



Economic and International Affairs Scrutiny Panel

Review of the demerger of C.I.C.R.A. and formation of J.C.R.A.

Witness: Institute of Directors

Friday, 14th May 2021

Panel:

Deputy D. Johnson of St. Mary (Chair)

Senator S.W. Pallett

Deputy S.G. Luce of St. Martin

Witness:

Ms. L. Springate, Chair, Institute of Directors

[14:18]

Deputy D. Johnson of St. Mary (Chair):

Good afternoon, everyone. Welcome to this hearing of the Economic and International Affairs Scrutiny Panel in connection with their review of the demerger of C.I.C.R.A. (Channel Islands Competition and Regulatory Authorities) and the reincarnation of J.C.R.A. (Jersey Competition Regulatory Authority). For the record I will introduce members of the Scrutiny Panel, which include myself, David Johnson, Deputy of St. Mary, as chair, Deputy Steve Luce of St. Martin and Senator Steve Pallett. Perhaps you would like to introduce yourself for the record, Lisa.

Chair, Institute of Directors:

Yes, Lisa Springate, chair of the Institute of Directors in Jersey.

The Deputy of St. Mary:

Thank you for that. Just to put it in some form of context, this review was launched by the panel I think in April last year following the Minister's decision to demerge and much work was undertaken. Due to the COVID pandemic and the subsequent move by the previous chair of this panel elsewhere the review was paused. So we are effectively now picking up the baton but with more the emphasis on the future of J.C.R.A. rather than what has happened in the past. Against, that background, a general first question if I may. What involvement does the Institute and its members normally have with the J.C.R.A.?

Chair, Institute of Directors:

In terms of the background to this, if we just go back in terms of the announcement, back on 23rd April last year, we then had an email from Mr. Ringsdore on 4th June explaining what had happened and proposing that he meet with the Institute of Directors, together with Stephanie Liston. We then did have a meeting, it must have been in between the lockdowns, so it must have been around late summertime, and how matters were left were that a lunchtime presentation to the I.o.D. (Institute of Directors) was proposed but in light of obviously the challenges since then with lockdown that has not taken place. But he did helpfully provide an overview in terms of what had happened by way of background and what the next steps were. But we have not had anything further from them since the meeting. I think in fairness, as I say, that is due to the challenges of the last few months for everyone.

The Deputy of St. Mary:

From them, being J.C.R.A.?

Chair, Institute of Directors:

Correct.

The Deputy of St. Mary:

As you may or may not know, we just had a public hearing with their chair and C.E.O. (chief executive officer) and I know they tuned into the previous one we had with the Chamber of Commerce so I expect they will do likewise. I would imagine they will be in touch with you fairly soon. But generally speaking, apart from a presentation to all members, that is your main way of communication? Are you aware that individual members have a regular ...?

Chair, Institute of Directors:

What we did do was when we had the request from Deputy Morel on 7th July in terms of our thoughts of what had happened and just generally feedback as to the advantages and disadvantages of the reinstatement of J.C.R.A., we then fed back our response on 31st July, which I believe you are in receipt of.

The Deputy of St. Mary:

Yes.

Chair, Institute of Directors:

Which set out those comments from the members. So we went out to the membership and those were the collective comments which we fed back.

The Deputy of St. Mary:

Sorry, I am trying to get a handle on the overall scheme of things. Ignoring for the moment the actual demerger, is the J.C.R.A. a body you frequently liaise with on various matters?

Chair, Institute of Directors:

I would not from an I.o.D. main committee say that although I am aware that some of our members, a couple of the law firms do in terms of the masses that they are involved in. They were the ones that were the main contributors to the responses we received. I can only gauge by the responses we received to that request from Deputy Morel. There are probably about 4 or 5 members that fed back.

The Deputy of St. Mary:

Thank you for that. You say you responded at the time of the earlier part of our review and basically those are the views of the I.o.D. as far as you know with nothing further to add.

Chair, Institute of Directors:

That is correct.

The Deputy of St. Mary:

I have a question here, I am not sure it is applicable, but is there any sort of cross-cultivation with other bodies like the Chamber of Commerce as to ways forward? Do you have regular meetings with them?

