

Company number: 04608905

MINUTES
Costs Lawyer Standards Board Ltd
Thursday 19 May 2022 at 10:30 am
Remotely by videoconference

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| Board: | Rt Hon David Heath CBE | Lay NED (Chair) |
| | Stephanie McIntosh | Lay NED (Vice-Chair) |
| | Andrew Harvey | Lay NED |
| | Paul McCarthy | Non-Lay NED |
| | Andrew McAulay | Non-Lay NED |
| In attendance: | Kate Wellington | CEO and Company Secretary |
| | Jacqui Connelly | Director of Operations |
| | Heather Clayton | Director of Policy (Item 7.1) |
| | Jack Ridgway | ACL (Item 1.3) |
| | Sarah Hutchinson | ACL Training (Item 3.2) |
| | Kirsty Allison | ACL Training (Item 3.2) |

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.

1.3 Meet and greet with incoming ACL Chair

David welcomed Jack to the meeting and congratulated him on his recent appointment as Chair of ACL. Following introductions, Jack gave the board an overview of his plans and aspirations for his tenure. Board members had been provided with a copy of the new ACL Business Plan by way of background, and commented that it was very helpful to see ACL's values and vision set down in writing. The focus for the coming year would be to: ensure ACL has a sound understanding of what its members want; stabilise and modernise the back office function; and focus on activities that promote the values in the Business Plan, particularly diversity.

Jack noted that ACL was keen to collaborate closely with the CLSB where this was permitted by the LSB's Internal Governance Rules, and to ensure each organisation had sight of what the other was doing and why. The board agreed and discussed with Jack potential areas for collaboration, including in reshaping the Costs Lawyer Qualification, diversity (particularly social mobility), potential chartered status for ACL, and Costs Lawyers taking on judicial roles.

David thanked Jack for his time and emphasised that that the CLSB was keen to continue an open dialogue throughout his tenure.

2. MINUTES

2.1 Minutes dated 2 February 2022

The board considered the minutes of its last scheduled quarterly meeting on 2 February 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 2 February 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: Q1 2022

The board was provided with a progress update against the 2022 Business Plan. Kate noted that four priorities had been achieved during Q1, with many more underway. Board members asked about activities against priority 9 (diversity) and priority 2 (Costs Lawyer Qualification), and Kate provided further details.

The board discussed timings for finalising the new Accredited Study Provider Handbook and associated documents under priority 2. Kate explained that the Handbook would come back to the board in July for approval. She would aim to also have draft Training Rules available at that stage and, in the best case scenario, a draft consultation document, however this would be a stretch. The board agreed that the draft consultation could be considered by correspondence in Q3.

3.2 Roundtable discussion with ACL Training

Kirsty joined the meeting for this item. Sarah was detained in another meeting.

The board was provided with a report setting out the results of an ACL Training (ACLT) survey designed to gather views on the current structure and content of the Costs Lawyer Qualification. Kirsty took the board through highlights from the survey results as well as several roundtables held by ACLT. She noted that, based on the responses, ACLT was leaning away from a complete redesign of the course and focusing instead on improving what was already there. Board members asked questions about several survey findings and were pleased to see that there had been a decent number of responses from unregulated persons who were prospective purchasers of the course in the future.

Kirsty outlined next steps on ACLT's side, including the intention to take a core proposal to the ACLT board – with a draft course structure and indicative pricing – at its next meeting on 29 June. A key aim was to design a pathway that could be more flexible in terms of timing, while retaining the current credit value. Following that meeting, timing would depend on the CLSB's work, including the consultation outcome and subsequent rule change application to the LSB.

Kirsty highlighted some other improvements that had been made at ACLT, including moving the registry function to a new provider, looking at business development opportunities, business planning, and implementation of the approved governance

changes. The board discussed various issues with Kirsty, such as how the new structure was working from her perspective, how the design of the course could impact on diversity, and how work experience should be taken into account.

David thanked Kirsty for her time and reiterated the importance of ACLT and the CLSB working in parallel on the course for the benefit of the profession and its clients.

