

THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

RIGHTS OF AUDIENCE QUALIFICATION SCHEME

GUIDELINES FOR APPLICANTS COMPLETING AN APPLICATION FOR A CERTIFICATE OF ELIGIBILITY

INTRODUCTION

These guidance notes have been produced to assist applicants in completing the application form to obtain a certificate of eligibility to undertake the CILEx rights of audience qualification.

Applicants should note that the application form is divided into 5 parts.

- ◆ Part 1 asks for general information which should be completed by all applicants.
- ◆ Part 2 asks for details of advocacy and litigation experience and should be completed by all applicants.
- ◆ Part 3 is the portfolio requirements. All applicants must submit portfolios which meet the guidelines in this document.
- ◆ Part 4 is the declaration which should be completed by all applicants.
- ◆ Part 5 is an application for exemption and should only be completed by applicants who do not have the relevant examination passes.

All applicants should ensure that they enclose the correct fee with their application form.

RIGHTS OF AUDIENCE QUALIFICATION

This section provides a summary of CILEx's extended rights of audience scheme.

Qualification summary

CILEx is an approved regulator under the Legal Services Act 2007 for the purpose of awarding advocacy rights to Chartered Legal Executive Lawyers who complete the rights of audience qualification scheme.

The qualification scheme is also open to Graduate Members of CILEx. Graduate Members will be unable to exercise any additional rights that are awarded to them until they qualify as Chartered Legal Executive Lawyers. The course will be a natural transition for Graduate Members from the Level 6 qualification and will enable them to exercise the additional rights immediately upon qualification as a Chartered Legal Executive Lawyer.

CILEx awards three separate advocacy certificates: Civil Proceedings, Criminal Proceedings and Family Proceedings. Graduate Members and Chartered Legal Executive Lawyers will apply for the certificate which provides the rights of audience for the area of law in which they practice.

Certificate of Eligibility

To qualify for the additional rights a Graduate Member or Chartered Legal Executive Lawyer must make an application for a Certificate of Eligibility to undertake the qualification for the specialism for which they seek extended rights of audience. This application will be considered by the Admissions and Licensing Committee. The Committee will award a Certificate of Eligibility to applicants who meet the following requirements:

- ◆ They are Chartered Legal Executive Lawyers or Graduate Members of CILEx and are in good standing.
- ◆ They currently undertake civil, family or criminal work.
- ◆ They are employed by or are a manager in an organisation which is owned or managed by persons authorised to provide litigation services, or which is authorised to provide litigation services under the Legal Services Act 2007 or be employed by an organisation in which they work under the supervision of a person who is authorised to provide litigation services under the Legal Services Act 2007.
- ◆ They have gained an acceptable level of experience of conducting litigation in civil, family or criminal work, including relevant advocacy experience that meets the knowledge and experience guidelines that are set out in these guidelines (see later). As part of this requirement applicants will be required to complete portfolios that will be marked by External Advisors.

- ◆ They have sufficient knowledge of relevant law and legal practice, in accordance with the knowledge and experience guidelines of CILEx to undertake an advocacy skills course and, if successful therein, to exercise the relevant rights of audience.
- ◆ They are able to provide references from two people, other than their employer, who are able to offer an informed opinion as to their ability to meet the knowledge and experience criteria and their suitability to undertake the advocacy skills course.
- ◆ It is not possible for Chartered Legal Executive Lawyers as managers to practice independently.

Advocacy skills course

On the award of a Certificate of Eligibility the Graduate Member or Chartered Legal Executive Lawyer will be eligible to undertake the advocacy skills course. There will be a separate course for each specialism.

The course will involve the teaching of advocacy skills relevant to the certificate the applicant seeks. The course will be of at least 6 days duration and must involve formal assessments of advocacy skills and a test in the law of evidence. The course provider will be responsible for testing and will inform CILEx of the assessment results.

Graduate Members and Chartered Legal Executive Lawyers will be advised, when they obtain their Certificate of Eligibility, to obtain and study a self-study manual in the law of evidence. This will assist them in their preparation for the evidence test.

Rights of audience certificate

A Chartered Legal Executive Lawyer who has successfully completed and passed the advocacy skills course and evidence test may apply to CILEx for the relevant rights of audience certificate. A Chartered Legal Executive Lawyer must be employed by or be a manager in an organisation authorised to provide litigation services or work under the supervision of an organisation authorised to provide litigation services at all times while they hold a rights of audience certificate. They must not practice independently.

Graduate Members will be eligible to apply for the rights of audience certificate once they have qualified as a Chartered Legal Executive Lawyer.

The Advocacy Certificates

CILEx is able to award the following rights of audience under each certificate.

Civil Proceedings Certificate

- ◆ to appear in open Court in the County Court in all actions, except family proceedings;
- ◆ to appear before Justices or a District Judge (Magistrates Court) in the Magistrates Courts in relation to all matters originating by complaint or

application, including applications under the licensing, betting and gaming legislation;

- ◆ to appear before any tribunal under the supervision of the Council on Tribunals where the tribunal rules provide for a non-discretionary right of audience being available to barristers and solicitors;
- ◆ to appear before Coroners' Courts in respect of all matters determined by those Courts and to exercise rights of audience similar to those exercised by solicitors and barristers.

Family Proceedings Certificate

- ◆ to appear in Court (including in open court) in all County Court family proceedings;
- ◆ to appear before Justices or a District Judge (Magistrates Court) in the Family Proceedings Courts;
- ◆ to appear before Coroners' Courts in respect of all matters determined by those Courts, and to exercise rights of audience similar to those exercised by solicitors and barristers.

Criminal Proceedings Certificate

- ◆ to appear before Justices or a District Judge (Magistrates' Court) in all adult magistrates courts in relation to all matters within that Court's criminal jurisdiction;
- ◆ to appear before Justices or a District Judge (Magistrates' Court) in all Youth Courts in relation to all matters within that Court's criminal jurisdiction.
- ◆ to appear in the Crown Court or High Court before a judge in chambers to conduct bail applications;
- ◆ to appear in the Crown Court on appeal from the Magistrates' Court, the Youth Court or on committal of an adult for sentence or to be dealt with, if s/he, or any solicitor by whom s/he is employed or any other solicitor or Fellow in the same employment as her/him, appeared on behalf of the defendant in the Magistrates' Court or Youth Court;
- ◆ to appear before Coroners' Courts in respect of all matters determined by those Courts, and to exercise rights of audience similar to those exercised by solicitors and barristers.

