

COSTS LAWYER STANDARDS BOARD LTD

RISK REGISTERS

As at 22 April 2020

1. RISK SCORING

(i) Nature of risk

Our operational risks are categorised as:

- Legal
- Financial
- Operational continuity
- Capacity
- Reputational
- Stakeholder

Our reputational risks are categorised as having the potential to impact one or more of the following regulatory objectives:

- Protecting and promoting the public interest.
- Supporting the constitutional principle of the rule of law.
- Improving access to justice.
- Protecting and promoting the interests of the consumer.
- Promoting competition in the provision of services.
- Encouraging an independent, strong, diverse and effective legal profession.
- Increasing public understanding of the citizen's legal rights and duties.
- Promoting and maintaining adherence to the professional principles, namely: independence and integrity; proper standards of work; acting in a client's best interests; duty to the court; confidentiality of client affairs.

(ii) Gross risk: Impact x Probability

Impact (I)	Probability (P)
The consequences of an event occurring. The event will have: Negligible (1): Very little consequence Slight (2): Some consequences, but none serious Moderate (3): Some consequences which could be serious Serious (4): Serious consequences Severe (5): Very serious consequences	The likelihood of an event occurring. The event is: Low (1): Very unlikely to occur Medium low (2): Unlikely to occur Medium high (3): Likely to occur High (4): Very likely to occur

IMPACT	5	5 YELLOW	10 YELLOW	15 RED	20 RED
	4	4 GREEN	8 YELLOW	12 YELLOW	16 RED
	3	3 GREEN	6 YELLOW	9 YELLOW	12 YELLOW
	2	2 GREEN	4 GREEN	6 YELLOW	8 YELLOW
	1	1 GREEN	2 GREEN	3 GREEN	4 GREEN
		1	2	3	4
		PROBABILITY			

(iii) Adequacy of controls

Descriptor	Score	Description
Fully effective	5	Controls are well designed for the risk and address the root causes. The Executive and Board are comfortable that controls are effectively applied, monitored and assured
Substantially effective	4	Most controls are designed correctly and are in place and effective. Some more work to be done to improve operating effectiveness, or doubts about operational effectiveness and reliability
Partially effective	3	Controls in place but are not sufficient to fully mitigate risk. There are potential weaknesses in the application of controls and limited assurance or reporting available
Largely ineffective	2	Significant control gaps. Either controls do not treat root causes or they do not operate at all effectively
None or totally ineffective	1	No credible control and limited confidence in the application or oversight of risk activity

2. OPERATIONAL RISK REGISTER

Logged by board: 6/4/2011	Reference: OP1	Risk score: I(5) x P(4) = 20
Risk to operation	Changes to the profession impact CLSB viability as more leave than enter the profession	
Nature	Financial, operational continuity	
Evidence of risk	<p>(i) Electronic bills of costs April 2018: New electronic bill of costs came into effect 6 April 2018 for work done after that date.</p> <p>(ii) Capped costs January 2019: Pilot introduced on capped costs of £80k for High Court cases worth up to £250k.</p> <p>(iii) Increase in fixed costs April 2019: MoJ announcement of implementation of fixed costs on cases up to £100k.</p> <p>(iv) Coronavirus April 2020: Decreasing appetite and cashflow for clients to engage in disputes generally; furloughing of Costs Lawyers; risks to longer term job security and viability of firms; some positive impact, e.g. through delays to whiplash reforms.</p>	
Controls	<ul style="list-style-type: none"> • Monitor impact on the profession via impact assessment surveys, including a coronavirus impact survey in Q2. • Respond to proposals/consultations to help stakeholders understand the Costs Lawyer market and ensure policy developments are in the public interest. • Implement regulatory arrangements that support safe innovation and diversification, to promote ongoing competition and choice. • Mitigate risks around route to entry – see OP3. • Retain one year’s operating budget as reserves. 	
Control adequacy	4	
Priority area of risk	High	
Actions outstanding/status	Monitor reasons for leaving the profession at PC renewal and respond to new factors.	
Commentary	<ul style="list-style-type: none"> • LSB being kept informed of changes and potential impact. • ACL encouraging Costs Lawyers to diversify. 	

