

MAPPING TO THE CILEX CASE FOR CHANGE

CRL has mapped its current activities against the criteria to be applied by CILEX in consideration of CRL’s proposal to continue as the specialist regulator for CILEX members and other members of its regulated community. Where these are covered in detail in the main text, the key points are set out in summary.

CILEX CASE FOR CHANGE OBJECTIVES		
Objectives	CILEX Indicators	CRL Evidence and Comments
Able to operate at sufficient scale to deliver efficient and effective regulation at a cost that is affordable for the consumers and the profession	<p>The regulatory regime can:</p> <ul style="list-style-type: none"> • Support the delivery of effective regulation through PCF income without the need for financial subsidy from the Approved Regulator <p>The regulatory body can:</p> <ul style="list-style-type: none"> • Operate a consumer redress scheme independently without reliance on financial support or guarantee from the Approved Regulator • Invest the necessary time and activity in the significant amount of market engagement required to establish confidence and assurance in the minds of consumers of legal services – both individuals and corporate <ul style="list-style-type: none"> ○ 	<ul style="list-style-type: none"> • CRL is satisfied that it delivers effective regulation funded by PCF income and that it requires no financial subsidy from CILEX, as the Approved Regulator (page 23). Since 2018, CRL has kept its proportion of the practising fee level demonstrating sound financial management, and representing a considerable real terms saving to CILEX Fellows. • CRL was (until July 2022) also working with brokers and insurers to create a competitive PII offer (see evidence). • CRL is confident that it can operate its compensation arrangements without reliance on financial support or guarantee from the Approved Regulator (page 23). Resolving these issues will enable us to increase resources, [without an increase in the practising fee,] so we can: <ul style="list-style-type: none"> ○ 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.

		<ul style="list-style-type: none"> • The outcome will be to help CILEX professionals, as individuals and as a profession, to thrive. • CRL will appoint a Head of Public Affairs to create momentum and coordinate delivery of the engagement plan (pages 20-21). Active support from and co-ordination with CILEX and the regulated community will assist considerably in establishing confidence and assurance. <p>A subsidiary issue has been raised about the cost to the consumer of dual regulation (ie where the firm is regulated by one regulator and the lawyer by another). Cost referred to is not primarily the practising fee paid to the regulator (CRL’s practising fee is currently £367 pa compared to SRA’s of £316) but the cost to the firm of ensuring the individual lawyer complies with their regulatory requirements (reporting, CPD etc). This applies to varying degrees to all legal firms, as well as many other businesses. The professionals may as well as lawyers be accountants, tax advisers of financial advisers. These oncosts (in addition to the standard operating costs (staff, premises, IT etc) are overheads, the cost of which are a factor (the other being profit) in determining the firm’s charging structure. In this context, the cost of dual regulation to the extent it applies to a chartered legal executive employed in a SRA firm is marginal.</p>
<p>Able to establish and maintain consumer confidence that lawyers enter the profession through robust processes and maintain</p>	<p>The regulatory regime can:</p> <ul style="list-style-type: none"> • Through its systems and processes provide assurance to consumers of the standards required to qualify and practise as a lawyer • Through the information published on its ‘register of authorised persons’ increase public awareness and understanding as to the comparable competence, conduct and scope of authorised practice of those holding a practising certificate regardless of route to qualification or title 	<p>CRL’s processes for entry are robust, ensuring that individuals are competent to practise upon qualification. Chartered legal executive must submit an annual CPD return not only confirming compliance but also providing a summary of CPD completed and outcomes from that CPD.</p> <p><u>Systems and processes</u></p> <ul style="list-style-type: none"> • Findings from recent regulatory performance reviews by the LSB confirm that CRL is effective operationally across all functions. There are very few complaints to the Ombudsman (LeO) about the CRL regulated community in relation to service and CRL receives a small number of conduct complaints each year. <p><u>Consistency</u></p>

