



## Costs Lawyer Standards Board

### AGENDA

**Tuesday 31 January 2023 @ 10:30am**  
**Remotely via videocall**

<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
	Board members	Legal Services Board (Item 8.1)

*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>	- -		DH DH
2	<b>Minutes</b> 2.1 <a href="#">Approval of minutes</a> (19 October 2022) 2.2 <a href="#">Matters arising</a> (19 October 2022)	Item 2.1 -	Yes	DH DH
3	<b>Strategy</b> 3.1 <a href="#">Progress against Business Plan: 2022 roundup</a> 3.2 Annual report against performance indicators	Item 3.1 Item 3.2A+B	Yes Yes	KW KW
4	<b>Board matters</b> 4.1 Remuneration Committee report	-		AH

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<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: Q4 2022</a>	Item 5.1	No (D, E)	JC
6	<b>Risk management</b> 6.1 <a href="#">Review of risk registers</a> 6.2 Review of approach to risk	Item 6.1 Item 6.2	Yes No (G)	KW KW
7	<b>Regulatory matters</b> 7.1 Update on rule change applications 7.2 Ongoing competency forward plan 7.3 Costs Lawyer Profession in 2022 report 7.4 Code of Conduct review 7.5 Diversity update and proposed priorities	- Item 7.2 Item 7.3 Item 7.4 -	 Yes Yes Yes	KW KW JC KW KW
8	<b>Legal Services Board (LSB)</b> 8.1 Board to Board roundtable 8.2 Regulatory performance assessment outcome	- -		DH KW
9	<b>Stakeholder updates<sup>2</sup></b> 9.1 <a href="#">ACL Council meeting minutes</a>	Item 9.1	Yes	KW
10	<b>Operations</b> 10.1 Practising certificate renewals data	Item 10.1	Yes	JC
11	<b>Publication</b> 11.1 <a href="#">Confirmation that papers can be published</a>	-		DH
12	<b>AOB</b>	-		DH
13	<b>Next meeting</b> <a href="#">Date: 29 March 2023</a> <a href="#">Venue: Remote via videocall</a>	-		DH

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

**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 19 October 2022 at 10:30 am**  
**Remotely via Teams**

<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
	Paul McFadden	Legal Ombudsman (Item 9.2)

**1. OPENING MATTERS**

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

**2. MINUTES**

**2.1 Minutes dated 20 July 2022**

The board considered the minutes of its last scheduled quarterly meeting on 20 July 2022. The board agreed the minutes as being a true record for signing.

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

**2.2 Matters arising**

The board considered the matters arising from the minutes of its meeting on 20 July 2022. There were no matters arising that had not been scheduled as agenda items or otherwise dealt with.

**3. STRATEGY**

**3.1 Progress against Business Plan: Q3 2022**

The board was provided with a progress update against the 2022 Business Plan. Kate noted that four additional priorities had been achieved during Q3, meaning that 12 of 17 priorities had been achieved overall. Of the remaining five, two were in train, two were scheduled for Q4 and one was deprioritised in July. The board noted that Hook Tangaza would be assisting with delivery of the two priorities scheduled for Q4.

### 3.2 Strategy session: Regulating B2B vs B2C costs services

In July, the board held a strategy session at which it considered various issues arising from the findings of a project, funded by the Regulators' Pioneer Fund, that asked: How can Costs Lawyers help to reduce the cost of legal services? Based on feedback from that session, several issues were prioritised for immediate further consideration. One issue was how to develop proportionate and targeted regulation for the small minority of Costs Lawyers who serve individual consumers (provide B2C services).

Kate introduced the item, canvassing the issues for consideration and options for moving forward. A three step plan was proposed, focused around:

- more accurately identifying those Costs Lawyers who provide B2C services (step 1);
- developing a B2C regulatory framework that would apply only to such practitioners, drawing on existing consumer protection legislation (step 2); and
- choosing from a range of options for supervising compliance (step 3).

Kate explained the intended outcomes of the plan, including the envisaged benefits and how risks could be mitigated.

The board discussed the proposal in detail. Board members agreed that a bespoke B2C regulatory framework for Costs Lawyers, with clear criteria for its application, would be appropriate and beneficial for both practitioners and clients. The board discussed possibilities for where the financial burden of developing and supervising compliance with that framework should lie. It was agreed that the CLSB should not seek to recover costs only from practitioners who provide B2C services (for example through a tiered practising fee). Board members felt this could discourage Costs Lawyers from providing B2C services altogether, which could undermine the regulatory objectives of promoting access to justice, competition in the market for legal services, and the interests of consumers.

Board members then considered other issues such as:

- the potential value of the B2C regulatory framework for unregulated providers of costs services and as an incentive into regulation;
- the need to carefully manage communications with Costs Lawyers who provide B2C services – possibly on a one-to-one basis depending on the number of practitioners – to emphasise the benefits of the framework and the fact it will collate existing regulations rather than impose new ones;
- the benefits of the plan for other areas of the CLSB's work, such as developing evidence to support protection of title;
- the importance of demonstrating to the LSB how the plan will deliver compliance with its policy statement on empowering consumers in a way that is in line with the Better Regulation Principles;
- the detail of step 1, including the questions that would be used in the 2023 practising certificate renewal form to identify Costs Lawyers who provide or advertise B2C services; and
- ways of encouraging accuracy and candour in self-declarations about B2C work.

***Actions: Proceed with step 1 in the upcoming practising certificate renewal round using amended questions; Proceed with step 2 in the new year.***

## **4. BOARD MATTERS**

### **4.1 Board member reappointments**

Andrew H and Andrew M's appointments to the board were due to expire on 22 January 2023, before the board's next scheduled meeting on 31 January. Both put themselves forward for reappointment for a further three year term. The board was reminded of the relevant provisions of the Board Governance Policy relating to the reappointment process.

Andrew H and Andrew M left the meeting. Following discussion, the remaining board members unanimously resolved to reappoint both directors for three years from 23 January 2023. Andrew H and Andrew M were readmitted to the meeting. David conveyed the board's decision and thanked them for their valuable contribution to the board's work to date.

**Action: Agree reappointment letters with Andrew H and Andrew M.**

### **4.2 Remuneration Committee matters**

The board was provided with minutes of an extraordinary meeting of the Remuneration Committee on 19 July 2022, and Andrew H (as Chair of the Committee) gave a verbal report of the Committee's business. The board noted the minutes, which showed that the Committee had executed the new contractual relationship with the CEO.

In July, the board had discussed a proposed new Remuneration Policy, but had not settled on agreed language for paragraph 7 (relating to pay reviews). The board agreed a form of wording that would guarantee employees an annual pay review taking into account the rate of inflation, but would not guarantee an annual pay increase in line with inflation.

**Action: Amend paragraph 7 of the Remuneration Policy as agreed and adopt into the Internal Handbook.**

### **4.3 Governance review tracker: NED job descriptions**

Kate introduced this item. She explained that, following the LSB's well-led reviews in 2021, the CLSB had mapped the recommendations from the reviews against its own governance arrangements to produce a series of actions that should be taken to ensure the LSB's expectations were met. Most of these had been dealt with under the new Board Governance Policy, adopted by the board in February, and other ad hoc workstreams. One outstanding item was to ensure that job descriptions for all non-executive directors were properly documented and up-to-date. The board was provided with proposed job descriptions for the Chair and NEDs (including a competency map) for this purpose, as well as the updated recommendation tracker.

The board approved the job descriptions for incorporation into the Board Governance Policy. Kate noted that she would take the opportunity to also update references in the Board Governance Policy to the role of the Company Secretary.

**Action: Amend Board Governance Policy as agreed.**

## **5. FINANCE**

### **5.1 Quarterly report: Q3 2022**

Jacqui introduced the quarterly finance report. The board noted the financial position, particularly that the projected budget surplus had been reduced and expenditure was now in line with expectations at a global level, with higher than expected income providing some degree of buffer.

The board also discussed the Director of Policy's decision during Q3 to step back from day-to-day responsibilities and focus more on discrete policy projects for the CLSB, and the implications that would have on the budget.

### **5.2 LSB decision on PCF application**

Kate introduced this item, providing the board with feedback from the CLSB's consultation on its proposed practising certificate fee (PCF) for 2023 and explaining how this had been taken into account in the application to the LSB for approval of the PCF. This included feedback from the CLSB's new Advisory Panel, which had been asked to consider some of the issues around the PCF in more detail for the first time.

The board was provided with a copy of the LSB's decision on the PCF application. Board members noted the LSB's recommendation for next year's application and Kate explained that a request for additional financial information would be made of all the approved regulators in 2023.

David also noted that, at a recent LSB conference (see item 8.2), a number of LSB staff had commented on the high quality of the CLSB's PCF application. It was encouraging to receive this approbation and David thanked Kate and Jacqui for the hard work that had gone into preparing the documentation.

## **6. RISK MANAGEMENT**

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

The board reviewed the risk registers and considered whether any new risks should be added, any existing risks removed or any risk scores changed. Kate described the plans for an upcoming risk review, noting that the review would likely impact the framing of the regulatory but not operational risks in the register.

The board discussed risk OP6 (*breakdown in communication between any of ACL, ACLT and CLSB*), which the board had considered downgrading at its meetings in May and July. The Non-Lay NEDs provided positive feedback on the market's perception of ACL's activities under new leadership and Kate provided an update on the most recent developments at ACLT. The board agreed that the rating for OP6 should remain red, but that all relationships were continuing to strengthen and the expectation was that OP6 would be downgraded in the new year if things continued to improve.

The board also agreed to:

- update the controls for risk OP1 (*more leave than enter the profession*) to reflect the ongoing exploratory work from the Regulators' Pioneer Fund project to ensure regulation of Costs Lawyers is targeted and proportionate;

- update the controls for risk OP3 (*insufficient number of new qualifiers*) to reflect progress toward a new Costs Lawyer Qualification in 2023, while also updating the evidence of risk to reflect new risks from the transition.

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

## **7. REGULATORY MATTERS**

### **7.1 Costs Lawyer Qualification accreditation for 2023**

The board was provided with an update on the CLSB's various workstreams relating to the Costs Lawyer Qualification. The executive had continued to work closely with ACLT in Q3 on a number of different workstreams relating to both the existing and proposed new course. Kate explained the current staffing arrangements at ACLT, proposed transitional arrangements for the new course and steps that had been taken to ensure a smooth student experience.

The board was provided with the latest course report from ACLT and materials addressing recommendations made by the CLSB in November 2021 for improvements to course delivery. Based on those materials, Kate recommended that the CLSB accredit ACLT to deliver Units 2 and 3 of the existing course to new and enrolled students in 2023. This would essentially place the existing course into a run-off phase. The CLSB would consider whether to accredit ACLT's new course under its Accredited Study Provider Handbook once that document was implemented early in the new year.

The board noted the updates and agreed that ACLT should be accredited for 2023 on the terms set out in a draft accreditation letter that had been prepared by the executive.

**Action: Send accreditation letter to ACLT.**

### **7.2 Professional Qualifications Act 2022**

Kate introduced this item and explained the steps that the CLSB had taken, or planned to take, to comply with the Professional Qualifications Act 2022. This work covered areas such as:

- a new recognition framework for foreign qualifications;
- publication of prescribed information in a single place on the website (in compliance with section 8);
- information sharing requirements (in compliance with sections 9 and 10); and
- engagement with the professional qualifications register, which was not prescribed by the Act but was a related project being managed by BEIS.

Board members asked about the number and nature of applications for recognition received in the past and discussed the implications of this for the way that CLSB should implement the Act. Despite the low likelihood of applications in the future due to the nature of the market (i.e. the small number of jurisdictions with an equivalent profession to Costs Lawyers), the board emphasised the importance of compliance in principle as well as to ensure procedural fairness and transparency in the event an application was made.

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

### **8.1 Regulatory performance information request**

The board was provided with a request for information from the LSB for the purpose of carrying out a regulatory performance assessment of the CLSB (and other regulators) in December. Kate explained that the CLSB had been asked for evidence of progress on issues that affect the whole sector plus issues that relate specifically to the CLSB, as well as a precis of how the CLSB complies generally with each standard in the assessment framework.

The board was asked for general input on the CLSB's response to the request, as the deadline for responding was tight and there would not be sufficient time for the board to consider a full draft prior to submission. The board discussed the various aspects of the information request and was content for Kate to prepare and submit a response on that basis.

### **8.2 Feedback from LSB conference**

David provided a verbal update on highlights from the LSB's recent conference on aspects of its Reshaping Legal Services Strategy. The theme of the conference was: "a diverse public deserves a strong, ethical and diverse profession". David had attended the conference in person and Kate had attended remotely.

Board members discussed the LSB's equality, diversity and inclusion (EDI) agenda in particular, considering the CLSB's evidence base and how it would resource EDI work going forward. Opportunities to collaborate on EDI initiatives were discussed, particularly with organisations that had well-established activities in place. The board also considered whether the CLSB should do more to tailor its regulation to practitioners in Wales, and it was agreed that this should be looked at more closely in the new year.

The board discussed issues around ethics raised at the conference, including the role of regulatory bodies in helping junior lawyers to identify ethical issues and provide regulatory "cover" to do the right thing in difficult situations.

## **9 STAKEHOLDER UPDATES**

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

The board noted the minutes of ACL Council meetings held in April, May and August 2022. The board noted that the August minutes suggested there had been a meeting held in June, but no minutes of that meeting had been published.

### **9.2 Roundtable with Paul McFadden, Legal Ombudsman**

David welcomed Paul and invited him to give the board an overview of his future vision for the Legal Ombudsman (LeO) and the recovery plans that were in place for the organisation.

Paul described the position that LeO had been in when he joined, the priorities that had been identified, the challenges that had arisen, and the improvements that were now being seen. Paul portrayed the recent changes as radical, ranging from process improvements and scheme rule amendments, to a focus on early resolution and



proportionality, as well as internal culture shifts and staff engagement. He provided statistics from the 2022 mid-year review suggesting that the changes were having an impact on wait times and the backlog of cases, and that LeO was now on target to meet the milestones in its two year plan. Paul then explained plans and priorities for 2023, including changes to case fees and further engagement and collaboration with the sector.

David thanked Paul for his clear and open explanation and invited questions from board members. Participants discussed:

- The structure of case fees and how they can be used to incentivise resolution.
- Opportunities to move to a more thematic approach after the backlog is cleared, which can provide more value to consumers as a collective than the resolution of individual complaints.
- The use of data and engagement to consider how LeO can best contribute to a well-functioning sector.
- The balance between clearing the backlog of cases and maintaining quality of outcomes.
- The need for patience and persistence in turning around public perception of the organisation, even once it is operating on a business-as-usual basis.

David congratulated Paul on his resolution in taking on such a challenging task, and Paul agreed to keep in touch as the plan is delivered over the coming months.

## **10 OPERATIONS**

### **10.1 Complaint procedure audit report**

The board was provided with a report of the second annual audit of Costs Lawyers' complaint procedures, carried out in June. Jacqui introduced the item and explained that, while the intention had been to audit a random sample of complaint procedures this year, there was a sufficient number of noncompliant procedures identified at submission (alongside applications for 2022 practising certificates) such that random sampling was not yet warranted. She noted that none of the audited procedures met all requirements of the CLSB guidance, but that practitioners seemed to find the CLSB's model procedure useful in bringing their policies into compliance when asked.

The board considered the outcomes of the audit, noting the significant impact that the audit process was having on levels of compliance, particularly as one compliant procedure could potentially cover multiple Costs Lawyers working in the same firm.

### **10.2 Review of internal staff policies**

One of the priorities in the CLSB's 2022 Business Plan was to review and modernise its internal staff policies to ensure they are fair, relevant and reflect current ways of working. In pursuit of this, the board was provided with a draft Employee Handbook that had been adapted from the CLSB's existing policies and reviewed by HR agency Azets against prevailing market standards and legislative requirements. The board was informed that Azets had also reviewed the CLSB's Whistleblowing Policy and Equality and Diversity Policy, but no changes were recommended.

The board considered the draft Handbook. It had been proposed that employee expenses caps be increased by 10% to account for inflation (since 2017), however in relation to mileage claims that would push the cap above the relevant tax threshold. It was agreed that the burden of administering this would be disproportionate, so the mileage caps should remain unchanged. Andrew H had additional drafting comments, and the board agreed these could be dealt with by the executive via email without further approval of the full board.

Subject to those amendments, the board approved the Employee Handbook for adoption. It also approved the revocation of an existing HR Policy and Procedures document and Employee Expenses Policy, both of which were superseded by the Handbook.

***Actions: Adopt Employee Handbook with agreed amendments; Revoke HR Policy and Procedures and Employee Expenses Policy.***

## **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**

Kate raised an item of other business relating to an enquiry that had been received after circulation of the board papers. A solicitor had asked whether they were eligible to participate in the Accredited Costs Lawyer scheme and, while the answer was that they could not participate under the scheme's current terms, it would be possible to amend those terms to accommodate other authorised practitioners specialising in costs. The board was asked for early feedback on whether this should be pursued.

