



## Costs Lawyer Standards Board

### AGENDA

Wednesday 23 October 2023 @ 10:30am  
Remotely via videocall

<b>Board:</b>	Rt Hon David Heath CBE Stephanie McIntosh Andrew Harvey Andrew McAulay Paul McCarthy	Lay NED (Chair) Lay NED (Vice-Chair) Lay NED Non-Lay NED Non-Lay NED
<b>In attendance:</b>	Kate Wellington Jacqui Connelly Lori Frecker	CEO Director of Operations Director of Policy

*Note: Agenda items in blue are standing items*

	Agenda item	Paper	Publish <sup>1</sup>	Lead
1	<b>Opening matters</b> 1.1 <a href="#">Quorum and apologies</a> 1.2 <a href="#">Declarations of interest on agenda items</a> 1.3 Introduction – Director of Policy	- - Item 1.3	  No (A)	DH DH DH/LF
2	<b>Minutes</b> 2.1 <a href="#">Approval of minutes (28 June 2023)</a> 2.2 <a href="#">Matters arising (28 June 2023)</a>	Item 2.1 -	Yes	DH DH
3	<b>Strategy</b> 3.1 <a href="#">Progress against Business Plan: Q3 2023</a> 3.2 Consultation feedback on strategy and business plan 3.3 Education – launch of new CLPQ	Item 3.1 Item 3.2 -	Yes Yes	KW KW KW
4	<b>Board matters</b> 4.1 Amendment to Board Appointment Policy 4.2 NED reappointments	- -		DH DH

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

5	<b>Finance</b> 5.1 <a href="#">Quarterly report: Q3 2023</a> 5.2 Outcome of practising fee application 5.3 Interest bearing account options	Item 5.1 - Item 5.3	No (D, E)  No (D, E)	JC KW JC
6	<b>Risk management</b> 6.1 <a href="#">Review of risk register</a>	Item 6.1A+B	Yes	KW
7	<b>Regulatory matters</b> 7.1 Code of Conduct consultation outcome 7.2 New guidance on providing services to consumers 7.3 Progress update on ongoing competency 7.4 Regulatory Information Service	Item 7.1 Item 7.2 Item 7.3 Item 7.4	Yes Yes Yes No (B)	KW KW KW KW
8	<b>Legal Services Board (LSB)</b> 8.1 <a href="#">Work updates</a> 8.2 2023 regulatory performance assessment	Item 8.1 Item 8.2	Yes Yes	KW KW
9	<b>Stakeholder updates<sup>2</sup></b> 9.1 <a href="#">ACL Council meeting minutes</a> 9.2 Judicial appointments update	Item 9.1 -	Yes	KW AH/KW
10	<b>Operations</b> 10.1 Practising history data project	Item 10.1	Yes	JC
11	<b>Publication</b> 11.1 <a href="#">Confirmation that papers can be published</a>	-		DH
12	<b>AOB</b>	-		DH
13	<b>Next meeting</b> Date: <a href="#">30 January 2024</a> Venue: <a href="#">Remotely via videocall</a>	-		DH

---

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

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

**MINUTES**  
**Costs Lawyer Standards Board Ltd**  
**Wednesday 28 June 2023 at 9:30 am**  
**Gatehouse Chambers, London**

<b>Board:</b>	Rt Hon David Heath CBE	Lay NED (Chair)
	Stephanie McIntosh	Lay NED (Vice-Chair)
	Andrew Harvey	Lay NED
	Andrew McAulay	Non-Lay NED
	Paul McCarthy	Non-Lay NED
<b>In attendance:</b>	Kate Wellington	CEO
	Jacqui Connelly	Director of Operations

**1. OPENING MATTERS**

**1.1** The Chair declared the meeting quorate. There were no apologies. The Chair thanked board members for their participation in two productive meetings that were held on the previous day, namely an annual board strategy session and a board-to-board roundtable with IPReg.

**1.2** There were no declarations of interest on any agenda item.

**2. MINUTES**

**2.1 Minutes dated 29 March 2023**

The board considered the minutes of its last scheduled quarterly meeting on 29 March 2023. The board agreed the minutes as being a true record for signing.

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

**2.2 Matters arising**

The board considered the matters arising from the minutes of its meeting on 29 March 2023. Kate explained that the following matters, which had been outstanding from the January board meeting due to resource constraints in Q1, had been successfully completed in Q2:

- develop first annual risk outlook for publication; and
- develop and issue consultation on changes to the Code of Conduct.

The board was provided with a copy of the annual risk outlook and Kate fed back on the development process. The board was also updated on progress with the Code of Conduct consultation, including a proposed new layout for the Code to make it more accessible and user friendly.

The board was informed about the recruitment of a new Director of Policy who would be starting on 1 August. Board members looked forward to meeting her at the next scheduled board meeting.

### **3. STRATEGY**

#### **3.1 Progress against Business Plan: Q2 2023**

The board was provided with a progress update against the 2023 Business Plan for Q2. Kate noted that nine of the 12 priorities were underway, with two already completed. The board considered and approved the executive's proposed strategic priorities for Q3 of 2023.

#### **3.2 Entity regulation next steps**

The board continued its ongoing discussion around whether any form of entity regulation was viable for the Costs Lawyer profession. In March, the board had considered a paper setting out different models of entity regulation that the CLSB could implement, ranging from a full statutory scheme to a light-touch approach. During Q2, the executive had taken initial steps to scope market appetite and costings in relation to the options that the board felt had the most merit, and the board was presented with a paper setting out the findings of that scoping work.

The board discussed the scoping paper in detail, and in particular considered:

- whether the likely cost of development, implementation and ongoing monitoring of an entity regulation scheme was proportionate to the intended benefits;
- alignment of the project with the regulatory objectives, including promoting competition in the market for legal services and encouraging a strong, independent and diverse legal profession;
- the different resource requirements, possible structures and likely risks for each option;
- uncertainty around return on investment, for both the public/consumer interest and for the profession as a whole;
- alternative models, such as finding synergies with existing entity accreditation schemes;
- the experience of the other legal regulators in implementing entity regulation; and
- potential other ways of achieving the same or similar purposes to entity regulation, with less risk and cost attached.

Overall, the board agreed that the high (and potentially uncertain) input costs and risks of developing a form of entity regulation for Costs Lawyers outweighed the likely value, at least at this stage of the market's evolution. The main aim of such a scheme would be to raise standards within the unregulated part of the sector and encourage independence from other legal professionals, and there were less risky and less costly options for achieving those ends that could be tried first. It was agreed that the work done so far on entity regulation was helpful in reaching that conclusion, and could be returned to in the future if the context changed.

The board agreed that exploring alternative ways of achieving the same aims should be incorporated into the Business Plan priorities scheduled for H2 2023 (particularly Business Plan priorities 7 and 9). The board also agreed to include a priority in the 2024 Business Plan around developing guidance on the CLSB's expectations for unregulated costs firms, as a reference source in the public interest.

***Actions: Add new priority to 2024 Business Plan; Take forward aims of entity regulation through other workstreams.***

### **3.3 2024 Business Plan**

The board provided initial feedback on a draft Business Plan for 2024. Given the need to consult on the Business Plan in July (in time to apply to the LSB for approval of the 2024 practising fee), the Business Plan would be subject to adjustments based on discussions at the board's strategy session held on 27 June. It was agreed that a final draft would therefore be circulated for approval by email following the meeting.

***Action: Circulate final draft of Business Plan by email for approval.***

## **4. BOARD MATTERS**

### **4.1 2024 board dates**

The board agreed the following meeting dates for 2024:

- 30 January
- 23 April
- 16 and 17 July
- 23 October

The board also agreed to reschedule its next meeting from 20 September to 19 October, to accommodate board member availability.

***Action: Publish new board dates on CLSB website.***

### **4.2 Tenure renewals and succession planning**

For the purposes of continuity and succession planning, the board was provided with information about each NED's current tenure and expected ultimate retirement date from the board. The board agreed that overall there was a good staggering of anticipated retirements, subject to two factors.

First, given the size of the board, continuity issues could arise if board members did not provide good notice of any future intention not to renew their appointments. No board members indicated an intention not to put themselves forward for renewal, but all agreed to provide as much notice as possible if this changed in the future, to allow for recruitment planning.

Second, the Board Appointment Policy as currently drafted permits individual board members to be reappointed no more than twice. The board agreed that this was counter to its aim of having the flexibility to appoint members for shorter terms, to help stagger appointments and thus to promote continuity. It was therefore agreed that a proposed amendment to the Board Appointment Policy be brought to the board's October meeting for consideration. The overall term limit for board members should remain at 7 years.

***Action: Bring proposed amendment to Board Appointment Policy to next meeting.***

## **5. FINANCE**

### **5.1 Quarterly report: Q2 2023**

Jacqui introduced the quarterly finance report. The board noted the financial position, including that careful budget management during Q2 had significantly reduced the projected budget shortfall for the year. Board members noted that the process of continually improving the information contained in the finance report was proving beneficial for board scrutiny, as it was now easy to see what had been planned for each budget item, whether and how the plan had changed during the year, and why.

### **5.2 2022 accounts**

The board unanimously approved the 2022 financial accounts for signing.

Board members also agreed to provide updated mandates for the CLSB's bank accounts with Lloyds, which had been prepared for signing after the meeting.

***Actions: Sign and file 2022 accounts; Sign and submit updated bank mandates.***

### **5.3 2024 budget and PCF consultation**

Kate introduced this item, explaining how the proposed budget and consultation had been developed. She noted that, given the persistent high levels of inflation in England and Wales, a 10% uplift had been assumed on budgeted costs. She also explained how the budget surplus from 2022 of circa £24k had been deployed to offset expenditure in 2024 and reduce the practising fee from what it would otherwise have been.

The board discussed the proposal to increase the practising fee to £290, as informed by the proposed budget. It was agreed that it was appropriate to apply the 2022 surplus to offset expenditure in 2024 – in line with requirements in the LSB's Practising Fee Guidance – and that this would help to keep the increase in the fee below inflation, equating to a reduction in real terms. The board was conscious that the fee might need to increase further in future years – where there was no previous year's surplus available to apply – but it was agreed that future years' expenditure should not impact the present year's practising fee, in line with the LSB's Practising Fee Rules.

The board considered the consultation documents and discussed the consultation questions posed, including any potential differential impact of increasing the practising fee as between sole practitioners and Costs Lawyers whose employers pay their fee.

The board approved the consultation documents, including the budget, for publication.

***Action: Publish practising fee consultation once all supporting materials (including 2024 Business Plan and new mid-term strategy) have been finalised***

## **6. RISK MANAGEMENT**

### **6.1 Review of risk register**

Kate noted that, as agreed in March, the risk register had been updated to include mitigating actions in section C and the new version had been published on the website. Board members were invited to comment on the mitigating actions and otherwise carry out the usual quarterly review of the risk register.

The board discussed the longer term structural reforms highlighted in section D and how these were linked to themes from the strategy session held on 27 June.

A key emerging risk in the market – both for Costs Lawyers, other legal practitioners and their clients – related to publication of the new fixed costs rules by the Civil Procedure Rule Committee. While the rules had been published in draft, they did not appear to be subject to consultation and publication was merely by way of prior notice to those affected. The non-lay NEDs highlighted areas of potential risk for clients arising from the rules. For example, where a claim is reallocated to a different track part-way through proceedings, the rules applicable to the new track or complexity band will apply ab initio. This creates an unexpected risk of non-recovery (and potentially insolvency) for clients and solicitors, overlaid by a risk of negligence for Costs Lawyers who are not aware of (and thus do not advise on) this new risk. Other examples were emerging from ongoing commentary in the sector.

The board also discussed the potential impact of the new rules on competition and access to justice in the sector, given early signs that commercial firms are likely to shy away from claims worth less than the £100k cap going forward. There is some suggestion these claims could be bundled together and outsourced, which could lead to poor client outcomes in terms of service quality or regulatory protections.

The board agreed that it might be appropriate – depending on what action other stakeholders take – for the CLSB to prepare a risk bulletin, or a series of bulletins, on issues arising from the new fixed costs rules once these become clearer. This would be directly relevant to the regulatory objectives of protecting the interests of consumers and the public, as well as supporting a strong and effective legal profession in terms of the solvency risks involved. Paul agreed to help with identifying and curating these risks as they emerge.

**Action: Update risk register and monitor risks from fixed costs rules as they emerge.**

## **7. REGULATORY MATTERS**

### **7.1 Education – Accreditation**

Kate informed the board that, in June, the CLSB's Accreditation Panel granted ACL Training accreditation to deliver the new Costs Lawyer Qualification from September 2023. The board agreed that this was a significant milestone for both organisations, and for the profession as a whole, and discussed the benefits and learnings that had come out of the accreditation process and wider education reforms. The board was provided with the accreditation letter sent to ACL Training on 19 June and Andrew M also fed back on the experience of being a member of the Accreditation Panel. The board discussed the communication channels that would be used to promote the course going forward.

The board was also provided with an update on ACL Training's recent initiative to look at whether an apprenticeship route to qualifying as a Costs Lawyer was viable, including ways in which the CLSB could support that work. Board members were supportive of the proposal and agreed that the CLSB should keep abreast of developments and assist as appropriate.

## 7.2 Education – Qualifying Experience

Kate provided a report on work that had been undertaken in Q2 to progress the CLSB's new framework for Qualifying Experience, including:

- finalisation of the online application forms and template documents;
- implementation of the communications plan;
- delivery of a webinar for existing students and a joint presentation with ACL Training at the ACL Manchester conference;
- development of a supervisor register;
- processing of the first applications from students under the new framework.

This activity generated questions from students about how the rules applied to their unique circumstances, and two issues were raised with the board for consideration. First, the board discussed how the transitional arrangements applied to students whose existing Qualifying Experience supervisor did not meet the requirements in the new Training Rules. The board considered and approved a new policy statement setting out how students in particular circumstances would be treated, to ensure fairness and consistency.

Second, the board considered the approach that should be taken where a trainee is not in a role/organisation where they have the opportunity to practise the skill of advocacy during their Qualifying Experience as required by the Training Rules (by reference to the Costs Lawyer Competency Statement). Board members discussed the prevalence of advocacy-based work within the profession now and in the future, and opportunities to gain experience. The board approved guidance – to be published on the CLSB website as part of the Qualifying Experience FAQs – emphasising the importance of practising advocacy during Qualifying Experience but providing practical suggestions for how that experience might be obtained. The board discussed whether recent judicial comments on the quality of advocacy would be relevant to Costs Lawyers, even if by analogy, and thus should be considered in the context of competency. Kate agreed to look into this further.

The board acknowledged that during the transition period it was likely that other matters would come to light that needed to be addressed promptly to avoid any detriment being caused to students. The board therefore authorised the executive to take decisions on those matters – guided by the principles of clarity and consistency, pragmatism and practicality, and fairness to affected students – reporting to the board on an exceptions basis where appropriate.

Finally, given that this was the first time the CLSB had been responsible for determining whether students meet the Qualifying Experience requirements, and given that the issue had been put to the board both in and out of meetings over several months, the board agreed it was an appropriate topic for recording in a Board Decision Note. The board approved a draft Decision Note for publication.

***Actions: Adopt policy statement on transitional provisions; Adopt new FAQ on advocacy experience; Consider relevance of judicial commentary on standards in advocacy; Publish Board Decision Note.***

### 7.3 Progress against ongoing competency plan

The board was provided with a progress update against the CLSB's ongoing competency work plan and was asked to consider two outputs.

First, the board considered new text for the CLSB's policy statement on enforcement and sanctions, covering competency issues and how they will be treated in a disciplinary context. The board discussed the need to include guidance on the regulatory impact of temporary sources of a lack of competency or capacity, such as ill-health, where there is no issue with underlying professional knowledge and skills. The board approved the proposed changes to the policy statement, subject to an amendment to cover this additional issue.

Second, the board was presented with the first draft of an expansion to the Competency Statement to include professional skills from the point of authorisation to extend throughout a Costs Lawyer's career. Kate explained that, since post-qualification experience was rarely a reliable indicator of seniority or level of responsibility for Costs Lawyers (unlike other legal professionals), a different approach had been taken from other regulators. The project had focused on three practising scenarios in which Costs Lawyers are likely to find themselves after qualification (at any stage), namely: (i) as an experienced/specialist practitioner; (ii) as a people manager; and (iii) as a business owner.

The board discussed the draft in detail, including:

- the descriptors and behavioural indicators for the specific skills listed;
- the nature of the document, including whether it was mandatory or advisory and the implications of each option;
- links between the skills and the risks identified in sections C and D of the CLSB's risk register;
- how the document could support a transparent and consistent assessment of competency in a disciplinary context;
- opportunities to raise standards in the unregulated part of the costs sector through the business and commercial skills aspects;
- whether and how to consult on the document and next steps.

Overall, the board agreed that the document should be positioned as indicative guidance, rather than a mandatory set of skills that must be demonstrated at the relevant career stage. There were several reasons for this, most persuasively:

- this was consistent with the CLSB's approach of supporting and encouraging practitioners to meet high professional standards, over and above mere compliance;
- there was no evidence of existing ongoing competency issues in the market that required addressing through mandatory requirements;
- the document could be broader and deeper – and thus more valuable to practitioners and their clients – if positioned as guidance;
- guidance would still be indicative, although not determinative, in a disciplinary context, allowing for responsiveness to individual circumstances;

- guidance would be more able to flex and change as the market and client expectations change;
- it must be for the practitioner to assess whether and when they have reached each relevant career stage, as trying to precisely define the boundaries of each stage would be counterproductive to the purpose of the document and the LSB's policy statement.

The board agreed that consultation on the next version of the document would be important, although noting the need to avoid consultation fatigue given that a number of formal CLSB consultations were already active or scheduled. It was agreed that, instead of preparing a formal consultation document, the CLSB should convene a roundtable or workshop for those who are interested. Board members felt that a discursive event would be more likely to deliver detailed feedback from the profession on this kind of topic based on experience from the initial Competency Statement project.

***Actions: Add wording to the policy statement on enforcement and sanctions on temporary lack of competency then publish new version; Proceed with next steps on expansion of the Competency Statement, including updating the draft to address board feedback and convening a workshop.***

#### **7.4 Feedback from social mobility event**

David and Jacqui provided feedback on a webinar hosted jointly in June with ACL and KE Costs to coincide with Social Mobility Awareness Day. This built on the findings from the latest CLSB diversity survey, which focused on social mobility in the profession, as well as topical issues raised at the ACL conference. The event was successful and generated a good level of interest across the profession. Jacqui noted that the CLSB and ACL will work together to follow up the event by gathering case studies of what different firms are doing with the aim of sharing good practice.

#### **7.5 Draft cease and desist letter templates**

Kate introduced this item. She explained that it was one of the outputs of ongoing work around considering what (if any) action could be taken when faced with common scenarios in which unregulated providers undermine the regulatory objectives and/or generate poor consumer outcomes. It aimed to address challenges such as:

- the LSB's decision not to undertake a full review of the list of reserved legal activities in the Legal Services Act 2007;
- the lack of statutory protections for the 'Costs Lawyer' title, with misuse of the title causing confusion for clients (including professional intermediaries); and
- complaints received about unregulated costs advisers that the CLSB does not have the jurisdiction to address.

The board considered three template letters, prepared for the CLSB by a barrister with experience in costs regulation, addressing the following scenarios:

- i. where a person who has never qualified as a Costs Lawyer calls themselves a Costs Lawyer;
- ii. where a person does not have a practising certificate but continues to call themselves a Costs Lawyer;

- iii. where a complaint is made against an unregulated person who is not holding themselves out as a Costs Lawyer.

The board discussed the legal arguments put forward in the letters, the circumstances in which it might be appropriate to send them, the risks involved, and the CLSB's other soft options for dealing with these issues. Overall the board agreed that a version of letters (i) and (ii) could be used in a particularly egregious case of misleading conduct by an unregulated person, to test the legal arguments and possibly create precedent. In such a case, the letter should be heavily tailored to the specific situation.

More broadly, the board supported a push to find creative ways to address issues around protection of title and consumer detriment in the unregulated part of the market, as canvassed in detail at the strategy session on 27 June. This included building up and publishing case studies of detriment that was currently outside the scope of regulation, and following up with IPReg on convening a group from both within and outside the legal services sector to consider consumer protection levers where there is no formal protection of title.

**Action: Progress other workstreams on unregulated providers.**

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

### **8.1 Work updates**

The board received updates in relation to:

- the LSB's project on consumer redress;
- the LSB's project on technology for access;
- the 2023 regulatory performance assessment information request.

### **8.2 Feedback from Q2 meetings**

David provided feedback from meetings with the LSB (and other stakeholders) on consumer awareness and the rule of law and professional ethics, as well as his first meeting with the LSB's new Chair.

## **9 STAKEHOLDER UPDATES**

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

The board noted the minutes of ACL Council meetings held in February, March and April. Jacqui provided feedback on her attendance at the ACL conference in Manchester.

### **9.2 CILEx re-delegation**

The board was made aware of the LSB's recent decision on three issues referred to it by CILEx and CILEx Regulation Limited (CRL), relating to CILEx's proposal to change its delegation of regulatory responsibility from CRL to the SRA. The board discussed how the decision was relevant to the CLSB and agreed that it was helpful to have some degree of clarity around how any future re-delegation would work for the regulatory bodies.

The board felt that it might be appropriate in the future, depending on how the position with CILEx unfolded, for the smaller regulators to have a joint discussion about impact on regulation across the sector.

### 9.3 Annual review of MOU and OP with ACL

The board was informed that the third annual review of the MOU and Operating Protocol (OP) between ACL and the CLSB had taken place in Q2. The organisations had received all the information they needed under the OP in 2022 and there had been no perceived threats to regulatory independence identified during the year. It was agreed that the protocol was working well and that no changes to the documents were necessary at this stage.

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

**Action: Publish annotated version of MOU and OP on website.**

## 10 OPERATIONS

### 10.1 Outcome of 2023 complaints procedure audit

The board considered a report of the complaints procedure audit carried out in H1 2023. The board noted that the audit process is having a positive impact on improving standards and has also allowed the CLSB to start checking that the changes necessitated by a recent revision of the Disciplinary Rules and Procedures are being actioned. The board discussed the challenges around tackling these issues at a firm level in the absence of mandatory entity regulation, meaning there was no equivalent of a COLP or COFA who was responsible for ensuring that changes to a procedure are rolled out across an organisation.

## 11 PUBLICATION

### 11.1 Confirmation that papers can be published

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

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

## 12 AOB

There was no other business.

## 13 NEXT SCHEDULED QUARTERLY MEETING

The next meeting was scheduled for 19 October 2023, remotely by Teams.

There being no further business, the Chair declared the meeting closed at 12:05.

.....  
Chair

### Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes	About ⇒ Our board
3.1	2023 Business Plan	About ⇒ Strategy and governance

3.2	Proposed 2024 Business Plan	Regulatory ⇨ Consultations
5.2	Annual accounts	Regulatory ⇨ Cost of regulation
5.3	Proposed 2024 budget and practising fee consultation	Regulatory ⇨ Consultations
6.1	Risk register	About ⇨ Strategy and governance
7.2	Resources for Qualifying Experience	Qualify ⇨ How to become a Costs Lawyer
9.3	MOU and OP with ACL	About ⇨ Who we are
11.1	Board papers	About ⇨ Our board
<b>Item</b>	<b>Document</b>	<b>Publication location (other)</b>
9.2	LSB decision on CILEx re-delegation	LSB website <a href="#">here</a>

DRAFT



# Annual priorities

## Improving our regulatory arrangements

	Initiative	Progress status / expected completion
1.	Work with internal and external stakeholders to develop a new mid-term strategy for the CLSB, building on the learnings and successes from our first strategy covering the period 2020 to 2023.	<p><b>Achieved (Q3)</b></p> <p><i>We held our scheduled strategy session with the board on 27 June. Following that discussion, we developed a proposed mid-term strategy for consultation alongside the 2024 PCF, business plan and budget. We also sought feedback on the proposed strategy from the CLSB’s Advisory Panel. The strategy was finalised and published in September and the board will be presented with the Advisory Panel’s feedback at this meeting.</i></p>
2.	Deliver the priority activities for the final year of our <a href="#">Consumer Engagement Strategy</a> , and consider what successor initiatives should be put in place going forward.	<p><b>Achieved (Q2)</b></p> <p><i>We scoped terms of reference and membership for a potential user panel as envisaged under the final year’s activities, and found that members’ experiences and needs were likely too disparate to make contributing through a single panel feasible. Having done this scoping work, we decided to focus on identifying individual business clients that could feed into our specific projects under priorities 5, 7 and 9 below.</i></p>
3.	Develop a programme of work to promote the outcomes in the Legal Services Board’s policy statement on empowering consumers in a way that takes into account the unique nature of the market for costs services.	<p><b>In train (expected Q4)</b></p> <p><i>Achieved: We have developed a work programme to ensure compliance with the policy statement and the programme has been approved by the board and socialised with the LSB and LSCP. The first stages of the programme have been implemented, allowing us to identify those Costs Lawyers offering B2C services. A new B2C regulatory framework was developed during Q3 for the practitioners identified through the segmentation exercise and a draft will be put to the board at this meeting.</i></p> <p><i>Outstanding: Once approved, the B2C regulatory framework will be published and embedded in the 2024 practising certificate application form for distribution on 1 November, completing this priority in Q4.</i></p>
4.	Using our new regulatory framework for the Costs Lawyer Qualification, work with	<p><b>Achieved (Q2)</b></p>

	ACL Training to accredit a new course that meets the standards for delivery and competency assurance set by the CLSB.	<i>New Training Rules were approved by the LSB in February and our new regulatory framework was then finalised and published. We appointed an Accreditation Panel, including an independent member to lead on the accreditation process, and that process was carried out during H1 with a Panel visit taking place on 26 April. The Panel made its decision on accreditation in June and the outcome was reported to the board at its June meeting.</i>
5.	Deliver a programme of work aimed at harnessing the unique insights that Costs Lawyers can bring, to stimulate discussion across all the legal regulators about how legal costs can be better controlled.	<b>In train (expected Q4)</b> <i>Scoping work for this project kicked off in Q3 and delivery is expected during Q4.</i>
6.	Investigate the risks and benefits of entity regulation amongst costs firms, including whether there is a cost effective version of entity regulation that may be practical for the CLSB to implement.	<b>Achieved (Q3)</b> <i>The board held its first strategy discussion around entity regulation in March, based on an options paper prepared by the executive. Scoping work was undertaken during Q2 at the board's direction and the results of that work were presented to the board in June. The board decided not to pursue entity regulation further, for reasons recorded in the June board minutes, but outcomes from the scoping work informed a number of other workstreams including new priorities in the 2024 business plan.</i>
7.	Explore ways of encouraging competition in the market for legal services and promoting the interests of consumers through considering: <ul style="list-style-type: none"> <li>• how the CLSB's branding is used by the sector;</li> <li>• how our competency frameworks can ensure the profession provides the best value to end users; and</li> <li>• how our overall framework of regulation could best support the positive role that Costs Lawyers can play.</li> </ul>	<b>In train (expected Q4)</b> <i>Scoping work for this project kicked off in Q3 and delivery is expected during Q4.</i>
8.	Consider whether and how to implement measures to more strongly distinguish between the interests of intermediaries	<b>Achieved (Q3)</b> <i>We identified ways to achieve this priority as part of improving the Costs Lawyer Code of Conduct. Changes</i>

