

## COSTS LAWYER STANDARDS BOARD LTD

### RISK REGISTERS

As at 20 January 2021

#### 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: <b>Negligible (1):</b> Very little consequence <b>Slight (2):</b> Some consequences, but none serious <b>Moderate (3):</b> Some consequences which could be serious <b>Serious (4):</b> Serious consequences <b>Severe (5):</b> Very serious consequences	The likelihood of an event occurring. The event is: <b>Low (1):</b> Very unlikely to occur <b>Medium low (2):</b> Unlikely to occur <b>Medium high (3):</b> Likely to occur <b>High (4):</b> 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
<b>Fully effective</b>	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
<b>Substantially effective</b>	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
<b>Partially effective</b>	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
<b>Largely ineffective</b>	2	Significant control gaps. Either controls do not treat root causes or they do not operate at all effectively
<b>None or totally ineffective</b>	1	No credible control and limited confidence in the application or oversight of risk activity

## 2. OPERATIONAL RISK REGISTER

<b>Logged by board:</b> 6/4/2011	<b>Reference:</b> OP1	<b>Risk score: I(5) x P(4) = 20</b>
<b>Risk to operation</b>	<b>Changes to the profession impact CLSB viability as more leave than enter the profession</b>	
<b>Nature</b>	Financial, operational continuity	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• Increase in fixed costs (from April 2019): MoJ announcement of implementation of fixed costs on cases up to £100k.</li> <li>• 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.</li> <li>• Whiplash reforms (from January 2021): could reduce work in low value PI claims, but may also increase complexity of instructions.</li> <li>• Link to OP3 in terms of numbers entering the profession.</li> <li>• Actual net attrition of 12 practitioners over 2020.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Monitor impact on the profession via impact assessment surveys, including coronavirus impact surveys in Q2 2020 and Q1 2021.</li> <li>• Respond to proposals/consultations to help stakeholders understand the Costs Lawyer market and ensure policy developments are in the public interest.</li> <li>• Implement regulatory arrangements that support safe innovation and diversification, to promote ongoing competition and choice.</li> <li>• Pursue recommendations in the Mayson report for expansion of costs regulation.</li> <li>• Mitigate risks around route to entry – see OP3.</li> <li>• Review of historic termination and reinstatement data carried out in 2020 and new processes put in place for communicating with potential returners.</li> <li>• Retain one year's operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	High	
<b>Actions/status</b>	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.	

<b>Logged by board:</b> 13/1/2015	<b>Reference:</b> OP2	<b>Risk score: I(5) x P(2) = 10</b>
<b>Risk to operation</b>	<b>The CLSB's organisational structure is not sufficient to ensure business continuity</b>	
<b>Nature</b>	Operational continuity, capacity, reputational	
<b>Evidence of risk</b>	Being a small organisation, institutional knowledge and operational capacity of the CLSB rests with a small number of individuals.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Assessment of continuity risks in light of coronavirus (including retaining core functions in the absence of a key staff member).</li> <li>• Increase in policy support resource from February 2021.</li> <li>• Updated Business Continuity and Disaster Recovery Plan adopted in July 2020 following restructure and reflecting changes for coronavirus.</li> <li>• Move to a paperless organisation, including via electronic processes and cloud storage.</li> <li>• Minimisation and logging of paper archives, with joint access.</li> <li>• Joint signatories to bank account.</li> </ul>	
<b>Control adequacy</b>	3	
<b>Priority area of risk</b>	High	
<b>Actions/status</b>	<ul style="list-style-type: none"> <li>• Rehousing or safe destruction of paper archives over coming years.</li> <li>• Knowledge transfer of all systems, processes, data and knowhow between staff and into internal policies and manuals.</li> </ul>	

<b>Logged by board:</b> 25/7/2017	<b>Reference:</b> OP3	<b>Risk score: I(5) x P(3) = 15</b>
<b>Risk to operation</b>	<b>There are insufficient numbers of newly qualified Costs Lawyers such that regulated numbers fall to an unsustainable level</b>	
<b>Nature</b>	Reputational, financial, operational continuity	
<b>Evidence of risk</b>	<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"> <li>• 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.</li> <li>• In 2017, CLSB considered applying to the government apprenticeship scheme, but concluded this was not an option.</li> <li>• 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.</li> </ul>	

	<ul style="list-style-type: none"> <li>• Coronavirus may impact the number of new qualifiers, due to assessment delays and reduced employer funding.</li> </ul>
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Work within the parameters of the new Protocol agreed with ACLT.</li> <li>• Nurture relationship with ACLT to ensure early notification of any future issues and ensure current learners are protected.</li> <li>• Implement regulatory arrangements within the current framework that modernise the three-year qualification as far as possible.</li> <li>• Retain one year's operating budget as reserves.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	High
<b>Actions/status</b>	<ul style="list-style-type: none"> <li>• Monitor success of course in 2020.</li> <li>• Reconsider longer-term approach to competency, taking learnings from the SQE experience.</li> </ul>
<b>Commentary</b>	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.

<b>Logged by board:</b> 24/10/17	<b>Reference:</b> OP4	<b>Risk score:</b> I(5) x P(1) = 5
<b>Risk to operation</b>	<b>ACL, named in the Legal Services Act 2007 as approved regulator (role undertaken by CLSB under delegation), becomes insolvent</b>	
<b>Nature</b>	Regulatory, operational continuity, reputational (for CLSB and the profession)	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• Coronavirus may impact regulated numbers or Costs Lawyers' ability to pay membership fees.</li> <li>• Inherent risk for any regulatory body acting under the delegated authority of its parent company.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Open dialogue with ACL to give us early warning of financial issues.</li> <li>• Ongoing engagement with the LSB's contingency planning initiative.</li> <li>• Retain one year's operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	3	
<b>Priority area of risk</b>	Low	
<b>Actions/status</b>	Financial instability in 2017-2018 appears to have subsided.	

