



Responses to Higher Rights of Audience Consultation

This document details the responses to the Consultation to consider proposed changes to the Practitioner Authorisation Rules and the new Standards to be able to authorise CILEX Practitioners with litigation and advocacy rights for Higher Rights of Audience.

This consultation ran for 6 weeks from 31 July 2023 to 11 September 2023 and invited member of the CILEX regulated community, other regulators, members of the public and other interested parties to respond.

A total of 105 responses were received:

- 56 Chartered Legal Executives
- 22 CILEX Practitioners
- 11 CILEX Advocates
- 11 members of the public
- CILEX
- The Criminal Bar Association
- The Bar Council
- 2 respondents did not identify their status

The consultation posed the following questions:

1. Do you agree that CRL should seek Higher Rights of Audience for suitably qualified CILEX Practitioners?
2. Do you agree with CRL's proposals to ensure that applicants exercise rights of audience in all courts should complete the training and assessment outlined in the consultation?
3. Are there any additional elements of the training and assessment that you believe should be included within the standards for CILEX high court advocates in civil proceedings?
4. Are there any additional elements of the training and assessment that you believe should be included within the standards for CILEX higher court advocates in criminal proceedings?
5. Do you foresee any issues with the revised Practitioner authorisation rules?
6. Do you agree that the application for Higher Rights of Audience should be restricted to those Chartered Legal Executives who hold both Litigation and Advocacy rights (CILEX Practitioners) and that those who only hold Advocacy rights (Chartered Legal Executive Advocates) would not be eligible to apply for Higher Rights of Audience?
7. Do you have any other comments?

Q1: Do you agree that CILEX Regulation should seek Higher Rights of Audience for suitably qualified CILEX Practitioners?		
Yes	No	Did not answer
97	8	0

Comments from those who agreed that CILEX Regulation should seek Higher Rights of Audience for suitably qualified CILEX Practitioners include:

- ‘The present arrangements are anomalous. Higher Rights of Audience qualifications for solicitors (in differing configurations) have been open to solicitors since the 1990s. Registered Trademark and Patent Attorneys have been able to exercise extended litigation conduct and advocacy rights of audience on assessment, post licensure, since 2012. The intended arrangements seek to open rights to CILEX in the same configuration as those applying to solicitors and constitute an important regulatory aim within the s 1(1) Legal Service Act 2007. See Ching J, “Solicitors’ Rights of Audience, Competence and Regulation: a Responsibility Rights Approach” (2021) 41 Legal Studies 585.’
- ‘It is my position that there are many roads to Rome and that diversity is best achieved by having heterogeneous paths and avenues to qualification rather than a homogenous motorway which can become congested with the same experiences. The Legal Services Act 2007 sought to achieve a liberalisation of the marketplace in England & Wales for the provision of legal services. In order to achieve this aim it is necessary that all legal regulators be seen as on par with each other rather than swallowed up and amalgamated as smaller wings of larger regulators or as lower ranking but independent regulators. To achieve this aim this will require securing Higher Authorisation for suitably qualified practitioners such that eventually this will in turn see such practitioners being eligible for senior judicial offices. It is important to stress that this is not a substitution for quality assurance. This is not a quantity of practitioner rather than a quality of practitioner. There must be strict quality assurance procedures and processes in place save that they can be done via different models and criterion to the more traditional form of legal regulation.’
- ‘CILEX Practitioners are excellent in what they do. Not to recognise them as such is merely undermining their ability to expand their scope to practice and sharpen their skills.’
- ‘There is no reason why CILEX Practitioners shouldn’t be given the opportunity to develop and grow providing they meet the requisite criteria to ensure the public are protected.’
- ‘The inclusion of higher rights enables career progression for CILEX qualified litigators and advocates, together with the prospect of drawing in greater applicants for CILEX generally due to the ability to attain senior level qualifications matching that of the Bar or the SRA. This would be a very positive next step for CILEX Practitioners and with consideration that CILEX supports Judicial appointments, the ability to offer Higher Rights qualifications is both logical and beneficial.’
- ‘CILEX members are specialist lawyers, and as a specialist should be able to practice at all levels including Higher Courts level.’

CILEX (The Chartered Institute of Legal Executives) responded by confirming:

- 'CILEX is supportive of the proposed regulatory changes to enable CILEX Practitioners with Litigation and Advocacy Rights to be authorised for Higher Rights of Audience. The momentum for this change, driven by the Ministry of Justice, is, as we know, in turn driven by CILEX's work to enable suitably qualified members to undertake the role of Crown Prosecutors for the CPS. A facilitative change like CILEx Regulation's proposed one, similar in principle to the arrangements open to solicitors to 'top-up' and acquire Higher Rights, can only be positive and in the public interest.'

Comments from those respondents who did not agree that CILEx Regulation should seek Higher Rights of Audience for suitably qualified CILEX Practitioners were as follows:

- 'A staggeringly small percentage of CILEX Fellows have become Practitioners with rights of Audience and litigation. A far better use of CILEx Regulation's time would be to enable fellows to have rights of Litigation in all domains. It was not until 1972 that Solicitors Rights of Audience were extended. Instead of running down this rabbit hole, I would rather CILEx Regulation spent it's time decoupling rights of litigation from rights of audience. Instead being able to grant Fellows the right to fill in and send a form to Court in their own right, which they do, regularly, on a daily basis.' Whilst CILEx Regulation understands the concerns raised by this respondent, the majority of its regulated community have supported this proposal and CILEx Regulation believe the number of CILEX Fellows becoming Practitioners will increase if we are able to offer Rights of Audience in all Courts.
- 'Not necessary for certain legal sectors and it's making fellows do exams when they have done the job for years.' CILEx Regulation would point out that this proposal only relates to Civil, Criminal and Family proceedings and does not impact on other reserved areas such as Probate, Conveyancing etc.
- 'This is out of line with SRA and CLC. Why is it necessary from your point of view to require those of us with decades of experience achieving significant qualification to prove ourselves further. It completely undermines what we have achieved so far and how others perceive us, which I thought was supposed to be your aim of us being seen equal. Partners and directors of firms cannot even carry out work under your rules.' CILEX understands and sympathises with the respondent, but it is not relevant to the consultation.

Comments from The Bar Council

No.

