



**Regulating Apprenticeship End Point Assessment  
Consultation on Conditions, guidance and requirements for Ofqual-regulated  
Apprenticeship End Point Assessments (EPAs)**

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

**May 2018**



<b>Contents</b>	<b>Page</b>
Introduction	3
Question 1	4
Question 2	5
Question 3	6
Question 4	6
Question 5	7
Question 6	8
Question 7	8
Question 8	9
Question 9	9
Question 10	9
Question 11	10
Question 12	11
Question 13	11
Question 14	11

<b>Contents</b>	<b>Page</b>
Question 15	13
Question 16	13
Question 17	14
Question 18	15
Question 19	15
Question 20	15
Question 21	16
Question 22	16
Question 23	16
Question 24	16
Question 25	16
Question 26	17
Question 27	17
Question 28	17

## **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 qualified Chartered Legal Executive lawyers.
- 1.2. CILEx is also a nationally recognised Awarding Organisation, regulated by Ofqual, Qualifications Wales and CCEA.
- 1.3. 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.
- 1.4. 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. Question 1: To what extent do you agree or disagree with our proposal to provide end-point assessment specific guidance in relation to conflicts of interest covering the areas set out?**

**Strongly agree**

**Agree**

**Neither agree nor disagree**

**Disagree**

**Strongly disagree**

**Please provide any comments:**

- 2.1. CILEx agrees with the proposal to provide End-Point Assessment (EPA) specific guidance in relation to Condition A4. However, it is considered that the draft guidance provides limited support for End-Point Assessment Organisations (EPAOs) seeking to fully understand Condition A4 in the context of EPA. It is noted that previously the statutory guidance has set out positive and negative indicators. CILEx has found the indicators helpful in assessing its compliance status and facilitating understanding of the associated conditions. Ofqual has not adopted this approach in relation to the statutory guidance for EPA and as a result the guidance is not as helpful. The proposed guidance includes the requirement to adhere to relevant guidance set by the IfA and the ESFA, and also guidance in the assessment plan or apprenticeship standard. This means that an EPAO has to navigate a number of different documents to seek to understand the requirements it has to meet. It would be more helpful if the Ofqual guidance incorporated the IfA and ESFA's requirements and provided clarity in relation to the requirements EPAOs are required to meet. EPAOs have received mixed messages in relation to the extent to which awarding organisation and EPAO activities and policies must be separated. This is a significant issue for EPAOs, which has resource implications, and clarity is required.
- 2.2. Page 3 bullet (c) is taken from the ESFA conditions but less detail is provided. This guidance adds nothing to the requirements set out in the ESFA conditions. It would be more helpful if Ofqual set out its expectations in relation to this requirement and provided positive and negative indicators to clarify these requirements.

2.3. The 'guidance' provided in bullet (d) is unhelpful. It states, 'and that assessment processes and procedures are sufficiently separate from each other' – CILEx would welcome clarification as to Ofqual requirements in relation to this statement. Again, indicators would help clarify Ofqual requirements.

**3. Question 2: To what extent do you agree or disagree with our proposal to apply an end-point assessment specific version of Condition B3, covering the areas set out?**

**Strongly agree**

**Agree**

**Neither agree nor disagree**

**Disagree**

**Strongly disagree**

**Please provide any comments:**

3.1. CILEx agrees that an EPA specific version of Condition B3 should be applied. However, CILEx does not agree with all of the content of EPA 3. Specifically, EPA 3.2k requires EPAOs to notify Ofqual if it believes an assessment plan has or could have an adverse effect... including where the assessment plan could give rise to an assessment that is not fit for purpose. This links to EPA 3.5 which requires an awarding organisation to notify Ofqual of any steps that it has taken or intends to take to prevent the event having an adverse effect. Normally, when an awarding organisation reports an event to Ofqual, it will set out the measures it is taking to prevent or mitigate the adverse effect. Generally, event notifications report awarding organisation errors or failings. However, the assessment plans for Ofqual EQA'd EPAs are approved by both the IfA and Ofqual. EPAOs are not responsible for the assessment plans which are produced by the Employer groups. This condition appears to blur the lines between an EPAO's responsibilities and the responsibilities of the IfA, Ofqual and the Employer groups. Further, there may be reluctance on the part of EPAOs to challenge assessment plans which have been approved by both Ofqual and the IfA.

