

CLSB Regulatory performance assessment May 2021

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

Overview

The last regulatory performance assessment of the CLSB was published in December 2020. The only updated outcome at that time was the addition of an assessment against outcome WL7, which relates to regulatory independence. The CLSB meets this outcome.

We received updates from CLSB on the four remaining not met outcomes (RA3, RA4, WL2, WL4) at the end of March 2021. Despite the challenges faced by CLSB as a smaller regulator it must be commended for the impressive progress made since the latest actions were set in August 2020 and its continued improvements since the January 2019 transitional assessment of regulatory performance identified eight not met outcomes.

As a result of the progress made, we are satisfied that outcomes RA3, WL2 and WL4 are now met. Considerable progress has been made towards meeting outcome RA4 and we will assess a further update in October 2021. Alongside RA4 we expect CLSB to demonstrate how it has used ongoing reflection and evaluation across all the standards to improve its performance year-on-year.

Not met: action being taken

| 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. |
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| Progress update (at May 2021) | LSB assessment | <p>We set an action for CLSB to demonstrate active use of its consumer engagement plan and to regularly evidence the application of learning from its own work. We asked for the progress update to include its planned 2021 annual priorities for improving regulatory arrangements.</p> <p>CLSB referred the work done to build its evidence base and use of that evidence base in regulatory interventions. It also pointed to its consumer engagement strategy aligning with its proposed regulatory framework based on good consumer outcomes. The consumer outcomes framework CLSB referenced is yet to be approved by its board but is intended to be a major initiative that will shape the approach CLSB takes to all its regulatory interventions.</p> <p>CLSB also confirmed that it has set six priorities all focused on improving regulatory arrangements in 2021 and has already made progress against five of the six priorities.</p> <p>The update from CLSB shows significant progress and provides a real underpinning for the next stage of work. We will need to see further progress in the priorities set around improving regulatory arrangements in 2021 and we will expect to receive further examples of CLSB applying evidence from its consumer engagement framework to inform its regulatory approach.</p> |
| | Action needed | <p>CLSB must demonstrate continued use of its consumer engagement strategy, in particular, its consumer outcomes framework, once operationalised. We expect to receive evidence of the impact made by the framework over time. We also expect to be updated on further progress against its 2021 business plan priorities for improving its regulatory arrangements.</p> |
| | Timing | <p>CLSB to provide a progress update by 31 October 2021</p> |

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| 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. | |
| Progress update (at May 2021) | LSB assessment | <p>The action for CLSB was to provide ongoing evidence of building and using its evidence base to inform its regulatory approach. We also asked that it demonstrate progress by obtaining a clear and thorough understanding of the diversity profile of its regulatory community. In addition, we set out expectations to receive updates and progress against a range of actions CLSB has already begun working on.</p> <p>The progress update provided by CLSB set out its key actions to meet this outcome in impressive detail. CLSB split its update into four headings: evidence base, diversity, consumer engagement and business plan priorities.</p> <p>In relation to building its evidence base CLSB provided examples of an ongoing project where evidence gathering is underway in relation to a competency framework for costs lawyers at the point of qualification, the steps CLSB took to further investigate anecdotal evidence of non-compliant complaints processes and work that led to updated guidance in relation to handling client money and third-party managed accounts.</p> <p>CLSB explained that it had identified good practice in measuring diversity and identified key metrics relevant to costs lawyers. It had then delivered a new diversity survey that improved its response rate from 23% in 2019 to 43.6% in 2020. A total of 294 responses. The data captured through the survey has provided CLSB with a better evidence base and will enable it to progress actions through 2021 aimed at improving its data and exploring diversity characteristics. We expect CLSB to follow through on improving the response rate to its diversity survey when it is next repeated. We welcome the plans CLSB has to embed diversity data collection into its annual practising certificate renewal exercise and</p> |

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| | | <p>look forward to read-outs on progress related to the work CLSB has identified and started to progress for 2021.</p> <p>On consumer engagement CLSB confirmed that it was in the advanced stages of preparing a consumer outcomes framework that will underpin its future policy work. It also confirmed that among other actions it had arranged research that would seek to engage directly with lay consumers of costs lawyers. We consider such engagement to be key as it will enable CLSB to identify who the consumers of costs lawyer's services are and what risks may arise that need to be managed through regulation.</p> <p>CLSB confirmed that it delivered its 2020 business plan in full save for two items that were deprioritised early in the year. It also confirmed that it had launched a series of initiatives under its 2021 business plan and had already delivered against several of its priorities.</p> <p>The volume and quality of evidence provided by CLSB has provided us with sufficient assurance to consider that this outcome is now met. We will expect CLSB to continue to demonstrate ongoing development and use of its evidence base to inform its approach.</p> |
| | Action needed | N/A |
| | Timing | Ongoing Monitoring |

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| 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. |
| Progress update (at May 2021) | LSB assessment | <p>We have held long-standing concerns about whether 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.</p> <p>To address this concern CLSB has created a new executive director of policy role and added further non-executive expertise through the appointment of an independent education adviser. It has also</p> |

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| | | <p>recently appointed a new Chair. CLSB also pointed to board minutes demonstrating routine consideration of resourcing in discussions around strategy, financing, and risk. It tracks a risk on its own risk register in relation to its organisational structure and has controls and mitigations in place. Further, CLSB has made progress in its ongoing 2021 plans to modernise CLSB which are set to improve processes and resilience. It also intends to review how the new arrangements and operating structure are working.</p> <p>The work done evidences significant progress and awareness and provides us with assurance that this outcome is now met. However, given its size, it will be very important for CLSB to continue to focus its efforts on collaboration where possible as its funding capability is limited. CLSB is reliant on its high performing executive team and on the current level of practising fee income it receives. Changes to its executive team and any decreases in funding could have a disproportionate impact on this outcome given the size of CLSB. This area will require continued focus from CLSB and the LSB will continue to scrutinise resourcing included in CLSB's annual application for approval of its practising certificate fees.</p> |
| | Action needed | N/A |
| | Timing | Ongoing monitoring. |

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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 May 2021) | LSB assessment | <p>We set an expectation for CLSB to demonstrate use of its consumer engagement strategy and to regularly evidence the application of learning from its own work and from others. We highlighted the value of its published board papers and board decision notes as evidence of this learning. In addition, we expected to receive feedback on the first year of its consumer engagements strategy, an update on its review of its diversity and inclusion initiatives against the three characteristics of a well-performing regulator, and progress against its business plan priorities.</p> <p>The work done to improve and use its evidence base, the collaborative working it has done with the SRA and others, and its increased understanding of its own regulated community through diversity data</p> |

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| | | <p>have provided good evidence that this outcome is now met on an ongoing basis. We have also seen evidence of learning in board minutes, board papers and board decision notes.</p> <p>We expect CLSB to continue with the approach it has developed and will maintain our monitoring of its ongoing learning and application of that learning over time.</p> |
| | Action needed | N/A |
| | Timing | Ongoing Monitoring |