Renewals of advocacy certificates

The first advocacy certificate is valid for 12 months and must be renewed on the first 1 June or 1 December following the expiration of the certificate. The renewal process will require candidates to produce portfolios of experience that they have gained in exercising the new rights.

Subsequent Civil Proceedings and Family Proceedings certificates will be valid for three years and must be renewed in the first 1 June or 1 December following expiration of the certificate on the basis that the Chartered Legal Executive Advocate undertakes the required advocacy CPD each year.

Subsequent Criminal Proceedings certificates will be valid indefinitely provided the advocate has met the requirements of the Quality Assurance Scheme for Advocates.

COMPLETING THE APPLICATION FORM

All applications should be typed.

Part 1 – General Information

1: Personal Details

Please insert your contact details including your home address in this section. If you wish CILEx to communicate with you at an address different to your home address please provide that communication address in this section.

2: Advocacy Certificate

Please tick the box next to the Certificate that you wish to apply for. The Rights of Audience available for each Certificate are set out at page 3 of this document. You should seek the Certificate which grants you the rights that you wish to obtain. This will be in the area of law in which you practice and have experience.

3: Examinations Passed

You will be expected to have passed the CILEx Level 6 examinations relevant to the practice area in which you seek advocacy rights. The subjects that the Level 6 passes must be obtained in are set out below for each Certificate. (The Level 6 examinations have previously been called the Membership Part II and Level 4 examinations).

- ◆ Civil Proceedings Certificate – you should have passed the CILEx Level 6 examinations in Contract, Tort and Civil Litigation.
- ◆ Criminal Proceedings Certificate – you should have passed the CILEx Level 6 examinations in Criminal Law and Criminal Litigation.
- ◆ Family Proceedings Certificate – you should have passed the CILEx Level 6 examinations in Family Law and Family Practice.

If you have passed the examinations relevant to the Certificate that you wish to obtain you should complete this section of the form. You should indicate next to the subject when you passed the examination.

If you were granted an exemption from the examinations relevant to the Certificate that you wish to obtain for the purpose of gaining Graduate membership status, you may be entitled to an automatic exemption for the purpose of this application. You should provide full details of the exemption you were previously granted in this section of the form.

If you have not passed the examinations or been granted an exemption by CILEx you should complete Part 5 of the application which is a separate form that has been enclosed with the application pack.

4: Employment Details

Please provide a succinct and accurate summary of your employment over the previous five years. You should provide a brief outline of your job, the nature of your duties, workload and your status or seniority within the firm.

5: Prior Conduct

Answer all 7 questions of prior conduct. Where relevant submit copies of any Orders or Findings made against you with the application form.

Part 2 – Advocacy and Litigation Experience

This section should be completed by all applicants. Please note that for the purposes of question 7.6 the guidelines differ depending upon the Certificate which you seek.

6: Litigation Experience

Indicate how many years litigation experience you have obtained and how much of this experience has been gained in your capacity as a fee earner.

7: Outline of Litigation Experience

- 7.1 Indicate how many chargeable hours you spend on litigation work each year. If it is not possible to calculate your chargeable hours on a yearly basis please indicate how many chargeable hours you spend on litigation work on a weekly or monthly basis.
- 7.2 Indicate what percentage of your time is spent on litigation work overall and how it is divided into specialisations. The percentage should be expressed as a percentage of the overall work you undertake. For example, you might undertake 70% litigation work (40% of which is debt recovery and 60% of which is personal injury) and 30% of your time may be taken by administrative, managerial or other duties in other areas of law.
- 7.3 Provide a general description of the work you carry out. You should indicate the types of litigation work you undertake, the main areas of specialism you work in currently and, where relevant, previously.
- 7.4 Provide an outline of the range and nature of your typical caseload. Use this section to outline the seriousness and complexity of the cases you deal with. It would be helpful to provide a summary of any difficult cases you have handled. If your current caseload is not a normal reflection of your work, please refer to your caseload during an earlier period and explain why your current caseload has not been a true reflection of your actual work.
- 7.5 Indicate what proportion of the litigation cases you have handled involved preparation for trial in the last two years. The Admissions and Licensing Committee recognises that the aim in proceedings is to settle as amicably as possible and that therefore fewer cases will proceed to trial.

Advocacy Experience

7.6 Civil / family proceedings applicants

Provide an outline of the range and nature of advocacy experience you have gained. The outline should provide details of the types of cases you have handled, the types of hearing you have been involved in (for example, directions hearings, case management conferences, summary trials etc). The outline should also indicate what proportion of these cases typically involved contested or uncontested issues and what courts you have appeared in. It would also be helpful if you could outline the nature of the issues involved.

The outline can either be provided as a summary of the work you have handled or alternatively in a list format.

Criminal proceedings applicants

The Admissions and Licensing Committee recognises that members seeking the Criminal Proceedings Certificate will not have gained advocacy experience because they currently have no rights of audience in the criminal courts. You should instead provide details of police station representation work you have undertaken.

7.6.1 Confirm whether or not you are accredited as police station representative by the Legal Services Commission or under any duty solicitor scheme.

7.6.2 Provide details of how long you have held accreditation for.

7.6.3 Provide details of the range and nature of police station work you have undertaken. Your outline should describe the number and the types of cases in which you have provided advice and the nature of advice you have been required to provide during police station interviews.

7.7 Provide an outline of the range and nature of advocacy you have observed. The outline should indicate the nature of the issues involved, who conducted the advocacy, the courts in which the advocacy took place, and whether the cases were contested or uncontested.

The summary can either be provided as a written summary or in a list format.

7.8 Use this section to provide details of any distinctive features of your work. For example, you may handle complex cases which involve substantial research rather than volume day to day litigation work.

7.9 Describe how your work is supervised. You should indicate who supervises your work, their status within the organisation, the amount of supervision exercised and the type of supervision exercised over your work.

7.10 Provide details of any supervision you exercise over the work of other members of staff.

Part 3 – Portfolio

You are required to submit portfolios of cases you have handled in the area of law in which you practice.

Your portfolios must be typed in sentence case. The cases that you refer to in the portfolios must have occurred in the previous two years. You should anonymise client details in your portfolios. The portfolios should not refer to the parties in the case by name.

Number of portfolios needed

You need to produce portfolios of 5 cases in which you can demonstrate your experience of litigation and portfolios of 3 cases in which you can demonstrate your advocacy experience.

The Admissions and Licensing Committee recognises that applicants seeking the criminal proceedings certificate will not have advocacy experience. If you are applying for the criminal proceedings certificate you can produce portfolios of cases where you have provided advice as a police station accredited representative instead of advocacy cases.

