

**MINUTES OF THE MEETING OF THE BOARD
OF DIRECTORS OF CILEx REGULATION LIMITED
HELD ON 3 DECEMBER 2015 AT BOX END PARK,
KEMPSTON, BEDFORD, MK43 8RQ**

Present:

Sam Younger (Chair), Patrick Bligh-Cheesman, Andrew Donovan, Luisa Fulci, David Gilbertson, Harvey Sandercock

In attendance:

Baljeet Basra, Chief Operating Officer, CILEx Regulation
Shazrin Begum, Governance and Consultations Officer, CILEx Regulation
Karl Cerski, Finance Director, CILEx (Item 10)
Jill Durham, Head of Policy and Governance, CILEx Regulation
David Edwards, President, CILEx
Laura Gadsby, Management Accountant, CILEx Regulation (Items 5-15)
Mandeep Nagra, Client Protection Manager, CILEx Regulation (Item 7),
David Pope, Entity Authorisation and Supervision Manager, CILEx Regulation (Item 7)
Joanne Stringer, Practitioner Authorisation and Supervision Manager, CILEx Regulation (Item 6)
Helen Whiteman, Chief Executive Officer, CILEx Regulation

1 APOLOGIES FOR ABSENCE

There were apologies for absence from Ian Chivers.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 MINUTES

The minutes of the CILEx Regulation Board meeting held on 1 October 2015 were approved as a true record.

4 STRATEGY MEETING

The Chair summarised the outcomes from the previous day's Strategy meeting. It was agreed that the office would focus on the following core strands:

- growth of the organisation, practice rights, entity regulation and progressing with the ABS application;
- review of process, structure, governance and IT;
- identification of unique selling points and the future of the regulatory landscape. Review of the legislative options paper and formulation of an organisational response.

The above three elements would appear as a standing item in future Board agendas.

The CEO was asked to produce proposals over the coming months for income generation. The CEO confirmed that work-based learning (WBL) and qualifying employment (QE) were subject to a governance review.

5 BUSINESS DEVELOPMENT

Practice Rights and Entity regulation

CILEx had produced a report on promotion of practice rights which would be reviewed by the Practice Regulation Working Group (PRWG). Practice rights roadshows had generated interest. The PRWG would view the record of enquiries and follow up action to ensure that enquiries convert to applications.

Profile Raising and leading on sector developments

The office had engaged in a number of initiatives aimed at raising the profile of CILEx Regulation and shaping the direction of key sector developments. The activities promoted the recognition of CILEx Regulation and therefore improved its position in the market.

Marketing activity

The office had continued its marketing activity through e-shots, direct mailings to members and increased use of LinkedIn and Twitter. The office would develop a schedule of e-shot content for early 2016. The office had also started improving templates for e-shots and direct mailings.

The Board considered a marketing report which identified the response rate to marketing activity.

6 PRACTITIONER AUTHORISATION AND SUPERVISION

Developments

The Board noted performance against KPIs, the successes, opportunities and risks of Practitioner authorisation work. This included updates on practice

rights, qualifying employment, work based learning, advocacy and CPD non-compliance.

Work Based Learning (WBL) Review

Workshops had been held with staff that assessing WBL applications and external advisors. The workshops explored areas where the outcomes could be redrafted, merged, deleted or new methods of assessment introduced.

The Board were provided with the proposals to:

- Require outcomes that currently have to be met three times to be met twice;
- merge some outcomes, where there is duplication in how applicants meet the outcomes;
- introduce new methods for meeting some outcomes – employers' statement or assessors' view.

The Board noted administrative changes being made.

The changes to the outcomes will require approval by the LSB before they can be implemented. Prior to an application to the LSB, a consultation is needed with key stakeholders.

The Board were provided with a project plan which had been developed for the next stages of the work; this would involve seeking views of the LETR WG as the WBL outcomes form part of the Fellows Day One Outcomes.

The Board agreed for the office to act in accordance with the project plan to progress the changes to the WBL outcomes and agree the proposal for revisions to the WBL scheme. The Board requested for the WBL proposals to be consulted at green paper level, where CILEx Regulation encouraged discussion from stakeholders.

7 ENTITY AUTHORISATION AND SUPERVISION

Developments

The Board noted the Entity Authorisation and Supervision team's performance against KPI, and a report on successes, opportunities and risks on entity work.