Logged by board: 13/1/2015	Reference: OP2	Risk score: I(5) x P(3) = 15
Risk to operation	The CLSB's organisational structure is not sufficient to ensure business continuity	
Nature	Operational continuity, capacity, reputational	
Evidence of risk	Being a small organisation, institutional knowledge and operational capacity of the CLSB rests with a small number of individuals.	
Controls	<ul style="list-style-type: none"> • Assessment of continuity risks in light of coronavirus (including retaining core functions in the absence of a key staff member). • Disaster Recovery & Business Continuity being redeveloped following restructure. • Move to a paperless organisation, including via electronic processes and cloud storage. • Minimisation and logging of paper archives, with joint access to storage. • Joint signatories to bank account. 	
Control adequacy	3	
Priority area of risk	High	
Actions outstanding/status	<ul style="list-style-type: none"> • DR&BC plan is still in development as all operational systems and processes are reviewed. • Continued move to paperless so all records are in one place, secure and accessible. • Knowledge transfer of all systems, processes, data and knowhow between staff and into internal policies and manuals. 	
Commentary		

Logged by board: 25/7/2017	Reference: OP3	Risk score: I(5) x P(2) = 10
Risk to operation	There are insufficient numbers of newly qualified Costs Lawyers such that regulated numbers fall to an unsustainable level	
Nature	Reputational, financial, operational continuity	
Evidence of risk	<p>There is only one means of entry into the profession (three-year course) and one provider (ACLT).</p> <ul style="list-style-type: none"> • In 2017, due to financial concerns, the CLSB authorised ACLT's course to the end of 2020 for current trainees only (i.e. a suspension on new intakes). The course reopened to new students in January 2020. • In 2017, CLSB considered applying to the government apprenticeship scheme, but concluded this was not an option. 	

	<ul style="list-style-type: none"> In early 2019, CLSB applied to the LSB for approval of an alternative qualification that would remove historical barriers to entry, but following feedback the application was ultimately withdrawn.
Controls	<ul style="list-style-type: none"> Work within the parameters of the new Protocol agreed with ACLT. Nurture relationship with ACLT to ensure early notification of any future issues and ensure current learners are protected. Implement regulatory arrangements within the current framework that modernise the three-year qualification as far as possible. Retain one year's operating budget as reserves.
Control adequacy	4
Priority area of risk	Medium
Actions outstanding/status	<ul style="list-style-type: none"> Monitor success of course in 2020. Reconsider longer-term approach to competency, taking learnings from the SQE experience.
Commentary	There is a general shift across the legal services regulators toward outcomes-based qualifications, but difficulties faced by other regulators in implementing those qualifications mean this is likely to be a longer term solution for the CLSB.

Logged by board: 24/10/17	Reference: OP4	Risk score: I(5) x P(2) = 10
Risk to operation	ACL, named in the Legal Services Act 2007 as Approved Regulator (role undertaken by CLSB under delegation), becomes insolvent	
Nature	Regulatory, operational continuity, reputation (for CLSB and the profession)	
Evidence of risk	ACL minutes, ACL accounts, ACL discussion paper to members and ACL EGM on 21 February 2018 raised concerns about ACL's ongoing financial viability at that time. Coronavirus may further impact regulated numbers or Costs Lawyers' ability to pay membership fees.	
Controls	<ul style="list-style-type: none"> Monitoring of controls put in place by ACL to give us early warning of financial issues. Document LSB advice that CLSB funds cannot be used by ACL for non-permitted purposes. Retain one year's operating budget as reserves. 	
Control adequacy	3	
Priority area of risk	Medium	
Actions outstanding/status	Discussions with LSB on contingency planning are ongoing.	
Commentary		

