

Company number: 04608905

MINUTES
Costs Lawyer Standards Board Ltd
Wednesday 21 April 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 (Administration Manager)
Professor Carl Stychin (Independent Education Adviser – item 1.2)
Heather Clayton (Director of Policy – item 1.3)

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 January 2021

The board considered the minutes of its last scheduled quarterly meeting on 20 January 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 20 January 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: Q1 2021

The board was provided with the first progress update against the 2021 Business Plan. Kate noted that two priorities had been achieved so far, with nine more underway.

Board members asked about the proposed timing for completion of priorities with a “red” rating. Kate explained that these were scheduled to commence later in the year and, at this stage, no priorities were at risk of non-completion. However, priority 11 (which involves testing new interim suspension order powers) was contingent on an appropriate disciplinary case arising during the year.

3.2 Education and competency

Kate updated the board on delivery of the competency framework project, following the board's approval of the project plan by email between meetings. The project was progressing very positively and the team had already:

- completed the one-to-one interview stages;
- convened and were working with the Expert Panel;
- hosted the Subject Matter Expert (SME) focus group;
- developed and circulated work diaries for completion; and
- begun to analyse the emerging evidence.

Input had been secured from senior industry figures, academics and educators, as well as unique perspectives from the Legal Services Consumer Panel and LawCare, and the quality and level of engagement so far had been very encouraging. The intention was to consult on the proposed framework in the summer.

The CLSB's Independent Education Adviser, Professor Carl Stychin, attended for this item to assist the board in considering options for the competency framework project and future initiatives around education and competency. Carl introduced himself and explained how his professional background and expertise could inform the work the CLSB was doing.

Carl gave his views on how a regulator can and should go about: (i) periodically reviewing professional competencies, reflecting the dynamic nature of professions; (ii) building the requirements for validation or accreditation of a training course from those competencies; (iii) setting parameters for what is expected of the organisation providing the course; and (iv) undertaking ongoing quality assurance of a provider and course, including through external oversight and annual reporting. The aim would be "right touch" regulation of the training provision, taking a risk-based approach, and creating the conditions for flexibility, diversity and responsiveness to student need. Carl discussed the challenges presented by the size of the market, but put forward suggestions for raising the profile of the profession with students and trainers.

David thanked Carl for his interesting observations and invited questions. Board members discussed with Carl:

- the CLSB's size and scale, and how it could best focus its resources in the areas Carl had described;
- how the Costs Lawyer Qualification was positioned in the wider education market and opportunities for growth;
- trends in how professional qualifications were being delivered, particularly against the backdrop of Covid-19, and what that meant for Costs Lawyers.

Kate then updated the board on the ongoing qualification audit. Progress had been slow but in mid-March, after various conversations, ACL had permitted the CLSB to obtain the required audit materials directly from ACL Training. ACL Training had provided the materials prior to the board meeting. The board also considered ACL's viability report for the course and two reports of an ACL Council working party on education that had

been shared in confidence by ACL. Finally, Kate noted that Rachael Wallace (ACL Council member) had recently been appointed to the ACL Education Executive.

The board discussed the implications of these developments and documents in detail. They highlighted a number of risks of particular concern, particularly around governance structures and oversight of the course. The board discussed the need to put plans in place to safeguard students in the event of unexpected suspension of course provision for any reason. Board members expressed their hope that Rachael would have the support of the ACL Council in making necessary changes to the structure and nature of the relationship between ACL and ACL Training. The board also considered how these issues fed into the risk register.

Board members discussed recent feedback from students and the wider profession on the quality of training, opportunities for ACL Training, and perception of the ACL brand. The board agreed that education and training issues were likely to be the CLSB's primary focus – for both the board and the wider organisation – over the coming months and probably years.

3.3 Consumer outcomes

Kate provided a high-level update on progress against the Consumer Engagement Strategy and noted that a more detailed report would be provided in July, at the end of the first year of the strategy. She then introduced two areas of emerging policy work – relating to consumer outcomes and consumer research – which would shape the organisation's approach to delivering the second year of the strategy. The board was provided with a working draft of the consumer outcomes framework and an annotated version of a new client survey e-form that had been developed to support this work.

Heather joined for this item, introduced herself to the board and provided further context in relation to the two emerging areas. She explained how the consumer outcomes framework would: (i) be used to align all policy interventions with the promotion of specified outcomes; (ii) ensure the CLSB did not focus inappropriately on outputs; and (iii) provide tangible benchmarks against which to measure impact.

