

## INTRODUCTION – CIVIL LITIGATION PRACTICE RIGHTS

The entry criteria, learning outcomes and evidence of competency stated in this schedule sets out:

- the level of competency, knowledge and understanding required to practise in the area of civil litigation
- the elements required to evidence that level of competency, knowledge and understanding
- the level of competency required in the relevant skills for this area of practice – client care, research and interviewing
- a statement of the study and work-based experience that demonstrates that an applicant has attained the required level of competence, knowledge and understanding in all the required elements

**Note:** In order to obtain civil litigation practice rights applicants must combine the application with an application for rights of audience in chambers. An application for rights of audience in open court remains optional and that applicants seeking rights of audience accreditation in hearings in chambers and/or in open court should refer to the criteria set out in the Advocacy Rights accreditation document.

- the elements required to evidence the required level of competence for these relevant skills

Certification of Civil Litigation Practice Rights will ensure that the applicant has:

- met the application requirements
- an appropriate level of experience in the field of civil litigation in practice, which must include not less than 2 years relevant experience immediately preceding the application

- an appropriate level of knowledge and appreciation of the key legal features of civil litigation, including the ability to advise, manage and undertake different methods of dispute resolution in all aspects of case management commonly associated with civil practice. Emphasis will be given to the practical aspects of conducting cases in a civil litigation context through the court system but a level of knowledge and understanding of other forms of dispute resolution will also be expected
- the ability and experience to research aspects of case law, legal procedure and documentation that is current
- the ability and experience to interview clients appropriately, identify the client's objectives and different means of achieving those objectives and advise and be aware of the financial, commercial and personal priorities and constraints to be taken account of together with the costs, benefits and risks involved in a transaction or procedure or course of action
- the ability, and experience, to perform the tasks required to advance transactions or matters, to include (but not restricted by), drafting letters of advice to clients, communicating with co-professionals and with the court
- the ability and experience to draft statements of case, applications and witness statements
- the ability and experience to undertake advocacy in the required fields within this practice area
- demonstrated a level of experience, knowledge and understanding of all aspects of professional conduct and regulation which includes an understanding of the key ethical requirements contained in the relevant conduct rules and other law and regulations and where these may impact and be able to apply them in context.

Entry Level Competencies	Learning Outcome	Supporting Experience
	The entry requirement to achieve civil litigation practice rights seeks to ensure that a applicant will be able to demonstrate that he:	The applicant will need to provide evidence of:
<p><b>STAGE 1</b> <b>ENTRY CRITERIA I</b></p> <p>KNOWLEDGE UNDERSTANDING SKILLS EXPERIENCE</p> <p><b>ENTRY KNOWLEDGE AND UNDERSTANDING</b></p>	<ul style="list-style-type: none"> <li>Has practical knowledge, understanding, experience and skills</li> </ul>	<p><b>Either</b></p> <ul style="list-style-type: none"> <li>successful completion of CILEX Level 6 Professional Higher Diplomas in civil litigation practice and, Level 6 law of contract or tort</li> <li>successful completion of CILEX Level 6 Professional Higher Diplomas in the skills of Research and Client Care, and</li> <li>is a Fellow of CILEX</li> </ul> <p>NOTE: Where the applicant holds appropriate qualifications which enable an application for Fellowship to be made, this can be made concurrently with the application for Civil Litigation Practice Rights</p> <p><b>or</b></p> <ul style="list-style-type: none"> <li>Has supplied evidence of qualification and/or experience of an equivalent standard</li> </ul> <p>Where the applicant does not hold the relevant CILEx Level 6 Contract or Tort and/or Civil Litigation examination (or equivalent), they are required to demonstrate their knowledge and understanding of Contract or Tort and/or Civil Litigation through the submission of 5 portfolios</p>