The current training for CILEX practitioners to obtain rights of audience in the lower courts as follows:

- At para 13 – *"...CILEX Practitioners with litigation and advocacy already hold rights of audience in the lower courts. The rights of audience are awarded by CRL once the applicant has successfully completed a CRL approved advocacy skills course and assessment (the rights to conduct litigation is assessed separately). They can then apply for authorisation."*
- At para 14 – *"The current advocacy skills course is outlined below:*
 - *It consists of 36 hours tuition, delivered over 6 one day sessions (including one day of home study to complete the law evidence requirements)*
 - *It develops candidates' advocacy skills and tuition is provided in to encourage the maximum amount of individual participation.*

- *Candidates are provided with feedback throughout the course after which the candidate is formally assessed through simulated court proceedings.*
- *The skills developed during the course build on pre-existing skills that the candidates have developed in the workplace, and cover: Professional Conduct, Interviewing, Negotiation, Case Analysis and Theory, Skeleton Argument o Advocacy (preparation and at the hearing) and Evidence.*

The additional training proposed by for CILEX practitioners to obtain Higher Rights of Audience is set out as follows:

- *At para 15 – “CRL has worked with our current external assessors for the advocacy skills courses to determine additional requirements to enable CILEX Litigators and Advocates to obtain Higher Rights of Audience.”*
- *At para 17 – “because most family proceedings work is dealt with in the lower courts, and the existing advocacy rights course will provide appropriate rights of audience, CRL is not proposing to provide a separate Higher Rights qualification for family work. However, family lawyers seeking Higher Rights would be able to take the civil route if they wished to seek Higher Rights of Audience. This also applies to immigration lawyers.”*
- *At para 19 – “As part of developing these additional skills, CRL proposed that the additional training should include formative assessments to cover:*
 - a. A Trail Strategy Plan (TSP)*
 - b. Additional written training to extend the knowledge gained on the current Advocacy Skills course in relation to evidence*
 - c. Crown Court processed, conduct, ethics, and etiquette*
 - d. Speeches, applications and submissions, appeals, skeleton arguments*
 - e. Sentencing and mitigation*
- *At para 20 – “CRL estimates that this will require an additional 12 hours of training over 2 days with pre-reading required.”*
- *At para 21 – “CRL would propose that prospective candidates will become eligible to take the additional training once they have completed their first renewal of their Advocacy rights. This is to ensure that they have the appropriate experience to undertake advocacy in all courts.”*

In other words, a CILEX Practitioner need only complete 36 hours tuition, delivered over 6 one day sessions (including one day of home study to complete the law of evidence requirements) plus an additional 12 hours of training over two days to be eligible to apply for Higher Rights of Audience in the criminal and civil courts.

There is no provision for specific training for practitioners who seek Higher Rights to appear in family or immigration cases. It is wrongly assumed that these two highly specialist areas of law, with rules, regulations and practice directions of their own, can somehow be subsumed within the training offered in Civil Law.

The established route to the Bar involved independent checks of intellectual ability, stamina, skills in written and oral advocacy, and the ability to consistently make swift and correct judgements. These checks are made at multiple stages in a training route that lasts for years and includes at least an undergraduate degree, the Bar vocational course, and then a year of pupillage. For many, there will be added into the list conversion course qualification, and periods of alternative employment which enable them further to develop such skills. At each stage, there is the involvement of external assessors who have little vested interest in whether the person succeeds or fails. This ensures that the standards of the respective institution – the quality of the degree

course, the status of the postgraduate course provider and the reputation of the status remain high.

The results of the training is that those who attain the qualifications, have proved themselves to possess the high quality of skills needed properly to act as a barrister. The courts and their clients can be confident in their intellectual abilities, judgement and integrity because they have proved them at many stages. That serves to ensure that the high standards necessary to ensure the effective administration of justice are maintained.

The CILEX proposal brings very little of this and overlook such complex matters. There is concern that these standards will be relaxed for CILEX practitioners whilst they continue to be strengthened for barristers in the public interest. To address this issue, there should be an appropriate and rigorous standard of training and expertise should be equal to the standards expected of solicitor-advocates and barrister to ensure that no client is misrepresented.

Comments from The Criminal Bar Association

No we do not agree.

The proposal creates a two-tier system of advocates in the higher courses with CILEX practitioners only required to carry out 36 hours of training. The route to becoming a Criminal barrister involves a lengthy process of study, training and supervision. All Criminal barristers are graduates who then undertake a year of specialist Bar legal training and advocacy followed by pupillage. This ensure the highest intellectual ability, resilience and skills in written and oral advocacy with the ability to consistently make swift judgements under pressure of time that are correct at multiple stages of proceedings.

The training process over so many years is equivalent to medical training for doctors who equally begin with general training moving to increasingly specialised work. At each stage, there are external assessors who have little vested interest in whether the individual succeeds or fails. In particular, during pupillage, criminal barristers have one-to-one training and supervision from a supervisor ensuring that the high standards of advocacy at the Criminal Bar are maintained. The quality of the graduate course, the status of the postgraduate provider and the reputation of the Criminal Bar remain high. The CILEX proposals do not compare to this level and quality of study, training and supervision which not only maintains high standards but preserves the integrity of the Criminal courts and efficiently manages the Criminal courts' workloads.

Following pupillage, new practitioners continue to receive formal and informal training: they must comply with the requirements to show proof of approved continuing professional development (including attending lectures and training conferences run by the CBA), and they receive mentoring and guidance from more established colleagues in Chambers. They will not have acquired the advocacy skills needed for advocacy in Crown Court or the Court of Appeal after 36 hours of training.

The CILEX proposals risk introducing a third and lower tier in criminal advocacy, by admitting individuals whose training and experience falls far beneath that which the Criminal Bar (or the Solicitor's profession) provides. It cannot be in the public interest for insufficiently qualified advocates to exercise higher rights. The profession of criminal court advocacy should not be deskilled in the manner proposed.

The CILEX consultation paper gives two reasons for seeking higher rights: to ‘enhance diversity’ and to provide ‘career opportunities’ for legal executives. It is troubling that these two reasons are given equal weight and no mention is made of the vocational aspect of being “called” to defend the cause of justice in our courts. The CBA recognises the importance of diversity and has long championed it, but only as a contributing factor to maintaining public confidence in the rule of law, not at all costs. As for career enhancement, the career interests of individual lawyers can never be a reason for deskilling the profession. Indeed, the Criminal barrister do not pursue their profession for personal gain, far from it. A legal executive who wishes to advance their career by practising advocacy is free to train to be a solicitor or a barrister with proper training and support that the profession providers.

