

	CILEx Regulation Limited
Date	16 November 2023
Item	ITEM 8.0
Title	Strategy (2022-2024) Standards strategic objective review
Author	David Pope, Director of Operations
Purpose	This paper provides the Board with a report on progress to date against the CRL Standards Strategy, planned activity for the remainder of the year, and sets out the proposed activity for 2024
Recommendation	The Board is asked: (a) to NOTE progress in 2023; and (b) APPROVE the proposed workstreams for 2024.
Timing	This Report includes Q4 work streams for 2023 and proposed workstreams for 2024
Impact assessment	Attached
Impact on Regulatory Objectives	This report provides an update on proposed workstreams for 2024 which will affect all the regulatory objectives. These are covered in the impact assessment below.
Implications for Resources	The proposals are likely to have additional resource requirements, particularly for ongoing competence and IT development.
Impact on Consumer Empowerment	Ensuring that CRL continually reviews and updates its standards protects and promotes the interests of consumers
Impact on Ongoing Competence	The report covers the launch of ongoing competence in 2024 and the initial supervision work that will be required.
Publication Status	The report is for publication.
Appendix	

PURPOSE OF REPORT:

1. This report provides the annual update to the Board on the progress against the 'standards' strategic objective. It also sets out proposals for workstreams that could take place during 2024 to contribute to the standards strategic objectives for 2022-24.

INTRODUCTION:

2. This paper provides the Board with an update on the actions taken under the standards strategic objective since the last review of this objective, which took place in September 2022. It sets out proposals for additional work which may be undertaken to meet the standards objective in 2024.
3. The paper is divided into 2 parts:
 - a review of progress against the current objectives and

- consideration of potential workstreams based on the strategic objectives for 2022-24.
4. Part 2 of the paper seeks the Board's view on the following possible workstreams for 2024:

RECOMMENDATION:

5. The Board is asked to **NOTE** progress in 2023 and **APPROVE** the proposed workstreams for 2024.

PART ONE: REVIEW OF PROGRESS AGAINST CURRENT OBJECTIVES

6. The Board decided the strategic direction for standards in 2022 as follows:

- Undertake a review of the regulatory model, starting with entity regulation, to ascertain the value to the public interest and plausibility of developing alternative options in order to increase access, and develop value, for a diverse regulated community and consumers.
- Embed a culture of continuous improvement at CRL to develop and enhance an innovative approach to service in legal services regulation. Enable the use of technology to improve legal services delivery and to improve the way we deal with internal processes.
- Develop an enhanced approach to individual supervision to assure ongoing competence of our regulated community, in partnership with other regulators.

7. This section of the report considers progress against these objectives achieved between September 2022 and September 2023 and sets out further actions for quarter four 2023.

Objective 1: Undertake a review of the regulatory model, starting with entity regulation.

Introduction:

8. Objective 1 required CRL to review how consumer protections could be retained using alternative, possibly technology-based, solutions that may reduce the costs to firms and create an effective alternative structure for law firm regulation.
9. The objective was set to account for the difficulties in the insurance market relating to access to PII for law firms and the ongoing compensation arrangements difficulties. CRL also believed that there were inherent barriers faced by lawyers once they have decided that they would like to set up their own firm.

Objectives from the strategy implementation plan:

Review regulatory model

10. As reported to the Board at the September 2022 Board meeting, this objective was sub-divided into two stages:
- to undertake research on the possible development of a new model for entity authorisation and supervision.

- to take forward research into the unregulated market once the LSB and the SRA had completed their research into the operation of unregulated legal services.

Stage 1 - Research

11. The research on use of a Third-Party Managed Account or TPMA and the development of 'Law Firm in a Box' was completed by IRN Spinnaker Research.
12. The practical use of TPMA identified significant issues with the proposal for some CRL regulated firms (primarily for firms who have high volumes of low value transactions and those that receive and issue cheques), and so this was not a viable option as part of the options to address compensation arrangements. The Board is aware that the existing CILEX compensation arrangements are still supported by CILEX and have been accepted by the LSB, with a further update in January 2024.
13. The research into the attractiveness of the Law Firm in a Box proposal was presented to the Board at the September 2022 Board meeting.
14. Unfortunately, CRL cannot progress this work until the future of regulatory arrangements for the CRL regulated community is settled. That has hampered all discussions with interested parties by CRL and its brokers. Clearly there is a risk that all parties may not have the same interest in the future.

