

SRA SUBMISSION TO CILEX ON THE REGULATION OF CILEX MEMBERS

July 2023

Introduction

CILEX is a Chartered Institute under Royal Charter, an approved regulator under the Legal Services Act (LSA) 2007, an awarding body for CILEX qualifications and a professional membership body. To obtain Chartered status as a Chartered Legal Executive a person must be a member of CILEX, attain the required CILEX qualifications and work experience, and be authorised and regulated under the terms of the LSA 2007. Authorisation and regulation is currently provided by CILEX Regulation Limited (CRL).

In July 2022 the Chair of CILEX invited the SRA Board to engage in formal discussions on the potential to transfer the delegation of regulation of CILEX members under LSA 2007 from CRL to the SRA. The SRA Board accepted the invitation and agreed to work with CILEX to undertake the necessary due diligence and to explore the development of a workable regulatory model. To avoid cross subsidy between solicitors and CILEX members, CILEX agreed to underwrite the cost of this work and (if applicable) of transition to the new model.

This paper sets out how the SRA proposes to regulate those CILEX members that are authorised to carry out specified and reserved legal activities as 'Authorised CILEX Lawyers'.

The model is based on changes to our existing rules. The changes we can make are constrained by statute in some respects, as outlined in this document. If CILEX proceeds with the re-delegation of regulation from CRL to us, we will work with CILEX and the LSB to pursue the necessary legislative changes that would allow a more standardised and consistent approach to issues such as consumer protection arrangements and appeal rights, across all the individuals and firms we regulate.

Proposed SRA regulatory model for Authorised CILEX Lawyers

Governance

The model will be founded on the decision of CILEX, as the Approved Regulator, to delegate the regulation of Authorised CILEX Lawyers, and the firms they work in, 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.

The SRA Board will exercise the regulatory functions relating to authorised 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 from undertaking any delegated functions on behalf of CILEX.

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. 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 Authorised CILEX Lawyers and the firms they work in, and to enable open communication between us, CILEX itself and the CILEX regulated community.

Our annual reporting and accounting arrangements will deal separately with the regulation of solicitors and law firms on the one hand, and Authorised CILEX Lawyers on the other. These arrangements will maintain financial transparency to ensure that each profession appropriately funds the costs of its regulation. They will also support clear branding and messaging about the status of Authorised CILEX Lawyers as distinct legal professionals.

A Dispute Resolution Protocol will be established in line with the requirement specified in the LSB IGR guidance and an annual review process will be established to allow both parties to declare ongoing compliance with the IGRs.

Communications, website, and branding

Authorised CILEX Lawyers 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.

Our communications, website and branding relating to CILEX Lawyers will:

- maintain and promote the distinct identity of CILEX Lawyers and the CILEX route into the profession
- explain how CILEX Lawyers are regulated by the SRA and set out what this means
- use the phrase “SRA regulating CILEX Lawyers” as a strapline where appropriate to raise awareness of our role in respect of CILEX members
- report on the regulation of CILEX Lawyers as a discrete category to allow comparison of data across the professions
- confirm that CILEX Lawyers have the same competence as solicitors in areas where they have practising rights, and that this flows from their training, assessment, and competence, not simply from being regulated by the SRA.

As discussed under ‘authorisation and licensing’ above, we will take on publication of the Authorised CILEX Lawyers Register and will explore with CILEX the scope to present it to consumers and the public alongside the Solicitors Register in a way that supports improved consumer understanding and choice with the ability to easily identify and compare those authorised to provide legal services.

Regulatory standards

Individuals

At present all individual members of CILEX, including students and paralegals as well as those authorised to provide reserved legal services and immigration services, are required to follow the CILEX Code of Conduct. CRL handles concerns about potential breaches of the

Code by any CILEX member and takes regulatory action in respect of such breaches where appropriate.

