

CILEX Board Meeting 29 November 2023

Presentation summarising the outcomes of the CILEX Consultation:
Enhancing Consumer Trust & Confidence

Material to be considered

- Consultation outcomes, split into:
 - 581 Individual responses – data & comments
 - Engagement data from roadshows & webinars capturing a further 630 perspectives
 - 39 Employer responses
 - Organisational responses from Consumer Panel, ACCA, Bar Council, Law Society, CRL, Bloomsbury Institute and Prof Stephen Mayson
 - Consumer and access to justice perspectives.
- The consultation outcomes paper provides analysis of the responses against each of the sections:
 - Section 1 - Voting rights, representation of Prof Board & eligibility for presidential office.
 - Section 2 - Chartered titles (Lawyer & Paralegal)
 - Section 3 – Delegated regulatory arrangements
- Updated impact assessments based on the consultation responses received – particularly analysis of the comments; and
- Proposals for measuring impact.

Part 1 - Outcomes

82% of respondents supporting the extension of voting rights and enabling of representation from all member grades to sit on the Professional Board.

90% of respondents supported the widening of the eligible pool for appointment as President to include Chartered Paralegals as well as Chartered Lawyers.

Comments from those who did not support:

- Will devalue the status of CILEX Fellows, aggravating the misconception that CLEs are unqualified or part-qualified and therefore the same as paralegals.
- Some respondents suggested that students and those in non-Fellow member grades lack sufficient experience and insight to meaningfully cast a vote or contribute to the institutes governance effectively.

Mitigation:

- robust selection and appointment process and through the provision of induction training for those appointed to roles within the CILEX governance structure.
- understanding and perception of CILEX professions and their level of qualification and authorisation is addressed within the regulatory proposals.

Part 2 – Outcomes

- **70% of respondents concluded that the new membership structure provides a simpler, clearer framework to Chartered status**
- **71% believe that the establishment of a career ladder and framework for paralegals will enhance public trust and confidence.**

Comments:

- frequent lack of understanding that CILEX Paralegals are unqualified and unregulated - failure to recognise all current CILEX Paralegals are qualified to at least Level 3 and have validated professional experience. They are currently and will continue to be regulated under any revised model of delegation.
 - Amongst those who did not support ‘Chartered Paralegal’ the main objective was a fear it would ‘water down’ the status of existing CLEs, especially those without practice rights.
- **69% majority of respondents agreed that the use of Chartered Lawyer titles will assist legal professionals, employers and the public to better understand the status and specialist nature of CILEX lawyers.**

Comments:

- confusion around practice rights, eligibility to use CILEX Lawyer under the current structure
 - incorrect assumption that either Chartered Legal Executive is being removed or that CILEX is creating a two tier profession.
 - Bar Council and Professor Stephen Mayson, both highlight the importance and benefit of retaining ‘CILEX’ within the title to allow identification and distinction of CILEX qualified Lawyers from other types of lawyers and to maintain their professional identity.
- Both the Bar Council and Consumer Panel highlight the importance of keeping titles as simple as possible and the need for effective communications and messaging to ensure understanding of the range of titles (and specialisms) held. These views are mirrored in some of the responses received from individual professionals.
- In light of this consultation feedback, it is proposed that the title be revised to “CILEX Chartered Lawyer”, rather than ‘Chartered Lawyer’ with the addition of the relevant specialism in which practice rights are held.

Protected Titles

Reserved area in which practice rights held	Title
Conveyancing	CILEX Chartered Property Lawyer
Probate	CILEX Chartered Probate Lawyer
Immigration	CILEX Chartered Immigration Lawyer
Family Litigation & Advocacy	CILEX Chartered Litigator & Advocate (Family)
Civil Litigation & Advocacy	CILEX Chartered Litigator & Advocate (Civil)
Criminal Litigation & Advocacy	CILEX Chartered Litigator & Advocate (Crime)

Non-reserved titles – Chartered CILEX Lawyer (Employment)

In-house	Commercial	Contract	Public
Court of Protection	Employment	Data Protection	Intellectual Property
Personal Injury	Banking & Finance	Trust	Regulatory
Mediation	Local Gov't/Planning	Mental Health	Medical
Coronial	Aviation	Construction	Shipping
Environmental			

Given the number of specialisms identified and the consultation feedback received as to the increased risk of confusion and complexity the greater the range, it is proposed to limit the use of specialisms within the structure of the title itself to the six reserved areas specified in the Legal Services Act and in which practice rights can be obtained with those working in non reserved areas using the generic title 'CILEX Chartered Lawyer'.