<p>the standards expected of them by the regulator and the public once in practice</p>	<ul style="list-style-type: none"> • Establish consistent standards of continuing professional development required to maintain a practising certificate based on authorised status and scope of practice • Apply a fair, transparent and consistent approach to the investigation of complaints and enforcement action across all those within regulatory scope 	<ul style="list-style-type: none"> • As oversight regulator, the LSB ensures that minimum standards across the profession are equivalent and therefore ensures consistency of approach. • The LSB has recently published its statement of policy - ongoing competence which will ensure consistency of approach across all legal professionals including solicitors and CLEs. • Consistency is not the same as identical, the process should be appropriate and rigorous for the profession. See notes below on scope of authorisation and proposals for Law Firm in a Box.
<p>Able to establish public confidence of a consistency of approach that each and every regulated activity every provider (entity and individual) in the market is required to operate to the same high standards</p>	<p>The regulatory regime meets the Better (Good) Regulation Principle of consistent by:</p> <ul style="list-style-type: none"> • Applying the same standards of behaviour and practice to all practitioners granted a practising certificate of equal scope regardless of route to qualification or title • Making it clear to consumers the scope of authorisation and practice granted to each regulated person • Providing a consumer redress scheme that standardises the compensation and insurance cover available regardless of title • Operating an entity authorisation scheme that applies the same standards and client protection arrangements to businesses offering the same services regardless of business structure or type of lawyer delivering services • Utilising the same investigation and enforcement processes, criteria and sanctions to all authorised persons of equal standing regardless of title 	<p><u>Signals to the consumer to increase awareness and understanding</u></p> <ul style="list-style-type: none"> • The Practitioner Directory on CRL’s website and in the last 12 months CRL has seen hits to the directory increase from 24,000 – 60,000. • The Practitioner Directory on Legal Choices • Legal Choices more generally provides effective consumer assistance in relation to regulation of the legal professions. This assists in raising the profile of all legal services providers and individuals. • CRL’s website has a section for members of the public which provides useful information and guidance on the work of Chartered Legal Executives. <p><u>Title and scope of authorisation</u></p> <ul style="list-style-type: none"> • In addition, the proposal in the case for change is to retain the distinction of title and qualification route. If there is a perception (which CRL does not accept) that other lawyers are less competent than solicitors, it is difficult to understand how being overseen by another regulator would change that perception. In fact, there is a significant risk that the reverse would happen, i.e., that the distinction of title and qualification route between solicitors and chartered legal executives will highlight the differences and therefore reinforce such a perception. <p><u>Consumer redress:</u> CILEX appears to have limited the issue of consumer redress to compensation arrangements and access to PII. The consumer is far more likely to access LeO or make a complaint to the regulator than seek compensation (from a discretionary fund of last resort).</p>

		<p><u>Investigation and enforcement</u> CRL's enforcement processes were assessed as providing sufficient assurance in the last LSB regulatory performance assessment. Our scheme is tailored to the CILEX profession and works effectively.</p>
<p>Able to support the equal treatment and recognition of legal professionals regardless of route to qualification and provide equality of opportunity for individual practitioners and entities</p>	<p>The regulatory regime supports:</p> <ul style="list-style-type: none"> • Publication of a register of authorised practitioners which: <ul style="list-style-type: none"> ○ Raises awareness as to the choice of legal professionals available ○ Supports consumers and legal provider organisations to understand the scope of practice and reserved legal activities each holder of a practising certificate is authorised to deliver ○ Provides transparency as to equivalence and differences between lawyers of different titles ○ Does not differentiate or discriminate based on route to qualification or background • The regulatory body is able to: <ul style="list-style-type: none"> ○ Challenge and influence those bodies employing, accrediting or contracting legal professionals and entities supplying legal services to them to ensure that they do not differentiate in the treatment of lawyers of equal authorised person status. 	<p><u>Practitioner Directory:</u> CRL has provided evidence that usage of its directory has more than doubled in 12 months, indicating that CRL is raising awareness of Chartered Legal Executives.</p> <p><u>Legal Choices and the CRL website:</u> these services both provide the consumer and legal services providers with information which enables everyone to understand the scope of practice and reserved legal activities held by CRL's regulated community.</p> <p><u>Regulatory title and scope of authorisation:</u> CRL has been very clear about the use of <u>regulatory</u> titles to ensure that consumers are able to understand what a CILEX member is able to do.</p> <p>CRL does not discriminate by qualification or background – all applicants are asked to demonstrate knowledge, skills, experience and competence against the education standards to be admitted as a Chartered Legal Executive.</p> <p><u>Ability to challenge and influence consumers and third-party commercial organisations</u></p> <p>CRL has set out progress made to date and the further steps it intends to take (page 20-21)</p>