This document focuses on SRA regulation of Authorised Persons - those individual CILEX members who require authorisation to provide specified legal services without supervision. These include:

- CILEX Practitioners who are authorised with practising rights in one or more reserved or regulated areas of law – these include CILEX Conveyancing Practitioners, CILEX Probate Practitioners, CILEX Immigration Practitioners, and CILEX Practitioners with Litigation rights in civil, criminal and/or family law
- CILEX-ACCA Probate Practitioners
- Crown Prosecution Service (CPS) Associate Prosecutors
- Chartered Legal Executives, who are authorised to administer oaths, including those who have specialisms other than those listed above.

The SRA understands that all CILEX members are subject to the CILEX Code of Conduct and CILEX is consulting on changes to its membership structure and proposals to establish a more formal status for CILEX Paralegals through the Professional Paralegal Register. The SRA will therefore in consultation with CILEX, once the outcome of its consultation is known, take forward a programme of work to ensure appropriate regulatory arrangements are established for non-authorised person members of CILEX in accordance with the regulatory objectives and on a fair and sustainable basis. It will be the role of CILEX as the representative membership body to deal with breaches of membership regulations by its members.

Around 75% of non-authorised CILEX members work in SRA firms and are therefore already held to our principles and standards under our existing processes. We will continue to use our powers under s.43 of the Solicitors Act 1974 to control their practice where appropriate. In taking forward our work in this area we would look to ensure that any regulatory overlap and duplication that exists under the current regulatory regime is addressed.

All CILEX members including students and paralegals are currently required to adhere to the core principles and to meet the outcomes set out in the [CILEX Code of Conduct](#). The Core Principles within that Code and the [SRA Principles](#) are closely aligned in substance (see comparison at Annex A).

We will maintain the CILEX Code of Conduct as a distinct set of requirements and identity for Authorised CILEX Lawyers but would propose and consult on amendments to align it with the standards that apply to solicitors, whilst reflecting appropriately the scope and context in which they practise. This will simplify regulation and promote consistency in terms of both public protection and public confidence. Authorised CILEX Lawyers have the same authorised status in their specialist areas of law as solicitors and will effectively be regulated to the same standard.

Firms

As of June 2023, there are 18 non-ACCA firms listed on the CRL Firms Directory as authorised CILEX entities. Seven of these firms are already eligible for authorisation as SRA firms, because their owners and managers include solicitors or non-authorised individuals. We will re-authorise these CILEX entities as SRA firms and our existing regulatory requirements will then automatically apply to them, including our consumer protection

arrangements. We will work with CILEX and the firms involved to support them through this transition.

The remaining eleven CILEX entities listed on the CRL Firms Directory are owned and managed only by CILEX Fellows and/or Practitioners. We will amend our authorisation rules so we can authorise them as 'SRA CILEX firms'. Most of our existing regulatory requirements, including the Code of Conduct for Firms and the Transparency Rules, will then automatically apply to these firms as they do to other SRA firms. However, in order to extend the consumer protection arrangements to this group, amendment to our legal framework is required. We will therefore work with CILEX to ensure suitable arrangements for this sub-set of CILEX entities, as discussed in 'consumer protection' below are maintained during the transition period until the required amendments to our framework are established to allow consistent consumer protection arrangements to apply all entities regulated by the SRA regardless of whether an SRA or CILEX-led firm.

Where the owners and managers of a former CILEX entity do not include a solicitor, their authorisation to provide reserved legal services will be based on the specialist practising rights of the CILEX members who manage them.

There are currently around 40 CILEX-ACCA Probate entities, providing reserved probate services solely as an ancillary activity to accountancy practices authorised and regulated by ACCA. These probate services cannot contribute more than 20% of the fee income of the related ACCA accountancy practice. CRL took on the regulation of the probate activities of these entities in 2021 following ACCA's decision to give up its role as an approved regulator of legal services.

These entities are subject to ACCA client protection requirements and AML supervision, as discussed later in this consultation paper. The LSB agreed when CRL took on the regulation of these entities in 2021 that it is therefore appropriate to retain separate arrangements for them. We propose to maintain separate rules for them accordingly. We will apply a standardised and consistent approach to the regulation of ACCA probate firms as far as possible, while recognising the necessary distinctions that arise from different professional identities. We will seek to align our guidance for these entities and the other firms we regulate.

