

Company number: 04608905

Costs Lawyer Standards Board Ltd
Wednesday 24 January 2018 at 10.30 am
The Studio, 7 Cannon Street, Birmingham

Present: Steve Winfield (Chairman/Chair)
Gillian Milburn (Vice-Chair) *Part*
Richard Allen
David Gamble
Tracyanne Ayliffe

In attendance: Lynn Plumbley (Chief Executive)

1. QUORUM, APOLOGIES, DECLARATIONS OF INTEREST & GUESTS

1.1 The Chair declared the meeting quorate, there were no apologies other than from GM who advised she would have to leave the meeting at 1pm. GM was in attendance for those agenda items minute numbered 1,2,3,4,5,10,11. Declarations of interest were declared by GM & TA in respect of their potential re-appointment.

2. MINUTES

2.1 The board noted all actions from the minutes of the scheduled quarterly board meeting on 24 October 2017 had been undertaken. There were no matters arising that had not been scheduled as an agenda item. Subject to the addition of the words "but no further" under minute 11.1, the minutes were agreed as being a true record for signing.

Action: LP: Post minutes of 24 October 2017 on CLSB website

3. BOARD MATTERS

3.1 Capacity & capability: Succession planning

The board was advised by DG that at the FCA a board member was permitted to serve a total of 9 years (3 x 3 years). The CLSB considered factors such as stability, freshness and quality key factors as well as effectiveness in determining term times. The board agreed to follow this approach unless evidence was presented on a contrary position.

3.2 Capacity & capability: Board re-appointments

It was agreed that GM and TA would be re-appointed.

Action: LP: Issue new letters of engagement

3.3 Annual cost of living remuneration rise

The board noted that for years 2012, 2013, 2014 and 2016 it had not awarded itself or the CEO an annual cost of living rise, whilst the CLSB established its reserves. This had effectively put executive and NED remuneration approx. 10% behind where it should be. It was agreed this would not be addressed this year. The Chair and CEO agreed an increase of 3.5% 2018 cost of living rise on NED remuneration effective 1 March 2018.

The NEDs agreed at 3.5% 2018 cost of living rise for the Chair & CEO effective 1 March 2018.

Action: LP: Apply 3.5% cost of living rise

4. FINANCE

4.1 Q4 report

The board noted the position at Q4 end was as expected.

4.2 2017 budget

The board was advised that there had been an under spend of £6.5k for 2017, and that this had enabled a transfer of £10k to the reserve account. The 2018 budget was subjected to slight adjustment based on the outcome of the 2017 year end budget/spend position.

5. RISK MANAGEMENT

5.1 Regulatory risk

The board considered the register and made only minor changes.

Actions: LP: Post updated register on the CLSB website

5.2 Operational risk

The board considered the register and made updates to current risks presented by the ACL and ACLT. It also agreed that compliance with anticipated changes in data protection law be recorded as a new risk.

Action: LP: Post updated register on the CLSB website

5.3 Data protection & cyber security

Following the consideration of cyber security risks and new data protection rules expected to be implemented May 2018, a review of data security had been undertaken. It was proposed a new Data Security Policy would replace the current Confidentiality & Information Security Policy, and that the new policy would be underpinned by two control documents

- (i) a data audit; and
- (ii) a data control record.

The board approved the new policy and approach.

Action: LP: Implement new control procedure

5.4 Retention of practising certificate applications

The board agreed that practising certificate applications and supporting documents would be retained for 7 full years i.e. during practising year 2018, 2011 practicing certificate documentation would therefore be shredded.

Action: LP: Shred 2011 practising certificate application forms

6. REGULATORY MATTERS

6.1 Consumer focus: CMA action: Revised guidance on client care letters

The board approved a revised guidance note to address the CMA requirement for client care letters to set out:

- (i) regulatory status; and
- (ii) supervisory arrangements; and

(iii) the contact details of both the CLSB and Legal Ombudsman.

Action: LP: Post revised guidance on the CLSB website

6.2 Consumer focus: CMA action: Costs Lawyer websites

The board noted the CMA recommendation that Costs Lawyer websites contain certain information however it was agreed the CLSB could not address this as websites are in the control of the employer, and the CLSB does not regulate entities. Other factors considered were that 1/3rd of CLSB regulated Costs Lawyers are employed by an SRA regulated entity so this provision is captured by them. Sole practitioners and small costs law firms do not appear to have websites as they secure over 95% of their instructions from professional clients e.g. solicitors, not lay clients.

