

Company number: 04608905

MINUTES
Costs Lawyer Standards Board Ltd
Wednesday 28 June 2023 at 9:30 am
Gatehouse Chambers, London

Board:	Rt Hon David Heath CBE	Lay NED (Chair)
	Stephanie McIntosh	Lay NED (Vice-Chair)
	Andrew Harvey	Lay NED
	Andrew McAulay	Non-Lay NED
	Paul McCarthy	Non-Lay NED
In attendance:	Kate Wellington	CEO
	Jacqui Connelly	Director of Operations

1. OPENING MATTERS

1.1 The Chair declared the meeting quorate. There were no apologies. The Chair thanked board members for their participation in two productive meetings that were held on the previous day, namely an annual board strategy session and a board-to-board roundtable with IPReg.

1.2 There were no declarations of interest on any agenda item.

2. MINUTES

2.1 Minutes dated 29 March 2023

The board considered the minutes of its last scheduled quarterly meeting on 29 March 2023. 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 29 March 2023. Kate explained that the following matters, which had been outstanding from the January board meeting due to resource constraints in Q1, had been successfully completed in Q2:

- develop first annual risk outlook for publication; and
- develop and issue consultation on changes to the Code of Conduct.

The board was provided with a copy of the annual risk outlook and Kate fed back on the development process. The board was also updated on progress with the Code of Conduct consultation, including a proposed new layout for the Code to make it more accessible and user friendly.

The board was informed about the recruitment of a new Director of Policy who would be starting on 1 August. Board members looked forward to meeting her at the next scheduled board meeting.

3. STRATEGY

3.1 Progress against Business Plan: Q2 2023

The board was provided with a progress update against the 2023 Business Plan for Q2. Kate noted that nine of the 12 priorities were underway, with two already completed. The board considered and approved the executive's proposed strategic priorities for Q3 of 2023.

3.2 Entity regulation next steps

The board continued its ongoing discussion around whether any form of entity regulation was viable for the Costs Lawyer profession. In March, the board had considered a paper setting out different models of entity regulation that the CLSB could implement, ranging from a full statutory scheme to a light-touch approach. During Q2, the executive had taken initial steps to scope market appetite and costings in relation to the options that the board felt had the most merit, and the board was presented with a paper setting out the findings of that scoping work.

The board discussed the scoping paper in detail, and in particular considered:

- whether the likely cost of development, implementation and ongoing monitoring of an entity regulation scheme was proportionate to the intended benefits;
- alignment of the project with the regulatory objectives, including promoting competition in the market for legal services and encouraging a strong, independent and diverse legal profession;
- the different resource requirements, possible structures and likely risks for each option;
- uncertainty around return on investment, for both the public/consumer interest and for the profession as a whole;
- alternative models, such as finding synergies with existing entity accreditation schemes;
- the experience of the other legal regulators in implementing entity regulation; and
- potential other ways of achieving the same or similar purposes to entity regulation, with less risk and cost attached.

Overall, the board agreed that the high (and potentially uncertain) input costs and risks of developing a form of entity regulation for Costs Lawyers outweighed the likely value, at least at this stage of the market's evolution. The main aim of such a scheme would be to raise standards within the unregulated part of the sector and encourage independence from other legal professionals, and there were less risky and less costly options for achieving those ends that could be tried first. It was agreed that the work done so far on entity regulation was helpful in reaching that conclusion, and could be returned to in the future if the context changed.

The board agreed that exploring alternative ways of achieving the same aims should be incorporated into the Business Plan priorities scheduled for H2 2023 (particularly Business Plan priorities 7 and 9). The board also agreed to include a priority in the 2024 Business Plan around developing guidance on the CLSB's expectations for unregulated costs firms, as a reference source in the public interest.

Actions: Add new priority to 2024 Business Plan; Take forward aims of entity regulation through other workstreams.

3.3 2024 Business Plan

The board provided initial feedback on a draft Business Plan for 2024. Given the need to consult on the Business Plan in July (in time to apply to the LSB for approval of the 2024 practising fee), the Business Plan would be subject to adjustments based on discussions at the board's strategy session held on 27 June. It was agreed that a final draft would therefore be circulated for approval by email following the meeting.

