

Company number: 04608905

**MINUTES**  
**Costs Lawyer Standards Board Ltd**  
**Tuesday 20 October 2020 at 10.30 am**  
**Remotely by videoconference**

**Present:** Steve Winfield (Chair): Lay NED  
Stephanie McIntosh (Vice Chair): Lay NED  
Paul McCarthy: Non-Lay NED  
Andrew Harvey: Lay NED  
Andrew McAulay: Non-Lay NED

**In attendance:** Kate Wellington (Company Secretary and CEO)  
Jacqui Connelly (Administration Manager) (for items 1 to 5, 7.3 and 10)

**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 21 July 2020**

The board considered the minutes of its last scheduled quarterly meeting on 21 July 2020. 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 21 July 2020. 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**

The board was provided with a progress update against the 2020 Business Plan, including a summary of activity to the end of Q3 and a RAG rating of each priority in the plan. Kate noted that a further five priorities had been achieved in Q3, leaving five priorities remaining for completion by year end.

The board discussed whether it remained feasible to achieve item 10, relating to collaborating with ACL to capture data. The intention had been to do this through large-scale ACL events – particularly the annual conferences – attended by a significant proportion of the profession, giving representative data from across the market. Due to COVID-19, the ACL conferences had been cancelled. The board agreed to mark this item as “deprioritised / delayed” with the intention of returning to it once the impact of coronavirus lessened, hopefully in 2021.

Kate confirmed that all other Business Plan priorities were on track for completion by year end.

### **3.2 Education and competency**

Kate provided the board with details of various developments relating to education, including:

- ongoing collaboration with ACL Training to develop a refreshed audit framework for the Costs Lawyer Qualification, for use in 2020 and beyond;
- likely student numbers for the course in 2021, noting that these numbers might be insufficient to warrant an intake of new students;
- governance and viability issues relating to the course that had been raised by ACL in recent discussions;
- new data showing how the size of the regulated community has changed over time, demonstrating the impact of new qualifiers on overall numbers;
- potential options and opportunities arising out of the above.

The board discussed these issues in detail. Board members supported the refreshed approach to audit, including the possibility of accrediting the course for three to five years subject to annual reporting on targeted matters. Board members noted the risk of changes being made to the course during the period of accreditation without CLSB approval and agreed that the framework should make the scope of accreditation as clear as possible. While it was not yet known whether ACL would accept new students onto the course in 2021, the board agreed that the audit should go ahead as planned to safeguard existing students and assess any threats to successful delivery.

The board referred to a roundtable that took place with ACL and ACL Training in August 2019 at which the future of the course had been discussed. Board members noted that significant progress had been made on some issues raised at the roundtable, while less progress had been made on others, particularly marketing the course. The board discussed the division of responsibilities relating to education – including communicating with students, the profession and the public – as between ACL, ACL Training and the CLSB.

The board considered potential risks to the long term future of the course that were presented by the governance and viability issues reported by ACL. Board members agreed there was scope for ACL to adjust the way it took on students in future, for example by having an intake every second year, but this should be communicated clearly and upfront, to give certainty to prospective applicants. The board discussed the risks associated with a rigid intake structure, including students finding other avenues to qualification, and considered how those risks might be mitigated.

Board members discussed the perception of the course within the profession. The Non-Lay NEDs reported on their experience as employers and supervisors. The board considered potential sources of demand outside the profession, including law students and school graduates, and examined options for reaching those people.

Board members emphasised the vital importance of education in the maintenance of professional standards and trust in the profession. The board asked Kate to have further discussions with ACL about how it is addressing immediate and longer term issues with the course, and to liaise with any other stakeholders as appropriate, reporting back in January.

***Actions: Proceed with development of audit framework and conduct 2020 audit; Arrange further talks with ACL and others; List as an agenda item for further discussion in January 2021.***

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

##### **4.1 Chair recruitment update**

Kate updated the board on recruitment for the new Chair. She noted the advertising channels that had been selected to attract high quality candidates from a variety of backgrounds. Applicants had been asked to complete a diversity survey to help monitor the breadth of the search and inform future campaigns.

