Solicitors Regulation Authority

Closed Consultation

Arrangements for Regulating Non-Authorised CILEX Members

- The consultation period ended on **15 May 2024**.
- You can download the consultation paper [#download] or read it below.

About this consultation

This is a consultation on proposed changes to our regulatory arrangements to allow us to regulate those CILEX members that are not authorised to carry on any reserved legal activities. These include CILEX students, paralegals and affiliates and are known throughout this paper collectively as 'non-authorised CILEX members.'

CILEX is the professional body for more than 17,000 CILEX lawyers, paralegals, and other legal professionals in England and Wales. It 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.

In August 2023, CILEX ran a consultation on its proposals for change [https://www.cilex.org.uk/about_cilex/consultations/royal-charter/], which included the redelegation of the regulation of all of its members and entities to us.

Our consultation on proposals for regulating CILEX authorised members, 'Arrangements for SRA Regulation of CILEX members [https://qltt.sra.org.uk/sra/consultations/consultation-listing/regulation-cilex-members/]', ended in November 2023 ('our 2023 consultation').

In December 2023, CILEX asked us to confirm that we remain willing to take on the regulation of CILEX professionals and to hold discussions on specific areas arising from its own consultation. These included our willingness (and approach) to providing regulation of non-authorised CILEX members.

This current consultation therefore asks for views on:

- the key changes we would make to our Standards and Regulations
- our processes to also bring non-authorised CILEX members within the scope of SRA regulation.

These changes will only be made if the redelegation by CILEX of regulation of their members as a whole proceeds. The analysis of risks, benefits and impacts in this consultation therefore focuses on the differences between:

1. a phased implementation, with the regulation by the SRA of authorised CILEX members implemented first. This will be followed later by the non-authorised CILEX members (the position set out in our 2023 consultation) and
2. implementation of regulation by the SRA of all CILEX members, including the non-authorised, at the same time (set out in this consultation).

According to figures supplied to us by CILEX from their latest membership data, 75% of all CILEX members already work in SRA-regulated firms. Around 87% of non-authorised CILEX members either work in those firms or in those authorised by CILEX. We have set out how we would use our existing enforcement powers in relation to those non-authorised members. We also consider what arrangements need to be in place for the 1,000 or so non-authorised members outside SRA or CILEX regulated firms, recognising that some of these will be supervised in any event by an SRA or CILEX authorised person.

This consultation also summarises the consequential and ancillary changes we would make to our other rules and regulations.

This consultation runs from 20 March 2024 until 15 May 2024.

After this consultation closes, our Board will consider the responses and decide on the way forward.

If our Board decides to proceed with the proposals set out in this consultation and our 2023 consultation, the SRA and CILEX will then need Legal Services Board (LSB) approval of our respective regulatory arrangements.

We would seek to work with CRL to arrange transitional arrangements that protect the interests of CILEX members and the public.

We would also work with the Law Society to arrange the necessary changes to our Articles of Association to enable us to take on the regulation of CILEX members.

We would therefore not expect to be in a position to take on these new functions until spring 2025 at the earliest.

Open all [#]

Introduction

The Solicitors Regulation Authority (SRA) is the largest regulator of legal services in England and Wales, covering around 90% of the regulated market. We oversee more than 200,000 solicitors and around 9,500 law firms in England and Wales.

We work in the public interest, protecting consumers and setting and enforcing high professional standards. We make sure those who qualify to be solicitors meet the required standard and we assess, approve and monitor the firms we regulate to make sure they are fit to offer legal services.

Our rationale for change

In 2023, CILEX ran a consultation on its proposals for changes to its Royal Charter which included redelegating regulation of all of its members and entities to us. Respondents to this consultation included 1,200 individuals, with input from various stakeholders including CILEX members, employers, and the wider legal profession.

CILEX also ran independently facilitated roundtable events with consumers and commissioned IPSOS Mori to conduct a poll of 2,237 members of the public. In January 2024, CILEX reported that all their consultation questions relating to proposals to redelegate the regulation of CILEX members to the SRA achieved at least a 60% positive response [https://www.cilex.org.uk/media/media_releases/cilex-reports-support-reform-agenda/] . There was particularly strong support (82%) amongst employers of CILEX members, and from consumers who were concerned to learn of the existing, separate regulatory arrangements for solicitors and CILEX lawyers, of which they were unaware. Consumers expressed support for changes that would see both groups regulated in the same way, providing uniform protection and consistency.

We have published the response to our 2023 consultation [#download] . We remain open to the idea of taking on the delegation of CILEX regulation because of the potential benefits to consumers and the wider public. However, the final decision will not be made until after responses to this current consultation are also considered.

CILEX's position on consultation and throughout the process of discussion with the SRA has been that independent regulation will include, as now, its non-authorised members. In its consultation, it stated: 'CILEX believes the inclusion of paralegals and other legal professionals involved in the delivery of legal services within the scope of regulation plays an important part in establishing consumer confidence.'

We said in our 2023 consultation that:

'We are not currently proposing to take on the function of regulating CILEX's non-authorised members directly as individuals... CILEX is consulting on changes to its membership structure and proposals to establish a more formal status for CILEX Paralegals through the Professional Paralegal Register. Once the outcome of that consultation is known, we will take forward a programme of work in consultation with CILEX to ensure appropriate regulatory arrangements are in place for

non-authorised members of CILEX, in accordance with the regulatory objectives set out in the Act and on a fair and sustainable basis.'

