

**By Email Only**

[linda.ford@cilex.org.uk](mailto:linda.ford@cilex.org.uk)

Linda Ford  
Chief Executive Officer  
CILEX  
Manor Drive  
Kempston  
Bedford  
MK42 7AB

3 November 2023

Dear Linda

**ACCA response to the CILEX reforms to its governance, membership structure and regulatory delegation**

ACCA welcomes the opportunity to comment on CILEX's proposed reforms to its governance, membership structure and regulatory delegation.

We are ACCA (the Association of Chartered Certified Accountants), a globally recognised professional accountancy body providing qualifications and advancing standards in accountancy worldwide.

Founded in 1904 to widen access to the accountancy profession, we've long championed inclusion and today proudly support a diverse community of over 247,000 members and 526,000 future members in 181 countries.

Our forward-looking qualifications, continuous learning and insights are respected and valued by employers in every sector. They equip individuals with the business and finance expertise and ethical judgment to create, protect, and report the sustainable value delivered by organisations and economies.

Guided by our purpose and values, our vision is to develop the accountancy profession the world needs. Partnering with policymakers, standard setters, the donor community, educators and other accountancy bodies, we're strengthening and building a profession that drives a sustainable future for all.

**ACCA**

+44 (0)20 7059 5000



[info@accaglobal.com](mailto:info@accaglobal.com)



[www.accaglobal.com](http://www.accaglobal.com)



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

At the outset, ACCA would like to state its overall support for CILEX's intention to reform its governance, membership structure and regulatory delegation in order to better serve its members and the public interest.

Our response focusses on Questions 15 and 16 within Section 3 of the consultation document on Regulation. The points set out in this letter are from an ACCA perspective, and in particular the perspective of ACCA practitioners authorised by CILEX to undertake non-contentious probate activities. We have also considered whether the proposed reforms are in the interests of ACCA members and firms and serve the overall public interest. ACCA has no comments to make on the other questions within the consultation document.

CILEX is the Approved Regulator for 40 ACCA probate entities authorised to provide the reserved activity of non-contentious probate under the Legal Services Act 2007 (the **Act**). It currently delegates its regulatory activities to CILEX Regulation Limited (**CRL**), a separate and independently run organisation that operates at 'arms-length' from CILEX. However, under the proposals set out in the consultation document, CILEX intends to change its regulatory delegation from CRL to the Solicitors Regulatory Authority (**SRA**).

We believe that regulatory delegation to a body that is structurally, financially and operationally independent from CILEX will increase the independence of CILEX's regulatory model and enhance public trust and confidence in legal services regulation. In our opinion, the SRA has the resources, scale and reach to deliver efficient and effective regulation at a cost that is affordable for ACCA practitioners and consumers.

ACCA welcomes the proposals from CILEX and the SRA to implement a model of regulation that will maintain and promote the distinct identity of ACCA authorised practitioners. We are pleased that the SRA proposes to maintain the separate rules for ACCA probate firms and continue existing regulatory processes, as this will help to minimise confusion, complexity and cost for our practitioners. We note that the SRA will apply a standardised and consistent approach to regulation as far as possible, while recognising the distinctions that arise from the different professional identity of ACCA probate firms. We are also encouraged by the commitment from CILEX and the SRA to work with ACCA to ensure a smooth transfer of regulation for ACCA probate entities.

We are, as indicated earlier, very supportive of measures which strengthen trust and public confidence in the legal services profession. The proposals will preserve a route into legal services for ACCA members and firms which is critical to meeting the regulatory objective set out in the Act of '*Encouraging an independent, strong, diverse and effective legal profession*' and is therefore in the public interest. We believe that SRA regulation of ACCA probate entities alongside CILEX probate entities and solicitor-led firms will also deliver enhanced consumer protection by aligning regulatory standards, requirements, and obligations.

Similarly, we also recognise the reputational benefits that ACCA and its members and firms would enjoy from the new regulatory framework. A change in regulatory delegation to the SRA will give ACCA practitioners access to market opportunities and the resulting commercial benefits, including support for professional development and the potential to obtain other legal services recognitions.

In conclusion, ACCA is supportive of the proposed transfer of ACCA probate firms to the SRA, and we do not consider there to be any risk or detrimental effect arising from the transfer.

We hope that you will find our comments helpful and if you should wish to discuss any aspects further, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Maggie McGhee', written in a cursive style.

Maggie McGhee  
Executive Director – Strategy & Governance



## CILEX: ENHANCING CONSUMER TRUST & CONFIDENCE

### PERSONAL RESPONSE TO CONSULTATION

November 2023

Professor Stephen Mayson

#### 1. Introduction

- 1.1 This is a personal response to the CILEX consultation on enhancing consumer trust and confidence through reforms to its governance, membership structure and regulatory delegation.
- 1.2 I make this response having carried out the Independent Review of Legal Services Regulation in England & Wales, which reported to the Lord Chancellor in June 2020 (IRLSR).<sup>1</sup> The IRLSR was established in response to the market study of the Competition & Markets Authority (CMA), which reported in 2016.<sup>2</sup> In anticipation of a more fundamental official review at some point, the IRLSR sought to clarify the challenges identified by the CMA and others, and to offer some short- and long-term recommendations for reform.
- 1.3 A second phase of the IRLSR subsequently addressed the nature of consumer harm in legal services<sup>1</sup>, and the inadequacies of the current approaches of both general consumer law and sector-specific regulation in providing redress and remedies for that harm.
- 1.4 In 2014-15, I also chaired the LSB-led review by regulators of the legislative options for reform of the Legal Services Act 2007.<sup>3</sup>
- 1.5 The views expressed here draw on the experience and conclusions of the IRLSR and the legislative options review, but are expressed personally and should not be attributed to any organisation with which I have a current or past connection.

---

1. The reports and other papers relating to the IRLSR are available at <https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation> and <https://stephenmayson.com/2020/06/11/legal-services-regulation-the-final-report/>.

2. See Competition & Markets Authority (2016) *Legal services market study*; available at: <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>.

3. See <https://legalservicesboard.org.uk/our-work/work-related-to-previous-years/work-arising-following-the-july-2014-ministerial-summit-of-legal-services-regulators>.

## 2. Responses to the consultation questions

**Question 1: Do you support the extension of voting rights and representation on the Professional Board to all grades of member within the Chartered Institute?**

**Question 2: Do you agree that the CILEX President be appointed from an eligible pool comprising of Chartered members?**

**Question 3: Do you have any comments regarding equality issues that may arise from our proposals to amend our governance and constitution?**

2.1 I am not a member of the Chartered Institute, and the issues raised by Questions 1 and 2 are matters for the membership. Subject to that, I would support both propositions, and have no comments on equality issues.

**Question 4: Do you agree the proposed new membership structure is simpler and provides a clear progression route to Chartered status?**

2.2 Yes. However, I am less convinced about the use of 'Lawyer'. It is a generic title within the legal services sector, and not protected (cf. the current draft Bill before the Scottish Parliament that would protect the use of the title in Scotland). Thus, the expressions 'Trainee Lawyer' and 'Student Lawyer' are likely not to mean anything to those outside CILEX (and, indeed, would probably be regarded as synonymous, rather than distinguishing CILEX students and trainees from other law students).

2.3 The status of 'Chartered Lawyer', in the context of 'lawyer' being a generic and unprotected title, simply begs the question, 'chartered by whom?'. The new title therefore has two disadvantages, and loses the benefit of any explicit connection with CILEX. Nevertheless, I can understand that the current protected title of Chartered Legal Executive requires explanation, and that to some less well-informed observers might imply that 'legal executive' is in some way subordinate to 'lawyer'.

2.4 On balance, I wonder whether replacing 'Lawyer' with 'CILEX Lawyer' would be more meaningful externally in each of the Chartered, Trainee and Student designations. I notice that, except for student members, 'CILEX' is retained in the post nominals.

2.5 Similarly, the expression 'paralegal' is generic and ubiquitous in the legal services sector and is not particular to CILEX. Nor, despite the welcome recent integration of the Institute of Paralegals with CILEX, can CILEX claim any particular ownership of that generic expression. Again, therefore, I wonder whether replacing 'Paralegal' with 'CILEX Paralegal' in each of the designations from student to chartered would be beneficial for both CILEX and its paralegal membership.

**Question 5: Do you agree the addition of a distinct progression ladder for paralegals leading to Chartered Paralegal status will enhance public trust and confidence in the delivery of legal services?**

2.6 Yes, subject to the point made in paragraph 2.5 above that CILEX Paralegals, on their way to chartered status, should be able to distinguish themselves clearly from others in the sector who choose to adopt the title 'Paralegal' for themselves or their staff.

**Question 6: Do you have any additional observations on the proposal to introduce a new Chartered Paralegal standard and professional status?**

- 2.7 On the assumption that the proposal for CILEX, as approved regulator, to delegate its regulatory functions under the Legal Services Act 2007 to the Solicitors Regulation Authority (SRA) is implemented, it is important to carry this through to apply to Chartered Paralegals, subject to any requirement for transitional arrangements.
- 2.8 I can see no reason in principle why, with appropriate training, Chartered Paralegals should not be able to receive targeted authorisation for some currently reserved legal activities (such as, for example, administration of oaths and probate activities). Were that to transpire, the need for Chartered Paralegals for appropriate authorisation suggests that consolidation of regulation within one regulatory body would be beneficial for consistency of approach and of registration.

