

CILEx Regulation's Regulatory Standards report 2015/16

May 2016

Background

Who we are and what we do

1. The Legal Services Board (LSB) is responsible for overseeing legal services regulators in England and Wales. We are independent of Government and of the legal profession. We hold to account regulators for the different branches of the legal profession. We drive change in pursuit of a modern and effective legal services market: one that better meets the needs of consumers, citizens and practitioners.

Regulatory standards

2. We have a process in place to hold the regulators to account for their performance. We consider the legal services regulators' performance against five regulatory standards: outcomes-focused regulation, risk assessment, supervision, enforcement and capability and capacity.
3. Effective delivery of the regulatory standards should lead to higher standards of professional conduct and competence amongst lawyers. It should help to create a legal services market with increased consumer choice and consumer confidence. It should encourage innovative practitioners who, if posing fewer risks, are not subject to intrusive or inflexible regulation. It will introduce a level of consistency in the approach to the regulation of legal services.
4. This is our second full assessment of CILEx Regulation's performance against the regulatory standards.¹ To undertake this assessment we asked CILEx Regulation to complete a self-assessment against the five regulatory standards. We also considered other evidence such as the results of a questionnaire aimed at understanding the experiences of individual users of CILEx Regulation, the outcomes of in-depth interviews with, and written responses from, key stakeholder organisations and information gained in other areas of our work, such as statutory decisions and thematic reviews.
5. This report sets out our view on the performance of CILEx Regulation against each regulatory standard as well as the grades we allocated to it. It should be read in conjunction with our thematic report on the performance of all of the regulators against the regulatory standards.² At Annex A we have provided some facts and figures about CILEx Regulation.
6. Individual reports have been produced for each of the eight regulators. Care should be taken, if reading the other reports, to ensure misleading comparisons are not made, particularly in relation to the grades given. There are differences in: the size of the regulators, in terms of staff numbers, budget, and the regulated

¹ Previously known as ILEX Professional Standards (IPS).

² The thematic report can be found here: http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm

communities; the risk profiles; who they regulate (individuals, entities and alternative business structures (ABS)); and the types of consumers their regulated communities engage with. We have taken the context of CILEx Regulation into account when considering its performance against the regulatory standards. The grades available are listed below.

- Good – all indicators embedded appropriately in the organisation and inform day to day working practices.
- Satisfactory – significant progress is being made to embed indicators and use them in day to day working practices.
- Undertaking improvement and work is well underway – indicators have been introduced but are not yet embedded appropriately in the organisation and do not yet inform day to day working practices.
- Needs improvement and work has started recently.
- Recognise this needs to be done but work has not yet started.

The next steps

7. The report indicates the areas where we think that there is scope for improvement. We will agree with CILEx Regulation a specific action plan as the basis for our future monitoring of performance. We aim to publish the action plan by the end of June 2016.
8. We would like to thank all those who contributed time, energy and insights to this regulatory standards review.

Overall assessment

9. Our overall assessment is that CILEx Regulation has made good progress since our 2012/13 Regulatory Standards report and our 2015 Update report.³ It has undertaken work to understand those that it regulates and consumers of their services and it has developed outcomes-focused regulatory arrangements such as its new approach to continuing professional development. That said, there is still more to do in specific areas, in particular risk assessment and supervision of authorised individuals.
10. It is important to note that the 2015/16 assessment for CILEx Regulation is set in a very different context to the previous 2012/13 Regulatory Standards report. CILEx Regulation has undergone significant changes between the two assessments; it now authorises entities and regulates a broader range of practice rights. Between the 2015 Update report and this assessment, much of what CILEx Regulation had planned to do was based on it regulating entities. This has not progressed at the rate that was expected because of the longer timetable to designation and the low number of entities applying to CILEx Regulation to become authorised. Whilst CILEx Regulation has processes and policies in place for the regulation of entities, given that there have only been two entities authorised to date, its approach remains largely untested.
11. In the previous assessment, we commented on the need for it to further develop its processes for risk assessment and supervision of individuals. We suggested that its approach to regulating individuals should be developed and refined with reference to its experience of regulating entities. As there are a limited number of entities regulated, it is understandable that CILEx Regulation has made little progress on this to date. That said, taking into consideration the wider range of practice rights that it can now grant and the fact that it cannot be certain about how its entity population will grow, our view is that it needs to consider how it can now take this work forward without undue delay.
12. We continue to expect CILEx Regulation to monitor and publicly report on progress and performance in authorising entities and the challenges of regulating new areas.