It was stated in response to our 2023 consultation that it would be wrong to redelegate regulation of CILEX authorised members to the SRA without at the same time redelegating the regulation of the non-authorised members. It was said that moving only one part of the membership to the SRA as a first phase would lead to regulatory fragmentation in the interval. If the CRL was left overseeing the remaining non-authorised members for a period, this, it was said, would be a retrograde step for the regulation of those individuals.

It was always our intention to work towards the inclusion of CILEX non-authorised members in SRA regulation over time if redelegation proceeds.

We are persuaded by the merits of implementing arrangements for all CILEX members at once if redelegation occurs. Importantly, the CILEX Council has now made the necessary decisions on its non-authorised CILEX membership structure. This provides the certainty to allow us to consult on the arrangements for regulation of those individuals, which would be brought into effect at the same time as the arrangements for CILEX authorised members.

Who are CILEX non-authorised members?

CILEX non-authorised membership comprises the categories and numbers set out below. Taken together, non-authorised members make up around 47% of CILEX membership.

The recent CILEX consultation [https://www.cilex.org.uk/wp-content/uploads/CILEX-Consultation-Enhancing-Public-Trust-and-Confidence-Aug-2023.pdf] on proposed changes to its membership structure and regulation outlined the qualifications and experience required for each membership grade.

None of these members are authorised to carry on any reserved legal activity.

Chartered Paralegal:

- 2,386 members (Currently known as 'Advanced Paralegals').
- Qualified to Paralegal L5 level with at least five years' experience validated via professional discussion assessment.
- According to the relevant CILEX standard: A CILEX Chartered Paralegal is a senior or experienced legal professional, operating with a degree of autonomy. They build positive working relationships and may run their own straightforward cases or legal matters... They are able to draft legal documents, conduct complex legal research and prepare information for trials or hearings, where

appropriate, playing a key role in the progression, management and outcome of legal matters.'

CILEX Paralegals:

- 3,341 members.
- Qualified to Paralegal L3 level with at least two years' experience validated via professional discussion assessment.
- According to the relevant CILEX standard 'A CILEX Paralegal is typically a case handler or legal assistant who operates effectively under the appropriate level of supervision. They are able to support a legal team; work with internal and external clients to understand their needs, obtain the necessary information and/or instructions... and conduct legal research...They can demonstrate problem solving skills, undertake straightforward tasks on legal matters eg preparing client care documentation, case outlines and reviews, court submissions and complete standard documents within their area of practice referring to the appropriate legal expert for more technical legal advice and case management.'

CILEX students:

- 2,176 members.
- Studying towards a CILEX qualification.
- Must also be currently working in the provision of legal services in order to become a CILEX student member.

CILEX is proposing to introduce a new membership level of Legal Technologist for those working in legal services providing ancillary services (such as IT) at some stage in the future once an apprenticeship process has been developed. When detailed proposals are put forward by CILEX in due course we will discuss any role that we may have in disciplinary proceedings and prior conduct with these members.

(This membership data was provided by CILEX as of 1 March 2024.)

Benefits

If redelegation proceeds, then us taking on regulation of non-authorised members at the same time as authorised CILEX members is expected to provide the following benefits:

- Protecting and promoting the interests of consumers. Simplifying the regulatory landscape by retaining a single regulator for all CILEX members will make it easier for consumers to understand their regulatory protections and redress. The current arrangements for the protection of consumers could be threatened if only the regulation of non-authorised members was left under the CLR for a period which could prove unsustainable as a separate model.

- Promoting and maintaining adherence to the professional principles. Applying the same high standards for CILEX authorised and non-authorised members supports this objective. The proposals will also bring efficiencies through reducing regulatory duplication for those non-authorised CILEX members who work in SRA-regulated firms.
- The proposals will protect the public interest by ensuring the sustainability of regulation for this group. As the above analysis shows, CILEX non-authorised members play an important part in providing legal services, and at the Chartered Paralegal level can have considerable autonomy. As a separate point, our draft SRA CILEX Code of Conduct also clarifies the importance of public interest in a way that is not explicit in the current CILEX Code of Conduct.

These are linked to the regulatory objectives under the Legal Services act 2007.

Read our draft Regulatory Impact Assessment [#download] .

Risks and mitigation

Risk of adverse impact on CILEX members

All CILEX members (authorised and non-authorised) are currently under a single regulator. And we are not expecting the changes proposed in this consultation to have a substantial impact on how they are publicly recognised and regulated.

Indeed, not implementing these proposals if redelegation proceeds would leave two different disciplinary systems for CILEX members for a period until the non-authorised CILEX members were included. This would potentially be confusing for consumers and unhelpful to those members as they progress through the various levels.

The proposed regulatory arrangements give equivalent rights in relation to due process and appeals on disciplinary matters to those proposed for CILEX authorised members.

We do not expect the fees payable by CILEX members to increase because of these arrangements. And there may be economies of scale overall through the use of a single regulator given that 75% of CILEX members work in SRA-regulated firms.

Risk of adverse impact on solicitors and SRA-regulated firms

We are not expecting these changes to affect the solicitors' profession or the way it is regulated.

As these CILEX members are not currently authorised or seeking to become authorised at these levels to provide reserved legal activities, we will not 'authorise' their ability to become members. We will have the limited role of regulating their conduct on behalf of CILEX. Their titles will not change and will not include reference to the SRA.