CILEx Regulation response to the comments from The Bar Council and The Criminal Bar Association:

Prior to beginning the 6-day Advocacy Course in either Civil, Criminal or Family Proceedings a CILEX member will have already completed the following:

Academic Stage:

- CILEX Level 3 Diploma in Law and Legal Practice AND CILEX Level 6 Higher Diploma in Law and Legal Practice; or
- CILEX Level 6 Diploma in Legal Practice (Graduate Fast Track Diploma having already completed a law degree)

OR

- LLB (qualifying law degree); and
- Either LPC or BPTC

PLUS

- 2,300 Qualifying Experience which is supervised and approved by CILEx Regulation.

PLUS

- Completed an extensive portfolio of log sheets and evidence which demonstrate 8 competencies that define a Chartered Legal Executive, namely:
 - Application of law and legal practice
 - Communication skills
 - Client relationships
 - Planning and managing work
 - Understanding the business environment that you work in
 - Professional conduct
 - Self-development
 - Working with others

The portfolio contains evidence produced over their 5 years legal experience, 2 years of which must be in their chosen specialism, i.e. civil, criminal or family. The portfolio is assessed by occupationally competent and qualified CILEx Regulation Assessors.

For those wishing to obtain practice rights with litigation and advocacy, their portfolio must include details of their litigation and advocacy experience through case studies they have been involved with and applicants are required to complete and submit an application to be deemed eligible to being the 6-day advocacy training course.

Once they have achieved status as a Chartered Legal Executive Litigator and Advocate and received Rights of Audience for their chosen specialism, they are unable to apply to undertake the proposed CILEX Higher Court Advocates training. For their application to be approved to undertake the additional training and assessment, they must submit a further portfolio demonstrating how they have used their Advocacy Skills. These portfolios are assessed by sector-specific external assessors.

As we do not award Rights of Audience for Immigration, we will not be offering Higher Rights relating to this specialism.

Most Family cases are dealt with in the lower courts, there is not a requirement for a specific Higher Rights programme for Family. However, if we have CILEX Practitioners or Advocates specialising in Family cases, they can choose to apply for and undertake the Higher Rights for Civil Proceedings. This is in line with the SRA Higher Rights training.

The Standards for Higher Court Advocates (Civil Proceedings) and Standards for Higher Court Advocates (Criminal Proceedings) have been developed by highly qualified, experienced and competent experts.

Both standards have been mapped to the SRA standards: Standard for solicitor higher court advocates for criminal proceedings and Standard for solicitor higher court advocates for civil proceedings.

Q2: Do you agree with CILEx Regulation's proposals to ensure that applicants to exercise rights in all courts should complete the training and assessment outlined in the consultation?		
Yes	No	Did not answer
74	30	1

Comments from those who agreed with CILEx Regulation's proposals to ensure that applicants to exercise rights in all courts should complete the training and assessment outlined in the consultation include:

- 'This gives customers a level of guaranteed standards.'
- 'This will equip them with the skills required to conduct trials at the Higher Courts.'
- 'Training should be applied and at the same time should be at the same standard that Solicitor Advocates have to undertake (at the minimum). Making it on par, or equal to the Bar (insofar as there is a difference between the Bar and Solicitor Advocate training) is where this course should be set.'
- 'Courses are appropriate to ensure people are properly qualified for the position.'
- 'I think it is extremely important, more so in criminal where there is no prior experience for CILEX Criminal Advocates. The standards must be sufficiently high for both criminal and civil certificates.'

Comments received from respondents who did not support CILEx Regulation's proposals to ensure that applicants to exercise rights in all courts should complete the training and assessment outlined in the consultation as follows:

- (a) 4 respondents raised the concern that we were imposing additional training on members with many years practical experience and the requirement of this training would cause issues due to full-time careers. CILEx Regulation understand these concerns, however, this is the first-time members of the CILEX regulated community will have the opportunity to take Higher Rights of Audience training and assessment and though the additional training may be perceived as troublesome, it will be up to the individual course provider(s), who decide to offer the qualification, to implement the most appropriate delivery methodology to meet the customer's variable requirements.
- (b) 4 respondents also raised the issue of exemptions if they have already undertaken alternative Higher Rights training and assessment on other programmes of study. CILEx Regulation has considered the merits of exemptions but, again, this will be at the discretion of the individual course provider(s), who decide to offer the qualification(s), to identify what exemptions could be applied to the training element. However, all members wishing to achieve the Higher Rights of Audience qualification will need to successfully complete the identified assessments.
- (c) 3 respondents raised concerns that solicitors do not need to undertake training and assessment for Higher Rights of Audience. CILEx Regulation have confirmed that this is not the case. According to the SRA Website 'Solicitors and registered European Lawyers (RELS) are granted rights of audience when they are admitted or registered. However, they cannot

exercise those rights in the higher courts until they have complied with additional assessment requirements.’

- (d) 1 respondent agreed that the training and assessments should be completed but that the option to undertake it should be open to all members of CILEX. CILEx Regulation has taken onboard this comment but feels that only those Chartered Legal Executive Litigator and Advocates and Chartered Legal Executive Advocates who have held rights of audience in the lower courts for at least 12 months are ready to undertake the Higher Rights of Audience training and assessment.
- (e) 1 respondent raised concerns over the cost of the additional training and assessment as this may inhibit some members. CILEx Regulation shares this concern but has no say in the fees that will be levied for the training and assessment – the fees will be set and levied by the individual course provider(s) who decide to offer the qualification.

Comments from The Bar Council

No. (We assume the question means 2... should complete only the training ...”).

The training process to become a barrister and solicitor (then solicitor-advocate once qualified as a solicitor) is detailed and clear. The content of the training and assessment proposed for CILEX practitioners to obtain Higher Rights of Audience remain unclear and are not specified within the proposals. That is a significant failure.

For many years, the Bar has significantly developed compulsory advocacy training, particularly for those at the early years of practice. The New Practitioners Programme, and the implementation of compulsory advocacy training in the first six months of pupillage, underpins the profession’s commitment to protecting the public interest. This advocacy training is ongoing even after the completion of the Bar’s vocational component to ensure that newly qualified barristers can provide high quality advocacy to their clients.

