



Getting on Board

Neil Buckley, chief executive of oversight regulator the Legal Services Board, outlines the areas where the Costs Lawyer profession and the CLSB are doing well – and where they need to improve

Consumers will be confident using legal services if they feel well protected by regulators. One of our most important roles, therefore, is to hold the approved regulators to account for their performance against five standards we have developed: outcomes focused regulation, effective risk identification, proportionate supervision, an appropriate enforcement strategy, and capability and capacity.

In our regulatory standards work, for which we gathered a strong evidence base, we assessed the regulators by taking account of a self-assessment exercise, a wide range of external evidence including user feedback, oral and written stakeholder feedback and information gained in other areas of our work, such as statutory decisions and thematic reviews.

In April, the Legal Services Board (LSB) published its latest performance reviews (and individual performance reports) for the legal service regulators and the LSB also concluded work on the cost of regulation and complaints-handling. On work like this, the LSB looks across the legal services sector as a whole but it is also possible to identify messages for specific regulators and their regulated communities, including for Costs Lawyers.

Consumer focus

Our latest assessment of the Costs Lawyer Standards Board's (CLSB) performance recognised that the regulator has maintained its core regulatory activities, including taking enforcement action, and has not imposed any

Compliance

The practice of obeying a rule, law, in accordance with established guidance, try to fit specified standards set do meets the requirements of accepted prescribed regulations, policies, le or the terms of a contract.

additional regulatory burden and cost on its regulated community.

However, as reported in the May/June edition of this magazine, our report identified a range of important issues for the CLSB to address and our assessment diverged significantly from the CLSB's self-assessment of its performance. Specifically, we consider that the CLSB needs to make progress towards being a regulator which is risk and evidence-based, outcomes-focused and which takes account of consumer needs.

Where do we go from here? We have agreed action plans with each of the regulators to address the issues raised in their respective reports and these have now been published. The CLSB action plan includes a commitment to review the two issues we have found especially problematic, which are the lack of an up-to-date

risk profile of the regulated community and a primary objective which puts the profession's needs ahead of those of the consumer. This latter, we believe, may be hindering the development of a strong consumer focus.

Cost of regulation

Regulation of lawyers needs to be efficient as well as effective. Indeed, the two need to be viewed together: it is in nobody's interests to have cut-price regulation that fails to protect consumers or, equally, a regulatory system that is unnecessarily gold-plated and costs the profession (and, ultimately, consumers) too much.

As a result of concerns (primarily anecdotal) raised by the legal professions, the LSB surveyed lawyers to understand their views in

more detail. In the survey, Costs Lawyers were the only group to assess both the practising certificate fee (PCF) and compliance costs as being either low or reasonable. This, we believe, is positive, but many of the Costs Lawyers who responded – like other lawyers – lacked awareness about the various ways the PCF is used and wrongly classified voluntary costs (such as membership of representative bodies) as regulatory costs.

Increasing transparency by regulators about their costs can help address low awareness among providers about how the PCF is spent and offer assurance around value for money.

Our analysis of published information suggests that regulators account for their costs in different ways and overall we consider levels of transparency to be mixed. We have initiated discussions with regulators to agree an approach that will make a greater level of information about their costs available in the public domain. Separately, we will be closely scrutinising the PCF approval process (in which the LSB has a statutory role), looking at the underlying regulatory costs which determine the size of the annual fee.

Complaints

Not all Costs Lawyers deal directly with individual consumers, although some do. The available data suggests that complaints numbers are low. The research also shows, however, that consumers – perhaps understandably – often feel apprehensive complaining about lawyers.

This makes it even more important for consumers to know how to complain in the event they are dissatisfied with the service they receive from a lawyer, or if they suspect misconduct.

In 2010, the LSB made rules in relation to signposting consumers to in-house complaints procedures and the Legal Ombudsman, which appear in the CLSB Code of Conduct. Following public consultation we have made minor updates to the signposting rules and a more substantial revision to the guidance to help and support lawyers to meet their regulatory requirements.

This refreshed guidance emphasises the value of learning from complaints data to make improvements to regulatory arrangements.

Concluding remarks

One benefit of oversight regulation is the opportunity for identification and sharing of good practice in regulation. All sides – providers, regulators, consumers – have something to gain from up-to-date regulatory practice. This in turn also helps to modernise the legal services market. ■

And another thing

The LSB has also written a letter in response to articles in the last two issues of *Costs Lawyer*

The LSB would like to respond to a number of points made in recent articles about the process it adopts to hold the regulators to account for their performance. Our regulatory standards work is a core statutory function. It is a key means through which we seek improvements in the performance of all the legal services regulators.

Our oversight of the regulators helps to command public confidence in the regulation of legal services and ensure that the public interest is protected. It is important to stress that the LSB is proportionate in its oversight of all legal sector regulators and it always takes account of the size and resources of each regulator.

It would, however, be too simplistic to suggest, as has been done, that the level of scrutiny and oversight applied by the LSB should be based solely or mainly on the issue of whether a profession holds client monies. While this is a key risk, it is not the only pertinent risk which we need to consider when determining the extent of our oversight or the nature of regulation a profession should face.

We also seek to improve the way we undertake our role. This is why we will be reviewing our approach to overseeing the performance of the regulators in 2016/17. We will be asking for the views of all regulators as part of this work.

When reaching our most recent assessment on the performance of all the approved regulators, the LSB sought a strong evidence base on which to assess the CLSB's (and all legal services regulators') performance. This included:

- Seeking feedback from CLSB stakeholders;

- Analysing a completed data return;
- Reviewing a range of documentation either directly provided by the CLSB or obtained ourselves;
- Running a survey for users of the regulators (including the CLSB); and
- Meeting the CLSB to fill gaps in the evidence we collected.

We reflected this evidence throughout our report. Each of the regulators was given the draft report in full prior to publication and had the opportunity to correct any factual inaccuracies within the draft report prior to publication. The CLSB provided very few and minor corrections.

The LSB is evidence-based in all its work and was clear where a regulator, including the CLSB, has performed well. This was illustrated by the grade of 'satisfactory' awarded for its enforcement function and the inclusion of the evidence from the profession that Costs Lawyers think that the CLSB is providing the right level of regulation at the right cost.

When we have highlighted other less positive issues in this report, it is because the evidence gathered suggests that they exist and need action. We have, therefore, suggested that the CLSB needs to address a number of areas in order to meet the necessary standards.

We will continue to work with all the regulators, including the CLSB, to address the areas of improvement identified for each of them in our report and outlined in the recent, jointly agreed, action plans published on our website. I hope that this dispels any misconceptions about why we do what we do that readers of *Costs Lawyer* magazine might have been left with by the previous articles.

Neil Buckley