



**INCREASING FLEXIBILITY IN LEGAL EDUCATION  
AND TRAINING**

**A RESPONSE TO PROPOSALS FOR DRAFT  
STATUTORY GUIDANCE TO BE ISSUED UNDER  
SECTION 162 OF THE LEGAL SERVICES ACT 2007**

**A RESPONSE BY**

**THE CHARTERED INSTITUTE OF LEGAL  
EXECUTIVES**

**AND**

**ILEX PROFESSIONAL STANDARDS LIMITED**

**6 DECEMBER 2013**

## **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 22,000 members of CILEx. The consultation was separately considered by CILEx and IPS. The outcomes of those respective considerations were exchanged and with no significant difference of opinion between the two organisations, a joint response is tendered. For the purposes of this response, 'we' is used to mean both CILEx and IPS unless the context suggests otherwise.
2. This response to the consultation provides a background to the developments in education and training at CILEx; consideration of the need for the issue of statutory guidance by the LSB to the Approved Regulators generally; an analysis of the elements describing each of the outcomes contained within the proposed guidance, in as far as they require commentary, in relation to the response; and responses to the questions contained in the consultation.
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 welcome the opportunity to comment on the consultation put forward by the Legal Services Board (LSB) on the issue of statutory guidance.

## **Recent Developments in Education and Training at CILEx**

5. Both before and after commissioning and publication of the Legal Education and Training Review (LETR), CILEx and IPS have been undertaking work to develop the education and training arrangements for CILEx members, to improve the assessment and therefore assurance of their competence.
6. Day One Outcomes can be used to express the knowledge, experience and skills required of a newly qualified Fellow. In recent years, IPS has developed arrangements for determining applications for Fellowship, through the modernised Work Based Learning scheme. The competencies developed through this scheme have enabled IPS to develop a definition of Day One Skills for Fellows. There is further development work to be undertaken to provide a statement of Day One Knowledge requirements. Taken together, they will form the outcomes for Day One Fellows. The resulting framework could provide a model from which it would be possible in the future to develop Day One Outcomes for other levels of the CILEx qualification.

7. A revised CPD scheme for CILEx members has been introduced and is being phased in over the next three years, to replace the previous hours based approach. The scheme draws on the competencies defined in the Work Based Learning scheme and is designed to assure competence through reflection and evaluation.
8. CILEx and IPS have made an application to obtain independent Practice Rights for CILEx members. The approach to education, training and assessment for practice rights is based on a competence framework, which sets out in detail the knowledge, experience and skills outcomes that applicants will be required to meet, to be authorised to provide reserved legal services under the Legal Services Act 2007.
9. The LETR report endorsed many of the education and training developments CILEx and IPS have already undertaken, whilst also identifying areas for further review. Areas for review that CILEx and IPS will take forward include:
  - The development of knowledge and skills outcomes which can be obtained through completion of the academic qualification as part of the development of the definition of a Day One Fellow
  - The development of similar outcomes for other levels of the CILEx qualification
  - Mapping and identification of knowledge and skills gaps within the CILEx Level 3 and Level 6 qualifications
  - Review of the available exemptions.
10. CILEx and IPS will continue to collaborate with the other Approved Regulators, regulatory bodies and other stakeholders in order to harmonise approaches, where it is appropriate to do so, without compromising our contribution to developing equality, diversity and social mobility in the legal profession.

## **Statutory Guidance**

11. Regulation should be outcomes-focused, proportionate and risk-based. The issuing of statutory guidance does not appear to be either proportionate or risk-based. Therefore, IPS and CILEx remain unconvinced that the LSB would be right to issue statutory guidance on education and training issues, tied to a fixed timetable in response to the recommendations from the LETR.
12. The draft statutory guidance appears to have been drafted to support a drive towards a different model of regulation for the legal sector. The prescriptive and rapid timetable proposed is not appropriate. The view of CILEx and IPS is that it would be better to take a thorough and careful approach so that any changes necessary in legal education and training can be identified and developed, taking into account the needs of the consumer and the wider public interest .
13. The timetable set out in the consultation, requiring project plans from the Regulators by April 2014, is unlikely to allow the LSB sufficient time to develop