³ This is a reference to the following reports: *Developing Regulatory Standards: an assessment of the legal services regulators* report (December 2012) and our *Regulatory Standards 2014/15: an update report on the performance of the legal services regulators* (February 2015). Hereafter referred to as 2012/13 Regulatory Standards report and the 2015 Update Report. These reports can be found here: http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm

Grades⁴

13. We set out below the grades that CILEx Regulation awarded itself and those the LSB awarded in 2012/13 and 2015/16. For the 2012/13 Regulatory Standards report, the grades for each regulatory standard shows a difference of view between the LSB and CILEx Regulation. The LSB's assessment highlighted that some form of improvement was required across almost all of the regulatory standards. The only exception was for enforcement where we both agreed a 'good' grading. For this assessment, there was a greater alignment between CILEx Regulation and the LSB's views on the grades to be awarded.

Grade \ Standard	Recognise this needs to be done but work has not yet started	Needs improvement and work has recently started	Undertaking improvement and work is well underway	Satisfactory	Good
Outcomes-focused regulation	LSB 2015/16				
	CILEx Regulation 2015/16				
	LSB 2012/13				
	CILEx Regulation 2012/13				
Risk assessment	LSB 2015/16				
	CILEx Regulation 2015/16				
	LSB 2012/13				
	CILEx Regulation 2012/13				
Supervision	LSB 2015/16				
	CILEx Regulation 2015/16				
	LSB 2012/13				
	CILEx Regulation 2012/13				
Enforcement	LSB 2015/16				
	CILEx Regulation 2015/16				
	LSB 2012/13				
	CILEx Regulation 2012/13				
Capability and capacity	LSB 2015/16				
	CILEx Regulation 2015/16				
	LSB 2012/13				
	CILEx Regulation 2012/13				

⁴ At the time of the 2012/13 Regulatory Standards report, IPS had split their self-assessment in two. The first section looked at the regulation of individual persons where it has considerable experience. The second at the developments it was making in entity regulation. The LSB reviewed and commented on both sections, however, as CILEx Regulation was predominantly a regulator of individuals, the table reflects the 2012/13 Regulatory Standards report for individual authorised persons only. The 2015/16 assessment grading given by both LSB and CILEx Regulation reflects it as a regulator of both individual authorised persons and entities.

Assessment against the regulatory standards

Outcomes-focused regulation

To deliver this regulatory standard, we consider that regulators must:

- have high quality, up-to-date and reliable evidence on what legal services consumers need and how they use the services
- have effective engagement with consumers
- demonstrate that outcomes are being achieved
- review and update their arrangements based on the evidence they gather.

14. Our main concern in the 2012/13 Regulatory Standards report was that CILEx Regulation lacked an evidence base on consumers' needs and use of services, and on the services provided by those it regulates. CILEx Regulation has undertaken work to address these gaps in its knowledge and evidence base. This was a priority for all regulators in the 2015 Update report.
15. It has developed a consumer engagement strategy and action plan and a Board member has been appointed to oversee this area of work. Progress against the outcomes set out in CILEx Regulation's strategy and plan are reviewed at Board meetings. To emphasise the importance of consumers in its work, CILEx Regulation asked the Legal Services Consumer Panel to train its staff on the consumer toolkit. This took place in April 2016. CILEx Regulation will ensure that all staff members consider the consumer in their day to day work.
16. In terms of specific activities to either gather information on consumers or to share information with consumers on regulation, CILEx Regulation has:
 - undertaken joint research with the Bar Standards Board (BSB) on youth advocacy
 - established links with consumer representative organisations to identify areas for joint action as well as gaining information on where it can improve the information it provides to consumers
 - reviewed literature on consumer expectations and experiences in the legal sector to identify areas where it can learn and/or change its approach to regulation; learning from this has been shared with the regulated community
 - run consumer feedback surveys
 - carried out annual surveys to establish trends and learning points from complaints dealt with at first tier
 - led initiatives to be managed by the joint regulators forums – the first is on developing a unity of approach and voice to consumer umbrella organisations by the regulators and the second is on the approach taken to client care letters; this work will be carried out in 2016
 - developed its website to include a specific section dedicated to consumers.

