

Lecture - 27 June 2013

DAC Beachcroft, London.

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**Reflections on the Governments Skills Agenda and the Legal
Education and Training Review:**

Or:

**CILEx, Apprenticeships, and Legal Education and Training
- a perfect fit.**

Thank you Mark. It's a great pleasure to be asked by our London Branch to address a very distinguished gathering on this topic especially as it amounts to the equivalent of a second invitation.

It is only a few weeks ago I had the honour of speaking at the CILEx President's Lunch and at an evening reception which followed. When arranging a speaker for the first time you are running an unknown risk even if it is a calculated one. Ask again though and it is a known risk and you have no excuses!

I must thank DAC Beachcroft for so kindly offering this room for the occasion. We owe a great deal to Beachcrofts; not only do they allow us to use a meeting room from time to time when we need a central location to meet, they also provide the most delicious chocolate biscuits to go with coffee.

It is a firm that long ago discovered the benefits of CILEx qualifications for their non-lawyer staff. Most of all, though, I must thank the firm for allowing Judith Gordon Nicholls to be our President in 2009. The support that Judith received was outstanding, and enabled Judith to undertake her duties as diligently as Judith wished to do. Thank you.

The invitation made it clear that this evening is part of our London Branch's celebrations for CILEx's 50th Anniversary. I had chosen the

topic some time ago, anticipating that the Legal Education and Training Reviews final report would have been published and possibly even old hat by now. So I've had to do some rapid reading over the last couple of days since its publication!

But in the context of what is ostensibly a birthday celebration, why have I chosen to talk about The Governments Skills Agenda and the Legal Education and Training Review.?

There are 2 reasons actually.

The first is that in practically all my speeches this year I have talked about the 50 year journey for CILEx; about how the founders would find the organisation and the Chartered Legal Executive of today so unrecognisable;

- so many women in our profession (74% of our membership),
- so many from ethnic minorities (36% of new students),
- so central to legal services and the legal professions,
- the small matter of a Royal Charter
- and such a plethora of rights our founders never dreamed of:
- rights of audience, eligibility for judicial appointment; partnerships; not to mention the prospect soon of reserved activity rights.

I'd love nothing more than to rehearse all that but I fear that my fellow Council members here tonight would simply lose the will to live if they had to hear it all again so I promised them I wouldn't mention it. Well, not much anyway ...

The second and the real reason is that much as we can be incredibly proud of what the Institute and its members have achieved, we can't rest on those Chartered laurels; nor will we.

We have to look at what the future holds for the legal profession, we have to look at what the future holds for legal services and we have to translate that into a qualification, admission and CPD process which is fit for purpose.

As a membership association and a regulator, besides rather obviously ensuring the conduct of members in practice, our role is to ensure that those future generations of lawyers and legal professionals are properly equipped to deliver the legal services which the consumer will demand and in the manner the consumer will demand.

What we do now is for the next generation and lays the foundations for the generations which follow. So we must look, as we are always looking, at legal education and training and, of course, apprenticeships.

As any historian will tell you, context is everything so in spite of all that talk of the future, I am going to follow the advice of the King of Hearts and start at the beginning, with the reason why CILEx exists at all.

I hope you will not be too alarmed to know that I shall adhere to the advice and so keep going until I get to the end. At which point, I promise, I shall stop.

So, in the beginning, it was 1892 when some 291 Solicitors Managing Clerks met in London, at Girdles Hall in the City, just down the road. They came together to establish not only a fraternal association, but for lectures and talks to keep themselves up to date with law and best practice.

In 1928 the managing clerks felt the time had come to be more organised; their members came from all over England and Wales, and meeting in London could no longer fulfil the need for education and training.

So the Solicitor's Managing Clerks Association was incorporated; it set standards. Branches sprang up all over the country for lectures, seminars, mutual support, dinners and professionalisation,

Their work was very successful. Managing Clerks gained increased standing in the legal community. So much so that they fell victim to the curse of flattery by imitation; or at least 'passing off'.

