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Francis, A [orcid.org/0000-0002-3715-8675](https://orcid.org/0000-0002-3715-8675) (2018) *Legal Executives: Education, Training and Professionalisation*. In: *Jahrbuch der Rechtsdidaktik 2017 / Yearbook of Legal Education 2017*. BWV / Berliner Wissenschafts-Verlag, Germany, pp. 325-346. ISBN 978-3-8305-3840-0

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# Legal Executives: Education, Training and Professionalisation

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## Introduction:

This chapter provides an analysis of the educational routes and professionalisation strategies of Chartered Legal Executives within England and Wales. It is a profession of fully-qualified lawyers undertaking similar work to solicitors, holding an increasing set of formal legal rights and responsibilities, but nonetheless characterised by a para-professional history, class and gendered disadvantages and, perhaps most fundamentally, a non-graduate vocational route of education and qualification.

It locates the profession within the context of the wider legal education and training framework of England and Wales and analyses the ways in which this both reinforces and challenges the professional project of Chartered Legal Executives. It draws on Andrew Abbott's work to highlight the importance of knowledge claims within jurisdictional competition and contextualises the story of legal executives within a broader set of political and regulatory changes within England and Wales. These have included (at various stages) drives to increase participation in higher education, the promotion of social mobility, greater emphasis on skills and vocational training and state moves to address monopolistic tendencies and restrictive practices within the professions – particularly within law. This chapter draws on empirical work previously undertaken by the author (Francis 2002, 2006, 2007, 2011) alongside analysis of more recent regulatory developments. It proceeds with the history and development of the profession before introducing an analysis of the role that legal executives play within legal services. It discusses the recent re-emphasis of vocational education and training within England and Wales, and the relationship of the profession's education and training framework to this landscape. It concludes with a reflection on the potential implications of this landscape for legal executives.

Legal executives have struggled throughout their history to consistently articulate a compelling story about their professional project. Are they a subordinate para-professional group, providing support and assistance to solicitor employers, or a rival profession of high-quality lawyers, with elevated standing and an ability to make inroads into solicitors' markets? Are they an alternative, non-graduate and vocational route to qualification as a solicitor or a high status profession in their own right? Are they cheaper and more cost-efficient than 'fat cat' lawyers or a similarly expert legal profession that should be remunerated at comparable levels? Are knowledge and skills learnt 'on the job' more important than academic knowledge and assessment? These are dilemmas common to other subordinate professional projects (Etzioni 1969), but what is distinctive is the way in which the professional body – the Chartered Institute of Legal Executives (CILEX) - has had to address these questions within a fast-moving and uncertain professional landscape. Thinking carefully and understanding the implications of a non-graduate qualification route for professional lawyers is critical at a time when fundamental questions are being asked in a number of different jurisdictions about the nature of legal knowledge and expertise required for competent professional practice, with attendant concerns to ensure the route to professional qualification is open to the widest possible social groups. As a case-study, Legal Executives represent both an exemplar of what is possible in this regard and a salutary reminder of what is not.

## Context: Changes within the legal services marketplace and higher education landscape of England and Wales

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<sup>1</sup> Many thanks to Rui Lee for research assistance for this chapter.

Whereas 'solicitor' and 'barrister' are recognised qualifications, legal executives are far less well known. Indeed, other than in England and Wales from which they are originate, legal executives are only found in Northern Ireland, the Republic of Ireland and a small number of Commonwealth countries.<sup>2</sup> While legal professions globally are facing challenge (Abel, Sommerlad, Hammerslev and Schultz, forthcoming), the transformations are particularly pronounced within the legal system of England and Wales (Law Society 2016), which has been a key site of market liberalisation and a broader set of cultural and societal shifts. There are two key elements of the contemporary challenges facing legal executives. First, the transformations within the legal services market as a whole, and secondly the developing priorities of central government in relation to higher education and the skills agenda for the UK.

The legal profession stands at the verge of technological transformation (Susskind and Susskind 2015), which raises fundamental questions about the nature of expertise, professionalism and the appropriate qualifications required to evidence professional competence. Even more significantly, these developments should be set against the context of broader market and regulatory disruption with new providers from other disciplinary backgrounds now able to provide 'reserved' or 'regulated' legal services within England and Wales.

The Legal Services Act 2007 permits the establishment of new forms of legal service provider. Legal Disciplinary Practices are a relatively modest precursor to multi-disciplinary practices and permitted partnership between solicitors, barristers and legal executives with up to 25 per cent of the partnership non-lawyers. The more radical Alternative Business Structures permit a variety of organisational forms but, most fundamentally, permit non-lawyer ownership and management of the business. While these developments permit legal executives to own law firms, in contrast to past prohibitions, the combination of these technological developments, market pressures and regulatory changes have seen the development of new hybridised roles within legal services. For all of the established legal professions, this should signal concern as the emphasis shifts to the new forms of knowledge and skills, rather than simply diversifying the range of educational and qualification routes leading to established professions.

