

## MINUTES



# ICAEW Regulatory Board

<b>DATE &amp; TIME:</b>	9 December 2021, 10 am
<b>LOCATION:</b>	CAH 1.4/1.5 + Zoom
<b>CHAIR:</b>	Jenny Watson
<b>VICE CHAIR</b>	Philip Nicol Gent
<b>SECRETARY:</b>	Tracy Stanhope

<b>ATTENDEES</b>	<b>BOARD MEMBERS</b>	<b>STAFF</b>
	Andrew Goldsworthy	Duncan Wiggetts
	Ann Wright	Mathew Downton
	Anthony Pygram	Elaine Griffiths
	Asif Patel	Bob Pinder
	Jane Titley	Claire Phillips
	Jonathan Williams	
	Michael Sufrin	
	Parjinder Basra	
	Philip Nicol-Gent	
	Steve Barrow	
	Thomas Palm	
<b>APOLOGIES</b>	None	
<b>OBSERVERS</b>	None	

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## ITEM    DETAILS

### **Welcome and apologies**

The chair thanked Steve Barrow for his work in the role of Alternate Chair of the IRB.

Additionally, the chair informed the IRB that four board members whose terms were due to end at the end of December 2021 – Andrew Goldsworthy, Jane Titley, Mike Sufrin and Steve Barrow had been offered extended terms until April 2022 by the Regulatory and Conduct Appointments Committee. In addition, Philip Nicol Gent was offered and had accepted a one-year term as vice-chair until December 2022.

- 1. To approve the minutes of the previous meeting held on 10 October 2021**

The IRB approved the minutes subject to a minor amendment of the date of the exercise of the Insolvency Service's reserve power to June 2022.

The chair informed the IRB members that an action tracker would be prepared from this meeting showing outstanding actions and the progress made against those actions.

## **2. Matters arising from the minutes not dealt with elsewhere**

Parjinder Basra, on behalf of the risk subcommittee, informed the IRB that work was ongoing on the production of an analysis of complaints and that the analysis so far had shown no emerging patterns of concern. That work would now be incorporated into the dashboard. As a result of the analysis, the subcommittee may collect extra data in the future.

The chair noted that all the papers on the agenda were classified as confidential. The chair requested that consideration be given to producing sections that could be published and sections that were confidential to increase transparency in the future.

## **3. Chair's update**

The chair thanked the IRB members for giving their time to have introductory conversations with her and the Chief Officer, Professional Standards, for his time.

Matthew Downton informed the IRB members that individual email addresses for IRB members were being put in place. The next step was discussions with ICAEW's IT team to allow IRB members' access to the ICAEW's systems.

It was agreed that attempts would be made to align the strategy day with the holding of an IRB meeting in Milton Keynes, and the secretary would investigate the logistics of this. Another suggestion was to use an external facilitator for the strategy day – it was noted that promptly agreeing to a date for the strategy day would make it easier to arrange an external facilitator.

The chair would update at each meeting on any meetings she had had. In the week commencing 13 December 2021, the chair would be meeting with the Financial Reporting Council (FRC), the Legal Services Board (LSB) and Office for Professional Body Anti-Money Laundering Supervision (OPBAS).

## **4. PSD Chief Officer's update**

In addition to the items included in his report, Duncan Wiggett's informed the IRB of the following recent matters which had arisen since the preparation of his report:

- i. ICAEW was in negotiations with the Chartered Institute of Public Finance and Accountancy (CIPFA) to explore closer working. There is an exclusivity agreement in place. Regarding the potential impact on PSD of the current or future arrangements, it

was noted that CIPFA's regulatory and disciplinary work is not extensive, though this could change.