Board members considered the opportunities and risks from this proposal, and agreed that it warranted further investigation. The board also felt that it complemented ACL's current objectives and should be discussed with them. Board members agreed to provide any further thoughts to Kate by email.

***Action: Investigate the proposal further and discuss with ACL.***

## **13 NEXT SCHEDULED QUARTERLY MEETING**

The next meeting was scheduled for 31 January 2023, remotely via videocall.

There being no further business, the Chair declared the meeting closed at 12:17.

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Chair

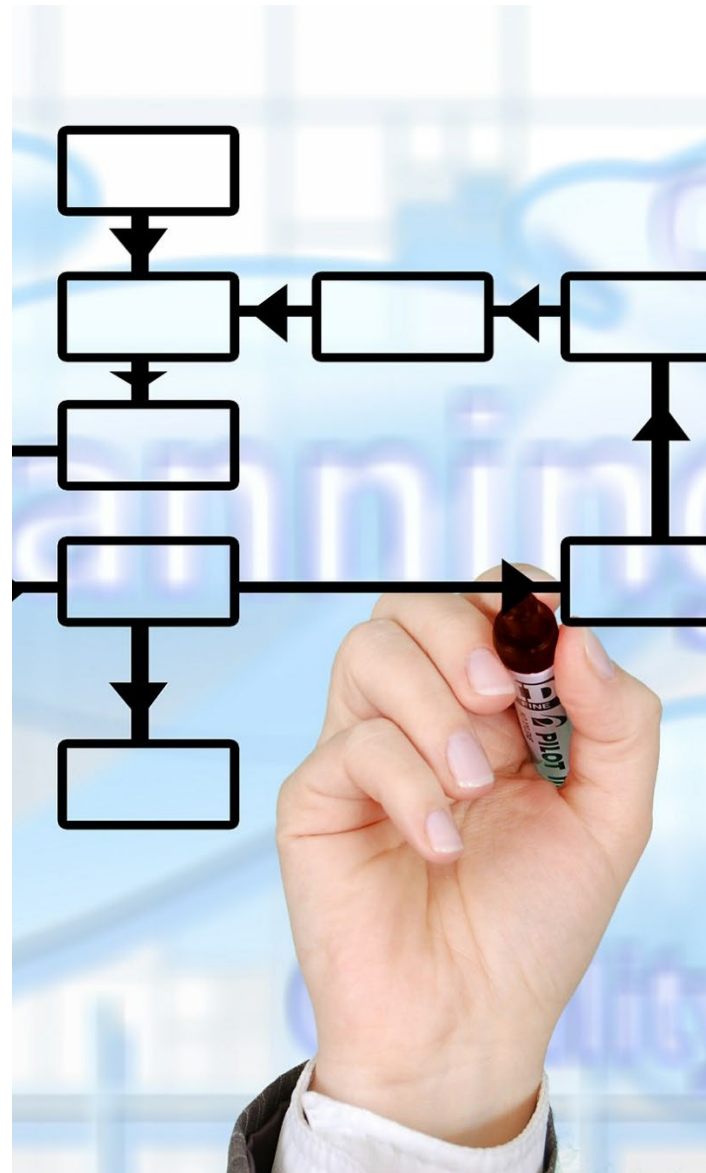
## Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes	About ⇒ Our board
3.2	Project webpage	CLSB website <a href="#">here</a>
6.1	Risk registers	About ⇒ Strategy and governance
10.1	Lessons learned from the 2022 complaints procedure audit	Regulatory ⇒ Supervision
11.1	Board papers	About ⇒ Our board
Item	Document	Publication location (other)
5.2	CLSB application for approval of 2023 PCF and LSB decision	LSB website <a href="#">here</a>

# Business Plan 2022

## Q4 board update

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January 2023

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Costs Lawyer Standards Board

CLSB

# Annual priorities

## Improving our regulatory arrangements

	Initiative	Progress status / expected completion
1.	<p>Review the Costs Lawyer Code of Conduct to ensure it aligns with:</p> <ul style="list-style-type: none"><li>• our consumer outcomes framework;</li><li>• our research into the competencies expected of a qualifying Costs Lawyer;</li><li>• learnings from our risk deep-dive exercise carried out in 2021;</li><li>• the better regulation principles, and in particular that it does not impose unnecessarily broad regulatory burdens;</li><li>• recent updates to our other regulatory arrangements;</li><li>• evidence of good practice across the wider professional services sectors.</li></ul>	<p><b>Achieved (Q4)</b></p> <p><i>This review was carried out in Q4, working with Hook Tangaza. A report detailing proposed changes to the Code will be put to the board for consideration at this meeting. Following board approval, a consultation will take place in Q1 2023 followed by a rule change application.</i></p>
2.	<p>Implement changes to the Training Rules and other regulatory arrangements relating to education – informed by evidence from our competencies project in 2021 – to modernise the requirements for becoming a Costs Lawyer and facilitate a wider range of flexible pathways to qualification.</p>	<p><b>Achieved (Q4)</b></p> <p><i>The board considered the first draft of the new Accredited Study Provider Handbook in January. A final draft, incorporating assessment outcomes and a series of new annexes, was put to the board in July along with proposed new Training Rules. Consultation materials were then developed and a public consultation was run from August to October. A rule change application was made to the LSB in Q4, completing this priority. We will work closely with ACLT in relation to implementation next year.</i></p>
3.	<p>Using our new supervision framework, evaluate the extent to which our revised approach to Continuing Professional Development (CPD) has been understood and adopted by Costs Lawyers, and develop communications to address any</p>	<p><b>Achieved (Q1)</b></p> <p><i>An audit of CPD for the 2021 practising year – being the first year in which the new CPD Rules were in force – was carried out in Q1. A report of the findings, as well as actions taken to provide feedback to the regulated community and further embed the approach, was presented to the board at its May meeting.</i></p>

	areas of difficulty or other themes identified.	
4.	Evaluate the success of our new Disciplinary Rules and Procedures two years after implementation.	<b>Achieved (Q2)</b> <i>A review of our experience in applying the new DR&amp;P was carried out in Q1 and several recommended adjustments were identified, mainly to clarify the relationship between complaints to the CLSB and complaints to LeO. A report setting out these recommendations was considered by the board in July. Consultation and a rule change application to the LSB followed in H2 by way of implementation. The review also identified a need for a documented, step-by-step triage process, which was approved by the board in May.</i>

## Protecting the interests of consumers and promoting professional standards

	Initiative	Progress status
5.	Update our <a href="#">Consumer Engagement Strategy</a> to capture learnings from the first year, and deliver the updated priority activities for the second year.	<b>Achieved (Q2)</b> <i>Our Consumer Engagement Strategy was updated for year 2, reflecting learnings from year 1 and bringing it into line with our policy statement on consumer outcomes. A report on delivery of the year 2 activities was put to the board in July, along with recommendations for our approach to the third and final year of the strategy.</i>
6.	Embed a culture of considering consumer outcomes in all of our regulatory work, seeking evidence of effectiveness where possible.  In line with this culture: <ul style="list-style-type: none"> <li>gather evidence of whether and how consumer outcomes differ when clients use regulated advisers and unregulated advisers, so we can better assess the risks to consumers of under-</li> </ul>	<b>Achieved (Q3)</b> <i>A large part of this priority was delivered through our project “How could Costs Lawyers reduce the costs of legal services?”, with funding from the Regulators’ Pioneer Fund. In this work we explored the differences between regulated and unregulated advisers, and the impacts of under and over regulation. The research phase of the project concluded in March and the project report was published in June. Following our RPF funded work, we now have a much better idea about the type of work Costs Lawyers do, what kind of clients they serve, and what our regulatory priorities should be. We curated a session at the July board meeting to cover</i>

	<p>or over-regulation in the market for costs law services;</p> <ul style="list-style-type: none"> <li>based on evidence, evaluate how far we can tackle any issues raised in the areas of price; innovation; access; privacy; and fairness.</li> </ul>	<p><i>taking forward recommendations around price, innovation and fairness. Access and privacy were covered separately (see below). While this priority is marked as “achieved”, it relates to a cultural shift that we will continue to nurture generally into the future.</i></p>
7.	<p>Carry out a research project to better understand the pricing structures used by Costs Lawyers and to benchmark prices for different types of costs services.</p>	<p><b>Deprioritised (Q2)</b></p> <p><i>We have changed our expectations of the work we should do in this area, in light of findings from our RPF funded project in relation to the nature of Costs Lawyers’ clients. We will be taking further steps to investigate pricing and prices under year 3 of our Consumer Engagement Strategy.</i></p>
8.	<p>Investigate consumers’ expectations in relation to privacy – including by reference to learnings from existing research in related markets – and assess whether there is any evidence that expectations are not being met.</p>	<p><b>Achieved (Q2)</b></p> <p><i>We have completed an evaluation of privacy and commercial clients of Cost Lawyers, and have set out a plan to reinforce the importance of considering privacy and cyber security in the context of B2B relationships.</i></p>
9.	<p>Deliver the next phase of our diversity and inclusion work program in the three broad areas identified in our 2021 comparative report, namely:</p> <ul style="list-style-type: none"> <li>further improving our data collection;</li> <li>enhancing engagement with our regulated community;</li> <li>assessing the likely effectiveness of potential regulatory interventions to improve diversity and inclusion.</li> </ul>	<p><b>Achieved (Q3)</b></p> <p><i>We have analysed the results of our 2021 survey on pay and earnings, comparing female and male Costs Lawyers, and a report on the outcomes was put to the board in July. We have commissioned an agency to check the conclusions we have drawn from the data prior to publication. We will take forward this work next year by engaging with our regulated community to explore the reasons for a (apparently) substantial pay gap between men and women, and differences by region. We have developed a new survey on social mobility that was distributed with PC applications in November, giving us additional data to consider in 2023. We decided against holding an event to explore social mobility, as recent similar events struggled to get traction, but our data analysis from these two recent surveys should provide us with a head start to further explore social mobility and progression of Costs Lawyers going forward, in line with LSB priorities for the sector.</i></p>
10.	<p>Deliver a project to benchmark the level of innovation in the profession and to</p>	<p><b>Achieved (Q1)</b></p>

	explore any regulatory or statutory arrangements that might hinder or assist innovation in the market for Costs Lawyers' services.	<i>This priority was delivered through our project "How could Costs Lawyers reduce the costs of legal services?", with funding from the Regulators' Pioneer Fund. The research phase of the project concluded in March and the final project report was published in June.</i>
11.	Engage with the other legal services regulators to identify and act on opportunities for collaboration that have the potential to deliver: <ul style="list-style-type: none"> <li>• material cost savings;</li> <li>• new evidence or learnings that we could not access on our own; and/or</li> <li>• unique benefits from taking a whole-sector approach.</li> </ul>	<b>Achieved (Q4)</b> <i>We identified a number of areas for collaboration during the year and joined a number of cross-sector initiatives. Examples include work on PLE, a joint statement on counter-inclusive behaviours, and sanctions compliance. This continued to be a priority throughout the year as we identified and acted on new opportunities, hence completion in Q4 / at year end.</i>

## Modernising our organisation

	Initiative	Progress status
12.	Begin to consider a vision for our organisation beyond the current <u>mid-term strategy</u> that ends in 2023, focused around a board strategy day informed by the views of stakeholders.	<b>Achieved (Q3)</b> <i>The strategy session envisaged under this priority was held alongside the board's July meeting. The board met in person to facilitate open discussion. The session drew on learnings about the market from our innovation project – which captured the views of a wide range of stakeholders – and generated suggestions for areas of strategic focus over the coming years.</i>
13.	Review our methodology for measuring, recording, monitoring and responding to risk in light of changes to our regulatory approach and organisational culture since our existing methodology was introduced.	<b>Achieved (Q4)</b> <i>This review was carried out in Q4, working with Hook Tangaza. A report detailing a proposed new risk framework for the CLSB will be put to the board for consideration at this meeting.</i>
14.	Test the measures in our Business Continuity and Disaster Recovery Plan to ensure they remain fit for purpose following changes to our organisational design.	<b>Achieved (Q2)</b> <i>Testing was carried out in Q2 by running through a hypothetical test scenario with key staff. Updates and adjustments have been made to the Plan based on the outcomes of the test, as well as to systems that</i>



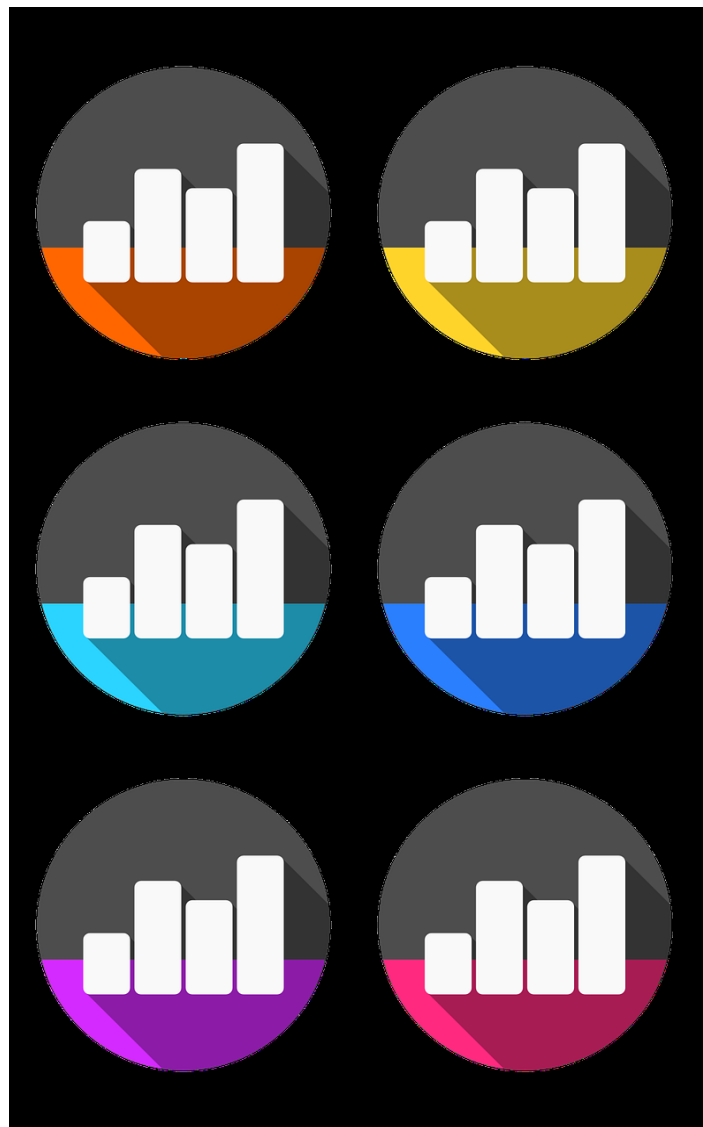
		<i>support it. A new version of the Plan has been distributed to holders.</i>
15.	<p>Deliver the next phase of our digital workplan, including:</p> <ul style="list-style-type: none"> <li>• automating the analysis of routinely captured data;</li> <li>• building add-on functionality for the Costs Lawyer database, such as bespoke report generation.</li> </ul>	<p><b>Achieved (Q1)</b></p> <p><i>In Q1 we added functionality to the database to:</i></p> <ul style="list-style-type: none"> <li>• <i>record complaints procedure audit outcomes</i></li> <li>• <i>track all contacts with individual Costs Lawyers</i></li> <li>• <i>auto-fill address fields to save admin time</i></li> </ul> <p><i>We decided that adding a bespoke reports option was not cost effective. We also made the following upgrades to the PC renewal application form:</i></p> <ul style="list-style-type: none"> <li>• <i>automatic calculation of fee remission</i></li> <li>• <i>provision of invoices rather than Fee Notes to facilitate bulk payments in large firms</i></li> <li>• <i>changes to make the form easier to follow, and more user friendly, in line with user feedback</i></li> </ul> <p><i>Back-end improvements meant that we were quickly and easily able to analyse the data captured in the Regulatory Return and for performance indicators, without needing external support as anticipated.</i></p>
16.	Review and modernise our internal staff policies to ensure they are fair, relevant and reflect our current ways of working.	<p><b>Achieved (Q3)</b></p> <p><i>We tendered for bids from HR consultancies for this work and appointed an agency in September. We worked with them to review and update our existing internal policies, taking advice on good practice standards. A proposed new, consolidated staff policy was approved by the board in October.</i></p>
17.	Consider whether additional or different advisory appointments are necessary to fill any skill gaps at board or executive level.	<p><b>Achieved (Q1)</b></p> <p><i>We incorporated this work into our wider governance review which was carried out in H2 2021. The recommendations from the governance review were implemented in Q1, following board approval in February 2022, and the RemCom held its inaugural meeting in June.</i></p>

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# Performance indicators

## 2022 stock take

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January 2023

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Costs Lawyer Standards Board

CLSB



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# Regulatory metrics

Previously, the Legal Services Board (LSB) has historically asked all approved regulators of legal services to provide an annual performance management dataset. The dataset for the 2021 practising year is published in our current [Performance Indicators](#) document (PID). In Q1, the PID will be updated with the statistics below for the 2022 practising year, which have recently been finalised.

The LSB has indicated that, under its new performance assessment framework, it will no longer be asking regulators to report this data as a matter of course.