Stage 2 - Review of legal landscape

15. Once the entity review was completed. CRL had planned to review the work of the LSB and the SRA in relation to the gaps which may exist in the regulatory market, considering its operation from the perspectives of both the regulated community and consumers.
16. Last year CRL reported that the LSB had presented a paper to their June 2022 Board, which concluded that: *'the evidence we have obtained does not provide us with a compelling case to justify pursuing a resource-intensive full statutory review of the reserved legal activities at this time... [although] we may wish to consider whether a targeted review is warranted to seek to reduce the risk of harm to consumers in a specific area where detriment is identified... There is merit in further exploring the feasibility of pursuing voluntary arrangements. We propose to engage with other regulators (such as the Professional Standards Authority) to discuss their approaches to similar powers. We also propose to engage further with those in the unregulated sector to test whether there is appetite for the LSB to provide assistance in the development of voluntary arrangements funded by unregulated providers.'*
17. There has been no further action since, although the current proposals by CILEX and the SRA may cause this matter to be considered once again.
18. In June 2023 the SRA published their research paper '[Understanding the unregulated market](#)'. The key conclusions that they made from the report were as follows:

The current market

- *Market is growing but fairly small at 6-8% of the total legal market turnover.*
- *Customers are individuals and small businesses.*
- *Providers are mainly in will and estate administration work (25%), family work (12%) and employment (11%) work.*

- *Many are members of professional bodies such as the Society of Will Writers, some FCA regulated, but some are not regulated at all and/or are not members of professional bodies.*
- *Potential for concerns about the quality of advice and service from unregulated providers that are not subject to any regulation or professional membership.*
- *Most small business consumers view regulation as important for the market and most preferred using a regulated provider even if they were more expensive.*
- *Many unregulated providers thought regulation is important too, especially those providing wills and trusts services.*
- ***About half of unregulated providers thought that people do not understand the difference between regulated and unregulated services.***
- ***And 14% said they would become regulated if they had to disclose their regulatory status.***

Potential future development of the market

- *Significant planned increase in their use of legal technologies for storing data, developing interactive websites and for identity checking.*
- *demand for legal services will rise over the next few years.*

Potential implications for consumers

- *Consumers who cannot distinguish between regulated and unregulated providers might not be aware of the protections available to them. So, consumers are likely to benefit from better information about whether a legal services provider is regulated and the differences between, and within, regulated and unregulated providers.*
- *Any growth in unregulated provision will increase access to justice, especially for those with lower incomes, but it brings the potential for increased risks.*
- *Due to fewer protections and routes to redress for poor quality and services when using a provider not subject to regulation.*

19. The SRA have stated that they will consider this research when considering potential changes to their regulatory requirements and believe it will feed into other work related to public legal education resources provided by the regulators, for example Legal Choices.

20. CRL needs to review the outcomes of the research before the end of 2023 as this may well be relevant to the current review of regulatory arrangements and the proposals by CILEX and the SRA.

Objective 2: Use of technology to improve processes (external and internal)

Objectives from the strategy implementation plan

External focus: Attendance at external meetings and collaboration with other frontline regulators.

21. The key activity under this objective was CRL's involvement as an observer with the SRA's unbundling pilot study. The SRA have finally published the [final evaluation](#) of the pilot on 15 June 2023. CRL will use this information to develop an approach to

unbundling and to develop advice and guidance on the use of unbundling to CRL regulated firms (including issues relating to PII).

22. CRL is a member of Law Tech UK's Regulatory Representation Unit (RRU), now managed by Codebase and Legal Geek, and attends these meetings to provide regulatory advice to law tech start-ups as required.
23. The LSB has consulted on draft statutory guidance on promoting technology and innovation to improve access to legal services and this will drive work in 2024 in this area.
24. CRL has agreed to explore a collaborative research project on digital exclusion with the BSB, ICAEW and IPReg.

