



# Regulatory Developments

## STATUS

1. The report is open but the appendices are considered confidential.

## EXECUTIVE SUMMARY

2. The paper (which is a standing item) summarises key regulatory developments of possible relevance to the activities of Professional Standards and the development of policy. This includes consultations and consultation feedbacks that have recently been published. This report provides a summary of these in the appendix and has provided some further commentary on those documents that are considered of immediate interest.
3. This document discusses the following in more detail;
  - a) The Cilex Regulation consultation on remote hearings
  - b) The LSB consultation on the new performance assessment framework
  - c) The LSB final policy document on consumer empowerment
  - d) The SRA consultation on health & Well-being
4. A further consultation by the FRC on eligibility for local audit key audit partners is covered in the Chief Officer's report.
5. The response to the white paper on insolvency reform was submitted on 25 March. The submission of Professional Standards is linked [here](#) and that of the representative side of ICAEW [here](#). There continues to be no sign of the government paper summarising the actions and responses to the consultation last year on audit and accountancy regulation.

## RECOMMENDATIONS

6. The board are asked to note the content and the appendices and to ask questions of staff where further information is required.
7. The board are asked to approve the classification of the paper as open and identify where redaction may be appropriate, as has been highlighted in yellow. Also agree to the non-disclosure of the appendices.

## CILEX CONSULTATION ON REMOTE TRIBUNALS

8. Cilex Regulation are asking for comments on their proposals to make permanent temporary arrangements for remote tribunals which were set up during Covid and approved by the LSB on that temporary basis. As we have found with our own tribunals, the remote proceedings have tended to work quite well if not better given the enhanced technology now available and the processes and procedures now being advocated by Cilex including safeguards match those we already have in place. Formalisation of remote hearing powers were incorporated into the amendments of the DBLs last year.
9. The Lord Chief Justice recently issued guidance for criminal courts, which is an assessment of the interests of justice and shows that remote hearings are now commonplace and accepted. The process we have put in place is appropriate, but based on the LCJ's advice and the approach outlined in the Cilex consultation we may move to refine a less rigorous list of exceptions and revise where and when the starting point is virtual. Appeal hearings are the obvious candidates. The process there is legal argument and it is very rare for live evidence to be called.
10. The deadline for comments on the Cilex consultation is 28 April and we may contribute a small submission to Cilex based on our experiences. We would not be proposing to ask the board or the sub-group to review this submission if made.

## LSB FRAMEWORK FOR PERFORMANCE ASSESSMENT

11. The board is aware of the self-assessment reports which we have submitted annually to the LSB since 2018. At December 2021 we were shown to be compliant on 26 of the 27 outcomes and did have some disagreement with the LSB on the one we were considered to fall short on. The December report of the LSB showed that the regulatory bodies are now pretty well up to speed with this assessment process which is beginning to feel dated, and the LSB in their budget and plan for 2022 indicated they would be reviewing the framework this year. This consultation is the inaugural step in that process.
12. The consultation aims to address a number of aspects which the LSB have outlined in their introduction. These include;
  - a) Some of the approaches need modification to better align with the statutory objectives
  - b) Streamlining areas of overlap
  - c) Modifying the reports of outcomes to better inform stakeholders
  - d) Changes in the tools of measurement and the ratings system
  - e) Greater dependency on the regulators' boards to monitor performance
13. In our relationship meetings with the IRB it is clear they use information on ICAEW's website and the Regulation web pages to monitor and track much of what we are doing as a regulator. The consultation refers to this process and intends to rely more on it for assessment as an alternative to requiring detailed reports on certain areas. Board papers and minutes are themselves seen as evidence of the IRB monitoring regulatory compliance.
14. We will be reviewing the proposals in more detail in developing the response to the consultation which is due 1 July. Soundings on areas of principle will be made with the IRB Legal Services Sub-group and the IRB will be able to consider this more fully at its June board.

## LSB POLICY DOCUMENT ON CONSUMER EMPOWERMENT

15. The CMA in their report of December 2020 on the legal services market indicated that progress was slow on improving consumer choice, and in its recommendations suggested the LSB should play a more active role. One of the actions pursuant to this has been the development of a consumer empowerment policy which was consulted on in September 2021 and to which Professional Standards contributed. The final policy has been issued in the last few days on 11 April 2022.
16. In our response on 17 December 2021 we were supportive of the framework but identified a number of areas where our ability to comply and the that of the firms might be made challenging through the multi-disciplinary activities of the firms we regulate. The LSB have noted that they have made some amendments and referred in particular to removing the need to disclose details of PII cover (which we had been unhappy about) and adding an example of best practice in testing solutions with consumers.
17. The policy takes effect immediately on date of publication (11 April). We will review the policy and map compliance as best we can and report back on this at the next board.

## SRA RULES CHANGE ON HEALTH AND WELL-BEING

18. The SRA has issued on 4 March a 12 week consultation on proposals to clarify their rules around appropriate treatment of work colleagues by individuals and firms and a solicitor's health and fitness to practise. The intent is to make it clear that those they regulate must treat colleagues with respect and dignity. And that if they fail to do so, the SRA will take action where necessary to protect the interests of clients and the public. Also to support the SRA's ability to take appropriate and proportionate action where necessary to deal with concerns over a solicitor's health affecting their fitness to practise
19. Our own regulations are reasonably comprehensive in this area already; the Fitness to Practise Regulations introduced in 2018 cover a lot the ground, and the guidance issued by Professional Standards on Duty to Report in October 2020 plus the guidance issued by the CCAB on conduct in July 2021 with reference to ethical standard 115 issued by IFAC (which also forms part of ICAEW Ethical Standards) address personal conduct. The SRA have referred to the ICAEW rules as part of their consultation. The only potential gaps which we are aware of and which we will review the SRA content to consider, are the way the rules apply and enforced to non-members we regulate be it through the affiliate process or firm regulation. Also we may reflect on the intervention powers, though the SRA have more powers at their disposal through the Solicitors Act 1956 and do not appear to address this aspect in the consultation.

## APPENDICES

Appendix Name	For consideration or for reference	No of pages
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<b>Appendix A</b>	<b>Review of consultations and feedback April</b>	<b>Reference</b>	<b>2</b>
<b>Appendix B</b>	<b>Review of consultations and feedback February</b>	<b>Reference</b>	<b>1</b>

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