**Question 7: Do you agree the use of the Chartered Lawyer titles will assist legal professionals, employers and the public to better understand the status and specialist nature of CILEX lawyers?**

- 2.9 I have long supported the CILEX routes to specialist practice, and the approach is entirely consistent with the recommendations of the IRLSR main report in 2020 for accreditation by service.<sup>1</sup> It is also a testament to the success of the CILEX approach that there are ten specialist practice designations, as set out on page 8 of the Consultation Paper.
- 2.10 The existence and accreditation of those areas is undoubtedly helpful to legal professionals and employers. However, the number and different formats of the descriptions set out in the Consultation Paper lead me to question whether they do in fact aid better public understanding of the status of CILEX lawyers. To some extent, one might expect the specific authorisations or accreditations to be confirmed in the public registers maintained by the regulators.
- 2.11 However, I can understand that practitioners and employers might also wish to signify to the public and to clients the specific specialisations that are being offered. In line with the comments in paragraph 2.4 above, I offer the thought that consistency and clarity could be achieved by standardising the designations of chartered lawyers (using the first in each category on page 8 as an example) as 'Chartered CILEX Lawyer (Family Litigator & Advocate)', 'Chartered CILEX Lawyer (Probate)', and 'Chartered CILEX Lawyer (Employment)'.
- 2.12 As stated at the bottom of page 8, there will still be (confusingly) Chartered Legal Executives, whose regulatory status and practice will continue to need to be explained to clients (and possibly less well-informed employers). It is not clear to me why Chartered Legal Executives should not also be referred to as Chartered Lawyers. They are authorised in respect of one or more of the reserved legal activities. That they may not engage in independent unsupervised practice is not, to me, a sufficient point of differentiation. The requirements of the 2007 Act are satisfied in respect of authorisation, in the same way that they would be for employed solicitors (where there

is no differentiation in their use of their professional title compared to their partner or principal colleagues).

- 2.13 Along with Chartered Paralegals, the paper identifies a total of 12 groups of CILEX members to whom a (slightly different) 'Chartered' label can be applied. It is not immediately clear that this is helpful to consumers and clients – at least, not without a degree of further explanation. I am not therefore convinced that, as an external 'badge', these various different descriptions serve an easily identifiable purpose that 'Chartered CILEX Lawyer' could not achieve on its own.
- 2.14 Where authorisation is restricted to a specific reserved activity, that would be apparent from the register – bearing in mind that a typical consumer or client will not understand or be interested in those activities, and that there is in any event an obligation on the individual practitioner to act with competence and integrity (and therefore not to act inconsistently with their personal authorisation).

#### **Question 8: Are there any other specialism(s) that should be included in the list of Chartered titles?**

- 2.15 The need for further accredited specialisation will probably evolve over time. In fact, I would strongly encourage legal services regulators to adopt the CILEX approach to specialist accreditation.<sup>4</sup> On this basis, the need for additional specialist or other accreditation ought to be considered on a sector-wide basis.

#### **Question 9: Are there any other considerations CILEX should take into account when considering the impact of these changes?**

- 2.16 None beyond those raised above.

#### **Question 10: Do you agree that increasing the independence of our regulatory model through delegation to a body that is structurally, financially and operationally independent from CILEX will enhance public trust and confidence in regulation?**

- 2.17 Yes, because there is real benefit arising from regulation that does not have a structural relationship with a representative or membership body. This benefit is at least as much contingent on the *perception* of that separation and independence as it is on the reality and lived experience of those who are subject to regulation or seek redress under it. It can be just as uncomfortable for a practitioner to be subject to disciplinary action by the regulatory arm of their membership body as it is for an aggrieved client to be part of a process that appears to have a regulator 'dealing with its own'.

---

4. I have been overtly critical for many years of the failure of the current regulatory framework to adopt a risk-based approach to the identification of activities that should be provided only by those with specific authorisation or accreditation (see most recently IRLSR 2020: paragraphs 3.4, 3.6, 3.12, 4.3.3, 4.7.1, 5.2.1, 5.2.3, 6.2.6.4, 7.2, 7.3.1.1, 7.3.2, 7.4.4, 8.1, 8.2(3) and 8.4(6)).

**Question 11: Do you agree that the SRA offers a sufficient scale and reach to be able to deliver efficient and effective regulation at a cost that is affordable for the consumers and the profession?**

2.18 In principle, yes. However, I make this response without offering any view on whether this would be a *better or preferable* alternative for CILEX members (which is an assessment for them to make).

**Question 12: Do you agree that regulation by the SRA provides opportunity to establish and maintain consumer confidence that lawyers regardless of whether through the CILEX route or the solicitor route, enter the profession through robust processes and are required to meet and maintain high standards of competence?**

**Question 13: Do you agree that regulation by the SRA provides opportunity to deliver a consistency of approach and therefore an increased confidence amongst consumers, that CILEX Lawyers and solicitors delivering the same services are required to operate to the same high standards of conduct and practice?**

2.19 In principle, yes (but, again, subject to the view expressed in paragraph 2.18 above). However, I would be concerned if a move to a larger regulator resulted in a 'one-size-fits-all' approach. For the reasons set out in IRLSR 2020 (paragraph 5.4.1 and Recommendation 28), I would want to see a more nuanced assessment of what 'high standards of competence' would mean, on a targeted and proportionate basis.

2.20 To maintain the more targeted, risk-based, and specialist approach to qualification and authorisation that CILEX has created over many years, it will be important to CILEX members (and consumers) that differences between the regulation of solicitors and Chartered CILEX Lawyers are preserved. For example, I do not support the automatic authorisation for solicitors in respect of five of the six reserved legal activities. As the Consultation Paper rightly points out on page 21, this leads to a difference that is "a matter of scope of practice, not level of competence or ability to practise independently without supervision, with solicitors receiving a general practising certificate and CILEX Lawyers being authorised as specialists in specific areas of law". This difference does not (indeed, cannot) reflect a targeted, proportionate and risk-based approach to regulation.

2.21 Further, with the Legal Services Board's recent emphasis on ongoing competence, explicit and public confirmation of *current* accredited specialisation is to be welcomed.

2.22 The alternative approach of CILEX, to my mind, highlights the better approach to regulating for risk and consumer benefit that has so far been absent from the SRA's approach. It is also, in my view, more robust and much more likely to meet and maintain higher standards of competence. A move to regulation of CILEX lawyers by the SRA can continue to achieve this benefit only if the SRA recognises and preserves (and, ideally, adopts more widely) the more targeted approach of CILEX.

2.23 The question of public awareness and understanding of comparable competence will best be addressed if there is a consolidated register with a single point of access for solicitors and Chartered CILEX Lawyers and, in time, Chartered Paralegals. I agree



that in a sector where three-quarters of CILEX members work in SRA-regulated firms, and other members are supervised by SRA-regulated lawyers, there are undoubtedly benefits to be derived from amalgamating the regulatory arrangements that apply to them.

**Question 14: Do you agree that regulation by the SRA provides opportunity to establish a consistency of approach and therefore an increased confidence amongst consumers, that firms whether solicitor-led or CILEX Lawyer-led, who deliver the same services are required to operate to the same high standards?**

**Question 15: Do you agree that SRA regulation of CILEX and ACCA probate entities alongside solicitor-led firms, will deliver enhanced consumer protection through consistent levels of PII, Compensation Fund scope and transparency obligations.**

**Question 16: Do you consider there to be any risk or detrimental effect arising from the proposed transfer of CILEX and ACCA probate firms to the SRA?**

2.24 Again, subject to the view expressed in paragraph 2.18 above, I would regard the transfer of entity regulation from CILEX to the SRA as likely to be beneficial in its outcomes. Greater consistency of approach – or, rather, the removal of the potential for inconsistency of approach – is to be welcomed for the future. Further, there could be positive benefits for CILEX firms accessing lender and approved provider panels.

2.25 I do not consider that there should be any risk or detrimental effect in relation to transferred probate firms. However, for reasons similar to those expressed in paragraphs 2.20 to 2.22 above, such a detriment could arise if there was thought to be merit in the future in a differential approach to the regulation of one or more of solicitor-led, CILEX or ACCA firms, but the SRA was not willing to reflect those differences in its entity regulation.

**Question 17: Do you agree that regulation by the SRA provides opportunity to better empower consumers to make informed choices as to which regulated provider (individual lawyer or firm) can best meet their need?**

2.26 No, although it could potentially make a comparison as between differently-titled providers quicker and easier. For the reasons more fully set out in the Supplementary Report<sup>1</sup> to the IRLSR on consumer harm, I do not believe that greater transparency and disclosure is as valuable to consumers – particularly vulnerable consumers – as is assumed by regulators. Consequently, irrespective of the caveat expressed in paragraph 2.18 above, the choice of regulatory body is for me, on this issue, irrelevant.

2.27 The belief expressed on page 19 of the Consultation Paper that “consumers will be more empowered to compare and choose which lawyer can best meet their legal need” assumes that consumers *want* to shop around and to feel empowered. This belief is also insufficiently tested.<sup>5</sup> Consequently, the assumed need for regulation on transparency and disclosure does not seem to me to be targeted and proportionate action because it is made in response to an *assumed* generic need.

**Question 18: Are there any barriers to increased competition, quality and innovation in legal services that arise from regulation by the SRA?**

2.28 Yes, although arguably these arise from the burdens and cost of regulation that are a necessary consequence of the statutory framework of the Legal Services Act 2007 and are not therefore barriers that are particular to the SRA or its approach to regulation.

2.29 On the other hand, the benefit of experienced and scalable regulation of entities enabled by the SRA could lead to the *removal or lowering* of barriers perceived by those CILEX members who might wish to operate independent businesses.

**Question 19: Do you agree that regulation by the SRA will support the equal treatment and recognition of legal professionals regardless of route to qualification and provide equality of opportunity for individual practitioners and entities?**

2.30 Regulation by the SRA might lead to greater consistency in regulatory approaches as between solicitors and Chartered CILEX Lawyers, as well as a slightly easier route for (the limited number of) consumers searching registers. However, the issues of equal treatment, recognition and opportunity are the outcomes of attitude and behaviour – particularly by solicitors and by consumers – some of which are especially deep-rooted. It may well take some considerable time before these outcomes can be observed to have changed significantly.

**Question 20: Do you agree that through the SRA’s publication of the Register of Authorised Persons for both solicitors and CILEX Lawyers, there is opportunity to explain the equivalence and distinction of these two professions, therefore assisting consumers to better understand and compare the choice of lawyer able to service their legal need?**

2.31 Possibly. While there would certainly be opportunity, the limited use of public registers by consumers – who tend to assume that all providers of legal services are regulated, whatever their description or title – is likely to mean that the actual scope for explanation and understanding will also remain limited.

