

Company number: 04608905

MINUTES
Costs Lawyer Standards Board Ltd
Wednesday 21 July 2021 at 11 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)

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 April 2021

The board considered the minutes of its last scheduled quarterly meeting on 21 April 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 April 2021. There were no matters arising that had not been scheduled as agenda items or otherwise dealt with. One of the actions arising under Item 7.3 of the April minutes (approval of policy documents relating to supervision) was postponed until the next board meeting, to make time for the governance strategy session that would take place at the end of today's meeting.

3. STRATEGY

3.1 Progress against Business Plan: Q2 2021

The board was provided with a progress update against the 2021 Business Plan. Kate noted that three additional priorities had been achieved during Q2, meaning that five of the 15 priorities in the plan had been achieved so far, with many more underway.

3.2 Education

Between meetings, the board received information about the outcome of ACL's education review, including the final report prepared by the ACL Council working party. ACL had engaged a consultancy, Hook Tangaza, to assist with implementing

governance changes following the review and Kate reported on several constructive conversations with Hook Tangaza following their appointment.

The board discussed whether and how the outcome of the review was being communicated by ACL to its membership, noting that two Council members had resigned around the time that the review was concluded. The latest available ACL Council minutes dated back to April, so it was possible that more recent minutes, once published, would shed light on the decision-making process. The board discussed additional ways of ensuring the regulated community was sighted on decisions about education and appreciated the distinction between the roles of ACL and the CLSB in relation to the professional qualification.

The board also considered the outcome of the CLSB's recent audit of the qualification. Board members were provided with the CLSB's audit report, a course overview document that had been helpfully provided by ACLT to give context, and a draft action plan prepared by ACLT in collaboration with Hook Tangaza setting out how the audit recommendations would be addressed and the timescales for doing so. The board agreed that the direction of travel set out in the action plan was a good start in addressing the audit recommendations. The board was also content with the proposed timescales, given the need to align these with the milestones in Hook Tangaza's ongoing governance project.

3.3 Draft competency framework

Kate introduced this item, summarising the work that had been done in producing the draft competency framework. She noted that comments from the Expert Panel were being collated and these would be incorporated into the consultation version, but otherwise all stages of the project plan (up to consultation) had been completed.

The board was impressed by the quality of the output and the rigour of the project methodology, particularly given the limited resources and time available to the team. The board agreed that the structure and presentation of the framework worked well; the Non-Lay NEDs felt they recognised the role that was being described through the framework, while the Lay NEDs felt that as non-lawyers they could easily understand the concepts and different elements. Board members provided comments and suggestions on various aspects of the detail, which Kate would address in producing the consultation version.

The board discussed the framing for the consultation and agreed that any controversial or novel areas should be proactively highlighted to promote an open debate with the profession and other stakeholders. The board discussed the need to capture the client perspective through the consultation – in terms of the expectations of end consumers and professional intermediaries – and considered which representative bodies and other stakeholder groups might be able to provide that input.

The board noted that the breadth of the framework highlighted the urgency of updating the current qualification, to ensure newly qualified Costs Lawyers have been assessed as competency across a range of skills using a variety of methods. With that

in mind, it would be helpful to get the consultation underway as soon as possible. The board agreed that it did not need to formally approve the consultation document prior to launch, given the detailed discussion at this meeting, but that Kate should circulate the consultation immediately prior to publication in case board members wanted to raise any final thoughts.

Actions: Address board member comments and suggestions in consultation version of the framework; prepare consultation following Expert Panel feedback; circulate to board members immediately prior to publication.

3.4 2022 Business Plan

Kate presented the draft Business Plan for 2022, explaining that by the end of 2022 the CLSB should be close to achieving the vision and objectives set out in its mid-term strategy (which runs to 2023). In preparing the draft, the executive had been mindful of meeting the CLSB's new commitment to focusing on good consumer outcomes; the Business Plan priorities had therefore been linked to the promotion of one or more of the consumer outcomes identified in the policy statement.

The board discussed the proposals, including how they were supported by the proposed budget (considered at Item 5.3), and agreed that the programme of work was comprehensive and well aligned to the strategy. The draft Business Plan for approved for consultation.

Action: Publish the draft 2022 Business Plan alongside the practising fee consultation.

4. BOARD MATTERS

4.1 Meeting dates for 2022

The board agreed the following meeting dates for 2022:

- 26 January
- 20 July
- 19 October

A convenient date for April 2022 could not be found and it was agreed that Kate would follow up with board members after the meeting.

The board discussed whether and when in-person board meetings should resume. Some board members expressed a preference for holding two in-person and two virtual meetings per year, while others felt that one in-person meeting would be more practical given how far the NEDs have to travel, perhaps structured around a strategy or vision day. Either way, it was agreed that meeting agendas should be crafted to get the most out of the format.

Action: Publish meeting dates on the CLSB website; follow up to agree April date.

5. FINANCE

5.1 Quarterly report: Q2 2021

Jacqui introduced the quarterly finance report, noting that the overspend projected in Q1 had been largely offset. She also explained changes to the telephone answering

system that were being explored, which would deliver significant cost savings on that budget line going forward.