Thus, the relatively settled position with the system of the legal professions within England and Wales, of legal executives working within solicitors' firms, within a settled jurisdictional détente between barristers and solicitors, has been torn to shreds. The rights and responsibilities of the established professions of barristers, solicitors and legal executives are now increasingly one of work actually undertaken, rather than regulatory proscription and, additionally, new providers from different disciplines are offering a range of services from a variety of organisational forms (Aulakh and Kirkpatrick 2016). The new regulators of legal services (such as the Legal Services Board and the Solicitors Regulation Authority) have embraced the regulatory objective of competition and approach regulatory reform from the perspective that open markets, new providers and transparent competition are needed for consumers.<sup>3</sup>

The other crucial context for the professional project of legal executives has been the successive policies of UK governments to higher skills, participation in higher education and vocational training. Following the Labour Government's election in 1997, then Prime Minister, Tony Blair, articulated an aspiration for 50 per cent of young people to participate in higher education (Carvel 1999). By way of context, in 2018 numbers of those graduating from an undergraduate degree in Law was 15431 (ASR 2016: 39). Underpinning much of this policy is

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<sup>2</sup> New Zealand, Australia, Singapore, Hong Kong and The Bahamas.

<sup>3</sup> See, for example, the SRA's focus on 'allowing the market to deliver the solutions that best meet consumers needs' in response to the CMA Report on Legal Services - [www.sra.org.uk/sra/consultations/consultation-responses/cma-report.page](http://www.sra.org.uk/sra/consultations/consultation-responses/cma-report.page)

a discourse that asserts that students undertake undergraduate degrees to 'become employable' (Bradney 2011: 60), an assumption which has, in fact, come to define the entire funding mechanism for higher education in England and Wales (Browne 2010). Thus, for the last twenty years or so, there have been a significant expansion in the numbers of law graduates. The challenge for legal executives is that if more people are going to university to study law than beginning work directly after school, there is a reduced supply of junior staff with the potential to develop paralegal responsibilities. The last time significant university expansion occurred, it disrupted the social and gendered hierarchies within legal practice to a significant degree and led to the establishment of ILEX (Francis 2002: 9).

The narrative of the value of participation in higher education has, however, been increasingly balanced by increasing concern about student debt (Coughlan 2017) and attendant concerns relating to graduate employment prospects. Alongside this, however, the skills and productivity agenda continues to be important (Leitch 2006) and, so more recently, the Government has expanded its policy objective to promote apprenticeships, with the aspiration that it will 'become the norm for young people to go into an Apprenticeship or to university or – in the case of Higher Apprenticeships – do both' (HM Government 2013: 3). The emphasis is on employers setting standards and substantial training being central. CILEX has positioned itself at the forefront of the provision of higher level apprenticeships. In the legal sector, the SRA's new Solicitors Qualification Examination (see further below) is designed to permit qualification as a solicitor for those having studied higher level apprenticeships and will not specify routes to qualification; it will assess only day 1 competence at the point the assessment is completed (SRA 2017a).

Thus within this landscape, of increased participation in higher education, a growing emphasis on vocational pathways to professional careers (see further below) and a disruption of settled professional roles within legal services, Legal Executives face both challenges and opportunities. On one level, their traditional emphasis on 'earn while you learn', positions them as an egalitarian alternative to the established legal professions resonates with the Government's higher level apprenticeship focus. At another level, if they continue to emphasise traditional skills and knowledge, they may be overtaken by new forms of knowledge and skills, for example in Legal Knowledge Engineering and Systems Management but, given their para-professional history, without the status protections of solicitors and barristers.

In order to better understand these tensions, the next section will set out the history of their project of professionalisation and its implications for their current role and status.

### **History: Professional Projects, Institutional and Individual subordination.**

A strong professional association is central to the successful professionalisation of an occupation (Larson 1977: 69-77, Lounsbury 2002: 256). Moreover, the successful professional projects of the late nineteenth and early twentieth century, saw strong links between professions and the education and training institutions which immersed the next generation in, not only the knowledge base of the profession, but also important processes of acculturation. For Larson, 'the standardization allowed by a common and clearly defined basis of training... is in fact, the main support of a professional subculture' (1977: 45). Education and formal training in universities gradually replaced the older apprenticeship model of training (Larson 1977: 44). Thus within these institutions a professional membership is established who share the standardized cognitive base, and are socialized to accept the existing model of internal professional stratification. Clarity of the knowledge base upon which this professional education is founded is important but, in order for this to be established, the other specific resource elements of the professional project need to be present. Legal executives have, throughout their history lacked these resources.

In focusing upon the relationships between CILEX and the Law Society, it is possible to identify the underlying limitations of the collective project of legal executives. Crucially, throughout the history of CILEX, the relationships between the two organisations have been characterized by the Law Society's power over CILEX and its predecessors, ILEX and the Solicitors' Managing Clerks' Association (SMCA). It has only been with the establishment of the Legal Services Board as the oversight regulator of both organisations that the strategic thinking of CILEX appears to have shifted (Francis 2011).

The original impetus for the creation of the SMCA in 1892 came from the managing clerks themselves, concerned about the possible loss of their rights of audience (Murray 1950: 112). Yet the powerful influence of the Law Society dominated the early history of the organisation. Although the Law Society and the SMCA had established an education scheme in the late 1940s, both associations soon acknowledged that this scheme was attracting insufficient numbers of managing clerks. Consequently, throughout the 1950s, discussions were held in an effort to establish a replacement qualification scheme for managing clerks.