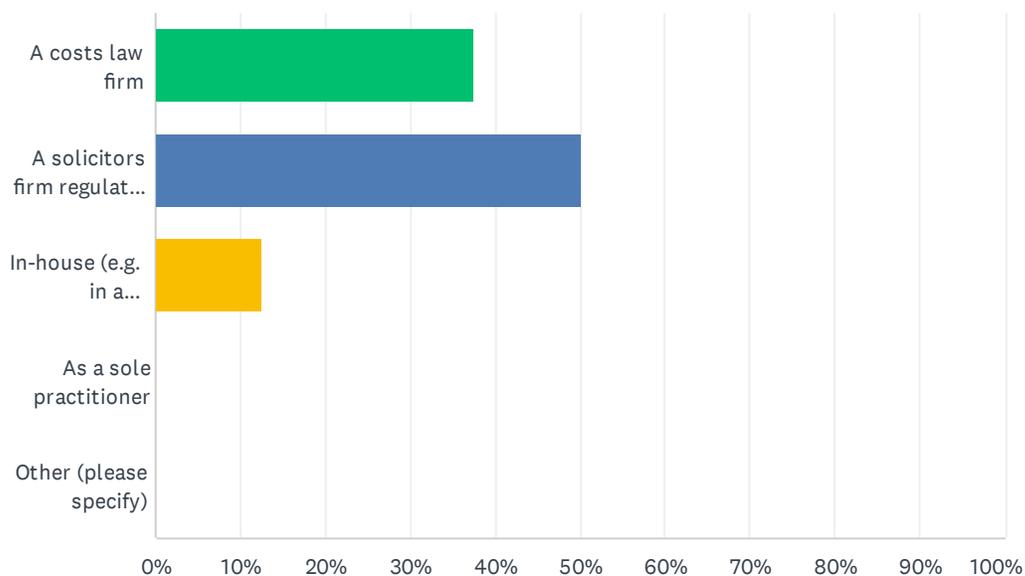
	(professionals who instruct Costs Lawyers on a client's behalf) and the interests of the Costs Lawyer's ultimate client in our regulatory arrangements.	<i>to the Code were approved by the board at its January meeting and a consultation was then issued, closing in mid-July. Depending on the outcome of the rule change application to the LSB, we will implement the changes either late this year or early next year.</i>
9.	Design a project that looks at how the regulation of Costs Lawyers should evolve into the future, taking into account how the profile of our regulated community may change.	<b>In train (expected Q4)</b> <i>Scoping work for this project kicked off in Q3 and delivery is expected during Q4.</i>
10.	Develop a programme of work to align the CLSB's approach to ensuring continued competency with the Legal Services Board's policy statement on ongoing competence.	<b>In train (expected Q4)</b> <i>Achieved: We have developed a work plan to ensure compliance with the policy statement, which has been approved by the board and socialised with the LSB. Amendments to our own policy statement on enforcement and sanctions were considered by the board in June. Following the board's feedback, further material was added to the statement before publication in September. We have also developed a proposed framework for extending the Competency Statement, as envisaged in the work plan, which was considered by the board in June. A working party has been convened and will meet in November to consider the latest version of the framework.</i> <i>Outstanding: The new framework will be finalised in Q4 following feedback from the working party, targeting full compliance by January 2024.</i>
11.	Continue to improve our diversity data collection and, specifically for this year, look at how working cultures and professional environments for Costs Lawyers impact on good equality, diversity and inclusion (EDI) outcomes.	<b>In train (expected Q4)</b> <i>Achieved: The board considered a report on our most recent diversity data in March and comprehensive reports looking at the gender pay gap and social mobility in the profession have been published. Follow-up work in both areas has been planned and a successful event to coincide with Social Mobility Awareness Day was held in June.</i> <i>Outstanding: Implementation of targeted initiatives to act on the data we collected in our two most recent diversity surveys will continue throughout H2.</i>
12.	Deliver the next phase of our digital workplan, including by:	<b>Achieved (Q3)</b> <i>The second item (single complaints repository in database) was completed in Q1. The first and third</i>



	<ul style="list-style-type: none"><li>• improving the visibility of supervision issues in the database;</li><li>• creating a single repository for complaints data in the database;</li><li>• adding action prompts to functionality;</li><li>• revising application forms and adding database functionality resulting from enhancements to the Register of Costs Lawyers made in 2022;</li><li>• capturing regulatory history of individual Costs Lawyers in the database to consolidate and safeguard all available information.</li></ul>	<p><i>items (improving visibility and adding action prompts) were completed in Q2. The fourth item (revising the application forms and adding database functionality) was completed in Q3. The final item (capturing missing aspects of the regulatory history of individuals in the database) was also completed in Q3 and a report on the project will be put to the board at this meeting.</i></p>
--	--	---

## Q1 What type of organisation do you currently work in?

Answered: 8 Skipped: 0

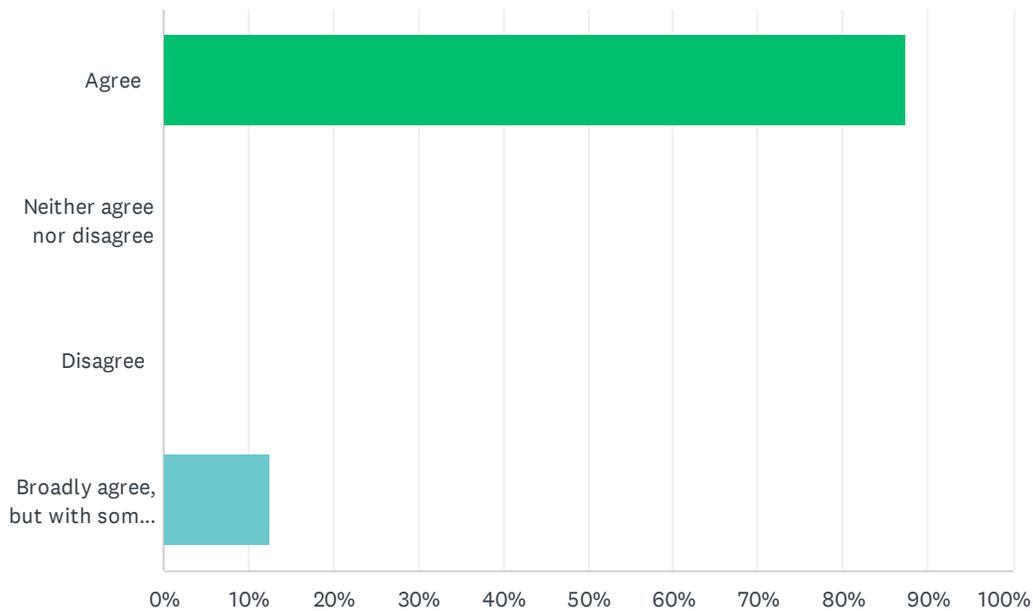


ANSWER CHOICES	RESPONSES	
A costs law firm	37.50%	3
A solicitors firm regulated by the Solicitors Regulation Authority (SRA)	50.00%	4
In-house (e.g. in a corporation, insurer, government department)	12.50%	1
As a sole practitioner	0.00%	0
Other (please specify)	0.00%	0
<b>TOTAL</b>		<b>8</b>

#	OTHER (PLEASE SPECIFY)	DATE
	There are no responses.	

**Q2 Do you agree with the CLSB's mission statement for the next four years, as set out in the draft mid-term strategy? This describes what we do as a regulator. "The CLSB provides effective, proportionate regulation of Costs Lawyers in a dynamic way that promotes consumer choice and understanding, and engenders justified public trust."**

Answered: 8 Skipped: 0

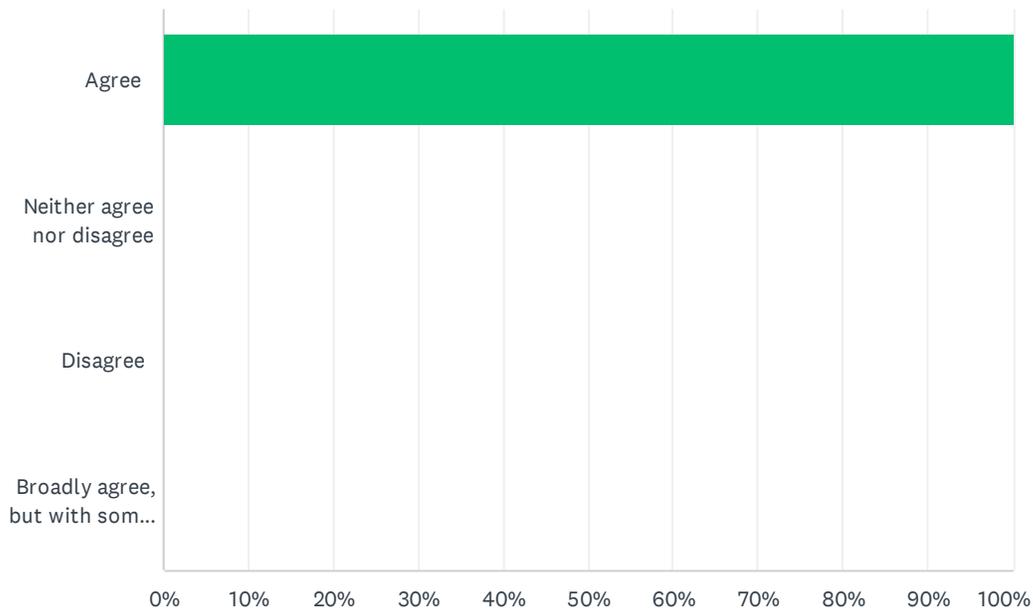


ANSWER CHOICES	RESPONSES	
Agree	87.50%	7
Neither agree nor disagree	0.00%	0
Disagree	0.00%	0
Broadly agree, but with some amendments (please specify)	12.50%	1
<b>TOTAL</b>		<b>8</b>

#	BROADLY AGREE, BUT WITH SOME AMENDMENTS (PLEASE SPECIFY)	DATE
1	I think it's important to recognise the vast majority of costs lawyers work is with lawyers, and not just with the public (lay persons). I would like to see some reference to professionalism.	8/7/2023 3:12 PM

Q3 Do you agree with the CLSB's vision for the next four years, as set out in the draft mid-term strategy? This describes the impact we hope to have. "The CLSB will leverage its past successes in order to tackle key structural and cultural issues facing the costs law market, growing the positive impact of regulation for everyone with a stake in the professionalism of legal costs advisers."

Answered: 8 Skipped: 0

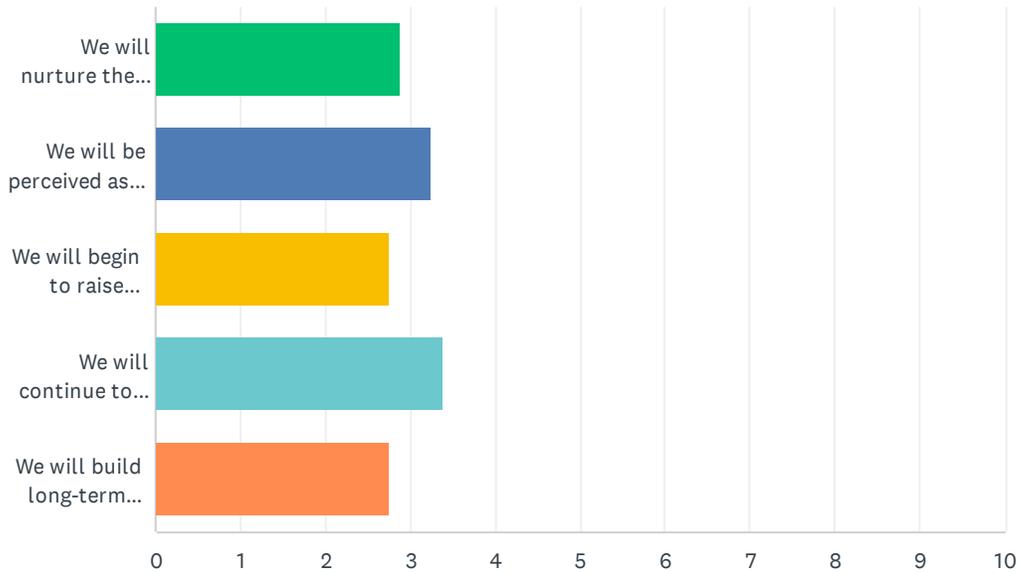


ANSWER CHOICES	RESPONSES
Agree	100.00% 8
Neither agree nor disagree	0.00% 0
Disagree	0.00% 0
Broadly agree, but with some amendments (please specify)	0.00% 0
<b>TOTAL</b>	<b>8</b>

#	BROADLY AGREE, BUT WITH SOME AMENDMENTS (PLEASE SPECIFY)	DATE
There are no responses.		

Q4 We have identified five strategic goals that will help us realise our vision, as set out in the draft mid-term strategy. Please rank these in order of importance to you as a regulated Costs Lawyer, from most important to least important.

Answered: 8 Skipped: 0

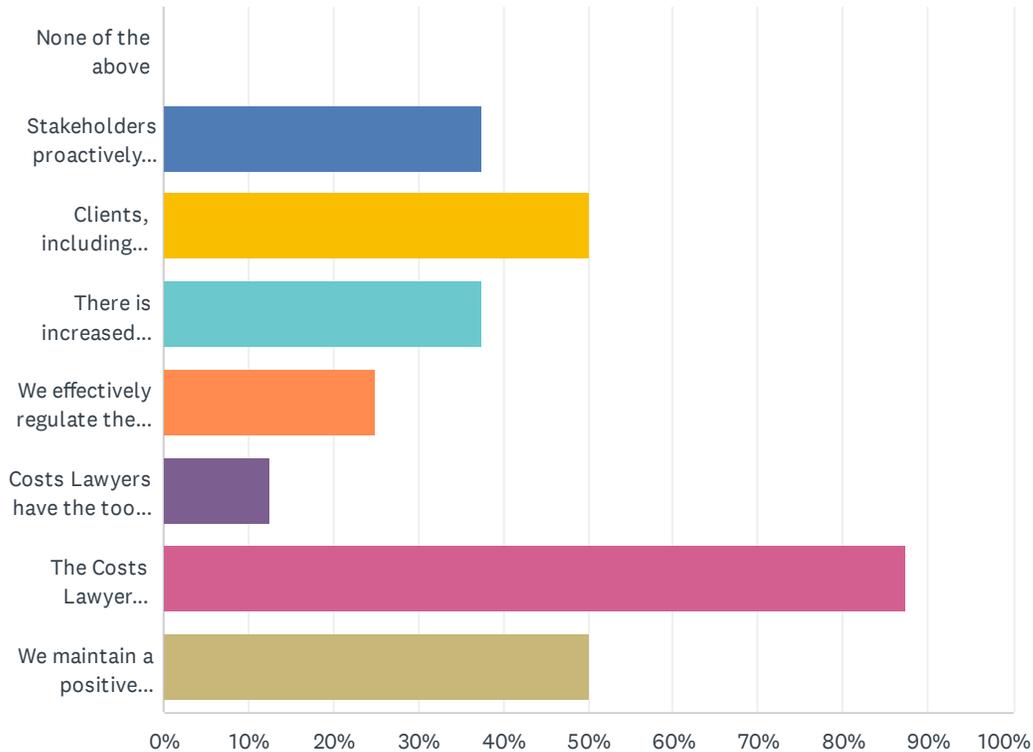


Advisory Panel Survey - CLSB mid term strategy 2024-2027

	1	2	3	4	5	TOTAL	SCORE
We will nurture the positive working relationships created under our previous strategy and begin to look outside the legal services sector for inspiration and learnings, seeking collaboration where this furthers our mission.	25.00% 2	12.50% 1	12.50% 1	25.00% 2	25.00% 2	8	2.88
We will be perceived as an expert on the market that we regulate, proactively adding value for Costs Lawyers, their businesses, their clients and the wider justice system, and we will effectively communicate that value to those in the costs community who decide each year whether or not to opt-in to regulation.	12.50% 1	25.00% 2	37.50% 3	25.00% 2	0.00% 0	8	3.25
We will begin to raise standards in the part of the costs law market that is currently outside the scope of regulation, by finding non-legislative levers to encourage professionalism and by communicating the benefits of regulation to the people who make purchasing decisions about costs advisory services.	25.00% 2	12.50% 1	12.50% 1	12.50% 1	37.50% 3	8	2.75
We will continue to create, evaluate and improve a regulatory model that is uniquely suited to the unusual characteristics of the costs law market, finding inventive ways to tackle the challenges presented by the legislative environment in which we operate.	37.50% 3	12.50% 1	12.50% 1	25.00% 2	12.50% 1	8	3.38
We will build long-term organisational robustness and resilience to guard against external risks and shocks, and we will promote the same resilience within the Costs Lawyer profession.	0.00% 0	37.50% 3	25.00% 2	12.50% 1	25.00% 2	8	2.75

## Q5 Please select up to THREE indicators of success from the draft mid-term strategy that are most important to you as a regulated Costs Lawyer.

Answered: 8 Skipped: 0



ANSWER CHOICES	RESPONSES
None of the above	0.00% 0
Stakeholders proactively seek us out as an expert source of data, advice or solutions on issues relating to the costs law market.	37.50% 3
Clients, including professional and intermediary clients, better understand the difference between instructing a Costs Lawyer and an unregulated costs adviser.	50.00% 4
There is increased recognition of the CLSB's brand and what it stands for.	37.50% 3
We effectively regulate the provision of costs services to individual lay clients (business-to-consumer transactions) in a way that does not disproportionately burden those Costs Lawyers who only provide services to professional or intermediary clients (business-to-business transactions).	25.00% 2
Costs Lawyers have the tools to recognise and assess risks to their business and their clients, and to adapt successfully in a changing market.	12.50% 1
The Costs Lawyer profession attracts a growing number of new entrants from a diverse range of backgrounds and prior professional experience.	87.50% 7
We maintain a positive performance assessment from the Legal Services Board, engaging openly and proactively with feedback and areas for improvement.	50.00% 4
Total Respondents: 8	

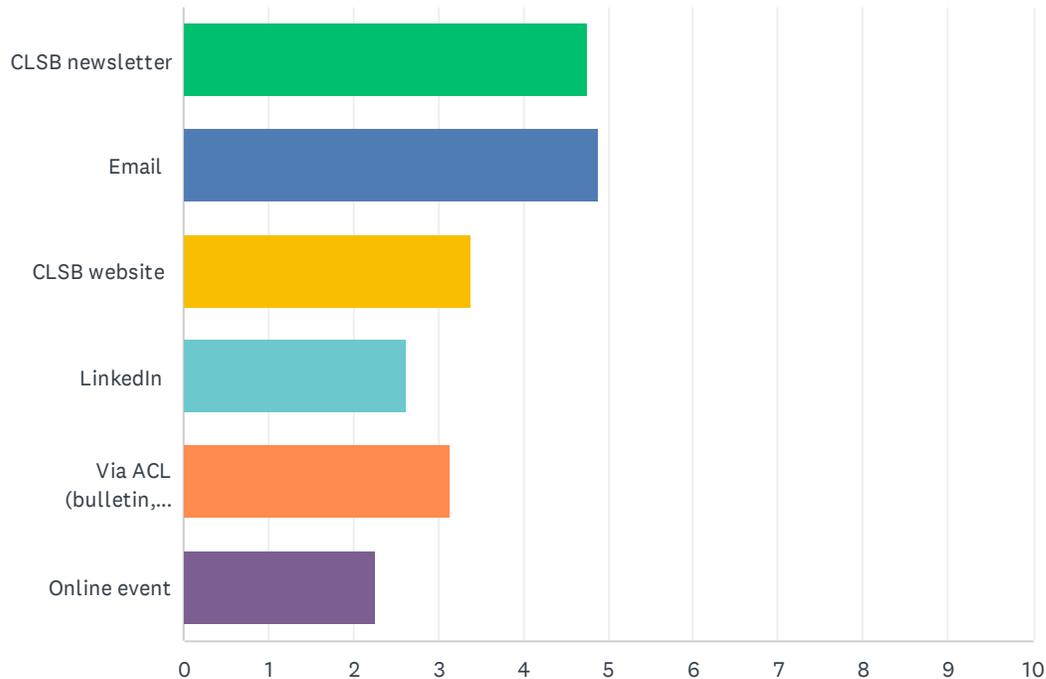
## Q6 Do you think there are any indicators of success that should be added?

Answered: 5 Skipped: 3

#	RESPONSES	DATE
1	That the entrants into the Costs Law profession are more diverse and inclusive	9/4/2023 10:20 AM
2	No	8/29/2023 4:07 PM
3	No	8/14/2023 5:52 PM
4	No	8/7/2023 3:12 PM
5	Yes - CLs on a par with Sols and Barristers and/or equality moves towards equity	8/7/2023 2:36 PM

**Q7 How do you think information about our mid-term strategy (including updates on progress) is best communicated to Costs Lawyers? Please rank the following from most effective to least effective.**

Answered: 8 Skipped: 0



	1	2	3	4	5	6	TOTAL	SCORE
CLSB newsletter	50.00% 4	25.00% 2	0.00% 0	12.50% 1	0.00% 0	12.50% 1	8	4.75
Email	50.00% 4	25.00% 2	12.50% 1	0.00% 0	0.00% 0	12.50% 1	8	4.88
CLSB website	0.00% 0	25.00% 2	25.00% 2	12.50% 1	37.50% 3	0.00% 0	8	3.38
LinkedIn	0.00% 0	0.00% 0	50.00% 4	0.00% 0	12.50% 1	37.50% 3	8	2.63
Via ACL (bulletin, conferences)	0.00% 0	25.00% 2	0.00% 0	50.00% 4	12.50% 1	12.50% 1	8	3.13
Online event	0.00% 0	0.00% 0	12.50% 1	25.00% 2	37.50% 3	25.00% 2	8	2.25

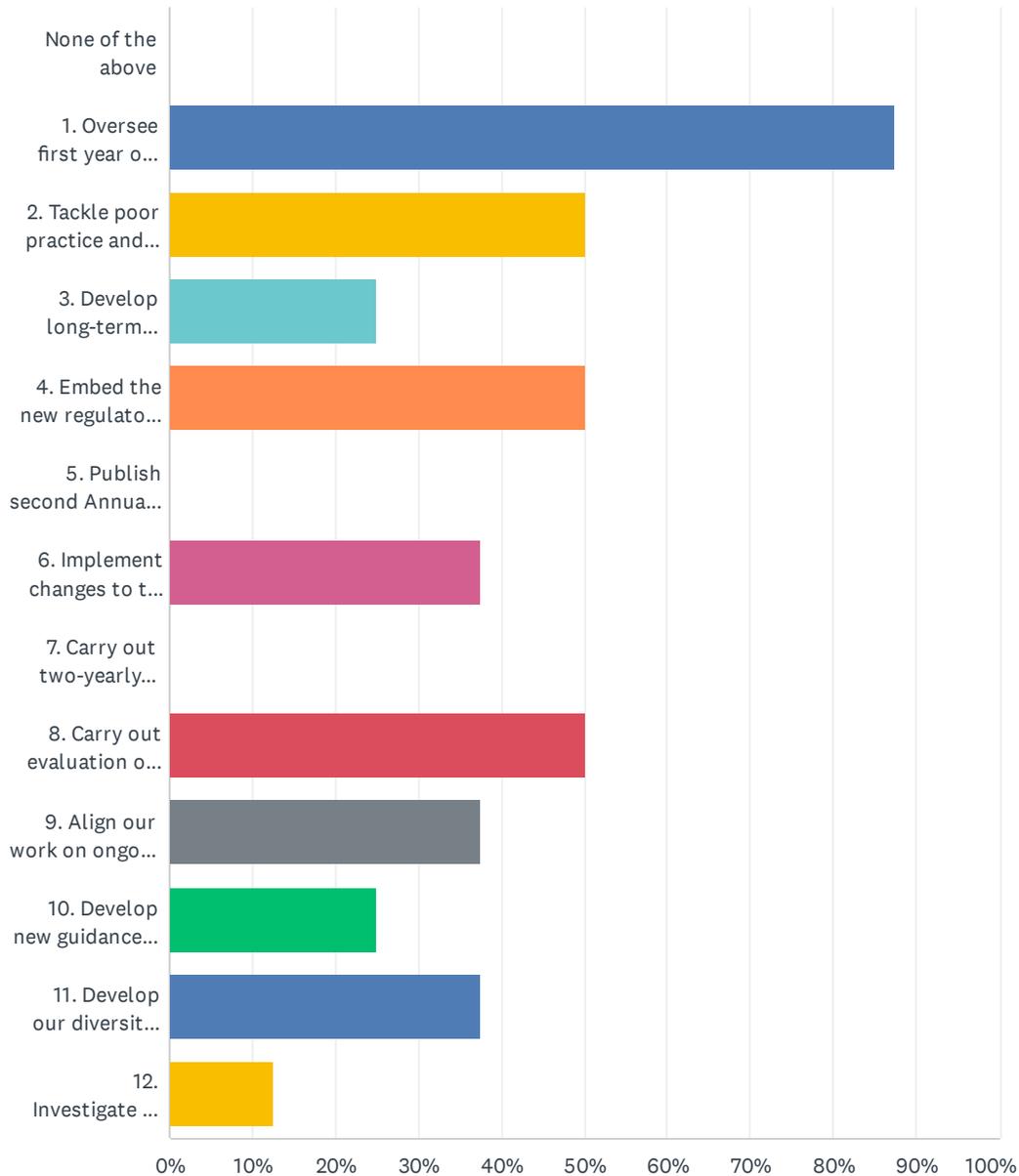
## Q8 Are there any other means of communication that you think we should consider?

Answered: 5 Skipped: 3

#	RESPONSES	DATE
1	Attendance at Regional Group events or more of the presentations like the one at the Manchester Costs Lawyer conference to promote better understanding of the role of the CLSB to the qualified and training cohorts of Costs Lawyers	9/4/2023 10:20 AM
2	Link to a pre-recorded video for members to watch	8/29/2023 4:07 PM
3	No	8/14/2023 5:52 PM
4	No	8/7/2023 3:12 PM
5	Annual town hall events maybe (can be remote). You Said/We Did etc showcasing progress	8/7/2023 2:36 PM

**Q9 Please select up to FIVE annual priorities from the draft 2024 Business Plan that you consider to be most important. (Please see the draft Business Plan for a more detailed description of each project.)**

Answered: 8 Skipped: 0



Advisory Panel Survey - CLSB mid term strategy 2024-2027

ANSWER CHOICES	RESPONSES	
None of the above	0.00%	0
1. Oversee first year of new Costs Lawyer Professional Qualification	87.50%	7
2. Tackle poor practice and attempt to raise standards amongst unregulated costs advisers	50.00%	4
3. Develop long-term communications strategy	25.00%	2
4. Embed the new regulatory framework for Costs Lawyers acting directly for consumers	50.00%	4
5. Publish second Annual Risk Outlook	0.00%	0
6. Implement changes to the Code of Conduct	37.50%	3
7. Carry out two-yearly review of Disciplinary Rules and Procedures	0.00%	0
8. Carry out evaluation of new qualification framework	50.00%	4
9. Align our work on ongoing competency with the existing CPD framework	37.50%	3
10. Develop new guidance on (i) setting up a practice and (ii) expectations on (unregulated) costs firms	25.00%	2
11. Develop our diversity and inclusion workplan	37.50%	3
12. Investigate a new supervision framework for client care letters	12.50%	1
Total Respondents: 8		

## Q10 Do you think there are any other priorities that we should be considering for 2024 or further ahead?

Answered: 5 Skipped: 3

#	RESPONSES	DATE
1	No	9/4/2023 10:20 AM
2	No	8/29/2023 4:07 PM
3	No	8/14/2023 5:52 PM
4	No	8/7/2023 3:12 PM
5	N/A	8/7/2023 2:36 PM

**Q11 Is there anything else about our draft mid-term strategy and draft 2024 Business Plan, or the wider 2024 practising fee consultation, that you think we should consider?**

Answered: 3 Skipped: 5

#	RESPONSES	DATE
1	No	8/29/2023 4:07 PM
2	No	8/14/2023 5:52 PM
3	N/A	8/7/2023 2:36 PM

## CLSB Risk Register

Last reviewed: 28 June 2023

---

This risk register was developed in March 2023 following a review of the CLSB’s risk framework. It maps the potential risks that could impact the CLSB’s effectiveness, either directly or indirectly, through their influence on the market that we regulate. Previous versions of our operational and regulatory risk registers are available by [contacting us](#).

This risk register is divided into four sections:

A. Sources of risk for horizon scanning (market risks) .....	2
B. Risk areas for ongoing monitoring .....	3
C. Key risk areas for mitigation .....	6
D. Risk areas for longer-term structural reform .....	8

## A. Sources of risk for horizon scanning (market risks)

These sources have the potential to generate new risks or exacerbate existing ones, and are therefore key targets for horizon scanning. They relate to what is happening in the costs law market, in areas such as:

- client demand and need;
- the supply of services by Costs Lawyers and other market participants;
- the overall legislative and regulatory environment affecting the market; and
- the impact of activity in other parts of the legal sector, including actions of other regulators.

Category of risk	Main sources of risk
Political/legal/regulatory	Changes in public sector spending, court rules or legislation driving costs control/capping.
Political/legal/regulatory	New regulation of ancillary industries, such as third party litigation funding.
Political/legal/regulatory	Changes in the Civil Procedure Rules or common law more broadly.
Economic	Trends in the litigation market and commercial developments in litigation funding options.
Economic	New entrants to the market and new service offerings.
Social	Consumer use of online legal services, including the emergence of costs risk.
Social	Demand for different pathways to legal professional qualification.
Technological	Progress in court digitisation and e-billing.
Technological	Law firm take up of technology, including case management and billing systems.
Technological	Adoption of blockchain technology and smart contracts.

## B. Risk areas for ongoing monitoring

These are specific risks, identified from horizon scanning across the risk sources described in section A above, that could foreseeably impact the regulatory objectives in section 1 of the Legal Services Act 2007. These risks are subject to ongoing monitoring to determine whether their impact can and should be actively managed by the CLSB (see section C below).

Even though many of these risks are outside of our control, their impact can be mitigated generally by fostering:

- Robustness – building strength and depth in the profession by increasing numbers, improving the quality of both initial and ongoing training and widening the range of expertise and skills the profession is able to offer.
- Resilience – improving the ability of Costs Lawyers to redeploy their skills within a changing market.

