

**MINUTES OF THE MEETING OF THE BOARD  
OF DIRECTORS OF CILEx REGULATION LIMITED  
HELD ON 28 JANUARY 2016 IN ROOM A CHAMBERS,  
KEMPSTON MANOR, KEMPSTON, BEDFORD, MK42 7AB**

**Present:**

Sam Younger (Chair), Patrick Bligh-Cheesman, Ian Chivers, 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  
Jill Durham, Head of Policy and Governance, CILEx Regulation  
David Edwards, President, CILEx (Items 1-10)  
Laura Gadsby, Management Accountant, CILEx  
Vicki Hurdley, Director of Development, CILEx (Items 1-9)  
Helen Whiteman, Chief Executive Officer, CILEx Regulation

**1 MINUTES**

The minutes of the CILEx Regulation Board meeting held on 3 December 2015 were approved as a true record, subject to minor amendments.

**2 CEO REPORT**

**Stakeholder meetings**

The CEO updated the Board on Chair and CEO meetings with stakeholders and government, to outline priorities for 2016 and identify areas of mutual interest.

The CEO had attended a meeting of the Regulators CEO Forum which had agreed that CILEx Regulation would lead on a consumer work stream to engage collaboratively with consumer organisations at national level. CILEx Regulation was also supporting CLC on a second work stream in relation to run-off insurance where the office was scheduled to meet with LSB colleagues to review the issues of restriction on competition in the legal services market caused by the current arrangements of regulators in relation to run-off requirements when a firm wanted to change regulators. The Board asked for updates on progress at their next meeting.

## **Review of regulatory independence**

The MoJ were scheduled to publish a consultation on regulatory independence in March 2016 to run for 12 weeks. The CEO would establish a collaborative discussion forum with CILEx to work through issues that would arise across the two organisations as a result of independence.

## **Education**

*Westminster Policy Forum 8 December 2015*

David Gilbertson attended the Westminster Legal Policy Forum Keynote Seminar 'Reforming the legal education and training framework: competency, diversity and innovation' on behalf of CILEx Regulation and spoke from the platform on a regulators' panel about next steps for regulatory supervision of legal education and professional standards. On behalf of the Board the Chairman thanked David for his contribution to the event, which had been well received.

*Paralegals Update*

Work on the Paralegal Enquiry continued at CILEx. Following completion of roundtables a short survey had been developed to explore common issues identified as a result of the meetings. The survey would be carried out by an independent organisation and would be sent to a targeted group of legal professionals.

A draft Paralegal competency framework had been developed and would be used to provide admission to the new Paralegal grade. The framework would be tested once the research had been completed. The CILEx Paralegal trademark had been registered.

## **Governance**

*Whistleblowers' and Anti-bribery Policies*

Board members were currently covered by the CILEx Group Whistle blowers' and Anti-Bribery policies in place for staff. The office recommended that CILEx Regulation adopt separate policies for the Board. The office had gained agreement from Mrs Justice (Dame Nicola) Davies to act as CILEx Regulation's independent person.

The Board approved the new Anti-bribery Policy for Board members. The Board approved the new 'Whistle blowers' Policy and Procedure: Making a Protected Disclosure' subject to a small amendment at Section 2 paragraph 2 to provide for non-disclosure of the identity of a whistle blower at their request to be subject to the requirements of the law.

### *Standing Orders*

The Board considered their Standing Orders (SOs) and agreed to amend SO 37 (minuting policy) to provide that draft minutes subject to approval of the Chair, would be published on the website within 10 working days of a Board meeting, with approval of the final version at the next meeting. The remainder of the Standing Orders would be reviewed as part of a wider Board governance review scheduled for March 2016 Board.

The office had produced templates for decision and discussion papers. The Board approved the templates subject to amendments to emphasise that reports will include favoured options and other options. Amendments to the impact assessments set out in reports were also agreed in order to add impacts on reputation/brand and to show impacts grouped in relation to public/consumer, regulated community and the organisation.

