



Commission on Justice in Wales: Law Council for Wales

A Submission by

The Chartered Institute of Legal Executives (CILEX)

November 2018

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. Over 1,000 CILEx members live in or adjacent to Wales.
- 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 these developments.
- 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.

2. General Points

- 2.1. CILEx empathises with the motivation for establishing a Law Council for Wales. As the professional association and awarding organisation for specialist lawyers and paralegals, our members working in Wales are increasingly dealing with legislation passed by the Welsh Assembly and judgments from Welsh Tribunals which are distinct from their counterparts in Westminster and the courts of England & Wales. This divergence will only increase over time.
- 2.2. For any such forum to be effective it must have independence from government. The independence of the legal profession does not exist only in the moment of handing down a judgment, or providing advice or representation, it is a broad concept that applies in all areas of the law including education and regulation, and it must be staunchly protected to ensure the public can retain trust in our legal profession and judges.
 - 2.2.1. In this regard we are fully in agreement with the approach outlined in the discussion paper by Professor Paterson¹;
 - The Council should not be a creature of statute, nor funded by Government, but still operate with Government recognition.
 - The Council should be a neutral forum, without an executive role nor powers to direct any agency or body, but should be able to make recommendations arrived at by consensus.
- 2.3. While the consultation paper outlines the intention for collaboration and partnership working, and that the secretariat would be supplied by the Chair's institute, one can reasonably assume that the Council as currently envisaged would have other costs (such as the proposed website). We would therefore welcome further consideration on if and how these other costs shall be absorbed, particularly considering that any costs requested from the practitioners or the professions are ultimately passed on to the public.

¹ Consultation document, para 12.

3. Remit

- 3.1. The need for a forum where relevant stakeholders can discuss the future of justice, legal services, professionals, and education and training in Wales has long been recognised.
- 3.1.1. This was, in part, the motivation behind the formation of the Legal Wales Foundation. Its purposes include;
- Providing a forum for discussions on the administration of justice, the teaching and research of law, and the provision of legal services,
 - Making representations to policy makers,
 - Promoting the interests of the legal community in Wales, and
 - Encouraging the study of the law as it applies to Wales.²
- 3.1.2. While the Foundation's reliance on voluntary committee members has understandably concentrated their efforts, particularly on the organising of the annual Legal Wales conference, we nonetheless see many similarities between the remit of the Law Council for Wales and that of the Foundation.
- 3.1.3. The specific proposal for a Law Council for Wales draws inspiration from Lord Lloyd-Jones address to the 2017 Legal Wales Conference where he said "...since so many different organisations and bodies are following very similar paths, what is needed now is a measure of coordination, in order to avoid duplication of effort, frustration, inefficiency and a waste of resources."
- 3.1.4. In this regard we hope that should the development of a Law Council for Wales proceed, that this be done in consensus with the Legal Wales Foundation to avoid the duplication Lord Lloyd-Jones refers to.
- 3.2. With regards to the specific remit outlined in the discussion paper, we would particularly welcome separating out the item on 'equality and diversity in the justice system and public legal education' in light of these being distinct and equally important topics.

4. Composition

- 4.1. The composition of the Council must strike a balance between the various interested parties and communities. On the basis of the discussion paper, we believe more would need to be done to achieve this.
- 4.2. It is immediately apparent that only one section of education providers is catered for. Wales has a mixed provision of legal training providers, which includes those in Higher Education (HE) and Further Education (FE).
- 4.2.1. While University degrees are delivered in HE settings, CILEx's degree-level qualifications are delivered through FE colleges and distance learning providers. They are an integral part of the legal education community within Wales, and should be treated with parity with their law school counterparts.
- 4.3. This is particularly important in light of the proposal to afford the position of Chair of the forum, and power of the secretariat, to these providers on a rolling basis. Given

² Summarised from Schedule 1 of the Constitution of the Legal Wales Foundation;
<http://legalwales.org/downloads/the-constitution-of-the-legal-wales-foundation.pdf>

CILEx is mindful that this constitution is in need of amendments to reflect the expanded role played by CILEx members in Wales, and we will be pursuing those discussions with the Foundation separately.

the wide range of interests that fall within the purview of the Council it may therefore be valuable to consider a lay chair to ensure a degree of independence between the various interests involved.³

- 4.4. Consideration may also need to be given for how the Council would ensure the voice of employers, including those who offer workplace settings for legal apprentices and CILEx students qualifying while in the workplace.
- 4.5. Regrettably, CILEx appears not to be treated with parity compared to our Law Society and Bar Council counterparts.
 - 4.5.1. Chartered Legal Executive lawyers have the same practice rights opportunities as solicitors, can be authorised as advocates in open court, serve as partners in firms, establish their own law firms, and serve as judges. In light of this, and considering the diversity profile they bring to the profession, it is important they are treated with parity.⁴
- 4.6. We would also welcome some clarity on whether the practitioner council members shall be acting in their own capacity, or as representatives of their respective professional associations.
 - 4.6.1. If the intention is to provide places for representatives of the professional associations then it may be appropriate to allow the relevant body to appoint their own representatives (whether that is a practitioner or an official). Whereas if the intention is to guarantee representation of practitioners then this can be achieved by allowing the professions to use their own appointment methods.

For further details

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³ This is notwithstanding the considerations raised in para 2.3.

⁴ It should also be noted that the CILEx Wales Forum is no longer in operation, with an evolving structure taking its place in the form of the CILEx Wales Specialist Reference Group. However, for the purposes of the composition of the Law Council for Wales we would recommend simply stating that the members are 'CILEx' or 'Chartered Legal Executives' depending upon the approach taken as discussed in para 4.4.