

**CILEx Regulation Ltd (CRL) Consultation – The proposal to
introduce an alternative route to acquiring additional practice rights
for established Fellows**

A Response by
The Chartered Institute of Legal Executives (CILEx)

August 2019



Introduction

1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. It is also an Ofqual regulated Awarding Body responsible for awarding legal qualifications and owns a Law School that delivers a wide range of training for the legal sector. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.
2. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.
3. CILEx is pleased that CILEx Regulation has recognised the feedback CILEx has provided from its members, that Fellows seeking practice rights are faced with a process viewed as cumbersome and a duplication of the qualification process, therefore we welcome the opportunity to provide feedback on the proposed alternative routes.
4. CILEx supports the introduction of a process that is streamlined, removing duplication, providing a more outcomes focused approach, without time-based inputs. This in turn will help to remove unnecessary and unintended barriers to progression and qualification and it is hoped cause more Fellows to seek to obtain additional practice rights.

Question 1: Do you agree with our proposal to introduce flexibility in how established Fellows demonstrate competence for the purposes of acquiring additional practice rights?

5. Flexibility is at the heart of the CILEx route to qualification and therefore CILEx considers it essential to preserve this value in the approach taken to the granting of additional practice rights. In particular, flexibility is necessary to accommodate the diverse range of working environments and qualification pathways that our members will have and the range of points in their careers that additional rights may become attractive. It is however essential that the flexibility does not result in confusion or complication in the model developed and members can clearly identify what they are required to demonstrate to meet the requirements.

Question 2: Do you agree with the proposal outlined in a) and b) above?

6. CILEx is fully supportive of the principle of developing an alternative route for existing Fellows to acquire practice rights. However, there is insufficient detail contained within the consultation as to how CRL proposes to require Fellows

to demonstrate the standards for CILEx to reach a view on whether it considers the proposals will effectively address the barriers currently preventing CILEx members from seeking to obtain additional practice rights. It is essential that the process and mechanism for meeting the requirements is perceived by our members to be proportionate and achievable in order that it is considered to be worthwhile to obtain the additional rights.

7. In particular, there are two areas of clarity CILEx seeks more information on: Firstly, for both Fellows with and without two years' experience, the consultation states that there is a requirement is to '*complete an application process evidencing requisite experience*'. The consultation does not however provide any details as to the mechanism intended for evidencing the required experience. CILEx members in their feedback have overwhelmingly cited having to complete a portfolio as a barrier to applying, therefore CILEx would be concerned that if the proposed approach involves a portfolio this would be unlikely achieve the intended aim of increasing the take up of practice rights amongst Fellows.
8. We surveyed practising Fellows¹ about practice rights and the proposals in this consultation, just over 5% engaged fully and responded to our survey. Of those respondents, 71.47% were already aware they could apply for additional practice rights, and 61.04% of those had considered applying, but cited the requirement to complete portfolios itself (seen to be too onerous and disproportionate given their Fellow status) and the level of evidence required in the portfolios being difficult to collate whilst working full time, or part time with other caring commitments as barriers to them applying.
9. Secondly, the proposals mention "*Fellows with at least 5 years of qualifying employment...*" CILEx seeks clarification as to whether CILEx Regulation is proposing that through the application process, it will be requirement for Fellows to demonstrate they meet the current Qualifying Employment requirements, by completing the same or similar application form, covering a period of five years (or more)?
10. In this context we would re-iterate our previous feedback given in our response to the CRL consultation on the new education standards in March 2019² around the need to avoid duplication of assessment, the perception amongst our members about having to get through multiple gateways and in particular our concerns around inputs relating to time/hours which, acts as a barrier for particular groups of members, namely those working part-time (predominantly women) and those working in particularly niche areas of law.

¹ 5,948 Practising Fellows were contacted by email, 49% of those engaged with the email.

² Paragraph 26

This would, in our view contradict CILEx Regulations stated aim to make the process for practice rights applications more flexible and be contrary to our value of accessibility.

11. The consultation does not provide details on the proposed cost of the application/assessment, so we seek clarification as to whether CILEx Regulation envisage there being an increase to the current costs, and if so, an indication of what that may be.

Question 3: Would you include any further requirements to those listed in a) and b) above?

12. Our comments to question 2 above reference those areas in which further information is needed to fully understand the proposals however we have not identified any further requirements based on the information available at this point.

Question 4: Do you agree with the proposed assessment methods for assessing competence bearing in mind that this will be available only to Fellows, i.e. those who have met the requirements set out in paragraph 9 above.

13. CILEx notes the combination of computer-based assessment together with written/oral practical skills assessment, and that details of specification and standards would be drawn up by the assessment provider, although we would expect CILEx Regulation to have an initial idea as to the Level at which they intend to set the assessment.
14. We assume the process/discussions would also cover the logistics of how the assessments will take place, for example whether they will be delivered in specified test centres or a Fellows place of work, whether they will be available on demand or during specific assessment windows. In considering these practical issues CILEx would ask CRL to ensure its proposals support the principles of accessibility and flexibility.
15. In order to ensure the opportunity to obtain additional practice rights is available to all Fellows it will be important for CRL to ensure that there is a sufficient range of assessment scenarios to accommodate the diversity of job roles and types of legal environments our members are working in, not just for those working in private practice. For example, one member stated when responding *“If I did want to do this, the ‘interview’ with a client would be rather difficult to simulate with any accuracy given that I work in Local Government and we deal differently with our ‘clients’”*.

