

Company number: 04608905

MINUTES
Costs Lawyer Standards Board Ltd
Wednesday 20 October 2021 at 10:30 am
Remotely by videoconference

Present: Rt Hon David Heath CBE (Lay Chair)
Stephanie McIntosh (Lay Vice Chair)
Paul McCarthy (Non-Lay NED)
Andrew Harvey (Lay NED)
Andrew McAulay (Non-Lay NED)

In attendance: Kate Wellington (CEO and Company Secretary)
Jacqui Connelly (Operations Director)
Professor Carl Stychin (Independent Education Adviser) (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.

2. MINUTES

2.1 Minutes dated 21 July 2021

The board considered the minutes of its last scheduled quarterly meeting on 21 July 2021. 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 2021. 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 2021

The board was provided with a progress update against the 2021 Business Plan. Kate noted that three additional priorities had been achieved during Q3, meaning that eight of the 15 priorities in the plan had been achieved so far, leaving seven for completion in Q4.

The only priority at risk of noncompletion was priority 11, which involved testing the efficacy of new interim suspension powers under the Disciplinary Rules and Procedures. That priority was contingent on a suitable disciplinary case coming to light and there had been no such cases so far in 2021.

3.2 Education

Kate provided the board with updates on the various education workstreams, including:

- the review of ACL Training's governance structures being carried out by Hook Tangaza;
- resourcing plans for ACL Training due to staff absence;
- applicant numbers for the 2022 intake onto the Costs Lawyer Qualification and the timetable for ACL and ACL Training to take a decision on viability;
- reports provided by ACL Training and Hook Tangaza to address the recommendation in the CLSB's audit report for the course;
- initial feedback from the consultation on the CLSB's new Costs Lawyer Competency Statement, which closed on 18 October; and
- proposed next steps for the CLSB's work on education.

David invited Carl to canvass the CLSB's options for next steps once the Competency Statement is in place. The board discussed the options against the background of Carl's advice and the updates from Kate, with a particular focus on the principles that should drive the next stage of the CLSB's work.

The board agreed that flexibility in delivery of the qualification was paramount, provided the specified outcomes were demonstrably achieved. This encompassed flexibility for providers (allowing for different modes of delivery and promoting innovation), flexibility for students (ensuring the course could attract students from a range of backgrounds) and flexibility for the CLSB and the profession (ensuring the course and the regulations that govern it remain current and fit for purpose).

The board discussed the need to draw on good practice from others and look at the models that work well for similar organisations. There are many possible structures for progression within the qualification, and that the CLSB should be mindful of this when setting the regulatory threshold for authorisation. A modular approach would both ensure flexibility and allow the qualification to intersect with other training opportunities for lawyers and others.

Board members discussed the need to understand employers' perspectives (and, to some extent, recruiters' perspectives) alongside the perspectives of students and clients when thinking about course structure. Options for doing this were canvassed, noting the work already done with employers in developing the Competency Statement.

The board discussed the timeline for considering whether to accredit the course for the following year. Kate explained the process set out in the Protocol agreed with ACL Training in 2019. The board agreed that a decision was needed at an earlier stage than in 2020, when a decision was not communicated to the CLSB until December. Kate would continue to liaise with ACL and ACL Training to push things forward.

4. BOARD MATTERS

4.1 Staff working arrangements

David introduced this item and explained that he had already had constructive discussions with each of the board members about Kate's plans to work from Australia. He invited board members to ask questions of Kate, and Kate agreed she would absent herself from the discussion should any board member feel it was appropriate.

Board members asked about staff wellbeing, resourcing and arrangements for meetings. Kate explained the proposed approach in these areas. The board was satisfied with the arrangements and unanimously approved Kate's working from Australia for the next six months, at which point all parties would take stock to ensure the arrangements were working for everyone, including other staff.

Action: Diarise to take stock of working arrangements at the Q2 2022 board meeting.

5. FINANCE

5.1 Quarterly report: Q3 2021

Jacqui introduced the quarterly finance report, noting that savings had been made that would negate the projected deficit by the end of the year, and that the overall financial position was healthy. The board noted the financial position in the report.

5.2 Outcome of PCF application

The board was provided with the LSB's decision on the CLSB's practising certificate fee (PCF) application for 2022. Kate outlined the follow-up questions that had been asked by the LSB's financial advisers and the responses given by the CLSB, and explained that these had been considered satisfactory.

The board reflected on whether the current account surplus was still required. Jacqui explained that the surplus was currently being used to fund outgoings on the new innovation project in advance of the funds being reclaimed (in arrears) from the Regulators' Pioneer Fund. This was a good example of how the surplus ensured liquidity, and the board agreed that it remained necessary and appropriate to retain the surplus.

The board noted the LSB's recommended action for the following year's PCF application, namely to consider other ways of engaging stakeholders alongside the consultation. Kate would ensure this was taken into account for the 2023 PCF application.

