Solicitors Regulation Authority

Statement

SRA statement on CILEX

Updated 3 July 2024 (Published: 1 July 2024)

This statement sets out the context and narrative that led to the SRA Board taking the decision to accept the request from CILEX to regulate its members. It provides the:

- Background to this decision
- Case for change
- Significant issues raised and our responses
- Proposed SRA regulated model for CILEX
- Next steps

Background

1. CILEX wrote to the Chair of our Board in July 2022, inviting us to engage in formal discussions on the potential to redelegate the regulation of CILEX members and entities from CILEX Regulation (CRL) to us. We consulted on our proposed regulatory arrangements from 31 August to 22 November 2023 ('our first consultation'). In parallel CILEX ran a consultation on its proposal to redelegate the regulation of CILEX members from CRL to us.
2. In December 2023, CILEX wrote to our CEO to ascertain SRA's willingness and approach to providing regulation of non-authorised CILEX members. At its meeting on 23 January 2024, the SRA Board agreed that it remained interested in regulating CILEX members and taking forward further work in some areas before final decisions could be made.
3. In March 2024, we published our response to the first consultation on the regulatory arrangements for authorised CILEX members. At the same time and following the request from CILEX to extend their engagement with us to non-authorised members, we launched our second consultation on the proposed regulatory arrangements specifically for this group. This consultation closed on 15 May 2024.
4. Since the initial request from CILEX, the SRA Board has considered the issues through a workshop session in October 2022, updates at Board meetings in February and July 2023, a CEO update in September, an oral update to the Board in December 2023 and a paper for discussion at the Board meeting of 23 January 2024. The final meeting of the Board was held on 25 June 2024 where it agreed to accept the redelegation of the regulation of all CILEX members.

Case for change

5. Having carefully considered the invitation from CILEX, the Board agreed that the redelegation of CILEX members and entities had the potential to support the regulatory objectives in The Legal Services Act and to offer benefits to consumers and the wider public.
6. It is widely accepted that the current legal sector regulatory landscape for England and Wales is complex and fragmented. With eight front line regulators of very different scales (for example, with regulated communities ranging from 210,000 individuals to under 700) covering different legal professions, each with a different way of working, different powers and different responsibilities, plus the LSB, it can be confusing and difficult for people to navigate.
7. Eight organisations need eight sets of governance, staff, procedures, offices and back-room services. All of that is costly, with the regulators funded by the professions.
8. We know that cost is a significant barrier for those who need legal help so opportunities to reduce regulatory costs on those providing these essential services have to be a priority for us all.
9. There is also overlap and duplication throughout the regulatory landscape. For example, as the largest regulator in the sector, we regulate around 10,000 law firms and everyone who works in them. That includes large numbers of lawyers from other legal professions, who are therefore both regulated by us and by a smaller regulator. Around 75% of CILEX professionals already work in SRA regulated firms. Many solicitors are also notaries, costs lawyers or intellectual property specialists, or solicitors may work in firms regulated as licensed conveyancers. They too are therefore doubly regulated. All this adds further to the confusion and the costs of the current regulatory model for consumers.
10. Robust regulation requires the sort of critical mass that can genuinely offer effective consumer protection. Legal regulators are being asked to do more and more – tackling anti-money laundering and economic crime are good examples. In the face of increasing requirements and with limited resources, the long-term viability of the smaller regulators must also be considered.
11. There is also a pressing need to look at how new types of legal services - unregulated, tech-enabled or unbundled - should be managed. A proactive, consistent and nimble approach is needed. The fragmentation enshrined in the current regulatory landscape makes that very difficult, slowing down how the sector responds and making it more likely that it cannot respond effectively.
12. The regulatory objectives in the Act require us – and the other regulators – to, amongst other objectives, give due regard to protecting and promoting the public interest, improving access to justice, protecting and promoting the interests of consumers and promoting competition in the provision of legal services. We understand that to mean that regulators need to give careful thought to the difficulties we have set out above.
13. With legislation to simplify the system unlikely in the foreseeable future, all those in involved in legal regulation need to think about

how to improve the current situation in the public interest.

