

REPORT TO: CILEx REGULATION BOARD

FOR: DISCUSSION/DECISION

DATE: 2 May 2018

REPORT TITLE: Q1 PERFORMANCE: JANUARY TO MARCH 2018

SUBMITTED BY: Jill Durham, Director of Policy and Enforcement
Vicky Purtil, Director of Authorisation and Supervision

PURPOSE OF REPORT:

- 1 To report progress against Business Plan targets and operational performance in Quarter 1.

KEY ISSUES FOR CONSIDERATION:

2018 Business Plan:

- 2 Appendix 1 shows an overview of progress on work streams to deliver the Board's five published strategic objectives. The Board carried out a mid-year strategy review in November 2017. The strategy will be fully updated and republished following review at the Board's Strategy Day on 12 July 2018. The Strategy Day focuses on further development of the Board's consumer facing objectives. The Board considered an options proposal at its 21 February 2018 meeting for development of activities to improve the organisation's consumer focus. A member of the LSCP Board has kindly agreed to join the event to inform strategy planning and prioritisation of activities and goals, and to update the Board on the recently published LSCP Business Plan and priorities.

New Group governance structure:

- 3 As indicated by RAG ratings, all work streams are progressing as planned either wholly or partly, other than redevelopment of protocols to fit the new CILEx Group Governance structure – this forms part of the work plan to address anticipated changes in the operating environment. Following the work at officer level in the latter part of 2017, on review of touchpoints with CILEx as the Approved Regulator, and updating of the IGR protocols to adapt these to the new Group governance structure, this work has been on hold. CILEx has now shared proposed byelaw changes prepared under advice from Bates, Wells and Braithwaite Solicitors. These can be viewed in Board SharePoint.
- 4 CILEx has launched a consultation on proposed byelaw changes. CILEx indicates that these do not directly affect delegation of regulatory functions to the independent regulator (now byelaws 19 and 20). CILEx flags the following key changes:

- updating definitions and replacing all references to Council with Group Board and Professional Board as applicable;
 - simplification of wording and removal of detail regarding operational procedures such as conduct of meetings etc. into Regulations;
 - introduction of new category of membership with MCILEx letters for other types of members who are not Fellows, graduates or associates and added in clause 9(5) at request of Privy Council to provide protection that any titles using 'Chartered' must be approved by them;
 - wording tidy ups for consistency with the Charter, Act etc.
- 5 The office will make a preliminary assessment of the other changes and in particular those that may impact directly on CILEx Regulation. An oral update will be given.
- 6 A consultation launched with CILEx members (weekly member e-shot for week comm. 16 April 2018) focuses in particular on the following:
- replacing election with appointment;
 - need or not for geographical representation;
 - role of branches and special reference groups;
 - inclusion of non-Fellow members within governance structures;
 - member services and support and delivery.

Group service purchasing:

- 7 CILEx's advisers, BWB, are in the process of forming CILEx Group Services. The board has been appointed of which there are three directors including a new Chair, Doris Olulode, who sits on the Group Board. Officers have asked the finance team for any available update on likely impact on our budget as a result of the new CILEx governance proposals, particularly the issue of direct employment of staff, timescales, if this remains a Group proposition, and how recharges will be calculated going forward. As currently understood we would need to cover the cost of payroll directly but the cost will not change and is covered under PCF income to be transferred to us. If we continue to utilise Group services we will be charged accordingly. We have budgeted for £200k for 2018 Group Services re-charges. There was a pro-rata calculation at the end of 2017 with our portion presented as being £142k to include MIS (management information systems) recharge, the latter having been previously funded by the Law School. Group Services has since advised that the MIS charge will be in addition to £142k and the revised reforecast is now approx. £170k. On what basis is still unclear and has not yet been discussed.
- 8 The proposed changes are unlikely to affect the 2018 budget and draft 2019 PCF budget, which have both been finalised. Any proposed changes for 2019, would be part of a larger discussion at the next stages of the budget cycle.

Barriers to entity growth - tackling anti-competitive practices in the legal services market:

9 The Business Plan updates the Board on development of targeted engagement to address anti-competitive practices in relation to entity authorisation (part of strategic objective no. 2). Once we have completed the changes to PII Rules and Minimum Wording (reported elsewhere on this agenda) one of the three central barriers we faced will have been removed – the requirement of the SRA for a firm switching regulator to take out six years run-off cover.

