

CILEx Regulation Proposal to CILEX

Specialist Regulation for the Future
of an Independent Profession

Executive Summary
July 2023

Introduction

In November 2021 the CRL Board published its new three year Strategy setting out our plans to deliver forward-looking regulation for the benefit of all. We recognised that whilst much had been achieved in our 15 years, there was a need for further innovation and renewal.

As we were beginning this transformation, in January 2022 CILEX separately advised CRL that it had started a process to decide whether it should withdraw the arrangements for delegation of its regulatory function from CRL and re-delegate them to another body, in this case the SRA. CILEX subsequently published its Case for Change which sets out its criteria for making that determination. We have agreed to seek to reach an agreed way forward in the interests of the whole regulated community.

We are therefore setting out our proposed way forward and sharing it with CILEX so they can consider it against the criteria in the Case for Change.

In this proposal we set out:

- our achievements, noting where CRL already meets or exceeds the criteria, and
- our commitment to review and refresh our relationship with CILEX and the CILEX community in compliance with the regulatory objectives, particularly the interests of consumers and the public interest.

The responses we have had to our consultation, Specialist Regulation for the Future of an Independent Profession, have been key for us in the development of this proposal. Our view has always been that regulation needs to be independent of the interests of any representative body but equally any regulator needs to understand, and enjoy the support of the regulated community.

Our consultation

CRL recognised the importance of engaging with the regulated community and giving them a voice in the future direction of CILEX and CRL.

We developed our consultation with the purpose of ensuring a shared understanding of the issues affecting CRL's regulated community and to provide an evidence base from which we have developed a positive proposal for change.

Our consultation was launched on 15 May 2023 and closed on 26 June 2023. We received 1,018 responses to the consultation and a total of 138 CILEX professionals attended the three webinars we held. We are delighted by the level of engagement from the whole of the CILEX community and the quality of comments. These tell us that whilst there is much more for us to do, the regulated community is strongly in favour of CRL continuing as regulator for the profession.

68% believe it is not a priority to change the current regulatory system.

74% believe that the CILEX Profession is enhanced by having its own regulator focused on the profession's unique place in the delivery of legal services.

The responses highlighted the need to ensure:

- the role of CILEX professionals is supported in the legal community,
- a greater appreciation of the knowledge and skills that CILEX professionals hold,
- their titles become more widely recognised and respected, and
- our own community better understands how they can prepare for future changes in the legal market.

We are publishing separately a summary of all the responses to the Consultation together with the responses and comments we have received.

The Case for Change

In their Case for Change, CILEX say that if they are not to lose the value of a diverse legal profession who represent the community they serve, then they need to consider whether it is now timely to move to review their delegation. For regulation to work consistently with the Better Regulation Principles and in the consumer interest it must:

- a. Be able to operate at sufficient scale to deliver efficient and effective regulation at a cost that is affordable for the consumers and the profession;*
- b. Establish and maintain consumer confidence that lawyers enter the profession through robust processes and maintain the standards expected of them by the regulator and the public once in practice;*
- c. Create confidence of a consistency of approach that for each and every regulated activity every provider (entity and individual) in the market is required to operate to the same high standards;*
- d. Provide equal treatment and recognition of legal professionals regardless of route to qualification and provide equality of opportunity for individual practitioners and entities.*

Our summary response to CILEX's Case for Change is as follows:

a. Be able to operate at sufficient scale to deliver efficient and effective regulation at a cost that is affordable for the consumers and the profession

CRL currently regulates 16,872 CILEX members, including 7,271 Chartered Legal Executives, 90 CILEX Practitioners and 154 Associate Prosecutors and 58 authorised firms. Uniquely amongst the legal regulators CRL also regulates non-authorised individuals.

Since 2018, CRL has been operationally self-funded whilst keeping its proportion of the practising fee level, demonstrating sound financial management and representing a considerable real terms saving to CILEX Fellows.