Education and training

We will maintain a clear separate route into the profession for Authorised CILEX Lawyers 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.

We will, in taking over the regulation of Authorised CILEX Lawyers, recognise the CILEX Professional Qualification, as leading to authorisation as a Chartered Legal Executive with Practice Rights, reflecting the current accreditation in place with CRL. We will also continue to recognise those who qualify through legacy educational awards previously approved by CRL and will work with CILEX to ensure that appropriate routes exist to allow Chartered Legal Executives who qualified under the legacy route without Practice Rights to obtain them.

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.

We will work with CILEX over time to consider any case for amending these arrangements. 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.

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.

We recently published an SRA [action plan](#) to meet the LSB's requirements relating to Continuing Competence. This focuses on understanding the risks in different areas of practice and carrying out proactive thematic work in higher-risk areas. We will evolve this approach as necessary to reflect the practice of Authorised CILEX Lawyers.

Authorisation and Licensing

We will authorise Authorised CILEX Lawyers. 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.

Since Authorised CILEX Lawyers 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 Authorised CILEX Lawyers for specific areas of practice. This may require some limited additional resource (see 'ongoing costs' below).

As discussed under 'regulatory standards' above, we propose that CILEX entities will be re-authorised as SRA-regulated firms.

We will use trained staff and adjudicators as decision-makers for our authorisation work, as we do for solicitors and SRA firms. So, we will stand down the CRL Authorisation and Licensing Committee.

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 the ownership and publication of this register as the Authorised CILEX Lawyers Register and will present it to the public alongside the Solicitors Register in a way that supports improved consumer understanding and choice as to those authorised to provide legal services. We will also take on ownership and publication of the separate register of CILEX-ACCA Probate entities currently published by CRL, as the SRA-ACCA Probate Entities Register.

It will remain CILEX's responsibility to keep and where applicable publish records of non-authorised CILEX members such as paralegals and students, and of non-practising CILEX members.

We propose to apply the same approach to oversight of continuing competence as we currently apply to Solicitors, which includes checks on a sample basis or in response to a

complaint. We do not therefore propose to take on CRL's existing mechanisms for routinely auditing Continuing Professional Development (CPD) records on an annual basis. We recognise that where CILEX conducts routine CPD checks as part of its membership function, CILEX will share with us any information arising from these checks that may raise regulatory issues and we will consider these in accordance with our existing regulatory processes. As discussed above, we will evolve our action plan on the continuing competence of solicitors to cover Authorised CILEX Lawyers.

Investigation and Enforcement

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, including complaints about non-authorised members).

We will handle any concerns about Authorised CILEX Lawyers. 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.

As with authorisation, we use trained staff and adjudicators as decision-makers for most disciplinary purposes. We consider that this approach could be taken for most disciplinary matters relating to Authorised CILEX Lawyers. We will use panels of adjudicators to deal with matters in which a hearing is required in the interests of justice, including those which may result in the most serious disciplinary sanctions, such as removal of practice rights.

Client protection

Our key client protection functions in relation to law 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).

As discussed under 'regulatory standards' above, we propose that CILEX entities will be re-authorised as SRA firms, with reauthorisation based on the specialist practising rights of the CILEX members who manage them. This would mean that our client protection requirements will apply to certain CILEX entities in the same way as to other SRA-regulated firms, with the exceptions set out below.

PII

Our PII requirements for law 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 which are broadly similar to ours but include a minimum level of cover of £2m for all CILEX entities. Those incorporated CILEX entities that are re-authorised as SRA firms would therefore require minimum PII coverage of £3m rather than £2m per claim if the SRA MTCs apply to them. We will explore the implications of this change further when consulting on our future regulatory arrangements for CILEX members.

PII protection for CILEX-ACCA Probate entities is provided by the ACCA-regulated accountancy practice to which an entity is linked. As discussed in 'regulatory standards' above, we propose to maintain the current regulatory requirements for CILEX-ACCA Probate entities so would not require them to obtain additional PII cover.

