

	CILEx Regulation Limited
Date	17 November 2022
Item	13.0
Title	Director of Operations' Report
Author	David Pope, Director of Operations
Purpose	This paper provides the Board with an update on the work of the Operations Directorate undertaken since the last meeting.
Recommendation	The Board is asked to NOTE the report, in particular the section on Anti-Money Laundering (AML) work and the possible changes to the AML supervisory regime (P24-38).
Timing	N/A
Impact assessment	N/A.
Appendices	13.1: Entity and Practice Rights Dashboard

Introduction

1. This paper provides the Board with an update on the work of the Operations Directorate and includes:
 - An update on the work of the Practitioner Team
 - An update on the work of the Entity Team, including an update on the policy matters arising through AML supervision, and
 - An update on the work of the Enforcement Team.

PRACTITIONER TEAM UPDATE

Rule change applications

Qualifying Employment review

2. The purpose of the rule change is to revise the definition of qualifying employment to:
 - a. ensure that the rules relate to work *experience* rather than to employment status, which will avoid the potential for discrimination against applicants, and
 - b. to streamline the application process.
3. Following approval at the September Board meeting, CRL has made the final changes to the draft application incorporating the last consultation responses. The application will be submitted to the LSB to amend rules relating to the definition of qualifying employment and time-served requirements to become a Chartered Legal Executive by the end of October 2022.

Recognition of Professional qualifications

4. CRL has been working on implementing the requirements of the Professional Qualifications Act 2022. This Act replaces all the transitional legislation that was in place following the exit from the EU.
5. CRL has been working with the team at the Department for Business, Energy and Industrial Strategy (BEIS) on the Regulated Professions Register, the GOV.UK Licence Finder and the information that is required to be published on the CRL

website to be compliant with the Act. Whilst CRL has met the deadline of 28 October 2022 to have all the necessary information in place, how the information is presented in one, simple to understand, resource was a key message from the BEIS team and therefore some follow up work is necessary to the website to ensure full compliance. This will be carried out in November 2022.

6. CRL will apply to the LSB to amend the CRL Temporary Rules for recognition of lawyers qualified in the EEA and to withdraw the CRL Temporary Guidance for recognition of lawyers qualified in Switzerland which will no longer be required. The LSB has confirmed that the changes should be possible through the submission of an Exemption Direction application as the change is related to a legislative change only and will not impact on the process CRL has in place. The application is expected to be submitted by the end of November 2022.

Operations

7. The work on the risk matrices has been completed and they are now live in the CRM system. However, a development issue was identified after the matrices went live and it reported to Silverbear for correction. The issue must be remedied before CRL can commence reporting and analysis of the data. Once fully operational, the risk assessments created through the matrices will feed into the work on ongoing competence as well as assisting with assessment of complaints received by the enforcement team.
8. Work to build the online WBL portfolio has been paused until the CILEX Project Co-Ordinator has reported development issues and concerns to the CILEX Executive Team meeting.
9. CRL is in discussion with an additional training provider to create another qualification route through the revised education standards.
10. The Higher Rights of Audience consultation has been published and will close on 3 January 2023.
11. CRL has now filled the vacant CPD administrator role. The new administrator joined the team on 3 October 2022.

Qualifying Employment (QE)

Applications received

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2022	61	65	62	70	57	72	44	56	58	28		
2021	64	64	86	80	77	76	61	50	53	74	62	79
2020	83	88	84	38	37	57	54	45	49	59	58	68
2019	92	93	93	70	74	40	88	77	59	82	54	72

12. The average time to first assessment for QE in September 2022 was **17** working days, maintaining the processing improvement reported at the September Board meeting.

13. The QE numbers for October 2022 are lower than expected at the time of drafting the Operations paper for the Board; however, there are 13 additional applications awaiting payment of the fee.
14. The cross-team working between the Practitioner team and the Enforcement team has continued, with five staff days per week now dedicated to the Enforcement Team.

