

Company number: 04608905

MINUTES
Costs Lawyer Standards Board Ltd
Wednesday 18 July 2018 at 10.30 am
GMCC, Elliot House, 151 Deansgate, Manchester

Present: Steve Winfield (Chairman/Chair)
Gillian Milburn (Vice-Chair)
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.

2. MINUTES

2.1 The board noted all actions from the minutes of the scheduled quarterly board meeting on 25 April 2018 had been undertaken. There were no matters arising that had not been scheduled as an agenda item. The minutes were agreed as being a true record for signing.

Action: LP: Post minutes on CLSB website

3. BOARD MATTERS

3.1 Capacity & capability: Additional education support

The board was advised two legal education specialists had been contracted to support the CLSB in progressing the proposed Costs Lawyer Competence Assessment (CLCA), previously known as the Costs Lawyer Competence Test (CLCT).

3.2 Capacity & capability: Additional investigative support

The board was advised a new independent investigator (non-practising Solicitor) had been contracted and as a result the CLSB now had the option of two independent investigators in the event a complaint was escalated through Disciplinary Rules & Procedures.

4. FINANCE

4.1 Q2 report

The board noted the position at Q2 end was as expected. It was agreed to review the reserve policy and clarification was requested on the level of judicial review insurance cover.

Action: LP:

- ***Review current Reserve Policy and list as agenda item for October meeting***
- ***Clarify level of cover under judicial review insurance policy***

4.2 2017 accounts

The board approved the year 2017 accounts for signing.

Action: LP:

- **File accounts with Companies House**
- **Post accounts on CLSB website**

4.3 2019 budget

The budget was considered and approved on the basis any operational underspend during 2019 would be transferred to the CLSB reserve account.

4.4. 2019 business plan

The board considered and approved the 2019 business plan.

Action: LP: Post 2019 business plan on CLSB website

4.5 2019 practising certificate fee & consultation paper

In supporting the recommendation the fee remain at £250.00 for the eighth consecutive year, the board was satisfied this provided adequate income to support capacity & capability during 2019. Depending on whether the CLCA is brought in, and if so, its effectiveness, it was acknowledged the fee may have to increase in 2020.

The board also considered and approved the consultation paper for issuing.

Board action: LP:

- **Initiate consultation process**
- **Post news item on CLSB website**
- **Post consultation paper on CLSB website**
- **Highlight consultation in CLSB newsletter**

5. **RISK MANAGEMENT**

5.1 Regulatory risk

The board considered the regulatory risk register, no changes or additions were made.

Actions: LP: Post July 2018 version of regulatory risk register on the CLSB website

5.2 Operational risk

The board considered the operational risk register, no changes or additions were made.

Action: LP: Post July 2018 version of operational risk register on the CLSB website

6. **REGULATORY MATTERS**

6.1 Consumer focus: Transparency on cost of regulation

The board was pleased to note the contents of the LSB letter dated 15 May 2018 under which they acknowledged “the CLSB’s costs statement, which contained all of the core metrics and a couple of the metrics mentioned in guidance as good practice, is a positive step in increasing transparency for the professions and others.” The board agreed to make the information more prominent by putting a new tab on the home page rather than it being a sub-tab under policy outcomes. It also agreed to

publish the following in accordance with the suggested cost transparency improvements of the LSB.

- Total of CLSB annual expenditure
- Size of CLSB reserves annually
- Chairs remuneration
- Board remuneration
- CEO remuneration

Action: LP:

- **Arrange for IT to create a new tab on CLSB home page**
- **Collate new information and publish on CLSB website**

6.2 Reasons why Costs Lawyers leave the regulated profession

Due to the high number who would not clarify their reasons for not applying for a practising certificate that year (see number in brackets) it is difficult to identify any trend. From those who did indicate why, reasons for not applying were mixed e.g. maternity leave, changed career, illness, career break, unemployment, personal reasons and death.

2012: 13 (1)

2013: 26 (9)

2014: 24 (10)

2015: 25 (13)

2016: 35 (18)

2017: 43 (22)

2018: 60 (30)

The analysis identified that only 1 Costs Lawyer indicated back in 2013 that they had not renewed due to cost. Unemployment only became a reason for not renewing in 2017 (4 Costs Lawyers) and 2018 (5 Costs Lawyers). This did not appear as a reason in 2016, 2015, 2014, 2013 or 2012 and reflects a challenging market for the profession.