Our communications will distinguish between solicitors, authorised CILEX members and non-authorised CILEX members. This is to help make sure the public are aware of differences between them and make informed choices when accessing legal services. We recognise the crucial importance of this issue should redelegation proceed and we will work closely with our stakeholders in this area.

There may be concerns around the different treatment or status of unqualified staff delivering legal services on behalf of solicitors or their firms, dependent on whether the person concerned is a CILEX member or not. However, these differences already exist under current regulatory arrangements as other unqualified staff are already subject to our regulation when working in an SRA firm or supervised by a solicitor.

It is an individual's choice to decide whether to become a CILEX member or not. And it adds an extra layer recognising that these individuals have opted to be subject to a set level of requirements as members of a chartered body.

Indeed, these proposals would reduce any current differences in treatment between non authorised persons in SRA-regulated firms. They would mean all employees would be subject to a single regulator and undergo similar procedure, whether or not they are CILEX members. We set out in more detail how this would work in the section below on the proposed arrangements for regulation.

Risk of adverse impact on our resources and current functions

Our new role would offer synergies and cost savings as we would use common processes to regulate solicitors and CILEX members where possible. This means we would make sure there is no cross subsidy between the regulation of the two professions.

We recognise concerns that have been raised about this issue as part of the responses to our 2023 consultation. We understand these concerns but are confident that we can ring fence costs and ensure appropriate charging. We are already used to doing this in other aspects of our work, for example, in relation to the compensation fund and interventions.

As is currently the case between CILEX and CRL, we propose that the cost of regulating non-authorised CILEX members will continue to be funded as a permitted purpose through annual practising certificate fees.

We would set up appropriate accounting arrangements to ensure that expenditure is fully met by CILEX members and make the relevant numbers transparent via our annual reports.

CILEX has agreed to fund the cost of development of and transition to these proposals.

Risk of adverse impacts on consumers

Non-authorised CILEX members would be held accountable to standards that are at least equivalent to the current position and there would be no reduction in client protection or redress. Our detailed proposals below set out how we propose do this.

We recognise a risk of consumer confusion if the SRA regulates CILEX authorised member but not non-authorised CILEX members for a period. These proposals would address that risk.

Three-quarters of CILEX members already work in SRA-regulated firms and 83% of non-authorised members work in those firms or those regulated by CILEX. There are clear benefits in terms of simplicity for consumers to having the SRA as the sole recourse for misconduct matters for all CILEX members.

We would make sure that consumers would know to complain to the SRA and how to do so whether the person is non-authorised or authorised.

The draft SRA CILEX Code of Conduct contains provisions (paragraphs 8.2-8.4) require all CILEX members to inform clients in writing at the time of engagement of:

- their right to complain
- how to complain
- that the CILEX member has the appropriate complaints procedures in place.

We would look to provide direct access to the SRA for complainants in place of the current process. At present, complainants about non-authorised CILEX members are directed by the CRL website to CILEX, who then need to refer that matter back again to CRL to take action.

We propose to publish our decisions so people can search a non-authorised CILEX member's name to see if they have been subject to a disciplinary decision pursuant to our regulatory arrangements.

We would aim to combine this with our current employee decision check [https://qltt.sra.org.uk/consumers/solicitor-check/employee-decision/] . This includes the list of those prohibited from working in solicitors' firms under s43 of the Solicitors Act 1974 and provides a single place of search for consumers for these members.

Solicitors Regulation Authority

Proposed arrangements for the regulation of non-authorised CILEX members

Here we explain the changes we would make to our regulatory model to bring non-authorised CILEX members within the scope of SRA regulation. This will be done in a way that best aligns with the approach we have already set out for authorised CILEX members.

We invite views on the proposed changes to our regulatory arrangements, in addition to those proposed in our 2023 consultation.

Annex 1 contains a draft revised SRA CILEX Code of Conduct for CILEX members. While Annex 2 contains a draft revised 'Appendix B' to the SRA Enforcement Strategy – 'Sanctions and Controls for CILEX members. Finally, Annex 3 shows proposed amendments to the draft SRA Standards and Regulations previously developed for authorised CILEX members.

We also highlight key policy issues and questions relating to the proposed changes.

In addition to the proposed regulatory arrangement changes, we will also liaise with CILEX to make sure that their Royal Charter and Bye-Laws (or other membership terms) appropriately provide for these proposals.

Regulatory standards

Under current CILEX arrangements, both authorised and non-authorised CILEX members are required to comply with the CILEX Code of Conduct.

We consider that maintaining one common code for all CILEX members will be simpler and more effective. It will help compliance by members by maintaining the same ethical standards throughout their progression. It will also allow for consistency of enforcement.

We therefore propose that non-authorised CLIEX members will be required to comply with the SRA CILEX Code of Conduct put forward in our 2023 consultation. Subject to some minor necessary amendments as set out in Annex 1 [#download].

We recognise that the roles of non-authorised members may vary significantly. This could, for example, be a senior paralegal who may be a manager in a firm handling their own cases or a student carrying out only limited tasks as delegated work. The particular role and responsibilities of CILEX non-authorised members can be taken into account in deciding on enforcement action, as set out further below.

This would mirror the approach that we currently take with the SRA Code of Conduct for Firms, which applies to all employees of SRA-regulated firms whether they are authorised persons or not. The appropriate context including the level of responsibility of the employee within the

firm is reflected in enforcement decisions. This approach is set out in our guidance on how we regulate non-authorised persons [https://qltt.sra.org.uk/solicitors/guidance/general-regulation-non-authorised-persons/] .