14. In the view of many, organic and well managed regulatory consolidation is the best solution and is probably inevitable. We consider it our duty to engage constructively in that process.
15. The CILEX proposal is, in our view, exactly the sort of careful and well thought through approach that will benefit everyone.
16. The potential benefits include:
    i. Further supporting public confidence by simplifying the landscape to make it easier for consumers to access regulatory services.
    ii. Enhancing consumer protection through bringing solicitor and CILEX member regulation together to maintain and enforce standards for two of the key groups of lawyers in consistent ways.
    iii. Improving public protection by replacing the currently poor compensation arrangements for the clients of the very small number of CILEX entities with the SRA's efficient Compensation Fund arrangements – importantly, without any cross subsidy from solicitors.
    iv. Bringing efficiencies which can reduce costs and help with access to legal services through reducing regulatory duplication for the 75% of CILEX members that already work in SRA-regulated firms - and indeed their employers.
    v. Providing the opportunity to address the regulation of new and emerging forms of legal services in an integrated way across both professions.
17. The proposed redelegation of CILEX's regulatory functions to the SRA offers an opportunity to explore pragmatic solutions to the issues facing legal regulation.

Significant issues raised during consultation

18. Some key issued raised through consultation and engagement with stakeholders included the following:
19. **Education and continuing competence (including CPD)** – these issues include differentiation in the qualifying routes and the ability to maintain competence.
20. The Board discussed this issue in its February 2023 and January 2024 meetings and concluded that the arrangements provided in the regulatory framework dealt with the concerns put forward. The issues repeated in the second consultation that relate to non-authorised CILEX members do not alter the plans already proposed.
21. We have set out our commitment to maintain clear and separate identities for solicitors and authorised CILEX members. This is supported through separate education routes and a separate Code of Conduct for individual CILEX members. This includes recognising the role CILEX holds in developing and delivering educational awards which lead to authorisation as a Chartered Legal Executive and the obtaining of specialist practice rights. We will collect data

on the way this works over time and work with CILEX to consider any case for amending these arrangements.

22. On continuing competence, we would apply the same approach to oversight of continuing competence for CILEX members as we currently apply to solicitors. CILEX have said that their members will be required to follow its continuing CPD arrangements for membership. If CILEX routinely checks CPD as part of its membership function, it would share with us any information from these checks that may raise regulatory issues. Such as issues around the requirements in the SRA CILEX Principles and Code of Conduct to maintain competence and keep professional knowledge and skills up to date. We would consider such information in accordance with proposed regulatory processes including whether enforcement action was required.
23. **Funding and fees**– these issues relate to cross-subsidy between the professions and likely costs of both the transition and on-going regulation by the SRA. The Board considered these issues at its February 2023, January and June 2024 meetings. The Board concluded that the costs of regulating authorised CILEX members would be fully recovered from the practising certificate fees of CILEX members.
24. The Board agreed that the systems in place for monitoring these costs would ensure no cross subsidy between solicitors and CILEX members. The Board also noted that CILEX had confirmed that it would pay our costs in developing these proposals, whether or not the redelegation proceeds, and any implementation and transitional costs. The process used to record and allocate costs during the development phase could be maintained to enable financial transparency in implementation and so ensure that each profession appropriately funds the costs of its regulation.
25. The question of whether non-authorised CILEX members should also pay fees would be kept under review, but was contingent on CILEX charter change, which we understand is in hand. These arrangements for financial separation and allocation of costs will be overseen by our Audit and Risk Committee and reviewed by our Financial Auditors going forward.
26. **Consumer research, benefits and communications** – these issues relate to the quality of research, impacts for consumers and communication to them to deliver benefits and avoid confusion. The Board considered these at its February 2023 and June 2024 meetings.
27. The Board concluded that the proposals to accept redelegation were underpinned by strong consumer benefits supported not only through the various pieces of research and engagement carried out by both the SRA and CILEX, but also by the wider body of consumer insight work we have about consumers' knowledge of the legal services market. The overarching benefits of the redelegation are listed above in para 16.