Internal focus: Utilise technology and innovation within CRL and embed a culture of continuous improvement to aid delivery of best value legal regulation.

25. Key target areas for 2023 were to:

- a. introduce automated processes, building on the ACCA registration, with a renewal process, through the CRL portal,
- b. introduction of a digital entity directory
- c. introduce the work-based learning portfolio submission tool, and
- d. risk-based supervision (followed by risk-based enforcement) – see objective 3 below.

26. The ACCA renewal process was brought in at the start of 2023, but there were a number of operational issues with it that have proved frustrating for the Entity Officer. Not all of these have been resolved satisfactorily.

27. The digital entity directory and the ACCA equivalent both still require further development and testing to be resolved. These have been ongoing for a considerable time.

28. The work-based learning tool remains a work in progress because of the lack of progress with an online portfolio tool and there is no sight of any online applications now.

29. There has been little progress with the utilisation of technology to aid CRL staff during 2023 and with the changes in the development team, it is unlikely that there will be any significant progress in the rest of 2023. This will clearly hamper CRL in the future.

Objective 3: Develop an enhanced approach to individual supervision to assure ongoing competence of our regulated community, in partnership with other regulators.

Risk-based supervision: The following activities were identified to be completed within this strategy period:

- a. Understand and develop risk profiles of regulated community once practitioner risk matrix live in CRM,
- b. Develop options to enhance supervision of regulated community through increased understanding of individual risk profiles, and

- c. Develop rule changes to introduce new supervisory tools.
30. The amendments to the CRM to enable a unique risk score to be attached to each member record was completed at the end of 2022 and some issues with the scoring were identified and resolved in the early part of 2023. The data was analysed and created interest from the LSB in how this could be used in contributing to our supervisory arrangements.
31. CRL has started to use the risk data in a number of applications during 2023.
32. The data has been used in investigative actions in 2023 related to identification of non-authorised members potentially conducting litigation and the provision of immigration advice outside of a regulated firm. This has been well received by those stakeholders who have been overseeing this work, namely the LSB and Home Office respectively.
33. During 2023, the Enforcement Team are now looking at the risk score as part of the initial triage process of a complaint in considering whether there has been sufficient misconduct to warrant an investigation.
34. The use of risk profiles of the regulated community will assist CRL with the implementation of ongoing competence assessments (which has been covered separately in Board papers during 2023). The Head of Education has been considering how these can be used in an effective way.
35. The review of regulatory arrangements is covered in Part Two below.

PART TWO: PROPOSED AREAS OF WORK FOR THE 2024 STRATEGY AND BUSINESS PLAN

36. Once the outcome of the CILEX review of its regulatory arrangements has been concluded and a final decision received as to the future of CRL, then CRL believes that there should be a discussion with CILEX as to a shared strategy for benefit of the membership.
37. However, it is important that the key objectives within the 2022-4 CRL strategy are progressed for the benefit of the CILEX membership. Subject to the continuation of CRL as the regulatory body, CRL has set out the following proposed areas of work for 2024, as follows:

Undertake a review of the regulatory model, starting with entity regulation, to ascertain the value to the public interest and plausibility of developing alternative options in order to increase access, and develop value, for a diverse regulated community and consumers.

- Develop the Law Firm in a Box proposal using the intelligence from the IRN research,
- Using research from LSB and SRA, together with CRL's data on self-employed CLEs and other CILEX members, review approach to unregulated legal services market (see above),
- A review of the approach to activity-based regulation at CRL., and
- Develop with CILEX a cohesive approach to the understanding of and encouraging the take up of practice rights

Limitation of Activity-Based Regulation (as it operates at CRL):