Conclusion

Subject to the following recommended changes:

1. amendment to the chartered titles proposed to include 'CILEX' thereby retaining the link to CILEX qualification and distinct professional identity as "CILEX Chartered Lawyer";
2. limiting the reserved titles to those six reserved specialisms aligned to practice rights with those working in unreserved areas using the title of 'CILEX Chartered Lawyer' with their specialism reference in brackets, e.g. CILEX Chartered Lawyer (Employment) etc

and testing the revised titles with consumers, the Regulatory Compliance Board were satisfied the consultation outcomes have validated the proposed changes to:

- widen participation in the institutes governance, specifically:
 - the extension of voting rights & eligibility for appointment to the Professional Board to all grades of CILEX member
 - that the CILEX President be appointed from an eligible pool comprising of Chartered members.
- amend the CILEX membership structure and the professional titles associated with each grade. Specifically to:
 - establish distinct progression pathways for CILEX Lawyers, CILEX Paralegals and CILEX Legal Technologists;
 - award Chartered Paralegal status to those who are assessed as having at least 5 years experience and who meet the competency and conduct standards;
 - publish a Register of CILEX paralegals allowing both providers and consumers of legal services to identify those paralegals who are qualified and regulated;
 - revise to Chartered titles awarded to CILEX Lawyers on qualification to include practice specialism.

Part 3 - Outcomes

- In all but 4 questions the response rate was more than 2/3rds (66%) supportive, including:
 - Increasing independence (68%)
 - Opportunity to establish & maintain consumer confidence re standards (67%)
 - Consistency of approach re standards, processes & consumer protection (67% for individual & 68% for firms)
 - Enhanced consumer protection (67%) between CILEX & SRA firms
 - No future barriers to increased competition (77%)
- Encouragingly 70% of respondents agreed SRA publication of the Register of both CILEX Lawyers and Solicitors, provides 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.
- 78% of respondents did not identify any adverse impact of the proposals on consumers, rising to 80% in respect of vulnerable consumers.

- **64% agreed 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?**
 - majority of those who did not agree, including in the organisational responses received, articulated a view that individual consumers do not choose which provider to use and that this will not change regardless of the information available to them.
 - this view is at odds with consumer research in the evidence base which identifies availability of information and ability to compare providers/services as key factors in assisting consumer choice.
- **63% agreed 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?**
 - data shows a spike in negative responses to this question directly following comments made by the SRA CEO being misreported in the legal press. The comments which were made during a conference Q&A session and related to the cost of regulating CILEX members and its impact on Solicitors were misrepresented as suggesting CILEX Lawyers are 'insignificant'.
 - Other comments provided suggest that an (incorrect) perception exists that the Law Society has influence / control over the SRA (or in some cases is misunderstood to be the SRA) and therefore the prejudice against CILEX professionals expressed in the Law Society public comments are attributed to the SRA and generating a worry that this would prevent equal treatment & recognition.
 - Feedback from roadshows & webinars suggested positive public commitment from the SRA to change its name to something more neutral or to be more explicit in how its views differ from those held by the Law Society would be effective in reassuring those who responded with scepticism to this question.

- ***60% consider there to be no risk or detrimental effect arising from the proposed transfer of CILEX and ACCA Probate firms to the SRA?***

- Of the 40% who did consider there to be a risk, the majority were CILEX-led entities. Conversely, ACCA entities (as confirmed in the formal response received from ACCA) are supportive of the proposed change. These represent $\frac{3}{4}$ of the firms CRL currently regulates.
- Responses from CILEX-entity owners suggest a lack of understanding of the SRA proposals, in particular its plan to change its rules to recognise CILEX-led entities equally but distinct from its existing categories of Solicitors-led and ABS structures.
- A second contributing factor to negative responses was the press coverage related to Axiom. Timeline of when negative responses were received (both online and during in person events & webinars) correlates to the announcement that the SRA may need to raise fees or collect an exceptional fee from its regulated community to finance the multi-million pound compensation claims anticipated. When answering this question and the question below re adverse impact on legal professionals, respondents expressed a fear that CILEX members would be required to contribute to the cost.
- This concern is mitigated by the published SRA commitment that there will be no cross-subsidy between professional groups. Furthermore, if agreed, the transfer from CRL to SRA would not take place before Jan 2024 which would be after any additional charges would have been apportioned.