informed guidance once the consultation responses have been received in December 2013. There is a real possibility that hurried guidance may result in the LSB being unable to explore fully all the issues raised. For guidance to be meaningful; there must be an in-depth understanding of the possible impacts of implementing the changes. There will be insufficient time for Regulators to produce project plans by April 2014, in response to the guidance. In order to achieve lasting and positive changes to legal education and training it is important, given the size of the project, that the time and resources required are fully understood.

14. It is important that the consultation is a genuine consultation with the issues raised being explored fully before guidance is issued. The LSB will also need to make clear how it will measure whether Regulators meet the outcomes. Measures must be set against proper criteria and include recognition that the LSB regulates very different organisations, with different constituencies.
15. The outcomes and explanations of the outcomes proposed by the LSB raise a number of issues, which we expand upon in our comments below. It seems to CILEx and IPS that many of the issues are most relevant to the degree and post graduate training which lead to qualification as solicitors and barristers. The degree and post-graduate approach is not the education and training method operated by CILEx. Therefore statutory guidance may not be relevant to all Approved Regulators. The mixed approach to qualification fostered by CILEx is important to encouraging a diverse entry to a legal career.
16. Furthermore, Regulators are starting from different positions in terms of review and reform of their qualification structures and are at different stages of development and implementation. The LSB assessment of action plans must recognise these differences.
17. All rule changes made in applications to the LSB are already set in the context of the regulatory objectives and Better Regulation principles and therefore any proposed changes made by the Regulators would necessarily be assessed and approved against these objectives.
18. In addition the regulatory bodies have expressed willingness to work both separately and together to achieve the recommendations outlined in the LETR where it is appropriate to do so, to ensure that legal services education and training meet future needs. However, CILEx and IPS, along with the other Approved Regulators and regulatory bodies, do not support the establishment of a separate Legal Education Council, which could lead to confusion with existing proposals to work together. The proposed timetable for responses to the LSB guidance allows no time for intended collaboration before action plans are drawn up, given the short timeframe.

### **Analysis of the proposed outcomes from the draft statutory guidance and answers to the consultation questions**

## The Outcomes:

- i. Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation.
- ii. Providers of education and training have the flexibility to determine how best to deliver the outcomes required.
- iii. Standards are set that find the right balance between what is required at entry and what can be fulfilled through on-going competency requirements.
- iv. Obligations in respect of education and training are balanced appropriately between the individual and entity, both at the point of entry and on-going.
- v. Education and training regulations place no direct or indirect restrictions on the numbers entering the profession.

### 1) Do you agree that these outcomes are the right ones?

19. The outcomes, as set out above, do not provide a complete picture of what is intended by each outcome. Therefore, although when expressed at this high level, they seem acceptable, there are issues with some of the outcomes which may lead to conflicting objectives. We give examples below.

### 2) Do you think that all of the outcomes should have equal priority?

20. No. This is not to say we believe that some outcomes are more important than others; but it would not be possible to achieve all the outcomes at the same time. Some would need to be developed before others – for example, the development of outcomes and standards is necessary before providers are able to develop multiple routes to qualification.

## Proposed guidance

**Outcome 1:** *Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation*

*a. Requirements might be role or activity specific, with certain universal requirements being consistent regardless of regulator. These universal requirements may focus on areas such as professional principles and ethics*

21. The suggestion of activity specific requirements is a significant change from the current approach. It appears to shift the emphasis from title-based to activity-based regulation. The implications of this approach require detailed consideration before there can be a commitment to it.

22. The development of any common standards would require agreement between the Regulators. CILEx and IPS have already expressed publicly their willingness to collaborate with other Regulators in appropriate areas.