Alternative Business Structures

The licensing application was on track for submission in early 2016. The office had produced profit and loss forecasts for the initial three years for licensing for the November PRWG meeting and commissioned market research for consideration at the next PRWG meeting.

The office was awaiting a response from another organisation to see whether it would jointly engage with the First Tier Tribunal to reduce costs.

Legal Counsel had been instructed to review and update rules. The office would issue a consultation on the licensing and associated rules that needed to change to incorporate licensing.

The PRWG had decided to adopt the low forecast in the budget for take up of ABS entities in 2017. The Board agreed this recommendation. The Board agreed that the office develop mitigating action for the deficit generated by the low forecast to be considered by PRWG.

An additional Board meeting may be needed to approve the licensing application. The Board agreed that approval be delegated to a smaller number of Board members.

Entity Regulation

The application made to the Disclosure and Barring Service (DBS) to enable the organisation to carry out a standard DBS check had been approved. The Board agreed the recommendation from the PRWG for a fee of £42 to be charged for a standard check.

Professional Indemnity Insurance (PII)

A meeting had been held with the LSB on run-off in October 2015. The LSB had expressed interest in the research carried out by CILEx Regulation. The Office had submitted a report on run-off to the LSB in December 2015. The Board were provided with an action plan which had been reviewed by the PRWG.

Anti-money laundering

CILEx had become an Anti-Money Laundering (AML) supervisor in January 2015. The Board were made aware of recent reports, changes to legislation and future consultations on the role of supervisors.

8 CAPACITY AND CAPABILITY

Resources review

CILEx Regulation had appointed a Head of Policy & Governance and Personal Assistant to the CEO, Chair and Senior Management Team.

The CILEx Finance and Remuneration Standing Committee (FRSC) had requested further information from CILEx Regulation on its budgetary requirements for 2016. The Board approved the CILEx Regulation report to the FRSC and was advised that the FRSC was satisfied with the additional

information provided and would recommend CILEx Regulation's budget for approval by Council at its November meeting.

The Board were provided with details of how remaining areas would be resourced. This included the Education and Policy Manager role where work would be allocated on a project consultancy basis. CILEx Regulation had identified the need for a part-time marketing and communications role.

A review of the mid-tier management structure would be undertaken to ensure skills, knowledge and expertise were best utilised, developed and retained in line with budgets. CILEx Regulation had introduced a number of new procedures to improve and extend financial capabilities, which included improved budget setting, reporting and monitoring mechanisms, to help identify the true cost of regulation.

Regulatory Standards Self-Assessment

The regulatory standards self-assessment had been completed and submitted to the LSB in October 2015. The LSB had confirmed it would be in touch in January 2016 to arrange a meeting to discuss its analysis of the self-assessment.

An independent audit of the self-assessment had been carried out. The Board agreed to receive the report at a later date.

Protocols and Service Level Agreements (SLA) with CILEx Compensation Fund

A draft of protocols and service level agreements (SLAs) between the CILEx Compensation Fund, CILEx Regulation and CILEx had been developed. It was shared with the Compensation Fund Board and the office was awaiting their initial feedback.

David Gilbertson had provided comments on behalf of the Board which would be incorporated into the next draft.

Business Plan 2015

The Business Plan for 2015 had been updated to record work since the last Board meeting. The text, in the updated progress section had been developed to provide more detail, as requested by the Board.

The Board noted progress of action against the business plan.

9 BOARD PERFORMANCE REVIEW

The Board agreed the timetable for 2015 self-assessment which would be on-line. The Board agreed a list of individuals who would be invited to take part in the survey.

Terms of reference for a wider governance review focusing on Board performance arrangements were agreed. The review would be led by David Gilbertson and supported by the Head of Policy and Governance. The purpose was to capture the views of Board members, review best practice in comparable organisations and to make recommendations on Portfolio structure and arrangements, individual Board member appraisal and the Board's annual self-evaluation.

10 FINANCIAL REPORT AND BUDGET

CILEx Regulation Budget 2016

At the October 2015 Board meeting a revised 2016 budget had been presented for Board approval. This budget went to FRSC in October where it was reviewed in conjunction with the other CILEx Group company 2016 budgets.

FRSC requested that CILEx Regulation prepare a revised budget and supporting narrative. The second draft of the revised budget identified additional cost savings made since the first draft. Additional costs savings included staff costs, entity regulation and practice rights. Work was being carried out to identify further cost savings that the office may be able to achieve.

