

Response to Discussion Paper 02/2012

The Chartered Institute of Legal Executives (CILEx)

1. CILEx is pleased to respond to the questions raised in Discussion Paper 2/2012 following our comments on previous consultation documents.
2. The views in this paper are those of a Working Party of CILEx's elected Council, which includes its education portfolio holder.
3. While we have addressed most of the questions directly, we have made some supplementary points which we believe should be considered by the LETR research team.
4. In particular, while we understand the remit of the review of legal education and training, we believe that the separation of 'regulatory' and 'non-regulatory' elements of legal education and training is artificial. It is not always clear what amounts to a 'regulatory issue' and what does not. For example, it would be strange to comment on access to, and diversity of the professions (perhaps regulatory matters), without remarking on the oversupply of Law and LPC graduates (a market function).
5. CILEx is concerned that the long-term implications of changes to legal education and training should be fully considered. For example, we would support a short further exercise to extrapolate the LETR's recommendations to gauge their effect on future judicial appointments.

Question 1: in the light of limited evidence received so far we would welcome further input as regards the preferred scope of Foundation subjects, and/or views on alternative formulations of principles or outcomes for the QLD/GDL The foundation subjects may not remain relevant to meet the future needs of the legal sector in terms of the advice provided to the consumer. There may be an inherent inflexibility in the subjects and rationale for them needs to be reviewed.

6. We take a close interest in the foundation subjects that comprise the qualifying law degree. This is particularly the case given the increasing number of law graduates who join CILEx in paralegal grades, or for the purpose of becoming a Chartered Legal Executive.
7. We would not advocate a major change to the core subjects, but would support the introduction of mandatory ethics and values teaching at undergraduate level. The syllabus should be set in consultation with the regulators.
8. Before enrolling on a law degree we believe that students should be made aware of destination statistics (those from HESA and other sources) of previous cohorts so

that they can make an informed decision about whether to commit to a £27,000 course.

9. Anecdotal evidence suggests that not all law degrees are perceived equally by employers and that for some students the CILEx route is genuinely more suitable and perhaps more beneficial to employers than a qualifying law degree. The training to become a Chartered Legal Executive costs circa £7,000 and can lead to a satisfying and well-remunerated legal career.
10. While CILEx will continue to promote this message, we believe there should be a wider onus on the legal training community to alert students to alternative pathways.
11. For law graduates, the CILEx Graduate Fast-Track Diploma (GFTD) is an affordable route into legal practice. The cost comparison of circa £3,000 compared with the LPC at £8,000+ is illuminating.
12. The LETR will be aware that CILEx's honours degree Level 6 law and practice papers are centrally set, so teacher and examiner are separate: students can only rely on past papers to anticipate what might be in an exam. We believe this creates a consistent and reliable standard. Those who have fulfilled academic stage training through CILEx (by topping up using CILEx Level 6 law units) would have studied *every* foundation subject at Level 6, that is, final year honours degree level. By contrast, law graduates will have covered some foundation subjects at a lower level in years one and two of their degree.
13. While the CILEx qualification can be used to fulfil academic stage training for the solicitors' branch of the profession, we are disappointed that the Bar will only admit graduates. As noted, we believe this is an odd position to take because it does not encourage diversity through improved access, nor does it take account of the possibility of diverging standards between degree awarding institutions.
14. In the last consultation ILEX Tutorial College expressed concern regarding the approach to grading and assessment of law degrees. If the LETR recommends authorised activities on the basis of academic levels, then it should be aware that alignment with nominal qualification levels could lead to difficulties: just because a student at institution X has achieved a qualifying law degree does not mean that s/he has studied *a particular* subject at the same level as a law graduate from institution Y.

Question 2: Do you see merit in developing an approach to initial education akin to ICAEW? What would you see as the risks and benefits of such a system?

15. We do not support the ICAEW model: unlike the ICAEW, there would be at least three regulators who would have an interest in the qualification. In terms of regulatory risk, the ICAEW model could create a divergence in standards beyond that which already exists (see ILEX Tutorial College's comments on Discussion Paper 01/2012) and, with three academic stage training routes currently available (LL.B, GDL, CILEx) appears to be superfluous.