Sarah joined the meeting at the end of this item, introduced herself to board members and apologised for being detained on other matters. She thanked the CLSB board and executive for their open and collaborative approach, which helped ACLT take the CLSB's proposals into account in its own thinking.

4. BOARD MATTERS

4.1 Annual declaration of interests

David introduced this item and asked board members whether they considered any risk of a real or perceived conflict of interests to arise from the consolidated register of interests. It was agreed that no such risk arose.

The board discussed whether and how the register should be published. In the interests of transparency and accountability, the board agreed that the register should be published both in the board pack and on the CLSB's website.

Action: Publish consolidated register of interests on website.

4.2 Scheduled review of staff working arrangements

At its October meeting, the board agreed to the CEO working from Australia, with the arrangement to be reviewed after six months to ensure it remained suitable for everyone. David sought feedback from board members and the executive, all of which supported the ongoing suitability of the arrangement, and the board agreed to its continuation. David noted that Kate had raised an issue in relation to national insurance contributions arising from her residency. This would be considered at the first meeting of the Remuneration Committee, scheduled for June.

5. FINANCE

5.1 Quarterly report: Q1 2022

Jacqui introduced the quarterly finance report. She noted that the current projection was for a surplus, attributable to higher than expected income levels, with spending largely as predicted. The surplus would be allocated to new workstreams that had arisen since the budget was drafted, so it remained likely that the year-end position would be balanced.

The board noted the financial position in the report. Board members discussed the amount in the committed reserves account and agreed this accorded with the approach set out in the Reserves Policy.

6. RISK MANAGEMENT

6.1 Review of risk registers

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

The board considered risk OP6 (*breakdown in communication between any of ACL, ACLT and CLSB*), particularly whether the positive recent developments within ACL and ACLT meant that the probability rating should be downgraded. It was agreed that the improved relationships should be given time to bed in, and OP6 would be reviewed again next quarter.

The board discussed whether there was still a risk that the tail-end of the covid-19 pandemic would impact risk OP1 (*more leave than enter the profession*). Kate provided the board with the most recent data on this issue and the board discussed the general state of the legal market post-pandemic as well as the impact in other parts of the profession. Paul and Andrew provided observations on the Costs Lawyer market from their own experience, and commented on the likely impact of the MoJ's new implementation date for extension of the fixed costs regime (April 2023). It was also noted that numerous Costs Lawyers were moving into roles in organisations based a long way from their residential address, suggesting that the pandemic had made the workforce more virtually mobile. Overall, it was agreed that the threat from covid-19 recorded under OP1 had now passed, and OP1 should be updated to reflect this. If new risks arose from long-term impacts of covid-19, these could be dealt with afresh.

The board agreed to:

- update the evidence of risk OP1 to reflect the de-escalated risk from covid-19;
- update the controls for risk OP2 (*CLSB's size means business continuity cannot be assured*) to reflect the risk costing exercise undertaken when updating the Reserves Policy;
- update the controls for risk OP4 (*ACL becomes insolvent*) to reflect the forward-looking measures in the new ACL Business Plan.

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

Stephanie dropped out of the meeting at this point due to technical difficulties and could not reconnect before the meeting ended.

6.2 Compliance with government sanctions on Russia

Kate introduced this item. She explained that the MoJ had become increasingly interested in how the legal regulators were monitoring compliance with the Russian sanctions amongst their regulated communities, to protect both the effectiveness of the sanctions regime and the reputation of the UK's legal sector. She explained the approach that the CLSB had been taking, including that:

- based on the CLSB's data, it was believed that the risk of Costs Lawyers acting for sanctioned clients directly was extremely low; and
- since Costs Lawyers were not permitted to handle client money, there was negligible risk of Costs Lawyers inadvertently diverting or laundering the assets of sanctioned parties.

Kate noted that the CLSB had been cooperating with the LSB and MoJ, and had pledged to support any sector-wide efforts. The board was provided with correspondence between the CLSB and the Lord Chancellor, which summarised the MoJ's expectations and the CLSB's responses.

