



A RESPONSE BY

**THE CHARTERED INSTITUTE OF LEGAL
EXECUTIVES**

AND

ILEX PROFESSIONAL STANDARDS LIMITED

Red Tape Challenge – Legal Services

July 2012

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 2007 Act)*, and ILEX Professional Standards Limited (IPS), the regulatory body for 20,000 members of CILEx.
2. For the purposes of this response, ‘we’ is used to mean both CILEx and IPS unless the context suggests otherwise.
3. CILEx and IPS promote proper standards of conduct and behaviour among Chartered Legal Executives and other members of CILEx. We aim to ensure CILEx members are competent and trusted legal practitioners and are fully aware of their obligations to clients, colleagues, the courts and the public. We aim to help good practitioners stay good and improve throughout their careers and to ensure the public know the quality of work Chartered Legal Executives can provide.
4. We promote the status of Chartered Legal Executives to members of the public and their standing within the legal profession. On behalf of our members and the public, CILEx analyses and responds to proposed changes in the law. Part of this process involves commenting on consultations from the Government, Parliament and other stakeholders.
5. CILEx is focused and committed to equality and diversity in relation to the members it represents, the staff it employs and its stakeholders. CILEx has already been recognised as a diverse organisation which has an “all are welcome” approach to its members, turning away no one via subscribed mandatory requirements but ensuring progress is achieved through vigorously tested capability. CILEx has thrived over the past 50 years in recruiting those interested in pursuing a career in law and ensuring the profession is accessible to all, regardless of social background or status.
6. The submission follows a call for evidence to CILEx members for their thoughts on regulation in the legal services sector, and is based on the 45 responses received. Members were asked a series of questions to inform our response to the consultation, and our response is based on the questions asked.

Executive Summary

7. In summary we make the following observations:

- Fit-for-purpose regulation is critical to ensuring public confidence in the legal services sector.
- Whilst over-burdensome regulation can reduce access to justice by making legal services more costly, under-regulation can reduce the quality of legal services relied upon by vulnerable people. A balance must be struck.
- Chartered Legal Executives offer cost-effective legal services, however the regulations in the Legal Services Act 2007 defining which professionals can and cannot conduct certain legal services reduces the level of choice for the public in who provides their services. The forthcoming application for additional practice rights for Chartered Legal Executives, if successful, will enable greater accessibility to legal services for members of the public.
- Regulation needs to maintain its focus on protection of the public, and should be constantly evolving to ensure it can meet the challenges posed by a constantly shifting sector.

Q1: What impact do you think regulation in the legal sector has on the public?

8. We and our members strongly believe that regulation in the legal sector has an important role to play in ensuring confidence and trust in the profession. The protection of the public, ensuring access to justice, and a fair and equitable legal system must be the predominant factors in deciding on any changes to regulation.
9. There is a concern that over-regulation can impact on access to justice, particularly as the cost of regulation is often passed indirectly to clients. Areas where regulation is burdensome and costly means additional expense to members of the public, and this can limit the individuals and groups who have access to high quality legal support.
10. However, reduced regulation can increase levels of competition in the sector. If market economic principles are applied there is potential for competitive pricing and improved quality, but it can also lead to reduced scrutiny and loss of public confidence.

11. A balance needs to be struck between regulation that reduces access to justice through being over-burdensome and bureaucratic, and under-regulation that is not fit for purpose and fails to protect the public.

Q2: Can the impact of regulation on the public be reduced or simplified?

12. 73% of respondents said that the impact of regulation on the public could be reduced or simplified.

13. We believe that regulatory regimes should be robust and complimentary, without resorting to 'one size fits all' approaches. Where practitioners are subject to multiple regulators, complimentary regimes would be less burdensome, and would not fall into the pitfalls of a uniformed approach. Additionally, greater public awareness of the role of different legal professionals and their respective regulatory requirements would enable members of the public to access and benefit from the sector's services more easily, and with less disruption from regulation.

14. Specifically with regard to client care, some respondents felt that the bureaucratic elements of regulation that require lengthy or substantial information to be presented to clients in all circumstances should be reduced where it is appropriate to do so. Client care expectations should not be treated as 'one size fits all' due to the individual circumstances affecting each client, and their level of need.

15. Of the 27% who disagreed, most felt that reducing regulation was not in the public interest, and could place individuals at risk from poor service provision.

Q3: Should regulation be streamlined to make the legal sector more accessible to the public?

16. 73% of respondents said access to the sector could be improved by streamlining regulation.

17. Broadly it is felt that the legal sector is complex and removed from society. We believe that de-mystifying the sector through simplified and streamlined regulation is an important step towards ensuring greater access to justice and a more diverse profession. The reduced cost burden from more streamlined regulation should be passed on as savings to the public.

18. CILEx's regulatory body ILEX Professional Standards (IPS) is currently preparing to submit an application for additional practice rights for members. We strongly feel that Chartered Legal Executives offer a cost effective, and consequentially more

accessible, legal service which should be available across a broader spectrum of legal activities.

19. The restrictions on which groups of professionals can and cannot engage in certain activities can lead to frustration and confusion amongst the public when they are practically applied. Minimising these restrictions for Chartered Legal Executives will give the public greater choice, increase competition and provide more accessible services without placing the public at risk due to the regulatory regime within which our members operate.

Q4: What impact does regulation have on you as a practitioner?

20. The majority of respondents were supportive of a regulatory regime that ensured quality client care and high professional standards, though some felt that regulation was over-burdening and restricted the amount of time they could spend working on client issues.

21. Quality schemes, such as Conveyancing Quality Scheme (CQS) or Quality Assurance Scheme for Advocates (QASA), can be seen as burdensome or unnecessary, especially when the professionals involved are suitably qualified and the schemes duplicate the role of regulators.

