

Costs Lawyer Standards Board - Regulatory performance assessment

REGULATORY APPROACH					AUTHORISATION					SUPERVISION				ENFORCEMENT						WELL-LED					
1	2	3	4	5	1	2	3	4	5	1	2	3	4	1	2	3	4	5	6	1	2	3	4	5	6
Met	Met	Not met – action being taken	Not met – action being taken	Not met – action being taken	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Not met – action required	Not met – action required	Met	Met	Met	Met	Not met – action being taken	Not met – action being taken	Not met – action being taken	Met	Met
Met	Met	Not met – action being taken			Not met – action required	Not met – action required			Not met – action required																

Action being taken

Outcome		<p>RA1: Regulatory arrangements and supporting guidance documentation are:</p> <ul style="list-style-type: none"> • outcomes-focused • written in plain English • maintain professional principles <p>with detailed rules limited to where evidence and analysis justifies them</p>
January 2019	LSB assessment	The CLSB considered a revised approach to CPD in 2016 but delayed implementation due to other priorities. The return submitted on 19 July notes that new CPD rules came into force in June 2017 however the Guidance notes section of the website has a version dated 28 August 2012. We also remain of the view that the CLSB is not aligned with LSB education and training guidance.
	Action needed	The CLSB to consider implementation of a revised approach to CPD and to provide the LSB with an update on its proposed action along with reasons.
	Timing	We asked CLSB to set out an initial action plan by the end of January in order to take control of its own timing. However, there was an expectation of substantive update by May 2019, which was extended until June 2019.

Progress update (at July 2019)	LSB assessment	<p>CLSB has made some progress towards addressing this outcome. However, the outcome will not be met until CLSB is able to demonstrate that its rules and guidance align with the requirements of this outcome.</p> <p>We note that CLSB has updated the CPD guidance on its website. It has also identified the need to audit the Costs Lawyers Handbook to identify any other inconsistencies between rules and guidance and to remedy any further occurrences. That audit is complete with no inconsistencies identified. However, the audit has identified a need to review older handbook content and further action on this is needed.</p> <p>While CLSB has confirmed an intention to review its current CPD arrangements against current best practice this action remains outstanding.</p>
	Action needed	<p>CLSB to complete the review of its older handbook content and to undertake the review of its current CPD arrangements as set out above.</p> <p>CLSB to update the LSB on its proposed actions along with reasons.</p>
	Timing	<p>The first phase of CLSB review of its handbook content to be completed by the end of 2019 with a full update to the LSB upon completion of the review by May 2020.</p> <p>CLSB's review of its current CPD arrangements to be considered by the CLSB Board in October with further work to follow (such as a consultation if appropriate). Update to LSB by 1 November 2019.</p>

Outcome	<p>RA3: The regulator has a robust evidence base from a range of sources on: (a) consumers' needs and use of legal services (b) new and emerging policy developments (c) the regulated community and (d) the market(s) regulated by it which informs its regulatory arrangements and approach.</p>
----------------	---

January 2019	LSB assessment	The information provided in the 19 July response addresses a narrow point about evidence. This reinforces our concern that the CLSB evidence base is currently very limited. The CLSB has not clearly identified how findings from regulatory returns or analysis of data collected from client surveys has been used in how it carries out its regulatory arrangements. For example, on policy development no information has been provided on any action taken as a result of best practice identified.
	Action needed	(1) The CLSB to actively engage with the SRA, as a regulator of entities where a significant number of costs lawyers are employed, to identify what elements of the SRA evidence base can be used by the CLSB to inform its policy development. The CLSB should also consider and engage with other regulatory bodies whose evidence bases will also be useful. (2) The CLSB to demonstrate through examples how learning from its evidence base has informed its regulatory approach.
	Timing	We asked CLSB to set out an initial action plan by the end of January in order to take control of its own timing. However, there was an expectation of substantive update by May 2019, which was extended until June 2019.
Progress update (at July 2019)	LSB assessment	<p>CLSB yet to make progress against this outcome but does have plans in place. In order to meet this outcome CLSB will need to provide the LSB with information demonstrating its evidence base and how it is used. This is likely to take time as CLSB works to build its evidence base and implement a new strategy for consumer engagement.</p> <p>We set CLSB a specific action of engaging with the SRA and other regulatory bodies and this has been partially met. CLSB identified weaknesses in its evidence base, in particular consumers' needs and use of legal services and is working to address the gaps.</p> <p>We note CLSB's plans to formulate a new consumer engagement strategy that will be based upon the evidence gathered through a report on consumers of costs lawyers' services. CLSB</p>

		<p>has also started to engage with others. It is in contact with the SRA and has met with the Legal Services Consumer Panel.</p> <p>In order to show that it holds a sound evidence base CLSB will need to demonstrate, through further examples, how it is using its evidence base and how it informs its regulatory approach.</p>
	Action needed	<p>CLSB to take forward its plan to produce a report on consumers of costs lawyers' services.</p> <p>CLSB to provide the LSB with ongoing examples of its learning from its evidence base and how that informs its regulatory approach, including its engagement with other regulators.</p>
	Timing	<p>Updates to be provided by 1 November 2019. Further updates on a quarterly basis to LSB.</p> <p>The LSB will continue to closely monitor progress on an ongoing basis.</p>