The Law Society's principal objective behind the creation of ILEX was simply 'to encourage recruitment to the unadmitted ranks of the profession' (LSG 1962: 26). However SMCA leaders saw the new qualification scheme as a key strategy in their drive for professionalisation. Notwithstanding this, ILEX was founded with the full support, agreement of, and a significant degree control from, the Law Society.

The next significant opportunity for legal executives to assert their status was during the Benson Commission on Legal Services. While legal executives continued to advocate for greater rights and increased remuneration, the Law Society was extremely reluctant to disrupt the status quo. The Law Society's influence was clearly pervasive throughout the Benson Commission's deliberations. The Commission effectively left any change that was to occur to the discretion of the Law Society (1979: 416, para.31.42).

Following the disappointments of the Benson Commission, ILEX refocused its energies on strengthening 'paraprofessional competence' (Johnstone and Flood 1982: 187) rather than continuing the project of raising its professional status. The 1980s and 1990s saw ILEX build its commercial strength with the purchase of new premises in Bedford and the establishment of companies to deliver and administer courses for non-qualified staff in legal practice.

Strikingly, the opportunities that arose for Legal Executives during the 1990s came not as a result of successful professionalization strategies or new knowledge claims which pushed against the jurisdiction of solicitors. Rather, legal executives were the fortunate beneficiaries of Government policies designed to drive down costs and address perceived restrictive practices in legal executives. The Access to Justice Act 1999 was the first key piece of legislation in these shifts. Under s.40 of the Access to Justice, Legal executives were awarded rights to conduct litigation. However, drawing on interviews conducted with council members of both the Law Society and ILEX at the time, it is striking to note the tensions being played out amongst the ILEX council members, concerned whether seizing the opportunity to prospect for further rights would upset the super-ordinate professional body, which represented their employers. By way of contrast, the ILEX was simply not on the Law Society's strategic radar (Francis, 2002).

Yet the changes brought in by the Legal Services Act and the establishment of the Legal Services Board as the over-arching regulator, are a major disturbance to the institutional logics of the field (Lounsbury 2002: 255). Today, CILEX makes public assertions about the equality of its standing as the third branch of the legal profession (Francis 2002: 5). CILEX's formal status as an Approved Regulator is a powerful marker of this standing in ways which go beyond even the most optimistic council members in 1999.

Thus, the rights to conduct litigation and to carry out Probate as a reserved activity were secured under the statutory regulatory regime overseen by the LSB, and will increase the practical worth of the CILEX qualification. While the legal executive qualification remains unprotected in law, the fact that, now, only Fellows of CILEX (and graduate members in some circumstances) may hold rights to conduct probate, civil litigation, hold rights of audience, assume judicial office and become partners in Legal Disciplinary Practices, adds real weight to the qualification. This potentially enhances its attractiveness as a career in its own right and, in effect, enables CILEX to engage in closure strategies of accreditation in ways not previously possible (Witz 1992).

However, despite the considerable gains that CILEX has made, there remains doubts as to the extent to which ILEX is on a par with the Law Society and the Bar, The continued prominence of the historic support and beneficence of the Law Society on CILEX's website, 'ILEX was founded in 1892 and became a company limited by guarantee in 1963 with the support and co-operation of the Law Society' ([https://www.cilex.org.uk/about\\_cilex](https://www.cilex.org.uk/about_cilex)), also curiously undercuts what is otherwise a rhetoric of contemporary parity.

Overall, however the picture is of an organisation emerging from the shadows, with a renewed sense of purpose – in particular with a re-emphasis of the long thwarted professional project. The award of the Royal Charter in 2012, was the culmination of its classical professional project and source of real pride for the organisation (ILEX 2011). However, individual legal executives continue to experience subordination and disadvantage within firms and other settings. The status and market claims that legal executives are able to make in the workplace seems, in contrast to Abbott's analysis, to trail the success that has occurred within the legal and public arenas (1988: 66-8).

### **The Role and Work of Legal Executives: Who they are and what they do**

Historically, CILEX oversaw the education and regulation of legal executives and represented their interests. However, the regulatory functions are now undertaken by CILEX Regulation, under the requirements of s.27 Legal Services Act 2007 to separate the regulatory and representative functions of front – line regulators.

Only Fellows of CILEX are entitled to call themselves Chartered Legal Executives, with Fellowship attained after two sets of examinations and a qualifying period of employment ([www.cilexregulation.org.uk/lawyers/become-a-fellow](http://www.cilexregulation.org.uk/lawyers/become-a-fellow)). However, in reality many non-qualified fee-earners within solicitors' firms (such as paralegals) describe themselves as legal executives, thereby devaluing the achievement and professional status of legal executives. The Government consistently resisted calls for the an offence of the misuse of the title 'legal executive' to be created under the Legal Services Act 2007 and, later in the same year, within the Criminal Justice and Immigration Bill. As the Conservative spokesperson on Justice, David Burrowes, noted, 'legal executives constitute the only established professional group that does not have statutory protection' (Hansard 2007: 781-82). Nonetheless, they are fully qualified lawyers employed within law firms, government departments and in private companies, and the name Chartered Legal Executive is protected under the terms of the Royal Charter ([www.cilex.org.uk/about\\_cilex/who\\_we\\_are/royal-charter](http://www.cilex.org.uk/about_cilex/who_we_are/royal-charter)).