The board welcomed the approach. Board members asked about the challenges that arise from only a small proportion of Costs Lawyers being instructed directly by individual consumers. Heather explained how proportionality is built into the model, and the helpfulness of the framework in assessing whether the burden and financial cost of an intervention is justified by the intended outcome(s). Board members also asked about how best to provoke engagement from what is a small regulated community and an even smaller pool of lay clients. Kate and Heather explained the work that was underway to find and interact with these groups, including through a project with Community Research and the newly launched client survey.

The Non-Lay NEDs felt there would be interest from the profession in understanding the outcomes we are aiming to benchmark, particularly around price, accessibility and satisfaction, to help individual practitioners improve their offering and meet client need. This presented an opportunity for a two-way conversation, with Costs Lawyers both

helping the CLSB to collect data on outcomes and then improving outcomes through commercial application of the collated data.

Action: Report on year 1 of Consumer Engagement Strategy at July meeting.

4. BOARD MATTERS

4.1 Input for strategy day agenda

David reminded the board that a strategy day had been scheduled for July and explained that this was now looking infeasible for two main reasons. First, the timetable for the LSB approving the 2022 practising certificate fee meant that the 2022 Business Plan and budget had to be approved by the board in July, making it difficult to meaningfully incorporate outputs from the strategy discussion into the upcoming Business Plan. Second, it seemed unlikely that the July board meeting could be held in person.

It was therefore proposed to split the strategy day into two parts, with governance strategy being considered in July (and feedback from that session informing the governance review scheduled for H2), and wider organisational strategy being considered in January or April 2022 (with feedback informing the 2023 Business Plan and budget, and setting the tone for the next mid-term strategy). Board members were asked for their views.

The board agreed that this was a sensible way forward. Board members discussed when meetings were likely to be convened in person again and, while there was an appetite to have an in-person meeting once it was safe, it was agreed this was unlikely to be in July. The governance aspect of the strategy discussion was the easiest element to consider virtually, so that session should go ahead in July.

Action: Plan governance strategy session for July and diarise wider organisational strategy session for early 2022.

5. FINANCE

5.1 Quarterly report: Q1 2021

Jacqui introduced the quarterly finance report, which was the first report to be generated using new finance software developed specifically for the CLSB, integrating with the organisation's bank records and internal database.

She noted that two new business savings accounts had been opened to house the reserves, meeting the requirements of the LSB's new Practising Fee Rules (discussed at Item 5.2). The projected value of reinstatement was also slightly overstated due to the new parental leave remission policy, but this would not have a significant effect on income and would be rectified going forward.

The board noted the financial position in the report.

5.2 Practising Fee Rules and updated Reserves Policy

The board was provided with a summary of the key changes introduced by the LSB's new Practising Fee Rules. Kate explained that some of the issues identified by the CLSB and others during the consultation process had led to changes in the final version of the Rules, while others had not, and the board considered the implications of this.

Overall, it was noted that the practising certificate fee (PCF) application process would be significantly more complicated and time consuming than in previous years, and resources would need to be diverted away from other projects to meet the LSB's requirements.

The new Practising Fee Rules also changed the requirements for holding reserves and the CLSB's Reserves Policy therefore required amending. A draft of the amendments was provided for the board's consideration. As noted above, steps had already been taken to split out the share capital reserves from the PCF reserves, as required, by opening new accounts.

The board discussed the LSB's expectation that a reserves target of more than three to six months' operating expenditure would require justification. Board members agreed that the CLSB's size meant aiming for 12 months of operating expenditure in reserves was not only justifiable but essential. For a high-cost risk, it was assumed that three to six months of operating expenditure would not be sufficient to cover that risk alone, leaving aside the possibility of several related risks materialising at once.

The board agreed that a selection of risks should be costed-up to test this assumption. If the assumption was correct, the costings could be used in the PCF application as further justification for the reserves target. If the assumption was not correct, the board would have the opportunity in July (before the PCF application was made) to readjust the target. The updated Reserves Policy was approved on that basis.

The board also agreed that a cross-check was warranted between the risks outlined in the updated Reserves Policy and the risk registers. Kate would make any adjustments to the risk registers that she considered necessary and the board would review these in July.

Action: Adopt updated Reserves Policy; Carry out risk costing exercise; Cross-check risks against risk registers.

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 evidence of risk OP1 (*more enter than leave the profession*) to reflect the results of the follow-up coronavirus impact survey;
- update the controls around risk OP3 (*insufficient numbers of new qualifiers*) to include the competency framework project;
- update the controls around risk R4 (*regulatory arrangements misaligned to consumer need*) to include the consumer outcomes framework and research projects;
- update the registers to ensure they align with the Reserves Policy, as discussed at Item 5.2.