60% consider there to be no adverse impact of the proposals on legal professionals.

- In addition to the financial concern identified above respondents, in identifying adverse impact, referenced loss of distinct professional identity and influence, fearing CILEX professionals will be ‘swallowed up’ and ‘be forgotten’ amongst the much larger solicitor cohort.
- Mitigation could include further assurance obtained from the SRA as to how its governance would operate and its mechanisms for recognising and preserving the distinct identities of each profession and to protect against any profession being ‘favourably treated’ or ‘having influence’.

Other feedback

Regulated Community

- Confusion over regulatory model – lack of understanding (& in some cases objection to) independence model & inability of CILEX to both influence how they are regulated (for example practice rights assessments) or vote on by whom.
- Disappointment and embarrassment regarding the public disagreement;
- Confusion regarding the requirement to obtain practice rights to work independently in reserved areas (and clarity what the reserved activities are).
- MOST IMPORTANT = Preservation of distinct identity, route & equal treatment.

Stakeholders

- Evidence base - publication, consumer research & impact assessments
- Cost - dependent on SRA consultation outcome & access to CRL data
- Clarity on Paralegals - lack of detail misunderstood as no or self-regulation of paralegals
- Measuring Impact - set of proposed measures

Consumer Perspective

- Consumer bodies invited to provide feedback:
 - Legal Services Consumer Panel
 - CMA
 - Citizens Advice
 - Support through the court
 - Age UK
 - Access to Justice Foundation
 - Lawcare
 - Resolution
- Within original evidence base reviewed by Chris Kenny – we hold clear evidence of lack of consumer awareness and understanding of CLEs with less than 1% having heard of the profession, even less having knowingly used one.
- Some assume CLE to be a junior admin type role (akin to Executive Assistant) other thing it means senior manager – none understood it to mean qualified regulated lawyer.
- Membership survey data evidenced that only 23% of CLEs use the title due to lack of understanding amongst both.
- Neither Consumers or employers currently have ability to compare & therefore make an informed choice between using a CLE or Solicitor. Legal choices presents this information separately & does not enable comparison.
- A number of organisational responses received inc those from from Consumer Panel, CRL and Law Society question whether the new titles will improve simplicity & understanding & those individuals & some businesses responding queried whether consumer need to choose between type of lawyer – further research has therefore been commissioned to re-test consumer perspectives on both title and whether the SRA model will improve their ability to access the information needed to support understanding & informed choice
- A IPSOS Mori sample of 2000 members of public plus consumer roundtables will therefore strengthen the evidence base to underpin our proposals and allow us to respond to the concerns raised by those stakeholders.

Impact Assessments

When asked whether any adverse impact on:

- consumers – 78% said no
- vulnerable consumers – 80% said no
 - Where yes identified risks were:
 - Confusion re titles
 - Consumer Choice irrelevant
 - No specific comments related to vulnerable groups – all consumer ‘voice’ bodies consulted confirmed no adverse impact
- legal professionals - 60% said no
 - Where yes identified risks were:
 - ‘Death of profession’
 - A fear that the identity of CILEX professionals will be lost or diluted;
 - The prejudice and derogatory views held by some solicitors (or the Law Society) and a misconception that these views are held by or will influence the SRA;
 - An existing perception of the SRA based on comments online / in the Gazette;
 - A lack of understanding of the requirements of independent regulation and governance and that no regulatory body (CRL or the SRA) is permitted to champion the interests of a particular profession;
 - A worry/ incorrect assumption that the SRA will not recognise or support the CILEX route into law;
 - Uncertainty regarding cost.
- legal providers – 76% said no
 - Where yes identified risks were:
 - Loss of ‘CILEX entity status’ based on an incorrect understanding of the changes proposed

Contrary, & more positive views from employer responses with % suggesting no adverse impact.