*b. Regulators move away from 'time served' models that focus predominantly on inputs rather than outcomes*

23. In consultation with CILEx, IPS has developed and implemented a new approach to qualification as a Fellow. This new approach (Work Based Learning) combines assessment of competence against 27 learning outcomes with a time served element. During development, IPS reviewed the time served element – which is only one element of the application process for admitting members to Fellowship. The best elements of the previous application arrangements were consolidated into the revised process to ensure the qualification remained flexible, so that a diverse range of working backgrounds can continue to be recognised. IPS and CILEx determined that the time-served element had value in its own right, as it enabled applicants to demonstrate the development of both breadth and depth in relevant work experience. This was reinforced through the provision of a clear description of what is legal work. We considered this essential to deliver consumer protection and competent practitioners. IPS recognised that the time served element could be reduced because of the additional competence element that is now part of the Fellowship qualification, but not discarded, as the 'earn as you learn' style of the CILEx qualification enables applicants from a range of backgrounds to complete the qualification.
24. The detailed study of the time-served element of the CILEx qualification to become a Fellow ensured that the period set was the minimum required to ensure that applicants had the necessary breadth and depth of experience. However, the Work Based Learning scheme as a newly developed scheme will be reviewed as part of the usual implementation administration process.
25. There are good practical arguments for the retention of a fixed time served element. It provides employers with guidance and a framework for the acquisition of competencies. A further benefit is that without a time served element, employers may be tempted to shortcut the process of the acquisition of competence by peremptorily declaring competence. The requirement for time-served in other jurisdictions and in other professions may be explored to inform the need for a time served element for qualification.
- c. Requirements exist only where needed to mitigate risks posed by the provision of a legal activity. We would therefore expect regulators to review their approach to the regulation of students where it is difficult to see how the regulatory burdens and costs involved can be justified when students are acting under the supervision of a qualified person and in many cases within a regulated entity*
26. CILEx studying members are normally following an 'earn as you learn' route to qualification, which means that they are in the workplace and undertaking legal work. Regulating studying members, who are undertaking legal work for consumers, protects both consumers and the public and is not burdensome. This model is different from the model followed by solicitors and barristers, where students are usually studying full time and pose little, if any, risk to the consumer.

27. IPS procedures allow for early consideration of issues such as prior conduct and enable IPS to manage students' expectations regarding entry to the profession. These expectations include whether an individual would be likely to gain employment in the legal sector and be able to be admitted to membership/Fellowship.

28. Whilst regulation through an entity provides some assurances regarding regulation, students may also be members of a profession and it is important that these members are of good standing and do not bring the profession into disrepute. It is essential that individuals take personal responsibility for professionalism and ethics, reinforced through both qualification and membership of a professional body. Becoming a member of a professional body as a student, instils the concepts of professionalism and ethics at the start of their career.

*d. Regulators act to facilitate easier movement between the professions, both at the point of qualification and beyond*

29. CILEx and IPS have expressed their willingness to collaborate with other Regulators in appropriate areas. However, care should be taken to ensure that specialisation is not so early as to risk compromising the competence of professionals. A further caveat would be that delegation of education and training to an entity is likely to increase variance and specialisation within areas of competence.

*e. Regulators review requirements regularly to ensure that education and training stays current and relevant to modern practice*

30. IPS and CILEx periodically review their education and training requirements to ensure that they remain fit for purpose. This is demonstrated through:

- The changes made to the professional qualification in 2007-09. This completely restructured the qualification into smaller units which increased flexibility and choice; and saw the introduction of skills units for the first time.
- The work to modernise the Fellowship qualification, undertaken between 2010 and 2013, which introduced a broader assessment of competence of CILEx members prior to admission to Fellowship, in addition to undertaking a period of relevant legal work experience. This work entailed detailed analysis of the skills required of newly qualified Fellows and to provide a clear and explicit standard against which IPS can assess competence. These were developed into 27 learning outcomes which must be met by all applicants before admission to Fellowship.
- Revisions to the CPD scheme undertaken between 2011 and 2013. The new CPD scheme, which is now being implemented, introduces the CPD cycle (reflect, plan, act and evaluate) to all CILEx members who are required to complete CPD.

