

**STRICTLY PRIVATE AND CONFIDENTIAL**

**MINUTES OF THE COUNCIL MEETING OF THE ASSOCIATION OF COSTS LAWYERS  
HELD ON THURSDAY 21 NOVEMBER 2013 AT THE CROWNE PLAZA HOTEL,  
19 NEW BRIDGE STREET, LONDON EC4V 6DB**

PRESENT	Mr M Heining Mr P Robotham Mr S Averill Mrs C Green	Chairman Vice-Chairman Treasurer Secretary
(Council)	Mr J Barrett Mrs S Nash Mr R Connelly	
(Ex-officio)	Mrs D Pattenden (Operations Manager)	

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The meeting started at 11.00am

**1. Welcome**

The Chairman welcomed all to the meeting.

**2. Apologies for Absence**

All council members were in attendance.

**3. Minutes of the Council Meetings Held on 20 September and 10 October 2013**

Both sets of minutes were approved as being an accurate reflection of the meetings.

**4. Matters arising**

1	Mrs Green	Look at implications of legally changing ALCD to ACL.	On hold pending future structure of ACL/ACLT being agreed
2	Mrs Green/Mr Robotham	Prepare briefing note to accredited trainers.	Jenny James is preparing the note. Carry forward
3	PR subcommittee	Develop a brochure for the CAB and LeO to inform the public	Not completed. Carry forward

		about costs issues. Brought forward.	
4	PR subcommittee	Prepare a simple guide for publication on the ACL website regarding the role of a Costs Lawyer and how members of the public can get help with costs issues. Brought forward. Mr Heining suggested that a brochure may have been produced some years ago for the CAB. Mrs Pattenden will check through old documents to try and locate this.	Old documents cannot be located. Not completed. Carry forward
5	Mrs Nash	Contact the LAPG regarding having an ACL stand at the LAPG seminar in October. Mr Heining has tried to contact [LAPG] on several occasions. Mrs Nash to try and contact her.	The Chairman advised that the LAPG only advised a couple of days prior to the seminar that ACL could have a stand. ACL therefore did not have a presence there.
6	Council	All council members to provide Mrs Pattenden with their declaration of any interest. If they do not have a declaration of interest this should also be confirmed in writing. Declarations of interest to be added to the new website. Brought forward	Carry forward to include in the new website.
7	Mr Barrett	Progress the idea of students being encouraged to form regional groups	A London group will be up and running by January 2014 up. Mr Barrett felt that there should be further discussion about other regional groups. Carry forward
8	Mrs Green	Investigate whether there are any copyright issues with putting case judgements on the website. Brought forward.	This will be addressed with the introduction of the new course.
9	Mr Heining	Draft a deed to the Charities Commission regarding a benevolent fund. This has been done and will be sent.	Awaiting reply from the Charities Commission. Carry forward.
10	Mr Heining	Submit the document on the grounds for submission to the Office of the Privy Council. This is	Submitted. Awaiting reply. Carry forward

		ready to be submitted. Brought forward	
11	Mrs Nash	Investigation into the appointment of CEO. It was agreed to take this to the next stage and advertise the vacancy. Approximate cost is £3,000 to seek the help of a recruitment consultant. Estimated cost of a CEO for 3 days per week is £30,000 plus expenses. A formal job and person specification will be drawn up. Black Letter to cover as a PR story.	Covered later in the meeting
12	Mr Heining	Mr Heining asked the council at the last meeting to consider an ex gratia payment to Sheila Chapman. An alternative to this would be fundraising. Brought forward.	Mr Heining has organised a seminar on 9 December. All profits will be sent to Mrs Chapman.
13	Mr Barrett	Encourage the formation of regional groups.	Covered earlier in the meeting under item 7.
14	Mr Heining	Encourage members to become members of the local Court User Groups. Mr Heining to use the Costs Lawyer as a vehicle for this.	Mr Heining felt that there should be a more formal approach than an article in the Costs Lawyer. Mrs Pattenden to email all members asking if they belong to a court user group.
15	Mrs Nash/ Mr Heining/ Mrs Pattenden/ Mr Barrett	Define roles of ACL key personnel (CEO, Operations Manager, Chairman, Vice Chairman and Secretary)	Not done. Carry forward to when the new CEO is appointed.
16	Mr Heining	Speak with Master Hurst regarding costs lawyers being permitted to undertake assessment of costs	Mr Heining has done this and suggested that if there are difficulties and delays being caused by provisional assessment the ACL has costs lawyers who would be happy to sit as deputy authorised court officers to undertake