Public Interest Outcomes: proposed approach to measuring impact

Consumer Choice

1. An increase in awareness and understanding of the role and status of CILEX Lawyers, alongside Solicitors in delivering legal services

- % of consumers who have heard of a CILEX Lawyer (*IPSOS Mori poll*)
- % of consumers who have used a CILEX Lawyer (*IPSOS Mori poll*)
- % of legal services providers who understand CILEX Lawyers to be specialist practitioners authorised to the same standard and status as a solicitor in a given area of law (*CILEX employer survey*).

2. Improved ability to search for and compare lawyers authorised to deliver legal services based on scope of practising certificate

- Increase in views of 'CILEX Lawyer' records via searches of Register of Authorised Persons Directory (*web analytics data*)
- % of providers of legal services who recognise CILEX Lawyers equally to Solicitors within their delivery models & fee structures (*CILEX workplace culture survey*)
- % of consumers who understand that CILEX Lawyers are specialist practitioners able to deliver legal services as an alternative choice to a solicitor (*IPSOS Mori poll*)

Public Interest Outcomes: proposed approach to measuring impact

Consumer Confidence & Perception

- 3. Increase in consumer confidence arising from assurance that their legal service will be delivered to the same standard and with the same level of protection regardless of whether provided by a Solicitor or CILEX Lawyer**
 - % of consumers who are confident to choose a CILEX Lawyer to deliver their legal service (*IPSOS Mori poll*)
 - % of legal service transactions involving CILEX Lawyers covered by additional scope of Compensation Fund or PII cover that would have been excluded or limited under CRL scheme (*SRA claim data*)

- 4. The regulatory landscape is simpler to understand & easier for consumers to navigate when things go wrong**
 - % of consumers who can correctly identify how to make a complaint in respect of legal services delivered by a CILEX Lawyer (*IPSOS Mori poll*)
 - Average time taken to investigate complaints involving a CILEX Lawyer working in an SRA firm (*SRA FTP data*)
 - % of complaints related to CILEX lawyers received by regulator directly without need for third party intervention e.g. LEO (*SRA Data*)

- 5. The legal profession better reflects the diversity and social /economic profile of the society it serves.**
 - % of lawyers who are state school educated / minority ethnic / disabled / female/ (*SRA annual diversity report*)
 - % of lawyers who qualify through non-traditional routes into the law (*CILEX/SRA diversity data*)

Public Interest Outcomes: proposed approach to measuring impact

Competition in delivery of legal services

6. Increased competition in the market through emergence of new providers & alternative business models

- No & % proportion of authorised firms who are 'CILEX led' or registered Alternative Business Structures (*SRA Trend data on number & nature of firms authorised to deliver legal services*)
- No of CILEX-led firms accepted onto lender panels, approved supplier lists & able to access same choice of insurance products as Solicitor-led firms (*CILEX data collection*)
- Level of un-met legal need (*Legal Services Consumer Panel tracker survey data*)

Sustainable Regulation

7. Regulation is sustainable and has the scale, reach and resources to meet current and future requirements to fulfil the regulatory objectives.

- No & value of applications made to CILEX for additional funding under S30 of Legal Services Act 2007 (*CILEX annual report*)
- 'Met' grades achieved in each LSB Regulatory Performance Standard including new economic crime objective (*LSB Performance Review Report*)

Conclusion

Based on the above analysis of the consultation outcomes and subject to the following actions arising from consideration of the feedback and responses received:

1. Provision of additional detail from the SRA providing further clarification and assurance in respect of the following issues raised during the consultation:
 - a. More detail as to how it will regulate CILEX Paralegals and other non-authorized person categories of CILEX members;
 - b. Independence from the Law Society, despite being a wholly owned subsidiary and confirmation as to how the governance arrangements will provide an equal voice for the CILEX and Solicitor professions and will prevent undue influence from those who hold prejudicial and discriminatory attitudes;
 - c. Assurance regarding the cost of regulation and the principle of no cross subsidy, in light of the Axiom case;
 - d. More detail as to how it will fulfil its commitment to preserve the distinct identities and routes into the law of Solicitors and CILEX Lawyers;
 - e. Consideration of how SRA branding can be adapted to better reflect its jurisdiction regulating a range of legal professionals;

and on the assurance received from the Executive team that should the proposal be approved, the current Regulatory Reserve is more than adequate to cover the cost of change, the Regulatory Compliance Board concluded that the public interest case for change has been validated and there are no risks or adverse impacts arising from the Impact Assessments that would be cause for the changes not to be pursued.