3.2. EPA 3.3b requires EPAOs to notify Ofqual if a review of the assessment plan for an EPA is proposed or initiated and 3.3 (c) if any change is made, or proposed to the assessment plan. As has been previously noted, EPAOs are not responsible for producing, reviewing or changing assessment plans. It is considered that the IfA should be responsible for reporting reviews of assessment plans to Ofqual. EPAOs cannot be certain that they will be promptly informed about reviews of assessment plans or consulted about proposed changes.

**4. Question 3: To what extent do you agree or disagree with our proposal to put in place end-point assessment specific guidance setting out when Condition C2 will, and will not, apply to end-point assessments?**

- Strongly agree**
- Agree**
- Neither agree nor disagree**
- Disagree**
- Strongly disagree**

**Please provide any comments:**

- 4.1. CILEx welcomes the proposal to put in place EPA specific guidance for Condition C2. However, the guidance could be improved to ensure that there is clarity in relation to Ofqual requirements.
- 4.2. In particular, in the 3<sup>rd</sup> paragraph 'or training provider's' should be added after 'employer's' so that it is clear that where a training provider's premises are used as the location for the EPA, but the assessment is conducted by the EPAO, C2 does not apply.

**5. Question 4: To what extent do you agree or disagree with our proposal to put in place end-point assessment specific guidance setting out the need, as part of keeping its qualifications under review, to have regard to the Institute's reviews and feedback?**

- Strongly agree**
- Agree**
- Neither agree nor disagree**

Disagree

Strongly disagree

**Please provide any comments:**

- 5.1. CILEx agrees with the proposal to provide EPA specific guidance. However, CILEx has concerns about the content of the guidance as set out on page 9 of Appendix B. As previously noted, the assessment plan will have been approved by the IfA and Ofqual and, therefore, there are concerns that EPAOs may be reluctant to raise concerns about the assessment plans.
- 5.2. Please also refer to CILEx's previous comments about EPA 3.2k.
- 5.3. CILEx agrees that EPAOs should have regard to the outcomes of IfA reviews of apprenticeship standards. However, EPAOs will only be able to do this if the IfA engages with EPAOs and ensures that they are provided with feedback accordingly. It is important that messages and feedback from the IfA are consistent and clearly communicated.
- 5.4. There are also concerns about version control of assessment plans and ensuring that the IfA and Ofqual have a joined up approach. It is noted that in the 5<sup>th</sup> paragraph of the guidance it states that where an IfA review leads to changes to an assessment plan an awarding organisation should only make changes to its EPA based on that review where the new version of the assessment plan is included in Ofqual's list. There is a concern that EPAOs will continue to be caught between the requirements of the IfA and Ofqual. It is important that the IfA and Ofqual put systems in place to prevent such issues arising.

**6. Question 5: To what extent do you agree or disagree with our proposal to disapply Condition E1 in respect of end-point assessments?**

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

**Please provide any comments:**

- 6.1. The requirements set out in condition E1 are clearly not appropriate to EPA.

**7. Question 6: To what extent do you agree or disagree with our proposal to set a Condition requiring compliance with assessment plans?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Please provide any comments:**

- 7.1. CILEx agrees that it is important that EPAOs comply with the assessment plans.
- 7.2. In relation to EPA1.1 (b) – whilst CILEx agrees that EPAOs should have regard to any guidance published by Ofqual, it is important that any such guidance is consistent with IfA and ESFA requirements/guidance, where appropriate. As previously noted, it is important that the IfA, Ofqual and the ESFA have a joined up approach in order that EPAOs are not caught trying to balance conflicting requirements/guidance.

**8. Question 7: To what extent do you agree or disagree with our proposal to put in place an end-point assessment specific Condition on the completion of gateway requirements?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Please provide any comments:**

- 8.1. The inclusion of this condition is considered sensible.
- 8.2. It is recommended that Ofqual issue guidance setting out the ‘reasonable steps’ it considers are necessary to comply with this requirement. For example, the types and extent of evidence Ofqual would expect to see to be satisfied that an EPAO has met this condition.