- ii. On 8 December, PSD received a copy of the LSB draft performance assessment for 2021. In 2020, in the 27 areas assessed, ICAEW had received green ratings in 25 areas, two amber and one red rating (well-led, regarding the publication of board papers). The 2021 assessment was an improvement overall in that the ICAEW was rated green with one red and one amber rating. The well-led assessment moved to green. Still, the LSB reassessed its marking for access to disciplinary data from an amber to red rating and the quality assurance of the quality of probate training from green to an amber rating.

One of the LSB's requirements was for ICAEW's "Find a chartered accountant", a marketing database should contain disciplinary data. It is acknowledged that not all ICAEW's probate firms are discoverable via "Find a chartered accountant", which was explained to the LSB. However, the LSB had also noted that there were too many sources of disciplinary data that they deemed confusing. The chair would consider writing to Michael Izza about the technical limitations of the Find a chartered accountant search function on the website.

The LSB had asked for comments by 15 December, and a call was to be held with the LSB on 14 December.

The Chief Officer informed the IRB members that the disciplinary database had gone back online in October 2021, shortly after the IRB had met.

In terms of the timing for the legal services strategy, the plan was to work back from the proposed PCF application in September 2022, and PSD staff would engage with the legal services working group in early 2022. The strategy would then feed through to the IRB.

A request was made that applications made to the LSB for regulatory change be shared with the IRB in order that the IRB could have sight of the level and type of information required and being provided to the LSB.

- iii. It was likely, given the new COVID restrictions, that the planned film launch event would have to be rescheduled.

The chair noted that the department was extremely busy.

The IRB also extended its good wishes to Justine Carruthers.

The IRB noted a decision in a recent case. A question was also asked about the deterrent effect of the sanction imposed. The Chief Officer explained that the fine was imposed in addition to that imposed on the individual by his firm. He clarified that it would be unusual for a tribunal to impose a fine when the individual had been subject to a separate financial penalty.

It was agreed that the IRB would write to staff thanking them for their efforts during 2021 and referencing that they had been coping without full teams for much of the year. In addition, the Chief Officer informed the IRB that staff would be receiving a pay increase, in line with inflation, and that there were funds available to pay bonuses for those deemed to have shown exceptional effort.

An update was also provided on the proposed insolvency consultation, which was expected to be published before Christmas and a proposed strategy for the response was set out. The government response following the BEIS White Paper was expected to be published in the third or fourth week of January 2022. It was also agreed that the Chief Officer would write to the FRC asking for an update on proposals around a recent high-profile case, having been requested to do so by the IRB.

### **Finance update**

Matthew Downton introduced this aspect of the update.

The IRB agreed that the IRB Chair would contact the ICAEW CEO after the IRB had discussed its communication strategy, including a website option at its February meeting to discuss making a case for the additional resources required by PSD. The IRB chair would also be invited to attend ICAEW Board, where there would be an opportunity to raise the need for additional resources. Funding had already been agreed for an additional member to be added to the PSD senior management team.

### **5. Insolvency issue paper (privileged and confidential)**

The IRB convened in a private session to discuss a sensitive and confidential matter and to consider legal advice provided by an external firm. It was noted that the legal advice itself was not the sole reason that the Board chose to reconvene in a private session.

### **6. Regulatory Appeals Regulations**

The IRB considered the matters raised in the paper where the Board was being asked to provide a view:

#### **Public/private hearings**

As part of its discussion, the IRB considered the need for transparency, reputational risk, the potential for additional cost to be incurred by holding hearings in public, and the views of the FRC.

The IRB agreed that the default position should be that hearings of the Review Committee and the Appeal Committee be held publicly.

#### **Publishing orders of the Review Committee**

The IRB agreed that the orders of the Review Committee should be published unless there were exceptional circumstances.

The IRB also agreed that the order be published pending any possible appeal or the determination of any appeal. A full record of the decision to be published if there is no appeal or the appeal has been determined. This approach is consistent with that which is applied to orders of the disciplinary tribunal.

The IRB agreed that PSD should engage with the oversight regulators and share what was being proposed.