The table below sets out which portfolio forms you need to produce and how many portfolios you need to produce.

<i>Certificate</i>	<i>Litigation portfolios</i>	<i>Advocacy / police station portfolios</i>
Civil	5	3 advocacy
Family	5	3 advocacy
Criminal	5	3 portfolios in total. If you are a police station representative you should complete 3 police station portfolios. If you are not a police station representative you can complete 3 advocacy portfolios. The advocacy portfolio form for police station cases is different to the civil and family advocacy form NB – only two portfolios can refer to observed advocacy

Presentation of the portfolios

You can chose to either complete the portfolio forms that CILEx Regulation has developed or produce your own portfolios.

CILEx Regulation has produced separate forms for the litigation, advocacy and police station portfolios which are enclosed with the application pack. You will need to copy these for each case that you submit in the portfolio.

The questions on the forms are designed to enable you to provide the details required to be covered in the portfolio. If you chose not to use the portfolio forms you must ensure that your portfolios answer the questions on the portfolio forms. Each question must be answered fully in turn. Reference to answers to other questions will not suffice.

You must detail in your answers specifically what your role was and not refer to 'the firm' or 'we'.

Where abbreviations are used, an initial definition must be provided.

Portfolios should be printed single-sided.

You are encouraged to send your first case portfolio to advocacy@cilexregulation.org.uk for initial feedback. We will check whether you have completed the portfolio form correctly and provide you with comments and feedback. This should help you with completion of the other 7 portfolios.

Information to be covered in the portfolio

The guidelines for what the Admissions and Licensing Committee requires you to cover in your portfolio are at appendix 2 to these notes.

The portfolio should cover the issues set out at paragraphs 4 and 5 of the guidelines if you are applying for either the civil or family proceedings certificate. The portfolio should cover the issues set out at paragraphs 4 and 6 of the guidelines if you are applying for the criminal proceedings certificate. The questions on the CILEx Regulation portfolio forms are intended to enable you to show how you meet these guidelines.

A further summary of the information required in the litigation portfolios and draft portfolios are enclosed at appendix 3 to these notes. Draft portfolios are intended to act as guidance only to enable you to assess how a portfolio may be completed.

Marking of portfolios

The portfolios will be marked by External Advisors who will then submit their report to the Admissions and Licensing Committee. The External Advisors are specialists in civil, criminal or family proceedings and will mark portfolios relevant to their specialisms.

If the External Advisors raise any queries or concerns about the portfolio we shall contact you to enable you to have the opportunity to address those issues before your application is referred to the Admissions and Licensing Committee.

8: Additional Information

Use this section to provide any additional information not provided elsewhere in the application which you wish the Admissions and Licensing Committee to take into account when it considers your application.

Part 4 – Declaration

9: Employers Endorsement

Your employer must complete this endorsement. It requires your employer to confirm that the information you have provided in the application form is accurate and that they expect you to continue undertaking advocacy during the next 12 months under their employment.

The endorsement should be provided by either a partner or a supervising solicitor of the firm. Where possible it should be the partner or solicitor who has ultimate supervisory responsibility for your work. Where you are a manager in an organisation the endorsement must be provided by another manager in the organisation. You cannot provide your own endorsement.

10: Referees

You should provide the names, addresses and telephone numbers of two referees who can attest to your knowledge of the area of legal practice in which you seek advocacy rights.

Referees should have first hand knowledge of your advocacy experience and must be able to offer an informed opinion as to your suitability to be authorised to become a Chartered Legal Executive Advocate. Referees can be a member of the judiciary, a court official or another member of the legal profession. However, a referee cannot be your employer, former employer or co-employee. At least one referee should be a member of the judiciary.

You may wish to ask members of the judiciary, court clerks, Counsel or Solicitors against whom you have appeared to provide references.

You should obtain the permission of the referees to provide their name before submitting the application to CILEx Regulation. Upon receipt of the application CILEx will write to the referee to obtain a reference. Any reference received will be treated as confidential and CILEx Regulation will not be able to disclose a copy to you.

Stipulate the context in which the referee provides a reference for you e.g., as a member of the judiciary, opposing counsel or solicitor.

11: Declaration

Please ensure that you sign the declaration and submit the correct fee with your application. The fee payable is £110. Cheques should be made payable to the 'Institute of Legal Executives'.

Application forms should be submitted to CILEx Regulation, Kempston Manor, Kempston, Bedford MK42 7AB.

Further advice and assistance

If you require further advice and assistance in completing this form please contact the professional development and regulation department on 01234 845778 or advocacy@ilexstandards.org.uk.

Part 5 – Alternative examinations or knowledge of subject area

This section should only be completed by applicants who have not passed or gained exemption from the CILEx Level 6 examinations relevant to the Advocacy Certificate sought.

The Admissions and Licensing Committee can give credit for knowledge acquired through alternative means to the CILEx Level 6 examinations. This form is designed to enable you to seek exemption from the need to pass the relevant examinations by providing evidence of alternative experience or examinations that you may have.

12: Alternative Examination Passes

If you have passed alternative examinations to the CILEx Level 6 examinations in the subjects required for the Certificate which you seek, complete this section of the form.

You will need to satisfy the Admissions and Licensing Committee that the qualification upon which you rely covered substantially the same topics and to the same depth as those set out in the knowledge and experience guidelines at Appendix 1 to these notes. The Committee must be satisfied that the knowledge was assessed to a comparable standard.

13: Experience of Subject Area

If you have not passed or gained exemption from either the CILEx Level 6 examination or comparable examination to the Certificate that you seek you will have to satisfy the Admissions and Licensing Committee that you have adequate knowledge of the subject area. For example, you might rely on knowledge gained through practice.

A separate form must be completed for each subject from which you seek exemption.

Complete this part of the form to provide evidence to satisfy the Admissions and Licensing Committee that the knowledge upon which you rely meets the knowledge requirements set out at Appendix 1 to these notes. The knowledge requirements are listed for each subject. To meet these requirements you need to show your knowledge equates to the knowledge you would have if you had passed the examination for the subject in which you seek an exemption. Your answers to this part of the form should map the knowledge you have gained against the knowledge requirements set out at Appendix 4 which are the syllabuses for each subject.

