in to render the twelve-point requirement no longer necessary, and to take into account any new evidence or requirements arising from the LSB's review.

## **Next steps**

Subject to LSB approval of the rules, we intend to introduce the new regime for all CPD carried out from 1 January 2021, which is the beginning of the next CPD year. We will keep Costs Lawyers updated via the usual channels.

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# Consultation outcome Practising Rules

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6 April 2020

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Costs Lawyer Standards Board

CLSB  
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# Overview

The Costs Lawyer Standards Board (CLSB) regulates Costs Lawyers under the framework established by the Legal Services Act 2007 (LSA). Costs Lawyers must meet certain criteria before they can apply to the CLSB for authorisation to carry out reserved legal activities. Those criteria are set out in our Practising Rules.

Our existing Practising Rules (the Rules) were established in 2011 and were last amended in 2014. A review of the Rules was therefore warranted in order to bring them up to date and ensure their consistency with our other regulatory arrangements. There was no evidence to suggest that fundamental reform of the practising regime is needed. Rather, our review focused on addressing specific issues with the current Rules that have been identified through our ongoing work. Our proposed revisions to the Rules included:

- Preparing for a digital process of practising certificate applications by removing detailed provisions of the application forms from the Rules.
- Moving to a fairer system of fee reductions for parental leave.
- Updating the list of events that Costs Lawyers are obliged to disclose to the CLSB in line with legislation and regulatory best practice.
- Improving transparency and accountability by setting out a framework for decisions on practising certificates in the Rules.
- Simplifying the Rules and removing the need for a separate practising certificate reinstatement procedure.

We issued a [consultation on the revised Rules](#) on 13 February 2020. We received responses from the Legal Services Consumer Panel (LSCP) and five individual Costs Lawyers. ACL Training (the training arm of the Association of Costs Lawyers) also replied to say it had no comments.

In light of the consultation responses, we intend to implement the revised Practising Rules as proposed, subject to amendments as described in this consultation outcome report. Implementation is subject to prior approval of the Legal Services Board.

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# Responses to consultation questions

## Application for a practising certificate

**Consultation question 1: Do you agree that the administrative aspects of the practising certificate application process should be removed from the Rules themselves, to facilitate digitalisation and allow us to respond to feedback? If not, what level of detail should remain in the Rules?**

The five Costs Lawyer respondents agreed with this proposal – with one saying that this agreement was provided that the application process was not compromised.

The LSCP supported the move to a digital application process for the next practising year. It felt this will give CLSB flexibility to be more agile and adjust to various Costs Lawyers' circumstances.

### **CLSB response**

We will implement this section of the Rules as drafted, removing administrative details of the application process. We will publish guidance in support of the application process on our website in the form of FAQs, which can be update over time in response to themes identified from practitioner enquiries.

## Parental leave

**Consultation question 2: Do you agree that all Costs Lawyers who return from parental leave should receive a dispensation from practising fees for the full period of their leave? We would be particularly interested to hear from anyone who will be impacted by this change.**

The existing Rules specify a reduced fee for a practising certificate application that is received part-way through the practising year. This applies to both newly qualified Costs Lawyers and Costs Lawyers who are returning to their practice (known as applying for “reinstatement” to the register).

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The fee dispensation is based on the number of months that a Costs Lawyer practises during the practising year in which they return to work. This has a particular impact in the case of parental leave and means that a Costs Lawyer who returns to work late in a practising year (say, November) will receive a larger fee dispensation than someone who returns to work earlier in the year (say, March) despite those Costs Lawyers being on parental leave for the same overall period of time. We recognised the arbitrary nature of this distinction and wished to ensure equal treatment of (and support for) all Costs Lawyers returning to the profession following parental leave. We therefore proposed to offer a fee dispensation in the practising year following the parental leave, covering the whole period of leave.

We also proposed to remove this fee dispensation from the Rules and embed it instead in the application form and guidance, to give us the flexibility to accommodate different circumstances and ensure we can treat all applicants fairly.

Four of the five respondent Costs Lawyers agreed with the proposal. One Costs Lawyer however felt that fee dispensations are unnecessary given the low level of the practising fee. The LSCP supported the changes.

### **CLSB response**

We believe that it is fair to continue to offer fee reductions. We will implement the proposal as drafted and include details of the fee reductions in the application form and guidance. This will include parental leave and other circumstances such as applications part-way through the year.

## **Disclosure to the CLSB**

**Consultation question 3: Is the proposed list of disclosable events in Rule 4 appropriate? Are there other events that should be disclosed as a matter of course?**

Costs Lawyers are obliged to disclose certain events (such as convictions) to the CLSB on the grounds that they may affect fitness to practise. The existing Rules contain a list of such events. We proposed to update the list of disclosable events in accordance with

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current regulatory best practice. As part of this, we proposed disclosure by Cost Lawyers of any disciplinary proceedings by a regulatory or professional body or any adverse findings of a civil court or tribunal.

The five Costs Lawyer respondents agreed with the proposal.

The LSCP endorsed the proposal to establish a common list of events that need to be disclosed upon applying for a practising certificate. It felt that the revised list was comprehensive, and welcomed that it prompts Costs Lawyers to self-assess and disclose any other matter that might affect their fitness to become or remain a Costs Lawyer. The LSCP agreed with the inclusion of disciplinary proceedings (professional or regulatory, civil court or tribunal) to the list. It commented that these changes will bring CLSB in line with other regulators giving equal levels of protection to consumers.

There were no suggestions as to any other specific matters that should be included in the list, but one Costs Lawyer commented that the Rule should be worded in such a manner as to cover all relevant incidents or those of suspected relevance.

### **CLSB response**

We will implement the list of disclosable events as drafted. The catch-all in Rule 4 that the Costs Lawyer must report to us if they become aware of any other matter that might reasonably be expected to be disclosed in affecting their fitness to become or remain a Costs Lawyer should deal with any circumstances not specified in the list. If it becomes necessary, we can also issue guidance in this area.

### **Decisions**

**Consultation question 4: Do you agree that it is helpful to set out a decision-making framework in the Rules? Are you aware of any specific areas where further guidance would be valuable?**

The existing Rules give little steer as to the basis on which an application for a practising certificate will be refused or a condition imposed, beyond providing a discretion if one

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of the disclosable events occurs. We therefore proposed a framework for decision-making in Rule 3 that would be more transparent and would assist both decision-makers and applicants.

Four of the five respondent Costs Lawyers agreed with the proposals. One Costs Lawyer felt that a codified system for decision-making risked making the system too rigid, created a possible need for future amendments and was unnecessary.

The LSCP made a comment on the proposed Rule 3.6. This Rule states:

*The CLSB may remove a condition on a Practising Certificate if it considers, on written application of the Costs Lawyer or on its own initiative, that there has been a change of circumstances such that it is no longer in the public interest for the condition to be maintained.*

The LSCP argued that the CLSB as regulator should specifically consider the consumer interest as well, because the public and consumer interest may on occasion differ.

There were no suggestions as to specific areas for guidance

### **CLSB response**

We will amend Rule 3.6 to specify that the CLSB may remove a condition on a practising certificate only if it is no longer satisfied that any of the grounds in Rule 3.4 for imposing a condition apply. These grounds include that the Costs Lawyer is putting, or is likely to put, at risk the interests of clients, third parties or the public.

Otherwise we will implement the decision-making framework in Rule 3 as drafted. We carefully considered the consultation response suggesting that the framework could be constraining, however we feel this must be balanced against the need for consistency and fairness for applicants. We consider that the framework provides transparency whilst leaving discretion at a broad enough level to allow flexibility. Given that all other respondents supported its implementation, we remain of the view that it is prudent to introduce the framework.

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## General improvements

### **Consultation question 5: Do you have any other suggestions for improving the Practising Rules as proposed?**

At a general level the drafting of the new Practising Rules aimed to simplify the provisions, make the Rules more accessible, adopt a more logical order and remove repetition and obsolete references. The changes were also designed to bring the Practising Rules into line with ongoing reforms to our CPD Rules and Disciplinary Rules and Procedures.

The LSCP said that, overall, it welcomed the CLSB's review and believed there are merits in simplifying the Rules. Simplification is likely to enhance accessibility and improve enforcement. The LSCP also welcomed the synergy between this process and the current reforms to the CLSB's CPD Rules and the Disciplinary Rules and Procedures.

Aside from the comment made by the LSCP on Rule 3.6 as described above, there were no specific suggestions for further improvements to the Rules.

### **CLSB decision**

We will proceed with seeking approval to implement the Rules as drafted, subject to the amendment to Rule 3.6 mentioned above.

## **Next steps**

We will now apply to the Legal Services Board for approval of the revised Practising Rules. Subject to the outcome of that application, we intend to implement the new Rules in the first half of 2020 to facilitate the use of a digital practising certificate renewal process in late 2020 (for the 2021 practising year). We will publish guidance in relation to the updated application process (in the form of FAQs) well in advance of the annual renewal period and will notify Costs Lawyers of the changes directly by email.



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This note offers guidance to Costs Lawyers who work in firms that are authorised and regulated by the Solicitors Regulation Authority (SRA). As at 2018, 41% of Costs Lawyers were employed in SRA regulated firms. The SRA introduced its new Standards and Regulations in November 2019.

## Costs Lawyers subject to SRA regulation

1. As employees or managers of SRA regulated firms, Costs Lawyers need to comply with the SRA's Standards and Regulations. These include, in particular, the [SRA Principles](#) and the [SRA Code of Conduct for Firms](#).
2. In relation to the Code of Conduct for Firms, managers are jointly and severally liable for any breaches by the firm, and the SRA can take action against individual employees who are personally responsible for the firm's breach.
3. Costs Lawyers working in SRA regulated firms should therefore familiarise themselves with the Code of Conduct for Firms. Your firm should be in a position to provide you with appropriate training as part of their obligations to ensure that their employees comply with the rules. The extent to which the obligations will apply to you as an individual will depend on your role – and whether, for example, you provide services to external clients as well as to the firm itself.

## SRA enforcement powers

4. The SRA can take action under its Regulatory and Disciplinary Procedure Rules against a manager or employee who has been responsible for a serious breach of SRA rules by the firm. Sanctions can include rebukes, fines or an order that the individual should not be employed in an SRA regulated firm going forward.
5. The SRA prioritises serious breaches of its rules. Its enforcement strategy also states that it will take into account the role of the individual within the firm. Action is more likely to be taken against those who have more senior roles within the firm with real control and influence. The SRA recognises that a person's inexperience or relatively junior role within an organisation may impact on their ability to take

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appropriate action, although this will not be an answer to serious misconduct such as dishonesty.

## Dual regulation

6. As a Costs Lawyer, you will remain personally regulated by the CLSB and will be required to comply with the Costs Lawyer Handbook as well as the SRA's Standards and Regulations that apply to you as an employee.
7. In the event of a conflict between the CLSB's rules that apply to you as an individual practitioner and the SRA's rules that apply to you as an employee, section 52(4) of the Legal Services Act 2007 provides that the rules of the regulator authorising the firm (i.e. the SRA in this case) prevail over the rules of the regulator authorising the person (i.e. the CLSB in this case).
8. In practice it is unlikely that there will be a conflict between the rules. The core principles and Codes of both regulators overlap to a considerable degree. Compliance with the SRA Code of Conduct for Firms will take you a long way to compliance with the CLSB Code of Conduct and vice versa. A number of your CLSB obligations (such as providing information to clients, having a system to deal with complaints and arranging insurance) are likely to be met by the firm itself.
9. As regulators, both we and the SRA have a duty to minimise conflicts between the rules. If a conduct issue arose in relation to a Costs Lawyer who worked in an SRA regulated firm, and that conduct could also constitute a breach of the SRA's rules that apply to the Costs Lawyer, we would liaise with the SRA to determine which regulator was best-placed to investigate (we have a memorandum of understanding in place with the SRA to cover this kind of scenario).
10. It is worth noting your duties to report in this context. You should report to us any event that you consider to be a breach of the CLSB Code of Conduct (whether by you or another Costs Lawyer). However, if you consider this event to also be a breach of the SRA rules, you should also report this to the firm's Compliance Officer.

**END**

**BOARD DECISION NOTE**  
**Costs Lawyer Standards Board**  
**Date of decision: 22 January 2020**  
**Issue: Mid-term strategy for consumer engagement**

**Board constitution:** Steve Winfield (Chair): Lay NED  
Gillian Milburn (Vice-Chair): Lay NED  
Stephanie McIntosh: Lay NED  
Tracyanne Ayliffe: Non-Lay NED  
Paul McCarthy: Non-Lay NED

**1. Background information and summary of the issue**

This Board Decision Note documents the decision-making process in relation to the CLSB's Consumer Engagement Strategy, which was adopted on 22 January 2020.

Regulatory action plan

Outcome RA3 of the Legal Services Board's regulatory performance framework requires that legal services regulators have a robust evidence base from a range of sources on, amongst other things, consumers' needs and their use of legal services. Historically, the CLSB has found it challenging to find reliable and statistically significant data relating to Costs Lawyers given the small size of the regulated community, the even smaller pool of complaints against regulated individuals, and the lack of engagement from (predominantly sophisticated) consumers of Costs Lawyers' services when asked for feedback.

In June 2019, the CLSB agreed an action plan with the Legal Services Board, aimed at meeting or exceeding all outcomes in the regulatory performance framework. Under the action plan, the CLSB acknowledged the need to be innovative in the way it approached potential evidence sources, including the need to make informed extrapolations from data held by other organisations where appropriate.

Specifically, the CLSB committed to undertaking a project with the following parameters:

- **Purpose:** *Gain a deeper understanding of who the consumers of Costs Lawyers' services are, how they interact with the market and the factors that drive their purchasing decisions. Establish a framework for ensuring that the CLSB's regulatory approach meets consumer needs and mitigates the right risks.*
- **Approach:**
  - *Define what we mean by consumers of Costs Lawyers' services, thinking broadly about ultimate beneficiaries of those services.*
  - *Snapshot the evidence that we currently have about consumers' characteristics and behaviours (e.g. mix of informed and lay, number and type of vulnerable consumers) and identify gaps.*
  - *Map the sources of evidence that might be available to widen or deepen our evidence base, e.g. data on SRA regulated firms employing costs lawyers; SRA*

*and BSB data on the ultimate/indirect clients of costs lawyers; the LSB's ILNS; the LSCP's tracker survey; MoJ research in the context of costs reforms; Citizens Advice enquiries; LeO complaints with a costs element; Legal Choices search term data etc.*

- *Engage with the SRA and LSCP on policy research that may read across to Costs Lawyers (e.g. LSCP work on consumer engagement).*
- *Engage with the BSB on who they consider to be "consumers" of barristers' services and how this impacts their evidence base.*
- *Engage with the CMA to identify any relevant evidence from the market study that could be shared.*
- *Analyse the evidence gathered to identify any unaddressed areas of risk or disengagement.*
- *Review whether the current client survey is adding value and explore possible alternatives/supplements.*
- *Consider other ways to measure the typical consumer experience, such as mystery shopping.*
- **Outputs:** *A report covering the above areas. A revised consumer engagement strategy, including how we will ensure our evidence base remains current. An agreed framework for aligning risk assessment and regulatory approach to consumer need, expectations and behaviours.*

#### Interim report

The initial stages of the project culminated in an interim report entitled Costs Lawyers and Consumers (**Annex 1**). The CEO presented this report to the board at its scheduled meeting on 23 October 2019. The report collated and considered various evidence sources on the consumer dimension of the Costs Lawyer market, as envisaged in the regulatory action plan. The board found the report valuable, noting that creative ways had been identified to access consumer insight. The board's comments are noted in the minutes of the meeting, [published on the CLSB website](#).

