

## Annex 5

### Discussion of the potential risks and benefits of the SRA accepting the redelegation of CILEX members.

#### Background: CILEX's consultation

1. In its [Case for Change](#), CILEX identified several reasons behind its proposals to redelegate regulation to the SRA. CILEX stated that in its view:
  - The number and variety of models involved in the regulation of legal services could be confusing for consumers and professionals alike. For many CILEX members this stemmed from a lack of recognition of the role and regulated status of CILEX practitioners, so that they are, for example, not able to act as authorised persons when engaging with some institutions.
  - There are very real barriers to accessing legal services so the confusion and lack of understanding about the part CILEX practitioners play is not in the consumer or public interest.
  - It had serious concerns about the sustainability of the CRL as an independent regulator with low or no growth in regulated practitioners and with an entity regulation model that was facing challenges around the funding of client protection arrangements. (In 2022 the CRL had proposed that CILEX entities be forbidden from holding client money to try and ensure the sustainability of its compensation arrangements. This followed the withdrawal from the market of the insurer underwriting those compensation arrangements.)
  - CRL, as a regulator with limited resources (and which relies on growth which was not happening), is constrained in its ability to invest the necessary time and activity in the significant amount of market engagement that is required to establish confidence and assurance in the minds of consumers of legal services.
  - The cost of regulation through CRL was already higher for individuals than that, for example, paid by solicitors, and increasing CRL resources significantly was likely to mean cost increases for consumers with the associated difficulties for access to justice.
2. CILEX considers that the results of its 2023 consultation have supported its Case for Change. In its [response document](#) CILEX pointed to positive responses (between 60% and 82% depending on the question and group) from its regulated community and employers of CILEX members in relation to all of its questions concerning the proposed redelegation.

#### Would redelegation protect and promote the interests of consumers and the public?

##### *Impact on consumers and the public: potential benefits*

3. The potential for a positive impact on the public and consumers by reducing the complexity of the current landscape is supported by our work with consumers. As set out in more detail in our 23 January Board 2024 paper, our online survey of 1,000 consumers in December 2023 suggested that consumers had limited knowledge of

the complexities of legal services regulation and might benefit from the consolidation of legal services regulators. For example,

- 90% agreed that having one regulator providing information on the two types of authorised members is likely to make it easier to compare the legal services providers they regulate.
  - 86% thought having one regulator covering both legal professionals is better than separate ones.
4. As part of CILEX's engagement process during its 2023 consultation, it found that consumers taking part in its roundtables were concerned to learn of the existing, separate regulatory arrangements for solicitors and CILEX authorised members, of which they were unaware. They expressed support for changes that would see both groups regulated in the same way and provide uniform protection and consistency.
  5. There has been consistent support in previous consumer engagement conducted by the SRA and others for the propositions that:
    - Consumers know little about the current regulatory landscape (and are therefore, by implication, currently unlikely to have an understanding of CILEX regulation that would be disrupted by the change or to make consumer choices based on who regulates a legal professional) but assume that everyone is regulated - see for example our [Consumer segmentation research 2023](#), points 4.2.12, 5.1 and 6 our [evaluation of the SRA Transparency Rules \(2023\)](#) point 6D conducted with Economic Insight, the Law Society and LSB's [Legal needs of individuals in E&W report \(2019\)](#) section 6.7.
    - Once informed of the position consumers would welcome a less complicated regulatory landscape and would favour moves towards a single regulator – see for example LSCP's [Standardisation of Consumer Information in Legal Services \(2022\)](#) pages 3 and 4 the LSB's [The state of legal services report 2020](#) page 38. The same conclusion was reached by our (unpublished) work with consumer focus groups on claims management issues in 2023.
  6. Conversely, LSCP takes the view that, although in principle the redelegation makes sense, the evidence that exists to support the benefits or assess the risks of the change is inadequate (see annex 3). It has referred to its 2023 paper "[Consumer Focused Regulation in Legal Services](#)" and stated that we have not met the standards required to take forward this policy. LSCP has referred to what it considers to be the poor quality of the SRA's consumer research for these proposals and complained about the research taking place during the consultation period for the proposals, rather than the proposals being driven by consumer research.
  7. In its letter of 15 January 2024 (annex 1) the Law Society also criticises the SRA research stating that against the background of consumers having little knowledge of regulation, a much greater depth of explanation of how services and professionals are regulated was needed. As it was, the questionnaire sought agreement on only one possible solution to addressing the challenges presented and could not be therefore taken as an informed endorsement of the redelegation proposals.
  8. Our view on these issues is that the purpose of consultation is to gather views, and that our work and CILEX's with consumers during our respective consultations should not be dismissed out of hand, especially as it reinforces previous research, as