The consultation set out our ambition to go further exploring with CILEX:

- How we can take direct responsibility for all functions ancillary to our work to increase our operational independence and secure costs savings (Q12-14)
- Reform of regulation for non-authorised CILEX members (Q8-9).

65% respondents agreed that increasing operational separation is a desirable goal

89% support independent regulation of all CILEX professionals serving the public

We also believe we can now move to a position where CRL will no longer need to ask CILEX to act as surety for the compensation arrangements.

We are confident that resolving these issues will enable us to increase resources, without an increase in the practising fee, so we can:

- Continue to provide support and guidance to all practising CILEX professionals;
- Increase our work breaking down barriers to recognition of their professional standing that CILEX professionals come across from institutions, the courts and colleagues;
- Increase choice for consumers and regulatory innovation.

The outcome will be to help CILEX professionals, as individuals and as a profession, to thrive.

b. Establish and maintain consumer confidence that lawyers enter the profession through robust processes and maintain the standards expected of them by the regulator and the public once in practice;

c. Create confidence of a consistency of approach that for each and every regulated activity every provider (entity and individual) in the market is required to operate to the same high standards

Taken together we are confident that CRL meets these criteria.

- There are well established and robust processes for authorisation so we can be satisfied CILEX professionals are competent to practise.
- CILEX professionals submit annual returns to confirm compliance with a summary of CPD completed and outcomes from that CPD.

Our assessment has been confirmed by the Legal Services Board in its regulatory performance reviews.

We are regularly updating the information and guidance for consumers on the CRL website.

Disciplinary findings are published and linked to records in the Practitioner's Directory. Hits to that page increased from 24,000-60,000 in the year to December 2022 (proportionally higher rate of engagement than to solicitors directory).

With other legal regulators we fund and support the Legal Choices website, a resource developed for consumers (1.3 million hits in year to October 2022).

d. Provide equal treatment and recognition of legal professionals regardless of route to qualification and provide equality of opportunity for individual practitioners and entities

This remains a key focus for our work.

As we said when we launched our EDI strategy in 2022 'we cherish the huge diversity of those we regulate and are firmly committed to fair access for all those who work within the legal services market'.

In addition to our work breaking down barriers to recognition, we will be making an application later in 2023 for Higher Rights of Audience. Assuming it is successful, those who already appear in court will also be able (with appropriate authorisation) to act as advocates in the higher courts. In the longer term they will be able to sit as judges in all courts.

This will be a further endorsement for Chartered Legal Executives and CILEX Practitioners increasing their profile across the wider legal profession.

It is a notable benefit for the profession that two of the five members of the CRL Board are Fellows with direct experience of working in the legal sector. Fellows also have an important role on CRL's committees and panels.

Our commitments to CILEX

We want to go further to re-build trust and create a productive working relationship with CILEX.

We set out our commitments to achieving that trust and invite CILEX to accept them in the spirit in which they have been given.

1. Work with CILEX and the CILEX community to raise the profile of the regulated community in the legal sector and with consumers.

96% want CRL to increase its emphasis on championing the work of CILEX professionals

We will place new emphasis and resources on our long-standing ambition to increase the brand, reach and influence of CILEX professionals across the broader legal profession, with consumers, Government and Institutions.

We recognise that CILEX, as the representative body for the CILEX community, has its own established networks and has a primary role in promoting its members and advocating on their behalf.

Equally it is clear from our consultations that many CILEX professionals still face barriers to recognition and progression in their everyday work. We therefore want to agree an engagement plan with CILEX comprising a series of projects, to include joint projects, so we can leverage existing contacts and make new connections. We will only be able to do this working in collaboration with our key stakeholders.

As we develop the engagement plan, we will be asking CILEX professionals to help us decide our joint priorities and work with us both to meet our agreed objectives.

We will appoint a Head of Public Affairs to create momentum and coordinate delivery of the engagement plan.

We believe that CRL and CILEX working together must be in the best interests of consumers and CILEX professionals.

