

CLSB Regulatory performance assessment August 2020

| REGULATORY APPROACH | | | | | AUTHORISATION | | | | | SUPERVISION | | | | ENFORCEMENT | | | | | | WELL-LED | | | | | |
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| 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 |
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| Met | | Not met – action being taken | | | | Not met – action required | | | | | | | | | | | | | | | | | | | |

Overview

The CLSB has continued to make progress in the time since the last assessment conducted by the LSB in November 2019.

The work done has translated into an assessment that shows the CLSB now meets five on the nine outcomes previously assessed as ‘Not met – action being taken’.

The focus for the CLSB must now be on demonstrating its delivery against each of the outcomes. We expect the CLSB to provide ongoing evidence that it can meet the outcomes that are yet to be met and sustain its improvements across all the ‘Met’ outcomes.

A key area for the LSB will be whether, considering its resourcing and structure, the CLSB will be able to demonstrate that it can meet the outcomes and standards that we expect of well performing regulators.

Not met: action being taken

| Outcome | | 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. |
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| Progress update (at July 2020) | LSB assessment | <p>The action for CLSB was to evidence its learning from engagement, the work it has done in relation to consumers and other policy developments. We highlighted that evidence would come from rule changes, board decision notes and actions flowing from its interim report on costs lawyers and consumers.</p> <p>CLSB has made progress with this action, particularly in relation to rule change applications with three approved by the LSB so far in 2020. However, it needs to continue to build its evidence base and demonstrate making use of it. To date it has produced two board decision notes and while it has now developed a Consumer Engagement Strategy it will need to provide evidence of progress against its priority activities that inform its regulatory approach.</p> <p>It is also notable that CLSB is among the regulators that have had challenges in building a reliable understanding of the diversity profile of their regulated community. We will expect CLSB to evidence progress in obtaining diversity data that will help inform its regulatory approach.</p> |
| | Action needed | <p>CLSB to provide ongoing evidence of building its evidence base and use of that evidence base to inform its regulatory approach.</p> <p>CLSB to demonstrate progress by obtaining a clear and thorough understanding of the diversity profile of its regulated community that will inform its regulatory approach.</p> <p>In particularly we would expect to receive:</p> <ul style="list-style-type: none"> substantive feedback on the work undertaken so far in the first year of its Consumer Engagement Strategy |

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| | | <ul style="list-style-type: none"> • an update on its review of its diversity and inclusion initiatives against the three characteristics of a well-performing regulator • relevant progress against its proposed Business Plan priorities, specifically improving its regulatory arrangements and protecting the interests of consumers and promoting professional standards. |
| | Timing | CLSB to provide a progress update by 31 March 2021 |

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| Outcome | | RA4: Regulatory arrangements and associated guidance documentation are informed by learning gathered from all of the regulator’s work including its risk assessment and enforcement work. |
| Progress update (at July 2020) | LSB assessment | <p>We set an action for CLSB to complete the work it had done in developing new CPD arrangements and new Disciplinary Rules and Procedures. Our expectation was for the CLSB to consult and then apply to the LSB for any alterations as needed. We also stated that CLSB must continue to demonstrate the impact of its learning on its regulatory arrangements and guidance. This will be demonstrated as it takes forward its proposals on both CPD and its Disciplinary Rules as well as in how it makes use of the consumer engagement strategy that is being developed.</p> <p>CLSB has made significant progress against this outcome by reaching a point where we have approved rule change applications and the new rules are now in place or due to come into force shortly. To meet this outcome CLSB will need to show sustained learning from all of its work.</p> |
| | Action needed | CLSB must demonstrate active use of its consumer engagement strategy and continue to regularly evidence the application of learning from its own work. In particular, its planned 2021 annual priorities for improving its regulatory arrangements. |
| | Timing | CLSB to provide a progress update by 31 March 2021 |