set out above. It is true that a simpler regulatory landscape could also be achieved by other solutions, such as a single regulator, but such solutions are not on the table now. It therefore falls to us to consider the policy option that is in front of us and to ask consumers about that. In our view our [research questionnaire](#) went into the regulatory background in the right level of detail to provide context for respondents.

9. We acknowledge that the evidence on benefits and risks in relation to consumers can always be improved, which is why CILEX with our support organised a focus group of consumers on 13 June to explore potential issues further. Overall, the focus group was also supportive of the proposals:
  - it felt it very important that protections such as compensation funds and insurance are similar for similar areas of work – for example conveyancing delivered by different professionals,
  - it agreed that the proposals would reduce the potential for consumer confusion when finding information to choose between legal professionals,
  - a small number stressed that under the proposals, the regulator should make sure it had capacity to deal with any extra work and that it needed to have the right expertise to deal with any niche areas.
10. We consider that on the evidence currently there is clear potential for consumers and the public to benefit from these proposals in terms of simplification. The current regime also adds costs through duplicated governance, staff, and services. This potentially increases the cost of legal services for consumers.
11. At a basic level, those consumers who deal with the 75% of CILEX members that work in SRA regulated firms will now only have one regulator to complain to instead of two, and processes can be made simpler accordingly.
12. Another potential benefit to consumers is that if redelegation proceeds, then over time, the CILEX compensation fund arrangements will be replaced by the SRA Compensation Fund. The SRA Compensation Fund has wider coverage; in particular, the CRL arrangements are only available in respect of those legal services that CRL has specifically authorised a firm to offer, and therefore do not cover any unreserved activities they may carry out.
13. There are currently 20 authorised firms on the CILEX register. Six of these (who have solicitor managers or qualify as ABS's) would be passported to become SRA regulated firms and the SRA Compensation Fund would apply to their clients. The remaining firms would need to remain under the CILEX compensation fund (guaranteed by CILEX) pending any changes to legislation to allow them to come within the SRA fund. We would also seek a change to legislation to apply the SRA Compensation Fund would to the clients of authorised CILEX members operating as freelancers.

*Impact on consumers and the public - risks and countermeasures*

14. The Law Society's position is that the delegation of regulation will in fact lead to consumer confusion. Although the Law Society is not very precise about how this consumer confusion might arise (or what damage it might result in) we consider that any risk is small and can be mitigated.

15. For example, in relation to any risk that consumers will not know who to complain to regarding CILEX members, 75% of those members currently work in SRA regulated firms. When an issue arises with an employee who is a CILEX member in those firms, consumers are already told about their right to complain to the SRA because we regulate the entity. This will not change under the proposals. In relation to the 25% of CILEX members who will not work in an SRA regulated firm, under our proposed arrangements (the proposed SRA-CILEX Principles and Code and the application of the SRA Transparency Rules), those CILEX members will be obliged to tell clients up front that the SRA regulates them.
16. However, there is a related criticism of the proposal by the Law Society, which is that regulation of both solicitors and CILEX members together by the SRA will create a “false equivalence” between the two professions and will negatively impact on the ability of consumers to choose the appropriate provider to meet their needs.
17. In response to this, it can be said that firstly, the evidence (as set out above) does not support the idea that consumers choose their legal providers on the basis of who regulates them since their knowledge of the regulatory landscape is limited. In relation to the 75% of CILEX members working in solicitors' firms, it is difficult to see how the change in regulation would impact on the choice made by consumers. And those working outside of SRA regulated firms will of course continue to use the CILEX titles.
18. However, it does appear to be the case that the solicitor title is generally regarded by consumers as the most recognised legal “brand” (see for example the findings of the CMA report into the legal services market in 2016). There therefore is a concern, as expressed by the Law Society, that CILEX members will somehow benefit from the solicitor brand by being regulated by the SRA, and that consumers will “falsely” assume that services offered by CILEX members are equivalent to those offered by solicitors. In its response to our first consultation and to CILEX’s consultation the Law Society has made it clear that it does not regard the two professions as authorised persons of equal standing. This, it states, is because solicitors have a wider breadth of knowledge, skills and experience underpinning their authorised practice and can conduct their practice in multiple areas of law as may be required.
19. Clearly, both authorised CILEX members and solicitors are regulated to deliver reserved legal services under the Legal Services Act, under arrangements approved by the LSB, and will remain so irrespective of the position on redelegation. This is why we have maintained the principle throughout our proposals that both professions should be held to the same or, where the context differs, to equivalent, high standards.
20. There are of course clear differences in the qualification routes between authorised CILEX members and solicitors, and in their rights of practice. A solicitor, once qualified, can provide services in any reserved area of law, whereas an authorised CILEX practitioner will be authorised in one or more individual areas, such as civil or criminal litigation, family litigation, conveyancing, probate, immigration etc, which will reflect their individual qualifications and training. As we have set out in our consultations and responses, we have no intention of changing these arrangements and CILEX has stressed its determination to retain the clear separate CILEX route to qualification.
21. Both approaches are approved by the LSB. It is also the case that, as the Law Society has [stated](#), solicitors are becoming increasingly specialised in practice. Nevertheless, we agree that it is very important that consumers are made