	<p><b>Demonstrate knowledge and understanding of civil litigation</b></p>	<p>remoteness of damage, quantum, defences and remedies.</p> <ul style="list-style-type: none"> <li>• Examples from the applicant’s work to demonstrate the specific application of matters relating to the law of the tort of negligence. This may include, but is not limited to, matters of trespass, employer liability cases, liability for premises, nuisance and defamation.</li> </ul> <p><b>and</b></p> <ul style="list-style-type: none"> <li>• Examples from the applicant’s work to demonstrate experience in the application of facts to the law and of the practical advice to be given arising from that application.</li> <li>• Examples from the applicant’s work to demonstrate knowledge and understanding and experience of the practice and procedure of civil litigation to include, but not limited to, pre-action matters, ADR, the application of the CPR and of the steps required to progress an action through the courts. This may include, but is not limited to, matters of funding, the appropriate court, the tracks, causes of action, defences, counterclaims, additional claims, requests for further information, allocation, case management and directions, disclosure, evidence (both of fact and expert evidence), interim applications, costs, judgments, enforcement, appeals and professional conduct issues.</li> </ul>
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<b>ENTRY SKILLS</b>		
<p><b>Client care</b></p>	<p><b>Demonstrate knowledge and understanding of the role of client interviewing and negotiation in legal practice</b></p>	<ul style="list-style-type: none"> <li>• Where the applicant does not hold the relevant CILEx Level 6 Legal Research or Client Care (or equivalent) qualification, they should provide a portfolio of evidence and logbook which demonstrates how they met each of the outcomes set out below in accordance with <b>the Portfolio Guidelines</b>. Examples will be drawn from a range of cases from the applicant's case load.</li> <li>• Explain what they understand by successful client interviewing</li> <li>• Demonstrate interviews which they consider to be successful and identify what made them successful</li> <li>• Explain what they understand by negotiation and its importance in legal practice, including identification of a number of types of negotiation and the importance of preparation in successful negotiation. Identify a number of media through which negotiation can take place</li> <li>• Provide examples of the following which have been overcome in a negotiation situation: <ul style="list-style-type: none"> <li>○ The use of different types of negotiation using different media</li> <li>○ A situation in which preparation for negotiation was central to success</li> <li>○ A situation in which communication barriers were overcome for a successful outcome</li> <li>○ Use of persuasion to achieve a successful outcome</li> </ul> </li> </ul>



		good client care to benefit the business
<b>Legal research</b>	<p><b>Demonstrate knowledge and understanding of legal research and be able to analyse the scope and complexity of situations which need legal research</b></p> <p><b>Demonstrate knowledge and understanding of and be able to evaluate legal research sources</b></p> <p><b>Demonstrate knowledge and understanding of and be able to perform appropriate legal research</b></p> <p><b>Demonstrate knowledge and understanding of and be able to analyse the law in relation to practical problems</b></p> <p><b>Ability to record and evaluate information</b></p> <p><b>Ability to synthesise research to present advice</b></p>	<ul style="list-style-type: none"> <li>• Identify situations in which the need for legal research has arisen in their work</li> <li>• Explain the steps they undertook to identify relevant sources of information and how they determined the reliability, accuracy and currency of the information discovered</li> <li>• Explain their understanding of primary and secondary sources and how these sources can be used to ensure they have sufficiently researched the problem</li> <li>• Identify relevant statutes, case law and other sources from their research</li> <li>• Evidence how they prioritised and analysed the research and used this to better understand the issues raised in the legal matter</li> <li>• Evidence their synthesis of the research materials to provide a structured and accurate report</li> <li>• Evidence how they evaluated the research ensuring that it is comprehensive and sensitive to the needs of the recipient.</li> </ul>
<b>ENTRY EXPERIENCE</b> <b>ALL APPLICANTS</b>	<ul style="list-style-type: none"> <li>• Civil proceedings litigation experience in the 2 years preceding the application</li> </ul>	<ul style="list-style-type: none"> <li>• General description of civil work carried out</li> <li>• Description of typical case load</li> <li>• An indication of chargeable hours spent on civil proceedings work in each of the last 2 years</li> <li>• The proportion of time spent on civil proceedings work</li> </ul>