Regulatory objective	Costs law market related risk outcome	Relationship to risk sources
Protecting and promoting the public interest	<ul style="list-style-type: none"> <li>– Capping of recoverable costs</li> <li>– Reduction in the size of the NHS litigation budget</li> <li>– Wasting of court time by unqualified costs draftsmen, authorised practitioners lacking in costs competency, or poor practices of Costs Lawyers</li> </ul>	<ul style="list-style-type: none"> <li>– Risks from unqualified suppliers</li> <li>– Risks from ineffective regulation</li> <li>– Risks from public sector budget cuts targeting litigation, or other forms of intervention in the costs market, in ways that prioritise short term budgetary savings over longer term public interest</li> </ul>
Supporting the constitutional principle of the rule of law	<ul style="list-style-type: none"> <li>– Shrinking legal aid budget and falling solicitor numbers providing legal aid services</li> <li>– Court promotion of technology and mediation to overcome backlog</li> <li>– Civil procedure review designed to improve the functioning of the courts and introduction of e-billing as standard</li> </ul>	<ul style="list-style-type: none"> <li>– Risks from policy, legislative or rule changes that impact on demand for Costs Lawyer services or viability of providing services to those with legal need</li> </ul>
Improving access to justice	<ul style="list-style-type: none"> <li>– Individuals or groups excluded from access to justice by excessive costs or costs uncertainty</li> <li>– Expansion of fixed costs regime, reforms to PI regime, reforms to judicial review</li> </ul>	<ul style="list-style-type: none"> <li>– Risks from inadequate supply of costs information services</li> <li>– Risks from policy reforms designed to reduce availability of contested litigation</li> </ul>

Regulatory objective	Costs law market related risk outcome	Relationship to risk sources
	<ul style="list-style-type: none"> <li>– Solicitors unable to claim full legitimate costs from legal aid budget without Costs Lawyers</li> <li>– Third party funders discouraged by inadequate budgeting and uncertainty of rules around contingency arrangements</li> </ul>	<ul style="list-style-type: none"> <li>– Risks from insufficient numbers of legal aid trained Costs Lawyers</li> <li>– Risks from inadequate service from Costs Lawyers or unqualified costs draftsmen</li> </ul>
Protecting and promoting the interests of consumers	<ul style="list-style-type: none"> <li>– Consumers unable to access independent advice on costs</li> <li>– Consumers are excluded from civil litigation or are inadequately served due to limitations on funding options (including fixed fees on specialist legal services)</li> <li>– Self-represented litigants incur significant adverse costs risk/liability due to lack of individualised advice</li> <li>– Consumer risk from unregulated no win no fee advisors</li> </ul>	<ul style="list-style-type: none"> <li>– Risks from insufficient supply of Costs Lawyers focused on consumer market</li> <li>– Risks from “capture” of Costs Lawyer services by professional (mainly solicitor) clients</li> <li>– Risks from public sector budget cuts targeting litigation or policy interventions designed to stem legal costs</li> <li>– Risks from gaps in regulation</li> </ul>
Promoting competition in the provision of legal services by authorised persons	<ul style="list-style-type: none"> <li>– Law firm mergers hampered by lack of accurate information about WIP; investors discouraged by lack of clarity around value of law firms</li> <li>– New entrants to the legal sector cannot access independent information about value of certain areas of litigation activity</li> <li>– Increased use of technology in law firms substituting for Costs Lawyers</li> <li>– Concerns about market risks disincentivise new qualifiers or encourage qualified Costs Lawyers out of the profession</li> </ul>	<ul style="list-style-type: none"> <li>– Risks from insufficient supply of properly trained Costs Lawyers to provide essential services</li> <li>– Risks from new service areas with potential risks to clients and firms</li> <li>– Risks from the activities of other regulators</li> <li>– Risks from lack of awareness/ability of Costs Lawyers to embrace and adapt to technology</li> </ul>

Regulatory objective	Costs law market related risk outcome	Relationship to risk sources
	<ul style="list-style-type: none"> <li>– Costs firms offering new unregulated services alongside reserved legal activities, such as litigation funding options for clients</li> <li>– SRA regulation fails to prevent employer collapse creating problems in the Costs Lawyer market</li> </ul>	
Encouraging an independent, strong, diverse and effective legal profession	<ul style="list-style-type: none"> <li>– Insufficient numbers of Costs Lawyers are available to the market generally</li> <li>– Insufficient supply of independent costs law firms and practitioners in the market</li> <li>– Costs Lawyers’ independence is undermined by an actual or perceived conflict between the interests of their immediate (professional) client and their underlying client</li> <li>– Costs Lawyers are not appropriately trained and up-to-date</li> <li>– Costs Lawyer demographics do not reflect society</li> </ul>	<ul style="list-style-type: none"> <li>– Risks from insufficient supply of properly trained Costs Lawyers</li> <li>– Risks from Costs Lawyers being absorbed into solicitors firms/SRA regulation</li> <li>– Risks from “capture” of Costs Lawyer services by professional clients</li> <li>– Risks from ineffective CLSB regulatory arrangements</li> <li>– Risks from limited diversity of new entrants to the profession</li> </ul>
Promoting and maintaining adherence to the professional principles	<ul style="list-style-type: none"> <li>– Disciplinary issues/complaints about Costs Lawyers leading to poor consumer outcomes</li> <li>– Failure of Costs Lawyers to maintain proper standards of work</li> <li>– Costs law firms unwilling or unable to implement sufficient systems and controls</li> </ul>	<ul style="list-style-type: none"> <li>– Risks from ineffective CLSB regulatory arrangements</li> <li>– Risks from lack of entity-level regulation in the costs market</li> </ul>

## C. Key risk areas for mitigation

These consolidate the key risks identified in section B over which we have some degree of influence or control through our regulatory levers, and which we can therefore work to mitigate over time. The need to proactively manage these risks influences our regulatory activities, including our approach to supervision and the priorities in our annual Business Plans. The table below sets out the priority workstreams that are aimed at mitigating or managing these risks in the current year.

	Regulatory risks	Current priority initiatives for mitigating risks
1.	Poor client outcomes arise from substandard conduct, inadequate service or lack of competence amongst Costs Lawyers.	<ul style="list-style-type: none"> <li>• 2023 Business Plan priority 10: <i>Develop a programme of work to align the CLSB’s approach to ensuring continued competency with the Legal Services Board’s policy statement on ongoing competence.</i></li> <li>• 2023 Business Plan priority 12: <i>Deliver the next phase of our digital workplan, including by: improving the visibility of supervision issues in the database; creating a single repository for complaints data; adding action prompts to functionality; capturing regulatory history of individual Costs Lawyers in the database.</i></li> <li>• Implement changes to the Disciplinary Rules and Procedures as well as first tier complaint procedures aimed at encouraging streamlined resolution of both service and conduct issues for clients (April 2023).</li> <li>• Update and augment supporting materials for CPD and complaints procedures, and publish “lessons learned” for the profession, following supervisory audits (May 2023).</li> </ul>
2.	Costs Lawyers offer new areas of service without adequate consumer protections or assessment of risk to consumers.	<ul style="list-style-type: none"> <li>• 2023 Business Plan priority 3: <i>Develop a programme of work to promote the outcomes in the Legal Services Board’s policy statement on empowering consumers in a way that takes into account the unique nature of the market for costs services.</i></li> <li>• Develop our first Annual Risk Outlook for the profession (June 2023).</li> </ul>
3.	Regulatory deterrents or barriers to innovation limit the Costs Lawyer profession.	<ul style="list-style-type: none"> <li>• 2023 Business Plan priority 6: <i>Investigate the risks and benefits of entity regulation amongst costs firms, including whether there is a cost effective version of entity regulation that may be practical for the CLSB to implement.</i></li> </ul>

		<ul style="list-style-type: none"> <li>• 2023 Business Plan priority 7: <i>Explore ways of encouraging competition in the market for legal services and promoting the interests of consumers through considering: how the CLSB’s branding is used by the sector; how our competency frameworks can ensure the profession provides the best value to end users; and how our overall framework of regulation could best support the positive role that Costs Lawyers can play.</i></li> <li>• 2023 Business Plan priority 9: <i>Design a project that looks at how the regulation of Costs Lawyers should evolve into the future, taking into account how the profile of our regulated community may change.</i></li> </ul>
4.	Independence of the profession is compromised through capture by certain types of clients or practising arrangements.	<ul style="list-style-type: none"> <li>• 2023 Business Plan priority 5: <i>Deliver a programme of work aimed at harnessing the unique insights that Costs Lawyers can bring, to stimulate discussion across all the legal regulators about how legal costs can be better controlled.</i></li> <li>• 2023 Business Plan priority 8: <i>Consider whether and how to implement measures to more strongly distinguish between the interests of intermediaries (professionals who instruct Costs Lawyers on a client’s behalf) and the interests of the Costs Lawyer’s ultimate client in our regulatory arrangements.</i></li> <li>• Consult on changes to the Costs Lawyer Code of Conduct aimed at promoting professional independence (May to July 2023).</li> </ul>
5.	New Costs Lawyer Qualification fails to attract sufficient student numbers or sufficiently diverse cohorts.	<ul style="list-style-type: none"> <li>• 2023 Business Plan priority 4: <i>Using our new regulatory framework for the Costs Lawyer Qualification, work with ACL Training to accredit a new course that meets the standards for delivery and competency assurance set by the CLSB.</i></li> <li>• 2023 Business Plan priority 11: <i>Continue to improve our diversity data collection and, specifically for this year, look at how working cultures and professional environments for Costs Lawyers impact on good equality, diversity and inclusion (EDI) outcomes.</i></li> </ul>
6.	The Costs Lawyer Competency Statement or Costs Lawyer Qualification fails to ensure that newly qualified Costs Lawyers are equipped for modern practice.	<ul style="list-style-type: none"> <li>• 2023 Business Plan priority 4 (as above).</li> <li>• Implement a new framework for Qualifying Experience to be overseen by the CLSB for the first time (H1 2023).</li> </ul>

## D. Risk areas for longer-term structural reform

Our recent research and project work has identified structural risks in relation to the regulation of the costs law market. Mitigating these risks is fundamental to our regulatory approach and informs our longer-term strategic planning.

Risk statement	Source of risk	Strategic question to answer
There is a gap in how the public interest is defined/considered in the context of legal costs.	Costs Lawyers rarely serve consumers directly. There is a significant public interest issue at the heart of the costs market, but this may lie less in the protection of consumers and more in dealing with the market failure in legal costs management generally. Such a market failure appears to exist as there is no actor, outside the courts, that is currently tasked with ensuring the efficient use of resources to achieve appropriate and proportionate resolution of legal problems.	What does promoting the public interest mean in the context of the costs law market?
The authorisation of Costs Lawyers is not aligned with the public interest.	If the CLSB regulates primarily to protect consumers, it risks becoming increasingly less relevant to Costs Lawyers, who can work outside the scope of authorisation. Yet the regulatory agenda driven by the Legal Services Board, in fulfilment of its remit under the Legal Services Act, is focused on consumer-facing work and addressing unmet legal need. This model is misaligned with the public interest problem that needs to be addressed in the costs law market, and thus with impactful regulation of the Costs Lawyer profession.	What should the role of Costs Lawyers be in the legal market (i.e. what are Costs Lawyers for?) and how can that best be differentiated, through the CLSB's regulatory framework, from the role played by unregulated advisers to promote the public interest?

# **Response of the Association of Costs Lawyers to the Consultation Fixed Recoverable Costs: Consultation on issues relating to the new regime (July 2023)**

September 2023



## **OUR BACKGROUND**

The Association of Costs Lawyers (ACL) is a membership organisation representing Lawyers, students and retired practitioners in the field of legal costs.

ACL was founded in 1977 as the Association of Law Costs Draftsmen (ALCD) with the aim of promoting the status and interests of its members. In 2007, Fellows of the ALCD were granted the right to conduct costs litigation and rights of audience under the Legal Services Act.

In 2011 the ALCD was renamed as the Association of Costs Lawyers (ACL) and became the statutory regulator of qualified costs practitioners. In line with the Legal Services Act, the ACL delegated regulatory obligations to the Costs Lawyers Standards Board (CLSB).

There are currently 491 members (comprising 433 qualified Cost Lawyers, 54 Students and 4 retired members) of the ACL who represent both paying and receiving parties in all forms of costs litigation. Many members also act for Litigants in Person and the ACL is committed to delivering better access to justice in all costs related matters. All of our members have experience in costs disputes and the vast majority deal with costs on a day-to-day basis.

### **Introduction**

In the preparation of this consultation response the ACL has reached out to its membership to obtain views from across the spectrum of specialisms and perspectives. A clear consensus emerged as a point of principle, namely, that the current rules still do not provide certainty and clarity when it comes to costs and our members have highlighted a number of deficiencies that are prevalent within the rules as they are currently drafted. Furthermore, our members do not agree with the current rules as they are currently drafted and that all respondents to the ACL's survey consider that the proposed rules will result in a reduction to access to justice. The ACL notes that this consultation, in part, was made in response to a number of those issues being highlighted.

The ACL has responded historically to a number of consultations regarding the extension and expansion of the Fixed Recoverable Costs (FRC) regime to all claims up to the value of £100,000.00. The ACL has continuously raised its concerns regarding the negative impacts that would follow including the reduction to access to justice that such a regime would lead to. The ACL will not repeat those concerns again, but instead, invites the Ministry of Justice to review those consultation responses.

The ACL continues to raise concerns regarding the negative impact on access to justice that these reforms will result in and the potential unintentional consequences that may result from the implementation of the reforms. One area of significant concern is that the current proposed extension to the FRC regime is likely to result in significant shortfalls between the costs that are incurred by receiving party solicitors and the costs that are recovered on an inter partes basis. One potential reduction to access to justice would be that certain types of claims become uneconomically viable and solicitors will no longer be willing to take them on. Alternatively, another outcome of the implementation will result in a significant market shift towards seeking shortfalls directly from the solicitors' clients. This will significantly reduce access to justice because parties to litigation will not be fully compensated to be placed back in the position had the wrong not been committed against them.

Furthermore, if shortfalls are sought from clients then this is going to result in a significant increase in the number of solicitor/own client disputes. The ACL has significant concerns in respect of the suitability of the current legislation in place that deals with such disputes. The Solicitors Act 1974 will have been in place for half a century next year and, following the judicial comments in *Belsner v Cam Legal Services*, it is clear that the legislation is significantly out of date and is arguably not fit for purpose in modern litigation. The ACL therefore recommends that the MOJ looks into amending or introducing new primary legislation to deal with these issues prior to creating an environment where a significant number of claims are being brought.

The ACL objects to the proposal by the MOJ to proceed with the introduction of the current rules and propose to make the amendments proposed below to the rules in April 2024. The ACL considers that this is going to result in a basket of cases across a 6 month period where a different set of rules apply. The ACL considers that it is unreasonable to proceed with an October 2023 implementation, and instead, proposes that the new rules be updated and implemented in April 2024 at the very earliest. The ACL notes that these proposed reforms are going to revolutionise the civil litigation market, and as such, it is entirely reasonable to provide sufficient time for all stakeholders within that market time to understand and adapt to the proposed new rules before they are introduced.

#### **(i) Fixing Costs on Assessment**

The ACL has considered the proposals within the consultation and has a number of concerns.

Whilst the ACL considers that there is likely to be a wide variety of FRC disputes and these will range significantly in complexity, the ACL disagrees that a 'one size fits all' approach is appropriate, especially in the short to medium term following the introduction of the new rules. This is because a significant amount of initial challenges are likely to be focused solely on the interpretation of the rules and will, in turn, be seeking judicial guidance from the Courts on the content, interpretation and implementation of the new rules. The ACL refers to a number of cases that were heard a number of years after the introduction of LASPO which were required to clarify and provide certainty on the interpretation of the rules that were introduced a number of years earlier.

As such, the ACL strongly rejects the notion that such work, requiring a very high level of experience and expertise, can be correctly served by a condensed assessment procedure and where the proposed costs are nominal at best.

The ACL also requests that clarity is provided in respect of the proposal. The consultation at one stage references Sir Rupert Jackson's report and suggestion that there should be a 'fee cap of – say – £500' and at another stage suggests that the MOJ 'endorses Sir Rupert's proposal of fixed costs for this process'. The ACL must flag up that there is a clear and significant difference between a costs cap and fixed costs and that it is unclear what is currently being proposed. There are potential benefits and negatives to both approaches. The ACL considers that if costs of assessment are fixed then this will ensure that there is a 'swings and roundabouts' approach to the economical viability of challenges, whilst a capped approach will ensure that each set of costs of assessment reflect the complexities involved but the cap must allow for a fair amount to be incurred as an upper limit for the most complex FRC disputes.

In any event, the respondents to the ACL's survey are in consensus that the proposed fees are significantly below what would be reasonable for the amount of work that is likely to be required in the average FRC dispute, let alone, the significant shortfall that there would be in the more complex FRC disputes.

There are a number of conflicting viewpoints amongst the membership as to the impact that the proposed low level of fixed/capped costs will have on the number of FRC disputes that will be brought. One body of opinion considers that the level of the costs is set at such a low nominal level that it does not provide any form of disincentive to bring FRC disputes and that the likely benefits of the increase/decrease in the FRC that are assessed are likely to outweigh the potential proposed/ fixed costs.

Alternatively, there is also scope that setting the proposed fixed/capped costs at such a low level will make disputes uneconomically viable and, as a result, will lead to a chilling effect in the development and evolution of the FRC rules which again will undermine the overarching goal of these proposed reforms in providing clarity and certainty to all parties involved in litigation.

In conclusion, the ACL considers that further thought and consultation is undertaken to ensure that such a procedure to the assessment of FRC under the new regime is both suitable to meet the potential complexities of claims whilst also ensuring that sufficient funds are available to ensure that the costs of assessment remain reasonable and proportionate to the issues and complexities in dispute. The ACL considers that the current Provisional Assessment process is a reasonable approach. However, the ACL recalls the original proposals for the PA process and that this was originally intended to deal with costs claims up to the value of £25,000.00 and the proposed costs cap was intended just for this value of costs to be assessed. Thereafter, it was considered appropriate that the costs cap ought to increase in increments to reflect the increase in the costs to be assessed (£3,000.00 cap for a PA on a Bill worth up to £50,000.00 and £4,500.00 cap for a PA on a Bill worth up to £75,000.00). The ACL therefore considers that this would be an appropriate starting point when considering the process for FRC disputes. Only once the process is clearly defined can the discussion regarding the fixing or capping of costs begin to be fairly and reasonably discussed.

## **(ii) Fixing Costs for Part 8 costs only claims**

The ACL received a mixture of views on the proposals under this point, however, the majority of members did agree that it would be suitable to introduce a fixed cost for issuing Part 8 costs only proceedings. However, the majority of our members also disagreed with the level that is currently being proposed within the consultation. The main point of contention is that the level of proposed fixed costs is far too low in comparison to the work that is required. The basis of a fixed cost is to allow for an average cost to reflect the average amount of work required in such a case and that a 'swings and roundabouts' principle will ensure that the simpler matters will compensate the shortfall on more complex matters. The ACL considers that the current level of proposed fixed costs are insufficient.

Furthermore, the ACL does not consider that the introduction of such an approach is going to impact the number of Part 8 costs only proceedings that are commenced. Such proceedings are not issued on the sole basis that it is another form of costs building. Instead, Part 8 costs only proceedings are issued because there is a fundamental

disagreement or dispute between the parties regarding the amount of costs in issue and that this is the only means available to the parties to obtain a court assessment to resolve the dispute.

**(iii) Providing for the recoverability of (a) inquest costs and (b) restoration proceedings**

We agree with proposals set out at paragraph 21 in respect of inquests. The costs of inquests should be recoverable in addition to the FRC and subject to detailed assessment. Otherwise, to include such costs in the FRC would make claims unviable and prevent access to justice for family members and dependents in fatal cases. It would not be appropriate to assess such costs in short form and/or by summary assessment.

Where a claim for inquest costs is made it is recommended that the claim for FRC be submitted at the same time. In most cases it is anticipated that the FRC will not be challenged and the inquest costs would be subject to agreement or assessment.

If both the inquest costs and the FRC are disputed then there should be provision for all of the costs to be assessed together as part of the detailed assessment. The Rules should provide that in these circumstances the paying party may include Points of Dispute to the FRC claim. There should be a new form N258 Request for Detailed Assessment where both standard basis hourly rate costs and fixed costs are sought to be assessed. The ACL considers that a new form N258 could also include a number of different aspects that would be claimed/in dispute, including but not limited to costs enhancement for dealing with vulnerable parties.

The provisions for standard basis hourly rate basis costs should not be restricted to inquests. There are cases where attendance for example at a criminal trial, HSE hearing or at a public inquiry may be necessary in order to obtain key witness evidence and raise questions which are crucial to the subsequent civil claim, very similar to why it is necessary to attend inquests. There may be other types of hearing in other jurisdictions (such as in accidents abroad) where attendance may be appropriate for the same reasons.

We agree that the provision in the draft rule 45.56 could be extended to apply in other types of claims, such costs should be recoverable in addition to the FRC. Additional sums should be recoverable in respect of each company being restored.

**(iv) Providing for recoverability of advocacy fees in case which (a) are settled late or (b) are vacated**

The ACL considers that there should be amendments to the rules that allow for a reasonable recovery of advocacy fees when cases are settled late or are vacated. The overriding objective is clear in that cases should be pursued at reasonable and proportionate costs and it is arguable that, even if a case settled late in the day, that a party should not be punished by the failure to allow costs to be recovered. In any event, not allowing the recoverability of advocacy fees in such circumstances is likely to lead to a reduction in access to justice, either, because fewer barristers will be willing to take on cases if they know that they will not be paid if the case settles late in the day, or because, when such fees are not recoverable then the client may have to pay the shortfall from any settlement achieved.

In any event, the majority of respondents to the ACL's survey considered that the proposals would ultimately discourage late settlements. The ACL does not consider that this would assist the implementation of the overriding objective.

**(v) Uprating the fixed trial advocacy fees for inflation**

Whilst the majority of members agreed with the proposal to review and increase the figures in line with inflation, a number of members continued to have reservations regarding the amount of uplift that was being proposed and that there are a number of other 'fixed costs' that are contained within the CPR which also have not been updated for a number of years or even a decade. The ACL strongly implores the MOJ to undertake a thorough review in respect of all 'fixed costs' contained within the CPR and for a comprehensive framework to be introduced to ensure that such costs are regularly reviewed.

**(vi) Clinical Negligence claims at CPR 26.9(10)(b)**

Our starting point is that clinical negligence claims should not be included within the extension of FRC. The majority of our members also disagreed with the proposed allocation criteria set out within the extended FRC regime. Quite simply the work required in a liability admitted RTA Band 1 Intermediate Track claim cannot be compared to any type of clinical negligence Intermediate track claim, even where there has been an admission. The work required, even in cases where breach and causation are admitted, in lower value clinical negligence cases can be extensive. They are very different to standard personal injury cases and should not be classified within the same category. Solicitors may jeopardise claims by trying to cut corners or simply refuse to take them on, thus a significant access to justice issue for would-be claimants.

On the other hand, usually only claims which have been properly investigated will be made, many will be turned down following appropriate initial investigations. By their very nature, clinical negligence claims are 'front-loaded' given the significant amount of investigations to be undertaken, including the costs of obtaining expert evidence. As the proposed FRCs are unlikely to cover the work required to properly investigate claims at the outset, claims may not be properly assessed before the letter of claim is prepared. Consequently, there could actually be an increase in the number of speculative claims initiated by claimants.

Clinical negligence claims should be excluded from the new Rules until the final details of the low value DHSC scheme have been published and the new FRCs have had time to bed in for other types of claim.

It may be true that clinical negligence claims are unlikely to be allocated for some time (as per paragraph 48) but there will be many claims where the date of knowledge is caught by the provisions between 1 October 2023 and April 2024. It is important that any provision regarding the timing of an admission is made retrospectively when the Rules are finally introduced in April 2024.

We agree that there must be a full admission in the letter of response but also only if that response is provided within the Protocol period. A significant amount of work is usually required before a letter of claim can be served in a clinical negligence claim. This includes investigations on liability, as already set out above, and that may also include the cost of one or more liability reports. This initial stage of work is significant and this additional layer of investigation does not appear to have been taken into account for Intermediate Track

clinical negligence claims. That is contrary to the Pre-Action Protocol for the Resolution of Clinical Disputes whereby parties are expected to investigate properly and obtain sufficient information to the opponent to encourage early resolution or narrowing of the issues.

It must also be borne in mind that at the time a letter of claim is prepared the claimant may not have all of the information that will ultimately be relied upon. There may be amendments to the allegations made. 3.19 of the Pre-Action Protocol for the Resolution of Clinical Disputes states that letters of claim do not have the same status as Particulars of Claim and there should be no sanctions if the Particulars differ from the letter of claim. The Rules should be drafted to ensure that defendants cannot argue that a letter of claim is defective e.g. because of incomplete information so as to unreasonably extend the time for responding. Likewise, a claimant should not face any criticism for preparing a letter of claim before all of the evidence on breach and causation is complete.

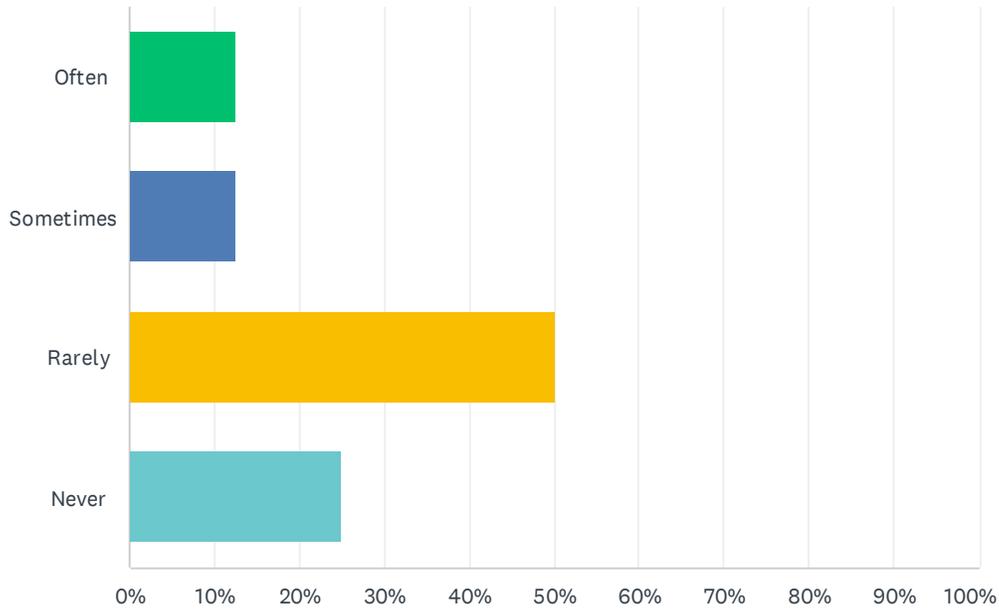
## **Conclusion**

The ACL reiterates its concerns raised on numerous occasions regarding the significant negative impact that the proposed reforms will have on access to justice. Irrespective of the ACL's opposition to the introduction of the proposed FRC on principle, the ACL has significant concerns regarding the timing of the proposed consultation and the proposed changes to be introduced after the initial implementation of the reforms. The ACL considers that it is entirely unreasonable for the FRC reforms to be introduced in such a piecemeal way and that it fails to give the civil litigation legal market sufficient time to plan, prepare and adapt to what will be a significant upheaval.

Furthermore, the ACL invites the MOJ to also consider further reviews of primary legislation in order to address any unintended consequences that are likely to flow from the introduction of the proposed FRC extension. If this is not undertaken, the ACL considers that the proposed reforms will fail in their stated aims to improve access to justice and to provide clarity and certainty to all parties in respect of costs of civil litigation.

