



LSB discussion paper:

Are regulatory restrictions in practising rules for in-house lawyers justified?

A response by

CILEx Regulation and the Chartered Institute of Legal Executives

20 April 2015

Introduction

1. This response represents the joint views of the Chartered Institute of Legal Executives (CILEx), an Approved Regulator under the Legal Services Act 2007 (the Act), and CILEx Regulation (formerly ILEX Professional Standards), the regulatory body for around 20,000 members of CILEx. The Legal Services Board (LSB) discussion paper was considered independently by CILEx and CILEx Regulation. The outcomes of those respective considerations were exchanged and with no significant difference of opinion between the two organisations, a joint response is tendered. For the purposes of this discussion document, 'we' is used to mean both CILEx and CILEx Regulation unless the context suggests otherwise.
2. We promote proper standards of conduct and behaviour among members of CILEx and CILEx Practitioners. Our aim is to ensure CILEx members and CILEx Practitioners are competent and trusted legal practitioners who are fully aware of their obligations to clients, colleagues, the courts and the public. We aim to help practitioners maintain competence and improve throughout their careers and to ensure the public know the quality of work Chartered Legal Executives and other CILEx practitioners can provide.
3. CILEx has recently become an Approved Regulator for the purposes of awarding practice rights in litigation, conveyancing and probate. It also regulates immigration and advocacy services. CILEx Regulation is also a regulator of entities through which legal services are provided. CILEx Regulation can now authorise its suitably qualified members, including conveyancing and probate practitioners, to provide legal services through entities subject to robust but proportionate regulation.
4. We provide an alternative route to legal qualification. The new practice rights allow members and practitioners, who do not come from the traditional legal

route, to qualify as lawyers and enable them to set up their own legal businesses.

CILEx in-house lawyers

5. There are approximately 950 Chartered Legal Executives who practise as in-house lawyers. Our members are employed in a range of organisations from public authorities (including government departments and local authorities) through to private companies of varying sizes. All CILEx members and CILEx Practitioners are subject to our rules and bye laws. The CILEx Code of Conduct sets out the standards of conduct expected from CILEx members and CILEx Practitioners.
6. We contacted all our in-house lawyers to (i) inform our response; and (ii) to gauge opinion on the current arrangements of in-house lawyers. The overwhelming majority of respondents supported our current regulatory arrangements on in-house lawyers.
7. The following are verbatim comments from respondents:

"Having reviewed the paper and background there seems to be no justification to have regulatory restrictions in practising rules for in-house lawyers".

"I urge CILEx Regulation to protect members and employers from unnecessary regulation and resist bringing in such and to retain its current position".

"In so far a 'risk' goes, in-house lawyers have one client (their employer), who they are directly accountable to in all respects. Aside of their professional duties to the Court and those under relevant codes of conduct/ regulation, they are obliged not to anything that would cause conflict or harm with their employers business, its customers or its reputation. This procures a measure of 'self regulation' in-house lawyers are mindful of applying in dealings - both inside and outside work - with any persons 'connected' with their employers business"

"It seems that Local Government is well regulated.

The only issue might be when Local Authority legal departments combine to provide legal services to other Local Authorities to whom they are not directly accountable other than in a lawyer/client relationship. This might apply as there are now organisations such as Public Law Partnership who provide legal services to any Local Authority who wishes to receive their services. In my view they are highly organised and very competent"

CILEx Regulation's approach to regulating in-house lawyers

8. CILEx Regulation provides an outcomes-based approach to regulation and allows members the flexibility to demonstrate how they meet the outcomes and principles of the Code of Conduct. We believe the obligation placed on CILEx members and CILEx practitioners under the CILEx Code of Conduct is sufficient to protect the public interest, without further red tape.
9. Members are required to self-report misconduct when it arises and annually. We also issue surveys annually to members to obtain disciplinary and conduct information. These surveys have not produced any evidence of specific or emerging risks in respect of in-house lawyers. Under its scheme of accreditation for Associate Prosecutors employed by the Crown Prosecution Service (CPS), there are arrangements in place for the CPS and Associate Prosecutors to report any conduct or disciplinary issues. Neither the CPS nor individual Associate Prosecutors have reported risks which suggest there are particular issues which require new regulation to address.
10. We are determined to avoid unnecessary prescription. However, we will review our policies in light of new research or emerging risks, particularly as the range of individuals and organisations CILEx regulates expands under our new powers.

LSB questions for regulators:

What is the rationale to support your current approach to regulating in-house practice?

11. The approach we have adopted to regulate in-house lawyers complies with the provisions set out in section 15 of the Legal Services Act 2007. We have assessed our current in-house practice rules and believe that they are fit for purpose. The CILEx Code of Conduct provides the core principles which CILEx members and practitioners must adhere to in their conduct, practice and professional performance, and the outcomes they must meet. We are a modern, flexible and proportionate regulator. We allow members to fully practise without undue restriction. Regulators imposing unnecessary restrictions have the potential to stifle innovation and limit the legal market place. Most of the current restrictions are rooted in history and have no place in the modern legal sector. In-house lawyers are increasingly contributing in areas such as governance and compliance, neither of which is a reserved activity, but are important to ensure probity and integrity.

12. Our current approach to regulating in-house practice works well and is supported by our members. Any change to this arrangement would be detrimental to the progress of CILEx members and would impact negatively on growth and innovation in the legal sector. We have identified no risks through our disciplinary or monitoring processes which indicate a need for further, specific regulatory intervention.

If you have specific regulatory arrangements, how have you assured yourself that there is compelling evidence to support those arrangements?

13. We do not have any specific regulatory arrangements for in-house practice.

Having reflected on your specific regulatory arrangements, are there any areas you intend to remove or review?

14. We do not have any specific regulatory arrangements for in-house practice.

Can current approaches be improved?

15. We are concerned about the disparity of arrangements for in-house practice between legal regulators. Some regulators have gone beyond the provisions of section 15 of the Legal Services Act and have restricted their regulated community from providing unreserved activities. This is unfavourable for economic growth and for promoting competition in legal services and is contrary to the regulatory objective of *'promoting competition in the provision of legal services'*.¹

16. The different arrangements of regulators will also cause confusion amongst consumers of legal services. They will find that some in-house lawyers can provide unreserved legal activities whereas others cannot and there is no reasonable explanation to support this. These restrictions are detrimental for consumers and restrict the ability of competent and qualified practitioners in the provision of services.

17. Issues arising from CILEx Regulation monitoring of in-house lawyers have been minimal.

Conclusion

We do not impose any unnecessary restrictions on in-house CILEx lawyers. We believe it is sufficient to protect consumer interest if CILEx members comply with the CILEx Code of Conduct. Our approach to in-house practice has been adopted in light of appropriate risk assessment and to safeguard the public interest. We believe that our current arrangements require no revision as they work effectively and ensure that regulation supports economic growth. However we will continue to monitor the area of in-house lawyers as we continue to expand our regulatory remit.

¹ Section 1(1)(e) of the Legal Services Act 2007