22. Comments from respondents included concerns about the regulatory maze in areas such as immigration; the unhelpful shape and wording of the 2007 Act; and whether any purpose is served by Parliamentary work such as the making of orders over and above decisions by the LSB.

23. Some members talked about the complexities posed by a constantly changing regulatory regime, or having multiple regulators (for example, if a Chartered Legal Executive works for a CQS accredited SRA regulated practice they have three regulatory regimes to comply with.)

24. A small number of respondents reported feeling the need to act defensively or to protect oneself against complaint on regulatory grounds, rather than feeling empowered to help their client as best as they saw fit. CILEx's regulatory regime is based on principles of conduct that can be applied to unique situations, rather than black and white regulations that do not reflect the complexities of modern practice.

25. Some respondents felt they were unfairly restricted in their work through regulation and lack of practicing rights. For example, CILEx regularly hears concerns from members working in conveyancing that they are not able to sign ID1

forms due to its reservation under the 2007 Act, despite having appropriate professional standing.

Q5: Currently legal activities are split between three broad areas; unregulated, regulated and reserved. Is this fragmentation fit for purpose?

26. Nearly two-thirds of respondents felt the current fragmentation of legal services regulation was not fit for purpose.

27. Whilst the majority of respondents wanted to see a simplified system, there were differing opinions over the manner of this simplification.

- The largest proportion of members suggested bringing unregulated services under a regulatory regime, thereby ensuring that all unregulated legal services are regulated to protect the public. This would see a distinction between two broad areas of legal services; regulated and reserved.
- Some suggested a single regulatory approach for all legal services, arguing that a lack of consistency is confusing for the public, and creates bureaucracy when practically applied. This would see one broad area of legal regulation; making all legal services either regulated or reserved.

28. There was broad agreement however that the information available to the public and practitioners was lacking in this area. Clearer guidance is needed to ensure the public are able to choose the practitioner and service that is right for them, and have confidence in the service they will be offered.

29. CILEx supports the regulation or reservation of all legal services as a means of protecting the public and ensuring high quality delivery. However due regard must be given to ensure such regulation does not become over-burdensome or overly bureaucratic; such a situation would result in increased costs and reduced quality for the public, and ultimately limit access to justice. Where reservations are applied, due regard should be given to enable competition and accessibility.

Q6: Do you think the Legal Services Act 2007 needs to be reviewed?

30. Just over half of respondents (52%) felt that the 2007 Act needed reviewing.

31. Of those respondents who did, some felt that Solicitors had been given an unfair advantage over Chartered Legal Executives in the authorisation to deliver reserved activities. CILEx members are vocationally trained lawyers who have practically applied their learning whilst both working and studying, and therefore are well

placed to be able to provide the widest possible range of legal services. The impending application from IPS, if successful, will largely address these concerns.

32. Others felt that the 2007 Act simply needed reviewing to ensure it continued to be fit for purpose.

33. We believe that the two instruments specifically mentioning Legal Executives under this consultation (SIs 1118/2011 and 1077/1998) do not need to be changed, but should be incorporated in a reviewed Legal Services Act if such a review were to take place.

Q7: Do you have any other thoughts on regulation in the legal sector?

34. Respondents broadly felt that regulation could be de-mystified. Clear guidance is needed on regulatory requirements to ensure the public can understand legal services better.

35. We believe that this transparency is important to challenge the preconceptions held about the legal sector, and to open up the sector to more diverse practitioners.

Q8: Could their purpose be achieved in a non-regulatory way (e.g. through a voluntary code)?

36. We believe that a voluntary code would not provide sufficient protections for the public, and would not be sufficiently enforceable. Two-thirds of respondents (66%) agreed that a non-regulatory approach was not sufficient.

37. Additional codes might be considered for quality of service 'over and above' minimum regulatory requirements, akin to quality marks found in other sectors, but firm regulatory foundations should remain in place.

38. A firm regulatory framework is necessary to ensure uniformity and quality of delivery across providers, and to protect the public interest.

Q9: Could they be reformed, simplified or merged?

39. Two-thirds of respondents (67%) felt that regulations could be streamlined in one of these ways. Broadly they supported a process of simplifying regulatory schemes, instruments and rules, and that this should be done in a coherent fashion by a single body.

40. We believe that transparent regulation is an important part of a well-functioning legal sector, and proposals for simplification that emerge out of the Red Tape Challenge should be put out to consultation.

Q10: Can the bureaucracy of regulation be reduced through better implementation?

41. Three-quarters (76%) of respondents believed that bureaucracy could be reduced through better implementation. To enable this there would need to be clear guidance from regulators and legal bodies that plainly spelled out situations in which regulations applied.

42. The use of modern technologies and the internet can also facilitate regulatory functions, making them less burdensome and quicker.

Q11: Can enforcement be made less burdensome?

43. Just over half of respondents, 55%, agreed that enforcement could be made less burdensome.

44. Respondents said that clearer guidance from regulators on what constitutes a breach of regulation would aid both practitioners and most importantly the public.

45. It was also suggested that rewarding good practice should be considered alongside punitive actions for breaches.

Q12: Should regulation remain as is?

46. Nearly three-quarters of respondents (74%) believed that regulation should not remain the way it is.

47. For the remainder who felt that it should, many said that it was too early for wholesale change, and that a formal review should be conducted once sufficient time had passed.

48. The changes that were proposed by respondents included increasing the practice rights of Chartered Legal Executives, and addressing the fragmentation between unregulated, regulated and reserved activities.

49. Broadly though, respondents believed that regulation needed constant evolution in order to keep up with changes and developments in the sector. We support this opinion, and wish to emphasise the need for consultation on any proposed changes.