Action: Circulate final draft of Business Plan by email for approval.

4. BOARD MATTERS

4.1 2024 board dates

The board agreed the following meeting dates for 2024:

- 30 January
- 23 April
- 16 and 17 July
- 23 October

The board also agreed to reschedule its next meeting from 20 September to 19 October, to accommodate board member availability.

Action: Publish new board dates on CLSB website.

4.2 Tenure renewals and succession planning

For the purposes of continuity and succession planning, the board was provided with information about each NED's current tenure and expected ultimate retirement date from the board. The board agreed that overall there was a good staggering of anticipated retirements, subject to two factors.

First, given the size of the board, continuity issues could arise if board members did not provide good notice of any future intention not to renew their appointments. No board members indicated an intention not to put themselves forward for renewal, but all agreed to provide as much notice as possible if this changed in the future, to allow for recruitment planning.

Second, the Board Appointment Policy as currently drafted permits individual board members to be reappointed no more than twice. The board agreed that this was counter to its aim of having the flexibility to appoint members for shorter terms, to help stagger appointments and thus to promote continuity. It was therefore agreed that a proposed amendment to the Board Appointment Policy be brought to the board's October meeting for consideration. The overall term limit for board members should remain at 7 years.

Action: Bring proposed amendment to Board Appointment Policy to next meeting.

5. FINANCE

5.1 Quarterly report: Q2 2023

Jacqui introduced the quarterly finance report. The board noted the financial position, including that careful budget management during Q2 had significantly reduced the projected budget shortfall for the year. Board members noted that the process of continually improving the information contained in the finance report was proving beneficial for board scrutiny, as it was now easy to see what had been planned for each budget item, whether and how the plan had changed during the year, and why.

5.2 2022 accounts

The board unanimously approved the 2022 financial accounts for signing.

Board members also agreed to provide updated mandates for the CLSB's bank accounts with Lloyds, which had been prepared for signing after the meeting.

Actions: Sign and file 2022 accounts; Sign and submit updated bank mandates.

5.3 2024 budget and PCF consultation

Kate introduced this item, explaining how the proposed budget and consultation had been developed. She noted that, given the persistent high levels of inflation in England and Wales, a 10% uplift had been assumed on budgeted costs. She also explained how the budget surplus from 2022 of circa £24k had been deployed to offset expenditure in 2024 and reduce the practising fee from what it would otherwise have been.

The board discussed the proposal to increase the practising fee to £290, as informed by the proposed budget. It was agreed that it was appropriate to apply the 2022 surplus to offset expenditure in 2024 – in line with requirements in the LSB's Practising Fee Guidance – and that this would help to keep the increase in the fee below inflation, equating to a reduction in real terms. The board was conscious that the fee might need to increase further in future years – where there was no previous year's surplus available to apply – but it was agreed that future years' expenditure should not impact the present year's practising fee, in line with the LSB's Practising Fee Rules.

The board considered the consultation documents and discussed the consultation questions posed, including any potential differential impact of increasing the practising fee as between sole practitioners and Costs Lawyers whose employers pay their fee.

The board approved the consultation documents, including the budget, for publication.

Action: Publish practising fee consultation once all supporting materials (including 2024 Business Plan and new mid-term strategy) have been finalised

6. RISK MANAGEMENT

6.1 Review of risk register

Kate noted that, as agreed in March, the risk register had been updated to include mitigating actions in section C and the new version had been published on the website. Board members were invited to comment on the mitigating actions and otherwise carry out the usual quarterly review of the risk register.

The board discussed the longer term structural reforms highlighted in section D and how these were linked to themes from the strategy session held on 27 June.

A key emerging risk in the market – both for Costs Lawyers, other legal practitioners and their clients – related to publication of the new fixed costs rules by the Civil Procedure Rule Committee. While the rules had been published in draft, they did not appear to be subject to consultation and publication was merely by way of prior notice to those affected. The non-lay NEDs highlighted areas of potential risk for clients arising from the rules. For example, where a claim is reallocated to a different track part-way through proceedings, the rules applicable to the new track or complexity band will apply *ab initio*. This creates an unexpected risk of non-recovery (and potentially insolvency) for clients and solicitors, overlaid by a risk of negligence for Costs Lawyers who are not aware of (and thus do not advise on) this new risk. Other examples were emerging from ongoing commentary in the sector.

