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23 January 2024

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This paper will be published

SRA regulation of Chartered Institute of Legal Executives (CILEX) members

<p>Reason for paper</p>	<p>This paper:</p> <ul style="list-style-type: none"> • apprises the Board of the outcome of our recent consultation on proposed arrangements for the regulation of CILEX members • updates the Board on the key issues to be resolved arising from our consultation and the requests that CILEX have made following its own consultation • seeks the Board’s agreement to move forward with further work to explore taking on the regulation of CILEX professionals • updates the Board as to our next steps.
<p>Decisions(s)</p>	<p>The Board is asked to agree:</p> <ol style="list-style-type: none"> a) in principle that we could take on the regulation of non-authorised individuals from the outset of any new regulatory arrangements. This is a change to the position we took in our consultation last year, and would require further consultation. (paragraph 27) b) that we work with CILEX to resolve outstanding issues highlighted by them, including whether we take on the regulation of non-authorised individuals (paragraphs 33 and 34).
<p>Previous Board and committee consideration</p>	<p>In July 2022, the Chair of CILEX wrote to the Chair of our Board inviting us to engage in formal discussions on the potential to redelegate the regulation of CILEX members from CILEX Regulation (CRL) to us.</p> <p>Our Board considered CILEX’s invitation and agreed that SRA regulation of authorised CILEX members and entities had the potential to support the regulatory objectives set out in the Legal Services Act 2007 and to offer benefits to consumers of legal services and the wider public.</p> <p>The Board was provided with updates on our work to develop a regulatory model and related consultation. This included a workshop session in October 2022, updates at Board</p>

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	<p>meetings in February and July 2023, a CEO update in September and an oral update to the Board in December 2023.</p> <p>The papers for, and the notes of, those meetings can be found on Directors Desk.</p>
<p>Next steps</p>	<p>Subject to Board approval, we will:</p> <ul style="list-style-type: none"> • Begin discussions with CILEX on the areas on which they have requested further engagement, including the possibility of regulating non-authorised CILEX professionals – this is likely to lead to a further consultation. • Develop our final rules, using the consultation responses to understand where amendments or additional clarity may be needed. • Develop our engagement and communication plans. • Return to the Board for approval of the final rules.

If you have any questions about this paper please contact: Aileen Armstrong, Executive Director, Strategy, Innovation and External Affairs, aileen.armstrong@sra.org.uk, 07999 165496

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Summary

- 1 This paper sets out recommendations for next steps following our consultation on our proposed regulatory arrangements that would apply to authorised members of the Chartered Institute of Legal Executives (CILEX) if CILEX re-delegated regulation to us and we accepted that delegation. It invites the Board to agree that:
 - in principle that we could take on the regulation of ***non-authorised*** individuals from the outset of any new regulatory arrangements; and
 - we work with CILEX to explore whether we can resolve the outstanding issues.

Background

- 2 CILEX wrote to the Chair of our Board in July 2022, inviting us to engage in formal discussions on the potential to redelegate the regulation of CILEX members and entities from CILEX Regulation (CRL) to us. The Board agreed that taking on the regulation of authorised CILEX lawyers and firms had the potential to deliver tangible benefits to consumers of legal services and the wider public by:
 - Simplifying the complex regulatory landscape and making it easier for consumers to navigate.
 - Bringing more consistent levels of protection and information for consumers.
- 3 In July 2023 we [proposed a regulatory model](#) for the SRA regulation of authorised CILEX members and entities to the Board of CILEX and they agreed in principle to take forward this proposal, subject to consultation. We consulted on our proposed regulatory arrangements from 31 August to 22 November 2023. In parallel CILEX ran a consultation on its proposal to redelegate the regulation of CILEX members from CRL to us.
- 4 Our consultation included 35 questions under thematic headings relating to regulatory standards, rules and operations. This included a separate Code of Conduct for individual authorised CILEX lawyers and education and authorisation rules setting out how authorised CILEX lawyers will be authorised to provide reserved legal services and immigration services on the basis of their specific expertise. Our consultation did not seek views on CILEX's proposal to re-delegate regulatory oversight to us.