## AUTHORISATION

### Applications

Number of authorisations processed	689
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Outcomes of applications for authorised persons	688 approved 1 declined (no PI cover in place as between jobs)
Type of application:	
Newly Qualified (2022)	16
Annual Renewal (processed in 2022 for the 2023 practising year)	661
Reinstated (2022)	11

### Timeliness

From date of completed application:	(day 1 being the day of receipt)
Median time taken	1 day (77% of PCs were sent out on same day as the complete application was received, 89% by the end of the following working day)
Mean time taken	1.29 days (compared to 1.39 days last year)
Longest time taken	10 days
Shortest time taken	1 day

### Appeals

Number of appeals received and concluded	0
Number of appeals where a decision has been made to overturn the initial decision	N/A

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## SUPERVISION: ACCREDITATION

### Accredited Costs Lawyer Application

Number of applications processed	9 (2 additional applications not yet complete)
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### Timeliness (Accredited Costs Lawyer Application)

From date of completed application:	(day 1 being the day of receipt)
Median time taken	1 day
Mean time taken	1.4 days
Longest Time Taken	4 days
Shortest Time Taken	1 day

## SUPERVISION: ENFORCEMENT

### Conduct Cases

Number of cases received	2 (cases necessitating investigation)
Number of those cases concluded	2
Number outstanding	0

### Timeliness

From acceptance of complaint to final decision	
Number of cases considered	2
Mean time taken	22 days
Longest time taken	30 days
Shortest time taken	14 days

Note: It is worth highlighting this feedback received from one of the complainants: *"I am very grateful for your intervention and, I would add, the incredible speed and efficient manner in which you have dealt with my concern."*

### Decision Type

By CLSB (level 1)	2
By Conduct Committee (level 2)	0

### Appeals

Number of appeals (level 1)	0
Outstanding	N/A
Where decision was overturned	N/A
Where decision was upheld	N/A
Settled by consent	N/A
Number of appeals (level 2)	0

Outstanding	N/A
Where decision was overturned	N/A
Where decision was upheld	N/A
Settled by consent	N/A

## GOVERNANCE AND LEADERSHIP

### Organisational Health

Board membership turnover	0
Executive employee turnover	1

### Complaints

Number of justified complaints about the regulator	0
The subject matter of the justified complaints	N/A
Timeliness (Complaints)	
Median time taken	N/A
Longest Time Taken	N/A
Shortest Time Taken	N/A

## Governance metrics

### Robust management and oversight

As explained in the PID, the purpose of the metrics below is to help us identify and address any emerging risks or potential weaknesses in our governance processes. The first three columns (in blue) are taken from the PID. The fourth column (in red) provides an overview of progress in 2022 against each metric.

In previous years, the table also included suggestions for how the KPIs could be developed/improved for the following year. This year, we will set new KPIs that align with our next mid-term strategy, which will be developed under the 2023 Business Plan. We have therefore not made any proposals below to tweak the existing KPIs.

Oversight area	Metric	Outcome	Progress in 2022
Sound financial management	Level of reserves (as governed by our Reserves Policy)	Retain uncommitted reserves at target level, and reach target level of committed reserves by 2026	We contributed £5k to our committed reserves pot in 2022 and our level of uncommitted reserves remains at the target. We are on track with building our reserves as planned.

Appropriate resourcing	Stakeholder comfort that our operating structure is sustainable and appropriate for our size	Continue to meet the <a href="#">LSB's regulatory performance standards</a> under outcome WL:GL2 in 2022	In the November 2022 regulatory assessment we were assessed at providing sufficient assurance on the well-led standard. The LSB stated: "The CLSB's work to improve its evidence base is a great example of what can be achieved by smaller regulators who operate with limited resources."
Business continuity	Degree of business interruption at points of change	No material business interruption incidents arise through absence or turnover of staff or contractors	In 2022 our Director of Policy (contractor) stepped away mid-year, but we were able to reallocate all policy work and deliver our 2022 Business Plan without interruption. Our business continuity and disaster recovery processes are also now well-embedded.
Risk management and mitigation	Level of impact on the organisation when risks, of which the board was or should have been aware, materialise	None of the operational, governance or strategy metrics in this document is detrimentally impacted by materialisation of one or more risks of the kind described	Departure of a key contractor in 2022 had the potential to put governance metrics ( <i>business continuity</i> ) and strategy metrics ( <i>robust approach to evidence</i> ) in jeopardy, but these risks were successfully managed and none of the metrics in the PID have been detrimentally impacted by materialisation of the risks described to the left.
Cultural alignment and accountability	NED perception of cultural indicators, such as inclusivity and openness to new ideas	Cultural descriptors selected by NEDs in an annual survey show positive cultural progression year on year	The survey feedback signals an open and inclusive culture within which we can make effective progress. This is particularly positive as 2022 was the current Chair's first full calendar year leading the board.

## Strategy metrics

### Successful implementation of our mid-term strategy

As explained in the PID, the purpose of the metrics below is to help us track progress against the goals in our mid-term strategy. If outcomes are not being achieved, this will prompt us to consider the reasons why, how we can improve, and what the consequences might be for achievement of our strategy. The fourth column in the table (in red) provides a status update at as December 2022. Again, we will develop new strategy metrics this year to align with our next strategic plan.

Strategy area	Metric	Outcome	Status at end of 2022
Collaborative relationships	Regulatory or operational developments that could not have been achieved by the CLSB acting alone	At least two significant developments in 2020, rising to at least three in 2021 and 2022, and at least four in 2023	<p>Examples of developments this year are:</p> <ul style="list-style-type: none"> <li>• Most significantly, we delivered our RPF innovation project in collaboration with a wide variety of stakeholders and with funding from BEIS. This is a key example of significant impact that we could not have achieved acting alone.</li> <li>• We have collaborated closely with ACL Training throughout the year to develop the new assessment outcomes and Scheme Handbook for the Costs Lawyer Qualification, which are currently with the LSB for approval.</li> <li>• We worked with other legal regulators across a range of initiatives where we do not have dedicated resource of our own (such as PLE, EDI, lawtech). We were commended by the LSB in our latest performance assessment for demonstrating good practice through being “willing to learn from others” in this way.</li> </ul>
Robust approach to evidence	Stakeholder comfort in the way evidence is used to inform our regulatory arrangements and board level decision-making	Meet or exceed the LSB’s standards in the regulatory assessment under outcomes RA3, RA4, WL:GL3 and WL:GL4	<p>The RPF project transformed our evidence base in 2022, and we were also able to demonstrate to the LSB how we are using that evidence base to inform our regulatory work and future planning. In the November 2022 performance assessment the CLSB was assessed as meeting all of the LSB’s standards, including RA3, RA4, WL:GL3 and WL:GL4.</p>
Bespoke risk-based regulatory approach	Prevalence of detrimental consumer outcomes, combined with the burden imposed on Costs Lawyers by our regulatory arrangements	No detrimental consumer outcomes caused by professional conduct issues that are not resolved at first tier, combined with at least 95% of Costs Lawyers considering the CLSB to be an effective regulator	<p>We continue to actively encourage first tier resolution of complaints, and we strengthened this position in 2022 via further amendments to our Disciplinary Rules and Procedures. All complaints were successfully resolved in this way in 2022, other than:</p> <ul style="list-style-type: none"> <li>• one complaint that was investigated by the CLSB and upheld, although it did not involve any detrimental consumer outcomes (indeed the Costs Lawyer was attempting to protect her client’s interests through her conduct);</li> <li>• one complaint that was investigated and not upheld.</li> </ul> <p>In 2022, for the first time ever we had no Costs Lawyers indicate in the regulatory return that they do not consider the CLSB to be an effective regulator – a major achievement.</p>

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			Feedback from the free text box in the regulatory return was also very encouraging and a verbatim read-out has been provided separately.
Facilitator of trust	Level of integration into the regulated community	There is a sustainable route of entry into the profession, with long-term viability, by 2023	<p>Under new board leadership at ACLT, the 2022 cycle of viability assessment, audit and accreditation ran much more smoothly than in 2021.</p> <p>This year we completed a flagship project to redesign our regulatory arrangements for the route of entry, working closely with ACLT and others. Our rule change application is pending with the LSB and, if successful, we are in a strong position to have a new course up and running for September 2023.</p>



## Results of NED satisfaction survey

For measuring progress against KPI metrics relating to cultural alignment and accountability

January 2023

### Participants

The survey was completed by the four non-executive directors on the CLSB board in January 2023.

This paper contains comparisons to the results of the 2021 and 2022 satisfaction surveys. The survey questions were the same in both years, however the Chair of the board participated in the 2021 survey but not the 2022 or 2023 survey, to ensure the NEDs' views were accurately reflected.

### 1. How satisfied are you that the CLSB board has the following characteristics?

Respondents could indicate that they were: not satisfied; somewhat satisfied; neither satisfied nor dissatisfied; mostly satisfied; entirely satisfied.

Characteristic	Entirely satisfied
I have the opportunity to share my views in board meetings.	100%
I feel respected and listened to by my fellow NEDs.	100%
I feel comfortable speaking up when I disagree with the Chair.	100% <sup>1</sup>
I feel comfortable speaking up when I disagree with a fellow NED.	100%
The board reaches decisions through a collaborative process.	100%
The board is open to new ideas and suggestions.	100%
The board values my unique perspective, skills and traits.	100%
The CEO is open to feedback and constructive challenge.	100%
The CEO acts on the board's feedback and constructive challenge.	100%

By way of comparison, in 2021, 100% of respondents were entirely satisfied across all characteristics other than "The board is open to new ideas and suggestions" and "The board values my unique perspective, skills and traits". In relation to those two characteristics, 80% were entirely satisfied and 20% were mostly satisfied.

<sup>1</sup> One respondent did not answer this question.

## 2. What three words would you use to describe the CLSB's culture?

### Responses in 2023

Collaborative	Confident	Measured
Collaborative (again)	Efficient	Open
Collaborative (again)	Inclusive	Open (again)
Collegiate	Inclusive (again)	Progressive

### Responses in 2022 (for comparison)

Adaptable	Curious	Inclusive (again)
Ambitious	Diligent	Motivated
Assured	Efficient	Open
Connected	Inclusive	Open (again)

### Responses in 2021 (for comparison)

Ambitious	Collaborative	Collegiate
Committed	Considered	Constructive
Determined	Embracing	Forward thinking
Modern	Open	Supportive
Supportive (again)	Thoughtful	Transforming

## 3. Are there any changes that could be made to improve the culture of the board / organisation?

*The annual dinner and meeting in person was worthwhile in bringing the board and organisation together for more than only the core business.*

*None that come to mind.*

*No.*

*No.*

**END**

## COSTS LAWYER STANDARDS BOARD LTD

### RISK REGISTERS

As at 19 October 2022

#### 1. RISK SCORING

##### (i) Nature of risk

Our operational risks are categorised as:

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

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

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

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

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

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

(iii) Adequacy of controls

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

## 2. OPERATIONAL RISK REGISTER

<b>Logged by board:</b> 6/4/2011	<b>Reference:</b> OP1	<b>Risk score: I(5) x P(4) = 20</b>
<b>Risk to operation</b>	<b>Changes to the profession impact CLSB viability as more leave than enter the profession</b>	
<b>Nature</b>	Financial, operational continuity	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• Increase in fixed costs (from April 2023): MOJ confirmation that it will expand fixed costs regime.</li> <li>• Whiplash reforms (from January 2021): could reduce work in low value PI claims, but may also increase complexity of instructions.</li> <li>• CJC review of civil litigation costs (consultation closing September 2022): broad range of possible outcomes that could impact civil costs.</li> <li>• Link to OP3 in terms of numbers entering the profession.</li> <li>• Actual net attrition of 2 practitioners over 2021, down from 12 in 2020.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Monitor impact of shocks on the profession, such as coronavirus impact surveys in Q2 2020 and Q1 2021.</li> <li>• Respond to proposals/consultations to help stakeholders understand the Costs Lawyer market and ensure policy developments are in the public interest.</li> <li>• Implement regulatory arrangements that support safe innovation and diversification, to promote ongoing competition and choice.</li> <li>• Pursue recommendations from the Regulators' Pioneer Fund project to ensure regulation of Costs Lawyers is targeted and proportionate.</li> <li>• Mitigate risks around route to entry – see OP3.</li> <li>• Review of historic termination and reinstatement data carried out in 2020 and new processes put in place for communicating with potential returners.</li> <li>• Retain six months' operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	High	
<b>Actions/status</b>	Monitor reasons for leaving the profession at PC renewal and respond to new factors.	

<b>Logged by board:</b> 13/1/2015	<b>Reference:</b> OP2	<b>Risk score: I(5) x P(1) = 5</b>
<b>Risk to operation</b>	<b>The CLSB's size means that business continuity cannot be assured in all possible circumstances</b>	
<b>Nature</b>	Operational continuity, capacity, reputational	

<b>Evidence of risk</b>	Being a small organisation, institutional knowledge and operational capacity of the CLSB rests with a small number of individuals. Duplication of staffing costs in the event of a long term absence could have a disproportionate impact given the number of staff.
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Increase in policy support resource from February 2021.</li> <li>• Updated Business Continuity and Disaster Recovery Plan adopted in July 2020 following restructure and reflecting changes for coronavirus.</li> <li>• Reassessment of continuity risks in light of coronavirus (including retaining core functions in the absence of a key staff member).</li> <li>• Move to a paperless organisation, including via the database, electronic processes and cloud storage.</li> <li>• Minimisation and logging of paper archives, with joint access.</li> <li>• Systematic documentation of all processes.</li> <li>• Joint signatories to bank account.</li> <li>• Retain six months' operating budget as reserves, based on costed risk analysis in 2021 taking into account various continuity scenarios.</li> </ul>
<b>Control adequacy</b>	5
<b>Priority area of risk</b>	Low
<b>Actions/status</b>	<ul style="list-style-type: none"> <li>• Rehousing or safe destruction of paper archives over coming years.</li> <li>• Knowledge transfer of all systems, processes, data and knowhow between staff and into internal policies and manuals.</li> </ul>

<b>Logged by board:</b> 25/7/2017	<b>Reference:</b> OP3	<b>Risk score: I(5) x P(3) = 15</b>
<b>Risk to operation</b>	<b>There are insufficient numbers of newly qualified Costs Lawyers such that regulated numbers fall to an unsustainable level</b>	
<b>Nature</b>	Reputational, financial, operational continuity	
<b>Evidence of risk</b>	There is only one means of entry into the profession and one provider (ACLT). In 2017, due to financial concerns, the CLSB authorised ACLT's course to the end of 2020 for current trainees only. The course reopened to new students in January 2020 and ACL did not confirm a 2021 intake until December 2020. Historically, student numbers have been variable. A new course will be launched in September 2023 and, while we consider this a very positive development, we do not yet know the level of take-up and there will be a transitional period with few new qualifiers.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Flagship project in 2021 to create a new competency statement, providing a basis upon which to modernise regulatory requirements for the qualification by 2023.</li> <li>• Work closely with new ACLT board, appointed in January 2022, to effect sustainable change.</li> </ul>	

	<ul style="list-style-type: none"> <li>Nurture relationship with ACLT to ensure early notification of any future issues and ensure current learners are protected through the transition.</li> <li>Retain six months' operating budget as reserves.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	High
<b>Actions/status</b>	Final delivery of consequential rule changes following Competency Statement.
<b>Commentary</b>	Establishing a stable, modern, flexible qualification is the CLSB's highest priority for the short and medium term.

<b>Logged by board:</b> 24/10/17	<b>Reference:</b> OP4	<b>Risk score: I(5) x P(3) = 15</b>
<b>Risk to operation</b>	<b>ACL, named in the Legal Services Act 2007 as approved regulator (role undertaken by CLSB under delegation), becomes insolvent</b>	
<b>Nature</b>	Regulatory, operational continuity, reputational (for CLSB and the profession)	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>Economic climate may impact regulated numbers or Costs Lawyers' ability to pay membership fees.</li> <li>Lack of communicated value proposition for membership over the medium and longer term.</li> <li>Succession planning challenges.</li> <li>Inherent risk for any regulatory body acting under the delegated authority of its parent company.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>Open dialogue with ACL to give us early warning of financial issues.</li> <li>Engagement with ACL in developing its new business plan for 2022-23.</li> <li>Retain six months' operating budget as reserves, and committed reserves account for paid up share capital.</li> </ul>	
<b>Control adequacy</b>	3	
<b>Priority area of risk</b>	Medium	
<b>Actions/status</b>	Financial instability in 2017-2018 appears to have subsided.	

<b>Logged by board:</b> 24/1/18	<b>Reference:</b> OP5	<b>Risk score: I(4) x P(1) = 4</b>
<b>Risk to operation</b>	<b>Failure to comply with data protection obligations</b>	
<b>Nature</b>	Legal, financial, reputational	
<b>Evidence of risk</b>	Increased risk under new GDPR arrangements, including a significant increase in the level of fine that can be imposed. CLSB handles the	

	personal data of Costs Lawyers, employees, agents and (to a limited extent) some members of the public.
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Data protection compliance review carried out in Q4 2019, leading to adoption of a new Data Protection Manual and implementation of updated processes for ensuring compliance in 2020.</li> <li>• Updates to IT systems with a focus on data security.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	Low
<b>Actions/status</b>	Updates to IT systems ongoing throughout 2020.

