



CILEx Response to the Interim Report for the Civil Courts Structure Review

**A response by
The Chartered Institute of Legal Executives**

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For further details

Should you require any
further information,
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1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.
- 1.2. CILEx continually engages in the process of policy and law reform. At the heart of this engagement is public interest, as well as that of the profession. Given the unique role played by Chartered Legal Executives, CILEx considers itself uniquely placed to inform policy and law reform.
- 1.3. 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.
- 1.4. CILEx welcomes the opportunity to provide input for additional discussion within the Interim Report. CILEx recognise that this is an interim report and also appreciates the tight time constraints of this work.
- 1.5. The planned programme of reform of the courts is overdue and embracing technology in the way that is envisaged will have an immense impact on court users, legal professionals and judges. There will be implications for training and education of all of these groups. There will need to be a concerted and comprehensive public education strategy to ensure public trust and confidence in the new online court (OC).

2. Access to Justice

- 2.1. The ability to enable access to justice through the use of online courts for lower value, simpler claims is supported by CILEx. At a time when there is a great deal of unmet legal need and there has been a rise in Litigants in Person, the ability to navigate the complexity of the current system can be a deterrent to those needing to pursue claims. The recent rise in court fees also has the potential to deter claimants from seeking justice.

- 2.2. The Civil Justice Council's report ¹ into Online Dispute Resolution for lower value civil claims and the similar proposals from JUSTICE², as well as the report in question, set out a new vision for the courts of the future.
- 2.3. The suggestion of a three-stage approach within the court system i) avoidance through information and case analysis; ii) resolution through online facilitation and mediation; and iii) adjudication by a judge either by an online court or in a courtroom and with a reduced need for lawyers, forms the foundation of the proposals. This, combined with better, more user-friendly rules, court procedure which cuts through unnecessary steps and allows quicker, easier case processing, is an achievable outcome.
- 2.4. The court closure programmes and previous reductions in legal services, highlight the need for a strategy to address fundamental access to justice issues. We hope the use of other local public buildings and venues will ensure that justice continues to be done and is seen to be done in local communities. The visiting nature of tribunals and courts can be seen in the healthcare regulation field where many of the statutory healthcare regulators use hotels and public buildings for Fitness to Practice hearings, sometimes for cases of long duration.
- 2.5. The legal profession, the public, international businesses and the vulnerable all use the system and have expectations about outcomes and customer service that are not always met.
- 2.6. We need to introduce clearer proportionality into the system; at the moment even simple procedural steps in the court process require an undue amount of bureaucracy and resultant delay. In our civil courts it means we need to minimise delays in bringing cases to a conclusion, for the benefits of all parties.
- 2.7. Speed and certainty will also retain those court users who come to England and Wales for access to the jurisdiction. This is a growing part of the legal business of England and Wales and it must be preserved and enhanced. The global importance of the legal services market and the high value litigation which finds its way from overseas is an important feature of our jurisdiction.

¹ <https://www.judiciary.gov.uk/reviews/online-dispute-resolution/>

² JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system administrative, civil and criminal in the United Kingdom.

The potential growth of international arbitration and dispute resolution should be considered.

- 2.8. The development of online tools will enable better online navigation of what to do and how to get issues resolved, cases can be resolved without court, but with justice. The court system needs to be accessible and easy to use, radical changes are required to rules, processes and information. In the civil courts, lessons can be learnt from the ombudsman model and the experience of other jurisdictions. There is a real need for forms in plain English and flowcharts to describe the pathway that a case may follow.
- 2.9. Across all of our courts, we need to ensure that our system remains transparent, accountable, independent, open and fair.
- 2.10. Information security is a concern but simple steps can result in significant safeguards. Progress is being made with Wi Fi installation across the court service as well as digital capability being developed in the criminal courts.
- 2.11. Extended court sitting times, booking hearings online and building in the ability to give feedback and capture the customer experience should all be explored.
- 2.12. In this case it does require a degree of overhaul of the IT infrastructure of the courts system and much public money to be spent. The technological solutions for online courts and dispute resolution have already been developed and are available.
- 2.13. Time will be needed for training and piloting, but if the change is to happen then this needs to be built into the resourcing.
- 2.14. At CILEx many of our members have a younger age profile and our research suggests that they are increasingly using information technology in their practice In every aspect of our life technology is making a difference. There may be emotional barriers to these changes. Should it be a human process at all or should there be a formula that is populated and then a result arrived at? The experience of delivering clinical pathways in healthcare should inform this work. Such questions are fundamental at a time when the courts service is charged with saving money and at a time when clients are seeking resolution and remedies without massive financial outlay.

3. Specific observations

- 3.1. **Paragraph 1.14.** In the process of moving to a paperless court, special attention will be needed to information governance, audit trails and disaster recovery. These factors will be influential in assuring the public that the system is robust and dependable.
- 3.2. **Paragraph 1.12.2.** We would encourage further statistical research. There are useful data sets available to collate a dependable evidence base for the reports propositions, and CILEx is able to supply information on our membership.
- 3.3. **Paragraph 3.40.** CILEx has been a supporter of the Litigants in Person Support Strategy and believes that more can be done to advance this work.
- 3.4. **Paragraph 4.12.** CILEx notes the change of title from Designated Judicial Officers (DJO) to Case Officers, in our view this could be interpreted as a relatively low level title for a potentially powerful individual, which may alter the public perception of the importance of the role.
- 3.5. **Paragraph 4.19.** The independence of the Case Officer role may be called into question. There will need to be absolute clarity about the limits of their authority and also quality assurance of their decision making process. The extent to which there should be judicial oversight should be carefully considered, as the reason for introducing the role is to minimise the extent to which judicial time is being used in areas where judges are not necessarily required. The training and qualifications of the individuals occupying these posts will be crucial. Unless they command confidence and are viewed with authority and respect, then the OC will not work.
- 3.6. **Paragraph 5.122.** Sets out a vision that the OC will have embedded rules. Time spent drafting strangulating; incomprehensible rules will defeat the purpose of the exercise. It will be important to ensure seamless appeal processes and rules that can work together, as cases move from the OC to the other parts of the civil justice system. CILEx is encouraged that the rules will be embedded in the system and advise the formulation of the technology solutions need to have the consumer at the heart of the process. Over engineering is a real risk.

3.7. **Paragraph 6.18.** This paragraph sets out the advantages of having a separate court with separate rules; however there must be the ability to integrate the outcomes into the more traditional model and the OC should be piloted in some specific areas first. Additionally, whilst we acknowledge the purpose of the OC is to enable litigants to pursue and settle claims without the need for lawyers, we would encourage that litigants who do decide to utilise legal professionals should not be disadvantaged in any way.

Please contact the writer above for further contributions that may be required from the suggestions provided.