# Q1 How often do you refer to the Costs Lawyer Code of Conduct in the course of your work?

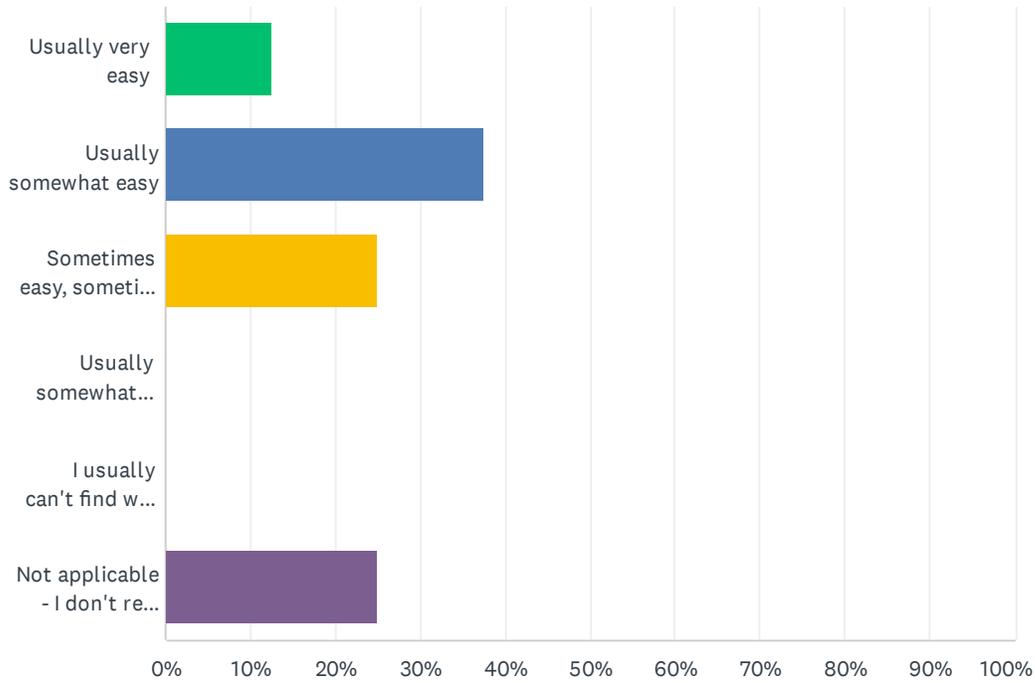
Answered: 8 Skipped: 0



ANSWER CHOICES	RESPONSES	
Often	12.50%	1
Sometimes	12.50%	1
Rarely	50.00%	4
Never	25.00%	2
<b>TOTAL</b>		<b>8</b>

## Q2 When you have referred to the Code of Conduct, how easy was it to find what you were looking for?

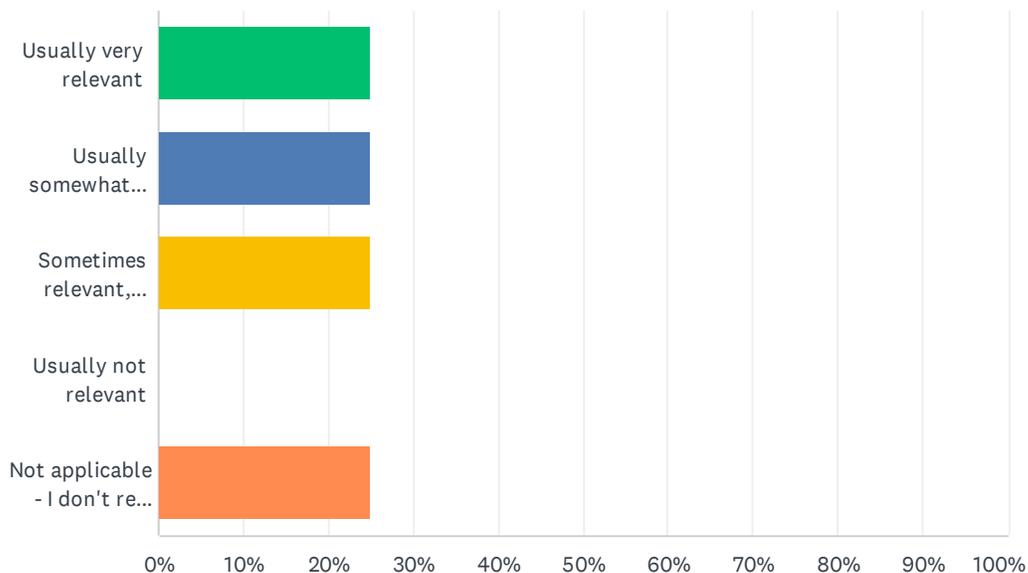
Answered: 8 Skipped: 0



ANSWER CHOICES	RESPONSES	
Usually very easy	12.50%	1
Usually somewhat easy	37.50%	3
Sometimes easy, sometimes difficult	25.00%	2
Usually somewhat difficult	0.00%	0
I usually can't find what I'm looking for	0.00%	0
Not applicable - I don't refer to the Code of Conduct	25.00%	2
<b>TOTAL</b>		<b>8</b>

### Q3 When you have referred to the Code of Conduct, how relevant was it to your circumstances?

Answered: 8 Skipped: 0



ANSWER CHOICES	RESPONSES	
Usually very relevant	25.00%	2
Usually somewhat relevant	25.00%	2
Sometimes relevant, sometimes not	25.00%	2
Usually not relevant	0.00%	0
Not applicable - I don't refer to the Code of Conduct	25.00%	2
<b>TOTAL</b>		<b>8</b>

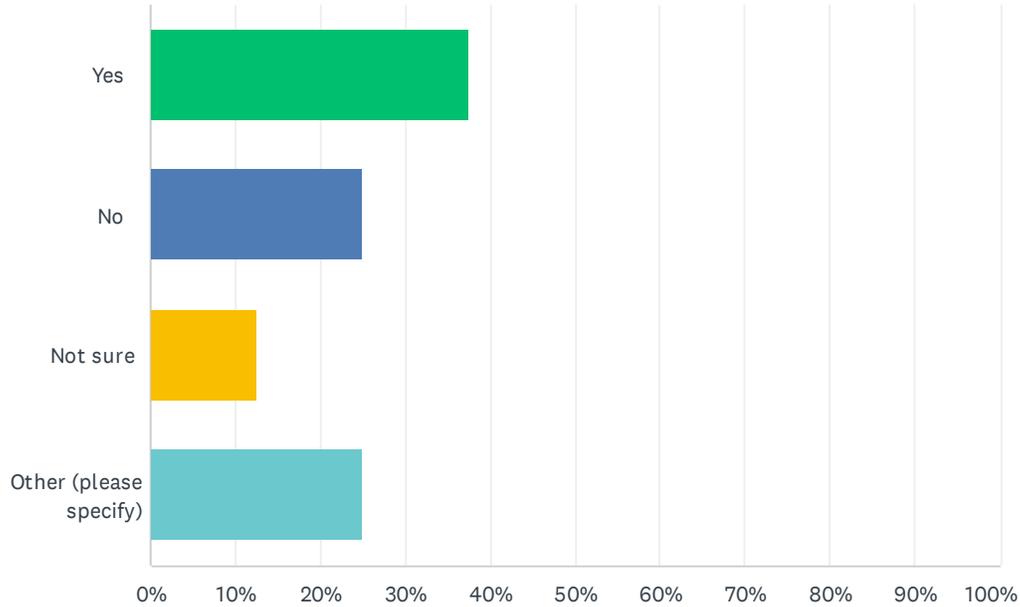
## Q4 Please briefly tell us about the main issue(s) on which you refer to the Code of Conduct, and why (where applicable).

Answered: 7 Skipped: 1

#	RESPONSES	DATE
1	Nothing has arisen	7/19/2023 10:52 AM
2	Needs to be more searchable, with links	7/17/2023 1:19 PM
3	As an in house costs lawyer and mainly in management, I dont need to refer frequently. I mainly do so for setting CPD objectives and ensuring there has been no breach is a complaint is made about my team. However we don't act for external clients.	7/10/2023 1:58 PM
4	Working as an in-house costs lawyer and wanted to check the code for any conflict points for privately instructed matters	7/7/2023 10:02 AM
5	Duty to the Court and acting in the best interests of the client. The occasional difficult interplay between the two, whilst maintaining integrity as a Costs Lawyer.	7/6/2023 2:53 PM
6	Ethics, running training on ethics/professionalism, and/or ensuring we comply/role-model best practice in everything we do	7/6/2023 11:58 AM
7	In general in my practice, I don't find myself in any situation which would require me to review the code of conduct	7/6/2023 11:49 AM

## Q5 When you completed the Costs Lawyer Qualification do you think there was sufficient emphasis on professional and ethical conduct?

Answered: 8 Skipped: 0



ANSWER CHOICES	RESPONSES
Yes	37.50% 3
No	25.00% 2
Not sure	12.50% 1
Other (please specify)	25.00% 2
<b>TOTAL</b>	<b>8</b>

#	OTHER (PLEASE SPECIFY)	DATE
1	I think the original course was all about this (but was before the courses were written)	7/17/2023 1:19 PM
2	No but I completed the course in 2005 under a previous regime	7/10/2023 1:58 PM

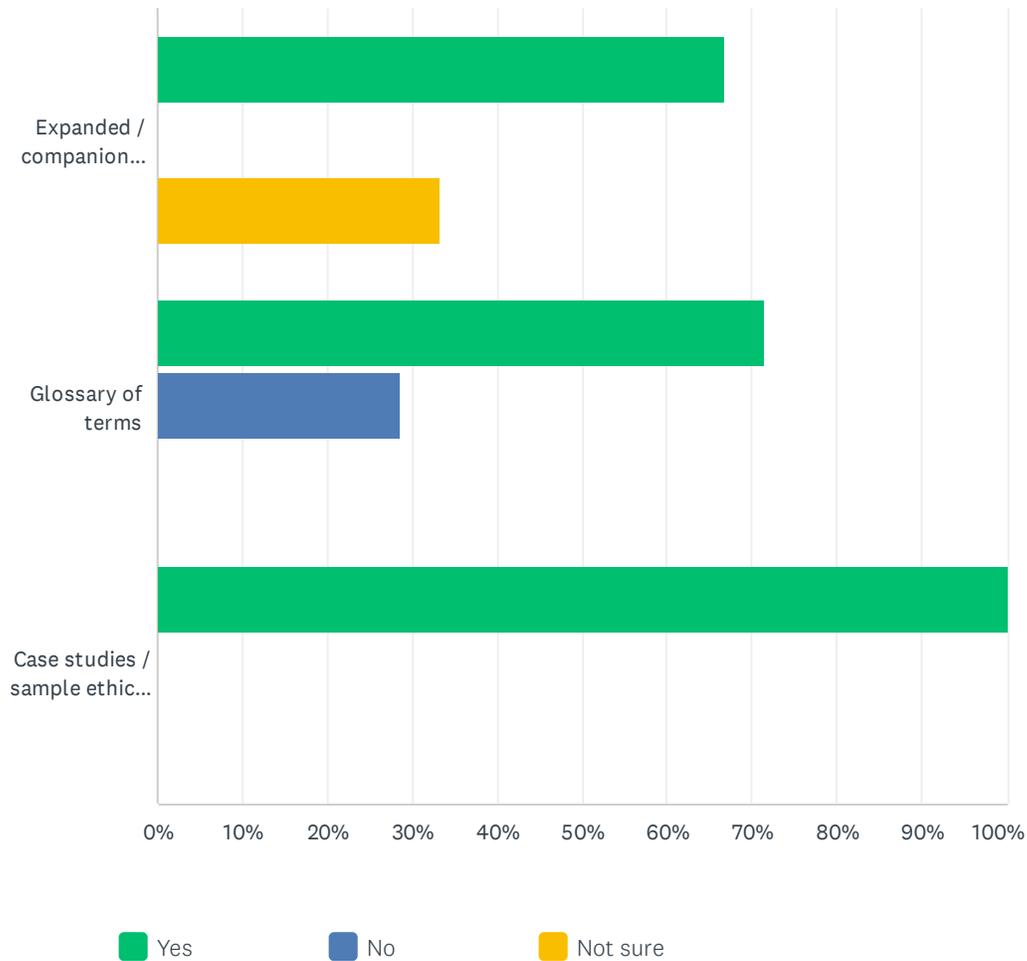
## Q6 If you answered no or not sure to Q5, what other course content would you have liked to see?

Answered: 3 Skipped: 5

#	RESPONSES	DATE
1	More practical examples and scenario based learning - what would you do in this situation.	7/6/2023 2:53 PM
2	Old course so was updated for more professional ethics and conduct with new course	7/6/2023 12:46 PM
3	More emphasis on work that could be seen as being a breach of the codes of conduct. As an example, there has over the years been an increase in the idea that time should be estimated whether there is evidence for it or not in order to 'bump up' bills/schedules. Whilst GLD is the most notable example, it is not the only one and there was a case more recently involving a firm of Costs Lawyers who had their bill struck out as it did just this.	7/6/2023 11:49 AM

## Q7 Would you find any of the following supplementary information helpful?

Answered: 8 Skipped: 0



	YES	NO	NOT SURE	TOTAL
Expanded / companion guidance	66.67% 4	0.00% 0	33.33% 2	6
Glossary of terms	71.43% 5	28.57% 2	0.00% 0	7
Case studies / sample ethical dilemmas	100.00% 8	0.00% 0	0.00% 0	8

## Q8 How do you think we can make the Code of Conduct more accessible and ensure Costs Lawyers engage with it in their day to day work?

Answered: 8 Skipped: 0

#	RESPONSES	DATE
1	On-line availability	7/19/2023 10:52 AM
2	Use of search function and hyperlinks	7/17/2023 1:19 PM
3	I think setting CPD objectives in light of it is a good practice.	7/10/2023 1:58 PM
4	Refresher modules/webinars/related activities to complete 1 point each year for CPD purposes	7/7/2023 10:02 AM
5	Unsure	7/6/2023 2:53 PM
6	Case studies examples, touch point for costs lawyers to raise queries to/ask advice on situations (informational purposes)	7/6/2023 12:46 PM
7	Create an embossed 1-sided A4 poster detailing the key principles that all CLs can print off, put up and abide by	7/6/2023 11:58 AM
8	Maybe have 'soundbites' bits in the newsletter on different aspect of the Code of Conduct.	7/6/2023 11:49 AM

## Q9 Is there anything else about the Code of Conduct that you think we should consider?

Answered: 2 Skipped: 6

#	RESPONSES	DATE
1	See above - poster (similar in style/look to Practising Certificate)	7/6/2023 11:58 AM
2	<p>I think some form of support/guidance helping Costs Lawyers who are 'trapped'. I worked for a costs solicitor firm who insisted that I should add in work to a bill that simply hadn't been done and couldn't be supported on the file. I refused and so they took the file off me and handed it to someone else, but they made it clear that they believed I simply wasn't competent. The same firm put me through a disciplinary because I handed the judge the risk assessment when he asked for it and they believed that instead I should have lied to the court and said it wasn't there. Unsurprisingly, I didn't last and left before my probation period had even ended.</p> <p>However, I was also lucky enough to be supported financially by my husband until I found another job. For Costs Lawyers who have mortgages and childcare costs etc... and might be single or have little other financial support, the idea of leaving that employment and looking for another job where the employer is ethical is uneconomic and bringing a tribunal claim is unrealistic. So they will do what the employer tells them to do no matter whether it is proper or not in order to keep their jobs. Maybe having a guidance note on what steps they could take or what support might be out there if they didn't want to comply might help? (p.s. sorry this note is so long).</p>	7/6/2023 11:49 AM



---

## In this Guidance Note

Who should read this Guidance Note? .....	3
Brief overview and background .....	3
Why is this Guidance Note important? .....	4
Key concepts .....	5
Interaction with other CLSB rules .....	7
Advertising and promotional materials .....	8
Overview .....	8
Misleading by omission – in more detail.....	9
Examples of misleading information.....	13
Pre-contractual information .....	14
Cancellation rights .....	16
Contract terms .....	17
Ensuring your contract terms are transparent.....	18
Ensuring your contract terms are fair .....	19
While you are performing the services.....	22
Professional diligence .....	23
ADR and complaint handling.....	25
Further information and guidance.....	27
Annex 1 – Overview of pre-contract information requirements .....	28
Annex 2 – Overview of key legislation in more detail .....	30

---

This Guidance Note is intended to help Costs Lawyers recognise their obligations under consumer law and how these relate to their regulatory duties as Costs Lawyers. It is also intended to help ensure any clients, or potential clients, who are consumers are dealt with fairly and in line with their consumer rights.

## Who should read this Guidance Note?

1. Any Costs Lawyer who deals directly with consumers and/or who promotes their services to consumers.
2. Any organisation employing a Costs Lawyer who deals directly with consumers and/or promotes their services to consumers.
3. As explained at paragraph 13 below, for the purposes of this Guidance Note a consumer is an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.

## Brief overview and background

4. In 2016, the Competition and Markets Authority (CMA) carried out a market study into the supply of legal services in England and Wales, and published a number of recommendations. The CMA reviewed the implementation of its recommendations in 2020 and published a report of its findings.
5. A key finding of the CMA's market study was that the legal services sector was not working well for consumers. The CMA found that consumers generally lack the experience and information they need to find their way around the legal services sector and to engage confidently with providers. As a result, consumers find it hard to make informed choices because there is little transparency about price, service and quality.
6. Consequently, one of the CMA's key recommendations was that the regulators of legal services develop new minimum standards for the disclosure of price, service,

---

redress and regulatory status, and require legal services providers to adhere to them. By improving transparency, it was expected that consumers would be more engaged when seeking and purchasing legal services, leading to better consumer decisions as well as better consumer outcomes in the market.

7. As part of its response the CMA's recommendations, in 2022 the Legal Services Board published a statutory [policy statement on consumer empowerment](#) with which all the regulatory bodies must comply. This Guidance Note supports the aims of the CMA's recommendations and the Legal Services Board's policy statement, in particular by contributing to your understanding of the minimum standards expected of you and how you can improve outcomes for consumers.
8. This Guidance Note sets out our views on some of your key legal obligations<sup>1</sup> under consumer law in relation to:
  - advertising and promoting your services to consumers;
  - the provision of information to consumers;
  - fair contract terms and conditions;
  - quality of services provided;
  - the consumer law concept of professional diligence; and
  - ADR and complaint handling.

## Why is this Guidance Note important?

9. When dealing with consumers you have a number of legal obligations under consumer protection law. While there are similarities between these obligations and the CLSB's regulatory rules,<sup>2</sup> it is essential that you and your firm recognise and understand these distinct consumer law rules.

---

<sup>1</sup> This guidance is not intended to be a comprehensive account of the law and is not a substitute for reading the underlying law itself or taking your own legal advice where appropriate.

<sup>2</sup> For example, principles 1.3, 1.4, 3.4, 4.2, 4.3 and 4.6 of the [Code of Conduct](#).

- 
10. In some circumstances, compliance with our regulatory rules will mean you are compliant with your consumer law obligations. However, it is important to note that this will not always be the case. Similarly, just because you are compliant with consumer law does not mean you will satisfy your broader regulatory obligations. Consequently, each set of rules needs to be considered and applied to your practice separately.
11. Good compliance with consumer law is likely to enhance your professional reputation and reduce potential disputes with clients. Non-compliance, on the other hand, could have a range of potential consequences, including but not limited to:
- regulatory action by the CLSB<sup>3</sup> or by any other regulator of your firm, such as the Solicitors Regulation Authority (SRA);<sup>4</sup>
  - consumer law enforcement action (for example by Trading Standards or the CMA)<sup>5</sup> against your firm;
  - enforcement action by the Advertising Standards Agency (ASA), for example against misleading advertisements that contravene its Advertising Codes;<sup>6</sup>
  - dissatisfied clients, consumer complaints and cases before the Legal Ombudsman;
  - adverse findings by the Legal Ombudsman;
  - court proceedings by individuals – consumers may be able to sue for breach of contract or seek redress in relation to certain breaches of consumer law.

## Key concepts

12. **When does consumer law apply?** You will need to consider your obligations under consumer law in relation to all your engagement, or potential engagement, with consumers. In particular, the application of consumer law is not limited to

---

<sup>3</sup> See the [disciplinary outcomes](#) page of the CLSB website.

<sup>4</sup> See, for example, the SRA's [investigation and enforcement guidance](#).

<sup>5</sup> See, for example, the CMA's [consumer enforcement guidance](#).

<sup>6</sup> See the ASA's [Advertising Codes](#).

---

situations where you have been formally instructed by a consumer; crucially, it also applies in your dealings with consumers prior to any formal arrangement with them and in your dealings with potential consumer clients (even where they do not ultimately become your client).<sup>7</sup>

13. **Who is a consumer?** For the purposes of this Guidance Note, a consumer is an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession. It is important to be aware that this includes individuals who are funded by legal aid and individuals you are advising on a pro bono basis. Note that while there is significant overlap between consumers and those who can complain to the Legal Ombudsman, the definition of a "complainant" under the Legal Ombudsman Scheme Rules is broader than the definition of a "consumer" under consumer law.<sup>8</sup>
14. **Vulnerable consumers.** As further set out in this Guidance Note, when considering the steps you should be taking to ensure consumer law compliance you will need to take into account the extent to which your consumer clients (or potential clients) may be vulnerable. As the Legal Services Consumer Panel has observed, the very nature of the legal services being provided may lead to consumer vulnerabilities, for example because:
- there is a big knowledge gap between members of the public and legal professionals;
  - people often need legal advice when they are experiencing stressful difficulties;
  - it can be hard for people to judge the quality of legal services, even after they have received them.

---

<sup>7</sup> For example, consumer law will apply to general promotional material aimed at potential consumer clients.

<sup>8</sup> In addition to private individuals, the Legal Ombudsman's definition includes micro-enterprises, charities, clubs, associations or societies with an annual income of less than £1m, and trustees of a trust with a net value of less than £1m (but excluding regulated lawyers and law firms).

- 
15. However, the position is even more acute where your practice is focused on consumers who may be particularly vulnerable – such as those who have suffered personal injury or been the victim of clinical negligence – or where a particular commercial practice (such as the publication of an advertisement) is aimed at a specific group of vulnerable consumers.
  16. **Who is responsible for consumer law compliance?** Consumer law places legal obligations on traders that interact with consumers. In this context, a trader is a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf. Accordingly, in many cases it will be your firm who will be held to account for any consumer law breaches, although where you are acting in your own name (for example, as a sole practitioner) you may be personally responsible for any consumer law infringements.
  17. However, even where ultimate responsibility rests with your firm, each individual Costs Lawyer has an important role to play in ensuring consumer law compliance. In particular, this is because:
    - your actions can lead directly to liability attaching to your firm, for example because your actions cause your firm to be in breach of contract or the statements you make mislead consumers;
    - you may face regulatory action by the CLSB where you are responsible for causing your firm to be non-compliant with its consumer law obligations, for example if this constitutes a breach of the Code of Conduct.

## Interaction with other CLSB rules

18. Although this Guidance Note focuses on your obligations under consumer law, it is important to note that there is nothing new in terms of your legal obligations. To the extent you have been dealing with consumers to date, this Guidance Note

---

should reflect what you have already been doing given you need to comply with consumer law in order to comply with the Code of Conduct.<sup>9</sup>

19. In any event, you will see that there are many similarities between the requirements of consumer protection law and the requirements of regulatory rules that apply to legal services and Costs Lawyers specifically. Although overlapping, it is important to recognise that the two regimes are distinct and you will need to consider your responsibilities separately under each to ensure full compliance.
20. This Guidance Note cross-refers to other CLSB documents in a number of places, which you still need to be familiar with. It does not cover other laws or rules enforced by the CLSB, SRA or other sector regulators and you must continue to comply with your broader legal sector regulatory obligations. The CLSB's core regulatory rules can be found in the [Costs Lawyer Handbook](#).

## Advertising and promotional materials

### Overview

21. It is important that you provide clients (and potential clients) with the information they need, at the time they need it and in a format that is clear and easy to understand. This is to help ensure consumers are in a position to make informed decisions when dealing with a Costs Lawyer, and it puts you in the best position to avoid infringing consumer law.

**Ask yourself.** Are you providing consumers with:

- the right information
- at the right time
- in the right format?

---

<sup>9</sup> Principle 2.1 provides that you must at all times act within the law.

- 
22. If you fail to ensure that the information you provide to consumers is accurate and does not contain false information, you are at significant risk of breaching consumer law. Similarly, you may infringe the law if the information, or its overall presentation, in any way deceives or is likely to deceive potential or current clients (even if that information is factually correct).<sup>10</sup> Particular care should be taken in relation to information concerning your fees, your firm and the nature of the services being provided.
  23. These obligations apply in relation to all your interactions with consumers including, for example, adverts, website content and marketing materials. They can also apply when dealing with individual consumers.<sup>11</sup>
  24. While this section of the guidance focuses on your consumer law obligations, you will note the many similarities with your broader regulatory obligations.<sup>12</sup> However, it is important to note that compliance with our regulatory rules does not guarantee your compliance with consumer law. Neither does compliance with consumer law ensure broader regulatory compliance.

## Misleading by omission – in more detail

25. You are likely to infringe consumer law if the information you provide to consumers omits or hides material information.<sup>13</sup> Similarly, if you provide material information in a manner which is unclear, unintelligible, ambiguous or untimely, you are likely to infringe consumer law.<sup>14</sup>

---

<sup>10</sup> Consumer Protection from Unfair Trading Regulations 2008, regulation 5.

<sup>11</sup> Note that where the information is being provided to consumers in a format that falls within the ASA's jurisdiction (for example, in adverts or on your website), the ASA may take action in relation to the provision of misleading information or the failure to provide material information properly.

<sup>12</sup> See, for example, paragraph 4.6 of the Code of Conduct which states: "You must ensure that clients are able to make informed decisions about the work being undertaken on their behalf throughout the lifetime of a matter, including how it will be priced, the costs incurred and the likely overall cost of the matter (including any potential liability for the costs of other parties)".

<sup>13</sup> Consumer Protection from Unfair Trading Regulations 2008, regulation 6.

<sup>14</sup> Consumer Protection from Unfair Trading Regulations 2008, regulation 6.

---

**What do you mean by “untimely”?** This will change depending on the information.

Some information needs to be provided much earlier in your engagement with consumers than others. It may be useful to ask yourself whether your clients might make a different decision (for example, to shop around) if you provided certain information earlier. If the answer is yes, or maybe, there is a good chance you need to provide that information earlier in order for it to be timely.

26. Material information is information that the average consumer<sup>15</sup> needs – in the relevant circumstances – to take an informed transactional decision,<sup>16</sup> such as whether to instruct you or your firm, or whether certain services you offer are right for them. It is an intentionally broad concept and may vary from one firm to another depending on the services being offered to consumers and how they are offered to them. Accordingly, you should take care to consider what information your clients are likely to need based on how you are interacting with them, and you should be conscious of how your clients are likely to interpret the information you provide them with.

**How do I know if information is material?** It can be helpful to ask yourself whether your clients might make a different decision (for example, in relation to the services they instruct you to provide) if you told them a certain bit of information. If the answer is yes, or maybe, then there is a good chance that information would be considered material.

27. Our [Guidance Note on price transparency through websites and promotional material](#) contains further information and guidance in this regard.

---

<sup>15</sup> See Annex 2 for further information on who the average consumer is for these purposes.

<sup>16</sup> See Annex 2 for the full definition, but this is a broad concept and includes the decisions a consumer takes in relation to whether, how and on what terms to purchase a product. This can also include decisions leading up to a decision to purchase (or a decision not to purchase) a product.

- 
28. In particular, you need to bear in mind that the average consumer you are dealing with is likely to be less familiar with legal processes, terminology and the services you provide than professional clients and so is likely to need different information presented in a more digestible form.
29. If your practice is focused on vulnerable consumers, adjustments will be necessary to reflect those vulnerabilities.<sup>17</sup> For these purposes, care is needed especially where consumers may be vulnerable, for example because they are elderly or mentally or physically infirm. There is a heightened risk of infringing consumer law when a particular commercial practice (such as the publication of an advertisement) is aimed at a specific group of vulnerable consumers, and their vulnerabilities are not properly taken into account.
30. In all situations we would expect consumers to receive the following information in a timely manner:
- Key information about the services being offered or to be provided by you/your firm, including details of the proposed timeframes for the work.<sup>18</sup> This would normally be expected to be tailored to the individual case, rather than being generic.
  - The total price for the services (including all taxes), or where the total price is not known at the outset, how the price will be calculated<sup>19</sup> together with a genuine estimate of the likely total cost to the consumer.
  - Whether (and if so, when) any additional charges (such as disbursements) are to be incurred and, where these are known, what such charges will be. Again, where they are not known, you should explain how such charges will be calculated and provide a genuine estimate of the likely additional charges.

---

<sup>17</sup> See Annex 2 for further information.

<sup>18</sup> For example, where the work is to be completed in stages, it may be helpful to set out those stages. Remember that the client might not understand what the key stages are so you may need to explain them in simple language.

<sup>19</sup> For example, including hourly rates (by grade of staff where applicable).

- 
- Your firm's name (and trading name if different) and your contact details, including your postal address and telephone number.
  - Any information that is required to be provided to clients under the CLSB's regulatory rules or other regulatory requirements that apply to you.
  - Details of your complaint handling procedure.

---

**What do you mean by the total price?** Where you cannot say in advance what your total fees will be, you should consider whether providing an indicative cost of your services would be helpful. This could be a range of likely total costs. You might also choose to provide a typical or average cost for the type of service, particularly if the range is quite large. If feasible, consider providing an indicative number of hours or a range of hours needed for different services. If the price is by stage, then it might be helpful to provide details on that basis. However, if it would not be obvious to a consumer what a stage of the service is, you will likely need to provide a simple explanation.

---

---

## Examples of misleading information

**1.** If your advert states you're a signatory to a code of conduct, it may be misleading if you do not adhere to the standards set out in that code.

**2.** If your advert suggests that your firm, rather than you as an individual, is regulated by the CLSB this may be misleading, particularly if some costs advisers in your firm are not regulated.

**3.** If your promotional material encourages consumers to engage your services, but fails to mention that there are certain cases you will not take on, that may be material information and its omission may be misleading.

**4.** You should inform clients if anything that could reasonably be expected to be included in your stated fees is not. A failure to do so could be misleading and a breach of consumer law.

**5.** If you offer conditional fee agreements (CFAs) but fail to set out the circumstances in which clients might have to make any payments themselves, such as disbursements, this may be misleading.

**6.** If the type of service you are promoting involves a risk that the client will have to pay costs to the other side, you should indicate this and make it clear that this is additional to your fees, or this could be misleading.

**7.** If you provide your client with average timescales for dealing with different types of matters to indicate how long the work may take, but do not explain why this might not apply in their case, this could be misleading, especially where there is a material risk of not meeting the indicated average timeframes.