CILEX CPD REQUIREMENTS

CPD Guidance Document Updated May 2022 set out the CPD CILEC practitioners are expected to engage it.

CILEX Practitioners and Advocates required to complete 9 CPD outcomes each year, at least 5 of which must be planned.

For CILEX Litigators and Advocates at least 2 of the 5 planned outcomes must be related to advocacy focused activities to develop skills as an advocate and knowledge of procedure.

Outcomes can be met through variety of CPD activities including: attendance at courses, shadowing other advocates, webinars focused on drafting arguments.

Other requirements for other types of CILEC members e.g. Paralegal members required to complete 8 hours CPD and 1 professional outcome.

“A planned outcome would be a learning outcome which you plan in advance; you need to know what you want to update your knowledge/ competence on. Once you have set a learning outcome, you would undertake an activity which would be you completing the outcome.”

“An unplanned outcome is simply how it sounds; we would describe this an unexpected learning. This would be an activity which you undertake and have not planned beforehand. An example of this would be reading the CILEX Journal, you are unable to plan what topics will arise therefore if you did benefit from the article it would be an unplanned outcome.”

The Bar Council cannot see any specific provision for continuing professional development set within CRL's proposed training and assessment. The general provision for continuing professional development set out for CILEX practitioners is inadequate to assist those with Higher Rights of Audience to undertake focused advocacy training to ensure continued improvement of their advocacy, the currency in their thinking and remain practitioners who are across the detail of developments in law.

As presently drafted, the CILEX proposals do not enforce the same standards that are established in the current Bar route. This is no multi-centre quality assurance built in, with then entire process deal with within CILEX. There is no indication of who it is within CILEX who possesses the skills and experience needed to teach, for example, cross-examination, drafting documents for Court of Appeal, or the application of the disclosure regime. There is no indication of how the process would link membership of or training offered by the Inns of Court. There is no indication as to how long the training process will last, nor is there any indication of its rigour.

The proposals for training and assessment lack detail and the information provided is not only inadequate to assist the reader assess the quality of the training it also lacks specificity. By way of example, how will the training and assessment compare with the solicitor-advocate training, and the Bar Training? These questions remain unanswered in the current proposal.

CILEx Regulation Response

The content of the training and assessment in the Standards for Higher Court Advocates (Civil Proceedings) and Standards for Higher Court Advocates (Criminal Proceedings) are very clear, are expressed in terms of assessment outcomes, assessment criteria and content and have been mapped against the equivalent SRA Standards.

Comments from The Criminal Bar Association

No we do not agree.

The proposed training and assessment falls short of the same standards that are established in the Criminal Bar. There is no multi-centre independent quality assurance proposed as the entire process will be dealt with within one body, CILEX. There is no indication of who it is within CILEX, with the extensive practical skills and experience needed, who will teach and monitor skills that include ethical decision-making, cross-examination of vulnerable and young witnesses, drafting of documents for the Court of Appeal or the application of the disclosure regime. There is no comparison with the membership or training provided by the Inns of Court. There is no indication as to how long the training process will last, nor is there any indication of its rigour. Unless the training prescribed for CILEX members compares directly with the years of training supervision and experience of Criminal barristers, a two-tier system of representation will develop. The public will have no confidence in the proposals unless a detailed and rigorous training programme is set out which is at least equivalent of that which barristers or solicitors with higher rights undergo.

CILEx Regulation response:

Delivery of the training and assessment stipulated in the Standards for Higher Court Advocates (Civil Proceedings) and Standards for Higher Court Advocates (Criminal Proceedings), will be delivered and assessed through accredited course providers. CILEx Regulation has a robust and stringent course provider accreditation process which includes reviews of staff and physical resources, delivery and design of training and assessment and policies and processes related to assessment and quality assurance.

CILEx Regulation is an External Quality Assurer (EQA) for the following:

- Paralegal Level 3 Apprenticeship Standard
- Chartered Legal Executive Level 6 Apprenticeship Standard
- Chartered Legal Executive Level 7 Apprenticeship Standard

This status was awarded to CILEx Regulation and regulated by the Institute for Apprenticeships and Technical Education (IfATE).

Our role as an EQA is to monitor the end-point assessment that apprentices undertake at the end of end of their apprenticeship, to ensure that it is fair, consistent and robust. We are responsible for ongoing quality assurance audits of End-point assessment organisations through application of a quality assurance framework designed to ensure that high standards are maintained, and assessments are reliable, valid and fit for purpose. This is achieved through undertaking of bi-annual audits of all approved End-point Assessment Providers (EPAOs). This framework will also be applied to ongoing regulation and monitoring of accredited course-providers for the new Higher Rights standards.

There were 2 comments from respondents that did not directly relate to the question being asked. These were as follows:

- (a) 'I think it is unfair to make all students studying litigation undertake an advocacy course when their job will never require them to advocate unless they chose to. It should be a choice to undertake the advocacy course and shouldn't delay litigation students from qualifying in comparison to non-litigation students.' And
- (b) 1 respondent simply stated, 'Forced to provide an answer by the survey format'.

Q3: Are there any additional elements of the training and assessment that you believe should be included within the standards for CILEX higher court advocates in civil proceedings?		
Yes	No	Did not answer
7	96	2

Comments from respondents who did not feel that there are any additional elements of training and assessment that should be included within the standards for CILEX higher court advocates in civil proceedings include:

- 'It should mirror the qualification/requirements that Solicitor Advocates have to undertake.'
- 'I think is sufficient to cover all.'
- 'As appropriate for the role.'
- 'The course should be in line with the Higher Rights qualification for solicitors.'
- 'Not immediately. I think the current framework is suitable to get a base level of CILEX Practitioners to Higher Rights of Audience. I do think in the long-term once a successful pool of experience in the Senior Courts is generated by CILEX Advocates with Higher Rights of Audience, then an evolved training and assessment package can be developed as a transitional measure to include a panel of Higher Rights CILEX Advocates with experience in the Senior Courts to offer a shadow or fellowship program in which CILEX Practitioners without Higher Rights can observe CILEX Practitioners with Higher Rights in the Senior Courts and dissect and debrief those with more senior CILEX Practitioners to utilise the wealth of experience gained by them to enhance their own future practices and vice versa senior learning from more junior (because complacency isn't good. You should be able to teach an old dog new tricks).'