Although legal executives specialize early in their careers, in most practice settings their work is similar to solicitors' and they possess a level of autonomy comparable with other employed lawyers (Francis 2002: 18). Conveyancing, general civil litigation and personal injury are the three most common areas of practice (CILEX 2015: 45). Within private practice they work as fee-earners, with their work charged to clients and thus contribute directly to the income of the firm. The qualification can also be used as a pathway to become a solicitor; 2.3% of new entrants to the solicitors' profession in 2014 – 2015 (140 individuals) were legal executives, (ASR, 2015: 48). Although the title is not legally protected, it brings rights that are unavailable to un-qualified paralegals ([www.cilexregulation.org.uk/practice-rights/about-practice-rights](http://www.cilexregulation.org.uk/practice-rights/about-practice-rights)).

The Legal Service Act 2007 permits legal executives (as lawyers) to take up positions as partners within Legal Disciplinary Practice.<sup>4</sup> At the same time legal executives continue to develop their professional responsibilities. Thus, CILEX Regulation has now applied for the rights to regulate alternative business structures ([www.cilexregulation.org.uk/news/abs](http://www.cilexregulation.org.uk/news/abs)), although not, in the first instance, for multidisciplinary entities (LSB 2017). More broadly, the profession has attempted to develop their recognition within other jurisdictions (ILEX 2003: 7).

It is, therefore, important to distinguish legal executives from paralegals. The paralegal primarily assists the fee-earning work of the lawyers - a role which combines legal research and writing with secretarial tasks (Pierce 1995: 31-33). There are estimated to be anywhere between 60,000 and 300,000 paralegals now in England and Wales (Allaboutlaw 2017). Within the UK, attempts at professionalisation have been made by a variety of competing bodies, including the Institute of Paralegals ([www.theiop.org/](http://www.theiop.org/)) and the National Association for Licensed Paralegals ([www.nationalparalegals.co.uk](http://www.nationalparalegals.co.uk)), but there is still huge variation in terms of the levels of qualification, experience and longer-term career trajectory (Rose 2010).

More recently, in part as a response to the collapse of public funding for legal aid cases, there has been a rise in 'professional' McKenzie Friends. This is another unusual role, which permits support and assistance to be provided by a 'friend' to a litigant in person (HM Judiciary 2010). While there have been a rise in the number of these individuals, like paralegals, there is no real regulation or coherent framework of training (Smith, Hitchings and Sefton 2017). In contrast to this plethora of un-regulated and ill-defined roles chartered legal executives are, fully qualified lawyers, engaged in fee-earning work holding substantive formal rights to undertake various aspects of legal work and regulated by a recognised regulator with statutory authority. And yet, despite the recent growth in formal rights and recognition attached to legal executives, there has been a 7% fall in numbers between 2012 and 2015: from 7,552 to 6,645 (LSB 2016).

Legal executives are primarily a female profession, with 74% of members are women). As noted above, a key reason for this, was the loss of working class male managing clerks to university legal education in the 1960s. Women, working primarily in administrative and secretarial positions provided a new talent pool for solicitors' practices. However, the gendered nature of the profession (see also Witz 1992), alongside other structural disadvantages has caused acute disadvantage in the workplace for all legal executives, and in particular for women legal executives.

Women legal executives appear to experience a distinct disadvantage within legal practice. This intersectional disadvantage differs from that experienced by women solicitors and is different to that experienced by male legal executives (Crenshaw 1989/1993). In addition to the failure of the public and the wider legal profession to recognize their qualification and expertise, they reported being seen as secretaries, typically a role within legal practice gendered as female (Francis 2006).

If you say you're a legal executive, they always mishear you and think you're a legal secretary, especially if you're a female. And I'm not one of those women's libber type people, but they do, they instantly think you're a secretary. If they hear the word legal executive,... they think it's just a posh name for legal secretary, especially being a woman. (Female, medium-sized regional firm).

All the women, interviewed as part of my fieldwork, readily identified the legal executive route as a 'woman's profession', both descriptively and normatively in terms of it being more 'natural', 'suitable' or 'acceptable' for a woman than a man. This was attributed partly to the

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<sup>4</sup> S.9A(2)(a) Administration of Justice Act 1985 (as amended by the Schedule 16, Part 2, paragraph 82 Legal Services Act 2007). Nick Hanning from Poole firm RWPS was first legal executive to be appointed a partner following the changes in the law (McPartland 2009c).

pathway allowing legal executives to 'earn while they learn' ('easiest route... if you have a family') and that the pool of entrants is largely from the ranks of administrative or secretarial staff, which are still mainly women within legal practice.

