



Arrangements for SRA regulation of CILEX members

Consultation response

20 March 2024

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Executive summary

This document outlines our response to the feedback to our consultation on arrangements for SRA regulation of authorised CILEX members.

We are considering the idea of taking on the regulation of CILEX members because we see potential benefits for consumers and the wider public. For instance, it could make the regulatory landscape easier to navigate and provide more consistent levels of protection and information for the public.

Our consultation ran in parallel to a separate one by CILEX, which included proposals to redelegate the regulation of its members to the SRA. Ours set out a proposed regulatory model and arrangements that would provide the basis for us to regulate authorised CILEX members if a redelegate decision was made.

Our proposals included:

- a separate Code of Conduct for individual authorised CILEX members – to deliver high professional standards and to maintain a clear separate identity for authorised CILEX members as regulated legal professionals
- education and authorisation rules setting out how authorised CILEX members would be authorised to provide reserved legal services and immigration services on the basis of their specific expertise
- an approach to investigation and enforcement where there is a report that an authorised CILEX member has breached our regulatory requirements
- summaries of the consequential and ancillary changes we proposed to make to our other rules and regulations
- an approach to regulating the authorised CILEX-ACCA Probate practitioners and entities and the Crown Prosecution Service (CPS) Associate Prosecutors currently regulated by CILEX Regulation (CRL)
- draft regulatory and equality impacts assessments.

Having carefully considered each consultation response we remain open to the idea of regulating CILEX members. We consider that the regulatory model that we consulted on would provide an appropriate framework, subject to undertaking further work to address some specific areas raised by stakeholders. This will include:

- working with CILEX to resolve outstanding issues highlighted by it, including whether we take on the regulation of non-authorised CILEX members
- continuing to develop our regulatory arrangements using the consultation responses to understand where amendments or additional clarity could be needed
- continuing to engage with consumer bodies as we develop our arrangements to make sure that they would deliver the consumer benefits of regulatory simplification and avoid any potential consumer confusion

Sensitivity: General

- developing our approach to branding in a way that supports the separate identities of solicitors and CILEX members, while retaining a focus on enhancing consumers understanding and choice of legal services.
- updating our impact assessments.

We recognise that the above actions require careful consideration. As part of this there would be a need to design and deliver consumer testing of proposed changes to our consumer facing communications, to ensure they support positive consumer outcomes.

This document explains the rationale for our decisions and our next steps.

Where respondents have given their permission, we have published their full response.

Background

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 CRL to us.

Our Board agreed that taking on the regulation of authorised CILEX members 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.

In July 2023, we [proposed a regulatory model](#) for the SRA regulation of authorised CILEX members and entities to the Board of CILEX. It was 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.

Our consultation included 35 questions under thematic headings relating to regulatory standards, rules and operations. We also published regulatory and equality impact assessments.

In December 2023, following its consultation, CILEX wrote to us and formally asked us to confirm that we were willing to take on the regulation of CILEX members. And to hold discussions on specific areas of its own consultation.

The most significant area raised, in terms of requiring us to undertake further work and consultation, was around our willingness (and approach) to providing regulation of non-authorised CILEX members.

Who we heard from

We received 49 responses to the consultation from:

- Eight representative bodies, including The Law Society (TLS), the Association of Chartered Certified Accountants (ACCA), the Criminal Law Solicitors' Association (CLSA) and five local law societies
- The Legal Services Consumer Panel (LSCP)
- The Solicitors Disciplinary Tribunal (SDT)
- The Bloomsbury Institute
- Less than 10 law firms

- Thirty-one individual solicitors
- Less than 10 CILEX members
- One other individual.

We also carried out extensive engagement as part of our consultation. This included direct conversations with a wide range of stakeholders. We engaged with representative bodies for the legal profession such as The Law Society (TLS) and the Sole Practitioners Group. And organisations that could be directly impacted by change such as the Solicitors Disciplinary Tribunal (SDT), Association of Chartered Accountants (ACCA) and Crown Prosecution Service (CPS).

We also spoke to insurers and other regulators, including CRL, the Financial Conduct Authority and the Legal Services Board (LSB).

We spoke at a range of events about our proposals, including:

- around 900 delegates at our annual Compliance Officers Conference,
- a hundred solicitors from smaller firms at a dedicated event for sole practitioners
- an interactive webinar with more than 300 views, 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 joined its October Board meeting to discuss the proposals, alongside CILEX. A survey with a broadly representative sample of a thousand members of the public, which we carried out at the end of 2023, provided us with some additional evidence of consumer perspectives on legal services regulation.

We are grateful to everyone who responded to the consultation and took the time to engage with us about our proposals. We have carefully considered all of the feedback we received in developing our final positions.

Our position

In this section we outline each consultation proposal. We set out a high-level summary of the responses we received, our next steps and our rationale.

Redelegation of regulatory oversight of authorised CILEX members to us

The focus of our consultation was our proposed regulatory arrangements in the event of redelegation. For context, we set out the case for change, explaining why we were open to the idea of taking on the regulation of CILEX members in the interest of consumers and the wider public. We included analysis of the impact on the regulatory objectives set out in the Legal Services Act 2007 (the Act). It should be noted that it was for CILEX to decide whether to redelegate.