Work Based Learning (WBL)

Applications received

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2022	42	37	71	70	62	52	50	77	65	36		
2021	56	58	62	83	70	43	53	41	58	55	53	58
2020	43	49	48	53	44	46	42	52	77	50	61	42
2019	61	45	75	61	60	44	54	46	70	71	46	53

15. The average time to first assessment of WBL applications in September was 10 weeks from receipt of payment. However, this reduced significantly in October and is currently at **8 weeks and 3 days**. The number of applications to 19 October is 36; however, there are 15 additional applications awaiting payment of the fee.
16. With the Assessment Officer leaving CRL on 30 November 2022, the Practitioner team intends to use external assessors rather than recruiting for a permanent replacement for the role currently. The assessors have indicated they have capacity to undertake additional assessments.

Practice Rights & Advocacy

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
2022												
Applications received	4	3	5	2	3	1	2	3	3	1		
Applications authorised	3	5	8	3	6	4	6	4	3	2		
2021												
Applications received	4	1	5	4	3	1	4	3	3	5	4	7
Applications authorised	1	1	4	4	4	3	3	0	0	0	3	4

Courses

17. Barbri Alitor delivers the advocacy skills courses which enables CILEX members seeking advocacy rights to be assessed as competent for authorisation. They will be hosting a civil advocacy skills course in November 2022, but the December date for family litigation course is not acceptable to our applicants, so they are looking to arrange an alternative date in January 2023.
18. CRL has spoken to Mercia regarding probate courses that would be suitable for ACCA members seeking to become CILEX Practitioners. CRL is currently mapping the

course to its framework and hopes to be able to work with them to accredit the course before the end of the year. ACCA had previously accepted their members sitting Mercia courses as being authorised, although this information was not provided to CRL until transfer of authorised persons had commenced.

CPD Non-Compliance

2020/2021	01/10/2021	30/09/2022	% Reduction since 1 October 2021
Associate Prosecutors	31	0	100%
Fellows	1646	77	95%
Graduates	634	172	73%
WBL reduction	212	19	91%
Associates	1100	662	40%
Total	3623	930*	74%

* These figures have increased by 6 in total in September due to reinstatements or inactive accounts being made live.

19. The above table sets out the achievement of the team in dealing with CPD non-compliance since the CPD year closed on 1 October 2021.
20. The last three months have been a very busy time with a high volume of emails received in the CPD inbox:
 - August 2022 - 933 emails
 - September 2022 - 1223 emails.
 - October 2022 - 514 emails.
21. All emails were responded to within 5 working days and all emails received up until close of business on 30 September 2022 were responded to prior to the 2021/2022 CPD year closing.
22. The 2021/2022 CPD year closed on 30 September 2022. The initial non-compliance figures have been provided below together with how the initial work on submission errors has already had an impact:

2020/2021	30/09/2022	19/10/2022
Associate Prosecutors	15	15
Fellows	757*	683
Advanced Paralegals (Graduates)	505	488
WBL reduction	137	132
Paralegals (Associates)	1410	1266
Total	2824	2584

* this figure was reduced to 700 after any submission errors were corrected.

23. In September 2021 at the close of the CPD year, CPD non-compliance for Fellows was 15% (1165 out of 7318 Fellows not having completed their submission). That figure has improved significantly for the 2022 CPD year with the non-compliance figure

as at September 2022 at 9.6% (700 out of 7296 Fellows not having completed their submission). CRL attributes this to:

- improved engagement between CRL and the regulated community in relation to the operation of the CPD scheme
- improved quality of responses from Fellows once they have been contacted, and
- CRL providing an improved operational response time (5 working days) to follow up CPD submissions.

