

Written evidence submitted by The Chartered Institute of Legal Executives (CCB0004)

Introduction

- 0.1. The Chartered Institute of Legal Executives (CILEX) is the professional association and governing body for Chartered Legal Executive lawyers (commonly known as ‘CILEX Lawyers’), other legal practitioners and paralegals. Under the Legal Services Act 2007, CILEX acts as the Approved Regulator (AR) and delegates these regulatory powers to the independent regulator, CILEx Regulation Ltd (CRL).
- 0.2. CILEX represents over 17,500 members of which 77% of the membership are female, 16% of members are from an ethnic minority background, 4% are LGBT and 6% have a disability. Additionally, in terms of social mobility, 77% of CILEX members attended a state-run or state-funded school and 41% have an undergraduate university degree (of which 63% of those members were the first to attend university).
- 0.3. CILEX is frustrated by the sustained lack of support for the criminal courts. Despite several promises by the former Government made to committees, to the House of Commons and the House of Lords, and to the public, the backlog has not reduced. CILEX sees merit in the Public Accounts Committee holding the current Government to the 6 recommendations made in the 2022 report by the Public Accounts Committee and any additional recommendations which the committee sees fit. Without substantial oversight into the Ministry of Justices’ conduct in relation to the criminal court backlogs, CILEX believes that not only victims, but defendants, witnesses, practitioners, judges and court staff will continue to be failed.
- 0.4. When CILEX practitioners were asked: ‘On a scale of 1 (being ‘not at all’) to 10 (being ‘extremely’), what impact does the criminal court backlog have on your clients?’, they responded with an average of 9.4. Additionally, when asked to use the same scale to evaluate their ability to efficiently practice, they responded with an average of 7.2. CILEX therefore wishes to highlight to the committee that the criminal court backlog is having not only a huge impact on clients and victims, but also on practitioners.
- 0.5. When members were asked to outline the cause of the criminal court backlog, they outlined the lack of advocates and of litigators. They also outlined a lack of judicial availability and a lack of court resources. One specific issue which was raised was that prisoners were not being made available to the court at the correct time – CILEX notes that this responsibility is outsourced, and CILEX requests that the committee review whether this is a widespread issue. Additionally, members of CILEX highlighted other issues such as problems with the Common Platform, the CPS not providing evidence until very close to trial, and courts not dealing directly in advance with agreed requests to adjourn matters.
- 0.6. One member highlighted a myriad of reasons for the backlog, which demonstrates the wide-ranging issues: [sic] *“There has been chronic and systemic underinvestment in the Criminal Justice System for nearly 2 decades. [...] Further issues are the complexity of cases, technology, social media, phone downloads, unused material considerations under the CPIA 1996 with increased burdens on investigators and prosecutors. There are also insufficient numbers of member of the judiciary who are “ticketed” to deal with rape and serious sexual offences. There are also insufficient advocates (both prosecution and defence) to deal with the sheer volume of cases. There is also inefficient listing practices by the Crown Courts.”*
- 0.7. Based on evidence from members, CILEX disagrees that the sole reasons for the increase in the criminal court backlogs are the Covid-19 pandemic and the industrial action undertaken by

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members of the bar in 2022. In lieu, CILEX contends that the backlog stems from a culmination of systemic underfunding of the criminal justice system, and poor recruitment/retention of legal practitioners (amongst other reasons). As such, CILEX confines its evidence to these issues.

Part 1 – Systemic underfunding of the criminal justice system and lack of resources