The knowledge requirements are listed at the following paragraphs for each certificate:

Civil proceedings – paragraphs 7, 8 and 9 (appendix 2) and appendix 4
Criminal proceedings – paragraphs 7 & 8 (appendix 2) and appendix 4
Family proceedings – paragraphs 7 and 8 (appendix 2) and appendix 4

The Admissions and Licensing Committee will need to be satisfied that you have covered a comparable range of topics and have provided evidence that you have a comparable level of knowledge to a person who has passed the CILEx level 6 subject. If the Admissions and Licensing Committee is not satisfied that your knowledge meets the requirements it can require you to undertake further study and obtain acceptable qualifications. For this reason you should try to match your experience against the syllabus for the subject from which you seek exemption in detail.

The following guidance covers each question on the form.

13.1 You should provide a summary of the knowledge you have gained in each subject for which you seek an exemption. The summary should include an outline of your experience, the range of the work you have undertaken and an indication of what knowledge you have gained from the experience and work undertaken. You should indicate the time span that your experience has been gained over and the nature of the cases you have handled.

Your answer to this question should map your knowledge and experience against the syllabus for which you seek an exemption. The syllabuses appear at Appendix 4 of these notes.

13.2 Outline the mechanisms by which you gained your knowledge. For example, knowledge may have been gained by on-the-job training, CPD, research, studying without a formal qualification or through handling cases.

13.3 In your answer to this question provide evidence of how you have used the knowledge you have gained in that area of law or practice. You should show how you applied the knowledge for the syllabus to your work.

13.4 In your answer to this question indicate how you apply rules and principles relating to the area of law to your cases. Your answer should cover all the areas of the syllabus where you have relevant knowledge.

13.5 Provide an outline of what proportion of your work involves dealing with the area of law in which you seek an exemption in proportion to your other responsibilities.

Please remember that you must answer these questions for each subject that you seek an exemption. Copy the form and the complete one copy for each subject that you seek exemption.

KNOWLEDGE AND EXPERIENCE GUIDELINES

CIVIL PROCEEDINGS

Certificate of Eligibility

1. Graduate Members and Chartered Legal Executive Lawyers who make an application for extended Rights of Audience must submit details of the civil litigation and advocacy experience they have gained. These details will form part of their application for a Certificate of Eligibility to undertake the advocacy course.
2. The Applicant must provide the following information about his experience:
 - Total years litigation experience and number of years as a fee earner.
 - Types of litigation undertaken and main areas of specialism currently and previously.
3. In relation to the 2 years preceding the application applicants must give the following information:
 - General description of the litigation work carried out.
 - Typical caseload.
 - Chargeable hours spent on litigation work in each year.
 - Proportion of time spent on litigation work.
 - Proportion or number of cases which have included preparation for trial.
 - Range and nature of advocacy experience including observed advocacy.
 - Details of any distinctive features of the applicant's work.
 - Details of supervisory arrangements under which the applicant works and/or his supervisory responsibilities.
4. Applicants must also submit a portfolio of cases demonstrating their litigation and advocacy experience in compliance with the competence criteria set out below. The portfolio requirements are set out in the **Portfolio Guidelines**.
5. The Admissions and Licensing Committee will consider Applications for Certificates of Eligibility. Graduate Members and Chartered Legal Executive Lawyers will need to satisfy the Committee that they have an appropriate level of knowledge of civil law, particularly the law of tort and contract, civil procedure and the rules of evidence in civil proceedings and that their experience of civil proceedings work is sufficient to enable them to undertake the advocacy course and, upon

successful completion of that course, to exercise the extended rights of audience that they will be granted.

Competence Criteria

6. In deciding whether an applicant has adequate knowledge and experience the Admissions and Licensing Committee will have regard to the Competence Criteria listed below.

Knowledge of the law of tort

7. The Committee will expect an applicant to have successfully completed a CILEx Level 6 Professional Higher Diploma paper in the Law of Tort or equivalent qualification, so that they are able to:

- Understand the nature of liability in tort and defences.
- Know and understand the elements of liability in tort.
- Analyse a factual situation in terms of relevant tort concepts.
- Apply the rules and principles of liability in tort.
- Analyse factual situations using the law of tort.

Knowledge of the law of contract

8. The Committee will expect an applicant to have successfully completed a CILEx Level 6 Professional Higher Diploma paper in the Law of Contract or equivalent qualification, so that they are able to:

- Demonstrate knowledge of the law of contract.
- Analyse factual situations using the law of contract.
- Apply the rules and principles relating to the law of contract so that they understand – the nature of contract; offer, acceptance and termination of offer; intention to create legal relations; consideration; terms of contract; exemption clauses; mistake; misrepresentation; duress; undue influence; incapacity; illegality; privity of contract; discharge of contract and remedies for breach of contract.

Knowledge of civil litigation

9. The Committee will expect an applicant to have successfully completed a CILEx Level 6 Professional Higher Diploma paper in Civil Litigation or equivalent qualification, so that they are able to:

- Demonstrate knowledge and understanding of the following aspects of civil procedure and the law of evidence – financing civil litigation and conduct; pre-action considerations; commencing proceedings; allocation, progress to trial and directions; the small claims track; the fast track; the multi track; preparation for trial and applications for interim orders; payments into court and interim payments; Part 20 proceedings; special categories of litigant; trial; judgment, enforcement and costs.
- State and apply relevant legal rules and sources of law in civil proceedings and to be able to explain their effects.

- Demonstrate awareness of the impact of the Human Rights Act 1998 in civil litigation.
- Identify and deal appropriately with issues relating to conduct and ethics as they may arise in factual situations.

Analysis, critical judgment and evaluation

10. The committee will expect an applicant to be able to:

- Recognise and rank items and issues in terms of relevance and importance.
- Integrate information and materials from a variety of different sources.
- Undertake the analysis of factual information in a logical and coherent way.
- Make critical judgments of the merits of particular arguments.
- Present and make a reasoned choice between alternative solutions.

Autonomy and an ability to learn

11. The committee will expect an applicant to be able to:

- Act independently in planning, preparing and undertaking tasks in the above areas of law.
- Undertake independent research in the above areas of law using standard legal information sources.
- Reflect on his or her learning and to make constructive use of feedback.

12. The Admissions and Licensing Committee may accept alternative evidence of the applicant's knowledge of the law of tort, the law of contract and of civil litigation other than the successful completion of the relevant head of the Level 6 Professional Higher Diploma in Law. The Applicant would need to provide evidence that the content of an alternative qualification substantially covered the criteria above and that the qualification was assessed at a comparable standard. An applicant who seeks to rely on knowledge gained through experience or means other than qualifications must submit evidence to the Admissions and Licensing Committee to demonstrate that he has knowledge of the law required by the competence criteria and that his level of knowledge is to a comparable standard to the Level 6 Professional Higher Diploma in Law.

