



BIRMINGHAM LAW SOCIETY
one profession • one region • one voice

**Response to SRA Consultation on arrangements
for SRA regulation of CILEX members**

November 2023

Response of the Professional Regulation Committee of the Birmingham Law Society to the SRA Consultation on arrangements for SRA regulation of CILEX members

This response has been prepared by the Professional Regulation Committee of the Birmingham Law Society. The Society is the largest local law society with some 9,000 members. The response represents the collective view of the Professional Regulation Committee whose members are specialist lawyers practising in all aspects of professional regulation and compliance for the legal profession.

Response

The Chief Executive of the SRA (Mr Paul Philip) announced at the SRA COLP/COFA conference on 18 October 2023 that the SRA proposals for its regulation of CILEX members was a *“tidying up exercise”*. The Birmingham Law Society (“BLS”) strongly disagrees with this view which seriously underestimates the impact of such a significant change upon CILEX members, the solicitors’ profession, and the legal profession more generally.

BLS agrees that the current system put in place by the Legal Services Act 2007 is imperfect. Its implementation followed a report produced by Sir David Clementi, who was appointed in July 2003 to review the regulatory framework for legal services in England and Wales. This followed a report by the Department of Constitutional Affairs which concluded that the framework was *“outdated, inflexible, over-complex and insufficiently accountable or transparent”*. Clementi’s task was, therefore, to suggest a simplification to the system with more transparency and accountability.

He failed in his objective. The result was the Legal Services Act – a huge and complex piece of legislation which has left the legal profession with 8 frontline regulators of greatly differing sizes and an overarching regulator, the Legal Services Board (“LSB”). All regulators have different rules and regulatory regimes and, as an added complication, many lawyers are regulated by two regulators – as an individual by one regulator and as part of a firm, by another.

This was compounded by a failure to open up the debate on which legal services should be subject to regulation and which should not. There was therefore no change to the list of reserved activities (taking oaths, litigation and advocacy, conveyancing, and probate) which had been set out in successive Solicitors Acts over many decades. This spawned an increase in those providing legal services through unregulated entities and by unqualified individuals. The result for the public was the complete opposite of a simplification of the regulation of legal services as envisaged by Clementi.

However, the failure of Clementi does not in the view of BLS justify tinkering or tidying up the regulation of legal professionals in the way proposed by the SRA in this consultation. Change to the regulation of legal service providers would need to be undertaken in a holistic way and would be a job for the Government not the SRA.

This consultation has the look and feel of another step on the SRA's onward march to becoming the sole regulator for legal services alongside its pitch for a role as sole supervisor for AML. It may have its sights set on becoming the Financial Services Authority for the law – the Legal Services Authority.

The Law Society will be scrutinising the specific proposals within the consultation and responding in detail. BLS supports and endorses the concerns expressed by the Law Society.

Of particular relevance to BLS are the following:-

1. The solicitors' profession has not been consulted on the principle of these proposals. The SRA has jumped forward to a consultation upon "arrangements" before the CILEX members have responded to the CILEX consultation and before solicitors can consider whether they want CILEX members to be regulated by the SRA.
2. The proposed legal relationship between CILEX which is the representative body for CILEX members (equivalent to the Law Society) and the SRA.

3. The potential for consumer confusion including the effect upon the identity of the solicitors' profession as well as CILEX's proposal to use the title "Chartered Lawyer".
4. The SRA will sit between two representative bodies i.e., the Law Society & CILEX – how will disagreements between those two bodies be resolved?
5. Will the SRA Board need a Legal Executive as a member of its Board who will then oversee decisions about solicitors?
6. CILEX will continue to oversee entry or membership for Legal Executives and the education and training – the SRA undertakes these roles for solicitors. How will this work in practice?
7. This whole exercise will cost the SRA additional funds in training and ongoing staff costs. There will be separate Codes of Conduct for CILEX members.
8. It is not clear how the CILEX members will be able to fund these costs which will be more than their current outlay. It is anticipated that the number of CILEX members will decrease significantly. The cost will therefore be borne by the solicitors' profession.
9. If clients of CILEX entities are permitted access to the Compensation Fund then contributions and reserves should not be pooled otherwise the solicitors' profession will be subsidising the CILEX clients.

BLS understands that CILEX members are generally not in support of these proposals expressing the concern that it would be the beginning of the end for CILEX members who have been a source of immense benefit to the legal services market since 1892.

In summary, BLS is not in agreement with these proposals and urges the SRA to take particular notice of the Law Society detailed response.

Birmingham Law Society Professional Regulation Committee

November 2023