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By email

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Dear Janine

Decision to commence an investigation in consideration of exercise of LSB enforcement powers – terms of engagement and scope

1. Following the letter from Matthew Hill, dated 4 October 2022, I write to confirm the terms of engagement and scope of the forthcoming investigation. I am writing to Linda Ford, CILEX CEO, in the same terms.
2. The LSB will carry out the investigation in a fair, transparent, efficient and timely way and in accordance with our duties under section 3 of the Legal Services Act 2007 (the Act)¹. The LSB expects CILEX to reflect the same principles in its approach to compliance, cooperation and engagement with the investigation process. We will keep all parties up to date on the progress of the investigation.

Scope of investigation

3. The investigation will cover the period from June 2021 to October 2022. The LSB considers that this time period provides a reasonable window in which we can consider the full range of relevant issues. For the avoidance of doubt, this investigation replaces any process in relation to the disputes that have already been raised with the LSB by the parties.
4. The investigation will consider the lawfulness of the acts or omissions of both parties and compliance with their duties under the Act. The aim of the investigation is to inform the LSB's decision concerning whether to exercise its enforcement powers.
5. The lines of enquiry (at least at this stage) will be as follows:

¹ <https://www.legislation.gov.uk/ukpga/2007/29/section/3>

1 - Delegation

(a) The disagreement between CILEX/CRL concerning the extent of CILEX's powers under the Act and the Internal Governance Rules 2019 (IGR) to consider re-delegating its regulatory functions to another body and/or begin preparatory steps for doing so.

AND

(b) The impact of the acts/omissions of CILEX when considering a possible re-delegation and CRL's acts/omissions in response. In particular, whether those acts/omissions have had the effect of undermining CRL's exercise of its regulatory functions.

2 – Financial matters

Issues arising out of the IGR dispute referred by CRL regarding financial matters including the transfer of reserves and alleged PCF surplus retained by CILEX. This will include consideration of the overall financial management of both CILEX and CRL and other connected financial matters.

3 – Consultation

Issues arising out of the IGR dispute referred by CILEX regarding CRL's proposed consultation entitled 'Regulating responsibly and responsively'.

6. The LSB considers that the apparent breakdown in relationship between CILEX and CRL and consequential breakdown of trust and communication is material to all the areas of investigation listed above. It will therefore consider this issue as a part of each of the matters set out above, where relevant.
7. Further details on the issues that we expect to cover in respect of these lines of enquiry can be found in the Annex to this letter. I should say that these are not exhaustive and that further elements may be included (or excluded) in the course of the investigation. CILEX and CRL will be informed of any change in scope.

Next steps and terms of engagement

8. This letter marks Step 2 of the investigation process. As set out in the Annex, the LSB will now commence Step 3 and will carry out a detailed analysis of the information that we hold to date.
9. Following that, we will write to you seeking any additional information that we may require. This request for information will be made under section 55 of the Act. We may also wish to hold interviews with board members and/or members of the executive. Should this be the case we will explain the purpose of those meetings and provide reasonable notice.
10. The LSB may make interim findings and/or findings on all or any issues of the investigation and may do this before conclusion of the full investigation. The LSB's current position is that it may make a finding on issue 1(a) above, prior to the conclusion of the investigation as a whole.

11. The LSB may seek the views of any other relevant third parties, including approved regulators and regulatory bodies, where it considers it relevant and of sector wide importance, for example in relation to the powers of delegation (issue 1(a) above).
12. The parties are referred to the [LSB Statement of policy for enforcement](#), which explains the options open to the LSB in accordance with the Act.
13. CILEX, CRL and any other relevant parties will be given time to review any interim findings and the final investigation report for comment and fact checking purposes prior to publication.

Request to pause further steps

14. We have previously asked CILEX and CRL to pause any further steps, including external and public communications/engagement/consultation, in connection with any of the matters in dispute between them. The LSB asks the parties to continue to refrain from public communications/engagement/consultation. However, it is a matter for both CILEX and CRL whether they chose to continue to work on their proposals or any issues connected to this matter either internally, together or with other external parties, advisers etc whilst the matters are under LSB investigation.²
15. Both CILEX and CRL should continue to carry out regulatory or 'business as usual' functions connected to the matters in dispute. This includes working effectively together where necessary. If either party has any doubts about whether or not a particular step/activity falls within the scope of the request to pause, please feel free to contact us in advance. It would also be beneficial if continued or renewed efforts are made to reconcile differences in the interim, where possible.
16. The LSB considers that this request to pause public announcements is necessary to prevent ongoing risk that CILEX/CRL will undermine the other's activities by publicly airing their disputes and disagreements. We consider that, based on the information available, there may be evidence that the parties' previous acts or omissions have had an adverse impact on one or more of the regulatory objectives. The request is therefore proportionate to that risk of harm or potential harm to the regulatory objectives.
17. The LSB will keep this request under review and CRL and CILEX are, at all times, welcome to make representations as to why this request should be lifted or amended in any way. The period of time that this pause is in place is dependent on the progress of the investigation.