10 However, there are two further barriers that CILEx Regulation is working to address:

Eligibility of regulated firms to Mortgage Lender Panels: Mortgage lenders operate a panel of legal services providers that they are willing to recognise as being able to act on their behalf in conveyancing transactions involving mortgages being redeemed on sale of property or registered on purchase of property. Firms act for either the vendors/purchasers and the mortgage lender in most residential house sale and purchase transactions. Many lenders are unwilling to allow non-SRA firms onto their panels.

11 There are two related issues:

- the lender does not recognise CILEx Regulation as an entity regulator for the purposes of conveyancing and will not accept CILEx Regulation regulated entities onto their panel as a matter of policy. This includes e.g. a requirement for membership of the Law Society owned Conveyancing Quality Scheme (CQS):
- the lender does not accept the individual onto its panel owing to policies such as needing a minimum number of partners within the entity or a sufficient recent transaction history with the lender.

12 CILEx Regulation can only seek to influence the former barrier and continues to engage with mortgage lenders, the Law Society, the CMA and others, in order to address this barrier. The potentially serious impact of the barrier is demonstrated following a recent meeting with the Nationwide Building Society. They insist that access to their lender panel is only available to firms with CQS accreditation.

13 As access to this accreditation is limited to SRA regulated firms, this impacts on both CLC and CILEx authorised entities, and prevents these firms not holding CQS accreditation from accessing the Nationwide lender panel. The Nationwide recognised that this is not ideal and are supportive of us approaching the Law Society on the matter.

14 This problem is neatly demonstrated by the example of one of our regulated conveyancing entities which deals with large scale developments including sale of multiple properties. They have highlighted that the potential loss of income to them of having to involve intermediate firms, who can access the Nationwide panel, is running into £20k/£25k per month.

- 15 CILEx opened discussions with the Law Society in 2015 about access to CQS for CILEx regulated entities. The Law Society were unwilling at that stage to consider allowing firms regulated other than by the SRA to access the CQS. At that time the Law Society's then flagship e-conveyancing platform, Veyo, was about to be launched under joint venture arrangements with an IT developer. The Law Society offered access to the platform for all conveyancing firms regardless of regulator. CQS compliance was baked in to the design of the platform and would have guaranteed compliance with CQS process requirements whether a firm was a CQS member or not. On that basis it appeared likely that the CQS membership requirement would cease to be relevant to lenders.
- 16 Board members may recall the highly visible failure of the Veyo platform launch. This meant that we are back where we were in relation to the lender panel issue. Officers met with the Law Society on 20 April to discuss access both to their CQS and Lexcel, and how firms switching regulator can maintain existing accreditations. The Law Society was sympathetic to the issues raised, however this is a strategic decision for them and any change of policy would require discussion and passage through several committees before the rules could be changed. The representative also said that some lenders had removed the CQS requirement for some CLC firms. The office will hold further discussions with the Nationwide to determine whether this would be a possibility for them to consider.
- 17 **Access to After the Event Insurance (ATE) and other indemnity insurances:** This barrier affects both civil litigation and conveyancing firms. Both the SRA and the CLC are Designated Professional Bodies (DPBs). This means that they regulate law firms for the selling of ancillary insurance products. The firms receive commission on the sale but more importantly they are able to supply this product or similar products to their clients. The issue for our regulated entities is that insurers who supply such products are used to the approach of the SRA and CLC and are unwilling to look at other models such as sale of the product through an FCA regulated broker (even though this approach is better from a regulatory perspective). The only alternative option currently offered is for the CILEx Regulation entities to seek regulation directly from the FCA, which would cause expense for the firm and is disproportionate.
- 18 Officers are presently seeking to meet with insurers in the market to discuss an alternative approach using a broker (which is acceptable to the FCA - confirmation was received from them on the point earlier in 2018).
- 19 A new insurance distribution directive (IDD) comes into force shortly and this has more onerous provisions for DPBs than presently in relation to supervision arrangements by the regulators for entities. Our broker, John Kunzler at Marsh believes that this may impact on the future of DPBs.
- 20 CILEx Regulation considered seeking DPB status at the point of application for entity regulation but was dissuaded by both HM Treasury (which administers the application process and has not created a new DPB since

2007) and cost, which with fees and annual subscriptions would have been in the region of £30,000 in Year 1. In addition to the cost of DPB status, there would be additional regulatory requirements as the DPB acts in the place of the FCA. Officers have also raised this as a competition issue with the CMA.

