

# Investigation Report

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**Investigation into disputes between the Chartered Institute of Legal Executives and CILEx Regulation Limited in consideration of exercise of enforcement powers under the Legal Services Act 2007**

**18 April 2023**

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## Preface

This report concludes the LSB's investigation into a range of disputes and disagreements that took place between the Chartered Institute of Legal Executives (CILEX) and CILEx Regulation Limited (CRL) during 2022.

By its nature, as an investigation, it looks backward to chart and, where it can, explain the events that took place.

However, its main purpose is not to criticise (although there are certainly criticisms made) but rather to create understanding. And not just for CILEX and CRL, but for their members and regulated communities, for the public and for all those with an interest in the regulatory system, with a view to creating an opportunity to restore professional relationships and get on with the important business of regulation.

No-one expects approved regulators and regulatory bodies to agree on everything. Indeed, constructive tension can be a hallmark of appropriate regulatory independence. However, the public and the profession is entitled to expect those institutions to co-operate respectfully and constructively in the public interest, whatever the nature of the issue, in the discharge of their regulatory functions. And that expectation is at the heart of the findings and recommendations we set out in this report.

Both CILEX and CRL are governed and run by professional people who collectively bring public accomplishment. We hope that this report, in setting out a clear legal analysis and expectations about how CILEX and CRL are to work together, will help them both map out a new course with sights set firmly on the public interest. We know that both will want to demonstrate publicly their commitment to upholding the good reputation of the regulation of chartered legal executives, however that might be achieved, now and in the future.

## Introduction

1. The Legal Services Board (LSB) is the oversight regulator for legal services in England and Wales. The LSB is independent of both government and the legal profession. The LSB oversees the regulation of approved regulators, who in turn regulate authorised persons to carry on reserved legal activities.
2. The Internal Governance Rules 2019 (IGR) made by the LSB under s. 30 of the Legal Services Act 2007 (the Act) sets out requirements to be met by an approved regulator for the purpose of ensuring that the exercise of its regulatory functions is not prejudiced by its representative functions, and decisions relating to the exercise of its regulatory functions are, so far as reasonably practicable, taken independently from decisions relating to the exercise of its representative functions. For approved regulators with both representative functions and regulatory functions the IGR requires such bodies to delegate their regulatory functions to a separate body (regulatory body).<sup>1</sup> Annex C explains the statutory framework under the Act.
3. The IGR and Guidance on the IGR issued under s. 162 of the Act (IGR Guidance) requires an approved regulator to resolve issues that arise under or in connection with the IGR and, in the event of a dispute with its regulatory body, to refer it to the LSB for determination before taking any further action (rule 14(2) of the IGR).
4. The Chartered Institute of Legal Executives (CILEX) is an approved regulator with representative functions and regulatory functions.<sup>2</sup> CILEX has, in compliance with the IGR and its obligations under the Act, delegated its regulatory functions to CILEX Regulation Limited (CRL) – together referred to as the ‘parties’ in this report. On 25 January 2022 CILEX informed CRL that it intended to enter into formal discussions with the Solicitors Regulation Authority (SRA) with a view to transferring the delegation of its regulatory functions from CRL to the SRA. This triggered a series of disputes and disagreements between CILEX and CRL.
5. The LSB exerted considerable efforts to encourage and support CILEX and CRL to find common ground and to reach a resolution of their disputes and disagreements. Unfortunately, the parties were not able to do so. The LSB considered its powers and obligations under the Act, and its relevant policies and guidance, and concluded that in all the circumstances it was appropriate to commence an investigation (notified to the parties on 4 October 2022). This report of the investigation into disputes between the CILEX and CRL in consideration of exercise of enforcement powers under the Act (report) sets out the LSB’s findings, conclusions and recommendations, following that investigation.
6. The purpose of the investigation was to enable the LSB to determine whether to take enforcement action as regards CILEX/CRL and, if so, to determine what form that should take.
7. The LSB hopes that the investigation process will enable CILEX and CRL to reflect on what has transpired between them so that they can take the necessary steps to rebuild the positive working relationship that is necessary for the effective regulation of chartered legal executives. The conclusions set out below are consistent with that

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<sup>1</sup> Rule 2(1) of the IGR defines “Regulatory body” as: “A body which has been delegated the regulatory functions of an Approved Regulator, as defined in Rule 2(1)”.

<sup>2</sup> “Regulatory functions” and “representative functions” are defined in s. 27 of the Act.

aspiration. Whatever model may be adopted in the longer term for the regulation of chartered legal executives, both CRL and CILEX will need to work together constructively for at least the immediate future. This is in the public interest and interest of consumers, as well as the interests of the community of chartered legal executives and the legal profession more generally. In this report references to chartered legal executives means persons authorised by CRL to carry out one or more reserved legal activities.<sup>3</sup>

8. This report makes various specific recommendations to reflect learning from the experiences of CRL and CILEX. The LSB is aware that the parties were in entirely new territory, in that no approved regulator has previously considered redelegating its regulatory functions in this way. As a result, some of the recommendations set out in this report may have general application for the wider regulated sector. In reaching the findings and recommendations set out below, the LSB has had regard to best regulatory principles, in particular to the need to be proportionate, transparent and targeted.
9. CILEX and CRL have submitted a substantial volume of material to the investigation, which the LSB has considered. This report also refers to certain other information that has been material to the LSB's considerations. Where CILEX and CRL have made representations or submitted materials that are not specifically described or responded to in this report, they have all nevertheless been considered in the course of reaching the conclusions set out below. In order to keep this report to a reasonable and proportionate length, the most significant matters and relevant conclusions are set out below.
10. Both CILEX and CRL were given an opportunity to comment on a draft of the report (draft report) to identify whether:
  - a. They considered that the LSB had missed out any critical piece of information, analysis, evidence or reasoning;
  - b. If so, why that should have changed the LSB's conclusions;
  - c. Whether the factual narrative – which is largely set out in Annexes A and B – is sufficiently complete; and
  - d. Whether in their opinion any of the findings, recommendations or other conclusions set out in the draft report were legally or factually flawed.
11. The LSB has considered those comments carefully prior to finalising this report. Some of those comments are reflected in this report, albeit these comments did not cause the LSB to alter any of its overall findings.
12. In summary, the LSB has determined that CILEX has the power, in principle, to explore and give effect to alternative delegation arrangements to those currently in place through CRL.
13. The investigation has also identified areas where both CILEX and CRL have not been compliant with the Act and the IGR:

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<sup>3</sup> In this report "chartered legal executive" refers to the following persons CRL authorises to carry out one or more reserved legal activities: chartered legal executive; CILEX Practitioner; CILEX Practitioner (ACCA-probate); CILEX authorised entity (firm); and CILEX-ACCA entity (firm).

- a. The LSB finds that the manner in which CILEX first approached CRL in January 2022 with its proposals for redelegation of its regulatory functions to the SRA was not consistent with the regulatory objectives, in particular the protection and promotion of the public interest and the interests of consumers, and did not meet its obligations in rule 2(3) of the IGR.
  - b. The LSB considers that CRL has not approached its dialogue, communications and relationship with CILEX in a manner that was liable to protect and promote the public interest and interests of consumers, and was not consistent with its duties under s. 28 of the Act.
14. However, the LSB considers that there are two significant mitigating factors, that provide an important backdrop to this investigation:
  - a. This is the first time that an approved regulator has seriously considered redelegating its regulatory functions to a third party in this way. As a result, there was no 'road map' in place for CILEX to follow. To the extent that it made errors of approach or communication, they should be understood against that backdrop.
  - b. The LSB is conscious that the prospect of redelegation is 'existential' for CRL. If CILEX's regulatory functions are redelegated to the SRA, CRL may cease to exist (at least in its current form). To the extent that CRL made errors in terms of approach, and to the extent that the relationship between the parties became confrontational, the fact that the stakes were high provides an important and mitigating factor.
15. At least some of the findings set out below could – in principle – provide the basis for enforcement action on the part of the LSB (in particular where the LSB has found that CILEX and/or CRL has breached the Act and/or the IGR). However, taking into account all of the factual matters set out in the report, the mitigating circumstances described above, and that CILEX and CRL have agreed undertakings to act in accordance with the recommendations of this report, **the LSB does not consider that it is necessary or proportionate to take enforcement action at this time.**
16. The LSB considers that its enforcement powers under the Act apply only to the approved regulator, not its regulatory body. As well as taking enforcement action, the LSB has the power to resolve matters informally (see s. 49(4)(a) of the Act and paragraphs 23 to 33 of the LSB Statement of Policy for Enforcement).
17. Taking all the relevant matters into consideration, in the round, the LSB has decided that the appropriate course – at this point – is to resolve these issues informally. CILEX and CRL have agreed undertakings to act in accordance with the recommendations<sup>4</sup> of this report and are developing an action plan to implement those undertakings. The LSB will put in place measures to monitor CILEX and CRL's compliance with the undertakings, and it will from time-to-time publish progress updates. In addition, the LSB will keep under review the question of whether it should move to formal enforcement action, in particular if cooperation between the parties fails sufficiently to address the findings and recommendations in this report.

## Lines of enquiry

18. The investigation has focused on the following lines of enquiry:

### Delegation

19. This line of enquiry explored the following issues:

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

20. This line of enquiry also determines the dispute referred on 8 and 11 February 2022 to the LSB by CRL under rule 14 of the IGR<sup>5</sup> (Disputes and Referrals for Clarification) concerning CILEX's proposals to explore redelegating its regulatory functions from CRL to the SRA. At the time that the referral was made, the LSB took the view that the parties had not taken sufficient steps to resolve the dispute between them. That dispute referral is now determined below.

### Financial matters

21. This line of enquiry concentrated on the issues arising out of the IGR dispute referred by CRL to the LSB on 15 September 2022 regarding financial matters including the transfer of reserves and alleged practising certificate fee surplus retained by CILEX. This will include consideration of the overall financial management of both CILEX and CRL and other connected financial matters.

### The planned issue by CRL of a proposed consultation on its regulatory arrangements

22. Issues arising out of the IGR dispute referred by CILEX to the LSB on 25 September 2022 regarding CRL's proposed consultation entitled 'Regulating responsibly and responsively' (which it has not as yet proceeded with).

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<sup>5</sup> Rule 14 of the IGR provides: "(1) If an approved regulator has been unable to resolve any point arising under or in connection with these Rules, it may refer that point to the Legal Services Board for clarification. (2) In the event of a dispute between an approved regulator with a residual role and its regulatory body in relation to any point arising under or in connection with these Rules, the dispute must be referred to the Legal Services Board before any further action is taken. (3) Any response provided by the Legal Services Board shall be determinative unless expressly indicated otherwise."



## Findings

### A. Delegation – part 1: delegation of regulatory functions

#### Summary of issues

24. This section determines the dispute between the parties as to whether it is open to CILEX, in principle, to revoke the delegation of its regulatory functions from CRL and redelegate them to another body and/or begin preparatory steps to do so, without CRL's consent.

#### Events

25. The following summary of the relevant background should be read alongside the narrative of relevant events in Annex A and timeline of events in Annex B.
26. From at least July 2021, CILEX began to consider redelegation of its regulatory functions to the SRA from CRL to address the challenges that it considered were facing the sector (of chartered legal executives). Having decided to explore this option, CILEX carried out preliminary discussions with the SRA from September 2021 onwards concerning the feasibility of transferring the delegation of CILEX's regulatory functions from CRL to the SRA. Also in September, CILEX first informed the LSB that it had had early conversations with the SRA and was considering what was possible within the current regulatory framework. The LSB informed, and, reiterated to CILEX the importance of conducting discussions about its proposals in a transparent way and for all parties to the process to work in good faith, and openly. On 18 January 2022 the CILEX Board approved its proposals, part of which involved redelegation to the SRA, including its "Case for change" which sets out the rationale and reasons for its proposals. This is addressed further in paragraph 76.
27. On 25 January 2022 the Chair and interim Chief Executive of CRL met with their counterparts at CILEX, at the latter's request. At the meeting:
  - a. CILEX asked the CRL representatives to sign a confidentiality non-disclosure agreement (confidentiality agreement) in relation to the information to be imparted to them at the meeting (the CRL representatives objected but believed they had no option other than to agree);
  - b. CILEX informed CRL that it was considering redelegating its regulatory functions from CRL to the SRA and of its intention to enter into 'formal discussions' with the SRA on development of an alternative regulation model;
  - c. CILEX explained that, in essence, its proposal was motivated by concerns about the future sustainability of the regulatory framework for chartered legal executives;
  - d. This was the first time that CRL was informed that CILEX was considering proposals specific to redelegation to the SRA;
  - e. CRL was invited to sign jointly with CILEX a submission to the LSB informing it of CILEX's intentions;

- f. CRL expressed serious concerns at CILEX's proposals and the imposition of the confidentiality agreement, which prohibited the disclosure of information about CILEX's proposals outside of CRL's non-executive board members, Chair, and the Chairs of the LSB and SRA. The confidentiality agreement did make provision for the possibility that CRL might seek permission from CILEX to discuss the proposals more widely.<sup>6</sup>
28. There followed an exchange of correspondence between the parties, the LSB and the SRA, the details of which are in the narrative at Annex A (paragraphs [13 to 26]). On 8 February 2022 CRL through its solicitors Russell-Cooke LLP (Russell-Cooke) wrote to the LSB to raise concerns regarding:
- a. An alleged breach, on the part of CILEX, of the IGR, namely rules 1(1) (the overarching duty), 2(2) (provision of assurance to approved regulator) and 4(3) (regulatory autonomy).
  - b. A referral of a dispute and request for LSB resolution of that dispute in accordance with rule 14(2) of the IGR (the dispute was broadly concerned with the question of whether CILEX had the statutory power to initiate redelegation in this manner).
  - c. A request that CILEX cease its proposals concerning redelegation pending outcome of the above-mentioned dispute under the IGR.
  - d. CRL's view that CILEX's decision to engage in discussions with the SRA was unlawful.
29. This was the first of three referrals made under the IGR to the LSB concerning the disputes and disagreements between the parties: two by CRL on delegation and financial matters (see paragraph 100 for second referral) and one by CILEX on the CRL consultation (see paragraph 136).
30. The LSB responded to CRL on 10 February 2022 to the effect that the preconditions for a referral had not yet been met. It noted that rule 14(1) of the IGR required an approved regulator and its regulatory body to use reasonable efforts to resolve disputes and it was not clear from the information provided that this had taken place. (It subsequently transpired that the parties had not agreed a dispute resolution process.) CRL in a letter dated 11 February 2022 restated its IGR referral, asserted that it had taken reasonable steps to resolve the dispute and asked for a response by 14 February 2022. The timeline reflected the urgency arising out of CILEX's proposal then to make a public announcement on 15 February 2022.
31. On 12 February 2022 CRL through Russell-Cooke issued a letter before claim to CILEX, seeking a response within two days, failing which it intended to issue proceedings and seek relief by way of an injunction (to prevent CILEX carrying on with its proposed review of redelegation). The proposed claim was, in summary, that CILEX's decisions to give notice to CRL of its intention to revoke its delegation as well as the other actions that CILEX had taken pursuant to its proposals were in breach of the IGR and unlawful because they: (i) prejudiced the exercise of CRL's regulatory functions and prejudiced its ability to discharge those functions compatibly with the regulatory objectives having regard to the better regulation principles; (ii) were incompatible with CILEX's Royal Charter and the IGR; (iii) failed to take account of

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<sup>6</sup> Paragraph 1.3.3 of the confidentiality agreement provided that any other disclosure could only be made with CILEX's prior written consent.

relevant considerations including information from CRL; and (iv) were improperly taken pursuant to CILEX members' representative interests.