38. CRL has been regulating individuals by specialism since 2014. The authorisation to practise independently in a reserved or regulated area was defined at the time of designation by the reservation rather than being role-based.
39. CRL advised the Board in 2022 standards review that this method of authorisation puts CILEx Practitioners at a disadvantage over legal professionals with a general practising certificate (one which enables solicitors and barristers to practise in all reserved/regulated areas of activity).
40. Two examples of the issue, ones which CRL are aware of, were previously advised to the Board and remain as follows:
 - Probate: Practitioners who undertake probate work are often required to undertake work which would be classed as conveyancing (e.g., severing a joint tenancy when writing a will), or, where a probate case becomes contentious, the practitioner would require civil litigation rights. The limitation of the probate practice rights has meant for example, that probate practitioners are not able to lodge severing of a joint tenancy at the Land Registry.
 - Immigration: In order to be able to fully represent clients in judicial review cases, the legislation requires civil litigation and advocacy rights. CRL has had two Immigration Practitioners forced to seek Civil Litigation and Advocacy rights in order to be able to carry out their role effectively.
41. In the medium term it is suggested that a review of the operation of activity-based regulation at CRL, with input from CILEX, is undertaken to ensure that CILEX Practitioners are not disadvantaged when compared with solicitors.

Embed a culture of continuous improvement at CRL to develop and enhance an innovative approach to service in legal services regulation. Enable the use of technology to improve legal services delivery and to improve the way we deal with internal processes.

Legal Technology (external)

42. CRL will continue to engage in understanding the developments in legal technology, including policies to encourage CILEx law firms to innovate and to keep a watching brief on the following developments:
 - DCMS Digital Identity
 - E-signatures
 - Online courts
 - Back-office automation
 - Simplified conveyancing processes (e-conveyancing, chain management, blockchain transfer) including attending HMLR Industry Forum, Land Registry Advisory Council. Home Buyer & Seller Group and DPMSG
 - Video witnessing of wills
 - 'RegTech' (compliance and monitoring of firms)
 - Access to justice (Public Legal Education, providing legal information in accessible format, 'platforms' to help people identify legal issues)
 - Open Justice (video conferencing, automatic reporting)
 - Artificial Intelligence

43. CRL will work with other regulators on the collaborative research project on digital exclusion and a budget of up to £15,000 has been agreed by the CRL Board.
44. CRL expects the LSB to publish its statutory guidance on promoting technology and innovation to improve access to legal services in 2024 and this will be based on the three outcomes in the consultation:
- **Outcome 1: Technology and innovation are used to support improved access to legal services and to address unmet need.**
This outcome is driven by evidence that the adoption of technology and innovation based around the needs of consumers is already having a positive impact in the legal services market, and that the promotion of technology and innovation could further enable consumers to better access legal services now and in the future.
 - **Outcome 2: Regulation balances the benefits and risks, and the opportunities and costs, of technology and innovation in the interests of the public and consumers.**
This outcome focuses on the need for regulators to understand and balance the benefits and risks, and the opportunities and costs, related to the use of technology and innovation in the provision of legal services, without being unduly risk averse.
 - **Outcome 3: The legal services sector is open to technology providers and innovators and barriers to entry are lowered.**
This outcome is driven by evidence about the barriers faced by technology providers and innovators who wish to enter the legal services market and the need for ongoing, proactive collaboration to help reduce barriers to entry and promote consumer choice.
45. Developing the CRL approach to meeting these outcomes will be a key part of this objective in 2024.

Internal innovation

- Working either with the CILEX CRM development team or accessing other external providers, CRL should prioritise accessing IT systems to facilitate the introduce online applications for qualifying employment, work-based learning, practice rights, and entity, and
- Consideration of the introduction of a handbook to support the principles-based code of conduct.

Principles-based code

Background

46. The details of this objective were presented to the Board in the 2022 standards paper.
47. Since 2007, when CILEX became an approved regulator, CRL has adopted a principles-based Code of Conduct on which to found its supervision of individuals and firms. The Code sets out nine core principles to guide and support the regulated community in the work they do, and the principles are supported by outcomes that the regulated community is required to achieve.

48. CRL also has rules, approved by the LSB, to address specific requirements as needed and, where an issue is not addressed by a specific rule, CRL has looked either to any underpinning legislation, or how the issue has been dealt with previously under the Code of Conduct to determine how to proceed.
49. This approach is different from other regulators, such as the SRA and BSB, who have historically operated with a larger set of prescriptive rules, covering more eventualities, presented within a handbook.

The issues faced with the principles-based code?

