



SRA Consultation – ‘Assuring advocacy standards’.

**A joint response from
The Chartered Institute of Legal Executives and
CILEx Regulation**

November 2019



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 Regulation Ltd (CRL) is the regulatory body for Chartered Legal Executives, CILEx Practitioners and legal entities. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEx). CILEx Practitioners are authorised by CILEx Regulation to provide reserved legal activities.

2. Background

- 2.1. The SRA is proposing within its wider consultation, to require Youth Court Advocates to obtain Higher Rights of Audience prior to undertaking work where the crime would be tried in the Crown Court if the defendant was an adult.
- 2.2. CILEx and CRL have provided a joint response to the consultation, which makes some general observations to the proposal. We have no view on the specific proposals as to how the SRA treats its advocates and assures their competence, both at the point of qualification and beyond as a practising advocate.

3. Qualifying as a Chartered Legal Executive Advocate (Criminal Proceedings)

- 3.1 CRL, as the regulator of specialist criminal advocates, many of whom undertake Youth Court work, takes a different approach to the authorisation of its advocates from that currently in operation or proposed by the SRA.
 - Firstly, any Chartered Legal Executive who wants to undertake criminal advocacy must demonstrate relevant knowledge, experience and

competence prior to attending an advocacy skills course, which is focused on their own specialist area. For criminal advocates, this includes knowledge and understanding of the procedures operating in the Youth Court (which are different from those in adult courts).

- In addition, criminal advocates are required to undertake CPD specifically focused on their specialism (including advocacy skills) each year and we are currently developing a more tailored risk-based approach to supervision to enable us to require more tailored developmental and ongoing competence training.

3.2 The additional requirements for Youth Court advocates are likely to incorporate:

- Engaging with young people
- Dealing with vulnerable clients and witnesses
- Understanding all of the options open to young defendants (including diversion from the criminal justice system).

4. Restriction of Youth Court work to Higher Rights Advocates

4.1. Whilst we appreciate that, at present, solicitors working in the lower courts receive minimal advocacy training, CILEx and CRL consider this proposal to be disproportionate to the need.

4.2. The work in Youth Courts is unique and gaining Higher Rights of Audience alone is unlikely to furnish advocates with the necessary knowledge and competence required to deal specifically with the youth justice system or its clients. It would not, for example, give a grounding in youth court sentencing or particularly in the youth court environment ie dealing with lay justices or a single District Judge.

4.3. Additionally, the proposals may not be nuanced enough: for example, some crimes that must be tried in the Crown Court in the case of an adult are not necessarily that serious (in the scheme of things); some types of robbery, for

example, may not attract a custodial sentence in the youth court in the absence of specific aggravating features or a long list of pre-convictions. Nor is there reference in the consultation about the grave crime procedure (91(1) Powers of Criminal Courts (Sentencing) Act 2000).

- 4.4. It is important that any proposed changes are founded on evidence rather than assumptions; 'vulnerable' is a broad term and the SRA seem to have assumed that the victims and witnesses in the youth court are somehow more 'vulnerable'. In fact, all young people under 18 are, by definition, vulnerable. Similarly, there is an assumption that holding higher rights confers the ability to deal with vulnerable victims and witnesses; this is not necessarily the case.
- 4.5. There are alternatives to the SRA's HRA proposal: for example, there could be a compromise whereby perhaps in cases which are tried in the youth court before a specially ticketed judge might (e.g. in cases of rape) be expected to have additional training; or if s28 pre-recorded evidence in chief is rolled out in youth court. Another appropriate alternative may be to create specialist youth court training for solicitors seeking to undertake this work, without the need to seek full Higher Rights of Audience, particularly as there is limited evidence available to support this proposal set out within the consultation. CILEx is itself currently reviewing the content of its own professional qualifications with this very requirement in mind.
- 4.6. Further, the structure and funding of the Youth Court is such that the requirement to attain Higher Rights may mean that in the future there are fewer appropriately qualified advocates to serve the needs of consumers.

5. Next Steps

- 5.1. CILEx and CRL would welcome the offer to discuss this proposal with the SRA and the BSB to determine other alternatives which may enable continued alignment of approaches to working in the Youth Court, which we consider would be better served through the introduction of a specialist course, assessment and ongoing competence requirements, without the need

for Higher Rights.

Please contact the individuals below for further contributions that may be required from the answers provided.

For further details

Should you
require any
further
information,
please contact:

Simon Garrod
Director of Policy &
Governance

simon.garrod@cilex.org.uk
01234 845725

Vicky Purtill
Director of Authorisation &
Supervision

victoria.purtill@cilexregulation.
org.uk
01234 845748