<b>Logged by board:</b> 23/1/19	<b>Reference:</b> OP6	<b>Risk score: I(4) x P(4) = 16</b>
<b>Risk to operation</b>	<b>Breakdown in communications between any of ACL, ACL Training and the CLSB</b>	
<b>Nature</b>	Operational continuity, reputational	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• Previous difficulties in securing ACL/ACLT engagement with CLSB, due to lack of resource or appetite.</li> <li>• Governance and oversight complications as between ACL and ACLT in relation to the Costs Lawyer Qualification.</li> <li>• Highly strained relations between ACL and ACLT during 2021.</li> <li>• A breakdown of any of the bilateral relationships could adversely impact the qualification and the CLSB.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Contingency planning for operational areas that require ACL input.</li> <li>• New MOU and OP agreed with ACL in 2020.</li> <li>• Help ACL engage with its regulatory obligations as a designated body under the IGRs.</li> <li>• Extend engagement beyond ACL Chair to foster understanding within the Committee as a whole.</li> <li>• Work within the parameters of the new Protocol agreed with ACLT.</li> </ul>	
<b>Control adequacy</b>	2 – relations between ACL and ACLT could significantly impact CLSB but are largely outside of the CLSB's control	
<b>Priority area of risk</b>	High	
<b>Actions/status</b>		



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

<b>Logged by board:</b> <b>21/4/21</b>	<b>Reference:</b> <b>OP8</b>	<b>Risk score: I(3) x P(1) = 3</b>
<b>Risk to operation</b>	<b>Unplanned involvement in litigation results in the payment of significant legal costs and/or damages</b>	
<b>Nature</b>	Legal, financial, reputational	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>Decisions of the CLSB are subject to judicial review.</li> <li>The CLSB may choose to seek an injunction for breach of the Legal Services Act 2007.</li> <li>A private law action for damages could be brought against the CLSB at any time.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>Risk is partially insured (including legal expenses insurance).</li> <li>Retain six months' operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	5	
<b>Priority area of risk</b>	Low	
<b>Actions/status</b>	Insurance cover is scheduled for review in 2022.	

### 3. REGULATORY RISK REGISTER

<b>Logged by board:</b> <b>23/01/2020</b>	<b>Reference: R1</b>	<b>Risk score I(4) x P(1) = 4</b>
<b>Risk</b>	<b>The professional standards set by the CLSB do not achieve positive consumer outcomes or, where poor consumer outcomes cannot be prevented, the CLSB is unable to take action</b>	
<b>Risk to objectives</b>	Regulatory objective: Protecting and promoting the public interest. Regulatory objective: Protecting and promoting the interests of consumers. Professional principle: Proper standards of work. Professional principle: To act in the best interest of the client.	
<b>Evidence of risk</b>	There is limited evidence of actual risk, although there are theoretical risks that must be controlled, for example: <ul style="list-style-type: none"> <li>• Risk of complaints processes not being properly communicated: While the very low level of complaints about Costs Lawyers to the CLSB or LeO could suggest that either few complaints arise at first-tier or those that are raised are handled well, this may also suggest that consumers are unaware of how to complain to their Costs Lawyer.</li> <li>• Risk of under-insurance: Costs Lawyers are free to select an insurance provider from the open market, as this promotes competition and keeps fees at a sustainable level, but this may carry a risk of a Costs Lawyer not purchasing the right type of cover.</li> <li>• Risks from lack of supervision: The shift to remote working during 2020 could have long-term consequences for proper supervision and training of junior Costs Lawyers. As we do not regulate entities, we cannot address this at firm/system level.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• New Practising Rules, CPD Rules and Disciplinary Rules and Procedures implemented in 2020, including to increase the deterrent effect of financial penalties.</li> <li>• Guidance subject to systematic review from 2019, with all Handbook content reviewed by the end of 2021 (other than Code of Conduct, which will be reviewed in 2022).</li> <li>• New Supervision Policy and four supporting supervision frameworks adopted in 2021.</li> <li>• Risk reviews carried out on complaints procedures and under-insurance in 2021 with follow-up actions identified.</li> <li>• Data collected during year 2 of the Consumer Engagement Strategy to benchmark consumer outcomes across our areas of focus.</li> </ul>	
<b>Control adequacy</b>	4	

<b>Priority area of risk</b>	Low – no evidence of risk having materialised to date
<b>Actions/status</b>	Year 2 of the Consumer Engagement Strategy to be delivered by the end of H1 2022. Recommendations from the review of under-insurance to be carried out in 2022. Expansion of complaints procedure audit in 2022.

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

<b>Logged by board:</b> <b>24/07/2019</b>	<b>Reference: R4</b>	<b>Risk score: I(4) x P(2) = 8</b>
<b>Risk</b>	<b>CLSB cannot generate sufficient evidence about the consumer dimension of the Costs Lawyer market, resulting in regulatory arrangements that are misaligned to consumer need</b>	
<b>Risk to objectives</b>	Regulatory objective: Protecting and promoting the public interest.	

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

<b>Logged by board:</b> 20/10/2020	<b>Reference: R5</b>	<b>Risk score: I(4) x P(3) = 12</b>
<b>Risk</b>	<b>CLSB cannot promote all aspects of diversity within the profession given the small size of the regulated community and trainee population</b>	
<b>Risk to objectives</b>	Regulatory objective: Encouraging an independent, strong, diverse and effective legal profession.	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• There is only one route of entry into the profession and, in some years, there may be no new students accepted through that route (linked to OP3).</li> <li>• Statistically the size of the profession makes it more difficult to strive for a composition that is reflective of wider society.</li> <li>• The LSB has provisionally assessed existing data that we capture on the diversity of the profession as insufficient.</li> </ul>	

<b>Controls</b>	<ul style="list-style-type: none"> <li>• Testing of approaches to new diversity and inclusion survey.</li> <li>• Diversity work programme developed in 2021, with delivery in 2021 and 2022.</li> <li>• Audit recommendations made to ACLT on promoting diversity.</li> <li>• Seeking opportunities to collaborate with other regulators and organisations in this area.</li> </ul>
<b>Control adequacy</b>	2 – plans are in place but it will take time to implement and then assess these during 2022
<b>Priority area of risk</b>	Medium, so long as we are able to deliver planned initiatives
<b>Actions/status</b>	Further work on survey response rates in 2022. Delivery of second stage of work programme in 2022.

## Response to LSB information request

### Ongoing competence progress update

24 January 2023

#### Introduction

This document sets out the Costs Lawyer Standards Board's response to a request from the LSB for a progress update on implementation of the LSB's policy statement on ongoing competence. It adopts the headings suggested by the LSB.

#### 1. Which expectations and outcomes the regulator already meets

##### Overview of implementation status

The status of our progress toward implementing each outcome and expectation is set out in the table below. This gives a snapshot of overall progress, with further information provided below in relation to recent and planned work.

Outcome	Expectation	Status
<b>12(a)</b> Set the standards of competence that authorised persons should meet at the point of authorisation and throughout their careers.	In pursuing outcome 12(a), regulators must develop a competence framework or equivalent that clearly states what skills, knowledge, attributes and behaviours ('competencies') they expect authorised persons to have at the point of authorisation and throughout their careers.	<b>Partially met.</b> This has been the main focus of our work on competency to date. We have developed a Competency Statement for the point of authorisation – more details on this are provided under <b>question 2 below</b> . Our next step is to expand the Competency Statement to extend throughout Costs Lawyers' careers – more details are provided under <b>question 3</b> .
<b>12(b)</b> Regularly determine the levels of competence within the profession(s) they regulate, and identify areas where competence may need to be improved.	In pursuing outcome 12(b), regulators must put in place measures to routinely collect relevant information about the competence of their authorised persons. This should contribute to their determination of levels of competence across the profession(s) they regulate, and their understanding of areas of risk or where competence may need to be improved. Regulators must determine appropriate arrangements for collecting relevant information.	<b>Met.</b> We are confident that the data capture and analysis processes that we have put in place over the last three years already meet the expectations under this outcome. A more detailed description of those processes is set out <b>below this table</b> .

<b>12(c)</b> Make appropriate interventions to ensure standards of competence are maintained across the profession(s) they regulate.	In pursuing outcome 12(c), and taking into account evidence gathered in pursuing outcome 12(b), regulators must put in place effective measures to ensure standards of competence are maintained across the profession(s) they regulate.	<b>Partially met.</b> We undertake a range of measures to ensure standards of competence are maintained – more details are provided <b>below this table</b> . However we also intend to consider whether any further measures are warranted as part of our planned project to expand our Competency Statement past the point of authorisation – more details are provided under <b>question 3 below</b> .
<b>12(d)</b> Take suitable remedial action when standards of competence are not met by individual authorised persons.	In pursuing outcome 12(d), regulators must develop an approach that provides for appropriate remedial action to be taken to address competence issues. Remedial action in this context means measures intended to support authorised persons to improve or correct competence issues.	<b>Met, but we will improve our guidance.</b> The CLSB has the necessary regulatory tools and powers under its regulatory arrangements to meet this outcome. However our guidance could be bolstered to ensure we take account of all the considerations set out in the policy statement – more details are provided under <b>question 3 below</b> .

#### More information on how we meet outcome 12(b)

We collect and monitor data from a number of sources that allows us to identify areas in which competency may be at risk. The table below shows how we take into account the considerations set out at paragraph 24 of the policy statement for the implementation of outcome 12(b).

<b>Regulators should consider...</b>	<b>Our approach</b>
Information from their regulatory activities, for example, regulatory returns, first-tier complaints and thematic reviews.	We ask all Costs Lawyers to report on first-tier complaints in an annual regulatory return. Information collected includes the number of complaints, the nature of each complaint and whether/how they were resolved. This information is captured in our database which allows us to run reports and identify trends, such as: a spike in complaints across the profession generally; repeating complaints about the same Costs Lawyer or firm; repeating complaints about thematic issues. We check for these trends annually when we run analysis on the regulatory return data (which we publish in a report on our website).
Information from supervisory activities such as spot checks, audits, file reviews or equivalent oversight checks.	We carry out an annual randomised CPD audit to ensure that Costs Lawyers are reflecting on their competency and development needs in setting and pursuing CPD objectives. We also carry out an annual randomised audit of complaints procedures to ensure that any competency issues experienced by clients can be raised and addressed.  We carry out additional supervisory checks of individual practitioners at the point of receiving a complaint about them. The additional supervision is aligned to the nature of the complaint and targeted at the heightened risk of non-compliance or lack of competency indicated by the complaint.

	<p>All these processes are set out in our supervision frameworks (for CPD, complaints procedures and point of complaint monitoring), available on our website <a href="#">here</a>, each containing detailed information about our processes and their purpose.</p>
<p>Feedback from, including but not limited to, consumers/users, intermediaries, supervisors, peers and judiciary.</p>	<p>We ask all Costs Lawyers to issue our client survey to clients at the end of matters and clients can also access the survey via our website. Clients in this context include lay clients (which are rare) and professional intermediaries (more common). We contact all lay clients who complete the client survey (and who provide contact details / consent) to carry out an additional interview about their experience of the Costs Lawyer's services.</p> <p>We obtain feedback on competency from supervisors at the point of authorisation and, once implemented in 2023, this will be aligned to the minimum competency standards outlined in the Competency Statement. We also act on judicial comment about the advocacy of Costs Lawyers.</p>
<p>Information from other agencies such as the Legal Ombudsman, disciplinary tribunals and government agencies that have relevant data.</p>	<p>We monitor complaints to the Legal Ombudsman about Costs Lawyers through monthly case reporting (although the number of such complaints is limited). All relevant complaints to the Ombudsman are added to our own database, feeding into our annual monitoring for thematic issues as well as our point of complaint monitoring of individual practitioners.</p> <p>We require Costs Lawyers to disclose any investigations or decisions made against them by other regulators and are party to the joint MOU between the legal services regulators for sharing information.</p>

#### More information on how we partially meet outcome 12(c)

We undertake a range of measures to ensure competence is maintained. For example, in relation to the considerations set out at paragraph 26 of the policy statement for the implementation of outcome 12(c):

- Our current approach to CPD, introduced in 2021, requires Costs Lawyers to consider their upcoming development needs – for example due to a change in role or managerial responsibilities, a new specialism or peer feedback – and set CPD objectives to address those needs. Having undertaken at least a minimum level of CPD for the year, Costs Lawyers must then reflect on the extent to which they have met their objectives and consider any remaining gaps in their skills or knowledge. This process must be recorded (we provide an optional template form for this purpose) and is subject to an annual randomised audit by the CLSB. Details of our CPD regime – including our Rules, guidance, templates, FAQs and an introductory video – are available on our website [here](#). Our data shows that the vast majority of practitioners (over 85%) undertake more CPD than the prescribed minimum to meet their objectives.
- We provide individualised feedback to participants in all our audits, and also provide feedback to the regulated community on thematic issues we identify through “lessons learned” webpages (which we promote through our communications). We have the tools to take remedial action for any Cost Lawyers not taking our competency requirements seriously. Measures we have used for this purpose in recent years have included: informal feedback and suggestions; formal written advice; re-auditing practitioners the following



year; imposing practising conditions; and, in one rare case, revoking the Costs Lawyer's practising certificate.

- The new Competency Statement promotes reflective practice at the pre-authorisation stage through the development of relevant skills, particularly "self management", which encompasses positive behavioural indicators such as "reflects on their own performance and takes action where needed" and negative behavioural indicators such as "reacts negatively to perceived criticism" and "covers up mistakes". The skills are developed and tested throughout completion of the Costs Lawyer Qualification.
- In Q1 2023, we will be publishing our first annual risk review, looking at emerging areas of risk for the profession and highlighting areas where new skill or knowledge competencies are likely to be needed.

We will consider whether any further measures are warranted as part of our planned project to expand our Competency Statement past the point of authorisation. More details are provided under question 3 below.

## 2. The work done and progress made to date in meeting the expectations and outcomes

We have made considerable progress toward meeting outcome 12(a), and this has been the main focus of our recent work. The expectation for this outcome is that regulators "must develop a competence framework or equivalent that clearly states what skills, knowledge, attributes and behaviours ('competencies') they expect authorised persons to have at the point of authorisation and throughout their careers". We recently carried out a significant project to develop a Competency Statement for Costs Lawyers at the point of authorisation. The Competency Statement is the bedrock of a new regulatory framework for qualifying as a Costs Lawyer. An application to the LSB for approval of new Training Rules (for which the Competency Statement is a supporting document) was submitted in December and we are awaiting the outcome.

The Competency Statement is published on our website [here](#), although it will not become "live" until the amended Training Rules are implemented which we hope will be early in Q1, subject to LSB approval. The Competency Statement was developed through an extensive programme of research and engagement, as summarised at page 5 of this [consultation document](#). The Statement sets out:

- The categories of legal and technical knowledge that a Costs Lawyer will possess at the point of qualification
- The skills that a Costs Lawyer will demonstrate
- The Minimum Standard to which the above knowledge and skills will be applied
- The professional attributes that will help a Costs Lawyer meet the Minimum Standard and progress successfully beyond qualification

The table below shows how the considerations for outcome 12(a), as set out at paragraph 21 of the policy statement, are taken into account through the Competency Statement.

Regulators should consider...	Our approach
Core competencies that authorised persons should have, such as knowledge of basic legal principles, client care and practice management.	The Competency Statement covers legal and technical knowledge, skills and attributes. They are comprehensive and current, and cover client care (see for example under relationship management on page 7 and effective communication on page 11) and practice management (see for example under case management on page 8).

Competencies around ethics, professional conduct and standards that ensure public confidence in the legal professions.	Ethics and professional conduct competencies are embedded in both the knowledge competencies – with “professional standards and ethics” being a standalone knowledge area – and across all the skills with examples of ethical/unethical conduct being given as positive/negative behavioural indicators.
Specialist competencies that particular authorised persons should have, for example, in their role as advocates.	Advocacy has been identified as a standalone skill (see page 13) that has been allocated a discrete set of Assessment Outcomes that must be met through the Costs Lawyer Qualification.
Recognition that competence varies according to circumstances, and authorised persons may need competencies depending on factors such as: ▪ job role; ▪ area of practice; ▪ stage of career; ▪ changes to the law; ▪ changes to consumer expectations.	Our methodology for development of the Competency Statement included bringing together a group of Subject Matter Experts to undertake a forward look at the market and identify emerging or likely future competencies based on upcoming trends. The Competency Statement is a living document that will be subject to this kind of SME input over time to maintain its currency.

Implementation of the Competency Statement upon approval of our new Training Rules is a key CLSB priority for early 2023. Following this, we will begin work to expand the Competency Statement beyond the point of authorisation – see below under question 3 for more details.