28. The Board agreed that our proposals have the potential to reduce confusion for consumers by removing duplication and overlap that the current system creates. The Board agreed that the plans to take on publication of the CILEX Authorised Practitioners Directory will support improved consumer choice. This directory, currently published by CRL, shows the regulated legal services that each member is authorised to provide. But we recognise that the manner in which these arrangements are communicated will be key to achieving the benefits and we will be doing further work on this before any submission is made to the LSB. We will keep the Legal Services Consumer Panel in touch with this work as we move forward.
29. At its February 2023 meeting, the Board agreed the proposals for our website and branding and branding around these arrangements, as set out in an annex to the June 2024 Board papers. These arrangements aim to help consumers understand where solicitors and CILEX members have equivalent practice rights in delivering reserved legal services and where they do not. As with all our work these will be tested to ensure they are achieving the desired outcomes.
30. **Professional differentiation** – these issues relate to the possibility that the proposed changes could reduce the attractiveness of becoming a CILEX member. The variety of legal professionals creates choice and diversity of service for users of legal services, and we are committed to maintaining that diversity by protecting the distinct identities of CILEX members and solicitors. We will support the continued development of the two different branches of the legal profession. We will, however, monitor the impact of any change on entry into both professions to see if there have been any unanticipated or perverse consequences.
31. **Management and resources** – these issues relate to SRA capacity and capability. The Board was assured by the Executive that the majority of the policy work to support the Board decision is now complete. The only further work that would require senior time is any submission to the LSB. Implementation and delivery of the new arrangements will be delegated to a number of individuals at operational level. The relative scale difference of CRL and the SRA, means that the operational implementation and business as usual is not expected to pose management or resourcing issues. Notwithstanding the Board has asked for assurance around the resourcing plans.

Proposed SRA regulatory model for CILEX members

32. We have mapped the key regulatory activities for CILEX members – such as authorisation, consumer protection and disciplinary functions – against our own. The majority of the arrangements could be readily brought into our own way of working or operated alongside our own processes in the short term, with longer term

review to ensure effectiveness and efficiency. Importantly, there would be no element of cross subsidy with solicitors.

Governance

33. Governance of the model will be founded on the decision of CILEX, as the Approved Regulator, to delegate the regulation of CILEX members and entities to the SRA. The delegation will reflect the terms of CILEX's Royal Charter, including the fact that Title to the authorised status of Chartered Legal Executive derives from Fellowship of CILEX and the specific role held by CILEX as the body that awards qualifications leading to Fellowship. The delegation will be based on the existing scope of delegation of regulatory functions, as specified in CILEX's Scheme of Delegation as amended from time to time. It will be supported by appropriate protocols between CILEX and the SRA setting out both parties' roles and responsibilities under the LSB's Internal Governance Rules.
34. The SRA Board will exercise the regulatory functions relating to CILEX members and entities that are currently exercised by the CRL Board as specified within CILEX's Scheme of Delegation, as amended from time to time. The CRL Board and its committees will be stood down.
35. We will agree with CILEX appropriate engagement and oversight mechanisms to ensure that our Board and our organisation are well aware of the issues and risks facing CILEX members and entities, and to enable open communication between us and the CILEX regulated community.
36. We will work with CILEX on Practising Certificate Fee (PCF) applications and other relevant submissions to the LSB. The SRA Chair and Chief Executive will have a regular cycle of meetings with their counterparts at CILEX, as we currently do with the Law Society.
37. Our annual reporting and accounting arrangements will deal separately with the regulation of solicitors and law firms on the one hand, and CILEX members on the other. These arrangements will maintain financial separation between the regulation of CILEX members and solicitors. They will also support clear branding and messaging about the status of CILEX members as distinct legal professionals.
38. A Dispute Resolution Protocol will be established in line with the requirement specified in the LSB Internal Governance Rules guidance and an annual review process will be established to allow both parties to declare ongoing compliance with the IGRs.

Regulatory standards

39. All CILEX members including students and paralegals are required to adhere to the core principles and to meet the outcomes set out in the CILEX Code of Conduct

[https://www.cilex.org.uk/about_cilex/the_code_of_conduct/code-of-conduct] . The Core Principles within that Code and the SRA Principles [https://indemnity.sra.org.uk/solicitors/standards-regulations/principles/] are closely aligned in substance (see comparison at Annex A).