The board discussed various elements of the report, including the observation that Costs Lawyers had a role to play in helping the wider legal services market present prices in a transparent way. The board also discussed the role of the Legal Choices website in public education about Costs Lawyers' role and scope of service.

The board considered the evidence of unmet need stemming from the report. There was further scope to look at complaints against other legal services providers (e.g. complaints to the Legal Ombudsman or SRA about solicitors) that related to costs or pricing, to assist in identifying and quantifying unmet need. The Non-Lay board members shared insights as to how own-client costs are presented to consumers and the possibility that a lack of awareness about whether and how to challenge costs is leading to further unmet need.

The board agreed that the report should be shared with the LSB and other approved regulators who could provide input, and this was actioned following the meeting. The board supported progression to the next phase of the project, as outlined in the report, which included development of a new consumer engagement strategy.

### Roundtable with the LSB CEO

At its October meeting, the CLSB board also had the benefit of a roundtable discussion with the new CEO of the Legal Services Board, Matthew Hill. Evidence of the consumer dimension of the market was a central aspect of that discussion.

The discussion touched on who consumers of Costs Lawyers' services are, historic difficulties in capturing data about consumers and future opportunities for remedying this. The Chair of the CLSB board outlined some of the initiatives being explored by the CLSB, as described in the interim report, and sought feedback from Matthew on the overall approach.

There was also a wider discussion about evidence, including different sources and forms of evidence, how complaints data can be used, ways of informally gathering evidence, and learnings from the LSB's Individual Legal Needs Survey. Matthew offered the LSB's assistance in fostering collaboration between the CLSB and the larger regulators in terms of evidence collation. Full minutes of the roundtable can be found in the minutes of the meeting, [published on the CLSB website](#).

### Strategy proposal

Between the board's meetings on 23 October 2019 and 22 January 2020, a proposed Consumer Engagement Strategy was developed which built on the findings in the interim report. The interim report had drawn together existing evidence about the way consumers purchase Costs Lawyers' services and flagged potential avenues of further investigation. The Consumer Engagement Strategy aimed to establish a prioritisation framework for those further avenues of investigation, providing a basis to build on and utilise the CLSB's evidence base going forward.

The proposed Consumer Engagement Strategy covered the same period as the CLSB's prevailing organisational strategy (2020 to 2023). It was structured to highlight priorities for each year of the strategy and the anticipated outcome by the end of the period.

## **2. Evidence considered by the Board**

- Interim report on Costs Lawyers and Consumers (Annex 1).
- Views of the LSB CEO.
- Draft Consumer Engagement Strategy developed by the executive.

## **3. Recommendation(s) of the executive and/or Chair**

The board was asked to consider the draft Consumer Engagement Strategy, which was put forward by the CEO for discussion. The Chair commended the draft to the board and invited feedback on the approach.

The CEO also recommended that the existing Consumer and Potential Consumer Engagement Strategy (**Annex 2**), developed in 2016, be revoked. This mainly described

ongoing activities and relied on a description of “consumers” that had been superseded by the CLSB’s recent work. The CEO therefore recommend that this document be replaced wholesale by the new Consumer Engagement Strategy.

#### **4. Summary of deliberations**

The board considered the proposal and discussed the envisaged activities and timings. Board members agreed that the document was accessible and concise. They supported the staged approach, allowing adjustment of the strategy to reflect continual learning. The strategy would also directly address risk R4 in the CLSB’s regulatory risk register, bringing down the rating for this risk over time.

The board considered whether it was appropriate to revoke the existing Consumer and Potential Consumer Engagement Strategy that was developed in 2016 and concluded that there was nothing in the existing strategy that was not captured or superseded by the new strategy.

#### **5. Other factors considered by the Board**

Standing items for consideration are the impact of the decision on:

- |   |                                 |
|---|---------------------------------|
| - the CLSB’s independence                   | - the CLSB’s financial position |
| - furtherance of the regulatory objectives  | - equality and diversity        |
| - consumers, including vulnerable consumers | - data privacy                  |

Factors not already addressed in sections 1 or 4 above are:

- CLSB independence: The strategy envisages engagement with the Association of Costs Lawyers in the sharing and gathering of data and evidence. This is an appropriate collaborative exercise and is in keeping with the LSB’s Internal Governance Rules 2019. Otherwise, further development of the CLSB’s own evidence base enhances the CLSB’s independence from the representative body.
- CLSB’s financial position: Staging the actions in the strategy will help to ensure this work can be accommodated within the parameters of the usual annual budget.
- Equality and diversity: The strategy has the potential to reveal unmet legal need or identify client vulnerabilities, promoting equality at the consumer level.
- Data privacy: Collation of evidence will be in accordance with the CLSB’s Privacy Policy, and any personal data used for analytical purposes will be anonymised.

#### **6. Risk assessment**

The Consumer Engagement Strategy is designed to directly address a risk identified in the CLSB’s regulatory risk register, namely the risk that the CLSB cannot generate sufficient

evidence about the consumer dimension of the market (risk R4). This risk has the potential to undermine the CLSB's ability to implement targeted, evidence-based regulatory interventions that will deliver better outcomes for consumers. It also jeopardises the CLSB's ability to meet the regulatory standards expected by the Legal Services Board. For these reasons, the decision is seen as essential in managing and mitigating a recognised risk.

Adopting the strategy does not import new risks, and the risks involved in failing to successfully deliver the strategy are already captured in the risk register.

**7. Decision taken, including reasons for the decision (if not apparent from the above)**

The board adopted the Consumer Engagement Strategy, the final version of which is at **Annex 3**. The board agreed this should be published on the CLSB website to promote transparency and encourage stakeholder interest.

The board revoked the existing Consumer and Potential Consumer Engagement Strategy.

The board also agreed to update the CLSB's regulatory risk register by reducing the probability score for risk R4 (*CLSB cannot generate sufficient evidence about the consumer dimension of the market*) to level 2, to reflect implementation of the new strategy.

**8. Dissenting Board members (if any), including reasons for their dissent (if not apparent from the above)**

There were no dissenting board members.

**9. Provision of the Legal Services Act 2007, or other legislation, under which the decision was made**

Section 28 and section 1(1)(d) of the LSA.

**Board Decision Note approved by the Board on: 22 April 2020**

Dear Kate,

**Information request: diversity of the legal profession**

In January 2019 we published our report *Diversity: Summary report on the legal services regulators' progress against diversity outcomes*. This report also included our expectations of the actions to be taken by each regulatory body during 2019 and diversity has been monitored through the relationship management discussions throughout the past year.

At its January 2020 meeting, the Board considered what more the LSB could do to encourage greater diversity and it approved an enhanced set of expectations of what good regulatory performance looks like on equality matters. Essentially, the expectations seek to ensure that each regulatory body has a deeper understanding of the diversity of the individuals and entities regulated.

The [Board paper](#) explains our plans for monitoring and reporting on diversity in future. We consider that the following characteristics would be exhibited by well-performing regulators:

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

We are seeking a more formal update from each regulatory body on progress against your previous assessment published in January 2019. We are working towards these principles becoming part of the regulatory performance framework in due course, and I welcome any comments on this approach.

Please provide a progress report which sets out:

- your progress against the assessment published in January 2019, and
- An explanation of relevant activity and learning in relation to the three characteristics of well-performing regulators set out above.

As part of our evidence gathering for our 'state of legal services' report that will be published later this year, our research team may be in contact to request specific data on your regulated community.

Steve Violet as your relationship manager will be able to discuss this in more detail and answer any questions you may have. We ask for your submission by **Friday 1 May 2020**.

Yours faithfully,



Angela Latta

Head, Performance and Oversight  
**Legal Services Board**

**CLSB diversity assessment and action plan: 2019**

<b>LSB expectations for CLSB for 2019</b>
<b>Outcome 1:</b> <ul style="list-style-type: none"><li>• CLSB to inform LSB of response rates of next full diversity survey in 2019.</li></ul>
<b>Outcome 2:</b> <ul style="list-style-type: none"><li>• CLSB to provide examples of how the Board has considered diversity</li></ul>
<b>Outcome 3:</b> <ul style="list-style-type: none"><li>• CLSB to seek more opportunities to actively work and collaborate with other organisations on diversity initiatives.</li></ul>
<b>Outcome 4:</b> <ul style="list-style-type: none"><li>• CLSB to review its guidance note on equality and diversity again in the future, to ensure it remains up to date and fit for purpose.</li></ul>

## Progress report to LSB on diversity and inclusion

[x] April 2020

### Introduction

This document sets out the Costs Lawyer Standards Board’s (CLSB’s) response to the LSB’s request for a progress report in relation to diversity outcomes. In particular, the LSB asked all approved regulators to set out:

- their progress against the LSB’s previous diversity assessment, published in January 2019; and
- an explanation of relevant activity and learning in relation to the LSB’s three characteristics of well-performing regulators.

We understand the three characteristics of well-performing regulators to be as follows:

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

We hope it will be clear from this progress report that we have moved some way beyond the actions set for us in the January 2019 assessment. We will address those actions at the outset of this report, however the report will focus on summarising the initiatives that are helping us demonstrate the three characteristics as expected by the LSB.

### Progress against previous assessment

There were four actions set for the CLSB under the January 2019 assessment. The table below addresses these in turn.

<b>Outcome 1</b>	CLSB to inform LSB of response rates of next full diversity survey in 2019	2019 was the first year that we issued the diversity survey electronically. The response rate was 23.4%, which was slightly less than in previous years when forms had been sent by post.  In 2020, we have been (and will continue to be) making significant changes to our IT systems. This includes sending all communications through a distribution platform rather than by regular email, which should significantly reduce bounce-back rates. We are also moving all of our forms (including practising certificate renewal forms) online, to be hosted on our website. This will mean that, by the time of the next diversity survey, Costs Lawyers should be used to receiving forms from us electronically and will be familiar with their style and functionality. We hope that this will boost participation rates.
<b>Outcome 2</b>	CLSB to provide examples of how the board has	This outcome was set primarily because the CLSB had previously noted that diversity statistics were reported to the board, but had not provide examples of what the board did with that data in terms of policy development. The initiatives

	considered diversity	<p>described in this progress report (in relation to the LSB's three characteristics, below) provide a range of recent examples of how evidence about diversity and inclusion has informed our activities.</p> <p>Diversity is also taken into account in all key board-level decisions as a matter of course. Significant board decisions are recorded in <a href="#">Board Decision Notes</a>, in line with our Transparent Decisions Policy (implemented in October 2019). As can be seen from the Board Decision Note template (in section 5), one of the standing items for consideration in board decision-making is the impact of the decision on equality and diversity.</p>
<b>Outcome 3</b>	CLSB to seek more opportunities to actively work and collaborate with other organisations on diversity initiatives	<p>This outcome was set primarily due to the CLSB's small size and budget constraints making it difficult for us to carry out flagship initiatives on our own. The initiatives described in this progress report (in relation to the LSB's three characteristics, below) consist of a mix of activities where we have:</p> <ul style="list-style-type: none"> <li>• worked on our own, when issues relate to our unique regulatory arrangements or regulated community;</li> <li>• actively participated in joint initiatives led by others;</li> <li>• proactively identified and led opportunities for collaboration with ARs and other organisations.</li> </ul>
<b>Outcome 4</b>	CLSB to review its guidance note on equality and diversity again in the future, to ensure it remains up to date and fit for purpose	<p>Our Guidance Note on equality and diversity was reviewed and updated in April 2019. At that time, we also introduced a short <a href="#">Equality and Diversity Statement</a>, which is published on our website.</p> <p>As detailed below, we have since improved the way we present information on equality and diversity to make it more relevant and accessible to Costs Lawyers and their clients. The core content of the Guidance Note has therefore been transferred to our new diversity webpage, allowing it to be used as a starting point for wider engagement with our regulated community as opposed to being a static statement of the minimum legal requirements.</p>

We also note that our [2020 Business Plan](#) includes a priority activity to revisit our diversity action plan (at item 5). We have now done this, and feel we have delivered against the plan and actions set by the LSB. We are now moving beyond the action plan, as demonstrated by the remainder of this progress report.

### Activity and learning in relation to the LSB's three characteristics

#### 1. An understanding of the composition of the regulated community.

- We collect comparative data in relation to the composition of the regulated community in two ways, namely:
  - (i) An annual regulatory return. This covers a range of metrics relating to a Costs Lawyer's practice. The return is submitted by Costs Lawyers with their annual application for a practising certificate and, as such, it has a high response rate. While we mandate

answers to some questions in the regulatory return, we do not feel this is appropriate in relation to diversity information, as we would not want a practitioner to feel that the outcome of their practising certificate application is linked to a protected characteristic (or any other irrelevant attribute).

- (ii) A triannual diversity and inclusion survey. This is issued as a standalone form and is usually completed by around one quarter to one third of the regulated community.

We have recently considered evidence from these sources in developing reforms to our core regulatory arrangements (see further below).

- In 2019, we began to [publish data](#) from the regulatory return, and in 2020 we expanded this to include data from the diversity and inclusion survey. The aim of publication is to raise awareness of areas in which there are particular risks of equality and diversity issues arising, due to the make-up of the regulated community. Publication also allows the data to be used by stakeholders (such as the Association of Costs Lawyers) to inform their own policy development, training provision and other initiatives.

The next step is to publish the data in different formats (such as infographics) to make it more engaging for our various audiences, including the general public and members of the regulated community who have an interest in the high-level themes. We hope to develop infographics in time for publication of the next round of regulatory return data, which will be collected during the practising certificate renewal process later in 2020.

- During Q1 of 2020, we reviewed the data that we hold on the regulated community to identify gaps and opportunities arising from our new approach to practising certificate renewals. We are in the process of moving from hard copy renewal forms to e-forms, and are therefore rethinking all questions on the renewal forms including those in the regulatory return. Our review highlighted that improvements were needed to the way we gather and hold data on gender diversity.

Currently, we make assumptions about gender at the point of qualification and we store gender data against the name of each practitioner (i.e. the data is not anonymised in the way that our survey data is). However, Costs Lawyers are not asked to confirm their gender identity at any stage. Our starting point was to consider whether we need to hold this data at all. On balance, we have decided to remove it from our database and collect more meaningful statistics on gender through the diversity survey.

The gender question used in previous diversity surveys was binary and required updating. We have conducted research into how other third sector organisations and public bodies capture gender information, which has allowed us to formulate a simple but meaningful and inclusive question on gender for our next diversity survey.

2. [An understanding of the barriers to entry and progression within the regulated community, and a programme of activity to mitigate those barriers with measures in place to evaluate effectiveness.](#)

In relation to diversity and inclusion at the point of entry into the profession:

- With no route of entry into the profession from 2017 to 2019, there was little we could do to promote entrant diversity during this period. In 2019, we worked closely with ACL Training to

reopen the Costs Lawyer Qualification for a January 2020 intake. This, in itself, will have a material diversification effect on the profession, given that a quarter of practitioners are aged over 50.

