

**REPORT TO:** CILEx REGULATION BOARD

**FOR:** DISCUSSION

**DATE:** 29 SEPTEMBER 2020

**REPORT TITLE:** ITEM 11 - IGR PHASE 2 – GREATER INDEPENDENCE

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

**PURPOSE OF REPORT:**

1. To obtain the Board's steer on appetite relating to greater independence to inform discussions with CILEx for the scope of phase 2. Phase 2 is the steps to further independence that are not required by the IGR.

**BACKGROUND:**

2. The LSB have fed back that they accept our IGR compliance position and they have reassured us that they do not intend to invoke an onerous compliance evidence and assessment regime. This leaves us free to consider what steps we wish to take to achieve even greater independence, which are not required under the IGR.
3. The context is CILEx made a public statement committing to maximising regulator independence. When CRL learned CILEx intended to make this statement we cautioned against it. However, CILEx chose to proceed with the statement.
4. At a meeting with Linda Ford on 11 September to help better understand what CILEx wishes to achieve in phase 2 we obtained a better insight into what CILEx are seeking.
5. CILEx's Board want a clear vision of what independence max looks like and from that would like to achieve a joint vision/understanding with CRL for independence.
6. CILEx are keen to explore what genuine independence looks like, including financial independence.
7. Linda would like to start with what an independent financial model looks like, before considering what a corporate structure with CRL being independent might look like. For example, the PCF, fee and what the reserves models look like.
8. Regarding the corporate structure, what would make CRL more independent. CILEx are changing their corporate structure that will leave CRL as the only subsidiary so there is the opportunity to consider it now and whether there are any other structural options. Linda was clear is no appetite to change the Charter and bye-laws or seek changes to the Legal Services Act. It was highlighted to Linda that structure also needs to consider interlinkages such as permitted purposes.
9. There was a shared view that we should not put ourselves under timescale pressures to rush the scope of phase 2 like the timescale pressures to achieve IGR phase 1. However, CILEx are also keen to see progress on this. Feedback from Linda Ford is that maximum regulator independence is something Chris Bones wishes to see achieved within his tenure, which concludes in roughly 2.5 years time.

10. Another useful insight into drivers was Linda highlighting CILEx's concern about financial liability beyond under the Section 30 legal services act duty to pay reasonable regulator costs. CILEx are concerned about other legal liability risks such as health and safety, employee tribunal claims etc.
11. CILEx do not wish to miss any opportunities for greater independence as and when they arise, by knowing in advance where independent appetite lies.
12. CILEx are asking for a prompt view from CRL on what our branding desires are. Do we wish to fall under the CILEx branding and are we open to considering a name change? To address the perceived stigma CLE's experience, they are keen to rebrand to CILEx lawyer and specialist lawyer.
13. Linda felt the building change raised the question of whether there is an opportunity consider separating as well as choosing to stay together.
14. Linda Ford has indicated she is prepared for CILEx to pay Hook Tangaza an additional £10-15,000 to help scope an options paper to aid a collective discussion.
15. We have agreed to feed CILEx's thinking for Board consideration and then meet with Linda Ford following the Board to feedback, with the possibility of a NEDs meeting if it would be helpful. Linda Ford offered to attend this Board meeting.

#### **KEY ISSUES FOR CONSIDERATION:**

16. What is the Board's appetite for independence?
17. What areas of independence are the Board most keen and least keen to pursue?
18. The Board has previously expressed a desire to have early conversations on Reserves and Shared Services.
19. One area not mentioned above is culture, given a great deal of independence comes done to CILEx understanding what is regulatory and then respecting CRL's independence for these matters, even when they have a keen interest or may disagree with the regulator.
20. What is the Board's preferred approach to resolving if there is differing levels of appetite between CILEx and CRL?
21. A question CILEx have asked CRL to answer is; How important do CRL feel independence is from a public and key stakeholder trust perspective and what can be done to maximise the perception of independence?

#### **IMPACT ASSESSMENT:**

<b>Public/Consumer</b>	
Consumer	Positive impact by greater regulator independence
Public interest	Positive impact by greater regulator independence
Environment	N/A

<b>Regulated Community</b>	
Cost of Regulation	Depending on the options chosen, the cost of regulation may go up to achieve even greater independence
Equality and Diversity	None identified – due to keeping costs down
<b>Us</b>	
Reputation/Brand	Positive impact by being viewed as more independent with the opportunity to review our branding
Resources:	<ul style="list-style-type: none"> <li>• Hook Tangaza – CILEx agreed to pay for this service</li> <li>• The officer time, particularly the Director of Governance's time, to progress actions</li> </ul>
Operations:	N/A
Risk:	<ul style="list-style-type: none"> <li>• Maintaining positive relations with CILEx</li> <li>• Resources to deliver the changes</li> <li>• Potentially differing risk appetite / ambitions between CILEx's Board and CRL</li> </ul>
Finance:	Dependent on options chosen
Legal:	We are IGR compliant. However, additional steps help ensure compliance
IT:	N/A

**RECOMMENDATION:**

- The Board are asked to **NOTE** the report and provide its steer on independence appetite, scope and priorities.