ENTITY TEAM UPDATE

Policy

Anti-Money Laundering (AML) Supervision

24. CRL submitted its response to the Office for Professional Bodies AML Supervision's (OPBAS) consultation on changes to its sourcebook. Primarily, the proposed changes affect how OPBAS assesses compliance by regulators but a proposal that has faced pushback is the suggested requirement that the Specified Point of Contact with OPBAS to be at Board or equivalent level. The majority of supervisors have advised that this is not practical, and they would wish to retain their existing contacts.
25. There have been no quarterly meetings with OPBAS. The annual AML supervision report, required under r.46A of the Money Laundering Regulations, was approved by the Board at the October meeting and published by the end of October 2022.
26. Discussions have commenced on the 'Economic Crime Plan 2'. The new focus will be around economic fraud, although the plan will also pull together work related to sanctions and AML, and includes the work outlined below.
27. The Economic Crime and Corporate Transparency Bill is now progressing through committee stage. It will deliver:
 - reforms to Companies House
 - reforms to prevent the abuse of limited partnerships
 - additional powers to seize and recover suspected criminal cryptoassets
 - reforms to give businesses more confidence to share information in order to tackle money laundering and other economic crime
 - new intelligence gathering powers for law enforcement and removal of nugatory burdens on business
28. CRL has previously advised the Board of discussions with the MoJ about a proposed ninth regulatory objective to be added into the Legal Services Act 2007 which would focus specifically on ensuring legal regulators promote adherence to the legislation to prevent economic crime. This has been drafted in the Act to read as follows:

“promoting the prevention and detection of economic crime.”

29. In this case “economic crime” has the meaning given by section 153(1) of the Economic Crime and Corporate Transparency Act 2022. The offences are extremely wide ranging and outside of the scope of CRLs normal supervision, although by their nature would clearly be considered as misconduct.
30. The Act also provides the SRA with an increase of their fining powers related specifically to economic crime from the recently agreed general limit of £25,000.
31. HMT advise that the debates in parliament have indicated a desire to extend the Act further around criminal corporate liability, professional enablers and registration of overseas entities. At this stage CRL has had no further indication what these changes might look like.
32. At the end of 2021 HMT published a Call for Evidence on a Review of the UK’s AML/CFT regulatory and supervisory regime. In the consultation they suggested several options related to a review of the supervisory regime to improve effectiveness. Applied to the legal sector AML supervisors, these were broadly:
 - a) An extension of OPBAS’s existing powers.
 - b) Partial consolidation of legal sector AML supervisors
 - c) Consolidation of legal sector AML supervision to one supervisor for each devolved authority
 - d) Consolidation of all legal and accountancy AML supervisors with one new overarching supervisor.
33. CRL attended a roundtable hosted by HMT to gather input to the proposals, covering a number of specific operational questions. Whilst HMT stated that they have no preferred outcome, the focus would seem to be on consolidation to a single legal sector AML supervisor for each devolved authority. CRL has provided informal feedback on the questions posed and additional thoughts and challenges that HMT may wish to consider.
34. HMT will be consulting formally on proposals for changes to the supervisory regime in Q2 2023, and this is listed within the draft Economic Crime Plan 2. There is a demand from all AML supervisors for this consultation to be published as soon as possible because of concerns related to staff and resources.
35. With this consultation in the early part of 2023 and the new regulatory objective being brought in, there is a question around whether the work on AML, financial sanctions and economic crime can really be considered as separate areas of risk supervision. Within the Affinity Group Meetings and AML Supervisors Forum a significant amount of time is now dedicated to economic crime and financial sanctions.
36. The MoJ had indicated it would be for the LSB to guide regulators on how they interpret economic crime and their expectations for supervisory and, thereby ultimately, enforcement action.
37. CRL does not believe that AML supervision could just be separated from the other work to another body as it is part of economic crime and also linked to financial sanctions work. How this then work with a regulatory objective applying to all approved regulators, notwithstanding that only one may have responsibility for it, remains open. CRL will continue to update the Board as these discussions continue.

38. The new Suspicious Activity Reporting portal is now in testing and should go live in February 2023.

FCA / Claims Management Activities

39. CRL has been working with the Financial Conduct Authority (FCA), the Solicitors Regulation Authority (SRA) and Bar Standards Board (BSB) on new rules related to claims management activities and fee caps.
40. The judicial review of the FCA's new policy and rules was not successful and CRL understands that the SRA will recommence work on this area. CRL will look to meet with the SRA and BSB once again to progress this work.