			provisional assessment. This was dealt with at the last court user group meeting where Mr Heining was told that this would not be appropriate.
17	PR Committee	Contact [individual] regarding LinkedIn	Mr Barrett has emailed [individual] but not had a response. Carry forward
18	Mrs Nash	Work with Black letter to promote the Manchester Costs Conference	Delete
19	Mrs Green	Provide details to Mr Heining on the suggested entertainment for the May Annual Costs Conference	Mrs Green should be able to do this soon. Carry forward
20	Mrs Pattenden	Thank Mr Hogan and accept his offer to speak at the May Conference	Completed
21	Mr Robotham	Report back on 21 November on structure of the new training company	Carry forward
22	Council	Comment on Mr Barrett's proposal regarding affiliate status	Covered later in the meeting
23	Mr Barrett	Draft document to ballot members on views re affiliate membership	Covered later in the meeting
24	Mrs Nash	Prepare membership benefits flyer to mail out with subscription renewals	There will be a two page feature in the next Costs Lawyer. Delete
25	Mrs Nash	Invite Anthony Smith to the council meeting on 10 October in Manchester	Completed
26	Council	Consider the question from a costs lawyer member of "what would be the position if a firm of costs draftsmen (some regulated, some not) were, together with a third-party funder, offering a costs advance facility to solicitors?"	Covered later in the meeting.
27	Mrs Pattenden	Book hotel rooms at the Lowry for Council members	Completed. Delete.

## 5. **Affiliate Membership**

Mr Averill circulated a paper, written by Erica Bedford (member of the Law Reforms committee) prior to the meeting. He highlighted the key outcomes to the council.

Mr Heining raised the question of whether non-regulated, unqualified people could become affiliates. Mr Averill said that under the current Bye-Laws they could not be affiliates but could be honorary members.

Mrs Nash suggested that in addition to the categories proposed in the paper, there should also be an honorary status for people such as Professor Dominic Regan or Neil Rose. There was no objection from other council members to this.

A discussion took place regarding the fact that Affiliates should be called Affiliates, rather than Affiliate members of the ACL. This was agreed. It was also agreed that Affiliates should be costs professionals who are regulated by another Authorised Regulator and that the category should not be widened.

Mr Barrett felt that members should be balloted on their view. It was agreed that members should be advised of decisions regarding the Affiliate category and that they should be asked to respond with comments within a set time frame. He did not feel that the membership should be consulted on whether to allow corporate membership.

Further discussions regarding membership took place.

Mr Robotham suggested that there should be an accelerated route to qualification for experienced costs professionals. Mrs Green expressed concern and suggested that there must be a very rigorous application process if this were to be allowed. Mr Heining asked Mr Robotham, as Chairman of the Education Committee, to draft a paper on the subject.

## 6. **Chairman's Report**

- **Housing Group Conference 2013**  
The Legal Aid Group would like ACL to have a stand at the Housing Group Conference 2013. The cost of this is £400. Mr Heining felt that this represented a good opportunity to promote ACL. All agreed.
- **Guideline Hourly Rates**  
Mr Heining has put in ACL's submissions and confirmed that these were supported by Master Hurst.

A survey has published on GHR and ACL members have been encouraged to complete it. Mr Heining emphasised the importance of all council members completing the survey.

- **Provisional Assessments**  
A number of costs lawyers have expressed concern that costs officers are returning bills that have been provisionally assessed with no reasons as to why there has been a reduction. Representations have been made to the SCCO and it has been agreed that costs officers of the SCCO will give reasons for all main decisions.

Mrs Nash said that she felt there was a real issue with where the court has clearly made an error in that there was no mechanism for dealing with such a situation. It was agreed that the Rules Committee would investigate this.

- **Rule Change**

Mr Heining advised that the practice direction to rule CPR43 was revoked and accordingly revoked rights to litigation. Concerns were submitted to the Rules Committee in July and Nick Bacon has been charged with suggesting amendments. Mr Bacon's proposal is to amend CPR40 so that references to solicitors will be changed to any authorised representative. This was considered on 9<sup>th</sup> November but Mr Heining was not aware of the outcome.

- **New Format Bill Committee**

Mrs Green has been tasked with completing her tasks on the committee for May 2014. It was agreed that it was important to update the membership on this and she will write an article for the Costs Lawyer.

## 7. Treasurer's Report

- Mr Averill reported that the full transfer of the bank accounts has still not been completed. Expenses for training are still being made from the ACL account as this is the only account that is available to use.