Regulatory Objectives and the Better Regulation Principles:

All CRL’s applications to the LSB, whether for new designation or to give effect to rules changes are supported with evidence that they are compatible with the regulatory objectives and have regard to the Better Regulation Principles. These are independently assessed by the LSB as part of the application process, so providing assurance that CRL meets each of these requirements. CRL has provided examples against each of the regulatory objectives below to demonstrate how it meets the requirements.

REGULATORY OBJECTIVE	LSB GUIDANCE	CRL EVIDENCE TO MEET THE OBJECTIVE
<p>Upholding the public interest</p>	<p>To ensure that this objective is being met the LSB states that the objective is to understand the overall impact on society of the matter in question. If the overall impact is positive to society, it will be in the public interest, even if it is not in the interests of some members of society.</p> <p>Regulators should through their actions contribute to:</p> <ul style="list-style-type: none"> • Public confidence in the justice system • An effective legal system • Public confidence in the regulatory system, and • The rule of law (see next objective) 	<p>The public expects regulators to act independently of the profession to ensure that high standards of practice are maintained. CRL is independent of the Approved Regulator and is not ‘captured’ by it or the regulated community. CRL makes independent regulatory decisions (e.g., practice rights contract awarded to ULaw).</p> <p>Other examples: practice rights, entity regulation, seeking Higher Rights of Audience authorisation.</p> <p>High standards of entry, supervision and enforcement and applies these to its regulated community.</p>
<p>Supporting the constitutional principle of the rule of law</p>	<p>The regulatory regime ensures that no-one is above the law and establishes standards that align to the principles underpinning the rule of law:</p> <ul style="list-style-type: none"> • The law must be accessible, intelligible, clear, and predictable 	<p>Education standards require authorised individuals to be aware of their obligations under the rule of law.</p> <p>Supervision requirements require CILEX professionals to have annual updates on professionalism in the delivery of legal services and may include updates on ethical behaviour. Focus on in-house CILEX professionals who are at risk of additional pressures from their employer.</p>

	<ul style="list-style-type: none"> • Questions of legal right and liability should ordinarily be resolved by application of the law and not exercise of discretion • The laws of the land should apply equally to all, save for objective differences which justify differentiation • Ministers and public officers should exercise the powers conferred on them in good faith, fairly, for the purpose for which they were conferred, without exceeding the limits of such powers and not unreasonably • Afford adequate protection of human rights • Means must be provided for resolving bona fide civil disputes which the parties themselves are unable to resolve • Adjudicative processes should be fair • The state should comply with both national and international law 	<p>Each regulated individual is responsible for maintaining and enhancing their professional competence. This ensures that CRL professionals understand their obligations and maintain high ethical standards.</p>
<p>Improving access to justice</p>	<p>The requirement is <i>to improve</i> rather than solve access to justice and it should be noted that access to legal aid is a public policy issue. The solutions may be wider than lawyers and law firms. The <i>key issue is access and availability of assistance</i> which includes materials and resources. It may also be addressed through other professionals, advice bodies, third sector and the unregulated sector.</p> <p>Key issues are:</p> <ul style="list-style-type: none"> • The links to the consumer interest, the rule of law (the framework should allow for just and fair outcomes to be achieved by individuals with a legal need) and public legal education 	<p>CRL contributed to the outcomes of the CMA report through participation in:</p> <ul style="list-style-type: none"> • Cross-sector working groups (RPIG and MTCOG, • Legal Choices <p>Other examples are:</p> <ul style="list-style-type: none"> • CRL Law Firm in a Box • risk matrices tools to inform planned research to understand the impacts of the unregulated sector on consumer and EDI interests. • Practice rights, • Higher Rights of Audience application • Application for designation as supervisory body for ancillary insurance products (now at the parliamentary stage of approval). • High standards of delivery required of regulated community through its authorisation and supervision schemes