31. CILEx and IPS keep the academic qualification under review and in doing so will have regard to the recommendations of the LETR.

**3) Do you agree with our guidance that a risk based approach to education and training should focus more on what an individual must know, understand and be able to do at the point of authorisation?**

32. We take authorisation to include the definition of a range of competencies which set out what is required to undertake a particular activity. If this is the case, then this may not be sufficient. Risk has a part to play in the education and training requirements of practitioners, who may undertake a given activity in a range of environments; this may necessitate more breadth than the above statement would allow. It is important to build into the qualification sufficient depth to enable practitioners to understand the limits of their field of competence and therefore be able to identify situations in which they are not competent to act and should refer a client to another source of legal advice. In developing the new Work Based Learning criteria, IPS identified the threshold competencies which newly qualified Fellows need, to carry out specialist legal work safely, in the interests of clients and employers.

33. Risk assessment underpins the qualification arrangements developed by IPS and CILEx in their application for independent Practice Rights, where knowledge and skills have been linked to an area of practice, underpinned by a sufficiently broad understanding of the area of law. In addition, Work Based Learning sets out the skills of a newly qualified Fellow; as 8 competencies, which have been broken down into 27 learning outcomes.

**4) What are the specific obstacles that need to be removed to facilitate movement across different branches of the profession?**

34. It should be noted that CILEx accepts routes to qualification besides the CILEx examinations. The need for a degree as a pre-requisite to joining a profession is a significant barrier to transferability between professions. This relates primarily to the cost of qualification, which can inhibit accessibility and therefore have a negative impact on equality and social mobility.

**5) Do you agree that regulators should move away from 'time served' models?**

35. In consultation with CILEx, IPS has developed and implemented a new approach to qualification as a Fellow. This new approach (Work Based Learning) combines assessment of competence against 27 learning outcomes with a time served element. During development, IPS reviewed the time served element – which is only one element of the application process for admitting members to Fellowship. The best elements of the previous application arrangements were consolidated into the revised process to ensure the qualification remained flexible so that a diverse range of backgrounds can continue to be recognised. IPS and CILEx determined that the time-served element had value in its own



right, as it enabled applicants to demonstrate the development of both breadth and depth in relevant work experience. This was reinforced through the provision of a clear description of what is legal work. We considered this essential to deliver consumer protection and competent practitioners. IPS recognised that the time served element could be reduced because of the additional competence element that is now part of the Fellowship qualification, but not discarded, as the 'earn as you learn' style of the CILEx qualification enables applicants from a range of backgrounds to complete the qualification.

36. The detailed study of the time-served element of the CILEx qualification to become a Fellow ensured that the period set was the minimum required to ensure that applicants had the necessary breadth and depth of experience. However, the Work Based Learning scheme as a newly developed scheme will be reviewed as part of the usual implementation administration process.
37. There are good practical arguments for the retention of a fixed time served element. It provides employers with guidance and a framework for the acquisition of competencies. A further benefit is that without a time served element, employers may be tempted to shortcut the process of the acquisition of competence by peremptorily declaring competence. The requirement for time-served in other jurisdictions and in other professions may be explored to inform the need for a time served element for qualification.

**6) Do you agree that the regulation of students in particular needs to be reviewed in light of best practice in other sectors?**

38. No. CILEx studying members are normally following proven best practice by following an 'earn as you learn' route to qualification, which means that they are in the workplace and undertaking legal work.
39. Regulation of studying members who are undertaking legal work for consumers protects both consumers and the public and is not burdensome. This model is different from the model followed by solicitors and barristers, where students are usually studying full time and pose little, if any, risk to the consumer.
40. Entity regulation has a role to play. Students may also be members of a profession and it is important that these members are of good standing and do not bring the profession into disrepute. It is essential that individuals take personal responsibility for professionalism and ethics, reinforced through both qualification and membership of a professional body.

