



Transforming Our Justice System Consultation

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

November 2016



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. This includes 4883 Conveyancers registered on our database.
- 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.

PANEL COMPOSITION IN TRIBUNALS

2. Question 7: Do you agree that the SPT should be able to determine panel composition based on the changing needs of people using the tribunal system?

Please state your reasons.

2.1 CILEx takes the view that the SPT should be able to determine panel composition in a more proportionate and flexible way, based on the changing needs of people using the tribunal system. The SPT should ensure that it is clear on whether there is a need for a single tribunal member or a panel though.

3. Question 8: In order to assist the SPT to make sure that appropriate expertise is provided following the proposed reform, which factors do you think should be considered to determine whether multiple specialists are needed to hear individual cases?

Please state your reasons and specify the jurisdictions and/or types of case to which these factors refer.

3.1 The SPT should be allowed to adopt a more proportionate and flexible approach to panel composition. The need for multiple specialists should be determined on the basis of value of claim, complexity, and likely prejudice to one party or other, significance of an issue in comparison to the claim as a whole and the potential significance of an issue to other parties or other cases (and the potential volume of those other cases).

3.2 The SPT should also take into account special representations made by the parties in the proceedings.

IMPACTS AND EQUALITY IMPACT ASSESSMENTS

4. Question 9: Do you agree that we have correctly identified the range of impacts, as set out in the accompanying Impact Assessments, resulting from these proposals?

- Panel composition in the tribunals

Please state your reasons.

- 4.1 The impacts identified in the Composition of First Tier Panels Impact Assessment are broadly the right ones in relation to the various potential impacts derived from giving the SPT greater flexibility in determining panel composition. Whilst it must be right that that new flexibility is not restricted by a requirement to look at historic panel composition, any change should not preclude their consideration which could be a good indicator of the level and type of expertise needed in relation to any given case.
- 4.2 The main aim of the reform should be to ensure the right panels are in place and not simply reduce the use of multiple panels (though their unnecessary deployment is of course pointless and wasteful). The expectation (at paragraph 8 of the Impact Assessment) that single member panels will become the default position may be reasonable but ensuring the right panel is in place, including possible multiple member panels, should remain a live option (whether by consideration of previous panel composition or not) if the reform is to ensure the expectation (paragraph 11) that tribunal users will not be negatively affected.
- 4.3 Therefore, and changes to secondary legislation ~~to~~ *reset panel composition to a single member unless otherwise determined by the SPT* should be appropriately worded to reflect that.

5. Question 10: What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform?

- Panel composition in the tribunals

Please state your reasons.

- 5.1 The equalities impacts in the panel composition equalities statement are broadly the right ones. However, its focus is more on the use and deployment of non-legal panel members (NLMs) than on tribunal users. Whilst that is broadly right, if the default position in future is single member panels, then CILEx believes that there is a greater risk that users could feel they have been negatively affected by the panel composition arrangements (paragraph 3.33).
- 5.2 This could particularly be the case given the equalities assessment acknowledges for example (at paragraph 3.4.6), that ~~it~~ *seems that a reduction in the number of NLM sitting days could disproportionately impact members of*

the judiciary of a BME background Therefore, it will be important that there is sufficient detail of the *safeguards* available to be put in place and allow additional panel members to sit, should such scenarios arise.

6. Question 11: Do you agree that we have correctly identified the range of equalities impacts, as set out in the accompanying Equalities Impact Assessments, resulting from these proposals?

- **Panel composition in the tribunals**

Please state your reasons.

6.1. As stated above, greater focus, detail and emphasis needs to be applied to and mitigating the possible adverse effects on tribunal users. One way of doing this might be for the review of requirements across the FtT to be undertaken by the SPT in advance of any of these reforms being implemented to ensure any adverse effects are identified and contained.

CILEx welcomes the opportunity to contribute to this consultation and would be happy to work with the Ministry of Justice on future consultations or the incremental development of these proposed services which envisages gaining extensive feedback from court users.

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

For further details

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