**9. Question 8: To what extent do you agree or disagree with our proposal to disapply Condition E7 in respect of end-point assessments?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Please provide any comments:**

9.1. The condition is clearly not relevant to EPA.

**10. Question 9: To what extent do you agree or disagree with our proposal to disapply Condition E8 in respect of end-point assessments?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Please provide any comments:**

10.1. The condition is clearly not relevant to EPA.

**11. Question 10: To what extent do you agree or disagree with our proposal to put in place end-point assessment specific guidance about the titling of end-point assessments?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Please provide any comments:**

11.1. CILEx considers that this condition should be disappplied and replaced with an EPA specific condition. CILEx agrees that Ofqual should have a condition addressing titling but this must be consistent with IfA/ESFA requirements and take into account the EPAO's responsibilities. The title is determined by the

Employer group and set out in the apprenticeship standard and assessment plan. Much of the current E2 cannot apply to EPA as it is not within the EPAO's gift. The use of guidance to support condition E2 does not clarify requirements but instead leads to confusion in relation to what an awarding organisation needs to do to ensure compliance.

- 11.2. In addition, there is a concern that compliance with condition E2 and the associated guidance could lead to EPAOs being non-compliant with either ESFA or IfA requirements. E2.3 require awarding organisations to use the title consistently in advertising and communications, however, CILEx's understanding is that the name of the EPAO cannot be used in the title of the EPA.
- 11.3. It would be far more helpful if Ofqual would simply set out in a new condition the titling conventions for EPA with which EPAOs must comply when putting EPAs on the Register.

**12. Question 11: To what extent do you agree or disagree with our proposal to continue to require end-point assessment organisations to publish specifications for end-point assessments?**

- Strongly agree**
- Agree**
- Neither agree nor disagree**
- Disagree**
- Strongly disagree**

**Please provide any comments:**

- 12.1. Ofqual acknowledges that a number of the items in E3.2 are outside of an EPAO's remit and will appear in the assessment plan or apprenticeship standard. Ofqual has noted that the information may not always be presented as fully or as clearly in the assessment plan or standard as it would be in a specification. In which case, Ofqual should discuss its concerns with the IfA to ensure that assessment plans and standards are sufficiently clear. EPAOs should not be required to address the shortcomings of assessment plans and standards. It is likely that many EPAOs will produce guidance documents or similar for apprentices and employers. This is for individual EPAOs to decide

in order to meet the requirements of their customers. CILEx considers it to be an unnecessary regulatory burden to require EPAOs to comply with condition E3. This condition should be disapplied

**13. Question 12: To what extent do you agree or disagree with our proposal to produce end-point assessment specific guidance setting out how Condition E3 applies in respect of end-point assessments?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Please provide any comments:**

13.1. As noted above, CILEx considers that condition E3 should be disapplied.

**14. Question 13: To what extent do you agree or disagree with our proposal to no longer suspend Conditions E3.2(l), E3.4(a) and E3.4(c)?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Please provide any comments:**

14.1. As noted above, CILEx considers that condition E3 should be disapplied.

**15. Question 14: To what extent do you agree or disagree with our proposal to put in place an end-point assessment specific Condition to require the level of the end-point assessment to match that of the apprenticeship standard?**