Q2 milestones:

21 Key milestones for Q2 are shown in Appendix 1.

Meeting the diversity regulatory objective:

- 22 An update on the Diversity Action Plan is attached at Appendix 2. This is our published plan to meet the revised Diversity Guidelines published by the LSB in 2017 on how to meet the regulatory objective in the Act of *'encouraging an independent, strong, diverse and effective legal profession'*. We are working with our IT colleagues to specify the collection of diversity characteristics under the new CRM. It is hoped this will enable us to dispense with a significant amount of our diversity survey work, in relation at least to regulated individuals.
- 23 Board members will recall that we developed a brief for an external consultant to advise on meeting the requirements in the LSB Guidance ahead of the LSB's formal audit in August 2018. This followed the positive feedback reported to the Board at the LSB's preliminary audit of our Diversity Action Plan. In the event we have held discussions with the LSB at officer level on the expectations at the August 2018 formal audit and have now received the template the LSB propose to use to carry out the formal assessment. This template has been added to Board Sharepoint and appears to be a further desktop exercise, for which the office will prepare by way of self audit.
- 24 For this reason we have redeveloped the consultancy brief to seek quotes for advice on the initial three areas of review. These were identified from our most recent research report as (1) potential barriers to BME regulated individuals entering QE, (2) over representation of BME regulated individuals at Disciplinary Tribunal and (3) development of female and BME representation on governance structures including the Board. A chart showing the current governance structure is attached at Appendix 3 for reference.
- 25 The office is satisfied that the work to deliver the Diversity Action Plan is on target. By way of exception we are behind schedule on collaboration with regulators of firms employing our regulated members, to gain data/information relating to these members, annually. Here we are awaiting data from SRA colleagues and actively chasing. We have also encountered issues with engagement with CILEx colleagues and have asked for a quarterly officer-level working group meeting to be set up, this has been scheduled for 3 May.

Entity/ABS Delivery Plan update:

26 The entity/ABS delivery plan is attached at Appendix 4 showing progress as at end of March 2018. We are anticipating LSB Board approval for the

application at their 24 May 2018 meeting following which the application for designation can move to its next stage.

Meeting the consumer regulatory objective:

- 27 The plan to deliver the recommendations of the CMA report on the legal services market is attached at Appendix 5 showing progress as at the end of March 2018 and the associated comms plan discussed for joint roll out with CILEx. Following the Board's decision on 21 February 2018 on the scope of rules and guidance to be introduced for regulated entities governing transparency of price and what work the consumer can expect for the price, work continues on development of our proposed Rules. This is led by David Pope, Entity Authorisation and Client Protection Manager and Sue Chandler, Consumer Engagement and Policy Officer. David and Sue aim to publish a six week consultation on Rules and Guidance in July. This will enable the final proposals to be reported to the Board's September meeting for approval ahead of an application to the LSB.
- 28 Sue Chandler attended the inaugural PwC research breakfast briefing on 17 April on *Supporting Customers in Vulnerable Situations*. Around 90 delegates including representatives from the SRA, BSB and LSCP heard from a cross-sector expert panel from a range of organisations including OfCom, FCA, Smart Energy and Northumbrian Water, sharing experiences and debating the big questions around vulnerability. The session focussed on:
- research: understanding vulnerability and the challenges customers face;
 - business: developing effective customer strategies - encouraging openness, empowering consumers, multi-channel engagement, need for specialist services, role of technology.
 - the future: exploring the changing nature of vulnerability.
- 29 Presentations illustrated key vulnerability issues, including:
- its fluidity;
 - that it can be hidden and or circumstantial and the same vulnerability does not equal need for the same support, while similar support may be needed for different vulnerabilities;
 - impossible to make assumptions about;
 - one size does not fit all;
 - vulnerable consumers do not want to be treated differently;
 - 70% of individuals do not inform their provider of their vulnerability and 46% would not feel comfortable to do so.
- 30 There was an emphasis on collaborative working with other networks/organisations to develop better understanding of the range of consumers and their journeys and the challenge of reflecting research and understanding in regulators' work to understand the harm/detriment that can arise and avoiding products (such financial services) that could create detriment.

