

To:	Legal Services Board	
Date of Meeting:	By circulation only	Item: Paper (19) 01

Title:	Section 80 recommendation to the Lord Chancellor – Chartered Institute of Legal Executives: First-tier Tribunal	
Workstream(s):	Statutory Decisions	
Status:	Official	

Summary:

This paper seeks the Board's agreement to the making of a recommendation under section 80 of the Legal Services Act 2007 (the Act), that the Lord Chancellor makes an order establishing the General Regulatory Chamber of the First-tier Tribunal as an appellate body to hear appeals against licensing authority decisions made by CILEx Regulation. These are appeals from decisions made by CILEX Regulation acting as a licensing authority, should CILEx (which has delegated its regulatory powers to CILEx Regulation) be designated as such.

As required by s81 of the Act, the Board consulted on the proposed recommendation and draft order. One representation was received from CILEx supporting the proposals and noting they were consistent with that adopted for most other approved regulators designated as licensing authorities.

Recommendation(s):

The Board is invited to:

1. **note** the content of the response decision document and **approve** its publication
2. **approve** the making of the recommendation to the Lord Chancellor as set out in **Annex A** of the response decision document
3. **note** the draft Order (drafted by Ministry of Justice lawyers) which accompanies the recommendation, as set out in **Annex B** of the response decision document
4. note the Justice Impact Test (drafted by the Ministry of Justice and CILEx Regulation) at **Annex C** which will accompany the recommendation and draft Order.

Risks and mitigations	
Financial:	N/A
Legal:	A section 80 order must meet the statutory criteria and procedural requirements set out in the Act. The draft Order has been drafted by Ministry of Justice lawyers and is subject to the statutory instrument review process.
Reputational:	[REDACTED]
Resource:	None

Consultation	Yes	No	Who / why?
Board Members:	√		The Board approved the LSB's recommendation to the Lord Chancellor that CILEx be designated as a licensing authority at the meeting on 24 May 2018.
Consumer Panel:	√		The Consumer Panel was a mandatory consultee in the LSB's assessment of CILEx Regulation's application to become a licensing authority. It raised no objections to the FTT being the appellate body for licensing authority decisions
Others:	CILEx Regulation and the Ministry of Justice have been kept informed of the LSB's technical consultation on the draft Order.		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Risks and mitigations: Reputational	Section 36(2)(b)(ii): information likely to inhibit the exchange of views for the purposes of deliberation by the Board	
Annex A	Section 21: information accessible by other means and published here .	

LEGAL SERVICES BOARD

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Recommendation to the Lord Chancellor that he makes an order under Section 80 of the Legal Services Act 2007 in relation to a licensing authority.

Background / context

1. In May 2018, the Board approved an application from CILEx Regulation, the regulatory body for the Chartered Institute of Legal Executives (**CILEx**), seeking a recommendation to the Lord Chancellor that CILEx be designated as a licensing authority. In its application CILEx Regulation proposed that appeals be heard and determined by the General Regulatory Chamber (**GRC**) of the First-tier Tribunal (**FTT**).
2. The Legal Services Act 2007 (**the Act**) requires that arrangements are in place for a relevant appellate body to hear and determine appeals about decisions made by licensing authorities. Our policy position is that all such appeals should be heard and determined by the GRC of the FTT; this policy is set out in our response decision document [Alternative business structures: appeal arrangements](#).¹ The LSB's thematic [assessment of sanctions and appeals processes](#)² also confirmed that the LSB will continue to advocate the use of the FTT for all appeals against regulatory decisions.
3. Section 80 of the Act makes provision for the Lord Chancellor, by order, to establish a body to hear and determine such appeals. Such an order can only be made on the recommendation of the LSB. Section 81 sets out the procedural requirements for such orders and includes a requirement for the LSB to consult on both the proposed recommendation and the proposed Order.

Consultation

4. The LSB consultation exercise took place between 19 October and 16 November 2018. In accordance with the requirements of section 81 of the Act, the consultation paper invited representations on the draft recommendation and the draft statutory Order. Representations were also invited on the draft Justice Impact Test (JIT) which was drafted by the Ministry of Justice (MoJ) and CILEx Regulation.
5. This is the sixth time that the LSB had consulted on such orders which are technical in nature, being directly linked to the designation orders for licensing

¹ Available at:

http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20110509_absappeals_decision_doc.pdf

² Available at:

http://www.legalservicesboard.org.uk/Projects/thematic_review/pdf/20140306_LSB_Assessment_Of_Current_Arrangements_For_Sanctions_And_Appeals.pdf

authorities. CILEx Regulation had previously consulted on the policy decision to use the FTT.

6. The MoJ has led on the drafting of the proposed Order in consultation with CILEx Regulation and the LSB. The MoJ and CILEx Regulation has also engaged with HM Courts and Tribunal Service in the development of the draft Order.

Representations received

7. Only one representation was received in response to the LSB consultation. This was from CILEx which said that it supported the proposals outlined in the consultation and did not have any comments on the draft recommendation or the draft section 80 Order.

Conclusion and recommendation to the Board

8. Taking into account that apart from CILEx, no comments have been received on the draft Order or JIT, our view is that we should proceed with the recommendation to the Lord Chancellor.
9. A draft response document in response to the consultation is provided in **Annex A**.
10. The draft recommendation and Order are set out in Annexes A and B respectively of the response decision document. The JIT is set out in Annex C of the document.
11. The Board is invited:
 - to note the content of the response decision document and approve its publication
 - approve the making of the recommendation to the Lord Chancellor as set out in Annex A of the response decision document
 - note the draft Order which accompanies the recommendation, set out in Annex B of the response decision document
 - note the JIT at Annex C of the response decision document which will accompany the recommendation and draft Order.

11 January 2019