Chair, Institute of Directors:

No, we do not have regular meetings with the Chamber of Commerce but certainly Jennifer and Murray and I have conferred where we felt it necessary over the last few months in relation to different items. Jennifer and I were only in contact earlier this week and we are due to meet up in early course, but it was mainly to do with I.o.D.'s election campaign. I can certainly raise this item in the context of that meeting.

The Deputy of St. Mary:

I will not go down that road of I.o.D. election campaign; it sounds rather interesting but we will leave that. I am not saying I am struggling to ask questions but you provided a lot of information, for which many thanks. The ongoing relationship will probably depend on your next meeting or presentation with J.C.R.A.

Chair, Institute of Directors:

Just looking back at that response, when I was looking at it last night in terms of I think where we were quite keen and, unfortunately, because of work commitments I was not able to listen in because I was conscious that there was the earlier hearing with Tim Ringsdore. But I think what we were keen to understand, just looking back at my notes from the meeting as well, is to better understand the future operating model, whether or not its statutory powers are to be amended and respected, those instances where it could intervene going forward. I think in light of previous reporting of the cases and associated costs in which C.I.C.R.A. had been involved some more clarification. Because you will see from that letter, the response that we set on 31st July, that there were some disadvantages and drawbacks which we set out within that response. My own thoughts, prior to coming on to this call, would be if the J.C.R.A. were proposing to do an update that we then publicise that to our members and if they did a webinar it would be quite helpful for a number of stakeholders, just not I.o.D. Rather than for them to have to duplicate to various stakeholders if they perhaps just did a webinar, like the Commission have been doing recently, and if we publicise that to I.o.D. members and encourage them to join that webinar.

The Deputy of St. Mary:

I am sure they will take it on board. I am sorry, Senator Pallett, I did previously suggest that you might look at this area of questioning, and I am treading on your toes here. Do you want to take over at this stage?

Senator S.W. Pallett:

No, David, you carry on. I think you have asked that section so there is only one at the end, if you want to carry on with it.

The Deputy of St. Mary:

Sorry, the questions merge into one really. Again, the new structure as is, the question I would like to ask is: are you supportive of it but you are going to tell me: "Do not know yet" because you want to hear from them the advantages or otherwise.

Chair, Institute of Directors:

I think the best way to get a collective view would be to have some sort of webinar or some meeting which we can organise easily with the members and for those that are more actively involved. I mean certainly when I was in private practice I had more dealings with C.I.C.R.A. when I was in litigation practice. I think it would only be right for those of our members who are more actively involved to comment and to provide that feedback. I think that is going to be probably the most useful from yours and your colleagues' perspective.

The Deputy of St. Mary:

In their own hearing with us they did elaborate on how they saw differences, et cetera, and light touch. But it is not for me to be a translator for them. They need to be in touch with you direct.

Chair, Institute of Directors:

I think really it boils down to the fact that from a cost perspective in terms of there were comments made by some of the members about the need to file in both jurisdictions where there may be some overlap. Obviously question, when we had a cross-panel Island presence before obviously there is I suppose a greater depth of expertise. There were comments like that, that it would be good, just looking through this response, just to hear more back from Tim and from Stephanie on, just so that we can understand in terms of ... I appreciate when we first met with them it was very ... it had only just happened and in light of the pandemic since then obviously I am sure that everybody has had quite a lot of challenges. It would be good to hear within the last few months what development has happened and what is envisaged, and then to get proper feedback. I think maybe what the best thing would be is I can liaise with Tim and get some sort of webinar set up. Then we can get perhaps some further feedback, if that would be helpful.

The Deputy of St. Mary:

I am sure it would, for the benefit of your members and for J.C.R.A. as well. I appreciate what you say and they acknowledged in their hearing with us that when they took up in office they were pretty light on numbers and they have now built up their team, which they believe is, they would say, quite focused on what they have to do. But it is for them to explain to you. In a previous meeting, talking to Steve Luce now, we touched on telecoms. Do you want to take that area forward, Steve?

Deputy S.G. Luce of St. Martin:

If I might, before I do that, just go to a question I was looking to ask of Lisa, and good afternoon, Lisa. You were mentioning meetings with various people over here, J.C.R.A. and Chamber, et cetera, but I am presuming you meet with your equivalent I.o.D. in Guernsey on a fairly regular basis?