***Outcome 2: Providers of education and training have the flexibility to determine how best to deliver the outcomes required***

- a. *Approval of education and training routes is dependent on providers' ability to demonstrate how their approach will achieve the required outcomes*
- b. *Regulators take care not to predetermine approval by prescribing particular routes*

41. These outcomes appear to be primarily aimed at the solicitor/barrister model of validation of providers to deliver qualifying law degrees and postgraduate qualification.
42. The primary issue is whether the education and training requirements can produce competent practitioners and therefore contribute to the protection of the consumer.
43. CILEx already allows Graduate entry to LPC/BPTC graduates and limited exemption for those students with a QLD. Similar exemptions apply to onward qualification as a solicitor through SRA recognition of CILEx Fellowship.
44. It is possible that some learning outcomes as defined by the Regulator may require delivery and assessment in a particular way in order to ensure that they are achieved.
- c. Multiple routes to authorisation are able to emerge, with no one route becoming the 'gold standard'*
45. The 'gold standard' is difficult to eliminate as this relates to the perception of employers, students, consumers and the public. Whilst these groups cannot necessarily provide evidence to support their view, as everyone has pre-conceived ideas relating to a wide variety of subjects, even demonstration of common standards is unlikely to address this. An example can be seen in the difference in perception between different QLDs. All QLDs are validated to the same quality and subject benchmarks, but not all are perceived as equal in terms of academic rigour. These attitudes are often driven by entry routes to the qualification rather than anything else, for example A' level results and elite selection of students.
- d. Approval processes for new routes to authorisation support providers in their delivery of the required education and training outcomes and do not put in place unnecessary obstacles (for example, not requiring repeated waivers or exemptions from regulators)*
46. Exemptions/waivers from requirements are needed to ensure that different routes to qualification allow applicants to meet the outcomes established by the Regulators. The introduction of common standards across the legal profession as a whole would assist with this. CILEx and IPS have expressed willingness to work with others in appropriate areas.
47. Where changes are made to the qualification route, revalidation of the qualification would be necessary to ensure the route still meets all the outcomes set by the regulator; and periodic revalidation may also be necessary to ensure quality is maintained in the various routes to qualification.

*e. Regulators complement rather than duplicate existing quality assurance processes such as those undertaken by higher education institutions themselves and those carried out by the Quality Assurance Agency (QAA). We would expect all regulators to undertake a review of their existing quality assurance processes to identify where changes can be made*

48. CILEx qualifications are regulated both by the Office of Examinations and Qualifications Regulation (Ofqual) and IPS. The regulation of Awards by IPS is currently under review and the provision of information to Ofqual would be acceptable to IPS to meet some of the outcomes of regulation of the education requirements for CILEx students. IPS and CILEx are keen that work undertaken for Ofqual should not be unnecessarily duplicated in reporting requirements for IPS.

49. IPS is responsible for quality assuring the arrangements adopted by CILEx and the standards set relating to the CILEx qualifications and Ofqual provides quality assurance of the process in place for CILEx as an awarding organisation. It should however be noted that the purposes of organisations such as QAA and Ofqual are different from the purposes of the regulators of the professions and therefore, whilst there will be some overlap, there cannot be complete reliance on these alternative quality assurance mechanisms.

**7) Do you agree that regulators should allow more flexibility in the way that education and training requirements are delivered by no longer prescribing particular routes?**

50. As a policy, greater flexibility in routes to qualification is laudable, but we are not convinced it would be wholly workable. Even if routes are not prescribed, acceptable routes would have to be recognised. In practice, examples such as the different treatment of QLDs awarded by different institutions, despite being validated to the same academic and quality standards, highlight the limitations of this approach, particularly in terms of perception to employers, consumers and the public. The assessment of institutions to a threshold standard, whilst allowing institutions to teach beyond that standard creates a view that, whilst all QLDs are equal, some are perceived to be of greater value. This perpetuates the notion of a 'gold standard' in qualifications.

51. It should also be noted that both employers and consumers expect the gold standard from lawyers. The impact of such changes should be considered in a wider context than simply the providers and the professional bodies.

