

Company number: 04608905

MINUTES
Costs Lawyer Standards Board Ltd
Wednesday 20 July 2022 at 9:30 am
Institute of Advanced Legal Studies, London

Board:	Rt Hon David Heath CBE	Lay NED (Chair)
	Stephanie McIntosh	Lay NED (Vice-Chair)
	Andrew Harvey	Lay NED
	Paul McCarthy	Non-Lay NED
	Andrew McAulay	Non-Lay NED
In attendance:	Kate Wellington	CEO and Company Secretary
	Jacqui Connelly	Director of Operations
	Heather Clayton	Director of Policy (Item 3.2)

1. OPENING MATTERS

- 1.1** The Chair declared the meeting quorate. There were no apologies. Andrew McAulay joined by videolink.
- 1.2** There were no declarations of interest on any agenda item. David noted that he had recently been appointed to a disciplinary committee of the Royal College of Veterinary Surgeons, although that appointment had not yet involved active casework. The appointment would be added to his declaration of interests form.

2. MINUTES

2.1 Minutes dated 19 May 2022

The board considered the minutes of its last scheduled quarterly meeting on 19 May 2022. 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 19 May 2022. 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: Q2 2022

The board was provided with a progress update against the 2022 Business Plan. Kate noted that three additional priorities had been achieved during Q2, meaning that overall six of 17 priorities had been achieved with six more in train. Board members discussed how the projected budget surplus could be used to resource remaining Business Plan priorities to relieve pressure on internal resource.

3.2 Strategy session: Defining our regulatory approach

The board was provided with a paper drawing out issues from the findings of a project, funded by the Regulators' Pioneer Fund, that asked: How can Costs Lawyers help to reduce the cost of legal services? Heather introduced this item with a presentation setting out relevant evidence from the project and exploring how the issues canvassed in the paper could shape the CLSB's approach to regulation.

The board discussed the issues in detail, considering matters such as:

- Whether Costs Lawyers should be seen as providers of business-to-business (rather than business-to-consumer) services, and the implications of this for the cost and scope of regulation.
- Whether the small minority of Costs Lawyers who serve individual consumers could and should be treated differently from a regulatory perspective.
- The benefits and drawbacks of viewing regulation of Costs Lawyers as essentially voluntary, given the nature of the market.
- The potential impact of, and appetite for, expanding the scope of costs regulation.
- The CLSB's place within the Legal Services Act framework, including how it should implement LSB policy, which is aimed primarily at protecting consumers.

The board considered the impact of these issues on practical matters such as the prospect of entity regulation, overlaps and gaps with other regulatory bodies, and the importance of independence from ACL (ensuring that it is the regulatory objectives – not the interests of the profession – that are driving decision-making). Board members debated the purposes of regulation in the market for costs advice, including the benefits that regulation can deliver not just for clients but for the justice system and society as a whole.

The board drew several preliminary conclusions as to how the CLSB should move forward, while acknowledging that ongoing internal and external discussion would be needed on these issues:

- There were benefits to the CLSB remaining within the Legal Services Act framework, but it would be important to agree an approach with the LSB that enabled the CLSB to pursue the regulatory objectives in a way that recognised the business-to-business nature of Costs Lawyers' work.
- The CLSB must not take on representative functions, but this did not preclude it from exploring potential services that Costs Lawyers could provide which would benefit the public and improve access to justice, in line with the regulatory objectives.
- The potential public benefits from light-touch entity regulation were sufficient to warrant preliminary investigations as to viability.
- The board was open-minded as to whether having a specialist regulator for the Costs Lawyer profession was an efficient model, noting that at present the approach was working well and that ultimately ACL was named as the approved regulator in the Legal Services Act.

It was agreed that the executive should continue to develop ideas and workstreams arising from the strategy session, taking the board's views into account, and further discussion would be needed at future board meetings to take these forward. The board

thanked Heather for her assistance in curating the strategy session and agreed that it had been a very useful and interesting agenda item.

4. BOARD MATTERS

4.1 Dates for 2023 meetings

The board agreed to meet on the following dates in 2023:

- 31 January
- 29 March
- 28 June
- 20 September

Action: Publish board meeting dates on website.

4.2 Remuneration Committee report

The board was provided with minutes of a meeting of the Remuneration Committee on 16 June 2022, as well as a Remuneration Policy tabled by the Committee for approval by the board in line with the Committee's Terms of Reference. Andrew Harvey, as Chair of the Committee, also gave a verbal report of the Committee's business.

The board noted the minutes, which showed that the Committee had considered in detail options for changing the contractual relationship with the CEO due to her residency in Australia, arrangements the Committee had made for carrying out its business going forward, and the implications of *NMC v Somerville* for the CLSB.