The board noted that the campaign had attracted a good selection of candidates to date and that applications closed on 1 November 2020. Kate reminded the board that she would be in touch about forming interview panels in due course.

***Action: Finalise recruitment and appointment process with the aim of the incoming Chair attending the January board meeting.***

##### **4.2 Reappointments**

Four reappointments were considered in line with the Board Appointment Rules, namely:

- Stephanie – reappointment from 4 December 2020 for a period of three years;
- Paul – reappointment from 25 January 2021 for a period of three years;
- Andrew H and Andrew M – reappointment from 23 January 2021 for a period of two years.

The board dealt with all the reappointments, even though some would not take effect until after the next board meeting, because there would be insufficient time to recruit an alternative if any director was not reappointed at the January meeting.

The directors confirmed their ongoing eligibility and desire to seek reappointment. Each reappointment was discussed without the input of the relevant individual. The remaining board members unanimously confirmed each reappointment.

***Actions: Issue letters of reappointment on the terms agreed; Update governance schedules and registers of interests.***

#### **5. FINANCE**

##### **5.1 Quarterly report: Q3 2020**

Jacqui introduced the quarterly finance report. The board considered the financial position at the end of Q3 and noted the projected underspend.

The board affirmed its intention to transfer at least £10,000 to reserves, in accordance with the budget provision, and noted that it might be appropriate to make a higher contribution (in line with the Reserves Policy) at year end.

In light of the projected surplus, the board discussed a proposal to expand the executive team by recruiting a dedicated policy manager, with a particular focus on (i) equality, diversity and inclusion (ii) building the CLSB's evidence base, including by delivering the Consumer Engagement Strategy, and (iii) enforcement strategy and delivery. These areas were aligned to key priorities in the 2021 Business Plan. Kate put forward options in relation to salary, working arrangements and tenure for the board's consideration.

The board supported the proposal, feeling that additional resource would accelerate change and help the CLSB meet the LSB's performance expectations in these specific areas. Board members felt this could be an exciting proposition for the right candidate and were optimistic the role would attract high-calibre applicants, especially in the current job market where employees were rethinking their ways of working. To that end, the board agreed the role should be advertised on a flexible basis in terms of days and working arrangements. The board agreed a title of "Director of Policy", which could encompass enforcement and supervision functions as necessary.

The board was confident that the position could be funded on an ongoing basis, but was also mindful that the scope of the role addressed a current business need which might change over time. The board therefore agreed to offer the role as a 24-month contract, allowing the organisation to take stock after 18 months and reassess the support required at that time.

***Actions: Develop job spec and person description for Director of Policy role; Begin recruitment on agreed terms.***

## **5.2 Legal Choices funding update**

Steve introduced this item and reminded the board of previous discussions about funding for the Legal Choices website. In July, the board had considered the funding contribution sought from the CLSB, which represented around 2% of the total Legal Choices budget, and noted that the CLSB was being asked to make the same contribution as regulators that had significantly larger budgets. The board had expressed concerns about the disproportionate financial burden this placed on Costs Lawyers and had asked Kate to see what progress could be made on revisiting the funding model. Kate updated the board on discussions with the LSB, CLC and other members of the Legal Choices Governance Board (LCGB) during Q3.

The board noted that agreement had been reached by all members of the LCGB to (i) affirm their commitment to the Legal Choices project for three further years (ii) fund the next project year (2020/21) on the proposed terms and (iii) agree funding in principle for a further two years. In coming to this arrangement, the CLSB's concerns (along with the concerns of three other regulators) had been recognised and taken into account. Kate confirmed that she would continue to work constructively with the LCGB to ensure the CLSB's voice was heard and the project was able to proceed satisfactorily into the next phase.

Board members asked when the next round of usage figures for the Legal Choices website would be available. Kate confirmed that these were being prepared by the SRA for a LCGB meeting in November. Board members were keen to see usage data

relating specifically to costs issues and Kate noted that there might be scope to get more meaningful data from the project team during the next year of development.

