

**SRA BOARD**

25 June 2024

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*This paper will be published*

**SRA regulation of Chartered Institute of Legal Executives (CILEX)  
members**

<b>Reason for paper</b>	This paper reports on our recent consultation on the regulation of non-authorized CILEX members (paralegals and students), recommends accepting the redelegation of the regulation of both authorized and non-authorized CILEX members based on the analysis of the merits of that proposal, and recommends next steps.
<b>Decision(s)</b>	<p>The Board is asked to:</p> <ul style="list-style-type: none"> <li>a) agree to accept the redelegation of the regulation of all CILEX members (paras 19-55), and if the Board so agrees, then (subject to CILEX’s decision to redelegate) to:</li> <li>b) approve in principle the regulatory arrangements (made available to the Board separately) on the basis that, if CILEX formally approves the redelegation, they will then be submitted to the LSB, with a view to the rules being made at the appropriate time when the SRA is empowered to do so</li> <li>c) delegate to the Chair (i) final approval of any further amendments (not changing policy) to the regulatory arrangements and (ii) the ability to make the final rules at the point at which the SRA is empowered to make the regulations (paras 56-58)</li> <li>d) delegate to the Chair final approval of the necessary amendments to the SRA Articles (made available to the Board separately) to be agreed with the Law Society to implement the redelegation (para 62).</li> </ul>
<b>Previous Board and committee consideration</b>	Previous Board papers have included 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 papers for, and the notes of, those meetings can be found on Directors Desk.

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<b>Next steps</b>	Subject to Board approval, we will: <ul style="list-style-type: none"><li>• inform CILEX of the Board's decision</li><li>• publish the response to the consultation on proposed arrangements for the regulation of non-authorized CILEX members</li><li>• if the Board and CILEX agree to proceed with the redelegation, prepare and submit the application to the LSB for approval of the regulatory arrangements of CILEX members</li><li>• continue to engage with the Law Society, LSB and CILEX to discuss the issues and the draft amendments to the SRA Articles.</li></ul>
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### SRA regulation of Chartered Institute of Legal Executives (CILEX) members

#### Summary

- 1 This paper updates the Board on the proposed redelegation by CILEX to the SRA of the regulation of CILEX members. It discusses the risks and benefits of accepting the redelegation in light of the latest information. The paper then invites the Board to accept the redelegation of the regulation of both authorised and non-authorised CILEX members.
- 2 If the Board decides to accept the redelegation, this paper asks the Board to agree the next steps that we set out, aimed at giving effect to that decision.

#### Background

- 3 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.
- 4 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.
- 5 The CEO of the Law Society wrote to us on 15 January 2024, raised objections about the proposal to accept the redelegation and requested that the Board was made aware of the points raised. This letter was provided to the Board for its 23 January 2024 meeting, and a further copy is attached at annex 1.
- 6 At its meeting on 23 January 2024, the Board agreed that it remained interested in regulating CILEX members and taking forward further work in some areas before final decisions could be made.
- 7 On 18 March 2024 we published:
  - [the response](#) to our first consultation (on the regulatory arrangements for authorised CILEX members)
  - [a consultation](#) on the regulatory arrangements for non -authorised CILEX members (“our second consultation”).

#### Second consultation responses

- 8 In our second consultation, which closed on 15 May 2024, we set out the case for the SRA implementing regulatory arrangements for non-authorised CILEX members at the same time as authorised members.