Question 1: Do you have any comments on the draft revised SRA CILEX Code of Conduct and its application to non-authorised CILEX members

Prior conduct and suitability

Under current arrangements, all prospective CILEX members must make a prior conduct declaration [https://cilexportal.cilexgroup.org.uk/myCILEX/Prior-Conduct-Guidance] upon first seeking to join CILEX. They must declare whether there have been any relevant matters which may impact their suitability to be a member, including a criminal conviction, proceedings by another regulatory body, bankruptcy, or disqualification as a company director.

Existing members have an ongoing duty to declare any such events as soon as practicable, as well as on their annual renewal of membership with CILEX.

If any such issues are declared, the member is required to submit a DBS check, and CRL considers the impact on the individual's membership. Membership can be refused, removed or have conditions imposed upon it. Failure to declare a relevant issue will itself amount to misconduct.

This process provides an important control on membership of CILEX and helps to protect the public and consumers that may rely on their services.

We therefore propose to maintain the process of declarations of relevant matters by non-authorised CILEX members at point of first application for membership. Existing member will remain under an ongoing duty to report any such issue to us, as well as make a declaration on their annual membership renewal with CILEX. As now, CILEX non-authorised members will have to pay for a criminal record check (DBS) only when a relevant issue is declared.

However instead the current CRL prior conduct test when declarations of relevant matters are made, we propose to apply the SRA's character and suitability rules to those declarations. This is because:

- The prior conduct test covers essentially the same areas and purpose as the SRA's character and suitability rules.
- In our 2023 consultation, we said that authorised CILEX members would be subject to the SRA's character and suitability rules on authorisation. The same requirements should be applied throughout the period of membership.

This approach serves to distinguish them from authorised members who under the proposals in our 2023 consultation would all supply a DBS on authorisation. It would apply the character and suitability requirements by exception to prospective and non-authorised CILEX members when a relevant event is declared.

By matching the current CRL approach in that respect, it makes sure that no extra burden is placed on applicants for CILEX membership and non-authorised CILEX members.

There would be consequential amendments to the SRA Assessment of Character and Suitability Rules. These are included in Annex 3 [https://qltt.sra.org.uk/sra/consultations/consultation-listing/regulating-non-authorised-cilex-members/#download] .

Question 2: Do you agree with our proposed approach to applying the character and suitability test to applicants for CILEX membership and non-authorised CILEX members?

Governance

We would adapt the governance arrangements set out in our 2023 consultation to include the delegation of regulation of non-authorised CILEX members.

As we stated in our 2023 consultation:

'The governance arrangements will be supported by appropriate formal protocols between CILEX and the SRA setting out both parties' roles and responsibilities under the LSB's Internal Governance Rules (IGRs). These will include a Dispute Resolution Protocol. An annual review process will be established to allow both parties to declare ongoing compliance with the IGRs.'

Insofar as regulatory arrangements for non-authorised CILEX members (in particular those that that do not work under the supervision of SRA/CILEX regulated persons or firms) are not regulatory arrangements under the Legal Services Act 2007, then they will be considered as contractual obligations to which non-authorised CILEX membership become subject at the point of membership. These would be included in formal agreements between the SRA and CILEX. The necessary provisions to require cooperation with the SRA and to allow enforcement of SRA disciplinary decisions would be included in the terms of membership by CILEX.

Investigation and enforcement

We propose to take the same approach to the investigation and enforcement of non-authorised CILEX members, as we set out in our

2023 consultation. Annex 3 that consultation [https://qltt.sra.org.uk/sra/consultations/consultation-listing/regulation-cilex-members/#download] sets out our overall approach, which we will adapt for non-authorised CILEX members.

We will handle any reports about non-authorised CILEX members using the same processes as for reports about solicitors and other individuals and firms we currently regulate. This is triage, assessment, investigation, notice and decision.

We have guidance on how we regulate non-authorised persons [https://qltt.sra.org.uk/solicitors/guidance/general-regulation-non-authorised-persons/], which will continue to apply subject to any necessary changes to reflect the changes in delegation.

Disciplinary powers and sanctions

We would take on CRL's disciplinary powers [https://cilexregulation.org.uk/complaints/disciplinary-panels-and-tribunals/] to investigate, reprimand, fine, order costs, remove membership or impose conditions on it.

Sanctions available to the CRL against non-authorised members are substantially the same as those available in relation to authorised CILEX members. This is except those relating solely to practising certificates.

We would adopt our existing powers, to issue advice and warnings and to impose fixed fines or interim controls, for non -authorised CILEX members.

We have drafted the necessary changes of terminology to the new 'Appendix B' to the SRA Enforcement Strategy – 'Sanctions and Control for CILEX members'. This formed part of our 2023 consultation to make sure its application to non-authorised CILEX members. See Annex 2 [#download].

Decisions on enforcement and appeals

Our 2023 consultation set out our approach to first instance enforcement decisions, rights of review and rights of internal appeal for authorised CILEX members. We would adopt the same process for non-authorised CILEX members.

We use trained staff and adjudicators as decision-makers for most disciplinary decisions in accordance with a published schedule of delegations [https://qltt.sra.org.uk/sra/decision-making/schedule-delegation/]. First instance decisions are taken by an appropriate staff member (such as a case officer or manager in a relevant operational team) or by an adjudicator or panel of adjudicators.

