

19 JULY 2022

I was asked by CILEX to consider the quality of evidence which lies behind the "Case for Change" paper to help enable the Board to decide whether to progress to a more formal review of its regulatory delegation.

The purpose of my review was to:

1. provide independent assurance that there is a reasonable evidence base underpinning the decision by CILEX to review its delegation;
2. provide a mechanism for CRL to respond to CILEX's consultation on the Case for Change via an independent third party, giving increased confidence to CRL that its evidence will be considered.

My objectives were to:

- receive and review the evidence provided by CILEX in support of the conclusions captured in the Case for Change document;
- receive and review evidence provided by CILEX Regulation Limited and advise the CILEX Board whether it is material to the conclusions captured in the Case for Change document;
- produce a written statement advising the CILEX Board whether, having reviewed the evidence available as of June 2022, the Case for Change provides reasonable grounds for CILEX to seek to review its delegation.

In line with these terms of reference, I sought to engage with CILEX Regulation Limited (CRL) in order to provide them with an independent conduit to place views on record at this stage, however no submission was received.

Having reviewed the evidence available, it is my assessment that:

- subject to assuring themselves that their actions are compliant with the requirements of the Legal Services Act and relevant LSB rules and guidance, the CILEX Board do have a legitimate role as approved regulator in considering whether to undertake a review;
- the fact that they are considering this step as a by-product of a larger piece of work on strategy in no way invalidates their ability to make such a decision;
- there is no evidence that in the consideration given to the issue to date or the evidence presented to me that the motivation has been primarily that of a representative body, rather than the approved regulator;
- CILEX's support for the principle of greater independence of regulation is both welcome and credible, but the extent to which any change in their current delegation would further the establishment of a single regulator is irrelevant for the purposes of current decision-making;
- there is clear evidence that the nature of the task facing CRL, its current position in the market and those of the individuals and entities it regulates means that it is likely to face higher unit costs than other regulators for some considerable time, absent some form of comparative business transformation process so far not specified;
- it is at least arguable that the effects of this structural problem will impact adversely on a number of the regulatory objectives and also potentially maintain and increase a financial dependence on CILEX as approved regulator which is potentially unhealthy in creating the right atmosphere of regulatory independence;

- it is possible, but very far from certain on the current very limited information available about both scope and timing, that the envisaged strategic work referred to in the CRL Strategic Plan and recent circular, may be sufficient to allay concerns if it is sufficiently robust in its commercial and financial modelling.

In my overall judgement, therefore, whilst it would not yet be accurate to say that CRL's viability challenges yet constitute "a blazing platform", the issues in relation to the compensation fund show that the impact is becoming increasingly real and, from the evidence I have seen, is beginning to weaken relationships between the regulator and regulated community.

Hence, I conclude that a wider review is justified.