Action: LP: Inform Costs Lawyers of the outcome under next CLSB newsletter

6.3 BEIS Regulators Pioneer Fund

The board was advised the CLSB had received notification of this initiative on 16 April 2018, and that two meetings of the approved regulators and LSB had taken place on 25 April 2018 and 10 May 2018. The Regulators Pioneer Fund is a £10m fund to support regulators (not just the regulators of legal services) to develop innovation-enabling approaches to emerging technologies. Due to limited application (the CLSB regulates individuals not entities) and the short timeframe for putting together a funding bid (mid-June 2018) the CLSB had not pursued this.

6.4 Annual 1:1 with LSB

The board was advised the annual 1:1 between the Chair & CEO of the CLSB and LSB had taken place on 4 May 2018. This meeting is normally used as a mechanism for the LSB to feed back its view of CLSB performance, however the majority of the time had been taken up discussing the challenges faced by the CLSB as a result of issues at ACL and ACL Training.

6.5 New guidance note: Reserved legal activity rights

The board was advised that an allegation had been made that a Costs Lawyer had delegated one or more of their authorised reserved legal activity rights to a non-authorised legal costs practitioner in the firm in which they both worked. A guidance note has been drafted clarifying why personal rights are non-delegable under the Legal Services Act 2007. The guidance note was considered and approved by Gregory Treverton-Jones QC, who specialises in regulatory law. Mr Treverton-Jones agreed his name could be attributed to its approval.

Action: LP

- **Post new guidance note on CLSB website**
- **Issue to all Costs Lawyers under a newsletter**
- **Write article for next edition of Costs Lawyers Journal**

6.6 Revised guidance note: Executing legal documents & the administration of oaths

The board considered and approved a revised guidance note to make reference to Schedule 2 of the Legal Services Act 2007 for the sake of completeness.

Action: LP: Post revised guidance note on CLSB website

6.7 CLCT consultation outcome

The board noted this proposal was to be re-branded as the CLCA (Costs Lawyer Competence Assessment). The board was furnished with a copy of all the responses in favour and all those against (in full or part). The board was disappointed only 42 responses were received and was concerned the outcome may have been skewed by ACL Training having put a proposed 2 year qualification in a newsletter to all Costs Lawyers before the consultation closed. It was noted that out of the 23 who registered objections (in full or part), 18 of those objections were received after the ACL Training communication.

The board was advised that all comments had been considered by the executive and changes had been made as a result of that input. The board noted those changes and was advised a one week snapshot survey had been initiated to establish how much of a Costs Lawyers work actually constituted advocacy. As a result of the outcome, the proposal consulted on was revised to test drafting skills and instead imposed a requirement for a training day on advocacy skills. The board agreed this was more targeted and proportionate based on information gathered.

Following the consultation, the board was advised the proposal had been amended to being a five part training/assessment requirement:

Part 1:	MCT:	Legal knowledge (core principles)
Part 2:	MCT:	Legal knowledge (costs law & practice specific)
Part 3:	Practical test:	Drafting pleadings & procedural documents
Part 4:	Training:	Attending one day training on advocacy skills
Part 5:	Training:	Minimum 2 years work based experience

The board was advised that work continued on this proposal and that a handbook

was being written to contain all required information. The board reflected on why it had actioned the CLCA, originally consulted on 1 February 2017, and agreed it continued to be, based on all the circumstances, the preferred option going forward. Following discussion with the LSB on whether it would be appropriate to file an interim application, as the SRA had, for tacit approval before proceeding to final application for approval, it was agreed to proceed with one application for final approval. This decision was based on the fact the profession currently had no means of entry unlike the Solicitors profession, which did until it proposed new assessment arrangement was introduced.

Action: LP: Continue to draft CLCA Handbook and application to LSB for approval of change to regulatory arrangements for board consideration

6.8 Revised code of conduct

The board was advised that following a complaint of alleged cold calling by a Costs Lawyer, it was considered appropriate to action a specific rule against this under the Costs Lawyer code of conduct. The board noted cold calling was not accepted practice in the legal professions with the SRA, IpReg and CLC having a specific rule against it under their regulatory arrangements in place for Solicitors, Patent Attorneys, Trade Mark Attorneys and Licensed Conveyancers.