We would take the same approach for all equivalent matters relating to non-authorised CILEX members and would update our schedule of delegations accordingly.

Under our current arrangements, we have power to refer certain cases to the Solicitors Disciplinary Tribunal (SDT [https://qltt.sra.org.uk/news/news/sra-sdt-statement-2023/]). This is rarely used in cases against an unqualified employee. Regulated individuals, including unqualified employees also have rights to appeal our enforcement decisions to the SDT. However, powers to make referrals to, or allow appeals to the SDT, will not extend to CILEX members in that capacity.

We would therefore provide access to reviews and an internal appeal where the non-authorised CILEX member disagreed with our judgment about what the outcome of an enforcement case should be.

There would be the right to request an internal review of a first instance enforcement decision on the grounds that:

- the decision process was materially flawed, or
- there is new information that would have affected the decision if it had been considered.

Reviews are considered by an adjudicator or panel of adjudicators, depending on who took the first instance decision. These are usually conducted on the papers rather than at a hearing, but the reviewer has discretion to invite the respondent to be interviewed.

There would also be a right of internal appeal where the individual disagreed with the enforcement decision.

The appeal would be conducted by a panel of adjudicators by way of a hearing, which will usually be held in private. The outcome may be to uphold our decision, to vary it or to reverse it.

Further details on the process are set out in our 2023 consultation. If redelegation proceeds, we intend to work with CILEX to seek a statutory instrument which could give all CILEX members the same external rights of appeal to the SDT as solicitors and SRA-regulated firms.

Costs

CRL has similar powers to ours to claim costs in regard to proceedings, and its Appeals Panel has powers to make ancillary orders including orders for costs. Where it is appropriate, we intend to recover our costs relating to contested matters involving non-authorised members, as well as matters that are resolved by agreement. Where a matter is contested, we will use the fee schedule currently used for the SDT.

Regulatory arrangements

We propose to amend the draft SRA Regulatory and Disciplinary Rules and SRA Application, Notice, Review and Appeal Rules published with our 2023 consultation to incorporate non-authorised CILEX members. There will also be consequential changes to the SRA Glossary. Annex 3 provides a list of the proposed amendments.

Interaction between SRA and SRA-CILEX regulation

Some 75% of CILEX members work in SRA-regulated firms. These are currently regulated in two ways:

- By us, as an employee under the SRA Principles and the SRA Code for Firms. They are subject to the disciplinary rules and procedures and can be excluded from working in a solicitor's firm under s43 Solicitors Act 1974 (or from an ABS under s99 of the Legal Services Act 2007). This would not change under these proposals.
- By CRL on CILEX's behalf as a member under the CILEX Principles and Code. Under these proposals they would now be regulated as individual CILEX members by the SRA under the SRA/CILEX Principles and Code.

This will be simpler for consumers as they will only deal with one regulator. A firm who decides that it needs to report an employee will only need to do so to the SRA.

Our proposed approach to this 'dual jurisdiction' for non-authorised CILEX members where disciplinary action is called for will be:

- In the cases where it would currently apply, consideration will be given to an order under s43 of the Solicitors act 1974 (or its equivalent under s99 Legal Services Act 2007) preventing the individual from being employed in a solicitor's firm. In parallel with this there would be proceedings against the individual as a CILEX member which may result in termination of their CILEX membership and other disciplinary measures.
- Otherwise, we will generally proceed with disciplinary measures against the individual as a CILEX member.

Where the CILEX member does not work in an SRA-regulated firm, or under the supervision of a solicitor, then the jurisdiction to bar them from being employed in that capacity would not apply. And the individual would be regulated by us as a CILEX member only, in accordance with the redelegation.

Publication of decisions

Decisions will be published and retained online in accordance with the overall approach set out in our publication guidance [https://qltt.sra.org.uk/solicitors/guidance/disciplinary-publishing-regulatory-disciplinary-decisions/] , which is similar to the publication policy

[https://cilexregulation.org.uk/wp-content/uploads/2018/12/IDAR-Annex-3.pdf] currently operated by CRL.

In the case of non-authorised CILEX members, we will consider how best to integrate publication with our employee related decision check [https://qltt.sra.org.uk/consumers/solicitor-check/employee-decision/].

Question 3: Do you have any comments on any aspects of our approach to investigation and enforcement of non-authorised CILEX members?

Question 4: Do have any comments on the draft changes to the SRA Standards and Regulations?

Costs and fees

The costs of regulating non-authorised CILEX members are not currently charged to those members and are incorporated in the practising fees charged to authorised CILEX members. This keeps membership fees lower at the earlier levels and reflects CILEX's view that regulation benefits those that are authorised members the most as a necessary condition for the right to conduct reserved legal activity.

We propose to maintain this arrangement if redelegation occurs, for the same reasons.

As set out in our 2023 consultation, our view is that we expect that the ongoing cost of the regulation element of the practising certificate fees to CILEX authorised members will not be higher than its present level. This does not consider transition costs, which CILEX has agreed to fund and therefore would only where absolutely necessary be recovered through the initial year's practising certificate fee.

Question 5: Do you agree with our proposed approach to the costs of regulating non-authorised CILEX members?

Education

We would not be 'authorising' individuals to become CILEX Paralegals or students.