1 comment from a respondent who did feel that there are any additional elements of training and assessment that should be included within the standards for CILEX higher court advocates in civil proceedings was as follows:

- 'For the most part, the elements suggested track the requirements of the SRA Higher Rights of Audience (Civil Route). This alignment is sensible as the assessment lead to the same rights as those of a solicitor advocate. There are, however, two additional points that may need to be considered. Firstly, it may be necessary to provide additional support for those who may have followed the Family or Immigration track under the CILEX Authorised Practitioner Authorisation Rules, paras 51-65, and who must obtain additional rights via the proposed CILEX Higher Rights of Advocacy (Civil Route). The context of such work is unlikely to involve the level of engagement with the Civil Procedure Rules envisaged in the training and assessment arrangement. Secondly, it would be helpful to see more extensive coverage of the new rules relating to vulnerable witnesses in civil proceedings under CPR Practice Direction 1A in respect of coverage of the rules, application of the rules by the courts and the development and assessment of associated practical skills.'

CILEX Regulation takes onboard these comments but they relate to the content of delivery of the new training and assessment standard, and this will be defined by the course provider(s) who decide to offer the qualification. CILEX Regulation's standard stipulates only the learning outcomes that must be covered and the criteria that must be assessed to judge competence.

Comments from The Bar Council

As we note below in our response to Question 4, trial advocacy is as high-level skills requiring academic, intellectual, and vocational training that barristers receive and develop over an extended period to time. The vocational aspect of the bar course is rigorous in its testing which aims to ensure that barristers can manage the pressured situations that they are regularly required to face. In civil proceedings, those can involve not only the inevitable emotional stresses of dealing with clients and others in a context where their homes, children and/or livelihoods are threatened, but also highly technical matters where it is necessary to understand the evidence experts across a wide range of fields and challenge that evidence with incisive cross-examination. Barristers are expected to engage effectively with people across the whole spectrum of society, to manage the stresses and challenges and to respond appropriately in a formal and structured setting. This requires a set of skills that is developed through the vocational component of the course and is strengthened during pupillage. Given the significant amount of time and energy dedicated to this area in training for the Bar, The Bar Council does not feel that the current training and assessment model is able to deliver these standards.

Further there are specific aspects of civil litigation that are either not included in the assessment outcomes and criteria or appear to have little emphasis given to them (i) written advocacy skills does not include draft of statements of case; (ii) pre action processes and requirements; (iii) cost management; (iv) appeals and (v) in the context of conduct and ethics an awareness of the importance of diversity and equality considerations.

Response from CILEx Regulation:

CILEX Chartered Legal Executive Litigators and Advocates and Chartered Legal Executive Advocates will undergo training and assessment mapped against that required by the SRA Standards for solicitor higher court advocates in criminal proceedings and Standards for solicitor higher court advocates in civil proceedings

Although not specifically written in the new Standards for Higher Rights Advocates (Civil Proceedings):

- (i) Draft statements of case
- (ii) Pre-action processes and requirements
- (iii) Cost management
- (iv) Appeals

Are part of the assessment outcomes and assessment criteria and again, have been fully mapped against the SRA equivalent standard

In terms of (v) conduct and ethics, the new Standards contain an entire unit focussed solely on conduct and ethics.

There were a number of comments from respondents that did not directly relate to the question being asked. These include:

- (a) 1 respondent stated 'N/A' and 1 confirmed they were unable to answer as they are a criminal advocate.
- (b) 1 respondent simply stated, 'Forced to provide an answer by the survey format'.

- (c) 1 comment related to the proposed transfer of CILEX regulator responsibilities to the SRA.
- (d) 1 suggested the development of an CILEx Regulation Intranet for members to use on a regular basis to keep refreshing their learning free of charge.
- (e) 1 member responded by asking if there was a consultation in relating to Higher Rights of Audience for conveyancing.

Q4: Are there any additional elements of the training and assessment that you believe should be included within the standards for CILEX higher court advocates in criminal proceedings?		
Yes	No	Did not answer
5	97	2

Comments from respondents who did not feel that there are any additional elements of training and assessment that should be included within the standards for CILEX higher court advocates in criminal proceedings include:

- 'As a Civil Attorney/Practitioner or Specialist Lawyer there are more experienced persons who are better able to comment in this area than myself. Suffice to say I do recognise there is an urgent need for CILEx Advocates with Higher Rights in criminal proceedings given the lack of available representation from elsewhere due to funding cuts. I accept there is an increasing and ever-growing policy or resource need for further Authorised Practitioners in this area and indeed a sense of urgency in terms of "Access to Justice" but again it must be quality over quantity and substance over form.'
- 2 'No' and 1 'N/A' responses.
- 'There are already enough elements.'
- 'Should mirror the qualification requirements that Solicitor Advocates need to undertake (cannot really comment as don't practice criminal law).'
- 'I think it sufficiently covers all.'

Comments from respondents who did feel that there are additional elements of training and assessment that should be included within the standard for the CILEX higher court advocates in criminal proceedings were as follows:

- 'In addition to the points raised above regarding the requirement for only 12 hours training, there should be a clearer delineation of the context of the Crown Court work as an advocate as opposed to that of the Magistrates' Court specialist.'
- 'All CILEX members should have experience of the EU law firms and Practice, and most importantly regulation.'

The above 2 comments both relate to the content of delivery of the new training and assessment standard, and this will be defined by the course provider(s) who decide to offer the qualification. CILEx Regulation's standard stipulates only the learning outcomes that must be covered and the criteria that must be assessed to judge competence.

'Civil proceedings and also how to represent cases in the High Court'. CILEx Regulation feels that this respondent appears to have misunderstood the question as there is a separate standard for Civil Proceedings as identified in Question 3 of the consultation.

There were a number of comments from respondents that did not directly relate to the question being asked. These include:

- (a) 1 respondent commented that they were unable to comment as they did not work in criminal.
- (b) 1 respondent simply stated, 'Forced to provide an answer by the survey format'.
- (c) 1 respondent stated that the advocacy course they attended is the exact same course as the solicitor's higher rights course.
- (d) 1 member responded by asking if there was a consultation in relating to Higher Rights of Audience for conveyancing.