Our responses to feedback on the proposed changes are limited to how and why we would be able to make such changes in a way that furthers the regulatory objectives.

Although outside the scope of our consultation, many respondents did voice opinions about CILEX's proposal to redelegate regulatory oversight of authorised CILEX members to us. Most respondents, including most law firms and individual solicitors, TLS, local law societies and the CLSA expressed opposition to the overall idea of the SRA regulating CILEX members and entities.

TLS and others from the solicitors' profession disagreed that SRA regulation of authorised CILEX members and entities had the potential to support the regulatory objectives. A key concern was that the SRA becoming the regulator of CILEX professionals would suggest a false equivalence between two distinct groups, reducing differentiation and choice. Many respondents felt this would make it more difficult for consumers to understand their options and damage the solicitor brand. TLS felt this was contrary to the objectives of protecting and promoting the interests of consumers and of promoting competition in the provision of legal services.

TLS also raised concerns about the potential for a greater alignment of standards in the future, suggesting this could undermine the regulatory objective of promoting a strong and diverse legal profession.

TLS and others from the solicitors' profession also raised concerns about how the SRA would make sure that the cost of regulating authorised CILEX members was not subsidised by solicitors.

In addition to the above, there were some positive responses to our proposals. ACCA, for example, welcomed the proposals, as far as they applied to authorised ACCA practitioners and CILEX-ACCA probate entities and stated that it 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 SDT 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.

Consumer research

In December 2023, we conducted research with 1,000 consumers via an online survey. This 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 these was gauged:

- 80% support having similar standards for legal professionals regardless of whether they are a solicitor or an authorised CILEX member.
- 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 authorised CILEX members and which cannot.
- 90% agree that having one regulator providing information on the two types of authorised member 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.

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 per cent 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.

Outcome of CILEX consultation

In December 2023, CILEX invited us to confirm that we remained willing to take on the regulation of CILEX members. And to hold discussions on specific areas arising from its own consultation, including:

- 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 redelegation
- compensation fund arrangements for authorised CILEX members / entities
- how the SRA will manage its branding to reflect its wider remit.

In January 2024, CILEX published the results of its recent consultation, including reporting that 1,200 individuals had responded and there had been strong support for its proposals. Its press release stated that questions relating to proposals to redelegate the regulation of CILEX members to the SRA achieved at least a 60% positive response.

Our position and next steps

We remain open to the idea of regulating CILEX members because of the potential benefits to consumers and the wider public.

As we set out in our consultation, the regulatory landscape for legal services is complex and fragmented. There is also overlap and duplication between regulators, including between the SRA and CRL. Around 75% of authorised CILEX members and other CILEX members currently work in SRA-regulated firms and are effectively regulated by both CRL and us.

This duplication and overlapping regulation create confusion, making it hard for people to understand and navigate the system. It also adds costs through duplicated governance, staff and services. This increases the cost of legal services for consumers.

In view of this, we consider that, overall, our proposals have the potential to reduce confusion for consumers and provide more consistent levels of protection and information for the public.

Our arrangements would maintain clear and separate identities for solicitors and authorised CILEX members. This would be supported through the maintenance of distinct entry routes to authorisation and separate codes of conduct for individuals.

Our communications (discussed in more detail below), would help consumers to understand where solicitors and authorised CILEX members have equivalent practice rights in delivering reserved legal services, and where they do not. This would

reinforce the separate identities of the solicitors' and CILEX members. Consumers can therefore be reassured that they are regulated to similarly high standards without creating an impression of equivalence.

Under our proposals, the cost of regulating authorised CILEX members would be fully recovered from the practising certificate fees of the CILEX members and entities we authorise. There would be no cross subsidy between the regulation of the two professions.

We understand that there are concerns over how the costs of regulating solicitors and authorised CILEX members will be kept separate. But we are confident that we can ring fence costs and ensure appropriate charging. We already deliver this through other aspects of our work, for example the SRA compensation fund recharges for interventions.

Before any final decisions are made, we will do further work. This will include:

- working with CILEX to resolve outstanding issues highlighted by them, including whether we take on the regulation of non-authorised CILEX members
- continuing to develop our regulatory arrangements using the consultation responses to understand where amendments or additional clarity may be needed
- continuing to engage with consumer bodies as we develop our arrangements to make sure that they would deliver the consumer benefits of regulatory simplification and avoid any potential consumer confusion
- developing our approach to branding in a way that supports the separate identities of solicitors and CILEX members, while retaining a focus on enhancing consumers understanding and choice of legal services
- updating our impact assessments.

Proposals to take on the regulation of non-authorised CILEX members will be subject to further public consultation.

We recognise that the above actions require careful consideration. As part of this, we would need to design and deliver consumer testing of the proposed changes to our communications to make sure they support positive consumer outcomes.

Our detailed proposals

We received a limited number of detailed responses to our specific consultation proposals. The remainder of this document summarises the responses we received under themes set out within our consultation and then our position.

We have not repeated in this section any views on CILEX's proposal to redelegate the regulation of CILEX members. Instead, the summaries provided are of comments made in relation to the specific proposals in our consultation.