---

5. As explained in IRLSR Supplementary Report 2022, evidence among consumers of a wish to be empowered is sparse, and the greater expressed need is to be *informed* (about their legal rights and responsibilities, not about providers) and *saved*: see IRLSR 2022: paragraphs 2.2.2, 2.3.1, 2.4, 3.2.2, 3.4.1, and 6.2.3.3.

2.32 Further, one assumes that a consumer's choice between solicitor and CILEX Lawyer will only be made when each is in independent practice. This also means that the practical benefit will also remain constrained until there are more CILEX Lawyers practising independently.

**Stephen Mayson**  
**3 November 2023**



Sent by email only to [approvedregulator@cilex.org.uk](mailto:approvedregulator@cilex.org.uk)

6 November 2023

Dear Sir/Madam,

The Legal Services Consumer Panel (Panel) welcomes the opportunity to respond to the CILEX consultation on Enhancing Consumer Trust and Confidence.

We have grouped our response in the manner CILEX has laid out in the consultation.

## **Reflections on the Consultation Questions**

### **Section 1**

The Panel has no objections to the changes CILEX proposes to make to its Governance and Constitution. We agree that it has the potential to enhance its effectiveness.

### **Section 2**

The Panel notes that there is a high risk that consumers may not comprehend the change in titles or comprehend what the various permutations mean. Therefore, consumer research and insight around branding should inform this change. There should also be a communication plan, as well as monitoring and evaluation to ensure that the changes deliver the desired outcomes.

### **Section 3**

The Panel has no objection in principle to the re-delegation of regulatory responsibility to another regulator, if this delivers effective regulation for the benefit of consumers, the public and the profession. The Panel has had productive meetings with key and affected stakeholders on this matter, specifically, CILEX, CILEX Regulation and the Solicitors Regulation Authority. The finer details of how this might happen, including the evidence threshold required, are matters for the Legal Services Board (LSB). Should CILEX proposals lead to a rule change application to the LSB, the Panel will have a further opportunity to feed into the process in accordance with our statutory responsibility.

The Panel wants to note that it unequivocally agrees with the outcomes that CILEX is seeking to achieve with re-delegation.

The Panel considers that consolidation of regulators may be a good thing, if it is designed to achieve the pulling together of knowledge, lessons, consumer research and engagement. Much of this could be achieved within the existing framework

through effective collaboration between regulators, without formally merging the regulators, but the Panel has been disappointed by the quality and depth of collaboration that has been achieved to date. We agree that regulators should operate at sufficient scale to deliver efficient and effective regulation. The Panel itself has raised numerous concerns about the thinness of resources of some of the smaller regulators and the difficulties this poses for delivering basic regulatory functions and in particular for commissioning consumer research.

Modern regulators must be ready to address, strategise and react to new challenges which require agility and adequate resources. Regulators with limited resources will increasingly struggle to meet these demands, and in turn struggle to respond to consumers' needs. Nevertheless, proposals for merging regulators must take care to ensure that the smaller professional communities are not ignored in favour of the larger ones. We have not seen evidence of how this risk would be mitigated.

The Panel also agrees that the current regulatory framework is overly complex, requiring a level of knowledge that is unrealistic for consumers to have or comprehend, even after it has been explained to them. Consolidation of regulators could well deliver better consumer understanding.

While the Panel agrees with the outcomes described above, and with the scale of the challenges that consumers currently face when navigating this fragmented and complex sector, we are not in a position to decide whether we can support these proposals because the evidence threshold and analysis to help us make an informed decision has not been met.

CILEX have assured us that considerable evidence sits behind the consultation document, and that this evidence has been independently verified by Chris Kenny's review of the case for change, which is published alongside the consultation document. Nevertheless, we believe the evidence that sits behind Chris Kenny's assessment should be set out on the face of the consultation document, or published alongside the document, so that stakeholders can assess and interrogate it for themselves. From what we have seen to date, Mr Kenny's review addressed the process to date but did not assess any evidence of the consumer impact, indeed he has suggested that there was a need for specific research into the consumer impact.

The Panel notes and welcomes the consumer research and engagement that we are told CILEX is conducting. We note that CILEX plans to host a consumer roundtable and a consumer engagement event. We fully support these activities, but we must emphasise that the findings from these activities, along with in-depth consumer research about perceived problems with the existing framework and what could improve their experience ought to have been compiled and analyzed ahead of the consultation. Such evidence would have helped us to arrive at a clear conclusion.

A seismic shift in regulatory arrangements warrants a detailed and thorough summation of all the available evidence. There are considerable gaps around how the proposed changes will benefit consumers, including the costs of this significant change which will no doubt be passed on to consumers. The Panel also notes that there needs to be a detailed risk assessment and equality impact assessment

included in the consultation document as well as a clear plan for monitoring and evaluation.

Before we can decide whether to support this proposal, we will need to see the evidence that CILEX assures us is being gathered. We look forward to further engagement and dialogue on this important issue.

Should you have any questions pertaining to this response, please contact Lola Bello, Consumer Panel Manager ([lola.bello@legalservicesconsumerpanel.org.uk](mailto:lola.bello@legalservicesconsumerpanel.org.uk))

Yours sincerely,

A handwritten signature in black ink that reads "S Chambers". The signature is written in a cursive, flowing style.

Sarah Chambers  
Chair  
Legal Services Consumer Panel.



**Bar Council response to CILEX's consultation on Enhancing Consumer Trust and Confidence, consultation on reforms to our governance, membership structure and regulatory delegation**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to CILEX's consultation on Enhancing Consumer Trust and Confidence, consultation on reforms to our governance, membership structure and regulatory delegation.<sup>1</sup>
2. The Bar Council represents over 17,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society.
4. The Bar makes a vital contribution to the efficient operation of criminal and civil courts and tribunals. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

**Question 1: Do you support the extension of voting rights and representation on the Professional Board to all grades of member within the Chartered Institute?**

5. No comment.

**Question 2: Do you agree that the CILEX President be appointed from an eligible pool comprising of Chartered members?**

6. No comment.

---

<sup>1</sup><https://www.cilex.org.uk/wp-content/uploads/CILEX-Consultation-Enhancing-Public-Trust-and-Confidence-Aug-2023.pdf>

**Question 3: Do you have any comments regarding equality issues that may arise from our proposals to amend our governance and constitution?**

7. No comment.

**Question 4: Do you agree the proposed new membership structure is simpler and provides a clear progression route to Chartered status?**

8. It is unclear from the consultation paper, CILEX's own website, or CILEX Regulation's website, the extent to which the proposal differs from the current system (and those sources could do with improvement in this regard). It would appear though from the proposals later in the consultation that part of this proposal is to combine 'legal executives' and 'CILEX practitioners' in one category, that of 'chartered lawyer' (if that has not already occurred). As to the undesirability of that, see below Q7.

9. The progression ladder with nine distinct grades and associated titles and six post-nominals is in any event likely to be very confusing to the consumer and may undermine public trust and confidence in the delivery of legal services. By contrast, the training pathway for Barristers has only four stages in total. They are unregistered barrister, non-practising pupil, practising pupil and barrister. Unregistered barristers cannot use their title in connection with the supply or offer to supply legal services, to avoid being mistaken for a barrister.

10. If simplicity is required, as stated below, it would be preferable for CILEX Practitioners to become described within the concept of '(chartered) legal executives', rather than using an umbrella term such as 'lawyer' not explicitly currently granted by the Act or Royal Charter, particularly if members of CILEX may in future be regulated by the Solicitors Regulation Authority (SRA).

**Question 5: Do you agree the addition of a distinct progression ladder for paralegals leading to Chartered Paralegal status will enhance public trust and confidence in the delivery of legal services?**

11. Subject to our views below, if paralegals are to be regulated in the way proposed, then we agree that paralegals should have a distinct progression ladder to differentiate them from those who provide full legal services as lawyers (whether as legal executives, barristers, solicitors or otherwise). We have no comment on the proposed progression pathway for such paralegals itself.

**Question 6: Do you have any additional observations on the proposal to introduce a new Chartered Paralegal standard and professional status?**

12. Whilst it is desirable for consumers of legal services to have recourse to the consumer protections that come with regulation, this has to be balanced against the fact that unregulated services may be at lower cost. This is because regulation carries a cost that often results in higher fees for clients. Some clients may wish to access lower cost services with the associated



trade-off of fewer consumer protections in place. Indeed, our understanding is that the popularity of paralegals in the legal services market, and a useful selling point distinguishing paralegals from legal executives and solicitors, is for this reason. What is important is that clients can obtain information about the extent of regulatory protections in place for a legal services provider and can make an informed choice in their selection of them. This is a consideration when determining whether and how to bring paralegals within the regulated sector.

13. The consultation document states that, “*Chartered Paralegals will be subject to regulation with a Code of Conduct, practice standards and a requirement to undertake CPD.*”<sup>2</sup> In addition to these forms of regulation, barristers must carry insurance that covers all of the legal services they provide to the public, are subject to disciplinary action by the BSB and many of their clients will be able to access the Legal Ombudsman (LeO) for service complaints. It is not clear whether there are plans to extend these additional regulations to paralegals and their clients. It is vital that any increase in LeO running costs resulting from an expansion of their remit must not push up costs borne by existing funders of it (e.g. barristers and solicitors).

14. The extent to which the form of paralegals’ regulation will be advertised to clients, in order to facilitate their making an informed decision about their provider is unclear. If there is no access to LeO, no insurance requirement and no form of disciplinary process then it is important that this is clearly communicated to potential consumers.

15. We note plans to include paralegals on a register. Whilst registers potentially impart useful information for consumers, our experience is that they are not widely referred to by consumers, and without a clear explanation of the different types of paralegal and their varying levels of qualification, experience and regulation, its utility will be limited. Care must be taken to ensure that the difference between this register and that of authorised persons are made clear, to avoid consumer confusion. This is particularly pertinent if the SRA takes on the regulation of legal executives and paralegals in addition to solicitors, whom they already regulate. Were this to happen, there is a risk that the three distinct groups are conflated into one in the eyes of the consumer.