Outcome		RA4: Regulatory arrangements and associated guidance documentation are informed by learning gathered from all of the regulators work including its risk assessment and enforcement work.
January 2019	LSB assessment	It is unclear how learning gathered from the CLSB's work has been used to inform its regulatory arrangements and guidance. The 19 July return provides no concrete additional information on how the CLSB is meeting this outcome.
	Action needed	The CLSB to provide information on how its evidence base, including learning gained from its regulatory returns and client surveys, as well as risk assessment and enforcement work, has been used to influence the Board and Executive's thinking and the development/revision of regulatory arrangements and associated guidance.

	Timing	We asked CLSB to set out an initial action plan by the end of January in order to take control of its own timing. However, there was an expectation of substantive update by May 2019, which was extended until June 2019.
Progress update (at July 2019)	LSB assessment	As with RA3, CLSB has explained its plans to meet this outcome. However, significant work is needed to implement those plans and demonstrate that the outcome has been met. While the CLSB has provided evidence of how learning from its enforcement work has resulted in a change to regulatory arrangements, continued use of evidence in decision making is required to reassure the LSB that practices regularly meet this outcome.
	Action needed	CLSB to demonstrate further examples of the ongoing application of its own learning and the impact it has on its board's thinking in developing regulatory arrangements and associated guidance.
	Timing	Update to LSB by 1 November 2019. Further updates on a quarterly basis. The LSB will continue to closely monitor progress on an ongoing basis.

Outcome		E2: The regulator ensures that all complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.
January 2019	LSB assessment	The CLSB does not have the power to issue interim orders which is not consistent with the practice of other regulators which have an interim orders panel in place or are considering expanding the scope of existing interim orders.
	Action needed	The CLSB to review whether, in the absence of interim orders powers, it is able to ensure consumers and others are protected should immediate suspension of a costs lawyer's authorisation be needed.

	Timing	We asked CLSB to set out an initial action plan by the end of January in order to take control of its own timing. However, there was an expectation of substantive update by May 2019, which was extended until June 2019.
Progress update (at July 2019)	LSB assessment	<p>CLSB has reviewed its Disciplinary Rules and Procedures to ensure they allow appropriate prioritisation of serious cases. It has concluded that a consultation is required on proposals to amend its rules. This should lead to implementation of either interim orders powers or procedures to ensure that consumers and others are appropriately protected in the absence of such powers.</p> <p>CLSB has indicated it will shortly issue a consultation but has not confirmed an exact timeframe.</p>
	Action needed	<p>CLSB to advise the LSB on the timing of the consultation on proposed changes to its Disciplinary Rules and Procedures and to then amend its rules as appropriate as soon as practicable.</p> <p>CLSB's decision document following consultation should fully address the action set in January 2019.</p>
	Timing	Update to LSB by 1 November 2019. Action to be completed by May 2020.
Outcome	E3: The enforcement process and any associated appeals process is: consistent; independent; risk-based; evidence-based; documented; transparent; proportionate; focused on consumer protection, maintaining professional principles and protecting the public interest.	

January 2019	LSB assessment	We have found no evidence of the CLSB’s consideration of its enforcement or decision making process. The Disciplinary Rules and Procedures guidance has not been updated since April 2013.
	Action needed	The CLSB to undertake a review of its enforcement process against this standard and produce a report setting out its findings.
	Timing	We asked CLSB to set out an initial action plan by the end of January in order to take control of its own timing. However, there was an expectation of substantive update by May 2019, which was extended until June 2019.
Progress update (at July 2019)	LSB assessment	CLSB has reviewed its Disciplinary Rules and Procedures. This is positive progress towards meeting the outcome. However, in order to meet the outcome CLSB will need to progress from review to consultation and then implementation of any amendments it proposes.
	Action needed	CLSB to advise the LSB on the timing of the consultation on any proposed changes to its Disciplinary Rules and Procedures and to then amend its rules as appropriate as soon as practicable. CLSB’s decision document following consultation should set out how any changes being made meet this outcome.
	Timing	Update to be provided to the LSB by 1 November 2019. Action to be completed by May 2020.

