

CILEx Regulation Limited

**Response to CILEX consultation proposing redelegation of
regulatory services**

October 2023





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Executive Summary

The CILEx Regulation Limited (**CRL**) Board, which is comprised of two CILEX professionals and three lay (independent) members, has carefully considered the consultation documents published by CILEX and the Solicitors Regulation Authority (**SRA**) in respect of the proposals to redelegate the provision of regulation for its members to the SRA.

We have also consulted CILEX members on their views, met with both organisations to seek additional information, and attended all CILEX events and webinars as part of the ongoing consultation process. Despite this scrutiny, there remain significant and considerable gaps in the information put forward by both organisations that we have not been able to fill.

For example:

- It is not clear whether appropriate governance structures will be created to ensure that CILEX members do not lose access to the focused, informed regulatory oversight they currently have.
- No information has been provided on the financial implications of the changes nor evidence of risk analysis.
- There is no published assessment of how the proposed changes will serve the public interest, despite the assertion that this is the most important criterion.
- No evidence has been provided of a failure, on the part of CRL, in its delivery of regulatory services across the past 15 years, nor has serious consideration been given to the alternative proposals for change submitted to CILEX by CRL.

In our consultation of June 2023, to which there were more than 1,000 responses, two thirds confirmed that regulatory change was not a priority for them, and three quarters stated a preference to continue with a specialist regulator that understands and is focused on the nature of their careers and practices.

It is therefore concerning to hear from CILEX that it may choose to disregard the views of its own members in deciding whether to proceed.

In this response, CRL has posed five key questions that we believe must be answered in detail and published as part of the consultation:

1. How will the public interest and other regulatory objectives be served by this change?
2. How will SRA champion the interests of 7,000 CILEX Fellows and Practitioners, ensure they benefit from focused, informed regulatory oversight and encourage the growth of new CILEX entities?
3. Will CILEX Fellows and Practitioners lose the input into the regulatory framework and decisions that they currently have?
4. Will CILEX's 9,500 paralegal members lose access to the voluntary, independent regulation that CRL currently provides?

5. How much will the change cost – in both the short and longer term - and who will pay?

In addition to these critical questions, the CRL Board still considers that CILEX does not have the necessary legal authority to make these changes unilaterally and stands ready to ask the Courts to rule on this issue if necessary.

CRL has a duty to ensure CILEX members are subject to effective regulatory oversight – whether that is by CRL or another party. In the absence of sufficient evidence to satisfy the CRL board that the proposals would deliver effective regulatory oversight, we do not believe it is currently possible for CILEX members to form a view on the appropriateness of the plans – nor for the Legal Services Board (LSB) to be able to assess whether they meet the regulatory objectives set out in the 2007 Legal Services Act.

We continue to seek answers to these questions and have urged CILEX members to do the same and to contribute their views to the consultation.

1. Introduction

CRL has provided independent regulatory services to members of the Chartered Institute of Legal Executives for fifteen years. The CRL Board is comprised of two CILEX professionals and three lay (independent) members, all of whom have appropriate regulatory or governance experience, ensuring CRL can provide focused, expert and appropriate regulatory oversight of CILEX's 7,000 authorised members. In addition, CRL provides independent regulatory oversight of CILEX's 9,500 non-authorised members (paralegals).

CRL is proud of the high standard of focused regulatory services that we deliver to CILEX and its members. We are also proud of our robust governance, independent and cost-effective operational structure, and productive engagement with our regulated community.

This sustained, positive performance has enabled us to build a reputation for effective regulation with not only CILEX members but also the LSB as oversight regulator.

It was therefore with considerable surprise that CRL was presented, in January 2022, with a proposal for the redelegation of regulatory services away from CRL to the SRA. In its subsequent investigation the LSB concluded that the way CILEX approached this "was not consistent" with the regulatory objectives and IGR rules.

We were disappointed that, having consulted the regulated community, the alternative proposals we presented to change and develop our own services to meet the challenges identified by CILEX were quickly dismissed by the CILEX Board without discussion.

CRL has carefully considered the proposals to redelegate the regulatory functions to the SRA. We have also met CILEX and the SRA to ask for more detail about their proposals. There remain significant gaps.

Further, we do not believe that CILEX has properly assessed its proposals against each of the eight regulatory objectives. In the absence of sufficient evidence, CRL does not agree that CILEX's proposals represent necessary amendments to the existing regulatory arrangements and is not persuaded that they represent the most appropriate and effective way of discharging the regulatory functions consistent with the regulatory objectives.

2. The five key questions for CILEX to answer

In this response, CRL poses five key questions that we believe must be answered and we have set out how far we believe the CILEX and SRA consultations have to date answered these questions.

2.1 How will the public interest be served by making this change?

CILEX has repeatedly stated that the public interest will guide this decision but has not provided any details as to how this will be defined or measured. CRL has requested this information, but no properly reasoned case has been published.