- Strongly agree
- Agree
- Neither agree nor disagree

Disagree

Strongly disagree

**Please provide any comments:**

- 15.1. CILEx agrees that an EPA specific condition should be introduced. However, CILEx is concerned that the lines between the responsibilities of the Employer groups and IfA are being confused with the responsibilities of EPAOs.
- 15.2. The level of the EPA is decided by the Employer group when developing the standard and approved by the IfA – EPAOs are not party to this decision making process. EPAOs are required to ensure that the EPA is set at the same level as that set out in the standard and assessment plan. As noted, if the level set out in the assessment plan is changed, the EPAO has to review the level of the EPA. However, the EPAO is not responsible for deciding the level, rather the EPAO is responsible for ensuring the EPA reflects the level set out in the assessment plan.
- 15.3. Changes to the level of an apprenticeship standard could have significant implications for apprentices. It is assumed such changes would be instigated by the Employer groups or the IfA. EPA 4.3 and 4.4 set out procedures to be followed where an EPAO is obliged to change the level assigned to an EPA. There is a concern about the freedom an EPAO will have to take the action it sees fit to protect the interests of apprentices. It is assumed that any action will have to comply with IfA requirements which may not be as apprentice focussed as an EPAO would like. There is also a concern that the IfA and Ofqual may not be consistent in their approaches to protecting the interests of apprentices, leaving an EPAO to manage the conflicting requirements. In the event that it is decided that the level of an apprenticeship standard is to be changed, it is recommended that the IfA, EQA (Ofqual in this case) and the EPAOs agree jointly the action to be taken having considered the implications for apprentices along with other key factors.
- 15.4. It should be noted that communicating changes to the level of an EPA to 'Users' is made more challenging because EPAOs may not know about particular cohorts of apprentices until they are registered for the EPA. Therefore, ensuring that up to date guidance and information are received by apprentices, employers, training providers may be challenging.

- 15.5. In relation to EPA 4.2 (a), if the IfA determines that the level of an apprenticeship standard (and therefore EPA) needs changing, it would seem sensible that it should communicate accordingly with Ofqual. EPAOs may not be promptly informed of potential changes to the level of apprenticeship standards. In order to comply with this condition, EPAOs are reliant on the prompt and effective communication of another organisation.
- 15.6. It is also noted that Ofqual is inconsistent in the proposed condition in its use of 'EPA' and 'qualification'. CILEx would prefer Ofqual to use EPA.

**16. Question 15: To what extent do you agree or disagree with our proposal to put in place end-point assessment specific guidance setting out how an end-point assessment organisation should comply with Conditions D1, E4 and G1 relating to ensuring assessments that are set are fit for purpose and can be delivered?**

- Strongly agree  
 Agree  
 Neither agree nor disagree  
 Disagree  
 Strongly disagree

**Please provide any comments:**

- 16.1. The guidance provides clarification that ultimately EPAOs have to comply with the assessment plan (for assessment plans on Ofqual's list). This guidance is helpful and pragmatic. In theory, issues should not arise with assessment plans on the Ofqual list because Ofqual will have approved them.
- 16.2. CILEx refers to its previous comments in response to question 2 in relation to paragraph 4 of the guidance and EPA3.2k.

**17. Question 16: To what extent do you agree or disagree with our proposal to put in place an end-point assessment specific Condition to require end-point assessment organisations to provide materials for the purposes of Ofqual's evaluation and to take any actions specified by Ofqual as a result?**

- Strongly agree  
 Agree

**Neither agree nor disagree**

**Disagree**

**Strongly disagree**

**Please provide any comments:**

- 17.1. CILEx supports the introduction of condition EPA 5. It is noted that Ofqual is inconsistent in its use of 'EPA' and 'qualification'. As noted previously, CILEx would prefer Ofqual to use 'EPA'.
- 17.2. To support the condition it would be helpful if Ofqual provided guidance or further information about its sampling approach including the data and documents required, timescales etc in order that EPAOs can ensure that they are prepared and are in a position to collaborate fully and effectively with Ofqual's processes

**18. Question 17: To what extent do you agree or disagree with our proposal to put in place end-point assessment specific guidance setting out how an end-point assessment organisation should comply with Conditions H1 and H2 in relation to marking and moderation?**

**Strongly agree**

**Agree**

**Neither agree nor disagree**

**Disagree**

**Strongly disagree**

**Please provide any comments:**

- 18.1. CILEx agrees with the proposal to introduce EPA specific guidance for Conditions H1 and H2.
- 18.2. However, the draft guidance is considered to be confusing and unclear. In particular, paragraph 4 of the guidance is problematic and needs to be redrafted. It is important that Ofqual clearly states which arrangements must be separate from marking. If Ofqual has requirements in relation to an EPAO's internal quality assurance arrangements, it would be helpful if Ofqual spelt out these requirements so that EPAOs can be certain that they are correctly interpreting Ofqual's requirements.