32. On 14 February 2022 CRL confirmed it would not seek an injunction at present, following the LSB's intervention detailed in a letter of the same date, and upon CILEX providing further information about its proposals and agreeing to delay publicly announcing those proposals (also in a letter also of the same date). CRL subsequently confirmed on 24 February 2022 that it would not issue proceedings at present. CRL and CILEX had agreed to seek to work together to find a way forward.
33. CRL provided further analysis and reasoning to the LSB, in letters dated 18 February and 1 March 2022, in support of its position on delegation. On 9 March 2022 the LSB wrote to the parties with a view to assisting them both and to bringing some clarity to the position. It explained its understanding and position, at that time, on the delegation issue: CILEX, as an approved regulator, had the power in principle to revoke its delegation of regulatory functions from CRL and redelegate them to another body without CRL's consent.
34. Subsequently, between late February and June 2022, CILEX and CRL sought to find ways that they could cooperate on exploring options for regulatory reform (putting aside their differences on the legal question). This included finalising and agreeing a dispute resolution process, which they then worked through. Ultimately, the parties were unable to make material progress, as detailed in Annex A (paragraph 44).
35. CILEX then commissioned an independent reviewer to review its proposals as set out in its Case for change provided to CRL in February 2022. That review took place over June and July 2022. CRL was invited to make representations but declined to do so because it considered that it had not been given adequate time to respond (it is necessary to state that the initial attempt to provide notice to CRL was not sent due to a server error, though CRL was then provided with the offer of an extension of time that it considered inadequate and so it declined to participate at all). On 12 July 2022, CILEX publicly announced its proposals (having originally planned to do so in February 2022). CRL swiftly replied by way of a public statement and the disagreement moved into the public domain.
36. The LSB further urged the parties to resolve their differences. However, they were not able to do so because there remained a fundamental disagreement concerning whether or not CILEX had the power, in principle, to initiate and give effect to its desire to redelegate its regulatory functions under the Act. In August 2022 the LSB proposed that the parties seek declaratory relief from the High Court on the delegation issue via a Part 8 claim. CRL consented to this course of action but CILEX declined on the basis that, in its view, CRL had not advanced a properly arguable legal position that justified the costs of court proceedings. Relations between the two parties further deteriorated. CRL made a referral to the LSB of a dispute under the IGR on 15 September 2022 in relation to financial matters (as detailed in paragraph 100). CILEX made a referral to the LSB of a dispute under the IGR on 25 September 2022 in relation to a proposed CRL consultation (as detailed in paragraph 136).
37. On 26 September 2022 the LSB informed the parties that, despite considerable efforts to address the parties' differences, no meaningful resolution was forthcoming. The LSB was therefore assessing all of the information before it in relation to the parties' disputes and disagreements, including the IGR referrals, in order to determine whether to exercise any or all of its powers in respect of both parties.

38. On 4 October 2022 the LSB notified the parties of its decision to commence this investigation, one part of which would involve consideration of full representations from both parties on the delegation issue.

### Analysis

39. At the heart of the dispute between CILEX and CRL, is whether CILEX could lawfully revoke the delegation of its regulatory functions from CRL and redelegate them to another body without CRL's consent. The statutory framework is set out in detail in Annex D. In summary only:
- a. Sections 29 and 30 of the Act provide that the exercise of an approved regulator's regulatory functions should not be "prejudiced" by its representative functions and that decisions relating to those regulatory functions should – so far as reasonably practicable – be taken independently from decisions relating to the exercise of its representative functions.
  - b. Rule 1 of the IGR requires an approved regulator to achieve this by "separate[ing]" its regulatory and representative functions, "as effectively as is reasonably practicable and consistent with Section 28 of the Act".
  - c. Rule 1(3) of the IGR further provides that each approved regulator should periodically review and, if reasonably practicable, improve these arrangements.
  - d. Rule 2 of the IGR explains that an approved regulator with both regulatory functions and representative functions must achieve separation by "delegat[ing] the discharge of its regulatory functions in compliance with Section 28 of the Act to a separate body ('regulatory body') and "must only retain a role to the extent that this is reasonably necessary to be assured that regulatory functions are being discharged in compliance with Section 28 of the Act or as otherwise required by law ('residual role')".
  - e. "Regulatory body" is defined in the IGR as "A body which has been delegated the regulatory functions of an Approved Regulator".
  - f. If an approved regulator intends to make a decision, plan, communication or other arrangement that may reasonably be considered likely to undermine the discharge of its regulatory functions, it must "promptly inform" its regulatory body (rule 2(3) of the IGR).

### *CILEX's delegation to CRL*

40. CRL (formerly known as ILEX Professional Standards Limited) was established by CILEX (then known as ILEX) in 2008 as a subsidiary company limited by guarantee to carry out on behalf of ILEX its functions and responsibilities as an approved regulator under the Act, and to carry out on behalf of ILEX such functions and responsibilities of ILEX as a regulator that ILEX may from time to time delegate to the company.<sup>7</sup>
41. In 2011 ILEX was granted by Royal Prerogative a Royal Charter of incorporation and became CILEX. The Royal Charter provides that CILEX's regulatory functions are delegated to a delegated regulatory body "[T]he subsidiary company of the Chartered

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<sup>7</sup> Article 3, CILEX Royal Charter.

Institute (CILEX Regulation or its successor body) to which the CILEX Group Board has delegated all regulatory functions in accordance with Article 13 of the Charter”. Art. 13 provides:

“Council shall in accordance with Schedule 4 to the Legal Services Act 2007 delegate regulatory functions defined in the Bye-Laws to a subsidiary company, and shall not exercise such functions itself”.

42. CILEX made changes to the delegation arrangements in the CILEX Bye-Laws<sup>8</sup> to align better with the IGR, approved by the LSB in 2020. The application to approve these changes as regulatory arrangements was made by CILEX in its capacity as approved regulator. The LSB understands that the changes were agreed between the two parties and that CRL did not suggest that CILEX acted beyond its powers by doing so (albeit the issue never arose between them).
43. Both CILEX and CRL have provided very extensive representations, legal analysis and argument in relation to this question. Neither party, nor the LSB, have identified any authority that is squarely on point and dispositive of the issue of law.

#### *CILEX's views*

44. In summary only, CILEX asserts that an approved regulator retains the power to both review its scheme of delegation and to redelegate its regulatory functions (as appropriate). This is necessary in order for an approved regulator to be able to discharge its obligations under s. 28 of the Act: an approved regulator is obliged to satisfy itself that the regulatory functions are being discharged effectively by the regulatory body. CILEX considers that any construction which provides that an approved regulator delegates its regulatory functions forever – and cannot recover them – would be contrary to the content and spirit of the Act. It would also be contrary to the public interest in maintaining effective regulation. A regulatory body, to whom certain functions are delegated, should not then become the only body that can determine whether that delegation should continue and/or whether an alternative would better meet the regulatory objectives.

#### *CRL's views*

45. CRL's view, in summary only, is that an approved regulator has no power to de-delegate its regulatory functions and redelegate them to another body without a regulatory body's consent. The Act places a particular premium on securing separation between regulatory functions and representative functions. This is reflected in the IGR which require that the regulatory functions be delegated to a separate regulatory body. To allow an approved regulator to redelegate functions would be an impermissible interference with a regulatory body's regulatory functions. It would also be contrary to both the Act and the IGR, which stress the importance of independence and the need to avoid undermining (on the part of the approved regulator). CRL argues that the approved regulator's residual role, set out in the IGR, is strictly limited to ensuring legal compliance by the regulatory body and no more.
46. CRL has also argued that: (i) CILEX is unable to revoke its delegation from CRL unless it makes changes to the Royal Charter and Bye-Laws; and (ii) the LSB has no power to consider this issue under this investigation (albeit CRL referred the issue to the LSB as a dispute under the IGR for resolution). CRL further asserts that the LSB

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<sup>8</sup> Bye-Laws of The Chartered Institute of Legal Executives.

has predetermined the outcome by setting out its earlier view in a letter dated 9 March 2022 and any further decision would be biased and/or taken with a closed mind.

47. In its response to the draft report, CRL suggested that “[i]t acknowledges that CILEX retains a power of delegation. The relevant issue is the lawful exercise of the power by CILEX consistent with the LSA 2007 and the IGR”. The LSB has considered that representation in the light of CRL’s communications over the past year and has concluded that:
- a. CRL’s position has historically been that CILEX does not have the power to redelegate its regulatory functions at all. For example, in CRL’s letter of 11 March 2022 (see paragraph 41 of Annex A) it stated that – even if it was not in compliance – CILEX’s power would be limited to asking the LSB to intervene in the public interest (but not to consider redelegating its functions of its own volition). Whether or not CRL’s position has been articulated in different ways over time, it has been a part of its case that CILEX does not have the power to redelegate its functions on its own initiative.
  - b. Given the centrality of this issue to the dispute between the parties, the LSB will resolve the question of *vires* as set out below in Finding 1 (paragraphs 60 to 61).
  - c. To the extent that CRL suggests that a separate question also arises concerning whether or not CILEX may redelegate its powers when there is no evidence of “*regulatory failure*”, the LSB is not minded to resolve that issue definitively in this report, since it has only crystallised fully at a late stage.

## Conclusion

48. The LSB has carefully considered all of the materials provided by both parties, some under a limited waiver of professional legal privilege. No privilege is waived over any of those representations by this report.
49. By way of preliminary issue, the LSB does not accept CRL’s arguments that the LSB cannot make a determination on the delegation issue, pursuant to this investigation. The delegation issue was referred to the LSB as an IGR dispute by CRL on 8 February 2022 (and restated by CRL on 11 February 2022). The LSB considers that an investigation may provide the mechanism by which an IGR dispute may be resolved. In any event, and even if that is wrong, the LSB does not consider that questions of law – of this kind – are outside the scope of matters that may be considered as part of an LSB investigation.
50. As to the further suggestion that any conclusion would be vitiated by bias or predetermination:
- a. The LSB’s 9 March 2022 letter set out an initial view and stated that: “the LSB does not ‘take sides’ in any disagreement between CILEX and CRL (albeit it may have to resolve a dispute between the parties if such a dispute arises)”.
  - b. When opening the investigation, the LSB made clear that it would “consider all relevant matters afresh in a fair and transparent manner, notwithstanding previous comments or correspondence on this legal question”.
  - c. The LSB has no direct interest in the outcome of this legal question. No fair-minded observer would conclude otherwise. The LSB is acting in the exercise of



its statutory functions and it does not consider that this investigation is vitiated by bias (either apparent or actual).

51. As to the core question of delegation, the LSB determines that an approved regulator retains the power, in principle, to revoke its delegation to a regulatory body and redelegate its regulatory functions elsewhere (and/or actively consider doing so) – this is referred to as the “delegation function” in this report. The LSB’s reasoning, in that respect, is set out below.
52. *First*, the ordinary position in public law is that a delegation of powers may be revoked or set aside.<sup>9</sup> This follows from the principle that a public body will not ordinarily divest itself of its power.<sup>10</sup> The terms of a statute conferring the relevant power may depart from this starting point. However, clear words are required to achieve this result.<sup>11</sup>
53. *Second*, there are no such clear words on the face of the Act. The Act speaks of the exercise of an approved regulator’s regulatory functions not being prejudiced by its representative functions, and decisions relating to the exercise of regulatory functions so far as reasonably practicable being taken independently from decisions relating to the exercise of its representative functions. However, it does not speak of delegation and it does not expressly (or impliedly) provide that any powers will be irrevocably delegated (or divested). On the contrary, ss. 29 and 30 of the Act make clear that independence is not absolute and is limited by the constraints of what is “reasonably practicable”.
54. These requirements must also be construed in light of the Act’s overall purpose to create a coherent framework for the effective regulation of legal professionals.<sup>12</sup> The multi-layered scheme in the Act prioritises supervision, checking and accountability; one of the core purposes of the Act is to create clear lines of oversight (including powers to intervene).<sup>13</sup> Parliament could have ensured absolute independence by mandating that the representative functions and regulatory functions be held by different bodies. Instead, it provided that the regulatory functions of an approved regulator (which remain ultimately the functions and duties of the approved regulator itself) should be carried out independently, subject to the qualification that this should only be “so far as is reasonably practicable”. The Act does not prescribe how “independence” is to be achieved – that is prescribed in the IGR. The IGR themselves requires each approved regulator with representative functions and regulatory functions to separate them and maintain the independence of the latter by way of delegation. Approved regulators have implemented this in different ways.
55. *Third*, the “regulatory functions” of CILEX, as defined in s. 27 of the Act, do not include the delegation function and it is not a regulatory function for the purposes of the IGR, because unlike the (exhaustive) list of regulatory arrangements in s. 21 of the Act, delegation does not relate to the regulation of authorised persons. It is more narrowly concerned with delegation to the body which administers those arrangements.

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<sup>9</sup> *Huth v Clarke* (1890) 25 QBD 391; *Manton v Brighton Corp* [1951] 2 KB 393, at 403; *Robertson v DEFRA* [2005] EWCA Civ 138 at [42]-[43].

<sup>10</sup> See e.g. *De Smith’s Judicial Review*, [5-169].

<sup>11</sup> *Arthur v Bokenham* (1708) 11 Mod 148, 150; Craies on Legislation at [14.1.7]. This is particularly so in the context of the highly prescriptive scheme set down by the Act: see by analogy *R (ICAEW) v Lord Chancellor* [2019] EWHC 461 (Admin).

<sup>12</sup> *Law Society v Blavo* [2018] EWCA Civ 2250 at [51].

<sup>13</sup> See the Explanatory Note to the Act, [121]-[123].

56. *Fourth*, even if (contrary to the above) the delegation function is a regulatory arrangement, it is not one which passes to a regulatory body under the statutory scheme, for the following reasons:
- a. As above, the starting point is that a delegation will not be irrevocable.
  - b. Under the IGR the approved regulator : (i) retains a “residual role” to ensure that its regulatory functions are being fulfilled in a manner that is consistent with s. 28 of the Act (rule 2(2) of the IGR) and; (ii) is required periodically to review and, if reasonably practicable, improve its arrangements as regards the separation of its regulatory functions from its representative functions and the maintenance of the independence of its regulatory functions as effectively as is reasonably practicable and consistent with s. 28 of the Act (rule 1(3) of the IGR). Neither of these rules is consistent with the suggestion that the delegation of functions is total and irrevocable. In addition, the IGR define regulatory functions as the functions in s. 27 of the Act “except functions relating to arrangements for delegation of regulatory functions to a regulatory body and assurance of compliance with s. 28 of the Act, in accordance with Rule 2” (emphasis added).<sup>14</sup> This provision is clear that the delegation function forms a part of the approved regulator’s residual role. More recently, CRL commented, in its response to the draft report that it has not suggested the contrary. For the reasons set out above the LSB does not accept that characterisation.
57. *Fifth*, contrary to CRL’s arguments, the prospect of redelegation does not leave a regulatory body at the ‘mercy’ of an approved regulator. The exercise of the power to revoke a delegation from a regulatory body by an approved regulator will be subject to approval by the LSB or ultimately subject to challenge in the courts by judicial review (the powers must be exercised rationally and for a proper purpose).
58. *Sixth*, CRL is correct that the Bye-Laws of CILEX will need to be amended if the delegation is to be revoked and reassigned. However, this is not an answer to the question whether powers may be redelegated in principle. The requirement to amend the Bye-Laws adds an important procedural protection preventing abusive or inappropriate exercise of the delegation function. However, they do not alter the meaning of the Act or lead to the result that any delegation is a permanent divestment of power.<sup>15</sup>
59. As to the question whether the existence of “*regulatory failure*” is a necessary precondition for the exercise of the power to redelegate, the LSB does not intend to take a definitive position at this time. This was not the central issue that arose in relation to this line of the investigation.<sup>16</sup> For completeness, at this point, the LSB is not satisfied that CRL’s argument is correct. However, it is mindful that: (a) the parties (particularly CILEX) have not had a full opportunity to address this question separately,

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<sup>14</sup> CRL’s argument as to this carve-out is that it refers only to *administrative* arrangements concerning delegation such as governance and financial arrangements. This finds no expression in the wording of the IGR. See also IGR Guidance at [22]-[24].