Logged by board: 24/1/18	Reference: OP5	Risk score: I(4) x P(2) = 8
Risk to operation	Failure to comply with data protection obligations	
Nature	Legal, financial, reputational	
Evidence of risk	Increased risk under new GDPR arrangements, including a significant increase in the level of fine that can be imposed. CLSB handles the personal data of Costs Lawyers, employees, agents and (to a limited extent) some members of the public.	
Controls	<ul style="list-style-type: none"> • Data protection compliance review carried out in Q4 2019, leading to adoption of a new Data Protection Manual and implementation of updated processes for ensuring compliance. • Use of electronic board papers rather than circulation by regular post. • Updates to IT systems with a focus on data security. 	
Control adequacy	3	
Priority area of risk	Medium	
Outstanding actions (status)	Implementation of final outcomes from data protection compliance review during Q2 2020. Updates to IT systems ongoing throughout 2020.	
Commentary		

Logged by board: 23/1/19	Reference: OP6	Risk score: I(4) x P(2) = 8
Risk to operation	Breakdown in communications between ACL/ACL Training and CLSB	
Nature	Operational continuity	
Evidence of risk	Previous difficulties in securing ACL/ACLT engagement with CLSB, due to lack of resource or appetite.	
Controls	<ul style="list-style-type: none"> • Build a constructive relationship with new ACL Chair in 2019. • Contingency planning for operational areas that require ACL input. • Work with the LSB to help the ACL engage with its regulatory obligations as a designated body under the new IGRs. • Extend engagement beyond ACL Chair to foster understanding within the Committee as a whole. • Work within the parameters of the new Protocol agreed with ACLT. 	
Control adequacy	4	
Priority area of risk	Medium	
Outstanding actions (status)	Revisit Memorandum of Understanding with ACL to implement the LSB's new IGRs, to clarify aspects of the relationship and support smoother communications and co-working.	

Commentary	
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Logged by board: 23/1/19	Reference: OP7	Risk score: I(1) x P(3) = 3
Risk to operation	A no deal Brexit undermines current regulatory structures	
Nature	Legal, capacity, stakeholder	
Evidence of risk	Brexit may impact on current arrangements for mutual recognition of professional qualifications.	
Controls	<ul style="list-style-type: none"> Monitor the distribution list for early updates about MoJ policy on mutual recognition of qualifications. LSB approval obtained under ED133 for draft regulatory arrangements, in line with published statutory instruments, that would apply in the event of a no deal Brexit. 	
Control adequacy	4	
Priority area of risk	Low - there are currently no European Costs Lawyers (or their equivalent) registered under MRPQ with the CLSB.	
Outstanding actions (status)	The LSB has confirmed that, subject to further developments from government, we can continue to rely on existing approval under ED133 for proposed regulatory arrangements. Keep negotiations under review.	
Commentary		

2. REGULATORY RISK REGISTER

Logged by board: 23/01/2020	Reference: R1	Risk score I(4) x P(1) = 4
Risk	The professional standards set by the CLSB do not achieve positive consumer outcomes or, where poor consumer outcomes cannot be prevented, the CLSB is unable to take action	
Risk to objectives	Regulatory objective: Protecting and promoting the public interest. Regulatory objective: Protecting and promoting the interests of consumers. Professional principle: Proper standards of work. Professional principle: To act in the best interest of the client.	
Evidence of risk	There is limited evidence of actual risk, although there are theoretical risks that must be controlled, for example: <ul style="list-style-type: none"> Risk of complaints processes not being properly communicated: While the very low level of complaints about Costs Lawyers to the CLSB or LeO could suggest that either few complaints arise at first- 	