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- 5 We received responses from 49 stakeholders. These included seven representative bodies (the Law Society, the Association of Chartered Certified Accountants (ACCA) and five local law societies), three other organisations (including the Solicitors Disciplinary Tribunal and the Legal Services Consumer Panel), three law firms, 31 individual solicitors, three CILEX members, and two other individuals.
- 6 In December, to support the consultation, we also conducted research with 1,000 consumers via an online survey.
- 7 On 7 December 2023, CILEX formally invited us to confirm that the SRA remains willing to take on the regulation of CILEX professionals and to hold discussions on specific areas arising from its own consultation. Those areas are:
 - The SRA's willingness (and approach) to providing regulation of non-authorised CILEX members.
 - Clarifying the relationship between the SRA and the Law Society and how that will operate alongside the SRA's relationship with CILEX following re-delegation.
 - Compensation Fund arrangements for CILEX Lawyers / entities.
 - How the SRA will manage its branding to reflect its wider remit.
- 8 On 11 January 2024, CILEX published a press release summarising the results of its recent consultation, including reporting that 1,200 individuals had responded and there had been strong support for their proposals. The press release stated that questions relating to proposals to redelegate the regulation of CILEX members to the Solicitors Regulation Authority (SRA) achieved at least a 60% positive response.
- 9 In addition to its consultation response, the Law Society sent us a further letter on 15 January 2024. This is attached at annex 2. In the letter, the CEO of the Law Society raised concerns about our customer survey and reiterated a range of concerns, and requested that the Board was made aware of the points raised.

Rationale for change

- 10 In the consultation, we set out the case for change, including a high level analysis of the impact on the regulatory objectives set out in the Legal Services Act 2007 (the Act). We did not invite feedback on this as it is for CILEX to set out and consult on its assessment of the overall implications of this change for CILEX members, and to reach a view on whether it brings the benefits and meets the requirements set out in its Case for Change. Our consultation instead focused on our proposed regulatory arrangements in the event of re-delegation. However, most of the consultation responses focused on the rationale for change and the benefits we had set out. We therefore think it

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important to consider the points that were raised as part of our decision as to whether to move forward.

- 11 We set out that our proposals would support our statutory regulatory objectives, including through reducing the complexity of the legal sector regulatory landscape in England and Wales for the public and consumers, innovators and regulators. We also highlighted that public protection could be enhanced by increasing the consistency in the regulation of two key groups of legal services providers and replacing as far as possible the current limited compensation arrangements for clients of CILEX entities with the SRA’s Compensation Fund arrangements.
- 12 We argued that bringing together the regulation of solicitors and authorised CILEX members would also create efficiencies and reduce duplication, noting that 75% of CILEX lawyers work in SRA regulated firms. This is as well as providing new opportunities to address the regulation of new and emerging forms of legal services in an integrated way across both professions.

Consultation responses

- 13 Most respondents, including most law firms and individual solicitors, the Law Society (TLS), local law societies and the Criminal Law Solicitors’ Association (CLSA) expressed opposition to the overall idea of the SRA regulating CILEX members and entities.
- 14 A key concern raised by TLS, and others from the solicitor’s profession, was that the SRA becoming the regulator of CILEX professionals would cause confusion for the public and suggest a false equivalence between two distinct groups – making it more difficult for consumers to understand their options and damaging the solicitor brand. TLS raised specific concerns about our branding and about the use of our clickable logo as potentially causing confusion.
- 15 TLS and others from the solicitor’s profession, disagreed that SRA regulation of CILEX members and entities had the potential to support the regulatory objectives. TLS stated that there would be no impact on access to justice given that the majority of CILEX members work in solicitor run firms. It also stated that the proposal would cause consumer confusion and create a risk of reducing differentiation and decreasing choice, contrary to the objectives of protecting and promoting the interests of consumers and of promoting competition in the provision of legal services.
- 16 TLS raised concerns about the potential for future changes that may bring a greater alignment of standards. It stated “We are concerned that there is the potential for the SRA to assimilate the professions to the point where the regulatory objective of promoting a strong and diverse legal profession is undermined by a false homogenisation of two of the largest professions”.