| 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. |
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| Progress update (at July 2020) | LSB assessment | <p>In our previous assessment we concluded that the level of CLSB’s internal fixed resources continued to be a concern. We explained that we would maintain close contact with CLSB on their interim resourcing solutions to ensure they are sufficient.</p> <p>CLSB has since provided an updated Business Continuity Policy setting out how it would ensure continuity of regulation in a range of scenarios including the sudden unavailability of the CEO. In addition, CLSB has provided the LSB with a detailed resourcing plan setting out its proposed actions and steps for the 2020 PCF cycle.</p> <p>The plan has been developed considering the impact of Covid-19 and CLSB contends that it will allow it to continue with a progressive programme of work. CLSB has also implemented a new format for a quarterly financial report to its board to ensure the board are better sighted on expenditure against budget. CLSB’s proposed budget planning does not provide for an increased budget but, in practice does increase its resourcing and resilience to some extent as compared to previous years.</p> <p>However, the LSB continues to be concerned about whether the CLSB has sufficient resources and scale in the longer-term to be able to demonstrate that it can meet the outcomes and standards that we expect of well performing regulators. For example, to continue to operate effectively it is crucial that CLSB can quickly demonstrate a better understanding of the risk profile of its regulatory community, and to gather and use meaningful diversity data to inform its policies. We know that it has plans to address these areas but are concerned that the planned resourcing may be insufficient to do so appropriately and in a timely way with such a small resource base, alongside the wider policy development, supervision and enforcement work that also requires ongoing attention.</p> <p>We also see significant risks associated with its current operating model, in that there is little resilience or scope for further scaling back. This is brought into the light in particular by events such as the COVID-19 pandemic.</p> <p>Given our ongoing concerns in this area, we will maintain a strong focus on this through the annual PCF approval process. We will also require ongoing updates from CLSB around its income and resources.</p> |

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| | | In the event that a lack of resources or capacity impact on the CLSB's ability to continue to progress towards achieving an adequate level of performance across the performance standards, we will be extremely concerned if we are not presented with evidence of the CLSB Board having given this adequate consideration and having put in place appropriate plans and mitigations. |
| | Action needed | <p>CLSB to keep the LSB informed of significant developments in relation to its resourcing, in particular increased risks to its ability to deliver the improvements required.</p> <p>In the event that resources or capacity impact on the CLSB's longer-term performance outlook, LSB to be provided with evidence of CLSB Board discussion and agreed plans and mitigations.</p> <p>We expect the next update from CLSB to include details of any progress made against its proposed 2021 Business Plan priority for Modernising the CLSB. In particular, its intention to revisit the effectiveness of its new operating structure.</p> |
| | Timing | CLSB to submit an update on progress by 31 March 2021 to coincide with its Q1 report to its Board. |

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| Outcome | | WL4: The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work. |
| Progress update (at July 2020) | LSB assessment | <p>We set an expectation that CLSB's progress against other outcomes should allow CLSB to meet this outcome over time. We explained that it would need to continue to make use of its developing evidence base and that board decision notes and publication of board papers would further assist.</p> <p>We additionally explained that CLSB needed to take action to progress its work to better understand consumers of costs lawyer services.</p> <p>It is clear CLSB has made progress here but we will need to continue to demonstrate its learning from across the sector and beyond.</p> |

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| | Action needed | <p>CLSB must demonstrate its use of its consumer engagement strategy and continue to regularly evidence the application of learning from its own work and others. We expect this to be clear as it builds a greater catalogue of published board papers and board decision notes.</p> <p>We would also expect to receive:</p> <ul style="list-style-type: none"> • substantive feedback on the work undertaken so far in the first year of its Consumer Engagement Strategy • an update on its review of its diversity and inclusion initiatives against the three characteristics of a well-performing regulator • relevant progress against its proposed Business Plan priorities, specifically improving its regulatory arrangements and protecting the interests of consumers and promoting professional standards. |
| | Timing | CLSB to provide a progress update by 31 March 2021 |

Met (August 2020)

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| 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> | |
| Progress update (at July 2020) | LSB assessment | <p>The actions for the CLSB were to consider implementation of a revised approach to CPD and to complete the review of its older handbook content.</p> <p>CLSB has reviewed and implemented changes to its CPD rules, Disciplinary Rules and Procedures and Practising Rules. These alterations have all included consultation, decision documents, successful applications to the LSB and publication of associated guidance where appropriate.</p> |