- In 2019 the CLSB board also approved changes to the course running order, which allowed us to introduce a new exemptions policy (see page 8 of the [Course Documentation](#)). Under that policy, students can obtain exemptions from whole units of the course if they have relevant prior learning. This can reduce the time involved in qualifying from three years of full-time study to one or two years, with a concurrent reduction in cost. We know from previous work that the time and cost involved in completing the course have been barriers to entry for certain groups of students, such as those who need to work on (at least) a part-time basis while studying (e.g. those on low incomes, those with lower socio-economic status, and those with financial dependents).

To evaluate the effectiveness of this change, students in the January 2020 intake were asked (as part of an induction survey) whether they would have undertaken the course if the structure had not changed. Of students who started the course in unit 3 (i.e. students exempted from the first two years of the course), only 18% said they would have been in a position to apply for the course if the length of the qualification had not been reduced through the change in running order. We therefore believe this change has mitigated a barrier to entry that disproportionately affected less affluent students and thus limited diversity and access to the profession.

- We are also working with ACL Training to analyse diversity data for the 2020 intake of students, to assess whether additional changes could further promote diversity (data collected includes age, gender, ethnicity, disability and prior education). The youngest applicant for this intake was 22, indicating that it might be worth exploring whether barriers to entry remain for younger students (i.e. those between 18 and 22) or whether this is purely an awareness issue.

Feedback also suggests that, for many, the cost of the course means that securing funding is essential. Employers have different funding policies, and the only alternative means of funding is a private or graduate loan. Thus we will work with ACL Training to explore whether undergraduate funding could assist with diversity in terms of both socio-economic status and age.

In relation to diversity and inclusion for those already working as a Costs Lawyer (including career progression):

- In Q1 2020 we have begun to improve the way we engage with our regulated community on diversity and inclusion issues on an ongoing basis. In March, we launched a new website, which has a dedicated [equality and diversity page](#). Previously, we had issued a short guidance note to practitioners on equality and diversity. With the new website now live, the CLSB board has decided to revoke that guidance [board approval pending] and incorporate the relevant material into the website content. This makes the content more accessible and allows it to be more readily updated in response to emerging issues.

The aim is to move away from having one static document that recounts a practitioner's legal obligations toward an approach that facilitates wider, more dynamic, and more relevant

engagement with our regulated community on diversity and equality issues. We will develop the webpage over time and will flag updates to our regulated community through our newsletter.

- As part of our wider operational reforms, we have developed a new format for our regular newsletter to Costs Lawyers. As part of this, we will be raising awareness of targeted diversity issues via guest posts in the newsletter. This will allow us to collaborate with a range of organisations and draw on expertise from within and outside the legal services sector, to highlight topical issues and provide practical advice to Costs Lawyers. We will focus on areas where we know (from the data held on our regulated community) that issues could arise. Our first guest post was written by Blackstone Chambers in relation to an interesting project they have undertaken on engaging young people with the history of women's role in the law.
- We have increased our collaboration with other approved regulators on diversity issues where the opportunity has arisen. In some instances, this has involved participation in existing initiatives, such as supporting the Legal Choices Pride campaign. In other instances, we have proactively identified areas where joint working would be beneficial.

For example, we collaborated with the SRA to publish [a guide for Costs Lawyers on the business case for diversity](#), based on recent SRA research. Given that around half of all Costs Lawyers work in SRA regulated firms – and many have managerial positions within those firms – we felt it was important to ensure that our practitioners had access to the SRA's findings. Our guide is also relevant to Costs Lawyers outside SRA regulated firms, as explained in the introduction to the guide.

- We routinely incorporate learnings from our diversity data into our policy development. For example, we recently consulted on changes to the way our Practising Rules apply to practitioners who have taken parental leave (see question 2 of the [consultation](#) document).

Tracking and analysis of enquiries from practitioners showed that our regulatory arrangements may have resulted in unfair outcomes for women on maternity leave. While no specific enquiries were raised about other types of parental leave, we assessed the risk of unfair outcomes as being similar for everyone in this category. Our proposed reforms should ensure that all new parents are treated equally, and that no new parents are required to pay practising fees for the period of their leave.

Effectiveness of the approach will be monitored through enquiry tracking following implementation; we expect to see a similar number of enquiries during the first year as we transition to the new arrangement, but then a fall in enquiries and increased satisfaction with outcomes. We will record and act on any dissatisfaction that is expressed going forward.

### 3. [Measures in place to understand any differential impact on protected characteristics within their disciplinary/enforcement procedures.](#)

- We have limited direct evidence of differential impact on protected characteristics within our enforcement procedures, given the small number of disciplinary proceedings we carry out. We have never conducted disciplinary proceedings in relation to a Costs Lawyer or complainant who reported having a protected characteristic.

- However, we have taken equality considerations into account in reformulating our Disciplinary Rules and Procedures, as can be seen from our recent [rule change application](#) (see paragraphs 47 to 53). For example, based on the demographic of our regulated community, we added an express reasonable adjustments provision into the rules. This should encourage participants in the disciplinary process to proactively inform us about relevant protected characteristics at an early stage.

## **GUIDANCE NOTE: EQUALITY & DIVERSITY**

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

**Issued: 26 April 2019**

#### **1. Introduction**

The CLSB considers equality to mean removing barriers, eliminating discrimination and ensuring equal opportunities and access for all.

The CLSB considers diversity to mean celebrating difference and valuing everyone equally. Each person is an individual with visible and non-visible differences and by respecting this everyone can feel valued for their contributions which is beneficial not only for the individual but for CLSB too.

#### **2. Equality Act 2010 (the “Act”)**

Section 150(2) of the Act states; *‘A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).’*

The CLSB is not a public authority for the purpose of the Act because it is not a person specified in Schedule 19 of the Act. CLSB does however exercise a public function and in doing so it must have due regard s150 (1), namely to the need to—

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Thus, in order to comply with the Act the CLSB must have due regard to these issues in the exercise of all of its functions in order to achieve the regulatory objectives, whilst also acting in a manner which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (s28(3) Legal Services Act 2007).

This guidance note has been issued in keeping with the Equality Act 2010 as the CLSB is dedicated to creating a working and regulatory culture in which diversity is recognised and valued; equality of opportunity is promoted actively; and in which unlawful discrimination, victimisation and harassment are not tolerated.

#### **3. What the CLSB expects from Costs Lawyers**

(i) Personal compliance with principle 6 of the Costs Lawyer Code of Conduct.

*PRINCIPLE 6: Treat everyone with dignity and respect*

*6.1 You must treat all clients, staff or third parties with dignity and respect. You should encourage equality of opportunity and must not unlawfully discriminate against them, either*

*directly or indirectly, victimise or harass them on the grounds of age, disability, race, colour, ethnic or national origin, sex, gender reassignment, pregnancy and maternity, marital status (including civil partnerships), sexual orientation, religion or belief.*

*6.2 You must have/adhere to a written policy which prevents discrimination and harassment and must investigate any allegation of discrimination, victimisation or harassment and take disciplinary action where appropriate.*

*6.3 You must make reasonable adjustments for those with a disability to ensure they are not at a disadvantage in comparison with those without disabilities.'*

- (ii) Third parties: As well as considering their own conduct a Costs Lawyer should also encourage any business of which they are a part of to:
- Have a commitment to the principles of equality and diversity and legislative requirements.
  - Have a written equality and diversity policy which is appropriate to the size and nature of the firm which includes details of how complaints and disciplinary issues are to be dealt with.
  - Provide employees and managers with appropriate training and information about complying with equality and diversity requirements.
- (iii) Co-operation with CLSB issued diversity surveys: The CLSB now issues a diversity survey every three years, and each question affords the Costs lawyer a “prefer not to say” option. Costs Lawyers should comply with any diversity survey issued by the CLSB to provide the CLSB with the best opportunity to monitor and comply with the Act.

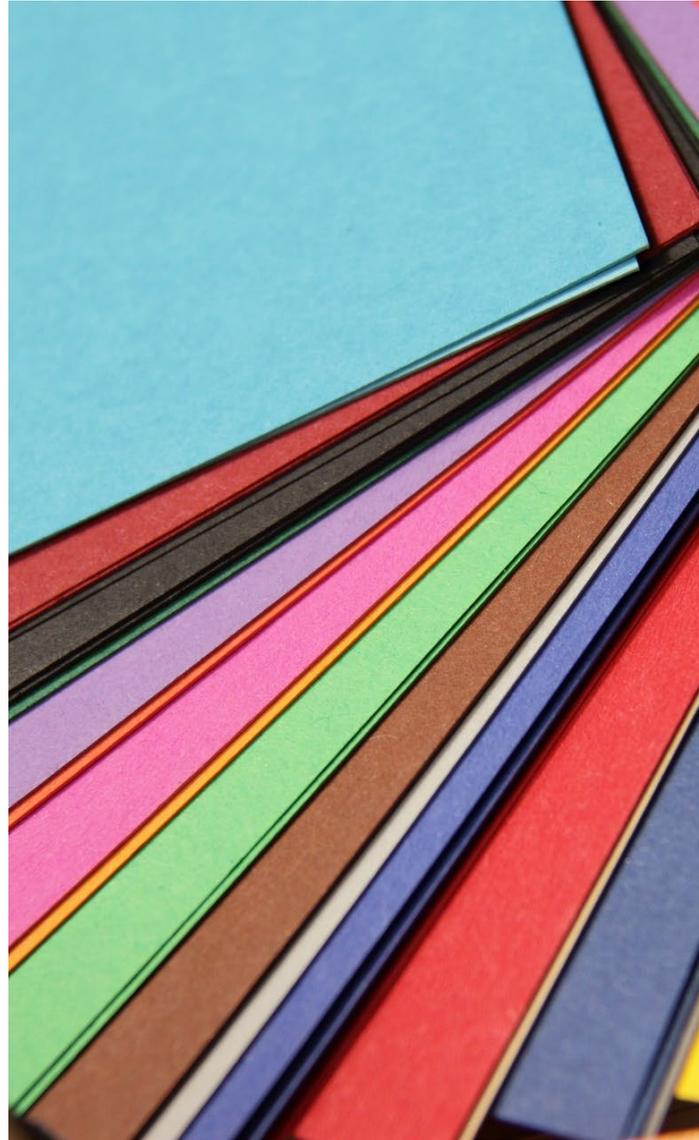
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# The Business Case for Diversity

## A guide for Costs Lawyers

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March 2020

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Costs Lawyer Standards Board

CLSB  
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## Introduction

In 2018, the Solicitors Regulation Authority (SRA) published a [risk outlook paper on the business case for diversity](#). That paper provides a framework for thinking about the benefits of diversity in a professional setting and contains resources that lawyers can use to promote diversity within their own practice and the wider profession.

We are mindful that many Costs Lawyers work in firms that are regulated by the SRA, and the SRA’s paper will be directly applicable to them. More broadly, we believe that understanding the business case for diversity is important for all Costs Lawyers, regardless of the way in which they choose to practise. This includes Costs Lawyers who are sole practitioners, since they will encounter diversity and inclusion issues in engagement with their clients and in their supply chains.

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For these reasons, the CLSB has collaborated with the SRA to produce this short guide, which aims to make the SRA’s paper accessible to our regulated community. It draws on the SRA’s research and findings, but has been tailored to issues that are particularly relevant to the Costs Lawyer profession. We would like to thank the SRA for its support with this initiative.

## The business case for a diverse profession

### Why diversity matters

Equality and diversity in the legal professions are important for many reasons, including:

- high standards – allowing the most talented people to become practitioners and progress in their careers, ensuring a highly skilled and proficient workforce;
- the effective administration of justice – a diversity of views and approaches supports an independent and effective justice system, whether in law firms or in the judiciary;
- improved access to services – some people may be more likely to seek legal advice from lawyers they share some social or cultural characteristics with.

There is also a real commercial advantage to having a diverse workforce. There is growing evidence about the positive relationship between diversity and commercial performance. For example, closing gender pay gaps has been estimated to add £150bn to the UK economy by 2025. Research also suggests that an additional £24bn, representing 1.3% of GDP, could be added from full representation of BAME individuals across the labour market, through improved participation and progression.

Some lawyers, and the firms they work in, are taking positive actions to address differences in the balance of gender, ethnicity and sexuality, and to improve social mobility and the support given to disabled staff. However, there is still some way to go with both recruitment and career progression for the legal professions to be fully representative across all strands of diversity.

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Embedding diversity and inclusion into workplace culture is an important part of developing a modern, open competitive legal sector, providing accessible services for those who need them.

*“Promoting and supporting diversity in the workplace is an important aspect of good people management – it’s about valuing everyone in the organisation as an individual. However, to reap the benefits of a diverse workforce it’s vital to have an inclusive environment where everyone feels able to participate and achieve their potential. While UK legislation – covering age, disability, race, religion, gender and sexual orientation among others – sets minimum standards, an effective diversity and inclusion strategy goes beyond legal compliance and seeks to add value to an organisation, contributing to employee well-being and engagement.”*

**Chartered Institute of Personnel and Development, 2017**

## Recruitment

Diversity across all levels of staff, including senior leadership, has been linked to improved organisational performance. For example, [based on an international analysis of public companies](#), those in the top quarter for ethnic diversity are 35% more likely to have financial returns above their national industry average. And companies in the top quarter for gender diversity are 15% more likely to have profits above their national industry average. In addition, for every 10% increase in gender diversity in senior leadership, profits rise by 3.5%.

Unequal business performance within the same industry and country shows that staff diversity gives a competitive advantage, as market share shifts toward more diverse companies over time. For example, [some insurance companies have indicated](#) that they look to employ legal firms with diverse teams.

Organisations with the best reputation for diversity will appeal to the widest talent pool of potential candidates. Removing the barriers that some groups face to entering, and

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progressing within, the profession and some organisations, maximises the chances of getting and retaining the best people for each role.

*“It is simply good business sense to recognise the enormous potential of women and to take action to nurture and progress female talent.”*

**Justine Greening, former Minister for Women and Equalities, 2017**

## Cost efficiencies and improved productivity

Organisations that have robust equality and diversity practices, which monitor the recruitment, pay and promotion of all groups, benefit from higher labour productivity and lower staff turnover. Improved employee morale and engagement associated with a diverse and inclusive workforce improves retention rates of staff and talent. This lowers recruitment and severance costs and the risk of reputational damage from employment tribunals.

Flexible working and home working are often seen as ways of supporting women in work, but can be used to help the work-life balance of all staff, support everyone with caring responsibilities and can increase productivity. Agile working also gives staff the flexibility to manage their work-life balance, as the focus is on outputs rather than the time spent at work. Senior managers can lead by example, such as showing that it is acceptable to work flexibly by noting in their calendar when they are out of the office for family commitments.

## Better understanding of the market

Staff with diverse backgrounds and perspectives will have insights about the widest range of stakeholders. Diversity at all levels within a business can lead to addressing the customer needs and cultural sensitivities of untapped markets. This might be, for example, through improved market strategies or new products and services aimed at the needs of diverse communities. This can lead to higher customer satisfaction, as well as widening the customer base.