<sup>15</sup> See e.g. *English Bridge Union v English Sports Council* [2017] EWCA Civ 116, at [14]; Craies on Legislation, [3.7.8].

<sup>16</sup> CRL has claimed previously that CILEX has not identified any “*regulatory failure*” on its part. However, the LSB has understood that claim to be largely to the effect that CILEX did not have a proper and reasonable basis for any proposed redelegation. The LSB did not understand it to be a hard-edged question of whether the necessary preconditions for redelegation were satisfied.



and (b) the LSB has not had a full opportunity to consider its position in the brief window before this report was finalised. It may be that this is a question that requires further consideration and dialogue between the parties following the publication of this report.

## Finding 1

60. CILEX has the power, in principle, to explore and give effect to alternative delegation arrangements to those currently in place through CRL. In particular, its proposals to redelegate its regulatory functions to the SRA are in principle compatible with both the Act and the IGR (subject to the proposals being implemented in a manner that is consistent with CILEX's procedural obligations and in a manner that is otherwise consistent with principles of good decision-making in discharging public functions and ordinary principles of public law).
61. In making this finding, however, the LSB accepts that the alternative position set out by CRL (but in respect of which it has not waived privilege as regards CILEX) – in essence that regulatory functions are divested in perpetuity and that only a regulatory body may lawfully change the scheme of delegation – is arguable, but not correct. The fact that it is arguable follows, at least in part, from the absence of any authoritative case law on this question and was the reason why the LSB suggested the matter could be resolved by way of Part 8 proceedings in 2022. However, the LSB does not consider that CRL's position is correct.

## A. Delegation – part 2: has there been undermining of regulatory functions

### Summary of issues

62. This section considers whether CRL and CILEX undermined or prejudiced the exercise of regulatory functions by CRL in a way that was not compatible with the Act, including the IGR and/or acted in a manner that was contrary to the obligations in s. 28 of the Act and the regulatory objectives.

### Legal framework

63. The statutory framework for the regulation of legal services is set out in full at Annex C. In very brief summary only:
- a. CILEX is obliged to ensure that CRL's exercise of its regulatory functions is not prejudiced by CILEX's representative functions and that decisions relating to the exercise of the former are not prejudiced by the latter (ss. 30(1)(a) and (b) and 30(2) of the Act and rule 1(1) of the IGR).
  - b. Both CILEX and CRL are subject to obligations in s. 28 of the Act, which obliges them to act, so far as is reasonably practicable, in a way which is compatible with the regulatory objectives and which they consider most appropriate for the purpose of meeting those objectives. The regulatory objectives are set out in s. 1 of the Act and include protecting and promoting the public interest, protecting and promoting the interests of consumers and encouraging an independent, strong, diverse and effective legal profession.

### Finding 2

64. CRL has asserted in correspondence with the LSB that – even if CILEX has the power in principle to redelegate its regulatory functions – the steps that CILEX has taken were motivated by its representative interests, with the result that CILEX has acted in a manner that is contrary to s. 30 of the Act and the IGR.
65. The LSB agrees that an approved regulator cannot be guided by its representative functions and interests when it considers whether or not to redelegate its powers (by which we mean regulatory functions). By way of example, if an approved regulator received complaints from the regulated community that the professional standards imposed by its regulatory body were too onerous, or that the practising certificate fee was too high, and the approved regulator acted on those complaints in discharging its regulatory functions, that would likely be a breach of its overarching duty under rule 1(1) of the IGR.
66. However, the LSB considers that an approved regulator is not limited to a purely negative role, when considering the exercise of its regulatory functions: for example, in circumstances that amount to a breach of s. 28 on the part of its regulatory body. It also has positive obligations and responsibilities. This is consistent with s. 28 of the Act and rule 1 of the IGR obligations to actively further the regulatory objectives. This is also consistent with rule 1(3) of the IGR, which provides that the approved regulator must periodically review and improve its arrangements for separation and independence (which is not stated to be conditional on any breach of s. 28).

67. The regulatory objectives, as set down in s. 1 of the Act, are relatively broad. They include, for example, “promoting competition in the provision of services” and “encouraging an independent, strong, diverse and effective legal profession” (s. 1(1)(e) and (f)).
68. The LSB considers that an approved regulator is entitled to consider all matters that are relevant to the promotion of those objectives, when considering the exercise of its delegation function. In doing so it should act in a manner that is consistent with the requirements of good governance in its decision-making.
69. In January 2022 CILEX produced its Case for change, which sets out the rationale and reasons for its proposed redelegation. That Case for change focuses on the following justifications for CILEX’s consideration of redelegation:
- a. Scale to be able to deliver efficient and effective regulation at a cost that is affordable for consumers and the profession;
  - b. Ability to maintain consumer confidence that lawyers enter the profession through robust processes and maintain the standards expected of them by the regulator and the public once in practice;
  - c. Opportunity to further enhance public confidence of a consistency of approach that each and every regulated activity provider (entity and individual) in the market is required to operate to the same high standards; and
  - d. The equal treatment and recognition of legal professionals regardless of route to qualification and provide equality of opportunity for individual practitioners and entities.
70. The LSB considers that these reasons are consistent with the regulatory objectives and are not consistent with CILEX being guided by its representative functions (so as to prejudice the exercise of its regulatory functions).
71. The LSB has considered carefully whether the objective of “Scale to be able to deliver efficient and effective regulation at a cost that is affordable for the consumers and the profession” is evidence that CILEX was motivated by an improper desire to reduce practising fees in the interests of authorised persons. However, the LSB considers that – read fairly and in context – that is not the case. The LSB understands this element of the Case for change to be a reference to CILEX’s desire to secure the efficiencies and enhanced capabilities that follow from being part of a larger-scale organisation (in the ultimate interests of consumers and the profession). The LSB takes no view of the merit of this reasoning in the context of this investigation, but the LSB does not consider that it is an improper matter for CILEX to take into account.
72. The LSB is reinforced in that conclusion by the fact that it appears to be consistent with the conclusions and analysis of Mr Chris Kenny (a former Chief Executive of the LSB from 2009-2014), who was appointed by CILEX as an independent reviewer to scrutinise the Case for change and provide independent assurance as regards its credibility (Kenny review).

### Finding 3

73. Under rule 2(3) of the IGR, an approved regulator is required to “promptly inform its regulatory body if the approved regulator makes or intends to make a decision, plan, communication or other arrangement which may reasonably be considered likely to undermine the discharge of regulatory functions”. After such notification, the approved regulator must work with the [regulatory body] to see if there may be a more favourable alternative.<sup>17</sup>
74. The process of redelegation has the potential – at least – to undermine a regulatory body’s exercise of its regulatory functions. This is because the process of considering and effecting a redelegation could, by way of example: (i) undermine confidence amongst regulated persons in the regulatory body without providing sufficient confidence in the future exercise of those functions; (ii) create uncertainty within a regulatory body, making it more difficult to retain staff or triggering a staff exodus; or (iii) undermine public confidence in the regulated community itself. That being the case, when an approved regulator wishes to consider the possibility of redelegation, rule 2(3) of the IGR is engaged and the approved regulator should notify and work with the regulatory body in relation to that redelegation process.
75. This is not to say that redelegation is not permitted (see Finding 1 above). The consequence of rule 2(3) of IGR is that where an action, on the part of an approved regulator may undermine the exercise of regulatory functions, certain additional procedural obligations are imposed on the relevant approved regulator.
76. The steps that CILEX took to inform CRL of its intentions are set out in detail in Annexes A and B. That is not repeated in full here. In summary:
- a. CILEX did not share its proposals “promptly” with CRL as required by rule 2(3) of the IGR. The LSB understands that CILEX first started considering concrete proposals as regards specific re-delegation to the SRA in July 2021. In connection with this, CILEX first spoke to the SRA in September 2021 and also informed the LSB of its thinking in September 2021, but only communicated with CRL that it was actively considering redelegation to the SRA in January 2022, six months after starting to specifically consider the proposals and four months after informing the LSB. An approved regulator is entitled to develop its thinking, and to ensure that its proposals are sufficiently clearly formulated. However, the LSB has not been provided with any justification by CILEX for this considerable delay. Additionally, while formulating its proposals CILEX continued to discuss working together with CRL as set out in the joint practising certificate fee application of 26 October 2021: “...we have agreed that there is a need for further strategic discussion between our Boards to consider how our regulatory model might need to evolve to provide both effective and affordable regulation of all CILEX members”. The LSB is not aware of any evidence that CILEX gave CRL any reason to understand that this future strategic discussion could or might involve redelegation of the functions elsewhere.
  - b. The LSB is not satisfied that CILEX approached its initial communications and contact with CRL in a manner that paid sufficient regard to the risk of

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<sup>17</sup> IGR Guidance paragraph 2.16.

undermining and the possible adverse impact on the regulatory objectives, including the public interest, the interest of consumers and/or encouraging an independent, strong, diverse and effective legal profession:

- i. The LSB has not been provided with satisfactory evidence that CILEX adequately considered how its planned actions could impact on the discharge of CRL's regulatory functions, in the period during which redelegation was under active consideration, and how to mitigate that impact, in advance of the January 2022 meeting.
- ii. By requiring CRL's senior leadership to sign a confidentiality agreement before discussing its proposals, CILEX greatly constrained CRL's ability to take steps itself to mitigate that impact. By way of example, the confidentiality agreement made it impossible for CRL to prepare the ground and communicate with its own staff (at least without seeking additional permission to do so). In practical terms, it made it difficult for CRL to work with CILEX.
- iii. CILEX does not appear to have given any or sufficient consideration to the making of joint communications that would reassure the regulated community and/or the public as to the fact that there would be continuity within the regulatory regime (albeit the regulatory functions would be exercised elsewhere).

77. CILEX stressed two points in relation to this issue. *First*, that it had engaged with CRL long before January 2022 in relation to the possibility of redelegation and that the meeting in January 2022 was merely one step on a longer process.
78. CILEX maintained that the January 2022 meeting was just one stage in a longer process of review. It says that it had been considering a different regulatory model, including specifically the possibility of regulation of CILEX's members being delivered by a body other than CRL, since 2019 and that it had discussed that possibility with CRL. In particular, it pointed to its potential consideration of redelegation to the SRA in discussions with CRL in April 2019, November and December 2020, and in various meetings between April and September 2021. The LSB has reviewed the evidence in relation to these communications and considers that they evidence general discussions about the appropriate regulatory model for the sector. However, those discussions were fundamentally different from the presentation on 25 January 2022 by CILEX to CRL of specific and actionable proposals to explore redelegation to the SRA. From at least July 2021, CILEX began concrete steps to consider adopting a different regulatory model – including the redelegation of its regulatory functions to the SRA – but did not inform CRL of that considerable departure or those proposals until January 2022. Those detailed proposals could have been communicated more promptly.
79. *Second*, CILEX stresses that it engaged conscientiously with CRL in early 2022 but was repeatedly rebuffed. The LSB sets out its views as regards the dialogue between the parties below. While it is clear that CILEX went to considerable lengths after the initial meeting on 25 January 2022 to attempt to facilitate a constructive dialogue, it is equally clear that its initial approach to CRL, and the response it prompted in CRL rendered such a dialogue more difficult than it might otherwise have been. On a matter of such sensitivity, it would have been important to create an atmosphere of trust from the outset, even if there were matters on which the parties disagreed. However, the imposition by CILEX of a confidentiality agreement in terms that CRL were justified in viewing as hostile made such an atmosphere difficult, if not impossible, to achieve, however sincere and diligent CILEX's subsequent efforts might have been. As a result,

CILEX's efforts to engage CRL were not sufficient to effectively mitigate the risks that its actions might have an adverse impact on the regulatory objectives. It is hard to avoid the conclusion that the confidentiality agreement was a serious misstep that reverberated long and loud over subsequent events.

80. On the basis of the above, the LSB finds that the manner in which CILEX first approached CRL in January 2022 was not consistent with the regulatory objectives, in particular protecting and promoting the public interest and the interests of consumers, and the use of the confidentiality agreement did not meet its obligations in rule 2(3) of the IGR.
81. There are, however, two important contextual points that mitigate the finding above:
  - a. This was the first time that an approved regulator has considered redelegating its functions elsewhere. Put another way, this was novel territory with no established 'road map' concerning how an approved regulator should conduct itself or advance the process. CILEX was operating against that backdrop.
  - b. The LSB is not satisfied that CRL was materially undermined in the exercise of its regulatory functions as a result of the manner in which CILEX approached its initial conversation with CRL.<sup>18</sup>

#### Finding 4

82. CRL fulfils CILEX's regulatory functions under the current delegation arrangements. It is obliged to exercise those functions in a manner consistent with the regulatory objectives (s. 28 of the Act), which include: protecting and promoting the public interest; improving access to justice; and protecting and promoting the interests of consumers. This section of the report considers whether CRL – by its actions – has breached that obligation.
83. The LSB acknowledges that there were sensitive issues under consideration by CILEX and CRL throughout the period. Nevertheless, the LSB considers that the manner in which CRL engaged with CILEX on several occasions over the course of 2022 was not consistent with this obligation.
84. In particular CRL has failed to take reasonable steps to cooperate with CILEX, over several occasions in 2022 (per rule 3 of the IGR and consistent with the overriding obligation to promote the public interest and the interests of consumers):
  - a. CRL was unwilling to compromise when seeking to agree a joint process for reviewing proposals for regulatory change with CILEX: it sought to have the ability to evaluate the SRA's alternative proposals directly and compare those proposals to its own, which the CILEX Board objected to. This condition was unacceptable to both CILEX and to the SRA.
  - b. It did not participate at all in the Kenny review, despite being invited to do so. The LSB does not agree with CRL that 21 days was an insufficient period of time in which to make representations on issues that had first been raised many months

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<sup>18</sup> CRL says that the public communications in the summer of 2022 led to confusion amongst the regulated community and damaged its reputation. The LSB has seen only some limited evidence of this. The process of redelegation will always involve some disruption but the LSB has not seen sufficient evidence to conclude that CRL was materially undermined.



before. The Case for change was notified to CRL months prior to the Kenny review. CRL had already undertaken analysis on the Case for change and was formulating proposals to consult on that case, and therefore had developed its thinking. The LSB recognises that the original invitation to participate in the review was accidentally not sent (due to a server error). However, Mr Kenny showed a willingness to give CRL more time and sought to arrange a meeting 17 days after the email was received. CRL sought an extension but it did not consider Mr Kenny's proposal for a revised timeframe adequate to give due consideration to its representations, and so declined to participate. If CRL considered that this was not sufficient, a reasonable approach would have been to make representations in the 17 days available, not to conclude that no representations should be made at all. To the extent that CRL says that it had lost confidence in CILEX's commitment to an objective, evidence-based process, the LSB is not satisfied that this was a fair conclusion to reach as regards Mr Kenny's report.