Under the Costs Lawyer code of conduct such a practice is considered contrary to principle 1, to act with integrity and professionalism. A specific code against such conduct was not written into the code as it was never envisaged, based on the nature of the profession, such activity would occur between Costs Lawyer and lay person. To ensure the protection of members of the public, it was recommended the Costs Lawyer code of conduct be amended to include a new code at 1.5 reading:

You must not make an unsolicited approach (cold call) by any means to a private individual (lay person) or to domestic premises (unless a business is being conducted from there) in order to publicise your service as a Costs Lawyer or your business.

Having considered all the circumstances, the board agreed to this new specific code. The LSB had advised a formal consultation process was appropriate.

Action: LP: Initiate consultation process

6.9 Additional performance information return

The board noted that following information given to the LSB under the new style of regulatory return, which was intended to be shorter and less labour intensive, the CLSB had received a request for further information. In responding to this request, a 13 page document has been produced. The board considered the additional performance information return and approved it for filing with the LSB with a copy being posted on the CLSB website so the public and profession can judge the performance of the CLSB for themselves.

Action: LP:

- **File additional performance information return with the LSB**
- **Post a copy as a news item on CLSB website**

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

7.1 Amended enforcement rules

The board was advised that on 27 April 2017, the LSB had published an updated enforcement policy and 14 sets of amended rules, this included revised rules on cancelling designation as an approved regulator.

7.2 Response to LSB consultation on IGR

The board noted that on 31 May 2018 the LSB had found the Law Society had breached internal governance rules set by the LSB under s.30 of the Legal Services Act 2007 and had issued a public censure. The CLSB is of the view the difficulties being experienced are due to the fact the Legal Services Act 2007 identifies representative bodies as the approved regulator and regulators, such as the SRA and CLSB then have to operate under delegated authority. This flies in the face of the purpose of the legislation, which was to deliver regulatory independence. Until this is addressed difficulties such as the SRA and CLSB have experienced will continue.

The board noted that the CLSB had written to the LSB on 7 June 2018 concluding *"This is a situation that requires remedy and decisive action by the Legal Service Board, who must summon up the courage for the likely fight to deliver true regulatory independence. The legal professions and the public would expect no less."*

7.3 Appointment of new Chair

The board was pleased to note that interim LSB Chair, Dr Helen Phillips had now been formally appointed to the role of Chair of the LSB.

8. **LEGAL SERVICES CONSUMER PANEL (LSCP)**

8.1 New chair

The board noted the appointment of Sarah Chambers as new Chair of the LSCP, but was disappointed no background information had been provided on her experience resulting in selection.

9 **LEGAL OMBUDSMAN (LeO)**

9.1 Service complaints

Monthly reporting to the CLSB had again dropped off, no new service complaints had been notified to the CLSB since the last quarter board meeting.

10. **REPRESENTATION (ACL)**

10.1 Representations to the LSB (April 2018)

In relation to regulatory independence, the ACL had advised the LSB *"arrangements do need to be made to ensure that this is the position."* To date, no actions have been taken to facilitate this. The board was again reassured that CLSB monies were protected from ACL.

10.2 National conference in Manchester (18 May)

The board noted SW and LP had attended to provide a lunch time surgery. No issues arose as a result of their attendance.

10.3 Meeting on 18 May

The board was advised a meeting took place between SW, LP, Iain Stark and Frances Kendal of the ACL Council. During this meeting, ACL requested ACL Training be considered for the contract to provide the CLCA. The CLSB agreed they would be afforded the opportunity to tender.

10.4 Share buy back

The CLSB was asked to write to ACL making a formal request the CLSB be permitted to buy back the 15,000 shares in issue to ACL, enabling the CLSB to re-structure to become a company limited by guarantee. This request was made by email dated 18 May 2018, no response has yet been received.