52. If individual routes are not prescribed, then it is possible that each applicant to the profession would need to have their qualifications assessed against the outcomes. This requires looking behind each qualification to ensure that each applicant has complied with the requirements, which may be more costly and time consuming than existing approaches.

**8) Do you think such a change will impact positively on equality and diversity?**

53. The increase in the number of routes to qualification ought to enable a widening of participation in legal education and training. This occurred with the increase in the numbers of institutions offering the Qualifying Law Degree. However, without the removal of the perception of a gold standard route, this action would be unlikely to result in significant change in practice. It could in fact have the reverse effect, where those with sufficient social capital are able to distinguish routes, superficially perceived to be of equal value and those without this information unable to do so.

**9) Do you agree that regulators should review their approach to quality assurance in light of developments in sector specific regulation of education providers?**

54. Quality assurance afforded by oversight of the CILEx qualifications by Ofqual, is already factored into oversight of the qualifications by IPS.

**Outcome 3:** *Standards are set that find the right balance between what is required at entry and what can be fulfilled through on-going competency requirements*

*a. Education and training requirements should be set at the minimum level at which an individual is deemed competent for the activity or activities they are going to carry on*

55. It is wrong to take too narrow a view of competence. Legal problems and projects do not arise in neat categories. Lawyers have to be aware of the context in which they work; both in relation to the technical legal and procedural issues in play and the way in which services are delivered. This is true also for those carrying out technical legal work, unless the work is very narrowly process driven.

56. To introduce activity-based authorisation requires detailed consideration as there are many issues for consideration in adopting this approach. There are wide variations in what is defined as 'activity'. For example; litigation, personal injury and child abuse damages are all valid activities but are of very different scope.

*b. Requirements beyond the minimum are only in place where they can be justified by the risks. We would expect regulators to review all available evidence to determine the likelihood of the risk occurring and to monitor the impact of any requirements over time. This may lead to an on-going review cycle with strong links to regulatory supervision functions*

57. IPS has generally taken this approach to its application for independent Practice Rights, where authorisation is based on reserved activities.

58. This would presumably mean higher standards or additional education and training requirements have to be developed as post-qualification outcomes. It should be noted that in law the riskiest areas of work, tend to be those which are public facing (rather than business to business transactions) and offer the lowest remuneration.

59. This has the potential to put the greatest regulatory burden on those with the lowest incomes within the profession. This may be necessary to ensure protection of the consumer and the public, but finding ways to mitigate this potential disconnect is considered by CILEx and IPS as an important part of such changes.

*c. The balance between initial and on-going requirements for education and training should be determined in accordance with the risks posed by that activity*

58. This proposal also raises further potential issues: authorisation to undertake reserved activities is not necessarily linked to the knowledge, understanding and skills required to undertake these activities specific to the role a person may perform in practice. To determine what is required could result in the drafting of a large number of complex frameworks which set out what can be done at entry and what is needed to undertake more complex work. The alternative would be to hand this assessment over to employers, outside the control of the Regulators and potentially create a conflict of interest, as employers balance the interests of clients and their own profitability. The frameworks would still need to be drafted by the Regulators, however, thereby adding to the maze of regulation and this would contribute to consumer confusion.

*d. Regulators should consider whether broad-based knowledge of all areas of law needs to be a prerequisite for authorisation in all areas. For example there may be areas where the risks allow for authorisation in a specific activity and therefore a broad base of knowledge is not the most effective way to address the risks.*

59. CILEx members begin with a broad based qualification, but undertake a more specialised qualification at a higher level to ensure competence in their specialist area of work. This reflects the evolution of legal services, where the High Street, generalist has been replaced with specialist lawyers. This also reflects the position in other professions such as health and accountancy.

60. Qualification as a lawyer requires a broader knowledge base and even narrow activity based qualifications require more than just technical expertise. Professionalism is fundamental. A broad based qualification may not guarantee competence and, equally, competence will not guarantee professionalism. The range of competence we ask for in Practice Rights is broader than the basic reserved activity and extends to competence in across the area of law and legal practice.