Our role with the individual non-authorised CILEX members would primarily relate to character and suitability, and enforcement. We would deal with reports of breaches of the SRA CILEX Code of Conduct which could include breaches of the requirements in that Code to provide a competent service. We will however have no role in assessing the continuing competence of non-authorised CILEX members in general.

Paralegal CILEX members are subject to continuing professional development (CPD) requirements. As stated in our 2023 consultation, we

do not propose to take on CRL's existing mechanisms for routinely auditing CPD records on an annual basis.

We recognise that if CILEX routinely checks CPD as part of its membership function, it will share with us any information from these checks that may raise regulatory issues. This would be particularly around the requirements in the SRA CILEX Code of Conduct to maintain competence and keep professional knowledge and skills up to date. We would consider such information in accordance with proposed regulatory processes including whether enforcement action is required.

We recognise that the qualifications that non-authorised CILEX members take are designed to allow them to become authorised in the future. And as such we would have a future role in oversight of the education providers.

As we have said in the response to our 2023 consultation, the education routes for solicitors and authorised CILEX practitioners are different. And we remain committed to work with CILEX, and in consultation with relevant stakeholders, to review and consider any appropriate changes and improvements over time.

Question 6: Do you agree with our proposed overall approach to issues relating to the education and continuing competence of non-authorised members?

Consumer information and communications

As set out in our 2023 consultation, if redelegation proceeds we will adapt our website and other communications to include CILEX members in ways that provide clarity to the public. We will also maintain the distinct identity of both CILEX and solicitor routes to the profession.

We would make sure that consumer information incorporates the regulation by the SRA of all CILEX members. They would be obliged under the proposed SRA CILEX Code of Conduct to inform clients how the services they provide are regulated. We recognise that getting this approach right will be crucial to successful delivery of these proposals and we will work with stakeholders to do so if redelegation proceeds.

CILEX will continue to maintain and publish the Professional Paralegal Register [https://www.cilex.org.uk/membership/institute_of_paralegals/] .

Transitional arrangements

Our approach to transitional arrangements was set out in our 2023 consultation. We will adopt this for non-authorised CILEX members, working with CILEX and the CRL if redelegation proceeds. This would

include arrangements for transfer of live investigations and part heard cases.

Arrangements not impacted by these proposals

Our regulatory arrangements in a number of areas will be unchanged by these proposals. These will continue to apply only to authorised persons and to SRA- regulated firms. They will not apply to non-authorised CILEX members except insofar as they are employees of SRA-regulated firms. These are:

- Anti-money laundering requirements
- Compensation arrangements
- Interventions
- Overseas Rules
- Professional Indemnity Insurance requirements
- Regulated Financial Services Activities.
- SRA Account Rules and holding of client monies including third-party managed accounts
- Transparency Rules.

Draft Regulatory Impact Assessment

Overview

This draft regulatory impact assessment sets out our view of the likely impact of our proposals on stakeholders. It also outlines how we will evaluate the impact of our proposals for the regulation of non-authorised CILEX members if redelegation of CILEX regulation from the CRL to the SRA goes ahead.

Analysis

Those most likely to be affected by the proposals are:

- CILEX members
- CILEX-regulated entities
- solicitors
- SRA-regulated firms
- consumers of legal services,
- the wider public.

The identified impacts are set out below as neutral, positive and negative.

Our analysis of these risks and benefits focuses on:

1. How our proposals would present differences in the way non-authorised CILEX members are currently regulated. This focuses on

our proposals
   a. to make changes to the SRA CILEX Code of conduct and
   b. give equivalent rights to non-authorised CILEX members in relation to due process and appeals on disciplinary matters to those we proposed for CILEX authorised members.

2. The potential positive, negative or neutral benefits of such changes for non-authorised CILEX members, solicitors, consumers and the wider public, from the perspective of the regulatory objectives and principles of good regulation in the Legal Services Act.

This analysis draws on publicly available data and documentation from CILEX, CRL, as well as data and documentation produced by us and other organisations.

We are asking stakeholders to provide further evidence and views in response to this consultation. We will take any further evidence into account in finalising our regulatory impact assessment, and where relevant in our future regulatory arrangements.

Neutral impacts

Three-quarters CILEX members, including students and paralegals, already work in SRA-regulated firms and so already come under SRA regulatory standards and requirements. Around 83% of non-authorised CILEX members work either in those SRA-regulated firms or those regulated by the CRL under similar rules.

Our proposals for non-authorised CILEX members involved a transfer of existing functions from the CRL to us. Although this could result in some changes in processes, the regulatory functions would remain the same.

The change in regulator for non-authorised CILEX members would not be expected to affect the way the solicitor's profession is regulated. As we set out in the 'Risks and mitigation' section of this consultation, we will not be authorising CILEX students, paralegals or affiliates and they will not include SRA in their title.

There will be a separate SRA CILEX Code of Conduct and our regulatory communications will distinguish between solicitors, authorised CILEX members and non-authorised members. This will help to make sure that the public are aware of differences between them and make informed choices when accessing legal services.

We will make sure that there are no costs to solicitors in these arrangements. Again, as set out in the 'Risks and mitigation' section, we will work with CILEX to ensure that there is no cross subsidy between the professions. Any transitional or development work is being funded by CILEX.

Our main proposals for change are focused on the SRA CILEX Code of Conduct and investigation and enforcement. We would continue to deliver prior conduct tests for CILEX members, but we would apply our current character and suitability rules rather than the tests currently being delivered by CRL. This mirrors proposals we have already made in relation to authorised CILEX practitioners. All our regulated community would then come under the same approach – rationalising regulation and supporting consumer protection.