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*“Diversity at all levels in organisations builds strong foundations for long-term success, in both the private and the public sector. Making good use of the talent, skills and experience of all drives better corporate performance and a successful economy. Those businesses which reflect the diverse nature of the environment in which they and their stakeholders operate are the ones that employees, customers and other stakeholders value.”*

**Stephen Haddrill, CEO, Financial Reporting Council**

## Creativity and innovation

A wider range of perspectives can be achieved when all staff are fully included within the organisation, and their differences are valued and respected. This means decisions will be more thoroughly considered and better informed, increasing the chance of more innovative ideas and solutions. More diverse teams therefore give businesses the ability to better react to market changes.

Embedding diversity and inclusion into the culture and systems of organisations allows firms to fully benefit from the creative problem-solving benefits that diverse teams bring.

*“Having a diverse firm keeps our brand relevant to clients. From a business point of view, we recognise that there is a diverse client base that we want to provide services to. We want all our staff to be themselves and have the best development opportunities. This gives us creative capability in our business, as creativity comes from diversity, not from a conversation with 10 people the same as yourself.”*

**Large legal firm**

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# How Costs Lawyers can help overcome barriers to diversity

## Interplay between different barriers

People's career paths and choices are influenced by their social background and education as well as barriers to entering, and progressing in, the profession.

There are different barriers for different groups, and different barriers within groups. And some people face multiple barriers if they are a member of more than one disadvantaged group. So, it is important not to group all strands of diversity, or even all groups within a strand, together when trying to overcome the barriers. This means that it is best for employers and individual Costs Lawyers with responsibility for recruitment, progression and other development decisions to take more than one approach to improving diversity.

## Education

It is important to value skills, not just school results. [Research shows that](#) school pupils from less advantaged backgrounds often make subject choices that negatively affect their prospects, and the quality of information, advice and guidance is weaker for these pupils. They also lack access to wider opportunities, such as a variety of sports clubs and language classes, that help develop the non-educational competencies that are valued in professions. This can also apply to some of the minority ethnic groups who tend to come from lower socio-economic backgrounds.

Attainment at school or college continues to be used as screening criteria by two thirds of leading legal firms, and it affects candidates' ability to secure employment. However, [research suggests that](#) these measures do not guarantee high performing candidates are recruited. SRA data also shows that university law students from disadvantaged backgrounds and those that study part-time tend to have lower pass rates. And students who are a member of several different disadvantaged groups have a lower attainment than if they were a part of just one.

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*“The Fairness Project, run by three universities, equips students to maximise their employability through understanding inequality and unfair diversity barriers in the legal profession, helping them to develop personal strategies to overcome these. The students are encouraged to address their own biases to also help them to become fairer employers and managers in the future, and to help change the culture of the legal profession from within.”*

**The Fairness Project: equipping students to maximise employability**

## Recruitment

Other barriers to entering and progressing in the profession include the varied opportunities to gain experience, the availability of role models, recruitment biases and that some organisational cultures are not inclusive.

Students’ access to work experience can be affected by their social or family networks. And someone with caring responsibilities, or who needs to earn additional income, will have less time to be able to gain experience by volunteering. Costs Lawyers can consider getting involved in initiatives that give work experience to students from disadvantaged backgrounds, such as Pathways to Law. This can also help students improve their understanding of the work that Costs Lawyers do at an early stage.

A lack of positive role models has been shown to discourage disadvantaged and BAME graduates from applying to some professions and organisations. Role models are particularly important to the progression of black British employees, but there are few BAME senior managers in large organisations.

Initiatives such as Inspired by Law, Sponsors for Educational Opportunity and the Social Mobility Business Partnership widen aspirations and give students some role models, as well as expanding the potential talent pool. Some legal organisations also recognise the value in having a website, and other marketing materials, that better reflect the diversity of the legal professions and potential students.

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Unconscious bias and discrimination have also been shown to be barriers to diversity. Several studies have found that job applications using a name associated with a minority ethnic group are less likely to be successful in getting to the sift stage of recruitment.

*“Race, gender or background should be irrelevant when choosing the right person for a role – few now would disagree with this. But organisations and individuals tend to hire in their own image, whether consciously or not. Those who have most in common with senior managers and decision makers are inherently at an advantage. I have to question how much of this bias is truly ‘unconscious’ and by terming it ‘unconscious’, how much it allows us to hide behind it. Conscious or unconscious, the end result of bias is racial discrimination, which we cannot and should not accept.”*

**McGregor-Smith Report on Race in the Workplace, 2017**

Legal organisations can work to reduce their recruitment bias by updating their candidate screening systems, which could improve social mobility and diversity across all groups; for example, by removing school attainment criteria, or by removing all university or school details from applications, so candidates are judged only on their performance and potential. Contextual recruitment, such as the system offered by Rare, also helps organisations identify candidates from disadvantaged backgrounds with the greatest potential.

Behavioural science has been put to good effect in improving recruitment diversity in other sectors. For example, changing the phrasing of a job advertisement and job description to appeal to all applicants’ values and sense of belonging, along with advertising through media that appeals to different groups, widens the diversity of recruits. And having a diverse team to make recruitment decisions increases the chances of finding the best candidate.

Research has also shown that men are more likely to “self-promote” than women. If recruitment processes places high value on this trait, they may deter or disadvantage

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female candidates. This should be taken into account when setting recruitment criteria and interview questions.

Generally, organisations should make sure that their approach to interviews and any written exercises are suitable for all candidates and make reasonable adjustments where needed.

*“We make three key recommendations for firms wishing to access the widest range of talent to benefit their business and their clients in future; first, amend attraction strategies to encourage higher numbers of applications from students with a wider range of educational and socio-economic backgrounds; second, ensure that these diverse students have access to similar levels of support enjoyed by their more traditional peers, in order to navigate the selection process effectively; third, interrogate current definitions of talent, including how potential is identified and assessed, to ensure that disadvantaged students are not ruled out for reasons of background rather than aptitude and skill.”*

**Social Mobility and Child Poverty Commission, 2015**

## Progression

The barriers set out above, along with unconscious bias and discrimination when deciding who to give opportunities and promotions to, affect diversity at all levels of seniority within organisations.

Mentoring programmes are proven to improve diversity at management levels, along with being more transparent with diversity statistics and practices. Middle and senior managers can also celebrate and encourage people with diverse characteristics, call out biases, champion diversity initiatives, and challenge existing work practices. Increasing the interactions that managers have with all staff means they are more likely to recognise the value that people from different backgrounds bring to the business.

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A key action that has been identified for improving the progression of all groups of people is to make sure that legal organisations' cultures are inclusive, so that all staff feel able to be themselves. Maintaining a continued focus on improving diversity is also important. This can be achieved with minimal cost and resources, for example:

- Make flexible or agile working available to all staff, where possible.
- Networking groups can be more visible and inclusive, encouraging allies to attend the groups and identifying how senior managers can support the groups.
- Small organisations can set up, or join, networks across the wider legal industry to share best practices and accelerate change.
- Both men and women should be given the flexibility to take parental leave.
- Events can be held that reflect the cultural and social values of all staff.
- Business in the Community shares best practice and has online toolkits and guides to support employers.



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# Memorandum of Understanding

## 1. Introduction

This memorandum of understanding (MOU) sets out the framework for the Association of Costs Lawyers (previously known as the Association of Law Costs Draftsmen) (ACL) and the Costs Lawyer Standards Board (CLSB) to work together in order to carry out their independent roles and separate functions in accordance with the Legal Services Act 2007. It supplements, but does not replace, any requirements set out in the statutory framework. It is a public document and is intended to provide clarity for all stakeholders in relation to the separate roles of ACL and CLSB.

This MOU is supplemented by an Operational Protocol (OP) which sets out certain administrative duties that each party shall undertake from the effective date. The OP does not set out all activities that will or may be undertaken by the parties. Rather, it focuses on areas where independence of CLSB, assurance for ACL, or clarity of responsibility between the parties is particularly important.

The MOU and OP were agreed as part of ensuring ACL and CLSB's compliance with the [Internal Governance Rules](#) implemented by the Legal Services Board on 24 July 2019.

## 2. Delegation

ACL was granted authorised body status for the purposes of sections 27 and 28 of the Courts and Legal Services Act 1990 by way of statutory instrument titled *The Association of Law Costs Draftsman Order 2006* (SI No 3333 of 2006), which came into effect on 1 January 2007. An authorised body can grant the following rights to carry out reserved legal activities:

- right of audience;
- right to conduct litigation; and
- right to administer oaths.

Under the Legal Services Act 2007 (LSA), ACL was designated an approved regulator of legal services in relation to reserved legal activities carried out by Costs Lawyers. ACL is

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also the representative body for the Costs Lawyer profession. ACL has an overarching duty to ensure that the exercise of its regulatory functions is not prejudiced by its representative functions. Under the Internal Governance Rules 2019, it must put arrangements in place to maintain the independence of its regulatory functions and separate them from its representative functions. To achieve this, it has delegated the discharge of its regulatory functions to CLSB.

ACL has a residual role in obtaining assurance from CLSB that its regulatory functions are being discharged in accordance with the LSA, particularly section 28, which sets out the general duties of an approved regulator.

### 3. Regulatory independence of CLSB

The LSA and the Internal Governance Rules 2019 require “each approved regulator [to] have arrangements in place to: separate its regulatory functions from any representative functions it may have; and maintain the independence of its regulatory functions”.

CLSB was established as the regulatory body to carry out the regulatory activities of ACL as an approved regulator.

As required by the Internal Governance Rules 2019 CLSB will carry out regulation independently from any ACL representative interest. It will independently determine the most appropriate and effective way of discharging its functions.

ACL, as the approved regulator having delegated its regulatory functions, will only retain a role to the extent that is reasonably necessary to be assured that these regulatory functions are being discharged in compliance with section 28 of the LSA or as otherwise required by law. ACL continues to exercise its representative function i.e. the representation and promotion of the interests of Costs Lawyers.

### 4. Discharge of regulatory functions

CLSB will discharge its regulatory functions in accordance with the provisions of the LSA, including section 28.

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In particular, CLSB will act in a way that is compatible with the regulatory objectives defined in section 1 of the LSA as:

- 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 consumers;
- Promoting competition in the provision of services provided by authorised persons;
- Encouraging an independent, strong, diverse and effective profession;
- Increasing public understanding of citizens' legal rights and duties; and
- Promoting and maintaining adherence to the professional principles (as set out in section 1(3) of the LSA).

CLSB will also act in accordance with the Better Regulation Framework (including the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted), as amended by the government from time to time.

CLSB, by its Chief Executive, Chair or other representative, may communicate directly with the Legal Services Board, Legal Services Consumer Panel, Office for Legal Complaints and other approved regulators as it sees fit, including in relation to CLSB's independence or ability to effectively carry out its regulatory functions.

## 5. Assurance and information provision

ACL will act at all times in a manner that ensures the effective regulatory independence of CLSB. ACL will provide regular updates to CLSB on ACL's representative activities to enable CLSB to consider any impact on its assessment of risk to:

- consumers, the profession or the wider public; or
- CLSB's ability to fulfil its regulatory functions on an ongoing basis.

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CLSB will independently determine the most appropriate and effective way of discharging its regulatory functions in a manner which is compatible with the regulatory objectives. ACL will not prejudice the independent judgement of CLSB as the regulatory body.

Both ACL and CLSB will work openly and with mutual respect so far as is consistent with their obligations under the LSA and other laws, in furtherance of the consumer and public interest. Each will share information that is of relevance to the other and will respond to requests for information within a reasonable time period.

In particular, CLSB as the regulatory body will provide sufficient information to ACL as the approved regulator as is reasonably required to enable ACL to be assured of CLSB's compliance with section 28 of the LSA. ACL will not use this information for its representative functions unless it receives the information for that purpose or that information is made publicly available.

In fulfilment of this obligation, CLSB will provide information as set out in the OP. If ACL believes on reasonable grounds that it requires additional information in order to be assured of CLSB's compliance with section 28 of the LSA, it will request that information promptly in writing (which may be by email). The CLSB will use best endeavours to provide the information requested.

Where CLSB determines that the requested information should not be provided (for example, because provision would contravene data protection laws, breach confidentiality or undermine CLSB's independence or effectiveness), CLSB will inform ACL promptly in writing. In such circumstances the parties will work collaboratively to agree an appropriate way for ACL to gain the assurance it needs to meet its obligations under the LSA and perform its residual role under the Internal Governance Rules 2019.

## 6. Governance/management

CLSB will be governed by the CLSB board and employ its own staff free from the influence of ACL. ACL will be governed by the ACL Council and employ its own staff free from

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the influence of CLSB. Each party shall independently determine its own governance processes, structure, budget, priorities and strategy.

No person will be involved in both decision-making within the CLSB governance structure and the representative functions of ACL.

ACL and CLSB do not, and do not intend, to share operational services. Should the parties identify any areas in which it would be desirable and appropriate to share services in the future, shared services will only be implemented following approval of the ACL Council and CLSB board. In such circumstances, the parties will negotiate any amendments to the MOU and OP as are necessary to ensure continued compliance with the Internal Governance Rules 2019.

## 7. Finance

CLSB will use all reasonable endeavors to ensure it is financially self-sufficient. ACL as the approved regulator will ensure such resources as are reasonably required for the efficient and effective discharge of regulatory functions will be made available to CLSB.

ACL will raise its income by way of an annual membership fee. CLSB will raise its income by way of the annual Cost Lawyer practicing certificate fee. Either party may raise additional income in other ways, insofar as they are consistent with the MOU and OP and compliant with the LSA.

## 8. Dispute resolution

The parties will use best endeavours to resolve any disputes between them in relation to this MOU or otherwise by way of ongoing dialogue, negotiation and collaboration. Disputes should be escalated promptly for discussion between the parties' senior staff, such as the Chief Executive or Chair of CLSB and the Chair or Vice Chair of ACL. Either party may ask the Legal Services Board for its view on a matter in dispute.

Any issue relating to compliance with the Internal Governance Rules 2019 which cannot be or has not been remedied within a reasonable period will be reported to the Legal

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Services Board in writing by ACL. Neither party will take any action in relation to a dispute arising under or in connection with the Internal Governance Rules 2019 until that dispute has been referred to the Legal Services Board.

**9. General**

This MOU will be reviewed annually to ensure its terms remain accurate and fit for purpose. Either party may request that this MOU be reviewed on an ad hoc basis if a need arises. Any changes will be approved by the ACL Council and CLSB board and signed to by an authorised representative.

It is agreed that all introductions, headings and attachments form part of this MOU.

.....

.....

Signed on behalf  
of CLSB

Signed on behalf  
of ACL

Name:  
Position:

Name:  
Position:

Dated:

Dated:

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# Operational Protocol

## 1. Introduction

This Operational Protocol (OP), agreed between the Association of Costs Lawyers (ACL) and the Costs Lawyers Standards Board (CLSB), allocates responsibility for certain duties or tasks to each of the parties from the effective date. It supplements (and should be read together with) the MOU agreed by the parties on the same date. Terms used in the MOU have the same meaning in this OP.

For the purposes of the Internal Governance Rules 2019, ACL is the approved regulator of the Costs Lawyer profession with a residual role under the LSA and CLSB is the profession's regulatory body.