Action: LP: Chase a response from ACL

10.5 Relationship between CLSB/ACL/ACL Training

SW asked the board to consider our current relationship with the ACL and ACL Training. The board was of the view the CLSB should look forward, not back, and issue more communication to Costs Lawyers on what the CLSB is doing and why.

11. **EDUCATION**

11.1 Resignation of Steven Davies

The board was disappointed to note this important communication link with ACL Training had been lost following the resignation of Steven from the ACL Council. To date, the CLSB has not been advised of his replacement in the role of ACL Council member with special interest in education.

11.2 2 year qualification

The board was frustrated to note that despite communicating to the ACL and ACL Training in May 2018 that its focus was now on a new alternative and flexible means of entry into the profession rather than a prescriptive education model, ACL Training put a proposed 2 year prescriptive study programme into the public domain. There was concern that this action had caused confusion and therefore undermined the CLSB consultation on the CLCA.

The CLSB had replied: As ACLT is aware, any change to our regulatory arrangements require consultation and subsequently, approval by the Legal Services Board. This is a time consuming process for the CLSB and lengthy (up to six months). Further, the CLSB has already issued two consultations in respect of a new means of entry - the CLCT, and discussions with the Legal Services Board have taken place on that proposal. To put an alternative proposal to the Legal Services Board would undermine our position on the CLCT. Accordingly, we do not feel it appropriate to consider this proposal at this point."

11.3 2018 audit of ACL Training provision of 3 year qualification

The outcome of this audit was noted. The board shared the independent auditors concern on progression/drop off rate. For example:
2015/16: 112 trainees enrolled on unit 1 but only 79 progressed to unit 2

On 15 June 2018, the CLSB was advised:

21 trainees had completed unit 1

21 trainees had completed unit 2

It would not be known until September 2018 whether the 42 would sign up to continue/complete the qualification. It was therefore agreed that due to the small numbers now involved no further audit would be undertaken. The board did however request that the progression/drop off rate continues to be monitored.

Action: LP:

- **Communicate outcome of audit to ACL Training**
- **Monitor progression/drop off rate**

11.4 Snapshot survey of drafting/advocacy

1/6th of the Costs Lawyers the CLSB regulates responded to its snapshot survey. The outcome identified a surprisingly low level of advocacy being undertaken by the profession. The question asked was “*what % of your work time (on average per calendar month) involves drafting and what % advocacy.*” 19.09% advised that they undertook no advocacy on average per calendar month.

86.55% (average per calendar month): Drafting pleadings & procedural documents

8.7% (average per calendar month): Advocacy

12. **ANY OTHER BUSINESS**

The board was advised that on 12 July 2018, Professor Stephen Mayson announced an independent review of legal services regulation would be undertaken by UCL. He stated the terms of reference have been seen by both the MoJ and the CMA, and their views have been taken into account. The board noted that Professor Mayson undertook such a review in September 2013 and initiated a further review entitled “Beyond the Legal Services Act” in 2015, neither of those reports resulted in any change. The board agreed that if asked to assist with this review, the CLSB would do so.

13. **DATE & TIME OF NEXT MEETING**

13.1 Date & time of next meeting: Wednesday 24 October 2018 @ 10.30am

Location: Birmingham

Venue: The Studio, 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 (25 April 2018)	CLSB website: Under "internal governance" then "board minutes"
Risk register (regulatory risk) July 2018	CLSB website: Under "policy outcomes" then "risk management"
Risk register (operational risk) July 2018	CLSB website: Under "policy outcomes" then "risk management"
CLSB budget 2019	CLSB website: Under "news" item dated 19 July 2018 on 2019 PCF CLSB website: Under "policy outcomes" then CLSB consultation
CLSB business plan 2019	CLSB website: Under "internal governance" then "business plan"
CLSB accounts 2017	CLSB website: Under "internal governance" then "annual accounts"
Revised guidance note: Executing legal documents & the administration of oaths	CLSB website: Under "Costs Lawyer handbook" then "guidance notes"
New guidance note: Reserved legal activity rights	CLSB website: Under "Costs Lawyer handbook" then "guidance notes"
Consultation paper on 2019 practising certificate fee	CLSB website: Under "news" item dated 19 July 2018 on 2019 PCF CLSB website: Under "policy outcomes" then "CLSB consultations"