A number of respondents made similar arguments in response to different questions. These were centred around opposition to our proposals based on causing confusion to consumers and/or increasing costs to solicitors.

Where respondents expressed opposition in a general way, we have not repeated their concerns and our response under each theme. Where, however, respondents raised a specific issue, for example questions of costs relating to the compensation fund, we have included their points and our response under the relevant theme.

A small number of concerns were also raised about current regulatory arrangements. This is beyond the scope of this consultation and so we have not responded to these comments.

Governance

What did we propose?

We set out that if there is a decision to delegate regulation, then the SRA Board would exercise the regulatory functions relating to authorised CILEX members and CILEX entities. This is currently exercised by the CRL Board as specified within CILEX's Scheme of Delegation.

We said that we would put in place appropriate engagement and oversight mechanisms to make sure that our Board and our organisation are aware of the issues and risks facing authorised CILEX members. And to enable open communication between us, CILEX and the CILEX regulated community.

We also stated that our annual reporting and accounting arrangements would separately deal with the regulation of solicitors and authorised CILEX members.

Respondents' views

TLS and other law societies raised concerns about how the SRA would incorporate the interests of CILEX members. They also stated that if there were disagreements on regulatory matters between CILEX and TLS as the professional bodies, the SRA would have to 'adjudicate'. TLS suggested that this might impact the independence of the solicitors' profession.

It also asked how the separation between CILEX and its regulator would be maintained if information gathered by CILEX during checks conducted as part of its membership function was shared with the SRA.

Our response

We regulate independently in the public interest and regulatory decisions are taken with consideration of the regulatory objectives of the Act. We do not act in the interests of those that we regulate or their representatives. In setting our regulatory strategy, we consult with those that we regulate and wider stakeholders as appropriate.

Having considered the relevant views and other evidence, we independently decide our approach, which may or may not align to the preferred position of a particular representative body or other stakeholder. We explain the reasons for our decisions. This position would not be altered if we were to take on the regulation of authorised CILEX members.

Before taking on the regulation of CILEX members, following any decision to do so, we would put into place appropriate formal protocols between CILEX and the SRA. This would set out the roles and responsibilities of both parties under the LSB's Internal Governance Rules. This would include how information is exchanged and a Dispute Resolution Protocol.

The transfer of information from the professional body to ourselves on matters relevant to regulatory decisions would not hamper our independence. In this context, CILEX currently exchanges information with CRL and we are not aware that this has raised any issues around the separation between the regulator and the representative body.

Also, this approach is consistent with features of our existing regulatory model for solicitors, namely the reliance on self-reporting and declaration by the profession in relation to regulatory matters.

Regulatory standards

Individuals

What did we propose?

We proposed to regulate (as 'authorised CILEX members') only those individual CILEX members who require authorisation to provide specified legal services without supervision. We would take forward a programme of work in consultation with CILEX to make sure appropriate regulatory arrangements are in place for non-authorised members of CILEX at a later date.

The Core Principles in the existing CILEX Code of Conduct are already closely aligned with the SRA Principles for solicitors and firms. We proposed to maintain these with minimal drafting amendments.

We are also looking to maintain a separate Code of Conduct for individual authorised CILEX members. We set out that this would be closely aligned to the standards that apply to solicitors, with differences which recognise the different scope and context of their practice.

We published a draft 'SRA Principles and Code of Conduct for authorised CILEX members' alongside the consultation and set out the key similarities or differences with the existing CILEX Code of Conduct. We explained that our Transparency Rules would apply to individual authorised CILEX members providing unreserved legal services to the public outside an authorised firm. And that we would extend our Overseas Rules to any authorised CILEX members who have established to provide legal services outside England and Wales.

Respondents' views

TLS felt that there was the potential for fragmentation, rather than consolidation, of regulation if the SRA was only to regulate authorised CILEX members and not non-authorised members.

TLS and several other respondents stated that it was essential for CILEX to retain its own code of conduct, to support professional identity and public confidence. The SDT, however, suggested that there should be a single code of conduct for all those regulated by the SRA. Several other respondents, including a couple of solicitors and a CILEX member, also supported greater alignment of standards.

TLS welcomed a consistent approach in the application of overseas rules to any authorised CILEX members established to provide legal services outside England and Wales. Several other respondents also supported this position.

However, TLS raised concerns that the aligning of standards for authorised CILEX members and solicitors in the draft code of conduct would reduce consumer perception of the professions' differences. This would then impact on consumer choices. TLS argued this change would create a disincentive for individuals to choose the Chartered Legal Executive route into legal services. A couple of other respondents made similar points.

Our response

Following the request from CILEX, we will bring forward discussions about whether and how we might regulate non-authorised providers. Amongst our considerations will be:

- whether regulating non-authorised providers would be in the best interests of consumers and the wider public
- whether if we were to regulate this group, we should adopt the current arrangements operated by CRL or whether the regulation of non-authorised CILEX members should 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

- what would be the costs involved and how would they be funded.

As part of our consideration, we will publish a formal consultation on our proposed regulatory arrangements for non-authorized members.