## 2. Regulatory arrangements

CLSB will:

- 2.1 Set professional standards for Costs Lawyers by way of a Code of Conduct and other such regulatory arrangements as it considers appropriate, dealing with issues such as continuing professional development, practising rights and disciplinary processes.
- 2.2 Implement appropriate processes for supervising compliance with those regulatory arrangements.
- 2.3 Determine whether any amendments to the regulatory arrangements is necessary and, if so, what form the amendment should take.
- 2.4 Make all implemented regulatory arrangements available to ACL and inform ACL of consultations regarding changes to regulatory arrangements.

ACL will:

- 2.5 Only seek to influence determinations about CLSB's regulatory arrangements in the exercise of its representative functions.
- 2.6 Not prejudice the independent judgement of CLSB in determining its regulatory arrangements.

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- 2.7 Promptly inform CLSB if ACL makes or intends to make a decision, plan, communication or other arrangement which may reasonably be considered likely to undermine the discharge of regulatory functions in compliance with section 28 of the LSA.

### 3. Competency

CLSB will:

- 3.1 Set training standards for Costs Lawyers, for the purposes of both initial qualification and continuing professional development (CPD).
- 3.2 Accredite the providers of training to Trainee Costs Lawyers and review this accreditation on a needs be basis.
- 3.3 Set entry level requirements that a person must meet before they can become a Trainee Costs Lawyer.
- 3.4 Monitor compliance of Costs Lawyers with ongoing competency requirements, for example by auditing CPD attainment.

ACL will:

- 3.5 Retain records of ACL membership and event attendance for at least three years and provide such information to CLSB upon request to facilitate a CLSB audit of CPD attainment.

### 4. Finance and governance

CLSB will:

- 4.1 Comply with its obligations under section 51 of the LSA in relation to seeking approval of the Legal Services Board for the level of its practising fee.
- 4.2 Collect practising fees independently of ACL membership fees.
- 4.3 Collect the levies payable to the Legal Services Board and Office for Legal Complaints as part of the practising fee and pay these levies to the relevant bodies.
- 4.4 Provide the following information as a matter of course, either on its website or directly to ACL where it is not otherwise published, to enable ACL to perform its residual role:

- 
- financial accounts (annually);
  - budget (annually);
  - business plan (annually);
  - strategy (ad hoc);
  - material changes to governance arrangements (ad hoc);
  - material changes to structure or staffing arrangements (ad hoc);
  - risk registers (quarterly);
  - performance indicators (ad hoc);
  - board minutes (quarterly and ad hoc).

4.5 Promptly notify ACL of any insolvency event.

4.6 Promptly notify ACL of any issues regarding non-compliance with the Internal Governance Rules 2019.

ACL will:

4.7 Collect ACL membership fees independently of practising fees.

4.8 Provide a copy of its annual accounts to CLSB on request.

4.9 Promptly notify CLSB of any insolvency event.

4.10 Maintain a log of all issues regarding non-compliance with the Internal Governance Rules 2019, including the action taken and the result.

## 5. Practising certificates

CLSB will:

5.1 Establish the criteria for the issue of a Costs Lawyer practising certificate and issue practising certificates to practitioners who meet those criteria.

5.2 Maintain the register of authorised and regulated Costs Lawyers in compliance with the LSA.

5.3 Inform ACL of any Costs Lawyers who have indicated an intention not to renew their practising certificate for the following practising year.

ACL will:

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- 5.4 Notify CLSB of successful completion of the Costs Lawyer qualification by a Trainee Costs Lawyer and send CLSB a copy of the qualification certificate together with the qualifying Costs Lawyer's contact details.

## 6. Professional conduct complaints

CLSB will:

- 6.1 Deal with professional conduct complaints against a Costs Lawyer, in accordance with its regulatory arrangements, independently of ACL.

ACL will:

- 6.2 Promptly forward any professional conduct complaints against a Costs Lawyer to CLSB.
- 6.3 Provide to CLSB any reasonably required documentation or other information in relation to a conduct complaint within seven days of request.
- 6.4 Provide the Legal Ombudsman with any reasonably required documentation or information in relation to a service complaint within seven days of request.

## 7. General

- 7.1 ACL will invite CLSB to attend relevant events and conferences to facilitate two-way communication between CLSB and the regulated community.
- 7.2 Both parties will promptly send to the other any communications relevant to their respective roles.
- 7.3 Both parties will copy to the other any notification received on change of name, address, employer or email to ensure respective databases are kept up to date.
- 7.4 Both parties will ensure that any exchange of personal data envisaged in the MOU or OP is carried out in compliance with data protection laws and will take all reasonable measures to ensure that the envisaged exchange of personal data can lawfully take place (for example, by informing data subjects that personal data will be shared between ACL and CLSB for specified purposes and obtaining consent where necessary).
- 7.5 All introductions, headings and attachments form part of this OP.

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7.6 This OP will be reviewed on an annual basis to ensure it is current and fit for purpose. Either party may request that it be reviewed on an ad hoc basis if a need arises. Any changes will be approved by the ACL Council and CLSB board and signed to by an authorised representative.

.....

.....

Signed on behalf  
of CLSB

Signed on behalf  
of ACL

Name:  
Position:

Name:  
Position:

Dated:

Dated:

## MEMORANDUM OF UNDERSTANDING

### Costs Lawyer Standards Board & Association of Costs Lawyers

Effective date: 31 October 2011

#### **1. Introduction**

This memorandum of understanding (“MOU”) sets out the framework for the Costs Lawyer Standards Board (“CLSB”) and the Association of Law Costs Draftsmen, known with effect from 1 January 2011 as the Association of Costs Lawyers (“ACL”) to work together in order to carry out their independent roles and separate functions in accordance with the Legal Services Act 2007. It supplements, but does not replace any requirements set out in the statutory framework. It is a public document and benefits consumers and the Legal Services Board, as well as the parties, in understanding the separate functions of the ACL and CLSB.

CLSB and ACL will also agree an Operational Protocol which will set out the administrative duties each shall undertake from the Effective Date. The Operational Protocol will be reviewed on a needs be basis with any agreed changes being signed to by appointed representatives. The Operational Protocol will not be a public document.

#### **2. Representative & regulatory functions**

ACL was granted authorised body status for the purposes of Section 27 & 28 of the Courts & Legal Services Act 1990 by way of statutory instrument titled The Association of Law Costs Draftsmen Order 2006 (SI No 3333 of 2006) which came into effect on 1 January 2007. An authorised body can grant the following rights:

- Right of audience.
- Right to conduct of litigation.
- Right to administer oaths.

Under the Legal Services Act 2007 the ACL was designated an approved regulator. It is a requirement under that act that ACL separates its regulatory and representative functions. To ensure statutory compliance the CLSB was established to undertake, under delegated authority from ACL effective from the date above, the role of approved regulator to include:

- Education & training requirements of Costs Lawyers.
- Professional conduct of Costs Lawyers whilst practising.
- Disciplinary mechanisms necessary when a Costs Lawyer falls short of standards expected of them.

ACL continues to exercise its representative function i.e. the representation and promotion of the interests of Costs Lawyers.

#### **3. Regulatory independence of CLSB**

As required under the Legal Services Act 2007 and the Internal Governance Rules 2009 which state “*structures or persons with representative functions must not exert, or be*

*permitted to exert, undue influence or control over the performance or regulatory functions, or any persons(s) discharging those functions”* CLSB will carry out regulation independently from any ACL representative interests.

CLSB will be known as the approved regulator of Costs Lawyers and will act in all capacities as such. All regulatory obligations and duties of an approved regulator will apply to CLSB as the approved regulator (Rule B4). It will be for the CLSB to *“have in place arrangements that observe and respect the principle of regulatory independence”* (Rule C6A) and will ensure *“the exercise of regulatory functions is not prejudiced by any representative functions or interest”* (Rule C7B).

#### **4. Effective Date**

CLSB will undertake the administration of all conduct complaints that have arisen on or after the Effective Date. ACL will conclude any conduct complaints received by them prior to the Effective Date and will deal with any subsequent complaints where the cause for complaint occurred before the Effective Date.

#### **5. Statutory objectives of CLSB**

CLSB will act in accordance with the regulatory objectives defined in Section 1 of the Legal Services Act 2007:

Protecting & promoting the public interest.

- Supporting the constitutional principle of the rule of law.
- Improving access to justice.
- Protecting & promoting the interests of consumers.
- Promoting competition in the provision of service provided by authorised persons.
- Encouraging an independent, strong, diverse and effective profession.
- Increasing public understanding of citizen’s legal rights and duties.

#### **6. CLSB principles of good regulation**

CLSB will have regard to the following principles of good regulation:

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

#### **7. Principles for ACL/CLSB working together**

**ACL will:**

- Act at all times in a manner that ensures the effective regulatory independence of CLSB.
- Report to the CLSB any significant changes to ACL policies and procedures and provide regular updates to CLSB on the ACL’s representative activities.
- Keep up to date all information relating to ACL and Costs Lawyers on various websites e.g. ACL website and Access to Justice website.

**ACL will not:**

- Interfere with or impede the regulatory independence, processes and procedures of CLSB.
- Challenge any decision properly made by CLSB through its defined procedures on a conduct, competence or fitness to practice matter.
- Challenge any decision properly made by the Legal Ombudsman in relation to a service complaint investigated and determined by them.

**CLSB will:**

- Liaise with ACL on issues and concerns identified as a result of its regulatory function.
- Identify risks within the profession of the Costs Lawyer and put in place processes and procedures to reduce or eliminate those risks.

**CLSB will not:**

- Interfere with or impede the exercise of the representative functions of the ACL.

**ACL and CLSB will both:**

- Ensure continuing compliance with the requirements of the LSA.
- Work openly and with mutual respect so far as is consistent with their obligations under the LSA, the law and consumer/public interest.
- Respond to the others request for information within a reasonable time.
- Consult the other in respect of proposed rule or policy changes that may affect the proper functioning of the other.
- Treat as confidential the information each holds about Costs Lawyers, save where disclosure is required by law or is in the public interest.
- In the event of joint lobbying on a matter agree who shall take the lead with input/support from the other.

**8. Financing**

The ACL is ultimately responsible for ensuring adequate resources are available which are reasonably required to enable CLSB to carry out its independent regulatory function.

**9. Dispute Resolution**

Any disputes between ACL and CLSB in relation to this MOU or otherwise will be resolved by discussion between the Chief Executive and Chair of CLSB with the Chair and Vice Chair of ACL. Nothing in this MOU prevents either party from referring any dispute to the LSB to resolve. Either party must however give at least seven working days' written notice to the other should it intend to refer a matter to the LSB.

**10. Review**

This MOU will be reviewed annually or when amendment is required to ensure its terms remain accurate and fit for purpose. Any changes will be approved by the ACL Council and CLSB board and signed too accordingly.

.....  
Graham Aitken  
CLSB Chairman

Dated:

.....  
Iain Stark  
ACL Chairman

Dated:

## **OPERATIONAL PROTOCOL**

### **Costs Lawyer Standards Board and Association of Costs Lawyers**

**Effective date: 31 October 2011**

#### **Introduction**

This Operational Protocol agreed between the Costs Lawyer Standards Board (“CLSB”) and the Association of Costs Lawyers (“ACL”) sets out who will undertake which administrative duties following delegation by ACL of its role as an approved regulator to ACL on the effective date above.

#### **Setting professional standards**

##### **CLSB will:**

- 1.1 Set Costs Lawyer professional standards by way of Code of Conduct, Practising Rules and Disciplinary Rules & Procedures and any other governance documents deemed required.
- 1.2. Communicate, implement and monitor those standards.
- 1.3 Be accountable to the Legal Services Board for those standards as the approved regulator.

#### **Training (Trainee Costs Lawyers)**

##### **CLSB will:**

- 2.1 Set required training standards to qualify as a Costs Lawyer (Training and CPD Rules).
- 2.2 Accredite the providers of training to Trainee Costs Lawyers and will review this accreditation on an annual/needs be basis.
- 2.3 Set entry level qualification requirements.
- 2.4 Approve any changes to the entry level examination.
- 2.5 Consider the appropriateness of the modular syllabus and other examinations e.g. entry level, formal examination.
- 2.6 Approve any changes to the modular syllabus and final examination.

##### **ACL will:**

- 2.7 Set Trainee Costs Lawyer fees which are reasonable and appropriate.
- 2.8 Manage all Trainee Costs Lawyer applications, fee payments, information and training.
- 2.9 Manage the Register of Trainee Costs Lawyers.
- 2.10 Set modular and final examination fee levels which are reasonable and appropriate.
- 2.11 Manage the provision of appropriate training to Trainee Costs Lawyers.
- 2.12 Implement and monitor training standards.
- 2.13 Report to CLSB, as requested, on training standards.
- 2.14 Set and manage the professional standards of Trainee Costs Lawyers.

#### **CPD for Costs Lawyers**

##### **CLSB will:**

- 3.1 Set the standard in relation to the continuing professional development (CPD) of Costs Lawyers by way of Training & CPD Rules.
- 3.2 Issue CPD Record sheets to Costs Lawyers for use 2012 onwards.
- 3.3 Collect CPD Record cards/sheets for 2011 and onwards.

3.4 Monitor those standards and achievement thereof .

**ACL will:**

3.5 Manage the appropriate provision of CPD training.

3.6 Manage a CPD recording system, ensuring attendances are recorded for audit by CLSB.

**S51 application**

**CLSB will:**

4.1 Draft and manage the annual S51 application to conclusion.

**ACL will:**

4.2 Submit to CLSB in good time its budget and all other required information for the forthcoming year.

4.3 Respond to a request for approval of the consultation paper and S51 application within timescales defined by CLSB.

**Certificate of qualification**

5.1 On successful completion by a Trainee Costs Lawyer of the ACL qualification, ACL will issue a Certificate of Qualification.

5.2 ACL will notify CLSB of this by email and will send CLSB a copy of the certificate together with the qualifying Costs Lawyers name, address, date of birth, phone numbers etc.

**Practising certificates**

**CLSB will:**

6.1 Issue practising certificates.

6.2 Draft and issue the annual Application for Practising Certificate under which it will seek to capture all required information for the purposes of its regulatory function.

6.3 Collect the practising certificate fee.

6.4 Forward to ACL the annual agreed sum derived from those fees.

6.5 Update the Register of Costs Lawyers on issuing a practising certificate.

**LSB Levy**

7.1 CLSB will collect the LSB levy under the Practising Certificate Fee.

7.2 CLSB will be responsible for paying the levy over to the LSB.

**Fees for Representation**

8.1 CLSB will collect any approved proportion of the PCF attributed to representation.

8.2 CLSB will forward a schedule at end of each month, showing those Costs Lawyers who have paid those fees, to ACL, together with a cheque for that portion of the PCF.

**Register of Costs Lawyers**

**CLSB will:**

9.1 Administer the Register of Costs Lawyers (both full and public access versions)

9.2 Ensure the Registers (full and public access versions) are up to date.

9.3 Ensure that both Registers are accessible by ACL (read only).

9.4 Ensure the public access version is accessible through both the ACL & CLSB websites.

**Conduct complaints**

**CLSB will:**

10.1 Manage all conduct complaints independently of ACL.

**ACL will:**

10.2 Provide CLSB with any reasonably required copy documentation or other information in relation to a conduct investigation within 7 days of request.

**General**

11.1 Both parties will send to the other in good time any communications (emails, letters, consultation papers or otherwise) relevant to their respective roles.

**Review**

12.1 This Operational Protocol will be reviewed on a needs be basis to ensure it is fit for purpose. Any changes shall be agreed and signed to by both party's appointed representatives.