The Board approved the second draft of the revised budget for 2016 for inclusion within the 2016 CILEx Group budget.

Three and Five year Entity Regulation Forecasts

The finance team had produced three year forecasts for entity regulation. The forecasts had been compiled for the Board to review and consider action to reduce the net cost to the business, or improve income streams to help offset the cost of entity regulation.

The PRWG decided at its November meeting to recommend to the Board that the low scenarios should be incorporated in CILEx Regulation forecasts as a whole. This recommendation was made on the basis that it reflected low numbers of entity regulation.

The Board approved PRWG recommendations that the low scenario should be adopted within the CILEx group forecasts. The Board agreed to keep the viability of entity regulation under review.

Work Based Learning Fees (WBL)

CILEx Regulation charged a £150 fee for WBL applications to achieve Fellow status. This fee had remained at £150 for a number of years. The Finance team had carried out detailed analysis to calculate assessment costs.

The Board had considered a number of scenarios and voted by a majority to increase the WBL fee to £350 per portfolio from 1 April 2016.

The Board closely debated the fee increase because of the impact it would have on CILEx members. However the fee had not changed for a number of years and was based on the previous Fellowship process.

Qualifying Employment

QE fees had remained at £35 for a number of years.

The Board considered a number of scenarios and approved increments below, over the next five years.

- Year 1 - £70 (100% increase)
- Year 2 - £105 (50% increase)
- Year 3 - £125 (20% increase)
- Year 4 - £140 (11% increase)
- Year 5 - £150 (7% increase)

2015 Financial Report

The Board reviewed the management accounts to the end of September and the profit and loss forecast to the end of 2015. Management accounts provided actual and budget figures to the end of September 2015.

Total income was below budget to September as there were lower revised figures on practice rights and entity regulation. Total income for the full year was under budget and direct expenditure was close to budget.

11 EDUCATION AND STANDARDS

Update on Quality Assurance Scheme for Criminal Advocacy (QASA) implementation

The Joint Advocacy Group (JAG) had issued a consultation on the changes to the QASA due to close on 24 December 2015 after which an application would be made to the LSB for approval of the changes. The changes were those needed following the decision of the Supreme Court.

QASA would impact on CILEx Regulation litigation rules, advocacy rules and associate prosecutor scheme rules.

The Board agreed that the office update the advocacy rules and submit them to LSB for approval as a part of the submission to be made by JAG for approval of QASA.

Youth Court Advocacy review

The review commissioned by the BSB and CILEx Regulation into the quality of advocacy in the Youth Courts had concluded. A draft report had been circulated in the summer for comment by the BSB and CILEx Regulation and provided to the Board's September meeting.

The key findings of the final report showed that the infrastructure and proceedings of the Youth Courts needed investment and that advocates did not receive enough training in or have enough knowledge of Youth Court procedures and the needs of young people involved in cases in the Youth Court.

The Board agreed:

- that the training of CILEx advocates and litigators be reviewed in the light of the research report;
- recommendations be drafted addressing the issues identified by the review;
- and recommendations be submitted for consideration by the LETR Working Group.

Ethics in Advocacy

CILEx advocates and Fellows specialising in civil litigation had been invited to take part in research being carried out by the Advocacy Training Council and funded by the Legal Education Foundation to examine advocates' treatment of ethical issues.

A limited number of CILEx advocates met the criteria for the research so the final report would not provide valuable feedback on the effectiveness of the current CILEx approach to ethics training. The Board noted that the project was scheduled to complete by the end of 2015.

Vulnerable witness project

CILEx and CILEx Regulation had participated in the Advocates Gateway (TAG) project to develop toolkits for working with vulnerable witnesses.

Former Board member Thelma Brown had represented CILEx Regulation at TAG. The Board agreed that the office attend future meetings of TAG.

Trailblazer Apprenticeships

Three law standards had been developed for the Trailblazer scheme: paralegal, Chartered Legal Executive and solicitor. The standards had been approved in August 2014 and assessment plans approved in September 2015.

The end point assessment application was being developed by CILEx and would be submitted to the Skills Funding Agency for consideration at the end of November.

Further development work was required around the assessment plans for the paralegal and the Chartered Legal Executive Trailblazers to finalise the details around end point assessment.

12 ENFORCEMENT

Developments

The Board noted performance against KPIs, successes and opportunities and risks in Enforcement work.

