

## 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                 | 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 | 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 |

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| Met | Not met – action being taken | Not met – action required |
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### Action being taken

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| <b>Preliminary action</b> | The CLSB to submit an overall action plan to the LSB by 31 January 2019. This plan should set out in more detail how CLSB will address the assessment feedback and how each action set out below will be taken forward. All actions should be completed by 31 May 2019.   |
| <b>Outcome</b>            | <p><b>RA1: Regulatory arrangements and supporting guidance documentation are:</b></p> <ul style="list-style-type: none"> <li>• <b>outcomes-focused</b></li> <li>• <b>written in plain English</b></li> <li>• <b>maintain professional principles</b></li> </ul> <p><b>with detailed rules limited to where evidence and analysis justifies them</b></p>                                 |
| <b>LSB Assessment</b>     | 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. |
| <b>Action</b>             | 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.   |

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| <b>Outcome</b>        | <b>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.</b>  |
| <b>LSB Assessment</b> | 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. |
| <b>LSB Assessment</b> |   |
| <b>Action</b>         | (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.<br><br>(2) The CLSB to demonstrate through examples how learning from its evidence base has informed its regulatory approach.             |
| <b>Outcome</b>        | <b>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.</b>   |
| <b>LSB Assessment</b> | 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.  |
| <b>Action</b>         | 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.   |
| <b>Outcome</b>        | <b>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.</b>   |

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| <b>LSB Assessment</b> | 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.  |
| <b>Action</b>         | 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.  |
| <b>Outcome</b>        | <b>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.</b>   |
| <b>LSB Assessment</b> | 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.   |
| <b>Action</b>         | The CLSB to undertake a review of its enforcement process against this standard and produce a report setting out its findings.   |
| <b>Outcome</b>        | <b>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.</b>   |
| <b>LSB Assessment</b> | 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. |
| <b>Action</b>         | (1) CLSB to review its risk register and to consider the inclusion of risks such as board member recruitment.  |

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|                       | (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).   |
| <b>Outcome</b>        | <b>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.</b>  |
| <b>LSB Assessment</b> | <p>(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.</p> <p>(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.</p> |
| <b>Action</b>         | <p>(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 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>   |
| <b>Outcome</b>        | <b>WL4: The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work.</b>  |
| <b>LSB Assessment</b> | There is no evidence of significant learning from engagement with the regulated community or consumers.   |

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| <b>Action</b> | 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. |
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