

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 would be of interest to members, other approved regulators, consumers of legal services and any other interested parties.

1. CILEX Regulation (CRL) is the independent regulator for chartered legal executives, other grades of CILEX membership, CILEX Practitioners and firms. We take a risk based and outcomes focused approach to regulation, by working constructively with our regulated community to ensure that they deliver the best outcomes for clients. We have set clear principles within our Code of Conduct and inform the public of the standards they can expect. We believe this provides a balanced approach.
2. The purpose of this consultation is to consider changes to the CRL Practitioner Authorisation Rules and the draft content of the new standards for CILEX higher court advocates for civil proceedings and standards for CILEX higher court advocates for criminal proceedings (hereafter, referred to as 'the standards'). Once this is done it is CRL's intention to make an application to the Legal Services Board to enable competent CILEX Practitioners holding litigation and advocacy rights to apply for authorisation to conduct advocacy in all courts (Higher Rights of Audience).
3. CILEX and CRL have identified support for the initiative from a range of stakeholders. Additionally, there is the likelihood that suitably competent CILEX Practitioners with Higher Rights would enhance the diversity of the legal profession, and that career opportunities would arise for CILEX members as a result of this change. It is against this background that CRL is now proposing to extend its delegation to authorise CILEX Practitioners to enable them to exercise rights of audience in all courts relevant to their specialism.
4. We have previously consulted our regulated community on whether CRL should make this application and how CRL proposes to assess applicants for authorisation in all courts (Higher Rights). CRL is now seeking views on these proposals from other approved regulators, consumers of legal services and other interested parties, as well as the standards to be used to assess competency.
5. This consultation will run for 6 weeks, from **31 July 2023**, closing at **4pm on 11 September 2023**.

Background

6. CILEX Practitioners, chartered legal executives and CILEX Advocates are specialist lawyers, regulated by CRL, who are able to practise in a reserved or regulated area of practice without the requirement to be supervised by an [authorised person](#) under the Legal Services Act 2007.
7. CILEX Practitioners with litigation and advocacy (rights of audience) rights can undertake litigation and advocacy in the lower courts¹ in one of the following areas:
 - a. Civil litigation
 - b. Criminal litigation
 - c. Family litigation

¹ provided 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

Why is CILEx Regulation proposing to seek the right to authorise competent CILEX Practitioners with litigation and advocacy rights in all courts in England and Wales?

a. Enhancing diversity and fairness in the legal sector/Equality of opportunity

8. CILEX has, for a number of years, been lobbying for a career path for its members working at the Crown Prosecution Service to be able to become Crown Prosecutors without the requirement to cross-qualify as a solicitor.
9. In CILEX's discussions with the Ministry of Justice (MoJ), in addition to re-consideration of the option for CILEX members to become Crown Prosecutors, the possibility of CILEX members to be able to be authorised to undertake advocacy in all courts (Higher Rights) was raised. This was because it would enhance further the options to CILEX members for career progression. This possibility was then raised, by the MoJ, with CRL, as the independent regulator of CILEX members.
10. Following a survey of chartered legal executives and CILEX Practitioners, and a formal consultation in late 2022, CRL has agreed to take this proposal forward.

b. Views of CILEX authorised persons

11. CRL sought the views of CILEX lawyers (chartered legal executives, CILEX Advocates and CILEX Practitioners) to determine interest and support for the proposal to seek additional powers to award Higher Rights of Audience. The response was overwhelmingly in favour of CRL making an application to the Legal Services Board to enable CRL to authorise suitably competent CILEX Practitioners for Higher Rights of Audience).

c. Improving diversity in the legal profession and the judiciary

12. In addition to improving the career progression for suitably qualified CILEX members, it has also been noted that the ability to authorise CILEX Practitioners to undertake advocacy in all courts would (owing to the diversity within the CILEX membership) have the potential, in the longer-term, to enhance the diversity of the judiciary.

How CILEx Regulation proposes to introduce the changes

Proposed Training and Assessment for those seeking Higher Rights of Audience

a. Existing Training and Assessment for Advocacy in the lower courts

13. As outlined at paragraph 8, 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 right to conduct litigation is assessed separately). They can then apply for authorisation.
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 of 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
 - Advocacy (preparation and at the hearing), and
 - Evidence

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.

b. Proposals for additional training and assessment to award Higher Rights of Audience to suitably competent CILEX Litigators and Advocates

16. CRL awards rights of audience in one or more of the following areas of practice:

- a. Criminal proceedings,
- b. Civil proceedings, or
- c. Family proceedings

17. However, 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.

18. The new standards to develop the additional skills required to undertake advocacy in all courts can be found at [Appendix 2](#) for Standards for CILEX higher court advocates for civil proceedings and [Appendix 3](#) for Standards for CILEX higher court advocates for criminal proceedings.

19. As part of developing these additional skills, CRL proposes that the additional training should include formative assessments to cover:

- a. A Trial 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 processes, conduct, ethics, and etiquette
- d. Speeches, applications and submissions, appeals, skeleton arguments
- e. Sentencing and mitigation

20. CRL estimates that this will require an additional 12 hrs training over two days with pre-reading required.

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.

22. On completion of the additional training, candidates would be required to demonstrate competence against each of the elements listed at paragraph 19 a-e inclusive. CRL is considering the best way for candidates to be assessed and this will be set out in the final application. After successfully completing the assessment(s), candidates would be able to apply to CRL for authorisation to become a Chartered Legal Executive Litigator and Higher Rights Advocate.

Proposed amendments to the Practitioner Authorisation Rules

23. To bring the proposals into effect, CILEx Regulation is proposing to amend the Practitioner Authorisation Rules which can be found at [Appendix 1](#).
24. The amendments to the rules are as follows:
- a. CILEX Litigators and Advocates who have held rights of audience in the lower courts for at least 12 months will be eligible to apply for Higher Rights of Audience in the relevant specialism (Civil Proceedings for those specialising in either civil proceedings or family proceedings, and Criminal Proceedings for those specialising in criminal proceedings).
 - b. Applicants seeking Higher Rights of Audience will be required to demonstrate their knowledge and competence by attending an additional course and assessment to ensure that they have the necessary knowledge, skills and behaviours required of a Higher Rights Advocate.
 - c. Once approved, the authorised title will be either Chartered Legal Executive Litigator and Higher Rights Advocate (Civil Litigation) or Chartered Legal Executive Litigator and Higher Rights Advocate (Criminal Litigation)
25. CRL is not proposing to enable Chartered Legal Executive Advocates (i.e., those who do not hold litigation rights) to be able to become Higher Rights Advocates.

Consultation questions

26. CILEx Regulation welcomes the views of all interested parties as these will inform its next steps with regards to any future rule change application.

Q1. Do you agree that CRL should seek Higher Rights of Audience for suitably qualified CILEX Practitioners?

Yes/No? Please provide comments:

Q2. Do you agree with CRL's proposals to ensure that applicants to exercise rights of audience in all courts should complete the training and assessment outlined in the consultation?

Yes/No? Please provide comments:

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? Please provide comments:

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? Please provide comments:

Q5. Do you foresee any issues with the revised Practitioner Authorisation Rules?

Yes/No? Please provide comments:

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 only hold Advocacy rights (Chartered Legal Executive Advocates) would not be eligible to apply for Higher Rights of Audience?

Yes/No? Please provide comments:

Q7. Do you have any other comments?

Yes/No? Please provide comments:

How to respond

Please complete the [consultation survey](#).

[Appendix 1](#)

[Appendix 2](#)

[Appendix 3](#)

Submission deadline

Please respond by **4pm on 11 September 2023**.