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- 9 We received 13 responses to the second consultation. The majority of individuals responding identified as CILEX lawyers or fellows. Most of the individuals responding generally supported our detailed proposals, although a couple of individual respondents made comments that related more to our consultation on authorised CILEX members which closed in 2023.
- 10 The Legal Services Consumer Panel (LSCP), whilst saying that in principle the SRA regulating both authorised and non-authorised CILEX members together was the right idea, reiterated its view that there was insufficient evidence to support the proposed redelegation.
- 11 Several of the responses from organisations (including from CRL and the Law Society) disagreed with the proposals in terms of possible impacts on professionals, non-authorised persons and consumers. CRL and the Law Society also repeated their objections to the redelegation of regulation of all or any CILEX members in principle.
- 12 We have considered the points raised in relation to the changes consulted upon and a draft response to the consultation is at annex 2. This will be finalised after the Board meeting. The responses from CRL, the Law Society and LSCP are attached at annex 3.
- 13 Our recommendation is that if the Board agrees to accept redelegation, we should take on the regulation of non-authorised CILEX members at the same time as authorised members.
- 14 CRL's regulation of non-authorised members is part of its arrangements that have been approved by the LSB. Removing independent regulation from these members would be seen as a lowering of standards. Splitting up the regulation of current CILEX members would also lead to regulatory fragmentation rather than consolidation.

**Other developments since the 23 January 2024 Board meeting**

- 15 We have continued discussions with CILEX on areas on which it requested further engagement in a letter of 7 December 2023. This letter and our reply dated 24 February 2024 are attached as annex 4.
- 16 We met again with the LSCP during the second consultation period. It recommended that CILEX, with SRA support, undertake further consumer engagement (for example via focus groups) to look at the potential benefits of the redelegation, for example in terms of a simpler regulatory landscape.
- 17 A consumer focus group was held on the 13 June, this is discussed below.

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- 18 CILEX is holding its annual general meeting in July at which its board will make its formal decision on redelegation in light of the decision of the SRA Board.

#### **Discussion: whether to accept redelegation of the regulation of CILEX members**

- 19 Annex 5 contains a detailed discussion of the potential risks and benefits of the SRA accepting the redelegation of CILEX members. This section contains a summary of that discussion.

#### **Would redelegation protect and promote the interests of consumers and the public?**

##### *Impact on consumers and the public: potential benefits*

- 20 The potential for a positive impact on the public and consumers by reducing the complexity of the current landscape is supported by our work with consumers. As set out in more detail in our 23 January Board 2024 paper, our online survey of 1,000 consumers in December 2023 suggested that consumers had limited knowledge of the complexities of legal services regulation and might benefit from the consolidation of legal services regulators.
- 21 This research has come under criticism from the Law Society, which felt that the information provided to the respondents guided the answers, and by the LCSP which considers that we do not have sufficient evidence to show that expected benefits to consumers will occur.
- 22 Our view is that the research supports conclusions from previous work with consumers by ourselves and others.
- 23 Overall, the additional focus group held on 13 June was also supportive of the proposals:
- it felt it very important that protections such as compensation funds and insurance are similar for similar areas of work – for example conveyancing delivered by different professionals,
  - it agreed that the proposals would reduce the potential for consumer confusion when finding information to choose between legal professionals,
  - a small number stressed that under the proposals, the regulator should make sure it had capacity to deal with any extra work and that it needed to have the right expertise to deal with any niche areas.
- 24 We consider that on the evidence currently there is clear potential for consumers and the public to benefit from these proposals in terms of

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simplification. The current regime also adds costs through duplicated governance, staff and services.

- 25 At a basic level those consumers who deal with the 75% of CILEX members that work in SRA regulated firms will now only have one regulator to complain to instead of two, and processes can be made simpler accordingly.
- 26 Another potential benefit to consumers is that if redelegation proceeds, then over time, the CILEX compensation fund arrangements will be replaced by the SRA Compensation Fund. The SRA Compensation Fund has wider coverage; in particular, the CRL arrangements are only available in respect of those legal services that CRL has specifically authorised a firm to offer, and therefore do not cover any unreserved activities they may carry out.