**Question 7: Do you agree the use of the Chartered Lawyer titles will assist legal professionals, employers and the public to better understand the status and specialist nature of CILEX lawyers?**

16. We agree with the Competition and Markets Authority’s conclusion that, “*Professional titles are an important factor in consumer decision-making and can be a useful way for consumers to identify high quality or the availability of regulatory protection.*”<sup>3</sup> Any change to the title of legal executives runs the risk of a considerable period of consumer uncertainty over what those with the new title are entitled to do and the extent to which they are regulated. An education campaign may help mitigate this risk, but it is likely to be challenging to alleviate it entirely. With twelve new titles planned, we have concerns about the sheer number of new titles being

---

<sup>2</sup> <https://www.cilex.org.uk/wp-content/uploads/CILEX-Consultation-Enhancing-Public-Trust-and-Confidence-Aug-2023.pdf> 2023: 7

<sup>3</sup> [CMA Legal Services Market Study final report](#) 2016: 153

proposed. This appears to complicate the picture for consumers considerably. Whilst it is appreciated that there is an attempt to use plain language readily understood by a consumer, which is desirable, there will be many consumers who do not understand terms such as “litigator” or “probate”.

17. If barristers were to change their title in a way that described every authorisation they had and activity they undertook, their titles would be long and unwieldy and subject to change over time as they move in and out of different specialist practice areas. Consideration could be given to the approach taken by the Bar Standards Board which is to list on the Barristers’ Register barristers’ various authorisations, for example the right to conduct litigation or to accept public access instructions.

18. We have very serious concerns about the proposed use of the titles of “lawyer” and “advocate”. As you will no doubt be aware, the term “lawyer” is not restricted, nor does it carry any regulatory meaning. Currently, anybody can call themselves a lawyer. The Competition and Markets Authority found in their 2016 market study of legal services that, *“unauthorised providers advertise themselves using terms such as ‘lawyer’, ‘legal adviser’ or ‘legal consultant’”*<sup>4</sup>. ‘Lawyer’ can also cover a multitude of qualified persons providing legal services including barristers and solicitors – see for example the list in section 190 of the Legal Services Act 2007 (in relation to legal professional privilege – as well as costs lawyers and so on). There is consequently scope for significant confusion with both the regulated and the unregulated sector if CILEX uses the term “lawyer” in any of its titles. We question how a member of the public will be able to discern where a lawyer is subject to CILEX regulation or is unregulated, and understand the lack of consumer protections afforded by the latter category. Use of the term “lawyer” by legal executives will lead to a blurring of the lines between regulated and unregulated providers and create confusion about the regulatory status of the provider being instructed.

19. The relevant power granted to CILEX under the Act and the Royal Charter is to grant a certificate authorising the person to act as a ‘legal executive’, and that status should continue to be prominently used by relevant CILEX members in the interests of clarity and protection of the public. We would encourage the retention of (chartered) legal executive (or, although we consider this a less familiar term, CILEX practitioner). If ‘lawyer’ or ‘chartered lawyer’ is ever to be used, it should mandatorily include ‘CILEX’ in formal usage.

20. If simplicity is required, it would be preferable for CILEX Practitioners to become described within the concept of ‘(chartered) legal executives’, rather than using an umbrella term such as “lawyer” not explicitly currently granted or controlled by the Act or CILEX’s Royal Charter, particularly if members of CILEX may in future be regulated by the SRA. Although members of CILEX may not often use the term Chartered Legal Executive themselves, that is an issue that can be dealt with by better public education and awareness about legal executives, not by the adoption of a wholly confusing and vague term such as “lawyer”.

---

<sup>4</sup> [CMA Legal Services Market Study final report](#) 2016: C12

21. Although use of the term “advocate” is not reserved or restricted in any way in England and Wales, it is a term that can be commonly used to describe barristers and solicitors that have obtained higher rights of audience, known as “solicitor advocates”. Over the border in Scotland, Advocates are the equivalent of our barristers. Advocates also exist in many European Union jurisdictions, doing work similar to that of barristers. The proposal for legal executives to use the word “advocate” in their title therefore has potential to cause confusion amongst clients of legal executives, solicitor advocates and barristers. It runs the risk of blurring distinctions between professions operating within England and Wales as well as with neighbouring jurisdictions.

22. “Litigator” has a similar issue in that it is an activity carried out by other legal professionals such as barristers and solicitors.

23. The Competition and Markets Authority noted that, “consumers appear to rely to some extent on regulatory titles to navigate the market”.<sup>5</sup> Significantly altering titles in the way proposed by CILEX will make it significantly harder for consumers to navigate the legal services market.

**Question 8: Are there any other specialism(s) that should be included in the list of Chartered titles?**

24. No, as already mentioned, we think that the proposal to create twelve new titles is likely to be confusing for consumers. Retention of the existing titles or a significant reduction in the number of titles being proposed should be considered.

**Question 9: Are there any other considerations CILEX should take into account when considering the impact of these changes?**

25. As outlined above in the response to question 7, CILEX must take into account the risk of confusion with other professions and determine if the benefits outweigh these risks, and what mitigation steps would be necessary were they to proceed. We consider that the potential risks to the public greatly outweigh the potential rewards.

**Question 10: Do you agree that increasing the independence of our regulatory model through delegation to a body that is structurally, financially and operationally independent from CILEX will enhance public trust and confidence in regulation?**

26. We are not aware of evidence that the current form of regulation necessarily undermines public trust and confidence in regulation. What is paramount is that regulation is independent and is demonstrably independent. That is possible through the present system.

27. The Bar Council is a strong advocate for regulation that is independent of government and the profession. The Bar Council set up the Bar Standards Board as an independent operation in advance of the statutory requirement to do so. Our view is that, for the public,

---

<sup>5</sup> [CMA Legal Services Market Study final report](#) 2016: 179

and for the Bar and its clients, the arrangements for securing regulatory independence are working well. The same should be possible for CILEX.

28. That said, we recognise the importance of the Approved Regulator being able to highlight issues with their regulators' operation and performance and to have the power to make changes, including to the delegation itself, that will benefit the consumer interest as well as the interests of its members.

**Question 11: Do you agree that the SRA offers a sufficient scale and reach to be able to deliver efficient and effective regulation at a cost that is affordable for the consumers and the profession?**

29. No comment.

**Question 12: Do you agree that regulation by the SRA provides opportunity to establish and maintain consumer confidence that lawyers regardless of whether through the CILEX route or the solicitor route, enter the profession through robust processes and are required to meet and maintain high standards of competence?**

30. No comment.

**Question 13: Do you agree that regulation by the SRA provides opportunity to deliver a consistency of approach and therefore an increased confidence amongst consumers, that CILEX Lawyers and solicitors delivering the same services are required to operate to the same high standards of conduct and practice?**

31. There are examples of successful regulation by different regulators of legal professionals that engage in similar or the same activities. For example, solicitor advocates and barristers both engage in advocacy in the higher courts but are regulated by the SRA and BSB respectively. Other aspects of their practice, for example differences in the rules on handling client money or the predominantly self-employed nature of barristers, warrant different systems of regulation. Just because legal professionals engage in similar or the same activities does not mean that regulation by the same regulator is the best solution. In any event, we are unclear as to whether CILEX in fact proposes that its members are required to operate to the same standards of conduct and practice. See, for example, paragraph 13 above.

**Question 14: Do you agree that regulation by the SRA provides opportunity to establish a consistency of approach and therefore an increased confidence amongst consumers, that firms whether solicitor-led or CILEX Lawyer-led, who deliver the same services are required to operate to the same high standards?**

32. We do not consider that the use of one regulatory body for firms led by different professions necessarily means an increase in confidence amongst the public that the professions are required to operate to the same high standards. That could not be said of those that separately regulate doctors and dentists practices which offer the same services, or barristers entities and solicitors firms, for example.

**Question 15: Do you agree that SRA regulation of CILEX and ACCA probate entities alongside solicitor-led firms, will deliver enhanced consumer protection through consistent levels of PII, Compensation Fund scope and transparency obligations?**

33. No comment.

**Question 16: Do you consider there to be any risk or detrimental effect arising from the proposed transfer of CILEX and ACCA probate firms to the SRA?**

34. No comment.

**Question 17: Do you agree that regulation by the SRA provides opportunity to better empower consumers to make informed choices as to which regulated provider (individual lawyer or firm) can best meet their need?**

35. Not necessarily. As long as there is sufficient information about a provider's regulatory status, qualifications and areas of specialism readily available to a consumer, it is inconsequential who their regulator is.

**Question 18: Are there any barriers to increased competition, quality and innovation in legal services that arise from regulation by the SRA?**

36. This depends on the ability of the SRA to tailor its regulation to a different group of legal professionals. The experience of the Bar Council is that it is beneficial to have a bespoke regulator where the work and mode of operation by the regulated community and mode of operation is significantly different. Barristers' delivery of advocacy and specialist legal advice and main mode of practice from chambers means they need a bespoke regulator that understands them and can take a risk-based approach based on consent. This is conducive to proportionate and effective regulation at reasonable cost as unnecessary interventions and rules are avoided.

37. It follows that a regulator that understands its regulated community will also be better placed to understand the opportunities and risks presented by innovative practices and technologies and work with the regulated community to test them out.

**Question 19: Do you agree that regulation by the SRA will support the equal treatment and recognition of legal professionals regardless of route to qualification and provide equality of opportunity for individual practitioners and entities?**

38. We do not agree that regulation by the SRA should by itself make any difference to equality of opportunity – that laudable aim should be possible regardless of which body is delegated with the task of regulation.

**Question 20: Do you agree that through the SRA's publication of the Register of Authorised Persons for both solicitors and CILEX Lawyers, there is opportunity to explain the equivalence and distinction of these two professions, therefore assisting consumers to better understand and compare the choice of lawyer able to service their legal need?**

39. Arguably this aim is already met through a combination of the information already present on existing registers and websites. In any event, the use by consumers and, therefore, usefulness of registers is very limited. It is not a substantial reason warranting change.

**Question 21: Do you consider there to be any adverse impact of our proposals on:**

**Consumers**

**Vulnerable groups**

**Legal professionals**

**Providers of legal services**

40. We consider that the proposals in relation to altering the nomenclature structure of those regulated by means of CILEX membership will or may have an adverse impact on consumers, vulnerable groups, legal professionals and providers of legal services for the reasons we have identified above. We have identified no such similar issues with the proposals in relation to regulation by the SRA.