Lender Panels / Banks

41. ICAEW advised CRL that they had had no response to any communications with UK Finance, similar to CRL, so they were not taking any further action until their firms raised the matter again. CRL will have to adopt a similar position.

Professional Indemnity Insurance (PII)

42. CRL has been working with an insurer interested in joining the list of qualifying professional indemnity insurers, including the possible creation of a Master policy for CRL firms which would be linked to CRL's Law Firm in a Box. This work is now on hold, as the insurer requires greater certainty on CILEX's proposed changes to regulatory arrangements, prior to investing further time into the proposals.
43. Having notified the LSB of this issue as an interference with CRL's regulatory functions, the LSB requested that CRL set up a meeting with the insurer so that they could understand the issues. The insurer was reluctant to engage with the LSB and the broker involved in facilitating the discussions, whilst willing to speak to the LSB, could offer limited information on the insurer's rationale, therefore, the LSB decided that they would not take any further action at this point.

Sanctions

44. On 30 September 2022, in response to the Russian annexation of parts of Ukraine, the UK announced further sanctions that included a ban on the provision of transactional legal advisory services (to cover "certain commercial and transactional services and hamper Russia's businesses' ability to operate internationally").
45. CRL is awaiting the implementation of these new sanctions and the Ministry of Justice and the LSB are seeking clarification of the extent of the ban. CRL will be attending any meetings related to these new sanctions ahead of communicating the impact to CRL individuals and firms.
46. There is now anecdotal evidence that some SRA firms are having restrictions placed on their PII where they act for sanctioned designated persons.

Rule changes

Designated Professional Body (DPB) application

47. HM Treasury previously advised CRL that the decision on the CRL application to become a DPB had been delayed owing the Conservative leadership contest and CRL believes that latest events will also have delayed consideration by a minister. HM Treasury are unable to provide any indication on timescales for the decision.

Operations

ACCA Performance Update

48. There has been a small increase in the number of enquiries, but these are linked to the timetable for accreditation of Mercia as a provider of courses. CRL will be closing down those applications that have not progressed over the next month.
49. The following table sets out both the individual and firm applications CRL has received.

Current ACCA applications

	Figures at the close of the month							
<i>ACCA had authorised 99 individuals and 78 firms</i>	Mar 2022	Apr 2022	May 2022	June 2022	July 2022	Aug 2022	Sep 2022	Oct 2022
<i>Total individual applications received</i>	70	71	74	75	75	76	76	76
Number of CILEX Practitioners (ACCA-Probate) in progress	8 (4 on hold)	7 (3 on hold)	7 (3 on hold)	8 (3 on hold)	8 (3 on hold)	9 (3 on hold)	9 (3 on hold)	9 (3 on hold)
Number of CILEX Practitioners (ACCA-Probate) provisionally authorised	15	15	15	13	12	11	10	10
Number of authorised CILEX Practitioners (ACCA-Probate)	47	49	52	54	55	55	55	55
<i>Total firm applications received</i>	46	48	48	48	48	49	49	49
Number of CILEX-ACCA Probate firm applications in progress	9	9	6	5	5	6	5	5
Number of CILEX-ACCA Probate firms	37	39	42	43	43	43	43	43

Entity Performance Update

Current applications

	Figures at the close of the month								
	Mch 2022	Apr 2022	May 2022	Jun 2022	July 2022	Aug 2022	Sep 2022	Oct 2022	Comment
Number at the pre-authorisation stage	4	7	7	4	3	2	2	1	This is delayed as the applicant needs to secure advocacy rights.
Number at Provisional Authorisation stage	1	0	1	1	1	1	0	0	.
Number granted Full Authorisation	0	1	0	0	0	0	1	0	
Number of authorised firms	24	25	25	25	25	24	23	23	Whilst CRL authorised a new firm in September 2022, during the same month two probate firms switched regulators to the SRA.