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| | | In looking at its older handbook material CLSB has issued updates to existing guidance based upon evidence, it has revoked guidance that we considered no longer relevant and updated its website to provide relevant material in an accessible way. In addition CLSB has issued new guidance in areas where it was receiving a lot of enquiries. |
| | Action needed | Action Complete |
| | Timing | Action complete |

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| Outcome | | RA2: Regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base. |
| Progress Update (at July 2020) | LSB assessment | <p>A key component for meeting this outcome is effective engagement with the LSB's rule approval process. In January of 2019 the CLSB applied to introduce a new Costs Lawyers Competency Assessment (CLCA). The application was later withdrawn but only after the LSB issued a warning notice.</p> <p>Despite significant engagement with the CLSB prior to the application, there were a number of significant issues which had an impact on the LSB's ability to assess the application. These issues ranged from a lack of:</p> <ul style="list-style-type: none"> • information and evidence to support the stated rationale for the CLCA • detail in the competence and threshold standard being proposed • evidence on the potential equality impact or costs implications of the proposal • detail of the plan for implementation. <p>Since the initial assessment based upon the above application the CLSB has undergone an organisational restructure and has altered the way in which it approached engagement with the LSB's rule approval process.</p> |

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| | <p>In 2020 CLSB engaged significantly with the LSB on how to approach rule changes and has since made three rule change applications to the LSB. They have all been clearly drafted, with an understandable rationale and evidence base. All the proposed changes have been approved.</p> <p>Through 2020 CLSB has also progressed significant work in ensuring that its proposals are backed by evidence from both within and outside of the sector along with LSB policy statements. It has not only progressed rule changes but has also set in train a programme of work that has resulted in updates to several pieces of guidance.</p> |
| Action needed | Action Complete |
| Timing | Action Complete |

| 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. |
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| Progress update (at July 2020) | LSB assessment | <p>CLSB was asked 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.</p> <p>CLSB has now amended its Disciplinary Rules and Procedures. The changes included the introduction of interim suspension orders and were approved by the LSB on 6 April 2020.</p> <p>Given the low incidence of disciplinary matters we note that it will take time for CLSB to produce evidence that it meets E2 in practice. In the circumstances we are willing to consider this outcome met provisionally. We expect to revisit this outcome as and when CLSB is in a position to provide further evidence based on its consideration of complaints it receives. It is noted that CLSB will be reviewing the effectiveness of all the changes made two years after implementation.</p> |
| | Action needed | Action complete. |

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| | Timing | Action complete. |
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| 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. |
| Progress update (at July 2020) | LSB assessment | <p>The action for CLSB was to undertake a review of its enforcement process against this standard and produce a report setting out its findings.</p> <p>CLSB has altered its disciplinary rules and procedures. It has also added a page to its website on disciplinary outcomes. It has also published its Panel Member Appointment Policy and Code of Conduct. In addition, it has published policy statements on enforcement and sanctions and publication of disciplinary decisions. Finally, it has produced internal guidance for its conduct committees and conduct appeal committees.</p> <p>This is significant progress and removes the active concerns held by the LSB. Given the low incidence of disciplinary matters we note that it will take time for CLSB to produce evidence that it is meeting E3 in practice. In the circumstances we are willing to consider this outcome met provisionally. We expect to revisit this outcome as and when CLSB is in a position to provide further evidence.</p> |
| | Action needed | Action complete. |

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| 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. |
| Progress update (at | LSB assessment | <p>We set a requirement for CLSB to turn its attention to drafting and publishing board papers. Consequently, CLSB developed a policy statement setting out documents it would publish, the purpose</p> |

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| November 2019) | | of publication and the timing of publication. This includes publication of agendas, papers and minutes for meetings. Papers for April and July 2020 can now be found online, consistent with its new policy statement. |
| | Action needed | Action Complete. We will of course expect to see CLSB consistently building a larger catalogue of agendas, papers, minutes, and decisions now that it has a clear publication policy. |
| | Timing | Action Complete |