*Impact on consumers and the public - risks and countermeasures*

- 27 The Law Society's position is that the delegation of regulation will in fact lead to consumer confusion. We consider that any risk is small and can be mitigated.
- 28 We agree that it is important that if redelegation proceeds, consumers are made aware of when and how to complain to the SRA about CILEX members, and of the client protection arrangements that are in place. Requirements to explain the regulatory arrangements will be in the SRA-CILEX Code of Conduct applying to all CILEX members. And the SRA Transparency Rules, which would apply to any former CILEX- regulated firms and CILEX freelance practitioners, require clients to be given details of compensation and PII arrangements.
- 29 The Law Society is concerned that regulation of both solicitors and CILEX members together by the SRA will create a "false equivalence" between the two professions and will negatively impact on the ability of consumers to choose the appropriate provider to meet their needs.
- 30 A solicitor once qualified, can provide services in any reserved area of law, whereas an authorised CILEX practitioner will be authorised in one or more individual areas, such as civil or criminal litigation, family litigation, conveyancing, probate, immigration etc, which will reflect their individual qualifications and training. If redelegation proceeds we have no intention of changing these arrangements and CILEX has stressed its determination to retain the clear separate CILEX route to qualification.
- 31 We would ensure that consumers are made aware of the precise scope of the practising rights of the provider that they are instructing, as this scope reflects not only the formal legal position but the nature of the providers' qualifications and expertise. It is equally important that providers do not stray beyond that expertise, and that clients are referred on to the appropriate service where appropriate.

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- 32 For that reason, the proposed CILEX-SRA Principles and Code of Conduct contain provisions that impose the relevant obligations on CILEX members, including the obligation to explain what services they are and are not authorised to provide, and to assist customers to obtain access to a full range of services where appropriate.

**Would redelegation encourage an independent, diverse and effective legal profession and promote and maintain adherence to the professional principles?**

*Impact on the legal profession and the professional principles: potential benefits:*

- 33 We consider that redelegation would simplify matters for the 75% of CILEX members that currently work in SRA firms, in that they would only need to report to one regulator with one set of processes who would be applying more consistent standards. The position would be similarly simplified for the SRA firms that employ those members.
- 34 For all CILEX members, wherever they work, we have closely aligned the CILEX Principles and Code to the standards that apply to solicitors, with appropriate differences which recognise the different scope and context of their practice. This approach will promote greater consistency in the regulation of authorised legal professionals. (We expect it will also be clearer for consumers of legal services, reducing the potential for confusion around expectations and regulatory action.)
- 35 We have set out our commitment to maintain clear and separate identities for solicitors and authorised CILEX authorised members if redelegation proceeds. This is supported through separate education routes and a separate Code of Conduct for individual CILEX members.
- 36 Combining the regulation of these two branches also provides the opportunity of a common approach to address the regulation of new and emerging forms of legal services (for example AI) in an integrated way across both professions. This could benefit both the regulated community and the public.

*Impact on the legal profession and the professional principles: risks and countermeasures*

- 37 One risk of the SRA regulating both CILEX members and solicitors is that there would be cross subsidy, with one profession paying for regulation of the other. The stability of funding for CILEX regulation needs to be considered, especially given that the risk of the unsustainability of CRL was one of the reasons given by CILEX in its Case for Change. From CILEX members' point of view, a significant increase in their fees would have an adverse impact. As would be

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expected, the Law Society is focused on the risk of solicitor regulation being adversely affected by the costs of CILEX regulation.

- 38 CILEX has confirmed that it is paying the SRA's development costs of these proposals (whether or not the redelegation proceeds) and any implementation and transitional costs. There is already an accounting process in place with CILEX for it to pay those development costs.
- 39 If redelegation proceeds we would maintain financial transparency to ensure that each profession appropriately funds the costs of its regulation.
- 40 Ongoing regulatory costs would be met by fees from CILEX members. As set out in our response to the second consultation we would initially intend to adopt the current CILEX policy of recouping the costs of regulation of all CILEX members (authorised and non-authorised) from the practising fees charged to authorised CILEX members.
- 41 This proposal has come under criticism in the responses to the second consultation from both CRL and the Law Society which maintain that non-authorised members should contribute to the cost of regulation as they benefit from it, and that there should be no cross subsidy from the authorised members.
- 42 During development of our proposals, our initial calculations were that in terms of investigation, enforcement and authorisation costs, there could be savings in relation, for example, to the cost of panels and staff due to the fact that the SRA has an existing infrastructure which could be able to absorb CRL's wider functions at a lower cost.
- 43 Overall, our current calculation is that, given these synergies that should be available when absorbing CRL's current workload into a larger organisation, we expect that the ongoing cost of the regulation element of the practising certificate fees to authorised CILEX members would not be higher than its present level in real terms. Based on the percentage figure in the last CILEX application for a Funding Order, the regulation element of the annual fee for CILEX Authorised members is currently £221 compared to the SRA share of £162 for a solicitor's practising certificate.
- 44 This does not include transitional costs which would be paid by CILEX.
- 45 However, we are not able to forecast with confidence the 'steady state' future cost of regulation without access to more detailed information held by CRL, which currently it is not providing.
- 46 CILEX members' fees would remain subject to annual approval from the LSB.