50. CRL continues to receive enquiries regarding entity authorisation, but these have seen a reduction in number, and none are progressing to the application stage. This is due to a combination of difficulty in securing professional indemnity insurance quotes, and the continuing uncertainty surrounding CILEX's proposed changes to its regulatory arrangements.

51. *Redacted*

52. Two other firms that CRL had thought might switch to the SRA appear to be willing to wait until more information is known on the CILEX proposal to change its regulatory arrangements.

Pre-authorisation stage

53. The number of live applications at the pre-authorisation stage has fallen to one and there are unlikely to be more until there is greater clarity on the future of regulatory arrangements.

54. The list below sets out those applications that are likely to progress in the short term.

Conventional Entity Authorisation applications		
✓	1	Application delayed as applicant needs to complete the advocacy part of their practice rights course.

Annual Returns

55. Since the last report to the Board, five Annual Return risk assessments have been completed and only two Annual Returns due for completion this year remain. One was due in October but is delayed and the other remains overdue and CRL has contacted the owner of the firm to seek its submission.
56. Currently three firms are overdue on the payment of their regulatory fees, but this is being addressed with the support of the Finance Team. Except for one Accountant's Report, all firms are up to date.
57. CRL continues to receive calls from the owners of the firms that it regulates requesting updates on the CILEX proposal to change its regulatory arrangements. As CRL is unable to comment, this lack of information is causing concern for the regulated community.
58. The summary dashboard of practice rights and entity enquiries and applications is at **Appendix 13.1**.

ENFORCEMENT TEAM UPDATE

Rule change: remote hearings

59. Following Board approval in July, CRL will submit a formal application to the LSB by the end of October 2022 to allow for a presumption for remote hearings. In the interim the LSB has agreed that the temporary arrangements enabling the presumption of remote hearings can continue until February 2023. This will allow the application to be received, reviewed and decided.

Other Enforcement matters

60. CRL, together with other regulators, has continued discussions with the SRA on their approach to financial penalties, including fixed penalties for firm operational non-compliance. As an example, these include a fee of £750 for not complying with a request to display the SRA smart logo on a website. The focus is clearly on firms rather than individuals within their consultation.
61. With the expected implementation of the Practitioner Risk Matrices shortly, the Enforcement Team will be able to incorporate any learning gained from their adoption when developing a risk-based approach to complaint handling, the Enforcement Rules and Handbook.

Operational

62. The following table sets out the number of prior conduct declarations and misconduct complaints that CRL has received over the last two years and for 2022 to date.

	2020	2021	2022 YTD
Misconduct Complaints	65	58	56
Prior Conduct declarations	945	517	175

63. CRL has had a judicial review claim against it in relation to findings by a Disciplinary Tribunal and subsequent Appeal Panel, which were heard during the pandemic. A non-authorised member was investigated for performing reserved activities. The member failed to co-operate with the investigation and claimed they had resigned from membership. They were excluded from membership by the Disciplinary Tribunal and fined. The Appeals Panel subsequently rejected the individual's appeal and the individual sought a judicial review of the decisions.

64. The court refused permission to claim a judicial review on all grounds, but the individual is applying for reconsideration of the decision. An oral update will be provided to the Board.

Prior conduct

Declarations received

2022	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Declarations received	25	17	16	23	23	17	18	18	19			
No of cases resolved	17	6	24	40	29	40	14	11	53			
No of cases live	172	203	185	168	162	139	143	149	115			
No of cases 'On hold'								15	14			
2021												
Declarations received	189	93	68	30	25	41	15	12	8	3	7	26
No of cases live	416	373	350	316	289	269	231	226	178	175	174	174

65. During 2022 the Enforcement Team has determined **208** declarations (as of 30 September 2022). Of those 79.8% of determinations were made by an investigator (delegated) and 20.2% by the PCP.

66. At present the oldest case requiring PCP determination is 'on hold' at **142 weeks** but this is due to an ongoing SRA investigation and CRL's parallel misconduct investigation is on hold for the same reason.