17. It is positive that so much work is being undertaken to engage with consumers and to develop knowledge about their needs. We look forward to seeing the outcomes of this work.
18. As well as developing their understanding of consumers, CILEx Regulation has engaged with its regulated community. It has sought feedback from those that it regulates on changes it has made to its regulatory arrangements. It has also used varied communications methods to engage its regulated community, for example, e-shots and podcasts. The stakeholder feedback we received indicated that the regulated community had a good relationship with CILEx Regulation and valued its outcomes-focused and proportionate approach to regulation.
19. CILEx Regulation's commitment to outcomes-focused regulation is clear through its regulatory arrangements. For example, it has:
- adopted a new outcomes-focused code of conduct to support its entity regulation regime
 - developed a new approach to continuing professional development (CPD), moving away from counting hours to an approach that requires practitioners to consider their individual development needs and how these might be most effectively addressed
 - introduced work-based learning rules and practice rights rules which set out outcomes that applicants must meet to obtain authorisation.
20. CILEx Regulation has said that in making regulatory arrangements that need to be prescriptive (for example in relation to accounts rules), they only include the level of detail that is necessary for the rule to be understood and effective.
21. The final aspect of the outcomes-focused regulation standard is that the regulator must demonstrate that its regulation is delivering the outcomes consumers expect. In our 2015 Update report, we asked that all regulators collect evidence to understand the impact of the rules they impose and whether those rules are delivering the outcomes consumers expect. We note that little evidence has been collected to demonstrate whether or not the changes CILEx Regulation has made to date, including to its rules, are having the desired impact. Whilst we recognise it can be difficult to gather evidence on outcomes, we would encourage CILEx Regulation to consider best practice from other regulatory regimes to find a creative solution that is appropriate to its regulatory environment.

Risk assessment

To deliver this regulatory standard, we consider the legal services regulator must:

- have formal, structured, transparent, evidence-based approaches to the collection, identification and mitigation of current and future risks which inform all regulatory processes
- focus their risk analysis on vulnerable consumers and consumer detriment
- have processes in place which are understood by the Board and staff
- demonstrate that outcomes are being achieved.

22. The key observation made by the LSB in the 2012/13 Regulatory Standards report was that CILEx Regulation had a largely complaints-based and reflective approach to risk assessment. We deemed this as appropriate for the market it then regulated. However, we identified that if it extended its scope of regulation it would need to take steps to understand the risks in the markets it operates in and to build its knowledge of consumers and the regulated community. CILEx Regulation has made progress in this area.

23. CILEx Regulation has taken account of the observation we made in the 2012/13 report and this materialised in it taking a different approach to risk assessment of entities. In relation to entities, CILEx Regulation has:

- developed a risk framework
- appointed dedicated staff to carry out risk assessments
- developed an approach which enables staff to review and report on risks identified from a wide range of intelligence sources including organisations with a common interest
- developed guides on how to undertake risk assessments. This is in line with our expectation set down in the 2015 Update report that regulators would develop learning programmes and tools to ensure a consistent and evidence based approach is taken to risk assessment
- established a Strategic Risk Committee (SRC) to oversee and scrutinise its approach.

24. A SRC oversees CILEx Regulation's approach to risk and reviews the risk ratings. The monthly risk reports are shared with the SRC and inform decisions on where CILEx Regulation should focus its efforts. However, due to the very small number of entities which are regulated, there is still limited evidence about the impact of this approach and whether it is achieving the outcomes consumers need. CILEx Regulation should continue to monitor and, if necessary, refine its approach as the number of regulated entities grows.

25. In relation to carrying out risk assessments for individual regulation, we note that CILEx Regulation's approach has not changed since 2012/13. It is still largely reflective and complaints-based. We acknowledge that most individuals

authorised by CILEx Regulation in fact work in entities regulated by another regulator such as, the Solicitors Regulation Authority (SRA). However, we remain concerned that there is limited proactive risk management of regulated individuals and limited information about these individuals to inform such an assessment. Risk management remains focused on compliance, through activities such as CPD record sampling, review of an annual prior conduct return and sharing information on enforcement activities with other regulators and agencies. There is no clear evidence that analysis of this information informs a forward-looking risk assessment regime. We have previously accepted that CILEx Regulation would use its development of entity regulation to develop its approach to individuals. However, as the uptake of entities has progressed a lot slower than expected, CILEx Regulation cannot rely on this and must start thinking about how it can risk assess regulation of individual practitioners in an evidence-based and proactive manner. We will monitor this area of CILEx Regulation's work.

26. As noted earlier in this report, CILEx Regulation is building its knowledge of consumers and its regulated community. Its research with the BSB on youth advocacy is a good example of it seeking to understand risks to quality in a particular segment of the legal services market. We expect CILEx Regulation to build on the good work done so far to further inform its evidence base on risk to consumers. This should enable it to focus its risk analysis on vulnerable consumers and consumer detriment. This is in line with the expectation we set all regulators in our 2015 Update report that they should build a usable evidence base to identify the risks faced by consumers that use regulated legal services.
27. We have seen that CILEx Regulation seeks to inform and educate its regulated community about risks through articles in its journal, social media messages and by direct mailing. It has also told us that it is looking to disseminate more information on risks to the regulated community and it is considering how best to do this. For example, if it was an issue that affected the general consumer it may be shared differently to if it was a discrete risk which just affected entities. This information should be helpful to its regulated community.