- c. CRL's correspondence has been unnecessarily confrontational, on occasion.
  - i. By way of example, on 12 July 2022 CRL published a public statement which said:
 

"It is with regret that we must note that CILEX's position appears to have been reached over the period from July 2021 to January 2022 excluding Chartered Legal Executive Board members, without any process of consultation with its own members or CRL, in conditions of great secrecy and on the presumption that its Royal Charter can simply be changed to suit... An effective system of legal regulation depends on independent regulators being able to take robust action without the threat of "de-delegation" of their regulatory functions. Allowing a representative body to shop around for a regulator more to its liking, would create self-evident risks to the robustness of the current regulatory arrangements..."
  - ii. The wording of this statement did not provide a fair description of the steps that CILEX had taken. CILEX had engaged in at least some consultation with CRL. The use of the words "in great secrecy and on the presumption that its Royal Charter can simply be changed to suit..." cast CILEX's conduct into an unfairly pejorative light. The same applies to the description of CILEX's conduct as shopping around for a regulator more to its liking.
  - iii. The wording was also likely to – and there is some evidence that it did – lead external parties to conclude that there had been a breakdown of trust between CRL and CILEX (this language contributed to the adverse coverage in the legal press, which stressed the adversarial nature of the discussions).
  - iv. The statement also suggested that CILEX's actions and approach were liable to undermine the regulatory regime for chartered legal executives. The LSB does not agree that CILEX's consideration of redelegation was inherently liable to undermine that regime.
  - v. On 20 July 2022 CRL published a further statement, which asserted that CILEX was acting in breach of the Act and that "Its objectives are those of a representative body". In addition, it described "CILEX's rapidly deteriorating financial position" and referred to this as the reason for

CRL's public request to hold on to its own reserves. Again, the language of this communication was not calculated to de-escalate tensions, sustain public confidence or to restore relations between the two regulators. It was not in the best interests of the public or the regulated community to correspond, in public, in this manner.

- d. CRL's proposed consultation on "Regulating Responsibly and Responsively" is considered below in its own right. However, its content is consistent with the adversarial tone of CRL's communications in this period.
  - e. CRL has submitted that any duty to co-operate with CILEX cannot extend to co-operating with an unlawful process, and that it was acting on advice from counsel that CILEX's proposed redelegation was unlawful. The LSB does not agree with this reasoning. *Firstly*, CRL received the LSB's letter on 9 March 2022 containing its initial view that CILEX's proposed approach was lawful. CRL does not appear to have taken this into account sufficiently. From that point onwards, CRL should have acted on the assumption that CILEX's legal position was correct for the purposes of co-operation, or at least on the basis that there was a proper argument that it was correct (although it was entitled to reserve the right to seek a court determination of the issue). *Secondly*, CRL's view of the lawfulness of CILEX's decision does not justify the unnecessarily confrontational tone of its public statements or proposed consultation.
85. In conclusion, the LSB considers that CRL has not approached its dialogue, communications and relationship with CILEX in a manner that was liable to protect and promote the interests of consumers and the public interest. This finding stands on its own: even if the LSB's view of the law in relation to Finding 1 is incorrect, the LSB considers that the manner in which CRL has engaged with CILEX is not consistent with its duties under s. 28 of the Act. For the same reason, even if CRL was correct on the underlying legal question, its conduct in this period was not consistent with its obligations.
86. The LSB recognises that there are some important mitigating circumstances: CRL considered that CILEX had no power to take the steps that it proposed to take. CILEX's actions were also 'existential' in the sense that they threatened the very existence of CRL. However, CRL has, at times, acted in a manner that was not consistent with the regulatory objectives.

## Finding 5

87. The effectiveness of the regulatory scheme as a whole requires a relationship of trust between an approved regulator and its regulatory body. The Act creates a scheme of checks and balances which, while intended to maintain independence as between an approved regulator's regulatory and representative arms, also envisages a working relationship between them. The residual role of the approved regulator requires collaboration: as per rule 3 of the IGR, the approved regulator and regulatory body should "cooperate with one another to provide and accept assurance". An approved regulator is entitled to request information from the regulatory body, which it reviews to ensure compliance with its statutory obligations. The two bodies may also establish shared services under rule 11 of the IGR. Maintaining a working relationship between the approved regulator and regulatory body is in the public interest and the interests of consumers in line with the regulatory objectives in s. 28 of the Act, and consistent with



the approved regulator's duty not to undermine regulatory functions under rules 1(1) and 2(3) of the IGR.

88. The parties did not work together effectively to resolve the issues between them in the public interest. Discussions between the parties as to collaborating on regulatory change broke down, and CRL subsequently refused to participate in the independent review commissioned by CILEX. When both parties made public statements in July 2022, this brought their disagreement into the public sphere. This was not helped by the adversarial tone adopted by CRL in its 20 July 2022 statement, in particular. The LSB does not consider that the contradictory communications served the public interest.
89. The LSB disagrees with CRL's view that CILEX had predetermined the outcome of any dialogue, and that continued discussions with the SRA alongside discussions with CRL were inappropriate. While CILEX had already carried out some analysis and indicated what it considered was the best option (redelegation), it was entitled to have a pre-disposition towards one option as long as its mind remained open.<sup>19</sup> The LSB considers that CILEX was prepared to listen to CRL's counter view and that it engaged Mr Kenny in order to test the credibility of its Case for change.
90. The LSB does not consider that CILEX had closed its mind to such an extent that it was not fulfilling its obligations under the IGR. The LSB also does not consider that CILEX's decision to continue communication with the SRA was either improper in its own right or evidence of bad faith on CILEX's part. An approved regulator, reviewing delegation arrangements, is entitled to gather information in order to take an informed decision having explored all possible options.

## Observations

91. The LSB also makes two observations arising out of the materials provided to it in the course of the investigation.
92. *First*, in the course of the investigation, a free-standing issue has arisen. Both CILEX and CRL have previously assured the LSB that they were compliant with the IGR, including the IGR Guidance. It has transpired that this is not correct in all respects. When the disagreement arose, the parties had not agreed a system for resolving issues between them, including disputes (as they were required to do). The question of compliance in this manner was not formally a part of the investigation and the LSB makes no separate finding on this point. However, the LSB notes that this is a matter of some concern and indicates that there may be weaknesses in both parties' technical governance that it would be prudent to address.
93. *Second*, the LSB asked CILEX to provide it with records of its Board papers and other records that capture its reasoning in the period between June 2021 (when it first began to specifically consider the possibility of redelegation) and 18 January 2022 (the date on which the CILEX Board decided to inform CRL of its proposals).

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<sup>19</sup> There is a close analogy with principles of how a public authority must conduct a consultation: see *Electronic Collar Manufacturers Association V Secretary of State for DEFRA* [2019] EWHC 2813 (Admin), per Morris J at 139ff.

94. The issues that CILEX was considering at this time were of profound importance to its role as an approved regulator. The LSB expected CILEX to have a clear record of its consideration, the discussions that it had held, and the reasoning that had informed its decisions. CILEX did not provide the LSB with information which showed:
- a. A record of the Board decision, underlying Board papers and Board discussion that led to the decision to pursue the proposed change of delegation;
  - b. Any record of the form of delegation from the CILEX Board to the Chair or CEO to pursue the proposals and hold discussions with CRL, the SRA or the LSB;
  - c. Any formal record generated by CILEX of the discussions between CILEX and the SRA.
95. This issue does not fall within the ambit of the investigation *per se*. Nonetheless, the LSB was surprised by the lack of available materials from CILEX. The LSB considers that it is appropriate – in the circumstances – to record its view that CILEX’s internal record keeping could have been fuller in relation to these important matters.

## Recommendations

96. In the light of the findings above, the LSB makes the following recommendations.

### Recommendation 1

97. Should CILEX wish to proceed with its proposals to explore alternative delegation models it should do so:
- a. Collaboratively and in cooperation with CRL, including prompt notification, as far as is reasonably practicable.
  - b. In a manner that is transparent: sharing its thinking and analysis openly with CRL and invite comment from CRL in relation to those materials.
  - c. Does not undermine the exercise of its regulatory functions (even if it concludes that is appropriate to move those functions from CRL to another regulatory body).
  - d. Maintains conscientious efforts to communicate, to the public and regulated persons, that CRL retains the exercise of CILEX’s regulatory functions, for now. CILEX should also be clear that any transfer of those regulatory functions:
    - i. Will be done carefully and (as far as possible) with appropriate involvement of CRL, with any changes relating to delegation subject to the LSB’s approval.
    - ii. Will be carried out in order to advance the regulatory objectives.
    - iii. Will be executed in a manner that ensures continuity of the regulatory functions.

## Recommendation 2

98. CRL should engage constructively and collaboratively with CILEX's review of its delegation, with a view to promoting its obligations under s. 28 of the Act. This will include, but is not limited to:
- a. Carefully scrutinising whether CRL's public communications will promote and protect the public interest.
  - b. Providing CILEX with access to information that is relevant to CILEX's proposals, and in respect of managing risks to the effective discharge of regulatory functions.
  - c. Conscientiously considering whether the redelegation under consideration would further the regulatory objectives, for example, be in the public interest, improve access to justice and protect and promote the interests of consumers.

## LSB Action

99. The LSB will consider whether it would be proportionate and appropriate to develop and consult on proposals for guidance in relation to the issues to be taken into account when an approved regulator is considering changing the delegation of its regulatory arrangements.

## B. Financial matters

### Summary of issues

100. This line of enquiry concentrated on the issues arising out of the IGR dispute referred by CRL regarding the transfer of reserves and alleged practising certificate fee (PCF) surplus retained by CILEX, and connected matters. It considers the overall financial management of both CILEX and CRL and other connected financial matters and is divided into 3 parts: (1) reserves (2) PCF reconciliation and (3) shared services.
101. On 15 September 2022 CRL referred a dispute under rule 14(2) of the IGR to the LSB in relation to what it considered to be CILEX's failure to make payment of what it claimed was monies due to it namely: (i) the transfer of £700,000 contingency reserves (contingency reserves) to CRL (see part 1: reserves below) and ii) payment of a minimum of £118,813 due in respect of PCF for the period 2017 to 2021 (see part 2: practising fee reconciliation below).

### Financial matters – part 1: reserves

102. Section 30(3)(a) of the Act requires rules to be made by the LSB which oblige an approved regulator to (amongst other matters) “take such steps as are reasonably practicable to ensure that it provides such resources as are reasonably required for or in connection with the exercise of its regulatory functions”. Consistent with that obligation, rule 9 of the IGR requires that: “Each approved regulator must provide such resources as are reasonably required for its regulatory functions to be efficiently and effectively discharged”.
103. Regulatory bodies determine their own budget and the allocation of their resources independent from the approved regulator (rule 10 of the IGR).<sup>20</sup> The intention of the statutory regime is that a regulatory body should be provided with sufficient funds to discharge its regulatory functions and should allocate those funds autonomously.
104. The IGR also sets out various information sharing obligations. Rule 3(1) of the IGR provides that each regulatory body shall provide sufficient information to the approved regulator as is reasonably required for the approved regulator to be assured of that regulatory body's compliance with s. 28 of the Act. The IGR Guidance (para 3.12) provides that each approved regulator and regulatory body should endeavour to agree a protocol for the provision of such information. CILEX and CRL have an agreed information sharing protocol for this purpose.
105. The background facts are relatively straightforward and are set out in detail at Annex A (paragraphs 53 to 62). In summary, as it stands now, CILEX holds contingency reserves on behalf of CRL and CRL has access to these reserves. In July 2022, CRL requested the transfer to it from CILEX of CRL's £700,000 contingency reserves currently held by CILEX (the request). CILEX has not given effect to the request as of yet and has asked CRL for certain assurances and information that it regards as necessary in order to consider and give effect to the request. Throughout July, August

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<sup>20</sup> The LSB Practising Fee Rules 2021, made under s. 51 of the Act, require that the amounts raised by the practising fees levied on the profession by an approved regulator must be sufficient to effectively discharge its regulatory functions.

and September 2022, CILEX and CRL were in correspondence in relation to the transfer of CRL's contingency reserves.

106. The LSB has reviewed the arrangements that are in place for the holding and transfer of the contingency reserves including the CRL Reserves Policy and CILEX Group Reserves Policy. In simple terms, they provide that:
- a. CILEX holds the contingency reserve as part of the CILEX Group Reserves governed by the CILEX Group Reserves Policy; and
  - b. CRL is entitled to unfettered access to the contingency reserves by way of a straightforward administrative process.

## Finding 6

107. The CRL Reserves Policy, complies with the LSB Practising Fee Rules 2021 (PCF Rules) and Guidance and enables CRL to manage and control its own reserves as far as is reasonably practicable to do so. Pursuant to that policy, CRL is entitled to request, and as far as is reasonably practicable to be granted, the facility to hold its own reserves.
108. To the extent that it may wish to do so, CILEX can ask questions about compliance with the CRL Reserves Policy and the CILEX Group Reserves Policy but cannot impose any preconditions on the transfer of the contingency reserves - at least for the purposes of the CRL Reserves Policy where its own reserves are held is a matter for CRL to decide.
109. In its response to the draft report, CILEX suggested that its right to seek answers from CRL arise from the parent/subsidiary relationship between them in company law. The relationship between the parties, in company law terms, is a matter for the parties to resolve, having regard to their obligations under the Act and the rules made under it.

## Finding 7

110. The request from CRL:
- a. Was an exceptional request as it did not relate to the use of its contingency reserves (but rather a request to hold those reserves).
  - b. Was for a significant amount of money.
111. In the circumstances, while CILEX states CRL has unfettered access, in fact CILEX acted reasonably when it sought assurance that CRL intended to manage the contingency reserves in line with the agreed CILEX Group Reserves Policy – given that it was an exceptional request and for all of the contingency reserves. In the ordinary course of business, between two organisations that were cooperating normally, that assurance would have been given swiftly. CRL's initial answer was somewhat equivocal and did not affirm, in terms, that the contingency reserves would continue to be held in a manner consistent with the CILEX Group Reserves Policy. That confirmation was only provided in its letter of 24 August 2022.

112. CILEX is also entitled – indeed in some cases is obliged – to seek information to satisfy itself that CRL is continuing to act in a manner compatible with s. 28 of the Act. The request was a proper trigger for questions of that kind. Again, CRL’s initial answers were not as full as they might have been. By asking these questions, CILEX was seeking assurance that the request was not due to CRL having depleted its funds in a manner that contradicts the regulatory objectives and CRL’s duty to have regard to the principles of best regulatory practice, in particular to act proportionately under s. 28 of the Act. The LSB is not aware of any reason why CRL’s later answers to CILEX’s questions would not provide a proper basis for concluding that CRL is acting in a manner compatible with the s. 28 obligations.
113. However, while it is correct that CILEX was entitled (or obliged) to ask the above questions, CILEX was not entitled to make the provision of satisfactory answers a precondition to the transfer of the reserves. That is not what the CRL Reserves Policy provides. If CRL’s answers had caused CILEX to doubt whether CRL was acting in compliance with s. 28, that might have provided a justification for CILEX to take other steps. However, neither the Act, the IGR, nor the CILEX Group Reserves Policy provided any basis for CILEX to decline to transfer the contingency funds until CRL had satisfied it of its ongoing compliance with s. 28.
114. Ultimately, whether or not the provision of satisfactory answers could be made a precondition of the transfer, the disagreement in relation to this issue is consistent with the overall breakdown in the effectiveness of the parties’ communications and relationship over the course of the events under investigation. They did not work together effectively. CRL’s initial responses to CILEX’s requests were not as full or as cooperative as they might have been. CILEX should have been clear, from the start, that it was content in principle to transfer the contingency reserves and that it was not seeking the information as a precondition for transfer.

### Recommendation 3

115. The parties should work together to give effect to CRL’s request to hold its own contingency reserve so far as is reasonably practicable.
116. CILEX should:
- a. Clarify whether it considers that CRL’s answers to its questions as regards current and future compliance with the CILEX Group Reserves Policy and future compliance with s. 28 of the Act are not satisfactory (or require further elaboration and explain in what respect).
  - b. Make clear that the provision of satisfactory answers to these questions is not a precondition to the transfer of the funds.
117. CRL should respond fully, clearly and comprehensively to any further requests for information that are made by CILEX and in a spirit of sincere cooperation. CILEX has explained in response to the draft report that, in its view, it has not made the provision of satisfactory answers to its questions a precondition of transferring the reserves. CILEX further considers that there may have been a breach of both the CILEX Group Reserves Policy and that CRL may not have acted in accordance with the s. 28 obligations. These are matters for it to pursue, separate to the transfer of the reserves.