67. The oldest case requiring delegated decision is **142 weeks**. This has been processed and is awaiting further information from the member.

68. Of the 115 open cases, currently 38 can be determined by an investigator. The remaining 77 may require a PCP decision.

Misconduct

Complaints received

2022	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
------	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

No of New Complaints	2	5	4	11	5	8	3	10	8			
No of Complaints resolved	9	0	5	14	6	1	0	2	0			
No of cases live	110	115	114	111	110	117	120	128	136			
No of cases 'On hold'							33	34	37			
2021												
No of New Complaints	5	2	7	5	4	3	9	2	5	5	8	3
No of cases live	86	89	95	97	95	98	102	104	108	111	114	117

The 'On hold' historic data is not accurate but is collected going forward.

69. The total number of live misconduct cases on 30th of September 2022 was **136** which can be broken down as follows:

Authorised Entities	5 (concerning 2 firms)	3.7%
Fellows	74 (one Fellow is subject to 3 separate complaints)	54.4%
Non-Authorised grades	57 (3 members are subject to multiple complaints)	41.9%

70. Of the 122 live misconduct cases, 37 are on hold, of which 27 are subject to investigation by another regulator. The remaining 10 cases include police investigations, as well as making reasonable adjustments owing to the member's mental health.

71. The oldest live case, which is on hold, is **194 weeks**. The following table provides an analysis of live complaints by age:

	0-6 months	6-12 months	12-18 months	18-24 months	24+ months
No of live cases	36	22	18	21	39
Those 'On Hold'	11	7	3	4	12

72. There has been an increase on the number of live cases since the beginning of the year, but this can be dependent on the complexity of the complaint, the engagement by the parties involved, and volume of evidence for review.

73. CRL has in place a KPI that all initial allegations should receive an initial review by the month end with a target of 100% completion. The following table highlights the continued impact of the improved triage procedure now in place:

2022	Jan	Feb	Mch	Apr	May	Jun	Jly	Aug	Sep	Oct	Nov	Dec
-------------	------------	------------	------------	------------	------------	------------	------------	------------	------------	------------	------------	------------

Target initial assessment by month (100%)	93.6	82.3	86	89.4	100	100	100	100	100			
---	------	------	----	------	-----	-----	-----	-----	-----	--	--	--

74. When a complaint is received, the Enforcement Team assesses the member's alleged misconduct against the Code of Conduct and identifies which Principles may have been breached. The following table shows how the Team has assessed which principles have been breached over the last three years. A member may have broken more than one Principle.

Principles breached	2020	2021	2022
Principle 1 – Rule of Law	7	7	3
Principle 2 – Professional Conduct	55	51	32
Principle 3 – Honesty and Integrity	36	31	15
Principle 4 – Legal Obligations	10	7	6
Principle 5 – Act Competently	12	9	7
Principle 6 – Treat Everyone Fairly	7	4	3
Principle 7 – Ensure Independence	3	1	2
Principle 8 – Act Effectively	2	0	1
Principle 9 – Protect Client Money	0	1	0
Total breaches	132	111	69

75. Unsurprisingly, Principle 2 – Professional conduct is the most breached. The investigator may add, remove, or amend a breach of principle as a case progresses to accurately reflect the misconduct that is being evidenced. This will allow more accurate and focused guidance to be provided to the regulated community. This can mean the numbers will change up and down from month to month.

Disciplinary Panels

Professional Conduct Panel (PCP)

76. Of the eight scheduled PCP meetings in 2022, seven have been held (including one extra meeting) with the remaining two arranged for November and December.

Disciplinary Tribunal (DT)

77. No further hearings have been held after the one hearing on 23 June 2022 when all charges were proved, and the member excluded.

Appeals Panel

78. There have been no appeal hearings so far in 2022. Hearings are scheduled only when an appeal is received.

Other activities

79. Following a review of CRL's future requirements the decision to recruit additional panellists and 'bank' clerks has been put on hold until 2023