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- 47 We propose that if redelegation proceeds, the issue of whether to charge non-authorised members for regulation after the first year of SRA regulation should remain under review (with CILEX). This would mean that changes could be made, if necessary, in the future so that we can continue to ensure that the regulation of CILEX members is self-funding.
- 48 We have also considered the impact on the SRA Compensation Fund and on the former CILEX firms who would join the fund should redelegation proceed.
- 49 In terms of any risks to the fund presented by CILEX regulated firms that would join the SRA fund, there are currently 20 authorised firms on the CRL register. Six of these (who have solicitor managers or qualify as ABS's) would be passported to become SRA regulated firms and the SRA Compensation Fund would apply to their clients. The remaining firms would need to remain under transitional compensation fund arrangements with CILEX pending any changes to legislation to allow them to come within the SRA fund.
- 50 There is no evidence that the small number of CILEX entities or CILEX authorised members who practise as self-employed practitioners delivering unreserved legal services outside of authorised firms (whose clients would also have access to the SRA Compensation Fund only if the necessary legislation was obtained) represent a higher level of risk to the Compensation Fund than current SRA authorised firms and freelancers. We understand that there has never been a claim on the CILEX compensation fund nor an intervention relating to a CILEX entity.
- 51 In terms of the impact on CILEX firms of moving to the SRA Compensation Fund, as set out above, only six firms would be moving immediately into fund coverage. We have proposed an increase of firm contributions from £660 to £2220 in our draft business plan for 2024-25. If implemented there could be an increased cost to these firms from the current CILEX compensation fund rates depending on the firm's size, the categories of law they offer and whether they hold client money.
- 52 In terms of PII, CILEX entities currently obtain insurance through open market arrangements similar to our own and insurers price each firm's premium based on their assessment of risk irrespective of who authorises the firm. Our PII arrangements require a higher level of cover than CRL's. [Research](#) conducted jointly by the SRA and Legal Services Board indicates that the size of firm and type of services offered have the biggest impact on the level of PII premium, rather than the level of cover required. The research did find that CILEX-regulated law firms pay 12% lower PII premium rates on average than SRA-regulated but acknowledged that further work would be needed (given the small CILEX sample size) to examine whether differences in average premium rates are related to differences in the MTCs. Therefore, an increase of a similar level to premiums of the 20 CILEX firms that would be moving over to SRA regulation cannot be ruled out at this stage, although clearly there would be

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individual factors at play. However, analysis of the data we do have does not imply a sizeable increase in costs which might be passed on to consumers - even for those small number of firms.

- 53 Subject to the potential Compensation Fund and PII issues for the limited number of CILEX authorised entities, overall, our risk assessment has not identified any significant additional regulatory burdens and costs for CILEX members, authorised CILEX entities and solicitors. For those 75% of CILEX members working in solicitors' firms, and for the firms that employ them, moving to a single regulator would bring a simpler landscape.

**The remaining regulatory objectives**

- 54 We have focused above on the main potential benefits and risks to the regulatory objectives. As set out in our regulatory impact assessment, we broadly consider the impact on the remaining objectives as neutral.
- 55 Given the potential benefits that promote the regulatory objectives and the way in which we would intend to manage any risks as discussed above, in annex 5, and in the RIA (annex 6), we consider that there remain sound policy reasons to accept redelegation subject to the CILEX Board's formal decision.