	<p>tier or those that are raised are handled well, this may also suggest that consumers are unaware of how to complain to their Costs Lawyer.</p> <ul style="list-style-type: none"> • Risk of under-insurance: Costs Lawyers are free to select an insurance provider from the open market, as this promotes competition and keeps fees at a sustainable level, but this may carry a risk of a Costs Lawyer not purchasing the right type of cover.
Controls	<ul style="list-style-type: none"> • Practising Rules and CPD Rules reviewed in 2019. • Disciplinary Rules and Procedures reviewed in 2019, including to increase deterrent effect of financial penalties. • Guidance subject to systematic review during 2019 and 2020 following Handbook Audit. • Filing requirements with practising certificate applications (evidence of insurance, complaints procedures). • Targeted questions in client survey. • Supervision of first tier complaints through reporting in regulatory return.
Control adequacy	4
Priority area of risk	Low – no evidence of risk having materialised to date
Actions outstanding/status	Finalisation of rule changes following reviews. Completion of phased guidance reviews under Handbook Audit during 2020.
Commentary	

Logged by board: 31/10/2011	Reference: R2	Risk score: I(5) x P(2) = 10
Risk	Costs Lawyer (not working for SRA regulated firm) accepting client monies	
Risk to objectives	<p>Regulatory objective: Protecting and promoting the public interest</p> <p>Professional principle: To act with integrity</p> <p>Professional principle: To act in the best interests of the client</p>	
Evidence of risks	As Costs Lawyers are not permitted to handle client monies, they will not have systems and processes in place to ensure proper handling in the event they do inadvertently or deliberately accept monies in breach of our rules.	
Controls	<ul style="list-style-type: none"> • Covered under Principle 3.6 of Code of Conduct and associated guidance, updated in 2018 and the subject of a targeted review in 2020. • Client survey asks: <i>“Did you send any monies to your Costs Lawyer other than in payment of an invoice?”</i> 	

	<ul style="list-style-type: none"> Information sharing arrangement with LeO in relation to complaints involving client monies that fall within CLSB jurisdiction.
Control adequacy	3
Priority area of risk	Medium
Actions outstanding/status	Targeted review to be completed in 2020.
Commentary	No evidence from client survey (October 2016 to date) or from complaints that a Costs Lawyer has handled client monies. However a complaint in Q1 2020 suggested there is scope for poor client outcomes even where a Costs Lawyer does not handle client money directly.

Logged by board: 24/07/2019	Reference: R4	Risk score: I(4) x P(2) = 8
Risk	CLSB cannot generate sufficient evidence about the consumer dimension of the Costs Lawyer market, resulting in regulatory arrangements that are misaligned to consumer need	
Risk to objectives	Regulatory objective: Protecting and promoting the public interest Regulatory objective: Increasing public understanding of citizens' legal rights and duties.	
Evidence of risk	It has historically proven difficult to generate statistically significant data on the consumer experience with the Costs Lawyer market. Engagement with client surveys is low, as are complaint volumes, making traditional methods of data capture insufficient. It was hoped that the Legal Choices upgrade project would provide additional data and insights into the way consumers interact with the market. However, progress against the objectives for the Legal Choices website has been slower than expected and the BSB announced in July 2019 that it would not be making its funding contribution for 2020.	
Controls	<ul style="list-style-type: none"> New Consumer Engagement Strategy has been published covering the period of our mid-term organisational strategy (2020 – 2023), building on earlier consumer research project and establishing workstreams for building consumer-related evidence base. Data sharing arrangements are in place with LeO in relation to complaints about Costs Lawyers. Participate in the Legal Choices Governance Board to identify early warning signs that the project will not deliver as expected. 	
Control adequacy	4 – a forward plan is in place, as set out in the Strategy, but work will be ongoing for some time	
Priority area of risk	Medium, so long as we remain on target to deliver Strategy	

Actions outstanding/status	Implement Consumer Engagement Strategy. Consider whether to continue to fund the Legal Choices project beyond 2020, based on progress toward the end of the initial three-year period, and divert funding to other data sources.
Commentary	