**The Bar Council  
2 November 2023**

*For further information please contact*

*Sarah Richardson, Head of Policy, Regulatory Matters, Ethics and Law Reform*

*The General Council of the Bar of England and Wales*

*289-293 High Holborn, London WC1V 7HZ*

*0207 242 0082*

*[SRichardson@barcouncil.org.uk](mailto:SRichardson@barcouncil.org.uk)*



The Law  
Society

Law Society response:

**CILEX Enhancing Consumer Trust and  
Confidence consultation**

November 2023

## **Introduction**

The Law Society is the independent professional body for solicitors in England and Wales. We are run by and for our members. Our role is to be the voice of solicitors, to drive excellence in the profession and to safeguard the rule of law. The Law Society is also the approved regulator for the solicitor profession under the Legal Services Act. It has delegated its regulatory functions to Solicitors Regulation Authority Limited (SRA), whose remit is limited to the regulation of the solicitor profession.

When responding to this CILEX consultation, we have had in mind the key points made by the SRA in its accompanying consultation. This is especially relevant since CILEX have provided a positively biased view of proposed future arrangements, leaving the SRA to fill in some of the information necessary to take a more balanced view of the proposals. Neither consultation fully addresses significant gaps in the proposals, with many of the details that would be necessary to make an informed response effectively left for uncertain discussions at a later date. This is a highly undesirable position, given the significant impact of the proposals on the Law Society both as representative body and as approved regulator, on our members, and on the members of CILEX.



## Comments on the consultation document

1. We have a number of comments on the consultation documents, which we do not believe represent an evidence-based approach to effectively argue a public interest case despite what CILEX states. Assertions are frequently made without reference to any supporting evidence, which is particularly egregious when they suggest that positive outcomes for consumers will result from the proposed changes amounting to increased access to justice.
2. There are references to experts and authorities, such as Professor Mayson and the Competition and Markets Authority, who are quoted as 'evidence' when they do not in fact support the arguments being made or have been taken out of context. For example, Mayson argues in his report<sup>1</sup> for a full review of regulation, necessitating changes to the Legal Services Act, and states clearly that his conclusion is that many of the current regulatory arrangements are unnecessary. This has little in common with the proposals in this consultation and could in fact be seen as completely contradictory to the more onerous regulatory standards for authorised Legal Executives that would result from SRA regulation.
3. Some statements made in the consultation documents are misleading. For example, the authorisation of a Legal Executive to conduct reserved activity is confused with the idea of "specialisation" or technical excellence in that activity in contrast to other legal professions who are authorised in all areas of practice.
4. A number of questions posed are unbalanced and leading questions, and others are posed without sufficient evidence or data in the consultation document to enable respondents to give informed answers, for example the questions on the econometric effects on costs of regulation.
5. The consultation documents overstate the importance of CILEX as a route into the legal professions in terms of equality, diversity, and inclusion, whilst failing to mention factors that do not support its arguments. For example, it ignores the way in which the Solicitors Qualifying Exam (SQE) has opened up routes to entry into the solicitor profession with apprenticeships and flexible qualifying work experience, which means that CILEX no longer has the 'unique' offering that it may have thought previously. It also omits to acknowledge that the SQE is open to CILEX members who wish to go on to qualify as a solicitor.
6. The consultation documents essentially lack any coherent argument supporting the proposals for change. On the one hand, CILEX argues for a distinct professional identity. On the other, it seeks parity with the solicitor profession.
7. The proposals are presented as solutions to issues that CILEX identified in its Case for Change, without any discussion of alternative and more proportionate and effective options to resolve its internal regulatory and governance problems. There is minimal reference to the response made by CILEX Regulation Limited (CRL) to the Case for Change or to the solutions it has offered to the members of CILEX without the degree of disruption, risk and cost that is associated with the CILEX transfer proposals.

---

<sup>1</sup> [https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr\\_final\\_report\\_final\\_0.pdf](https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_final_report_final_0.pdf)

## Summary of the Law Society's position

8. The Law Society believes there are serious issues with the proposals presented in this consultation, which we explore in more detail below. The proposals are largely unsupported by evidence that they are of public benefit, are not supported by the affected community of CILEX members as shown by the results of the recent CRL consultation, and do not consider the wider regulatory context or the potentially serious negative impact that these changes will have on the regulated communities of both CRL and the SRA. The Law Society does not therefore support or agree to the proposals.
9. CILEX's key driver for proposing a change to its regulatory arrangements and a change of title appears to be a desire to raise the status of CILEX lawyers, in particular by comparison with solicitors. The Law Society considers this to be misguided, because the desired objective is not something that can be achieved by sharing the same regulator with the solicitor profession. It will only bring into sharper focus and comparison the scope and context of practice and roles in the respective professions. Both professions are valuable within the wider landscape of legal services provision, but they are not equivalent in education, training, scope of authorisation or practice.
10. The Law Society was previously approached by CILEX to make a joint statement with CILEX that the professions were "authorised persons of equal standing", which the Law Society was unable to do because there is clearly a difference in the qualifications, scope of authorisation and the roles held in each profession.
11. Lastly, the Law Society notes the vehement opposition of CRL, who have already responded<sup>2</sup> to CILEX's consultation. CRL argues that there have been no regulatory failings on its part, in fact the LSB's most recent regulatory performance review<sup>3</sup> notes no areas of insufficiency. We agree that the regulation of authorised Chartered Legal Executives is best managed under the current bespoke arrangements with CRL. CILEX has failed to demonstrate due consideration of the response made by CRL to the Case for Change and has failed to demonstrate the necessity for redelegating its regulatory functions to the SRA.

### Regulatory objectives

12. CILEX has failed to demonstrate why the proposed changes are required, or how they meet the bar for its statutory duty to positively promote the regulatory objectives. It also gives no assurance that the proposals will not adversely affect the regulatory objectives.
13. CILEX base much of their case for change in the consultation on the following regulatory objectives:

---

<sup>2</sup> <https://cilexregulation.org.uk/wp-content/uploads/2023/10/CILEX-Regulation-Limited-consultation-response-October-2023-FINAL.pdf>

<sup>3</sup> <https://legalservicesboard.org.uk/our-work/regulatory-performance/current-regulatory-performance-assessments#:~:text=In%20November%202022%2C%20we%20completed,of%20the%20regulatory%20bodies'%20performance.>

- improving access to justice
- protecting and promoting the interests of consumers.
- promoting competition in the provision of legal services and
- encouraging an independent, strong, diverse, and effective legal profession.

14. Contrary to CILEX's assertions of positive change potentially arising, we believe the proposals will have a negative impact on the regulatory objectives.

#### Improving access to justice

15. Throughout the consultation CILEX states that changing the status of Legal Executives will improve access to justice. However, there is no evidence presented to support this assertion. In fact, the majority of CILEX members work in solicitor firms so these changes would have no effect on those persons or the services they provide.

16. CILEX acknowledges that the very small number of CILEX led firms is not likely to increase, since there is no pipeline of members wishing to set up new firms. It is therefore hard to see where CILEX believes any new providers would come from to have a positive impact on access to justice.

17. The Legal Services Board (LSB) had indicated that in its view improved access to justice will only come through the lowering of regulatory barriers, thus enabling completely new entrants. Even if this is desirable, it is not something that can be addressed or achieved by a re-ordering of the current population of CILEX members or by SRA statements about the relative merit of Legal Executives.

#### Protecting and promoting the interests of consumers

18. As we set out in more detail below, there is a risk of greater consumer confusion resulting from a shared scheme for the regulation of solicitors and Legal Executives, particularly since it would appear that the SRA is not proposing to change its regulatory title as the *Solicitors* Regulation Authority, which strongly suggests that it is a single profession regulator.

19. In particular, the SRA's proposed statement that Legal Executives would have the same authorised status as solicitors in areas where they have practising rights would be misleading to anyone who does not have an understanding of the education and training requirements underpinning each qualification or the scope and implications of authorisation in the respective professions.

20. This confusion for consumers would be greatly exacerbated if CILEX is allowed to re-brand authorised Legal Executives as 'Chartered Lawyers', a term widely understood to refer to solicitors and barristers. The risks are even greater when you add the ability of such persons to also refer to themselves as 'SRA regulated'.

21. Overall, there would be a negative impact on consumers' ability to clearly understand and distinguish between the choices available to them for the provision of professional legal services, or to choose the appropriate legal

professional to meet their needs. This is particularly adverse for vulnerable consumers and those with no knowledge of the legal services market.

#### Promoting competition in the provision of services

22. The proposals represent a move towards greater alignment between Legal Executives and solicitors, therefore risking the greater homogenisation of, and a decrease in choice in, the legal market.
23. The increasingly flexible routes into the solicitor profession, brought about by the introduction of the SQE, and the introduction of apprenticeships and qualifying work experience, make the choice to become a Legal Executive rather than a solicitor less clear cut. This choice would become only more confused by the SRA's regulation of Legal Executives.
24. Even if a larger number of CILEX entities existed or were to exist in the future which is unlikely, consumer interest would not be measured by competition alone. Competition is a factor of informed consumer choice where the availability of relevant information is an absolute prerequisite.

