

COSTS LAWYER STANDARDS BOARD LTD
RISK REGISTERS
As at 20 October 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)
<p>The consequences of an event occurring. The event will have:</p> <p>Negligible (1): Very little consequence</p> <p>Slight (2): Some consequences, but none serious</p> <p>Moderate (3): Some consequences which could be serious</p> <p>Serious (4): Serious consequences</p> <p>Severe (5): Very serious consequences</p>	<p>The likelihood of an event occurring. The event is:</p> <p>Low (1): Very unlikely to occur</p> <p>Medium low (2): Unlikely to occur</p> <p>Medium high (3): Likely to occur</p> <p>High (4): Very likely to occur</p>

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	<ul style="list-style-type: none"> • Increase in fixed costs (from April 2019): MoJ announcement of implementation of fixed costs on cases up to £100k. • Coronavirus (from May 2020): Results of our coronavirus impact survey suggest a significant minority of Costs Lawyers are concerned about their ability to carry on practising; positive impacts for some, e.g. through delays to costs reforms and increased workload. • Link to OP3 in terms of numbers entering the profession. 	
Controls	<ul style="list-style-type: none"> • Monitor impact on the profession via impact assessment surveys, including coronavirus impact surveys in Q2 2020 and Q1 2021. • 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. • Pursue recommendations in the Mayson report for expansion of costs regulation. • Mitigate risks around route to entry – see OP3. • Review of historic termination and reinstatement data carried out in 2020 and new processes put in place for communicating with potential returners. • 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. Impact of coronavirus on regulated numbers being kept under close review.	

Logged by board: 13/1/2015	Reference: OP2	Risk score: I(5) x P(2) = 10
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). • Updated Business Continuity and Disaster Recovery Plan adopted in July 2020 following restructure and reflecting changes for coronavirus. • 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"> • Rehousing or safe destruction of paper archives over coming years. • Knowledge transfer of all systems, processes, data and knowhow between staff and into internal policies and manuals.

Logged by board: 25/7/2017	Reference: OP3	Risk score: I(5) x P(3) = 15
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 but ACL has indicated that the course might not run again in 2021. • In 2017, CLSB considered applying to the government apprenticeship scheme, but concluded this was not an option. • 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. • Coronavirus may impact the number of new qualifiers, due to assessment delays and reduced employer funding. 	
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. 	

	<ul style="list-style-type: none"> 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	High
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(1) = 5
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, reputational (for CLSB and the profession)	
Evidence of risk	<ul style="list-style-type: none"> Coronavirus may impact regulated numbers or Costs Lawyers' ability to pay membership fees. Inherent risk for any regulatory body acting under the delegated authority of its parent company. 	
Controls	<ul style="list-style-type: none"> Open dialogue with ACL to give us early warning of financial issues. Ongoing engagement with the LSB's contingency planning initiative. Retain one year's operating budget as reserves. 	
Control adequacy	3	
Priority area of risk	Low	
Actions outstanding/status	Financial instability in 2017-2018 appears to have subsided.	

Logged by board: 24/1/18	Reference: OP5	Risk score: I(4) x P(1) = 4
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 in 2020. • Updates to IT systems with a focus on data security.
Control adequacy	4
Priority area of risk	Low
Actions outstanding/status	Updates to IT systems ongoing throughout 2020.

Logged by board: 23/1/19	Reference: OP6	Risk score: I(4) x P(3) = 12
Risk to operation	Breakdown in communications between any of ACL, ACL Training and the CLSB	
Nature	Operational continuity, reputational	
Evidence of risk	<ul style="list-style-type: none"> • Previous difficulties in securing ACL/ACLT engagement with CLSB, due to lack of resource or appetite. • Governance and oversight complications as between ACL and ACLT in relation to the Costs Lawyer Qualification. • A breakdown of any of the bilateral relationships could adversely impact the qualification and the CLSB. 	
Controls	<ul style="list-style-type: none"> • Nurture a constructive relationship with new ACL Chair. • Contingency planning for operational areas that require ACL input. • New MOU and OP agreed with ACL in 2020. • Work with the LSB to help 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	
Actions outstanding/status		

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"> • 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. • Monitoring MoJ and BEIS developments to ensure we can deal with implementation by end of 2020. 	
Control adequacy	4	
Priority area of risk	Low - there are currently no European Costs Lawyers (or their equivalent) registered under MRPQ with the CLSB.	
Actions outstanding/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.	

3. 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-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. 	

	<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. • Priority projects in relation to three key risk areas and approach to supervision included in the 2021 Business Plan.
Control adequacy	4
Priority area of risk	Low – no evidence of risk having materialised to date
Actions outstanding/status	2021 Business Plan priorities to be completed by the end of the year.

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	Regulatory objective: Protecting and promoting the public interest Professional principle: To act with integrity Professional principle: To act in the best interests of the client	
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. 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.	
Controls	<ul style="list-style-type: none"> • Covered under Principle 3.6 of Code of Conduct and associated guidance, updated in 2020 following a targeted review. 	

	<ul style="list-style-type: none"> • Client survey asks: “Did you send any monies to your Costs Lawyer other than in payment of an invoice?” • Information sharing arrangement with LeO in relation to complaints involving client monies that fall within CLSB jurisdiction.
Control adequacy	4
Priority area of risk	Medium
Actions outstanding/status	

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 is intended that the Legal Choices project will provide additional data and insights into the way consumers interact with the market, although there have been threats to the success of that project including withdrawal of the Bar Standards Board.	
Controls	<ul style="list-style-type: none"> • Consumer Engagement Strategy covering the period of our mid-term organisational strategy (2020 – 2023), establishing workstreams for building consumer-related evidence base. • Data sharing arrangements with LeO in relation to complaints about Costs Lawyers. • Participation in the Legal Choices Governance Board, which oversees the project’s risk register, 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.	

Logged by board: 20/10/2020	Reference: R5	Risk score: I(4) x P(3) = 12
Risk	CLSB cannot promote all aspects of diversity within the profession given the small size of the regulated community and trainee population	
Risk to objectives	Regulatory objective: Encouraging an independent, strong, diverse and effective legal profession.	
Evidence of risk	<ul style="list-style-type: none"> • There is only one route of entry into the profession and, in some years, there may be no new students accepted through that route (linked to OP3). • Statistically the size of the profession makes it more difficult to strive for a composition that is reflective of wider society. • The LSB has provisionally assessed existing data that we capture on the diversity of the profession as insufficient. 	
Controls	<ul style="list-style-type: none"> • New diversity and inclusion survey developed for roll out with practising certificate applications in Q4 2020. • New reporting framework for the Costs Lawyer Qualification being agreed with ACL Training. • Targeted diversity initiatives planned for 2021. • Seeking opportunities to collaborate with other regulators and organisations in this area. 	
Control adequacy	2 – plans are in place but it will take time to implement and then assess these during 2021	
Priority area of risk	Medium, so long as we are able to deliver planned initiatives	
Actions outstanding/status	Assess impact of new data capture methodology in early 2021. Delivery of controls during 2021.	