



## Summary of Decision

The following table is a high level summary of the decision of the Legal Services Board. It is not a formal part of the decision notice.

<b>Purpose of notice</b>
To set out the LSB's decision to grant the application from CILEx Regulation to make changes to its regulatory arrangements to introduce new Transparency Rules.
<b>Alterations that are being approved by this decision</b>
<p>The CILEx Regulation alterations aim to improve price and service transparency. The proposed Transparency Rules will require firms to:</p> <ul style="list-style-type: none"><li>• publish on their website, or make available on request, price and service information;</li><li>• publish on their website their complaints procedure, including how a complaint may be made to the Legal Ombudsman or CILEx Regulation;</li><li>• publish regulatory information about Professional Indemnity Insurance (PII), access to Compensation arrangements and, on their website, the CILEx Regulation logo relating to the areas in which the firm is authorised to conduct legal services</li></ul>

## Decision notice

### The CILEx Regulation application for the approval of changes to its regulatory arrangements to introduce Transparency Rules.

The Legal Services Board (“**LSB**”) has granted an application from CILEx Regulation for approval of changes to its regulatory arrangements in order to introduce Transparency Rules.

1. This decision notice sets out the decision taken, including a brief description of the changes.
2. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (“**the Act**”) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. CILEx Regulation is an approved regulator. The notes at page 6 of this notice explain the statutory basis for the decision.
3. The chronology for the LSB’s handling of this application is also set out at the end of this decision notice.

## Background and proposed changes

### *Background*

4. The changes follow the Competition and Markets Authority (“**CMA**”) report published in December 2016<sup>1</sup> which made recommendations to address its conclusion that competition in the market is not working well for consumers. In particular, the CMA found that consumers need to be given access to more information to help them navigate the market and make informed decisions and choices when accessing legal services.

### *Transparency Rules*

5. The proposed Transparency Rules will require firms to:
  - i. publish on their website, or make available on request, price and service information;
  - ii. publish on their website their complaints procedure, including how a complaint may be made to the Legal Ombudsman or CILEx Regulation;
  - iii. publish regulatory information about PII, access to Compensation arrangements and, on their website, the CILEx Regulation logo relating to the areas in which the firm is authorised to conduct legal services
6. The new regulatory arrangements provide that price information must include:
  - The **total price** of the legal service
  - The basis on which the **total price** is calculated, for example, fixed fee or hourly rate

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<sup>1</sup> <https://www.gov.uk/cma-cases/legal-services-market-study#final-report>

- The services that are included in the published **total price**, and services that might reasonably be expected to be included in the published **total price** but are not
  - The price of all disbursements payable, together with an explanation of the disbursement
  - The prices and disbursements on which VAT must be paid and the amount of VAT available
  - An explanation of the circumstances in which clients may have to make payments themselves, if conditional fee or damages-based agreements are available.
7. Service information must include:
- A description of the legal services provided
  - The key stages of the legal service
  - Typical timescales for each stage of the legal service.
8. In relation to regulatory information, the new regulatory arrangements provide that an authorised entity must:
- state that it is required to have PII to cover all legal services provided
  - make clear the area(s) of law in which it provides legal services that it is authorised for, and which of these areas are covered by CILEx Regulation's Compensation Arrangements
  - display on the company's letter headed paper, emails and on the home page of its website the wording that it is 'Authorised by CILEx Regulation for...' followed by the areas of law in which it has been granted authorisation, along with its Authorisation number
  - display on the home page of its website the CILEx Regulation logo relating to the area(s) in which the firm is authorised to conduct legal services.

### **Key issues considered in the assessment of the application**

9. The LSB welcomes CILEx Regulation's changes to implement the recommendations made by the CMA. The LSB notes that this is a significant first step in CILEx Regulation's endeavour to improve transparency through introducing targeted rules setting out clear expectations for service providers. In the long term, the LSB considers that this should help to promote competition and contribute to improving access to justice. It should also help to provide evidence of the quality of services, to inform any need for further interventions or additional targeted compliance obligations.
10. The LSB makes the following key points in relation to the application.

#### *Code of Conduct*

11. CILEx Regulation do not consider it necessary to change the Code of Conduct ("**the Code**") because Principle 4 of the Code requires the regulated community to comply with their legal and regulatory obligations. CILEx Regulation state in their application that this means they will be able to enforce against the Transparency Rules, should they need to, under Paragraph 4 of the Code.

*Areas of law*

12. The CILEx Regulation Transparency Rules will apply to residential conveyancing and probate, in line with both the approach taken by other regulators. The application states that this will benefit the consumer in being able to make comparisons across the regulated market.
13. CILEx Regulation state that the experience they gain from the implementation in these areas will inform the approach to extending the Transparency Rules to further areas of law in 2020.

*Requirements not included in the rules*

14. CILEx Regulation's application notes and explains two key differences in its requirements, when compared to the regulatory arrangements that the LSB has already approved from other regulators in relation to transparency:
  - CILEx Regulation has decided not to mandate that information should be published in a "prominent" place because of how the use of prominent might be interpreted and potentially enforced in the future. It states that prominent on a website does not necessarily mean on the homepage or directly off the homepage, even if this might be the intention. CILEX Regulation explained that in their view that is not possible or practicable for all the required information within the Transparency Rules to be provided on the home page and that firms need to be able to set out their websites in a manner that was not prescriptive. As the CILEx Regulation Transparency Rules will only apply to a small number of firms, the LSB expects CILEx Regulation to monitor how the Rules are being implemented.
  - CILEx Regulation has decided to not mandate the publication of staff mix. It has explained that this is due to the limited knowledge or understanding of the CILEx Professional titles amongst the public and within the legal and government organisations. This is in part because the title of legal executive is not protected and therefore is often used by members of the profession who are not CILEx members.
15. The LSB expects CILEx Regulation to keep these issues under review as it monitors the impact of the rules and considers extending the requirements in 2020.