## B. Financial matters – part 2: practising fee reconciliation

118. It appears to be common ground between the parties that:

- a. At the end of each financial year, there was no reconciliation exercise whereby any surplus or deficit funds held by CILEX in relation to PCF for its regulatory functions should be transferred to CRL.
- b. There was no such reconciliation at year end for the years 2017 to 2021.
- c. There were surplus funds held by CILEX at the end of at least some of those years.
- d. The cumulative surplus throughout those years is at least £118,813.

119. CRL considers that the appropriate sum is £186,166 (though the information provided by CRL suggests that the figure may be higher at £269,937). The difference in figures is due to CRL and CILEX using different data sets.

120. Following correspondence between the parties in 2022, CRL sought payment of the agreed figure (£118,813) immediately. CILEX declined to provide that sum because, even though this was owing at the relevant time, it says that in 2022 the funds in relation to the PCF is in deficit for an amount greater than the historic surpluses. This reflects a purported decline in number of chartered legal executives in 2022 and/or the failure of some to pay the PCF.

121. CRL disagrees and notes that on its latest estimates, it considers that the PCF fund for 2022 will be in surplus again and that a sum of £35,258 will be owed at year end.

122. Attempts to use the parties' IGR dispute resolution process (which had been agreed in the course of 2022) to resolve the matter failed and a dispute was referred by CRL to the LSB under rule 14 of the IGR on 15 September 2022. In the referral CRL asked the LSB to carry out a full review of the CILEX management accounts to ensure that the calculations of the PCF owed from 2017 to 2022 are accurate and complete. The LSB sought information from the parties for the period 2017 to 2022. As the financial accounts for 2022 were not yet finalised at the time the investigation began, the LSB limited its consideration to the period 2017 to 2021.

### Finding 8

123. Rule 18 of the PCF Rules provides that any reserves generated from surpluses in the PCF should be held separately from any other funds. In addition, the PCF Guidance makes clear that any accrued practising fee reserves in excess of the target level of uncommitted reserves<sup>21</sup> ought to be returned to the regulated community by a corresponding reduction in the practising fee for the following year, or the approved regulator should explain why this would not be appropriate.

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<sup>21</sup> The PCF Rules defines 'uncommitted reserves' as the sum of reserves held by the approved regulator or regulatory body which have not been allocated to any ring-fenced commitments.



124. CRL asked the LSB to carry out a full review of the CILEX management accounts to ensure that the calculations of the PCF from 2017 to 2022<sup>22</sup> are accurate and complete. This reflects the fact that the dispute between the parties is largely a question of accounting treatment.
125. The LSB has decided that it will not carry out a full review of CILEX's management accounts (and to that extent it will not make a determination on the referral of this issue).<sup>23</sup> That is because – at least in this case – the LSB will not exercise its powers to adjudicate between the parties on a dispute in relation to accounting treatment. The nature of the parties' respective obligations under rule 18 of the PCF Rules are set out above. That process should be followed and the LSB will as appropriate engage with the parties in order to assist to clarify any misunderstandings in relation to the nature of their mutual obligations. However, it will not – at least in this case – resolve those elements of the referral that relate to technical questions of accounting treatment.

## Recommendation 4

126. The parties should work together to:
- a. Consider their compliance with rule 18 of the LSB Practising Fee Rules 2021 (PCF Rules).
  - b. Establish a shared understanding concerning how CILEX has treated any historic practising fee surpluses, for accounting purposes.
  - c. Agree the proper approach to current and future reconciliation of any sums owing and agree an orderly process and reasonable timeframe for the transfer of any sums owing by either party.
  - d. Have regard to the s. 162 Guidance to the PCF Rules requirement when considering whether any accrued practising fee reserves in excess of the target level of uncommitted reserves should be returned to the regulated community by a corresponding reduction in the practising fee for the following year.
127. The parties are highly likely to be assisted in relation to (b) and (c) above by a direct dialogue between, their professional advisers.

## Observations

128. The LSB makes the following observations, which are not binding on the parties, but are designed to assist them in resolving their dispute in relation to this issue.
- a. It appears that CILEX and CRL are using different figures and bases to calculate the number of persons authorised to provide reserved legal activities (and therefore projected income). It may be that the number of practising certificates issued does not directly correlate with the PCF received for such certificates for two reasons. First, the LSB understands there are a certain number of authorised

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<sup>22</sup> As noted above, this time period reflects the request from CRL for alleged PCF owed from 2017 to 2022. As the financial accounts for 2022 were not yet finalised at the time the investigation began, we limited our consideration to the period 2017 to 2021.

<sup>23</sup> The LSB has a discretion not to resolve a dispute that has been referred to it (IGR Guidance 14.12).



persons who receive a practising certificate based on a commitment to pay, such as by direct debit or because their employer would pay for it. Second, the LSB further understands that any person who completes their qualification and obtains authorisation from CRL part-way through the year is entitled to a practising certificate without additional charge.

- b. Reconciliation of the PCF funds should be a matter of accounting fact, capable of determination by a qualified professional. Any dispute as to this question ought to be capable of being resolved by both parties' professional advisers entering into a direct discussion in relation to the sums in dispute.
- c. The LSB notes that the parties' have agreed to establish a new PCF reconciliation procedure in future. It may be that this procedure can be used to effectively reconcile the historic sums. The LSB expects the parties to include information concerning the treatment of historic PCF surpluses in their annual PCF application.
- d. The LSB asked for, and was provided with, a view from CILEX's external auditor on the reconciliation of PCF receipts from 2017 to 2021. In the auditor's opinion it: "did not identify any issues, concerns or risks in respect of the receipt of PCF income or the allocation of PCF income between CILEX and CILEX Regulation Limited during the course of our audits of the financial statements for the years ending 31 December 2017 to 31 December 2021 inclusive, and there were no concerns over the general accounting treatment adopted by the group for this revenue." While this provides some assurance on the fact that no issues were identified, of the four audit reports for each of the years in question, only one (2017) makes reference to PCF matters. It is therefore unclear if the PCF reconciliation matter was a focus of each audit. The parties should clarify this between them.
- e. It was not immediately clear to the LSB – from the information provided to it – by what mechanism CILEX had historically ring-fenced any surplus PCF funds and whether it returned any accrued excess to the regulated community:
  - i. CILEX says that it has held any potential surplus PCF income in a 'fund' and used this surplus to set off any variance between forecast and actual PCF in the current year.
  - ii. However, it is not clear to the LSB whether the manner in which the funds are held satisfy the PCF Rules.<sup>24</sup> There appear to be some inconsistencies in the documents submitted by CILEX to the LSB. The document setting out its process states that: "1 January Surplus/Deficit balance carried forward via Regulatory Working Capital reserve". This reserve does not appear to correlate to those listed in the CILEX Group reserves policy.
  - iii. After receiving the draft report, CILEX explained that its Group Reserves Policy refers to the 'Working Capital Reserve', which is the pot in which

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<sup>24</sup> Rule 18 of the PCF Rules state that "an approved regulator must hold any reserves generated from surpluses of the practising fee... separately from any other funds."

any surplus (or indeed deficit) is held as a ring-fenced sum (the regulatory working capital reserve) within that wider reserve fund.<sup>25</sup>

CILEX should provide a clear explanation to CRL as to the procedures that it has adopted in this respect.

129. As set out above, the LSB will as appropriate engage with the parties to assist to clarify the nature of their respective obligations under the PCF Rules.

## B. Finance matters – part 3: shared services

130. Under the financial line of enquiry, the LSB also considered issues concerning shared services. Rule 11 of the IGR allows for an approved regulator and its regulatory body to have shared services. The approved regulator and regulatory body must be in agreement that, amongst other things, the shared service is necessary to be efficient and reasonably cost-effective.
131. CRL has raised concerns with the LSB regarding the provision, and cost, of shared services that are provided to it by CILEX. CRL and CILEX have put in place steps for how each party will in practice comply with the IGR and the requirements of the Act. These protocols state that CRL and CILEX will maintain a service level agreement (SLA) or equivalent in respect of the provision of shared services to CRL. The parties entered into an agreement in July 2020 that covered: IT, facilities, finance, HR, marketing and communications, membership, and qualifications.
132. The LSB understands that there were issues relating to the operation of the shared services agreement, such as:
- a. The provision of information by CILEX to CRL about the next year's cost of various shared services late, one month after the 31 July 2022 deadline specified in the SLA.
  - b. Issues about the prices and quality of shared services.

## Finding 9

133. The LSB considers that the matters set out above in relation to shared services are essentially contractual in nature. To the extent that the parties are in dispute concerning fulfilment and/or pricing of their contractual obligations, that is not a matter that the LSB will resolve for the parties. Furthermore, these matters have not been referred to the LSB as a dispute and the LSB does not propose to intervene.

## Finding 10

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<sup>25</sup> The CILEX Group Reserves Policy refers to three types of reserves: a central contingency reserve equal to the total value of six months of operating costs for each of the companies that make up the CILEX Group; a central strategic reserve equal to the amount of cash and investments held that are in excess of the Contingency Reserve to fund business development activities and investment opportunities; and local working capital reserves which are required to enable each operating company to maintain sufficient cash to meet its working capital requirements, equal to two months of operating costs, and which are held and controlled locally within each company.

134. CILEX's delay in providing cost of shared services information to CRL in 2022 meant that the PCF consultation issued by CRL may not have fully reflected the cost of regulation. This does not appear to have had an impact on the finalisation of the 2022 PCF application to the LSB (which included CRL's own budget and a cost for shared services shared between the parties). However, CILEX should ensure that it provides information to CRL in a timely manner in future, where that information is necessary for CRL to fulfil its statutory obligations.

## Recommendation 5

135. Some of the matters regarding shared services seem to have been compounded by a lack of clarity in the parties' communication. The parties should work conscientiously to ensure that they communicate more clearly, in a timely manner and work together more effectively in future.

## C. Consultation

### Summary of issues

136. On 25 September 2022, CILEX referred a dispute under the IGR to the LSB regarding a proposed CRL consultation entitled “Regulating responsibly and responsively”, which set out options for changes to CRL’s regulatory arrangements.
137. CILEX contended that by publishing the consultation, CRL would be “acting ultra-vires, contrary to s. 28 the Act” and that “publication would risk significant damage to the reputation of the CILEX regulatory system, the LSB and the wider legal services regulatory framework”. It said the consultation represented an intention by CRL “to undermine and prejudice CILEX’s regulatory review” and that CRL was “seeking to exercise CILEX’s powers as the Approved Regulator beyond the delegation that is in place”.
138. The relevant background is summarised as follows (and detailed in paragraphs 63 to 71 of Annex A):
- a. On Friday 23 September 2022, outside of business hours, CRL sent an e-mail to CILEX, attaching a copy of a proposed consultation with a stated publication time of 10am on Monday 26 September 2022. The consultation was intended to run for 12 weeks.
  - b. On Sunday 25 September 2022, CILEX: (i) sent a letter to the LSB referring a dispute under rule 14 of the IGR, on the basis that it considered the consultation would undermine CILEX’s review of regulatory arrangements, was a significant over-reach of CRL’s delegated role, was ultra vires, and presented an unbalanced portrayal of the key issues as well as containing factual inaccuracies; and (ii) sent a letter to CRL requesting immediate suspension of publication of the proposed consultation and advising it of the IGR dispute referral.
  - c. On Monday 26 September 2022, the LSB wrote to CILEX and CRL that the relationship between the parties had broken down, and requested that the parties pause any further steps, including in relation to the proposed consultation.
  - d. Following further consideration of the various disputes between the parties, the LSB opened this investigation. The proposed consultation has not been published.
139. In the proposed consultation (summarised in paragraph 65 of Annex A), CRL put forward its view and sought comments on several issues that were the likely to prove controversial, particularly given the public nature of the disagreements between the parties. These included an option for CRL to take on the role of approved regulator in CILEX’s place.

### Finding 11

140. As a general principle, regulators are independent bodies and are free to consult as they see fit. They are also entitled to express a preference for one or other of the possible consultation outcomes.

141. However, a number of the matters addressed in the consultation rest on an error of law: as drafted, CRL presupposed that it had the power unilaterally to alter its relationship with CILEX. At the very least, CRL should have reflected clearly in the proposed consultation that there was a real possibility that power to undertake many of the proposed changes outlined lay with CILEX (subject to the consent of the LSB and, for certain matters, ultimately for Parliament). CRL has submitted that its consultation questions were at a high-level and not concerned with the mechanics of implementation, and that it was well aware it did not have the ability to unilaterally implement the changes it proposed. However, it is fair to say that the consultation would not have made clear the limitations on CRL's powers, if it had been published.<sup>26</sup>

## Finding 12

142. The handling of the proposed consultation fell below the standards that the LSB expects of an effective regulator.
143. The proposed consultation was in development for some months. Yet CRL did not make CILEX aware of the detail of its proposed consultation until almost immediately before its intended publication (on a Friday evening outside of business hours prior to a planned Monday morning publication). This notification appears to have been given at the prompting of the LSB earlier that day. CRL relies on a general statement of intention to consult on "options to build on 100 years of independent professional development and regulation" made in a public statement on 19 July 2022, but this did not provide sufficient notice to CILEX of CRL's proposed consultation. This general statement does not contain any indication of the content of the proposed consultation, which is the core issue underlying the LSB's conclusion in Finding 11, nor any timeline for publication or consultation period.
144. Failure to keep CILEX informed of the ongoing development and then planned publication of the consultation would be poor practice under normal circumstances. Given the state of the relationship at the time, publication without notice would have reinforced the public perception that the parties were in disagreement, to the detriment of the profession and public confidence. That was particularly the case given that one of the proposed changes involved the removal of CILEX as approved regulator altogether and its replacement by CRL.
145. The LSB does not find – because it cannot form a view – that the intention of the consultation was to 'retaliate' in light of CILEX's public statements about the possible redelegation of regulatory functions to the SRA. However, the handling of the consultation (particularly given its content) was likely to further damage relations between the parties.
146. Given the tensions in the relationship between CRL and CILEX at the relevant time, it was particularly important that CRL engage constructively and conscientiously with CILEX prior to publication.

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<sup>26</sup> The LSB recognises that CRL took a different view on this question, albeit it was aware that the LSB disagreed with it at this point.

### Finding 13

147. The LSB is not aware of any evidence that CRL informed or properly engaged with other stakeholders who had a strong interest in the proposals (for example, the SRA (which is directly commented on in the consultation), the LSB or the Ministry of Justice).
148. During a Board meeting, earlier in 2022, the CRL Board noted the importance of notifying the SRA (at least) ahead of potential publication of an earlier iteration of the consultation. No such dialogue occurred. The LSB agrees with the original sentiments of the CRL Board: a clear dialogue with other relevant stakeholders would have been appropriate, prior to publication.

### Finding 14

149. CRL proposed to publish the consultation following a specific LSB request to both CILEX and CRL to refrain from further public comment on the various matters under dispute. The LSB had made this request in July 2022 with a view to avoid further adverse impact on the regulated community and public confidence in both parties.
150. Following CILEX's public announcement in July 2022, it held a series of membership events to provide further information about its intentions. It is understandable, against that backdrop, that CRL wanted to issue its own document setting out its preferred options for changes to its regulatory arrangements.
151. However, this does not provide a sufficient justification for the manner in which CRL intended to issue the proposed consultation (particularly given its content).

### Recommendation 6

152. CRL should ensure that it consistently undertakes effective scrutiny of its materials for publication. This includes:
  - a. Consideration of the effectiveness of its quality assurance processes.
  - b. How it considers the potential impact of its publications on the regulated community and third parties.

### Recommendation 7

153. CILEX and CRL should work together to:
  - a. Establish a comprehensive evidence-base, including available evidence from both parties to inform any proposals for future changes to the regulatory arrangements; and
  - b. Ensure that proposals for a change of delegation are subject to effective, meaningful and transparent engagement with a range of stake holders, including the regulated community.