### **5.3 Outcome of practising fee application**

Kate informed the board that the CLSB's application for the 2021 practising fee had been approved by the LSB. The board was provided with the LSB's decision letter, which set expectations for the year and rehearsed the LSB's concerns about the CLSB's overall level of resource and longer term viability. The board discussed the issues raised in the letter and agreed they mirrored the latest regulatory assessment and were not novel considerations.

The board also discussed a press article that had covered the decision, noting the supportive statement given by ACL in response and reflecting on stakeholder perception.

## **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 agreed to:

- update the controls around risk OP1 (*more leave than enter the profession*) to reflect opportunities from the Mayson report to pursue broader regulation of costs work and to remove superseded evidence of risk;
- increase the probability rating for OP3 (*insufficient numbers of new qualifiers such that regulated numbers fall to an unsustainable level*) from 2 to 3 and raise the priority rating from medium to high to reflect difficulties with the 2021 student intake;
- decrease the probability rating for OP4 (*ACL becomes insolvent*) and update the evidence and controls to reflect that there had been no recent suggestion of financial instability;
- increase the probability rating for OP6 (*communication breakdown with ACL/ACL Training*) and recouch it to incorporate the risk of communications breaking down between ACL and ACL Training inter se;
- update OP7 (*a no deal Brexit undermines regulatory structures*) to note that this risk would come to a head in Q4 2020;
- update the controls for R1 (*regulatory standards set by the CLSB do not achieve positive consumer outcomes*) to include the risk project in the 2021 Business Plan;
- update the controls for R2 (*Costs Lawyer accepts client money*) and increase the control adequacy rating from 3 to 4 to reflect implementation of new guidance;
- update the references to Legal Choices in R4 (*insufficient evidence about the consumer dimension of the Costs Lawyer market*);
- add a new regulatory risk, R5, in relation to diversity and inclusion.

The board also discussed whether OP5 (*failure to comply with data protection obligations*) remained a live risk, given the recent data audit and updated measures that were put in place as a consequence. The board concluded that OP5 should remain on the register given the intrinsic risk of a data breach or cyber attack. That risk should

be revisited over time to ensure controls remain adequate and to address any changes in the external data landscape.

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

## **6.2 Coronavirus**

The board discussed the ongoing impact of coronavirus on the profession and its clients. Paul and Andrew M provided feedback on the state of the market. Some redundancies were noted in firms that employed high volumes of staff to attend in-person hearings, particularly where this involved travel. Board members agreed that the next quarter would be significant for the profession and would determine whether new ways of working remained effective in further periods of lockdown.

The board discussed whether risk OP1 on the register (*more leave than enter the profession*) remained red in this context and agreed it did, at least for the next quarter.

The board considered when to conduct the next coronavirus impact survey. Board members felt there would be uncertainty during Q4, which could cause an over- or under-estimation of longer term impact. The board also noted that Costs Lawyers would be asked to engage with other important CLSB communications during Q4 – including the new practising certificate renewal process and launch of the new CPD regime – and did not want the survey to be overlooked. The board therefore agreed that the next survey should be conducted in Q1 2021. The precise timing and any additional questions would be agreed at the January 2021 board meeting, taking account of the situation at the time.

**Action: Include as agenda item for the January board meeting.**

## **7. REGULATORY MATTERS**

### **7.1 Guidance – final Handbook audit items**

Kate reminded the board that five guidance notes from the Costs Lawyer Handbook had been subject to routine review during Q2. All five notes required updating and specialist advice had been sought in relation to two of the notes. That advice was received during Q3, allowing the updates to be finalised.

The board considered and approved new guidance notes relating to:

- Referral arrangements and referral fees;
- Contingency retainers in contentious matters.

**Action: Update Handbook with approved guidance notes.**

### **7.2 Guidance – client money**

The board had considered issues relating to client money at its July meeting. It had agreed that a staged policy approach was appropriate for addressing existing evidence of potential consumer harm in this area. The first stage was to develop guidance on:

- safeguarding client assets for Costs Lawyers who practise in unregulated entities, linking this to existing obligations in the Code of Conduct; and
- the safe use of TPMAs as an alternative to handling client money.