#### Encouraging an independent, strong, diverse, and effective legal profession

25. Throughout the consultation CILEX makes broad appeals to diversity considerations in speaking positively about Legal Executives and CILEX members in general, without any evidence of how these considerations are relevant to or supportive of its proposals.
26. The diversity of the professions will not change due to some of CILEX's members being regulated by the SRA. At best, this change would slightly alter the diversity balance of the SRA's regulated community.
27. CILEX asks a very leading question about whether respondents "agree that the SRA offers a sufficient scale and reach to be able to deliver efficient and effective regulation at a cost that is affordable for the consumers and the profession". There is no mention of the potential for higher regulatory costs and higher burdens resulting from the upward alignment of standards mentioned in areas such as professional indemnity insurance and the Compensation Fund, none of which appears to have been assessed or factored in.
28. The proposals do not make clear that the move to higher regulatory standards will also result in greater regulatory burdens, and potential costs for Legal Executives. Far from encouraging an independent, strong, diverse, and effective legal profession, this would certainly make operating a business more difficult. It would also raise for new entrants the question of whether the limited scope of authorisation held by Legal Executives is worthwhile when, for similar or lower costs, new entrants could join the solicitor profession and have the opportunity for a broader, more varied career.
29. The proposals involve potentially serious financial risks for the SRA, and by extension the Law Society and the solicitor profession, which have not been adequately assessed. Indeed, CRL is yet to provide the necessary data to the SRA to begin this work. The SRA could be left regulating a small number of

CILEX members whose cost of regulation will significantly outweigh their contribution to the new regulator, resulting in unjustifiable financial risks to the solicitor profession.

#### Regulatory fragmentation

30. The LSB has indicated that it would be supportive of regulatory consolidation, while the SRA says in its consultation that it believes the CILEX proposals would achieve organic, well managed regulatory consolidation. However, given the current arrangements of CILEX's membership where all members (authorised or not) must adhere to the CILEX Code of Conduct and are overseen by CRL, a proposal to effectively move the regulation of only part of the CILEX membership to the SRA should be seen instead as regulatory fragmentation.
31. Should these proposals be implemented, CILEX would be left overseeing roughly 9,000 non-authorised individuals. This would be a backward step for the regulation and oversight of those persons.
32. It is also unclear what CILEX intends for the regulation of the new 'Chartered Paralegal' qualification that it puts forward in the consultation. The SRA mentions in its consultation only that this is an area that would need to be resolved in the future, without any commitment to regulating this qualification itself. This is indicative of the lack of detail and unanswered questions in both consultations, and of the level of uncertainty that respondents are left with when asked to comment on the proposals.

#### No majority support from CILEX members

33. CILEX has presented no mandate or support from its members to pursue these proposals. A recent consultation by CRL found that when Legal Executives were asked if they considered it to be a priority to change their current regulatory system, 68% of the 1,018 people who answered this question said 'no'.
34. Given that the majority of CILEX's members already work within SRA regulated entities and are therefore subject to SRA regulation in that way (including authorised and non-authorised members), the proposed transfer of CILEX's regulatory functions to the SRA involves disproportionate disruption and cost for a small population of authorised Legal Executives, for what must surely be limited, if any, gains.

## **Changing title to 'Chartered Lawyer'**

**Q7)** Do you agree the use of the Chartered Lawyer titles will assist legal professionals, employers and the public to better understand the status and specialist nature of CILEX lawyers?

**Q8)** Are there any other specialism(s) that should be included in the list of Chartered titles?

**Q9)** Are there any other considerations CILEX should take into account when considering the impact of these changes?

The proposals in this section primarily affect the regulatory objective of protecting and promoting the interests of consumers.

### Consumer confusion

35. Far from simplifying or aiding understanding as CILEX suggests, adopting the title of 'Chartered Lawyer' for authorised Legal Executives adds another layer of confusion and complexity for the ability of consumers to distinguish between the different legal professions.
36. The term 'lawyer' is widely understood by consumers to refer to professionals with a comprehensive legal qualification – solicitors and barristers. It is misleading to use it as a description of Legal Executives, who already have their own perfectly accurate and appropriate title.
37. Our position is supported by research we have conducted. In October 2023, the Law Society asked 2,236 adults questions to assess their understanding of legal titles, differences between solicitors and Legal Executives, and legal regulators. Three-quarters of the public associated the term 'lawyer' with solicitors while 60% associated the term 'lawyer' with barristers. Only 1 in 10 associated the term 'lawyer' with Legal Executives/CILEX legal professionals. On balance the public thought the term 'Chartered Lawyer' would be unhelpful.
38. These findings indicate the potential to disrupt an established understanding of the term 'lawyer' as relating to solicitors and barristers. They also demonstrate the difficulty in building an improved understanding of CILEX lawyers linked to a new 'Chartered Lawyer' title.

### Re-branding

39. The proposals appear to be an attempt by CILEX to re-brand some of its members to achieve an appearance of equivalence with solicitors in the eyes of consumers.
40. While some Legal Executives are authorised to provide services in discrete areas such as conveyancing and probate amongst others, they should not be represented to the public as equivalent to solicitors because their knowledge, training, experience, and scope of practice is limited to specific areas. Solicitors, with a wider breadth of education and training as a basis for their qualification, are authorised to work across all areas of law and can therefore recognise and advise clients on all practice areas connected with their issue. Many clients with legal needs require expertise across more than one of the reserved legal activities.

41. The Law Society would support the wider recognition of CILEX's membership, the roles they fill and the valuable work they undertake, but a proposal to transfer the regulation of the CILEX profession to the regulator for the solicitor profession is not an appropriate or acceptable method for improving its profile.

#### Welsh language

42. Another issue that must be considered in the jurisdiction of England and Wales is the additional consumer confusion that would be likely to occur when 'Chartered Lawyer' is translated into the Welsh language. Unlike in English, there is no distinction or separate word for a solicitor in Welsh compared to 'lawyer'. The word for both solicitor and lawyer (singular) is cyfreithiwr.
43. Whilst in English lawyer can be used as a generic term to refer to a barrister or solicitor, or potentially another legally qualified individual, this is not the case in Welsh. The word 'cyfreithiwr' (solicitor/lawyer) would never accurately be used to denote a sole barrister or other legal professional.
44. The translation of Chartered Lawyer, 'cyfreithiwr siartredig', would therefore, to a Welsh speaker, mean chartered solicitor. Whilst the word translates to lawyer, if it referred to a barrister or other legal professional, such as a Legal Executive, it would explicitly state so.
45. The current term used for Legal Executives, 'Gweithredwr cyfreithiol', avoids the confusion outlined above.

#### **Independent regulation (moving to the SRA)**

**Q10)** Do you agree that increasing the independence of our regulatory model through delegation to a body that is structurally, financially and operationally independent from CILEX will enhance public trust and confidence in regulation?

The proposals in this section primarily affect the regulatory objective of protecting and promoting the interests of consumers.

#### CILEX concerns about the Internal Governance Rules (IGRs)

46. CILEX sets out in its consultation how it considers its relationship with CRL to be restricted by the IGRs. These are rules made by the LSB for approved regulators (like CILEX) to ensure adequate separation and independence between their regulatory and representative functions.
47. CILEX suggests that there is a risk of conflict between the discharge of its duties as the parent organisation for CRL and the prohibitions and limitations that the IGRs place on its relationship with CRL as a regulatory body.
48. However, CILEX makes no mention of the fact that, under its proposals, it would continue to be an approved regulator for purposes of the Legal Services Act and remain subject to the same restrictions in its relationship with the SRA (or any other regulatory body). It also does not recognise that the IGRs also govern the relationship between the SRA and the Law Society as the approved regulator for the solicitor profession.
49. The consultation suggests that a benefit of moving the regulatory functions of CILEX to the SRA will be "financial and structural independence, in addition to

the operational independence currently in place". However, it does not say what practical arrangements would be put in place to achieve this, or how it would alleviate CILEX's concerns about the operation and requirements of the IGRs under its current regulatory arrangements with CRL.

#### SRA proposals for internal governance

50. Notably, the SRA suggests in its accompanying consultation that it will establish internal governance arrangements with CILEX to govern their relationship and that this would include a Dispute Resolution Protocol in line with the LSB's guidance, alongside an annual review process to allow both parties to declare ongoing compliance with the IGRs. This type of arrangement is not unique. It applies to all approved regulators and their regulatory bodies, and follows inevitably from the statutory framework in the Legal Services Act and from CILEX's status as an approved regulator, irrespective of whether its regulatory functions are delegated to CRL or to the SRA.
51. This means the point made by CILEX about benefits of greater independence and freedom from the IGRs is moot. Under its proposals, CILEX would be entering into a regulatory delegation arrangement that is governed by the same rules and restrictions that apply to its existing arrangement with CRL.
52. Given the current breakdown of trust between CILEX and CRL, which CILEX attributes to the set-up of their relationship, there is a risk that the same concerns and conflicts may again arise following a transfer of CRL's functions to the SRA. This would have a consequential negative impact on the reputation of the SRA and the Law Society and may adversely affect the SRA's regulatory performance to the detriment of the solicitor profession.
53. There is no detail on the specific arrangements that the SRA intends to establish with CILEX for the regulation of its members, but the Law Society is concerned that they would place the existing internal governance arrangements between the Law Society and the SRA at risk or at a potential disadvantage.

#### Regulatory conflict

54. The Law Society has concerns about the risk to the reputation of the SRA and a loss of confidence in its regulatory capacity were there to be any perception of partiality, which we believe could stem from the SRA's dual regulatory role in an environment of inevitable competition between the Law Society and CILEX. The SRA will effectively be given an additional power, since it will be sitting between both professional bodies, in a position of adjudicator for any disagreements between them regarding regulatory matters. This will inevitably interfere with the independence of the Law Society and our ability to represent solicitors, since the views of CILEX would have to be taken into consideration and the SRA would be regulating outside its current remit.
55. Neither CILEX nor the SRA are clear on how the governance of the SRA will reflect or represent CILEX members or their regulatory interests. For example, CILEX may wish to see Legal Executive members on the SRA's Board in the future to represent those interests, but those members would then also have decision making power over matters affecting solicitors. This fundamental alteration in the governance of the regulator for the solicitor profession is not



considered in the consultations, or weighed up in terms of the disadvantages to the existing regulatory community of the SRA.

**Operating at sufficient scale to deliver efficient and effective regulation at an affordable cost (financial issues with CRL)**

**Q11)** Do you agree that the SRA offers a sufficient scale and reach to be able to deliver efficient and effective regulation at a cost that is affordable for the consumers and the profession?

The proposals in this section primarily affect the regulatory objectives of improving access to justice and protecting and promoting the interests of consumers.