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- 17 TLS also raised concerns that retaining CILEX's freedom to develop and deliver educational awards could conflict with SRA arrangements for solicitors, where the professional body has no formal role.
- 18 TLS felt that there was the potential for fragmentation, rather than consolidation, of regulation if the SRA were only to regulate authorised CILEX lawyers and not non-authorised members.
- 19 TLS, and others from the solicitor's profession, also raised concerns about how the SRA would make sure that the cost of regulating CILEX professionals was not subsidised by solicitors. They voiced concern over access to a pooled SRA Compensation Fund for clients of SRA reauthorised CILEX entities. CILEX's letter of 7 December 2023 queried whether there will be an impact on the costs of CILEX members from our intervention into Axiom Ince. In addition, TLS raised concerns that there could be an increase in regulatory burdens for CILEX members (for example minimum professional indemnity insurance (PII) cover) and this could deter CILEX members from starting their own firm. It also raised concerns of a financial risk to solicitors if CILEX members were unable to bear an additional cost contribution.
- 20 ACCA welcomed the proposals, as far as they applied to authorised ACCA practitioners and CILEX-ACCA probate entities and stated that they believed these proposals would support our statutory objectives. Several solicitors and CILEX members supported many of the proposals, including greater alignment of standards and protections, and felt they would increase public confidence in CILEX members. The Solicitors Disciplinary Tribunal called for greater alignment than set out in our proposals, including a single code of conduct. A solicitor also argued that the changes would bring a greater awareness of the CILEX scheme, helping those from non-traditional backgrounds to enter the legal profession.
- 21 The Legal Services Consumer Panel felt that there was a lack of evidence of consumer engagement or research and so it was unable to provide a considered response.

Consumer research

- 22 Our online survey of 1,000 consumers in December 2024 suggested that consumers had limited knowledge of the complexities of legal services regulation and might benefit from the consolidation of legal services regulators. When respondents were shown the eight legal regulators and asked which they were aware of, a third were aware of the SRA and 4% had heard of CILEX. Awareness of the SRA was higher among respondents that had recently used a legal services provider. Following an explanation of the proposals to transfer regulation of CILEX members to the SRA, respondents' level of support for the proposals was gauged:

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- 80% support having similar standards for legal professionals regardless of whether they are a solicitor or a CILEX lawyer.
- 90% support having similar protections for clients in the same area of law.
- 92% support making it clear to consumers the services which can be provided by solicitors and also by CILEX lawyers and which cannot.
- 90% agree that having one regulator providing information on the two types of lawyers is likely to make it easier to compare the legal services providers they regulate.
- 86% think having one regulator covering both legal professionals is better than separate ones.

23 Respondents were invited to comment on the proposals for regulation of legal services. Two thirds of the comments supported the proposals. They welcomed reducing the number of regulators, feeling this would provide consistency, and reduce confusion by making it easier to compare legal services providers. Ten percent of views were negative. Among these respondents, some felt the proposals may lead to a loss of specialisation and the possible ‘watering down’ of legal services. Others raised concerns of an increased regulatory burden if insufficient resources are available and some opposed consolidation.

Our view

- 24 A key theme running through the responses was about the risk of consumer confusion. We recognise the small risk of consumer confusion highlighted by a number of respondents to our consultation. However, given the current duplication and fragmentation of the regulatory landscape, we consider our proposals could reduce confusion for consumers and support access to justice. We do not agree that our proposals will create an impression of equivalence, save that the public can be reassured that they are regulated to similarly high professional standards. This is supported by our consumer research. Through our communications plans, outlined within the consultation, we will help consumers to understand where solicitors and authorised CILEX lawyers have equivalent regulated status in delivering reserved legal services, and where they do not. For example, our website and wider media will use clear branding and explanatory information around the separate professions. The regulation of authorised CILEX lawyers will also be a discrete category in our suite of corporate reporting.
- 25 We have set out our commitment to maintain clear and separate identities for solicitors and authorised CILEX lawyers. This is supported through separate education routes and a separate Code of Conduct for individual CILEX members. We said that this included recognising the role CILEX holds in developing and delivering educational awards which lead to authorisation as a Chartered Legal Executive and the obtaining of specialist practice rights. We said that we would work with CILEX over time to consider any case for amending these arrangements.

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- 26 We recognise that the education routes for solicitors and authorised CILEX lawyers are different. However, both schemes are approved by the Legal Services Board and so we do not feel there is a conflict. As we made clear in our consultation proposals, we are initially adopting the arrangements that are already in place and will review any case for change in due course.
- 27 We proposed to initially regulate only those individual CILEX members who require authorisation to provide specified legal services without supervision. We also stated that following CILEX’s consultation, which included proposals to establish a more formal status for CILEX Paralegals through the Professional Paralegal Register, we would take forward a programme of work in consultation with CILEX to ensure appropriate regulatory arrangements are in place for non-authorised members of CILEX. Following the request from CILEX in its 7 December 2023 letter, we propose to bring forward discussions about whether and how we might regulate non-authorised providers. Amongst our considerations will be whether we want to adopt the current arrangements operated by CRL or whether we want the regulation of non-authorised CILEX members to be on a more formal footing. If the latter, we need to consider what regulatory arrangements would apply and what would be the mechanism through which we could impose and enforce such arrangements. We will also need to consider the costs involved. Formal consultation on the associated arrangements would likely be needed.