The board discussed the significance of the risks canvassed under Item 3.2 above. The board agreed that the probability rating for risk OP6 (*breakdown in communications*

between any of ACL, ACL Training and CLSB) should be increased to the highest level, reflecting uncertainty around the relationship between ACL and ACL Training. The probability rating for risk OP4 (*ACL becomes insolvent*) should increase for the same reasons.

Board members also discussed the strong progress being made on the controls around R4 (*CLSB cannot generate sufficient evidence about the consumer dimension of the Costs Lawyer market*). The board agreed it was premature for this risk to become “green”, but it was moving in the right direction.

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

6.2 Coronavirus impact survey report

Kate explained that, further to the board’s steer in January, a follow-up coronavirus impact survey was carried out in Q1. The questions were adjusted to cover: impacts that had actually played out during 2020; updated predictions for the near future; and trends in relation to home working. The board was provided with a report analysing the survey findings. Kate noted that overall the outlook was positive and the level of concern about the future had fallen. However, there were pockets where the outlook was less optimistic. This was particularly true for legal aid practitioners.

The board discussed the ongoing impact of coronavirus on the profession and its clients in light of the survey findings. Paul and Andrew M provided feedback on their impressions of the market. Both noted that the most adversely affected practice areas seemed to be those in which ADR could not be used to circumvent court delays and where a court determination was unavoidable. Legal aid costs was one such example. In other areas, where a court determination could be avoided and/or technology could be used to expedite a resolution, cases were proceeding to the costs stage quicker. This work was “forward filling” the instructions that had been pushed back due to delays in substantive hearings, meaning revenue was stable for many firms.

Commentators were also predicting a rise in general commercial litigation as the moratorium on winding up petitions lifts and the furlough scheme ends, with a spike in insolvency and debt recovery proceedings expected in the next few years. Costs Lawyers with expertise in commercial costs would be well positioned to pick up that work.

Board members discussed the survey results relating to the use of technology, noting that less practitioners reported embracing new technologies than those predicting they would do so during the first survey in May 2020. There were anecdotal reports of technologies being abandoned if their ongoing use was not mandated. Conversely, it was noted that videoconferencing software may have become so embedded that it is no longer considered a new technology.

In relation to the differential in statistics for legal aid practitioners, the board discussed whether there was a case for engaging with the MoJ, to provide evidence and data on the impact of legal aid reforms. Board members agreed that issues in legal aid might be self-correcting as they worked through the system, but this would not prevent cashflow problems which could lead to insolvency and thus unmet legal need in the

short or medium term. Kate agreed to explore the survey data with the ACL Legal Aid Group (LAG) in the first instance, supplement the data if necessary and then engage with the MoJ as appropriate.

Action: Publish survey report; Engage with LAG on legal aid data and then MoJ as appropriate.

7. REGULATORY MATTERS

7.1 Updated guidance notes

The board considered updated guidance notes on conflicts of interest, client care letters and price transparency. Kate thanked Andrew M for his assistance in working through various conflict scenarios during development of the conflicts guidance. The board considered the guidance notes and approved them for adoption.

Action: Update Costs Lawyer Handbook with approved guidance notes.

7.2 2020 CPD audit outcomes

Jacqui introduced this item and explained that the annual CPD audit had been carried out in Q1. Despite the concerns expressed by Costs Lawyers during 2020 about not being able to meet the CPD requirements, everyone passed the audit.

The board considered the audit report. It was noted that this would be the last audit under the old CPD regime and plans for next year's audit would be covered under the next agenda item.

7.3 Supervision frameworks

Kate drew the board's attention to priority 8 in the Business Plan, which involves developing the CLSB's approach to supervision. Kate explained that the team had begun tackling the project by looking across the organisation's core supervision areas and considering:

- the purpose of the supervision activity (what outcomes is the CLSB trying to achieve? what risks is it trying to mitigate?)
- the practicalities of supervision (what data is available? what are the key intervention points?)
- supervision resources (how does the CLSB best align resources to risk? what resources can it use or create to aid compliance and thus minimise interventions?)

For each area, the answers to these questions were used to develop a supervision framework that clearly described the key supervision processes that would be adopted. The frameworks were intended to be internal documents, giving the reader practical guidelines for carrying out a supervision activity (such as an audit) in a way that is consistent, fair and in line with regulatory rules, in pursuit of the identified purpose.