Board members discussed the Remuneration Policy. In relation to proposed paragraph 7, the board considered whether it was appropriate to create an expectation of an annual wage increase linked to inflation, or whether a guaranteed annual review was preferable. It was agreed that any guaranteed pay review should not be hollow and that the objective of maintaining real wages where possible was sound. The board asked Kate to prepare and circulate amended text for paragraph 7 based on this position, which could be approved by email and reported back for the minutes at the next meeting.

The board noted that the proposed changes to the contractual relationship with the CEO could be approved by the Committee under the terms of the Remuneration Policy following the meeting. Those changes would necessitate the CEO resigning as Company Secretary, but a replacement was not necessary as a Company Secretary was no longer required for private limited companies.

Action: Circulate amended wording for paragraph 7 of the Remuneration Policy for approval by email.

4.3 Governance review tracker: New consultation process document

Kate introduced this item. She explained that, following the LSB's well-led reviews in 2021, the CLSB had mapped the recommendations from the review against its own governance arrangements to produce a series of actions that should be taken to ensure the LSB's expectations were met. Most of these had been dealt with under the new Board Governance Policy, adopted by the board in February. One outstanding item was

to formalise and document the CLSB's policy on consulting with stakeholders. The board was provided with a proposed "Approach to consultation" policy for this purpose, as well as the updated recommendation tracker.

The board felt the policy would be helpful both internally and externally, and would give stakeholders reassurance that their views were heard and taken into account. The board approved the policy and suggested it be published on the website.

Action: Adopt policy into Internal Handbook and publish on website.

5. FINANCE

5.1 Quarterly report: Q2 2022

Jacqui introduced the quarterly finance report. She noted that the current projection remained for a surplus, attributable to higher than expected income levels and lower spending in certain areas. The board noted the financial position in the report and that the executive would investigate how to allocate the surplus, as discussed under item 3.1 above.

5.2 2021 accounts

The board was asked to approve the 2021 draft financial accounts for signing and was provided with an explanatory note setting out how the Regulators' Pioneer Fund grant had been recorded for accounting purposes. Board members asked about the additional £10,000 expenditure on professional fees as compared to 2020, and Jacqui explained that this largely comprised expenditure on two consultants who assisted with the review of the Costs Lawyer Qualification, which was not included in the 2021 Business Plan or budget. The board approved the accounts.

Jacqui noted that a small corporation tax liability had been accrued for the first time, from income on the reserve accounts. A tax return would be completed in 2022 and this liability would be recorded in the 2022 accounts, so no amendment was needed to the 2021 accounts as approved.

Action: Sign and file 2021 accounts.

5.3 2023 Business Plan and budget

5.4 PCF consultation

The board took agenda items 5.3 and 5.4 together. Kate introduced this item, explaining how the Business Plan and budget had been developed and highlighting the proposed priorities for 2023. She noted that the contingency budget line had been removed and that, given the current rate of inflation, a 9% uplift had been assumed on budgeted costs.

The board discussed the proposal to keep the practising fee static at £281, as informed by the proposed budget. It was agreed that inflationary pressures might necessitate an increase to the fee in future and that it was preferable not to burden the regulatory community with a significant one off increase in a later year. Despite this, the budget showed that inflation could be borne in 2023, so a static fee was appropriate this year, if not next year.

The board considered the consultation documents and discussed the consultation questions posed. It was noted that question 3 in relation to the benefits of regulation

might help to inform the issues the board had discussed under the strategy session at item 3.2 above.

The board discussed engagement activity that could be carried out to complement the consultation. There was concern that the regulated community might be suffering from survey fatigue due to recent demands on their time and it was suggested that a webinar be explored if there was resource for this.

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

Action: Launch consultation and consider complementary activity.

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 considered risk OP6 (*breakdown in communication between any of ACL, ACLT and CLSB*), which the board had considered downgrading at its meeting in May. Kate updated the board on staff changes at ACL Training, with the CEO's announcement that she would be leaving upon three months' notice. On this basis, the board agreed that the rating for OP6 should remain red as the transition played out.

The board discussed whether the emerging cost of living crisis impacted risk OP1 (*more leave than enter the profession*). It was agreed that there was no evidence at this stage to suggest it did, but this should be kept under review, particularly by monitoring practitioners' reasons for non-renewal.

The board agreed to update the evidence of risk OP1 to reflect the new date for extension of the fixed costs regime by the MoJ and to acknowledge the Civil Justice Council's costs review.

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

7. REGULATORY MATTERS

7.1 Two year review of Disciplinary Rules and Procedures

The board was presented with a report of the scheduled review of the Disciplinary Rules and Procedures two years after their implementation. Kate introduced the item and summarised the recommendations for improvement. She noted that the LSB had been given early sight of the findings of the review, and had been asked for feedback on whether a full rule change application would be necessary. The LSB's view was that it would be and that consultation should be undertaken.

The board considered the report and approved the proposed next steps, including consulting on the proposed changes to the rules.

Action: Develop and publish consultation paper.