The Rehabilitation of Offenders Act 1974 and Data Protection Act 1998

Members of the investigation team had attended a training seminar presented by NACRO, a charity providing pathways for social inclusion and reducing crime. As a result staff had been alerted to S56 of the Data Protection Act 1998 introduced on 10 March 2015 to protect individuals with criminal convictions and cautions so they can benefit fully from the Rehabilitation of Offenders Act 1974.

As a result of the training seminar CILEx Regulation had taken the following action:

- asked the Clerk to the PCP to advise panel members that they cannot compel a member or applicant to disclose a conviction or caution to a referee before they will accept the content of a reference;
- provided advice to the Clerk to the PCP that any disclosure of sensitive personal data will be provided either by way of the basic Disclosure Scotland report or the standard DBS report;
- removed all reference to requests for subject access reports, memorandum of convictions and notifying referees of convictions and cautions from the website and standard letters;
- advised the Practice Advice Team at CILEx of the change in order to manage customer calls.
- informed the Entity Authorisation and Supervision Team which was applying for authority to become a registered organisation with the Disclosure Barring Service, of the additional disclosures required. There was a minimum requirement of 100 disclosure reports and this will improve our chances of meeting this minimum requirement.

CPD non-compliance update

The Practitioner Authorisation and Supervision Team had referred members of the regulated community with outstanding CPD for 2012/2013 and 2013/2014 to the Investigation Team for misconduct action. The Board were provided with a summary of the current figures and action plan.

ABS licensing application

The office had begun a review of the Investigation, Disciplinary and Appeals Rules (IDAR) as a result of the ABS licensing application. The new IDAR would incorporate additional powers within the Entity Authorisation and Supervision Team. The IDAR Handbook would need to be updated to incorporate these changes when they came into effect.

13 CONSUMER AND STAKEHOLDER ENGAGEMENT

Consumer Action plan

The Board noted progress against the Consumer Engagement Action Plan 2015. Work was in hand to develop the Consumer Engagement Action Plan 2016. It would be finalised following the strategy meeting for presentation to the Board's January meeting.

Pro bono

In June 2015 the Lord Chancellor had given a keynote speech suggesting that improvement in access to justice might be addressed by increased pro bono provision. This was viewed as a suggestion that the government may impose obligations on lawyers to carry out pro bono work.

Andrew Donovan had represented CILEx Regulation at a regulators' panel event launching 2015 National Pro Bono Week. Andrew had highlighted that CILEx Regulation already had a principles based, outcomes focused Code of Conduct which did not limit pro bono activity over and above the restrictions in the Legal Services Act 2007.

The Board noted that CILEx Regulation required no further deregulation to facilitate pro bono.

Unbundling legal services

The Legal Services Consumer Panel (the Panel) had carried out research into unbundled legal services. The Board noted the Panel's policy brief.

In September the Consumer Panel had convened a workshop to bring together regulators, researchers, representatives and advice-giving bodies. This had been an opportunity to provide an information exchange and to

share learning around different aspects of unbundled legal services. They considered a report of the outcomes of the workshop.

CILEx Regulation would hold a workshop with consumer organisations to explore issues on unbundling. The Panel would also provide a tailored training package based on individual organisations.

Consumer research joint work

The Board noted the minutes of the Regulators' Forum. Consideration was given to the outcomes of the meeting held in August 2015 at which it was agreed that there should be a joint approach towards research and consumer engagement on client care letters.

It was agreed that a sub-group would begin scoping out the project. The office would contact the Bar Standards Board to arrange a meeting to take the work forward.

14 INFORMATION ITEMS

The Board noted the following:

- a summary of open and closed consultations;
- minutes of the CILEx and CILEx Regulation Futures Group Meeting held on 24 September 2015;
- minutes of the Practice Regulation Working Group meeting held on 17 September 2015;
- minutes of the Admissions and Licensing Committee meetings held on 3 June 2015, 22 July 2015 and 2 September 2015;
- minutes of the Strategic Risk Committee meeting held on 22 September 2015.

15 AOB

The Board agreed to streamline the CILEx Regulation Annual Report for 2015. The office would commence work on the Annual Report.

The Board noted that a business case was being developed for CILEx and CILEx Regulation to pursue escrow provisions.

16 DATE OF NEXT MEETING

28 January 2016 at 9:30am.

SAM YOUNGER
CHAIRMAN