## General finding

### Finding 15

154. Taking all the evidence into account, in the round, the LSB considers that there has been a breakdown in transparent, open and professional communication between CILEX and CRL. Approved regulators and their regulatory bodies should work effectively with one another in order to secure their shared objectives, which are set out in s. 1 of the Act. Those include the obligation to promote the public interest when there is disagreement between approved regulators and regulatory bodies. As set out above, that has not always been the case in this matter. That followed, at least in part, from the fact that relationships were not maintained effectively, at Board or Executive level, throughout the relevant period.

### LSB Action

155. The LSB will consider the findings from this investigation in the next review of the IGR. The LSB will consider and consult on any proposed amendments as appropriate that might be needed to address the issues highlighted as part of the investigation, and that may be of general application to approved regulators and regulatory bodies.
156. The LSB will consider whether there are any other lessons learnt that may be of general application to approved regulators and regulatory bodies, besides issues relating to the IGR, and if so, how these may be appropriately shared.

## Consideration of enforcement action

157. The investigation has identified areas where both CILEX and CRL have not been compliant with the Act and the IGR.
158. However, the LSB considers that there are two significant mitigating factors, that provide an important element of the backdrop:
- a. This is the first time that an approved regulator has seriously considered redelegating its regulatory functions to a third party in this way. As a result, there was no 'road map' in place for CILEX to follow. To the extent that it made errors of approach or communication, they should be understood against that backdrop.
  - b. The LSB is conscious that the prospect of redelegation is 'existential' for CRL. If CILEX's regulatory functions are redelegated to the SRA, CRL may cease to exist (at least in its current form). To the extent that CRL made errors in terms of approach, and to the extent that the relationship between the parties became confrontational, the fact that the stakes were high provides an important and mitigating factor.
159. At least some of the findings above could – in principle – provide the basis for enforcement action on the part of the LSB (in particular where the LSB has found that CILEX/CRL have breached the Act and/or the IGR). However, taking into account all of the factual matters set out in the report, the mitigating circumstances, and that CILEX and CRL have agreed undertakings to act in accordance with the recommendations<sup>27</sup> of this report **the LSB does not consider that it is necessary or proportionate to take enforcement action against either of the regulators at this time.**
160. The LSB considers that its enforcement powers under the Act apply only to the approved regulator, not its regulatory body. As well as taking enforcement action, the LSB has the power to resolve matters informally (see s. 49(4)(a) of the Act and paragraphs 23 to 33 of the LSB Statement of Policy for Enforcement).
161. Taking all the relevant matters into consideration, in the round, the LSB has decided that the appropriate course – at this point – is to resolve these issues informally. CILEX and CRL have agreed undertakings to act in accordance with the recommendations<sup>28</sup> of this report and are developing an action plan to implement those undertakings. The LSB will put in place measures to monitor CILEX and CRL's compliance with the undertakings, and it will from time-to-time publish progress updates. In addition, the LSB will keep under review the question of whether it should move to formal enforcement action, in particular if cooperation between the parties fails sufficiently to address the findings and recommendations in this report.

## Monitoring implementation of the recommendations

162. To provide assurance that CILEX and CRL are addressing the findings and meeting the recommendations, and to inform the LSB's considerations on whether formal enforcement action is required (as opposed to informal steps to resolution):



- a. To fulfil the recommendations, including if CILEX decides to continue to explore redelegation, the LSB will ask CILEX to prepare a plan of action setting out how it intends to meet each of the recommendations in compliance with the IGR and the Act. CILEX should collaborate with CRL in formulating any such plan. The LSB will publish the plan.
- b. The LSB will facilitate tri-partite meetings to be chaired by the LSB, where CILEX and CRL will be expected to provide updates on their progress against the action plan. The meetings will be conducted in a transparent manner, in the public interest. There will be a presumption that relevant records of those meetings will be published.
- c. The LSB will ask for progress reports from CILEX and CRL, which will be presented to the LSB Board and published by the LSB.

# Annexes

## Annex A: Narrative of relevant events

### Delegation

1. This Annex sets out the LSB's understanding of the relevant events that occurred prior to and during the period under investigation.
2. From the information provided, it appears that CILEX and CRL had been discussing the challenges facing chartered legal executives and the effectiveness of the regulatory model for some years and in detail since 2018. There were a number of Board and senior executive-level discussions informed by collaborative work on discussion papers on regulatory independence. The thrust of these papers centres around giving CRL greater regulatory independence from CILEX. On 28 January 2019 in a media release CILEX stated "its intention to give its regulatory body complete structural independence" in response to a consultation by the LSB on proposals which led to the IGR.
3. CILEX and CRL appeared to be in agreement that the sector was facing challenges and working together to find ways to address the issues from 2019 onwards. From the information provided by the parties to the investigation, and subsequently CILEX's response to the draft report, the options considered by CRL and CILEX at that time did not specifically include concrete steps for consideration of delegation to another regulatory body and specifically the SRA.
4. From at least July 2021, CILEX began considerations about a different regulatory model to address the challenges facing the sector (of chartered legal executives) – namely, redelegation of its regulatory functions to the SRA from CRL. Having decided to explore this option, CILEX carried out preliminary discussions with the SRA from September 2021 onwards concerning the feasibility of transferring the delegation of CILEX's regulatory functions from CRL to the SRA.
5. CILEX's first raised these considerations with the LSB in September 2021. CILEX informed the LSB that it had had early conversations with the SRA and was considering what was possible within the current regulatory framework. CILEX also informed the LSB that it had shared its thinking and the outcomes of an internal strategy session with CRL.<sup>29</sup>
6. There were two further meetings in 2021 between CILEX and the LSB where CILEX referred to its proposals. CILEX and the LSB had a routine meeting in October 2021 where CILEX's proposals were discussed alongside a range of other topics. The LSB and CILEX then met in November 2021 to discuss CILEX's proposals.
7. As part of the discussions, the LSB informed CILEX of the importance of conducting discussions about its proposals in a transparent way and for all parties to the process to work in good faith, and openly. At the October 2021 meeting, CILEX noted it had spoken to CRL about the need for wider strategy discussions, but had not yet informed CRL about its discussions with the SRA. The LSB reiterated the need for transparency.<sup>30</sup>

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<sup>29</sup> Note of 27 September 2021 meeting between LSB CEO and CILEX CEO.

<sup>30</sup> Notes of 18 October 2021 and 24 November 2021 meetings between LSB and CILEX.

8. On 26 October 2021 CILEX and CRL made a joint application to the LSB for approval of the practising certificate fee for 2022. This is an annual process for approval before that fee can be collected from persons authorised by CRL to provide reserved legal activities.<sup>31</sup> A letter accompanying the application stated that both parties agreed the need for further strategic discussion between them “to consider how our regulatory model might need to evolve to provide effective and affordable regulation of all CILEX members, in a way that is sustainable and reflects the changing legal landscape and evolving needs of consumers”. This application also included a Reserves Policy prepared by CRL which set out the oversight of its reserves and made clear that despite CRL’s contingency reserve being held and managed centrally by CILEX, CRL “has unfettered access to its reserves held within the CILEX reserves”.
9. At the meeting on 24 November 2021 between CILEX and the LSB, CILEX informed the LSB that it was aiming to release information to the public in mid-January 2022 and it would engage with CRL, beginning with a meeting between the respective Chairs before discussion between the two Boards.
10. On 18 January 2022, the Board of CILEX met and made decisions to:
  - a. Write to the SRA inviting it to engage in formal discussions with CILEX in its capacity as the approved regulator of CILEX members regarding the potential to transfer the delegation of the independent regulation of CILEX members to the SRA.
  - b. Notify the LSB of its intention to engage in formal discussions with the SRA to explore the option of CILEX transferring its delegation regulatory arrangements to the SRA.
  - c. Inform the Chair and interim Chief Executive of CRL “in order to allow CRL the opportunity to jointly sign our submission to the LSB stating our intention to enter formal discussions with the SRA”; and to invite the CRL Chair and Chief Executive “to a face-to-face meeting as soon as possible and to put in place a Confidentiality Agreement.”<sup>32</sup>
11. On 25 January 2022, the Chairs and Chief Executives of CILEX and CRL met. At the start of the meeting CILEX asked the CRL Chair and interim Chief Executive to sign a confidentiality agreement in relation to the information to be imparted to them at the meeting. Under the confidentiality agreement, CRL’s Chair and interim Chief Executive would be prohibited from sharing information imparted to them at the meeting (and subsequently in a letter from CILEX of the same date) other than to CRL’s non-executive Board members, CILEX non-executive Board members and Chief Executive, and the Chairs of the SRA and LSB, though the confidentiality agreement also made provision for the possibility that CRL might seek permission to discuss the proposals more widely.<sup>33</sup> CRL objected but believed they had no option other than to agree to the confidentiality agreement at the time.

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<sup>31</sup> The application was made pursuant to s. 51 of the Act and the LSB Practising Fee Rules 2021.

<sup>32</sup> Minutes of CILEX Extraordinary Board meeting held on 18 January 2022.

<sup>33</sup> Paragraph 1.3.3 of the confidentiality agreement provided that any other disclosure could only be made with CILEX’s prior written consent.

12. CILEX then informed CRL that: “Our intention is to enter into formal discussions with the SRA on development of an alternative regulatory model”, and reasons for this, which in essence concerned the future sustainability of the regulatory framework for chartered legal executives.<sup>34</sup> This was the first time CILEX had informed CRL that it was considering specific proposals for redelegating its regulatory functions from CRL to another body. CILEX invited CRL to sign what CILEX referred to as its submission to the LSB informing of CILEX’s intention to enter into “formal discussions with the SRA”. CRL expressed serious concerns at CILEX’s proposals and the imposition of the confidentiality agreement, which prohibited the disclosure of information about CILEX’s proposals outside of the specified people.
13. CILEX wrote to CRL on the same day to provide what it said was a summary of the briefing it gave at the meeting – that as a “consequence of the structural challenges of a stand-alone regulatory environment, we want to exercise our right as the Approved Regulator to initiate a change in our delegated regulatory arrangements”. It said its conclusion “is driven by four factors that we believe cannot be addressed through the discreet regulatory structure of the kind that exists today”. These factors were set out as relating to entity regulation, dual regulation, little or no room for revenue growth and no obvious route to cost sharing. CILEX proposed to publicly announce its proposals on 9 February 2022.
14. Both parties contacted the LSB shortly afterwards to convey the strength of their feelings about what had taken place. On 27 January 2022 the Chair of CRL spoke to the Chair of the LSB. The LSB met with CILEX later that day to understand the detail of the CILEX proposals and next steps, noting CRL’s immediate concern about CILEX’s proposed 9 February 2022 announcement and likely impact on CRL staff. At the meeting, the LSB emphasised the importance of both parties ensuring continuity of regulation.
15. On 28 January 2022 CRL wrote to CILEX stating its disappointment that CILEX:
- “had proceeded so far down this path without informing CILeX Regulation or exploring the issues with us as the regulator. It is particularly regrettable that no proper discussion has taken place in the light of our joint letter of 26 October 2021 to Helen Phillips [Chair of the LSB] when we agreed that there needed to be “further strategic discussion between our Boards to consider how our regulatory model might evolve. We subsequently had a strategy discussion at the beginning of November when again you had the opportunity to set out your thinking...
- ...If the catalyst for your proposal is, indeed, disagreement with our independent regulatory decisions, the question arises as to why you think that a different arrangement would address that issue. It might be suggested that allowing a representative body to shop around for the independent regulator most to their liking creates risks which ought to concern the LSB.”
16. CRL reserved its position on CILEX’s “power to take unilateral action in winding down all current regulatory arrangements and operations”.<sup>35</sup>
17. CRL also asked for the confidentiality agreement to be lifted with immediate effect in relation to the disclosure of information to CRL staff and objected to the proximity of the

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<sup>34</sup> “Draft Script for Meeting of 24.01.2022” considered by CILEX Board at its 18 January 2022 meeting.

<sup>35</sup> 28 January 2022 Letter from CRL to CILEX.

planned public statement on 9 February 2022, which, it said, would be likely to cause difficulties with a range of third parties as well as staff.

18. On 31 January 2022 in an extraordinary meeting, the CRL Board considered sending a letter before claim, but agreed instead to send an initial letter that day to CILEX setting out the CRL Board's concerns and its wish to avoid legal action.
19. On 1 February 2022 CILEX wrote to the SRA, in CILEX's capacity as an approved regulator under the Act, to invite it to "engage in formal discussions with CILEX regarding the potential to transfer the delegation of the independent regulation of CILEX members to the SRA".
20. On 1 February 2022, CRL wrote to CILEX to express its concerns about the lawfulness of CILEX's approach and to ask CILEX not to proceed with the public announcement of its proposals which it considered would be detrimental to its work and the public interest. CRL also reiterated concerns about the confidentiality agreement, questioning its appropriateness and whether it was in the public interest.
21. On 1 February 2022 CILEX wrote to CRL responding to its 28 January letter. It refuted CRL's assertion that its actions were for an improper purpose, reiterated the rationale for exploring a change to its delegation, offered to extend the scope of the confidentiality agreement in a limited way, and to provide support for staff retention until June 2023.
22. CRL wrote again to CILEX on 2 February 2022, expressing its view that CILEX was reframing what it had referred to in earlier communications as a 'decision' to 'exploring a change' or 'possible alternatives' in relation to the proposals. CRL also sought to clarify its concerns were in the interests of consumers and professional standards not just CRL employees. It asked CILEX to confirm what decision it had made.
23. On 2 February 2022 CILEX wrote to the LSB to inform it of the contents of its 1 February 2022 letter to the SRA and to share its Case for change.
24. CILEX replied to CRL on 4 February, noting it had offered to meet with CRL to explain details about its proposals, planned communications and proposed process but that CRL had refused to meet. CILEX stated that it was planning to make a public announcement on 16 February 2022.
25. Further CILEX said that it "expect[s] at our Board meeting in July 2022, to be in a position to formally consider a proposed model of regulation developed by the SRA and to reach a decision whether therefore to consult on a proposed change to our delegated regulatory arrangements. If, following consultation, the CILEX Board resolve to approve such a change, an application will be made to the Legal Services Board... If as a result of the formal discussions with the SRA and having considered the SRA's proposed model of regulation, the CILEX Board considers it to be in the interests of its members and consumers to transfer its delegated regulatory arrangements, CILEX will, ahead of any public communications and consultation, inform the CRL Board. This will provide you with the opportunity to develop a further plan to maintain effective regulation and to communicate with your staff regarding any next phase of the process".
26. On 8 February 2022, CRL through Russell-Cooke wrote to CILEX setting out its views: "that the action proposed by CILEX was unlawful..."; that the regulatory functions have

been delegated to CRL and therefore CILEX has no power to de-delegate and redelegate the regulatory functions to another regulator; and that these actions could undermine the regulatory functions. It asked CILEX to pause making a public announcement.