Kate explained that three frameworks had been developed so far – for supervising compliance with the CPD Rules, Accredited Costs Lawyer Rules and guidance on complaints procedures – and drafts were provided to the board for consideration. In Q2, a further supervision framework would be developed, following which a public-facing Supervision Policy would be drafted to summarise the overall approach.

In addition to the draft supervision frameworks, the board was also provided with an updated version of the guidance note on Complaints Procedures, which had been augmented to include a model procedure. Kate explained that spot checks during the last practising certificate renewal process had highlighted that some firms' complaints procedures were not compliant with the guidance, creating a risk that consumers were not being properly informed of their right to complain or to escalate a complaint to second-tier. Anecdotally, poor practice was most often seen in smaller firms, but the nature of the poor practice did not suggest deliberate avoidance of responsibility; rather it suggested a lack of understanding of what was required, perhaps due to a lack of dedicated compliance resource at firm level.

The model complaints procedure was designed to help individual Costs Lawyers and small firms improve their procedures. This would complement the supervision framework for complaints procedures, allowing the team to target specific examples of non-compliance during the first full complaints procedure audit in 2021, using the model procedure as a tool to educate non-compliant firms and improve standards going forward.

The board considered the draft frameworks and model complaints procedure. Board members discussed the process for selecting audit participants and queried whether this was accurately described as a random selection exercise. Kate and Jacqui explained the criteria applied during selection for audit across the three frameworks. While selection of individual practitioners was random, there were filters applied to whittle down the pool of people who might be selected (for example, based on practice area or organisation type). It was agreed that this should be set out more clearly in the frameworks.

The board discussed the need for all practitioners to learn from the audits, whether or not they had been individually audited. It was also important for the risk of audit to be real, and for all Costs Lawyers to appreciate that they could be selected for audit in any practising year (subject to spreading the regulatory burden of audit fairly across the profession).

In relation to the supervision framework for complaints procedures, the board discussed the point at which the CLSB should check that non-compliant procedures had been sufficiently improved. Kate and Jacqui explained that two main options had been considered; namely that complaint procedures be re-reviewed when the practitioner next applied for a practising certificate, or re-reviewed during the following year's audit. The latter had been selected for logistical reasons, but with an option for practitioners to submit their revised procedure at any time during the year for feedback and advice. It was agreed that this approach would be tested in the first year and, if there was evidence of delay in Costs Lawyers updating their procedures, the framework would be revisited.

Actions: Adopt supervision frameworks into the Internal Handbook, amended as agreed; Bring the final supervision framework and draft Supervision Policy to the board in July.

7.4 Guidelines for complainants

Kate explained that the LSB recently asked the CLSB to consider whether its “Policy on Expectations of a Complainant” required review. The LSB was concerned that the policy appeared to impose obligations on complainants (i.e. people approaching the CLSB with a complaint about a Costs Lawyer) and might have a chilling effect on complaints. The request was triggered by the LSB’s consideration of a similar issue in a decision about proposals put forward by ICAEW.

Kate noted that the policy had not been reviewed since 2017 and, while the CLSB did not believe it imposed obligations on complainants, a review was worthwhile. It was therefore proposed that the policy be replaced with a shorter note – published as web-based guidelines rather than a standalone policy document – which reflected the underlying intentions of the policy, namely that:

- complainants should behave reasonably; and
- complaints that the CLSB devotes effort to investigating should have some merit.

The board considered and approved the guidelines and associated web content, and agreed that the former policy should be revoked.

Action: Upload agreed web content and revoke policy.

7.5 Feedback from Accredited Costs Lawyers

The board was reminded that the Accredited Costs Lawyer scheme became voluntary when new CPD Rules were introduced in January. Improvements to the scheme were being made and tested throughout the year, including via the supervision framework, new e-forms, a new accreditation certificate, and additions to the register to make it more commercially attractive.

As part of that work, feedback had been sought from Costs Lawyers who chose not to renew their accreditation during Q1. Jacqui reported statistics in relation to renewals and reasons for non-renewal. Overall, the shift to a voluntary scheme did have some impact on uptake, although most Accredited Costs Lawyers were still renewing, and not all non-renewers cited the changes as their reason for lapsing.

The board discussed the feedback and improvements that were being made. The Non-Lay NEDs welcomed the idea of a network or forum for Accredited Costs Lawyers, if that could be achieved at proportionate cost. This would help Accredited Costs Lawyers better understand what kind of training others were delivering, share good practice and identify opportunities.

Action: Explore options for an Accredited Costs Lawyer network.