CILEX lays great importance on the fact that it 'opens up access to a career as a lawyer to all. 81.5% of our members do not have parents who attended university, and only 2% of our members have a parent who is a lawyer.' This enables it to position itself at the forefront of recent debates on social mobility and diversity within the legal profession and is able to report that

41% had A levels on joining CILEx. 21% only had GCSEs or O levels. 75% attended a state school. Only 9% went to a fee-paying school. 17% of their households received income support or free school meals.  
([www.cilex.org.uk/media/interesting\\_facts/facts\\_figures](http://www.cilex.org.uk/media/interesting_facts/facts_figures))

This is an important point of distinction, but given the longstanding reproduction of social and cultural hierarchies with the profession, it also brings disadvantage. Nearly all of the legal executives interviewed described how they 'fell into the profession'. They lacked the commitment and aspiration that could form a stable basis for a professional identity (Friedson 1992: 223). The overriding reason why people chose the CILEx route was affordability - 48% of members chose the CILEx route as they couldn't afford either Uni or the GDL/LPC/BVC routes: ([www.cilex.org.uk/media/interesting\\_facts/facts\\_figures](http://www.cilex.org.uk/media/interesting_facts/facts_figures)). Affordability of professional qualification remains a key contemporary challenge and has been stated objective of the SRA in its plans to reform the qualification and training process for solicitors in England and Wales (SRA 2017a).

Nearly 80 per cent of legal executives I interviewed came from lower socio-economic backgrounds or generally complicated personal situations. The men and women described coming to the profession from variously, 'difficult circumstances at the time', of 'having left school at 16 and drifted into awful jobs, got married and had a baby at 20 [when] childcare was poor', of 'having left college and did silly things as you do when you're nineteen' ... and then being 'on my own with a child', putting it down to 'parents' financial situation' or not 'being that great academically.. law ... wasn't an option because solicitors were middle class kids who'd gone to university and I was from a working class crap comprehensive school' or 'couldn't face the thought of having to quit work and have no money coming in and study at university.' Arguably, this background contributes to the perception of legal executives as being part of a less prestigious profession, given the continuing importance of a variable graduate capital (Webb 1999: 232), and, more broadly the role of class in limiting access to the legal profession (Nicolson 2005: 213).

The gendered and classed disadvantages experienced by legal executives in the workplace are an important counterpoint to the success that CILEX has achieved in securing further rights for its members. The non-graduate status and administrative background of much of its membership is also set against the increased emphasis on the importance of gradueness within the UK skills economy (see above). Although it may be that the policy agenda is shifting (see further below), the focus on vocational knowledge, practical training and the tension between maintaining this as a legitimate route alongside the pragmatic drivers to accommodate graduates on the CILEX pathway is a significant feature of the tensions currently experienced by legal executives.

Throughout their history, legal executives have struggled to secure professional autonomy 'a position of legitimate control over work' (Freidson 1970: 82). They have been unable to do so because, throughout most of their history they have been employed by solicitors. They were thus unable to claim exclusive expert knowledge (Abbott 1988). Thus, whereas other jurisdictional settlements between professions rest on the boundaries of expert knowledge. This is not the case between solicitors and legal executives. Therefore although the work of legal executives and solicitors is similar, and draws from the same cognitive base, the route



to qualification differs fundamentally. Legal executives are a vocationally trained and qualified subordinate legal profession and the search for status remains elusive (Matthews 2012). As one female legal executive working in a large City firm, interviewed as part of my earlier study, remarked:

I was told 'Oh, yes, you'll be more marketable' [as a legal executive] ..., but ..., my experience was that as a legal executive you're not really valued, you're not really recognized by your own colleagues or indeed the public (Female Legal Executive, Large Corporate).

### **Education and Training: The Development of Legal Professional Expertise in a Vocational Context**

In contrast to the qualification routes for solicitors and barristers, the current educational and training framework for legal executives is explicitly designed for candidates who are in full-time employment and are effectively studying part-time. This means that not only is the qualification route extremely modularised, there are also a number of different categories of membership to signal the stage of qualification, while clearly linking them to the professional association. The membership categories are as follows:

- Student Member: for those embarking on qualification with no prior legal qualification or with less than three years' legal work experience.
- Affiliate Member: for those holding at least one level 3 or level 4 CILEX qualification or possessing at least three years legal work experience.
- Associate Member: Completed Level 3 CILEX Professional Diploma in Law or Graduates with Qualifying Law Degrees.<sup>5</sup> Entitled to use the ACILEx after their name.
- Graduate Member: Completed Level 3 Professional Diploma and the Level 6 Professional Higher Diploma in Law and Practice, or the Graduate Fast Track Diploma or who are LPC/BPTC graduates. Entitled to use GCILEx
- Fellow: Graduate members who have completed the Qualifying period of employment (see further below). Fellows are entitled to use the term 'Chartered Legal Executive lawyer' and the letters FCILEx after their name. ([www.cilex.org.uk/membership/membership-grades-and-fees](http://www.cilex.org.uk/membership/membership-grades-and-fees))

While this framework carries advantages in structuring the learning and providing clear professional milestones particularly for candidates coming from non-traditional educational backgrounds, this may add to the difficulties in terms of public clarity about the role. There are related concerns about ethical burden on those at various stages of fee-earning roles within legal practice to present their professional status accurately (Francis 2007: 134-5).