Over time, so many people without any training or qualification were calling themselves Managing Clerks that the concept of the Managing Clerk became tarnished and the progress gained was at risk.

By the 1960s it was a real problem; so much so that when OUR managing clerks decided to reinvent themselves they did so with the support of the Law Society, the Bar Council and the Judiciary and had very specific goals. Not only did they wish to establish a significant and rigorous qualification but they also aimed to emulate the Law Society's approach to the regulation of members. So it was that, in case you'd forgotten, exactly 50 years ago, in 1963, The Institute of Legal Executives was born.

There are two things to note from this brief history; the first is the emphasis always on education and training and good practice, the second is that this was done by people who saw themselves as support staff, supporting the work of their solicitor employers.

Nowadays they would come under the generic title of "paralegal". They learned their craft as they worked, sometimes at the knee, as it were, of

a solicitor, but for the most part from a Managing Clerk (who also, mostly, trained the articled clerks or trainee solicitors, as so many of our members still do).

They went to evening classes or “night school” as it was called; later you might be lucky and get day release to college. And on the face of it they did the job well. Certainly, many senior members of the judiciary speak kindly of the managing clerks and Legal Executives who briefed them and frequently claim “they taught me all I know, particularly about procedure”,

Of course now the Chartered Legal Executive is a lawyer; not quite the person so fondly recalled by the late Sir John Mortimer: and I quote from his book “The Summer of a Dormouse, A year of Growing Old Disgracefully:

“An invitation to a dinner of legal executives. In the days when I knocked about the Probate, Divorce and Admiralty Division, they were known as Managing Clerks. They came in two varieties, either fat and cheerful, their pockets stuffed with summonses and affidavits, who would pant up the steps of the Law Courts and take a cheerfully optimistic view of your chances, “You’ll pull it off sir.” Or thin, and gloomily ironic. “Do what you can for her, Sir, in my view our woman doesn’t deserve a penny”.

I do hope he was not disappointed when he came to our annual LUNCH and spoke so hilariously of his enthrallment with the law.

Now, as then, we learn not only the law and practice of the law in accordance with our qualification requirements, we also learn through our on the job experience how to handle all sorts of clients; to communicate with all sorts of people; to write legal letters and conduct telephone conferences; even to appear in court in chambers appointments with all the niceties of court etiquette - sometimes learning through catastrophe –

A very long time ago I had the 'interesting' fortune to do some work shadowing with a sole practitioner in Sherborne. He was old school and had a mixed practice mainly comprising family work and crime.

I remember him scolding my appalling telephone manner when I asked a client to 'hang on a minute' – I've not learned from that actually – but my worst moment was the first time I went to court with him.

He was running late as usual so when we arrived he was marching forward at pace and as I tried not to break into a run behind him he shouted over his shoulder 'follow me'.

He immediately barged through a set of double doors and to my belated astonishment came to an abrupt halt and just as I crashed full pelt into him, bowed to what I now know was the Magistrates' bench.

Amazingly he kept his balance but at the expense of his papers and books. While I made a feeble attempt to retrieve them I was consigned in no uncertain terms to the public gallery ...

So, one way or another, as we progress in our training we cover not only law and the practice of law, but skills too. Nor does CILEx let the grass grow under our feet. We regularly revisit our qualifications, and make improvements to meet modern legal sector needs.

Already many of these skills are more formally learned within our academic studies, through modules on client care and legal research.

The LETR report itself brings out the range of skills that respondents to the research identified as important for the modern lawyer. Communication skills, meaning, it seems, written skills and advocacy; client handling skills; legal research, digital literacy, ethics and professionalism, commercial awareness; problem solving, coping with stress (now there's an eye opener!), teamwork...and so on.

All of these have their place. All of them are important. But actually the report itself rather shrugs its shoulders and comments that a place must be found for all of these, somewhere...