Although important and significant, reliance on the public interest as the sole determining criteria is insufficient. Approved Regulators, must consider the impact of proposed changes on each of the regulatory objectives set out in the Legal Services Act 2007:

- *Protecting and promoting public interest*
- *Supporting the constitutional principles of the rule of law*
- *Improving access to justice*

- *Protecting and promoting the interests of consumers*
- *Promoting competition in the provision of services*
- *Encouraging an independent, strong, diverse and effective legal profession*
- *Increasing public understanding of the citizen's legal rights and duties*
- *Promoting and maintaining adherence to the professional principles.*

In addition to there being no evidence of proper assessment of the first objective, there is no evidence that the other seven have been considered in the information released to date.

For example, the contribution CILEX members make to improving access to justice must not be lost through a change of regulator.

Chartered Legal Executives embrace and celebrate their distinct professional identity.

Compared to solicitors, CILEX members are more likely to be women, more likely to be older, more likely to have attended state school – and as likely to be from an ethnic minority background.

CILEX members offer an important diversity of choice to consumers and the opportunity to select legal advisors from a background comparable to their own.

It is not clear in the proposals how subsuming the regulation of CILEX members into the SRA would protect and promote the distinct and important role that they play in providing access to justice for all UK communities.

2.2 How will SRA champion the interests of 7,000 CILEX Fellows and Practitioners, ensure they benefit from focused, informed regulatory oversight and encourage the growth of new CILEX entities?

There is no explanation of how the SRA would enable CILEX Fellows and Practitioners to continue to thrive. Indeed, the SRA has acknowledged this lack of detail to CRL in meetings and confirmed that they do not intend to elaborate further at this stage.

In its own proposals for change, CRL identified ways in which it could champion the interests, role and profile of CILEX Fellows and continue to support CILEX members to set up their own firms. This included creation of a new Head of Public Affairs.

2.3 Will CILEX Fellows lose the input into the regulatory framework and decisions that they currently have?

The proposal would see regulation of CILEX's 7,000 Fellows and Practitioners subsumed into the SRA, which already regulates 160,000 solicitors and 9,000 firms. There are no details in the proposals about how this would be managed.

There is no proposal for CILEX Fellows and Practitioners to have any continuing role in the governance of its regulator and the way its regulatory functions are exercised.

2.4 Will CILEX's 9,500 paralegal members lose access to the voluntary, independent regulation that CRL currently provides?

It is not clear in the proposals how, or indeed if, the 9,500 paralegals currently subject to independent regulation by CRL would be regulated by the SRA.

2.5 How much will the change cost and who will pay?

CILEX, as the instigator of these changes, needs to demonstrate that the substantial cost and disruption are justified.

This has not been done. The proposals do not set out the financial implications – neither the short term transition costs, nor the long term operational costs and future implications for the practising fees payable by CILEX members. No impact assessment nor robust analysis has been published.

3 Additional information gaps that need to be addressed

There are two further important issues that CRL believes must be addressed:

- 3.1 Should these proposals proceed even if there is no independent evidence base to recommend them, nor support from the regulated community?

CILEX has asserted that it is entitled to disregard the views of its members in proceeding with its proposals.

In our own consultation, conducted in June this year, over 65% of the 1,000+ respondents said they did not agree with the move.

As the representative body for Chartered Legal Executives and other CILEX members, it is hard to understand how CILEX can declare its intent to disregard the views of its members.

We are also aware that the Law Society, the representative body for solicitors, strongly opposes the proposals. CILEX (and indeed the SRA) will need to take this fully into account in any proper assessment of these proposals.

- 3.2 Has CILEX established that it has the legal powers to take this decision?

While the LSB has expressed the view that CILEX has the power, in principle, to explore and give effect to alternative delegated arrangements to those currently in place through CRL, it acknowledges that CRL's alternative position is arguable.

CRL's position remains that CILEX may not lawfully de-delegate its regulatory functions from CRL and re-delegate them to the SRA.

It is not part of the representative's body's residual functions to re-enter the regulatory arena to re-shape regulation in accordance with its own preferences unless CRL is failing to meet its obligations (which has not been suggested) or CRL itself agrees in the wider public interest to changes proposed.

CRL will, if necessary, apply to the Court to determine this issue.

4 The importance of a full and fair assessment of the proposals

CRL has a duty to ensure CILEX members are subject to effective regulatory oversight – whether that is by CRL or another party. Since we were first made aware of CILEX's intentions in 2022, we have sought to understand the rationale behind this move. No evidence has been provided of any failure on the part of CRL in its delivery of these regulatory services.

Despite the existential nature of the threat to the CRL team, it remains our duty to deliver effective regulation to CILEX members and we are proud of our team of staff and member representatives who continue to do just that, day-in-and-day out, at such a challenging and uncertain time.

We continue to engage with CILEX and the SRA on these proposals to secure the missing information that will help to satisfy the many unanswered questions about these proposals and seek opportunities to discuss our alternative proposals which should be given equal and fair consideration.

Given the significance and wide reaching impact of these proposals for CILEX members (both the authorised and non-authorised communities), we have been strongly urging CILEX members to engage with the CILEX and SRA consultations too, including those members who are dual qualified.

We believe members should ask questions of CILEX, as their representative body, demand a say in the decision and ensure they make their views clearly known through the consultation and accompanying events and webinars.

It is critically important for all of these questions to be answered clearly and fully, to avoid the risk of a decision being made which is not in the public interest, is not in the consumer interest and does not support the development of a competitive, independent, strong, diverse, and effective legal profession.

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