		<ul style="list-style-type: none"> <li>• The number of cases which have included preparation for trial</li> <li>• Details of the supervisory arrangements under which the applicant works and/or their supervisory responsibilities</li> </ul> <p>The applicant is required to demonstrate his experience of Contract/Tort Law and Civil Litigation through the submission of 3 portfolios in accordance with <b>the Portfolio Guidelines</b>. Examples will be drawn from a range of cases from the applicant's case load.</p>
<p><b>STAGE 2</b></p> <p><b>QUALIFICATION CRITERIA: SKILLS</b></p>	<p>The qualification requirement to obtain civil litigation practice rights will require the applicant to demonstrate that they meet the following skills:</p>	<p>In order to achieve accreditation the applicant needs to demonstrate the outcomes by either</p> <ul style="list-style-type: none"> <li>• Attendance on a course, or</li> <li>• Through work experience and by satisfying the qualification criteria</li> </ul> <p>This can be evidenced by the civil litigator demonstrating the ability to</p>
<p><b>Element 1.</b></p> <p>INTERVIEWING, ADVISING &amp; COMMUNICATING</p>	<p>INTERVIEWING</p> <ul style="list-style-type: none"> <li>• An ability to conduct effective interviews with the client and potential witnesses across a range of civil disputes.</li> </ul>	<ul style="list-style-type: none"> <li>• Prepare for an initial interview and apply a structured approach to it</li> <li>• Greet the interviewee appropriately</li> <li>• Use appropriate listening questioning and feedback techniques</li> <li>• Maintain rapport with the interviewee</li> <li>• Be sensitive to diversity issues</li> <li>• Keep a full and accurate record of the interview</li> <li>• Close the interview appropriately</li> <li>• Obtain all relevant information and identified the clients objectives</li> <li>• Is able to disseminate, appropriately, and</li> </ul>

	<p>ADVISING AND COMMUNICATING</p> <ul style="list-style-type: none"> <li>An ability to give and communicate clear accurate and practical advice both orally and in writing on matters relating to law, procedure, strategy and prospects of success (either orally, in writing or other media).</li> </ul>	<p>accurately, the information received from the client and seek appropriate instructions</p> <ul style="list-style-type: none"> <li>Give clear advice on all relevant matters arising</li> <li>Identify the options available and explain the pros and cons of each of those options</li> <li>Enable the client to make decisions in the case based on appropriate advice</li> <li>Give clear, appropriate and accurate advice regarding costs and funding</li> <li>Seek appropriate instructions and give clear advice regarding the next steps to be taken</li> <li>Deal appropriately with any diversity issues that arise</li> <li>Produce an accurate record of the interview</li> <li>Can identify and effectively communicate the complex legal, tactical and commercial factors involved in litigation and has appreciated the options available for seeking resolution of a dispute</li> </ul>
<p><b>Element 2.</b> COSTS AND FUNDING</p>	<p>COSTS</p> <ul style="list-style-type: none"> <li>An awareness of the requirements of the relevant practice rules that relate to contentious and non-contentious costs and be able to give clear, accurate and regular advice or information on costs issues arising in the case</li> </ul>	<ul style="list-style-type: none"> <li>Provide realistic costs estimates of all costs and disbursements at the start of the case and update throughout the progress of the action to include the cost implications of case strategies</li> <li>Ensure full compliance with the CPR costs rules</li> <li>Explain the differences between the indemnity and standard basis of costs</li> <li>Explain the cost implications of CPR 36 and other Offers to Settle</li> <li>Provide appropriate advice regarding the fees that will be charged</li> <li>Prepare estimates and schedules of costs</li> </ul>