Question 5: If your answer to 5 is no, do you have an alternative option for assessing competence.

16. No further comments at this point.

Question 6: Do you agree that provided stringent measures were in place, an assessment provider could also deliver training?

17. CILEx would have no objections to a single assessment provider, which also delivered training, being responsible for the production and delivery of assessments. We would expect any such assessment provider to have robust measures in place to ensure issues relating to conflicts of interest were properly managed, and the assessment integrity was not compromised in any event. We would agree it would be prudent to establish this through the tender process.

Question 7: Do you agree with the benefits and assurances which would be achieved in introducing this into our education and training framework? Do you see any disadvantages or threats to standards?

18. CILEx agrees that an increase in Fellows with specialist practice rights, will provide greater choice for consumers. Of the Fellows who responded to our survey, 2.19% of them had already applied for or obtained practice rights, which reinforces the feedback that the current system may act as a barrier, which is in turn limiting consumer choice.

19. Whilst we have highlighted that under the existing model portfolios have acted as a barrier to members seeking additional practice rights, there are a number of other reasons cited by members as to why they have not applied for or obtained authorisation, which we would ask CRL to consider how they can be addressed in these new proposals:

- i. Practice rights were not considered to be relevant or necessary within their current role;
- ii. The time, effort and costs associated with the application process is disproportionate to the opportunity of having additional rights;
- iii. Being too late in their career / approaching retirement age;
- iv. Their current status and authorisation as a Chartered Legal Executive is sufficient for their career ambitions;
- v. A lack of employer engagement, interest or support; and
- vi. The available practice rights are not specific enough for the specialist or niche nature of their role;

20. Of the respondents who were previously unaware that they could apply for practice rights (26.33%), 65.4% of those said that now they are aware of their availability, they may consider applying for them in the future, although 34.52% of them will not.

21. When asked whether the current proposal would mean they are more or less likely to apply for practice rights, of 133 respondents, 36.09% would be very likely to apply with the new proposals, 24.81% likely, 10.53% somewhat likely, 11.28% neither likely or unlikely, 9.77% somewhat unlikely; 4.51% unlikely and 3.01% very unlikely.

22. Comments in support by those more likely to apply under the proposed route included:

- i. Offers a more flexible option;
- ii. Seems more straight forward;
- iii. “This could be done in a timeframe that would suite me personally and professionally and allow me to showcase the skills I have developed in a better way”;
- iv. “Rather than needing to refer back to files at work to prove various assessment points, I will be tested on my knowledge and skills, in the way I use them on a daily basis”; and
- v. “Exam based is better as I don’t have enough time to complete the portfolios alongside work”.

23 Comments by those identified as less likely to make an application through the proposed route included:

- i. “There can be a lot of diversity of work within a particular specialist area of law, I would be concerned that the assessment would not necessarily be appropriate for all practitioners within that specialism”
- ii. “I have put in over 7 – 9 years from taking exams, processing the qualifying employment and then completing the work-based learning, I would not have the time to do any more exams”;
- iii. “It seems to be even more difficult and time consuming and probably even more expensive than before I would presume”;
- iv. “The additional work required to qualify doesn’t seem worth it”; and
- v. “Still too onerous”.

24 Of the respondents who had considered applying for practice rights prior to being contacted about this consultation, when asked which would suit them more, 20.37% said the current process, 55.56% said the proposed process, with 24.07% saying they did not know.

25 CILEx would be keen to work with CILEx Regulation to understand both the statistical data on achievement and progression regarding our membership base and the feedback provided by members to ensure that in developing this new scheme it will adequately address the barriers cited and therefore successfully achieve the stated aim of increasing the number of Fellows

obtaining additional Practice Rights through a flexible and accessible mechanism.

26 In conclusion, we are supportive in principle of CILEx Regulations proposals to offer an alternative route for CILEx Fellows to obtain practice rights. We are however keen to better understand the detail as to how the process will work including the standard and mechanism for the requirements to be demonstrated and the logistics of the proposed assessment process.

27 In particular, we also seek reassurance that the proposed arrangements address the barriers identified by members as having prevented them from obtaining practice rights under the current model. Specifically:

- the application process will not replicate the reported issues with portfolios and will not result in duplication of assessment and multiple gateways;
- the time and workload burden of meeting the current evidence requirements;
- the difficulty of part-time workers and those working outside of traditional law firm environments in meeting the hours-based requirements and limited definition of 'legal work';
- the need for more flexibility and recognition of the wide range of job roles and working environments our members practice in;
- the cost of making an application.

in order that the scheme can fulfil its intended aim of increasing the number of Fellows obtaining practice rights and in line with the CILEx values of flexibility and accessibility.

For further details

Should you
require any
further
information,
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