

Commission on Justice in Wales

A submission by

The Chartered Institute of Legal Executives (CILEx)

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1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers. Over 1,000 CILEx members live in or adjacent to Wales.
- 1.2. CILEx continually engages in the process of policy, regulatory reform, and law reform. At the heart of this engagement is public interest, as well as that of the profession. Given the unique role played by Chartered Legal Executives, CILEx considers itself uniquely placed to inform these developments.
- 1.3. As it contributes to reforms in policy, regulation and law, CILEx endeavours to ensure regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.
- 1.4. We look forward to ongoing engagement with the Commission. As such this submission is designed to briefly highlight some of the specific issues that CILEx has especial interest in and can speak with authority on. Other matters under consideration by the Commission remain of interest to CILEx, and we hope to work in partnership on all matters.

2. General points

- 2.1. Justice in the jurisdiction of England and Wales is under mounting pressures – declining public spending, rising numbers of unrepresented litigants, a shrunken and dilapidated court estate, growing areas of advice deserts, and concerns about the future sustainability of the workforce in some fields. Against this backdrop, there is the impending and uncertain impact of Brexit. Factors that uniquely affect justice in Wales – geography and infrastructure, dual-language provision, and diverging legal and regulatory provisions – are only heightened by these pressures.
- 2.2. Meaningful access to justice should not be reliant on location or language. A healthy, dynamic and diverse legal services market is central to meeting this access to justice challenge.
 - 2.2.1. The public expect a consistency of quality and consumer protection regardless of which side of the border they are on. The legal regulatory framework currently provides for this across England and Wales as a single jurisdiction. Any functioning market requires a competent and sustainable workforce, with a balance of generalist and specialist providers and professionals.
- 2.3. CILEx is very proud of its Welsh heritage, and has members practicing in all areas of law, and at all levels, across Wales from very junior up to partner level. CILEx has local branches that span the entirety of Wales, and in recent years the Institute itself has had Presidents originating from Wales.
- 2.4. The majority of Chartered Legal Executive lawyers practicing in Wales have qualified through an accessible route to a legal career. By enabling aspiring specialist paralegals and lawyers to qualify via distance learning and on-the-

job qualification, and not mandating university study, CILEx has systemically removed many of the barriers faced by those for whom the traditional routes do not cater. This has also enabled Welsh practitioners to earn while they learn, meaning they qualify without the same crippling debts that other legal professionals often face.

- 2.5. We hope that in its deliberations the Commission is mindful of the pressures divergent education policy and regulatory regimes can have on smaller Awarding Organisations (AOs) like CILEx. If further policy or regulatory divergence were to take place without sufficient consideration for the mechanics of training and qualifying the future legal workforce, the ability for CILEx to continue provision in Wales may be encumbered, or at worse become economically unviable.

3. CILEx route to qualification

- 3.1. CILEx has been educating specialist paralegals and lawyers across England and Wales for more than 50 years.
- 3.2. The CILEx route is demonstrably more accessible, flexible, and affordable than the traditional route to qualify.
- 3.2.1. We provide a non-university route to qualify as a lawyer, and do not require minimum qualifications before undertaking studies.
- 3.2.2. The academic elements of the route can be studied with local colleges or with distance learning providers, and can be undertaken at a pace of the learner's choosing.
- 3.2.3. Many CILEx members work in the law while undertaking CILEx qualifications, meaning they apply their real-world experience to their studies, and vice versa.
- 3.2.4. The CILEx route to practise in law is significantly more affordable than the degree route.¹ The costs of CILEx qualification are so affordable that employers have made financial contributions to study and examination costs for 67% of CILEx members.
- 3.3. Because the CILEx route is more accessible and affordable;
- 3.3.1. Over 100,000 people have studied with CILEx over the last 25 years,
- 3.3.2. 74% of CILEx lawyers are women (compared to 48% of solicitors², and 33.5% of barristers³),
- 3.3.3. A quarter of our new students are from BAME backgrounds,
- 3.3.4. 82% of members do not have a parent who attended university,

¹ The Law Society estimates that it costs from £25,000 to £50,000 to qualify as a solicitor, and a recent chair of the Bar Council stated that qualifying as a barrister may cost up to £127,000. Whereas with CILEx the cost of qualifying is a fraction of these figures (on average less than £10,000), and the majority will earn while they learn. <http://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/costs-of-qualifying/>
<https://www.theguardian.com/law/2016/feb/23/qualifying-barrister-may-cost-new-students-127000>
http://www.cilex.org.uk/study/lawyer_qualifications/typical_costs.aspx

² <http://www.lawgazette.co.uk/practice/news-focus-statistics-of-a-changing-profession/5048466.fullarticle>

³ https://www.barstandardsboard.org.uk/media/1773934/women_at_the_bar_-_full_report_-_final_12_07_16.pdf

- 3.3.5. Only 3% of members have a parent who is a lawyer,
- 3.3.6. Just 6% of CILEx members attended a private school (a more favourable figure than other legal professions)
- 3.3.7. While at school, 19% of CILEx members' families received income support or free school meals.