Evaluating Experience

Litigation Experience

13. The Committee will expect applicants to have a range of experience across the area in which they are employed. Applicants should have handled cases from the beginning to the end of the process, which should include preparing cases for trial and undertaking post-trial work.

14. The Committee will consider the quality of experience that an applicant has gained as well as the quantity of experience. In considering the quality of experience that an applicant has gained the Committee will look at various factors such as the seriousness and complexity of cases handled, difficult cases handled, advocacy conducted in contested proceedings, the nature of the matter and the types of hearings that have been undertaken.

Advocacy Experience

15. The Committee will need to be satisfied that an applicant is actively undertaking advocacy. In considering whether an applicant is an active advocate the Committee will take into account advocacy experience that an applicant has gained outside their normal area of work. It will also take into account that advocacy is part of the dispute resolution process and may be reflected in successful case preparation, negotiation, arbitration and mediation.
16. The Committee will also need to be satisfied that applicants have extensive first-hand experience of the style and standards of practice and advocacy expected in the courts for which they are seeking extended rights of audience.
17. The Committee will expect applicants to have observed advocacy in those areas where currently no rights of audience exist but where they will be granted rights upon completion of the course. Applicants will be required to state the number of cases that they have observed and indicate the nature of the cases concerned.
18. The Committee will need to take a balanced view about an applicant's experience in deciding whether his experience is sufficient to grant a Certificate of Eligibility, particularly where an applicant relies in part on observed advocacy.

Career breaks/illness

19. The Committee will recognise that applicants may have had a break in their advocacy experience due to factors such as career breaks, job changes, maternity leave, long term illness or disability. The Committee will not discriminate either directly or indirectly against an applicant whose experience has been affected in this way but will need to ensure that the applicant does have an acceptable standard of advocacy or level of experience. Applicants who have been affected may provide details of experience gained during a different period when they were more actively engaged as advocates.

Other factors

20. There may be other factors which affect the number of appearances in the preceding two years, so that they would not give a fair picture of an applicant's experience and practice. The Committee will consider details of more active periods of advocacy from applicants whose

advocacy record in the preceding two years discloses a pattern that they regard as atypical.

FAMILY PROCEEDINGS

Certificate of Eligibility

1. Graduate Members and Chartered Legal Executive Lawyers who make an application for extended Rights of Audience must submit details of the family proceedings and advocacy experience they have gained. These details will form part of their application for a Certificate of Eligibility to undertake the advocacy course.
2. The Applicant must provide the following information about his experience:
 - Total years litigation experience and number of years as a fee earner.
 - Types of litigation undertaken and main areas of specialism currently and previously.
3. In relation to the 2 years preceding the application applicants must give the following information:
 - General description of the litigation work carried out.
 - Typical caseload.
 - Chargeable hours spent on family proceedings work in each year.
 - Proportion of time spent on family proceedings work.
 - Proportion or number of cases which have included preparation for trial.
 - Range and nature of advocacy experience including observed advocacy.
 - Details of any distinctive features of the applicant's work.
 - Details of supervisory arrangements under which the applicant works and/or his supervisory responsibilities.
4. Applicants must also submit a portfolio of cases demonstrating their family proceedings and advocacy experience in compliance with the competence criteria set out below. The portfolio requirements are set out in the **Portfolio Guidelines**.
5. The Admissions and Licensing Committee will consider Applications for Certificates of Eligibility. Graduate Members and Chartered Legal Executive Lawyers will need to satisfy the Committee that they have an appropriate level of knowledge of family law and procedure and that their experience of family proceedings work is sufficient to enable them to undertake the advocacy course and, upon successful completion of that course, to exercise the extended rights of audience they will be granted.

Competence Criteria

6. In deciding whether an applicant has adequate knowledge and experience the Admissions and Licensing Committee will have regard to the Competence Criteria listed below.

Knowledge of family law

7. The Committee will expect an applicant to have successfully completed a CILEx Level 6 Professional Higher Diploma paper in Family Law or equivalent qualification, so that they are able to:
 - Demonstrate an understanding of the rules of family law and the principles on which those rules are based.
 - Analyse and explain the theoretical basis of relevant aspects of family law.
 - Apply the rules and case law principles to problematic factual scenarios and demonstrate an ability to analyse the relevant facts in the application of principle so as to be able to provide accurate advice as to the likely outcomes in prescribed situations, covering the following subject areas – jurisdiction of English courts in matrimonial causes; nullity; dissolution of marriage; judicial separation; ancillary relief; child support provisions; matrimonial proceedings in the Family Proceedings Courts; maintenance agreements; matrimonial property; protection from violence; the law relating to the unmarried family; the law relating to children including powers and duties of local authorities..

Knowledge of family practice

8. The Committee will expect an applicant to have successfully completed a CILEx Level 6 Professional Higher Diploma paper in Family Practice or equivalent qualification, so that they are able to:
 - Identify the relevant facts and law and advise a married client on the relevant law and procedure in divorce proceedings.
 - Complete a divorce petition and statement of arrangements.
 - Identify and complete the necessary forms to process the divorce petition through the court to decree absolute.
 - Complete the required forms under the Legal Help Scheme and an application for CLS funding and an emergency application to cover the intended proceedings.
 - Understand the principles upon which finance and property orders are made; the tax position; pensions; the statutory charge; costs; variation and enforcement of orders and the relevant procedures involved. Complete an application for ancillary relief and a draft statement.
 - Identify terms of agreement to include in a consent order and terms which should be recorded in an undertaking within a consent order.
 - Draft a consent order.
 - Understand the jurisdictions available for protection from domestic violence, the procedures for obtaining relevant orders and methods

of enforcement and to be able to complete an appropriate application for protection from domestic violence.

- Understand the jurisdictions available to obtain orders relating to children; the procedures and principles upon which such orders are made and the procedures available to assist in the recovery of abducted children.
- Understand the rules for the protection of the rights of occupation and acquisition of an interest in the matrimonial home (including cohabitantes).
- Demonstrate awareness of the impact of the Human Rights Act 1998 in Family Law.
- Demonstrate awareness of and deal appropriately with issues relating to conduct and ethics.

Analysis, critical judgement and evaluation

9. The committee will expect an applicant to be able to:

- Recognise and rank items and issues in terms of relevance and importance.
- Integrate information and materials from a variety of different sources.
- Undertake the analysis of factual information in a logical and coherent way.
- Make critical judgements of the merits of particular arguments.
- Present and make a reasoned choice between alternative solutions.