### 3. Planned work between February 2023 and January 2024 to meet the expectations and outcomes, including milestones and timeframes

#### Planned work on outcomes 12(a) and 12(c)

As explained above, in order to fully meet outcome 12(a) we need to extend our Competency Statement past the point of authorisation to address ongoing competency throughout a Costs Lawyer’s career. This might involve the identification of additional knowledge, skills or attributes, and/or involve the application of knowledge and skills to a different standard (for example, at the point of supervising others).

As part of expanding the Competency Statement, we plan to consider whether any additional measures are warranted in order to fully meet outcome 12(c) and help us to ensure competency at later career stages. This might involve, for example, mandating relevant CPD training upon certain career milestones, such as becoming a business owner or people manager. In line with the Better Regulation Principles, we will only implement additional measures if, through our work on expansion of the Competency Statement, we identify competency risk areas that need to be addressed.

The intended timeline for completing this work is as follows:

- Plan project, develop methodology, procure resource and expertise – Q1 2023.
- Gather evidence and data, develop initial proposals – Q2 2023.
- Carry out consultation and engagement with the regulated community, clients and other stakeholders – Q3 2023.
- Finalisation and implementation – Q4 2023.<sup>1</sup>

<sup>1</sup> Please note that Q4 deliverables are signed-off by the CLSB board at its annual January meeting.

As well as meeting the LSB's expectations, this will also ensure we deliver priority 10 in our 2023 Business Plan, which is to "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" by the end of the year.

#### Planned work on outcome 12(d)

We are confident that we meet outcome 12(d), as we have the necessary regulatory tools and powers to take suitable remedial action when standards of competence are not met by individual authorised persons. The Costs Lawyer [Code of Conduct](#) facilitates taking disciplinary action where there has been a lack of competency; see for example principle 4 on providing a good quality of work and service to each client.

Remedial action can include the imposition of practising conditions, such as a period of supervision, as well as more collaborative approaches where appropriate or more protective approaches, such as revocation of a PC. The tools we need are all available – we can and do take appropriate remedial action where a lack of competency is demonstrated or where a practitioner's conduct suggests they are not taking competency seriously, for example by non-compliance with the CPD Rules.

We also publish guidance to help practitioners understand our approach to enforcement and how we apply sanctions, which is published on our website [here](#). While we believe we already meet outcome 12(d), we feel we could more directly address some of the considerations in paragraph 28 of the policy statement by adding a section to our guidance expressly relating to competency.

We will therefore review the guidance with a view to explicitly setting out: which sanctions are likely to be most relevant to competency issues; how a lack of competency might be evidenced; how the aggravating and mitigating factors in the guidance are linked to competency; monitoring options.

This work is scheduled for Q2 2023.

4. Whether you consider you will have met all the outcomes and expectations by 31 January 2024, and if not all of them, what further work will be needed and is planned from 2024 onwards

Our intention is to meet all the outcomes and expectations by the end of January 2024.

## Data to December 2022

## Costs Lawyer Standards Board

CLSB  


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# In this report

Introduction ..... 3

About Costs Lawyers ..... 4

    Age ..... 4

    Diversity ..... 4

About Costs Lawyers’ practice ..... 4

    Organisation type..... 4

    Insurance..... 5

    Other legal regulation ..... 6

    Complaints ..... 6

About Costs Lawyers’ clients..... 8

    Sources of instructions..... 8

    Legal aid ..... 9

    Pro bono work..... 9

    Vulnerable clients ..... 10

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# Introduction

The CLSB holds various types of data about the Costs Lawyer profession. We collect and analyse this data for a variety of purposes, such as:

- understanding the nature of our regulated community, including the service that Costs Lawyers provide, the challenges they face and how they interact with consumers and the public
- identifying areas of risk so that we can tailor our regulatory interventions accordingly
- monitoring the diversity of the profession and barriers to entry, promotion or inclusion
- supervising compliance with our regulatory rules
- sharing intelligence with other organisations, such as the Association of Costs Lawyers, to help with initiatives for the benefit of Costs Lawyers and the public.

Data we collect includes:

- information about the nature of Costs Lawyers' practice as part of their annual application for a practising certificate (the regulatory return)
- diversity statistics
- supervision and disciplinary information
- ad hoc information to help us fulfil our statutory obligations, such as opinions, feedback and predictions about market impacts.

The data we hold is [available on our website](#) or by [contacting us](#). This report provides an annual summary of core metrics.

Throughout this report, data is presented in a series of tables. Unless otherwise indicated, the figures in the tables show the percentage of Costs Lawyers that fall into each relevant category. By way of example, in the table on the next page that provides statistics on the age profile of the profession, the figures indicate that 8.5% of Costs Lawyers were aged between 20 and 29 in 2017. If you have any questions about interpreting the data, please [contact us](#).

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# About Costs Lawyers

## Age

The stabilisation in 2021 of the gradual increase in the average age of Costs Lawyers (due to the route of entry into the profession being closed in 2017 to 2019) has not continued, and the upward trend in the average age has resumed. The changes to the Costs Lawyer Qualification being introduced in 2023 should help address this trend.

Year	20-29	30-39	40-49	50-59	60+	Age not given/prefer not to say
2017	8.5	37	26	18	8	2.5
2018	9.5	36.8	27.1	16.6	8.5	1.5
2019	7.4	37.3	27.2	18.2	9.2	1.5
2020	4.3	37.7	29	18.9	9	1
2021	4.1	35.6	28.2	18.5	7.6	5
2022	1.7	34.8	31.5	19.8	10.4	1.8

## Diversity

Data relating to the diversity of the Costs Lawyer profession is [available on our website](#). An analysis of the data from our 2022 Diversity Survey, which focused on social mobility, will be published later this year.

# About Costs Lawyers' practice

## Organisation type

Since 2011, the number of Costs Lawyers in each type of practice has fluctuated year on year. Overall, the proportions of Costs Lawyers working for costs law firms and as sole practitioners have fallen, while the number working in firms regulated by the Solicitors

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Regulation Authority (SRA) has increased. Since 2018, more Costs Lawyers have been working in SRA regulated firms than any other type of organisation.

Year	Unregulated costs law firm	Sole practitioner	SRA regulated firm	In-house
2011	53.8	16.1	26.5	
2012	48.2	17.4	31.0	
2013	42.0	19.4	29.2	
2014	44.0	17.8	34.3	
2015	41.0	15.8	33.7	
2016	38.0	17.7	37.2	
2017	43.1	14.5	37.8	
2018	39.6	14.1	41.0	
2019	39.7	11.8	41.2	
2020	35.4	13.6	47.0	3.0
2021	39.3	12.2	44.8	3.7
2022	40.2	11.3	44.5	3.9

Note: In-house data is not available prior to 2020. Figures do not always total 100% because prior to 2020 data was not recorded for Costs Lawyers not working exclusively in one of the first three categories, and it was not obligatory for practitioners to provide this information.

In 2022, we began asking Costs Lawyers to provide us with details of all the organisations in which they work, rather than just their primary place of practice, as well as the types of costs services they provide (their practice areas). This information is now available in the [Register of Costs Lawyers](#) and next year we will begin publishing comparative data for both areas in this summary report.

## Insurance

The CLSB collects data relating to the professional indemnity insurance policies held by Costs Lawyers working as sole practitioners or for costs law firms not regulated by the SRA. The minimum level of cover prescribed in the Practising Rules is £100,000.



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Since 2014, the percentage of these Costs Lawyers with higher levels of cover has been increasing. The percentage with cover of £2m or more has more than doubled between 2014 and 2022, with a significant rise in the last year. Almost half of all Costs Lawyers now have this level of cover.

Cover level	2014	2015	2016	2017	2018	2020	2021	2022
£100,000	22.1	17.5	18.6	16.0	10.6	10.1	9.8	9.4
£100,001-£999,999	32.0	28.9	26.6	23.7	23.3	24.6	23.6	22.9
£1,000,000-£1,999,999	24.9	25.8	25.1	26.5	29.4	26.5	27.0	21.1
£2,000,000 or over	20.4	28.0	29.5	33.9	37.1	38.8	39.7	46.6

Note: This data was not collected in 2019.

The CLSB works with the National Cyber Security Centre – a government agency that provides cyber security guidance and support – to raise awareness of cyber risks within our regulated community and promote free online training for small businesses.

## Other legal regulation

Since 2021 the CLSB has asked Costs Lawyers whether they hold a current practising certificate from any other legal regulator.

Number regulated as	2021	2022
Chartered legal executive	13	16
Solicitor	13	15
Other	1	1
Total	27	32

Note: The one practitioner in the “other” category is a Costs Lawyer also regulated as a foreign lawyer by the Law Society of Scotland.

## Complaints

The number of complaints made at first tier remains low, which could be explained by a variety of factors such as strong client satisfaction, high levels of informal resolution or

a lack of awareness about how to complain. To mitigate against the possibility that a lack of understanding is a barrier to complaints, in 2021 we introduced a [supervision framework](#) for auditing Costs Lawyers' complaints procedures.

Year	Number of first tier complaints made
2011	7
2012	Not collected
2013	Not collected
2014	Not collected
2015	6
2016	1
2017	3
2018	3
2019	5
2020	3
2021	4
2022	5

Similarly low levels of complaints are formally escalated to the second tier (namely the CLSB in relation to conduct complaints and the Legal Ombudsman in relation to service quality complaints and hybrid complaints (which relate to both service quality and conduct)).

Year	Number of second tier complaints upheld	
	CLSB (Conduct)	Legal Ombudsman (Service)
2011	0	0
2012	2	1
2013	0	1
2014	1	0
2015	0	1
2016	0	0
2017	0	0
2018	2	0
2019	1	0
2020	0	0
2021	0	0
2022	1	0

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# About Costs Lawyers' clients

## Sources of instructions

From 2020, we began to ask Costs Lawyers about the sources of their instructions as a proportion of total work. (Although we had asked questions about number of cases from different sources in the past this data is not directly comparable.)

Proportion of instructions from each client type	Lay clients			Legal services providers			Corporate		
	2020	2021	2022	2020	2021	2022	2020	2021	2022
0%	80.77	80.79	79.73	22.34	26.54	18.91	71.75	72.87	65.51
1-10%	15.68	15.10	16.34	2.22	1.91	2.87	8.14	7.77	10.44
11-25%	1.78	1.76	1.82	1.48	1.47	1.21	2.66	2.64	4.24
26-50%	1.18	1.17	0.61	3.40	3.23	3.18	3.40	3.37	4.08
51-75%	0.00	0.00	0.30	2.66	2.64	2.72	1.18	1.03	1.06
76-90%	0.15	0.15	0.15	6.66	6.30	10.14	1.48	1.32	1.82
91-99%	0.30	0.29	0.00	10.50	10.26	9.83	1.92	1.76	1.06
100%	0.74	0.73	1.06	50.74	47.65	51.13	9.47	9.24	11.8

Over half of all Costs Lawyers were instructed exclusively by other legal services providers, such as solicitors or barristers, and this proportion is increasing. The proportion doing no work at all for other legal services providers appears to be falling.

Only around 20% of Costs Lawyers received some instructions from lay (individual) clients in the last three years, and only about 15% do more than 10% of their total workload for lay clients. However, a small number of Costs Lawyers receive instructions only from lay clients.

The 2022 data suggests that the percentage of Costs Lawyers receiving some instructions from corporate clients may be increasing, but almost two thirds of Costs Lawyers still received no corporate instructions at all.

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In 2023 the CLSB will be further interrogating the number and nature of lay client instructions received by Costs Lawyers to help us develop a bespoke regulatory framework for Costs Lawyers who act directly for lay clients. We have been capturing new data to facilitate this work, which will be published throughout the year.

## Legal aid

Between 2012 and 2020 the proportion of the profession undertaking exclusively legal aid work doubled from 2.5% to 5%. The figure has fallen from this high point in the last two years. The number of Costs Lawyers who do not undertake any legal aid work has increased in the period and is now relatively stable at around 70%, almost doubling since 2012. This is likely to be driven by reforms and other pressures on legal aid more broadly.

Year	Proportion of workload comprising legal aid work					
	0%	1-25%	26-50%	51-75%	76-99%	100%
2012	38.8	28.7	5.2	8.9	9.9	2.5
2013	46.7	23.4	4.7	7.9	8.3	2.9
2014	49.1	27.4	3.4	6.6	6.7	3.2
2015	49.8	23.7	5	1.6	6.3	4.1
2016	50.3	15.6	1.4	3.5	2.6	3.8
2017	56.1	20.8	3.4	2.4	5.9	2.1
2018	55.2	24.0	2.8	3.2	5.1	2.8
2019	51.3	22.3	3.0	3.1	4.3	3.7
2020	70.2	17.3	2.4	2.8	1.9	5.0
2021	71.4	16.7	2.3	2.2	0.7	4.7
2022	70.2	17.9	2.9	2.3	2.9	3.9

Note: Where years do not total 100%, some Costs Lawyers did not provide this information.

## Pro bono work

The number of pro bono cases undertaken by Costs Lawyers rose between 2015 and 2019. In 2019 there were 97 pro bono cases in total, and 45 of these were dealt with by one Costs Lawyer; the next largest number of cases was just 6. The overall trend is likely to be explained by the changing nature of traditional work areas and the rise in litigants in person using the justice system generally.

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Year	Number of cases
2015	0
2016	4
2017	77
2018	61
2019	97

To better capture how the trend may be changing over time, from 2020 we asked Costs Lawyers to report on the percentage of their instructions that were pro bono. The figures are almost identical for the three years.

Proportion of workload comprising pro bono cases	% of the profession		
	2020	2021	2022
0%	97.2	97.2	97.1
1-25%	2.7	2.6	2.7
26-50%	0	0	0
51-75%	0	0	0
76-100%	0.2	0.2	0.2

We encourage Costs Lawyers to engage with pro bono work and to consult our [guidance for Costs Lawyers](#) which was published in 2021.

## Vulnerable clients

This data has been collected since 2016. Generally Costs Lawyers deal with very few vulnerable clients, which reflects the low number of instructions received directly from lay (individual) clients.

From 2020 the data has been collected as a percentage of total instructions rather than an absolute number of instructions to improve comparability. In all three years, 95% of one Costs Lawyer's clients were vulnerable, but no other Costs Lawyer reported more than 50% of their clients having vulnerabilities. The nature of vulnerabilities in 2022 included clients under the court of deputies, protected parties, litigants in person, language difficulties, as well as clients with mental health issues.

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Year	Number of vulnerable clients
2016	2
2017	4
2018	16
2019	13

Proportion of vulnerable clients	% of the profession		
	2020	2021	2022
0%	98.5	98.5	97.7
1 – 25%	1.0	1.0	1.7
26 – 50%	0.3	0.3	0.5
51 – 75%	0.0	0.0	0.0
76 -100%	0.2	0.2	0.2

# Refreshing the Code of Conduct

## Note to the CLSB Board

### Introduction

1. The CLSB's most recent regulatory performance assessment from the LSB<sup>1</sup> was extremely positive. One important contributory factor in this assessment is the approach that has been taken in recent years to ongoing reflection and renewal of the regulatory arrangements governing Costs Lawyers.
2. The CLSB's Code of Conduct is an important central element of these regulatory arrangements and one outstanding action from the 2022 business plan (priority 13) was to undertake a review of the Costs Lawyer Code of Conduct to ensure it aligns with:
  - the consumer outcomes framework;
  - recent research into the competencies expected of a qualifying Costs Lawyer;
  - learnings from our risk deep-dive exercise carried out in 2021;
  - the better regulation principles, and in particular that it does not impose unnecessarily broad regulatory burdens;
  - recent updates to our other regulatory arrangements; and
  - draws on any evidence of good practice across the wider professional services sectors.
3. The attached annex contains a marked up version of the current Code of Conduct, which was last amended in 2018,<sup>2</sup> but which has not been subject to wholesale revision since its introduction in October 2011. The proposed changes are intended to do the following:
  - (i) Reflect the consumer outcomes framework by strengthening expectations of the role that Costs Lawyers can play in serving consumer clients (referred to in the draft amendments as "lay clients" to reflect the fact that this may include small business clients). The proposed amendments also strengthen the conflict protections for consumers, reinforce the CLSB's diversity commitment and encourage innovation.
  - (ii) The proposed revised code strengthens the obligation on Costs Lawyers to maintain their skills and knowledge, in line with the CLSB's evolving approach to continuing competence.
  - (iii) It also incorporates some changes which bring the CLSB Code into line with the approach being taken by the SRA (for example in allowing solicitors to take fees on account without a client account if they are working outside a regulated entity), BSB (e.g. in the proposed differentiation between professional and ultimate clients (see below), and IPReg (which has recently made proposals in line with the approach of the SRA) to take into account personal conduct and not simply restrict the application of the Code to professional activity.
  - (iv) It also incorporates a number of suggestions arising from the RPF research project, notably:
    - It introduces the principle of independence – not mentioned in the current code but a core value that the RPF research suggested was very important for clients of Costs Lawyers. This is further underpinned by the proposed revised obligations around conflicts and the differentiation of professional and ultimate clients. The terminology

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<sup>1</sup> [Regulatory performance report 22 December 2022](#)

<sup>2</sup> To add a prohibition against making unsolicited approaches to private individuals, while not amending any other provisions.