Recommendation: the Board is asked to agree:

- a) in principle that we could take on the regulation of non-authorised individuals. This is a change to the position we took in our consultation last year, and would require further consultation.**
- 28 Our initial risk assessment has not identified additional regulatory burdens and costs for reauthorised CILEX entities and solicitors. Compensation Fund levies are set at a level that we think is necessary to deal with forthcoming claims. This means that future contributions to the Compensation Fund for all eligible firms will reflect the current risk we have identified. It is therefore not the case that costs to CILEX members will be higher because of our intervention into Axiom Ince or that entities previously regulated by CILEX will benefit from a substantial pool of money built up by solicitors. There is no evidence that CILEX entities or CILEX lawyers who practise as self-employed practitioners outside of authorised firms represent a higher level of risk to the Compensation Fund than current SRA authorised firms and freelancers. The clients of all new SRA regulated firms benefit from the protection of the SRA Compensation Fund, irrespective of the limited contribution the firm has made to the Compensation Fund at the time of authorisation. The position for entities previously regulated by CILEX will be no different.
- 29 CILEX entities currently obtain insurance through open market arrangements similar to our own and insurers price each firm’s premium based on their assessment of risk irrespective of who authorises the firm. Research conducted jointly by the SRA and Legal Services Board indicates that the size of firm and

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type of services offered have the biggest impact on the level of PII premium, rather than the level of cover required.

- 30 We have also made clear that the costs of regulating authorised CILEX lawyers would be fully recovered from the practising certificate fees of CILEX members, and that we are confident that there would be no cross subsidy between solicitors and CILEX lawyers. We will monitor this following implementation to make sure that this is delivered.
- 31 We therefore do not consider that any of the above concerns raised by respondents alters our view that SRA regulation of authorised CILEX professionals is likely to bring benefits to consumers of legal services and the wider public. In addition, initial consideration of the responses that were provided has not led us to identify the need to make significant changes to our proposals.
- 32 In this context, we feel that we should therefore confirm to CILEX that we remain willing in principle to take on the regulation of CILEX members and entities, subject to resolving outstanding issues, the most significant one being about the regulation of non-authorised CILEX members.

Developing our final rules and implementation

- 33 We will continue to develop our final rules, using the consultation responses to understand where minor amendments or additional clarity may be needed. This will include consideration of the regulation of non-authorised CILEX members. We will also engage with stakeholders where needed. We will then return to the Board for formal approval of our proposed arrangements and rules.
- 34 We plan to take a proactive approach to understand the practical impacts of our arrangements and this may lead to further refinements. This will include targeted engagement activity, particularly with CILEX members, creating opportunities for those newly regulated by us to engage with us and help us to understand how the new regulatory arrangements are working in practise. This is a similar approach to the one we took to implementation of the Standards and Regulations which has worked well.

Recommendation: the Board is asked to agree:

- b) that we work with CILEX to resolve outstanding issues highlighted by them, including whether we take on the regulation of non-authorised individuals.**

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Next steps

35 Subject to Board approval we will:

- Begin discussions with CILEX on the areas on which it has requested further engagement – this is likely to lead to a further consultation on the regulation of non-authorised CILEX members.
- Develop our final rules, using the consultation responses to understand where minor amendments or additional clarity may be needed.
- Develop our engagement and communication plans.
- Return to the Board for approval of the final rules.

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Supporting information

Links to the Corporate Strategy and/or Business Plan and impact on strategic and mid-tier risks

- 36 There are strong links between our proposals (as set out in our consultation on regulating authorised CILEX members) and our overall mission focusing on improving public and consumer understanding of, and confidence in, legal services. Our proposals set out that we will maintain the distinct identities of authorised CILEX lawyers and solicitors. We will, however, also (1) seek to ensure that high standards are delivered across both professions, (2) take a proactive, evidence-based approach, (3) promote innovation and technology, and (4) be an authoritative and inclusive organisation, across all our regulatory activities. In the event of accepting re-delegation, we would review our current deliverables (within our strategy and business plan) and ensure these were inclusive of authorised CILEX lawyers and entities, where appropriate. We would update our risk registers accordingly.