The board agreed that the approach struck the right balance based on the risk profile of the Costs Lawyer community.

7. REGULATORY MATTERS

7.1 Innovation project report

The board was provided with the final report for the research project entitled *How could Costs Lawyers reduce the cost of legal services?* (funded by the Regulators' Pioneer Fund (RPF)), along with a cover paper explaining key findings and proposed next steps. Heather introduced the report and confirmed that all obligations attaching to the funding had been met and the project had been completed on time and within budget. She thanked consultancy Hook Tangaza for their hard work on the project.

There were three remaining workstreams:

- The project had been chosen for evaluation by RPF, which would be a useful process, and Heather was working on this with colleagues at BEIS.
- The report would be published after key stakeholders had advanced sight of the findings.
- A session would be curated at the July board meeting for board members to consider the strategic questions raised by the report.

The board discussed the key messages outlined in the cover paper. It was noted that some findings were as expected, while others were surprising, particularly the extremely low volume of work undertaken by Costs Lawyers for individual clients. The regulatory model adopted by the CLSB should reflect this, and thus the findings provided an important opportunity to pause, reflect, and think creatively about what kind of regulator the CLSB should be going forward.

The board then discussed plans for publication of the report and made suggestions for involving key stakeholders, headlines to draw out, and framing for the press. Heather agreed to pick up with Andrew H on communications, and David offered his availability for follow-up press work if needed.

Action: Carry out final workstreams on project; Work up materials for July strategy session

7.2 Complaint triage process

Kate explained that, in line with priority 4 in the 2022 Business Plan, a review of the CLSB's new Disciplinary Rules and Procedures (DR&P) had been carried out. A report setting out recommendations for tweaks to the DR&P would be brought to the board in July, with a rule change application to follow.

The review also identified a need for a documented, step-by-step triage process for inbound complaints made to the CLSB about Costs Lawyers. A proposed process document was provided to the board for consideration. Kate explained that the triage process would:

- improve transparency and consistency around handling inbound complaints;

- ensure that early-stage decisions – particularly in relation to the CLSB’s jurisdiction to investigate complaints – were properly documented and recorded;
- allow the CLSB to better capture and analyse data on early-stage complaints;
- promote business continuity, by ensuring each role in the triage process can be undertaken by more than one person (to accommodate sickness, holidays and capacity, given the unpredictable timing of inbound complaints).

Kate noted that additional resource for disciplinary matters had also been secured on a flexible basis.

The board considered the proposal. Board members asked about use of the term “professional conduct” and discussed whether and how conduct in an individual’s personal life (such as criminal convictions) were taken into account in the disciplinary process. Kate noted that the DR&P review would make one recommendation for change to the CLSB’s policy statement on enforcement and sanctions in relation to this issue. In addition, a sector-wide statement on taking disciplinary action against counter-inclusive behaviour (to which the CLSB was a signatory) would also be published soon. The board approved the triage process for adoption.

Action: Adopt triage process into Internal Handbook; Bring report on review of the DR&P to the board in July.

7.3 Costs Lawyer profession in 2021

The board noted the trends identified in the latest annual report compiling statistics about the Costs Lawyer profession in 2021, which were mainly derived from the “regulatory return” data collected as part of practising certificate renewals.

8. LEGAL SERVICES BOARD (LSB)

8.1 Continuing competence

The board was provided with the CLSB’s response to the LSB’s recent consultation on a draft policy statement to implement the findings of its work on continuing competence. Kate drew out key elements of the response and shared feedback from conversations with the LSB and other regulators. She indicated several areas where, if the policy statement was not changed following consultation, the CLSB would need to devote resource in order to comply.

The board discussed the response and the overlap between the CLSB’s views and those of others. Likely consultation outcomes and timings were considered, and the board noted the resource that would likely be needed.

8.2 Policy statement on empowering consumers

The board considered the final published version of the LSB’s policy statement on empowering consumers. Kate explained that the CLSB was working with other regulators to look for opportunities to collaborate on implementation. There was no implementation period specified in the statement, and the LSB had not said by when it expected all regulators to comply.