---

## Pre-contractual information

31. Before a consumer becomes bound by a contract with you, consumer law requires that certain pre-contract information is provided to that consumer. What constitutes the contract for these purposes will be determined on the facts and by the form of your agreement with your client. In many cases, your contract is likely to be your client care letter, your terms of engagement, a letter confirming your instructions or some other similarly named document.
32. You are likely to satisfy many of the pre-contract information requirements naturally as part of your engagement with consumers, not least because there is considerable overlap between these requirements and those set out in the Code of Conduct<sup>20</sup> and other regulatory guidance.<sup>21</sup> However, as consumer law states that pre-contract information is to be treated as a term of the contract,<sup>22</sup> it is important you ensure this is given, or made available, to consumers before a consumer enters into a contract with you.
33. Although there is some overlap between the pre-contract information requirements and the material information referred to above, they stem from separate legal obligations and care should be taken to ensure compliance with both. In particular, it is worth noting that although providing some material information just before a consumer enters into a contract with you may satisfy your pre-contract information obligations, it may still leave you vulnerable to a breach for failing to provide material information in a timely fashion.
34. The pre-contract information that you need to provide to consumers, and the form in which you need to provide it, will depend on how the contract is entered into with the consumers. This is summarised in Annex 1. However, in all cases this

---

<sup>20</sup> See, for example, principle 3.4.

<sup>21</sup> See, for example, the CLSB's [Guidance Note on client care letters](#).

<sup>22</sup> Consumer Rights Act 2015, section 50.

---

information needs to be provided to consumers in a clear and comprehensible manner.

35. The law recognises three types of contract:

- **on premises** – for example where the contract is entered into in person at your offices or following a face-to-face meeting at your office (even if the contract is entered into online);
- **distance** – for example where the contract is entered into by email, online or over the phone and up to this point the contact with your client is exclusively through one or more means of distance communication;
- **off premises** – for example where the contract is entered into face-to-face, but in a location that is not your usual business premises (such as the consumer’s home or at another law firm’s offices).<sup>23</sup>

36. As noted above, consumer law provides that the pre-contract information you provide to prospective consumer clients is to be treated as a term of the contract that you subsequently enter into with them. It is therefore important for you to ensure that the pre-contract information is accurate and up to date, because otherwise you may breach the terms of your contract with your client. This may be particularly relevant, for example, where you are relying on pre-contract information that is provided on your website or in pre-printed leaflets and marketing.

37. Consumer law provides that you cannot rely on any change to the pre-contract information provided to a consumer (whether such change takes place before or after the contract is entered into) unless that change has been expressly agreed between you and that consumer client.<sup>24</sup> In practical terms, if changes are needed before entering into the contract, this means you will need to highlight changes

---

<sup>23</sup> The Consumer Contracts Information, Cancellation and Additional Charges Regulations 2013, regulation 5.

---

to pre-contract information promptly and obtain the client’s consent before seeking to enter into a contract with a consumer on the basis of the change. This may be particularly important, for example, if you are updating a standard fee list that has previously been provided to the consumer.

38. Where a change to pre-contract information is necessary after a contract has been entered into, there may be certain circumstances in which you can rely on a variation clause to agree such changes with a consumer client. However, any such clause must be fair in accordance with unfair terms legislation – see further paragraphs 42 to 54 below.

## Cancellation rights

39. Where you enter into a distance or off premises contract with a consumer, they will have a right to cancel. Under this right, the consumer may cancel the contract for any reason and may do so at any time during the “cancellation period” (being the period ending 14 days after the day on which the contract was entered into).<sup>25</sup>
40. Where the consumer exercises their right to cancel, the contract is cancelled and treated as if it was never entered into. Both parties are relieved from their obligations under the contract<sup>26</sup> and the consumer is entitled to a refund of any sums paid in advance for services yet to be performed.<sup>27</sup> If you have started to provide the services during the cancellation period, you will not be entitled to charge the consumer in the event they exercise the right to cancel, except where:
- the consumer has expressly requested that you provide some (or all) of the services during the cancellation period; and

---

<sup>25</sup> The Consumer Contracts Information, Cancellation and Additional Charges Regulations 2013, regulation 30. This period is extended where the consumer is not informed of their right to cancel – see regulation 31.

<sup>26</sup> The Consumer Contracts Information, Cancellation and Additional Charges Regulations 2013, regulation 33.

<sup>27</sup> The Consumer Contracts Information, Cancellation and Additional Charges Regulations 2013, regulation 34.

- 
- in the case of an off-premises contract, the consumer has made such a request on a durable medium<sup>28</sup> (a durable medium could be an email or a written request made in hard copy).

41. In such cases you may charge the consumer a reasonable amount for the services provided, typically calculated by reference to what has been supplied as a proportion of the full service to be provided under the contract. If you have provided all the services under the contract during the cancellation period, the conditions in paragraph 40 above have been met and the consumer has acknowledged in advance that they would lose their right to cancel in such circumstances, the consumer will lose their right to cancel.<sup>29</sup>

**Example.** Your client has a hearing in two days and asks you to prepare points of dispute on a bill ahead of the hearing. If your client confirms in writing (for example, by email) that they want you to start work straight away, they will lose their right to cancel if you complete that work.

## Contract terms

42. Our [Guidance Note on client care letters](#) sets out the CLSB’s broader expectations regarding your client care letters. While that guidance focuses on the key terms of your engagement – such as the services to be provided, your fees and timescales – it notes that you may wish to include more standard contract terms (or terms of business) within the document.<sup>30</sup> While it is obviously of paramount importance that consumers understand the key terms of your contract with them, consumer law goes further than this. In addition to requiring that all your contract

---

<sup>28</sup> The Consumer Contracts Information, Cancellation and Additional Charges Regulations 2013, regulation 36.

<sup>29</sup> The Consumer Contracts Information, Cancellation and Additional Charges Regulations 2013, regulation 36.

<sup>30</sup> Where ‘contract terms’ are referred to in this section, this includes all wording which gives rise to an obligation or right between you and a consumer client, wherever those obligations/rights are set out (for example in the client care letter, separate contractual documents, conditions, policies or terms published on your website).

---

terms are fair, consumer law also requires that you draft all your terms in such a way that consumers can be expected to understand the potential consequences to them of entering into a contract with you.

43. If a term is found by a court to be unfair, it will not be binding on a consumer and cannot be enforced. Consumers may also be able to rely upon unfair terms legislation in any legal proceedings they bring against you or in defence of a claim where you try to enforce an unfair term.

## Ensuring your contract terms are transparent

44. All contract terms should be easily locatable and accessible by your clients. They should be brought to the attention of prospective clients in a timely manner before they agree to instruct you. Further, you need to afford your clients an appropriate opportunity to read and understand the contract terms before they become bound by them.<sup>31</sup> This is particularly important given that in many cases consumers are unlikely to be familiar with the nature of the services you provide and how your business operates.<sup>32</sup>
45. As such, it is important that you ensure your contract terms are clear and unambiguous. They should be written using plain and intelligible language<sup>33</sup> which is clear and informative. You should avoid the use of “legalese” or technical language as consumer law requires that clients must genuinely be able to understand their rights and obligations before agreeing to them. Paragraph 12 of our [Guidance Note on client care letters](#) provides some further information in this regard that you may find helpful to consider. Where you are dealing with vulnerable consumers, you will need to factor this into your approach.<sup>34</sup>

---

<sup>31</sup> This was one of the principles underlying the original European legislation on which the Consumer Rights Act 2015 was based – see recital 20 of the [European Directive on Unfair Terms](#).

<sup>32</sup> Note that complying with these transparency obligations does not necessarily mean you are compliant with your other legal obligations regarding the provision of information to consumers, as set out elsewhere in this guidance. The various obligations are all distinct and need to be considered on their own merit to ensure compliance.

<sup>33</sup> Consumer Rights Act 2015, section 68.

<sup>34</sup> For further information, see our [Guidance Note on vulnerable consumers](#).

- 
46. You should be aware that where a contract term has more than one possible meaning, and so is ambiguous, it will be given the meaning that is most favourable to the consumer.<sup>35</sup>

## Ensuring your contract terms are fair

47. A term will be unfair if, contrary to the requirements of good faith, it causes a significant imbalance in the parties' rights under the contract to the detriment of the consumer.<sup>36</sup>
48. Whether a term is unfair is an assessment that must be considered in the round, taking into account the nature of the subject matter of the contract, and by reference to all the circumstances existing when the term was agreed and to all the other terms of the contract or of any other contract on which it depends.<sup>37</sup>
49. That said, the fairness test includes the following two main elements: (i) significant imbalance to the detriment of the consumer; and (ii) good faith.
50. "Significant imbalance" is concerned with the parties' rights and obligations under the contract. There will be a significant imbalance if a term is so weighted in favour of a business that it tilts the rights and obligations under the contract significantly in its favour. This may be, for example, by granting the business undue discretion or imposing a disadvantageous burden on the consumer. It is important to note that:
- a contract term may be unfair if it has the potential to cause a significant imbalance to the detriment of consumers, even if it is not used in that way in practice; and

---

<sup>35</sup> Consumer Rights Act 2015, section 69.

<sup>36</sup> Consumer Rights Act 2015, section 62.

<sup>37</sup> Consumer Rights Act 2015, section 62(5).

- 
- While a contract may purport to set out equal rights (for example, equal obligations in the event of cancellation), this may still cause a significant imbalance if the practical effect on consumers is significantly disadvantageous compared to that for the business.
51. The concept of “good faith” is intended to have a broad application and to ensure that the fairness assessment includes an overall evaluation of the different interests involved. The requirement of good faith embodies a general principle of “fair and open dealing”. It looks to good standards of commercial morality and practice.
  52. In terms of fair dealing, this requires that you do not, whether deliberately or unconsciously, take advantage of a consumer’s circumstances to their detriment. Accordingly, when setting your terms of business, you should factor in the typical characteristics of your consumer clients and potential consumer clients (for example, their lack of experience or unfamiliarity with legal processes, or particular vulnerabilities, such as disability). In addition, you also need to actively take the legitimate interests of consumers into account when setting your contract terms.
  53. In terms of open dealing, case law dictates that terms should be “expressed fully, clearly and legibly, containing no concealed pitfalls or traps”. Appropriate prominence should be given to terms that might operate disadvantageously to your clients. You should not assume that consumers can identify terms which are important or which may operate to their disadvantage.

---

**Ask yourself.** When setting your contract terms, you need to ask yourself whether it is reasonable to assume that clients would agree to such terms if the respective negotiating positions of your firm and the consumer were equal. If not, the contract term is likely to be unfair and unenforceable.

---

---

54. While the fairness test is deliberately broad and flexible in application, consumer law illustrates what “unfairness” means by listing some types of terms that are likely to be unfair. For example, your contract terms may be unfair if one or more of them has the following characteristics.

- It unduly excludes or restricts your liability to the consumer. Indeed, some such clauses are automatically unfair, for example those that seek to exclude or restrict your liability when you have failed to provide your services with reasonable care and skill.<sup>38</sup>
- It excludes or limits a consumer’s right to take legal action or exercise any other legal remedy. This would include a term that precludes the escalation of a complaint to the Legal Ombudsman or places more restrictive timeframes on a consumer to do so, or mandates the use of arbitration.
- It seeks to bind consumers to hidden terms; that is, contract terms that they have not had the chance to become familiar with or understand.
- It allows you to vary the service to be provided, without a valid reason. Particular fairness concerns are likely to arise where you have a wide discretion to impose changes, or where the consumer could not foresee the circumstances in which changes may be necessary or what the potential consequences of those changes might be.
- It allows you to increase the price<sup>39</sup> after the consumer is bound by the contract. Where a fixed fee has been agreed, it will be rare for there to be circumstances in which it would be fair to change that fee, particularly in relation to a short-term contract. Similarly, it is unlikely to be fair to change agreed hourly rates, particularly in relation to a short-term contract.
- It allows you the right to determine whether the services supplied are in conformity with the contract, or gives you the exclusive right to interpret any term of the contract.

---

<sup>38</sup> Consumer Rights Act 2015, section 57.

<sup>39</sup> Or the way in which the price is to be calculated.

- 
- It purports to exclude liability for any statement (oral or written) made by you or someone on your behalf about the business or the service. Such statements are to be treated as a term of the contract if they are taken into account by the consumer when deciding to enter into the contract or, later, when making any decision about the service. Any attempts to exclude such statements (for example, the use of an entire agreement clause) are automatically unfair.

## While you are performing the services

55. In addition to the continued application of the rules set out in relation to misleading information and unfair contract terms (both above)<sup>40</sup> and professional diligence (below),<sup>41</sup> consumer law also sets out some specific requirements regarding the quality of the services to be provided.
56. In practice, there may be little difference between the standards expected under consumer law and under your broader regulatory obligations in relation to some aspects of your work.<sup>42</sup> However, it is important to ensure compliance with the standalone consumer law obligations, not least because if you breach those obligations the consumer is entitled to a number of statutory remedies that cannot be avoided or limited.
57. All services you provide must be performed with reasonable care and skill.<sup>43</sup> They must also adhere to the description of the services you provided to the consumer under your pre-contract information obligations, as well as any other statement that you have made to the consumer about the services that was taken into account by the consumer when deciding to enter the contract.<sup>44</sup>

---

<sup>40</sup> See paragraphs 21 to 30 and paragraphs 42 to 54 respectively.

<sup>41</sup> See paragraphs 60 to 62.

<sup>42</sup> For example, principle 4 of the Code of Conduct requires you to provide a good quality of work and service to each client.

<sup>43</sup> Consumer Rights Act 2015, section 49.

<sup>44</sup> Consumer Rights Act 2015, section 50.

- 
58. A failure to do so is a breach of contract and in addition to any rights the consumer has under common law,<sup>45</sup> the consumer has a statutory right to repeat performance.<sup>46</sup> This is a right to require you to perform the service again, to the extent necessary to complete its performance in conformity with the contract, within a reasonable time and without cost or significant inconvenience to the consumer.<sup>47</sup>
59. In addition, if no timeframe is agreed with your client, the services must be performed within a reasonable time.<sup>48</sup> A failure to do so is a breach of contract and in addition to any rights the consumer has under common law,<sup>49</sup> the consumer has the right to an appropriate reduction in the price paid for the services.<sup>50</sup>

## Professional diligence

60. In addition to the more specific rules referred to above, it is worth noting that consumer law also contains a more general prohibition against commercial practices which contravene the requirements of professional diligence.<sup>51</sup>
61. Professional diligence is an objective standard of special skill and care which you/your firm are expected to exercise towards consumers and which is commensurate with honest market practices<sup>52</sup> or the general principle of good faith in the sector. It is an intentionally broad and flexible test and is intended to reflect what consumers would reasonably expect of you.

---

<sup>45</sup> Save that the consumer is not entitled to any double recovery.

<sup>46</sup> Consumer Rights Act 2015, section 55, except where repeat performance of the contract is impossible.

<sup>47</sup> Where you fail to repeat performance within a reasonable time or without causing significant inconvenience to the consumer, the consumer is entitled to an appropriate price reduction. See Consumer Rights Act 2015, sections 54 to 56. A price reduction remedy is also available where repeat performance is impossible.

<sup>48</sup> Consumer Rights Act 2015, section 52.

<sup>49</sup> Save that the consumer is not entitled to any double recovery.

<sup>50</sup> Consumer Rights Act 2015, sections 54 to 56.

<sup>51</sup> Consumer Protection from Unfair Trading Regulations 2008, regulation 3.

<sup>52</sup> Note, however, that for there to be a breach you do not need to be acting dishonestly – the legal test is less strict.

---

**Example.** While you have a published complaints procedure, in practice you fail to follow it adequately or your complaints procedure does not adhere to the CLSB's guidance. In both cases, in addition to any potential regulatory action, you may be contravening the requirements of professional diligence and so be in breach of consumer law.

62. While compliance with your obligations under the Code of Conduct is a good place to start, this will not guarantee compliance with your professional diligence obligations under consumer law. They are distinct obligations and should be considered separately. In this regard, it is important to note the following.
- You may infringe the rules on professional diligence either before, during or after you have been formally instructed by a consumer.
  - As is the case for other potential consumer law infringements referred to above, you may contravene the professional diligence requirements in relation to consumers who do not formally become your clients.<sup>53</sup>
  - It is not a defence that other firms engage in the same practices. If it is poor practice, it will not meet the objective standard of professional diligence as this is not what a reasonable consumer would expect of a firm acting in accordance with honest market practices or good faith, even though others are doing the same thing.
  - There is an enhanced risk of a breach where you are engaged in a practice that is taking advantage of, or may take advantage of, consumers. This may be because, for example, consumers are particularly vulnerable, are not familiar with the services you are providing, feel pressured into making decisions that they do not fully understand, or only receive pertinent information late in the day.

---

<sup>53</sup> For example, due to the way in which you solicit new customers.

---

**Example.** You have noticed that consumers who complain to your firm are less likely to complain to the Legal Ombudsman if the complaints process takes a long time. As a result, you decide that you will seek to string out consumer complaints as much as possible. This is likely to mean you are contravening the requirements of professional diligence and so will be in breach of consumer law.

## ADR and complaint handling

63. Under section 112 of the Legal Services Act 2007, it is a requirement that you have effective procedures in place for the resolution of service and conduct complaints. Further, under the Code of Conduct, you must provide for an effective first-tier complaints procedure which is simple and transparent, ensures that a complaint can be made by any reasonable means, and takes into account the individual needs of clients (in particular the needs of vulnerable consumers).
64. The CLSB has produced a [Guidance Note on complaints procedures](#) which sets out further information regarding its expectations from a regulatory perspective. However, when you are dealing with consumers, it is also important to ensure that your complaints procedure adheres to your consumer law obligations. While regulatory guidance is relevant to assessing the standards expected under consumer law, adhering to this guidance does not guarantee compliance with your consumer law obligations. For example, as noted above, consumer law requires you to give or make available to prospective consumer clients information about your complaint procedure before they become bound by any contract with you.
65. You are more likely to comply with your consumer law obligations if:
  - When establishing your internal policies and procedures, you ensure they do not have the effect of discouraging consumers from making complaints or escalating complaints where they are unsatisfied with your process. Similarly,

---

as noted above in relation to unfair contract terms, the terms of your client care letter (or equivalent) should not have this effect either.

- Your complaints procedure is clear and simple with as few steps as possible, facilitating the early identification and resolution of complaints.
- You have a written complaints procedure which is easy to find, understand and use, for example:
  - it is clearly signposted (easy to find and access) on your website;
  - it is easy to navigate with the use of clear headings which are intuitive to consumers, for example reflecting the questions they are likely to have; and
  - you avoid the use of legalese and other overly complex language.
- When you receive complaints, you adhere to your complaints procedure such that complaints are dealt with fairly and effectively, and your procedure is applied consistently.
- You ensure that the information you provide consumers about your complaints procedure is accurate, complete, timely and not misleading. This applies throughout your dealings with consumers, whether in writing, in face-to-face discussions or on the telephone, and covers a range of information about the complaints procedure, including for example:
  - the existence of your complaints procedure;
  - how to follow the complaints procedure; and
  - when and how a consumer may escalate a complaint to the CLSB or Legal Ombudsman.
- You ensure that any investigation of a complaint is carried out by someone who is independent of (and not the direct subject of) the concerns raised, to help avoid potential conflicts of interest.

66. Finally, it is important to note that under consumer law it will be the firm that is responsible for the actions of anyone acting in the firm's name or on its behalf. Similarly, you may be responsible for anyone acting in your name or on your behalf. As it is crucial that any complaints procedure is followed in practice – it is

---

not enough simply to have one, it is important that all relevant individuals are trained in and have a good understanding of your complaints procedure, how it works, their role and responsibility in reporting and resolving complaints raised with them, and their role in supporting people if they want to make a complaint.

## **Further information and guidance**

67. [To be added]

## Annex 1 – Overview of pre-contract information requirements<sup>54</sup>

On Premises contract	Distance contract	Off-premises contract
<b>How the information is to be provided</b>		
Information to be given, or made available <sup>55</sup> to consumers in a clear and comprehensible manner if that information is not already apparent from the context.	Information to be given, or made available to consumers in a clear and comprehensible manner and in a way appropriate to the means of distance communication used.	Information to be given to consumers in a clear and comprehensible manner. It is to be on paper or, if the consumer agrees, on another durable medium and must be legible.
<b>Information to be provided</b>		
(a) the main characteristics of the services. (b) the identity, geographical address and telephone number of your firm. (c) the total price of the services inclusive of taxes, or where this cannot reasonably be calculated in advance, the manner in which the price is to be calculated. (d) where applicable, all additional delivery charges or, where those charges cannot	(a) the main characteristics of services. (b) the identity, geographical address, telephone number, fax number and email address of your firm. (c) the total price of the services inclusive of taxes, or where this cannot reasonably be calculated in advance, the manner in which the price is to be calculated. (d) where applicable, all additional delivery charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable.	

<sup>54</sup> The complete list can be found in The Consumer Contracts Information, Cancellation and Additional Charges Regulations 2013 - Annex 1 (for on-premises contracts) and Annex 2 (for distance and off-premises contracts).

<sup>55</sup> For these purposes, information is made available to the consumer only if the consumer can reasonably be expected to know how to access it.

---

reasonably be calculated in advance, the fact that such additional charges may be payable.

(e) the arrangements for payment, delivery, performance, and the time by which you undertake to perform the services.

(f) your complaint handling policy.

(g) if the contract is of indeterminate duration, the conditions for terminating the contract.

(e) the arrangements for payment, delivery, performance, and the time by which you undertake to perform the services.

(f) your complaint handling policy.

(g) where a right to cancel exists, the conditions, time limit and procedures for exercising that right.

(h) that they will lose their right to cancel if (i) they expressly request the services are provided within the cancellation period; (ii) you provide all the services in the cancellation period and (iii) the consumer acknowledges that they will lose their right to cancel in such circumstances.

(i) that the consumer is required to pay reasonable costs for services already provided if they exercise their right to cancel having expressly requested that the services start during the cancellation period.

(j) the existence of relevant codes of conduct, and how copies of them can be obtained, where applicable.

(k) if the contract is of indeterminate duration, the conditions for terminating the contract.

(l) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.

---

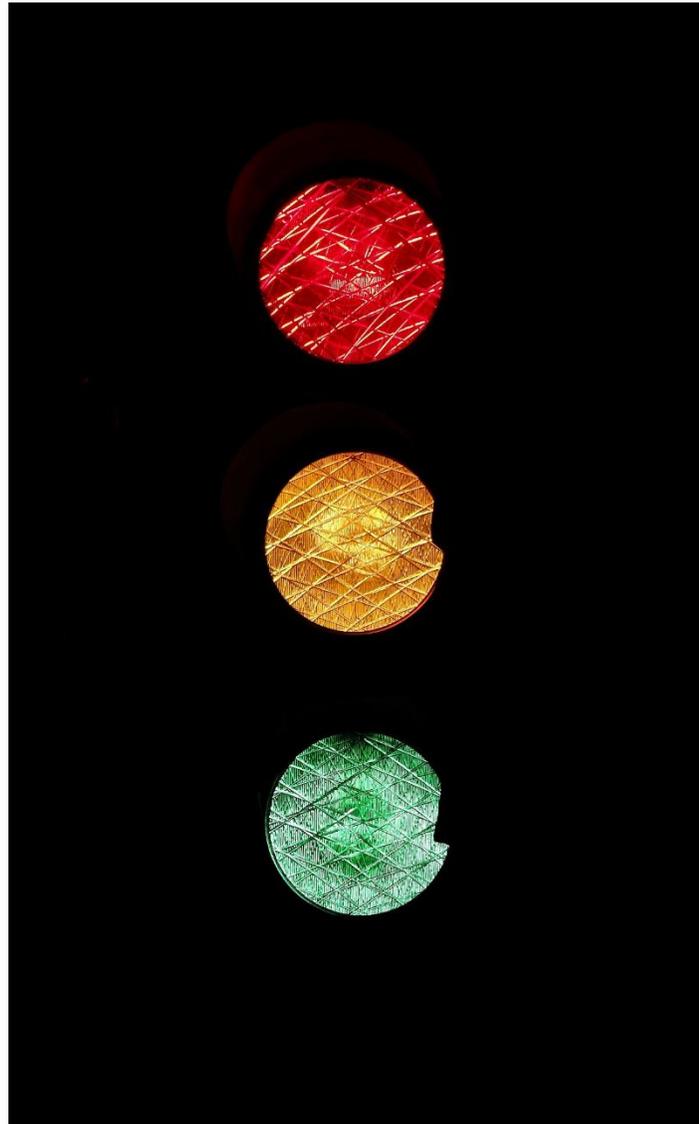
## Annex 2 – Overview of key legislation in more detail

[To be added]

---

# Policy statement on enforcement and sanctions

---



**28 September 2023 (version 2)**

---

**Costs Lawyer Standards Board**

**CLSB**  
|||

---

## Purpose of this policy statement

1. The purpose of this policy statement is to promote proportionate, consistent and fair decision making by the Costs Lawyer Standards Board (CLSB) when considering the conduct of a Costs Lawyer. It supplements two sets of regulations – the Disciplinary Rules and Procedures (DR&P) and the Practising Rules – both of which can be found in the [Costs Lawyer Handbook](#) on the CLSB website.
2. The DR&P set out the types of disciplinary sanctions that can be imposed when a Costs Lawyer breaches our rules. The range of outcomes under the DR&P – which can be imposed by the CLSB or agreed with the Costs Lawyer – include:
  - A warning letter
  - A written undertaking
  - Condition(s) on a practising certificate
  - Payment of a financial penalty
  - Suspension of a practising certificate for a fixed term
  - Permanent revocation of a practising certificate
3. The Practising Rules specify the circumstances in which the CLSB can refuse an application for a practising certificate, revoke a Costs Lawyer’s practising certificate, or impose practising conditions. The Practising Rules also require Costs Lawyers and prospective Costs Lawyers to disclose specified events (such as criminal convictions, financial measures and regulatory breaches) when they apply for a practising certificate and throughout the year. Disclosures can affect a Costs Lawyer’s eligibility for a practising certificate or attract practising conditions.
4. This policy statement will be taken into account by the CLSB when making decisions under the DR&P and/or the Practising Rules in relation to a Costs Lawyer’s conduct. This includes decisions taken by a Conduct Committee or Conduct Appeal Committee in the context of disciplinary proceedings. The policy statement should be read in conjunction with the DR&P, Practising Rules and any other relevant CLSB regulations. The specific provisions of the DR&P and Practising Rules take precedence over this policy statement.

---

## Purpose of the rules

5. The DR&P and Practising Rules 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 Costs Lawyer 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 conduct matters dealt with fairly and promptly.
  
6. In particular, the purpose of imposing disciplinary 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 by the same Costs Lawyer or others in the profession.

## Approach to enforcement

7. The CLSB is primarily concerned with taking enforcement action against serious breaches, not those which are merely trivial. 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.
  
8. Whilst the CLSB's core concern is the regulation of Costs Lawyers' professional conduct, in some circumstances it will be appropriate to take action in relation to conduct that occurs 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) where:

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

## Mitigation and aggravation

9. Below is a table listing the main factors that we are likely to take into account as mitigating or aggravating a Costs Lawyer’s conduct. These factors – and any other relevant factors specific to the case – will determine the nature and level of sanctions imposed under the DR&P and/or the impact on the Costs Lawyer’s ability to practice under the Practising Rules. The factors in the table can also be used in deciding whether conduct is serious enough to warrant action at all.

<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
There was no profit made or intention to profit from the conduct	The Costs Lawyer profited or intended 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, or had no control over the circumstances leading to the breach	The Costs Lawyer was senior or experienced, 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

---

## Approach to enforcement relating to competency

### Lack of competency while practising

10. In some cases, we might become aware of information that indicates a practitioner does not meet the standards of competency expected of an authorised Costs Lawyer, as set out in the [Costs Lawyer Competency Statement](#).
  
11. The competency of all Costs Lawyers is assessed at the point when they qualify into the profession, through the Costs Lawyer Qualification. However, a lack of competency could arise during a Costs Lawyer's career if, for example, they:
  - fail to keep their technical knowledge or skills up to date;
  - fail to acquire new skills that are necessary for complying with their regulatory obligations in a changing environment, such as becoming a people or business manager, or taking on a new specialism;
  - misunderstand how the principles of professional conduct should be applied in a novel situation;
  - fail to appreciate the scope of their authorisation as a Costs Lawyer when taking on new work.
  
12. It is unlikely that competency issues will come to our attention in a vacuum. Usually, we will become aware of a potential lack of competency because it is implicit in, or is indicated by, other outcomes such as a poor client experience or a breach of our regulatory rules. A lack of competency might be indicated by, for example:
  - a formal finding of serious professional negligence against a Costs Lawyer;
  - negative observations made by a judge or the Legal Ombudsman;
  - the nature of a complaint made against a Costs Lawyer;
  - the nature of a disclosure made by a Costs Lawyer;
  - failure to demonstrate compliance with the CPD Rules.