- 31 The government's recent green paper, published by BEIS on 11 April, '*modernising consumer markets*'¹ was referenced at the event. This seeks views on how to ensure that regulatory, competition and enforcement regimes are suitable for the modern economy and the modern consumer. The consultation closes on 4 July 2018. Officers will review the proposals for issues relevant to the development of the Board's consumer strategic objective, and activities to meet this.

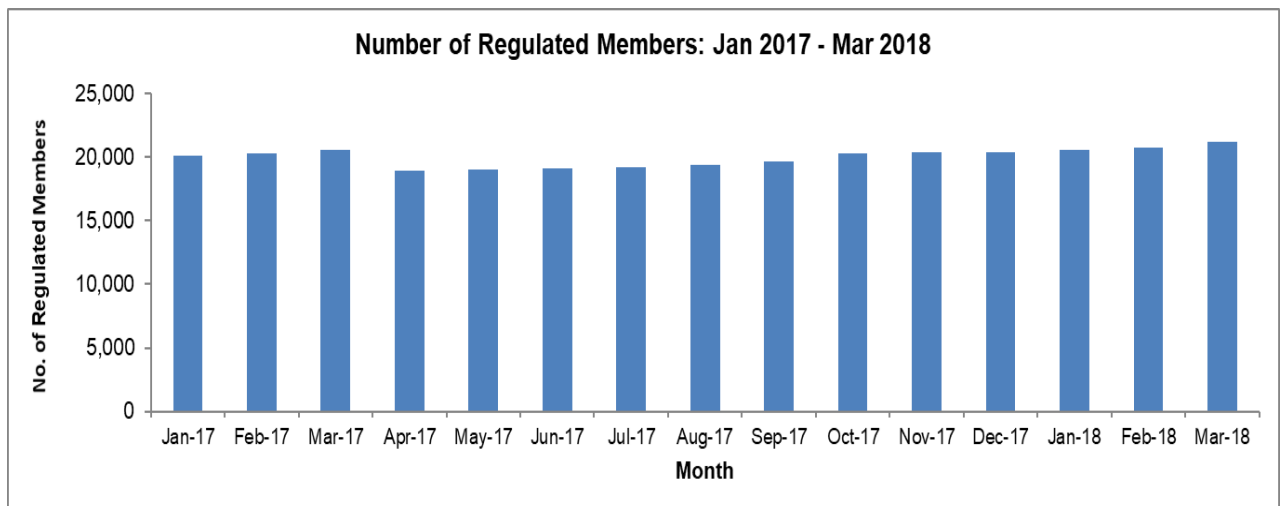
New website:

- 32 The designs for the new website have been delivered by SpinDogs – a selection of screen shots attached at Appendix 6 give a flavour of the fresh modern look of the new site, which is set to replace our main SiteCore based website platform later this year. The new site will be complemented by our Regulation Matters online news vehicle.