2. Enable CILEX authorised members to extend the scope of legal services they can deliver and support the development of diverse routes to qualification

Since 2014 the quality, status and breadth of CILEX qualifications have been transformed. Recognising their diversity and diverse needs, students can determine the pace at which they complete their studies and evidence qualifying experience.

The CILEX Apprenticeship now provides a further route to qualification.

Authorised CILEX members have considerable flexibility in demonstrating their competence to secure practice rights.

We will make an application to the LSB before the end of 2023 to enable competent and appropriately skilled CILEX Practitioners to apply for Higher Rights of Audience (see further above).

CRL has received anecdotal evidence that the way in which individual Practice Rights are framed may unnecessarily limit the range of services CILEX Practitioners are able to deliver. Once an initial scoping exercise has been completed, CRL will publish a Call for Evidence to assess the extent of detriment to the regulatory objectives, in particular the interests of consumers and competition.

CRL will use its influence as an awarding body to accelerate the uptake and delivery of these qualifications.

3. Complete development and launch the CRL Law Firm in a Box concept

78% said that there are benefits of making it easier to set up a regulated law firm

90% agreed making it easier to set up a regulated law firm will bring benefits to the consumer

We will build on the research we have already carried out to refine the resources we have developed for CILEX professionals, so they understand the regulatory and practical requirements for setting up a firm.

We will target CILEX professionals who are setting up firms delivering high street services to consumers. They have an important part to play in tackling legal advice deserts, those areas of the country where there is little or no local access to legal advice and support.

They will be offered practical support to develop a realistic and achievable business plan as well as a broad range of training, most importantly in marketing and AML requirements.

Our goal is for all CRL law firms to have access to compliant and competitively priced professional indemnity insurance, and that we create sufficient volume of CRL regulated firms that their regulation is self-financing.

4. Work with CILEX to transform our working relationship

77% agreed CRL should undertake a feasibility study into the costs and benefits of assuming all or more of the functions ancillary to its work, with a view to changing its operational arrangements with CILEX, potentially to increase its operational independence and secure cost savings

We will carry out a review with CILEX to determine the feasibility of achieving mutual financial independence. This will include:

- identifying and agreeing the range of activities we each carry out, with particular emphasis on shared services, the cost of delivering those services and whether the funding arrangements enable full cost recovery
- Agreeing such changes as are appropriate and proportionate.

5. Introduce a fee structure for the wider membership to spread the cost of regulation

78% believe that we should seek to engage with CILEX on reform of regulation for non-authorised CILEX members.

When asked to state their preferred option:

39% were in favour of reforming regulation for non-authorised members

45% wanted the fee between authorised and non-authorised members to be rebalanced, and

15% wanted CRL to cease regulating non-authorised members

Following on from the financial independence review, we will satisfy ourselves that the current fee structure is transparent and fair. We will review the fees we charge (other than the practising fee) to ensure that they are, or are close to, cost neutral.

Of the 16,872 CILEX membership, 9,601 (57%) non-authorised CILEX members pay no regulatory fee, although they are regulated by CRL. This issue becomes more significant if CRL is to have a role in regulating members of the Institute of Paralegals once they have become CILEX members.

From the responses, we received to the consultation there was little appetite for us to cease regulating these members, and we think it important in the consumer interest that there is no diminution of current levels of regulation. We therefore intend to continue to regulate non-authorised CILEX members. We have however an open mind on how best this is done, and in collaboration with CILEX, we will agree a fairer and transparent process for CRL to recoup the costs it incurs in regulating non-authorised CILEX members.

Conclusion

We are proud of what we have achieved in the last 15 years in helping establish CILEX professionals as a key part of the legal community, respected by consumers and others for their skills and professionalism. We think decisions taken over the next few months are of central importance to the profession's future. Our view is that the best way forward is continue as an independent profession with its own regulator understanding the needs of the regulatory community, and shaped by the input of CILEX professionals at every level.