It was agreed that a Board member could write a paper for inclusion on a Board agenda by agreement with the Chair, and could either partner a member of the office in writing such a paper or request that it be included in the agenda with no officer contribution to drafting.

### *Business Cycle and calendar planning*

The Board were provided with details of the business cycle and discussed moving the annual Strategy planning day from December to July, to fit better with budget setting and business planning. The Chair agreed to review Strategy dates with the office and suggest options for a meeting possibly at a London venue – dates to be circulated by Doodle Poll.

### *Directory and self-certification*

The directory of regulated members included individual specialisms which were self-certified. The LSB had raised issues in its most recent regulatory standards assessment that CILEx Regulation did not check statements by members of the regulated community that were relied upon by consumers. To address the issue the office identified the following options:

- Option 1: Remove the specialism entry on the directory;
- Option 2: Introduce a checking/supervision procedure.

Both options would require consultation with CILEx and its members.

Board members expressed doubt as to whether it was the role of the regulator to supervise specialism as no accreditation of specialism was in place.

The Board agreed that this work should commence once the work-based learning review had been completed.

## *Approval of Handbook changes - Investigation, Disciplinary and Appeals Rule manual*

The IDAR Handbook needed amending to clarify the Determination by Consent procedure under Rule 18 and clarify the meaning of Rule 17(4) 'consent and admit to the allegations'. The Board agreed the changes which were designed to make the Handbook clearer for users and to eliminate ambiguity, rather than change the substance.

### **Operational Performance**

#### *Work based learning and qualifying employment*

Qualifying employment applications allowed the office to assess whether a CILEx member's work is of a legal nature. The Board were provided with information on the number of applications received and assessed at first assessment and at further assessment stage.

#### *Practice rights and business development*

The Board noted the number of practice rights enquiries and authorisations. The Director of Development at CILEx continued to promote practice rights.

#### *CPD*

The Board received an update on CPD non-compliance. CILEx members, who had not completed their CPD for year ended September 2014, had been referred to the disciplinary team.

The Board noted the non-compliance figures for CPD year ending September 2015.

#### *Entity Regulation*

The entity regulation team continued to authorise entities and work on the licensing application.

#### *Professional Indemnity Insurance*

The office commenced the annual renewal of the qualifying insurers' agreement with insurers. The run-off insurance report was under review by the LSB. The office would meet with the LSB in late January 2016 to discuss next steps.

#### *Investigation and disciplinary*

The investigation and disciplinary team continued to investigate complaints and misconduct allegations and also dealt with fitness to own and prior conduct declarations.

### 3 STRATEGY DAY OUTCOMES

The minutes of the CILEx Regulation Strategy meeting held on 2 December 2015 were approved.

#### *Growth*

The Board considered a report on options for growth including the following:

- practice rights – growth and extension;
- entity regulation – growth;
- licensing – gain rights and growth;
- activity based regulation – unreserved areas;
- Project 600.

The Board considered:

- how paralegals might fit in with the current specialist lawyers brand;
- how the understanding of the regulated community could be further developed, possibly in collaboration with CILEx to deepen the understanding of the business needs of its members;
- how the Board could consider the findings of the CILEx Omnibus survey or carry out its own surveys;
- how the Board could utilise member data made available by CILEx to inform its business planning;
- whether provision of a stepping stone towards becoming a solicitor of barrister should be a business goal by marketing this as a career pathway;
- whether the Fellowship and its place in the market should be reviewed;
- how business planning could be developed through the lens of sustainability and continued viability;
- whether a continuous improvement plan for the organisation could be developed;
- whether as part of the work-based learning review we could seek feedback from users of the service;
- how we could alter language in our external communications to move away from use of terms like risk based and outcomes focused by using more plain English messages like: *We don't tell you how to run your business; We don't waste your time or your money; We fight for your equality with solicitors and barristers*;
- how we could engage with regulators in other sectors to improve learning (such as HCPC);
- how a PR plan could be developed including brand promotion.

The Board agreed that CILEx Regulation needed to strengthen its approach to engagement with the regulated community. The Board requested a discussion paper at future meeting on how CILEx Regulation could achieve independence from its approved regulator.