**Decision**

16. The LSB has considered CILEx Regulation's application against the criteria in paragraph 25(3) of Schedule 4 to the Act. It accordingly grants the application in full.
17. **Annex A** to this decision notice contains the amended Transparency Rules that are approved by the LSB.

### **Chronology**

- The LSB confirmed receipt of an application from CILEx Regulation on 8 October 2018, noting the last business day for the 28-day initial decision period as 2 November 2018
- This decision notice is effective from 30 October 2018.
- This decision notice will be published on our website on 1 November 2018.

**Neil Buckley, Chief Executive**

**Acting under delegated authority granted by the Board of the Legal Services Board  
30 October 2018**

*Notes:*

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that
  - (a) granting the application would be prejudicial to the regulatory objectives
  - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
  - (c) granting the application would be contrary to the public interest
  - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
  - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
  - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
  - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
  - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
  - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules<sup>2</sup> about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

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<sup>2</sup> Rules for Rule Change Applications – Version 2 (November 2010)

## Annex A – CILEx Regulation Transparency Rules



### CILEx Regulation Transparency Rules

#### Introduction

1. (1) These are the CILEx Regulation Transparency Rules.  
(2) If a CILEx **Authorised Entity** is providing legal services set out at Annex A, in relation to those legal services, it must
  - a) publish on, or via a link from, its website homepage the information set out at Rules 2-8, or
  - b) if it does not have a website, make available on request the information set out at Rules 2-7.  
(3) In complying with these rules, a CILEx **Authorised Entity** is required to adhere to the CILEx Code of Conduct for the time being in force, including but not limited to, Principles 2, 4 and 5. A CILEx **Authorised Entity** is bound by the associated regulatory arrangements in force from time to time.  
  
(4) Responsibility for the application and administration of these Rules is delegated by **CILEx** to **CILEx Regulation**.

#### PRICE information

2. Price information must include:
  - a) The **total price** of the legal service.
  - b) The basis on which the **total price** is calculated, for example, fixed fee or hourly rate.
  - c) The services that are included in the published **total price**, and services that might reasonably be expected to be included in the published **total price** but are not.
  - d) The price of all disbursements payable, together with an explanation of the disbursement.
  - e) The prices and disbursements on which VAT must be paid and the amount of VAT payable.

- f) If conditional fee or damages-based agreements are available, then the circumstances in which clients may have to make payments themselves (including from any damages) must be explained.

### **SERVICE information**

- 3. Service information must include:
  - a) A description of the legal services provided
  - b) The key stages of the legal service
  - c) Typical timescales for each stage of the legal service

### **COMPLAINTS AND REDRESS information**

- 4. An **Authorised Entity** must publish details of its free complaints handling procedure including how and when a complaint can be referred to the Legal Ombudsman and to **CILEx Regulation**.

### **REGULATORY information**

- 5. An **Authorised Entity** must state that it is required to have Professional Indemnity Insurance (PII) to cover all legal services provided and it must be made clear which legal services are covered by the Authorised Entity's PII.
- 6. An **Authorised Entity** must make clear the area(s) of law in which it provides legal services that:
  - a) it is authorised for,
  - b) are covered by CILEx Regulation's Compensation Arrangements (Compensation Arrangements) and
  - c) are not covered by Compensation Arrangements
- 7. An **Authorised Entity** must display on the company's letter headed paper, emails and on the home page of its website the wording that it is 'Authorised by CILEx Regulation for....' followed by the area of law in which it has been granted authorisation for and its Authorisation number.
- 8. An **Authorised Entity** must display on the home page of its website the **CILEx Regulation logo(s)** relating to the area(s) in which the firm is authorised to conduct legal services.

## Interpretation

9. In these Rules, unless otherwise provided:

<b>Authorised Entity:</b>	means a partnership (including a limited liability partnership), company or sole principal authorised or licensed by CILEx under the Legal Services Act 2007 to:  (a) carry on an activity which is a Reserved Legal Activity; or (b) provide immigration advice or immigration services;  and where the context permits, references to acts or omissions by such a body shall include the acts or omissions of such a body's principals (including the partners in a partnership, the members in an LLP or the directors in a company) and employees;
<b>CILEx:</b>	means the Chartered Institute of Legal Executives;
<b>CILEx Regulation:</b>	means CILEx Regulation Limited
<b>logo:</b>	means any CILEx Regulation logo or smart badge that any Authorised Entity or CILEx practitioner is authorised to display.
<b>total price:</b>	means all costs that must be paid for a legal service including, but not exclusively, the legal fees, disbursements, any other costs and VAT on these elements where payable.

**Annex A** - the list of the areas of legal services to which the price transparency requirements apply

1. Residential conveyancing of freehold and leasehold sales and purchases, mortgages and re-mortgages including:

- transfer of legal title, ownership or any legal or equitable interest in such property from one party to another
- grant of a mortgage or other lien (the grant of an encumbrance on any such property such as a mortgage or a lien)
  - (the drawing of documents which affect such transfers or grants or establish a title or interest in such property
  - the examination of the title or ownership of such property)

2. Probate, that is the collection and distribution of money, property and other assets belonging to a person following their death, including, but not exclusively:

- application for grant of probate or letters of administration
- payment of debts and funeral expenses
- payment of inheritance tax liability
- distribution of the remainder to beneficiaries in accordance with a will, or, distribution in accordance with the rules of intestacy where there is no will.

Contested probate is not included.