18.3. CILEx notes that the guidance for H2 will not apply to EPA in most cases, however, the guidance is helpful in providing clarification.

**19. Question 18: To what extent do you agree or disagree with our proposal to put in place end-point assessment specific guidance for Condition H6 on issuing results for end-point assessments?**

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

**Please provide any comments:**

19.1. The guidance is clear and provides the necessary clarity in relation to the issue of results.

**20. Question 19: To what extent do you agree or disagree with our proposal to disapply Conditions I3 and I4 in respect of end-point assessments?**

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

**Please provide any comments:**

20.1. These conditions are not appropriate for EPA

**21. Question 20: We have set out the ways in which our proposals could impact (positively or negatively) on learners who share a protected characteristic. Are there any potential impacts that we have not identified?**

21.1. No

**22. Question 21: Are there any additional steps we could take to mitigate any negative impact, resulting from our proposals, on learners who share a protected characteristic?**

22.1. None identified

**23. Question 22: Do you have any other comments on the impacts of our proposals on learners who share a protected characteristic?**

23.1. No

**24. Question 23: We have not identified any ways in which our proposals will unduly increase the regulatory impact on end-point assessment organisations. Do you have any comments on this assessment?**

24.1. CILEx is supportive of Ofqual as a provider of EQA for apprenticeships. It is noted that the 'EQA burden' placed on EPAOs for which Ofqual is the provider of EQA will be greater than the burden placed on EPAOs with one of the other EQA options. For example, no other EQA has the power to take regulatory action. Further, Ofqual needs to understand that the regulatory burden will increase if there is not a joined up approach by Ofqual, ESFA and IfA. It is noted that at the recent ESFA/IfA annual conference, it was stated that IfA's approach to EQA would be flexible and open. CILEx would welcome Ofqual taking a similar supportive approach as EPAOs and Ofqual adapt to this new model.

**25. Question 24: Are there any additional steps we could take to reduce the regulatory impact of our proposals?**

25.1. Please see comments in relation to individual questions

**26. Question 25: Are there any costs or benefits associated with our proposals which we have not identified?**

26.1. No



**27. Question 26: We have not identified any ways in which our proposals will prevent innovation by end-point assessment organisations. Do you have any comments on this assessment?**

27.1. It is noted that applying the current conditions and implementing existing regulatory models could restrict EPAOs from exploring new ways of working and assessing. EPAOs with experience of Ofqual regulation may keep doing what they currently do because they consider that this will meet Ofqual's regulatory requirements rather than exploring new and innovative approaches which could lead to regulatory interest

**28. Question 27: Do you have any comments on our proposed End-point assessment Qualification Level Conditions?**

28.1. CILEx accepts Ofqual's proposed approach to regulate EPAs as qualifications. However, this does present some challenges because EPAs are not qualifications. EPAs are assessments informed by an apprenticeship standard and assessment plan. The standard and assessment plan have not been developed by the EPAO and do not fall under the remit of the EPAO. It is important that Ofqual is cognisant of the limitations of the remits of EPAOs and does not through its statutory guidance or conditions blur the lines of responsibility between EPAOs and the Employer groups which develop the apprenticeship standards and assessment plans in accordance with the IfA's requirements.

28.2. It is also noted that Ofqual has only consulted on changes to conditions and new draft guidance. Ofqual has not consulted on the conditions which it is not proposing to change to establish whether EPAOs consider that these conditions can be applied to EPA

**29. Question 28: Do you have any comments on our proposed End-point assessment Qualification Level Guidance?**

29.1. The guidance would benefit from the inclusion of positive and negative indicators. It is unclear why Ofqual has not adopted the approach it has taken

to previous statutory guidance and as a result the guidance proposed for EPA is not considered as helpful as previous statutory guidance

**For further details**

Should you  
require any  
further  
information,  
please  
contact;

Amanda Pipe  
Education Compliance Manager

[amanda.pipe@cilex.org.uk](mailto:amanda.pipe@cilex.org.uk)

01234 845758