Publication

18. Finally, please note that we intend to provide a copy of this correspondence to our Board and publish it on our website [investigation page](#) on Wednesday 12 October at 5pm alongside Matthew Hill's letter to you dated 4 October. The operational plan will not be published.
19. Following publication of the notice of investigation, we will make no further public comment until the investigation has concluded and findings including any

² This request is made in accordance with the IGR 14(2) and paragraph 14.9 of the IGR Guidance and more generally in accordance with s7 of the Act. <https://www.legislation.gov.uk/ukpga/2007/29/section/7>

enforcement decisions are published. We ask that CILEX and CRL also adopt this position, save for any public acknowledgement of the commencement of the investigation that they may wish to make. This is to protect the integrity of the evidence and information gathering process³.

20. Please do not hesitate to contact me if you wish to discuss the contents of this letter further. We will write again as promised with a request for further information in due course.

Yours sincerely

A handwritten signature in blue ink that reads "Angela Latta". The script is cursive and fluid.

Angela Latta
Head, Performance and Oversight

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³ The information sought and shared as part of the investigation is restricted information in accordance with s167 of the Act and the request for no public comment is also made in accordance with s7 of the Act.

INVESTIGATION PROCESS – CILEX CRL

A. Detailed lines of enquiry

The detailed lines of enquiry are as follows

1 - Delegation

- a) **The disagreement between CILEX/CRL concerning the extent of CILEX's powers under the Legal Services Act 2007 (the Act) and the Internal Governance Rules 2019 (IGR) to consider re-delegating its regulatory functions to another body and/or begin preparatory steps for doing so.**

AND

- b) **The impact of acts/omissions of CILEX in pursuit of its considerations regarding re-delegation and CRL's acts/omissions in respect of this issue. In particular, whether those acts/omissions have had the effect of undermining CRL's exercise of its regulatory functions.**
- i. Legal question regarding the power of an approved regulator to re-delegate its regulatory functions to another regulatory body.
 - ii. Did CILEX act in compliance with/contrary to the IGR and s28 of the Act in effecting its plan to consider options for re-delegation?
 - iii. What was the impact of CILEX's actions/decisions – did CILEX undermine CRL's discharge of the regulatory functions?
 - iv. What was the impact of CRL's response to CILEX's plans/actions – was the response in accordance with the IGR and s28?
 - v. What steps have been taken to resolve the matter via internal dispute resolution processes? Have they been effective? If not, why not?
 - vi. Did any of the acts or omissions by either CILEX or CRL in connection with the re-delegation issue have or were they likely to have an adverse impact on one or more of the regulatory objectives?

2 – Financial matters

Issues arising out of the IGR dispute referred by CRL regarding financial matters including the transfer of reserves and alleged PCF surplus retained by CILEX. Including considerations of the overall financial management of both CILEX and CRL and other connected financial matters

- i. What is the nature of CRL's request regarding reserves and the impact of that change?
- iii. What are the facts in relation to the dispute over whether there are any amounts outstanding from the PCF that are due from CILEX to CRL?

Have CILEX and CRL acted in accordance with the IGR, existing agreement, s28 in relation to this issue?

- vi. What steps were taken to resolve the matter via internal dispute resolution processes? Were they effective? If not, why not?
- vii. Did any of the acts or omissions by either CILEX or CRL in connection with the financial issues have or likely to have an adverse impact on one or more of the regulatory objectives. In particular, did CILEX/CRL's act/omissions undermine the discharge of their regulatory functions?

As part of this work stream we will consider the overall finances and ongoing viability of both organisations in connection with the discharge of regulatory functions. This will be explored alongside the points listed above together with any relevant information received as part of the 2022/23 PCF application.