Where non-authorised CILEX members breach our principles or Code of Conduct for CILEX members and/or SRA-regulated firms, we would seek to integrate investigation and enforcement of individuals with our current approach. This would include recognising any engagement of Section 43 of the Solicitors Act 1974 and the Code of Conduct for SRA-regulated firms which already applies to non-authorised CILEX members working such firms.

We would apply criteria and guidance to make sure that our approach to investigation and enforcement was proportionate to the risk of the public. This means we are not expecting any significant impacts on non-authorised members due to our proposals on investigation and enforcement.

The assessment of positive and negative benefits below focus on the potential impacts of where we are proposing changes to regulatory arrangements.

Positive impacts

1. **Protecting and promoting the interests of consumers and enhancing consumer protection**

Simplifying the regulatory landscape by retaining a single regulator for all CILEX members would make it easier for consumers to understand their regulatory protections and redress.

Our proposals for investigation and enforcement would reduce any current differences in treatment between non authorised persons. This means both CILEX and non CILEX staff would come under our enforcement strategy and would go through similar procedures.

We would also aim to simplify the complaints process that relates to non-authorised CILEX members and allow consumers to easily search for disciplinary decisions relating to non-authorised members.

2. **Promoting and maintaining adherence to the professional principles.**

Applying the same high standards for CILEX authorised and non-authorised members supports this objective. The proposals will also bring

efficiencies through reducing regulatory duplication for those non-authorised CILEX members who work in SRA-regulated firms.

3. **Encouraging an independent, strong, diverse and effective legal profession.**

The need to treat everyone one including consumers in a non-discriminatory manner is found in the existing CILEX Code of Conduct. Our draft SRA CILEX Code of Conduct also requires all CILEX members to treating colleagues fairly and with respect, and the Principles extend to conduct outside the workplace. We would update our guidance for those we regulate on how to comply with our requirements - to confirm our expectations in respect of CILEX members. The updated guidance would make clear that we would take an equivalent approach to key regulatory issues, for example conduct in litigation or sexual harassment.

Equality impacts are further considered in the equality impact assessment below.

4. **Protecting and promoting the public interest.**

CILEX non-authorised members play an important part in providing legal services and ensuring that their regulation is sustainable (which it might not be if they were regulated as a separate group) protects the public.

As a separate point, our draft SRA CILEX Code of Conduct also clarifies the importance of public interest in a way that is not explicit in the current CILEX Code of Conduct.

Negative impacts

No negative impacts have been identified at a policy level.

Evaluation

If CILEX proceeds with the redelegation of the regulation of CILEX members 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 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.

Question 7: Do you have any comments on our draft regulatory impact assessment?

Draft Equality Impact Assessment

Introduction

We not expecting our proposals to have a substantial impact on how equality and diversity is monitored and addressed for unauthorised CILEX members. This is because all legal service regulators have similar requirements and duties.

The CRL and the SRA are both subject to the regulatory objective in the Legal Services Act to encourage an independent, strong, diverse and effective legal profession. Both have incorporated equality and diversity considerations in their codes of conduct for those they regulate. And both regulators work within the LSB's framework to encourage and promote a diverse legal services sector, which includes data collection and publication requirements, diversity outcomes and criteria for good regulatory performance on equality matters. The redelegation of regulation will enable a consistent and joined-up approach to EDI issues relating to solicitors and CILEX members, led by the SRA's dedicated equality, diversity and inclusion team.

This equality impact assessment (EIA) specifically considers the equality and diversity implications of the changes proposed in this consultation. Due to limited access to data on non-authorised CILEX members, all CILEX membership has been referenced.

At this stage we are focused on assessing the equality impacts of changes at a policy level. If our Board decides to go forward with our proposals, we would then consider equality and diversity issues as we develop implementation plans. We would also monitor for impacts, with reference to issues identified in our EIAs.

Comparing our current and proposed regulated population

Our initial analysis of solicitor and authorised CILEX practitioner data sets identified some common equality issues in respect of the two regulated populations. CILEX data has been provided to us as of 1 March 2024. The national benchmark figures in this section are taken from the 2021 national census.

An under-representation of disabled people in comparison with the national benchmark for declared disability (18%) is found across the wider CILEX membership (6%) and all lawyers in SRA-regulated firms (6%).

Differences between solicitors and all CILEX members includes a higher proportion of women at authorised CILEX grades and across the CILEX membership (77%. This is compared to solicitors who are female (53%) and the national benchmark (51%). While 17% of CILEX members are from ethnic minority groups in comparison to 19% of solicitors and the national benchmark of 18%.

We have recently undertaken some specific work into pregnancy and maternity leave and support, reasonable adjustments and the attainment gaps and over-representation in certain stages of enforcement. We have identified some best practice pointers from our findings. We would make sure that changes in our regulated community are incorporated into considerations of such issues. We would also be open to new issues arising from changes in our regulatory community.

Data available on SRA-regulated firms and CRL diversity reports which suggests generally that lawyers in SRA-regulated firms (57%) are more likely than CILEX members (35%) to have come from a professional socio-economic background.