Outcome	WL2: The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented.
----------------	--

January 2019	LSB assessment	Insufficient information is available on how the CLSB will continue to ensure it has the right resources and structures. In particular: the Business Plan is not clear what the CLSB priorities or actions are with many activities classified passively as ‘monitoring’; the risk register is incomplete and does not reflect the impact of the current and future changes to 3 of the 5 Board members; the risk register does not fully address the ongoing risks associated with the reliance on a single member of staff. There are concerns over CLSB’s understanding of the risks it faces and whether appropriate contingency planning is in place.
	Action needed	(1) CLSB to review its risk register and to consider the inclusion of risks such as board member recruitment. (2) CLSB to consider and to provide the LSB with an updated contingency plan explaining the ongoing risks and mitigations associated with a single member of staff support and the provider of contingency support if needed (we note the BSB has offered to provide interim support but it is not clear why this is considered to be the most appropriate regulator to step-in).
	Timing	We asked CLSB to set out an initial action plan by the end of January in order to take control of its own timing. However, there was an expectation of substantive update by May 2019, which was extended until June 2019.
Progress update (at July 2019)	LSB assessment	CLSB has made considerable progress and has developed and published a 3-year strategy document which will inform its 2020 business plan. Further, CLSB has refreshed its approach to documenting risk and has published an updated risk register following its July board meeting. The change in risk register is welcome and reflects the action set in January 2019. CLSB has also provided an updated disaster recovery and business continuity plan. We have noted the plan and have provided feedback to CLSB on this operational document.

		Both the review of the risk register and new business continuity plan are welcome and we recommend additional work on these as well as the business plan before this action can be considered complete.
	Action needed	CLSB to consider further feedback from LSB on the contents of its risk register and on its contingency planning. CLSB to produce a new business plan reflecting the feedback provided in the January 2019 assessment.
	Timing	Updates to be provided to the LSB by 1 November 2019. The LSB will continue to closely monitor progress on an ongoing basis.

Outcome		WL3: The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community faces and how these are being mitigated; performance; regulated community and related markets; financial costs.
January 2019	LSB assessment	(1) While the CLSB does publish Board minutes which provide some evidence for decisions made by its Board or Executive which impact on its regulated community, we consider that the CLSB is not sufficiently transparent in this regard, and that it could publish more information and do so more promptly. We therefore cannot consider this outcome to be met until the actions below are completed. (2) While the CLSB does publish the minutes of Board meetings, it does not publish performance information on how its Board holds the executive to account, we consider that the CLSB is not sufficiently transparent in this regard, and that it must publish more information and do so promptly. We therefore cannot consider this outcome to be met until the actions below are completed.
	Action needed	(1) The CLSB to review current publication policy and ensure that the supporting evidence for decisions taken by the Board or Executive which impact on the regulated community is

		<p>published as soon as possible after decisions are taken. This should include Board papers which should only be withheld or with content removed in limited circumstances.</p> <p>(2) The CLSB to review the transparency of its performance information (e.g. KPIs and performance reports, complaints about the regulator etc.) and that this information should be published as soon as possible after the Board consideration.</p>
	<p>Timing</p>	<p>We asked CLSB to set out an initial action plan by the end of January in order to take control of its own timing. However, there was an expectation of substantive update by May 2019, which was extended until June 2019.</p>
<p>Progress update (at July 2019)</p>	<p>LSB assessment</p>	<p>CLSB has made significant progress in improving the transparency of its decision making. It has developed a Transparent Decisions Policy along with an associated Board Decision Note. The policy and note are welcome but whether they are sufficient to meet this outcome will depend on how they are implemented.</p> <p>CLSB has also made progress in respect of publishing its own performance information. It has developed a new KPIs policy which was implemented in April 2019. It intends to publish results against the KPIs on a quarterly basis following board consideration. It will also begin to publish performance information gathered from its annual regulatory return and information on complaints against the CLSB. Implementation of this policy will enable CLSB to meet the performance transparency element of this outcome.</p>
	<p>Action needed</p>	<p>CLSB to implement its Transparent Decisions Policy in October 2019 along with more detailed minutes. CLSB to give further consideration to drafting and publishing board papers to not only increase transparency but to improve the governance and evidence upon which board decisions are made.</p> <p>CLSB's new KPI's policy to be further developed and fully implemented.</p>
	<p>Timing</p>	<p>Updates to be provided to the LSB by 1 November 2019. Actions to be completed by May 2020.</p>

Outcome		WL4: The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work.
January 2019	LSB assessment	There is no evidence of significant learning from engagement with the regulated community or consumers.
	Action needed	The CLSB to improve the transparency of how its evidence base is regularly shared with the Board and utilised to drive change/developments, for example risk management, guidance and revised policy.
	Timing	We asked CLSB to set out an initial action plan by the end of January in order to take control of its own timing. However, there was an expectation of substantive update by May 2019, which was extended until June 2019.
Progress update (at July 2019)	LSB assessment	<p>The work CLSB is doing under other outcomes should lead to it being able to meet this outcome over time. In particular, in order to meet this outcome CLSB must:</p> <ul style="list-style-type: none"> • improve and make use of its evidence base as set out under RA3 and RA4 • evidence its learning through transparent decision making as required under WL3. The transparency of sharing CLSB's evidence base with the board will be particularly aided by board decision notes.
	Action needed	CLSB must take forward the actions set out under RA3, RA4 and WL3 in order to evidence its learning and how it uses that learning.
	Timing	Update to the LSB by 1 November 2019. LSB to review progress in May 2020.