3 - Consultation

Issues arising out of the IGR dispute referred by CILEX regarding CRL's proposed consultation entitled 'Regulating responsibly and responsively'

- i. What are the facts in relation to the CRL consultation?
- ii. What are the possible implications of the proposed consultation?
- iii. What was the impact of the manner in which the parties communicated about the proposed consultation, both internally and externally?
- iv. Was it communicated in accordance with the existing sharing of information protocol between the parties, under the IGR and in accordance with s28 duties?
- v. What engagement or consultation has been undertaken or been planned by CILEX?
- vi. What were the (possible) implications of CILEX's engagement/consultation?
- vii. Did any of the acts or omissions of either CRL or CILEX in connection with the consultation dispute have (or were likely to have) an adverse impact on one or more of the regulatory objectives?

The LSB considers that the apparent breakdown in relationship between CILEX and CRL and consequential breakdown of trust and communication is material to all the areas of investigation listed above. It will therefore be considered alongside these matters, where relevant.

This is a non-exhaustive list and if further relevant facts or issues come to light throughout the investigation, the LSB reserves the right to expand or narrow the scope of the investigation. CILEX and CRL will be informed of that decision and invited to provide further information if that is required.

B. Timeframe of the investigation

The investigation will focus on information submitted and matters discussed between **June 2021 and October 2022**. There may be exceptions to this and the LSB retains discretion to consider matters outside of this timeframe if conducive to its enquiries.

C. Investigation steps and timetable

The investigation will follow the steps below. It is intended that the process will have the full engagement of the CILEX and CRL.

Step 1	Pre-notification of investigation	4 October 2022
Step 2	Notice of investigation letter issued (including scope) and website publication	11 October 2022 Publication + 1 day
Step 3	LSB detailed review and analysis of information held	12 October – 4 November 2022
Step 4	Request any additional information from CILEX, CRL and any third parties, if relevant, s55 LSA	7 November 2022
Step 5	Provision of additional information deadline	5 December 2022
Step 6	Analysis of information and preparation of findings/report	5 December – 31 January 2023
Step 7	Draft report/findings shared for fact-checking	1 February 2023
Step 8	Final report/findings and publication	28 February 2023 -1 st week March 2023

The steps have indicative timings and the aim will be to ensure reasonable opportunity is allowed for CILEX and CRL to provide information and comply with the investigation and sufficient time for LSB to meet the expectations at each step. This will also take account of the time required for other parties that may be involved. These indicative timings will be kept under review as the investigation progresses and may be altered or extended where appropriate. It may be possible to expedite the investigation if the parties are co-operative.

D. Information

The LSB will make any formal requests for information in accordance with s55 of the Act. The LSB will provide reasonable time for provision of a response. The LSB may also seek information from any relevant source, in addition to CILEX and CRL, where it considers it necessary and appropriate for the investigation.

Taking account of the LSB's intent not to place disproportionate burdens on the parties, the LSB will discuss the most efficient way for information to be provided. Nonetheless, the LSB expects CILEX and CRL to provide accurate and complete information in a timely manner. Early and open disclosure of information is encouraged. The LSB may take into account any unnecessary delay or obfuscation by the parties and draw inferences in its findings.

Information that is shared as part of the investigation is restricted information within the meaning of s167 of the Act.

E. Ongoing CILEX and CRL involvement

In addition to the provision of information and being kept up to date with the progress of the investigation, the LSB anticipates that it will seek CILEX and CRL's engagement throughout the investigation and, in particular, at the fact-finding/analysis and reporting stages. This will ensure that the LSB has all the material facts regarding the decisions made and procedures that CILEX and CRL have followed. CILEX and CRL will be given time to review the draft findings and carry out a final fact-check of the report prior to its publication.

In the event that the LSB makes either interim findings or findings, prior to conclusion of the investigation, CILEX and CRL will be given time to review any draft interim findings and carry out a final fact-check prior to their publication.

F. Possible Outcomes

The LSB will consider each line of enquiry. The LSB may decide that CILEX and/or CRL has breached its duties under the Act.

Depending on the information received and findings made, the LSB may choose not to take any further action in relation to either party as appropriate.

The LSB Statement of policy for enforcement provides information on the range of statutory enforcement powers available to the LSB and when they might be used in accordance with the Act.

The LSB may, under rule 14(3) of the IGR make a determination in relation to a dispute, where appropriate. It may also consider, in connection with the dispute that there has been a breach of the IGR or that a party has acted unlawfully and decide to exercise enforcement powers in relation to that breach or unlawful act or omission in accordance with the Act.

The LSB may consider it appropriate to use all or any of its other powers under the Act, including issuing or amending statutory guidance under s162, amending existing statutory rules or issuing a new s49 policy statement. These may be used instead of or in conjunction with statutory enforcement powers.

G. Publication

The full investigation report findings including any enforcement decisions will be published in line with previous LSB investigations.