	<p>FUNDING</p> <ul style="list-style-type: none"> <li>An ability to provide clear and accurate advice on funding options to include private funding, public funding, insurance, conditional fees and other forms or third party funding</li> </ul> <p>DOCUMENTATION</p> <ul style="list-style-type: none"> <li>Draft or complete the necessary documents relating to funding</li> </ul>	<ul style="list-style-type: none"> <li>Understand all matters relating to a summary assessment of costs and detailed costs assessments</li> <li>Identify the funding options available in a particular case</li> <li>Communicate the risks and benefits of each method of funding available</li> <li>Be aware of the funding regulations and restrictions (for example non-regulated activities)</li> <li>Advise the client, or service user, of significant developments in the case</li> <li>Identify and have regard to potential conflicts of interest on funding issues</li> <li>Identify the appropriate documents to put in place the agreed funding method</li> <li>Draft client care letters</li> <li>Draft or complete for the client or inform the client of the appropriate documentation and explain the requirements of the agreed funding method</li> <li>Draft funding agreements</li> <li>Prepare estimates and schedules of costs</li> <li>Understood all matters relating to a summary assessment of costs and detailed costs assessment</li> </ul>
<p><b>Element 3.</b> CONDUCT AND ETHICS</p>	<p>CONDUCT AND ETHICS</p> <p>PROFESSIONAL OBLIGATIONS</p> <ul style="list-style-type: none"> <li>An awareness of their professional obligations in a diverse range of situations in respect of matters relating to substantive law and the rules of professional conduct</li> </ul>	<ul style="list-style-type: none"> <li>Draft client care letters</li> <li>Identify situations where their obligations to: the court, their client, other lawyers, the public, and</li> </ul>

	<ul style="list-style-type: none"> <li>• An awareness of their obligations to: the court, their client, other lawyers, the public and money laundering legislation and regulation</li> </ul> <p>CONFLICTS</p> <ul style="list-style-type: none"> <li>• An ability to identify and deal appropriately with conflicts of interest throughout the handling of the matter</li> </ul> <p>WITHDRAWAL FROM A CASE</p> <ul style="list-style-type: none"> <li>• an awareness of when they can and/or must withdraw from a case; the proper steps to be taken when doing so whilst observing the interest of the client</li> </ul> <p>UNDERTAKINGS</p> <ul style="list-style-type: none"> <li>• an understanding of the bases for the giving of professional undertakings to clients, the court and others; the implications of giving such undertakings; the consequences of breaching such undertakings and demonstrate awareness of the appropriate use of undertakings in legal proceedings</li> </ul> <p>CONFIDENTIALITY AND PRIVILEGE</p> <ul style="list-style-type: none"> <li>• In respect of confidentiality and privilege the applicant must demonstrate an understanding of and the ability to apply the law and practice of confidentiality and privilege in a variety of practical contexts.</li> </ul>	<p>money laundering legislation arise</p> <ul style="list-style-type: none"> <li>• Demonstrate an understanding of the application of their professional obligations in their dealing with these persons or bodies</li> </ul> <ul style="list-style-type: none"> <li>• Identify and deal appropriately with conflicts: arising between the applicant and the client or service user, arising between the applicant and their duty to the court, or arising between him and any relevant third party</li> </ul> <ul style="list-style-type: none"> <li>• Show an awareness of the need to withdraw; show an awareness of the proper action when the client refuses to make proper disclosure, show an awareness when the client's or service user's interests conflict with the applicant's duties to the court or any other circumstances where withdrawal is required</li> </ul> <ul style="list-style-type: none"> <li>• Identify when an undertaking may be required and shown an awareness of the implications of giving the undertaking and putting in place, or obtaining the appropriate safeguards in respect of the undertaking given</li> </ul> <ul style="list-style-type: none"> <li>• Distinguish between legal advice privilege and litigation privilege</li> <li>• Distinguish between confidential information and privileged information</li> </ul>
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	<p>COMPLAINTS AND NEGLIGENCE</p> <ul style="list-style-type: none"> <li>• In respect of complaints and negligence the applicant must demonstrate an understanding of the professional conduct rules as they are applied in practice and the steps that must be taken in the event that a mistake (or an act of negligence) as occurred.</li> </ul>	<ul style="list-style-type: none"> <li>• Identify the circumstances when a complaint could be made or negligence may arise</li> <li>• Describe/explain the complaints procedure operated by his professional body</li> <li>• Be aware of procedures or processes which can be adopted to reduce the risk of complaints or allegations of negligence being made</li> <li>• Explain what steps would need to be taken in respect of the identified, or potential, mistake or act of negligence</li> <li>• Identify the appropriate professional conduct rules applying and the indicative behaviours that would need to be shown to evidence that no mistake or negligence had occurred</li> </ul>
<p><b>Element 4.</b> MANAGING LITIGATION WORK</p>	<p>FILE HANDLING</p> <ul style="list-style-type: none"> <li>• An ability to plan and manage litigation, to progress matters expeditiously and maintain files and records in accordance with procedures</li> </ul>	<ul style="list-style-type: none"> <li>• Plan and prioritise a workload and manage files and tasks concurrently, efficiently, making the best use of available resources, exercise good judgment, been realistic (as to the client's or service user's expectations, proportionality, time or available funds) and seek support when necessary</li> <li>• Show that he is able to deal with a diverse range of client issues presenting a range of civil disputes</li> <li>• Deal with matters without causing delay.</li> <li>• Maintain files and systems (which may include electronic systems) appropriately and correctly</li> <li>• Ensure that files are up to date and 'in budget'</li> <li>• Manage financial transactions on the file correctly</li> </ul>