The Level 3 Professional Diploma in Law and Practice is designed to sit at a pre-undergraduate degree level and is set at A-level standard. It is targeted at 'those with A-levels or a non-law degree, or for paralegals or support staff wishing to take on file-handling in a specific role of practice' ([www.cilexcareers.org.uk/qualifications/non-law-graduates/becoming-a-cilex-lawyer-/stage-one](http://www.cilexcareers.org.uk/qualifications/non-law-graduates/becoming-a-cilex-lawyer-/stage-one)). Although this qualification does not attract any formal practice rights, CILEX suggests that those in law firms who hold the Diploma may charge their time out at Band D of the Guideline Hourly rates.<sup>6</sup> The compulsory units are in an 'Introduction to Law and Practice', Contract, Criminal, Land, and Tort. To achieve the Diploma, students must then complete either two Practice Units and a linked Law unit (e.g. Practice of Law for the Elderly Client and Wills and Probate) or three Practice Units (e.g. The Practice of Family Law), in addition to two professional skills units (in Client Care and Legal Research). Thus, it is possible to take a practice unit, without the underpinning law (e.g. Practice of Family Law, without Family Law), thus underlining at Level 3, the potential for a clear vocational focus

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<sup>5</sup> An undergraduate law degree that satisfies the academic stage of professional qualification for solicitors.

<sup>6</sup> Approximately £118-138 depending on the part of the country ([www.gov.uk/guidance/solicitors-guideline-hourly-rates](http://www.gov.uk/guidance/solicitors-guideline-hourly-rates)).

for the applicants - the vast majority of whom would not have experienced undergraduate education from any discipline.

The Level 6 Higher Diploma is set at a level comparable to degree level. However, the focus on specialisation, rather than the breadth of legal knowledge and understanding covered either by the current qualification framework for solicitors within a QLD and LPC or the proposed content required for Day 1 competency under the SRA's new regime (SRA 2017a). Specialisation is central to the claim of expertise made by legal executives, and yet arguably it structurally limits their claim to established professional expertise and standing by embedding the professional paradox (Moorhead 2010) into their education and qualifications from the outset. In order to complete the Level 6 Higher Diploma, a candidate must complete:

- 1 Legal Practice unit and 1 linked Law unit
- 2 Law units (open choice)
- 2 Mandatory Professional Skills modules (Client Care Skills and Legal Research)

Thus, a candidate undertaking fee-earning work within a family law team, might therefore opt for The Practice of Family Law, Family Law, Contract and Wills and Succession, together with the Professional Skills module. Unless they have come through a QLD route, their broader exposure to the wider range of legal subjects covered in law degrees would have been at a pre-degree level. The focus is not on the broad based academic knowledge, but on the practical, applied knowledge required for competence in a particular practice area. The assessment guidance reinforces this; thus the directions to candidates on the practice units, will require them to analyse 'in order to provide practical advice and assistance' (CILEX 2017). As the CILEX guidance makes clear 'by the time you are working towards the second stage of your Chartered Legal Executive Training, it is likely that you will know which area of legal practice you want to specialise in' ([www.cilexcareers.org.uk/qualifications/non-law-graduates/becoming-a-cilex-lawyer-/stage-two](http://www.cilexcareers.org.uk/qualifications/non-law-graduates/becoming-a-cilex-lawyer-/stage-two)).

Thus, in contrast to other successful subordinate professions such as nursing (Witz 1992: 142), legal executives have not been able to develop their own distinct knowledge base. CILEX members (indeed non-members, such as paralegals, outdoor clerks and so on) work exclusively within the legal knowledge base of their employers and of the superordinate profession. The ILEX modules on the Law of Contract or Crime are, of course, the Foundations of Legal Knowledge required of entrants to the solicitors' profession (JASB 2002). Moreover, in their claims for increased professional status, legal executives interviewed asserted that they were doing the 'work of a solicitor'. The use of their employers' knowledge base is at the root of legal executives' failure to develop their own shared distinct knowledge base or a strong collective identity. It is simply not possible for them to make a jurisdictional move in the way that Abbott describes. It is not an alternative body of abstract knowledge to that used by solicitor, it is the same – and moreover, they have undertaken a more partial (albeit high-level in certain areas) study of it. The legal education and qualification of legal executives is unequivocally about the development and assessment of specialised professional expertise in a vocational context.

The final key stage of qualification is the Qualifying Employment. At least three years qualifying employment is required, together with the demonstration of the work based learning competences. The final year cannot be gained until after the Graduate membership qualification has been achieved ([www.cilex.org.uk/study/lawyer-qualifications/qualifying-employment](http://www.cilex.org.uk/study/lawyer-qualifications/qualifying-employment)). It is useful at this point to contrast the detailed guidance and requirements of legal executives with those proposed by the SRA under the SRA. The rigour with which prospective legal executives are expected to evidence the competencies that they have developed in practice is striking. In addition to providing detailed evidence of the Qualifying Employment, applicants must also demonstrate that they meet 8 competencies, which are then further broken down into 27 learning outcomes ([www.cilexregulation.org.uk/lawyers/work-based-learning-resources](http://www.cilexregulation.org.uk/lawyers/work-based-learning-resources)). The 8 competencies are

- Practical Application of the Law and Legal Practice
- Communication Skills
- Client Relations
- Management of Workload
- Business Awareness
- Professional Conduct
- Self-awareness and Development
- Working with others

Extensive portfolios are required to explain how the candidate is able to evidence the different learning outcomes within the competency. Thus, for example, in relation to 'Practical Application of the Law', candidates are variously required to identify the applicable law, describe how the law applies to the matter, and explain how the evidence that is then provided demonstrates the outcome. There is a strong element of reflexivity built into the process. In evidencing 'Competency 7' for example, candidates must identify their strengths and weaknesses and set out steps to address them. The majority of the outcomes have to be evidenced twice. This appears to echo much of the work done in other fields, for example nursing, on the importance of portfolios in bridging both assessment of outcomes and supporting personal development (Price 1994, Endacott et al 2004).