Having carefully considered the differing views expressed, we consider that our proposed approach in relation to regulatory standards for individuals would be appropriate for regulating authorized CILEX members.

A separate Code of Conduct for authorized CILEX members would maintain distinct and separate identities for solicitors and authorized CILEX members. This can be clearly communicated to consumers and means incentives to choose either profession would be maintained.

In addition, we believe that market differentiation and consumer choice do not require differing standards of competence and ethics, or that they would they be best served by these. Our work to align standards as closely as possible has the potential to provide consumers and the wider public with reassurance that both professions are regulated to equally high standards.

CILEX entities and CILEX-ACCA Probate entities

What did we propose?

There are currently 19 authorized CILEX entities. We proposed to passport seven of these over as SRA-regulated firms as they are already eligible for authorization as such. For the remaining 12, we proposed to amend our authorization rules so we can authorize them as 'authorized CILEX bodies' enabling them to retain their existing ownership and management arrangements. Entities reauthorized as SRA-regulated firms (of whatever type) would have to comply with our Standards and Regulations in the same way as other SRA firms.

In respect of the around 40 CILEX-ACCA Probate entities, we proposed to retain a separate regime, with their own register and handbook. This is because of the specific and niche context in which these firms operate and the arrangements that apply to them.

Respondents' views

TLS and other law societies suggested that our proposals could lead to additional regulatory burdens and costs for CILEX entities and potentially put off CILEX members from starting their own firms. For example, by increasing the minimum level of professional indemnity insurance required by reauthorized CILEX firms.

A CILEX member and a couple of solicitors supported our proposals for reauthorising CILEX firms. Another solicitor stated that all CILEX entities should be reauthorised as SRA firms.

ACCA supported maintaining the current regulatory requirements for CILEX-ACCA probate entities. TLS, argued that there was no impetus for change. Several respondents also called for reviews of current regulatory arrangements for CILEX-ACCA probate entities.

Our response

Our initial risk assessment has not identified significant additional regulatory burdens and costs for reauthorised CILEX entities and solicitors.

There would be the same minimum terms and conditions and the increase in minimum cover from £2m to £3m should not increase premiums as that is driven by other factors. 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 type of services offered have the biggest impact on the PII premium.

Our compensation fund levies are set at a level that we think is necessary to deal with potential claims. This means that future contributions to the fund for all eligible firms would reflect the current risk we have identified. The details of this are further outlined under 'consumer protection' below.

We recognise that changes to regulatory arrangements for CILEX-ACCA probate entities were only recently put into place and that these entities operate in a specific and niche context. We would therefore retain the current regulatory requirements for these entities.

Education and authorisation of individuals

What did we propose?

Education

We proposed to maintain a clear separate route to becoming an authorised legal professional for CILEX members in accordance with the provisions of the CILEX Charter. And that we would authorise Chartered Legal Executives, CILEX Practitioners, CILEX-ACCA Probate practitioners and CPS Associate Prosecutors as authorised CILEX members.

We confirmed that our processes would reflect the CILEX Charter requirement to be a Fellow of CILEX in order to hold the protected title of Chartered Legal Executive. This is as well as the need for character and suitability checks.

We also proposed to make several changes to the assessment of qualifying experience for an authorised CILEX member. This includes existing CRL rules that:

- state that time spent on a Legal Practice Course (LPC) will be treated as qualifying experience. We would not treat participation in an SQE preparatory course in the same way as these courses are not regulated by us
- require evidence of certain practice management skills as part of the approval process. We would not require this. But we do require all individuals we regulate to maintain their competence, and have the requisite knowledge and skills, for the role they carry out
- include a discretion for a non-authorised person to sign off qualifying experience. We would remove this discretion and consider sign-off by an authorised person, held to standards of integrity by a legal regulator, to be an important safeguard.

Respondents' views

A couple of respondents, including a solicitor and a CILEX member, supported our proposals for change. A CILEX member called for clarity for authorised CILEX members working in unregulated areas, including on higher rights of audience. A solicitor stated that respected qualifications and routes into the legal profession for authorised CILEX members should be maintained. In addition, one respondent called for full equivalency across qualification routes for authorised CILEX members and solicitors.

TLS and other law societies expressed concerns that retaining CILEX's freedom to develop and deliver educational awards may not be consistent with the IGRs and could conflict with SRA arrangements for solicitors.

In addition, TLS called for transparency of our long-term plans for education regulation, including questions over the new Chartered Paralegal qualification proposed in the CILEX consultation. One respondent asked for greater clarity over whether we would continue to recognise all CILEX approved programmes, including in the longer-term.

TLS suggested that the LPC should be removed from CILEX qualification routes and the same work-based qualifying requirements should apply to both authorised CILEX members and solicitors. A couple of respondents responding to the question on qualifying experience also suggested:

- a self-certificate by the practice manager to ensure industry standards
- that there was a need to recognise time taken on both the SQE preparatory and the LPC.

Our response

We have set out our commitment to maintain clear and separate identities for solicitors and authorised CILEX members. This is supported through separate

education routes and a separate Code of Conduct for individual CILEX members. We said that this would include 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.