Well, we believe there is a place for experience and observation. I am reminded by one of our members, for many years a rather put upon legal secretary –“oh yes,” she told me, rather wryly, “I know just how to communicate with and manage clients. I’ve spent years observing how not to do it....”

Needless to say that is not the most robust method of learning and there is work to be done across all the professions to test those skills and evidence their learning.

For our part we will continue to build upon the excellent work of IPS, supported by CILEx colleagues and members, in developing our new Work Based Learning outcomes and assessment, and the new approach to CPD.

And what are these? From this week Work based Learning replaces the old “Qualifying Employment” Rules. Whilst retaining a period of “time spent” now down from 5 years to 3 years, Work Based Learning is all about demonstrating competence against a series of learning outcomes,

covering everything from the practical application of the law through to professional conduct and business awareness.

Our CPD requirements will also move from “inputs” - don't you love regulation speak; to you and me this means points or hours – to what I'm told are called "outputs".

I don't pretend to be fluent in the language yet but I understand and embrace the concept. CPD is not about rocking up to a course in Equity Derivatives – whatever they are - because it was the only course left 3 days before the end of the CPD year.

CPD is about identifying your own development needs, tackling those, saying how they were tackled and reflecting on lessons learned. I know I will find the change hard to begin with; but I recognise its value in quality assuring our members' continuing competence and am very proud that IPS and CILEx are leading the way in the new approach.

Learning 'on the job' is of course the defining feature of an apprenticeship and many firms across the country refer to “taking on Apprentices”, when they actually mean recruiting from school leavers and offering them training via CILEx into a legal role in their firm. That was the norm in 1963.

Today a great many of our members come to us from jobs within the sector; legal secretary, paralegal, legal clerk, legal adviser, legal assistant, fee earner; the job titles are as legion as their backgrounds.

The school leaver route has not disappeared, but it has diminished, and with it, I believe, an element of gender diversity. We are an organisation very heavily female orientated, 74 % of the total membership, which is terrific in many ways. But if gender equality is what you are after, we need to find ways of encouraging more men, and young men at that, into our profession.

This is where the government's skills agenda may make a difference.

The previous government's drive was to get 50% of young people into a university education, to match the attainment levels of many of our current competitors, let alone emerging competitors.

And they got there, more or less. Whether those figures are sustainable given the cost of a university education remains to be seen but I suspect not. We are already seeing numbers drop and there is a real risk that a university education will be the preserve of the wealthy or the over-optimistic.

There was, however, a second policy emphasis, which was to build on the rediscovery of apprenticeships, now referred to as National Apprenticeships.

Although an ancient concept which stretches back to the guilds of the Middle Ages, by 1990 numbers had decreased from a high in the 1960s of 240,000 apprentices to only 53,000. Successive governments since 1993 have sought to improve the apprenticeship schemes which have gone through a number of iterations.

Substantively though, National Apprenticeships are intended to be rigorous in developing a broad range of skills: technical knowledge, functional skills (maths, English and ICT) and personal skills.

Why should government be so keen? Well, let me quote from the Prime Minister David Cameron, during a visit to CILEx's neighbour Milton Keynes during National Apprenticeship week:

"Britain is in a global race ... If you want to win in a global race, you must let your people rise up and achieve their aspirations. And investing in apprenticeships is a win win situation. Good for (apprentices) because you get the chance to acquire skills that mean you have a really worthwhile career...it's a win for companies because the government is

putting money into apprenticeships that allow access to training and skills that are good for the company.”

CILEx shares that view. CILEx has been a key partner with Skills for Justice and others to develop the Level 4 Apprenticeship in Legal Services; and with Skills for Justice and the University of Law in the development of Level 3 Apprenticeship pathways, as well as with the CPS in their Advanced Level 3 pathway in Criminal Prosecutions. We have worked with Skills for Administration to put units at the heart of their Business and Administration apprenticeships.