“ultimate client” has been used rather than “lay client” as there is a possibility that a client (beyond the professional referring client) may not be a lay individual.

- It underlines the importance of the role of Costs Lawyers in the efficient resourcing of legal matters and the role that they might play in other matters such as pricing.
  - It stresses that a Costs Lawyer’s activity is not limited to authorised activities – something which the RPF research suggested was acting as an actual or perceived constraint on innovation.
  - It lays the foundations for the CLSB to reconsider use of the CLSB Mark of Regulation by firms and also for the introduction of any new marks in future.
  - It begins to make the distinction between the different modes of practice through which a Costs Lawyer may operate – either as a Costs Lawyer operating as a business, as an employer of other Costs Lawyers or as an employee. Where obligations can be relaxed, e.g. because they are covered by an authorised business regulated by another legal regulator, this is suggested.
- (v) There are also some other drafting changes suggested which tidy up the Code. The proposed revisions:
- Remind Costs Lawyers that their regulatory obligations extend across all regulatory arrangements and are not limited to the Code
  - Strengthen the confidentiality obligation
  - Reinforce the CLSB’s ability to enforce
  - Propose the removal of mentions of ACL as a regulator, in line with the strengthened IGRs since the last revision of the Code
  - Align equality and diversity obligations more closely with the legislation

Proposed amendments to the text of the current code are marked up in red in the annex and a commentary on the suggested text change is contained in the right hand column.

The board has discussed previously (e.g. at its strategy day to consider the RPF project findings) whether, in light of the loopholes which allow unregulated providers to offer the same services as a Costs Lawyer, Costs Lawyers should be regulated at all. The conclusion (in summary) was that there is clear potential for regulation to add value, but only if the CLSB’s regulatory model appropriately reflects the practicalities of the market. The proposed amendments to the Code aim to reflect this conclusion, attempting to create a clear added value for clients (whether professional or otherwise) in using Costs Lawyers, as well as strengthening the role that Costs Lawyers play in upholding the public interest.

## **Next Steps**

Although these suggestions represent a “spring clean” of the CLSB Code, rather than a wholesale redraft, their implications – which we intend to be positive – may in some cases be significant, and a consultation will need to be issued in line with the LSB’s Applications To Alter Regulatory Arrangements Rules 2021. Following the board’s feedback, we will carry out this work during 2023. Once the changes are implemented (or perhaps at the stage of applying to the LSB for approval) we will also need to carry out a process of aligning all our guidance, rules and web content to the amended version of the Code.

January 2023



## Annex: Proposed Revised Code of Conduct for Costs Lawyers

Section of Code – Revised Text	Explanation of Proposed Amendments
<p><b>Introduction</b></p> <p>This Code is made pursuant to the LSA and sets out the principles <b>that should guide your conduct to be followed by you</b> as a Costs Lawyer, <b>both when delivering reserved activities and across the rest of your practice, as well as, to the extent indicated below, in your private conduct.</b> Further, it sets out your authorised rights and works in conjunction with prevailing legislation in such a way as to regulate what you can and cannot do under your authorisation. <b>The scope of your authorisation is governed by legislation but should not be interpreted as preventing you from expanding into other, unreserved areas of practice or from seeking to innovate in areas related to costs and pricing where Costs Lawyers have unique knowledge and skills. If you are unclear about how an innovation you are considering might interact with this Code or other CLSB regulatory arrangements you should contact the CLSB.</b></p> <p>Under section 176(1) of the LSA you must comply with this Code. Breach of this Code <b>or of the CLSB's wider regulatory arrangements as set out in the Costs Lawyer Handbook</b> may result in disciplinary proceedings being brought against you by CLSB. This Code is effective on the date stated on the first page <del>and replaces the previous Code of Conduct effective 31 October 2014.</del></p>	<p><i>This expanded introduction is designed to remind Costs Lawyers that their practice is not limited to reserved areas and to encourage innovation.</i></p> <p><i>A minor change proposed for clarity, to remind Costs Lawyers of their wider obligations.</i></p>
<p><b>Authorised Rights</b></p> <p>As a Costs Lawyer you are a regulated person under the LSA and are authorised to carry on the following reserved legal activities:</p> <ul style="list-style-type: none"> <li>• The exercise of a right of audience</li> <li>• The conduct of litigation</li> <li>• The administration of oaths</li> </ul>	<p><i>Proposed addition at the end of this section of the Code designed to clarify that Costs Lawyers' practice is not limited to their authorised rights.</i></p>

Section of Code – Revised Text	Explanation of Proposed Amendments
<p>Provided that you are instructed to deal only with matters that relate to costs, you may conduct proceedings and represent clients in any court or tribunal, including any criminal court or courts martial, the Supreme Court or the Privy Council where:</p> <ul style="list-style-type: none"> <li>• the proceedings are at first instance;</li> <li>• the proceedings include an appeal below the level of the Court of Appeal or Upper Tribunal, are on a first appeal (other than in the Court of Appeal) and the appeal itself relates to costs;</li> <li>• the proceedings do not fall within either of the categories above, but your instructions are limited to dealing with the costs of the proceedings; or</li> <li>• the court or tribunal grants permission for you to conduct proceedings or to represent a client (or both).</li> </ul> <p>Where proceedings relate to other matters, in addition to costs, the rights referred to above apply only to those parts of the proceedings (if any) that:</p> <ul style="list-style-type: none"> <li>• relate solely to costs; or</li> <li>• when they relate to other issues, solely those issues that are not in dispute.</li> </ul> <p>A matter “relates to costs” if it relates to payments for legal representation, including payments in respect of pro bono representation under section 194 of the LSA, or to payments made for bringing or defending any proceedings, but only if and to the extent that those monies are not damages. For the avoidance of doubt, this includes:</p> <ul style="list-style-type: none"> <li>• costs between opposing parties including costs management and budgeting;</li> </ul>	

Section of Code – Revised Text	Explanation of Proposed Amendments
<ul style="list-style-type: none"> <li>• solicitor and client costs but not if and to the extent that issues of negligence arise when a lawyer competent to deal with allegations of negligence ought to be instructed instead;</li> <li>• legal aid, criminal costs, wasted costs or costs against third parties.</li> </ul> <p>Further, you may administer any oath.</p> <p>The scope of this authorisation does not prevent you from offering other services as a Costs Lawyer provided you do so in accordance with this Code of Conduct and adhering to any of the CLSB's other regulatory arrangements that are relevant.</p>	
<p><b>Seven principles of regulation</b></p> <p>There are seven principles to which Costs Lawyers must conform to ensure public confidence in you and the profession. Adherence to these principles is mandatory.</p> <p>You must:</p> <ol style="list-style-type: none"> <li>1. Act with <b>honesty and</b> integrity and <b>maintain your independence</b> professionalism.</li> <li>2. Comply with your duty to the court <b>and promote the good</b> in the administration of justice.</li> <li>3. Act in the best interests of <b>each</b> the client.</li> <li>4. Provide a good quality of work and service to each client.</li> <li>5. Deal with the regulators and Legal Ombudsman in an open and co-operative way.</li> <li>6. Treat everyone <b>fairly and</b> with dignity and respect.</li> <li>7. Keep <b>your work on behalf the affairs</b> of your clients confidential.</li> </ol>	<p><i>The CLSB code has historically adopted a slightly different configuration of the professional principles than those set out in the LSA 2007, or those adopted by other authorised regulators (again slight variants of the LSA s.1(3)). This defines the "professional principles" as follows:</i></p> <p><i>(a) that authorised persons should act with independence and integrity,</i></p> <p><i>(b) that authorised persons should maintain proper standards of work,</i></p> <p><i>(c) that authorised persons should act in the best interests of their clients,</i></p> <p><i>(d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and</i></p> <p><i>(e) that the affairs of clients should be kept confidential.</i></p> <p><i>The proposed amendments to the principles are designed to maintain them as set out in the current code but with minor amendments as follows:</i></p>

Section of Code – Revised Text	Explanation of Proposed Amendments
	<ul style="list-style-type: none"> <li>• Principle 1 is amended to include independence in place of professionalism. The latter concept is reflected already in principle 4 in particular. Independence is a core value that is not currently mentioned in the code and which emerged in the RPF research as an attribute that clients would particularly value.</li> <li>• Principle 2 strengthens the duty to the administration of justice beyond a duty to comply to encourage the promotion of good administration of justice and, by implication, better allocation of resources, including those of the court.</li> <li>• Principle 3 is amended to reflect the fact that Costs Lawyers are often not acting directly for a client but through a professional client.</li> <li>• Principle 6 is amended to incorporate the concept of fairness as well as dignity and respect. This is a more accurate reflection of prevailing EDI norms and equality legislation.</li> <li>• Principle 7 is broadened slightly to reflect the fact that Costs Lawyers will have access to client information beyond simply the work that they are undertaking on the client's behalf.</li> </ul>
<b>PRINCIPLE 1: Act with honesty and integrity and maintain your independence</b> <del>professionalism</del>	
1.1 You must act honestly, <del>professionally</del> and with integrity <del>not only in all your dealings in</del> your professional life, <del>but also in your private life where this might reasonably be considered to undermine your adherence to the core ethical principles of the profession.</del>	1.1. Professionalism is deleted here as this is implicit in the other core values. The application of the principles is not defined in the current code and the current drafting suggests these are narrowly focused on professional activities as a Costs Lawyer compared, for example, to the application of other legal regulators' codes. e.g. IPREG proposal 2022 – "These Principles set out the ethical behaviours that IPReg expects all regulated persons to uphold.

Section of Code – Revised Text	Explanation of Proposed Amendments
<p>1.1a You must act independently in the interests of the good administration of justice. This duty overrides your duties to your client and applies both to your work before the court and in conducting litigation.</p> <p>1.2 You must not attempt to carry on a reserved legal activity other than those you are authorised to undertake under the LSA. Where you carry out unreserved legal activities within the same business, or if you hold yourself out as a Costs Lawyer in any other business, you must adhere to this Code of Conduct across these other activities.</p> <p>1.3 You must not give false or misleading information to anyone with whom you deal.</p> <p>1.4 When you supply or offer your services as a Costs Lawyer, you must not be misleading or inaccurate when you publicise yourself as a Costs Lawyer or your business. about the nature or scope of the services you are offering, who will be legally responsible for undertaking them, the extent to which they are covered by regulation and insurance, the terms on which they will be supplied or the basis on which they will be charged.</p> <p>1.5 You must not: (i) make an unsolicited approach by any means to a private individual (lay person) or to domestic premises (unless a business is being conducted from there) in order to publicise your service as a Costs Lawyer or</p>	<p><i>This includes not only in their professional life but also their private life where it is relevant to their practice as a regulated person”</i></p> <p><i>1.1a This is a proposed inclusion. Independence is not mentioned as a core value in the current CLSB code but the RPF research suggested that the most significant added value a Costs Lawyer could bring to the legal system was as an independent assessor of costs. It is expanded upon in the sections on the court and client’s best interests. Learnings from recent disciplinary investigations also highlight the need to make explicit the interaction between independence / integrity and other principles (such as keeping a client’s affairs confidential).</i></p> <p><i>1.2 This proposed addition makes clear that the Code applies not just to the exercise of reserved activities. It also serves to remind Costs Lawyers that they can carry out other activities beyond core costs law services.</i></p> <p><i>1.4 This obligation brings Costs Lawyers into line with the obligations on barristers. It highlights the importance of all clients – including professional clients – understanding what services are provided within the scope of regulatory protections.</i></p>

Section of Code – Revised Text	Explanation of Proposed Amendments
<p>your business; or (ii) accept referrals from a third party who made an unsolicited approach to the private individual (lay person) being referred.</p> <p>1.6 You must not enter into any fee arrangements which are unlawful.</p> <p>1.7 You must not act in any way which is likely to diminish the trust the public places in you or in the profession of Costs Lawyers.</p> <p>1.8 You must only use the CLSB's regulatory marks in compliance with the terms of use published on the CLSB website.</p>	<p><i>1.8 This follows up on a recommendation of the RPF report which was to tighten up/clarify the use of this mark and whilst the inclusion here does not represent any material change it lays the foundations for tightening up in due course (for example, linking more explicitly to Costs Lawyers working in a particular way such as in law firms led by Costs Lawyers)</i></p>
<b>PRINCIPLE 2: Comply with your duty to the court <del>in the</del> and promote the good administration of justice</b>	
<p>2.1 You must at all times act within the law.</p> <p>2.2 You must not knowingly or recklessly either mislead the court, <b>attempt to mislead the court</b> or allow the court to be misled.</p> <p>2.3 You must comply with any court order which places an obligation on you and you must not be in contempt of court.</p> <p>2.4 You must <b>ensure that clients understand when your duties to the court will override duties owed to them and you must</b> advise clients to comply with court orders made against them.</p> <p>2.5 <b>You must support the good administration of justice by promoting the appropriate and cost-effective use of the resources of the court.</b></p>	<p><i>2.2 An addition which marries Costs Lawyer obligations to those of barristers.</i></p> <p><i>2.4 An addition designed to reinforce the role of Costs Lawyers as independent actors in the justice system.</i></p> <p><i>2.5 A proposed new obligation designed to underline the unique role that Costs Lawyers can play in the justice system to support the proper use of court resources.</i></p>
<b>PRINCIPLE 3: Act in the best interests of <b>each</b> <del>the</del> client</b>	

Section of Code – Revised Text	Explanation of Proposed Amendments
<p>3.1 You must always act in the client's best interests. <b>As a Costs Lawyer you may be instructed by another regulated person ("professional client") to act for an underlying client ("ultimate client").</b> You must act at all times <del>to ensure the</del> <b>in the best interests of each client, whether a professional client or an ultimate client, 's interest is paramount</b> except where this conflicts with your <b>duty to act independently in the interests of the good administration of justice</b> <del>duties to the court or where otherwise permitted by law.</del></p> <p><b>3.1a</b> You must decline to act:</p> <ul style="list-style-type: none"> <li>– if it would not be in the <b>ultimate</b> client's best interests; <del>or</del></li> <li>– if that client's interests conflict directly with your own; or</li> <li>– if your client's interests conflict with those of <b>your professional client or another client. You may, however, act if each client has substantially common interests and has given informed consent.</b></li> </ul> <p><b>3.2</b> You must provide for an effective complaints procedure <b>for handling complaints from both professional and ultimate clients, covering issues relating to your professional conduct as well as the service you provide, in line with the CLSB's guidance on complaints procedures.</b> <del>(first tier complaints handling procedure) which is simple and transparent and ensures that a complaint can be made by any reasonable means and which takes into account the individual needs of clients (in particular the needs of vulnerable clients).</del></p> <p>3.3 You must ensure that complaints are dealt with promptly (within a maximum eight week period from <b>the</b> date of receipt) openly and fairly and that appropriate provisions for redress exist.</p> <p>3.4 You must <b>ensure that</b> <del>advise</del> new clients <b>are advised</b> in writing when instructions are first received of:</p>	<p><i>3.1 This includes the suggested distinction raised in the RPF between the Costs Lawyer's professional client and ultimate client. It also emphasises again the overriding nature of the duty of independence (see new 1.1a above).</i></p> <p><i>3.1a This proposed addition adds further nuance to the conflict assessment and brings it into line with the SRA Solicitors' Code. Our guidance already reflects this nuance and highlights that the Code is too blunt an instrument as current drafted.</i></p> <p><i>3.2 This again reflects the distinction between professional and ultimate clients and emphasises the need for the ultimate client to have a direct route for complaining to the Costs Lawyer. It also mirrors recent amendments to our Disciplinary Rules and Procedures which ensure that both conduct and service complaints are considered at first tier. Note that our guidance and audit processes make clear that individual / additional complaints procedures are not required by practitioners working exclusively in-house or for SRA regulated firms with firm-wide procedures that comply with the SRA Code for Firms.</i></p> <p><i>3.4 This marries more closely the drafting in the SRA Code of Conduct – it does not make each Costs Lawyer responsible for</i></p>

Section of Code – Revised Text	Explanation of Proposed Amendments
<p>(i) An estimate of fees / details of charging structure and where that estimate subsequently becomes inaccurate or that charging structure changes provide an updated estimate / notice of revised charges.</p> <p>(ii) The right to complain.</p> <p>(iii) How to complain i.e. <b>the first tier complaints handling procedure that applies to the services you will provide.</b></p> <p>(iv) <del>The period within which you will deal with complaints under your first tier complaints handling procedure.</del></p> <p>(v) <b>If applicable</b>, the client's right to refer their complaint to the Legal Ombudsman in <b>certain circumstances.</b> <del>the event the matter is not resolved to the satisfaction of the client or the matter has not been resolved within eight weeks of the complaint being made.</del></p> <p>(vi) <del>Applicable time limits for referring the complaint to the Legal Ombudsman.</del></p> <p>(vii) <del>The Legal Ombudsman's contact details.</del></p> <p>3.5 You must identify and rectify any systemic client complaint issues <b>that are causing, or likely to cause, client complaints</b>, taking steps to do so promptly upon discovery.</p> <p>3.6 You must not accept client money save for disbursements, for which you are liable on behalf of your client, and payment of your proper professional fees. <b>This does not prevent you from using the services of third party financial institutions, such as escrow accounts or third party managed accounts, to deal with client money (including advance payment of your fees) so long as the terms of those services are agreed in advance with your client.</b></p>	<p><i>sending client care letters, not relevant to employees, but does require them to make sure arrangements are in place.</i></p> <p><i>3.4(iv), (vi) and (vii) are redundant as they are included in the CLSB's extensive guidance on complaint handling. As drafted, they give the impression that this information is more important than the other information about complaints that must be provided to clients, as set out in detail in the guidance.</i></p> <p><i>The addition in 3.4(v) reflects the fact that right of access to the Legal Ombudsman is limited.</i></p> <p><i>3.5 This suggested addition is intended to encourage Costs Lawyers to take proactive action to rectify potential complaints issues.</i></p> <p><i>3.6 This addresses an issue that came up in the RPF research. Costs Lawyers have sometimes been reluctant to act for individual consumer clients because of the risk of not getting paid. Taking fees on account through TPMA's or other independent financial structures is not inconsistent with this principle. We took the opportunity in 2020 to emphasise this in our guidance, and we have the opportunity now to emphasise this in the Code itself to help encourage uptake.</i></p>