aware of the precise scope of the practising rights of the provider that they are instructing, as this scope reflects not only the formal legal position and the work the provider is entitled to carry out but also the nature of the providers' qualifications and expertise. It is equally important of course that providers do not stray beyond that expertise, and that clients are referred on to the appropriate service where appropriate.

22. For that reason, the proposed CILEX-SRA Principles and Code of Conduct contain provisions requiring that CILEX members:

- Do not act in matters where they are not authorised to act, or in an area of law where they have insufficient knowledge or experience
- Ensure that they and their business, its processes, and practices, adequately assist consumers and clients to access justice and the full range of legal services (thus reflecting the fact that CILEX members may provide services in narrower areas of law than solicitors).
- Ensure that clients understand whether and how the services they provide are regulated. This includes explaining their professional status, whether they are an authorised CILEX member, how they are regulated by the SRA, and the areas of law in which they have rights to practise.
- Do not hold themselves out as having a qualification or professional status that they do not possess.

23. The SRA Transparency Rules require that information is given to consumers and potential consumers about regulation, PII and the Compensation Fund. These already apply to SRA firms and would be extended to CILEX regulated firms and to any CILEX members delivering unreserved legal services as "freelancers".

24. How services are branded, and how information is accessed is important as regards consumer choice. We have discussed these issues with CILEX, which is equally keen to maintain the separation of the two professions. We would not be changing the SRA name, but CILEX regulation would be delivered under the strapline "The SRA regulating CILEX members".

25. We would maintain the following as separate registers:

- The Solicitors Register
- The CILEX Authorised Practitioners Register
- The ACCA-Probate Practitioners Register

26. Disciplinary findings against non-authorised CILEX members would be recorded with our other findings against non-authorised persons under our jurisdiction (such as former employees of SRA regulated firms subject to orders under s43 of the Solicitors Act 1974 preventing them from being employed by solicitors in the future).

**Would redelegation encourage an independent, diverse, and effective legal profession and promote and maintain adherence to the professional principles?**

*Impact on the legal profession and the professional principles: potential benefits:*

27. As we have set out in our two consultations, our response to the first consultation and our published Board papers, we consider that redelegation would simplify matters for the 75% of CILEX members that currently work in SRA firms, in that they would only need to report to one regulator with one set of processes who would be applying more consistent standards. The position would be similarly simplified for the SRA firms that employ those members.
28. For all CILEX members, wherever they work, we have closely aligned the CILEX Principles and Code to the standards that apply to solicitors, with appropriate differences which recognise the different scope and context of their practice. This approach will promote greater consistency in the regulation of authorised legal professionals. (We expect it will also be clearer for consumers of legal services, reducing the potential for confusion around expectations and regulatory action.)
29. We have set out our commitment to maintain clear and separate identities for solicitors and authorised CILEX authorised members if redelegation proceeds. This is supported through separate education routes and a separate Code of Conduct for individual CILEX members. We have said that this includes 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.
30. Concerns have been raised by the Law Society that our approach to CILEX education differs from solicitors in that we would not be creating the qualification route, but assessing the route already created by CILEX. We recognise that the education routes for solicitors and authorised CILEX authorised members are different. However, both schemes are approved by the Legal Services Board and so we do not feel there is a conflict or that they cannot co-exist side by side. As we made clear in our consultation proposals, we would be initially adopting the arrangements that are already in place and reviewing any case for change in due course.
31. A further factor to be considered is that combining the regulation of these two branches provides the opportunity of a common approach to address the regulation of new and emerging forms of legal services (for example AI) in an integrated way across both professions. This could benefit both the regulated community and the public.