<b>Logged by board:</b> 24/1/18	<b>Reference:</b> OP5	<b>Risk score:</b> I(4) x P(1) = 4
<b>Risk to operation</b>	<b>Failure to comply with data protection obligations</b>	
<b>Nature</b>	Legal, financial, reputational	

<b>Evidence of risk</b>	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.
<b>Controls</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Updates to IT systems with a focus on data security.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	Low
<b>Actions/status</b>	Updates to IT systems ongoing throughout 2020.

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

### 3. REGULATORY RISK REGISTER

<b>Logged by board:</b> <b>23/01/2020</b>	<b>Reference: R1</b>	<b>Risk score I(4) x P(1) = 4</b>
<b>Risk</b>	<b>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</b>	
<b>Risk to objectives</b>	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.	
<b>Evidence of risk</b>	There is limited evidence of actual risk, although there are theoretical risks that must be controlled, for example: <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• Risks from lack of supervision: The shift to remote working during 2020 could have long-term consequences for proper supervision and training of junior Costs Lawyers. As we do not regulate entities, we cannot address this at firm/system level.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• New Practising Rules, CPD Rules and Disciplinary Rules and Procedures implemented in 2020, including to increase the deterrent effect of financial penalties.</li> <li>• Guidance subject to systematic review from 2019, with all Handbook content due to have been reviewed by the end of 2021.</li> <li>• Filing requirements with practising certificate applications (evidence of insurance, complaints procedures).</li> <li>• Targeted questions in client survey.</li> <li>• Supervision of first tier complaints through self-reporting.</li> <li>• 2021 Business Plan includes priority projects in relation to: (i) three key risk areas; (ii) approach to supervision; (iii) developing guidance for</li> </ul>	

	employers of Costs Lawyers, which will cover emerging risks from remote working.
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	Low – no evidence of risk having materialised to date
<b>Actions/status</b>	2021 Business Plan priorities to be completed by the end of the year.

<b>Logged by board: 31/10/2011</b>	<b>Reference: R2</b>	<b>Risk score: I(5) x P(2) = 10</b>
<b>Risk</b>	<b>Costs Lawyer (not working for SRA regulated firm) accepting client monies</b>	
<b>Risk to objectives</b>	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	
<b>Evidence of risks</b>	<ul style="list-style-type: none"> <li>As Costs Lawyers are not permitted to handle client monies, they will not have systems in place to ensure proper handling in the event they do inadvertently or deliberately accept monies in breach of our rules.</li> <li>No evidence from client survey or 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.</li> <li>Pending whiplash reforms could increase the prevalence of direct instructions – including complex instructions – from lay clients with a likely increase in the desire for funds on account.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>Covered under Principle 3.6 of Code of Conduct. Associated guidance updated in 2020 following a targeted review, including to promote the use of TPMAs to safely deal with client monies.</li> <li>Client survey asks: <i>“Did you send any monies to your Costs Lawyer other than in payment of an invoice?”</i></li> <li>Information sharing arrangement with LeO in relation to complaints involving client monies that fall within CLSB jurisdiction.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	Medium	
<b>Actions/status</b>		



<b>Logged by board:</b> 24/07/2019	<b>Reference: R4</b>	<b>Risk score: I(4) x P(2) = 8</b>
<b>Risk</b>	<b>CLSB cannot generate sufficient evidence about the consumer dimension of the Costs Lawyer market, resulting in regulatory arrangements that are misaligned to consumer need</b>	
<b>Risk to objectives</b>	Regulatory objective: Protecting and promoting the public interest. Regulatory objective: Increasing public understanding of citizens' legal rights and duties.	
<b>Evidence of risk</b>	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.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Consumer Engagement Strategy covering the period of our mid-term organisational strategy (2020 – 2023), establishing workstreams for building consumer-related evidence base.</li> <li>• Data sharing arrangements with LeO in relation to complaints about Costs Lawyers.</li> <li>• 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.</li> </ul>	
<b>Control adequacy</b>	4 – a forward plan is in place, as set out in the Strategy, but work will be ongoing for some time	
<b>Priority area of risk</b>	Medium, so long as we remain on target to deliver Strategy	
<b>Actions/status</b>	Implement Consumer Engagement Strategy.	

<b>Logged by board:</b> 20/10/2020	<b>Reference: R5</b>	<b>Risk score: I(4) x P(3) = 12</b>
<b>Risk</b>	<b>CLSB cannot promote all aspects of diversity within the profession given the small size of the regulated community and trainee population</b>	
<b>Risk to objectives</b>	Regulatory objective: Encouraging an independent, strong, diverse and effective legal profession.	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• 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).</li> </ul>	

	<ul style="list-style-type: none"> <li>• Statistically the size of the profession makes it more difficult to strive for a composition that is reflective of wider society.</li> <li>• The LSB has provisionally assessed existing data that we capture on the diversity of the profession as insufficient.</li> </ul>
<b>Controls</b>	<ul style="list-style-type: none"> <li>• New diversity and inclusion survey developed for roll out with practising certificate applications in Q4 2020.</li> <li>• New reporting framework for the Costs Lawyer Qualification being agreed with ACL Training.</li> <li>• Targeted diversity initiatives planned for 2021.</li> <li>• Seeking opportunities to collaborate with other regulators and organisations in this area.</li> </ul>
<b>Control adequacy</b>	2 – plans are in place but it will take time to implement and then assess these during 2021
<b>Priority area of risk</b>	Medium, so long as we are able to deliver planned initiatives
<b>Actions/status</b>	Assess impact of new data capture methodology in early 2021. Delivery of controls during 2021.