The board noted the financial position in the report.

5.2 Reserves Policy

In April, the board had discussed the LSB's expectation under its new Practising Fee Rules that a reserves target of more than three to six months' operating expenditure would require justification by the legal regulators. The CLSB's size meant that aiming for 12 months of operating expenditure was considered justifiable and it was assumed that three to six months' operating expenditure would not be sufficient to cover high-cost risks. The board had agreed that a selection of risks should be costed-up to test this assumption and, if the assumption was not correct, the board would have the opportunity at this meeting to readjust the target.

In light of the above, several hypothetical scenarios had been costed during Q2. The scenario carrying the highest level of financial risk involved a data breach and/or cyber attack. However, Kate explained that the CLSB's insurance cover would soon be expanded to insure against a wider range of foreseeable risks, including cyber risks. The board was therefore presented with calculations for the next most expensive hypothetical scenario, which involved the CLSB being unable to continue as the regulator of Costs Lawyers following an unsuccessful judicial review of a third party's decision. The costing was based on advice taken from the CLSB's accountants as well as data drawn from internal financial records and public sources. The total estimated cost came out at just over 6 months' operating expenditure (acknowledging that assumptions had to be made and the actual cost might be higher or lower depending on the exact circumstances).

The board considered the calculation in detail and explored the assumptions made. Board members raised alternative scenarios to test whether they might create an additional financial burden, but it was agreed that there was a limited pool of costs that could be met through practising fee reserves, which could only be spent on permitted purposes under the Practising Fee Rules.

It was acknowledged that there might be exceptional, unforeseeable circumstances that are not accommodated by the Reserves Policy, but the board's focus had to be on mitigating known and foreseeable risks that had some likelihood of materialising. Reserves were funded by the profession, and thus ultimately the public where the cost of regulation was passed on, so it was important to strike the right balance. On this basis, the board approved an updated version of the Reserves Policy that reduced the target level of uncommitted reserves from 12 to 6 months of operating expenditure.

As the purpose of the uncommitted reserves was to mitigate risk (in line with the LSB's guidance) – rather than paying for one-off projects that could not reasonably be funded through an annual increase in practising fees – it was agreed that a committed reserve for future IT development was also necessary. The next phase of planned development of the CLSB database had been priced at just over £30,000 for the build, testing, implementation and integration with other systems. The board therefore

agreed to adopt a £30,000 committed reserves target, with the aim of contributing £5,000 per year over the next five years (being the anticipated technological lifespan of the current database software).

Action: Adopt updated Reserves Policy.

5.3 2022 budget

5.4 2022 practising fee consultation

Kate explained the budget setting process and how this was linked to the priorities in the draft 2022 Business Plan. The board considered the budget alongside the proposed practising fee for 2022 of £281, as well as the draft consultation on the level of the fee. The budgetary items that placed upward and downward pressure on the level of the fee were discussed.

In terms of perception, the Non-Lay NEDs felt that the profession would be receptive to a small increase in the fee given that they have seen tangible improvements in service, for example through the online practising certificate renewal process.

The board approved the 2022 budget and draft practising fee consultation for publication.

Action: Launch practising fee consultation with associated documents.

5.5 2020 accounts for approval

The board approved the 2020 accounts, prepared by AGP Chartered Accountants, for signing.

Action: Arrange for signing of accounts and publish on website.

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 approved the changes that had been made to the registers during Q2, as requested at the April board meeting, to mirror the updated Reserves Policy. This included the addition of new risks OP7 and OP8.

The board noted that further changes were needed to reflect the reduction in the uncommitted reserves target from 12 to 6 months' operating expenditure as agreed under Item 5.2.

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

7. REGULATORY MATTERS

7.1 New guidance notes

The board considered a new guidance note on closing down a practice as well as guidance for unregulated employers of Costs Lawyers, which had been developed in Q2 in line with priority 3 in the 2021 Business Plan.

In relation to closing down a practice, the board discussed whether there was any evidence of practitioners having difficulty obtaining run-off insurance in the current

market. Kate explained the initiatives that were underway which might uncover such evidence, but noted that there was no suggestion of difficulties thus far.

In relation to the guidance for unregulated employers, the board felt this was particularly important for highlighting that whilst employers might not be responsible to the regulator for what Costs Lawyers do in their professional capacity, they should not put their employees in a position that runs counter to their regulatory obligations. The guidance would give practitioners something to point to if they felt under pressure. Work on the competency framework project suggested this would be welcome, particularly for junior lawyers.

The board approved the guidance notes for adoption.

Action: Update Costs Lawyer Handbook with approved guidance notes.

7.2 Proposals for diversity and inclusion next steps

The board considered a paper setting out the findings of a desk research exercise to explore evidence of effectiveness of different types of diversity interventions. The board approved the work areas proposed in the paper by way of next steps.

The board was also asked to consider how the CLSB should approach its next diversity survey. Several difficulties had emerged with the proposed approach for 2021 and Jacqui had asked a small group of practitioners for feedback on the options available (in terms of perceived privacy implications, likely response rates etc). Essentially the options were running an anonymous survey or a non-anonymous survey with pre-populated data, each having distinct benefits and drawbacks. The board discussed the pros and cons of each approach.