How the issues support the regulatory objectives and best regulatory practice

- 37 The current regulatory landscape for the legal sector in England and Wales is complex and fragmented, with eight regulators of varying sizes, powers and responsibilities. Our view is that there is overlap and duplication, leading to confusion and increased costs for consumers. The regulatory objectives emphasise improving access to justice, promoting competition, and protecting consumers. While legislative simplification is unlikely, we are proposing consolidating regulation, subject to CILEX's decisions, by taking on the oversight of authorised CILEX members. We do not see any issues in doing so especially when the majority of CILEX members work in SRA authorised firms and there are no specific examples or evidence to suggest that our proposals would not work in practice. Our proposals aim to simplify the system, enhance public confidence, improve consumer protection, and address emerging challenges more effectively. The benefits include streamlining the regulatory landscape, enforcing consistent standards for solicitors and CILEX lawyers, reducing duplication, and providing clear consumer protection arrangements.
- 38 A more detailed assessment is provided as a regulatory impact assessment within the consultation document. The feedback we received from the consultation has not led us to substantially change this assessment. In the event of the acceptance of re-delegation, we will develop more detailed plan and engage stakeholders in these, as appropriate.
- 39 As set out above, our regulatory impact assessment identified potential positive impacts for access to justice, protecting and promoting public interest and the interest of consumers. We also informed various stakeholders, including the Legal Services Consumer Panel, of our consultation. Some respondents to the consultation suggested that there might be negative impacts for consumers in relation to these objectives, specifically that the changes would lead to greater

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public confusion over the differences between solicitors and authorised CILEX lawyers. The Legal Services Consumer Panel (LSCP) felt that it could not give a detailed response to our consultation without better understanding of potential impacts on consumers. Research which we undertook in December 2023 found that consumers understanding could potentially benefit from the proposals. We shared this with the LSCP, and a summary of the research findings is included in the main body of this Board report.

What engagement approach has been used to inform the work and what further communication and engagement is needed?

- 40 We completed a consultation on potential changes to our regulatory arrangements to include authorised members of CILEX, to which we received 49 responses. We also carried out extensive engagement as part of our consultation. This included direct conversations with a wide range of stakeholders: representative bodies for the profession such as The Law Society and Sole Practitioners Group, and organisations that could be directly impacted by change such as the Solicitors Disciplinary Tribunal, Association of Chartered Accountants and Crown Prosecution Service. We also spoke to insurers and other regulators, including CILEX Regulation, the Financial Conduct Authority and the Legal Services Board. We spoke at a range of events about our proposals, including with around 900 delegates at our annual Compliance Officer's Conference, with a hundred solicitors from smaller firms at a dedicated event for sole practitioners, and an interactive webinar with more than 300 attendees, including solicitors and CILEX members. We also made sure we understood the perspective of consumers. We had direct conversations with the Legal Services Consumer Panel, and also joined their October Board meeting to discuss the proposals, alongside CILEX. Given the potential impacts on consumers, we also carried out a survey with a broadly representative sample of a thousand members of the public to explore their understanding of the regulatory framework and whether they would see benefits in potential changes. We are still reviewing the findings before publishing, but in summary, they show that the vast majority of the public are confused by the current regulatory arrangements, and likewise the vast majority support the potential benefits of having authorised members of CILEX and solicitors regulated by the same body

What equality and diversity considerations relate to this issue?

- 41 An equality impact assessment was published alongside the consultation.

How the work will be evaluated

- 42 If CILEX proceeds with the redelegation of the regulation of authorised CILEX lawyers from CRL to the SRA, we will put in place formal evaluations of the consequential changes to our regulatory arrangements. These will gather and analyse evidence of the actual impact of our arrangements on affected stakeholders. We will publish the outcome of our evaluations, and report on

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any changes we have made to our work as a result of the findings. If analysis suggests that changes to our rules or other regulatory arrangements are needed to support the regulatory objectives, we will bring forward proposals for change.

Annexes

Annex 1 **Draft summary of consultation responses (a final version will be published with our consultation response)**

Annex 2 **Letter from the Law Society of 15 January 2024**

NB: an updated version of annex 1 to this paper will be published as part of our response to the consultation on our proposed regulatory arrangements that would apply to authorised members of CILEX