A lack of competency might also be evidenced through the presence of one or more negative behavioural indicators, as set out in the [Competency Statement](#) for each skill competency.

- 
13. A potential lack of competency will be considered under the DR&P in the same way as any other conduct issue (and will usually be considered together with any related conduct issues).
  14. Where a lack of competency is identified, we will require the Costs Lawyer to take remedial action to develop their competency and correct the issue. We are likely to do this in one or more of the following ways:
    - by supporting the Costs Lawyer to put in place an informal remediation plan, reporting to us as milestones are completed (with a failure to meet milestones, without good reason, being likely to result in additional measures being imposed);
    - by placing conditions on the Costs Lawyer's practising certificate requiring specified remedial action to be taken;
    - by placing conditions on the Costs Lawyer's practising certificate requiring them to refrain from offering certain services or acting for certain types of clients until action has been taken;
    - in very serious cases, by making an interim suspension order under DR&P 4, preventing the Costs Lawyer from practising until action has been taken.
  15. We may impose any appropriate condition on a Costs Lawyer's practising certificate, but the conditions that are most likely to be imposed to remedy a lack of competency are:
    - completion of relevant training within a prescribed time frame;
    - a period of supervision or oversight of the Costs Lawyer's practice by a qualified person;
    - a period of monitoring of the Costs Lawyer's practice by the CLSB, for example through obtaining feedback from clients or managers;
    - a requirement for the Costs Lawyer to align their annual CPD objectives and activities with the relevant competency area;
    - a requirement to report on CPD activity more regularly than the usual annual requirement.

16. The approach taken will depend on the extent, nature and seriousness of the competency issue. The following mitigating and aggravating factors are likely to be most relevant in this context (these draw on the general mitigating and aggravating factors in the table above at paragraph 9).

<b>Less serious/mitigating factor</b>	<b>More serious/aggravating factor</b>
The lack of competency is of low risk to the public interest	The lack of competency is of high risk to the public interest
The lack of competency is of low risk to the reputation of the profession	The lack of competency is of high risk to the reputation of the profession
The lack of competency is of low risk to the administration of justice	The lack of competency is of high risk to the administration of justice
The lack of competency is an isolated incident (unless a very serious one)	There is a pattern of minor or serious competency issues that have not been addressed
The Costs Lawyer has reflected on their training and development needs and undertaken appropriate CPD activities	The Costs Lawyer has failed to consider or address their training and development needs in line with the CPD Rules
The Costs Lawyer shows insight into the issue and is proactive in planning and undertaking remedial action	No genuine insight into the issue has been demonstrated and/or the Costs Lawyer fails to take remediation seriously
The Costs Lawyer collaborates with the CLSB and provides full information	The Costs Lawyer does not collaborate or provide information and/or attempts to conceal information

## Temporary inability to meet competency requirements

17. We recognise that there may be situations in which a Costs Lawyer is practising but is temporarily not able to meet the standards of competency required, for example due to injury, illness, mental health concerns or a significant change in their personal circumstances. In a situation where there is a risk of a temporary lack of competency, a Costs Lawyer should:

- 
- reflect on their capacity to meet the standards of competency required whilst practising;
  - consider any adjustments or assistance that they might need during this time. This could include seeking reasonable adjustments from their organisation for employed Costs Lawyers or arranging supervision by a Costs Lawyer working in another organisation for sole practitioners;
  - if they have been away from practice, consider what steps they will need to take to meet the standards of competency required when they are practising again, for example, completing additional training or updating their technical knowledge and skills.
18. We will not take regulatory action against a Costs Lawyer just because they have a health condition or have experienced a significant temporary change in their personal circumstances. We recognise that many Costs Lawyers will be able to manage the impact of temporary situations or health conditions themselves, by making adjustments to their practice or seeking assistance as necessary.
19. We may require a Costs Lawyer to take remedial action or impose a condition on their practising certificate (as set out in paragraphs 14 and 15) in situations where:
- a temporary lack of competency has been identified;
  - the Costs Lawyer has not taken sufficient steps to address the impact of this; and
  - there has been a serious breach of our rules, or the individual's conduct is of high risk to the public interest or the profession (see paragraphs 7 and 8 above).
20. If you are concerned that you may not be able to fully address the impact of a temporary condition or change in personal circumstances for any reason, you should [contact us](#). We can then work with you to discuss and consider available options.
21. As a Costs Lawyer, you also have access to the support services provided by [LawCare](#). LawCare is the mental wellbeing charity for the legal profession offering

---

free and confidential emotional support, peer support and resources to those working in the law. If you need support with managing stress, mental wellbeing or other personal challenges, please consider contacting LawCare.

**END**



## Consultation response

### Legal Services Board consultation on draft guidance on promoting technology and innovation to improve access to legal services

25 September 2023

---

#### Introduction

The Costs Lawyer Standards Board (“CLSB”) is the regulator of Costs Lawyers in England and Wales. We exist to serve the public interest by setting and maintaining the standards of professional conduct by which Costs Lawyers must abide. Our mission is to “provide effective, proportionate regulation of Costs Lawyers in a way that promotes consumer choice and understanding, and engenders justified public trust”.

The CLSB is pleased to respond to the LSB’s consultation on draft guidance on promoting technology and innovation to improve access to legal services.

In 2021 the CLSB secured funding from the Regulators’ Pioneer Fund for a project that asked: [How could Costs Lawyers reduce the costs of legal services?](#) This project looked at how regulation or legislation might help, or hinder, the emergence of innovative services provided by lawyers specialising in legal costs. The findings from the project’s final report have informed this consultation response.

The CLSB is broadly supportive of the LSB’s proposed guidance. Our answers to the consultation questions are set out below.

#### Q1: Do you agree with our approach of using the guidance to set outcomes for regulators?

The CLSB agrees with the LSB’s approach of using the guidance to set outcomes for regulators. Each regulated community is different, and an outcomes-focussed approach will enable each regulator to develop guidance that is appropriate and sensible for its own regulated community. This approach also empowers regulators to design frameworks that meet the existing needs, challenges and opportunities of their own regulated communities, but which are also flexible enough to encompass potential future developments. This flexibility is important in a field of rapid and continuing change, such as technology and innovation.

Setting harmonised outcomes also enables regulators to develop guidance that is consistent across the sector. This is particularly important for regulated communities that work closely with, or within, other regulated communities, such as Costs Lawyers (who are individually regulated by the CLSB but often work in firms that are regulated by the Solicitors Regulation Authority or another approved regulator).

#### Q2: Do you know of any case study examples it would be useful to share?

The CLSB’s 2021 Regulators’ Pioneer Fund [report](#) found that there was no evidence of any groundbreaking use of technology in the costs market, but widespread use of costs software, such as CostsMaster. Costs Lawyers who took part in the research were asked how they use technology in

their work. Of those who responded, 60% said they used costs-specific software, 25% used firm case management technology, 13% used technology in relation to automation of the courts, and 2% were using AI-driven case outcome prediction software.

The report also identified that Costs Lawyers who are involved in innovative activities are often employed in larger organisations alongside other professionals. It gave the specific examples of Acumension and Bottomline Technologies, as follows:

*“Where Costs Lawyers are engaged in more innovative activities, these are most often in larger organisations, usually with a mixture of professionals involved. Acumension, for example, is a company comprising insurance experts, legal project managers and a costs lawyer. It focuses on providing legal costs services to the insurance industry (inter alia) and highlights on its website the paperless nature of the firm’s work and its adoption of ISO standards, especially around data handling. Bottomline Technologies is an online Software as a Service (SaaS) provider which employs Costs Lawyers and which includes a module for business clients on managing legal spend.”*

**Q3: Do you agree with the proposed outcome to ensure that technology and innovation are used to support improved access to legal services and to address unmet need?**

The CLSB agrees with this proposed outcome. In our [policy statement on good consumer outcomes](#), we identified innovation as one of seven key categories of consumer outcomes that are important to us. The outcomes we want to see are that consumers benefit from innovative ways to supply services, and that innovation reduces prices and drives up quality and accessibility. This aligns with the LSB’s proposed outcome of ensuring that technology and innovation are used to support improved access to legal services and address unmet need.

The CLSB’s 2021 research [project](#) found that, if the services of Costs Lawyers were to be used by the more innovative ends of the legal services market, then innovation would be more likely to take root in the costs market itself. That report also found that if “Costs Lawyers were better known beyond the specialised costs law market, their contribution to the development of innovation in the sector could be increased.”

Whilst greater use of technology and innovation could support improved access to legal services and address unmet legal need for consumers, not all regulated communities have the same opportunities for innovation. Costs Lawyers are dependent on other regulated communities, such as solicitors. As a result, the demand for innovative services that Costs Lawyers could provide, and the manner and extent of such services, is dependent on the needs - and risk and innovation appetite - of those other regulated communities. Demand for innovative services from Costs Lawyers may be increased or constrained by these varied environments and the regulation that governs them. The CLSB is therefore pleased to see explicit recognition in paragraph 15 of the draft guidance that all regulated communities are different and that, when it comes to increasing use of technology and innovation, varied regulatory approaches will be necessary and welcomed.

**Q4: Do you agree with the proposed outcome for regulatory frameworks to balance benefits and risks, and the opportunities and costs, of the use of technology and innovation in the interests of the public and consumers?**

The CLSB agrees that there is a role for regulation to play in ensuring that legal professionals feel able to use technology and innovation to improve their offering to consumers, whilst ensuring that the risks are appropriately identified and mitigated. As the LSB’s consultation paper sets out, increased adoption of technology and innovation in the legal sector has several potential benefits for

consumers and legal professionals. For that reason, it is important that regulation does not discourage the use of technology and innovation in the legal sector.

Evidence from [research](#) carried out by the CLSB suggests that Costs Lawyers are constrained in their ability to engage in innovation by aspects of the current regulatory framework. The research found that “these limitations are both statutory and sometimes also arising from the regulatory arrangements currently in place”, however, it also found no evidence that the CLSB’s regulation has a negative impact on innovation. Clear guidance from regulators on the use of technology and innovation that addresses the benefits, risks, opportunities and costs, whilst enabling legal professionals to be flexible and agile in their approach, may help to reduce some of these actual and perceived constraints.

Our [2023 Annual Risk Outlook](#) identified several trends relating to the use of technology that are likely to have an impact on Costs Lawyers. These include:

- Accelerated technological change in the justice system as the Ministry of Justice and HMCTS have ambitious agendas for adopting technological solutions, particularly automated dispute resolution platforms and improved systems for legal aid providers and applicants.
- Technology-driven new entrants, such as Persuit, are attempting to persuade the legal market to use fixed fees and smarter legal pricing across the board, including in litigation.
- Increased adoption of blockchain technology in smart contracts is likely to reduce the need for litigation over contractual terms, although we may see more complex litigation relating to the technology itself emerge in its place.
- The move to remote and hybrid working following the pandemic has made many businesses, including law firms, more dependent than ever on IT systems. With increased dependence comes increasingly sophisticated threats that must be predicted and managed. Cyber scams (such as phishing attempts and email modification frauds), ransomware used to steal information and block system access, and attacks spreading between legal providers who work together (such as instructing solicitors, barristers and Costs Lawyers) have all been experienced recently in the legal sector, often with very serious consequences.

To meet these challenges, all regulatory bodies and legal professionals will need to ensure that they have an understanding of how to use new technologies and systems, and that they understand the risks associated with them. They will also need to understand the changing needs of clients, how new regulatory and ethical obligations may apply to specific practising arrangements, and have sufficient technical knowledge of emerging areas in order to be able to identify potential issues and advise accordingly. Keeping on top of these varied requirements is a significant challenge in an era where technology and innovations are developing and changing rapidly.

Paragraph 19 of the draft guidance states that, “In pursuing outcome 1, regulators should be proactive about understanding how the adoption and use of technology and innovation in the provision of legal services can benefit consumers and help them access legal services”. Paragraph 76 of the consultation paper states that the LSB considers that regulators “should proactively aim to understand, assess, and balance the benefits, risks, opportunities and costs of using technology and innovation to provide legal services, without being unduly risk averse (and thereby potentially creating further barriers for providers and innovators.”

The CLSB agrees that regulators have a responsibility to proactively understand, assess and balance the risks, opportunities and costs of technology and innovation.

To achieve this, we welcome the LSB's willingness to "explore ways to facilitate regulators sharing case-studies/other information with each other which relate to regulatory activities undertaken to promote technology and innovation that have benefited consumers or improved access to legal services". We would suggest that the LSB uses its convening power as the oversight regulator to commission relevant research and develop knowledge repositories to avoid regulators working in silos. This is particularly important as many of the challenges identified by the LSB in its consultation paper are common to all approved regulators and regulated communities.

The LSB could also develop a forum for regulators to meet to share best practice, discuss issues and hear from experts in the field (similarly to the Legal Regulators' EDI Forum that currently exists). The CLSB considers that, as the benefits, opportunities and challenges of technology and innovation are relevant across all legal professions and approved regulators, this presents an excellent opportunity for the LSB and regulators to work collaboratively to ensure that those benefits are realised, and risks mitigated, across the sector.

#### **Q5: Do you agree with the proposed outcome on ensuring the legal sector is open to technology providers and innovators?**

The CLSB understands that this outcome intends to address the need and scope for more ongoing collaboration to promote new solutions coming into the legal services sector. The consultation paper refers to the Lawtech Sandbox as a positive example of a collaborative venture that supports technology pioneers to bring their products to market. The CLSB is pleased to have joined with other regulators such as the Financial Conduct Authority, Information Commissioner's Office and Solicitors Regulation Authority as part of this initiative. The CLSB considers that initiatives like this which provide a safe space for start-ups, technology providers and innovators to work collaboratively with regulators and legal professionals to develop and test their ideas - without the risk of breaching regulatory rules - should be encouraged.

As set out in our answer to question 4 of this consultation, the CLSB considers that the LSB could use its convening power as the oversight regulator to develop fora for regulators to meet periodically to share best practice, discuss issues and hear from experts in the field (similarly to the Legal Regulators' EDI Forum that currently exists). This could include fora for hearing directly from tech providers and innovators who wish to bring new products to the legal market. Such fora would provide a space for the increased cross-collaborative activities between a wide range of stakeholders that the LSB wishes to encourage, and enable regulators to meet paragraphs 23 (a), 25 (a) and 25 (e) of the proposed guidance.

#### **Q6: Do you agree with our proposed plan for implementation?**

The CLSB agrees with the LSB's proposal to monitor and assess use of the guidance via characteristic 13 of the annual LSB Regulatory Performance Assessment Framework in the first instance.

#### **Q7: Do you have any comments or concerns about the equality impacts of our proposed guidance? Do you have any evidence relating to the potential impact of our proposals on groups with protected characteristics and any associated mitigating measures you think we should consider? Are there any wider equality issues and interventions that we should take into account?**

The CLSB agrees that the proposed guidance has potential to improve legal services provision for consumers, including those who may face barriers in accessing legal services currently. The CLSB

notes that the LSB's [Technology and Innovation in Legal Services survey](#) shows increased use of 'technologies for access' across the sector, which suggests that regulated communities are already alive to the need for, and benefits of, more accessible legal services for consumers.

It is important that increased use of technology and innovation does not inadvertently lead to the exclusion or detriment of consumers who are less confident at engaging with technology. Research from the ONS shows that, in 2020, 6.3% of UK adults had never used the internet and Ofcom research found that 1.5 million homes do not have internet access. Ofcom data shows that the groups least likely to have internet access are those aged 65 and over, lower income households and financially vulnerable adults. Technological and innovative legal solutions also need to take into account accessibility and compatibility for clients with disabilities who may use screen reading, speech recognition, reading solution or other accessibility-related software.

Paragraph 20 (d) of the draft guidance states that regulators "could consider understanding the needs of different consumer groups/segments and the barriers they may face in accessing legal services provided by technology and innovation, and how these barriers can be addressed." The CLSB agrees that understanding the needs of different consumer groups and segments is important for meeting Regulatory Objective 3 (improving access to justice) and Regulatory Objective 4 (protecting and promoting the interests of consumers). Given that understanding consumer need in this way is central to the regulatory objectives, we consider that it is a sector-wide challenge that should be addressed on a collective and consistent basis, rather than being considered by individual regulators. The CLSB therefore considers that the LSB would be ideally placed, as the oversight regulator, to commission research into this area that regulators could then use to inform their individual approaches. This would reduce the risk of individual regulators duplicating research, and empower the sector to take a consistent, informed approach to addressing any identified issues.

The equality impact section of the consultation paper states that, "Increased use of technology in the sector could also potentially improve diversity in the legal profession by enabling more flexible entry routes, training routes and different ways of working. This could encourage a more diverse range of entrants into the profession and assist with retention and progression." However, the consultation does not give further detail about how greater use of technology would achieve this. The equality impact section also makes no mention of existing research into how existing recruitment and hiring technology may replicate inherent biases, particularly AI-based technology. For example, research by [Cambridge University](#) has shown that AI hiring tools do not reduce bias or improve diversity. Discovery of bias replication in AI recruitment tools has led to some organisations ceasing to use it for recruitment altogether. In a high profile 2018 instance, [Amazon](#) stopped using an AI recruitment tool after it was found to be discriminating against female candidates. More recently, the Information Commissioner's Office (ICO) has announced that it is carrying out an [investigation](#) into whether automated recruitment software has been unfairly ruling out candidates who are members of minority groups.

Given the concerns outlined above, the CLSB is surprised that the consultation paper states that, "overall, we do not consider there is anything in the proposed guidance which will negatively impact groups with protected characteristics." The CLSB would like to see the LSB carry out more detailed and thorough investigation of the potential equality, diversity and inclusion ('EDI') impacts of greater use of technology and innovation in the legal sector. The CLSB would also like to see the LSB commit to ongoing monitoring of any EDI impact – positive or negative – of increased use of technology and innovation on the legal profession, entrants and consumers. Finally, the CLSB considers that there is scope for the LSB to work with the ICO, which has identified fairness in AI as a

key priority, to consider and address any potential EDI risks arising from increased use of technology and AI in the legal sector.

**Q8: Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?**

The CLSB welcomes the recognition in the consultation paper that introducing new outcomes for regulators may result in an increased burden on authorised persons. Whilst it is difficult to quantify a particular cost at the present stage, in the event that the requirements of the new guidance result in regulators needing to hire additional staff or external advisors with specific expertise in technology and innovation, this will inevitably have a direct financial impact on authorised persons in the form of higher practising fees.

**Q9: Do you have any other comments about the proposed guidance?**

The CLSB considers that the proposed guidance, as drafted, is clear and accessible. Our comments and concerns about particular aspects of the proposed guidance are set out above.



# 2023 Annual Regulatory Performance Assessment

Response to LSB information request

28 July 2023

---

## Introduction

Below is our response to the information request received from the LSB on 8 June 2023. It follows the tabular format used in the Annex to the LSB’s request.

References to evidence in support of our response are denoted in the text as **E1**, **E2** and so on. A table of evidence is then provided on pages 23 to 24 of the response, showing where each evidence source can be found. The evidence is available either via a hyperlink to published web content, or in a bundle of documents provided with this response.

Aspects of our response are intended to provide general assurance that we meet the “well-led” and “effective approach to regulation” standards. In these sections, we have indicated the specific assessment characteristic(s) to which our response most closely relates – using the format (*Characteristic [•]*) – at the end of each paragraph.

In preparing this response we have taken account of the LSB’s Sourcebook of Standards and Characteristics, the LSB’s thematic feedback from the 2022 regulatory assessment, and the guidance provided to the regulators by email on 6 July in relation to how the LSB expects regulators to respond. As this is our first submission under the new performance framework, we trust you will let us know if we could make any improvements to our approach going forward.

## Response to information request

### ***Well-led: Regulators are well-led with the resources and capability required to work for the public and to meet the regulatory objectives***

Please provide assurance to the LSB on how the CLSB meets this standard including in relation to:

- transparency of decision-making
- capacity and capability
- resources, capability and capacity for enforcement

As part of your response please also answer the specific questions below.

**1:** Please provide an update on the progress of CLSB's digital workplan.

**2:** Please provide examples of CLSB's learning from its own work and the work of others (including in respect of how it engages with stakeholders).

#### General assurance

1. We have devoted considerable effort to our governance processes in recent years, and are confident that we meet good practice standards in all areas as well as demonstrating the characteristics in the Sourcebook.
2. Since 2019, we have been pursuing our current mid-term organisational strategy (**E1**) which is aligned to the regulatory objectives and aims to build our capacity, gain the confidence of our stakeholders and the public, and transform our regulatory approach. That strategy takes us through to the end of this year. In June 2023, our board held an annual strategy day at which it evaluated progress and achievements against the existing strategy and developed a new strategic plan for the next four years, drawing on a variety of evidence sources such as the findings of our 2022 innovation project funded by the Regulators' Pioneer Fund (the "RPF Project") and the recent review of our approach to risk. We are currently consulting on this new mid-term strategy as part of our consultation on the 2024 practising fee (**E2**). The strategy sets out our mission, vision, strategic objectives and indicators of success. (*Characteristic 1*)
3. Each year we develop an annual Business Plan that pursues our mid-term strategy, and also takes into account emerging issues and opportunities for collaboration. Our Business Plan for 2023 is available on our website (**E3**) and our 2024 Business Plan is currently out for consultation, alongside the strategy and practising fee (**E4**). (*Characteristic 1*)
4. We have a progressive, open and collegiate board that is active in setting and overseeing our organisational direction. We hold four scheduled board meetings a year, including one in-person meeting, plus an annual strategy day. We have achieved a 100% attendance rate at all board meetings consistently for the last four years. Our published agendas and board minutes (**E5**) demonstrate the breadth and depth of issues considered by the board and the richness of discussion and input on strategic issues. (*Characteristic 2*)

5. The board receives a report at each meeting setting out progress against the annual Business Plan during the previous quarter – examples can be found in each of our published board packs at Item 3.1 (**E6**) – as well as an outline from the executive on proposed priorities for the coming quarter. The board considers on an annual basis achievement against a published set of KPIs linked to our organisational strategy (**E7**). A report from the executive against these KPIs is also published with our board papers and the discussion is recorded in the minutes (example from January 2023 at **E8**). As part of the annual consideration of KPIs, the board reviews its own culture and effectiveness through an anonymised survey, the results of which are shared with the board for discussion and published with the board papers (example from January 2023 at **E9**). (*Characteristic 2*)
6. Financial data is reported to the board at quarterly meetings, including notes from our Director of Operations to explain any changes to projections for the budget year and seeking approval for any material departures from the agreed budget. We have worked with an accounting consultant to improve our reporting systems over time, to avoid human error and ensure information can be presented to the board in a way that is comprehensive but easy to digest. This has resulted in the development of a bespoke internal system which allows us to automatically generate MI reports from our bookkeeping and budget records for use by the board. (*Characteristic 2*)
7. Our governance systems and processes were subject to a comprehensive review in late 2021, with a new Board Governance Policy being introduced in February 2022. This is kept updated through ongoing evaluation and review and has been subject to one round of updates so far (current version, version 2, at **E10**). The Board Governance Policy houses a variety of processes and procedures, including the Board Code of Conduct, Board Appointment Policy, Board Performance Appraisal Policy, Board Additional Remuneration Policy and Director Job Descriptions. It also establishes and sets Terms of Reference for the board's Remuneration Committee, which meets annually and determines remuneration against the CLSB's Remuneration Policy (**E11**). Performance reviews for individual board members are carried out annually, with the latest round having been completed in June this year. (*Characteristic 8*)
8. Supporting the Board Governance Policy we have a series of other processes and materials to which the board refers as relevant. These include, for example, a board skills matrix, board appointment letters, our risk register which is reviewed quarterly at board meetings (**E12**), a register of directors' interests which is published on our website (**E13**), various finance policies including the Reserves Policy (**E14**), and so on. (*Characteristic 8*)
9. We have also now completed all actions in the tracker document that we used to ensure implementation of the learnings from the LSB's two well-led reviews (**E15**). (*Characteristic 8*)
10. We have fostered a constructive working relationship with the profession's representative body, the Association of Costs Lawyers (ACL), and now regularly

collaborate on areas where the interests of Costs Lawyers, their clients and the public overlap. Recent examples include a successful EDI event on social mobility in the Costs Lawyer profession in June 2023, hosted jointly by ACL, the CLSB and a costs firm with speakers from each organisation. We have also collaborated extensively this year with ACL and its subsidiary company, ACL Training, on the development and accreditation of a new qualification for Costs Lawyers, to ensure that students are supported through the transition and to raise awareness of the changes in regulation and delivery. *(Characteristic 3)*

11. We collaborate with ACL in a way that is mindful of the Internal Governance Rules (IGRs). We have an MOU and Operating Protocol in place that meets the requirements of the IGRs (**E16**), and the effectiveness of those arrangements is reviewed on an annual basis (most recently in June 2023). We also have systems in place to ensure internal compliance; for example, all staff and contractors are issued with an “IGRs Quick Guide” (**E17**) and we keep an internal log of those who have confirmed they have read and understood the document. *(Characteristic 3)*
12. Externally, we have worked hard to develop strong collaborative relationships with our stakeholders and participants in the sector, including at board level. Board members have regular interaction with ACL, for example as panel participants at ACL conferences or attendance of our non-lay directors at ACL events with their CLSB “hat” on. We hope you share our view that the CLSB’s relationship with the LSB is positive and constructive, including at board level through Chair meetings as well as the board-to-board session held in January, which provided an opportunity for wider visibility. *(Characteristic 7)*
13. Historically, horizon scanning at board level has been relatively ad hoc, with our non-lay directors providing updates on market developments at scheduled meetings or by email and our lay directors bringing comparative expertise from other sectors. We wanted to put this on a more formal footing and considered how we might do so as part of the risk review we undertook in late 2022. Through that project, we developed a more systematic approach to horizon scanning and the collection of market intelligence, culminating in our first Annual Risk Outlook published in May (**E18**). This serves the dual purpose of informing the board’s consideration of risks to the regulatory objectives on the one hand, and sharing intelligence with our regulated community to help them identify and manage risks within their own practices (and thus to their clients) on the other. *(Characteristic 7)*
14. More information about transparency *(Characteristic 5)* and capacity and capability *(Characteristic 6)* are set out below in answer to the LSB’s specific questions, and more information about understanding the needs of consumers and the public interest *(Characteristic 4)* is set out below in addressing the “effective approach to regulation” standard, where we talk more about our research and evidence base.

Transparency and decision-making *(Characteristic 5)*

15. We take an approach of publishing, in a clear and accessible format, all board documents and information other than in narrow and defined exceptional circumstances.

16. Our publication policy is formally housed in our Board Governance Policy (see section 8), but is also published with explanatory text on a dedicated page of our website (**E19**). It summarises the information that we publish, the purpose of publication (i.e. how stakeholders might want to use the information) and when the information will be available. The policy covers the publication of board agendas, board papers, minutes, and the dates of scheduled and extraordinary board meetings. The policy clearly states the circumstances in which we would (exceptionally) redact or withhold information and informs stakeholders of how they can tell whether information has been withheld. We then annotate our published board agendas with letters (A to G) showing where a document has been withheld and why. This gives stakeholders the information necessary to understand – and importantly to challenge, if need be – our rationale for any instances of non-publication.
17. Our board materials are published on our website using easy to navigate drop-down menus organised by year (**E20**).
18. For certain types of decisions, such as a significant policy or strategic changes, we will also publish a Board Decision Note alongside the usual board minutes. For such decisions we feel it is appropriate for a more detailed account of the issue, the decision, and the reasoning behind the decision to be recorded. As noted in our Board Governance Policy, Board Decision Notes enable the CLSB to:
- be transparent with stakeholders as to how a board decision is reached and why;
  - keep an historical record of the rationale for decisions, allowing regulatory arrangements and internal policies to be continually re-evaluated against prevailing best practice; and
  - demonstrate good governance and be confident that the board has turned its mind to all relevant factors in making its decisions.
- The most recent Board Decision Note, by way of example, tracks the board’s decision-making process around implementing the new framework for Qualifying Experience (**E21**).
19. Alongside our board webpages, we have a “strategy and governance” page on which we publish key documents such as our annual business plan, budget, mid-term strategy, consumer engagement strategy, performance indicators, consumer outcome commitments, risk outlook and risk register (**E22**). Annual reports of our attainment against KPIs are published with our board papers, as explained above. We also have a webpage where we would publish complaints about the CLSB as a regulator, although we have not had any complaints to date (**E23**).
20. We use our annual practising fee consultation as a hook to publish information about our broader work and to ensure accountability for delivery of our annual Business Plan, including through a summary of the benefits achieved via our work in the previous year (most recent example, published with our 2024 practising fee consultation, at **E24**). We also use the practising fee consultation as an opportunity to explain how we use practising fee income and set our annual budget. The budget remains available throughout the year on our website and we also have a dedicated webpage setting out the cost of regulation, including comparative data from 2012 to

the present (**E25**). The webpage provides data about the practising fee, CLSB costs (including senior level remuneration and a copy of our annual accounts), the LSB and Legal Ombudsman levies, and our contribution to Legal Choices.