40. We will maintain the CILEX Code of Conduct as a distinct set of requirements, but would propose and consult on amendments to align it with the standards that apply to solicitors. This will simplify regulation and promote consistency in terms of both public protection and public confidence.
41. We proposed that current CILEX entities, will be re-authorised by the SRA (without the need for an application) as either:
    - Recognised or Licensed Bodies (ABS's) if they qualify due to having a solicitor or non-authorised person as a manager, in which case the same regulatory rules and protections will apply as with existing SRA-firms
    - Authorised CILEX Bodies, with authorisation to provide reserved legal services based on the specialist practising rights of the CILEX members who manage them. The SRA's regulatory requirements and professional indemnity insurance arrangements for law firms would then apply to these entities. However, the SRA Compensation Fund will not be available to their clients until a statutory instrument can be obtained and the firms. would need to remain under the CILEX compensation fund (guaranteed by CILEX) or some other transitional arrangement until then. We will work with CILEX and the entities involved to manage the transition and support the entities.
    - CILEX ACCA Probate entities for whom we will maintain a separate regime involving their own register and Handbook. This includes their own professional indemnity insurance and compensation arrangements which will not be changed.
42. In the longer term we aim to align more closely the standards for Chartered Legal Executives and CILEX Practitioners with those for solicitors. Any such change would need to maintain a clear identity for CILEX members, and to recognise appropriately the scope and context in which they practise.

Education and training

43. We will maintain a clear separate route into the profession for Chartered Legal Executives and CILEX Practitioners in accordance with the provisions of the CILEX Charter. This includes recognising the role CILEX holds in developing and delivering educational awards, which lead to authorisation as a Chartered Legal Executive and the obtaining of specialist Practice Rights.
44. We will, in taking over the regulation of CILEX members, recognise the CILEX Professional Qualification, as leading to authorisation as a Chartered Legal Executive with Practice Rights, reflecting the current accreditation in place with CILEX Regulation. We will also

recognise those who qualified through legacy educational awards previously approved by CILEX Regulation.

45. CILEX has confirmed we will be able to undertake quality assurance activities in respect of its assessments. For example, we will review samples of exam questions and mark schemes, observe standardisation meetings and have access to the outputs from CILEX's own quality assurance. We will need to agree with the Institute for Apprenticeships and Technical Education that we will become the external quality assurance body for the CILEX Chartered Legal Executive and Litigation and Advocacy apprenticeships.
46. We will work with CILEX over time to consider any case for amending these arrangements focussing on quality and consistency of the outcomes delivered. This could include reviewing the current standards and oversight arrangements for educational awards, experience and training and the quality assurance processes for CILEX Apprenticeships. We will also need to review the arrangements by which organisations other than CILEX can deliver and/or grant educational awards.
47. We will also work with CILEX to establish a suitable framework for the accreditation and quality assurance of new qualifications leading to authorisation as a Chartered Legal Executive or CILEX Practitioner, including Apprenticeships.
48. We recently published an action plan [https://indemnity.sra.org.uk/sra/research-publications/ongoing-competence-lsb/] to meet the LSB's requirements relating to continuing competence. This focuses on understanding the risks in different areas of practise, and carrying out proactive thematic work in higher-risk areas. We will evolve this approach as necessary to reflect the practice of CILEX members.
49. We do not check solicitors' Continuing Professional Development (CPD) activity, since we consider that our education standards framework and our action plan on Continuing Competence constitute a proportionate regulatory approach to ensuring continuing competence. So, we do not propose to take on CRL's regulatory function of routinely checking that CILEX members are meeting the annual CPD requirements, which are a requirement of CILEX membership, although we may carry out checks on a sample basis or in response to a complaint. We recognise that CILEX intends to continue routine CPD checks as a membership function, and we expect that CILEX will share with us any information arising from these checks that may raise regulatory issues. As discussed above, we will evolve our action plan on the continuing competence of solicitors to cover Chartered Legal Executives and CILEX Practitioners.

Authorisation and Licensing

50. Our Individual Based Authorisation team will take on the authorisation of Chartered Legal Executives and CILEX Practitioners. Our processes will reflect the CILEX Charter requirement to be a Fellow of CILEX in order to hold the protected title of Chartered Legal Executive, as well as the need for character and suitability checks.
51. Since CILEX members do not qualify and practise in the same way as solicitors, we will set up appropriate processes to manage the differences. In particular, we will manage the authorisation of Chartered Legal Executives and CILEX Practitioners for specific areas of practice. This may require some limited additional resource (see 'ongoing costs' below).
52. We use trained staff and adjudicators as decision-makers for our authorisation work, so we will stand down the CRL Authorisation and Licensing Committee.
53. CILEX Practitioners and Chartered Legal Executives are listed on the CILEX Authorised Practitioners Directory which is published by CRL and shows the regulated legal services that each member is authorised to provide. We will take on publication of this register, and will present it to the public alongside the Solicitors Register in a way that supports improved consumer choice, but clearly differentiates the professions and the services they offer.
54. We will not publish a register of non-authorised CILEX members. This will remain a matter for CILEX, along with the register of non-practising CILEX members. We will work with CILEX to ensure it is clear to the public how CILEX members who are not in the Authorised Practitioners Directory are regulated, and how to make a complaint about them.