It is early days, I know, but I hope that all parts of the sector will recognise the value of apprenticeships, and introduce them as part of the business's mix of recruitment, training and development.

I also hope that businesses will not make the mistake of thinking that 'apprentices' equals 'cheap and cheerful labour' but understand the importance of there being an effective and accessible progression route.

In each of the areas in which we are involved we have built in progression routes, as we have always done with the CILEx professional qualifications. Our goal is to ensure individuals can make the most of their ambition – aspirations, in Mr Cameron's words - not merely at the behest of their employer but through their own choices.

If you ask employers what they want, they will ask for a round peg to fit a round hole; a narrow, technical or paralegal role usually bespoke to that employer.

CILEx has always resisted this *exclusive* approach. Our professional qualification certainly enables firms and individuals to pick and choose units for the round peg in a round hole. But it also has the flexibility for members to have individual developmental opportunities as well.

So it is with Apprenticeships. As well as delivering a qualification in its own right, there must be progression routes within the apprenticeship frameworks, as well as transferability in, out and across professions within the sector.

And only with such progression routes will those who come into the sector as apprentices be truly valued. Oh yes, they will be valued for their narrow, technical excellence.

"They taught me all I know" may be an affectionate and well-meaning gesture of appreciation but it is not recognition.

Without the embrace of the leadership of the sector, they will, I'm sorry to say, always be looked upon, no doubt kindly, as awfully good technicians, terribly useful paralegals, excellent value labour. Nothing more.

I believe there is a real danger here. If, as I've referred to earlier, the cost of going to university becomes such that only the wealthy attend, and everyone else has to hunt around for CILEx, or an apprenticeship, or something else, a hierarchy of practitioners will quickly develop.

Let's face it; we're rather good at that here. Our class system is unparalleled and an inexhaustible source of ridicule; Messrs Cleese, Barker and Corbett in *That Was the Week that Was* in the 60's, and Harry Enfield in the 80's shine bright in the memory.

A hierarchy of different grades of qualified lawyers is a Brave New World we do not wish to enter. It will be to the detriment of social mobility certainly, but also to the detriment of the real need to ensure that our legal services are delivered by the best. We need a sector that values who you are and where you are, not where you've been.

Apprenticeships are no panacea as the LETR report recognises. I quote: *"it is questionable how much difference the (apprenticeship) route will make in diversity terms, or whether employers will tend to use it as a mechanism for recruiting high calibre "A" Level students directly into paralegal roles. If this is so, then apprenticeships may do very little to interrupt the pattern of social disadvantage that is already present by the end of secondary education, and limit its continuation into the professions"*.

That is why CILEx will continue to offer open access to a legal career through its professional qualification structure as well as, now, through Apprenticeships. To quote the LETR; *"only CILEx qualifications offer career progression directly into a regulated profession."*

I've used the paralegal word a couple of times. There was talk throughout the work of the LETR of the role of the paralegal, often in terms of surprise that there are so many of them. As if they are a recent phenomenon. As if they are a problem. As if they might need regulation, control by...somebody.

The report itself reflects this surprise at finding them there. For example, it refers to "the occupation" suffering from a lack of identity and co-ordination, limited training and a lack of recognised qualifications. *"Nevertheless, it has still managed to become integral to the delivery of legal services...."*

Frankly, I find that level of befuddlement to be surprising. Read Dickens. Read Pepys. Even read Cicero! Paralegals have always been here.

Solicitors and attorneys have always employed people to do all sorts of legal work to support the lawyer. Whether known as Clerks, or Managing Clerks, there they are.

When the term “Managing Clerk” fell into desuetude these unqualified or part qualified people did not disappear.

Instead, not only did titles change as we saw from the legion earlier but also Legal Secretaries began to be used more for doing legal work as technology made the typing part of the job faster and freed them up for more legally advanced work.

For the past 20 years, it is this “in house” group that has formed a large part of our membership as they sought to gain recognised qualifications, recognition within the sector, and a career.