Autonomy and an ability to learn

10. The committee will expect an applicant to be able to:

- Act independently in planning, preparing and undertaking tasks in the above areas of law.
- Undertake independent research in the above areas of law using standard legal information sources.
- Reflect on his or her learning and to make constructive use of feedback.

11. The Admissions and Licensing Committee may accept alternative evidence of the applicant's knowledge of family law and of family practice other than the successful completion of the relevant head of the Level 6 Professional Higher Diploma in Law. The Applicant would need to provide evidence that the content of an alternative qualification substantially covered the criteria above and that the qualification was assessed at a comparable standard. An applicant who seeks to rely on knowledge gained through experience or means other than qualifications must submit evidence to the Admissions and Licensing Committee to demonstrate that he has knowledge of the law required by the competence criteria and that his level of knowledge is to a

comparable standard to the Level 6 Professional Higher Diploma in Law.

Evaluating Experience

Litigation Experience

12. The Committee will expect applicants to have a range of experience across the area in which they are employed. Applicants should have handled cases from the beginning to the end of the process, which should include preparing cases for trial and undertaking post-trial work.
13. The Committee will consider the quality of experience that an applicant has gained as well as the quantity of experience. In considering the quality of experience that an applicant has gained the Committee will look at various factors such as the seriousness and complexity of cases handled, difficult cases handled, advocacy conducted in contested proceedings, the nature of the matter and the types of hearings that have been undertaken.

Advocacy Experience

14. The Committee will need to be satisfied that an applicant is actively undertaking advocacy. In considering whether an applicant is an active advocate the Committee will take into account advocacy experience that an applicant has gained outside their normal area of work. It will also take into account that advocacy is part of the dispute resolution process and may be reflected in successful case preparation, negotiation, arbitration and mediation.
15. The Committee will also need to be satisfied that applicants have extensive first-hand experience of the style and standards of practice and advocacy expected in the courts for which they are seeking extended rights of audience.
16. The Committee will expect applicants to have observed advocacy in those areas where currently no rights of audience exist but where they will be granted rights upon completion of the course, in so far as it is possible for them to do so, given the private nature of many family court proceedings. Applicants will be required to state the number of cases that they have observed and indicate the nature of the cases concerned.
17. The Committee will need to take a balanced view about an applicant's experience in deciding whether his experience is sufficient to grant a Certificate of Eligibility particularly where an applicant relies in part on observed advocacy.

Career breaks/illness

18. The Committee will recognise that applicants may have had a break in their advocacy experience due to factors such as career breaks, job changes, maternity leave, long term illness or disability. The Committee will not discriminate either directly or indirectly against an applicant

whose experience has been affected in this way but will need to ensure that the applicant does have an acceptable standard of advocacy or level of experience. Applicants who have been affected may provide details of experience gained during a different period when they were more actively engaged as advocates.

Other factors

19. There may be other factors which affect the number of appearances in the preceding two years, so that they would not give a fair picture of an applicant's experience and practice. The Committee will consider details of more active periods of advocacy from applicants whose advocacy record in the preceding two years discloses a pattern that they regard as atypical.

CRIMINAL PROCEEDINGS

Certificate of Eligibility

1. Graduate Members and Chartered Legal Executive Lawyers who make an application for extended Rights of Audience must submit details of the criminal litigation and advocacy experience they have gained. These details will form part of their application for a Certificate of Eligibility to undertake the advocacy course.
2. The Applicant must provide the following information about his experience:
 - Total years litigation experience and number of years as a fee earner.
 - Types of litigation undertaken and main areas of specialism currently and previously.
3. In relation to the 2 years preceding the application applicants must give the following information:
 - General description of the litigation work carried out.
 - Typical caseload.
 - Chargeable hours spent on criminal proceedings work in each year.
 - Proportion of time spent on criminal proceedings work.
 - Nature and extent of police station representation work.
 - Whether they are or have been accredited as police station representatives by the Legal Services Commission or under any duty solicitor scheme.
 - Proportion or number of cases which have included preparation for trial.
 - Range and nature of advocacy experience including observed advocacy.
 - Details of any distinctive features of the applicant's work.
 - Details of supervisory arrangements under which the applicant works and/or his supervisory responsibilities.
4. Applicants must also submit a portfolio of cases demonstrating their litigation and advocacy experience in compliance with the competence criteria set out below. The portfolio requirements are set out in the **Portfolio Guidelines**.
5. The Admissions and Licensing Committee will consider Applications for Certificates of Eligibility. Graduate Members and Chartered Legal Executive Lawyers will need to satisfy the Committee that they have an appropriate level of knowledge of criminal law, procedure and the rules of evidence and that their experience of criminal practice is sufficient to enable them to undertake the advocacy course and, upon successful completion of that course, to exercise the extended rights of audience that they will be granted.

Competence Criteria

6. In deciding whether an applicant has adequate knowledge and experience the Admissions and Licensing Committee will have regard to the Competence Criteria listed below.

Knowledge of criminal law

7. The Committee will expect an applicant to have successfully completed a CILEx Level 6 Professional Higher Diploma paper in Criminal Law or equivalent qualification, so that they are able to:

- Understand the nature of criminal liability and defences.
- Categorise, distinguish and relate the elements of crimes.
- Analyse and categorise the elements of defences.
- Apply the rules and principles of criminal liability.

Knowledge of criminal litigation

8. The Committee will expect an applicant to have successfully completed a CILEx Level 6 Professional Higher Diploma paper in Criminal Litigation or equivalent qualification, so that they are able to:

- Demonstrate a detailed understanding of criminal procedure and the law of evidence as it operates in practice covering the following areas – role and jurisdiction of the criminal courts; public funding of criminal cases; bail; police investigative powers; summary proceedings; how and why cases go to the crown court; trial on indictment; youth courts; sentencing; appeals; and the rules of evidence in criminal proceedings.
- Identify and assess problems arising in a factual situation and to respond appropriately to them.
- Identify key issues in advising clients in criminal matters.
- Practise as an effective member of a criminal litigation team.
- Demonstrate awareness of the impact of the Human Rights Act 1998 in criminal litigation.
- Demonstrate awareness of and identify and deal appropriately with issues relating to conduct and ethics.

Analysis, critical judgement and evaluation

9. The committee will expect an applicant to be able to:

- Recognise and rank items and issues in terms of relevance and importance.
- Integrate information and materials from a variety of different sources.
- Undertake the analysis of factual information in a logical and coherent way.
- Make critical judgements of the merits of particular arguments.
- Present and make a reasoned choice between alternative solutions.