One area that warranted early attention was paragraph 23 of the policy statement, which necessitated changes to the online Register of Costs Lawyers, since that work would have a lead time and incur development costs. The board was provided with a proposed action plan for implementing paragraph 23, which included an assessment of the CLSB's current level of compliance, planned changes, and additional (optional) improvements that could be made now or in the future.

The board discussed opportunities for collaborating with others on amending the Register and Kate provided background to the MTCOG task and finish group that was looking at this issue, noting the complexities involved and likely timescales. It was agreed that any opportunity to collaborate in order to reduce cost and improve consistency for consumers should be seized, but that the CLSB's plans should not be delayed.

The board approved the action plan and noted the additional development costs required.

Action: Implement action plan.

8.3 Other consultations

The board received updates in relation to recent LSB consultations (and the CLSB's engagement with them) on:

- the LSB's 2022/23 business plan and budget;
- a new regulatory performance framework.

9 STAKEHOLDER UPDATES

9.1 ACL Council meeting minutes

The board noted the minutes of ACL Council meetings held in December 2021 and January, February and March 2022. Kate flagged a continuity risk arising from the February minutes, relating to the resignation of Council members. This could have an impact in the area of policy affairs in particular. Kate would pick up with ACL on how policy matters would be staffed going forward once Jack had settled in.

9.2 Work updates

The board was updated on the Legal Ombudsman's consultation on its budget and workplan and board members were provided with a letter setting out how the scheme had addressed consultation feedback in shaping its final proposals.

10 OPERATIONAL MATTERS

10.1 2021 CPD audit outcomes

The board received a report of the recent audit of 2021 CPD records. Jacqui introduced the report, noting that this was the first audit under the new CPD regime implemented in 2021, and explained the benefits that had been gained from the new approach. For example, the audit provided the CLSB with insights into how the nature of Costs Lawyers' work was changing and how practitioners thought about professionalism. The board was pleased to see a high level of engagement with the new regime from practitioners, as well as steps that had been taken to communicate learnings from the audit back to the wider regulated community.

10.2 New exit survey

The board was provided with a copy of a new exit survey that had been trialled in Q1. This was designed to help the CLSB better understand Costs Lawyers' experience of the profession, why they leave, and the role that regulation plays in their decisions.

Anecdotal evidence from survey responses was summarised for the board. Board members discussed how the survey was presented and response rates to date. Jacqui noted that the exit survey had been trialled following the last practising certificate renewal round and that it would be sent out earlier in the next round to improve the response rate further.

11 PUBLICATION

11.1 Confirmation that papers can be published

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

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

12 AOB

There was no other business.

13 NEXT SCHEDULED QUARTERLY MEETING

The next meeting was scheduled for 20 July 2022 in London. Jacqui updated the board on joining arrangements. The board agreed that the meeting should begin at 9:30am.

There being no further business, the Chair declared the meeting closed at 12:42.

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Chair

Related documents

| Item | Document | Publication location (CLSB website) |
|------|--|-------------------------------------|
| 2.1 | Board minutes (2 February 2022) | About ⇒ Our board |
| 4.1 | Consolidated register of interests | About ⇒ Our board |
| 6.1 | Risk registers | About ⇒ Strategy and governance |
| 6.2 | Information about Russian sanctions | CLSB website here |
| 7.1 | Innovation project webpage | CLSB website here |
| 7.3 | Costs Lawyer profession in 2021 report | CLSB website here |
| 8.1 | Response to LSB continuing competence consultation | Regulatory ⇒ Consultations |

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|-------------|---|-------------------------------------|
| 10.1 | Lessons learned from CPD audit | CLSB website here |
| 11.1 | Board papers | About ⇒ Our board |
| Item | Document | Publication location (other) |
| 1.3 | ACL Business Plan | ACL website here |
| 8.2 | LSB response to its consultation on empowering consumers | LSB website here |
| 8.3 | LSB consultations on business plan and regulatory performance framework | LSB website here |