	<p>CASE ANALYSIS AND CASE PREPARATION</p> <p>An ability to formulate a case strategy which is:</p> <ul style="list-style-type: none"> <li>• Compatible with the client's objectives and</li> <li>• Is legally and procedurally sustainable</li> </ul> <p>An ability to draft legal documents and letters that can be used effectively in the presentation and procedures for an action to proceed either by way of settlement or litigation</p>	<p>and appropriately</p> <ul style="list-style-type: none"> <li>• Has exercised and applied appropriate case analysis, critical judgment and evaluation through a thorough risk assessment and has identified the issues arising and applied the correct law and procedures to a matter</li> <li>• Is able to adopt and maintain an appropriate, and effective, case strategy that is compatible with the client's aims or requirements and that is legally, procedurally and ethically sustainable</li> <li>• Has shown an ability to think independently and highlight strategies available to the client that meet the client's objectives</li> <li>• Is able to act within a team and independently and demonstrates self-direction and an assumption of responsibility for the actions undertaken</li> </ul> <ul style="list-style-type: none"> <li>• Identify the 'strengths' and the 'weaknesses' in a case</li> <li>• Identify gaps in available evidence</li> <li>• Draw up a realistic case plan</li> <li>• Relate the case theory to the client's or service user's objectives and expectations</li> <li>• Provide the client with a balanced view of the likely risks, costs and benefits of the case strategies</li> <li>• Adopt a cost effective, analytical and pragmatic approach to the wider issues (which may include the client's or service users commercial objectives)</li> </ul>
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	<p>DEALING WITH OTHER PROFESSIONALS</p> <ul style="list-style-type: none"> <li>• An appropriate level of professionalism in establishing an effective working relationship with others involved in a legal matter</li> <li>• Identified and provided appropriate information to others involved in a matter which may include;</li> <li>• An ability to instruct an advocate when necessary</li> <li>• An ability to select, appoint and instruct an expert and shown an awareness of the range of expertise that may be needed for a case</li> </ul>	<ul style="list-style-type: none"> <li>• Deal with other professionals involved in a matter appropriately, professionally and ethically</li> <li>• Provide other professionals involved in a matter with appropriate information, instructions and guidance</li> </ul>
<p><b>Element 5.</b> SETTLEMENT V LITIGATION</p>	<p>SETTLEMENT</p> <ul style="list-style-type: none"> <li>• Be able to identify when settlement of a case is in the client's interest and give clear and accurate advice on settling his case and take the necessary steps to secure settlement</li> </ul> <p>NEGOTIATION</p> <ul style="list-style-type: none"> <li>• Be able to negotiate in a clients case</li> </ul>	<ul style="list-style-type: none"> <li>• Explain the merits of settlement in achieving the client's or service user's objectives</li> <li>• Give consideration to offers to settle</li> <li>• Understand the significance of 'open' offers, Part 36 Offers and Global Offers</li> <li>• Explain the advantages of a form of offer</li> <li>• Advise the client when responding to an offer to settle</li> <li>• Understands the appropriate way to settle an action (for example by discontinuing or consent orders – these examples are not an exhaustive list of examples that the applicant can use to demonstrate awareness and experieee in matters relating to settlement)</li> <li>• Understands and has applied an appropriate use of the different types of consent orders</li> <li>• Negotiate a settlement, this may include, but is not limited to, effective and appropriate negotiation immediately before, and during, a trial or hearing</li> <li>• Prepare effectively prior to negotiating with the</li> </ul>