Chair, Institute of Directors:

Yes, we do because ... I am not sure if you are aware but Pall Mall are proposing that the various branches of I.o.D. are franchised in early course. We are all going to be coming franchises of the main Pall Mall branch and so I have been liaising with Jennifer and Wendy from Guernsey very frequently actually for a number of months now because, from a Crown Dependency perspective, we are trying to get aligned in terms of similar models from an I.o.D. perspective. So I am pretty familiar. Also we have liaised with Ireland more recently. So we do have regular comms with them.

The Deputy of St. Martin:

The reason I asked the question is you mentioned private practice previously. Do you think it is going to be an issue for your members moving forward where they are going to go from a situation where they had an overarching body that looked at competition over the Channel Islands to a situation now where we are going to have J.C.R.A. and G.C.R.A. (Guernsey Competition and Regulatory Authority) and they may well, within their own businesses, have offices quite easily in both jurisdictions? Is that going to be a problem for them moving forward?

[14:30]

Chair, Institute of Directors:

Steve, can I just clarify? Have you had the benefit of seeing the response I sent in on 31st July last year?

The Deputy of St. Martin:

I was not a member of the panel at the time so if you could give me a very brief ...

Chair, Institute of Directors:

In terms of what the advantages were to the decision, the position was that it obviously was intended to enable J.C.R.A. to better focus on consumer matters which impact individuals in Jersey, and that is an important feature of its role. In addition, greater autonomy would mean that J.C.R.A. can better protect the needs of Jersey consumers by focusing on the issues and circumstances relevant to this jurisdiction without being tied to matters of importance to Guernsey where there are different laws and political systems. Also we can all see operating entirely independently may give better credibility to each Island's reputation on the international stage. That said, each of the J.C.R.A. and G.C.R.A. have always, to our knowledge, operated as independent authorities. Then the drawbacks, there were quite a few in terms of the feedback of, in particular, one member who I knew is quite active on this front, and who I made the most contact with. They said in their experience: "The pooling of resources between Islands worked well. The larger dedicated resource team across both Jersey and Guernsey allowed a greater level of expertise. We are unaware of what the structure of the J.C.R.A. is intended to look like going forward as compared to the system in place currently",

however competition law, and I recall this from my litigation days, it is a complex area requiring particular expertise. The view was that the decision naturally splits the resource pool and may result in a smaller number of dedicated case officers although that may be dealt with, given what the comment is earlier about the team being better resourced, where a filing needs to be made in Jersey and Guernsey. I suppose from a private practice, if I was still in private practice days now, yes, you may have a situation where ... but there you again you can have that in litigation anyway where you get a different decision between the respective jurisdictions between the courts on a particular item. So that can be said just in terms of interpretation of case law. But what they did say was in such scenarios the same case officer would deal with the matter both from a Jersey and a Guernsey perspective thus streamlining the process and knowledge of the case in both Islands. There are a number of occasions in which both Islands' competition matters are required to be considered, and also I think that view therefore was that handling such matters would involve 2 separate discussions, which in itself could lead to more time and potentially more costs to those engaged with the regulators. One of the members had referred to an agreement being required perhaps between both authorities where a company trades in both jurisdictions and to consider a fees table that was more than a single application but less than a joint application to support both organisations involved. It is like anything, is it not, there are always advantages and disadvantages. I suppose it is just a question of you may end up with slightly different decisions and also, I suppose, it is the expertise and the cost factor.

The Deputy of St. Martin:

You will be aware of course that there is regulation and competition; as regards regulation J.C.R.A. are looking at telecommunications, ports and air and sea services but I can ask: are any of your members involved in specifically the telecoms and have you had any issues with them particularly over the demerger?

Chair, Institute of Directors:

Have I heard from any of the members? No, I have not heard from them.

The Deputy of St. Martin:

Okay, that is fine. So you have no comments on the licence obligations that are imposed on Sure or Jersey Telecom or places like that?

Chair, Institute of Directors:

I am not sure I can answer that question fairly because I have not been asked to concentrate specifically on that. I need to go out to the membership to get a fair response to you on that question.

