

Paul Philip
Chief Executive
Solicitors Regulation Authority

By email

15 January 2024

Dear Paul

Re: CILEX proposals for redelegation of regulation

I hope that you and colleagues enjoyed a restful break over the holidays and look forward to working with you in 2024 across our many areas of shared interest.

I am writing today in relation to the ongoing matter of the SRA's proposals to regulate some of CILEX's members. I believe that your Board will meet on 23 January and will at that meeting consider responses to the consultation you conducted last year and what if any further steps should be taken. I would ask that your board members are made aware of this letter for the purpose of that item.

Recent SRA research

We have noted the findings of consumer research commissioned by the SRA, late in 2023, and made available on your web site - ahead of publication of the results of your consultation - on or around 13 December ("the December Research"). The December Research was I think first brought to our attention by members of the Law Society, rather than contact between our two organisations.

We have a number of concerns about the December Research, which I should draw to your attention prior to your 23 January Board meeting.

The design of the December Research questions to consumers, who are acknowledged to have low levels of knowledge about how to resolve legal issues (if they recognise them as such) and low awareness of how services and professionals are regulated, greatly influences the responses received. It would in our view require a far greater depth of explanation to bring consumers to the point where they can judge this situation on its merits and make considered responses. As it is, the questionnaire seeks agreement on only one possible solution to addressing the challenges presented and cannot be therefore taken as an informed endorsement of the redelegation proposals.

As such, we do not think that the December Research adds to the debate on this matter, and does not provide reliable evidence to support decision making, or progress the public debate. The 'result' that consumers do not have a clear understanding of legal sector regulation and favour simplicity over complexity when asked a hypothetical question and without being advised of the basic framework established under the 2007 Act are unsurprising. It is right that consumer needs are addressed in an appropriate way

but there are alternative solutions that do not require redelegation of responsibilities from CILEx Ltd to the SRA.

Overall the December Research appears to confuse rather than clarify the consumer protection issues at stake. It does not establish what the harm is that the proposals for a limited regulatory consolidation aim to address or what material gain for consumers is expected in terms of choice, price and quality. It has not been established that the way legal executives currently operate and are regulated creates consumer detriment that requires mitigation through regulatory consolidation.

It also remains questionable whether conducting this research falls within the scope of the SRA's delegated functions and its corporate objects. While the Articles of SRA Limited include as one of the company's objects the power to publish research and surveys in respect of all matters of regulation by such means *as may in the opinion of its directors positively affect or advance the company's objects*, they also make it clear that the company's objects are limited to performing and discharging those functions delegated to it by the Law Society and its Council. Whilst it is for your board to be satisfied that the authority is acting within its powers or to assess the risks of doing otherwise, we should make clear that we continue to reserve our position on that issue and should not be taken to acquiesce in relation to it.

The Law Society's position

In light of the ongoing work from the SRA on this matter as well as comments from CILEX at the recent Justice Select Committee and the upcoming discussions at your Board, I should reiterate that the Law Society remains opposed to the proposals put forward by CILEX and the SRA.

These proposals, which would fundamentally alter the current regulatory arrangements, do not consider the potential disadvantages to both the solicitor and CILEX regulated communities or the potential adverse effects on the SRA's ongoing duty to regulate the solicitor profession in a way that supports and promotes the regulatory objectives. The impact assessments carried out by the SRA are insufficient to offer any reassurance.

We believe that a profession's code of conduct and the range and rigour of professional training are the basis for that profession's identity and public confidence here and abroad. The CILEX and solicitor professions have different requirements and individual professional identities that are best served by individual, specifically tailored, independent regulators. A point on which CILEx Regulation Ltd agrees, in relation to the regulation of CILEX members.

In addition, we remain concerned that the SRA has voiced no view in relation to CILEX's proposal to introduce the title of 'Chartered Lawyer', despite the risk of this negatively impacting consumers' ability to clearly understand the legal choices available to them and to choose the right legal provider for them especially where their legal needs are multiple. The YouGov poll carried out for the Law Society found that 76% of consumers associated the term 'lawyer' with solicitors and 61% associated it with barristers. In comparison, only 12% associated the term with legal executives/CILEX legal professionals.

The redelegation of CILEX's regulatory function must not be treated as a given. A strong, evidence-based case would need to be made to justify such a change in the regulation of the legal profession. There is a great deal of wider opposition to these proposals,

including from CILEx Regulation Ltd and members of CILEX, which must not be downplayed. There are many important questions which remain unanswered and must be dealt with prior to any evidence-based decision can be made. For example, the issue of paralegals and CILEX's future plans for these individuals remains unresolved.

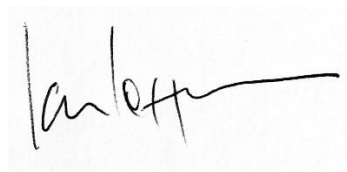
It may also be timely to reiterate that, as previously discussed, my expectation is that the Law Society Council would, if required to decide the matter on behalf of the Society as the sold shareholder in SRAL, refuse consent to changes that would be required to be made to SRAL's Articles for any redelegation to take effect.

Finally, we are aware that in recent days CILEx has published results from its Autumn 2023 consultation exercise. We are reviewing those materials but even from an initial reading can see that they do not make the necessary case for any application to be made by CILEx to be approved.

I am sorry to write in these terms but felt that our position as set out in our response to your consultation should be reiterated and updated ahead of 23 January. Following your board meeting, we anticipate that you will publish results of your consultation exercise and indicate what if any further steps the SRA proposes to take. We would ask to be notified of those matters as soon as possible after your meeting.

As always, I would be happy to speak to discuss these matters in more detail if that would be helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Jeffery', with a long horizontal flourish extending to the right.

Ian Jeffery

Chief Executive Officer, the Law Society