Supervision

To deliver this regulatory standard, we consider the legal services regulator must:

- have a supervision policy that is carried out with reference to identified risks, all available information and is underpinned by an evidence-based understanding of the different market segments
- have access to a range of supervisory tools and willingness and capacity to use them
- have processes in place to enable learning to be shared and performance to be monitored.

28. In our 2012/13 Regulatory Standards report we noted that CILEx Regulation had a largely complaints-based and reactive approach to supervision. We said that as most CILEx fellows are employed in solicitors practices, risk identification and supervision activities had historically largely been left to the SRA. We noted that this appeared appropriate for the market it regulated at that time but that more work would be needed if the market were to change, for example, once CILEx Regulation began authorising entities of its own accord.

29. As mentioned previously in this report, CILEx Regulation now regulates entities. In preparing to become an entity regulator, CILEx Regulation developed a new approach to supervision and associated processes. These include a requirement on entities to submit annual returns, accountant reports and client care letters which are then reviewed and assessed in line with CILEx Regulation's risk assessment framework. We were satisfied that CILEx Regulation's supervisory approach and processes were fit for purpose when we assessed its application to become an entity regulator. As there have only been two entities regulated so far and no annual returns submitted (as of October 2015), the supervision process understandably remains untested. As information is submitted and the number of entities grows we would expect CILEx Regulation to monitor its approach to assess whether it is achieving the correct outcomes for consumers.

30. In our 2015 Update report we said we expected CILEx Regulation to develop and publish an evidence based supervision policy for individual CILEx fellows that incorporated the use of a wider range of supervisory tools. Progress has not been made against this expectation. The supervision regime for authorised individuals remains reactive and compliance-based. For example, CILEx Regulation audits individual's CPD records and carries out a review of annual returns on prior conduct. We have previously accepted that CILEx Regulation would use its development of entity regulation to develop its approach to individuals. However, as the uptake of entities has progressed a lot slower than expected, CILEx Regulation cannot rely on this and must start thinking about how it can supervise individual practitioners in an evidence-based and proactive manner. We will monitor this area of CILEx Regulation's work.

31. We have been told, and have seen in Board minutes, that there is oversight of the supervision processes for individuals and entities. However, it is not clear from these minutes if this oversight is in line with the expectation set down in the 2015 Update report, that the effectiveness, proportionality and value for money of supervision approaches should be monitored and reported on. We suggest that CILEx Regulation's Board should consider how it could demonstrate to the regulated community, consumers and other stakeholders how it holds the executive to account for performance in this area of work.

Enforcement

To deliver this regulatory standard, we consider the legal services regulator must:

- have a range of effective and proportionate enforcement tools
- have published policies and guidance that enables others to understand the regulator's criteria for deciding to take action
- operate the enforcement function in a timely, evidence-based, fair and proportionate manner
- have appeal processes that are independent from the body or persons who made the original decision
- have processes in place to ensure that learning is shared and performance is monitored.

32. We graded CILEx Regulation as 'good' in our 2012/13 report and have seen no evidence to suggest that this assessment should change. We continue to consider that CILEx Regulation has in place enforcement processes which appear to be proportionate. These processes have been tested and appear to be effective and to enable cases to be decided in a timely manner. Now that it is an entity regulator we note that it has powers to intervene in an entity and has documented procedures for use in the case of intervention.

33. CILEx Regulation continues to be transparent, it publishes:

- decisions of its disciplinary panels
- a range of documents which support its approach to enforcement such as its sanctions guidance
- its website contains a wealth of information in consumer-friendly language, which is easy to locate, about how to complain and about how each stage of the enforcement process works
- the feedback it receives from users of the complaints and enforcement processes through feedback questionnaires, and the responses are used to inform an action plan for improvements
- information on cases which educates the regulated community on standards and conduct expected of them
- its performance against its key performance indicators (KPIs), which include one for total time taken to conclude a case.

34. This is in line with the expectations we set all regulators in our 2015 Update report that they improve the timeliness and transparency of enforcement processes. This includes end-to-end reporting, procedures in plain language and easily searchable records of determinations. We also said that they must ensure that it is easy to make a complaint about potential misconduct.