Question 3: we would welcome views on whether or not the scope of the LPC core should be reduced, or, indeed, extended. What aspects of the core should be reduced/substituted/extended, and why?

16. CILEx's view is that as well as developing practice readiness, the LPC should, to ensure a diverse profession, integrate flexible access points. These are currently absent, since no LPC exemptions are available to Chartered Legal Executives enrolling on the LPC. CILEx believes its Level 6 practice subjects and professional skills units should attract credits to effect partial exemption against the compulsory elements of the LPC. The obvious counter argument is that the LPC is a level 7 qualification and therefore at a higher level than CILEx's Level 6. CILEx strongly disputes that the *effective* level of its qualification is lower than that of the LPC, and has conducted a mapping exercise in compulsory LPC areas to show how its qualification meets compulsory area outcomes. **We would be pleased to share this evidence with the LETR.**
17. CILEx believes that the training contract exemption for Chartered Legal Executives who want to transfer to the solicitors' branch is a very valuable route for those who cannot afford or are disinclined to follow the more traditional path.
18. Partial exemption against the LPC for those passing CILEx Level 6 legal practice qualification would be consistent with the training contract exemption for Chartered Legal Executives.
19. On the question of day one outcomes raised by the LETR, CILEx remains concerned about over-reliance on passive competence. It supports activity based CPD as being an essential tool to cultivate continuing competence and welcomes the debate about the periodic re-accreditation of practitioners. Further comment on this is made below.

Question 4: should greater emphasis be placed on the role and responsibilities of the employed barrister in the BPTC or any successor course? If so, what changes would you wish to see?

Question 5: do proposals to extend rights to conduct litigation and the extension of Public Access to new practitioners require any changes to the BPTC, further education or new practitioner programmes, particularly as regards (a) criminal procedure (b) civil procedure (c) client care, and (d) initial interviewing (conferencing) skills?

20. CILEx does not have a view on the content of the BPTC, other than to reiterate our concern that access is denied to those who have fulfilled academic stage training via CILEx's Level 6 law units.

Question 6: we would welcome any additional view as to the viability and desirability of the kind of integration outlined here. What might the risks be, particularly in terms of the LSA regulatory objectives? What are the benefits?

21. CILEx believes that the LPC already functions as a stand-alone paralegal qualification, albeit a flawed one for those who cannot secure a training contract. As a paralegal qualification it is too expensive and the curriculum has limited relevance to the specialised work that usually follows the course.
22. Students who have not secured a training contract before commencing the LPC should be made aware of less expensive and arguably more effective alternatives, if their objective is to work in mainstream 'high street' type areas.
23. For example, law and GDL graduates could study for CILEx Level 6 qualification/s in one or two practice areas for a fraction of the cost of the LPC. These can be studied at the same time as working.
24. In areas not covered by the CILEx qualification (such as commercial litigation) a higher level apprenticeship may be more suitable than the LPC.
25. CILEx believes that there is nothing wrong with allowing the market to be the arbiter of an individual's legal career, providing the individual is furnished with the facts to make a genuinely informed choice. CILEx would like to see the LETR make recommendations that positively assist students in this regard.

Question 7: We would welcome additional evidence as regards the quality of education and training and any significant perceived knowledge or skills gaps in relation to qualification for these other regulated professions.