7.2 Consumer Engagement Strategy: Year 2 report

The board was provided with a report on progress against the initiatives scheduled for year 2 of the Consumer Engagement Strategy and recommendations for areas of focus in year 3. Kate explained that, because the RPF project found that Costs Lawyers are servicing a negligible number of individual consumers, focus had shifted across some of the initiatives (e.g. around pricing and privacy) away from looking at outcomes for individual consumers toward looking at outcomes for business clients.

The board considered progress in year 2 and approved the proposals for year 3. Board members discussed the proposal for constituting a user panel and suggested that this should include a Costs Lawyer who instructs other Costs Lawyers, as they would have a unique perspective.

Action: Update published version of the Consumer Engagement Strategy to incorporate initiatives for year 3.

7.3 Accredited Study Provider Scheme Handbook

The board was provided with a final draft of the proposed Accredited Study Provider Scheme Handbook, incorporating new content and annexes since the board last reviewed the draft in February. Kate summarised the key changes that would be implemented by the Handbook as compared to the existing arrangements for the Costs Lawyer Qualification and sought feedback on both the substance and drafting.

The board discussed various aspects of the Handbook, including the appeal mechanism from decisions of the Panel, alignment of the accreditation process with market standards and providers' expectations, and internal resource implications of implementing the new processes.

The board approved the Handbook for consultation. It was agreed that the consultation paper should be circulated to the board by email before publication, so the board could satisfy itself that all relevant questions were covered. It was also suggested that, as part of the consultation process, a response was sought from an expert who could comment on any equality and social inclusion consequences of the proposal, to ensure the scheme did not inadvertently create obstacles for entry into the profession.

Stephanie noted that she would send minor drafting points, that need not concern the full board, through the Kate after the meeting.

7.4 Diversity update

The board was provided with a draft report of the findings of the diversity survey that was carried out alongside the 2022 practising certificate renewal round, focusing on the pay gap between men and women. Kate explained that, while only around a third of practitioners responded, enough data had been obtained to meaningfully analyse most categories (age, geographic location etc) against reported earnings. The results suggested there was a significant pay gap between genders in all regions other than the South East. The executive felt that the survey may have hit on an important issue, where the CLSB could use regulatory tools to make a real difference to EDI markers within the profession.

Kate noted that the report would ultimately be published, but was still in draft form because an independent consultant had been asked to check the analysis and verify the conclusions drawn from the data before any strong statements based on the survey results were made publicly.

The board considered the report and discussed some of the outcomes that were particularly surprising, for example in relation to the differences between London and the South East, as well as factors that might be driving the significant gender pay gap identified in the North East. Board members also discussed the possibility of triangulating the data to other factors such as experience, qualification level and business ownership. It was agreed that the data was unexpected, which meant it was interesting and merited follow-up work, but also warranted doublechecking prior to publication.

8. LEGAL SERVICES BOARD (LSB)

8.1 Regulatory performance framework consultation

The board was provided with the CLSB's response to the LSB's recent consultation on a new regulatory performance framework for the legal regulators. Kate explained how the CLSB had approached its response and the anticipated next steps from the LSB. The board noted the position.

8.2 Feedback from All Chairs meeting

David provided a verbal update on topics of interest covered at the annual meeting of the Chairs of all the legal regulators on 29 June, hosted by the LSB, as well as a bilateral meeting of the LSB and CLSB Chairs on 19 July. He noted that the relationship between the CLSB and LSB remained very constructive, and the LSB was interested in the questions about regulatory approach that the CLSB was currently asking itself. David explained that the LSB had proposed a board-to-board meeting, probably at the beginning of 2023, which the executive would set up in due course.

9 STAKEHOLDER UPDATES

9.1 Annual review of MOU and OP with ACL

The board was informed that the second 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 2021 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 PUBLICATION

10.1 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.

11 AOB

There was no other business.

12 NEXT SCHEDULED QUARTERLY MEETING

The next meeting was scheduled for 19 October 2022, remotely via videocall. It was agreed that the board would aim to hold its June 2023 meeting in person and arrangements for this would be made closer to the time.

There being no further business, the Chair declared the meeting closed at 12:56.

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Chair

Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes	About ⇒ Our board
3.2	Project webpage	CLSB website here
4.3	Approach to consultation	Regulatory ⇒ Consultations
5.2, 5.3, 5.4	Practising fee consultation, annexing proposed 2023 Business Plan and budget and 2021 accounts	Regulatory ⇒ Consultations
6.1	Risk registers	About ⇒ Strategy and governance
7.1	Consultation on proposed changes to the Disciplinary Rules and Procedures	Regulatory ⇒ Consultations
7.2	Consumer Engagement Strategy	About ⇒ Strategy and governance
8.1	Response to LSB consultation on new regulatory performance framework	Regulatory ⇒ Consultations
9.2	MOU and OP between CLSB and ACL	About ⇒ Who we are
10.1	Board papers	About ⇒ Our board
Item	Document	Publication location (other)
8.1	LSB consultation on new regulatory performance framework	LSB website here