

REPORT TO: CILEx REGULATION BOARD

FOR: DECISION

DATE: 12 May 2020

REPORT TITLE: INTERNAL GOVERNANCE RULES

SUBMITTED BY: Stuart Dalton, Director of Policy, Governance and Enforcement

PURPOSE OF REPORT:

1. To seek the Board's approval of key governance instruments required for IGR compliance, starting with the protocols, contract for support services from CILEx and service level agreement. CILEx's Board approved these documents on 21 April. The Annual Governance Review paper also includes changes that are needed to achieve IGR compliance, such as a change to our Articles of Association. Therefore, the Annual Governance Review paper should be read in conjunction with this paper.
2. To provide an update on progress with the project and outline the key next steps to deliver compliance in advance of the 23 July compliance deadline.

BACKGROUND:

3. Hook Tangaza have provide a project status dashboard report (**appendix 4**). In addition to this, it is highlighted:
 - Following the Board teleconference on 25 March which endorsed the protocols, contract and SLA, all the suggested improvements from CRL Board (Luisa provided the most feedback) were put to CILEx and accepted and incorporated in the documents.
 - The IGR Working Group and NEDs Steering Group meetings are now taking place monthly to oversee the project until compliance sign off. At the NEDs Steering Group on 26 March CILEx's Chair fed back a desire for CRL to develop more mechanisms to demonstrate value for money and regulatory standards to the membership that pay for CRL as a regulator (CILEx call this 'mutuality'). On 16 April NEDs meetings, CILEx's Chair agreed these mutuality discussions take place as part of the greater independence phase 2 rather than phase 1 IGR compliance.
 - Stuart Dalton and Simon Garrod (CILEx's Director of Governance) met with the LSB on 20 April to ensure our approach is compliant whilst we still have time to make changes prior to the 23 July deadline. It was a positive meeting with the LSB endorsing the quality of the protocols and our proposed evidence plan. This offers an indicator that we are well-positioned when LSB assess and rate compliance as part of their regulator performance regime. There were no suggestions for improvements that cannot be accommodated.
 - CILEx's Board on 21 April approved the protocols, contract and SLA delegating authority to the CILEx Chair to make any final alternations to the documents, if any are identified by CRL's Board.

- All the leads for remaining activities to achieve compliance, such as HR and procurement, were asked to confirm at the 22 April Working Group that 29 May deadline to complete final activities will be completed. All the leads assured that the 29 May deadline should be met. If this holds true, then we remain on track to present the final compliance sign-off at 11 June CRL Board teleconference, with CILEx Board sign-off on 29 June. Whilst we remain on track, it is still possible we may need to hold a later CRL sign-off teleconference.

KEY ISSUES FOR CONSIDERATION:

A) Approval of key governance instruments

A1 Protocols

4. The IGR expect protocols between the membership body and regulator setting out ways of working that are IGR compliant. Unlike some membership and regulators protocols already existed between CILEx and CRL. However, to ensure IGR-compliant protocols directly linking to the Rules, clarity of drafting and objectivity (including removing the risk of distrust in one party drafting the protocols for their own goals), CILEx and CRL agreed to use lawyers, Kingsley Napley, to draft the protocols afresh.
5. Board members have already reviewed the protocols. On the Board teleconference on 25 March, the Board endorsed the principles in the proposed protocols (as well as for the contract and SLA covered below). The improvements identified by Board members have been incorporated into the final protocols (**appendix 1**) presented to Board for approval.
6. Only two internally identified substantive changes were made to the protocols since the initial draft was considered at the Board teleconference on 25 March. Firstly, Linda Ford suggested the following wording be added at 4.3 to cover the mutuality point, "CILEx Regulation will, from time to time, publish its service standards to increase transparency of its performance as a regulatory body under the LSA." Secondly, Luisa Fulci recommended changes to the Resources section 9.1-9.4, to ensure we are not restricting our ability to call on CILEx to additional funds under Section 30 of the Legal Services Act. CILEx have accepted the changes.
7. The LSB recommended two substantive changes. Firstly to change the dispute referral arrangements in P.14 to minimise the need to refer the matter to the LSB. Secondly, to bolster the information-sharing annex, which has been done in B1.
8. For ease the changes have been marked as tracked changes with a comment to help quickly identify them in the protocols.