Capacity and capability (*Characteristic 6*)

21. Given our size, we run a flexible resourcing model that suits our needs well. At our board's recent strategy day, this was identified as a key strength of the organisation and something to be nurtured going forward.
22. We have two core staff members that provide continuity and stability of resourcing, namely the CEO and Director of Operations. A third team member – the Director of Policy – is engaged on a contract basis for two-yearly periods. This allows us to staff that role at an appropriate level and with appropriate skills and expertise to meet our business needs as they evolve over time. Our new Director of Policy starts her two-year term on 1 August 2023.
23. We meet the remainder of our resource needs through a pool of skilled contractors and consultants that we have built-up over many years, ensuring that we have people on hand who understand our business and the regulatory environment in which we operate, and who can support us in areas where our demand ebbs and flows.
24. Our staff turnover levels are very low, including at board level where all board leavers over the last four years have served their full permitted terms. The board reviews its own capability against its skills matrix at points of recruitment and regularly considers succession and contingency planning, most recently at its scheduled meeting in June 2023 (as reflected in the minutes at Item 4.2) (**E26**). Where the board has identified that additional skills or expertise are required, but there are no board vacancies, the board appoints specialist advisers who are available on an "on call" basis, such as our education adviser Professor Carl Stychin (**E27**).
25. Our budget setting process, along with a description of how we ensure our business plan priorities are fully resourced, is set out in our annual practising fee application. We will not rehearse that here, other than to provide assurance that we have determined our proposed practising fee for 2024 (which is currently under consultation, **E28**) using the same methodology as in previous years. We propose to increase the fee this year by 3%. We have been able to keep the increase at a level below the rate of inflation by applying a budget surplus from 2022 for the benefit of the regulated community, in accordance with the LSB's Practising Fee Guidance.
26. You also asked specifically about resources, capacity and capability for enforcement activities. As you know, we have a relatively low number of complaints with very few of these falling within our jurisdiction to investigate – often relating to unregulated costs draftsmen – and even fewer necessitating full disciplinary proceedings (see paragraph 94 below for data from the past year). We therefore find that the level of resource required for enforcement ebbs and flows, and can be unpredictable.
27. Like all other areas in which a permanent staff member is not appropriate for us, we manage this by engaging a consultant with extensive skills and expertise in legal

disciplinary matters to provide support on an “as needed” basis. Our current arrangement was put in place in December 2021 and works very effectively for our needs.

28. To support the arrangement, we developed a comprehensive triage process in 2022, as part of our two-year scheduled review of the Disciplinary Rules and Procedures (E29). The triage process can be carried out by either the consultant, the CEO or the Director of Operations – depending on capacity – and any subsequent investigation can be carried out by either the consultant or the CEO. This is consistent with our regulatory arrangements and allows us flexibility in resourcing while ensuring a consistent and transparent process.
29. We also have a pool of experienced panel members that are available to call on in the event we need to convene a Conduct Committee. They have been recruited in line with our Panel Member Appointment Policy and Code of Conduct (E30), and we refresh the commitment of all members annually and update panel members on our activities throughout the year.
30. Ultimately, if we were ever in a position where a highly complex complaint required additional resource or we were faced with a systemic market failure that necessitated proactive enforcement action, we would draw on our uncommitted financial reserves for this purpose.

#### Update on progress of digital workplan

31. Each year in our annual Business Plan we set out the next phase of our digital workplan. By tying the digital workplan to the Business Plan we ensure that we are accountable for delivery and have appropriate budget allocation for this work.
32. In 2023, our digital workplan involves the following activities:
- improving the visibility of supervision issues in the database – *this was completed in Q2 of 2023 by adding category flags and we were able to tie this in successfully with the action prompts workstream (below);*
  - creating a single repository for complaints data in the database – *this was completed in Q1 of 2023 and we were able to use this functionality when capturing first tier complaints reported in the regulatory return for 2022;*
  - adding action prompts to functionality – *this was also completed in Q2 of 2023 and avoids the need to set manual reminders for following up on issues such as audit outcomes or the provision of evidence and documentation;*
  - revising application forms and adding database functionality resulting from enhancements to the Register of Costs Lawyers made in 2022 – *this work has been completed and is in the process of being tested, with the new application forms due to be finalised by the end of August;*
  - capturing regulatory history of individual Costs Lawyers in the database to consolidate and safeguard all available information – *this work is also well underway and due for completion in Q3 (it is essentially a data capture exercise that is being progressed around other work).*

33. Since developing the 2023 Business Plan in June 2022, we have identified several other important activities that warranted prioritising this year under our digital workplan in addition to those described above. The board considered a paper in March 2023 which set out this additional work, including associated costs and progress to date (**E31**).

Examples of learning from own work and work of others

34. Below are four examples of how we have learned from our own work and the work of others during the assessment period. We chose these examples as we feel they demonstrate a variety of approaches used across different areas/issues, but if you would like any other specific examples please let us know. There are also further examples of how we learn from our work and the work of others – including engagement with stakeholders – throughout our response to the questions below on the “effective approach to regulation” standard.

*Example 1: Amendments to the Code of Conduct*

35. Earlier this year our board considered proposals to amend the Costs Lawyer Code of Conduct and we consulted on the proposed changes from 19 May to 14 July (**E32**). You can see from the consultation paper how we have drawn together learnings from across all aspects of our work to inform the improvements we propose to make.

36. Annex 1 to the consultation document (pages 6 to 14) sets out the rationale for each of the changes and explains where we have captured learnings from our own and others’ activities. In particular:

- Principles 1.1a, 1.8, 2.4, 2.5, 3.1, 3.6 and 4.6 – changes are informed by learnings from the evidence and recommendations arising out of the RPF Project;
- Principle 1.1a – changes are informed by learnings from the outcome of a recent CLSB disciplinary investigation;
- Principle 1.1 – changes are informed by learnings from IPReg’s recent review of its regulatory arrangements;
- Principles 1.4 and 3.1a – changes are informed by learnings from the way that other regulators (BSB and SRA) differentiate between intermediary (professional) and ultimate clients;
- Principles 3.2, 3.4(v) and 5.4 – changes are informed by learnings from our two-year review of the Disciplinary Rules and Procedures;
- Principle 4.4 – changes are informed by learnings from our recent work on education and training under the new Training Rules;
- Principles 6.1 and 6.2 – changes are informed by best practice from across the sector on equality and diversity issues.

*Example 2: Sharing learnings with IPReg*

37. On 27 June we hosted the directors of IPReg for a board-to-board discussion about current challenges and analogies between our regulated communities. The discussion focused on sharing good practice around governance – drawing on the CLSB’s 2022 governance review and IPReg’s current work in this area – and identifying potential areas where the regulators could cooperate to tackle complex issues. A particularly

interesting outcome for us was to understand the challenges that IPReg faces around the lack of protection for professional titles in its part of the sector; something that creates structural barriers in the regulation of Costs Lawyers also.

38. Off the back of this, we are now working to convene a group of regulators from within and outside the legal services sector that also face this challenge, to share experiences and learnings about the use of non-regulatory/informal levers to raise standards across the market as a whole (regulated and unregulated).

*Example 3: Learning from CILEX on diversity in judicial appointments*

39. In May, CILEX was successful in helping to promote diversity in the profession by working with the MoJ to introduce changes that the government describes as making “up to 4,500 more lawyers from diverse backgrounds eligible to become judges” (E33). Recognising the synergies with our own social mobility agenda (described below at paragraphs 51 and 52), and given that the diversity profile of our profession could assist in promoting diversity within the judiciary, we have sought to learn from CILEX’s success in this area to enable experienced Costs Lawyers to apply for judicial appointment. We are pursuing this through contacts at the Judicial Appointments Commission; our next meeting to discuss the proposals is scheduled for 15 August.

*Example 4: Risk review*

40. We undertook a wholesale review of our approach to risk in late 2022, culminating in the adoption of a new risk register in March 2023 (E12) and the publication of our first Annual Risk Outlook for the profession in May (E18). We drew on learnings from our own work to do this – particularly the findings of our RPF Project – and combined these with the learnings of others through a comprehensive desk research exercise.
41. As well as extracting relevant evidence from publicly available data and publications, we specifically took learnings from the Scottish government’s current legal services reforms, HESA’s work on identifying future trends in professional qualifications, litigation trend analysis by the judicial college, risk outlooks published by other regulators both within and outside the sector, and trends identified by regulators in comparative common law jurisdictions. We used these learnings to inform our approach to risk and associated publications, but also to inform our 2024 business planning and June strategy day in considering the likely direction of travel for the profession in the current landscape.

***Effective approach to regulation: Regulators act on behalf of the public to apply their knowledge to identify opportunities and address risks to meeting the regulatory objectives***

Please provide assurance to the LSB on how the CLSB meets this standard including in relation to:

- use and deployment of evidence
- levels of proactiveness in supervisory work

As part of your response please also answer the specific questions below.

**3:** Please provide a brief overview of the scoping work CLSB has undertaken in relation to entity regulation.

General assurance

42. Historically the CLSB has had a modest research budget due to our size, and has relied on finding creative ways to leverage publicly available sources and research undertaken by larger regulators to inform our work. As you know, in 2021 we received a substantial grant from the Regulators' Pioneer Fund – which supports projects to foster innovation by regulatory bodies or their regulated communities – to conduct a research project looking at how Costs Lawyers can impact the cost of legal services (**E34**). That work grew our evidence base significantly and we were able to gather data on a wide range of issues under the auspices of the project. The evidence we generated has informed a number of priority workstreams in our 2023 and 2024 Business Plans, as well as the overall direction of travel established by our new mid-term strategy that will see us through to 2027. (*Characteristics 9, 10, 13*)

43. We also used the findings of the RPF Project to inform a wholesale review of our approach to risk in late 2022, combining the findings with a variety of other evidence sources (as described above at paragraphs 40 and 41). This culminated in the adoption of a new risk register in March 2023 and the publication of our first Annual Risk Outlook for the profession in May. Our risk register sets out how our work programme is designed to tackle the identified risks through the priority activities in our annual Business Plans and other key initiatives undertaken throughout the year (see in particular section C of the risk register at **E12**). (*Characteristics 9 and 10*)

44. We regularly engage directly with stakeholders to gather evidence on specific issues, market developments and proposed regulatory interventions as the need arises. We have an Advisory Panel comprised of Costs Lawyers from a range of practising types and specialisms, which we consult on topical issues. This year we have consulted the Advisory Panel on issues such as the way we communicate with Costs Lawyers, compliance with international sanctions, entity regulation, and advocacy experience for trainee Costs Lawyers. We have also begun to explore complementary ways of gathering evidence alongside formal consultations. For example, we carried out a survey alongside our consultation in July on amendments to the Costs Lawyer Code of Conduct, seeking targeted feedback on how the Code is perceived and used by the profession and options for implementation. The results will inform our upcoming rule

change application. (*Characteristics 9 and 10*)

45. One area where we have identified a need for a more systematic approach is in coordinating engagement and communication with different stakeholder groups. To address this, our next Business Plan (**E4**) includes a specific initiative (priority 3) to: “*Develop and begin to implement a comprehensive, long-term communications strategy, aimed at supporting each of the five strategic goals in our new mid-term organisational strategy in a cohesive and systematic way*”. We will begin planning for this workstream in H2 2023. (*Characteristics 9 and 10*)
46. We collect a wide variety of data from our regulated community on an annual basis through a regulatory return, which is integrated into our online practising certificate renewal application. The return captures information such as the level of insurance a practitioner holds, the type of clients they act for, the type of work they do and where their instructions come from, amongst other things. This data is stored in our internal database allowing us to run targeted reports, including comparative reports across different groups within the profession. We also ask Costs Lawyers annually whether they perceive the CLSB to be an effective regulator and provide a free-text box for comments on our performance. We publish the data we hold about Costs Lawyers on a dedicated webpage (**E35**). This includes diversity data, key survey data, and an annual report compiling the regulatory return data with comparative statistics for previous years (**E36**). (*Characteristic 12*)
47. We use a variety of regulatory levers to promote the regulatory objectives across all of our work. An example of how we have combined a range of levers is in the implementation of our new regulatory framework for qualifying as a Costs Lawyer. The framework is rooted in formal regulatory arrangements, specifically the new Training Rules. Those Rules are then supported by a suite of guidance materials, collated in the Accredited Study Provider Scheme Handbook, including formal requirements and criteria, processes and procedures, and good practice suggestions (such as the Assessment Guidance). We then rely on contractual obligations, found primarily in the standard-form Accreditation Agreement, to safeguard our ability to intervene if our objectives are not being met. Template materials for demonstrating Qualifying Experience, including worked examples, are provided to assist students in complying with formal requirements, supported by extensive FAQs on topical issues. Early communication with students – through our participation in the course induction day and webinars – seeks to encourage best practice and influence students’ perception of the purpose of Qualifying Experience and the opportunities it can bring. This aims to create a wholistic package of formal and informal mechanisms for promoting high standards of competency and ethics through the path to qualification. The materials mentioned above are all available on our website (**E37**). (*Characteristic 11*)
48. We have a programme of evaluation and review for our core regulatory arrangements, and we use these touchpoints to make improvements based on learnings from our work. For example, we implemented updates to our Disciplinary Rules and Procedures in April 2023 following a scheduled evaluation of changes made in 2020. As set out in the relevant rule change application to the LSB, this allowed us to

address inconsistencies that we had identified in the way our processes interacted with the Legal Ombudsman's scheme rules, and to put in place additional supporting materials for considering complaints that were identified as helpful through our work. (*Characteristic 11*)

49. We also review and update our regulatory interventions outside of scheduled reviews where learnings from our work suggest this is warranted. For example, in late 2022 a firm that employed several Costs Lawyers went into administration shortly before our annual practising certificate renewal window, generating a number of queries as to how unemployment impacted on the right to obtain a practising certificate given the need to hold professional indemnity insurance. We carried out a review of our regulatory arrangements to establish how this issue could affect people who temporarily stopped practising for a variety of reasons at different times of the year, and updated our guidance on indemnity insurance in March 2023 to clarify the application of our rules for the benefit of practitioners and their clients (see paragraph 23 onward) (**E38**). (*Characteristic 11*)
50. In relation to diversity, we have internal policies and processes to help us lead by example. These include an internal Equality and Diversity Policy, which dates from 2019 but which was reviewed for currency when we introduced our new Employee Handbook in October 2022 (**E39**). We use a standard candidate diversity survey that all applicants for any CLSB role must complete and we use the results of those surveys to inform our recruitment practices (example from April 2023 at **E40**). Our website also includes an EDI webpage (**E41**) that explains our role in diversity matters and what we expect of Costs Lawyers, as well as resources to encourage good practice such as our Business Case for Diversity. We participate in sector-wide initiatives relating to diversity where the opportunity arises, with participation in the regulators' EDI Forum as our key touchpoint. (*Characteristics 14 and 15*)
51. In relation to promoting diversity within our regulated community, we have EDI strategic priorities that are considered and approved by the board alongside our annual Business Plan, and our Business Plans always contain at least one initiative targeted specifically at this regulatory objective. Diversity is also one of the key metrics in our policy statement on good consumer outcomes (**E42**), to which our Business Plan priorities are linked. We have taken the approach of identifying discrete, tangible EDI issues that our evidence suggests are most relevant to our regulated community, gathering data on those issues and then designing interventions based on our findings. Our first two areas of focus have been: (i) the pay gap between men and women; and (ii) social mobility. These were the subject of our most recent whole-of-profession diversity surveys, and reports of our findings are published on our website (**E43** and **E44**). We have raised awareness of these findings through our usual communication channels such as social media and our newsletters to Costs Lawyers (example from April 2023 at **E45**). (*Characteristics 14 and 15*)
52. As mentioned above at paragraph 10, on 15 June we held a successful online event in collaboration with ACL and KE Costs called "Driving Social Mobility in Costs", to discuss the findings of our research. Speakers canvassed issues such as the meaning of social mobility, why it matters and how social mobility can benefit

individuals, firms, clients and the justice system. The invitation was extended beyond our regulated community to anyone working in costs in any role, as well as their managers and HR professionals, reflecting the importance of taking a wholistic view of this issue (especially for a regulator that does not have regulatory reach into firms). The discussion has fed into the work we are currently doing with ACL Training to scope an apprenticeship route into the Costs Lawyer profession (noted at paragraph 86 below) and the event generated a number of employer volunteers for a Trailblazer Group which will meet for the first time on 12 September. We are also collating case studies of good practice examples around promoting social mobility which we hope to share with the regulated community later this year. (*Characteristics 14 and 15*)

#### Use and deployment of evidence

53. The information request asks specifically about the use and deployment of evidence under this standard. This response contains a variety of examples of how we use and deploy evidence, so we thought it best to respond to this aspect of the request by cross-referring to other parts of this document.

54. We would therefore point in particular to the following as examples of how we use and deploy evidence:

- Paragraphs 35 and 36 in relation to our review of the Costs Lawyer Code of Conduct.
- Paragraphs 40 and 41 in relation to our risk review and resulting outputs.
- Paragraph 42 in relation to evidence from the RPF Project informing our business planning and strategy development.
- Paragraph 48 in relation to our review of the Disciplinary Rules and Procedures.
- Paragraph 61 ff in relation to scoping work on entity regulation.

If you would like us to provide further examples or information, please let us know.

#### Levels of proactiveness in supervisory work

55. As you are aware, we undertook a comprehensive review of our approach to supervision in 2021. This included developing four new supervision frameworks, using a consistent approach and format, which:

- introduced an audit programme for compliance with our new CPD Rules, which came into effect in January 2021;
- implemented a structured annual audit of complaint procedures for the first time, measuring compliance with our guidance on first tier complaints;
- complemented the new version of our Accredited Costs Lawyer Rules, by introducing more rigorous supervision of compliance with those rules at the point of reaccreditation;
- formalised our “point of complaint” targeted supervision activities, drawing evidence from our database.

56. The frameworks are tied together by a Supervision Policy, and all five documents are available on a dedicated supervision page of our website (**E46**).

57. As explained in the Supervision Policy (at paragraph 12 ff), the activities that we carry out under the supervision frameworks make up our core programme of targeted,

proactive supervision, and each supervision framework sets out the potential outcome(s) of our supervision activities in the relevant area.

58. Our second audit under the CPD supervision framework was carried out in February and March 2023 and the outcomes are documented in a report presented to the CLSB board in March (**E47**). A similar report detailing the outcomes of our latest audit under the supervision framework for complaints procedures was considered by the board in June (**E48**). You can see from both reports that the regulated community has responded well to the audit processes and we have been able to use these processes to engage with practitioners in areas of risk and improve compliance. You can also see from these reports that we have identified follow-up actions for next year's audit, and have addressed follow-up actions from the previous year's audit as planned.
59. As well as communicating the lessons learned from these audits to our regulated community through dedicated webpages (**E49**), we have also applied the lessons to inform improvements and updates to our own regulatory arrangements. For example, you can see from the CPD audit report (under the heading "Actions" from page 3 onward) that we have amended our guidance, communications and internal processes to reflect common themes identified in the audit and improve standards. We can confirm that all actions set out in the report have now been completed.
60. In relation to the other two supervision frameworks – for Accredited Costs Lawyers and point of complaint monitoring – we report to the board on an "exceptions" basis, as there is no annual touchpoint for formal reporting. However, if you would like to see examples of how we have used the frameworks in individual cases, we could prepare some anonymised case studies. The framework for point of complaint monitoring is now also reflected in our new triage process for complaints (**E29**), adopted as an output of the review of our Disciplinary Rules and Procedures.

#### Scoping work in relation to entity regulation

61. In July 2022, our board considered how the findings of the RPF Project might shape the way we regulate in the future. Two areas were identified for follow-up in the short term. The second of those related to exploring options for entity regulation.
62. At its meeting in March 2023, the board was presented with a discussion paper setting out background to the issue and options for consideration (**E50**). The options presented were essentially 'high', 'medium' and 'low' impact versions of entity regulation, which could each take on different characteristics.
63. The board had a wide-ranging and detailed discussion about the options, as noted in the meeting minutes. In summary, the board considered:
- the nature of the regulatory framework and enforcement mechanisms that would be required under each option;
  - how entity regulation could further the regulatory objectives and the positive impacts of the different options;
  - resource implications and the distinction between front-end and ongoing costs;
  - analogies to models used in other sectors, such as the voluntary scheme adopted by the Association of Litigation Funders for its members;

- the risk of compliance being viewed as an issue to be dealt with by entities, undermining the personal responsibility of individual practitioners for their own ethical standards and conduct;
- reputational risk, and the potential for consumer confusion, where a voluntary scheme for entities offers less protection to clients than the existing statutory scheme for the regulation of individuals;
- whether there is market appetite for entity regulation and, if so, what kind and from whom;
- the interplay with existing forms of statutory entity regulation – particularly where Costs Lawyers work in regulated firms – and the need to complement existing schemes/other regulators;
- opportunities to raise standards in the unregulated part of the costs law market.

64. Overall, the board felt there was limited merit in the option of a light-touch entity regulation scheme but was interested in exploring the other options in more detail. We therefore took initial steps to scope market appetite and costings in Q2.

65. This next stage of scoping involved:

- a review of the evidence we had gathered when we last considered entity regulation in 2014;
- a survey of our Advisory Panel members to gauge market appetite;
- discussions with service providers on how a project plan might look and associated costs;
- discussions with other regulators and desk research to understand learnings from those who already regulate entities (the BSB's project timeline was a useful reference tool, for example).

66. The board was presented with a report detailing the findings of that scoping work at its meeting in June. We have not provided the report with this response, as it contains verbatim feedback from named contacts as well as price estimates that were provided in commercial confidence. If you are keen to see any of the information in that document, we would be happy to prepare a redacted version and/or have a discussion in which we could answer any questions by providing anonymised information.

67. The outcome of the board's deliberations are summarised in the minutes of the June meeting at Item 3.2 (**E26**). The board again had a wide-ranging and detailed discussion, the result of which was to agree that the high (and potentially uncertain) input costs and risks of developing a form of entity regulation for Costs Lawyers outweighed the likely value, at least at this stage of the market's evolution. The main aim of an entity regulation scheme would be to raise standards within the unregulated part of the sector and encourage independence from other legal professionals, and it was felt that there were less risky and less costly options for achieving those ends that could be tried first. It was agreed that the work done so far on entity regulation was helpful in reaching that conclusion, and could be returned to in the future if the context changed.

68. The board agreed that exploring alternative ways of achieving the same aims should be incorporated into the Business Plan priorities scheduled for H2 2023 (particularly Business Plan priorities 7 and 9). The board also agreed to include a priority in the 2024 Business Plan around developing guidance on the CLSB's expectations for unregulated costs firms, as a reference source in the public interest. This can now be found at priority 10 in the 2024 Business Plan which is currently out for consultation (E4).

#### Questions on progress on empowering consumers statement of policy:

4: With reference to the [empowering consumers policy statement](#), please provide information on any relevant work you have undertaken in the last year to ensure the **provision of useful information** that best enables effective consumer choice **on the quality of legal services providers** to consumers.

5: Please set out when you expect to have met the specific expectations in the empowering consumers policy statement.

6: Please provide an update on your work to look at how general consumer protection legislation applies to legal services provided by Costs professionals serving individual consumers (as set out in your submission to the LSB in July 2022)

#### Progress update

69. In our previous progress update, submitted to the LSB on 27 October 2022, we summarised our progress toward compliance with the policy statement in the following terms, focusing on our two "gap" areas which are: (i) publication of regulatory information, and (ii) development of a targeted approach for regulating the small group of Costs Lawyers who provide B2C services.

*"Work on publishing regulatory information will be completed in January 2023, at the end of our next practising certificate renewal round. Work on developing targeted regulation for B2C services is underway but is a significant undertaking for us, and we envisage it will be completed by the end of 2023. This will place us in full compliance with the policy statement by (latest) the end of next year. As is implicit from the gap analysis, we believe we already comply with the other aspects of the policy statement. An overview of our compliance status on each section of the statement is below for completeness."*

70. In late 2022 we completed all the planning and IT development work needed to implement changes to our Register, forms and database in order to meet expectations on the publication of regulatory information and address our first "gap". Data was captured during November and December within the annual regulatory return and the new Register, containing all the required regulatory information, went live on 31 January 2023 as anticipated (E51). You can see from the Register that we now publish comprehensive and easily accessible information on practising areas, disciplinary decisions, practising conditions, and Legal Ombudsman decisions for every practitioner. We also took the opportunity to include information in the Register about whether a Costs Lawyer's firm or business is regulated and, if so, by whom.

This was an area we identified through our Enquiries Tracker as causing confusion and uncertainty for clients. We now believe that we are in full compliance with this aspect of the policy statement in line with our intended timeline.

71. This data capture exercise also allowed us to progress the next steps on our second “gap”, by identifying which Costs Lawyers provide or intend to provide (or market or intend to market) B2C services (this work is described as “Step 1” in our October 2022 submission).

72. In summary, of the 661 Costs Lawyers who renewed their practising certificate for 2023, 66 (10%) indicated that they provide or market services to consumers. However, the percentage of their workload they expected to come from direct consumer instructions in 2023 was generally low, as shown in the following table.

Percentage of workload expected from consumers in 2023	Number of Costs Lawyers
50%	2
30%	1
25%	1
20%	2
10%	15
5%	18
2.5%	1
2%	8
1%	11
0%	6

73. This means that, of the expected total workload of all regulated Costs Lawyers in 2023, just 0.7% is anticipated to come from direct consumer instructions. We have identified and reached out to the individual Costs Lawyers whose expected workload from consumer instructions exceeded 5%, to gather information about what kind of work this is likely to be (e.g. solicitor-client disputes, specialist family or criminal proceedings, commercial litigation) and what type of clients they expect to be instructed by (e.g. self-represented litigants, small businesses) in order to inform the content and presentation of the B2C regulatory framework.

74. As noted above, our timeline requires the B2C regulatory framework to be completed by the end of this year, and we are on track to meet that milestone. A project spec has been developed and we are in discussions with two consultants in relation to the drafting phase. As the framework will collate existing rules and laws (rather than introduce new ones), we do not intend to formally consult, but will rather socialise the framework with those to whom it will apply and seek feedback (for example, if aspects of the document require clarification or further guidance).

75. We remain confident that we can meet the LSB’s proposed implementation date of September 2024 – as discussed at the recent MTCOG meeting on 26 July – and there are no changes to our implementation timeline.

76. In terms of quality indicators, in line with our October 2022 submission we are pursuing this through our work on the publication of regulatory information and

engagement with the cross sector initiative on comparison tools. As you know, the areas of focus for the quality indicators pilot and follow-up work relate to high volume transactional activities (such as conveyancing and divorce), which are difficult to read across to the work of individual Costs Lawyers. We have been following the learnings from the pilot closely – with gratitude to those directly involved for sharing their work – and will look for opportunities for costs advice to be considered as an “add-on” to any comparison products developed for more mainstream legal services.

#### **Question on progress on ongoing competence statement of policy:**

**7:** Please provide any relevant updates on progress since January 2023 toward meeting the outcomes in the ongoing competence policy statement, including any changes to your expected timeline for meeting the outcomes.

#### Progress update

77. We progressed the work set out in our compliance plan during H1 this year. Two outputs were considered by our board at its meeting in June, as can be seen from the published minutes at Item 7.3 (**E26**).

78. First, we developed an additional section in our policy statement on enforcement and sanctions, covering competency issues and how they will be treated in a disciplinary context (the new text appears under the heading “Approach to enforcement relating to competency” from page 6 onward) (**E52**). The board discussed the need to include guidance on the regulatory impact of a temporary lack of competency or capacity, due to factors such as ill-health, where there is no issue with underlying professional knowledge and skills. The board approved the proposed changes to the policy statement, subject to additional guidance to cover this issue. The additional guidance will now be worked up and the new version of the policy statement will be published in Q3.

79. In relation to the second output, our progress is summarised in the board minutes as follows:

*Second, the board was presented with the first draft of an expansion to the Competency Statement to include professional skills from the point of authorisation to extend throughout a Costs Lawyer’s career (**E53**). [The CEO] explained that, since post-qualification experience was rarely a reliable indicator of seniority or level of responsibility for Costs Lawyers (unlike other legal professionals), a different approach had been taken from other regulators. The project had focused on three practising scenarios in which Costs Lawyers are likely to find themselves after qualification (at any stage), namely: (i) as an experienced/specialist practitioner; (ii) as a people manager; and (iii) as a business owner.*

*The board discussed the draft in detail, including:*

- *the descriptors and behavioural indicators for the specific skills listed;*
- *the nature of the document, including whether it was mandatory or advisory and the implications of each option;*
- *links between the skills and the risks identified in sections C and D of the CLSB’s risk register;*
- *how the document could support a transparent and consistent assessment of*

*competency in a disciplinary context;*

- *opportunities to raise standards in the unregulated part of the costs sector through the business and commercial skills aspects;*
- *whether and how to consult on the document and next steps.*

*Overall, the board agreed that the document should be positioned as indicative guidance, rather than a mandatory set of skills that must be demonstrated at the relevant career stage. There were several reasons for this, most persuasively:*

- *this was consistent with the CLSB's approach of supporting and encouraging practitioners to meet high professional standards, over and above mere compliance;*
- *there was no evidence of existing ongoing competency issues in the market that required addressing through mandatory requirements;*
- *the document could be broader and deeper – and thus more valuable to practitioners and their clients – if positioned as guidance;*
- *guidance would still be indicative, although not determinative, in a disciplinary context, allowing for responsiveness to individual circumstances;*
- *guidance would be more able to flex and change as the market and client expectations change;*
- *it must be for the practitioner to assess whether and when they have reached each relevant career stage, as trying to precisely define the boundaries of each stage would be counterproductive to the purpose of the document and the LSB's policy statement.*

*The board agreed that consultation on the next version of the document would be important, although noting the need to avoid consultation fatigue given that a number of formal CLSB consultations were already active or scheduled. It was agreed that, instead of preparing a formal consultation document, the CLSB should convene a roundtable or workshop for those who are interested. Board members felt that a discursive event would be more likely to deliver detailed feedback from the profession on this kind of topic based on experience from the initial Competency Statement project.*

80. We therefore put out a call for expressions of interest to join a reference group for the project in our July newsletter and intend to convene a meeting in the early autumn. In the meantime we will be developing the next draft of the expansion to the Competency Statement taking into account the board's feedback.