This had been actioned during Q3 and draft guidance was put to the board for consideration.

The board agreed that the draft guidance delivered the policy intention. Board members felt the guidance note was practical and easy to follow, addressing the issues comprehensively by reference to the Code of Conduct, without straying beyond the CLSB's regulatory reach.

The board discussed the risk that the guidance could alert practitioners to ways of working that were legitimate but did not lead to the best possible consumer outcomes. The board concluded there was a greater risk from practitioners adopting such practices of their own accord, without having the benefit of guidance that would help them to do so safely and in accordance with their professional obligations.

The board reiterated its intention to assess the impact of the guidance over the coming year. If evidence from consumer complaints or practitioner feedback suggested that further intervention was warranted, the board would look at the issue again.

Kate recommended that deliberations on this issue be recorded in a Board Decision Note (BDN), in accordance with the Transparent Decisions Policy, given that deliberations had taken place across three board meetings in 2020. The board considered a draft BDN which had been prepared for that purpose and agreed it as a true record of the decision-making process.

***Actions: Update Handbook with approved guidance note; Publish Board Decision Note as agreed.***

### **7.3 CPD dispensation policy**

In July, the board had resolved to produce an operational policy for handling CPD dispensation requests in 2020, to ensure consistency of treatment in relation to coronavirus. The board considered draft dispensation guidelines prepared for that purpose.

Kate noted that the document was predominantly for internal use, as a decision-making framework, but included a proposed communication to Costs Lawyers. Kate also noted that the LSB had confirmed the guidelines did not change the CLSB's regulatory arrangements and thus did not require a rule change application.

The board considered whether, as per paragraph 16 of the draft guidelines, the CLSB would in all cases expect Costs Lawyers to have avoided work entirely during a period of leave to benefit from the exemption in CPD Rule 1.4. Board members discussed the terms of the government's furlough schemes, as well as existing CLSB guidance on CPD for part-time workers, and agreed that paragraph 16 was accurate as drafted. The board also considered whether the dispensation for exceptional circumstances gave sufficient flexibility.

The board acknowledged that not all circumstances could be covered expressly by the guidelines, but agreed that the guidelines provided a clear path for handling the kinds of enquiries that could be reasonably foreseen at the time. The board approved the guidelines for adoption.

***Actions: Adopt CPD Dispensation Guidelines into Internal Handbook; Publish annex on the website.***

#### **7.4 CMA review of market study recommendations**

Kate drew the board's attention to the CMA's review of its 2016 market study recommendations. The board was provided with a press release summarising the purpose and scope of the project. Kate explained how the CLSB was engaging with the review and the evidence provided to the CMA to date. The board discussed possible areas of structural market change that might emerge from the review and the likely outcomes.

The board was also provided with a copy of the LSB's response to the CMA's call for inputs. Board members discussed paragraphs 57 and 58 in particular, which affirmed the LSB's ambition for a single legal services regulator, reiterated its concerns about the resources of the smaller regulators, and noted its power to cancel a body's designation as an approved regulator. The board discussed the LSB's likely approach within the current statutory framework, in light of the CMA's work. Board members considered the merits of a single legal regulator, and the opportunities and risks it presented for the Costs Lawyer profession, consumers and the public.

Kate agreed to continue engaging on these issues and to report the outcomes of the CMA's review in January.

***Action: Report on outcomes of CMA review at the January meeting.***

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

#### **8.1 Response to Practising Fee Rules consultation**

The board was provided with a copy of the CLSB's response to the LSB's consultation on reforms to its Practising Fee Rules. Steve introduced the item and highlighted the main areas of concern that had been drawn out in the CLSB's response.

The board discussed the practical implications of the proposed changes for the CLSB and other regulators, and thanked Kate for preparing a considered consultation response.

#### **8.2 Regulatory assessment**

The board was provided with the published version of the LSB's latest regulatory assessment, having received an earlier draft by email between meetings. The board welcomed the assessment, noting that the CLSB had moved from "amber" (not met – action being taken) to "green" (met) against five standards. Board members considered this a major achievement in the timeframe.

