

To:	The Board	
Date of Meeting:	14 September 2011	Item: Paper (11) 62

Title:	CLSB application for approval of regulatory arrangements	
Workstream(s):	Workstream 2A Developing Regulatory Standards	
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Status:	Unclassified	

Summary:

The Costs Lawyer Standards Board (**CLSB**) has submitted its first application for approval of regulatory arrangements. If approved, this will mean that when the Association of Costs Lawyers (**ACL**) formally delegates its regulatory functions, CLSB will have in place an appropriate set of regulatory arrangements.

Background

In anticipation of CLSB assuming its regulatory function under delegated authority from the ACL (expected to commence by 31 October 2011 at the latest), CLSB has developed a Code of Conduct, Practising Rules, Disciplinary Rules & Procedures and Training & CPD Rules to replace Bye Laws and regulatory arrangements of the ACL. This application seeks our approval of these replacement rules.

The CLSB issued a consultation in May 2011 and made changes to the proposed rules in the light of the comments received. The rules submitted by the CLSB for approval take account of the responses to the consultation.

The changes

The Code of Conduct, which will be mandatory, focuses on seven key principles which reflect Part 1 of the Legal Services Act 2007. The seven principles in the Code are to:

- Act with integrity and professionalism
- Comply with your duty to the court in the administration of justice
- Act in the best interest of your client
- Provide a good quality of work and service to each client
- Deal with the regulators and Legal Ombudsman in an open and co-operative way
- Treat everyone with dignity and respect
- Keep your work on behalf of your clients confidential.

For each principle, there are supporting provisions which describe in more detail things that are, and are not, allowed.

The Practising Rules are intended to govern the practice of Costs Lawyers.

The Disciplinary Rules and Procedures govern the conduct complaint and

disciplinary process, including the remit and operation of the Conduct Committee and appeals stages (including sanctions and costs which may be imposed).

The Training and CPD Rules detail the conditions for training and the application process. It also prescribes the CPD for Costs Lawyers, who must complete a minimum of 12 CDP points in each CPD year (for which they must maintain records and produce evidence on demand to the CLSB).

Issues

No major issues were identified in our assessment. However, as a result of queries that we raised with them, CLSB made a number of small changes, three of which are worthy of mention:

- Under Principle 5 of the Code of Conduct, 'other regulators' has been added to the list of people that Cost Lawyers are expected to co-operate with (on the basis that they may work in firms that may be regulated by bodies other than the CLSB).
- Disciplinary Rule 1 no longer requires a complaint to the CLSB to be made in writing. This is in line with our own guidance in respect of service complaints and the Legal Ombudsman scheme rules (which allow a complaint to be made by any means).
- Disciplinary Rule 14.2 has been amended so that warning letters and undertakings will be included on the register (and available for public inspection) until such time as they have expired or the actions have been completed (previously specified: six months).

We also sought from the CLSB assurances in respect of rules relating to its proposed operating procedures to support compliance monitoring and enforcement:

- Disciplinary Rule 5.4 – this Rule says that the CLSB will monitor to ensure that accepted terms and undertakings by the Costs Lawyer in respect of disciplinary findings will be met. The CLSB responded that its Chief Executive will follow through in such circumstances by maintaining a log. The Chief Executive will seek evidence from the Costs Lawyer that terms and undertakings have been complied with within the defined time period. The Chief Executive may also employ the services of an Appointed Investigator to make those enquiries if circumstances require it. In the event that the Chief Executive believes a term or undertaking has not been complied with, she will call a further Conduct Committee to consider.
- Training and CPD Rule 11 – we asked the CLSB how the proposed CPD points system will be reviewed and compliance monitored by the CLSB. Its response advised that, when CPD cards are received at the beginning of the year, CLSB will undertake a random audit. CLSB has already asked ACL to ensure it keeps accurate records of those who attend CPD point courses, so attendances can be checked.

At this stage, it is difficult to assess precisely the capability of the CLSB in respect of its regulatory role, particularly as it is a new and small organisation. However, we are satisfied with the CLSB's responses to our queries about compliance and enforcement (as set out above). There are a relatively small number of Costs Lawyers regulated by the CLSB (c. 500) and, given that they are predominantly engaged in business-to-business activity, there is a relatively low risk to most

consumers. Consequently, while there might be some initial difficulties and challenges of compliance, there is no reason to see wide scale systematic difficulties or major threats to the Regulatory Objectives in agreeing these rule changes.

Crispin Passmore (Strategy Director) had a recent meeting with the CLSB and was impressed by its Board.

Therefore, following an assessment, while capability is not necessarily proven at this stage, we see no reason to positively turn down the application. We are satisfied that the proposed Code and rules are an appropriate set of regulatory arrangements for CLSB. Overall, the proposed changes to regulatory arrangements pose no negative impacts on the Regulatory Objectives. The changes are proportionate and consistent with the Better Regulation Principles.

The draft Decision Notice (which includes the new arrangements) is attached (**Annex**).

Risks and mitigations	
Financial:	None.
FoIA:	None.
Legal:	None.
Reputational:	None.
Resource:	None.

Consultation	Yes	No	Who / why?
Board Members:		✓	
Consumer Panel:		✓	
Others:	N/A.		

Recommendation(s):
<p>As this is the first regulatory arrangement change application from the CLSB, the Board is invited:</p> <ul style="list-style-type: none"> (a) to review and to note the draft Decision Notice (which includes the new arrangements) (see Annex) (b) to note that the Chief Executive will approve the application (in accordance with the authority delegated to him by the Board on 30 November 2009).