A2 Contract for support services and Service Level Agreement with CILEx

9. Up until now, there has only been a non-legally binding service level agreement (SLA) between CRL and CILEx. However, the IGR expect a contractual footing for support services with no advantages being offered to the membership body compared to third party providers. Therefore, a contract has been introduced to alter the nature of the relationship and put it on a formal customer and supplier

footing. Secondly, the SLA has been bolstered to reflect the changed relationship and expectations, including explicitly referencing IGR compliance.

10. The contract (**appendix 2**) and SLA (**appendix 3**) are presented for approval. Given the ever-evolving nature of services required and the detail of these services, it is proposed that the service catalogues remain with the Executive for amending, updating and agreement. This fits within existing Executive delegations and therefore does not need separate Board approval and is purely highlighted to the Board for transparency. An example service catalogue is saved onto sharepoint to enable the Board to see an example.
11. Please note that if the procurement process identifies alternative cheaper providers (delivering the same level of service as CILEx) then CRL are required to go with these alternative providers. However, initial work on this does not indicate that CRL will be able to find alternative providers at a cheaper rate than CILEx whilst offering the breadth and quality of services CILEx currently offer. The second phase of the greater independence project will focus on stimulating the market to try and build alternative suppliers e.g. shared services between regulators (whether within or outside legal services regulation).

B) Project update and next steps to achieve the IGR compliance deadline

B1 Dashboard

12. Hook Tangaza, the external governance consultancy supporting the project, have provided an objective perspective on project progress in the attached dashboard (**appendix 4**).

B2 Next steps and delivery for 23 July 2020

13. The final slide of dashboard (**appendix 4**) sets out the next and final steps to achieve full IGR compliance. Once all the IGR compliance actions are completed, the Board will need to sign-off a compliance certificate that the LSB is expecting from both regulators and the membership bodies before 23 July 2020. We anticipate we will be ready to obtain compliance certification at 11 June Board teleconference.

IMPACT ASSESSMENT:

Public/Consumer	
Consumer	Positive impact by greater regulator independence
Public interest	Positive impact by greater regulator independence
Environment	N/A
Regulated Community	
Cost of Regulation	Ongoing compliance costs have been included in the 2021 PCF budget, estimated at 0.15 of a FTE related to contract monitoring, service development and procurement; various IGR-required logging activities; providing evidence to the LSB; issue resolution; training; administration and meeting support for ongoing NEDs Steering and Working Group as the project moves to phase 2 greater independence focus etc.

Equality and Diversity	None identified – due to keeping costs down
Us	
Reputation/Brand	Positive impact by being viewed as more independent with the opportunity to review our branding
Resources:	<ul style="list-style-type: none"> • Hook Tangaza – CILEx agreed to pay for this service for the IGR compliance until 23 July. If we wish to use them as part of the greater independence work, there may be a cost implication • A member of CRL staff is doing an additional day a week on IGR since mid-March to increase CRL capacity (this reflects the 0.15 FTE covered in Cost of Regulation above) • CILEx also identified a support officer from their Compliance team
Operations:	N/A
Risk:	<ul style="list-style-type: none"> • Maintaining positive relations with CILEx – working well through positive personal relations, the working Group and NEDs Steering Group • Resources to deliver the changes to the timescale – mitigated through Hook Tangaza consultancy and additional resource highlighted above (which also mitigates against one or more of the key project group being incapacitated with COVID-19).
Finance:	No additional finance implications beyond the PCF point highlighted above
Legal:	We anticipate being fully compliant by 23 July. Equally non-compliance would be reflected in the LSB performance ratings and the LSB has directive powers for serious breaches.
IT:	N/A

RECOMMENDATION:

- The Board **APPROVE** the:
 - The Protocols between CILEx Regulation and CILEx;
 - Contract for support services from CILEx; and
 - Service Level Agreement with CILEx.
- If the Board wish to make any additional changes to the Protocols, that the Board **DELEGATE** approval authority to Sam Younger to agree final changes to the Protocols with CILEx.
- The Board **NOTE** the progress made in delivering the IGR and highlight any matters it wishes to be considered in the next steps prior to the 23 July IGR compliance deadline.

Appendices

Appendix 1: Protocols with appendices

Appendix 2: Contract for support services from CILEx

Appendix 3: Service Level Agreement with CILEx

Appendix 4: Project dashboard from Hook Tangaza