In addition, 86% of CILEX members attended state school in comparison to 64% of all lawyers in SRA-regulated firms. CILEX data from 2022 has also indicated that there was no significant difference between the performance of candidates for the new CILEX professional qualification (CPQ) assessment on a range of diversity characteristics. These include ethnicity and gender, which compares well with evidence of attainment gaps across legal services [https://qltt.sra.org.uk/sra/research-publications/ethnicity-attainment-gap-legal-professional-assessments/] in general.

There is evidence that some non-authorised CILEX members have a significant role in legal aid cases, and so support access to justice for those who would not otherwise be able to afford it.

An independent review of Criminal Legal Aid by Sir Christopher Bellamy (2021), for example, included the finding that perhaps up to 40 per cent of police attendances are carried out by accredited representatives. Many of these are likely to be from the relevant duty solicitor's firm, for example CILEX paralegals who do not, or chose not, to meet the full LAA requirements for duty solicitors but are none the less qualified as accredited representatives. Black people are likely to be disproportionately represented in their client group. Government figures for 2021 to 2022, for example, show that Black people were 2.4 times more likely to be arrested than White people.

In light of this analysis, it is therefore important that our regulatory proposals do not impose unjustified burdens on the non-authorised CILEX member group. This could interact adversely with equality characteristics both for that group and for their clients. This is considered in more detail below.

Regulatory standards

Our proposed changes are not expected to result in new barriers or regulatory burdens for non-authorised members, and therefore also should not have a knock-on effect on services to their clients. Our expectation is that the cost of regulating non-authorised CILEX members

would be fully recovered from the practising certificate fees of authorised CILEX members. We are not expecting such fees would increase as a result of redelegation.

Code of Conduct

Our draft SRA CILEX Code of Conduct emphasises the need for CILEX members to treat colleagues fairly and with respect and would also extend to conduct outside working times in SRA regulated firms. Any breaches would then be dealt with by our proposals on investigation and enforcement (see below).

The new SRA CILEX Code of Code potentially could, therefore, potentially have positive impacts for various groups who are more at risk of harassment and discrimination within, and outside the workplace.

Investigation and enforcement

We have drafted our proposals so that non-authorised CILEX members would have broadly equivalent review and appeal rights to those that they currently enjoy.

Introducing more burdensome conduct checks could interact with equality characteristics. Therefore, our proposals in relation to replacing the CILEX prior conduct test with the SRA's character and suitability rules are designed so that there is no extra burden for non-authorised CILEX members. As now, DBS checks would only be required by exception where a relevant issue was declared.

As in the case of CRL, we monitor the diversity of individuals subject to enforcement and disciplinary processes. We have also commissioned research which seeks to identify factors that are driving overrepresentation at particular stages of enforcement.

SRA diversity data on enforcement is published annually and suggests an overrepresentation of certain groups in concerns raised and cases we investigate. This includes men and solicitors from Black, Asian and minority ethnic backgrounds. Although this is based on small sample sizes for early stages of enforcement. CRL (2022) data on CILEX members also suggests the possibility of overrepresentation at particular stages based on being Black, Asian and/or male and other protected characteristics. Although CRL also had small sample sizes.

In the event of redelegation, we would work towards integrating specific consideration of CILEX members into our wider investigations and work to address any overrepresentation of certain groups within enforcement cases. We would also seek to identify factors leading to this and how to address these as far as we are able.

Evaluation

If CILEX proceeds with the redelegation of the regulation of CILEX members from CRL to the SRA we will monitor, and seek views on, and report on the equality impact of the consequent changes to our regulatory arrangements.

Question 8: Do you have any comments on our draft equality impact assessment?

Consultation questions

Question 1

Do you have any comments on the draft revised SRA CILEX Code of Conduct and its application to non-authorised CILEX members?

Question 2

Do you agree with our proposed approach to applying the character and suitability rules to applicants for CILEX membership and non-authorised CILEX members?

Question 3

Do you have any comments on any aspects of our approach to investigation and enforcement of non-authorised CILEX members?

Question 4

Do have any comments on the draft changes to the SRA Standards and Regulations?

Question 5

Do you agree with our proposed approach to the costs of regulating non-authorised CILEX members?

Question 6

Do you agree with our proposed overall approach to issues relating to the education and continuing competence of non-authorised members?

Question 7

Do you have any comments on our draft regulatory impact assessment?

Question 8

Do you have any comments on our draft equality impact assessment?

Download

- Consultation - Arrangements for Regulating Non-Authorised CILEX Members (PDF 26 pages, 261KB)
  [https://qltt.sra.org.uk/globalassets/documents/sra/consultations/arrangements-regulating-non-authorised-cilex-members-consultation.pdf]
- Annex 1 - Draft SRA Code of Conduct for CILEX Members (PDF 10 pages, 157KB)
  [https://qltt.sra.org.uk/globalassets/documents/sra/consultations/annex-1-draft-sra-code-conduct-cilex-members.pdf]
- Annex 2 - Proposed Sanctions and Controls for CILEX members (PDF 7 pages, 174KB)
  [https://qltt.sra.org.uk/globalassets/documents/sra/consultations/annex-2-proposed-sanctions-controls-cilex-members.pdf]
- Annex 3 - Consequential Amendments to the SRA Standards and Regulations (PDF 2 pages, 131KB)
  [https://qltt.sra.org.uk/globalassets/documents/sra/consultations/annex-3-consequential-amendments-sra-standards-regulations.pdf]

Back to closed consultations [https://qltt.sra.org.uk/sra/consultations/consultations-closed/]