The level of rigour expected in evidencing the reflection and professional development taking place during the Qualifying Employment reinforces the workplace as a key site of professional qualification and learning for legal executives. It also sends a signal in terms of the standards that are expected. This is not simply a 'time-served' process. Candidates are expected to complete an extensive portfolio, under appropriately qualified supervision (CILEX Regulation 2017: 4). The SRA's approach to the new solicitor qualification differs. A qualifying period of two years' work experience will be required which must 'comprise experience of providing legal services which provides you the opportunity to develop the prescribed competences for solicitor' (SRA 2017b). CILEX's expectations are much more precise; it must be a 'wholly of a legal nature for at least 20 hours a week...[and] involves the application of the law, legal practice or procedure (CILEX 2017). The SRA does not propose either a detailed portfolio or sign-off by the supervisor. All that will be required is that, the person signing off the qualifying work experience should confirm

- (a) details of the period of work experience carried out; (b) that it provided you with the opportunity to develop some or all of the prescribed competences for solicitors; and (c) that no issues arose during the period of work experience that raise a question as to your character and suitability to be admitted as a solicitor, or if such confirmation cannot be given, then details of any such issues (SRA 2017b)

Assessment as to whether competence has been met is not part of the proposed regulation. This assessment will take place in part 2 of the SQE. One of the most fascinating aspects of the future for legal executives and their qualification process will be the way in which this maps onto the landscape of higher legal level apprenticeships and the increased routes to qualification as a solicitor envisaged by the SRA.

### **Looking to the Future: Apprenticeships, SQE and the disaggregation of legal qualification routes**

Over the last twenty years, CILEX has shown itself increasingly capable of being responsive to the changes in the external policy climate in order to position itself and its membership (Francis 2002: 21). It saw opportunities when the Government sought to remove restrictive practices in the provision of legal services from the Access to Justice Act 1999 onwards and also sought to ride the policy tide towards greater diversity in the legal profession. The launch of higher level apprenticeships by the Government and the SRA's reforms to the qualification process for solicitors, potentially challenge the centrality of CILEX to the provision of work-placed learning and qualification for lawyers. However, the organisation has, once again, acted to ensure that it is at the heart of the debates – at least, in respect of apprenticeships.

In 2013, the Government established a new agenda for the delivery of apprenticeships (HM Gov.t 2013). This represented a key policy change, and a recognition that investment in university models of post-16 training was neither going to fully satisfy the Government's skills agenda, nor address issues of social mobility. Amongst the changes were the development of uniform standards for each sector, with employer groups at the heart of the process to develop standards.<sup>7</sup> The model of an Apprenticeship sees the young person employed by the firm for the period of the apprenticeship, which then pays for the training and assessment. The employer chooses a training provider and an end point assessment organisation (EPAO), which needs to be different to the training provider. Government has sought to drive this forward by imposing an Apprenticeship Levy on all organisations with a staff bill of over £3million per annum (DfE 2017). However, employers who wish to employ apprenticeships may draw down funds from newly created 'Apprenticeship Accounts' which can fund some of the training and assessment costs.

CILEX has been approved as an EPAO, for the Paralegal – Level 3 and Chartered Legal Executive – Level 6 Apprenticeships. These qualifications map onto the CILEX professional qualification, and so that a candidate who completes the Level 6 Chartered Legal Executive Apprenticeships will qualify as a Chartered Legal Executive ([www.cilexcareers.org.uk/qualifications/apprenticeship](http://www.cilexcareers.org.uk/qualifications/apprenticeship)). Clearly a key difference between the established professional routes, and the new apprenticeships is that employers will pay for the training and assessment (and may secure government support to do so). These advantages meant that it was critical that CILEX was involved from the outset and was able to map the new framework onto its existing qualification. In addition to the cost, CILEX envisages that the additional support and structure provided through the apprenticeship route means that they will be more attractive to younger employees, who have clearly embarked on a qualification route from the outset. Again, this has the potential to attract a different profile of CILEX lawyer. They will potentially be less immersed within a legal environment in terms of years of experience in various administrative or support role, but possess a much clearer commitment to professional qualification and a career as a CILEX lawyer at an earlier point.