Comments from The Bar Council

Trial advocacy is a high-level skill requiring academic, intellectual and vocational training. Practitioners need to have speed of thought, precision of language, and clarity of judgement. Those who are successful in qualifying as barristers through the existing route to the Bar gain those skills. They learn, for example, the need to make important decisions quickly, and get them right – whether that be in answering exam questions and justifying their answers, or in mock trials or mooting. The vocational aspect of the course is rigorous in its testing. It ensures that barristers can manage the pressurised situations that they will be facing in the course of adversarial litigation in the criminal courts. In criminal proceedings, situations are often emotionally as well as intellectually challenging, and barristers are expected to manage these stresses and act appropriately – in accordance with the duties to the court and to their clients. They are able to do this because it is a skill that is developed through the vocational component of the course and is strengthened during pupillage. Given the significant amount of time dedicated to this area, The Bar Council does not feel that CILEX's training and assessment model is able to deliver these standards.

CILEX Regulation response:

To gain Higher Rights of Audience, CILEX Practitioners and Chartered Legal Executives must have experience of litigation and advocacy prior to gaining permission to undertake the Advocacy course in their specialist area, attend and successfully complete the assessments contained within the Advocacy course and then practice advocacy for a minimum of 1 year before undertaking the standards for Higher Rights of Advocacy.

Q5: Do you foresee any issues with the revised Practitioner Authorisation Rules?		
Yes	No	Did not answer
16	87	2

Comments from respondents who did not foresee any issues with the revised Practitioner Authorisation Rules were as follows:

- 'I don't have a crystal ball. I am sure that these will need to be re-visited and adjusted as time moves forward however, they seem very suitable as a working but living document to get the ball rolling. They must not become static or rigid or set in stone and must be able to evolve and adapt to their surroundings with the passage of time and the growing and re-shaping needs of the legal marketplace in England & Wales.'
- 'No I believe no issues.'
- 'No but this is on the assumption that the MOJ are aware of the changes to rights of audience and do not require explanation from the practitioner every time they utilise their higher rights.'
- 'Any amendments will be necessary to assist/enable practitioners to obtain these rights and for CILEX REGULATION to regulate them.'
- 'CILEX REGULATION is sufficient to govern these changes.'

Comments from respondents who did foresee issues with the revised Practitioner Authorisation Rules were as follows:

- 'It will be necessary to make consequential amendments in relation to legislation which is configured to pre-existing post licensure rights which envisage only barrister and solicitor advocates.'
- 'Confusion on the 'rights' a CILEX practitioner will have if this goes ahead – needs to be made very clear to stop confusion within the industry.'

Both of the above comments are being addressed by CILEX (The Chartered Institute of Legal Executives) in their representative capacity.

- 'The revised PAR may become too complex.' CILEX shares this concern and undertakes regular reviews of all the rules to ensure they are as clear and understandable as possible which still meeting requirements.
- 'There should be exemptions/fast track applications for those with relevant qualifications e.g. BVC, BPTC or BTC'. CILEX Regulation has considered the merits of exemptions but this will be at the discretion of the individual course provider(s), who decide to offer the qualification, to identify what would provide exemption for the training element. However, all members wishing to achieve the Higher Rights of Audience qualification will need to successfully complete the identified assessments.

Comments from The Bar Council:

Yes.

CILEX' document is premised on the assertion, "*[a]s the legal sector evolves there's a growing demand for a new kind of lawyer – a specialist lawyer.*" A specialist lawyer is not a "new" kind of lawyer, they exist in every area of law. The Bar is made up entirely of specialist lawyers: specialists because of their core emphasis on advocacy, whether written or oral; and specialist because all will have fields of law in which they operate.

CILEX suggests that "*specialist lawyers are the future of law*". That may or may not be so, but if it is, then the Bar in its present form already provides such specialists. But like doctors, they are specialists who arrive at the specialism having had a lengthy training starting at the basics and honing their specialist skills through years of training.

There is no indication of what minimum standards are needed for CILEX practitioners to access Higher Rights, and how they will be fulfilled. One key issue is that there is limited reference made to the duty to the court and duty to the client which is fundamental in all Bar training and practice.

CILEX Regulation Response:

In terms of minimum standards for CILEX Practitioners and Chartered Legal Executives to access Higher Rights detailed in Rules 78 to 87 within the revised Practitioner Authorisation Rules and Rules 55-64.

Duty to the court and duty to the client are both integral components of the Conducts and Ethics unit built into both standards.

Comments from The Criminal Bar Association

Yes, we foresee serious issues with the revised Practitioner Authorisation Rules.

As mentioned above, the Revised Practitioner Authorisation Rules do not address the disparity in education, training, supervision and experience of other criminal advocates.

The CILEX document asserts "*[a]s the legal sector evolves there's a growing demand for a new kind of lawyer – a specialist lawyer.*" and "*specialist lawyers are the future of law*".

It is mistaken to suppose that a new class of specialist is required.

The Criminal bar are specialist lawyers; they specialise in criminal law, in particular advocacy, as the majority of their work relates to appearing in court. Anyone acquainted with the reality of legal practice in the UK will already know that it is highly specialised. The Bar alone comprises criminal, family, chancery, environment, copyright, commercial, immigration, landlord and tenant specialists (and others), as does our sister profession of solicitors. Like doctors, who also study train and are supervised for a number of years and who specialise in particular areas of medicine, Criminal barristers are specialists who achieve that specialism by devoting their time to criminal law.

There were a number of comments from respondents that did not directly relate to the question being asked. These include:

- (a) 1 'Maybe', 1 'Not known' and 1 'N/A'.
- (b) 1 respondent simply stated, 'Forced to provide an answer by the survey format'.
- (c) 1 respondent asked if the Practitioners had approved them.
- (d) 1 respondent commented 'If I were actively pursuing this, I would spend my time converting to be a solicitor and then a solicitor advocate as opposed to doing so with CILEX REGULATION'.