6.3 Consumer focus: CMA action: Revised CLSB website

The board noted some changes had been made to the CLSB website to make it more “user friendly” e.g. a new section on complaints under which all process as well as outcome can be found.

6.4 Consumer focus: CMA action: Legal choices website

The board noted that following the CMA recommendations, the approved regulators had been asked to invest £750k in the Legal Choices website over a three year period. The financial contribution of CLSB to Legal Choices had therefore increased from £1.2k to £14k over three years. As the majority of the CMA recommendations do not apply to the CLSB for various reasons, it was considered whether this increased spend of Costs Lawyer monies was justified. SW expressed concern the Legal Choices website was not widely known about. DG asked for figures on historical usage, and advised the board he would expect to see a good return for this spend. The board also noted that administration of the Legal Choices website had become more time onerous as three bodies had been set up to oversee it, each having approximately 4 meetings a year.

(i) Advisory Panel

(ii) Steering Group

(iii) Governance Board

Board action: LP:

- **Revise 2018 budget to reflect this increase in expenditure**
- **Establish year on year usage of Legal Choices website (i) in general; and (ii) for the CLSB since inception to date**

6.5 Privacy notice

Following a review of data protection, the board was advised a privacy notice had been introduced on 2018 application forms, and agreed the wording for continued use.

HOW INFORMATION ABOUT YOU WILL BE USED

We only collect information about you that enables us to comply with our statutory duties under the Legal Services Act 2007. For that purpose, we may share that information with the Legal Services Board or other approved regulators. We will use

the email address you provide to keep you informed on regulatory matters e.g. newsletters, consultations.

6.6 Recognition by Law Society of Scotland

The board noted that following the decision of the Law Society of Scotland (LSS) to recognise CLSB regulated Costs Lawyers, the CLSB had established a register to ensure compliance. The requirement for certificates of good standing and notifications of material changes in regulatory regime were also noted. RA advised the change may only apply to Costs Lawyers who can evidence they have a work base in Scotland. The board noted CLSB guidance titled Working as a Costs Lawyer Outside England & Wales had been revised to reflect this new arrangement with LSS.

Board action:

- **Post revised guidance note on CLSB website**
- **Seek clarification from LSS on work base evidence required of applicants**

6.7 Complaints about SRA regulated Costs Lawyers

The board was advised that at a recent regulators forum, C.ILEX had asked the SRA to identify and report to them when a complaint had been made against one of their regulated Legal Executives working at an SRA regulated firm. The CLSB had joined with this request in respect of the 1/3rd of its regulated Costs Lawyers who work in an SRA regulated firm. As entity regulation “trumps” individual regulation, in the event a professional conduct complaint is received about a Costs Lawyer working for an SRA regulated firm, CLSB would first offer jurisdiction to the SRA. The CLSB would therefore know about that complaint and be able to monitor the outcome under its supervision arrangements. However, where the complaint is made direct to the SRA, the CLSB is not being informed. CLSB wrote to the SRA requesting this information, the SRA responded “*we have reviewed the monthly material but unfortunately we were unable to break it down to identify where costs lawyers are part of the firms we regulate.*”

Action: LP: Raise again with SRA and seek LSB assistance if required

6.8 Pro-bono work

The board was advised that following a discussion with The Access to Justice Foundation (a charity set up to receive pro-bono costs) CLSB guidance on client care letters had been revised to include a new section on pro-bono work. The board approved the new text.

Action: LP: Post new guidance note on website

6.9 2018 practising certificate applications

The board noted that at 2017 year end there were 706 CLSB regulated Costs Lawyers, as at 17 January 2017 only 623 had applied for a 2018 practising certificate. 32 had confirmed they would not be applying the other 51 had neither applied or replied to our emailing dated 10 January 2018 chasing their application. The board was advised a hard copy letter would now be sent to all those who have not applied advising them that they cannot represent themselves as being authorised by the CLSB under the Legal Services Act 2007.

Action: LP: Issue letters to Costs Lawyers who had not applied for a 2018 practising certificate

6.10 Progress report against diversity outcomes

The board noted the outcome but was concerned about delivering to LSB level expectations as it is the entity not individual Costs Lawyers who make the decision on whom they employ. TA advised her employer made their decisions on which candidate was best for the job, not based on sex, race and religion. The board was in agreement positive discrimination should not be forced on its regulated community. The board agreed it would seek to remove any identified barriers to entry, where it could. DG asked for the full report including the outcome of all other ARs.