	<ul style="list-style-type: none"> • Public policy impacts on the ability to improve access to justice through administration, operation, and funding of the courts • Access to materials and resources • High levels of unmet legal need • Vulnerability of consumers 	<ul style="list-style-type: none"> • Transparency Rules with high levels of compliance. <p>As the LSB has acknowledged, legal regulators are not in a position directly to influence Government on public policy issues, such as funding decisions to enable consumers to access legal advice or representation which would not otherwise be available to them.</p>
<p>Protecting and promoting the consumer interest</p>	<p>Covers all consumers including government and large firms but the focus should be on SMEs and individual consumers. Issues included are:</p> <ul style="list-style-type: none"> • Accessibility • Choice • Quality • Redress • How services are provided • Fairness, and • Available information <p>The requirement is for strong, proactive action to ensure the market operates in the interests of consumers.</p>	<p>CRL places the consumer interest at the centre of all its activities and it is one of our three strategic themes.</p> <ul style="list-style-type: none"> • Dedicated consumer pages on its website, explaining CRL’s role and remit, how to make a complaint, signposting to the LeO • Protection of consumers is a central concern of CRL’s operational functions • Increased traffic to the practitioner directory • Implementation of recommendations made in the CMA report, including transparency rules and guidance, quality indicators pilot and the unbundling project • Transparency rules later extended to ACCA-Probate firms • In 2020, CRL published its own research on consumer needs when seeking legal advice and services. Currently participating in BSB led research of Digital Exclusion. • The Legal Choices initiative (planning for next 3 year cycle starting in September 2023). • CRL Law Firm in a Box • Ongoing competence implementation • Compensation arrangements review.
<p>Promoting competition</p>	<ul style="list-style-type: none"> • Creating a regulatory regime that enables service providers to be free to respond to commercial pressures within the bounds of the regulatory objectives, 	<p>The CMA in its report highlighted competition as the third element of a functioning legal services market (alongside the public interest and consumers).</p>

	<ul style="list-style-type: none"> • Encourage providers to respond to consumer demand through new and innovative service provision, • Create pressure to provide value for money, and • Applies to authorised persons working in both the regulated and unregulated sectors. 	<p>Other initiatives:</p> <ul style="list-style-type: none"> • CRL’s law firm in a box • Working with legal tech suppliers and researchers • Waiver policy to enable new innovations and technology to be tested and implemented • Breaking down barriers for CRL’s regulated firms: including access to the MIB portal, provision of ancillary insurance products, lender panels • Legal Choices • practice rights • Higher Rights of Audience application • qualifying experience • ULaw route to practice rights • Advice and guidance to the IFATE on the development of the new CLE apprenticeships at Levels 6 and 7 • Review of role-based regulation.
<p>Encouraging an independent, strong, diverse and effective legal profession</p>	<p>This objective relates to the suppliers of legal services. There is a strong public and consumer interest in there being an independent and diverse profession. It will encourage public confidence in the legitimacy of the profession. The legal profession should reflect the diversity of society and this should be visible to the public. This will ensure that the profession is strong and effective. The public sector equality duty (to which the LSB is subject) requires a regard to the elimination of discrimination, advancing equality of opportunity and fostering good relations between different people.</p>	<p>CRL continues an ambitious programme:</p> <ul style="list-style-type: none"> • Publication of CRL’s first EDI strategy • EDI roundtable • Definition of progression • Contributed to the cross-regulator EDI forum and the Judicial Diversity Forum to standardise data collection <p>Other examples:</p> <ul style="list-style-type: none"> • Accrediting alternative training providers: more options for more people to qualify through the CILEX route • Qualifying employment • Working with the CLE trailblazer group, to develop the revised apprenticeship standards • Initial work to understand differential impacts by characteristic through the operation of our investigation and enforcement function

