

Company number: 04608905

MINUTES
Costs Lawyer Standards Board Ltd
Wednesday 19 October 2022 at 10:30 am
Remotely via Teams

Board:	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
In attendance:	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 milage 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 milage 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 here
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 here