Autonomy and an ability to learn

10. The committee will expect an applicant to be able to:
 - Act independently in planning, preparing and undertaking tasks in the above areas of law.
 - Undertake independent research in the above areas of law using standard legal information sources.
 - Reflect on his or her learning and make constructive use of feedback.

11. The Admissions and Licensing Committee may accept alternative evidence of the applicant's knowledge of criminal law and of criminal litigation other than the successful completion of the relevant head of the Level 6 Professional Higher Diploma in Law. The Applicant would need to provide evidence that the content of an alternative qualification substantially covered the criteria above and that the qualification was assessed at a comparable standard. An applicant who seeks to rely on knowledge gained through experience or means other than qualifications must submit evidence to the Admissions and Licensing Committee to demonstrate that he has knowledge of the law required by the competence criteria and that his level of knowledge is to a comparable standard to the Level 6 Professional Higher Diploma in Law.

Evaluating Experience

Litigation Experience

12. The Committee will expect applicants to have experience across a wide range of criminal proceedings and to be currently undertaking criminal litigation work. Their experience should include police station representation. Applicants should have handled cases from the beginning to the end of the process, which should include preparing cases for trial and undertaking post-trial work.

13. The Committee will consider the quality of experience that an applicant has gained as well as the quantity of experience. In considering the quality of experience that an applicant has gained the Committee will look at various factors such as the seriousness and complexity of cases handled and difficult cases handled.

Advocacy Experience

14. The Committee will have regard to the fact that it is likely members of the Institute who undertake criminal work will not have gained any advocacy experience in the criminal courts because they do not have rights of audience in those courts. The Committee may therefore take into account advocacy experience applicants have gained in other forums. It will also recognise that applicants may have gained advocacy experience through representing clients at police stations.

Applicants will need to provide information as to the types of representation undertaken.

15. The Committee will also need to be satisfied that applicants have extensive first-hand experience of the style and standards of practice and advocacy expected in the courts for which they are seeking extended rights of audience.
16. The Committee will expect applicants to have observed advocacy in those areas where currently no rights of audience exist but where they will be granted rights upon completion of the course. Applicants will be required to state the number of cases that they have observed and indicate the nature of the cases concerned.
17. The Committee will need to take a balanced view about an applicant's experience in deciding whether his experience is sufficient to grant a Certificate of Eligibility particularly where an applicant relies in part on observed advocacy.

Career breaks/illness

18. The Committee will recognise that applicants may have had a break in their advocacy experience due to factors such as career breaks, job changes, maternity leave, long term illness or disability. The Committee will not discriminate either directly or indirectly against an applicant whose experience has been affected in this way but will need to ensure that the applicant does have an acceptable standard of advocacy or level of experience. Applicants who have been affected may provide details of experience gained during a different period when they were more actively engaged as advocates.

Other factors

19. There may be other factors which affect the number of appearances in the preceding two years, so that they would not give a fair picture of an applicant's experience and practice. The Committee will consider details of more active periods of advocacy from applicants whose advocacy record in the preceding two years discloses a pattern that they regard as atypical.

PORTFOLIO GUIDELINES

1. Applicants must provide details of 5 cases in which they have been involved which will demonstrate their experience in litigation relating to the type of proceedings for which they are seeking to qualify as a Chartered Legal Executive Advocate. Applicants in respect of Civil or Family proceedings must also provide details of 3 cases in which they have been involved which will demonstrate their advocacy experience relating to those types of proceedings. Applicants for a certificate in respect of Criminal Proceedings will be required to provide details of 3 criminal cases in which they have been involved where they have either provided police station advice or undertaken or observed advocacy. The cases described must have occurred during the 2 years preceding the application.
2. The Portfolio provides an opportunity for applicants to demonstrate that they are able to meet the criteria prescribed in the Knowledge and Experience Guidelines which are set out in Appendix 1 to the Certification Rules.
3. The details of cases which Applicants provide must therefore reflect those Guidelines. Where, in the opinion of the Admissions and Licensing Committee, the case details fail to demonstrate the requisite knowledge and experience, the Application for a Certificate of Eligibility is likely to be refused.

Litigation Experience

4. For each of the 5 cases included in a portfolio of litigation experience, applicants for a Certificate of Eligibility will need to set out the following:
 - A concise description of the case, its progression and outcome.
 - The law arising in the case and its application to the facts.
 - Procedural or process issues, including the Court and, where relevant, the track to which the case was allocated.
 - Evidential issues arising in the case.
 - Ethical or conduct issues arising in the case.
 - Funding issues arising in the case.
 - Research undertaken in the case, relating to law or procedure.
 - Decision making in the case and any advice taken on strategic issues in the case.
 - Any training or development needs identified, arising from the case.

Advocacy Experience – Civil and Family Proceedings

5. For each of the 3 cases included in a portfolio of advocacy experience, applicants for a Certificate of Eligibility in respect of a Civil or Family Proceedings certificate will need to set out the following:
 - A concise description of the case, its progression and outcome.

- The nature of advocacy undertaken, including negotiation and arbitration, where relevant.
 - The Court in which the advocacy took place, and whether the hearing was contested.
 - Preparation work carried out for the hearing and the client's objectives for the case.
 - Legal, procedural, evidential and ethical issues arising in the course of the hearing or advocacy.
 - Effectiveness of the advocacy.
 - Any training or development needs identified, arising from the advocacy.
6. The Advocacy described may be in relation to the litigation cases described in the Portfolio, but need not be. One of the cases described may be observed advocacy, rather than advocacy carried out by the Applicant.

Police Station Experience – Criminal Proceedings

7. For each of the 3 cases included in a portfolio of police station advice experience, applicants for a Certificate of Eligibility in respect of a Criminal Proceedings Certificate will need to set out the following:
- A concise description of the case, its progression and outcome.
 - The way in which instructions to assist the client were received.
 - The context in which advice, assistance or representation was provided – by telephone, at police station or otherwise.
 - Legal issues arising in the course of advising, assisting or representing the client.
 - Procedural issues arising in the course of advising, assisting or representing the client, including issues arising under the PACE Codes of Practice.
 - Ethical or conduct issues arising in the course of advising, assisting or representing the client.
 - Actions taken after providing advice, assistance or representation.
 - The effectiveness of the advice or assistance to the client, or representations made on the client's behalf.
 - Any training or development needs identified, arising from the case.

Police station work described may be in relation to the litigation cases described in the portfolio, but need not be.