27. At the same time, in a letter dated 8 February 2022, Russell-Cooke referred on behalf of CRL the matter to the LSB as a dispute under rule 14(2) of the IGR, and restated this in a letter dated 11 February 2022.
28. On 10 February 2022, the LSB responded to CRL to the effect that the preconditions for a referral had not yet been met. It noted that rule 14(1) of the IGR required an approved regulator and its regulatory body to use reasonable efforts to resolve disputes and it was not clear on the information provided that this had taken place. In response, in a letter dated 11 February 2022, CRL restated its IGR referral originally made on 8 February, asserted it had taken reasonable steps to resolve the dispute, and asked for a response by 14 February 2022. The urgency reflected the timing of CILEX's proposal to make a public announcement on 15 February 2022.
29. It subsequently transpired that the parties had not agreed a dispute resolution process, a requirement under the IGR Guidance<sup>36</sup>. This was despite the parties having certified in the IGR compliance assurance provided to the LSB in July 2020. Consequently, both parties had to agree the process at Board level, which took three months.
30. On 12 February 2022, CRL issued CILEX with a letter before claim for judicial review and sought a response within two days, failing which it intended to issue proceedings and seek relief by way of an injunction (to prevent CILEX carrying on with its proposed review of redelegation). It considered the LSB to be an interested party.
31. In response, CILEX replied by letter dated 14 February 2022, enclosing its 'Case for change' and confirming it would not be making an announcement on 16 February 2022 of its intention to engage in discussions with the SRA regarding the potential to develop a model of independent regulation that would allow CILEX members to be regulated by the SRA alongside solicitors (the announcement was ultimately postponed until 19 July 2022).
32. On 14 February 2022, CRL confirmed it would not seek an injunction at present, on the LSB's intervention detailed in a letter of the same date, and upon CILEX providing further information about its proposals and agreeing to delay publicly announcing those proposals.
33. On 18 February 2022, CRL wrote to the LSB to set out its opinion on why it considered CILEX had no power to redelegate its regulatory functions under the Act.
34. On 23 February 2022, the LSB wrote to CRL to respond in part to its letter before claim. First, the LSB said it considered that the: "proposal made by CILEX, that the parties enter into a period of dialogue and consultation, is a sensible one. It is in the parties' interests – and the interests of those that they regulate/represent – for this issue to be resolved, or at least clarified and crystallised, without litigation." The LSB confirmed its view that the IGR required the parties to make all reasonable efforts to resolve

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<sup>36</sup> IGR Guidance paragraph 14.10.



differences and follow their process for dispute resolution. It urged the parties to enter into a period of dialogue to resolve their disputes.

35. On 24 February 2022 CILEX wrote to CILEX and the LSB to confirm it would not issue proceedings at that time.
36. CRL wrote again on 25 February 2022 to CILEX. It declined to participate in dialogue stating: “CRL is not therefore prepared to participate in a process by which it is invited after the event to provide representations on a decision which CILEX has already made and which CRL considers CILEX had no power to make.” It said that it was embarking on its own process to consider options for reform and that it would welcome CILEX’s input in its representative capacity.
37. On 1 March 2022, CRL wrote to the LSB again to set out more detail its opinion on why it considered CILEX had no power to redelegate its regulatory functions under the Act.
38. Subsequently, the LSB wrote to both parties on 4 March 2022, acknowledging it was “clear that there remains a divergence of views regarding the legal position in relation to delegation. The LSB undertook to provide its position in more detail by 9 March 2022.
39. The LSB reiterated that the IGR required the parties to make best efforts to resolve differences and follow their set process for dispute resolution and asked for a copy of the dispute resolution protocol.
40. On 9 March 2022, in an effort to assist the parties resolve their differences, the LSB wrote to them to set out its preliminary position on delegation, which was that CILEX has the statutory power to revoke the delegation of its functions from CRL. The LSB also expressed regret that it had found dialogue between the parties to be limited and encouraged a collaborative and conciliatory approach.
41. In correspondence dated 11 March 2022, CRL did not accept the LSB’s position. It maintained that CILEX had no power redelegate its regulatory functions for it had delegated this power to CRL and could not rescind it. CILEX in a letter on the same date set out its opinion that was contrary to CRL’s.
42. On 14 March 2022, the LSB Chair and CEO held a routinely scheduled meeting with the CRL Chair and Interim Chief Executive. On 15 March 2022, the LSB then met with the CILEX Chair and CEO. The LSB subsequently convened and observed a meeting between the respective Chief Executives, where it reiterated the need to find a common way forward.
43. CILEX proposed a period of dialogue and consultation with CRL in relation to the matters in dispute. The parties agreed to work together and, in doing so, agreed for their process to set aside the challenge on CILEX delegation vires.
44. Between March and June 2022, CILEX and CRL finalised and agreed their dispute resolution process and worked together to establish a means to consider options for regulatory reform following the Case for change (putting aside their differences on the legal question). This process was protracted and involved a significant level of correspondence between the parties, including Russell-Cooke and with the LSB. Despite the considerable efforts, the parties were unable to agree the terms of reference for an



independently-led committee to carry out the review. The parties had different expectations on who would evaluate different proposals put forward from the SRA and CRL.

45. CILEX then proceeded to commission an independent review of the Case for change, carried out by Mr Chris Kenny (the Kenny review). The review consisted of a desk-based review of material provided by CILEX which it had used to inform its Case for change. That review took place over June and July 2022.
46. CRL was invited to make representations but declined to do so because it considered that it had not been given adequate time to respond (it is necessary to state that the initial attempt to provide notice to CRL was not sent by Mr Kenny due to a server error). CRL sought an extension, but it did not consider Mr Kenny's proposal for a revised timeframe adequate to give due consideration to its representations, and so it declined to participate, stating it had lost confidence in CILEX's commitment to an objective, evidence-based process.
47. CILEX informed its members on 12 July 2022 of its process to determine whether an alternative delegation would be in the public and consumer interest, and of its intentions to make a further public statement on 19 July 2022. Also on 12 July 2022, CRL published a statement on its website. The statement included the following: "It is with regret that we must note that CILEX's position appears to have been reached over the period from July 2021 to January 2022 excluding Chartered Legal Executive Board members, without any process of consultation with its own members or CRL, in conditions of great secrecy."
48. CILEX's Board met on the morning of 19 July 2022 ahead of its AGM in the afternoon. The Board discussed the findings of the Kenny review and resolved:
  - a. It was satisfied that the Case for change was a valid basis upon which to review its delegation;
  - b. To explore changes to CILEX's regulatory delegation in order to address the issues identified in the Case for change and the Kenny review;
  - c. To write to the SRA to initiate formal discussions to explore the feasibility of a potential alternative model of delegated regulation for CILEX members;
  - d. To write to the LSB to inform them of its decision to review its delegation and to engage in formal discussions with the SRA; and
  - e. To write to CRL to inform it of the Board's decisions and its intention to communicate this decision to its members and stakeholders, and to reiterate the opportunity for CRL to engage and that the CILEX Board would consider any proposals for an alternative model from CRL in light of the Case for change.
49. Alongside publication of the Kenny review and the Case for change following its AGM on 19 July 2022, CILEX announced its intention to initiate formal talks with the SRA on an alternative regulatory model. It noted: "Our decision to explore the possibility of a new model of regulation with the SRA is driven by our desire to ensure independent regulation is sustainable and that consumer needs are met. We will only pursue a

change of regulation if we are satisfied that such a change achieves both.” It published a list of FAQs on the same date.

50. CRL issued a statement in response on 20 July 2022. The statement noted issues with the Kenny review and asserted inaccuracies. It said that CRL was planning a consultation on its own proposals for change and disputed CILEX’s power to undertake its action.
51. The LSB made its first public statement on 12 July 2022 following the public statements issued by CILEX and CRL: “...we strongly encourage CILEX as the approved regulator and CILEX Regulation as the regulatory body to work together to minimise any risk of uncertainty and worry for affected businesses and individuals, and to ensure continuity of regulation in the interests of the public and consumers”.
52. With the clear impasse on collaborative efforts between the parties to resolve the disagreements, in August 2022, the LSB proposed that the parties seek declaratory relief from the High Court on the delegation issue via a Part 8 claim. CRL consented to this course of action but CILEX declined on the basis that, in its view, CRL had not advanced a properly arguable legal position that justified the costs of court proceedings.

#### Financial matters

53. In relation to financial matters, at its 31 January 2022 Board meeting, CRL decided in principle that it no longer wished to hold its contingency reserves of £700,000 within the CILEX Group Reserves.
54. The CRL Board was made aware of a purported issue related to PCF monies owed to it at its 22 March 2022 meeting, and again at its meetings on 16 and 17 May 2022. There was extensive correspondence between the parties in July 2022 to clarify what, if any, outstanding PCF monies were owed to CRL. This correspondence also highlights a variance in the figures used by CRL and CILEX in calculating the size of the regulated community. It is also clear that there was no agreed annual reconciliation process in relation to PCF payments.
55. In relation to the issue of CRL’s contingency reserves, the CRL Board resolved to a “formal request for immediate drawdown of the £700,000 contingency reserve” at its 13 July 2022 meeting, with CRL writing to CILEX on 14 July 2022 on the matter, and in line with the process it had outlined via an earlier email (22 October 2021).
56. Throughout July, August and September 2022, CILEX and CRL were in correspondence in relation to the transfer of CRL’s contingency reserves. On 28 July 2022, CILEX noted that CRL’s request for the transfer of its contingency reserves would require CILEX to liquidate that part of its portfolio. CILEX noted that CRL had working capital reserves of £459,000 as of January 2022 and asked what had caused CRL to exhaust those reserves, so warranting the request for the contingency reserves.
57. CILEX explained that, in its view, it was obliged, pursuant to s. 28 of the Act and in accordance with rule 3(1) of the IGR, to satisfy itself that CRL was discharging its regulatory functions in accordance with s. 28 of the Act. It asked what proportion of CRL’s £459,000 working capital reserves had been spent in the period between January and July 2022 and for what purpose; and what additional expenditure CRL anticipated

being required beyond the existing annual budget. CILEX also sought written assurance under rule 3(1) of the IGR that CRL understood that the reserve funds can only be used for the purpose for which they are held and ring-fenced.

58. On 1 August 2022, CRL wrote to CILEX and explained that the contingency reserves have only ever been held with CRL's agreement as a matter of convenience, not control. CRL also noted that if it decides to hold the reserves, that is a matter for it alone. They also stated that the transfer of reserves cannot be made subject to conditions or qualification, and that it would not use the funds for any unlawful purpose.
59. CILEX explained, in a letter of 12 August 2022, that its requests under rule 3(1) of the IGR were not only related to the lawful use of funds and repeated its request for information as to the future use of the funds and for assurance as to CRL's compliance with s. 28 of the Act. It made clear that the provision of satisfactory answers to its questions was a precondition of transferring the funds but that it had no objection in principle to CRL holding the contingency reserve directly once those questions were answered.
60. CRL's response on 24 August 2022 explained that CRL had no immediate plans to use the contingency reserve and that it would be held on the basis set out in the CRL Reserves Policy. The letter affirmed that the request did not reflect any anticipated expenditure beyond that which is included in the budget. The letter reiterated that it was not open to CILEX to impose any condition on the transfer or subsequent use of the funds.
61. The correspondence culminated in matters being referred to the 14 September 2022 IGR Non-Executive Directors (NED) Working Group, in line with the dispute resolution protocol in place between the parties.
62. On 15 September 2022, CRL referred a dispute to the LSB pursuant to rule 14(2) of the IGR concerning financial matters considered at the 14 September NED IGR Working Group. In its referral letter, CRL referred to two issues. First, it was claimed CILEX had failed to transfer reserves of £700,000 to CRL. Second, it was claimed CILEX owed CRL payments in relation to outstanding practising certificate fees for the period 2017 to 2021.

### Consultation

63. On Thursday 22 September 2022, at a routine working-level meeting, CRL informed the LSB that it would be publishing a consultation on potential changes to its regulatory arrangements on Monday 26 September, and would send the LSB an advance copy on Friday 23 September.
64. On Friday 23 September 2022, CRL sent the LSB an embargoed copy of the consultation. Later that afternoon, the LSB responded to CRL, asking whether CILEX was aware of the planned publication. That evening, outside of business hours, CRL sent an embargoed copy of the consultation to CILEX, providing it with "the opportunity to consider the issues raised" prior to planned publication at 10am on Monday 26 September 2022.
65. In the consultation document, CRL put forward its view and sought comments on the following: an assessment of its own performance; how to improve the status quo; options

to reform the PCF, change its name, wind up CRL and transfer functions to another regulator; and consideration of a single regulator.

66. CILEX considered it necessary to hold an extraordinary Board meeting on Sunday 25 September 2022 to consider the consultation. The Board's view expressed at the meeting was that "there was insufficient time to engage in any meaningful dialogue with CRL ahead of publication". Following the meeting, CILEX wrote to the LSB referring a dispute under rule 14 of the IGR, on the basis that the consultation would undermine CILEX's review of regulatory arrangements, was a significant over-reach of CRL's delegated role, was ultra vires, and presented an unbalanced portrayal of the key issues as well as containing factual inaccuracies. It also sent a letter to CRL requesting immediate suspension of publication of the proposed consultation and advising it considered the matter to be a formal dispute under the IGR.
67. On 25 September 2022 the LSB wrote to the CRL noting CILEX's letter to the LSB and requesting that CRL pause publication temporarily to give the LSB time to assess the correspondence received. On the morning of 26 September 2022, CRL responded confirming it would pause publication while it considered the correspondence from CILEX.
68. On 26 September 2022 the LSB informed the parties that, despite considerable efforts to address the parties' differences, no meaningful resolution was forthcoming. The LSB was therefore assessing all of the information before it in relation to the parties' disputes and disagreements, including the IGR referrals, in order to determine whether to exercise any or all of its powers in respect of both parties.
69. Over the period, the LSB had grown concerned that the disagreement, now in the public domain, was having a detrimental effect on public confidence in the regulation of persons authorised by CRL to provide reserved legal activities, impacting on consumers and the public interest.
70. Despite the LSB's considerable efforts to encourage and support an agreed approach between the parties, it was clear that by late September 2022 the ongoing disputes and disagreements between both parties were no closer to resolution. The LSB therefore considered its powers and obligations under the Act and relevant policies and guidance and concluded that in all the circumstances it was appropriate to commence an investigation in relation to the ongoing issues.
71. On 4 October 2022, the LSB informed CILEX and CRL of its decision to commence an investigation in relation to the ongoing issues between them. On 11 October 2022, the LSB wrote to the parties to inform them of the terms and scope of the investigation - the issues arising out of the IGR dispute referred by CRL and CILEX: delegation, financial matters including other connected matters, and consultation.