35. CILEx Regulation uses the civil standard of proof at both stages of its enforcement process (early stage decisions made by staff and those made by the adjudication panel) which is in line with our view on best regulatory practice as we set out in our report [*Regulatory sanctions and appeals processes report – an assessment of the current arrangements \(March 2014\)*](#).⁵ In that report, we also said that it was good practice for the appeals process for all regulators to be operated by the First-tier Tribunal (FTT). CILEx Regulation administers its own appeals panel, which is independent but not separate in the way that the FTT is. However, given the small number of cases heard, this appears to be appropriate for now but this may need to change if CILEx Regulation becomes a licensing authority.
36. There is scrutiny by the Board of the performance of the enforcement function with one Board member responsible for that work stream. From Board minutes we have seen evidence of it receiving information on the number of cases and the time taken to process cases. There is also an annual report of enforcement activities that forms part of the CILEx Regulation annual report. The figures for enforcement activity are low. As CILEx Regulation transitions to a more proactive approach to risk management and supervision of individuals, it will be useful for the Board to monitor any trends in these figures in order to understand the relationship between risk assessment, supervision and enforcement.

⁵ LSB report on Regulatory sanctions and appeals processes -an assessment of the current arrangements. (March 2014)
http://www.legalservicesboard.org.uk/projects/thematic_review/pdf/20140306_LSB_Assessment_Of_Current_Arrangements_For_Sanctions_And_Appeals.pdf

Capability and capacity

To deliver this regulatory standard, we consider the legal services regulator must:

- have clear and consistent leadership that ensures the whole organisation has a strong consumer focus
- have regulatory budgets and staffing set at appropriate levels for the risks associated with the market
- have a culture of transparency and improvement
- have management and governance processes in place which are capable of scrutinising the performance of the regulator.

37. We consider that there are good governance arrangements in place at CILEx Regulation. CILEx Regulation's Board has a code of conduct, appraisal process and reviews its performance regularly. There are also appropriate management and governance processes in place which enable the Board to scrutinise the performance of the executive. For example, the Board monitors performance against agreed KPIs and committees produce annual reports to the Board on performance in their areas. This is in line with the expectation we set all regulators in our 2015 Update report that they should ensure that management and governance processes are capable of scrutinising the performance of the regulator. Further, we consider that CILEx Regulation's Board and executive have made a good start to becoming a more consumer-focused regulator. This is evident in the work it has undertaken to engage with and understand consumers.

38. The concerns we identified in our 2012/13 Regulatory Standards report which related to CILEx Regulation's capability and capacity were that it should ensure that it had appropriate succession plans in place and that it had effective project planning and management expertise in place to meet its ambitions of extending its scope of regulation. CILEx Regulation has addressed both these areas of concern. It has put in place succession plans and carried out reviews of its structure and staffing levels. It will keep its staffing levels and regulatory budget under review. It has also continued to ensure that staff can make regulatory decisions across the organisation at the right level, with appropriate review and reporting arrangements. CILEx Regulation also has effective project planning and management expertise in place which was illustrated by its successful applications to increase its scope of regulation.

39. We consider that CILEx Regulation has a culture of improvement and transparency. This is evident in earlier sections of this report. That said, CILEx Regulation accepts that it could become more transparent by publishing its Board papers. It plans to review whether this is possible later in 2016.

Annex A

What is CILEx Regulation?

Key facts

- As at 1 April 2015, a total of 7595 fellows and 253 associate prosecutors were regulated by CILEx Regulation (down 79 from April 2014).
 - As at December 2015, a total of 2 entities were regulated by CILEx Regulation.
 - As at 1 December 2015, CILEx Regulation's total regulatory income is £940,100. This is up from £826,243 in 1 December 2014.
 - As at 31 March 2015, CILEx Regulation employed a total of 24 full time equivalent staff.⁶
1. CILEx Regulation is the independent regulator of the Chartered Institute of Legal Executives (CILEx), which is the approved regulator under the Legal Services Act 2007. CILEx Regulation changed its name from ILEX Professional Standards (IPS) on 23 March 2015. The change follows parliamentary approval for CILEx Regulation to award practice rights and authorise legal entities.
 2. CILEx Regulation regulates chartered legal executives, other CILEx members and non-members with practice rights in the legal sector (including associate prosecutors).
 3. CILEx Regulation's role is to set and maintain standards in legal work and services provided by the individuals and entities they regulate. They can take action if those standards are not met. It also oversees education, qualification and practice standards of all CILEx members.
 4. The CILEx Regulation Board plays a key role in ensuring that CILEx Regulation delivers proportionate and transparent regulation. There are a total of seven members, both lay and professional (chartered legal executive). The chair of the Board is a lay member. There are six committees to which the Board delegates certain key matters.

⁶ Information provided by CILEx Regulation.