



CILEx Response – Independent Review of Legal Services Regulation

**A Response by
The Chartered Institute of Legal Executives (CILEx)**

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1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association for Chartered Legal Executive lawyers (CLEs), other legal practitioners and paralegals, representing approximately 20,000 members, including 8,000 fully qualified CLEs. As the Approved Regulator under the Legal Services Act 2007, CILEx has delegated these regulatory powers to the independent regulator CILEx Regulation Ltd.
- 1.2. CILEx members are regulated for all activities and therefore, as distinct from other regulatory models within the legal profession, effectively enter with ‘voluntary’ regulation, i.e.: for all their activities and not just for activities for which they require authorisation. This public interest principle was formally enshrined when CILEx acquired its Royal Charter in 2012. CLEs require authorisation on qualification as they are permitted at that stage to undertake one reserved legal activity, to be a Commissioner for Oaths. They are then able to acquire the right to undertake other reserved legal activities by attaining additional Practice Rights and do so by undertaking additional assessment in line with regulatory standards. Consequently, CILEx members occupy a slightly different role within the regulatory framework, distinct from the starting point whereby “...*an individual or business wishing to offer only non-reserved legal activities, and not otherwise subject to legal services regulation, cannot gain admission to legal sector regulation.*”¹
- 1.3. In light of this unique positioning, CILEx welcomes this opportunity to comment on the interim report of the *Independent Review of Legal Services Regulation*, published by the Centre for Ethics and Law, University College London. The report comes at a particularly uncertain time for the future landscape of the legal services market in wake of wider political changes such as Brexit and changing market trends with an increased focus on the role of technology providers for the delivery of legal services. At this early stage, CILEx simply offers its observations on key topics under discussion and eagerly anticipates the final report and recommendations due for publication next year.

¹ UCL Centre for Ethics and Law, Professor Stephen Mayson, *Independent Review of Legal Services Regulation: LSR Interim Report*, p.11.

2. Regulatory Independence

2.1. CILEx calls for an acceleration in the drive for regulatory independence between the regulatory and representative arms of the legal professions. The current dichotomy between these two components, separated and yet not independent, has embedded unnecessary complexity within the regulatory framework. As a result, the current arrangement blurs the distinction between these two key functions, making it harder to navigate and less visible to the consumer.

2.1.1. As the interim report rightly finds, these two functions have their own parts to play in upholding standards within the profession; with the regulator establishing minimum regulatory requirements, and the representative body promoting higher quality of service and standards. As a chartered institute, CILEx's duty to act in the public interest takes this role a step further, placing it in a unique position to complement the role of the regulator and act as "*guardians of consumers' interest*"² through the promotion of best practice and the development of legal qualifications and training for chartered professionals.

2.2. A main tension in representative bodies' role of Approved Regulator is that statute, as drafted, means it is one with responsibility but without control, and this separation tests the relationship between the regulatory and representative functions. In acknowledgment of these inherent barriers and as part of CILEx's continuing internal governance reforms, CILEx and CILEx Regulation have taken the view that enhancing independence between itself and CILEx Regulation should be a priority. Both Boards are therefore committed to making this a reality in practice (when made possible by legislative change) by being ready in having achieved the greatest degree of regulatory independence possible under the current legislation. Both organisations are therefore committed to exceeding mere compliance with the Legal Services Board's new Internal Governance Rules.

2.3. Statutory restrictions, including those which prevent full regulatory independence, highlight the inflexibility contained within the Legal Services Act 2007 (LSA 2007); hindering the ability for the regulatory framework to adapt and develop in line with a more diverse legal services market. As identified by the interim report, the current framework of the LSA 2007 imposes an '*all or nothing*'³ approach towards regulation, in which providers either face the full suite of regulatory obligations or

² Ibid - See footnote 1, p.17.

³ Ibid - See footnote 1, p.12.

are excluded from the regulatory framework altogether. This not only risks compounding the prevalent misconception of consumers that all legal services are regulated but restricts consumer choice and hampers healthy competition within the sector.

- 2.4. The impact of these barriers is already apparent. For example, CILEx members often provide services associated with the grant of probate or grant of letters of administration. However, unless authorised with the relevant practice rights to undertake probate activities, they are unable to complete the final step of preparing/signing the necessary paperwork to the detriment of consumer choice and affordable service provision. The justification for requiring such high levels of regulation for such a narrow part of this process is yet to be understood. With the LSA 2007 now over a decade old, a review of the role of reserved legal activities as the entry point to regulation is needed, and CILEx provisionally favours suggestions for a more *“risk-based, segmented and differentiated”* model to regulation.