**Recommendation: the Board is asked to**

- a) accept the redelegation by CILEX of the regulation of both authorised and non-authorised CILEX members.**

**The regulatory arrangements**

- 56 If the Board agrees to accept the redelegation of the regulation of CILEX members, then it is asked to approve the regulatory arrangements (made available to the Board separately) which includes an explanation of each set of rules and what they are designed to achieve.
- 57 The Board cannot formally "make" the rules, at this stage, because the LSB has not yet agreed the redelegation and our articles have not been amended.
- 58 The Board can however consider the rules now and approve them in principle for submission to the LSB. The rules will then need to be made at the point at which LSB approval for CILEX's application is made, and they cannot come into effect unless and until the necessary changes to the SRA's Articles are in force.

**Recommendation: the Board is therefore asked to:**

- b) approve in principle the attached regulatory arrangements (made available to the Board separately) on the basis that, if CILEX formally**

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**approves the redelegation, they will then be submitted to the LSB, with a view to the rules being made at the appropriate time when the SRA is empowered to do so**

**(c) delegate to the Chair (i) final approval of any further amendments (not changing policy) to the regulatory arrangements and (ii) the ability to make the final rules at the point at which the SRA is empowered to make the regulation.**

**Next Steps**

59 We will publish the final version of the response to the second consultation.

60 If the Board decides not to accept the redelegation we will inform CILEX accordingly. If the Board agrees to accept the redelegation we will inform CILEX of the decision and await the results of its Board meeting.

61 If the CILEX Board then decides to proceed with redelegation:

- We will apply to LSB for approval of the regulatory arrangements at the appropriate moment, likely to be in tandem with CILEX's own application to LSB for approval of the redelegation.
- The Board is asked to note the draft amended Articles (made available to the Board separately) and delegate to the Chair final approval. Clearly for this to proceed, the Law Society would need to agree to these.
- We will report back to the Board on progress on these matters.

**Recommendation: the Board is therefore asked to:**

**(d) delegate to the Chair final approval of the necessary amendments to the SRA Articles (made available to the Board separately) to be agreed with the Law Society to implement the redelegation.**

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### Supporting information

#### How the issues support the regulatory objectives and best regulatory practice

- 62 For the reasons set out in this Board paper and annexes we consider that redelegation has the potential to protect and promote the interests of consumers and the public encourage an independent, diverse and effective legal profession and promote and maintain adherence to the professional principles.
- 63 A regulatory impact assessment which looks at our proposed arrangements in more detail is attached at annex 6.

#### What engagement approach has been used to inform the work and what further communication and engagement is needed?

- 64 Our engagement up to and including the first consultation was reported to the Board at its meeting on 23 January 2024.
- 65 We launched our second consultation on the regulation of non-authorized CILEX members to which we received 13 responses. We met again with the Legal Services Consumer Panel during the second consultation period.
- 66 CILEX and the SRA arranged a further consumer focus group on the 13 June.

#### What equality and diversity considerations relate to this issue?

- 67 An equality impact assessment is attached as annex 7.

#### How the work will be evaluated

- 68 If redelegation proceeds, we will ensure evaluations of the consequential changes to our regulatory arrangements. These will gather and analyse evidence of the actual impact of our arrangements on affected stakeholders including consumers, CILEX members and solicitors. We will publish the outcome of our evaluations, and report on any changes we have made to our work as a result of the findings.

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**Annexes**

- Annex 1** Letter from the Law Society of 15 January 2024
- Annex 2** Draft response to the second consultation
- Annex 3** Copies of responses to the second consultation by CRL, the Law Society and the Legal Services Consumer Panel
- Annex 4** Letter from CILEX of 7 December 2023 and our reply of 24 February 2024
- Annex 5** Discussion of the potential risks and benefits of the SRA accepting the redelegation of CILEX members.
- Annex 6** Regulatory Impact Assessment
- Annex 7** Equalities Impact Assessment