We recognise that the education routes for solicitors and authorised CILEX members are different. There is no inherent conflict in operating two different schemes. The different arrangements are compatible with the IGRs and have been approved by the Legal Services Board. We are not aware of any evidence of deficiency in the existing arrangements that would present undue risk to consumers in taking this approach. We would however remain committed to work with CILEX, and in consultation with relevant stakeholders, to review and consider any appropriate changes and improvements over time.

Given that the LPC is in the process of being phased out, we do not think that we should make changes to remove it from CILEX qualification routes.

Continuing competence

What did we propose?

We proposed to apply the same approach to oversight of continuing competence as we currently apply to solicitors.

Respondents' views

Several respondents suggested that there should be greater harmonisation of standards between the two professions. A CILEX member also suggested that there should be more alignment of the CILEX and solicitors CPD annual cycles. TLS, and other law societies, stated that authorised CILEX members would lose access to a routine audit of records which supported them to maintain their competence.

Our position and next steps

We consider that our proposal to apply our current approach to how we identify and respond to competence concerns relating to authorised CILEX members to be appropriate. We are developing this approach to make sure that it is effective and proportionate. We consider that there are benefits of consistency and efficiency in adopting this approach. We would evolve our action plan to include authorised CILEX members and reflect their practice. This would include how we share learnings from our continuing competence regime.

CILEX members would also continue to have the support of CILEX when considering how to maintain their competence. We would develop our continuing competence

programme to include authorised CILEX members and how we receive information from CILEX's routine continuing professional development checks.

Registers

What did we propose?

We proposed to take on the ownership and publication of the CILEX Authorised Practitioners Directory from CRL and explore with CILEX the scope to present it to the public alongside the Solicitors Register in a way that supports improved consumer understanding and choice. The register would include details of any regulatory action that we take in relation to authorised CILEX members.

We proposed that CILEX entities reauthorised as SRA firms or authorised CILEX bodies would be listed as such on our [Solicitors Register](#) and we would take on ownership and publication of the separate register of [CILEX-ACCA Probate entities](#) currently published by CRL. We said that we would liaise with the CPS on future arrangements for publishing information about CPS Associate Prosecutors.

Respondents' views

ACCA supported proposals to maintain a separate register for CILEX-ACCA Probate entities. TLS and other law societies repeated concerns over governance arrangements and the importance of avoiding consumer confusion.

Our response

We are conscious of the need to ensure that the various registers for which we would take on ownership and publication were then presented alongside the Solicitors Register in a way that improved customer understanding of the distinct identities of the two professions. We would carefully consider how to present CILEX entities reauthorised as SRA firms and authorised CILEX bodies on the Solicitors Register to make the scope of their authorisation clear to consumers. We would engage consumer representatives in this process.

Investigation and enforcement

What did we propose?

We proposed that we would handle any reports about authorised CILEX members using broadly the same processes as for concerns about solicitors, and other individuals and firms we regulate (triage, assessment, investigation, notice and decision). We said that we would take on [CRL's disciplinary powers](#) to investigate, reprimand, fine, and where necessary control and restrict the practice of authorised

CILEX members. We said we would also adopt our existing powers, to issue advice and warnings, to impose fixed fines or interim controls.

We explained that our enforcement powers would sit alongside our existing powers over non-solicitors working within SRA firms as employees or managers. We are conscious of the need to avoid unnecessary duplication in the use of:

- our existing powers in relation to non-solicitor employees for breach of the SRA Code of Conduct for Firms and
- our new powers in respect of authorised CILEX members.

Therefore, we proposed that where the same standards apply, our primary grounds for action would be in relation to the individual's status as an authorised CILEX member.

We put forward to take the same approach to first instance disciplinary decisions as we do currently for solicitors and SRA firms. However, we recognised that we do not have powers to refer authorised CILEX members or authorised CILEX bodies to the SDT (except when using our current powers in specific circumstances). We proposed to adopt our procedure for holding of a hearing for those individuals and entities that we currently apply to licensed bodies, for which the route to the SDT is also not available.

For reviews, appeals, publication of decisions and recovery of costs, we proposed to adopt the same approach to authorised CILEX members and authorised CILEX bodies as for solicitors and SRA firms. However, that rights of appeal to the SDT would not be available to authorised CILEX members or authorised CILEX bodies. Consequently, we proposed an internal right of appeal to a panel of adjudicators as an interim measure while we work with CILEX to seek a statutory instrument to provide statutory rights of appeal.

Respondents' views

Several respondents agreed with using trained staff, adjudicators and (where appropriate) panels of adjudicators to take investigation and enforcement decisions about individual authorised CILEX members. This would be if certain conditions were met including avoidance of any cross subsidy and ensuring familiarity with CILEX issues.

TLS and other law societies called for us to clarify whether we would hold authorised CILEX members to a different standard of regulation than solicitors. Or whether we would seek to replicate the approach of the SDT within our own processes.

The SDT stated that there should be:

- consistent rights of appeal

- a statutory instrument to ensure consistent consumer protection across all regulated firms
- the legislative opportunity for CILEX members to gain the same external rights of appeal.