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. At a general level, the board noted that there were a number of risks in the register that remained red, but these were mainly being driven by factors outside of the CLSB's control. The board therefore discussed whether there was anything more that the CLSB could do to control and mitigate those risks.

The board discussed in detail the risks to the CLSB arising out of risks to ACL and ACL Training; including by virtue of their respective structures, governance, staffing, business continuity and succession arrangements, financial resources and relationships. Those risks manifested as risks to the profession as a whole, and necessarily impacted risk OP1 (*more leave than enter the profession*) and risk OP6 (*breakdown in communication between any of ACL, ACLT and CLSB*).

The board also discussed whether risk OP2 (*organisational structure not sufficient to ensure business continuity*) was still relevant. It was agreed that the CLSB's scale meant it would always be fragile, but this was an inherent risk caused by size rather than organisational structure. It was therefore agreed that: (i) the wording of OP2 be recast to reflect this, (ii) the probability rating be reduced to 1, and (iii) the risk priority be reduced to low.

The board also agreed to:

- update the evidence of risk OP1 (*more leave than enter the profession*) to reflect that implementation of the new fixed costs regime had finally been announced;
- update the controls and status of risk OP3 (*insufficient numbers of new qualifiers*) to reflect delivery of the Competency Statement and intended next steps;
- update the priority of risk OP6 (*breakdown in communication between any of ACL, ACLT and CLSB*) to "high" from "medium" and update the evidence of risk based on the discussion; and
- update the controls for risk R1 (*our standards do not achieve positive consumer outcomes*) to reflect our new Supervision Policy and supervision frameworks, as well as our work on collecting benchmarking data around consumer outcomes.

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

7. REGULATORY MATTERS

7.1 Guidance Notes

The board was provided with drafts of: (i) an updated Guidance Note on Vulnerable Consumers, (ii) a new Guidance Note on Pro Bono Work, and (iii) additional text for the Guidance Note on Executing Legal Documents and the Right to Administer Oaths. The board considered each document and approved them for publication.

Kate noted that this concluded the review of all Guidance Notes in the Costs Lawyer Handbook, following an initial audit in late 2019. The board agreed that it had been a tremendous effort, both in terms of scale and quality improvement, and thanked the executive for their work on the project. The board agreed that wholesale changes would be less frequent going forward, so board packs should contain versions showing tracked changes against the current version.

Action: Update Costs Lawyer Handbook with approved guidance notes.

7.2 Supervision Policy and final supervision framework

Kate introduced this item and reminded the board that, in April, it approved three new supervision frameworks relating to compliance with the CPD Rules, Accredited Costs Lawyer Rules and complaints procedure guidance. A final framework, covering point-of-complaint monitoring, as well as an overarching Supervision Policy were due to come to the board in July but those items were postponed to allow time for the governance session. The board was now asked to consider and approve drafts of these documents, along with revocation of the existing Supervision Policy.

Kate also noted that the original intention had been to publish the Supervision Policy on the website and to provide the supervision frameworks only on request, as they were drafted as internal process documents. Having now prepared the Supervision Policy, which cross-refers to the frameworks, Kate felt this no longer represented a sufficiently transparent approach. The intention was now to publish all the frameworks alongside the Supervision Policy.

The board considered and approved the drafts. In relation to whether the frameworks should be published, the board asked about whether accessibility of the documents should be improved given they were drafted for internal use. It was agreed that this could be achieved by ensuring the Supervision Policy itself clearly explained the purpose and intended use of the frameworks and contained hyperlinks for easy cross-referral. Subject to this, it was agreed the frameworks should be published in the interests of transparency.

Actions: Adjust the Supervision Policy as agreed for accessibility; publish it along with the frameworks on the website.

7.3 Innovation project update

The board received a progress report on the innovation project funded by the Regulators' Pioneer Fund. Kate asked for a volunteer to join the "challenge board" that would be constituted as part of the project's governance. Stephanie and Paul both expressed an interest, although Paul had restrictions on his time due to client commitments. It was therefore agreed that Stephanie would join the challenge board, but the project team would find other ways to incorporate Paul's input.

7.4 Proposal for virtual diversity event

The board received a progress report on the CLSB's third diversity workstream, involving engagement with the regulated community. The board provided feedback on proposals for a virtual equality, diversity and inclusion (EDI) event later in the year.

It was agreed that the event should not be limited to Costs Lawyers and should extend to anyone with responsibility for, or an interest in, EDI within organisations where Costs Lawyers work. The board discussed how such individuals could be reached and agreed to send further suggestions to Kate by email.

The board felt that a focus on social mobility was particularly appropriate, as it extended beyond the protected characteristics under the Equality Act and helped to emphasise that EDI issues are relevant to a wide audience. Communications about the

event should convey that it is part of a wider programme and that activities focused on other areas would follow, so Costs Lawyers could choose which parts of the overall programme were most relevant to them.