The board also discussed the potential impact of the new rules on competition and access to justice in the sector, given early signs that commercial firms are likely to shy away from claims worth less than the £100k cap going forward. There is some suggestion these claims could be bundled together and outsourced, which could lead to poor client outcomes in terms of service quality or regulatory protections.

The board agreed that it might be appropriate – depending on what action other stakeholders take – for the CLSB to prepare a risk bulletin, or a series of bulletins, on issues arising from the new fixed costs rules once these become clearer. This would be directly relevant to the regulatory objectives of protecting the interests of consumers and the public, as well as supporting a strong and effective legal profession in terms of the solvency risks involved. Paul agreed to help with identifying and curating these risks as they emerge.

Action: Update risk register and monitor risks from fixed costs rules as they emerge.

7. REGULATORY MATTERS

7.1 Education – Accreditation

Kate informed the board that, in June, the CLSB's Accreditation Panel granted ACL Training accreditation to deliver the new Costs Lawyer Qualification from September 2023. The board agreed that this was a significant milestone for both organisations, and for the profession as a whole, and discussed the benefits and learnings that had come out of the accreditation process and wider education reforms. The board was provided with the accreditation letter sent to ACL Training on 19 June and Andrew M also fed back on the experience of being a member of the Accreditation Panel. The board discussed the communication channels that would be used to promote the course going forward.

The board was also provided with an update on ACL Training's recent initiative to look at whether an apprenticeship route to qualifying as a Costs Lawyer was viable, including ways in which the CLSB could support that work. Board members were supportive of the proposal and agreed that the CLSB should keep abreast of developments and assist as appropriate.

7.2 Education – Qualifying Experience

Kate provided a report on work that had been undertaken in Q2 to progress the CLSB's new framework for Qualifying Experience, including:

- finalisation of the online application forms and template documents;
- implementation of the communications plan;
- delivery of a webinar for existing students and a joint presentation with ACL Training at the ACL Manchester conference;
- development of a supervisor register;
- processing of the first applications from students under the new framework.

This activity generated questions from students about how the rules applied to their unique circumstances, and two issues were raised with the board for consideration. First, the board discussed how the transitional arrangements applied to students whose existing Qualifying Experience supervisor did not meet the requirements in the new Training Rules. The board considered and approved a new policy statement setting out how students in particular circumstances would be treated, to ensure fairness and consistency.

Second, the board considered the approach that should be taken where a trainee is not in a role/organisation where they have the opportunity to practise the skill of advocacy during their Qualifying Experience as required by the Training Rules (by reference to the Costs Lawyer Competency Statement). Board members discussed the prevalence of advocacy-based work within the profession now and in the future, and opportunities to gain experience. The board approved guidance – to be published on the CLSB website as part of the Qualifying Experience FAQs – emphasising the importance of practising advocacy during Qualifying Experience but providing practical suggestions for how that experience might be obtained. The board discussed whether recent judicial comments on the quality of advocacy would be relevant to Costs Lawyers, even if by analogy, and thus should be considered in the context of competency. Kate agreed to look into this further.

The board acknowledged that during the transition period it was likely that other matters would come to light that needed to be addressed promptly to avoid any detriment being caused to students. The board therefore authorised the executive to take decisions on those matters – guided by the principles of clarity and consistency, pragmatism and practicality, and fairness to affected students – reporting to the board on an exceptions basis where appropriate.

Finally, given that this was the first time the CLSB had been responsible for determining whether students meet the Qualifying Experience requirements, and given that the issue had been put to the board both in and out of meetings over several months, the board agreed it was an appropriate topic for recording in a Board Decision Note. The board approved a draft Decision Note for publication.

Actions: Adopt policy statement on transitional provisions; Adopt new FAQ on advocacy experience; Consider relevance of judicial commentary on standards in advocacy; Publish Board Decision Note.