Several other respondents felt that there needed to be appropriate processes, including a full hearing, to handle serious matters (such as the removal of practising rights) across all those regulated by the SRA. It was also emphasised that those delivering such processes needed to be familiar with CILEX issues. TLS felt that if the use of hearings was to increase, there would need to be more appropriately trained adjudicators.

Our response

Having carefully considered the views put forward, we consider that our proposals in relation to investigation and enforcement would be appropriate. Authorised CILEX members and entities would be regulated to the same high standards as solicitors and SRA firms.

Our proposals seek to facilitate this using the powers that would be available to us immediately, while setting out how we intend to seek greater consistency in the longer term. The jurisdiction of the SDT is set out in statute and would form part of discussions over any legislative instruments to facilitate arrangements related to redelegation.

We hear concerns raised about the need to make sure that CILEX members are subject to robust safeguards to deliver fair disciplinary processes. We are committed to this.

Where there is a recommendation of cessation or suspension of the authorised CILEX member's membership, we are committed to holding a hearing. We would not at this time be reviewing our rules in relation to hearings for solicitors, although only the SDT has power to suspend or strike off a solicitor. We employ a mix of legally qualified and lay adjudicators. Legally qualified adjudicators can be any authorised member, including authorised CILEX members. All of our adjudicators are fully trained, including to conduct hearings.

Consumer protection

What did we propose?

We proposed that if CILEX entities are reauthorised as SRA-regulated firms, then this would mean that our client protection requirements would generally apply to those entities in the same way as to other SRA firms. We set out some exceptions.

Our key client protection arrangements in relation to law firms include:

- setting requirements for firms to hold PII

- intervening in firms to protect clients' monies and interests
- handling claims for compensation for loss arising from ethical failures (including theft of client money, failure to account and failure to put in place PII).

We explained that clients of CILEX entities reauthorised as recognised bodies of licensed bodies would benefit from the protection of our compensation fund. However, clients of authorised CILEX bodies that are owned and managed only by authorised CILEX members and authorised CILEX members who practise as self-employed practitioners offering unreserved legal services outside of an authorised firm, would not be able to benefit from this protection. This is unless authorised CILEX bodies are brought within scope of our compensation fund via a statutory instrument.

We proposed to work with CILEX, the LSB and the Government to pursue such a statutory instrument. We committed to work with CILEX to arrange appropriate transitional arrangements until this was in place.

The anti-money laundering (AML) requirements and supervisory framework are set out in legislation and would not change as a result of our proposals.

Respondents' views

TLS and many other respondents disagreed with proposals for clients of reauthorised CILEX entities to be able to access the SRA compensation fund. TLS and other law societies rejected the pooling of contributions and reserves. They stated that if fraud provisions in PII policies of authorised Chartered Legal Executives were not the same as for solicitors, then claims could be made that would not be eligible in the present scheme. A couple of other respondents agreed, in principle, with our proposals.

Several respondents, including CILEX members, supported with the idea of pursuing a statutory instrument to enable access to our compensation fund. Several other respondents were not opposed to the idea if certain criteria were met. This included that the costs arising from CILEX clients were covered by the reauthorised CILEX entities, and any risks were assessed and properly managed.

TLS and other law societies felt that our proposals created risks for CILEX entities reauthorised as SRA firms who have to comply with our minimum terms and conditions of insurance, such as the minimum £3m coverage per claim for incorporated firms. This included potential costs and difficulties faced by CILEX entities in finding the increased PII cover.

Another respondent felt that it was important to recognise the difference between PII insurance of solicitors' firms and the reauthorised CILEX entities. This is so claims against one group did not adversely affect the premiums of the other. Several others felt that our proposals were fair and there was a need for an aligned approach across all those regulated by the SRA.

TLS said they had no comments on our proposal to apply our current intervention regime to CILEX entities reauthorised as SRA firms or authorised CILEX bodies. Several others responding agreed with our proposal or said this sounded sensible.

TLS and other respondents recognised that we would be required to apply our established approach to AML supervision to all those we regulate.

Our response

We have published principles our Board would consider when [setting the level of compensation fund contribution levels](#) in the future.

The fund levies are set at a level that we think is necessary to deal with forthcoming claims based on our best estimate of future risk. There is no evidence that CILEX entities, or authorised CILEX members who practise as self-employed practitioners outside of authorised firms, represent a higher risk to the fund than current SRA-regulated firms and freelancers.

The clients of all SRA-regulated firms benefit from the protection of the compensation fund, irrespective of the limited contribution the firm has made to the fund at the time of authorisation. The proposed position for entities previously regulated by CILEX would be no different.

CILEX, [in its consultation on its delegation of regulation to us](#), stated that it 'has agreed to retain its under-writing to maintain the existing Compensation Scheme during the transition period while the necessary statutory instrument is laid, ensuring consumers remain protected. Thereafter, the scheme would operate on a financial independent basis' (p.13).

It should also be noted that we are currently reviewing our [consumer protection arrangements](#), including our compensation fund arrangements, through a separate review process.

We consider that consistency of protection with regards to redress would be beneficial to consumers. With regards to aligning PII minimum conditions, and the increase in minimum cover, we set out earlier that factors other than minimum level of cover have the biggest impact on the PII premium.