.....  
Lynn Plumbley  
Chief Executive  
CLSB

.....  
Diane Pattenden  
Operations Manager  
ACL

Dated:

Dated:



**Certificate of compliance with Internal Governance Rules  
2019**

**On behalf of the Costs Lawyer Standards Board (CLSB), I Steve Winfield certify that the obligations are understood and that the CLSB is in compliance with the Internal Governance Rules 2019 made under Section 30 of the Legal Services Act 2007.**

Each rule is initialled to certify compliance.

Rule 1	The overarching duty	[ ]
Rule 2	Duty to delegate	[ ]
Rule 3	Provision of assurance to approved regulator	[ ]
Rule 4	Regulatory Autonomy	[ ]
Rule 5	Prohibition on dual roles	[ ]
Rule 6	Individual conduct	[ ]
Rule 7	Governance: lay composition	[ ]
Rule 8	The regulatory board: appointments and terminations	[ ]
Rule 9	Regulatory resources	[ ]
Rule 10	Regulatory body budget	[ ]
Rule 11	Shared services	[ ]
Rule 12	Communication by persons involved in regulation	[ ]
Rule 13	Candour about compliance	[ ]
Rule 14	Disputes and referrals for clarification	[ ]
Rule 15	Guidance	[ ]
Rule 16	Saving provisions	[ ]
Rule 17	Exemptions	[ ]

This certificate is accompanied by an explanation of the actions taken by the CLSB to ensure compliance. (Annex A)

This certificate is accompanied by a copy of the Board minute recording the decision taken to certify compliance. (Annex B)

**Signed:**

**On behalf of the board of Costs Lawyer Standards Board Ltd**

## Annex A – Actions taken to ensure compliance

### 1. THE OVERARCHING DUTY

(1) Each approved regulator has an overarching duty to ensure that the exercise of its regulatory functions is not prejudiced by any representative functions it may have.

(2) In particular, each approved regulator must have arrangements in place to:

- a. separate its regulatory functions from any representative functions it may have; and
- b. maintain the independence of its regulatory functions as effectively as is reasonably practicable and consistent with Section 28 of the Act.

(3) Each approved regulator must periodically review and, if reasonably practicable, improve its arrangements under sub-rule (2).

The Association of Law Costs Draftsmen (**ALCD**) is designated as the approved regulator of the Costs Lawyer profession under the Act. On 1 January 2011, ALCD changed its name to the Association of Costs Lawyers (**ACL**). ACL is primarily a representative body for the Costs Lawyer profession.

The Costs Lawyer Standards Board (**CLSB**) was established specifically to enable ACL to separate its representative functions from its regulatory role in accordance with the requirements of the Act. Since 31 October 2011, the CLSB has undertaken the role of approved regulator of the Costs Lawyer profession under delegated authority from ACL. The CLSB is a separate legal entity from ACL (incorporated as Costs Lawyer Standards Board Limited) and, while it is wholly owned by ACL, it is both legally and structurally separate from its parent.

This separation is documented in a Memorandum of Understanding (**MOU**) and Operational Protocol (**OP**) between the two entities (**Appendix 1**). Original versions of the MOU and OP were entered into in 2011. Refreshed versions were agreed between ACL and the CLSB on **[date]** for the purpose of complying with the Internal Governance Rules 2019 (**IGR 2019**). We would emphasise that we consider the arrangements in place between the parties to have been, in practice, already compliant with the IGR 2019 at the time the rules were implemented. It has therefore not been necessary to substantively alter those arrangements. Rather, the MOU and OP have been updated to ensure that mutual understandings are clearly documented and to improve transparency around the mechanisms for our compliance with the IGR 2019.

The MOU and OP are the primary means of ensuring compliance with rules 1(1) and 1(2). In relation to rule 1(3), the MOU and OP both contain an annual review provision (paragraph 9 of the MOU and paragraph 7.6 of the OP). Allowance is also made for ad hoc review where required; this facilitates compliance with paragraph 1.12 of the Legal Services Board's Guidance on the IGR 2019 (**the Guidance**), which requires a review to take place as soon as possible where a particular arrangement is identified as unfit for purpose.

### 2. DUTY TO DELEGATE

(1) Each approved regulator with both representative and regulatory functions must delegate the discharge of its regulatory functions in compliance with Section 28 of the Act to a separate body ('regulatory body').

(2) After delegating its regulatory functions, the approved regulator must only retain a role to the extent that this is reasonably necessary to be assured that regulatory functions are being discharged in compliance with Section 28 of the Act or as otherwise required by law ('residual role').

(3) An approved regulator must promptly inform its regulatory body if the approved regulator makes or intends to make a decision, plan, communication or other arrangement which may reasonably be considered likely to undermine the discharge of regulatory functions in compliance with Section 28 of the Act.

The delegation of all regulatory functions by ACL to the CLSB can be found primarily in sections 2 and 3 of the MOU (entitled "Delegation" and "Regulatory independence of CLSB" respectively). Section 2 makes clear that ACL's regulatory functions are delegated in their entirety to CLSB and that ACL retains the residual role envisaged in the IGR 2019. Section 3 refers back to the overarching duty and makes clear that the CLSB will independently determine the most appropriate and effective way of discharging its regulatory functions without interference from ACL except in pursuit of its residual role. This is reiterated in section 5 of the MOU and paragraphs 2.5 and 2.6 of the OP.

In relation to rule 2(3), ACL has an express obligation to provide information of the kind envisaged in the rule to the CLSB under paragraph 2.7 of the OP.

### 3. PROVISION OF ASSURANCE TO APPROVED REGULATOR

(1) Each regulatory body shall provide sufficient information to the approved regulator with a residual role as is reasonably required for the approved regulator to be assured of the regulatory body's compliance with Section 28 of the Act.

(2) The approved regulator with a residual role:

- a. may only require further information from the regulatory body if it has reasonable grounds to do so;
- b. must not require the regulatory body to provide information which may reasonably be considered likely to undermine the regulatory body's independence or effectiveness; and
- c. must not use the information it receives for the representation, protection or promotion of the interests of the persons it represents unless and until it receives that information for that purpose or that information is made publicly available.

The Guidance summarises this rule as a requirement for the approved regulator and regulatory body to "cooperate with one another to provide and accept assurance". The updated MOU and OP have been drafted in the spirit of this general statement, framing the process of exchanging information as an ongoing collaboration.

Section 5 of the MOU (entitled "Assurance and Information Provision") establishes a high-level information sharing protocol. The starting point is that the CLSB will provide the information detailed in the OP as a baseline requirement. The list of information has been agreed between the CLSB and ACL as reflecting the core information that will allow ACL to assure itself of the CLSB's financial stability, approach to regulation and compliance with the Act on an ongoing basis. In agreeing this list, the parties were mindful of paragraph 3.8 of the Guidance, which provides that the approved regulator should not duplicate the LSB's role in assessing regulatory performance. The OP touches on information provision in several places, but the core provision (containing the main list of information to be provided) is paragraph 4.4. This includes the regularity and mode of provision.

The framework in section 5 of the MOU then establishes that ACL may request other information from CLSB from time to time where necessary to perform its residual role. The safeguard envisaged in rule 3(2)(b) is accounted for by a mechanism under which CLSB can refuse to provide information, but in such circumstances the parties will work collaboratively to agree an appropriate way for ACL to gain the assurance it needs to perform its residual role. Section 5 also expressly incorporates the prohibitions in rules 3(2)(b) and (c).

In relation to the proactive provision of additional relevant information, the MOU goes beyond rule 3(1) and establishes that each party will share information that is of relevance generally to the other.

The Guidance suggests at paragraph 3.13 that arrangements for sharing information should be published in compliance with the better regulation principle of transparency. Both the MOU and OP [\[are available\]](#) on the [CLSB website](#).

### 4. REGULATORY AUTONOMY

(1) The regulatory body must independently determine the most appropriate and effective way of discharging its functions in a way which is compatible with the regulatory objectives and having regard to the better regulation principles.

(2) In particular, the regulatory body must determine:

- a. its own governance, structure, priorities and strategy; and
- b. whether any amendment to the regulatory arrangements is necessary and, if so, what form that amendment should take.

(3) The approved regulator with a residual role:

- a. may only seek to influence these determinations in the exercise of its representative functions; and
- b. must not prejudice the independent judgement of the regulatory body.

In relation to rule 4(1) and rule 4(2)(b), section 4 of the MOU establishes that the CLSB will fulfil its regulatory role in a manner compatible with the regulatory objectives and better regulation framework. Section 2 of the OP makes it clear that it is for the CLSB to determine how best to achieve this compatibility. Section 2 establishes that it is the exclusive role of the CLSB to implement, amend, supervise and communicate its

regulatory arrangements, and that ACL will not (other than in its representative capacity) seek to influence the way the CLSB carries out that role or prejudice the independent judgment of the CLSB.

Paragraph 2.4 of the OP provides that the CLSB will make all implemented regulatory arrangements available to ACL and inform ACL of consultations regarding changes to regulatory arrangements, allowing ACL to make representations in its role as the profession's representative body. The CLSB is not required to give any weight to those representations over and above the views of other stakeholders and consultees.

In relation to rule 4(2)(a), the CLSB sets its own governance, structure, priorities and strategy. In accordance with the Guidance, the CLSB's board is comprised of both a lay majority and a lay Chair. This is enshrined in our Articles of Association ([Appendix 2](#)). In addition, a person is not eligible for appointment as a non-lay board member if they have served on the ACL Council unless a period of two years has elapsed from the date of their resignation from the ACL Council and the published closing date for the board opportunity in question. This is set out in our Board Appointment Rules ([Appendix 3](#)) and is designed to ensure independence from the representative body and its interests among the non-lay directors as well as the lay directors. Under the Board Appointment Rules, a preference is expressed for the Vice Chair of the board to be a lay director. In practice, this has always been the case since the CLSB's inception.

The Board Appointment Rules also set out the process for recruiting and reappointing board members. The description of this processes and the selection criteria demonstrate that appointments are determined solely by the CLSB within the framework of the rules. This process was most recently followed for the appointment of two new directors in January 2020.

Otherwise, independence of governance and management – for both the CLSB and ACL – is established under section 6 of the MOU. This makes clear that the CLSB determines its staffing arrangements, governance processes, structure, budget, priorities and strategy free from the influence of ACL. In practice these matters are determined by the CLSB board, upon advice from the executive. Our [mid-term strategy](#) and [2020 Business Plan](#), for example, were developed independently of ACL and responsibility for our [performance measures](#) sits exclusively with the CLSB board.

## 5. PROHIBITION ON DUAL ROLES

No person, whether remunerated or not, who is involved in decisions relating to regulatory functions may also be involved in the representative functions of the approved regulator, unless that person's role is within a shared service in accordance with Rule 11.

This prohibition is expressly reflected in section 6 of the MOU, which provides that no person will be involved in both decision-making within the CLSB governance structure and the representative functions of ACL. This is supported by the selection criteria for decision-making roles within the CLSB.

Regulatory decision-making at the CLSB is carried out by three main role types:

- board members;
- members of the CLSB's disciplinary panel; and
- the CEO.

Any decisions taken by other staff that could be characterised as substantive regulatory decisions (for example, determining whether a Costs Lawyer should benefit from an exemption to a regulatory requirement) are taken under the direct supervision of, and in consultation with, the CEO. In our view, this means there is no possibility of a conflict of interest if such staff were also involved in representative functions, taking those staff outside the scope of rule 5 (in accordance with paragraph 5.9 of the Guidance). In practice, none of our staff have ever been involved in the representative functions of ACL in any event.

As mentioned above (under rule 4) a person may not be appointed to the CLSB board if they served on the ACL Council less than two years ago. There is a similar requirement in our [Disciplinary Rules and Procedures](#) that appointees to our disciplinary Panel must not have served on the ACL Council in the past two years. While there are no formal independence criteria for the CEO, candidates are considered by the board in line with the duty to ensure independence. It is a contractual requirement that the CEO disclose all external appointments and interests in writing to the Chair of the board prior to appointment. The Chair is also notified of any changes to those appointments or interests on an ongoing basis.

Our non-lay directors will often be members of ACL (as most Costs Lawyers are), but we do not consider this to render them "involved in ACL's representative functions" in the way envisaged by rule 5. We have processes in place to ensure the disclosure of additional interests they might have, which would include any

involvement in ACL's representative functions. All directors must complete a register of interests form upon appointment ([Appendix 4](#)) and keep this updated. Disclosure of interests relating to any specific matters considered at board meetings is a standing agenda item, as can be seen from our [published minutes](#).

In terms of documenting the decision making process, decisions of disciplinary panels are recorded in written reasons, which are provided to the parties to the disciplinary proceedings in accordance with our [Disciplinary Rules and Procedures](#). Outcomes are also [published on our website](#). Board decisions are recorded in the [published minutes](#) as well as in [Board Decision Notes](#) in line with our Transparent Decisions Policy. The board has ultimate responsibility for the activities of the CLSB, including oversight of the executive. This oversight is via scrutiny of key decisions at board meetings, the adoption of a variety of internal policies and procedures to give structure to decision-making (collated in our internal Operations Manual), and regular appraisals of the CEO's performance.

The CLSB and ACL do not have any shared services, so we do not rely on the exemption at the end of rule 5. We also do not have any non-remunerated (elected or voluntary) roles within the CLSB.

## 6. INDIVIDUAL CONDUCT

Each approved regulator must ensure that any individual, whether remunerated or not, with a role:

- a. in the exercise of regulatory functions; or
  - b. which may otherwise reasonably be considered likely to affect regulatory functions
- is aware of and complies with these Rules and the arrangements in place under Rule 1.

The CLSB considers the following individuals to have a role that is caught by rule 6 (by reference to paragraphs 6.9 to 6.11 of the Guidance):

- board members;
- members of the CLSB's disciplinary panel;
- the CEO;
- the Administration Manager.

Our consultants, such as payroll or IT professionals, do not have a role which falls within paragraphs (a) or (b) of rule 6. Consultants who are experts in legal or policy matters work as advisers to the CEO or board and do not exercise regulatory functions. Nonetheless, we ensure that such consultants are aware of and comply with the IGR 2019 by way of a contractual provision where the project in question means they could fall within rule 6(b).

The Board Terms of Reference ([Appendix 6](#)) provide in section 3 that the board will oversee that the CLSB has in place arrangements to comply with the IGR 2019, which ensure that the CLSB's regulatory function is not prejudiced by the representative function or interests of ACL. The Board Terms of Reference were updated in April 2020 to refer to the 2019 (rather than 2009) IGR, but the substantive provision remains unchanged.

The Board Code of Conduct ([Appendix 7](#)) also places obligations on individual directors to act independently. Section 8 specifically requires that board members: "Accord with the Memorandum of Understanding between the CLSB and the Association of Costs Lawyers and ensure no representative function or role is undertaken, only a regulatory role." Non-compliance with the Terms of Reference or Code of Conduct are grounds for termination of a board appointment.

In relation to both current and future members of our disciplinary Panel, there is a commitment in the Panel Member Declaration (at item (g)) as follows: "I will promote the CLSB's independence from the Association of Costs Lawyers and comply with the Legal Services Board's Internal Governance Rules" (this is found in the Panel Member Appointment Criteria and Code of Conduct, at [Appendix 8](#)). Reference to the independence requirements established by the MOU and OP are provided in supplementary guidance materials for Panel Members. Non-compliance with the declaration is a ground for termination of a Panel Member's appointment.