#### **Publishing orders of the Appeal Committee**

The IRB agreed that the decisions of the Appeal Committee should be published unless there are exceptional circumstances.

This could be a simple statement stating that an appeal had been upheld. The IRB reached this conclusion as the changes previously agreed regarding publicity meant information about previous hearings not previously made available would now be published. The conclusion of the process needed to be made available. The IRB also decided that this change should be highlighted in the consultation.

The IRB agreed that a guidance note regarding exceptional circumstances should be developed. Accordingly, a draft of the publication policy and an outline of proposed exceptional circumstances would be brought to the February IRB meeting, having first been shared with the IRB subgroup.

Guidance to the IDR subgroup was to progress the project based on the direction provided by the IRB and to revert to the IRB if any fundamental issues were identified.

### **7. Approval of IDRs for public consultation**

The IRB was advised that the Investigation Committee chair had confirmed that he was comfortable with the concept of making the Conduct Department the prosecuting body. He was also supportive that there be a second body of work after the framework's launch to look at the positioning of the Investigation Committee.

The IRB then discussed the recommendations in the paper. During its discussions, the IRB considered the prosecuting body concept, the role of the retained law firm and the costs of using an external law firm. The IRB also considered the threshold for appeals.

The IRB

a) approved the policy decisions regarding:

- Prosecuting body
- Permission to appeal – test for permission
- Grounds for appeal against costs orders
- Interim orders – test
- Lie on file process
- Costs orders against ICAEW

taken by the Sub-group at its meeting on 26 November 2021;

b) approved the current draft IDRs for an eight-week public consultation starting on or after the week commencing 10 January 2022;

c) delegated to the Sub-group authority to approve the final drafts for public consultation of the Regulatory Appeals Regulations, the Fitness to Practise Regulations, the Readmission and Re-registration Appeals Regulations subject to the policy decisions made by the IRB at its meeting.

## 8. **Impact of BST go-live on PSD**

The IRB discussed the update provided. During the discussion, the following matters were considered:

- The impact of the BST changes on the fee collection process
- That there would be no parallel running of the systems
- Backup plans should the system launch be unsuccessful
- The risks of having to employ manual workarounds
- The resource implications of the involvement of PSD staff in the project and the welfare of the staff involved
- Addressing requests for access to the systems and data requests from the FRC

The IRB expressed its concern on the update received. It was agreed that the IRB chair should contact the ICAEW Chief Executive and the ICAEW President to express the IRB's concerns emphasising the legal obligations that PSD must meet.

**9. Update from Risk sub-group**

The IRB were updated on the work the risk subgroup had been doing.

Since the October IRB meeting, the group had met twice on 10 and 29 November. The group had been focussed on three matters:

- i. The group's terms of reference – the terms of reference were being drafted and would be brought to the IRB in February. The terms of reference would refer to the four areas of the sub group's focus – 1) having an IRB strategic risk register, 2) ensuring that PSD has risk processes in place, 3) having a role in managing risks, ensuring the right balance between the IRB and the subgroup and 4) performance monitoring
- ii. The risk register would contain ten descriptions of risks that the sub-group believes are the most strategic risks. This would also be brought to the IRB in February.
- iii. The performance dashboard – this would be brought to the IRB in February

The group planned to meet again in mid-January 2022 and would meet quarterly after that.

As part of the discussion, the chair informed the IRB that the Regulatory & Conduct Appointments Committee would shortly be launching a skills audit of the IRB.

The chair requested that the subgroup consider how the group would return work to the IRB. A request was also made that consideration is given to a means of interaction between the chair of ICAEW's Audit Committee and the IRB, and the interaction between the ICAEW's internal audit team and the risk subgroup and/ or the IRB.

**10. AOB**

11. There was no other business.

**12. Meeting dates 2022**

Thursday 10 February
Thursday 7 April
Thursday 9 June
Thursday 4 August
Thursday 6 October

Thursday 9 December

Strategy meeting TBC