*Impact on the legal profession and the professional principles: risks and countermeasures*

32. One risk of the SRA regulating both CILEX members and solicitors is that there would be cross subsidy, with one branch of the profession paying for regulation of the other. The stability of funding for CILEX regulation needs to be considered, especially given that the risk of the unsustainability of CRL was one of the reasons given by CILEX in its Case for Change. As would be expected, the Law Society is focused on the risk of solicitor regulation being adversely affected by the costs of CILEX regulation. From CILEX members' point of view, a significant increase in their fees could have an adverse impact on them.
33. We would maintain financial transparency to ensure that each profession appropriately funds the costs of its regulation.
34. CILEX has confirmed that it is paying the SRA's development costs of these proposals (whether or not the redelegation proceeds) and any implementation and

transitional costs. There is already an accounting process in place with CILEX for it to pay those development costs.

35. Ongoing regulatory costs would be met by fees from CILEX members. As set out in our response to the second consultation, we would initially intend to adopt the current CILEX policy of recouping the costs of regulation of all CILEX members (authorised and non-authorised) from the practising fees charged to authorised CILEX members.
36. This proposal has come under criticism in the responses to the second consultation from both CRL and the Law Society, which maintain that non-authorised members should contribute to the cost of regulation as they benefit from it, and that there should be no cross subsidy from the authorised members.
37. CRL has stated that if non-authorised members were to contribute to their regulatory costs, this would provide opportunities to reduce the practising certificate costs for authorised members. The Law Society has raised concerns that the redelegation proposal creates an increased risk of the regulation of a small number of authorised CILEX members being financially unsustainable. If this occurred it is said there would be a strain on SRA resources overall, thus having an impact on solicitors. As at the latest CILEX members survey, there are around 7800 practising authorised members, comprising just under 50% of CILEX's overall membership.
38. During development of our proposals, our initial calculations were that in terms of investigation, enforcement and authorisation costs, there could be savings in relation, for example, to the cost of panels and staff due to the fact that the SRA has an existing infrastructure which could be able to absorb CRL's wider functions at a lower cost.
39. Overall, our current calculation is that, given these synergies that should be available when absorbing CRL's current workload into a larger organisation, we expect that the ongoing cost of the regulation element of the practising certificate fees to authorised CILEX members would not be higher than its present level in real terms. Based on the percentage figure in the last CILEX application for a Funding Order, the regulation element of the annual fee for CILEX Authorised members is currently £221 compared to the SRA share of £162 for a solicitor's practising certificate.
40. This does not include transitional costs which would be paid by CILEX
41. However, we are not able to forecast with confidence the 'steady state' future cost of regulation without access to more detailed information held by CRL, which currently it is not providing.
42. CILEX members' fees would remain subject to annual approval from the LSB.
43. To give an idea of scale:
  - In 2022, the CRL received 73 misconduct complaints. We receive over 10,000 complaints per year.
  - There are 20 CILEX Authorised firms. We regulate around 9300 firms.
  - In 2022 CRL dealt with 303 "prior conduct" issues. The prior conduct test is similar to our character and suitability test but is applied at an earlier stage, in that CRL carries out the test on application for membership so that it applies to

paralegals and students and not just to those seeking admission as an authorised person. In 2023-24 we dealt with 909 character and suitability issues for admitted solicitors, those applying for admission or role holders in SRA firms. including via the imposition of conditions on practising certificates. If redelegation proceeded we would replace the CRL's prior conduct test with the character and suitability test, but it would still apply to CILEX members at the point of membership.