Action: LP: Sent full report to DG

Action: DG: Report back to April board

6.11 Review of Accredited Costs Lawyer Rules

Following the introduction of new CPD Rules in 2017, the Accredited Costs Lawyer Rules have been amended to reflect those changes. A Costs Lawyer had requested the CLSB consider reducing the post qualification period under rule 4.1 from 4 years to 2. The board decided against making such a change.

Action: LP:

- **Issue revised rules to all Accredited Costs Lawyers**
- **Advise Costs Lawyer who had enquired of outcome in respect of rule 4.1**

6.12 Professional conduct complaints received 2017

The board was advised that 6 complaints had been received against one Costs Lawyer over a 6 week period towards the end of 2017, but none had been taken through formal disciplinary procedure to date for various reasons.

7. **LEGAL SERVICES BOARD (LSB)**

7.1 IQR review

The board was advised the CLSB had contributed twice to this review before the consultation was issued by the LSB. As a result, a consultation response was not proposed on this occasion.

Action: LP: Advise LSB

7.2 Pricing research

The board was of the view there were no surprises in the outcome of this research, and would have expected findings such as shopping around really pays and firms based in the south east are more expensive.

7.3 Consultation: Three year plan

The board noted the LSB had opened a consultation process on its proposed three year plan.

7.4 Revised regulatory assessment process

The board noted the revised regulatory assessment process (standard, process and dataset). Each board member had been provided with a hard copy for future reference.

8. LEGAL SERVICES CONSUMER PANEL (LSCP)

8.1 Tracker survey (Wales)

The outcome of this survey, which did not seem to include Costs Lawyers, was noted.

8.2 Tracker survey (transparency)

The outcome of this survey, which did not seem to include Costs Lawyers, was noted.

8.3 Segmentation

This was noted, however due to the nature of Costs Lawyer instructions and future uncertainties within the profession it was agreed this was not a priority for the CLSB at present.

9 LEGAL OMBUDSMAN (LeO)

9.1 Service complaints

The board was advised there had been no new service complaints to LeO since the last quarterly board meeting. The last service complaint filed with LeO was dated 21 January 2016, and that complaint had been dismissed by LeO.

9.2 New Chief Ombudsman

Following the appointment at the end of last year of a new CEO at LeO, the board noted the appointment of Rebecca Marsh as the new Chief Ombudsman, effective January 2018.

9.3 Language of complaints

Following the outcome of this research, the CLSB guidance note on a complaints procedure was revised to include LeO recommendations. These recommendations would also be highlighted in the next CLSB newsletter to Costs Lawyers. The board approved the revised guidance note.

Action: LP: Post revised guidance note on a complaints procedure on the CLSB website

10. REPRESENTATION (ACL)

10.1 Article of Matthew Harman

The board noted and discussed the article of Matthew Harman, previous Honorary President of the ACL in the November/December issue of the ACL Costs Lawyer journal under which he concluded *"I could not in all honesty encourage a young person to embark on a career as a Costs Lawyer unless the intention is to use it as a conduit to another area of law."*

10.2 ACL EGM

The board was advised the ACL intended to hold an EGM on 21 February 2018, the notice of this had not been sent to CLSB so the board was unable to comment on the intentions of the ACL. TA advised there was discord in the ACL membership as this EGM was being held in London, rather than in a more central location e.g. Birmingham. The CLSB had previously sent a statistical analysis evidencing over 50% of regulated Costs Lawyers were based outside the south of England.

10.3 Failure of representative body for paralegals

The board was advised The National Association of Licensed Paralegals, one of two bodies which developed the Professional Paralegal Register to act as a voluntary regulator of the sector, had decided to pull out after only 2 years citing “irreconcilable differences.”

10.5 Meeting between LSB/CLSB/ACL in December 2017

The LSB requested ACL & CLSB attend this meeting to discuss ACL proposals for the future following their having consulted members. The LSB requested the ACL seek advice on its options, and then return to the LSB so they and their Lawyers could consider whether those options were deliverable. LP suggested this action occurred before the ACL went to its membership.