4. Qualifications delivery in Wales

- 4.1. The devolution of education matters to the Welsh Assembly has created separate regulatory regimes, and separate policy directions.
- 4.2. CILEx as an Awarding Organisation (AO) falls under multiple regulatory regimes, including Qualifications Wales, as well as Ofqual in England, and the CCEA in Northern Ireland.
 - 4.2.1. AOs providing non-university technical and professional education (TPE, colloquially referred to as vocational education) who provide qualifications within Wales must meet the conditions defined by Qualifications Wales which, subject to the current review⁴, may differ from the conditions set by Ofqual for England.
- 4.3. The different approaches to education and qualification policy can result in unequal opportunities for learners.
 - 4.3.1. This includes apprenticeship policy which is also devolved to the nations, and therefore the different approaches (i.e. frameworks or standards), and funding models create challenges to AOs working across borders.
 - 4.3.1.1. For example, in England CILEx is an End Point Assessment Organisation for the Chartered Legal Executive apprenticeship and the Paralegal apprenticeship standards, which are not delivered in Wales.
 - 4.3.1.2. CILEx offers pre-existing framework apprenticeships in Wales at Level 3, and anyone over 16, living in Wales, and not in full-time education can apply for apprenticeship funding.
 - 4.3.2. Additionally, new T-Levels, which will include a pathway for legal, accountancy and finance, will be delivered in England only.
- 4.4. We note the comments of the Welsh Government, in proposing the establishment of a separate jurisdiction, that;

“While its laws would be different, they would not be fundamentally so in light of the common law principles upon which such a jurisdiction would be built. While there will be a need for bespoke Welsh legal education to take differences in law into account, the vast majority of what is taught will remain the same. We envisage, therefore, that

⁴ <http://www.qualificationswales.org/english/get-involved/consultations-and-surveys/closed-consultations-and-surveys/>

*those educated in Wales will be proficient in both English law and in Welsh law – as would those who practise in Wales.*⁵

- 4.5. CILEx welcomes the commitment to not unnecessarily separate the education of Welsh and English legal practitioners. We would however offer the following observations;
- 4.5.1. The nature of legal education has changed dramatically over the centuries, and the swelling body of legislation, regulation and case law make it unrealistic to expect law students to retain the entire body of law. Similarly, it is impossible to create legal qualifications that cover every piece of law that a legal professional will encounter in their professional career, and this is only more so in circumstances where a qualification is expected to apply multi-jurisdictionally.
- 4.5.2. CILEx is firmly of the belief that the purpose of training and qualifications is to develop competence and skills, and to acquire relevant knowledge in doing so. Our qualifications therefore prepare students for practice, and include a strong focus on the skills needed to identify the relevant law and apply it to the circumstance.
- 4.5.2.1. For this reason, our qualifications include specific modules on legal research assessed at Level 6 (honours degree level), as well as client care, and a mix of units in law and in practice.
- 4.5.3. From a regulatory perspective, we would expect practising legal professionals to familiarise themselves with any jurisdictional distinctions that exist in the normal course of their duties, and to keep their understanding up to date through meeting of minimum continuous professional development (CPD) requirements. It is the skills they develop in their qualifications that enable them to do this.
- 4.5.4. CILEx hopes that the continued evolution of legal qualifications in Wales will maximise opportunities for learners and employers, and that any further regulatory or policy divergence will be carefully considered in the context of the challenges created for AOs – particularly taking into consideration the size of the prospective market in Wales.
- 4.5.5. We intend to work closely with Qualifications Wales, the Welsh Government, and the Commission in how this may relate to the future delivery of legal professional qualifications in Wales.

For further details

Should you
require any
further
information,
please contact;

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⁵ Welsh Government – Evidence to the Justice Commission;
<https://beta.gov.wales/sites/default/files/publications/2018-06/Submission-from-welsh-government-en.pdf>