In relation to other staff, the job description of the CEO expressly includes the items: "Ensure on-going compliance with IGRs" and "Provide IGR performance report/information". Failure to meet the job description would be dealt with under the CLSB's HR policy, with the potential for disciplinary consequences and ultimately termination of employment. The Administration Manager's employment contract requires compliance with CLSB policies and procedures and any breach would be dealt with in the same way.

Otherwise, we do not consider it necessary to develop detailed training materials for existing staff in relation

to the IGR 2019. Given our size, all existing staff (NEDs and employees) have been involved in the development or approval of the MOU and OP with ACL as well as these compliance documents and have a robust understanding of the requirements. We have therefore taken the proportionate approach of developing a “quick guide” to our obligations under the IGR 2019 (Appendix 9). This is a one-page overview of our compliance arrangements under the IGR 2019, including a clear route for assistance when required (as suggested in paragraph 6.13 of the Guidance) and links to the MOU and OP.

New board members receive a welcome pack of induction materials, which already includes the Board Code of Conduct and Terms of Reference, and which has been updated to now include the quick guide. New staff receive a CLSB “historical” which explains the relationship between the CLSB and ACL, including the requirement of independence under the IGR. This will now be accompanied by the quick guide. The quick guide will also be provided to consultants to support contractual obligations where applicable.

## 7. GOVERNANCE: LAY COMPOSITION

The board or equivalent body which makes decisions about how to exercise regulatory functions must be comprised of a majority of lay persons and the chair of that body must be a lay person.

The CLSB board is the decision making body in control of its regulatory functions. The board has both a lay Chair and a lay majority. This is enshrined in our Articles of Association (Appendix 2) and Board Terms of Reference (Appendix 6).

The Guidance at paragraph 7.7 refers to the need to subsequently ratify decisions that are taken without a lay Chair or lay majority being present. Our Board Terms of Reference provide that a quorum requires a lay majority in all cases (see section 6), so ratification will never be necessary in this regard. As the Vice Chair is a lay member, we will also never be without a lay Chair (whether appointed or acting). If both the Chair and Vice Chair are absent, we could not achieve a quorum (as we would not have a lay majority), so again the need for ratification would never arise due to the absence of a lay Chair.

## 8. THE REGULATORY BOARD: APPOINTMENTS AND TERMINATIONS

(1) The regulatory body must independently determine and carry out its procedures for appointing, re-appointing and terminating members of its board or equivalent decision-making body including the chair, assessing their remuneration and carrying out appraisals.

(2) The approved regulator with a residual role:

- a. may only seek to influence these determinations in the exercise of its representative functions; and
- b. must not prejudice the independent judgement of the regulatory body.

Section 6 of the MOU provides that the CLSB will be governed by the CLSB board and employ its own staff free from the influence of ACL. As set out in relation to earlier rules, board members are appointed and reappointed independently in line with the process and criteria in the Board Appointment Rules (Appendix 3). Those rules are made and updated by the board. They cover all board roles, including the Chair.

Remuneration of directors is determined by the full board in accordance with the Remuneration Committee Terms of Reference (Appendix 10). Paragraph 3.2 of those terms provides that the remuneration of non-executive directors will be for the Chief Executive to recommend to the board, following consultation with the Chair.

Board member appraisals are carried out in accordance with the Board Performance Appraisal Policy (Appendix 11). Paragraph 3.2 of that Policy provides that, in relation to the Chair’s appraisal, the Vice Chair will “canvass the views of the Chief Executive, the Chair of the ACL (if felt appropriate by the Chief Executive and Vice Chair) and all other NEDs on the CLSB board on the Chair’s overall performance, strengths, weaknesses and training needs”. This is intended to ensure that feedback from ACL on the working relationship between the leaders of the two organisations is captured and actioned appropriately. It is for the Vice Chair, in appraising the Chair, to take this feedback into account in accordance with the Policy and the Vice Chair’s own obligations under the IGR 2019. This is in line with paragraph 8.4 of the Guidance, which provides that the regulatory body may choose to involve the AR, as long as this is done in a way which does not undermine or appear to undermine its independence. Otherwise, there is no input from the representative body in the appraisal process.

Termination of board members is in accordance with their individual Letters of Appointment. In all cases, termination is within the exclusive power of the CLSB; neither ACL nor any other person may dismiss a board

member or trigger a process that results in their dismissal.

## 9. REGULATORY RESOURCES

Each approved regulator must provide such resources as are reasonably required for its regulatory functions to be efficiently and effectively discharged.

The CLSB assesses its own resource requirements (see further under rule 10) and collects the resources it needs through the annual practising fee. Consultation on the practising fee includes provision of the relevant year's budget and previous year's annual accounts, which enables ACL to assure itself that the resources sought are reasonably required.

The CLSB and ACL are funded separately – CLSB through practising fees and ACL through membership fees (plus event revenue etc). Accordingly, the issue of allocating a single income source as between regulatory and representative functions does not arise. As a safeguard, section 7 of the MOU provides that, while the CLSB will use all reasonable endeavors to ensure it is financially self-sufficient, ACL as the approved regulator will ensure that such resources as are reasonably required for the efficient and effective discharge of regulatory functions will be made available to the CLSB if additional funds are ever needed.

## 10. REGULATORY BODY BUDGET

(1) The regulatory body shall independently:

- a. formulate its own budget in accordance with its priorities and strategy under Rule 4; and
- b. determine the allocation of its resources.

(2) The approved regulator with a residual role:

- a. may only seek to influence these determinations in the exercise of its representative functions; and
- b. must not prejudice the independent judgement of the regulatory body.

As set out above, section 6 of the MOU provides that the CLSB will independently determine its own budget, priorities and strategy. This is supplemented by section 4 of the OP.

In practice, the business planning and budget process is carried out initially by the CLSB executive and then scrutinised by the CLSB board at its July meeting (as can be seen from previous [published minutes](#)). The proposed practising fee is determined in accordance with the resources required under the budget, including any planned contribution to reserves. The consultation on the practising fee is circulated to all Costs Lawyers as well as ACL. Any response from ACL is considered in the round, and given due weight as representing the collective view of practitioners who are subject to the fee.

The PCF is collected by the CLSB into the CLSB's operating account, to which ACL does not have access (in line with paragraph 4.2 of the OP). Funds are allocated throughout the year to various workstreams or liabilities at the CLSB's discretion in line with the budget and in pursuit of the annual priorities identified in the business plan.

## 11. SHARED SERVICES

(1) An approved regulator with a residual role and its regulatory body may only share a service if they are in agreement that:

- a. this will not undermine, and could not reasonably be seen to undermine, the separation of regulatory and representative functions;
- b. this is effective and appropriate for the regulatory body to discharge its regulatory functions; and
- c. this is necessary to be efficient and reasonably cost-effective.

(2) Any services shared between the approved regulator with a residual role and the regulatory body under Rule 11(1) must be provided to the regulatory body on a basis no less favourable than to the approved regulator with a residual role.

The CLSB and ACL do not have any shared services. To ensure that any potential future shared services are accounted for, section 6 of the MOU provides as follows:

"ACL and CLSB do not, and do not intend to, share operational services. Should the parties identify any areas in which it would be desirable and appropriate to share services in the future, shared services will only be implemented following approval of the ACL Council and CLSB board. In such circumstances, the parties will negotiate any amendments to the MOU and OP as are necessary to ensure continued compliance with the

Internal Governance Rules 2019.”

## 12. COMMUNICATION BY PERSONS INVOLVED IN REGULATION

(1) Each approved regulator must have arrangements in place for persons involved in the exercise of its regulatory functions to communicate directly with the Legal Services Board, Consumer Panel, OLC and other approved regulators.

(2) In particular these arrangements must enable individuals to notify the Legal Services Board directly if they consider that the independence or effectiveness of regulatory functions is being or will be prejudiced.

Section 4 of the MOU provides that the CLSB, by its Chief Executive, Chair or other representative, may communicate directly with the LSB, Legal Services Consumer Panel, OLC and other approved regulators as it sees fit, including in relation to the CLSB's independence or ability to effectively carry out its regulatory functions.

In accordance with paragraphs 12.5 to 12.7 of the Guidance, there are no existing processes or agreements (including NDAs) between ACL and the CLSB that would inhibit direct contact and communication between the CLSB and a key statutory body in any way. Equally, there is nothing in the CLSB's internal policies or employment contracts that would prevent an individual staff member from notifying the LSB directly of prejudice to the CLSB's independence (and in our view such notification could always be handled to ensure compliance with other obligations, such as data protection laws). In practice, the CLSB has open and candid relationships with the LSB, LSCP, OLC and others and encourages staff at all levels to form their own contacts and connections.

## 13. CANDOUR ABOUT COMPLIANCE

(1) Each approved regulator must respond promptly and fully to all requests for information by the Legal Services Board made for the purposes of assessing and assuring compliance with these Rules.

(2) Each approved regulator must ensure that any issue in relation to compliance with these Rules which cannot be or has not been remedied within a reasonable period is reported in writing to the Legal Services Board, whether this information is requested or not.

The CLSB will respond promptly and fully to any request for information from the LSB about compliance. Our procedures are internally documented, allowing prompt responses when required.

Paragraph 4.6 of the OP requires the CLSB to promptly notify ACL of any issues regarding non-compliance with the IGR 2019. Paragraph 4.10 requires ACL to maintain a log of all issues regarding non-compliance with the IGR 2019, including the action taken and the result. In practice, this means that all issues of non-compliance identified by the CLSB are both raised for resolution and logged in a central register, in accordance with paragraph 13.10 of the Guidance.

In terms of internal reporting of any non-compliance, the quick guide ([Appendix 9](#)) makes it clear that all instances of non-compliance should be reported to the CEO, to enable the CEO to consider whether and how the issue can be remedied. Individuals may also report directly to the LSB if the issue is not acted upon by the CEO within a reasonable timeframe, to ensure compliance with rule 12(1). This is a simple procedure but, given our size, it is effective and efficient. We have also created an internal log to record any compliance issues raised going forward and the relevant outcomes.

Finally, section 8 of the MOU provides that any issue relating to compliance with the IGR 2019 which cannot be or has not been remedied within a reasonable period will be reported to the Legal Services Board in writing by ACL, in compliance with rule 13(2).

## 14. DISPUTES AND REFERRALS FOR CLARIFICATION

(1) If an approved regulator has been unable to resolve any point arising under or in connection with these Rules, it may refer that point to the Legal Services Board for clarification.

(2) In the event of a dispute between an approved regulator with a residual role and its regulatory body in relation to any point arising under or in connection with these Rules, the dispute must be referred to the Legal Services Board before any further action is taken.

(3) Any response provided by the Legal Services Board shall be determinative unless expressly indicated otherwise.

The mechanism for the resolution of disputes between the CLSB and ACL is found in section 8 of the MOU.

This provides that ACL and the CLSB will use best endeavours to resolve any disputes by way of ongoing dialogue, negotiation and collaboration. There is an escalation clause, and provision for either party to ask the LSB for its view on a matter in dispute.

As mentioned above, any compliance issue that cannot be remedied within a reasonable period will be reported to the LSB. Section 8 then makes clear that neither party will take any action in relation to a dispute arising under or in connection with the IGR 2019 until that dispute has been referred to the LSB in compliance with rule 14(2).

Internal referral of all non-compliance issues to the CEO will mean that disputes are handled centrally and in accordance with the dispute resolution mechanism in the MOU. In seeking the involvement of the LSB in any dispute, the CEO (or Chair on advice from the CEO) will have regard to paragraphs 14.4 to 14.12 of the Guidance as it applies to the particular matter at hand.

#### 15. GUIDANCE

In seeking to comply with these Rules, each approved regulator must have regard to any guidance issued by the Legal Services Board under Section 162 of the Act.

The CLSB has taken the Guidance into account in refreshing the MOU and OP with ACL, in developing or reassessing its internal processes that underpin compliance, and in producing this compliance documentation.

#### 16. SAVING PROVISIONS

(1) No approved regulator shall be in breach of these Rules if the action or omission, which would otherwise constitute the breach, is:

- a. in relation to an approved regulator with a residual role, reasonably necessary to satisfy its residual role;
- b. required by primary legislation; or
- c. carried out with the prior written authorisation of the Legal Services Board.

(2) In the event of a dispute as to whether any of these Saving Provisions apply, the matter must be referred to the Legal Services Board before any action is taken and any response will be determinative in accordance with Rule 14.

At the time of preparing this compliance documentation, we believe we are fully compliant with the IGR 2019 and thus do not have any reason to rely on the saving provisions.

17. EXEMPTIONS The following Rules do not apply to an approved regulator with only regulatory functions:

- a. Rules 2 to 5;
- b. Rule 8;
- c. Rules 10 and 11;
- d. Rule 14(2); and
- e. Rule 16(1)(a).

ACL, as approved regulator of the Costs Lawyer profession, is not a regulator with only regulatory functions. Thus all rules in the IGR 2019 apply to ACL and, by delegation, to the CLSB other than in relation to ACL's residual role.

**Annex B – Board minute extract recording the decision to certify compliance**

[To be added following 22 April 2020 meeting.]

## **BOARD TERMS OF REFERENCE**

### **Costs Lawyer Standards Board**

**Effective: 225 April 202018**

These terms of reference replace ~~the previous versions dates those effective since~~ 9 February 2011 and 25 April 2018. They set out the parameters within which the board ("Board") of the Costs Lawyer Standards Board ("CLSB") shall operate. The Board will act ~~within in~~ accordance with the prevailing Articles of Association of Costs Lawyer Standards Board Ltd. Articles dated 25 February 2014 have been used for the purposes of these terms.

#### **1. Delegated authority**

The CLSB has undertaken the role of approved regulator under the Legal Services Act 2007 ("LSA") since 31 October 2011 following delegated authority of the Association of Costs Lawyers ("ACL"). The CLSB authorises and regulates Costs Lawyers to undertake the following reserved legal activities under the LSA:

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

#### **2. Objectives of the Board**

The Board will take decisions with the aim of promoting ~~act within~~ the regulatory objectives of the LSA:

- 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 consumers.
- Promoting completion 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 profession principles.

The professional principles are that Costs Lawyers:

- Act with integrity and professionalism.
- Comply with their duty to the court in the administration of justice.
- Act in the best interests of their client.
- Provide a good quality of work and service to each client.
- Deal with the regulators and Legal Ombudsman in an open and co-operative way.
- Treat everyone with dignity and respect.
- Keep their work on behalf of their client confidential.

#### **~~2.~~ 3. Separation of regulatory and representative function**

It is a requirement under the LSA that the functions of regulation and representation (undertaken by the ACL) are separate. The Board will oversee that the CLSB has in place arrangements that comply with the Internal Governance Rules 2010~~09~~ issued by the Legal Services Board (“LSB”) that in particular:

- Observe and respect the principle that the ACL, in its representative function, must not exert, or be permitted to exert, undue influence or control over the performance of the regulatory function delegated to the CLSB.
- Ensure that the regulatory function is not prejudiced by the representative function and interest of the ACL.
- Ensure the exercise of the regulatory function is, so far as is reasonably practicable, independent of the representative function of the ACL.
- Ensure that any person on the Board of the CLSB is able to notify the LSB where they consider that their independence or effectiveness is being prejudiced.