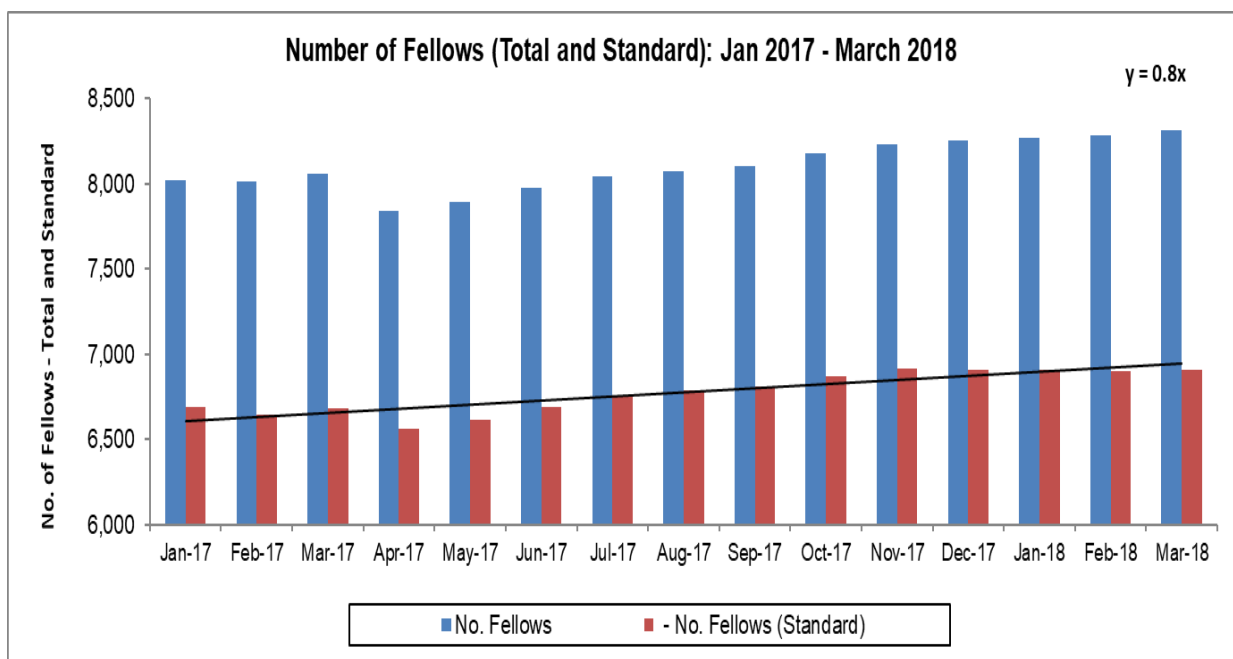
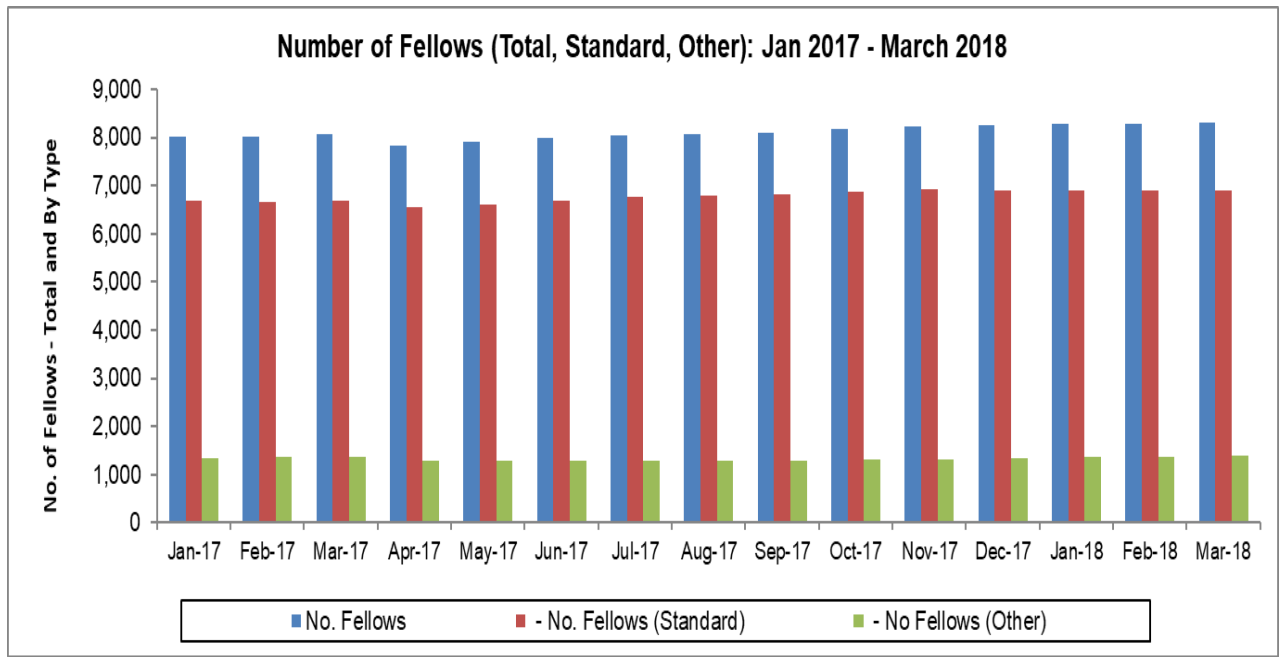
Operational Performance January to March 2018

- 33 The data on operational performance in Q1 is attached at Appendix 7.