Apprenticeships have also been developed for solicitors – Legal 7 Solicitor Apprenticeships. Alongside this, the SRA has developed new proposals for the solicitors' qualification – the SQE. This will comprise: (i) possession of a degree (not necessarily in law), apprenticeship, or equivalent; (ii) success in stages 1 and 2 of a centrally set SQE; and (iii) a requisite period of workplace training (likely in most cases to resemble the current pattern of training contracts). Stage 1 of the SQE (which will largely comprise multiple choice questions) can be taken after graduation; and Stage 2 at any time after Stage 1 (with current debate as to whether Stage 2 should only be allowed after workplace training). One of the SRA's stated objectives is to create a much greater diversity of routes to professional qualification as a solicitor, and it has been explicitly designed to accommodate to the Apprenticeship pathway – Stage 2, will thus form the End point assessment. While, the relationship of the apprenticeships to the SQE is clear and firms are beginning to advertise for apprenticeships on this basis,<sup>8</sup> the relationship to chartered legal executives is still not clear. In its response to the SRA's consultations on the SQE, CILEX has consistently raised the question as to whether and how exemptions for CILEX qualifications would work (CILEX 2017b: 27). If this were to happen, it would require

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<sup>7</sup> Gun Judge, Head of Resourcing at Addleshaw Goddard, was chair of the Law Trailblazer employer panel. This included Barclays, Browne Jacobson, Burges Salmon, Clyde and Co, DAC Beachcroft, Dentons, DWF, Eversheds, Gateley LLP, Kennedys Law, Lewis Silkin, Mayer Brown, Olswang, Pannone LLP, The Royal Bank of Scotland (RBS), Simmons & Simmons, Stephenson Harwood, Thomas Eggar, Withers, the Chartered Institute of Legal Executives (CILEX), the Law Society and the Solicitors Regulation Authority (SRA) and developed the Trailblazer solicitor, paralegal and chartered legal executive apprenticeships ([www.sra.org.uk/students/resources/solicitor-apprenticeship-qa.page](http://www.sra.org.uk/students/resources/solicitor-apprenticeship-qa.page))

<sup>8</sup> See for example, <https://www.muckle-llp.com/careers/solicitors-apprenticeship/>, which emphasises £15k p.a. starting salary and no university fees for 18 year old starters.

some movement from the SRA who have been consistent in saying that no exemptions for the SQE would be permitted, and under the existing regime, Legal Executives are treated differently to barristers for the purposes of transfer ([www.sra.org.uk/solicitors/qlts/key-features.page](http://www.sra.org.uk/solicitors/qlts/key-features.page)).

One of the key selling points for the current CILEX qualification for law and LPC graduates has been the possibility of qualifying as a solicitor, without securing a training contract ([www.cilexlawschool.ac.uk/prospective\\_students/qualify\\_as\\_solicitor/the\\_CILEx\\_route](http://www.cilexlawschool.ac.uk/prospective_students/qualify_as_solicitor/the_CILEx_route)). A central part of the SRA's reform process was to remove the 'blockage' of the training contract (SRA 2017). Thus, under the current regime, an LPC graduate, unable to secure a training contract, may secure a paralegal fee-earning role, and become a graduate member of CILEX, leading to Fellowship and potentially qualify further down the line as a solicitor. Under the SQE format, a law graduate may pass SQE 1, secure a fee-earning position with a firm, build up two years of QWE (either from that point, or referencing early periods of experience) and then pass SQE2 and thus qualify as a solicitor. The CILEX route looks potentially less appealing for a law graduate keen to move to professional qualification as a solicitor as quickly as possible. Paradoxically, particularly when the portfolio expectations of the work based learning are discussed, it also looks a great deal more exacting (although clearly much will depend on the final shape of the SQE assessment). Fundamentally, the attractiveness of either route will depend on market demands for particular types of employees. At time of writing, the market expectation is that many of the largest commercial law firms will continue to recruit their prospective trainees on the basis of existing practices and expectations about educational quality and rigour (CLLS 2017: 143). In this context, CILEX's concerns that a 'gold standard' of professional qualification will endure appears well founded (CILEX 2017b: 131).

## **Conclusion**

This paper has discussed the professional project, educational route and qualification framework of Chartered Legal Executives. By many counts they are a successful para-profession that offers a counter-factual to most established accounts of professional projects. They have never held an exclusive knowledge base, have no clear work jurisdiction, their professional association held questionable independence from the super-ordinate profession for much of its history and have experienced gendered disadvantage. And yet, in 2018, the profession holds far more by way of formally recognised rights and responsibilities than ever before. Its members can become judges, own law firms and its professional body is treated as a 'front-line' regulator in a manner nearly comparable to the established professions of solicitors and barristers. However, individual legal executives still experience disadvantage in the workplace. The standing is not comparable and the non-graduate profile of the qualification strips it of important social and cultural capital within the legal services marketplace.

Ongoing changes to the qualification routes of solicitors, and the increase in the number of higher apprenticeships also challenge the purpose of the legal executive qualification. Who will wish to qualify via this route rather than the new opportunities that are now opening up? In an environment of increasing complexity in the routes to professional qualification, what will be the distinctive offer of the CILEX education and qualification route? Alongside all of this is an increasingly urgent debate about the nature of legal expertise that is required in technologically transformed practice. CILEX has always offered a vocational educational route to legal practice. This is now becoming mainstream policy. The challenge for CILEX is whether to become another, perhaps less prestigious part of the mainstream, or re-imagine the qualification as something altogether different.

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