7.3 Progress against ongoing competency plan

The board was provided with a progress update against the CLSB's ongoing competency work plan and was asked to consider two outputs.

First, the board considered new text for the CLSB's policy statement on enforcement and sanctions, covering competency issues and how they will be treated in a disciplinary context. The board discussed the need to include guidance on the regulatory impact of temporary sources of a lack of competency or capacity, such as ill-health, where there is no issue with underlying professional knowledge and skills. The board approved the proposed changes to the policy statement, subject to an amendment to cover this additional issue.

Second, the board was presented with the first draft of an expansion to the Competency Statement to include professional skills from the point of authorisation to extend throughout a Costs Lawyer's career. Kate explained that, since post-qualification experience was rarely a reliable indicator of seniority or level of responsibility for Costs Lawyers (unlike other legal professionals), a different approach had been taken from other regulators. The project had focused on three practising scenarios in which Costs Lawyers are likely to find themselves after qualification (at any stage), namely: (i) as an experienced/specialist practitioner; (ii) as a people manager; and (iii) as a business owner.

The board discussed the draft in detail, including:

- the descriptors and behavioural indicators for the specific skills listed;
- the nature of the document, including whether it was mandatory or advisory and the implications of each option;
- links between the skills and the risks identified in sections C and D of the CLSB's risk register;
- how the document could support a transparent and consistent assessment of competency in a disciplinary context;
- opportunities to raise standards in the unregulated part of the costs sector through the business and commercial skills aspects;
- whether and how to consult on the document and next steps.

Overall, the board agreed that the document should be positioned as indicative guidance, rather than a mandatory set of skills that must be demonstrated at the relevant career stage. There were several reasons for this, most persuasively:

- this was consistent with the CLSB's approach of supporting and encouraging practitioners to meet high professional standards, over and above mere compliance;
- there was no evidence of existing ongoing competency issues in the market that required addressing through mandatory requirements;
- the document could be broader and deeper – and thus more valuable to practitioners and their clients – if positioned as guidance;
- guidance would still be indicative, although not determinative, in a disciplinary context, allowing for responsiveness to individual circumstances;

- guidance would be more able to flex and change as the market and client expectations change;
- it must be for the practitioner to assess whether and when they have reached each relevant career stage, as trying to precisely define the boundaries of each stage would be counterproductive to the purpose of the document and the LSB's policy statement.

The board agreed that consultation on the next version of the document would be important, although noting the need to avoid consultation fatigue given that a number of formal CLSB consultations were already active or scheduled. It was agreed that, instead of preparing a formal consultation document, the CLSB should convene a roundtable or workshop for those who are interested. Board members felt that a discursive event would be more likely to deliver detailed feedback from the profession on this kind of topic based on experience from the initial Competency Statement project.

Actions: Add wording to the policy statement on enforcement and sanctions on temporary lack of competency then publish new version; Proceed with next steps on expansion of the Competency Statement, including updating the draft to address board feedback and convening a workshop.

7.4 Feedback from social mobility event

David and Jacqui provided feedback on a webinar hosted jointly in June with ACL and KE Costs to coincide with Social Mobility Awareness Day. This built on the findings from the latest CLSB diversity survey, which focused on social mobility in the profession, as well as topical issues raised at the ACL conference. The event was successful and generated a good level of interest across the profession. Jacqui noted that the CLSB and ACL will work together to follow up the event by gathering case studies of what different firms are doing with the aim of sharing good practice.

7.5 Draft cease and desist letter templates

Kate introduced this item. She explained that it was one of the outputs of ongoing work around considering what (if any) action could be taken when faced with common scenarios in which unregulated providers undermine the regulatory objectives and/or generate poor consumer outcomes. It aimed to address challenges such as:

- the LSB's decision not to undertake a full review of the list of reserved legal activities in the Legal Services Act 2007;
- the lack of statutory protections for the 'Costs Lawyer' title, with misuse of the title causing confusion for clients (including professional intermediaries); and
- complaints received about unregulated costs advisers that the CLSB does not have the jurisdiction to address.