	<p>ADR</p> <ul style="list-style-type: none"> <li>• Be aware of the ADR processes available, including mediation, early neutral evaluation, and expert determination, identify the relevant and appropriate method of ADR and be aware of the role of the persons engaged in a form of ADR</li> </ul>	<p>other party</p> <ul style="list-style-type: none"> <li>• Identify the client's interests and expectations (and managed those expectations appropriately)</li> <li>• Identify the other party(ies) interests and expectations</li> <li>• Identify the strengths and weaknesses of the client's and other party(ies) cases</li> <li>• Prepare an agenda to deal with the relevant issues</li> <li>• Explain the appropriateness of the form of negotiation entered into (this may be by, but not limited to, an exchange of letters, or by a meeting)</li> <li>• Explain the nature and procedures of alternative dispute resolution methods</li> <li>• Explain the advantages and disadvantages of those methods</li> <li>• Recommend any appropriate ADR process which would be in the client's, or service user's, best interests</li> <li>• Advise the client or service user how to pursue a particular ADR process</li> </ul>
<p><b>Element 6.</b> LEGAL WRITING AND DRAFTING</p>	<p>LEGAL WRITING AND DRAFTING</p> <ul style="list-style-type: none"> <li>• Understand and apply the principles of good writing</li> <li>• Use accurate, straightforward and modern language</li> <li>• Use correct spelling, grammar, syntax and punctuation</li> <li>• Draft a document that is clear, logical, consistent and with appropriate structure and format</li> <li>• Draft a document that forms a coherent whole and, where appropriate, advances the matter, where appropriate identifies the client's objectives and priorities, where</li> </ul>	<ul style="list-style-type: none"> <li>• Understand and apply the principles of good writing</li> <li>• Use accurate, straightforward and modern language</li> <li>• Use correct spelling, grammar, syntax and punctuation</li> <li>• Draft a document that is clear, logical, consistent and with appropriate structure and format</li> <li>• Draft a document that forms a coherent whole</li> </ul>



	<p>appropriate provides a clear risk analysis</p> <ul style="list-style-type: none"> <li>• Address the document appropriately and accurately</li> <li>• Understand the appropriate uses of e-mails, letters, memoranda and other forms of written communication</li> <li>• Choose the appropriate medium, form and style of written communication</li> <li>• Tailor the written communication to suit the purposes of the communication and the needs of different clients or recipients</li> </ul>	<p>and, where appropriate, has advanced the matter, and where appropriate has identified the client's objectives and priorities, and where appropriate provided a clear risk analysis</p> <ul style="list-style-type: none"> <li>• Address the document appropriately and accurately</li> <li>• Understand the appropriate use of e-mails, letters, memoranda and other forms of written communication</li> <li>• Choose the appropriate medium, form and style of written communication</li> <li>• Tailor the written communication to suit the purposes of the communication and the needs of different clients or recipients</li> </ul>
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