7.6 The Costs Lawyer profession in 2020 report

The board was provided with an annual report compiling statistics about the Costs Lawyer profession in 2020. Comparisons had been drawn with historic data where possible, but Kate noted that the real value of the 2020 data was in providing a robust benchmark against which to make comparisons in the future.

The report also included headline results of the new diversity survey, which was run alongside the practising certificate renewal process last year, and Kate updated the

board on the CLSB's ongoing policy work on equality, diversity and inclusion. The board agreed that the report provided a good starting point for further analysis

8. LEGAL SERVICES BOARD (LSB)

8.1 Outcome of strategy and business plan consultation

Kate updated the board on the outcomes of two stakeholder events relating to the LSB's recent strategy and business plan consultation. In particular, she conveyed the LSB's position on reviewing the list of reserved legal activities in the Legal Services Act 2007 and the initial mapping exercise of unregulated activities that would be carried out this year.

The board noted the outcome of the consultation, including that the LSB had its proposed 4.4% budget increase approved by the MoJ.

8.2 Other workstreams

The board was provided with updates in relation to:

- the CLSB's submission for the next regulatory performance assessment and timings for next steps;
- a letter from Dr Helen Phillips (LSB Chair) about collaboration between the legal services regulators;
- David's introductory chat with Helen, which he reported as being positive and constructive.

The board discussed the proposals for collaboration in Helen's letter. Board members reiterated their support for collaboration and its importance in delivering required outcomes at proportionate cost. However, it was equally important to ensure that collaboration was targeted in the right areas, did not detract from delivery of the CLSB's own priorities, and did not subsume disproportionate resource for the return. In particular, where there was a suggestion of back-office savings from collaboration, board members felt it was unlikely that any further savings could be made on the CLSB's already highly streamlined budget.

Action: Incorporate board member views in responding to Helen's letter.

9 STAKEHOLDER UPDATES

9.1 ACL Council meeting minutes

The board noted the minutes of ACL Council meetings held in December 2020 and February 2021.

9.2 Work updates

Updates were provided in relation to:

- the outcome of the Legal Ombudsman's business plan and budget consultation;
- a draft consultation under consideration by the ACL Council in relation to the future of its membership structure.

The board discussed the draft consultation and proposals to increase ACL membership numbers. Board members noted that the consultation did not include consideration

of the membership's needs and preferences, or how ACL's value proposition could be strengthened over time. This could be fed back to ACL at this stage, or by way of consultation response if the CLSB was invited to respond.

10 OPERATIONAL MATTERS

10.1 Digital work programme update

The board was provided with an update on progress against the digital work programme, including:

- reviewing how IT is used for financial management;
- migrating all application forms to e-forms;
- improving and upgrading the Costs Lawyer database;
- final updates to the practising certificate renewal forms.

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

The Non-Lay NEDs reported on several structural changes in the market, including a high profile takeover of two firms by Frenkel Topping. The board discussed the opportunities from this kind of consolidation, as well as the potential impact on ACL membership and on ACL Training now that firms were beginning to partner with training providers to deliver their own learning and development sessions.

The board also discussed the interconnectivity between the Costs Lawyer market and other niche professions, such as quantity surveyors. Board members considered opportunities to partner with and learn from regulators of those professions, including around education and qualification.

In closing, David thanked the board members for their input and engagement during his first meeting as Chair, and invited feedback on any aspects of the board meetings or the organisation more widely.

13 NEXT SCHEDULED QUARTERLY MEETING

When: Wednesday 21 July 2021 at 10.30am
Where: Virtual

There being no further business, the Chair declared the meeting closed at 12:53.

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Chair

Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes (20 January 2021)	About us ⇒ Our board
6.1	Risk registers	About us ⇒ Strategy and governance
6.2	Coronavirus impact survey report	Regulatory ⇒ Data about Costs Lawyers
7.1	Guidance notes	For Costs Lawyers ⇒ Costs Lawyer Handbook
7.4	Guidelines for complainants	Make a complaint ⇒ Complain about a Costs Lawyer
7.5	Accredited Costs Lawyer scheme information	For Costs Lawyers ⇒ Accreditation to provide CPD training
7.6	The Costs Lawyer profession in 2020	Regulatory ⇒ Data about Costs Lawyers
11.1	Board papers	About us ⇒ Our board
Item	Document	Publication location (other)
5.2	Practising Fee Rules	LSB website here
8.1	Outcome of strategy and business plan consultation	LSB website here
9.2	Legal Ombudsman business plan 2021-22	LeO website here