CILEx has always had paralegal members. In fact the majority of our members are paralegals. CILEx represents around 12,500 paralegals, the largest number of regulated paralegals in the UK.

As highlighted earlier, they have access to development, qualifications, and a diverse choice of career destinations. And while many choose not to progress to become lawyers, consumers can still rely on them because they are held to the same professional and ethical standards as lawyers. They are true professionals.

Throughout the LETR research stage, there was debate about the need or not for compulsory regulation of paralegals. The final recommendation

is clear: “There is not a strong case for requiring registration or individual regulation of those who are currently subject to entity regulation”.

Well, regardless of the recommendations, what is essential is that businesses in some manner quality assure their staff, particularly when a legal business may be employing tens if not hundreds of non-lawyers to undertake legal work, all supposedly under the supervision of a small number of lawyers.

This is as much in the consumer interest, as it is in the sector’s interest, for confidence in the rule of law depends so much on the transparent quality of our legal services.

The LETR recommends a single voluntary recognition scheme or paralegal quality mark, akin to the Scottish scheme. I have some difficulties with this recommendation. It has all the hallmarks of an expensive regime without the guaranteed quality assurance the public would expect from such a scheme. It also overlooks the 50 year history of CILEX “paralegals”, and that measures of competence and knowledge already exist.

The LETR report itself recognises the significant dangers inherent in introducing a compulsory scheme:

- “The costs of creating a registration scheme may be considerable

- registration by itself does not necessarily offer any added guarantee of competence.
- Any register would need to operate in ways that maintained currency, accuracy and respect for the rights of applicants.
- One register built on one already maintained by a regulator may create difficulties in buy in if it were to appear to tie paralegals into a specific regulated profession, when they may have stronger affiliations elsewhere.
- It is not clear that the additional burden of registration is proportionate to the risks represented by paralegals.”

Indeed it is not. Nor is it clear what additional benefit is to be gained at the expense of such burden.

This has been a CILEx centric reflection on the LETR, and I make no apologies for that. There is much in the report that deserves reflection at leisure, and much that needs debating across the professional associations and regulators – to include our smaller brethren, some of whom may be concerned that their voices have not been adequately heard.

Sometimes it may not seem so, but I believe that the sector is not at all bad at coming together to discuss issues , develop relationships and

jointly take forward issues of pertinence, whether that is across the whole sector or by a couple of professions.

So the recommendation for a Legal Education Council I think is an unnecessary step; a “nice to have” idea perhaps but one I fear would cost too much, increase the burden of regulation, and remove regulatory responsibility from where it belongs; with the regulators.

I say we can work together so let's prove it. CILEx would like to start the ball rolling by proposing a Conference, or perhaps a Convocation of legal eagles, later this year, to debate – together - the recommendations and to work – together - to determine how best to take them forward - together. I know all the professions and their regulators will join us.

Mark, please forgive me. I'm acutely aware that rather like Banquo's Ghost I have distracted us from what was supposed to be a birthday party to celebrate again our wonderful 50 years.

I leave you with this last reflection on the Legal Education and Training Review:

The report says a great deal in a positive fashion about our approach to work-based learning; our understanding of competence assessment and day one outcomes, our pioneering work on CPD; and I pay tribute to the

Board of IPS, its Chairman Alan Kershaw, its Chief Executive Ian Watson and all the staff for their work in all these areas.

The report recognises our great story on social mobility. Of course there will always be more to do on standards, content, delivery, curriculum, assessment.

Our flexible and varied approaches to legal services education and training including apprenticeships, encompassing as it does the paralegal, the technician and the lawyer, with the focus on specialisation, in my view puts CILEx ahead of the game and at the forefront of how legal education and training can help to meet the regulatory objectives in the Legal Services Act, and, indeed, provide something of a model for the future.

You will be pleased to know I have reached the end and so, as promised, I shall stop.