Investigation and Enforcement

55. Our investigation and enforcement teams currently handle around 11,000 complaints a year about solicitors and firms. The volume of complaints about CILEX members is low in comparison (56 complaints in 2021). Our existing teams will handle any concerns about CILEX members. We anticipate using broadly the same processes as we do for complaints about solicitors and firms (triage, assessment, investigation, notice and decision). This may require some limited additional resource, but we estimate that the cost would be no higher than, and potentially lower than, the current cost of CRL's investigation and enforcement functions (see 'ongoing costs' below). Cases would be run through CILEX's CRM and Case Management System (as currently used by CRL) and could be treated as a separate cohort for reporting purposes.
56. As with authorisation, we use trained staff and adjudicators as decision-makers for most disciplinary purposes. Therefore we have concluded that this is the approach we will take.

Client protection

57. Our key client protection functions in relation to firms are setting requirements for firms to hold Professional Indemnity Insurance (PII), intervening in firms to protect clients, and handling claims for compensation for loss arising from ethical failures (including theft of client money, failure to account and failure to arrange PII).

Professional indemnity insurance (PII)

58. Our PII requirements for firms are based on minimum terms and conditions (MTCs) which include requirements for minimum coverage per claim (£2m for traditional partnerships and sole practitioners and £3m for incorporated firms) and six years of run-off cover. CRL has minimum PII requirements including a minimum level of cover of £2m. CILEX entities are mostly incorporated, so would require £3m coverage per claim if our MTCs apply to them. Entities which have recently transferred from CRL to SRA regulation have not experienced difficulties in arranging PII cover under our MTCs.

Interventions

59. Our intervention regime is the same as the CILEX regime and covers serving notice, taking possession of files and money, tracing clients, and returning money and papers. Since CILEX entities will be re-authorised by us after the transition our intervention team will handle any required intervention in the same way as for other SRA firms.

Compensation arrangements

60. Our proposal to re-authorise CILEX entities would give consumers who are clients of some of those entities access to the SRA Compensation Fund. This offers substantially more consumer protection than the CILEX arrangements, which are only available in respect of the reserved legal services for which the entity is authorised. Over time, as set out above, we would look to get agreement for the necessary statutory instrument to bring the clients of authorised CILEX Bodies within the fund. It would therefore help to simplify the regulatory landscape for consumers and remove some inconsistencies across different classes of regulated entity, improving consumer protection overall.

Anti-money laundering (AML)

61. Like CRL we are an AML supervisor. Since CILEX entities will be re-authorised by us, after the transition our AML team will supervise

the AML requirements that apply to them in the usual way. Our AML team will also supervise AML requirements that apply to individual CILEX members, in the same way and with the same staff and processes as we supervise individual solicitors.

Communications, website and branding

62. CILEX members will be included in our outreach, communications, research and diversity data collection work, and our annual reporting. This will include our work in Wales. We will establish a dedicated area on our website with relevant information for the profession and the public.
63. As discussed under 'authorisation and licensing' above, we will take on publication of the CILEX Authorised Practitioners directory, and will explore with CILEX the scope to present it to consumers and the public alongside the Solicitors Register.

Next steps

64. The next step will be for CILEX to consider the proposed regulatory model set out in this note and decide whether or not it wishes to proceed with this initiative. We understand that this consideration is likely to happen in July. If CILEX make the decision to proceed, regulatory applications from CILEX and the SRA will need to be submitted to the Legal Services Board.
65. At the appropriate time, we will carry out a post-implementation review as part of our standard practice when implementing changes to our policy. In relation to CILEX we are not, for the most part, making sweeping changes as part of the transition, however, we must review the impact of this transition. This will include a review of the regulatory model applied to CILEX members with a view to adjusting and improving the regulatory environment. This will be carried out in consultation with CILEX.