Q6: Do you agree that the application for Higher Rights of Audience should be restricted to those Chartered Legal Executives who hold both Litigation and Advocacy rights (CILEX Practitioners) and that those who hold only Advocacy rights (Chartered Legal Executive Advocates) would not be eligible to apply for Higher Rights of Audience?		
Yes	No	Did not answer
38	65	2

Comments from respondents who agree that the application for Higher Rights of Audience should be restricted to those Chartered Legal Executives who hold both Litigation and Advocacy rights (CILEX Practitioners) and that those who hold only Advocacy rights (Chartered Legal Executive Advocates) would not be eligible for Higher Rights of Audience as follows:

- ‘Without a pass in the associated Civil or Criminal Route Litigation rights assessment (such as a family or immigration specialist) it would not be possible to exercise advocacy rights before the higher courts. To do otherwise would result in a potential competence gap and a regulatory quality assurance gap.’
- ‘Because they miss that extra element of training their counterparts have and it doesn’t take much for them to be on the same level.’
- ‘Having both litigation and advocacy rights ensure that I am a well-rounded lawyer – this is a serious application and therefore applications at the highest levels should be met’.
- ‘It brings a greater standard of level and consistence of approach with others in the legal profession.’
- ‘Have seen comments that this isn’t necessary because Barristers don’t have the right to conduct litigation (but they can achieve it if they want) but any solicitor can achieve Higher Rights and so, to enable parity it should be restricted to those with appropriate litigation and advocacy rights (to be honest, don’t care really – just want to have these rights available!).’

Of the 64 respondents who did not agree that the application for Higher Rights of Audience should be restricted to those Chartered Legal Executives who hold both Litigation and Advocacy rights (CILEX Practitioners) and that those who hold only Advocacy rights (Chartered Legal Executive Advocates) would not be eligible to apply for Higher Rights of Audience, 27 commented. Comments include:

- ‘It is my experience as I am a European advocate that an advocate knows the law.’
- ‘Why should an existing advocate not wishing to conduct litigation on their own not be able to appear in a higher court. It is inconsistent with the existing restrictions (which only permit advocacy they work in a regulated law firm or in-house provided they do not offer services to the public or a section of the public).’
- ‘I believe that both Litigation and Advocacy are very similar in their approach to reaching an agreement and this should be open to both Litigation and Advocacy Legal Executives.’
- ‘It’s nonsense to require a good advocate to also be a litigator, even if they have no intention of ever conducting litigation. A barrister can appear in the Supreme Court without needing

to conduct litigation, and in many ways is banned from conducting litigation. This proposal is illogical and beyond my understanding.’

- ‘This will create a two-tier system within one discipline and there is no reasonable justification.’
- ‘Some matters before the higher courts do not rest heavily on litigation and so long as members feel they can adequately represent their client, litigation rights are not as fundamental as advocacy.’
- ‘By restricting those CILEX lawyer who have and have not Higher Rights of Audience will divide how CILEX lawyers as professionals are viewed in practice and devalue CILEX as a professional route for many choosing either to be Barristers, Solicitors or CILEX lawyers.’
- It is not clear to CILEX what regulatory risk is being mitigated or regulatory standard being compromised by making this requirement. Holders of Advocacy Rights often have many years’ experience of operating in the lower courts and, whilst it is not now possible to qualify with solely Advocacy Rights without also obtaining Litigation Rights (with the CPQ crystallising this approach for future CILEX Lawyers) and there is a general momentum being created to encourage current Advocacy Rights holders to seek to acquire Litigation Rights too, there is also a public interest argument in ensuring that suitably qualified CILEX members can acquire Higher Rights as soon as possible. There is a public interest behind enabling more lawyers to obtain Higher Rights to specifically assist in addressing the current court case backlogs by becoming Crown Prosecutors. If therefore the regulatory rationale for this proposed requirement is not clear enough, in terms of managing risk and meeting standards, then it may be disproportionately not in the public interest.

Based on the consultation responses regarding this question, CILEx Regulation, following lengthy consultation, have agreed to change the original proposal to allow Higher Rights of Audience to be available to both CILEX Practitioners and Chartered Legal Executive Advocates.

Comments from The Bar Council

No, because the Bar Council contents that none of the above should be eligible to apply for such rights.

The Bar requires consistent testing to ensure barristers are competent to delivery high quality advocacy to their clients. This is primarily emphasised through the vocational component and is supported by the Inns of Court. As a new Practitioner it is expected that a total of 45 hours’ worth of advocacy training must be undertaken by the end of the first three years of independent practice following the completion of the BTC and Pupillage. There is a significant amount of investment into developing these skills as a barrister, which is not currently addressed under CILEX’s training proposal. Until CILEX can demonstrate that they can deliver the same standard, The Bar Council does not support the application for Higher Rights of Audience to be administered to any CILEX practitioners.

Q7: Do you have any other comments?		
Yes	No	Did not answer
36	0	69

We received 34 other comments which include:

- (a) 12 comments stated 'No'
- (b) 6 comments were expressing respondent's enthusiasm for the proposal
- (c) The remaining comments were not directly related to the proposal, for example:
 - Proposed CILEX move to regulation by the SRA
 - Costs of proposed training
 - Lack of recognition of the Courts relating to the qualification of CILEX Lawyers etc.

Comments from The Bar Council

The CILEX proposals do not provide the training necessary to attain Higher Rights of Audience and properly practise at such a level.

The failure to provide specific and bespoke training and assessment for those practitioners who would wish to practice in the higher courts which deal with family and immigration cases is a material omission and demonstrates a fundamental lack of understanding and appreciation for the specialism of those areas.

In recognition of the demands of higher rights advocacy, the training for a practising barrister includes the following (subject to any exceptional waivers due to e.g. equivalent training received abroad):

Academic component

- Law degree or non-law degree plus graduate diploma in law (GDL).
- Degree covers seven foundations of legal knowledge.
- Minimum of 2:2 to be accepted onto a Bar vocational course.

Vocational component

- Bar vocational course
- Also must be part of an Inn and complete qualifying sessions before being called to the Bar.
- Qualifying sessions often educational e.g. aimed at improving advocacy/knowledge.

Pupillage

- Extremely competitive – successful candidates likely to have high academic attainment, prior advocacy experience, mini-pupillages etc.
- Must demonstrate competencies set out by BSB in Professional Statement:
 - Legal knowledge, skills and attributes
 - Practical knowledge skills and attributes i.e. good written and oral communication

- Advocacy
- Professional standards
- Personal values and standards
- Working with others
- Management of practice
- Allocated several experienced supervisors to mentor throughout pupillage.
- Frequent attendance at courts across all levels and range of practice areas.
- Likely to include not just shadowing but drafting, research, conferences etc.
- Own caseload in second six.