26. As important as identifying gaps is the need to ensure that skills are taught at an appropriate level. CILEx's view is that there should be an explicit link between the individual's level of academic attainment and the degree of supervision under which that person works. Currently this link is imperfect, since there is no commonly understood connection between the level of supervision required and existing knowledge and qualifications. CILEx could help in this respect by referring employers and students to its membership grades and aligning them with recommended supervision levels. We believe this would reduce the regulatory risk. Appropriate work based learning and activities based CPD, areas that CILEx is very active in, should help align skills levels with an appropriate level of supervision.
27. CILEx has a strong record in improving access to a career in law, especially, and perhaps surprisingly, at partnership stage. Notably, 236 CILEx qualified LDP partners have been appointed since 2010. They have been selected for partnership by reference to their supervisory responsibilities and on the strength of their knowledge, understanding and practical legal skills acquired through CILEx's version of work based learning. These are the original legal apprenticeships, in existence long before the introduction of apprenticeships in their modern form. The practical effect of the CILEx route to partnership is to produce diversity at the higher end of the legal profession.
28. CILEx partners are diverse. They range from 27 years old, with 55% being female.
29. CILEx can demonstrate that its diversity policy has a real effect: its partners are evenly distributed across England and Wales. There is no discernible bias towards London, with Chartered Legal Executives being spread out across the country.
30. In terms of prior educational achievement, our data on entry qualifications is dependent on self-reporting and therefore has some gaps. Nonetheless we know that a significant proportion (probably a majority) of current Chartered Legal Executive partners started their careers in an administrative or secretarial capacity, and did not possess higher level qualifications when commencing their legal training.
31. In a similar vein, the first Chartered Legal Executive judge commenced his legal training without first studying 'A' levels.

32. Looking to the future, CILEx has identified new routes for those who want to study in disciplines outside of its current qualification structure, by using the vehicle of higher level apprenticeships. Working with IPS on work based learning, CILEx also plans to create new qualifications that will include accounts and commercial awareness skills.

Question 8: As a matter of principle, and as a means of assuring a baseline standard for the regulated sector, should the qualification point for unsupervised practice of reserved activities be set, for at least some part of the terminal ('day one competence') qualification at not less than graduate-equivalence (QCF/HEQF level 6), or does this set the bar too high? (Note: 'qualification' for these purposes could include assessment of supervised practice). What are the risks/benefits of setting the standard lower? If a lower standard is appropriate, do you have a view what that should be (eg, level 3, 4, etc)?

33. We believe that reducing authorisation levels below that of CILEx Level 6 would create a risk for regulators. Where a legal issue is 'less well defined', the skills and knowledge required to clarify the issues may not be possessed by someone qualified at (say) Level 4. It raises again the question of aligning competency with qualification: is a law graduate at 'Level 6' even though some of his/her units would have been studied at Level 4 or 5?
34. CILEx believes that authorisation at Level 3 or 4 would only be in the public interest if the extent and quality of supervision was consistently assured. It is doubtful whether this is the case even in the regulated sector. In the unregulated sector sometimes there is no supervision at all.

Question 9: Do you consider that current standards for paralegal qualifications are fragmented and complex? If so, would you favour the development of a clearer framework and more coordinated standards of paralegal education?

35. At first blush the question of whether the current paralegal standards are complex and fragmented seems to suggest an affirmative answer.
36. CILEx believes that this whole issue has been clouded by several factors such as paralegal groups making a bid for legitimacy, new training providers looking to enter the sub-solicitor training market, the introduction of apprenticeships and the surfeit of law and LPC graduates who work in a paralegal capacity.
37. As a general principle in connection with paralegal organisations, CILEx believes very strongly that bodies claiming to represent paralegals should demonstrate that

they are owned by and accountable to their members, are transparently governed, produce membership figures and work in the public interest.

38. Employers of support and technician level staff working at Level 3 (CILEx students, affiliates and associates) already have a well-established paralegal qualification in the shape of CILEx/City & Guilds Level 2 and CILEx Level 3 qualifications.
39. Some employers also use single CILEx Level 6 units as a higher level paralegal qualification. Of CILEx's 20,000 members, some 13,000 work in a paralegal capacity.
40. Over 1500 employers have trained staff using the CILEx qualification, with very little confusion. It is worth noting that although CILEx's qualification has evolved over the last 25 years, there has been, and is, a clear qualification structure for technician level and higher level paralegals.
41. That said, CILEX is mindful of the need to enable employers and employees to address training needs in a flexible, cost effective and targeted way. Certainly larger firms and legal businesses are increasingly focusing on training and qualifications that are targeted to meet the needs of the business. These businesses keep tight control of internal opportunities for progression tied to training to career development and quality control/customer service. For example, the College of Law and CILEx, support Irwin Mitchell Solicitors' in-house academy through a "one-stop shop" arrangement.
42. For Irwin Mitchell Solicitors the advent of a one stop shop means the categorisation of employees is not problematic: training is based on the employer's needs and the outcomes they require. Delivery is either by College of Law or CILEx, according to the level required.