44. We are aware that CILEX has ambitions to expand its non-authorised membership, for example it acquired the Institute of Paralegals Register in 2022. In its 2022 Annual Report, CRL stated that the largest number of complaints about misconduct that it had received involved non-authorised members. We have also noted that CILEX has sought permission from the Privy Council to remove the current prohibition in its Charter against charging non-authorised members the cost of regulation.
45. We therefore propose that if redelegation proceeds, the issue of whether to charge non-authorised members for regulation after the first year of SRA regulation should remain under review (with CILEX). This would mean that changes could be made, if necessary, in the future so that we can continue to ensure that the regulation of CILEX members is self-funding.
46. We have also considered the impact on the SRA Compensation Fund and on the former CILEX firms who would join the fund should redelegation proceed.
47. In terms of any risks to the fund presented by CILEX regulated firms that would join the SRA fund, there are currently 20 authorised firms on the CILEX register. Six of these (who have solicitor managers or qualify as ABSs) would be passported to become SRA regulated firms and the SRA Compensation Fund would apply to their clients. The remaining firms would need to remain under the CILEX compensation fund (guaranteed by CILEX) pending any changes to legislation to allow them to come within the SRA fund.
48. There is no evidence that the small number of CILEX entities or CILEX authorised members who practise as self-employed practitioners delivering unreserved legal services outside of authorised firms (whose clients would also have access to the SRA Compensation Fund only if the necessary statutory instrument was obtained) represent a higher level of risk to the Compensation Fund than current SRA authorised firms and freelancers. We understand that there has never been a claim on the CILEX compensation fund nor an intervention relating to a CILEX entity.
49. CILEX has expressed concerns that the current demands on the SRA Compensation Fund arising from the Axiom Ince case could have an impact on the costs, scope, or operation of the SRA's Compensation Fund and the future contributions of CILEX members.
50. We have launched a [discussion paper](#) on our consumer protection arrangements to help ensure the future sustainability of the Compensation Fund.
51. In terms of the specific impact on CILEX firms of moving to the SRA Compensation, as set out above, only six firms would be moving immediately. We have proposed an increase of firm contributions from £660 to £2220 in our draft business plan for 2024-25. If implemented there could be an increased cost to these firms from the current CILEX compensation fund rates depending on the firm's size, the categories of law they offer and whether they hold client money.

52. In terms of PII, 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. Our PII arrangements require a higher level of cover than CRL's. 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 level of PII premium, rather than the level of cover required. The research did find that CILEX-regulated law firms pay 12% lower PII premium rates on average than SRA-regulated but acknowledged that further work would be needed (given the small CILEX sample size) to examine whether differences in average premium rates are related to differences in the MTCs. Therefore, an increase of a similar level to premiums of the small number of CILEX firms (six initially) that would be moving over to SRA regulation cannot be ruled out at this stage, although clearly there would be individual factors at play. However, analysis of the data we do have does not imply a sizeable increase in costs which might be passed on to consumers - even for those small number of firms.
53. Subject to the potential impact on CILEX authorised entities in relation to PII and the Compensation Fund referred to above, overall, our risk assessment has not identified any significant additional regulatory burdens and costs for CILEX members, authorised CILEX entities and solicitors. For those 75% of CILEX members working in solicitors' firms, and for the firms that employ them, moving to a single regulator would bring a simpler landscape.
54. The Law Society has expressed concerns that, if redelegation proceeds, there would be an adverse impact on the interests and independence of the solicitor profession, and on its ability to represent its members. The SRA would have to consider the views of CILEX when it reached decisions concerning regulatory matters, and CILEX's views might be different from the Law Society's.
55. However, it is already the case that the SRA must balance the regulatory objectives and consider other interests than those of solicitors in its decision making – such as those of the public, consumers, and the administration of justice. Insofar as any future decisions affected both professions, the SRA would continue to operate by applying those regulatory objectives. The regulatory objectives include encouraging an independent, strong, diverse, and effective legal profession and this would be given appropriate weight alongside the other objectives when decision making. None of this would interfere with the Law Society's ability to represent its members, or the independence of solicitors.

#### **The remaining regulatory objectives**

56. We have focused above on the main potential benefits and risks to the regulatory objectives. As set out in our regulatory impact assessment, we broadly consider the impact on the remaining objectives as neutral.