The board considered three template letters, prepared for the CLSB by a barrister with experience in costs regulation, addressing the following scenarios:

- i. where a person who has never qualified as a Costs Lawyer calls themselves a Costs Lawyer;
- ii. where a person does not have a practising certificate but continues to call themselves a Costs Lawyer;

- iii. where a complaint is made against an unregulated person who is not holding themselves out as a Costs Lawyer.

The board discussed the legal arguments put forward in the letters, the circumstances in which it might be appropriate to send them, the risks involved, and the CLSB's other soft options for dealing with these issues. Overall the board agreed that a version of letters (i) and (ii) could be used in a particularly egregious case of misleading conduct by an unregulated person, to test the legal arguments and possibly create precedent. In such a case, the letter should be heavily tailored to the specific situation.

More broadly, the board supported a push to find creative ways to address issues around protection of title and consumer detriment in the unregulated part of the market, as canvassed in detail at the strategy session on 27 June. This included building up and publishing case studies of detriment that was currently outside the scope of regulation, and following up with IPReg on convening a group from both within and outside the legal services sector to consider consumer protection levers where there is no formal protection of title.

Action: Progress other workstreams on unregulated providers.

8. LEGAL SERVICES BOARD (LSB)

8.1 Work updates

The board received updates in relation to:

- the LSB's project on consumer redress;
- the LSB's project on technology for access;
- the 2023 regulatory performance assessment information request.

8.2 Feedback from Q2 meetings

David provided feedback from meetings with the LSB (and other stakeholders) on consumer awareness and the rule of law and professional ethics, as well as his first meeting with the LSB's new Chair.

9 STAKEHOLDER UPDATES

9.1 ACL Council meeting minutes

The board noted the minutes of ACL Council meetings held in February, March and April. Jacqui provided feedback on her attendance at the ACL conference in Manchester.

9.2 CILEx re-delegation

The board was made aware of the LSB's recent decision on three issues referred to it by CILEx and CILEx Regulation Limited (CRL), relating to CILEx's proposal to change its delegation of regulatory responsibility from CRL to the SRA. The board discussed how the decision was relevant to the CLSB and agreed that it was helpful to have some degree of clarity around how any future re-delegation would work for the regulatory bodies.

The board felt that it might be appropriate in the future, depending on how the position with CILEx unfolded, for the smaller regulators to have a joint discussion about impact on regulation across the sector.

9.3 Annual review of MOU and OP with ACL

The board was informed that the third annual review of the MOU and Operating Protocol (OP) between ACL and the CLSB had taken place in Q2. The organisations had received all the information they needed under the OP in 2022 and there had been no perceived threats to regulatory independence identified during the year. 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 would be annotated to show the date of last review.

Action: Publish annotated version of MOU and OP on website.

10 OPERATIONS

10.1 Outcome of 2023 complaints procedure audit

The board considered a report of the complaints procedure audit carried out in H1 2023. The board noted that the audit process is having a positive impact on improving standards and has also allowed the CLSB to start checking that the changes necessitated by a recent revision of the Disciplinary Rules and Procedures are being actioned. The board discussed the challenges around tackling these issues at a firm level in the absence of mandatory entity regulation, meaning there was no equivalent of a COLP or COFA who was responsible for ensuring that changes to a procedure are rolled out across an organisation.

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

The next meeting was scheduled for 19 October 2023, remotely by Teams.

There being no further business, the Chair declared the meeting closed at 12:05.

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Chair

Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes	About ⇨ Our board
3.1	2023 Business Plan	About ⇨ Strategy and governance

3.2	Proposed 2024 Business Plan	Regulatory ⇨ Consultations
5.2	Annual accounts	Regulatory ⇨ Cost of regulation
5.3	Proposed 2024 budget and practising fee consultation	Regulatory ⇨ Consultations
6.1	Risk register	About ⇨ Strategy and governance
7.2	Resources for Qualifying Experience	Qualify ⇨ How to become a Costs Lawyer
9.3	MOU and OP with ACL	About ⇨ Who we are
11.1	Board papers	About ⇨ Our board
Item	Document	Publication location (other)
9.2	LSB decision on CILEx re-delegation	LSB website here