Question 10: If voluntary co-ordination (eg around NOS) is not achieved, would you favour bringing individual paralegal training fully within legal services regulation, or would you consider entity regulation of paralegals employed in regulated entities to be sufficient?

43. While we welcome the introduction of national occupational standards, these would be most effective if used to complement the knowledge, understanding and skills attained by studying a CILEx qualification. Indeed, CILEx has been instrumental in developing these in its work with Skills for Justice.
44. Achieving the CILEx qualification in addition to the use of NOS would help counter concern over the consistency and quality of supervision by ensuring that paralegals have at least an adequate knowledge and skills base.

45. IPS currently regulates paralegals who are in CILEx membership. CILEx believes that individual regulation of paralegals brings them closer to the rest of the legal profession, and that this would be a more effective method of protecting the public interest than relying on entity regulation and national occupational standards alone.

Question 11: Regarding ethics and values in the law curriculum, (assuming the Joint Announcement is retained) would stakeholders wish to see

(a) the status quo retained;

(b) a statement in the Joint Announcement of the need to develop knowledge and understanding of the relationship between morality and law and the values underpinning the legal system

(c) a statement in the Joint Announcement of the need to develop knowledge and understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values

(d) the addition of legal ethics as a specific Foundation of Legal Knowledge.

In terms of priority would stakeholders consider this a higher or lower priority than other additions/substitutions (eg the law of organisations or commercial law)?

Would you consider that a need to address in education and training the underlying values of law should extend to all authorised persons under the LSA?

46. CILEx supports the teaching of ethics and values from the outset: indeed ethics and values are taught comprehensively throughout CILEx's qualification.
47. IPS's requirement that ethics and values form part of the CPD requirement for Chartered Legal Executives is a model that we would encourage others to follow.
48. CILEx believes that there should be continuity in ethics and values training: it should start with the base qualification, be encompassed in a sworn oath and continue in the guise of CPD.

Question 12: Do you agree the need for an overarching public interest test in assessing the aims and outcomes of LET? If so do you have any view as to the form it should take?

49. While an overarching public interest test in assessing the aims and outcomes of legal education and training is broadly welcomed, we believe this should be subject of further discussion among the regulators to reach a consensus on the underpinning principles.

Question 13: we would welcome any observations you might wish to make as regards our summary/evaluation of the key issues

50. CILEx's view is that while the summary of key issues is useful, we believe that the LETR should be free to make recommendations that are outside of the regulatory straightjacket. Achieving some sort of balance between workforce supply and demand must influence the reform of legal education and training, and that goes to the cost of training, the suitability of training for the eventual job role and individuals' decisions on what path to follow. In this respect careers advice is patchy and inconsistent, and does not necessarily coincide with employers' requirements.
51. We are very concerned that LETR should also listen to the consumers' voice- that is, the consumer of legal education and training, being the current generation of law students. It is a sad refrain to hear so frequently from students who have spent a lot of time and money on legal study that they wished they had known about the CILEx qualification from the outset. Naturally CILEx must take some responsibility for ensuring its message is heard and understood. However, as legal education and training is market driven, the LETR might want to consider a mechanism by which employers' requirements are better understood by those joining the workforce. This would help students make genuinely informed choices about their training.