Numbers of regulated individuals: Fellow numbers are shown split as Standard and Other as requested at the Board's February meeting. The following graphics show trends from the introduction of the current performance reporting framework:

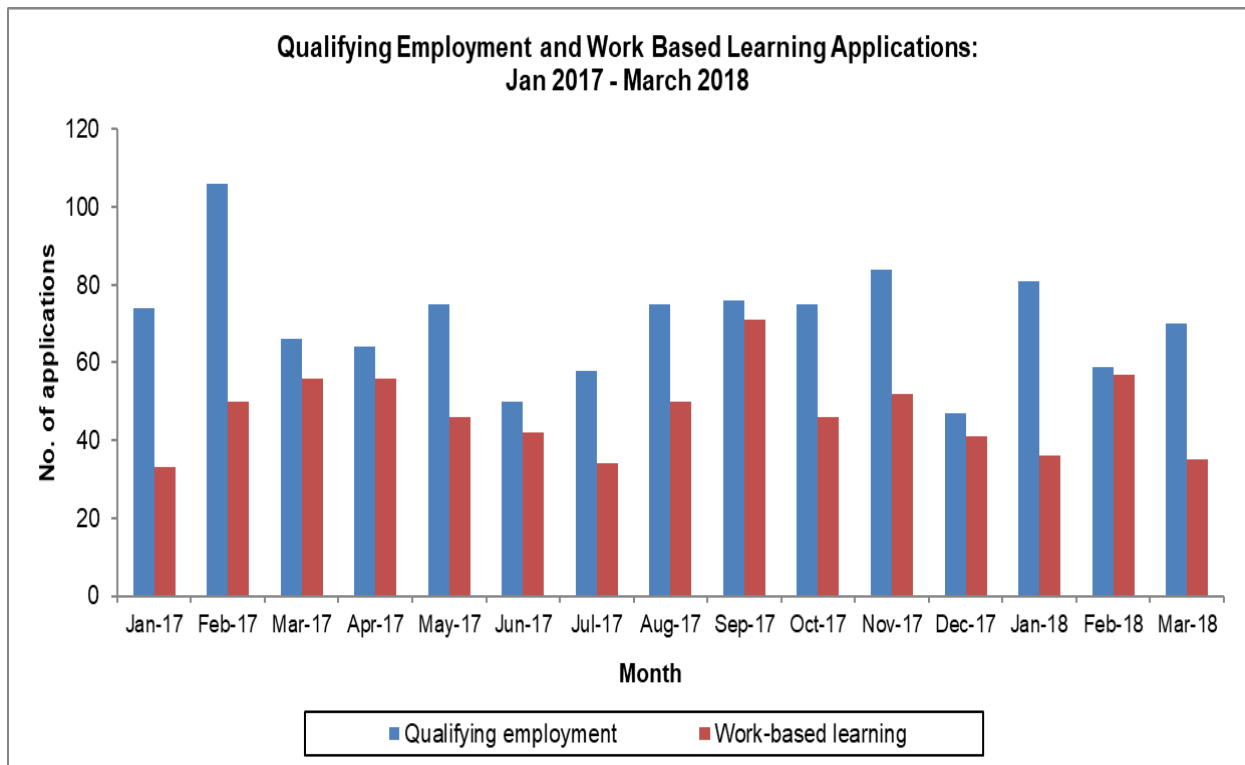


¹ https://www.gov.uk/government/consultations/consumer-green-paper-modernising-consumer-markets?utm_source=1c23339e-f07a-4d2c-9ee5-a008177b911f&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate



The above graph shows the total number of Fellows and the Standard Fellows only (the Y axis starts at 6,000). This makes it easier to see the slight upward trend in Standard Fellow membership shown by the trend line. The R squared value is 0.81 which shows that the trend is valid (the closer to 1.0 the better). The gradient is also shown $y = 0.8x$.

Practitioner Authorisation and Supervision: intakes on QE and WBL application are shown below:



Enforcement: Board members will recall that Q4 2017 performance reporting was deferred due to unexpected staff absence. This is now reported for Q4 2017 and Q1 2018. The figures for decisions on character and suitability/fitness to own following declarations of prior conduct will be reported with Q2 performance and if available by the date of the Board meeting can be added to SharePoint.