The Deputy of St. Martin:

I only have one further point that I would like to raise and that is about general regulation on business across the board: permits, form filling, licences, you name it. There is always a general grumble that the cost of regulation these days is going through the roof and every day you wake up there is something else you have to do. I do not want to put words in your mouth but would it be your hope that this new J.C.R.A. will take a more pragmatic approach to the way they look at business?

Chair, Institute of Directors:

Given my own personal experience from litigation days and some of the comments from our members, that is very much hoped in terms of perhaps when we have seen some of the history. But I do not think it is helpful to perhaps look back. I think it is better to look forward in terms of approach.

The Deputy of St. Martin:

Thank you for that, and I completely agree. One of the differences of approach that we may be taking on this panel as opposed to the previous one that started this review is that we very much want to look forward and not go back over why the demerger happened, what happened before that, what were the issues. I am grateful for that. That is me done, chair, on those few questions.

The Deputy of St. Mary:

As Steve correctly identified, we had a different panel back in April and certainly the focus of our initial review was why did it happen, how did it happen, should it have happened, I suppose. The letter we wrote to you was very much in that vein and you replied, for which many thanks. Yes, it had to be paused for obvious reasons and we are picking it up and there is not much ... we are where we are.

Chair, Institute of Directors:

All of our focus is to make the Island flourish in as many ways as we can so I think we all have the same goal and it is best to be positive and look forward.

The Deputy of St. Mary:

In some ways, the questions asked were historical. We have got your opinions from then and, moving forward, you say you need to or will be getting in touch with J.C.R.A. in some form and they will tell you what they want to do.

Chair, Institute of Directors:

Yes, I will reach out to Tim after this call and just get ... I would prefer really if he could organise a webinar and then we can just share the webinar details because it is the fastest way to get everybody online as quickly as possible. More so than an event because from our own experience, we have a wider reach now with Zoom and Team calls and webinars than we did before. We had an event on

Thursday and we have had over 250 online so it has a much wider reach than some of the in-person events, which is good. That is one of the positives of the last few months.

The Deputy of St. Mary:

That leads me on to a more general question away from J.C.R.A., which is as an organisation you are spreading your own wings, are you, in certain areas? I mean you mentioned the election thing. You are essentially becoming a more political body as well, is there a focus on your ...

Chair, Institute of Directors:

No, I would not say “political” because the organisation has to remain impartial and neutral but the election campaign is on the back of the Economic Council in which I.o.D. was involved as well as Chamber and other stakeholders. There are some details on our website, on the election page, but it is very much geared for 2 objectives: to engage more people to stand and also to vote. It is a 12-month campaign, which has literally just gone live. We are remaining completely neutral and impartial. We are obviously not behind any individual or individuals, or bodies or parties.

The Deputy of St. Mary:

Sorry, it was a clumsy use of the word “political” on my point.

Chair, Institute of Directors:

Obviously from Pall Mall’s perspective we are not to be political in any way. We are there as an enabler as a body, so I just have to be careful when those kinds of expressions are used that we just clarify, that is all. Hopefully that helps in terms of ... so it is a 12-month campaign and it is just basically to try and encourage. So far it has only been live a month and we have had quite a few people come forward. In terms of spreading our wings, yes, we are trying to focus on those items which complement the Island Plan, the Government Plan and the Economic Council paper and the Jersey Policy Forum, their recent paper, in terms of concentrating on sustainability, technology, diversity inclusion, regeneration and education. It is very much aligned in terms of approach. Our events at the moment are very much themed in terms of our 10 subcommittees within the I.o.D., the new structure. They are very much focused on those areas, again to try and build that better for the Island post the pandemic with those areas.

The Deputy of St. Mary:

Maybe as a panel, we should more closely follow your various subcommittees and see if you can give us a lead or opinions on some various things we are looking at. In some ways it is a question of catch-up. This hearing ought to have taken place several months ago, and it has not. But we both acknowledge where we are and thank you for that input at any rate. We will go on record and

we duly appreciate it, and your contribution will be duly reflected. Many thanks and I wish you well in your discussions with J.C.R.A.

Chair, Institute of Directors:

Thank you very much and wishing you all a good weekend. Thank you.

[14:41]