

A Case for Change – To Review Model of Delegated Regulation

Background

The Legal Services Act 2007 (LSA) brought in a new framework for independent legal regulation, separating out representation and regulation and setting out clear objectives for regulation.

With the passing of the LSA and the granting of practice rights in 2012, the standing of specialist lawyers qualified through CILEX as Chartered Legal Executives with Practice Rights is recognised as an equally valid route to authorisation to that of solicitors and, to the degree of permitted rights of audience, barristers.

Further changes approved by the oversight regulator, the Legal Services Board, in 2021 have enabled a reform of the CILEX professional qualification to create an integrated route to authorised person status with specialist practice rights. It has also provided, for the first time, formal professional status for paralegals and advanced paralegals qualified against a recognised education standard.

These advances cement the CILEX route into the legal profession as offering an education pathway for those, particularly from socially and economically disadvantaged backgrounds or for whom the traditional experience of a law degree followed by some form of traineeship has not been an option. As a result, England and Wales now has a distinct, high-quality route into the CILEX profession, delivering specialist lawyers of equal quality to those who pursue the generalist route and specialise after qualification. This complements the new routes made possible by the Solicitors Qualifying Examination, reflecting a shared commitment to opening up access to the legal professions for people from every community, supporting a truly diverse sector.

Of the 21,000 CILEX members, the vast majority are employed by firms regulated by the SRA. c.8,000 are Chartered Legal Executives (CLEs) and several hundred are full CILEX Lawyers (CLEs with additional rights). Over 1000 are partners in firms and 17 are members of the Judiciary.

After the establishment of independent regulation in 2007, like other specialist lawyers, CILEX members have been regulated through a separate regulator to that which regulates the conduct of the firms in which the majority work. In their case: CILEX Regulation Limited (CRL), formerly ILEX Professional Standards.

The experience over the last 15 years, thrown into sharp relief by the Covid-19 pandemic, is that the business model that supported CRL as a smaller regulator – an assumption that the profession would grow and that they could attract entities to regulate – is now in question.

The Issue

For regulation to work consistently with the Better Regulation Principles and in the consumer interest it must:

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

The Legal Services Act created a complex legal sector regulatory landscape. The number and variety of models involved in the regulation of legal services can be confusing for consumers and professionals alike, and has led to some potential difficulties that may not serve the consumer interest. For many CILEX members this stems from a lack of recognition of the role and regulated status of CILEX practitioners, so that they are, for example, not able to act authorised persons when engaging with some institutions.

More broadly, it is well understood that there are very real barriers to accessing legal services so the confusion and lack of understanding about the part CILEX practitioners play is not in the consumer or public interest.

A regulator with limited resources (and which relies on growth which is not happening) is constrained in its ability to invest the necessary time and activity in the significant amount of market engagement that is required to establish confidence and assurance in the minds of consumers of legal services – both individuals and corporate.

With low/no growth in regulated practitioners and with an entity regulation model that is facing challenges around the funding of client protection arrangements, there is now a serious question of sustainability over the short to medium term and for the continuing viability of CILEX Regulation as an independent regulator. The cost of regulation through CRL is already higher for individuals than that, for example, paid by solicitors (currently £367 vs £306) and increasing CRL resources significantly is likely to mean cost increases for consumers with the associated difficulties for access to justice.

In short, if we are not to lose the value of a diverse legal profession who represent the community they serve, then we need to consider whether it is now timely to move to review our delegation.