It was agreed that a hybrid approach should be investigated, to see if the software could support a choice for individual practitioners between an anonymous or non-anonymous survey. Kate and Jacqui would also reach out to the LSB and other regulators (particularly those that do not regulate entities) to seek feedback on the approach.

Actions: Test viability of hybrid approach; Discuss with LSB and relevant regulators.

7.3 Consumer engagement strategy – review and refresh

The board considered a paper setting out proposals for year 2 of the consumer engagement strategy (which runs from mid-2021 to mid-2022). The proposals update the strategy to ensure it is aligned with the CLSB's policy statement on good consumer outcomes and builds on learnings from year 1.

The board approved the proposals and noted that the work programme for year 3 would be firmed up toward the end of year 2.

Action: Update the published consumer engagement strategy to reflect the approach agreed for year 2.

7.4 Regulators' Pioneer Fund bid

Between meetings, the board was informed that a bid was being worked up for project funding from the Regulators' Pioneer Fund. Board members had asked to see the final bid, which was provided for noting. The board felt the project was interesting and well-positioned. Kate noted that, whether or not the bid was successful, it had been a useful exercise to identify opportunities for the CLSB in the innovation space.

8. LEGAL SERVICES BOARD (LSB)

8.1 Learnings from BSB review against well-led standard

Kate introduced this item. She reminded the board that the LSB had been carrying out a targeted review of the governance processes used by the Bar Standards Board (BSB) and the Faculty Office against the LSB's "well-led" performance standard. For the BSB, this had culminated in the publication of a report that identified various governance issues at board and executive level. There was an opportunity for the CLSB to apply the learnings from the report in its own governance review, which was scheduled to begin in Q3. Kate presented a paper drawing out themes from the report and making recommendations for where and how the CLSB could make changes informed by the report.

The board considered and agreed the actions recommended in the paper, noting that some would be discussed in more detail in the governance strategy session scheduled for the end of the meeting.

Action: Implement agreed recommendations.

8.2 Other workstreams

The board was provided with updates in relation to:

- positive press coverage of the latest assessment by the LSB of the CLSB's regulatory performance (the board was provided with the assessment itself between meetings);
- the CLSB's proposed response to the LSB's consultation on new rules for applications to alter regulatory arrangements.

9 STAKEHOLDER UPDATES

9.1 ACL Council meeting minutes

The board noted the minutes of ACL Council meetings held in March and April 2021.

The board discussed extracts relating to the collection of a mandatory practising fee by ACL from regulated Costs Lawyers. The board felt that any decision to pursue this course of action should be driven by principle rather than the need for a new income stream. Kate agreed to inform the board if the matter was raised further.

9.2 Work updates

The board was informed that the first annual review of the MOU and Operating Protocol (OP) between ACL and the CLSB had taken place in May. The organisations had worked together to consider what actions had been taken under the protocols throughout the year, whether the parties had received the information they needed and any perceived threats to regulatory independence. It was agreed that the protocol was working well and that no changes to the documents were necessary at this stage.

The board noted the outcome and Kate confirmed that the versions of the MOU and OP published on the CLSB website had been annotated to show the date of last review.

10 OPERATIONAL MATTERS

10.1 Complaints procedure audit outcomes

The board considered a paper on the outcomes of the first complaints procedure audit, which was completed in Q2. Kate noted that the number of problems found suggested that the audit was an effective use of supervision resource, and presented an opportunity to significantly improve compliance in the first year. The board noted the outcomes and approved the proposed next steps. Jacqui explained that the webpage which would be used to communicate learnings from the audit was nearly ready for publication.

Kate also noted that the time was right to begin more structured promotion of the CLSB's messaging through social media. This would start with LinkedIn, which could be used to support other communication channels (such as email circulars) and engage practitioners who preferred bite-sized interactions.

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

When: Wednesday 20 October 2021 at 10.30am

Where: Virtual

There being no further business, the Chair declared the meeting closed at 12:51.

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Chair

Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes (21 April 2021)	About ⇨ Our board
3.4, 5.3, 5.4	2022 practising fee consultation with annexes, including the proposed 2022 budget and Business Plan	Regulatory ⇨ Consultations

4.1	Board meeting dates	About ⇨ Our board
5.5	2020 accounts	Regulatory ⇨ Cost of regulation ⇨ Cost of CLSB
6.1	Risk registers	About ⇨ Strategy and governance
7.1	Guidance notes	For Costs Lawyers ⇨ Costs Lawyer Handbook
7.3	Consumer engagement strategy	About ⇨ Strategy and governance
9.2	MOU and OP with ACL	About ⇨ Who we are
11.1	Board papers	About us ⇨ Our board
Item	Document	Publication location (other)
8.1	LSB review of BSB against the well-led standard	LSB website here
8.2	Updated LSB assessment of the CLSB's regulatory performance	LSB website here
8.2	Consultation on proposed rules for applications to alter regulatory arrangements	LSB website here