61. It is wrong to take too narrow a view of competence. Legal problems and projects do not arise in neat categories. Lawyers have to be aware of the context in which they work; both in relation to the technical legal and procedural issues in play and the way in which services are delivered. This is true also for those carrying out technical legal work, unless the work is very narrowly process driven.

*e. 'On the job' training is utilised where knowledge can be obtained as effectively in this way rather than by requiring all knowledge to be obtained before authorisation*

62. In this model, knowledge, normally obtained through academic qualifications, as well as skills, would be 'ticked off' against the outcomes and could be assessed in the workplace, potentially reducing the need for formal examination. Inevitably, however, the issue of variance in assessment would need to be carefully addressed.

*f. CPD participants are required to plan, implement, evaluate and reflect annually on their training needs. A robust approach to monitoring is developed and aligned or integrated with existing supervision functions*

63. In 2011-2013, IPS carried out a fundamental review of the CPD requirements in the legal professions, as compared with best practice in other professions and agrees that this is the best approach to CPD. The CPD cycle has already been implemented for CILEx members, with effect from October 2013.

*g. Regulators are risk based in relation to reaccreditation with significant requirements at the point of authorisation indicating high enough risks to require some form of reaccreditation. For example, this is likely to be the case in any activities where additional endorsements to a practising certificate are required in order to practise*

64. We take reaccreditation to mean periodic assessment of competence. Continuous certification, subject to effective CPD requirements such as the model adopted by CILEx and IPS, should provide sufficient protection. This type of CPD provides annual assessment of competence, whereas reaccreditation is more likely to be less frequent and therefore provide a less accurate measure.

**10) Do you agree that entry requirements set by regulators should focus on competence?**

65. Yes, as consumers and the public expect legal professionals to be competent. However, the competence requirements should not be drawn too narrowly.

**11) Do you agree with our proposal that there may be areas where broad based knowledge is not essential for authorisation? Can you provide any further examples of where this happens already?**

66. If the question refers to the removal of all breadth in qualifications for lawyers, then the answer is no. Some breadth in qualification is essential to ensure that practitioners understand the limits of their competence to act; understand the context of their area of practice; and the interplay between different subjects in the resolution of legal problems and legal transactions. If the question is solely addressing competent technicians, the answer may be different.

**12) Do you agree that reaccreditation requirements should be introduced in areas where the risks are highest?**

67. No, not generally. There would need to be more information provided on what the risks are referred to in the question and what form of re-accreditation would be introduced. Central to any reaccreditation procedure is the need for requirements to be proportionate. A robust and effective CPD scheme should be able to achieve the same as reaccreditation, with the advantage of more regular reviews of the competence of the practitioner.

**Outcome 4:** *Regulators successfully balance obligations for education and training between the individual and the entity, both at the point of entry and on-going*

*a. There is a positive shift towards assurance from entities that competency requirements are met and a move away from those decisions being made by regulators*

68. Entities alone cannot assure competence for the purpose of authorisation to undertake reserved activities. This is for the Regulators. Entities may be able to assure competence for their own business model, but the Regulators would need to assess their ability to do so.

69. There are significant risks with what is proposed here, in terms of consistency of application of standards and how clients will be able to determine whether the individual is competent. The approach may also encourage employers to push people through qualifications. This could have two effects, it may serve to increase competence which would be a positive effect, or that they may collude to reduce standards, exposing a potential conflict of interest.

70. Provided proportionate supervision is in place to assure the education and training provided by entities, this would seem a benefit as the employer is more aware of the individual requirements of their employees in terms of education and training needs. However, there is a distinction between identification of education and training needs and the assurance of competence.

*b. When authorising an entity to provide reserved legal activities, regulators focus on ensuring the appropriate controls and supervision arrangements are in place to ensure the competence of all those employed to provide legal services and not only those with professional titles. For the avoidance of doubt we do not see that a licensing regime for individual paralegals is needed in the context of entity regulation*

71. The need to provide assurance as to personal and professional conduct through regulation is important for consumer protection and is in the public interest.