- 1.1. CILEX has outlined on several occasions that the criminal justice system is chronically underfunded. Noting the duty not to repeat evidence, CILEX draws the committee's attention to its comments made earlier in 2024 in relation to legal aid as it will seek to avoid repeating those arguments in this evidence.¹
- 1.2. CILEX notes that the Resource Departmental Expenditure Limit for HMCTS amounted to £2,277.9m for 2023-2024.² CILEX notes that the total MoJ RDEL for 2023-2024 was £10.879b whereas only £9.8bn was planned. Owing to substantial inflation, CILEX notes that when the £9.8bn is adjusted to £11.61bn (via the Bank of England's calculator), it appears that the department has suffered a substantial £0.73bn real-terms loss.³ This hampers operational abilities across the MoJ – but will also have had a substantial impact on the criminal courts and their ability to reduce the backlog.
- 1.3. As part of the previous Government's commitments in relation to funding and clearing the backlog – they outlined it had funded “100,000 sitting days last financial year”.⁴ CILEX notes that this is a decrease from 102,600 in 2022.⁵ CILEX notes the current Government's commitment to 106,500 days.⁶ Lord Bellamy in a letter to the Justice Committee dated 2 May 2024 outlined that 107,000 sitting days are planned for 2024.⁷ This is in comparison to 2015 in which there were 113,800 days.⁸
- 1.4. As a result, CILEX believes that in order for the Government to truly commit to reducing the backlog, an additional 20,000 days need to be funded. CILEX reached this figure based on the premise that even at the benchmark of 2015's sitting days the backlog declined marginally from 328,291 cases to 304,262 cases (Q1 of 2015 to Q1 of 2016), and therefore an additional 6,000 days are needed to make a meaningful reduction.
- 1.5. CILEX does not however have confidence that this is feasible under the current RDEL or with the current judiciary/practitioner numbers and therefore CILEX requests that a specific request be made for additional funding within the next spending review. CILEX concerns around the number of judges needed is outlined in part 2.

¹ CILEX, < <https://committees.parliament.uk/writtenevidence/128695/pdf/>> Accessed 08/05/2024

² Ministry of Justice, Main Estimate 2023-24: Estimates Memorandum <https://committees.parliament.uk/publications/40041/documents/195520/default/> Accessed 08/05/2024

³ Bank of England, < <https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator>> Accessed 08/05/2024

⁴ UK Parliament, Written questions, answers and statements: 902212, Mike Freer <<https://questions-statements.parliament.uk/written-questions/detail/2024-03-20/902212>> Accessed 08/05/2024

⁵ Institute for Government, Performance Tracker 2023: Criminal court <<https://www.instituteforgovernment.org.uk/publication/performance-tracker-2023/criminal-courts>> Accessed 08/05/2024

⁶ HC Deb, 5 November 2024, Vol 756, Col 143

⁷ Ministry of Justice, <<https://committees.parliament.uk/publications/44651/documents/221874/default/>> Accessed 08/05/2024

⁸ Ibid

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- 1.6. Further to the above, 100,000 sitting days is not representative of time actually used within each day. With 2.7, 2.9 and 2.8 hours per sitting day in 2020, 2021 and 2022 respectively, compared to 3.6, 3.5 and 3.5 hours in 2017, 2018 and 2019.⁹ This means that not only are days down overall compared to the high of 2015, but also less time is being utilised each day.
- 1.7. Lastly, the previous Government chose to close some of the Nightingale courts – when the backlog was at its highest. CILEX contends that the Nightingale programme should be systematically transferred into permanent criminal courts which are needed. These courts do not need to be physical, and CILEX advocates for using more videoconferencing for non-contentious hearings. CILEX notes that the practice is mixed around the country and that there are some magistrates' courts who will allow advocates to attend sentence hearings by CVP in less serious matters. This would free up physical space in the current court estate. CILEX believes that the cost of this software, and the cost of more staff to assist the court in using this technology would be substantially less than the current Nightingale programme and would allow for long-lasting progress in the criminal courts ability to operate.

Part 2 – Poor recruitment and retention of judges and legal practitioners

Judges

- 2.1. CILEX notes the government pledges that “this financial year, we plan to [...] recruit more than 1,000 judges across all jurisdictions”.¹⁰ However, CILEX also notes that the Government acknowledged in a 2021 consultation response: “Since 2018, we have recruited around 1000 judges and tribunal members per annum and this scale of recruitment will continue, alongside increased magistrate recruitment.”¹¹ As a result CILEX queries whether the Government can continue to locate and recruit 1,000 judges from within the existing system. Unlike other jurisdictions, judges in the UK are already typically practitioners within the legal system and any additional judges will leave gaps in the ranks of practitioners.
- 2.2. Furthermore, casting doubt on the 1,000 judges pledge, since 2012 the numbers of court judges (3,575 in 2012), and tribunal judges (2,060 in 2012) have both decreased.¹² This now stands at 3,483 court judges and 1,809 tribunal judges in 2023 – a decrease from 5,635.¹³ Furthermore, in the year to 31/3/2023 only 327 new judges entered the sector.¹⁴ Between the decrease in numbers and lack of new entrants, CILEX does not have confidence in the 1,000 materialising as there has been no wholesale shift in the recruitment process / rules to allow for easier expansion of the judicial ranks.