10.6 Increase in ACL membership fee 2018

The board was advised ACL had increased its membership fee from £150 to £200 (increase of 33.3%) for year 2018, and that they had stopped issuing its members with a desk diary. It was noted that ACL has the benefit of trainee membership fees, although CLSB considers it legally questionable as to how the ACL can impose membership on a Trainee Costs Lawyer when it is not mandatory for a qualified Costs Lawyer. Due to falling trainee numbers, it was noted trainee membership income would reduce to approx. 40 in 2019 from the historical circa 300.

11. **EDUCATION (ACLT)**

11.1 Annual audit

The board was advised ACLT had asked if there would be an annual audit this year. It was agreed a lesser but more targeted audit would be requested of the independent auditor, looking at ACLT, capability and outcomes.

11.2 Apprenticeship scheme

The CLSB had undertaken an exercise to establish if there were enough interested employers to set up an apprenticeship scheme. There had been and a first meeting had been held. It soon became clear that CLSB involvement in that interested employer group brought it into conflict with Costs Lawyers, whom the CLSB should be independent of. For example, some of the interested Costs Lawyer employers wanted to impose a 6 year apprenticeship scheme, which CLSB felt was not warranted and would not be of interest to employers/employees with such uncertainty on the future of legal costs (see minute 10.1). Accordingly, on 21 December 2017, the CLSB wrote to ask the ACL if this was an initiative they would be prepared to consider, and that if they were we had offered to forward them the list of interested employers and information gathered to date on the scheme.

11.3 Course offered by ACLT

The board was in agreement that the suspension of the three year course offered by ACLT, communicated out to Costs Lawyers under the CLSB newsletter dated 1 November 2017 was a consequence of current financial concerns at ACL/ACLT. ACLT had communicated to its membership that trainee numbers had fallen in the last 2 years (2016: 22, 2017: 20). ACL had advised the CLSB a minimum of 45 trainees a

year was required for the ACLT course to be financially feasible. The ACL Chair had only been able to give a financial assurance for those currently signed onto the three year course, but no further i.e. those who may have been seeking to enrol September 2018. It was agreed it would have been irresponsible of the CLSB to have accredited ACLT to provide its course starting 2018 when it could not give any assurance it could honour it for the full three year period. It was agreed this position would be reconsidered if the ACL/ACLT were able to give financial assurances beyond those given to date. In the meantime, the CLSB would continue to work on a Costs Lawyer competence test.

12. ANY OTHER BUSINESS

12.1 Diversity in Solicitors profession

It was noted that under this study the SRA had identified that there was now 6 times more women entering the profession now than in 1970, but that white males were 6 times more likely to become partner.

12.2 July board meeting

To ensure full attendance, it was agreed to bring the July meeting forward one week to Wednesday 18 July 2018.

13. DATE & TIME OF NEXT MEETING

- 13.1** Date & time of next meeting: Wednesday 25 April 2018 @ 10.30am
 Location: The Studio, 7 Cannon Street, Birmingham

There being no further business, the Chair declared the meeting closed.

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 Chairman

Board document disclosure

The following documents were not considered confidential, sensitive or subject to prevailing data protection laws and have therefore been published in the location stated.

Paper	Publication location
CLSB minutes (24 October 2017)	CLSB website: Under "Minutes"
2018 budget	CLSB website: Under "Policy Outcomes" and then "News Items"
Risk register (regulatory risk)	CLSB website: Under "Policy Outcomes" then "Risk Management"
Risk register (operational risk)	CLSB website: Under "Policy Outcomes" then "Risk Management"
Guidance note: Complaint Procedures	CLSB website: Under "Costs Lawyer Handbook" then "Guidance Notes"

Guidance note: Working as a Costs Lawyer Outside England & Wales	CLSB website: Under "Costs Lawyer Handbook" then "Guidance Notes"
Guidance Note: Client Care Letters	CLSB website: Under "Costs Lawyer Handbook" then "Guidance Notes"
Accredited Costs Lawyer Rules	CLSB website: Under Accredited Costs Lawyer Register on home page
Progress report against diversity outcomes	LSB website
IGR review	LSB website
LSB pricing research	LSB website
LSB consultation on three year strategic plan	LSB website
Revised regulatory assessment process	LSB website
LSCP tracker survey (Wales)	LSCP website
LSCP tracker survey (transparency)	LSCP website
LeO report on language of complaints	LeO website
Article of Mathew Harman	November/December edition of ACL Costs Lawyer journal
Report on diversity in Solicitors profession	SRA website