72. Supervision of employees may not provide a complete picture of each individual within that organisation, although it is recognised that in some areas of practice and in some entities, this may be appropriate.

*c. The systems and processes required of entities vary depending on the business model or nature of the services provided, and to whom they are provided. For example, we would expect regulators to take account of the proportion of reserved/unreserved services being provided*

73. This would address some of the concerns outlined above. However, the example provided is not necessarily a good one as entities which are undertaking some unreserved activities must still be regulated in relation to risks to consumers and the public.

**13) Do you agree that in most circumstances an entity is better placed than the regulator to take responsibility for education and training?**

74. No. CILEx and IPS do not consider that employers are best placed to assure the competence of their employees in relation to the right to practise. They should be able to identify appropriate education and training needs, but these requirements alone are not a substitute for the assurance of competence. As previously stated there is an identifiable conflict of interest in allowing an employer to assess the competence of employees.

75. In addition, whilst some of the larger entities employ Learning and Development professionals, this does not apply to all entities and it would be wrong to impose such a business model on the sector. To do so would be to place a massive burden on smaller enterprises, introducing a disproportionate cost burden. Where such activities are carried out centrally by the Regulator, the same can be achieved much more cost effectively.

**14) Can you think of any circumstances in which this may not be possible?**

76. Yes. See above.

**Outcome 5:** *Regulators place no direct or indirect restrictions on the numbers entering the profession*

- a. Regulatory arrangements promote competition and the interests of consumers through the availability of a range of qualification options*
- b. Regulators should not impose limits on the numbers entering the profession, either directly or indirectly (for example by restricting places on vocational training courses to those that have successfully obtained a pupillage or training contract)*



*c. Any education and training requirements are sufficiently flexible to meet the needs of a developing market, enabling businesses to make decisions about who they employ*

77. CILEx offers a flexible and cost effective approach to qualification and no limits are imposed on numbers of CILEx students. However there is a need to be in employment, which gives them the required legal work experience to become a Fellow. This is a necessary restriction to ensure members are competent at the point of authorisation. However, IPS takes a flexible approach to the acceptance of qualifying employment in terms of the nature of employment, provided the work undertaken is of a legal nature. This would include activities such as drafting and providing legal advice but would exclude activities such as filing and typing. Other methods of restricting numbers entering the legal profession could be seen as anti-competitive.

78. The confidence employers have in the CILEx qualification is reflected in the financial support provided to CILEx members by their employers. More than half of employers still offer financial assistance to their employees, in spite of the financial constraints of the current market.

**15) Do you agree that it is not the role of the regulator to place restrictions on the number of people entering the profession?**

79. Yes

**16) Can you provide any examples for review where the current arrangements impose such restrictions and may be unnecessary?**

80. The only restriction in relation to the CILEx qualification is in finding suitable work based training to ensure that members can fulfil the necessary 'on the job' learning, which is essential to assure the competence of legal professionals. The need to undertake work of a legal nature before members can qualify as Fellows is clearly set out and therefore students undertake the qualification knowing what the requirements to become a Fellow will be.

81. The current use of long-term, unpaid interns could have a restrictive effect on the availability of paid work, which in turn can have an impact on equality, diversity and social mobility. This is because only those with sufficient financial support to enable them to work unpaid can access this type of 'employment'. The LSB may want to consider the guidance set out in the 'Common Best Practice Code for High Quality Internships', published in July 2011 by the Gateways to the Professions Collaborative Forum, which outlines best practice for offering and conducting internships. Adherence to this Code may minimise the limitations outlined above.

82. Internships can also limit the available necessary qualifying employment to enable qualification as a CILEx Fellow (or other legal professional).

83. Some regulatory restrictions on internships may be appropriate to ensure that the profession remains accessible and does not unnecessarily restrict equality, diversity and social mobility in the professions.

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