50. Whilst the Code of Conduct is well thought of by external bodies, the challenge that CRL faces is the need to address very specific requirements that would either not fit naturally within the Code of Conduct or would mean that CRL is expanding the principles or outcomes. These relate to specific areas of legal practice which are being subject to greater scrutiny as risks are uncovered that need to be addressed.
51. Examples of issues that CRL needs to address, but where the rules do not naturally fit within the existing structure, are set out below:
- Immigration – struck off individuals
 - Immigration: Ongoing competence
 - Claims Management – regulatory arbitrage
 - Alternative Dispute Resolution (ADR)
52. By not having all the rules (and possibly guidance) in one place, CRL also faces issues as to how a complete picture can be presented to regulated individuals and firms.

Recommendation

53. CRL believes that the Code of Conduct with its principles and outcomes provides a strong basis for us to set expectations for individuals and firms.
54. However, CRL has seen the benefit of presenting the rules, including a Code of Conduct, for CILEx-ACCA Probate Entities as a handbook. This provided clear separation from the rules that apply to CILEx Authorised Entities and gave clear guidance to the ACCA firms.
55. When looking at misconduct issues it would assist the various panels to have all rules and code together in one place and this should aid decision making.
56. The proposed approach would bring the existing documents together in a more coherent and clear manner. This would help to provide greater understanding of the process for the individual and it would give greater clarity to CRL's expectations of both members & firms.
57. However, by adopting an approach as set out below, CRL considers that both individuals and firms will gain extra clarity on regulatory expectations:

Code of Conduct/Rules Handbook

+

Enforcement Handbook

+

Supporting guidance

58. CRL considers that it will allow:

- rules to develop to address emerging risk (as highlighted in the issues above),
- enable CRL to present the rules in a simple and coherent manner, and
- provide greater understanding of the expectations for individuals and firms.

Develop an enhanced approach to individual supervision to assure ongoing competence of our regulated community, in partnership with other regulators.

Risk-based supervision and implementation of the LSB's policy statement for ongoing competence

59. The following activities will be used as part of the development of appropriate tools to support the implementation of ongoing competence at CRL:

- a. Develop risk profiles of regulated community now the practitioner risk matrix is live in CRM,
- b. Implement the identified options to enhance supervision, complying with the LSB's policy statement on ongoing competence and individual risk profiles, and
- c. Develop rule changes to introduce new supervisory tools.

Impact Assessment:

Public/Consumer	
Consumer	Ensuring that CRL continually reviews and updates its standards protects and promotes the interests of consumers.
Public interest	It is in the public interest that regulators continually review and update standards.
Access to Justice	Ensuring the regulated community is able to deliver legal activities to the public promotes access to justice.
Public Legal Education	No direct impact
Other Regulatory Objectives	
Rule of Law	Setting and maintaining high standards supports the rule of law by ensuring the public and consumers are able to access effective legal services
Competition	A commitment to maintaining and enhancing standards for authorisation of individuals and firms is essential for legal entities to achieve competitive advantage
Professional principles	A commitment to high standards helps lawyers to comply with the professional principles, including the requirement to act in the best interests of clients
Other issues	
Environment	No direct impact
Regulated Community	
Cost of Regulation	There is the potential for the new supervision requirements to have a negative impact on the cost of regulation owing to increased requirements for reaccreditation. However, this is a requirement of the LSB.

Equality and Diversity	CRL's regulated community is more diverse than some other parts of the legal profession and therefore making positive changes to ensure access to authorisation should have a positive impact on equality and diversity. The additional requirements for ongoing competence will require monitoring to ensure there is no adverse impact on EDI.
Us	
Reputation/Brand	Continued commitment to high standards contributes to maintenance of CRL's reputation
Resources:	The proposals are likely to have additional resource requirements, particularly for ongoing competence.
Operations:	CRL is keeping this under review. At present, CRL believes that resourcing through the Operations Directorate may be sufficiently flexible to enable the additional requirements to be completed without additional human resource requirements, although CRL will probably need additional IT support.
Risk:	Failure by the CRL to continue to maintain and enhance standards for all is likely to have a detrimental impact on its reputation
Finance:	Additional resources may require additional financial support, both for IT changes and human resources.
Legal:	No direct impact
IT:	There are likely to be additional demands on CRM development in 2024.