Question 14: Do you agree with the assessment of the gaps (now or arising in the foreseeable future) presented in this paper in respect of the part(s) of the sector with which you are familiar? If not, please indicate briefly the basis of your disagreement. [If you feel that you have already responded adequately to this question in your response to Discussion Paper 01/2012, please feel free simply to cross-refer]

52. The analysis of skills gaps is very broad- it would be instructive to look at these gaps in more detail and assess the extent to which they are prevalent in the workforce as a whole, or whether certain sectors lack particular skills. ILEX Tutorial College's response to Paper 01/2012 questioned whether universities were equipped to tackle the problem of weak basic communication and numeracy skills.

53. There is a temptation to revert to an 'all you can eat buffet' approach to skills. The review should consider carefully where the eventual cost burden of skills training will fall. One CILEx partner remarked that 'life skills' are critical (and often absent) when dealing with clients who have been involved in a traumatic event. It is difficult, though, to see how empathy and understanding can be taught.

Question 15: do you consider an outcomes approach to be an appropriate basis for assessing individual competence across the regulated legal services sector? Please indicate reasons for your answer.

54. The separation of a qualification (which might be a gold standard) and national occupational standards is superficially attractive, the assumption being that the standards would be upheld through a combination of CPD and supervision in the workplace. While both these mechanisms have a role to play, CILEx does not think that they are a wholly adequate means of ensuring competency.

55. The requirement for a qualification is two-fold: for smaller employers it provides some quick and clear reassurance that an individual has underpinning knowledge and understanding. Second, for those who are training, qualification provides reward, a recognised badge and associated status.

56. CILEx believes there is a real regulatory risk associated with using solely a licensing and authorisation approach. It is essential that if such a scheme were to be introduced, separate from qualifications, then it would have to be sufficiently rigorous and supported by adequate resources for assessing competence. These resource requirements could be very substantial.

57. Further, given our concerns about the effectiveness and extent of workplace supervision, we believe that the most reliable measure of an outcome is a recognised qualification coupled with complementary work based learning and assessment.

58. CILEx notes the LETR's comments about passive competence. Continuing competence through reaccreditation for CILEx qualified advocates has been in effect for some time. CILEx supports IPS in their view that reaccreditation of advocates should move to a 5 year cycle. In other areas, what reaccreditation should look like will depend on the magnitude of risk to the consumer and may vary from specialism to specialism.

59. As a general principle, annual reaccreditation is too frequent – either it will be thorough, as it ought to be, and likely then to be disproportionate regulation to any identified risk – or it will quickly turn into a meaningless exercise. CILEx supports

linking reaccreditation to an activities based CPD scheme, such as that being adopted by IPS.

Question 16: in terms of the underlying academic and/or practical knowledge required of service providers in your part of the sector, would you expect to see some further specification of (eg) key topics or principles to be covered, or model curricula for each stage of training? If so do you have a view as to how they should be prescribed?

60. The desirability of model curricula and key topics will depend upon the specialisation of the individual being trained. In terms of generic skills, CILEx believes that more senior staff might benefit from training in presentation skills required for 'beauty parades'/the conduct of face-to-face client meetings.

Question 17: Would you consider it to be in the public interest to separate standards from qualifications? What particular risks and/or benefits would you anticipate emerging from a separation of standards and qualifications as here described?

61. Consumers of a complex service often find it difficult to choose a provider on the basis of competency. While ratings websites might assist, badges- be they qualifications or separate accreditation through a specialist body such as APIL- provide some reassurance about standards of technical competency. CILEx believes in maintaining this connection and would not support the separation of standards from qualifications.

Question 18: Decisions as to stage, progression and exemption depend upon the range and level of outcomes prescribed for becoming an authorised person. A critical question in respect of existing systems of authorisation is whether the range of training outcomes prescribed is adequate or over-extensive. We would welcome respondents' views on this in respect of any of the regulated occupations.

62. As stated, CILEx opposes authorisation being synonymous with educational levels unless they are linked to a recognised qualification. We note the importance of having multiple entry and exit points. CILEx believes that the inclusion of new pathways to authorisation, such as those drafted in the LETR's Discussion Document, should be built upon a model that has simplicity at its core.

CILEx October 2012.