New Practitioner CPD

- For barristers who have held a practising certificate for less than three years.
- Must complete 45 hours of CPD within the three-year period.
- This must comprise of:
 - At least nine hours on advocacy; and
 - At least three hours on ethics.
- Advocacy and ethics courses provided by Inns of Court
- CPD must be recorded on New Practitioner Programme Record Card

Established Practitioner CPD

- For barristers who have held a practising certificate for more than three years.
- No minimum number of hours.
- Individual responsibility to decide what training is required.
- Four stage process:
- Review – required to prepare a written CPD plan setting out learning objectives and proposed activities for the year.
- Record – keep a written record of CPD activities over past three years, including reflections on CPD activities and any variation in plans and an assessment of future learning objectives.
- Reflect – reflect on planned and completed CPD activities to assess whether have met objectives.
- Report – declare annually to BSB that CPD has been completed when renewing practising certificate.

Examples of BSB approved CPD activities: formal training courses, conferences, listening to podcasts, seminars and webinars, reading and research, authorship and editing of published works of a professional nature, presenting seminars/lectures, teaching a relevant legal course.

The proposals from CILEX do nothing to demonstrate that those who meet them will be able to practise advocacy at the high levels needed. They do nothing to demonstrate that those who meet them will be able to make important decisions correctly and within a tight – often instantaneous – timeframe. They do nothing to demonstrate that those who meet them will have the intellectual ability to stand up for their client against those who have taken an established route to the Bar. They do nothing to demonstrate that an equivalent to the Barrister's duty to the

court will have been deeply embedded in those so trained. Such skills and abilities are developed through the years of training in the established route to the Bar. Their purpose is to ensure that the standards of the profession remain high, and the quality of work provided to clients, and displayed in court, is maintained. For these reasons, The Bar Council's Education & Training Committee does not support the scheme proposed by CILEX.

What would be needed before it could be appropriate to grant higher rights to CILEX Members

If there were ever to be a move to extend higher rights of audience to CILEX members it would need to be supported by a much more careful analysis than has so far been proposed. That analysis would need to include a thorough and careful comparison of the content and form of the training and experience of (a) barristers, (b) solicitors with higher rates of audience, and (c) the present position of CILEX members and (d) the proposed additional training and qualification requirements for CILEX members seeking higher rights of audience. It would need to demonstrate that (c) plus (d) was equivalent to (a).

Nothing in the present proposal properly addresses this task.

If and when such an analysis had been performed, and if and when it were established that the necessary equivalence had been demonstrated, it would then be necessary to ask whether it would be better simply to require CILEX members who sought higher rights of audience to requalify either as barristers or solicitors, or to permit a system in which some proportion of CILEX members were able to acquire higher advocacy rights. The answer to that question is neither obvious nor straightforward and depends in part on assessing the potential confusion for consumers that might arise. But the second question does not arise on the present proposals because they do not come close to demonstrating equivalence.

Comments from The Criminal Bar Association

The critical question is whether the introduction of this cohort of advocates will serve the public interest and assist the courts and judges in fulfilling their 'overriding objective' of 'acquitting the innocent and convicting the guilty and dealing with a case efficiently and expeditiously'.

The CBA believes that these proposals mean that those with far less training will find themselves thrown into our specialist, fast moving Criminal courts. Risks of error in criminal cases can have the most devastating consequences resulting in the loss of liberty for individuals and additional distress for witnesses and victims. These proposals undermine the current standards of the Criminal advocate but also risk causing further delay in our Criminal courts where historic backlogs are being addressed as efficiently and quickly as possible.

Criminal barristers work the hours needed in the administration of justice and are dedicated to doing what is necessary to ensure justice is done. Independence from the need to meet the profit targets of a business fosters the independence that characterizes the Criminal Bar's ethos. They give unwelcome but accurate advice to whoever they represent based on deep knowledge of law and procedure derived from their training and career-long learning and experience.

Our independence is demonstrated by the fact that many barristers practice as both prosecutors and defenders. The duty to accept whatever brief arrives in the cab as it pulls up at the cab rank, whether it is to prosecute or defend helps maintain this independence and impartiality. This risks being compromised where advocates only conduct cases on behalf of their employer and have not been educated and trained to adhere to the demanding ethical standards of the Bar.

We remind those considering these proposals that independence of Criminal advocates and their good conduct is crucial to the functioning of an effective criminal justice system. The integrity of our criminal courts, and their legitimacy in the eyes of the public depends on elements that include: the independence of our Judiciary, safeguarding of human rights and the rule of law, provision of transparent and objective recourse and the maintenance of the highest ethical standards of legal professionals held to account by their professional bodies with the necessary serious disciplinary sanctions

The value to the integrity of our criminal justice system of independent advocates at the Criminal Bar, prosecuting and defending in our courts should be protected and not undermined. We point out that the UK State is required to take measures to strengthen integrity in our courts. Article 11 of the UN Convention against Corruption defines integrity as “the ability to resist corruption, fully respecting the core values of independence, impartiality, personal integrity, propriety, equality, competence and diligence.” (UNODC The Doha Declaration: Promoting a Culture of Lawfulness 9-10 7 April 2018). These values are identified in the Commission on Human Rights resolution 2003/43 on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers; and in resolution 2003/39 on the integrity of the judicial system.

Advocates with limited CILEX training are unlikely to be as effective and efficient in their role as those with much more training and supervision which will cause further delays in our already over-burdened system. With the backlog in criminal cases to address, lowering standards is not the answer. In fact to lower standards of advocates to address this need is both patronizing and short-sighted.

For all these reasons, the CBA does not support the scheme proposed by CILEX. That is not to say that CILEX members with the same qualifications, training, supervision and experience as Criminal barristers should be excluded as advocates, indeed they would be welcomed to the Criminal Bar. Half of entrants to the Criminal Bar are now women and BAME entrants are increasing in numbers, indeed some groups are over-represented compared to the general population. Funding is available to assist and support those with different backgrounds to come to the Criminal Bar. All who are motivated by a dedication to criminal justice and who are prepared to study, train and work hard to achieve the high standards required are welcome.