Section of Code – Revised Text	Explanation of Proposed Amendments
<p><del>3.7 You must provide required documentation and information on an application for a practising certificate and in the event of any complaint investigation conducted by CLSB or the Legal Ombudsman.</del></p> <p>3.8 You must ensure that you maintain professional indemnity insurance <del>that</del> which complies with the <b>Practising Rules</b> requirements of the CLSB prevailing at the time and promptly provide evidence of that insurance cover if requested by a client, CLSB, <del>ACL</del> or the Legal Ombudsman.</p>	<p><i>3.7 This provision is now covered in the later section on cooperating with your regulator, which is a more natural fit.</i></p> <p><i>3.8 The deletion of ACL brings the Code in line with the IGRs.</i></p>
<b>PRINCIPLE 4: Provide a good quality of work and service to each client</b>	
<p>4.1 You must ensure that you only undertake work for which you are properly qualified <b>and which you are competent to undertake.</b></p> <p>4.2 Work must be undertaken with due skill, care and attention, with proper regard for the technical standard expected of you. If you do not have the knowledge, skills or experience to undertake the work you must decline it.</p> <p>4.3 You must ensure that you carry out your professional work in a timely manner with proper regard for standards of professional service and care.</p> <p>4.4 <b>You must maintain your competence to carry out your role and keep your professional knowledge and skills up to date. You must keep your professional knowledge up to date by undertaking relevant training in accordance with current Practising Rules.</b></p> <p>4.5 You must keep the client regularly informed as to the progress of <del>the</del> work and keep accurate records of that work.</p> <p>4.6 You must ensure that clients are able to make informed decisions about the work being undertaken on their behalf <b>throughout the lifetime of a matter, including how it will be priced, the costs incurred</b> and they understand the likely</p>	<p><i>4.1 This addition references the need for ongoing competence and paves the way for the implementation of a new approach to CLSB ongoing competence arrangements.</i></p> <p><i>4.4 This amendment suggests broadening the obligation from simply the obligation to keep “knowledge” up to date, to encompass a wider “competence” obligation, in line with the inclusion of skills and attributes in the Competency Statement.</i></p> <p><i>4.6 This expands on the current 4.6 to reflect the potential greater role for Costs Lawyers in pricing and costs and the importance of clients understanding not only costs incurred for work done on their behalf but also their potential liability in relation to the whole matter.</i></p>

Section of Code – Revised Text	Explanation of Proposed Amendments
<p>overall cost of the matter (including any potential liability for the costs of other parties) that work.</p>	
<p><b>PRINCIPLE 5: Deal with the regulators and the Legal Ombudsman in an open and co-operative way</b></p>	
<p>5.1 You must be open, honest and co-operate in your dealings with the CLSB, <del>ACL</del>, other regulators and the Legal Ombudsman</p> <p>5.1a You must provide accurate and complete documentation and information on an application for a practising certificate and you must promptly notify the CLSB of any subsequent event that impacts on your fitness to be a Costs Lawyer.</p> <p>5.1b You must responding to any requests promptly and fully within 14 calendar days to any requests for information from the CLSB with full and accurate information. You must provide the CLSB with access to information and documentation if requested to do so.</p> <p>5.2 You must promptly notify the CLSB of any breach of its regulatory arrangements <del>this Code</del> by yourself or other Costs Lawyers and notify any other approved regulator, as appropriate, if you reasonably believe there has been a serious breach of their regulatory arrangements by any person regulated by them (including you).</p> <p>5.3 You must not take any action to dissuade or prevent anyone from reporting you to the CLSB or Legal Ombudsman, or victimise anyone who has done so.</p>	<p>5.1 This suggests removing ACL from this section in light of the IGRs. Other regulators are not specified here as “approved” regulators given the existence of other relevant regulators to costs lawyers (e.g. ICO, Companies House etc).</p> <p>5.1a This text has partially moved from section 3.7 (acting in the client’s best interests). The additional text, requiring a Costs Lawyer to update the CLSB of further developments, reinforces the obligation in Practising Rule 4.1 – whilst it might seem to duplicate it does reinforce the need for notifications to be made at any time and reflects the same emphasis that the SRA puts on these issues.</p> <p>5.1b The proposed inclusion of this section removes the arbitrary deadline of 14 calendar days.</p> <p>5.2 This proposes broadening the reporting requirement to take into account the role of Costs Lawyers in SRA regulated firms in particular and covers all regulatory arrangements, not just the Code. It brings the CLSB requirements into line with other approved regulators’ codes of conduct and promotes cooperation between regulatory bodies in the interests of clients and the public.</p> <p>5.3 This brings the Code into line with other regulators’ codes in relation to action to undermine cooperation.</p>

Section of Code – Revised Text	Explanation of Proposed Amendments
<p>5.4 You must promptly comply with any request, notice or disciplinary outcome issued to you by the CLSB under its regulatory arrangements.</p>	<p>5.4 Proposes to fill a gap in the current Code as there appears to be no obligation on Costs Lawyers to act on any action requested by the CLSB. Although this is perhaps implicit in the existing s.5.1 of the code, new 5.4 is a stronger obligation and matches those of other legal regulators, bolstering the effectiveness of the Disciplinary Rules and Procedures.</p>
<p><b>PRINCIPLE 6: Treat everyone fairly and with dignity and respect</b></p>	
<p>6.1 You must treat all clients, staff or third parties fairly and with dignity and respect. You should encourage equality of opportunity and must not unlawfully discriminate against them, either directly or indirectly, victimise or harass them on the grounds of age, disability, race (including colour, ethnic or national origin, nationality and citizenship), sex, gender reassignment, pregnancy and maternity, marital status (including civil partnerships), sexual orientation, religion or belief. Counter-inclusive conduct or harassment which, intentionally or unintentionally, narrows or denies opportunities to people because of their background or characteristics will be treated as a disciplinary matter.</p> <p>6.2 If you are an employer, you must:</p> <ul style="list-style-type: none"> <li>- have and adhere to a written policy which prevents discrimination and harassment and must investigate any allegation of discrimination, victimisation or harassment and take disciplinary action where appropriate-</li> </ul> <p>6.3—You must</p> <ul style="list-style-type: none"> <li>- make reasonable adjustments for those with a disability to ensure they are not at a disadvantage in comparison with those without disabilities.</li> </ul>	<p>6.1. This adds fairness into the discrimination principle and marries up more closely to the protected characteristics in the Equalities Act 2010. It incorporates the commitment of legal regulators in “Tackling Counter-Inclusive Misconduct Through Disciplinary Processes” (May 2022).</p> <p>6.2 This makes the distinction between conduct that can realistically be expected of an employer vs an individual Costs Lawyer.</p>
<p><b>PRINCIPLE 7: Keep the affairs your work on behalf of your clients confidential</b></p>	

Section of Code – Revised Text	Explanation of Proposed Amendments
<p>7.1 You must keep the affairs of clients, <b>including</b> <del>or</del> former clients, confidential unless disclosure is required or allowed by law or if the client consents in writing to disclosure, having had the consequences of such consent explained to them. You must ensure that your client is able, in your reasonable opinion, to give informed consent to waiving their right to confidentiality.</p>	<p><i>7.1 This is a minor drafting change but the principle is adjusted to bring it into line with the body of the code.</i></p>

**Minutes of the ACL Council Meeting**  
**held on 20 September 2022**  
 via Teams call



Council members present: **Jack Ridgway (JR)**, Ian Curtis-Nye (ICN), Victoria Morrison-Hughes (VMH), Kris Kilsby.

Also present: Carol Calver (CC) and Jo George (JG)

The meeting started at 10:00

Item	
1	<b>Welcome and apologies</b> Apologies were received from Stephen Averill, David Bailey-Vella, Laura Rees and Julian Caddick.
2	<b>Minutes of the council meeting held on 9 August 2022</b> It was unanimously agreed that the draft minutes of 9 August were an accurate reflection of the meeting. It was agreed that items 4.2, 4.3, 6.1 (partially) and 6.2 (partially) should be redacted before publishing on the website
3	<b>Actions arising from the council meeting held on August 2022</b> Actions were reviewed and updated
4	<b>PR &amp; Marketing Report</b>
4.1	JR updated the council on Sponsors and Speakers for the London conference – Keynote Speaker is LJ Birss and confirmed Master Kaye and Master McCloud. The SCCO have confirmed 2 x Judges to speak with names tbc. CC to contact Dominic Regan
4.2	Member Survey now closed, Data to be reviewed by DVB / LR and provide actions. Feedback to be provided to members at conference – JR Address or video in breaks etc.
5	<b>Chairman's Report</b>
5.1	JR planning for formal review of 2022 Business Plan in October
5.2	JR requested confirmation from Council on recruitment of a further Council member - this was agreed and Operations will start the process. CC to liaise with DBV regarding results from Member Survey on Council member benefits
6	<b>Policy Committee Report</b>
6.1	ICN reported back that the Policy Committee have had quarterly reviews with Stakeholders, including the LSB.
6.2	ICN confirmed a two week extension to the CJC Consultation and will reschedule the Town Hall style meeting.
6.3	KK confirmed the sub-committee continues to work on the formal response to the CLSB Handbook / Accreditation consultation. VMH to discuss coordinated response with ACLT board.
6.4	KK to provide annual update to Black Letter summarising Consultation activity over 2022
7	<b>Finance Committee Report</b>
7.1	-notes from Finance Update doc-
7.2	JR requested for October a YTD against budget, for review

8	Education Committee Report
8.1 – 8.5	<i>Items 8.1 to 8.5 redacted due to confidentiality.</i>
8.6	-notes from Education Update doc- Course viability report approved by ACLT Draft accreditation being prepared covering current and new course. CLSB Consultation under review with ACLT board, discussion into appropriate duration of Work Experience to make accessible to all – VMH to feedback to ACLT Board
8.7	Confirmation of Hook Tangaza covering the Head of Education role short term (12 months)
9	Operations Report
9.1	CC provided pricing options for Slido, agreed to trial if can obtain discount.
9.2	<i>Item redacted due to confidentiality.</i>
9.3	Discussion on ACL 45 <sup>th</sup> Anniversary September 22 – possible article in eBulletin
11	Any other business
11.1	Agreement to schedule Council Meetings for remainder of 2022 and 2023 – last Tuesday of each month
11.2	Confirmation of regional meetings to be organised as and when. Council confirmed can extend attendees out at preference of each group KK – Newcastle – late 2022 JR – London – late 2022 / early 2023 ICN – South West / Wales – 2023
12	Date of next meeting
12.1	Next meeting scheduled for Tuesday 18 <sup>th</sup> October at 11am There being no further business the meeting ended at 11:35am

**Minutes of the ACL Council Meeting  
held on 18 October 2022**  
via Teams call



Council members present: **Jack Ridgway (JR)**, David Bailey-Vella (DBV), Kris Kilsby (KK), Victoria Morrison-Hughes (VMH), Laura Rees (LR)

Also present: Carol Calver (CC)

The meeting started at 11:00

Item	
1	<b>Welcome and apologies</b> Apologies were received from Stephen Averill, Ian Curtis-Nye and Julian Caddick.
2	<b>Minutes of the council meeting held on 20 September 2022</b> It was unanimously agreed that the draft minutes of 20 September were an accurate reflection of the meeting. It was agreed that items 8.1 to 8.5 and 9.2 should be redacted before publishing on the website.
3	<b>Actions arising from the council meeting held on 20 September 2022</b> Actions were reviewed and updated.
4	<b>PR &amp; Marketing Report</b>
4.1	DBV reported on meetings with Black Letter, plans in place to engage with other legal professions in promotion of the ACL and to improve our Social Media presence with improved consistency.
4.2	Discussion on the results of the Member Survey. The Council were pleased with a high response rate and confirmation that members were aware and are in general satisfied with the benefits provided. Report to be shared with Council for further actions.
5	<b>Chairman's Report</b>
5.1	JR advised that with the timeline for the CJC Consultation being that the report likely being presented to the CJC in Jan, he surmises it is unlikely a decision will be made before April, with any implementation of changes happening Q3 2023.
5.2	JR confirmed the full line up of speakers and topics for the ACL London Conference.
5.3	JR advised of plans to complete a mid-year assessment of the business plan, including a review of policy handling, with a suggestion to divide internal and external to allow the policy committee to focus on consultations, liaising with external stakeholders, and political decisions, with Operations and Finance undertaking internal policy updates and reviews.
6	<b>Policy Committee Report</b>
6.1	KK reported that the Policy Sub Committee have been focused on the submission of the ACL response to CJC Consultation. Survey and 'Town Hall Style' meeting resulted in a much higher response and interaction with membership – plan to adapt for future significant consultations. The committee have also been working on the CLSB Accreditation consultation response – using response from both membership and trainees.
6.2	JR suggested recruiting a working group from the membership to handle the review of Association Articles & By-Laws.

7	Education Committee Report
7.1	<i>Item redacted due to confidentiality</i>
7.2	The ACLT response to the CLSB Consultation has been shared with the Education sub-committee.
7.3	Council confirmed that VMH and LR should continue to monitor the ACLT budgets and finances
8	Finance Committee Report
8.1	CC confirmed the transfer of investments funds is being processed to fund ACLT system improvements, enhancements and marketing plans.
9	Operations Report
9.1	CC confirmed 3 nominations received for Council Member vacancy of: <ul style="list-style-type: none"> <li>• Mevani Jagodage</li> <li>• Stephanie McBride</li> <li>• Amy Dunkley</li> </ul> Agreed with council to obtain biographies from nominees by 24/10, with nomination ballot to run 26/10 to 02/11. Intention is to have new council member in place during December.
9.2	London Conference discussion of delegate numbers, speakers and sponsorship. Confirmation of bespoke conference logo, coloured lanyards and highlighted name badges Q&A Session via Slido.
9.3	Council agreement for an end of year / season's greetings eShot
11	Any other business
11.1	No AoB
12	Date of next meeting
12.1	Next meeting scheduled for Thursday 3 <sup>rd</sup> November at 7pm There being no further business the meeting ended at 12:15pm



**Minutes of the ACL Council Meeting  
held on 03 November 2022**  
at The White Bear, Kennington



Council members present:

**Jack Ridgway (JR)**, David Bailey-Vella (DBV), Stephen Averill (SA), Ian Curtis-Nye (ICN), Kris Kilsby (KK), Julian Caddick (JC), Victoria Morrison-Hughes (VMH),

Also present:

Carol Calver (CC), Jo George (JG)

The meeting started at 19:30

Item	
1	Welcome and apologies
1.1	Apologies were received from Laura Rees.
2	Minutes of the council meeting held on 18 October 2022
2.1	It was unanimously agreed that the draft minutes of 18 October were an accurate reflection of the meeting. It was agreed that item 7.1 should be redacted before publishing on the website.
3	Actions arising from the council meeting held on 18 October 2022
3.1	Actions were reviewed and updated.
4	Chairman's Report
4.1	JR provided a brief update on the Speakers for the Annual London Conference.
4.2	JG detailed request from LAG for conference in Dec 22. Council discussed at length, determining that time constraints could make this unviable for this year. A virtual LAG Conference should be offered with an in-person event scheduled for 2023.
5	PR & Marketing Report
5.1	DBV provided details on a slideshow created for members to view during the breaks at the conference – detailing member survey results and ACL plans for the year ahead.
6	Policy Committee Report
6.1	ICN confirmed the conclusion of recent consultations including the CJC and CLSB – the ACL responses are to be uploaded to the website.
6.2	Confirmation of ICN resignation due to appointment on the Civil Procedures Rules Committee.
7	Education Committee Report
7.1	Education report to follow by email
8	Finance Committee Report
8.1	The finance update provided prior to the meeting was discussed.
8.2	SA detailed the transfer of investments funds to ACLT for October (complete), November and

	December.
8.3	SA presented information from Enable that suggested Council defer any further investment sales or changes <i>redacted due to confidentiality</i> for the remainder of 2022, recommending a review via The Laurel Partnership in early 2023.
9	Operations Report
9.1	The council discussed at length the upcoming Membership Renewals, debating costs, retention, value for money, benefits and marketing.
9.2	Unanimous decision to retain membership renewal fee for 2023, with a Newly Qualified Discounted Rate <i>redacted due to confidentiality</i> for the first year and Affiliate rates to also receive a <i>redacted due to confidentiality</i> discount.
9.3	Black Letter and Operations to work with Chambers to increase affiliate membership.
9.4	CC confirmed the results of the Council Member ballot with 73 members voting overall. The two new council members to be appointed in November 22 will be Stephanie McBride and Amy Dunkley.
9.5	JR detailed his intention to place Amy on the PR-AM sub-committee with Stephanie assisting with Finance/Operations.
9.6	CC confirmed arrangements for Operations over the Christmas period with the Council approving the use of an ACL Christmas Logo (where appropriate).
9.7	To allow for full training and full analysis, the Council approved a delay in migrating the ACL finances to Xero from Sage until February 2023.
11	Any other business
11.1	The Council presented ICN with a small gift in appreciation of his commitment and contribution whilst serving on the ACL Council.
12	Date of next meeting
12.1	Next meeting scheduled for Thursday 18 <sup>th</sup> January 2023 – tbc but likely held at: Thompsons Solicitors, 60 Church Street, Birmingham, B3 2DJ Time tbc There being no further business the meeting ended at 21:00

## Board report

### Review of the 2023 practising certificates renewal process

18 January 2023

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#### Overview

This was the third year of using the online renewal system. The system has been refined each year on the basis of experience.