The board was also confident of the CLSB's ability to continue improving against the four remaining "amber" standards. Board members noted that the amber standards were already a focus of the 2021 Business Plan and would benefit from the new resourcing agreed under agenda item 5.1. There were robust plans in place for next steps, supported by an open dialogue with the LSB and growing confidence from stakeholders.



Kate explained that the regulatory assessment was due to be updated again in November and the LSB was seeking up-to-date information on several of the “green” standards, particularly RA1, S4 and WL7. The CLSB was in a good position to provide the information requested.

Kate also updated the board on discussions with the LSB about their longer-term intentions for the regulatory assessment, involving targeted reviews into specific standards for individual regulators combined with thematic reviews where there was evidence of sub-standard performance across the market.

### **8.3 Other workstreams**

Kate provided feedback on the LSB’s strategy development, including outputs and themes from a senior summit attended in September.

Kate also reported that Stephen Gowland had been appointed as the LSB’s “board lead” for the CLSB under a new board-level liaison initiative. The board felt it could be useful to invite Stephen to the January board meeting for a meet-and-greet with both the outgoing and incoming Chairs in attendance.

***Action: Invite Stephen to a session at the January board meeting.***

## **9 STAKEHOLDER UPDATES**

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

The board noted the minutes of ACL Council meetings held in July and August 2020.

### **9.2 Work update**

Kate explained that she had restructured this part of the agenda to consolidate five standing items into a single item, following feedback at the July meeting. New item 9 would be used to update the board on any significant developments in the work of the Legal Services Consumer Panel, ACL, ACL Training, the Legal Ombudsman (including exception reporting on service complaints) and any other relevant stakeholders. This would be explained in the published agenda so it was clear to readers. The board agreed this was a sensible approach.

Updates were provided in relation to:

- a new CPD initiative that had been launched by ACL, providing incentives for Accredited Costs Lawyers to deliver CPD activities to peers; and
- progress on reforming the Legal Ombudsman, including appointment of the new senior management team.

## **10 OPERATIONAL MATTERS**

### **10.1 Practising certificate renewals process**

Kate explained that the team had been working hard in Q3 to finalise and test the new electronic practising certificate (PC) renewal form. She noted that testing had revealed some email systems direct CLSB communications to spam or a “promotions” tab and explained the measures that had been put in place to mitigate this risk.

Board members asked about the nature and outcomes of the testing process. Jacqui described the process and gave examples of issues that had been identified. Kate explained that a belt-and-braces approach was being taken to mitigating all foreseen risks this year, but that inevitably there would be some unforeseen glitches. Success would be measured by how quickly the team resolved those glitches and how they were used to inform the CLSB’s approach in future years.

Kate also explained that a comprehensive diversity survey had been developed for launch alongside the PC renewal form, with the aim of improving response rates and data quality. The diversity data would be anonymous and not linked to the PC application. The LSB had been invited to provide feedback on the new survey prior to launch.

## **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 raised.

## **13 NEXT SCHEDULED QUARTERLY MEETING**

When: Wednesday 20 January 2020 at 10.30am

Where: TBC

The board reaffirmed its preference for the January meeting to be held in person if it was safe to do so and agreed to revisit the issue around a month prior to the meeting.

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

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Chair

## Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes (21 July 2020)	About us ⇒ Our board
6.1	Risk registers	About us ⇒ Strategy and governance
7.1, 7.2	Guidance notes	For Costs Lawyers ⇒ Costs Lawyer Handbook
7.2	Board Decision Note on client money	About us ⇒ Our board
7.3	CPD dispensation statement	For Costs Lawyers ⇒ CPD
8.1	Response to LSB consultation on Practising Fee Rules	Regulatory matters ⇒ Consultations
10.1	FAQs on practising certificate renewals	For Costs Lawyers ⇒ Practising certificates
Item	Document	Publication location (other)
5.3	Practising fee application and decision	LSB website <a href="#">here</a>
7.4	CMA call for inputs in review of market study recommendations	Government website <a href="#">here</a>
8.2	Updated assessment of CLSB regulatory performance (August 2020)	LSB website <a href="#">here</a>