Board members suggested possible panellists for the event and agreed to send through further suggestions by email.

Action: Board members to send Kate or Heather further suggestions for EDI event by email.

8. LEGAL SERVICES BOARD (LSB)

8.1 Proposed statutory policy statement

Kate informed the board that the LSB had launched a consultation on its draft statement of policy, aimed at improving transparency of information in legal services. She flagged some of the issues arising in the consultation and noted that the CLSB intended to respond by drawing on its consumer outcomes work. The board noted that the CLSB might need to adjust its work programme going forward to ensure it meets the expectations in the final policy statement once published.

8.2 Other workstreams

The board received updates in relation to:

- a request for information received from the LSB in relation to the next annual regulatory performance assessment;
- CLSB's membership of the new Market Transparency Coordination and Oversight Group (MTCOG), chaired by the LSB, and the recent presentation to that group on the CLSB's consumer outcomes framework.

9 STAKEHOLDER UPDATES

9.1 ACL Council meeting minutes

The board noted the minutes of ACL Council meetings held in May, June and July 2021. The board discussed an extract referring to ACL's oversight of the CLSB, and it was assumed this was a reference to ACL's residual role under the Internal Governance Rules 2019.

David noted that the CLSB had been invited to ACL's November conference in London, but that he had a prior engagement on the relevant date. Both Lay NEDs noted they could not make the date either, but the Non-Lay NEDs confirmed they would both be attending.

9.2 Work updates

The board was provided with updates in relation to:

- Kate's recent meeting with the new Legal Ombudsman, Paul McFadden, following which Kate had invited Paul to the board's March meeting so he could introduce himself;
- the CLSB's presentation at a recent Legal Services Consumer Panel meeting on its consumer outcomes work and innovation project;
- finding of LawCare's Life in the Law publication and CLSB's participation in workshops considering how regulators could address the issues identified.

The board also discussed a written update provided by the Legal Ombudsman on improvements to service standards and wait times. Board members expressed concern that the figures suggested major inroads had not yet been made.

10 OPERATIONAL MATTERS

10.1 H&S policy and risk assessment

The board was asked to approve an updated health and safety (H&S) policy and risk assessment, to bring the CLSB's policies in line with current standards set by the Health and Safety Executive. Kate explained that the policy was accompanied by a pack of materials for staff, including a H&S checklist for home working environments, which all staff had completed. The board approved the policy and risk assessment, as well as revocation of the existing policy.

Action: Adopt new policy and risk assessment into the Internal Handbook and revoke existing policy.

10.2 CPD dispensation policy

Kate reminded the board that, in 2020, it approved a CPD dispensation policy for use when a Costs Lawyer had not been able to obtain sufficient CPD points because of the coronavirus pandemic, but had been at work for the full year. Although the majority of CPD activities were still taking place online in 2021, the executive felt it was unnecessary to ask the board to approve a dispensation policy this year because:

- the CPD Rules in force since 1 January 2021 provided greater flexibility and choice for Costs Lawyers in meeting their CPD requirements;
- to date in 2021 there had been no enquiries or concerns about meeting CPD requirements from Costs Lawyers; and
- the new CPD Rules provided for the CLSB to "waive all or part of these rules if it considers that exceptional circumstances have justifiably prevented a Costs Lawyer from meeting their CPD obligations during any CPD year" (Rule 4.1).

The board discussed the proposed approach, the availability of CPD opportunities in 2021, and what might constitute "exceptional circumstances" under the Rules. It was agreed that a mechanism was needed for providing dispensation to those who had genuinely been impacted by coronavirus during 2021 in a way that was different to the general population. However, the discretion in Rule 4.1 was deemed sufficient for this purpose, and the board agreed that a standalone dispensation policy was not necessary.

The board also discussed Costs Lawyer engagement with the new CPD Rules and how the changes had been communicated throughout the year. Andrew M noted that he had seen the CLSB's introductory video pushed out recently via social media and encouraged this use of multiple channels and media.

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

Two board members noted a diary clash with the schedule date for the next meeting. It was agreed that a suitable alternative should be found, if possible, so that everyone could contribute.

Action: Liaise by email to find alternative next meeting date.

There being no further business, the Chair declared the meeting closed at 12:21.

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Chair

Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes (21 July 2021)	About ⇨ Our board
6.1	Risk registers	About ⇨ Strategy and governance
7.1	Guidance Notes	For Costs Lawyers ⇨ Costs Lawyer Handbook
7.2	Supervision Policy and frameworks	Regulatory ⇨ Supervision
7.3	Innovation project webpage	CLSB website here
11.1	Board papers	About us ⇨ Our board
Item	Document	Publication location (other)
5.2	Outcome of CLSB’s PCF application	LSB website here
8.1	LSB consultation on statutory policy statement	LSB website here