### ~~3.~~ **4. Constitution of the Board (including Chair)**

The Board will be made up of 3 lay person non-executive directors (“NED”), one being the Chair and 2 non-lay person non-executive directors (“NED”). The ACL is the only shareholder of the CLSB and in accordance with Article 39 it shall not attend Board meetings.

### ~~4.~~ **5. Meetings**

The CLSB will give at least 7 days’ notice of a Board meeting. The Board will meet 4 times a year, additional meetings will be held on a needs be basis. Board meeting dates will be set well in advance and will be notified to the Board. Board members will use best endeavours to ensure they are in attendance. Only in exceptional circumstances e.g. (for example, where it is not possible to achieve a quorum) ~~present,~~ would a Board meeting ~~date be re-scheduled~~ postponed.

### ~~5.~~ **6. Agenda items**

A NED may request that an agenda item be listed, providing a minimum of 7 days’ notice has been given, and may seek a Board resolution based on that agenda item.

### ~~6.~~ **7. Quorum**

To be quorate, a minimum of 3 NEDs must be present. Of those present, there should be a lay majority. A NED can take part in a Board meeting by making submissions and voting in writing, by conference call or other means of telecommunication as long as everyone involved in the meeting can hear each other. NEDs taking part in this way will be considered present at the meeting and will be entitled to vote and be counted in the quorum.

### ~~87.~~ **Voting**

A NED may vote on a resolution unless they have declared any direct or indirect interest in the matter under vote. A vote shall be by show of hands of those NEDs present, ~~if~~ if the vote is equally divided, the Chair shall have the casting vote.

### ~~98.~~ **Attendance by others**

The Chief Executive will be in attendance to inform the Board. The Company Secretary (if a separate person) will be in attendance to take minutes. Other employees and third parties will be requested to attend by invitation as deemed appropriate by the Board.

**109. Chair ~~and~~ Vice-Chair**

These appointments shall be made in accordance with ~~prevailing the~~ Board Appointment Rules. In the event the Chair is unable to attend, the Vice-Chair will assume that role and will have the casting vote rights of the Chair.

**110. Minute taking**

The Company Secretary will take minutes of the Board meetings and will deal with all required notifications and filings.

**121. Sub-~~committees~~**

The Board may delegate part of its authority to an appropriately authorised, and formally constituted sub-committee, ~~such as a-e-g-~~ remuneration committee. Any such delegated authority will be documented and agreed by the Board in the form of written terms of reference for that sub-committee. Any sub-committee formed by the Board shall report to the Board at meetings and additionally as required by the Board.

**132. Equality ~~and~~ diversity**

The Board will comply with the CLSB Equality ~~and~~ Diversity Policy.

**143. Review**

These terms will be kept under review to ensure they are current and fit for purpose.

**END**

BY EMAIL

Kate Wellington  
Chief Executive  
Costs Lawyers Standards Board



LEGAL SERVICES  
**BOARD**

Legal Services Board  
3<sup>rd</sup> Floor, The Rookery  
2 Dyott Street  
London  
WC1A 1DE

[www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk)

23 January 2020

Dear Kate

**Legal Services Board (LSB) review of Practising Certificate Fee (PCF) approval process, including targeted review of non-regulatory permitted purposes**

On 9 December 2019 we wrote to you about the LSB's review of the PCF approval process, including a targeted review of the regulators' approach to the non-regulatory permitted purposes ('the review') and invited you to attend an initial meeting to discuss the LSB's emerging thinking on the project.

Following confirmation of your attendance at the initial meeting on 26 February, and as indicated in the previous letter, I am writing to you to provide more information about our review to inform our initial discussion, and our expectations regarding engagement on the project.

**The review**

*Background and rationale*

As an oversight regulator, each year the LSB must assess the Approved Regulators' (AR's) applications under section 51 of the Legal Services Act 2007, for the approval of their respective PCF. Section 51(2) stipulates that an AR may only apply amounts raised by PCF for one or more of the permitted purposes listed in section 51(4).

Our process for assessing PCF applications remains largely unchanged since it was first introduced in 2011. In this time, the LSB's overall approach to regulation has evolved significantly. We consider the review to be an opportunity to create a shared understanding of the purpose, benefits and costs of regulation, on the basis that a better appreciation of those issues ought to lead to improved standards across the sector.

We also intend the review to be an opportunity to see where transparency might be improved, to allow those that pay the PCF to drive accountability for the expenditure of PCF income and to inform the LSB's oversight responsibilities.

## *Initial working proposals*

In preparation for the review, we have assessed all PCF applications for 2018/19 and 2019/2020 with the purpose of identifying themes, to inform our initial working proposals for discussion with ARs and RBs and to discuss specific areas where our understanding could be improved.

The proposals and an analysis of all subsequent contributions and discussions will inform the proposed revisions to the current [LSB's Practising Fee Rules 2016](#) ('Rules') and [Guidance to Approved Regulators \(ARs\) on Practising Certificate Fee \(PCF\) applications](#) ('Guidance'), which we will consult on in June 2020. We intend to implement the final Rules and Guidance in November 2020 ahead of the 2021 PCF cycle.

The themes and initial working proposals are intended to stimulate discussion and are set out in Annex A.

## **Next steps**

We are looking forward to meeting you in February to hear your views on our work and our working proposals. We intend to complete our first round of engagement all with ARs and RBs by holding bilateral meetings in February 2020 to discuss the initial working proposals. Once the first round of engagement is complete, we will invite all ARs and RBs to participate in a workshop/s on the initial working proposals so that they can be openly discussed and further developed. Our project plan and anticipated activity timetable for each deliverable is set out in Annex B.

If you have any questions in the meantime please contact me as indicated at the foot of this letter or Carla Duval, Regulatory Policy Associate ([carla.duval@legalservicesboard.org.uk](mailto:carla.duval@legalservicesboard.org.uk) or 0207 271 0083).

Yours sincerely,

**Sally Al-Saleem**

Regulatory Policy Manager

**E:** [Sally.Al-Saleem@legalservicesboard.org.uk](mailto:Sally.Al-Saleem@legalservicesboard.org.uk)

**T:** 0207 271 0071

## **Annex A: Initial working proposals**

### **1. Overarching purpose of the PCF approval process**

While the Rules and Guidance set out a list of criteria and evidence the LSB will take into account in our assessment, the LSB's priorities and degree of scrutiny we will give to PCF applications could be clearer in our Rules and Guidance.

We will set out some principles as part of an overarching statement which will clarify the overall purpose of the PCF approval process. This will set the scene for the other key themes which will be examined through this review. The proposed principles will also inform a broader narrative which the LSB will develop on our expectations of an effective regulator and which sets out how the different strands of our work fit together.

### **2. Permitted purposes**

Generally, there is a lack of transparency on the allocation of PCF income to permitted purposes activities and a need for clarity on whether the methodology ARs use to allocate PCF income to permitted purposes is compliant with section 51 of the Act. Neither the Rules nor Guidance address these.

We propose to ensure there is transparency of information to allow those that pay the PCF to drive accountability for the expenditure of PCF income and allow the regulated community (and the LSB) to better scrutinise spend on non-regulatory permitted purpose.

We also propose to ensure the methodology ARs use to allocate PCF income to non-regulatory permitted purposes is compliant with section 51 of the Act.

### **3. Reserve arrangements**

Generally, there is a lack of clarity about how ARs have determined their reserve arrangements and how much PCF income is accumulated in them. The Rules refer only to a broad obligation for ARs to give an explanation of contingency arrangements where unexpected regulatory needs arise during the PCF year and the Guidance only asks that ARs have reserves policy which ensures that an adequate level is set for the upcoming budget.

We propose that ARs set out a clear reserves policy, justification for it, the level of reserves held and assurance that they are set at an adequate level for the upcoming budget.

We also propose that ARs ringfence reserves which contain surpluses generated directly or indirectly from PCF income or explain why it cannot.

### **4. Equality and regulatory impact assessments**

In general, there is a lack of meaningful equality or regulatory impact assessments in PCF applications despite proposals for PCF increases or changes to the PCF methodology for charging PCF, or persuasive explanations why these assessments are not necessary. Lack of meaningful consideration and information provided by ARs on equality issues, impacts on the LSB's obligation to comply with its public sector equality duty under the Equality Act 2010.

Our proposal is that an initial equality impact assessment of any differential impacts on individuals in the possession of protected characteristics should be conducted as a minimum. If the initial equality impact assessment reveals more than a minimal impact, then a full impact assessment should be undertaken.

We also propose that ARs/RBs to show clear understanding of the context in which they operate to ensure any changes or risks to the sector have been considered.

## 5. Consultation and engagement

ARs consult annually on the PCF, but most of the PCF applications for 2019/20 show that the regulated community was not adequately engaged by ARs and the costs and benefits of regulation and what it is achieving has not been meaningfully communicated. There is also a lack of transparency around how consultation responses were considered and whether they resulted in changes to the PCF proposal. The Guidance encourages ARs to conduct regular and periodic consultation (but must consult if there is an increase in PCF or if the methodology for calculating the PCF changes) but is silent on the form, and manner of the consultation.

We propose that ARs

- should consult if there is a PCF increase or change in methodology.
- should publish an account of what the expenditure of PCF income in the previous PCF year has achieved
- demonstrate that they have taken meaningful steps to engage their regulated community, which could have a range of manifestations such as the publication of costed business plans
- demonstrate how they have considered responses and any changes they have made to their proposal as a consequence or explain why they have not done so.

## 6. Addressing specific areas of improvement

Some ARs regularly fail to address issues or specific points of improvement identified in previous PCF decisions despite the Guidance reinforcing the need for this.

We propose to make clear on the face of our Rules that we will be rigorous in our follow up to ensure all ARs demonstrate they have addressed issues identified in the decision notice for the previous year.

## 7. Interim measures to collect limited PCF

There may be some instances where the specific issues identified in the application may have supported refusal. The existing Rules set out the process if a PCF application is refused and note that the LSB may specify the circumstances in which we would permit the AR to charge a PCF under its regulatory arrangements as an interim measure pending consideration and approval of its full application. However, neither the Rules of Guidance, specify what these circumstances are.

In discussion with ARs, we propose to specify the circumstances in which the current Rules allow ARs to collect a limited PCF as an interim measure if the LSB refuse their PCF application or a component of it, pending resubmission or appeal of their application (or for example, the need for the AR to reconsult on the PCF).

## **Annex B: Planned activity for the LSB's review of the PCF approval process**

### **Key milestones over the next 12 months**

#### February 2020

- Bilateral meetings with participating approved regulators and regulatory bodies

#### March 2020

- Working group meetings with participating approved regulators and regulatory bodies
- Publication of workshop materials on the LSB website
- Analysis and assessment of stakeholder views.

#### April 2020

- Final policy position paper to be developed informed by stakeholder analysis and additional evidence gathered.

#### May 2020

- Soft consultation on final policy positions reached.

#### June 2020

- Publication of consultation on revisions to LSB rules and guidance. Consultation to run for 12 weeks.

#### September/October 2020

- Consideration and analysis of all consultation responses.

#### November 2020

- Publication of an updated final LSB Rules, guidance, summary of responses and analysis of consultation responses.

# News in brief - 05.03.2020

## **LSB chief questions future of smaller regulators**

The chief executive of the Legal Services Board (LSB) has cast doubt on whether the smaller regulators have the size to deliver what is required of them.

Speaking last week at a Westminster Legal Policy Forum event on legal regulation in London, Matthew Hill, who said he was being openly provocative, questioned whether “smaller regulators” may “lack the scale that is necessary to deliver public outcomes”. He did not name any regulators in particular, but the Costs Lawyer Standards Board (CLSB) is the smallest of them all.

Speaking more broadly, Mr Hill highlighted that unmet legal need was still a major problem and that the legal market was not working “for a significant proportion of people and businesses”.

This would be the likely focus of the board’s reform agenda; he said there was “a lot that can be sweated out of the current regime before wholesale reform, but wholesale reform would undoubtedly help”.

He explained: “The existing system is undoubtedly complex. It’s built around professions and not consumers. For example, reserved legal activities and title-focused regulators make sense to regulators and sectors, but not necessarily to the public.”

Sustaining what he called “manufactured” independence of regulators like the CLSB from their representative bodies was “arguably costly”, he continued.

He described the system of regulation as being like a chair with two legs: “You can sit on it perfectly comfortably provided a lot of people spend a lot of time holding it steady for you. We do spend a lot of time making independence work by investing time and effort in it.”

# LeO humiliated as it is forced to drop 21% budget increase

By [John Hyde](#) | 31 March 2020

**T**he legal complaints handler has been forced to back down over controversial plans to ask lawyers to pay an extra £2m to fund its running costs.

Plans to hike the budget, **criticised** by the Law Society and Bar Council, were this month brought to a halt after a damning assessment of the proposal process by the oversight regulator, the Legal Services Board.

The Legal Ombudsman, through its umbrella organisation the Office for Legal Complaints, had **applied** for a total budget of £14.949m, representing an increase of 21% over the current budget.

But at its meeting last week, the LSB board was invited to reject this proposal, which had initially asked for a 30% increase. Faced with the inevitable, the OLC withdrew its proposed budget in favour of an inflation-only increase.

In her post-meeting blog, Dr Helen Phillips, LSB chair, wrote: 'The board and the OLC representatives had a frank and open conversation about the Legal Ombudsman performance and we all agreed that it continued to be unacceptable. The OLC presented the issues and causes candidly to the board and we had a constructive discussion about the critical improvements that must be made within the organisation and to services.'

Board papers reveal that LSB chief executive Matthew Hill wrote in February outlining 'significant concerns' about the substance of the ombudsman's proposals and saying it was highly unlikely his board would approve them.

It was suggested the process for setting next year's budget has 'undermined confidence' in the ombudsman. Significant new concepts have been introduced including heavy reliance on a new 'fast stream resolution process' that will be trialled this year, but the LSB said there was no information provided about the impact of this change.

A proposal to increase the levy on the legal profession by 30% came with no prior notification or consultation, even though the LSB had expressed concerns when the levy was envisaged to rise by 19.5%. The LSB noted weaknesses and change management, with high levels of attrition and 'worrying' staff survey results.

While the LSB praised the ombudsman's greater candour about its problems, it was felt the significant problems had not been properly addressed and performance had deteriorated since October. The latest budget plan was 'inadequately evidenced' and did not make out a sufficient case to show potential improvements. Allied with a historical pattern of failure to meet existing performance targets, the LSB lacked confidence in the ombudsman's ability to deliver its new targets.

The papers also outline the extent of the performance issues suffered by the ombudsman. Investigators are expected, according to their targets, to close an average of 7.3 cases per month. This was achieved last October but since then performance has dropped to 6.5 cases per month. More than a third of staff are currently closing fewer than five cases a month. Staff turnover remains, with average attrition of 22% and around 30% of investigators leaving the organisation.

More than 3,000 cases are currently waiting in a pre-assessment pool. Low complexity cases currently take around six months on average to conclude, with the time rising to 12 months for higher complexity cases.

Meanwhile, the LSB confirmed the appointment of Elisabeth Davies, a former chair of the Legal Services Consumer Panel, as the new chair of the OLC.