Interventions

Our intervention regime is essentially the same as the CILEX regime and covers serving notice, taking possession of files and money, tracing clients, and returning money and papers. We will handle any required intervention into a former CILEX entity authorised by the SRA, in the same way as for other SRA firms.

Compensation arrangements

The SRA Compensation Fund provides discretionary compensation to clients of a firm who suffer loss because of ethical failures by a firm (such as misuse of client money), or because a firm has failed to put in place the insurance arrangements we require. CRL has its own Compensation Arrangements, which provide more limited cover for these types of loss. 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. The CRL Arrangements are also unavailable to clients of CILEX-ACCA Probate entities, which are required by ACCA to have separate client protection arrangements relating to ethical failures.

If we re-authorise CILEX entities as SRA firms, then firms that are authorised:

- as a recognised body because their owners and managers include at least one solicitor, or
- as a licensed body because their owners and managers include at least one person who is not an authorised lawyer

would fall within the definition of a 'defaulting practitioner' in the [SRA Compensation Fund Rules](#). Their clients and others that engage with the firm would therefore benefit from the additional consumer protection provided by our Compensation Fund.

However, those 'SRA CILEX' firms that are owned and managed only by Authorised CILEX Lawyers would not currently fall within this existing definition. So, they would not be in scope of our existing Compensation Fund Rules, which limit the collection of funds and payment of grants to those specific statutory categories. They will therefore need to be brought within scope of our Compensation Fund via a statutory instrument¹, which requires LSB and UK Government support.

The same issue applies to those Authorised CILEX Lawyers who practise as self-employed practitioners offering unreserved legal services outside of an authorised firm. Clients of solicitors who work on a self-employed 'freelance' basis (carrying on reserved or unreserved activities) outside an authorised firm have access to the SRA Compensation Fund. But clients of an Authorised CILEX Lawyer in the same circumstances cannot currently access the CILEX compensation arrangements and would not be able to access the existing SRA Compensation Fund.

¹ Under s.69 of the Legal Services Act 2007

We propose to work with CILEX, the LSB and the Government to pursue a statutory instrument that would give the clients of this sub-set of former CILEX entities, and self-employed Authorised CILEX Lawyers, access to the SRA Compensation Fund. However, due to the legislative process we cannot guarantee this would be in place by the point at which we take on the regulation of Authorised CILEX Lawyers. We will therefore work with CILEX to discuss appropriate transitional arrangements until the necessary statutory instrument is in place, and this would include CILEX underwriting the arrangements in the meantime, by maintaining access to the current compensation arrangements for the clients of the affected former CILEX entities until we can provide access to the SRA Compensation Fund.

Anti-money laundering (AML)

Under AML legislation the Law Society and CILEX are the respective professional body supervisors for those regulated by them. Therefore, AML supervision will pass from CRL to us along with other regulatory responsibilities for Authorised CILEX Lawyers.

We will therefore supervise the AML requirements that apply to Authorised CILEX Lawyers, and to CILEX entities moving to SRA authorisation, in the same way as we supervise SRA firms and solicitors.

We will not take on AML supervision responsibility for CILEX-ACCA Probate Entities since this function is exercised by ACCA for each entity as part of its supervision of the relevant linked ACCA accountancy practice.

Other considerations

In developing this proposal, we have agreed the following with CILEX:

Finance issues - CILEX currently carries out financial transactions on behalf of CRL as part of its Shared Service arrangements. CILEX will provide the SRA with information about all relevant income streams following approval of its 2024 PCF application.