Mr Averill advised that at the end of 9 months the ACL is showing a loss of £26,343.74. The ACL Training is showing a profit of £80,496.21 for the same period.

- It was reported that the investments with Nucleus have produced good results in the last year and in total £172,218 has been invested (12.11.2012). The current value of the funds is £199,251. Mr Averill said that there was a substantial amount of money in the Training account and he would like to transfer some of this to the Nucleus account. Mrs Nash asked what the notice period on the account was. Mr Averill will report back on this.
- Mr Averill advised the council that he had taken out a 'Tax Wise Plus Fee Protection Policy' with the ACL accountants. The cost is under £300 per year. He briefly outlined the details of the cover provided.
- Mr Averill had met recently with Claire Crass at Alexandra Anthony. He advised that there had been a discussion at this meeting regarding the benefits of running separate accounts for ACL and ACLT. Mr Heining said that there may be an issue with ACL being able to control the finances of ACLT. This will be discussed further following consultation with the new CEO, once appointed and the CLSB.
- Mr Averill stated that ACL is not making a profit; the subscriptions are not sufficient to cover the outgoings. He said that the new CEO will be appointed for ACL which raises the question of where will the funds will come from. Mr Averill said that if ACL was registered for VAT and the Annual conference and other seminars were run through ACL then the income could be attributed to ACL. It was agreed that this was an important issue and must be discussed fully with the CLSB.

- A question was raised as to whether there was a need to maintain the ALCC dormant companies. It was agreed that as there was minimal cost involved the dormant companies should be kept.

## **8. Education subcommittee update**

- Mr Robotham advised the committee that Matthew Smith, Kings Chambers has been asked to act as Education Business Manager. He will produce a business plan and scoping document for the new ACLT website by the end of 2013
- Mr Robotham advised that the majority of the exam marking had been undertaken but there were still a handful of practical papers to be marked.
- Module 2 course materials were posted to students mid-October
- Module 3 materials are still not available. This is a priority.
- Module 1 materials which were originally due at the end of August should be available in December
- The seminar proposed for 6 December will not go ahead due to a lack of availability of speakers. There will however be a seminar, in association with 4 New Square on 7 February. This seminar will be run under the branding of ACL Training and use conference stands with the strapline "ACL Training; Educating and Developing the Costs Lawyers of Tomorrow".
- The CLSB audit is underway and Carol Cook has started to ask a number of questions. The due date for this is the end January 2014. Mr Robotham advised that the CLSB is very supportive of the work of the education subcommittee and that relations between the CLSB and ACLT are good.
- The agreed structure for the ACLT Board is: Educational Specialist (Jenny James), Business Manager (Matthew Smith), ACL Council member (Claire Green), ACL tutor representative (Lynne Male), ACL student representative (tba).

## **9. Law Reforms Committee update**

- Mr Heining asked for the practice direction that refers to assisting litigants in person to be amended. It still refers to members of the Association of Law Costs Draftsmen.

## **10. PR Committee update**

- The monthly report from Black Letter highlights the increase in recent coverage for ACL
- Mrs Nash advised the committee that she has recently put together some general ACL stock ads and that she also recently placed a full page advertisement on the back of the New Law Journal.

- Black Letter PR have suggested a judicial round table to discuss the judiciary's experience of costs, in February or March, the results from which will form the basis of a white paper. Invitees would include the Master of the Rolls, Peter Hurst, Jason Rowley, Chris Lethem and Mrs Nash asked for other suggestions of names from council members.
- Mrs Nash announced that the first new Costs Lawyer was due to mail on 19 December 2013. A review meeting with Archant and the new Editor, Ben Rigby, has been set for 18 December. Mrs Nash advised that there had been a few factual inaccuracies in the recent bulletins and that she had taken up the issues with the Editor.

## **11. Rights to Conduct Litigation**

Mr Heining advised the council that he acts for the Home Retail Group Plc. He receives instructions to act where costs cannot be agreed pre-action. He also receives instructions to take over the conduct of litigation at the end of litigation from the solicitors instructed by the Home Retail Group. Mr Heining started a partnership in 1984/85 with his wife. His wife has always worked for him part time and she has never practised in costs. Rights were granted to Mr Heining, as to other costs lawyers with a similar business set up, as an individual.

Mr Heining advised the council that a solicitor has made a complaint that a share of his profits made from litigation goes to an unregulated individual. Mr Heining raised this as he believes that there are many costs lawyers working in a similar way and there could be a roll on effect in that when a costs lawyer seeks to go on record, it will be questioned.