- The process went very smoothly overall, the move from Fee Notes to invoices (including an invoice number and organisation name and address), and the system calculation of fee remission following maternity leave saved a lot of administration time.
- The only significant unresolved issue is the reliability of emails to all CLs being delivered to their inboxes. (With email processing systems within firms and en route set up to prevent spam this supposedly simple task is significantly harder than I could have ever imagined!) We had an additional significant issue with the email sending system which meant that about 80 CLs did not receive their invitation to renew on 1 November. These were sent on Friday 4 November, thanks to the support of our IT consultant. Identifying the cause of the problem with our bulk email sending provider took considerably more time. Ultimately the issue was resolved, but the experience led us to conclude that an email sending system geared to large scale marketing was no longer appropriate for mailings to all CLs and an alternative must be sourced.
- The additional questions on the application form allowed us to collect the data required to be compliant with the LSB's Statement of policy on consumer outcomes. The old style Register of Costs Lawyers was updated before the end of the first working day in January, and the new Register went live the following day, Wednesday 4 January.

#### Statistics

##### Regulated numbers on 1 January 2023

- There were 699 CLs on the Register on 31 December 2022.
- 661 of these renewed their practising certificate for 2023.
- 2 other CLs reinstated from 1 January 2023.
- **There were 663 regulated Costs Lawyers at the start of the 2023 practising year.**

*Note: The statistics in this report exclude one very late renewal application submitted on 11 January. (4 other reinstatement applications are pending. 19 first practising certificate applications were sent to new qualifiers on 12 January.)*

## Renewal numbers before and after the 30 November deadline

Regulated numbers (Previous year in brackets)	Renewals/reinstatements/ new qualifiers	Terminations	Total
By end Nov <sup>1</sup>	640 (632)	26 (14)	666 (646)
By end Dec	652 (655)	30 (24)	682 (679)
At end of process	663 (674)	38 (31)	701 (705)

**Table 1: Renewal numbers by date**

## Renewals

	Parental Fee Remission	CPD Remission	CPD Dispensation	Hard copy PC request	Hard copy application	Late payment (new stat this year)
2023 PC App	14	24	0	21	0	80
2022 PC App	14	36	2	15	2	90
2021 PC App	5	47	4	16	1.5	64

**Table 2: Renewals data**

CPD Remission	Furlough	Newly qualified	Reinstatement	Parental leave	Sick leave
2023 PC App		4	1	18	2
2022 PC App	2	4	6	20	4
2021 PC App	12	13	3	16	3

**Table 3: CPD remission breakdown**

## Terminations

Terminations	2022	2021	2020	2019	2018	2017	2016
Total	38	33	32	47	58	61	43

**Table 4: termination numbers**

Termination reasons	COVID related	Retirement	Left profession	Parental leave	Other	Not known	No response
31.12.2022		4	6	6	12	1	9
31.12.2021		4	3	6	11		8
31.12.2000	7	2	4	5	7	2	5

**Table 5: Termination reasons**

Terminations for other reasons at the end of 2022:

- Unemployment – 1
- Ill health – 2
- Don't need a practising certificate to do legal aid work – 2
- Career break – 6

<sup>1</sup> Renewals complete or received in part.

To help us better understand Costs Lawyers' experience of the profession and why they leave since 2022 we have invited (most) Costs Lawyers not renewing their practising certificate to complete an exit survey. The responses from the survey sent in January 2023 are included as Appendix 1.

Issues of particular note for the Board are a number of CLs working in legal aid choosing not to renew, and a range of issues around the issue of "voluntary" regulation.

### Other data

Other data collected from the practising certificate applications is reported in the *Costs Lawyer Profession in 2022* report.

Appendix 2 sets out the feedback provided in the free text box that we incorporated into the PC renewal form, inviting Costs Lawyers to say why they consider the CLSB to be an effective or ineffective regulator.

Below some information about new data, collected for the first time, is provided for the information of the Board.

### CPD points gained in 2022

For the first time this year we have captured in the database the total number of CPD points reported by CLs. This should be viewed with some caution as there is no requirement to report CPD in excess of the minimum 12 points required – although many clearly do.

Excluding CLs who had CPD remission due to not working for a full year, the following CPD points were reported:

12	12.1-19.9	20-30.9	31-50.9	51-100	Total
96	447	73	17	4	637
15.1%	70.2%	11.5%	2.7%	0.6%	100%

**Table 6: CPD points**

The table shows that almost 85% of CLs do more than the prescribed minimum amount of CPD.

### Additional organisations

Of the 663 CLs currently regulated 13 work in an additional organisation as well as their primary practice. 2 of these 13 work in two additional organisations. These are all now shown on the Register of Costs Lawyers.

### Practice areas

To comply with the LSB's [Statement of policy on empowering consumers](#) we requested information from Costs Lawyers about their areas of practice for the first time. The table below shows the number and percentage of the 663 Costs Lawyers currently regulated that offer services in each area.

Practice areas	Number of Costs Lawyers	Percentage of Costs Lawyers
Costs management and budgeting	595	90%
Litigation funding	267	40%
Personal injury or clinical negligence disputes	488	74%
Insolvency disputes	100	15%
International disputes	146	22%
Solicitor/client disputes	387	58%
Other civil litigation or ADR	376	57%

Court of protection	225	34%
Family	101	15%
Crime	30	5%
Probate	71	11%
Legal aid	169	25%
Public sector	95	14%
Tribunals	121	18%
Higher courts	215	32%
Litigants in person	150	23%
Practice management	142	21%
Other	387	58%

**Table 7: Practice areas**

The Register of Costs Lawyers now allows users to search on these practice areas.

There were discrepancies between CLs who listed “litigants in person” as an area of practice, and those who said they provided services to consumers. Excluding CLs working in an SRA regulated firm:

- 95 listed litigants in person as an area of practice.
- 67 said they accepted instructions from litigants in person.
- The overlap was only 47.

#### Provision of services to consumers

Understanding what proportion of Costs Lawyers provide services to consumers, and for those who do what proportion of their work it makes up, will inform how the CLSB addresses new LSB requirements on regulators to protect consumers. We therefore asked these questions for the first time in the 2023 practising certificate application form.

Of the 661 Costs Lawyers renewing their practising certificate for 2023 66 (10%) provide or market services to consumers. The percentage of their workload they expect to come from direct consumer instructions in 2023 is 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

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.

## Diversity

As in previous years we asked CLs to complete a diversity survey on submission of their application for a practising certificate. This year's survey looked at social mobility in the profession.

We had 258 responses, a 39% response rate. Results of the survey will be reported separately.

## Updated assessment of the online renewals process against the five key metrics (cost, resource implications, user feedback, data security, data quality)

### Metric 1: Cost

As in 2021 the additional cost of running online renewals in 2022 was about £125 – for additional server capacity for the period and a temporary upgrade to our bulk email sending system. By way of comparison the cost of paper renewals in 2019 was £7330.

It is worth noting that the postal strikes would have made paper renewals almost impossible this year.

We spent more significant sums on adding functionality to the system in 2022, notably:

- £1925 on adding contact history, complaints procedure audit data, moving from a Fee Note to an invoice (to assist the financial processes in large firms) and automatic calculation of fee remission.
- £4875 on developing a new Register of Costs Lawyers and the required associated changes to the database to comply with the LSB's Statement of policy on empowering consumers.

The total development cost is therefore less than the costs of running the renewals process on paper by post, and has resulted in significant on-going enhancements, additional data capture and reduction of administration time.

### Metric 2: Resource implications

Moving from Fee Notes to invoices, and automating the calculation of fee remission saved considerable time.

Whilst I didn't work many fewer hours in November-December 2022 than in December 2021, this is only because I was also working with our IT consultant and bulk email sending provider on resolving the email issues noted earlier in the report, and then specifying a new email sending system. In the past it would not have been possible to work on such a significant project alongside renewals.

### Metric 3: User experience

All CLs used the online system this year (we had 2 by post in the previous 2 years). The vast majority had no difficulty, only one CL lost the data they had input due to leaving the form for several days. Reliability of email delivery to inboxes is now the single biggest issue, and will be largely resolved by implementation of our new email sending system (although invoices will initially continue to be sent out by our current email sending system).

### Metric 4: Data security

To overcome the problems of CLs losing data during completion of the application (which affected 2-3 people last year) the time data is stored on the local PC when there is no data entry was increased from 20 minutes to 4 hours. Instead we implemented a button which CLs can use to clear personal data if they need to leave a shared or public PC before the form is ready to complete.

## Metric 5: Data quality

The wording of the application forms was adjusted to try and capture more alternate email addresses (used to contact CLs who move firm without providing a new email address). This worked in part but many CLs providing only a work email address still ticked the box to say it was a personal one!

Data quality is only as good as the information provided. At least 25 CLs only advised of a change of firm earlier in the year on their application.

Data quality is now as robust as we can make it, and the focus this year was more on capturing a wider range of useful information (for example whether CLs work for consumers, their practice areas, and additional organisations worked in).

## Major technical developments scheduled for 2023

### 1. Email sending system

As noted above we have concluded our current bulk email sending system is not fit for purpose. When we chose it, it was on the basis of being the “least bad” option. We need a system which ensures as close to 100% delivery of a (relatively) small number of regulatory emails (as opposed to a reasonable hit rate on a huge number of marketing emails). In November after the problems we had we consulted other small legal regulators and ACL, none of whom have a better system. An extensive search showed there is no better product available on the market. However, by tailoring a new Microsoft product (Graph) our IT consultant is developing a bespoke email sending system for us which will send bulk emails individually (to avoid spam filters) and retain the functionality required to send the link to practising certificate applications. Work on the new system is already well underway.

### 2. Complete standardisation of wording and format of application forms.

### 3. Invoice refinement

- a. Having moved to an invoice system this year, we now need to refine this a little – showing the date that applications are sent out, as well as the date applications are made (so finance teams understand why late applications require prompt payment).
- b. Moving the (automated) sending of invoices from our current email sending system to the new email sending system.

Jacqui Connelly  
18 January 2022



## Appendix 1 – Feedback from CLSB exit survey

In January 2023 we invited 27 CLs who had not renewed their practising certificate for 2023 to complete our exit survey. We received 12 responses.

- a. Five CLs reported that they are not leaving the profession, just stopping being regulated. Two of these work exclusively in legal aid, and gave these comments:
  - *I am not leaving the Costs profession, I am simply renouncing my title of Costs Lawyer. I derive no benefit from being a "Costs Lawyer" for the purpose of the work I do for my clients who I have now worked for for over 25 years. The time and cost of being called a Costs Lawyer is far outweighed by any benefit it gives me. I only work one or two days a week and if I need to go into court, I can do it as an agent for the Solicitor. I still carry PII and still have a very reputable reputation in my locality.*
  - *Most legal aid practices are not that bothered if you are a costs lawyer or not, experience in legal aid was what appear to most to be important.*Another responded:
  - *Despite being a member for 30 years, being regulated has never been of assistance to me and no one cares if I leave, despite my experience and clean bill of health over the years when it comes to my loyalty. I still have to jump through hoops that I do not have the time to do as I continue to work less hours.*
- b. Over half of those responding (7) did not expect to return to costs law in future, and only two definitely expected to return.
- c. Half of those responding (6) said that the workload was quite or very significant in their decision to leave the profession. There were no other individual issues which had a significant overall impact, although 3 respondents noted that regulatory requirements were very significant in their decision.
- d. No respondent reported that equality or diversity issues were significant in their decision.
- e. The best things reported about being a CL included recognition, status & right of audience; flexibility, independence & variety; as well as:
  - *Becoming a regulated professional after spending many years as an unqualified unregulated costs draftsman*
  - *...equality of arms with men (or is that merely an illusion?)*
  - *"Costs" is the profession, and it's driven mainly by experience and reputation when you are a sole trader, not whether you are a member of an elite society who calls themselves a fancy name. I liked being able to do my work without having the added competition from Barristers who were less qualified or experienced.*
- f. The worst things reported about being a CL included budgets ("don't serve their purpose"), deadlines, workload (several respondents), CPD requirements, doesn't fit personal values. There were also the following comments:
  - *The denigration by solicitors, being over-ridden by judges in favour of non-costs-knowledgeable counsel, unqualified/unregulated costs draftsmen being allowed to conduct cases and attend hearings on equal terms with costs lawyers, aggression*

*and blatant lying by members of the legal profession - "certificate of accuracy" - my foot! Smoke and mirrors over funding and other pertinent enquiries relevant to the paying party, lay clients being ripped off by lawyers.*

- *The profession is too elite without warrant, especially as many new ones now do not even perform advocacy. I find it difficult to comprehend how can they cost or attack bills without this experience.*
- *... the toxic environment/culture that seems to be common across the legal profession. The lack of job satisfaction; it's all about profit margins and screwing the opponent*

g. Ideas for how CLs might be supported to stay in the profession included:

- *Promote more of a caring culture, as opposed to profit driven. Bear the mental wellness of employees in mind.*
- *Other areas of work where transferable skills can be used should be promoted eg mediation. This is going to become very important with the reduction of legal aid work and the increase in fixed costs.*
- *Recognise the skills & experience of legal aid only draftsman rather than the sole focus being on civil work.*
- *More opportunities to diversify to work across all aspects of the legal profession without being restricted to costs-only roles.*
- *Stop it feeling like a dirty job?*

h. 9 out of the 12 respondents thought CLSB was an effective regulator. One of these commented:

- *The CLSB has always been responsive to any queries I've had. Also, it has much helped in raising the profile of costs lawyers as a regulated profession that can be relied on.*

The 3 who did not think CLSB was effective explained:

- *If you are doing legal aid work, I do not think that CLSB can really play an effective role, if you are only undertaking work with the Legal Aid Agency.*
- *There should be 1 regulator for all the legal professions. Also, it was never really clear what the CLSB did in order to justify the fees charged.*
- *One size does not fit all when it comes to the many facets of a Costs Professionals many roles.*

## Appendix 2 – Feedback from PC applications about the CLSB's effectiveness

Below is a verbatim read-out of comments made in the free text box that we have incorporated into the PC renewal form, inviting Costs Lawyers to give feedback about why they consider the CLSB to be an effective or ineffective regulator.

- CLSB has always provided helpful updates as to their role and how they intend to deal with the ever-evolving legal climate.
- CLSB is appropriately 'light-touch' yet thoroughly professional and astute in keeping those it regulates up to date and informed
- Efficient and reasonably priced
- Excellent communications and very efficient when dealing with queries.
- Helpful guidance notes referenced, but not needed to refer to regulator generally.
- I have been involved with costs 39 years, was a member of the ALCD/ACL, and served for 7 years on the ALCD/ACL Council the formation of the CLSB is by far the most important step taken to achieve judicial recognition of the profession and the monitoring of its members has become much more professional in recent years
- I have no reason to suggest otherwise.
- I have only experienced a complaint against me for the first time this year. Although the complaint had no merit, and in my view was a malicious attempt to seek and advantage in litigation, I was swiftly contacted. The complaint against me was properly considered and my response was scrutinised.
- I think that the thought that has gone in to making obtaining CPD more relevant to individual practitioners shows an understanding of the work of, and demands on, Costs Lawyers. I am gradually changing the areas in which I work (hence spending time studying S & O/C and Protected Parties) and the flexibility of the current CPD system has allowed me to target my studies and attendances to what I actually need rather than what is available.
- Interactive with CLs whilst also responsive to requirements of Legal Services Board
- I've never needed CLSB to step in on anything so I cannot say.
- Maintains regulation within the profession to ensure consistent good practice across the board.
- Practising fee held to reasonable level and striking a balance on regulatory need and pragmatic factors.
- They have given me no reason to complain.