⁹ Institute for Government, Performance Tracker 2023: Criminal court <<https://www.instituteforgovernment.org.uk/publication/performance-tracker-2023/criminal-courts>> Accessed 08/05/2024

¹⁰ UK Parliament, Written questions, answers and statements: 902212, Mike Freer <<https://questions-statements.parliament.uk/written-questions/detail/2024-03-20/902212>> Accessed 08/05/2024

¹¹ Ministry of Justice, Judicial Mandatory Retirement Age, Response to Consultation <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967234/judicial-mandatory-retirement-age-consultation-response.pdf> Accessed 08/05/2024

¹² Diversity of the Judiciary: Legal Professions, Judicial Appointments and Judicial Office Holders, Table 3.1: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fmedia%2F64fae71b1886eb00d976fe6%2F2023_JDS_tables.ods&wdOrigin=BROWSELINK> Accessed 08/05/2024

¹³ Ibid

¹⁴ Ibid

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Practitioners

- 2.3. CILEX defers discussion surrounding barristers and solicitors to its colleagues at the Bar Council and the Law Society. CILEX's evidence will therefore focus on CILEX criminal practitioners.
- 2.4. One CILEX member commented: [sic] *“There is a shortage of lawyers on both sides. With only 4% of Duty Solicitors being under the age of 35, this is only going to become increasingly worse with people retiring; having enough of the whole system not working and switching careers; use of multiple portals; lack of sufficient training with new court staff. We now have as a result massive delays in cases getting to Court and the caseloads becoming voluminous as a result. Without the staff nationally, this pressure will become worse and more will walk away from what is now a chaotic system. Really sad when our Justice system used to be the envy of the World.”*
- 2.5. CILEX considers the direct financial packages, and indirect incentives, which are available to criminal practitioners to be far too low. This limits the entrants to the market and increases the numbers of those leaving criminal practice to practice elsewhere or to leave the law entirely. This hinders case management, litigation, and advocacy, creating substantial demand pressures on lawyers – pressures which cannot be met, causing further backlogs.

Part 3 – Conclusion & Recommendations

- 4.1. CILEX asked members: “What would reduce the court backlog” and the top five responses were:
- Better IT systems
 - Increased funding for advocates
 - Increased funding for litigators
 - Better listing practice
 - Better communication between parties' representatives
- 4.2. Members of CILEX who responded to the survey outlined that they believe the court backlog will increase – with 80% believe it will substantially increase. No members outlined their belief that the backlog will decrease or remain stable.
- 4.3. CILEX recommends the following crucial points:
- (1) Greater political impetus is needed to reduce the court backlog. This needs to become a priority for the Government. Reducing the backlog is a cornerstone to unlocking other issues in the criminal justice system and will deliver for not only defendants, but also for victims, witnesses and third parties. This in turn will create downstream benefits in areas such as local authorities, welfare, housing, and employment. It will also reduce pressure on the prison system.
 - (2) Increases to funding for law students and lawyers wanting to practice within the law are needed. Operating more schemes to fund training for qualification, will lead to more individuals working within the sector – allowing a larger pool of advocates and litigators, as

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well as swelling the ranks within the profession to allow for more judges.

- (3) More funding is needed for existing lawyers, to allow them to remain within the sector. CILEX believes that the 15% outlined in the CLAIR review needs to be reviewed (as a result of inflation) both in terms of its effect so far and to consider revision should a more adequate figure be needed for litigators and advocates due to changing environmental demands and pressures. Such an objective review function was a role CILEX recommended for the Criminal Legal Aid Advisory Board (CLAAB).
- (4) A long-term funding approach for HMCTS is needed across a 10-year period. This will allow the court to recruit judges in a more coherent way, and to also recruit adequate court staff to assist in the migration to more online hearings.

4.4. Whilst CILEX has other views in relation to the criminal court backlog, and further recommendations, it has sought to limit the scope of its evidence.

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