		<ul style="list-style-type: none"> • Higher Rights of Audience • Activity-based v role-based regulation of specialist lawyers.
Increasing public understanding of the citizen's rights and duties	Relates to the ability of the public to recognise that they have a legal need and to enable them to understand what options they have to address that need. This includes empowering consumers, which can also drive competition in the legal sector.	<p>This objective links closely with the consumer objective. To meet this objective CRL undertakes the following activities:</p> <ul style="list-style-type: none"> • Maintains and keeps under regular review the content of CRL's consumer website pages. • Works closely with the other legal regulators on Legal Choices (and through MTCOG with the BSB) on public legal education initiatives, for example, working with the third sector (Law 4 Life, Asylum charity).
Promoting and maintaining adherence (by authorised persons) to the professional principles	<p>The professional principles are set out in the Legal Services Act. They are as follows:</p> <p>Authorised persons should:</p> <ul style="list-style-type: none"> • Act with independence and integrity • Maintain proper standards of work • Act in the best interests of their client • Comply with their duty to the court, and • Keep client affairs confidential 	<p>CRL ensures this through the work of its authorisation, supervision and enforcement teams</p> <p>Recent and ongoing work:</p> <ul style="list-style-type: none"> • redevelopment of the CRL education standards • implementation of the LSB's statement of policy on ongoing competence • the introduction of risk matrices, and • a review of the operation of CRL's enforcement function.

BETTER REGULATION PRINCIPLES		
Consistent	<p>Rules and standards must be joined up and implemented fairly.</p> <p>This does not mean that rules and standards should be identical. They should reflect the regulatory regime in operation as a whole.</p>	<p>CRL’s current regulatory arrangements are developed and drafted to ensure consistency with other existing regulatory arrangements. They are approved by the LSB.</p> <p>Recent examples:</p> <ul style="list-style-type: none"> • qualifying experience • higher rights of audience
Proportionate	<p>Regulators should only intervene when necessary, remedies should be appropriate to the risks posed and costs identified and minimised</p>	<p>CRL considers carefully actions to be taken at both strategic and operational levels. Increasing regulatory burden to the regulated community is considered carefully and action is only taken once the proposals have been fully tested through research and consultation to ensure regulatory impacts have been fully assessed.</p> <p>Recent example:</p> <ul style="list-style-type: none"> • decision not to proceed with escrow as an alternative to a compensation fund for law firms following the assessment of the regulatory impact to firms. • Complaints made to CRL are triaged and prioritised taking account of risks to the public to ensure actions taken are proportionate to the harm caused or risk of harm.
Targeted	<p>Regulation should be focused on the problem and minimise side-effects.</p>	<p>CRL ensures that its regulatory arrangements are targeted to the actions of the authorised person: minimum necessary to ensure competence and consumer protection without creating unnecessary additional regulatory burden on individuals who do not require those authorisations.</p> <p>Authorisation for advocacy rights is only given to those individuals requiring them for their job role, ensuring that education, training, authorisation, supervision and enforcement are targeted to the individual.</p>

Accountable	Regulator must be able to justify decisions and be subject to public scrutiny	CRL publishes its Board papers and minutes, including operational performance data, its annual reports for all areas of the business and its financial statements.
Transparent	Regulators should be open and keep regulations simple and user-friendly	CRL publishes all its rules and guidance on its website and provides information to users and consumers in an open, transparent and user-friendly way. This also extends to CRL's communications to the consumer and the public both through its website and Legal Choices.
Agile	Regulation must look forward and be able to adapt to anticipate change.	CRL, as a small regulator, is able to act in an agile way to make changes to its regulatory arrangements and its strategy, for example, the focus on Financial Sanctions compliance.

CILEX Charter and Governance Requirements	
CILEX retains the role of Approved Regulator with delegation of regulatory functions in accordance with the CILEX Charter, Bye Laws and Scheme of Delegation	Yes
The governance framework satisfies the requirement to provide assurance to CILEX as the Approved Regulator under section 28 LSA	Yes
The model of delegated regulation enables compliance with LSB requirements, specifically but not limited to: <ul style="list-style-type: none"> • IGRs and associated guidance • PCF Rules and Guidance • Regulatory Performance Standards • Dispute determinations • Rules for Designations and Alterations to Regulatory Arrangements 	Yes