## Annex B: Timeline of events

Timing	Events
2018 – Jun 2021	<ul style="list-style-type: none"> <li>▪ Ongoing discussions between CILEX and CRL about the challenges facing regulation of chartered legal executives in scale and sustainability, and strategic direction for regulatory activities.</li> <li>▪ CILEX and CRL certify compliance with the Internal Governance Rules 2019 (IGR) in June 2020. The Guidance to the IGR provides that each approved regulator and regulatory body should “agree a system for resolving issues as and when they arise”.</li> </ul>
Jul 2021 – Jan 2022	<ul style="list-style-type: none"> <li>▪ CILEX develops Case for change – rationale and reasons for its proposals for redelegation of its regulatory functions (“CILEX proposals”) – and approaches SRA to discuss whether it had appetite to explore potential for SRA to regulate chartered legal executives.</li> <li>▪ CILEX continues discussions with CRL about the strategic challenges facing the profession and proposes further board-level discussions, but not that it was specifically exploring the option of redelegation to the SRA.</li> <li>▪ CILEX informs LSB of its emerging thinking on changing its regulatory arrangements, that it was in discussion with SRA, and that it had shared its thinking and the outcomes of an internal strategy session with CRL.</li> <li>▪ LSB notes to, and reminds, CILEX of importance of conducting discussions with transparency.</li> </ul>
Jan – Feb 2022	<ul style="list-style-type: none"> <li>▪ CILEX Board makes decision to: agree plan/actions for exploring delegation with the SRA (the CILEX proposals), invite CRL to participate and notify the LSB of its intention to engage in formal discussion with the SRA to explore option of CILEX transferring its delegated regulatory arrangements to SRA.</li> <li>▪ CILEX calls a meeting with CRL on 25 January 2022 and requires signature of a confidentiality non-disclosure agreement before sharing the CILEX proposals.</li> <li>▪ CRL Chair and Interim Chief Executive express grave concerns with CILEX’s proposals and imposition of confidentiality agreement. Cites what it considers to be lack of vires; destabilising operations/staffing concerns and public interest, undermining regulatory functions, and disappointment CILEX had proceed to this stage without informing CRL or exploring issues with them.</li> <li>▪ LSB is formally informed of CILEX’s proposals and CRL response.</li> <li>▪ CRL makes referral to LSB under IGR for dispute resolution on the basis that it considers its independence and effectiveness of its regulatory functions prejudiced by CILEX’s actions.</li> <li>▪ LSB declines to accept IGR referral as internal resolution process required under IGR Guidance had not been used. Notes CRL’s concerns including view that CILEX decision to engage in discussions with SRA unlawful.</li> <li>▪ CILEX delays public announcement by 1 week in response to CRL’s concerns [announcement eventually not made until July 2022].</li> <li>▪ CRL issues a letter before claim for judicial review against CILEX and intimates it will seek an injunction to prevent CILEX from further action in respect of its proposals. LSB named as interested party.</li> <li>▪ LSB’s intervention urging CILEX and CRL to enter into dialogue and consultation in relation to the matters in dispute as they had not made all reasonable efforts to resolve differences nor followed their internal dispute resolution process as required under IGR Guidance.</li> <li>▪ CRL agrees to suspend proposed judicial review claim following the LSB’s intervention.</li> </ul>

Timing	Events
	<ul style="list-style-type: none"> <li>▪ CRL agrees to enter into discussions with CILEX only if CILEX acting solely in its representative capacity.</li> </ul>
Mar – Jun 2022	<ul style="list-style-type: none"> <li>▪ LSB provides both parties with its legal position – that an approved regulator has power to redelegate regulatory functions to another body – to enable parties to engage positively and for progress to be made.</li> <li>▪ LSB meets separately with each party to hear their concerns and help each find a way forward.</li> <li>▪ LSB convenes and observes meeting between CILEX and CRL - reiterates that the public interest is served by resolution and finding a common way forward rather than entrenched positions and costly litigation.</li> <li>▪ CILEX and CRL work through the IGR dispute resolution process – firstly needing to agree and have board sign-off to the process and then go through the process.</li> <li>▪ CEOs of CILEX and CRL work together on process and terms of reference for a committee with an independent chair to consider CILEX’s proposals.</li> <li>▪ An impasse is reached on the committee terms of reference and CILEX withdraws from the process – cites differences that could not be resolved through a committee.</li> <li>▪ CILEX commissions Chris Kenny to carry out a review of CILEX’s proposals.</li> <li>▪ CRL Board is made aware of purported share of practising fee monies owed to it by CILEX.</li> <li>▪ CILEX/CRL dispute resolution process signed off at respective Boards in May.</li> </ul>
Jun-Jul 2022	<ul style="list-style-type: none"> <li>▪ Kenny review is underway. CRL invited to participate, declines on basis it was given insufficient time to respond.</li> <li>▪ Mr. Kenny reports to CILEX Board ahead of its July meeting. CILEX accepts findings and announces its proposals at the AGM and publishes its “Case for change”.</li> <li>▪ Both parties make public statements about the proposed review of delegation.</li> <li>▪ LSB publishes statement urging parties to minimise risks and ensure continuity of regulation.</li> <li>▪ CRL makes a formal request to hold its reserves currently held by CILEX.</li> </ul>
Aug 2022	<ul style="list-style-type: none"> <li>▪ CRL refers dispute for resolution on financial matters – relating to practising fee monies and CRL’s contingency reserve fund – to LSB under the IGR.</li> <li>▪ LSB proposes the parties seek declaratory relief from the High Court on the delegation legal issue via a Part 8 claim – would only proceed if both CILEX and CRL agree to be parties to proceedings.</li> <li>▪ CRL agrees to be a party to proposed claim on basis that delegation legal issue can only be determined by the court.</li> </ul>
Sept 2022	<ul style="list-style-type: none"> <li>▪ CILEX declines to participate in proposed part 8 claim – says CRL has not advanced a properly arguable legal position that justified the costs of court proceedings.</li> <li>▪ CRL sends proposed consultation to LSB ahead of publication. LSB asks CRL if it has shared with CILEX. CRL then shares consultation with CILEX.</li> <li>▪ CILEX makes IGR dispute resolution referral to the LSB to stop publication of consultation – claims inaccuracies in consultation expose CILEX regulatory regime to unacceptable risks.</li> <li>▪ LSB asks CRL to pause publication of the consultation [has not been published to date].</li> <li>▪ LSB informs CILEX and CRL that it is assessing all information in this matter and considering full range of powers under the Act/what action to take (if any).</li> </ul>
Oct 2022	<ul style="list-style-type: none"> <li>▪ LSB decides to commence investigation and notifies the parties.</li> </ul>



## Annex C: The statutory framework

1. The statutory regime established by the Act focuses on oversight and accountability. It establishes the LSB as the oversight regulator of approved regulators in the discharge of their regulatory functions. The LSB's functions in relation to the regulation of approved regulators is set out in Part 4 of the Act.
2. In carrying out their functions under the Act, both the LSB and approved regulators must – in relation to the latter's regulatory functions – so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives in s. 1, and which each body considers most appropriate for the purposes of meeting those objectives, and having regard to best regulatory practice.<sup>37</sup> CILEX is an approved regulator for the purposes of the Act.<sup>38</sup> It has both regulatory and representative functions in respect of chartered legal executives.
3. 'Representative functions' are any functions an approved regulator has in connection with the representation or promotion of the interests of persons regulated by it. The LSB is prohibited from exercising its functions under the Act in relation to an approved regulator's representative functions.<sup>39</sup>
4. 'Regulatory functions' are any functions an approved regulator has under or in relation to its regulatory arrangements, or in connection with the making or alteration of those arrangements.<sup>40</sup> 'Regulatory arrangements' is exhaustively defined in s. 21 of the Act as those arrangements of a body in relation to the authorisation, practice, conduct, discipline, qualification, indemnification, compensation, conduct and any other arrangement which apply to or in relation to regulated persons (i.e. authorised persons and their employees). Delegation is not expressly defined as falling within the meaning of 'regulatory arrangements'.
5. Alterations to an approved regulator's regulatory arrangements must meet one of the conditions for approval under Schedule 4 para. 19(1) to have effect. Approval is usually by the LSB on application by an approved regulator, or by LSB direction that the alteration be exempt from the requirement of approval (Schedule 4 para. 19(2)). The application must be accompanied by, inter alia, details of the relevant regulatory arrangements and the proposed alterations.
6. Sections 29 and 30 of the Act make provision for the exercise of an approved regulator's regulatory functions to be carried out, so far as reasonably practicable, independently from its representative functions.
7. Section 30 provides for the LSB to make IGR to secure this objective:

“(1) The Board must make rules (“internal governance rules”) setting out requirements to be met by approved regulators for the purpose of ensuring–

(a) that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions, and

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<sup>37</sup> Sections 3 and 28 of the Act.

<sup>38</sup> Schedule 4 to the Act prescribes bodies that became approved regulators under it.

<sup>39</sup> Section 27 of the Act.

<sup>40</sup> Section 27(1) of the Act.



(b) that decisions relating to the exercise of an approved regulator's regulatory functions are so far as reasonably practicable taken independently from decisions relating to the exercise of its representative functions.

(2) The internal governance rules must require each approved regulator to have in place arrangements which ensure—

a) that the persons involved in the exercise of its regulatory functions are, in that capacity, able to make representations to, be consulted by and enter into communications with the Board, the Consumer Panel, the OLC and other approved regulators, and

b) that the exercise by those persons of those powers is not prejudiced by the approved regulator's representative functions and is, so far as reasonably practicable, independent from the exercise of those functions."

8. Sections 31 to 48 of the Act give the LSB enforcement powers which "include target-setting, censure, financial penalties, a power of direction, direct intervention in the approved regulator's regulation of its members, and in extreme cases the removal of a body's authorisation."<sup>41</sup> In order to exercise its enforcement powers, the LSB may obtain information by notice to the approved regulator (s. 55) and enforce its information notices by action to the High Court (s. 56).

9. The LSB also has the power to resolve regulatory conflicts between approved regulators (ss. 50 to 53) and between approved regulators and external regulators (s. 54).

#### *The Internal Governance Rules*

10. Pursuant to s. 30 of the Act, the LSB has published the IGR. In summary, they explain how the "independence" required by s. 30 will be achieved. Rule 1 requires that an approved regulator:

a. Ensure that the exercise of its regulatory functions is not prejudiced by its representative functions. It should achieve this by "separate[ing]" its regulatory and representative functions.

b. This is subject to the double qualification that it must be done "as effectively as reasonably practicable and consistent with s. 28 of the Act" which provides that an approved regulator has an overriding duty to, so far as reasonably practice, act consistently with, and in a way which it considers most appropriate for the purpose of meeting, the regulatory objectives.

c. *"Must periodically review and, if reasonably practicable, improve its arrangements under sub-rule (2)."* This is important, because it presupposes that the obligation to review and improve lies with the approved regulator itself.

11. Rule 2 explains how this separation is to be achieved. Rule 2(1) requires that it must be done by delegation of an approved regulator's regulatory functions to a regulatory body. Rules 2(2) and 4 are key, for the purposes of answering the question before the LSB on the delegation issue. Rule 2(2) provides that "[a]fter delegating its regulatory functions,

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<sup>41</sup> Explanatory Notes at [121].

*the approved regulator must only retain a role to the extent that this is reasonably necessary to be assured that its regulatory functions are being discharged in compliance with Section 28 or as otherwise required by law ('residual role').* This is a relatively exacting standard: only such powers as are reasonably necessary are retained. Rule 4 provides that:

“(1) The regulatory body must independently determine the most appropriate and effective way of discharging its functions in a way which is compatible with the regulatory objectives and having regard to the better regulation principles.

(2) In particular, the regulatory body must determine:

(a) its own governance, structure, priorities and strategy; and  
(b) whether any amendment to the regulatory arrangements is necessary and, if so, what form that amendment should take.

(3) The approved regulator with a residual role:

(a) may only seek to influence these determinations in the exercise of its representative functions; and  
(b) must not prejudice the independent judgement of the regulatory body.”  
(emphasis added)

12. By Rule 3, “[e]ach regulatory body shall provide sufficient information to the approved regulator with a residual role as is reasonably required for the approved regulator to be assured of the regulatory body’s compliance with Section 28 of the Act” (emphasis added). The “Saving Provisions” at 16 state that:

(1) No approved regulator shall be in breach of these Rules if the action or omission, which would otherwise constitute the breach, is:  
(a) in relation to an approved regulator with a residual role, reasonably necessary to satisfy its residual role...”

13. The IGR set out the substance of how separation will be achieved and prejudice will be avoided. Rule 2(3) provides that the approved regulator must “promptly inform its regulatory body if the approved regulator makes or intends to make a decision, plan, communication or other arrangement which may reasonably be considered likely to undermine the discharge of regulatory functions”. In respect of this rule, the IGR Guidance provides:

“The approved regulator must consider if any such action may undermine the efficacy of the regulatory body or require the regulatory body to act in a way not consistent with Section 28 of the Act. In the case of decisions which the approved regulator intends to make, the regulatory body should be informed before the decision or plan is finalised.

Examples would include:

a. A management decision by the approved regulator which would negatively affect the resources of the regulatory body, as it is reasonably likely that this would curtail the regulatory body’s ability to act in a way which [it] considers most appropriate for the purpose of meeting [the regulatory] objectives.  
b. An arrangement or communication by the approved regulator which would or does negatively affect public confidence in the regulator as a whole as this may undermine

the regulatory body's ability to discharge its functions in a way which protects and promotes the public interest.

Compliance with this section will enable the regulatory body to:

- a. take whatever preventative action is available in order to mitigate the impact of the decision, plan, communication or other arrangement so that it may continue to comply with Section 28 of the Act;
- b. work with the approved regulator to see if there may be a more favourable alternative; or
- c. if neither of the above are sufficient and the risk of undermining the discharge of regulatory functions is significant, the LSB should be asked for advice.”<sup>42</sup>

14. The IGR are accompanied by guidance made under s. 162 of the Act: “LSB Guidance on Internal Governance Rules” (24 July 2019) (“IGR Guidance”). The approved regulator must have regard to the IGR Guidance under rule 15 of the IGR.

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<sup>42</sup> [2.14]-[2.16].

## Annex D: Investigation process

1. The investigation was initiated to consider the lawfulness of the acts or omissions of both CILEX and CRL and compliance with their duties under the Act. The aim of the investigation was to inform an LSB decision concerning whether to exercise its enforcement powers.
2. On 4 October 2022, CILEX and CRL were informed of the LSB's decision to begin an investigation. On 11 October, the parties were informed of the terms of engagement and scope of the investigation.
3. In the course of the investigation, CILEX as approved regulator was given notice under s. 55 of the Act in November 2022 for the provision of information by CILEX and its regulatory body, CRL, to which they submitted responses. Separately, the parties were each invited to make representations on the legal issue in relation to the delegation line of enquiry and given the opportunity to comment on each other's representations. The deadline for these comments was extended upon request. The LSB gave a further notice to CILEX under s.55 of the Act in January 2023 asking for i) information not provided by CILEX in response to the first notice; and ii) further information in relation to how and when practising certificate fee (PCF) receipts are recorded each year, and how the number of authorised persons are calculated. The timetable for preparing a final report was consequently revised, and parties were notified of this on 8 February 2023.
4. Shortly before the launch of the investigation, the LSB asked CILEX and CRL to pause any steps, including external and public communications, engagement or consultation, in connection with any of the matters in dispute between them. When the LSB notified the parties of the launch of the investigation, it asked parties to continue to refrain from public communications, engagement or consultation. The LSB considered this request was necessary to prevent ongoing risk that CILEX and/or CRL would undermine the other's activities by publicly airing their disputes and disagreements.
5. The LSB shared a draft report setting out its findings with the parties on 2 March 2023, and the parties given the opportunity to comment on the draft report before it was finalised. The parties were given a copy of the report for fact-checking only on 12 April 2023.
6. The lines of enquiry were as follows:

### Delegation

7. 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 redelegating its regulatory functions to another body and/or begin preparatory steps for doing so.

AND

8. The impact of acts/omissions of CILEX in pursuit of its considerations regarding redelegation 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.

- a) Legal question regarding the power of an approved regulator to redelegate its regulatory functions to another regulatory body.
- b) Did CILEX act in compliance with/contrary to the IGR and s28 of the Act in effecting its plan to consider options for redelegation?
- c) What was the impact of CILEX's actions/decisions – did CILEX undermine CRL's discharge of the regulatory functions?
- d) What was the impact of CRL's response to CILEX's plans/actions – was the response in accordance with the IGR and s28?
- e) What steps have been taken to resolve the matter via internal dispute resolution processes? Have they been effective? If not, why not?
- f) Did any of the acts or omissions by either CILEX or CRL in connection with the redelegation issue have or were they likely to have an adverse impact on one or more of the regulatory objectives?

### **Financial matters**

- 9. 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:
  - a) What is the nature of CRL's request regarding reserves and the impact of that change?
  - b) 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, s. 28 in relation to this issue?
  - c) What steps were taken to resolve the matter via internal dispute resolution processes? Were they effective? If not, why not?
  - d) 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?
- 10. As part of this workstream, the LSB 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.

### **Consultation**

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

- a) What are the facts in relation to the CRL consultation?
  - b) What are the possible implications of the proposed consultation?
  - c) What was the impact of the manner in which the parties communicated about the proposed consultation, both internally and externally?
  - d) Was it communicated in accordance with the existing sharing of information protocol between the parties, under the IGR and in accordance with s28 duties?
  - e) What engagement or consultation has been undertaken or been planned by CILEX?
  - f) What were the (possible) implications of CILEX's engagement/consultation?
  - g) 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?
12. The LSB also noted that the apparent breakdown in relationship between CILEX and CRL and consequential breakdown of trust and communication was material to all the areas of investigation listed above.