### *Strategy Day Outcomes – Process*

At its meeting on 3 December 2015 the Board had considered a report proposing changes to the work based learning scheme to:

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

The Board also agreed an increase in the WBL fee to £350 per portfolio from 1 April 2016.

The Head of Policy and Governance had commenced a governance review of the work of the Practitioner and Authorisation Team. The initial findings indicated that the WBL process could be streamlined to make it more cost effective. There were potential options to move to risk based assessment and online processing. The Board agreed to receive proposals at a later meeting.

The Board agreed that the proposal to change or merge outcomes and to introduce new methods of assessment by employer sign off or assessor view be placed on hold.

The Board agreed that in order to remain as lean as possible, a programme of continuous review of all processes was needed to ensure continuous improvement.

### *Unique selling points*

At its December 2015 strategy meeting the Board had identified strategic aims including the identification of unique selling points.

The Board broadly agreed unique selling points and the mechanisms for promoting them and arranged to review approaches to their promotion at its next strategy meeting.

### *Future regulatory landscape*

Regulators had contributed to LSB led deregulation work during 2015 resulting in the LSB's legislative options paper. The MoJ had announced a forthcoming consultation on regulatory independence. The Board were asked to formulate views on this.

The scenarios which the options paper considered were:

- regulatory functions and representative functions in one body with safeguards;
- partial separation of regulatory and representative functions;

- full separation of regulatory and representative functions. The MoJ had held scoping meetings with regulators.

The LSB had conducted work on the costs of regulation, which involved two surveys with the profession. The office had begun work to establish the full costs of each regulatory activity and to develop fully costed work areas. This would identify CILEx Regulation costs to the regulated community. As the organisation developed experience of entity regulation, it would be able to gather data about the full cost of regulation.

The Board agreed for work on regulatory costs to take place towards the end of 2016 and during early 2017, information from regulated entities would be requested and a review would take place in mid-2017 to establish next steps.

#### **4 LICENSING**

The office had drafted a licensing application for submission as an initial draft to the LSB for comment and to CILEx's Governance Standing Committee (GSC). CILEx had requested the draft application be expedited to February as opposed to April. The intention was for a final version to be submitted, once informal LSB feedback had been received and incorporated into the draft, and approval obtained from the Chair and one member of the Practice Regulation Working Group (PRWG).

The application would require approval by the CILEx Regulation Board as the regulatory body and also by CILEx as the approved regulator.

The CILEx President David Edwards recapped the history of the application. CILEx Council had asked CILEx Regulation to commence work on an application for designation of CILEx as a licensing authority in 2010. The decision to become a licensing authority had been re-confirmed by CILEx in July 2010.

The CEO advised the Board of concerns raised by CILEx and the Compensation Fund trustees about the resilience of the Compensation Fund and insurance arrangements to deal with current and future claims. She explained the financial position of CILEx's reserves and that a further restructure would take place in group services in April 2016. The office was working with CILEx Finance to resolve matters.

However the President indicated that CILEx Council may now have reservations about applying to become a licensing authority at this stage. CILEx Council may decide that such an application was better made at a later date because risks might be higher in relation to alternative business structures given that the lawyers in such structures might have less impact on business decision making than in a traditional law firm.

The office had submitted the licensing application to the GSC which meets on 1 February although the President indicated that the outcome of the vote by Council was uncertain. The Board felt it was important to understand the value of CILEx becoming a licensing authority as it would provide better

opportunities for CILEx members, enable growth and improve diversity and access to justice. The Board emphasised the need to consolidate the position of CILEx as an approved regulator ahead of possible independence, emphasising the extent of the work that had been done over a period of several years in both organisations to progress to this business critical point.

The Board emphasised the revenue opportunity presented by ABS regulation and the position it would secure as a progressive regulator, providing opportunities for CILEx members.

The office had issued a consultation on the rules and the principle of CILEx becoming a licensing authority. The consultation response deadline had been extended, to allow for further responses. The Board agreed for the office to update the application to include references to consultation outcomes without further approval from the Board.