81. At this stage, we do not envisage any changes to our expected timelines for meeting the outcomes in the LSB's policy statement.

***Operational delivery: Regulators' operational activity (eg education and training, authorisation, supervision, enforcement) is effective and clearly focused on the public interest.***

**[Authorisation]**

**8:** Please provide an update on work to implement CLSB's amended training rules.

**9:** Please provide an overview of the work undertaken by CLSB's Accreditation Panel in 2023.

**[Enforcement]**

**10:** Please update us on any enforcement action undertaken by the CLSB during the relevant period.

Implementation of the CLSB's amended Training Rules

82. Our new Training Rules were approved by the LSB on 15 February 2023 and were brought into force by the CLSB the same day. This was supported by a new webpage (**E37**) to host the Training Rules and supporting documents, which had been prepared in beta version while awaiting the outcome of the application. As you can see, the webpage explains the new qualification requirements in clear terms, explains the CLSB's role (as distinct from the training provider), hosts resources including the Training Rules and Accredited Study Provider Scheme Handbook, and provides extensive resources on the new framework for Qualifying Experience.

83. In relation to Qualifying Experience, we developed a Guidance Note (**E54**), template forms and expandable FAQs, all of which were published on the website following board approval in March. These formed the basis of discussions with individual students to ensure there was no detrimental impact caused by the transitional arrangements we put in place, and allowed us to begin communicating with current and future students about our expectations and good practice. The changes were publicised generally through our usual channels, including the April newsletter and on social media, as well as through ACL's newsletters and a joint session at the ACL annual conference in Manchester. We also implemented a communications plan aimed directly at students (as opposed to the wider profession), which included webinars and bespoke email communications.

84. During May and June, we began processing the first applications from students to verify their Qualifying Experience and have created new materials to help with this process, such as a verification checklist. As we began to identify themes across the enquiries we were receiving, we developed additional guidance and materials to address these. We published a Board Decision Note in June to track the board's involvement in the decision-making process (**E21**).

85. The other key workstream relating to implementation was use of the new Accredited Study Provider Scheme Handbook to assess ACL Training's application for accreditation to provide the qualification. This is considered under the heading below.

86. We are also now working with ACL Training to explore whether an apprenticeship route to qualifying as a Costs Lawyer is viable. If so, this will be an additional benefit of the significant work already undertaken by the CLSB in reforming its regulatory arrangements for education and training, and will help us to promote social mobility within the profession.

#### Work undertaken by the Accreditation Panel

87. In accordance with the new Accredited Study Provider Scheme Handbook adopted in February (E55), we convened an Accreditation Panel to consider ACL Training's application for accreditation to deliver a proposed new Costs Lawyer Professional Qualification starting in September. The Accreditation Panel comprised an independent member, the CLSB's CEO and a non-lay (Costs Lawyer) member of the CLSB's board.

88. The Panel engaged with ACL Training over the course of several months on various iterations of its draft application, providing feedback at each stage. The Panel's views on whether ACL Training had demonstrated that it met the Accredited Study Provider Requirements (as set out in the Scheme Handbook) were tracked in a Review and Assessment Report. This Report was shared with ACL Training at four key touchpoints, on 14 February, 13 March, 23 April and finally 12 June. As more evidence was requested by the CLSB and obtained from ACL Training, the Panel was able to assess ACL Training as meeting a growing number of the Requirements until – under the 12 June assessment – it was assessed as meeting them all.

89. The 23 April assessment was used to inform a virtual "visit" by the Panel, again in line with the processes in the Scheme Handbook, to meet with staff and learners, observe ACL Training's e-learning platforms and discuss outstanding issues. The agenda for the visit gives an indication of its scope and purpose (E56).

90. The Panel reconvened following the visit to compile a set of final questions for ACL Training. These mainly related to two discrete issues – around governance and sub-contracting – that remained outstanding. ACL Training responded satisfactorily to these issues and on 12 June the Panel was able to agree the final Review and Assessment Report. Our CEO wrote to ACL Training on behalf of the Panel on 19 June to convey the outcome and expectations (E57).

91. The outcome was reported to the CLSB board at its June meeting, with the Costs Lawyer member of the Panel providing feedback on how the process had worked.

92. Upon conclusion of the process, the Chair of ACL Training shared the following feedback: *"Please can I take this opportunity to thank the accreditation panel and the whole team at CLSB for an excellent process. It has been beneficial to ACLT, our team and students, in so many ways and it is always a pleasure to work with you all."* We felt that this aptly summarised how constructive and useful we had found the new accreditation process, which we were all working with for the first time. ACL Training and CLSB have now entered into a formal Accreditation Agreement covering delivery of the qualification.

93. As you might imagine, there is extensive documentation surrounding this process,

which we have not included with this response. If you would like to see any of that documentation, please let us know.

Enforcement action

94. The following is a summary of the outcomes of all formal complaints made to the CLSB about regulated Costs Lawyers since 1 November 2022.

Nature of complaint	Formal investigation	Outcome
Conflict between duty to court and duty to client (solicitor complainant)	Yes	Complaint upheld, formal letter of advice issued and agreed with Costs Lawyer, outcome published, learnings fed into review of Code of Conduct.
Failure to act, failure to provide regulatory information (lay complainant)	Yes	Complaint dismissed, informal advice on best practice issued and agreed with Costs Lawyer.
Misleading the court, based on judicial comments (solicitor complainant)	No	Person acting was unregulated and thus outside CLSB jurisdiction, but we worked with a regulated senior individual in the firm to ensure the complaint was handled appropriately and relevant information was provided.
Breach of confidentiality and concealment (lay complainant)	No	Complaint dismissed, no prima facie evidence of a breach of regulatory arrangements.
Fraudulent conduct (lay complainant)	Yes	Complaint was out of time but was accepted by the CLSB on the basis of the public interest exception due to the seriousness of the allegations. Currently under investigation.

95. Most enquiries we receive in relation to complaints are either resolved informally (for example, through sign-posting to the appropriate body) or relate to unregulated costs advisers. The increasing incidence of complaints in this latter category has prompted us to begin considering what we might be able to do in this area to promote the regulatory objectives of protecting consumers and the public interest, even if those activities fall outwith our formal regulatory powers. For example:

- We track these complaints and are building a pool of anecdotal case studies about detriment from the unregulated part of the sector, which we hope to publish in 2024 if we have a sufficient body of evidence.
- In June our board considered a series of template “cease and desist” letters, including one for use in circumstances where a complaint is raised with us about an unregulated provider.
- We have built priorities into our 2024 Business Plan to consider these issues further, including priority 2: *“Deliver a project to capture anecdotal evidence of poor consumer outcomes in the unregulated part of the costs market and report to stakeholders on themes and trends. Explore avenues that are available under the existing legislative framework to tackle poor practice and promote the regulatory objectives outside the immediate scope of regulation.”*

## Table of evidence

We have endeavoured to provide a selection of evidence that is relevant to the questions raised in the information request. This evidence does not represent a comprehensive suite of our documents and resources. If you would like assurance through any other specific materials, please let us know.

Ref	Document	Location
E1	Current mid-term organisational strategy	<a href="#">Link</a>
E2	Proposed mid-term organisational strategy (subject to consultation)	<a href="#">Link</a>
E3	2023 Business Plan	<a href="#">Link</a>
E4	Proposed 2024 Business Plan (subject to consultation)	<a href="#">Link</a>
E5	Board meeting agendas and minutes	<a href="#">Link</a>
E6	Examples of updates against Business Plans at Item 3.1 of published board papers	<a href="#">Link</a>
E7	Performance Indicators	<a href="#">Link</a>
E8	Most recent board report against performance indicators	Annex E8
E9	Most recent board survey results	Annex E9
E10	Board Governance Policy	Annex E10
E11	Remuneration Policy	Annex E11
E12	Risk register	<a href="#">Link</a>
E13	Register of directors' interests	<a href="#">Link</a>
E14	Reserves Policy	Annex E14
E15	Governance actions tracker from the LSB's well-led reviews	Annex E15
E16	MOU and OP between CLSB and ACL	<a href="#">Link</a>
E17	IGRs Quick Guide	Annex E17
E18	Annual Risk Outlook	Annex E18
E19	"What we publish" webpage	<a href="#">Link</a>
E20	Website access to board papers	<a href="#">Link</a>
E21	Recent example of a Board Decision Note	<a href="#">Link</a>
E22	"Strategy and governance" webpage	<a href="#">Link</a>
E23	"Complain about the CLSB" webpage	<a href="#">Link</a>
E24	Summary of activity funded by the 2022 practising fee	<a href="#">Link</a>
E25	"Cost of regulation" webpage	<a href="#">Link</a>
E26	Minutes of board meeting on 28 June 2023	<a href="#">Link</a>
E27	Board webpage showing director and specialist adviser expertise	<a href="#">Link</a>
E28	Consultation on the 2024 practising fee for Costs Lawyers	<a href="#">Link</a>
E29	Complaint Triage Process	Annex E29

E30	Panel Member Appointment Policy and Code of Conduct	<a href="#">Link</a>
E31	Board paper on progress against the digital workplan	Annex E31
E32	Consultation on changes to the Code of Conduct	<a href="#">Link</a>
E33	Gov.uk press release on expansion of judicial diversity through eligibility of CILEX lawyers	<a href="#">Link</a>
E34	RPF Project outputs	<a href="#">Link</a>
E35	“Data about Costs Lawyers” webpage	<a href="#">Link</a>
E36	The Costs Lawyer Profession in 2022 report	<a href="#">Link</a>
E37	“How to become a Costs Lawyer” webpage	<a href="#">Link</a>
E38	Guidance Note on Indemnity Insurance	<a href="#">Link</a>
E39	CLSB Equality and Diversity Policy	Annex E39
E40	Recent example of a candidate diversity survey	<a href="#">Link</a>
E41	“Equality and diversity” webpage	<a href="#">Link</a>
E42	Policy statement on good consumer outcomes	<a href="#">Link</a>
E43	Diversity survey report: Male and female pay and earnings	<a href="#">Link</a>
E44	Diversity survey report: Social mobility in the Costs Lawyer profession	<a href="#">Link</a>
E45	April 2023 Costs Lawyer newsletter (see “From the CEO” section on diversity survey findings)	<a href="#">Link</a>
E46	“Supervision” webpage	<a href="#">Link</a>
E47	Board report on outcomes of CPD audit	Annex E47
E48	Board report on outcomes of complaints procedure audit	Annex E48
E49	Example of a “lessons learned” webpage	<a href="#">Link</a>
E50	Board discussion paper on entity regulation	Annex E50
E51	Register of Costs Lawyers	<a href="#">Link</a>
E52	Draft amendment to policy statement on enforcement and sanctions	Annex E52
E53	Draft expansion to the Costs Lawyer Competency Statement	Annex E53
E54	Guidance Note on Qualifying Experience	<a href="#">Link</a>
E55	Accredited Study Provider Scheme Handbook	<a href="#">Link</a>
E56	Accreditation Panel visit agenda	Annex E56
E57	Accreditation outcome letter to ACL Training	Annex E57

**Minutes of the ACL Council Meeting**  
**held on 30 May 2023**  
 via Teams



Council members present: Jack Ridgway (JR), David Bailey-Vella (DBV), Stephen Averill (SA), Kris Kilsby (KK), Julian Caddick (JC), Victoria Morrison-Hughes (VMH), Laura Rees (LR) & Amy Dunkley (AD)

Also present: Carol Calver (CC) Head of Operations

The meeting started at 10:00

Item	
1	Welcome and apologies
1.1	Apologies were received from Stephanie McBride. JR welcomed all to the meeting.
2	Minutes of the council meeting held on 20 April 2023
2.1	It was unanimously agreed that the draft minutes of 20 April were an accurate reflection of the meeting. It was agreed that no items should be redacted before publishing on the website.
3	Actions arising from the council meeting held on 20 April 2023
3.1	Actions were reviewed and updated.
4	Chairman's Report
4.1	JR congratulated the Council on a very successful Manchester conference. Have interest from many sponsors and have speakers offering to speak in October.
4.2	ACL Training Articles of Association. JR proposed acceptance and sign off. DBV/VMH seconded and was unanimously agreed by remaining council. CC will submit to Companies House.
4.3	CLSB MoU and OP. JR proposed acceptance and sign off. KK seconded and was unanimously agreed by remaining council. CC will acknowledge to Kate Wellington at CLSB.
5	PR & Marketing Committee Report
5.1	DBV summarised feedback from Manchester conference with the majority happy with event, comments were venue related due to lack of space for lunch. However speakers, topics, location etc. was very positive. A general discussion regarding potential speakers took place for the upcoming London conference and Manchester next year.
5.2	<i>Item 5.2 redacted due to confidentiality.</i>
5.3	AD mentioned that the Mark Friston 4 <sup>th</sup> edition of Friston on Costs is due for release on 13/07 which may now cause a clash with the upcoming London Regional Meeting on the same date. This will be monitored and meeting moved if required.
5.4	<i>Item 5.4 redacted due to confidentiality.</i>

6	<b>Policy Committee Report</b>
6.1	CLSB code of conduct consultation, KK suggested ACL monitor but allow members to respond individually unless it is felt the ACL need to provide a formal response. CC to place reminders in eBulletin.
6.2	<p>KK reported on a meeting with the LSB where Business Plans and meeting minutes were shared and confirmed two upcoming consultations:</p> <ul style="list-style-type: none"> <li>- First Tier Complaints – consumer perspective</li> <li>- Tech Guidance – use of AI / Consumer Access</li> </ul> <p>KK highlighted a potential breach of GDPR with ChatGPT, being an information collation tool it may respond using case specific information previously input. It was suggested an article should be used to highlight this to members.</p>
6.3	KK has had an initial conversation with the LSB regarding Chartered Status but highlighted that once achieved changes to the ACL Articles and by-Laws can become limited due to need for privy-council approval.
6.4	<p>KK attended a Law Society workshop on Civil Legal Aid during May. Discussion covered:</p> <ul style="list-style-type: none"> <li>- Creation of a national legal service</li> <li>- Diversification of funding</li> <li>- Reduction in bureaucracy</li> <li>- Training grants and apprenticeships for Legal Aid</li> <li>- Separation of LAA from the MoJ</li> <li>- Restore Access to Justice KPI</li> </ul> <p>KK would like to pursue ACL involvement with Affordability of Legal Services group, he will discuss this and above with the LAG committee.</p>
6.5	KK confirmed DJ Searl attendance at upcoming Newcastle Regional meeting with 13 confirmed attendees. KK is aware of 5 more to book on.
7	<b>Education Report</b>
7.1	VMH & LR to attend ACL Training board meeting in June.
7.2	<p>LR confirmed admissions open for September intake, currently have 12 confirmed. Over 100 expressions of interest. <i>Redacted due to confidentiality.</i></p> <p>ACL Training to submit their application for accreditation to the CLSB beginning of June. Course Coordinator role filled by Gina Wilderman, starts 05/06 - <i>redacted due to confidentiality.</i></p>
8	<b>Finance &amp; Internal Policy Committee Report</b>
8.1	SA confirmed the review of the Articles and By-Laws will commence in June, with regular meetings until completion. JR highlighted that any Chartered Status application will be held up by review of Articles & By-Laws and as a lengthy process we need to keep ahead.
8.2	<i>Item 8.2 redacted due to confidentiality.</i>
8.3	<p>SA detailed the ACL dormant accounts currently held with Companies House. These accounts are held in the names of:</p> <p style="padding-left: 40px;">The Association of Law Costs Consultants Limited - 2002 - 04388378</p> <p style="padding-left: 40px;">A L C C Training Limited - 2002 – 04388137</p> <p>No accounts have been filed for either of these since 2002. The Council discussed these at length and decided unanimously to close them.</p>

<b>9</b>	<b>Operations Report</b>
9.1	Council discussed dates and location for July Council Meeting – in person event.
9.2	Council confirmed logo usage change as voted for by members should be a replacement of terms, not in addition to. However, both terms will apply until this is formally updated in the articles and By-law review.
9.3	Council agreed to ask Mark Friston to review the specialisms listed within the member directory so this can be updated for the new website.
9.4	CC asked Council opinion of a generic, anonymous banded survey of members covering location, salary, type of work, hourly rate, hours etc. etc – Council suggested this was appropriate to mix into the generic questions at conference.
9.5	CC detailed to Council that all Cost Lawyer Journal articles are available to members and the public alike and an intent to limit this going forward to preserve as a true member benefit. Council agreed in principle however more consideration needs to be given with regards to the requirement to log in to the website each and every time may discourage members. Council agreed to leave as for now with CC to investigate ease of access options for new website.
<b>10</b>	<b>Any other business</b>
10.1	JR acknowledged the successful re-nomination of Kris Kilsby to Council, along with an encouraging number of nominees and votes overall. JR detailed his intent to contact other nominees to see how they can assist the ACL outside of the Council by way of Regional Meetings, SiGs etc.
10.2	JR to speak with Kings Chambers with regards to Affiliate membership of the ACL
<b>11</b>	<b>Date of next meeting</b>
11.1	Next meeting scheduled for 27 June 2023, 10:00 to 12:00 via Teams. There being no further business the meeting ended at 12:10

**Minutes of the ACL Council Meeting**  
**held on 27 June 2023**  
 via Teams



Council members present: Jack Ridgway (JR), David Bailey-Vella (DBV), Stephen Averill (SA), Kris Kilsby (KK), Julian Caddick (JC), Victoria Morrison-Hughes (VMH), Stephanie McBride (SM) & Amy Dunkley (AD)

Also present: Carol Calver (CC) Head of Operations

The meeting started at 10:00

Item	
1	Welcome and apologies
1.1	Apologies were received from Laura Rees. JR welcomed all to the meeting.
2	Minutes of the council meeting held on 30 May 2023
2.1	It was unanimously agreed that the draft minutes of 30 May were an accurate reflection of the meeting. It was agreed that items 5.2, 5.4, 7.2 & 8.2 should be redacted/partially redacted before publishing on the website.
3	Actions arising from the council meeting held on 30 May 2023
3.1	Actions were reviewed and updated.
4	Chairman's Report
4.1	<i>Item 4.1 redacted due to confidentiality.</i>
5	PR & Marketing Committee Report
5.1	AD detailed a successful Costs in the City event on 22/06 with over 50 attendees. Plan to run another later in the year, perhaps a festive, December event.
6	Policy Committee Report
6.1	KK confirmed discussion with Bob Baker for LAG, Civil Legal Aid review will require support from the ACL.
6.2	KK confirmed a successful Newcastle Regional Costs Meeting on 01/06. Judge Searle very well received and increase in numbers / interest for future meetings.
7	Education Report
7.1	VMH confirmed accreditation from CLSB with no conditions.
7.2	<i>Item 7.2 redacted due to confidentiality.</i>
7.3	Budget will be re-forecast in September when final numbers known. <i>Redacted due to confidentiality.</i>
7.4	ACLT required to provide assurance of run off cover if course is terminated. JR approved sign off of ACL support if this occurs. Seconded by VMH & SA.

<b>8</b>	<b>Finance &amp; Internal Policy Committee Report</b>
8.1	SA reported on balances of bank account and investments.
8.2	SA will complete review of investments with Paull Hazell at Enable on sale of underperforming funds, detailing back any implications with regards to capital gains tax.
8.3	SM confirmed an initial review of the Association by-laws and articles of association has taken place, further meeting is set to further review. JR to review suggested changes, followed by full Council.
<b>9</b>	<b>Operations Report</b>
9.1	CC detailed to Council the various versions of the ACL names in use, requesting permission to investigate changing from all previous versions to the Association of Costs Lawyers. On discussion with Council it emerged that as the ACL is registered with the Legal Services Act as the Association of Costs Law Draftsmen, the name cannot be changed. CC will work to update to one version going forwards – The Association of Law Costs Draftsmen T/A The Association of Costs Lawyers.
9.2	CC detailed progress on the website re-design, confirming a later transfer date than 01/08 as this is now likely unachievable. CC will select two proposals to move forward to present to Council (PR-AM & JR as a minimum), mid July.
9.3	CC confirmed that the LAG constitution and handbook amendments had now been finalised and accepted by Bob Baker and Paul Seddon, Co-Chairs of the LAG Group. Handbook to be signed off by LAG Committee Members during July.
9.4	CC provided an update on the ACL Special Interest Groups, Court of Protection, Commercial Costs & Solicitor / Client Costs and confirmed the intent to create private LinkedIn Groups for each so members can chat / raise questions / share information whenever.
<b>10</b>	<b>Any other business &amp; Date of next meeting</b>
10.1	There being no further business the meeting ended at 11:25 Next meeting scheduled for 25 July 2023, 10:00 to 12:00 via Teams.

**Minutes of the ACL Council Meeting**  
**held on 25 July 2023**  
 via Teams



Council members present: Jack Ridgway (JR), Stephen Averill (SA), Kris Kilsby (KK),  
 Laura Rees (LR), Stephanie McBride (SM) & Amy Dunkley (AD)

Also present: Carol Calver (CC) Head of Operations

The meeting started at 10:00

Item	
1	Welcome and apologies
1.1	Apologies were received from David Bailey-Vella, Victoria Morrison-Hughes and Julian Caddick. JR welcomed all to the meeting.
2	Minutes of the council meeting held on 27 June 2023
2.1	It was unanimously agreed that the draft minutes of 27 June were an accurate reflection of the meeting. It was agreed that items 4.1, 7.2 & 7.3 should be redacted/partially redacted before publishing on the website.
3	Actions arising from the council meeting held on 27 June 2023
3.1	Actions were reviewed and updated. Note on no.8 – VMH to take part in TV Property Channel slot – Kerry Jack has advised against, unknown audience / relevancy v investment.
4	Chairman's Report
4.1	JR reviewed the final ACL 2022 accounts and corporation tax return – signed off.
4.2	JR reported on initial review of Articles & Bye-Laws and intent to survey membership on potential changes, suggesting a revival of the Fellow membership category for PQE
5	PR & Marketing Committee Report
5.1	AD detailed the initial questions prepared for an hourly rates survey for membership, council discussed the pro's and cons of offering the questionnaire in person at conference v an online survey – CC will share similar survey questions collated for conference. It was decided that HR survey will be asked of both ACL members and CLSB prior to conference.
5.2	AD reported on a successful regional meeting in London in July, planning another in November. JR requested CC to contact appropriate London members who may want to host / own the London regional meetings. KK confirmed another Newcastle meeting for early Sept and another for Nov/Dec and suggested we invite Master James or another from the SCCO to talk on CoP 'view from the bench' for the next CoP SiG meeting.
6	Policy Committee Report
6.1	KK detailed the formal ACL response submitted for the CLSB Code of Conduct consultation and intent to submit a response for the CLSB PC 2024 consultation.

6.2	KK confirmed intent to respond to the upcoming FRC Consultation due 8 <sup>th</sup> September 2023. Council discussed and it was decided to survey membership for responses to be collated by the ACL for submission. This is to be combined with a Town Hall event on 4 <sup>th</sup> September to provide members with an opportunity for full discussion.
6.3	KK reported on a request from the LSB for the ACL to collaborate on upcoming consumer protection / complaints procedures review.
<b>7</b>	<b>Education Report</b>
7.1	LR confirmed numbers for September 2023 intake: <i>redacted due to confidentiality</i> .
7.2	CC detailed request from HTG for assistance from ACL in the overall promotion of the CL profession. JR confirmed this was already within the Business Plan and will be further prioritised following the launch of the new website and application for Chartered Status.
<b>8</b>	<b>Finance &amp; Internal Policy Committee Report</b>
8.1	SA summarised a report on investments requested from Nucleus <i>redacted due to confidentiality</i> . They advise transferring underperforming funds in property investments to a more profitable fund.
8.2	SA advised any funds sold / transferred will be liable for Capital Gains Tax at 19-25%
8.3	SA has implemented an annual review with Nucleus for the Treasurer / Finance / HoO to evaluate fund performance.
<b>9</b>	<b>Operations Report</b>
9.1	CC detailed venue choices for London, Council concluded a preference for Leonardo St Paul's, CC to negotiate terms of moving event if industrial action announced for 20/10.
9.2	CC sought approval on spend for member give-away for conference, approved by Council.
9.3	CC asked for clarification on branding of Qualification Certificates, Council suggest these stay as ACL as registered with LSB and reinforces connection with the Association.
<b>10</b>	<b>Any other business &amp; Date of next meeting</b>
10.1	There being no further business the meeting ended at 11:55 Next meeting is scheduled for 29 August 2023, 10:00 to 12:00 via Teams.

# Capturing the full practising history of Costs Lawyers: from the ACL Register to the CLSB database

2023 Business Plan priority 12

Board report

29 September 2023

---

## Background

In July 2020 the new CLSB database went live with the records of all Costs Lawyers practising at that time. They were all given a practising status of “imported”.

In 2021 historic information from annual schedules (spreadsheets) of qualification, termination and reinstatement was added to the database, and many of the “imported” statuses were replaced with actual practising history data.

However, the database still did not provide a full practising history for each individual Costs Lawyer due to (i) gaps and inconsistencies in the CLSB’s historic manual records, and (ii) the lack of clear records from the time the regulation of Costs Lawyers was transferred from ACL to CLSB.

## Business Plan priority 12

Part of this year’s digital workplan was to consolidate all regulatory information about individual Costs Lawyers in the database. We have actually been able to go further than this and capture, as far as possible, the full practising history for each individual ever regulated by the CLSB.

## The project

### 1. *Establishing a starting point*

CLSB became the approved regulator of Costs Lawyers on 31 October 2011, and issued its first practising certificates for the practising year beginning 1 January 2012.

The earliest CLSB records of Costs Lawyers are from 2012. However, unlike in later years where there is a single Register, for 2012 there are four separate spreadsheets with different numbers of Costs Lawyers (between 564 and 567) and 6 individual Costs Lawyers who appear on one or more of the spreadsheets but not all. There is no indication of the master record or the date of each spreadsheet. ACL does not have records of the Costs Lawyers transferred in January 2012. The starting point was therefore to cross check these individuals with other historic records and email correspondence to establish the circumstances of these individuals, and thus the starting point for CLSB on 1 January 2012.

## 2. *Identifying anomalies*

Using the Reports Manager tool in the database we were able to write new reports to identify remaining anomalies. This showed there were 270 Costs Lawyers whose earliest status was “imported” (from the 2020 excel spreadsheet Register of Costs Lawyers) who also had a qualification date of 2012 or after, and who therefore could not possibly have been transferred from ACL. For each individual annual Registers and qualification schedules were cross checked to try and identify their dates of qualification and first regulation. In many cases historic records are incomplete and inconsistent, and where surnames have changed, and unique CL numbers not always used, identifying the history involved checking multiple years’ records for each individual.

## 3. *Automatic update of remaining records*

Once this work was complete, the 550 remaining “imported” practising status records, with qualification dates prior to 2012, were automatically updated to be “transferred from ACL” on 1 January 2012.

It is important for the Board to be aware that the quality of the data held in the database is limited by what is available in the historic records. Gaps may still occur due to: (i) the Registers prior to 2020 providing a snapshot of the position at year end, but usually not recording the precise date of first regulations and reinstatements during the year; (ii) the date of qualification is sometimes only a year, not a precise date; and (iii) inconsistencies in data held in multiple locations.

However, the CLSB database does now provide a full practising history, as far as possible, for all Costs Lawyers it has ever regulated. It is important for this data to be as accurate as possible to ensure we comply with our obligations under data protection law.

## **Related work – qualifying as a Costs Lawyer**

As part of this project, and in particular establishing the 2012 starting point, it became clear that there is no clear record or understanding at either ACL or CLSB of the process by which the then ALCD Fellows qualified as Costs Lawyers. To ensure that CLSB understands the way in which all Costs Lawyers have qualified, including those transferred from ACL, a wide range of historic records were tracked down and examined to identify the ways people have qualified over the years. We collaborated with ACL on this work.

More detailed records of both the work to capture the full practising history of each Costs Lawyer and the routes to qualification have been created for future reference and record. This also forms part of delivering our 2024 Business Plan priority around ensuring we document all internal systems and processes as part of our business continuity efforts.