Potential for increased costs

56. CILEX's overall positive bias in the consultation, as reflected in this leading question, fails to acknowledge that its proposals have the potential for increased cost of regulation. The small proportion of CILEX members whose regulation would transfer to the SRA - around 8,000 Legal Executives and 18 firms (plus 40 ACCA certified accountant firms) - means the burden of regulatory cost must be borne by this small group. Since the professions are to be regulated separately with no cross subsidy, Legal Executives and CILEX firms will not have the perceived cost benefit of a larger scale.
57. In addition, as set out in the SRA's proposal but not mentioned in this consultation, CILEX have agreed with the SRA to fund the costs of transferring its regulatory functions to the SRA and to fund any ongoing costs associated with the move. It is not explained in either consultation how CILEX would meet these costs, but there is a risk that they would be passed on to members through higher fees.
58. This one-sided question does not ask CILEX members if they would be prepared to pay more for SRA regulation; it only asks whether there is a possibility of efficiencies of which there is no supporting evidence. While some savings could be made from removing separate governance and enforcement panels, these are not significant in the total scheme of regulatory costs.
59. The SRA's assertion is that it believes regulatory costs would be unchanged or potentially lower, but it clearly states that it does not have the necessary financial information from CRL to make an adequate assessment of ongoing or steady-state costs. There is therefore no basis for determining true future regulatory costs and this question is at best premature since consultees cannot be expected to form a view without understanding the full picture.

Issues with scale of regulation

60. There are inferences throughout the consultation that CRL is in financial difficulties and would possibly be unable to fulfil its regulatory role, particularly if its duties were to expand in any way. CILEX discusses in the consultation that an advantage of moving to the SRA would be access to greater resources and scope of regulation, but without clear detail of what these perceived advantages are in tangible terms or how they would become available to CILEX.

61. If CILEX members and firms are to be regulated separate from the majority of the SRA's regulated community of solicitors and solicitor firms as the SRA has committed to doing, then it is unclear how the scale and costs of regulation will improve.

### **Education and training, routes into the profession**

**Q12)** Do you agree that regulation by the SRA provides opportunity to establish and maintain consumer confidence that lawyers, regardless of whether through the CILEX route or the solicitor route, enter the profession through robust processes and are required to meet and maintain high standards of competence?

The proposals in this section primarily affect regulatory objectives of protecting and promoting the interests of consumers, promoting competition in the provision of services, and encouraging an independent, strong, diverse, and effective legal profession.

#### Links to equality, diversity, and inclusion (EDI)

62. The consultation mentions CILEX's critical link to EDI without any evidence to explain what this link is or how it applies to qualification as a Legal Executive.
63. With the introduction of the SQE, many more flexible routes into the solicitor profession have developed. It is now possible to qualify as a solicitor through apprenticeships and graduate apprenticeships, to complete a flexible variety of qualifying work experience placements and to earn while you learn and take the SQE assessments. As a result, the unique value of the flexible 'earn while you learn' CILEX route into a legal profession is lessened, as is any claim to increased EDI aspects.

#### Minimum standards

64. The SRA has decided that the SQE standard is the regulatory minimum for solicitors to practice in those areas of law in which Legal Executives can also gain authorisation. It is unclear how Legal Executives can meet the same standard, given their narrower pathway to authorisation in limited areas. The SRA cannot make any inference of equality of standards without a clear explanation of the difference between the two professions, particularly in relation to their respective requirements for education and training.

#### Authorisation processes

65. CILEX has identified the current regulatory process for existing CILEX Fellows to obtain practice rights as a significant barrier to authorisation and implies in the consultation that a move to the SRA will address unnecessary barriers. However, there is no guarantee that the SRA would do any differently. To date, the SRA has only said that it would ensure that appropriate routes exist.
66. In addition to other considerations, setting up and maintaining a series of separate processes for the different authorisations, and the trained staff and adjudicators to conduct this work, will be resource intensive and costly.
67. There is competition from other regulators available to some CILEX Fellows, depending on their area of practice. The Council for Licensed Conveyancers has seen applications from Legal Executives to convert to CLC regulation surge to 112 in the past year, rather than the usual average of 10. The move allows

Legal Executives to access the same practice rights with a reduced administrative burden.

#### Ongoing competence

68. The section regarding continuing or ongoing competence is misleading. The SRA's proposed approach to continuing professional competence is dictated by the LSB, through its Statement on Ongoing Competence. Any approach from CRL would have many of the same elements since all legal regulatory bodies must show how their approaches meet the requirements set out in the LSB's statement.
69. In fact, CILEX members will lose some elements of regulation offered by CRL, such as routine auditing records, which the SRA does not engage in. This means Chartered Legal Executives will lose a useful tool helping them to maintain their competence, which CRL is able to provide.
70. The SRA's proposals, set out in more detail in its separate consultation, describe what could be seen as a blurring of lines between CILEX's membership functions and the SRA's proposed regulatory functions in this area. They reflect an expectation that CILEX would share with the SRA information gathered from checks conducted as part of the CILEX representative function. Whilst information should clearly be shared where it represents a regulatory risk, it is not clear where that boundary is to be drawn, or who would be responsible for setting it, or how CILEX members would expect their membership body to treat their information and records in relation to their independent regulator.

#### Separate registers

71. CILEX makes multiple mentions of the importance of the proposed register of Legal Executives which the SRA would publish on its website, stating that this would improve consumer choice, give clearer information and aid in the clarification of Legal Executives' status. We address this more fully in response to questions 17 and 18 below.
72. However, in this section of the consultation, CILEX clearly states that a longer-term objective would be to combine the proposed register of Legal Executives with the existing SRA register of solicitors. This would be unacceptable. It would surely lead to confusion for consumers over which members are qualified to be in each legal profession and which services they are authorised to conduct. It would be necessary to explain the relative differences between the professions, their practice areas and expertise, and the restrictions which apply to Legal Executives. Consumers would also be required to understand their legal issue well enough to know whether a Legal Executive or a solicitor is qualified and able to meet their needs within a single area of practice or a combination of practice areas.

#### **Standards of conduct and practice for individuals**

**Q13)** Do you agree that regulation by the SRA provides opportunity to deliver a consistency of approach and therefore an increased confidence amongst consumers, that CILEX Lawyers and solicitors delivering the same services are required to operate to the same high standards of conduct and practice?

The proposals in this section primarily affect the regulatory objective of encouraging an independent, strong, diverse, and effective legal profession.

73. The Law Society has always argued that all legal professionals providing the same services should meet the same regulatory standards. The implication from the SRA is that there will be an upward alignment of standards and regulatory requirements for authorised Legal Executives, through amendments to align the CILEX Code of Conduct with the standards that apply to solicitors, whilst reflecting the narrower scope of practice of Legal Executives.
74. The reflection of the narrower scope of practice, resulting from the relative narrowness of Legal Executives' education and training and post-qualification experience, is important as there is otherwise a risk of misleading consumers. Consumer confidence can be improved through good, accurate information, so clarity around the differences as well as the similarities between professions is essential.
75. It is contradictory that CILEX should wish to be held to the same standards as solicitors and provide the same services regulated by the same regulator, but then also to be recognised as a distinct legal profession in competition with solicitors. Moving to SRA regulation will only diminish the distinct nature of the CILEX profession, whilst undermining the clarity of both solicitor and Legal Executive titles in the public perception.

### **Standards for regulated firms**

**Q14)** Do you agree that regulation by the SRA provides opportunity to establish a consistency of approach and therefore an increased confidence amongst consumers, that firms whether solicitor-led or CILEX Lawyer-led, who deliver the same services are required to operate to the same high standards?

**Q15)** Do you agree that SRA regulation of CILEX and ACCA probate entities alongside solicitor-led firms, will deliver enhanced consumer protection through consistent levels of PII, Compensation Fund scope and transparency obligations?

**Q16)** Do you consider there to be any risk or detrimental effect arising from the proposed transfer of CILEX and ACCA probate firms to the SRA?

The proposals in this section primarily affect the regulatory objectives of promoting competition in the provision of services and encouraging an independent, strong, diverse, and effective legal profession.

### Increased regulatory burden

76. The same points regarding upward regulatory alignment apply here to firms (as they do to individuals above). Clarity of information is again essential to enable any consumer confidence.
77. In addition, it seems likely that additional regulatory requirements will represent not only an increased regulatory burden in terms of time and resources, but also potentially operational costs to firms.
78. There are only 11 CILEX firms that do not currently have a solicitor in a senior position and so cannot convert to SRA regulated entities, which suggests that this is not a popular business model. For these firms, closer alignment to SRA standards with additional regulatory requirements will not convey any

reputational or other benefits of having solicitors in key positions, for example when seeking professional indemnity insurance cover.

79. Contrary to removing barriers or creating opportunities for growth and innovation, it seems likely that models for regulated firms will be standardised and homogenised, if not pushed out of business entirely by additional regulatory or financial burdens. Indeed, CILEX acknowledges later in the consultation that there is no substantive pipeline of members wanting to set up firms, which correlates with SRA data showing a declining trend of authorised firms. This begs the question of where the impetus for change is coming from.

#### Professional indemnity insurance (PII)

80. CILEX suggests in the consultation that many of the issues that are currently faced by Legal Executives will be resolved through moving to SRA regulation, without giving details of those issues or how they will be solved. In fact, the issues identified (PII, lender panels, banks, and approved provider lists) are not within the control of CILEX or the SRA and are far more complex than is presented within the consultation paper. CILEX is not being honest with its members about these matters and is instead presenting a move to the SRA as leading to easier access and new opportunities.
81. For example, CILEX firms have been experiencing significant difficulties in procuring PII cover, because there are only two underwriters willing to work with them. This results in a highly uncompetitive market. There are not enough CILEX-regulated entities for underwriters to provide bespoke terms, so they use the SRA policy wording. (The only difference is that there is a fraud exception in CILEX policies that does not exist in SRA policies.) Therefore, from the perspective of underwriters, CILEX policies represent a risk broadly equivalent to SRA policies.
82. It is true that theoretically SRA-regulation would open the insurance market for CILEX firms because they would go from being able to access two underwriters to potentially being able to access more than 20. However, in reality, the wider market would probably have concerns about those CILEX firms operating without solicitors as principals. For those firms, the limited choice of underwriters is likely to continue unless and until other participating insurers are convinced that they represent an acceptable risk. In the meantime, those firms may see a rise in costs resulting from the higher regulatory requirements of SRA regulation.
83. It should be noted that those firms who would see an immediate positive benefit (7 in total) already have solicitors in principal positions and will become SRA regulated firms if this proposal goes ahead. However, the option for them to be regulated by the SRA is already available under the current regulatory arrangements. They have made the deliberate choice to instead be regulated by CRL.