3. Legal Tech

- 3.1. With growing interest and investment for legal technologies in the UK legal services market, both by private stakeholders and public institutions, CILEx foresees a need for greater flexibility within the regulatory framework to allow for alternative methods of delivery which can be included within the fold of regulation. At present, the narrow gateway of entry risks that this will not be the case as digital solution providers, largely driven by third-party players in the technology sector, shall involve input from non-lawyers who do not currently fall within the remit of legal sector regulation. With the algorithm itself unregulated, and non-regulated persons entrusted with writing it, a disconnect arises even where it has been written with the advice and guidance of a regulated legal professionals in the development of the legal tech solution; as inevitably, it is who writes the code and how it is written, that ultimately drives the service outcome. As a result, the regulatory framework will need to shift to enable these digital solutions, which are created, coded and maintained by non-legal middlemen, and may even eliminate the role of legal practitioners within certain legal processes, to be effectively regulated, or at the very least moderated, so as to ensure minimum standards within legal service delivery.
- 3.2. At present, there are procedural difficulties in attempting to update the regulatory framework whilst it remains embedded in statute. Nonetheless, in recognition of the changing landscape of legal services and increasing prevalence of technology in

the delivery of legal service, CILEx, as part of its review of qualifications, is developing specific content delivering competence for CILEx lawyers in the deployment of legal tech, consistent with CILEx Regulation's proposed education standards, and to provide impetus for the development of legal tech in the public interest.⁴

4. Activity based regulation

- 4.1. CILEx welcomes the proposed exploration of activity-based regulation predicated on a risk-based approach and widening the current gateway for entry into legal regulation. CILEx members (as discussed briefly in paragraph 1.2 above), are already a useful 'half-way house' towards achieving this goal: being effectively subject to voluntary regulation for all activities; authorised on qualification as a CLE; and then having the flexibility to demonstrate specific competence and acquire authorisation to practise any other reserved legal activities (i.e. regulation per activity). As such, the regulatory framework for CILEx members ensures minimum standards of compliance for all activities, providing greater assurances to the consumer, whilst maintaining proportionate compliance costs and eliminating barriers of entry for alternative providers of legal services to legal sector regulation.
- 4.2. CILEx recognises the benefits of this approach in comparison with the gateway of title for others in the profession, such as solicitors and barristers, whereby once through that gateway, they can undertake all reserved legal activities without assessment for their competence for each one. In comparison, activity-based regulation may provide a useful challenge to "ever-increasing prices"⁵ within the legal sector, by ensuring a better risk-to-cost ratio and helping diversify the market so that consumers are offered greater choice.
- 4.3. However, greater clarification is needed on the idea of extending after-the-event regulation to all providers of legal services, and if so, in particular how this might be funded. The interim report makes references to such a suggestion in proposing that access to the Legal Ombudsman should become available for consumers of all legal services, including where the activity in question is a low-risk activity; however, the practical implications of this are yet to be explored, and it is not clear how

⁴ CILEx has also established a Tech and Digital Specialist Reference Group earlier this year to create a platform for discourse on legal tech and gather evidence as to how it may transform the legal services market.

⁵ Ibid - See footnote 1, p.5.

unregulated providers would contribute to the costs of their regulation under this model. The same ambiguity is present with regards to the suggestion of a centralised register for legal service providers and the requirements for eligibility onto that register.⁶

- 4.4. CILEx looks forward to building on these observations once the anticipated final report supplies even further clarity in its recommendations for the future regulatory framework of legal services. We recognise the need for greater assurances delivered through greater regulatory independence, greater flexibility ultimately through a revision of the LSA 2007 and that these will be essential in the wake of a more dynamic, digitally-driven legal services supply chain, as will the need for greater consumer protections through a risk-based model of regulation per activity. CILEx shares the vision that such changes can improve and enhance legal services regulation by enabling it to keep pace with the fast changing landscape of the legal sector.

For further details

Should you
require any
further
information,
please contact;

Simon Garrod
Director of Policy & Governance
simon.garrod@cilex.org.uk
01234 845725

⁶ See footnote 1, p.39.