- 34 The current staff structure is shown in the chart attached at Appendix 7. We have four vacancies of which two are in Practitioner Authorisation and Supervision. The other two are in Enforcement. An appointment was made to the vacant Investigation Officer post however the individual was unable to start due to an unforeseen change in domestic circumstances. The Investigation Manager post is currently out to advert closing 8 May.

Staff Training

- 35 **General:** staff training days reported for this quarter include the following:
- o managers and relevant staff attended a one day seminar delivered by UK Training on 1 March 2018 on the requirements of the General Data Protection Regulations scheduled to be implemented on 25 May – this was attended by managers and relevant staff, with spare places taken up by CILEx Law School staff and cross charged accordingly;
 - o all managers and staff responsible for raising purchase orders attended e-requisitions training on 20 March 2018;
 - o the Research and Performance Analyst attended a one day course on how to determine the gender pay gap.

- 36 Consumer focus: we have commissioned a one day externally delivered workshop for up to 14 staff from a provider recommended by LeO colleagues on dealing with vulnerable clients and managing challenging behaviour. This workshop has been previously delivered, with excellent feedback, to the LeO teams in the West Midlands. The learning outcomes are to equip staff with the skills and confidence to manage customers who are demonstrating signs of mental health crisis and to enhance communication skills, effective listening and questioning techniques.
- 37 Staff will aim to:
- develop a better understand the impact of living with mental health issues;
 - discuss common misplaced myths attached to mental health issues;
 - discuss the term vulnerability;
 - recognise a vulnerable person and discuss how to react appropriately;
 - outline an understanding of current CILEx policies and procedures pertaining to vulnerability;
 - state the model of communication and the barriers to listening;
 - understand the importance of utilising effective and appropriate questioning skills;
 - state the component elements of models of aggressive behaviour;
 - demonstrate an ability to apply tactical communication skills in a crisis situation;
 - recognise the impact of ego states outlined within the theory of transactional analysis
 - understand how to manage one's own stress;
 - understand how to signpost an individual for professional/vocational help.
- 38 IT upskilling: we are migrating to a single Windows Platform (Microsoft Windows 10 from Windows 7). Most staff will require training or upskilling to assist in the smooth transition to this new platform and integration with Office 365, Onedrive and Sharepoint. Staff will be asked to confirm which type of training fits their learning style in order to assist with the planning of this Group wide training offer.
- 39 Sponsorship of staff development: appraisals take place twice a year with the full appraisals each July where next year's training needs are identified, and a mid year appraisal each January. Training needs across the company are costed into the budget process for the following year from August.
- 40 We sponsor staff for longer term education and personal development including CILEx Law School course fees, for which we are re-charged by the Law School. We also fund exam fees plus a maximum of one re-sit where necessary. Any further re-sits or tuition are paid for by the member of staff. Paid time off is given for pre-exam revision and exam sitting days.
- 41 Regardless of whether we fund an individual's course fees, either with CILEx Law School or other providers, we aim to allow requests for flexible working to accommodate studies. A member of staff in the Enforcement team has

recently completed a compressed hours' working arrangement over a two year period to enable study for the Legal Practice Certificate (part of the vocational stage of training to become a lawyer).

- 42 A member of the Practitioner Authorisation and Supervision team took CILEx Level 6 Conveyancing in this quarter, with a second member of the team taking CILEx Level 3 Elderly Client. Each were funded for course and exam fees and given study leave. Two other members of the team have been funded to undertake a 12 month programme of online assessor training in their own time to further develop their knowledge and understanding of the principles of competence-based assessment and the differences between knowledge and competence assessment and to put the work they do into context. A fifth member of the team is doing an apprenticeship with one day a week out of office for training (we pay the partly subsidised apprenticeship salary).

Communications:

- 43 An update on our Communication Plan is attached at Appendix 9 showing progress in relation to profile development and social media engagement. This will dovetail with the action plan agreed by the Board for increased involvement by Board members in organisational profile raising.

Complaints about us:

- 44 There were five customer complaints in Quarter 1. None are fully closed out. Times taken and outcomes reporting will fall into Quarter 2.