#### Association of Chartered Certified Accountant (ACCA) probate entities

84. A transfer of the regulation of ACCA probate entities to the SRA under a separate regulatory system could result in additional regulatory cost and resource requirements for those entities. It is not clear how this would be

managed by the SRA, or how much regulatory cost would be passed on to affected firms.

### **Access to justice, competition and consumer choice**

**Q17)** Do you agree that regulation by the SRA provides opportunity to better empower consumers to make informed choices as to which regulated provider (individual lawyer or firm) can best meet their need?

**Q18)** Are there any barriers to increased competition, quality and innovation in legal services that arise from regulation by the SRA?

The proposals in this section primarily affect regulatory objectives of improving access to justice, protecting, and promoting the interests of consumers and promoting competition in the provision of services.

85. The notion that simply changing regulators will somehow empower consumers is not supported by any evidence. It is the Law Society's view that it is instead likely to cause confusion for consumers. We are concerned about the lack of consideration given to the necessity for clear information not only about Legal Executives and their client offer, but about solicitors and the differences between the two distinct professions.
86. We also firmly believe that CILEX are better placed to promote the distinct identity of CILEX members, including authorised Legal Executives, as a unique category of legal professionals. CILEX is equipped to explain and to report on how it regulates a discreet profession since it already performs that function. CILEX has also put forward proposals for increased activities to promote that profession.

#### Proposed register

87. The proposed register, which CILEX believes will allow consumers to compare and search for solicitors and authorised Legal Executives, does not on its own provide or ensure informed consumer choice in a competitive market.
88. CILEX and the SRA have only considered in the proposals how to present information relating to Legal Executives, such as publishing which specific areas Legal Executives are authorised to practice in. However, it would also need to be clearly explained that solicitors are authorised to practice in all areas, otherwise there would be no clarity for consumers.
89. This proposed approach also assumes that consumers would know their legal issue or issues well enough to judge which type of practitioner would be qualified to adequately meet their legal needs in respect of all the relevant issues. A legal issue may at face value involve only one area, but in practice may involve two or more and there is a risk that consumers are left without adequate legal advice.
90. Authorised Legal Executives are limited to practising in a single area of law, with statutory consumer protections also limited to that reserved area. Any tools that provide for adequate comparison would need to clearly differentiate between narrow areas of authorised practice and more comprehensive expertise, and the relative difference in consumer protection. As consumers will not be comparing like with like, they will need information upon which to make

an informed choice. This is a consumer protection risk which the proposal does not recognise or address in its analysis of consumer interest.

91. If the necessary information is presented accurately and appropriately, as outlined above, it will serve to amplify the differences between Legal Executives and solicitors rather than conflate the two professions as CILEX seems to intend.
92. Separate registers should be held and published for separate professions. Any move towards a combined register, which is stated as a future goal in consultation, would undermine the SRA's commitment to ensuring separation of the professions. It would also significantly increase the risk of consumer confusion.

#### Status of Legal Executives

93. CILEX states that the status of authorised Legal Executives should be clarified. The Law Society does not consider it to be a matter of clarity. It is a matter of fact: the qualification of Legal Executives is narrower in scope than the qualification of solicitors, who are required to demonstrate a wider breadth of knowledge, skills and experience underpinning their practice.
94. The SRA's proposed statement, confirming that authorised Legal Executives have the same authorised status as solicitors in areas where they have practising rights, and that this flows from their training, assessment, and competence (and not simply from being regulated by the SRA) does not recognise the important distinction between the professions. It is also misleading to consumers who do not have knowledge of the education, training, and qualification requirements for each profession.
95. The consultation expressed an assumption that changes made behind the scenes to regulatory arrangements will increase or improve consumer trust or perceptions. This places a great deal of weight on consumers being well informed, which in regulatory terms is misplaced. For example, the assertion that the alignment of continuing competence standards will support consumer confidence assumes that consumers have knowledge of previous continuing competence requirements and how any changes to continuing competence would take effect. That is extremely unlikely.

#### Additional firms potentially leading to greater accessibility of legal services.

96. As stated above, the consultation rather confusingly says that growth in providers and increased competition will lead to greater affordability and accessibility of legal services but also that there is no pipeline of CILEX members wanting to set up firms. The SRA have also seen a decline in firms seeking authorisation.
97. Given this lack of enthusiasm, it is unclear how moving the regulatory functions of CILEX to the SRA will change the number of CILEX entities or increase legal services. Approximately three quarters of CILEX members work in solicitor firms, so there is not a large pool of individuals who might be in the market for setting up their own entity.

98. The consultation presents no evidence to support the assertion that the proposals, even if they were likely to bring about change, would drive down cost or make legal services more accessible.
99. CILEX also states that the SRA's bigger budget will enable greater innovation. The SRA business plan quoted in the consultation is about technology and does not provide evidence to support the assumption that the proposed regulatory move will lead to more services being offered and increased accessibility. There is also no evidence that innovation has led to greater affordability or accessibility of legal services. Nor is it clear how CILEX believes that the notion of an increased regulatory budget would operate, given the SRA's commitment to maintaining regulatory separation between the professions and how they are managed and funded.
100. The Law Society also notes the LSB's position that greater innovation will only come through the lowering of regulatory barriers, thus enabling completely new entrants. This is not something that can be addressed or achieved by a larger regulatory budget.

**Equality of treatment and opportunity (of legal professionals regardless of route)**

**Q19)** Do you agree that regulation by the SRA will support the equal treatment and recognition of legal professionals regardless of route to qualification and provide equality of opportunity for individual practitioners and entities?

**Q20)** Do you agree that through the SRA's publication of the Register of Authorised Persons for both solicitors and CILEX Lawyers, there is opportunity to explain the equivalence and distinction of these two professions, therefore assisting consumers to better understand and compare the choice of lawyer able to service their legal need?

The proposals in this section primarily affect the regulatory objective of encouraging an independent, strong, diverse, and effective legal profession.

101. In the consultation CILEX discusses how SRA regulation would mean that the SRA would be able to ensure that firms treat CILEX members equally as part of their EDI requirements. Whilst we would of course support the principle that employees must be treated well, it is unclear how EDI is relevant to CILEX's proposal, particularly when applied to its members, who are a broad spectrum of persons. It is also the case that, as mentioned above, most CILEX members work in SRA regulated firms already and come under the SRA's regulatory oversight and requirements for solicitor firms. Moving the regulatory functions of CILEX to the SRA would not change this in any material way.
102. CILEX seems to suggest that being regulated by the SRA would mean the SRA could make firms change their culture to be more accessible, diverse, and inclusive, which it believes would benefit CILEX members. In May 2023, the SRA set out in wellbeing at work rules specific obligations in the Codes of Conduct for both solicitor firms and individual solicitors to treat colleagues fairly and with respect, and not to engage in bullying, harassment, or unfair discrimination. These requirements apply to all persons working at SRA regulated firms, including CILEX members.
103. However, this does not interfere with the right of firms to structure their staffing arrangements in a way that best suits their business. This often means



requiring a certain number of individuals in different types of roles, at different levels and in teams composed of different legal professionals. CILEX members may fulfil some of these roles, as do solicitors and other legal professionals or those on various training routes into different professions, alongside paralegals and other roles.

104. The consultation discusses restraints on CILEX careers as compared to solicitors. On the one hand, it notes that authorised Legal Executives are qualified to the same level as solicitors and that differences are a matter of scope of practice, not level of competence or ability to practise independently without supervision. On the other hand, it then suggests that workplace culture constrains equality of opportunity and limits progression of those from non-traditional backgrounds, and diverse cultures and communities.
105. As discussed above, these issues are not specific or unique to (in this case) authorised Legal Executives. They should be addressed under any regulatory arrangement where they occur. They will not be automatically overcome just by way of a switch to a different regulator.
106. CILEX fails to acknowledge in any of this discussion that a relevant factor may be the narrower role that CILEX members are able to perform, due to the nature of their pathway to qualification and scope of authorisation. This may place a constraint on the opportunities available to Legal Executives

Proposed registers

107. This addressed above, in response to questions 12, 17 and 18.

### **Impact assessment**

**Q21)** Do you consider there to be any adverse impact of our proposals on:

Consumers Yes/No

Vulnerable groups Yes/No

Legal professionals Yes/No

Providers of legal services Yes/No

If yes, please explain:

The proposals in this section primarily risk negative consequences in relation to the regulatory objectives of protecting and promoting the interests of consumers and encouraging an independent, strong, diverse, and effective legal profession.

108. CILEX has not presented any impact assessment with its proposals to inform responses to this question. This is unacceptable, given the magnitude of the proposals being consulted on. It represents extremely poor practice for any consultation of this nature. It also shows a lack of regard and consideration from CILEX for the impacts that these proposals may have on those affected. A full impact assessment should be completed before any changes are proposed, let alone made.
109. The Law Society's view is that the LSB should require CILEX to conduct a full equality impact assessment prior to any consideration of the proposals for decision-making purposes by CILEX's Board, and certainly before the LSB is asked to make a decision on any application for a change to regulatory arrangements.

110. The SRA has completed both a regulatory impact assessment and an equality impact assessment as part of its consultation, on which the Law Society has separately commented. However, our view is that the SRA's equality impact assessment lacks any actual analysis of the impacts on the respective professions and the persons affected and does not represent a sufficient effort.
111. As set out in this response, the Law Society has identified that the CILEX proposals have the potential for significant adverse impacts on all the groups affected. The Society does not believe that CILEX (or the SRA) has demonstrated that the proposed transfer of CILEX's regulatory functions to the SRA will not be prejudicial to the regulatory objectives, including the objective of encouraging an independent, strong, diverse, and effective legal profession.