Mr Heining felt it necessary to inform the council as he believed that he had been targeted as Chairman of the ACL. He also understood that at least one other Costs Lawyer had been targeted. Mr Heining concluded that if the Judge raises the complaint as an issue, Mr Heining will bring the matter back to the council for further discussion.

## **12. Annual Conference 2014**

Suggested speakers: Justice Ramsey, SCCO, DJ Lethem, DJ Besford, Simon Middleton, Marshall Phillips, Justice Foskett, Professor Dominic Regan, Andy Ellis, Kerry Underwood

Mrs Nash suggested that other Costs Lawyers should be invited to speak. Mr Heining asked the council to consider which costs lawyers should be asked.

Ideas for other speakers should be forwarded to Mrs Pattenden

## **13. Appointment of a CEO**

Mrs Nash advised the council that following initial interviews, two potential candidates were short listed and attended a second interview recently. Mr Heining, Mr Robotham, Mr Barrett and Mrs Pattenden formed the interview panel and a decision was made that subject to approval by the council and subject to references, Maurice Cheng would be offered the position.



Mrs Nash read out the proposed terms and conditions for the role. There followed a discussion regarding the role, the proposed salary and whether an interim CEO was required for 2.5 or 3 days per week.

Mrs Green said that although she had no objection to the appointment of a CEO she strongly felt that the membership should be informed prior to the appointment, giving them an opportunity to share their views with the council prior to any appointment.

Mr Heining called for a proposal that a Chief Executive Officer should be appointed. Mrs Nash proposed this and Mr Connelly seconded the proposal. Mrs Green abstained and the remaining council members were in favour of the proposal.

He then asked for a proposal that Mr Maurice Cheng was appointed as CEO at a salary of £3,300 per month for 3 days per week. Mrs Nash proposed this and Mr Connelly seconded it. Mrs Green agreed that Mr Cheng's CV was impressive but abstained. All other council members supported the proposal.

Mrs Nash will contact Mr Cheng and formally offer him the role. A letter detailing the terms and conditions will be sent from Mr Heining. Mr Heining thanked Mrs Nash and also Mr Barrett for their work leading up to the appointment.

Mr Heining advised the council that the CLSB have questioned with the LSB whether the £100,000 indemnity insurance currently required is enough. As a result, the CLSB is going to prepare a guidance note for costs lawyers, asking them to ensure that their cover is sufficient for their own needs, which could be in excess of the minimum.

### **13. Any Other Business**

- ACL is helping to promote the 29<sup>th</sup> Solicitors Costs Conference via two emails to the membership and in return ACL members will be offered a discount. ACL has also been offered one free place. Mr Heining felt that this should not go to a council member but should, as in previous years, be offered to the student who gains the highest exam mark.
- One of the members has asked if the forum can be used to advertise job vacancies. It was agreed that this was not appropriate.
- Mrs Pattenden said that she had been advised that a Costs Lawyer (and member of ACL) had recently received a prison sentence for threatening behaviour and asked if he applied to renew his subscription whether it could be accepted. She has informed the CLSB and it was agreed that ACL would follow the decision of the CLSB. ACL cannot impose a sanction that the CLSB would not impose.
- Mrs Pattenden asked whether, following a recent request, the council felt it appropriate to list changes of members' employers in the Costs Lawyer, under the heading of News. It was agreed to do so.
- MBL Seminars have asked if ACL would allow them to advertise on the e-bulletin or in the Costs Lawyer. It was agreed that there was a conflict of interest and that it should not be allowed.

- Mr Heining said that he felt ACL should have a presence at the APIL Seminar. Mrs Pattenden will investigate costs and suggest to APIL that ACL could provide a speaker for a panel session in exchange for a stand.
- The previous council had an arrangement with Dominic Regan, agreed with Michael Bacon. Previous minutes confirm that it was agreed that ACL would pay Professor Regan £250 per month for his support and association with ACL. However, it has recently transpired that this has not ever in fact been paid. Mrs Nash agreed to speak with Michael Bacon to establish what exactly was finally agreed.
- A retired 'costs lawyer' has asked Mr Heining why he is not listed as such in the ACL diary. After a brief discussion, the council agreed that it was not appropriate to include names of non-practising costs lawyers in the diary.
- Mrs Pattenden asked whether it was still the intention to charge a £50 subscription fee to retired members. This was confirmed.

**14. Date of Next Meeting**

24 January 2014