Performance reporting to LSB:

- 45 Board members will recall earlier reports about the development, following consultation, of the LSB's revised regulatory performance standards assessment methodology, published in 2017. At its April telecon the Board considered a preliminary self-assessment against the evidence types given as examples for meeting the Well-Led: Governance and Leadership functional performance standard and agreed their action plan. The Board also agreed to carry out review of preparedness for assessment against the other four functional standards areas (Regulatory Approach, Authorisation, Supervision and Enforcement) on 11 July.
- 46 The companion piece to the functional standards is the introduction of continuous operational performance reporting to the LSB, designed to be complementary to the function of the Board in holding the executive to account for performance.
- 47 We have worked with the LSB at officer level to adapt their published generic performance dataset template² to our operations (the work of most other legal

2

[http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2017/Regulatory_Performance_Management_Dataset_December_2017_\(final\).pdf](http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2017/Regulatory_Performance_Management_Dataset_December_2017_(final).pdf)

services regulators focuses on 'authorised persons'). Provisional figures for Q1, in the format agreed with the LSB, are attached at Appendix 9. Initially we were asked to submit a return in this format for 2017. We pointed out that we did not hold the data in this format prior to agreement on the adapted template. On this basis we have agreed with the LSB to provide a return for Q1 2018 with a second return in the Autumn for Qs 2 and 3. After Year 1 we will make returns annually.

- 48 In terms of time taken data the LSB asked for this to be shown as shortest time, longest time and median time. In this context the median = the number separating the higher half of a data sample from the lower half. The median is calculated by arranging the data from lowest to highest and taking the middle figure (e.g. the median of 1, 3, 3, 5, 9, 11, 70, is 5). We have checked with the LSB that their understanding of median matches ours. They confirm that these are the figures they require rather than averages. Performance reporting to our Management Team and to the Board is based on averages.
- 49 Use of the median produces figures such as the following for timeliness in relation to character and suitability matters where a declaration of prior conduct has been made:

TIMELINESS - Number of weeks from date of receipt of prior conduct declaration to date of Professional Conduct Panel or delegated (first stage) decision		
	Authorised Persons	Non-Authorised regulated individual
Prior conduct cases determined by the Professional Conduct Panel or under delegated powers	153	174
Shortest time	1	1
Longest time	31	37
Median time	2	2

- 50 Although the longest time take was 37 weeks (such cases would typically have involved investigation and Panel decision) most of the 327 cases dealt with in the relevant period were dealt with in the week of receipt. This explains why the medians are so low and would typically be lower than the corresponding average.
- 51 As the Q1 return to the LSB is based on so few data there is no exception reporting at this stage. It will take time for the LSB to determine trends.
- 52 The new format for regulatory performance assessment is intended by the LSB to implement a more risk-based, targeted approach. The LSB contacted us on 19 April to confirm that using information already in the public domain, and any relevant information they hold, they have completed an initial analysis of CILEx Regulation's performance against the new standards and that for each regulator there are areas, particularly in relation to the new outcomes under the standards, where the LSB is of the view that further information would improve their assurance in relation to performance.

53 Rather than formal transitional reviews, they hope that we will be able to answer some specific questions on our performance in relation to certain outcomes. In order to limit the questions that they need to ask, they are currently reviewing the areas where we think further information is needed. This review is due to be completed in the next few weeks. They will write to us in May with questions and the timelines for responses.

RECOMMENDATIONS:

That the Board:

- considers progress in Q1 against Business Plan objectives;
- endorses the approach to development of expanded consumer business objectives;
- considers progress against associated delivery plans (Diversity Action Plan, Entity/ABS Plan, CMA Action Plan);
- considers operational performance in Q1.

APPENDICES:

Appendix 1: Q1 2018 Business Plan update
Appendix 2: Q1 2018 Diversity Action Plan update
Appendix 3: Governance structure chart as at April 2018
Appendix 4: Q1 2018 ABS/entity plan update
Appendix 5: Q1 2018 CMA Action plan update
Appendix 6: new website screen shots
Appendix 7: Q1 2018 Operational Performance
Appendix 8: Staff structure chart as at April 2018
Appendix 9: Q1 2018 Communications Plan update
Appendix 10: Q1 2018 LSB dataset (provisional)

Documents available in SharePoint:

- CILEx proposed byelaw changes
- CILEx consultation with members on governance changes