An independent research agency had been commissioned to undertake research into demand for licensing by CILEx members. A plan would be developed for marketing of licensing by CILEx and its development as an area of business. Following submission of the final application the LSB would have a period of six months, which may be extended to twelve months, to review the application.

## **5 FINANCIAL UPDATE – FOR DECISION**

### *Board Member Travel and Subsistence Expenses Policy*

A new Board Member Travel and Subsistence Expenses Policy was recommended to ensure CILEx Regulation adhered to HMRC guidelines. The new policy was agreed for implementation from 1 April 2016, other than the provisions at draft paragraph 10 that where travel time was included within a Board member's timesheet, travel expenses would not be reimbursed. Some Board members considered this provision would be overly disadvantageous to Board members living long distances away from the usual location of Board meetings. It was agreed that the office would review the impact of this provision and make recommendations to a future Board meeting pending which Board members could continue to claim both time and expenses for the same travel item.

### *Clerks Travel and Subsistence Expenses Policy and Committee Members, External Assessor and Tribunal Panellists Travel and Subsistence Expenses Policy*

The office had also developed a Clerks Travel and Subsistence Expenses Policy and a Committee Members, External Assessor and Tribunal Panellists Travel and Subsistence Expenses Policy.

The Board approved both policies for implementation from 1 April 2016.



## **6 FINANCIAL UPDATE - FOR DISCUSSION**

### *Review of Fees in Respect Of Clerks, Committee Members, External Assessors and Tribunal Panellists*

The office had identified cost savings as a part of the 2016 budget process. This included a review of fees paid to the panels, committees and assessors.

The Board reviewed proposed changes to Clerk, committee member, tribunal panellist and external assessor fees and agreed that the office incorporate these into contracts. The Board agreed that the annual retainer for ALC members should not be removed.

### *Management Accounts to November 2015*

The Board reviewed management accounts to the end of November 2015 and the profit and loss forecast to the end of 2015. Management accounts provided actual and budget figures to the end of November 2015. There had been minimal change to the management accounts which had been provided at the previous Board meeting.

Total income was below budget as figures on entity regulation had been revised downwards. Total income for the full year was under budget and direct expenditure was over budget.

## **7 CONSUMER ENGAGEMENT STRATEGY 2016**

### *Consumer engagement strategy 2016*

At its December 2015 meeting the Board had reviewed progress against the 2015 Action Plan. The 2016 Strategy and Plan had been developed against the background of the Board's Strategy meeting on 2 December 2015. The Strategy and Plan had been informally shared with the Legal Services Consumer Panel (LSCP), who provided feedback.

The Board agreed the Consumer Engagement Strategy and Action Plan 2016.

### *Consumer focus training proposal*

The LSCP had agreed to deliver a consumer focussed training session at no cost. The training would focus on the Consumer Principles and LSCP Guidance on how to use them, followed by a session on the Panel's Guide to Consumer Vulnerability aimed to help regulators recognise the consumer's individual characteristics and the market conditions that could cause or exacerbate vulnerability.

Arrangements were in hand for an all staff training session with the LSCP on 26 April 2016. The LSCP had also offered a separate Board session to which the Board agreed.

The CILEx President and Vicki Hurdley left the meeting.

## **8 BOARD EFFECTIVENESS QUESTIONNAIRE 2015**

Board members reviewed the results of their Board Effectiveness questionnaire exercise in December 2015.

Responses had identified areas for action including strategy development, marketing of CILEx Regulation as a regulator of choice, and shaping change in the sector of the legal services market.

### **INFORMATION ITEMS**

The Board noted the following:

- CILEx Qualifications Annual Report 2015;
- 2015 Year End accounts;
- 2016 Budget;
- Briefing Note on Briggs LJ Interim Report on Review of Civil Courts Structure (introduction of an on-line court);
- Briefing Note on CMA Market Study launched 13 January 2016.

### **DATE OF NEXT MEETING**

22 March 2016 at 9:30am.

**SAM YOUNGER**  
**CHAIRMAN**