We note the concerns raised about the need for the eligibility to make compensation fund claims for CILEX entity clients should be the same as for solicitors. Our intention is that this would be the case and we would keep under review how this worked in practice as we developed arrangements.

Consumer information

What did we propose?

We said that our Transparency Rules would apply to current CILEX entities that are reauthorised as SRA firms. This would mean that:

- all former CILEX entities reauthorised as SRA firms or authorised CILEX bodies would have to publish information about their regulatory status and complaints procedures. At the moment they need only do this if they provide conveyancing, probate and/or immigration services
- they would also need to include the SRA clickable logo in a prominent place on their website
- any firm offering any of the services falling within the scope of our costs requirements would have to publish costs information about those services
- individual authorised CILEX members providing unreserved legal services outside an authorised firm would have to publish information about their:
 - regulatory status
 - complaints procedures
 - costs and services in any areas of law they offer that are covered by our transparency requirements.

Respondents' views

Several respondents supported our proposals. TLS, and other law societies, saw some potential benefits for consumers and competition in applying our consumer information requirements to reauthorised CILEX entities. However, they were concerned about the regulatory burden and costs for those entities.

Several other respondents felt that the same requirements should be applied to authorised CILEX members providing unreserved services outside an authorised firm, as applied to solicitors. TLS was concerned that the use of the SRA clickable logo by reauthorised CILEX entities would cause consumer confusion over the differences between them and solicitor firms.

Our response

Having carefully considered the views put forward by respondents to the consultation, we agree that there would be benefits to our Transparency Rules applying to current CILEX entities reauthorised as SRA firms.

We proposed that the CILEX entities would display the logo, given that CILEX entities would be regulated in the same way as existing SRA regulated firms. This would help consumers to understand the regulatory status of providers and the associated consumer protections. However, we will engage further with CILEX, TLS and consumers on this issue as well as branding and communications (see 'Communications' section below).

Our requirements also support consumers to access the information they need to compare legal services providers and choose the right one for them. In doing this,

they support competition in the legal sector and access to justice. We agree with respondents that it is vital that transparency arrangements provide as much clarity as possible for consumers. For example, around the protections in place for solicitors and CILEX members practising in different ways, including outside of an authorised entity. We would continue to engage consumers to build in their views as our requirements evolve.

Communications

What did we propose?

We set out our proposals that our communications, website and branding relating to authorised CILEX members would:

- maintain and promote the distinct identity of CILEX members and the CILEX route into the profession
- explain how authorised CILEX members are regulated by the SRA and set out what this means for the different types of CILEX member
- use the phrase 'SRA regulating authorised CILEX members' as a strapline where appropriate to raise awareness of our role in respect of authorised CILEX members.
- include in our suite of corporate reporting a report on the regulation of authorised CILEX members as a discrete category to allow comparison of data across the professions
- confirm that authorised CILEX members have the same competence as solicitors in areas where they have practising rights, and that this flows from their training and qualifications as well as ongoing competence requirements.

Respondents' views

TLS and other respondents raised concerns about how the distinct identities of authorised CILEX members and solicitors would be retained through communications and branding. TLS queried how we would make sure that consumers understood the difference in education and training requirements and the scope of authorisation.

Throughout their responses to the consultation, several respondents repeatedly stated that if the redelegation took place, the SRA would need to revise its brand. A couple of other respondents said they were generally in agreement with our proposals for communications and reporting relating to authorised CILEX members.

Our response

We recognise that our communications would be crucial in helping consumers and the public to understand where solicitors and authorised CILEX members had equivalent practice rights in delivering reserved legal services, and where they did not. This includes our website, branding, reporting and registers.

Our consultation proposals set out some key communication tools which we would use to help us to build this understanding. CILEX, in its December 2023 letter, raised

this issue with us. We would develop plans in relation to our communications, considering the feedback from the consultation and the views of consumers. We would further engage with CILEX and TLS as we do this, as well as seeking the views of consumer representatives. This would include engagement on the proposed use of the SRA clickable logo by CILEX entities.

Other regulatory issues

What did we propose?

We set out several proposals in this section relating to arrangements including:

- not setting up special authorisation for authorised CILEX members to take up official roles under SRA accounts rules
- continuing with our approach to the use of third-party managed accounts (TPMAs) for our regulated firms
- not prohibiting CILEX entities that are reauthorised as SRA firms, including authorised CILEX bodies from carrying on regulated financial services activities
- not allowing authorised CILEX members working in a non-commercial body to provide reserved legal activities and/or hold client money in their own name
- some initial information on proposed ancillary changes and transitional arrangements.

Respondents' views

We received mixed views on whether we should maintain the CRL requirements for authorised CILEX members to be authorised separately to take up one or more official role. Some respondents, including TLS, felt there was not sufficient detail of why these were currently in place. The SDT and several other respondents felt there were no good reasons to maintain the CRL requirements. Several others felt that the current arrangements should be kept, although a CILEX member felt that the current CRL arrangements were complex and difficult to interpret.