Practising Certificate fee arrangements - transitional and long term

- CILEX will continue to collect PC fees from individual CLEs and CILEX Practitioners and pass an appropriate share of them to the SRA – this work will continue to be funded by the permitted purpose element of the PC fee which CILEX retains
- We will explore with CILEX whether we or CILEX should collect entity fees (e.g. it may be simpler for CILEX to collect these if it does so alongside individual PC fees)
- CILEX does not collect fees from CILEX-ACCA Probate entities so the SRA would need to collect the fees or ask CILEX to do so on our behalf

Commercial and contractual information - CILEX has agreed to serve notice on any current contracts relating to regulatory activities prior to any transfer of delegation and no contractual liabilities will pass to the SRA

Tax considerations

- Taking on regulation of CILEX members appears to have no adverse tax consequences for the SRA
- We will require an indemnity from CILEX against anything not yet identified which changes this position

Treatment of liabilities - CILEX has confirmed the transfer of regulation of Authorised CILEX Lawyers from CRL to the SRA will be treated as a 'clean break' and that CILEX will assume any liabilities outstanding or arising from the transfer. This will be a condition of our proposal.

Costs

Transition costs

We expect to incur costs relating to governance, policy, process and system design, training operational functions, HR work, finance work and legal advice. As above, CILEX has agreed to underwrite these costs to avoid cross-subsidy between the regulation of Authorised CILEX Lawyers and solicitors. We have provided CILEX with estimates of the further transitional costs we anticipate incurring up to the point of the redelegation of regulation. This proposal is conditional on CILEX agreeing to underwrite these further costs.

Longer term/ongoing costs

We are not currently able to forecast with confidence the 'steady state' future cost of the SRA regulating Authorised CILEX Lawyers without access to more detailed information held by CRL in respect of specific costs relating to the various component of the current regulatory approach.

The proposal we have set out is likely to bring potential cost-efficiencies in some areas such as governance (where CRL Board and support costs could be saved), reduction in senior management and potentially the removal of panels to take decisions. However, until we gain access to CRL data we cannot quantify these savings at this point.

In operational functions such as authorisation, investigation, and client protection, we expect there is also potential for economies of scale. We have noted in this proposal that we may need some limited additional resource in our authorisation and investigation functions to adopt our functions to reflect the characteristics of Authorised CILEX Lawyers. But our overall view, based on the information available to us, is that we should be able to provide steady-state regulation of Authorised CILEX Lawyers at a cost similar to, and potentially lower than, the current arrangements.

Therefore, we expect that at the point of the transfer of delegation of regulation, the cost of regulation (in terms of the regulation element of practising certificate fees) will not be higher than its present level. This does not take into account transition costs.

If it is determined by CILEX that we should take on the regulation of CILEX Lawyers, we will require access to the detail held by CRL to satisfy our Board that, where it is proposed to continue to utilise the resources and mechanisms already in place under the existing regulatory model, that these can support and promote the regulatory objectives in a way that our Board consider appropriate.

Annex A Comparison of CILEX Code of Conduct and SRA Principles and Codes of Conduct

<u>CILEX Code of Conduct</u> core principle	Corresponding <u>SRA Principle</u>
1 You must uphold the rule of law and the impartial administration of justice.	P1 You act in a way that upholds the constitutional principles of the rule of law, and the proper administration of justice.
2 You must maintain high standards of professional and personal conduct and justify public trust in you, your profession, and the provision of legal services.	P2 You act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.
3 You must behave with honesty and integrity.	P4 You act with honesty. P5 You act with integrity.
4 You must comply with your legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly, and co-operatively.	Code of Conduct for Solicitors para 7.1 (You keep up to date with and follow the law and regulation governing the way you work) and 7.3 (You cooperate with the SRA, other regulators, ombudsmen etc).
5 You must act competently, in the best interests of your client and respect client confidentiality.	P7 You act in the best interests of each client.
6 You must treat everyone fairly and without prejudice.	P6 You act in a way that encourages equality, diversity, and inclusion.
7 You must ensure your independence is not compromised.	P3 You act with independence.
8 You must act effectively and in accordance with proper governance and sound financial and risk management principles.	Code of Conduct for Firms para 2.4 (You actively monitor your financial stability and business viability) and 2.5 (You identify, monitor, and manage all material risks to your business).
9 You must protect client money and assets.	P7 You act in the best interests of each client.