TLS felt that our proposal for holding reauthorised CILEX entities subject to the same requirements as existing SRA entities, including in terms TPMAs and regulated financial services activities, seemed appropriate. However, TLS also raised an issue over firms operating a TPMA potentially being exempt from paying the firm contribution to the compensation fund and potential implications from this. Several other respondents also felt that same regulatory requirements should apply to reauthorised CILEX entities. One respondent stated that losses arising from TPMAs should not fall within the compensation fund.

Several respondents also did not agree with our proposal relating to regulated financial services, stating that CILEX members would not have the required knowledge and training.

TLS and other law societies also disagreed with our proposed approach to authorised CILEX members working in non-commercial bodies. A couple of respondents supported our proposals relating to regulated financial services and for authorised CILEX members working in non-commercial bodies.

In terms of transitional arrangements, TLS and other law societies stated that the SRA must guard against any negative impacts on the solicitors' profession and ensure no impact on available regulatory resources for solicitors. A couple of respondents generally agreed with our approach, as long as risks were properly managed. Another stated that the proposals seemed fragmented.

Our response

We would consider the view expressed by respondents as we further develop proposed arrangements.

In relation to TPMA's, solicitors are already allowed to operate these. And we do not have any evidence that our current regulatory arrangements for SRA firms creates difficulties including in relation to the compensation fund. We think it is right that the same requirements around the fund contributions when using TPMA's would apply to solicitors and CILEX members. We would consider the TPMA position in any future review of our compensation fund contribution model.

We cannot see that there would be an additional risk in allowing CILEX entities that are reauthorised as SRA firms to carry on regulated financial services activity. We have set out our plans to apply our competence requirements to these firms. And they would therefore be required to make sure that anyone carrying out this work has the necessary knowledge and training.

In any event, we are required to demonstrate to the Financial Conduct Authority that our arrangements provide sufficient protection for all those taking advantage of the exemption.

Regulatory Impact Assessment

Our consultation included a regulatory impact assessment (RIA) which set out potential risks, benefits and neutral impacts. This stated that we assessed our proposals as supporting our statutory objectives, particularly in terms of improving access to justice, protecting and promoting public interest and the interests of consumers.

Beyond this, we assessed our proposals as broadly presenting neutral impacts, but we also recognised that there were some uncertain costs/risks. We identified these issues in the RIA and asked for feedback.

Respondents' views

Some respondents, including TLS, felt that our impact assessment had not adequately assessed impacts of redelegation on our regulatory objectives. This included access to justice, consumer protection, competition and professional diversity.

TLS also repeated a point that it believed our proposals represented regulatory fragmentation rather than consolidation. The LSCP felt that it could not give a response to our proposals without more information on possible benefits, costs and risks to consumers.

ACCA felt that our proposals relating to its members would support our statutory objectives, while the SDT repeated its preference for the SRA to regulate via a single code of conduct. One respondent stated that the impact assessment seemed correct.

Our response

We have set out earlier how we consider the redelegation of authorised CILEX members and entities to us would support the regulatory objectives. And provide consolidation of the regulatory landscape in a way that would bring benefits to consumers, the wider public and legal professionals.

We will produce a final RIA to inform final decisions about taking on the regulation of CILEX members and our arrangements for doing so. This will be informed by responses to the consultation and any new information gained from our ongoing activity.

Equality Impact Assessment

Our Equality Impact Assessment (EIA) contained a comparison between the equality and diversity data collected and published by CRL and the SRA for 2021. It aimed to identify possible differences or similarities in the characteristics of the respective regulated populations, which could have implications if the SRA took on the regulation of authorised CILEX members and CILEX entities.

Our initial analysis of CRL and SRA data sets identified some common equality issues in respect of the two regulated populations. These included:

- underrepresentation of women
- professionals of a Black, Asian and minority ethnic origin in senior roles
- underreporting of disability across both professions.

We did not identify any potential negative equality impacts or material risks for the public or consumers within the EIA.

We noted that:

- we had some gaps in our data, including due to differences in SRA and CRL datasets
- there was limited comparable data about the characteristics of consumers using solicitors and authorised CILEX members,.

We also stated that we would monitor, seek views on, and report on the equality impact of the consequent changes to our regulatory arrangements if CILEX proceeds with the redelegation.

Respondents' views

TLS, other law societies and several other respondents called for a further, full equality impact assessment, including consideration of any additional regulatory burdens and costs for authorised CILEX members. It was also noted that if the SRA regulated CILEX members, the diversity of the SRA-regulated community was unlikely to change substantially. This is because many CILEX members already worked in SRA firms.

One respondent highlighted that CRL had made recent changes to its education regulation to remove equality barriers and that we should take care not to reintroduce these. They also emphasised that alternative routes to legal services could support equality and diversity, both in the profession and in terms of access to justice. One respondent stated that the assessment seemed correct, but there would be a need for further assessment if the redelegation went ahead.

Our response

We welcome the detailed feedback on equality and diversity issues that was returned to us, for example, by an educational provider.

We will produce a final EIA to inform final decisions about taking on the regulation of CILEX members and our arrangements for doing so. This will be informed by responses to this consultation and any new information gained from our ongoing activity.