8. Observed Advocacy

Applicants for a Certificate of Eligibility in respect of Criminal Proceedings may include descriptions of advocacy they have undertaken or observed in place of cases in which they have provided police station advice. No more than 2 of the 3 cases may relate to observed advocacy, the remaining case or cases must relate to police station attendance or advocacy undertaken in criminal proceedings. Where the Applicant describes cases

in which they have undertaken or observed advocacy, they must set out the information which applicants for civil and family proceedings certificates must set out in relation to their advocacy experience described at paragraph 6 above.

PORTFOLIO INFORMATION

Provide a concise description of the case, its progression and outcome

Describe the facts of the case but keep the case anonymous.

Outline the law arising in the case and its application to the facts of the case

State what legislation and/or case law applies and apply this to the facts of the case.

Summarise the procedural or process issues that arose in the case. Your answer should include the Court, and in civil cases, the track to which the case was allocated

Detail the steps undertaken to progress the case, for example where any forms lodged with the court and what action did you take before that?

'Issues' here does not mean problems.

Summarise the evidential issues that arose in the case and how you dealt with them

Set out what the evidence was and how you dealt with it (on both sides). It may be relevant to comment on the strength of the evidence.

'Issues' here does not mean problems.

Provide a summary of any ethical or conduct issues that arose in the case and how you dealt with them

It is very important you demonstrate that you are aware of your obligations to your client and the court and act with honesty and integrity. For example, were there any unrepresented third parties? Was there any conflict of interest? Did your client's instructions change? Did your client have capacity?

Provide a summary of the funding issues that arose in the case and how you dealt with them

Detail how the case was funded and how any public funding was obtained. It may be relevant to comment on why your client was or was not eligible for public funding and to comment on the advice you gave in relation to the statutory charge.

'Issues' here does not mean problems.

Outline any research that you undertook into law or procedure when handling this case

If you undertook any research, confirm what sources you used, what you learned and how you applied it to the facts of the case. For example, did you take the advice of colleagues, undertake internet based research or refer to statute or case law?

Summarise any decisions you had to make, how you made them and whether you had to take any advice on strategic issues in the case

You should detail the decisions you made throughout the case. For example, did you decide to instruct expert witnesses or pursue a particular source of evidence?

Summarise any training or development needs you identified while you dealt with this case

Any training needs that are identified should be addressed by reference to how you sought to obtain the desired training.

Draft portfolios

These draft portfolios might assist you in producing your portfolios. They provide an example of how a case portfolio might look and the issues that it covers.

PORTFOLIO FORM – LITIGATION CASES – CRIMINAL CASE

Date you were instructed in the case

Provide a concise description of the case, its progression and outcome

My client was charged with an offence of Common Assault.

He was of good character.

He was retired from full time teaching however he was working part time at a local school which educates children whom are not in mainstream education due to their behavioural and educational needs.

The complainant in the case was a pupil at the school and he alleged that my client had deliberately punched him to the left cheek, causing reddening and bruising.

The complainant's account of the incident was that my client had prevented him from leaving the classroom, as he had been asked to do, and he (the pupil) then pushed past my client to get out. The pupil alleged that my client then grabbed his arm in response to which the pupil motioned to head butt him. It is said to be at this point that my client threw the punch.

My client's version of events was that he had asked the pupil to leave the classroom due to his disruptive behaviour and upon doing so the pupil intentionally barged into him. He denied that he had prevented the pupil from leaving the room. My client's response to the contact was to say "don't you dare push me" and with that pupil then head butted my client and made contact with his left eye. My client's reaction was to put his arm out in a defensive strike. He was unsure if any contact was made with the pupil but if it was then it wasn't deliberate and done in self-defence.

The issue in the case was limited to whether the strike by my client was deliberate or defensive.

There were two witnesses to the incident, both of whom were teaching assistants in the room at the time. They supported the Crown's case that the contact made by my client was deliberate.

My client was interviewed as a volunteer at the local police station a month after the incident. He gave the account as stated above, both verbally and by producing a copy of a written report he had prepared the same day for the school's internal inquiry.

The matter proceeded to a two day trial before a District Judge at the local Magistrates Court.

My client was represented by counsel at the hearing.

He was acquitted by the District Judge and her finding was that my client had been assaulted by the pupil on two occasions during the incident in question and he had acted entirely reasonably in self defence of himself.

A costs order was awarded to my client who was a private paying client as he was not eligible for legal aid.

Outline the law arising in the case and its application to the facts of the case

Common assault is an offence contrary to section 39 of the Criminal Justice Act 1988.

The law is unclear on whether common assault and battery are statutory or common law offences. The Divisional court in *DPP v Taylor* and *DPP v Little* held that they are statutory offences whereas in *Haystead v DPP*, an obiter opinion was expressed by the Divisional Court that Common assault and battery remained common law offences.

In practice the offence is generally charged as being contrary to statute, and the wording of the offence is generally '....assaulted by beating...'

Common assault is a summary offence which carries the Magistrates maximum power of 6 months imprisonment (to be altered to 51 weeks under the Criminal Justice Act 2003 albeit not yet in force) or a fine.

The term assault is often used to include both an assault and battery and it is defined as an act by which a person intentionally or recklessly causes a person to apprehend immediate unlawful violence or to suffer violence.

In this particular trial the Crown's case was put on the basis that my client intentionally made unlawful physical contact with the victim, in that he deliberately punched him.

My client's defence was one of self defence.

Self defence is provided for by both Common Law and Statute Law, namely section 3 of the Criminal Law Act 1967.

At common law the principle is that 'a person is entitled to use reasonable force as is necessary to protect himself....'

At statute it states that 'a person may use such force as is reasonable in the circumstances in the prevention of a crime....'

The Criminal Justice and Immigration Act 2008 clarified the principles of reasonableness and confirmed that the question of whether the force used by someone was reasonable in the circumstance is to be considered with regard to the circumstances as that person believed them to be, and whether that belief of the circumstances was a genuinely held belief. Section 76 of the

Criminal Justice and Immigration Act 2008 doesn't operate to change the older law it is simply a tool to clarify it.

In the circumstances of this case, my client's use of force was to try and prevent a head butt from the complainant. His case was that by putting out his arm to try and block the complainant's forehead making contact with him was a reasonable response to the attack he faced. His genuinely held belief was that the head butt would make contact if not prevented, and thereby cause him injury if not know him unconscious. In addition although the complainant was only young he was only slightly smaller than my client but of similar build. Based on those circumstances my client sought to persuade the court that his actions operated as a complete defence to the offence of assault.

Summarise the procedural or process issues that arose in the case. Your answer should include the Court, and in civil cases, the track to which the case was allocated

The case was tried summarily by a District Judge sitting at the local Magistrates court.

My client received the requisition in the post. The requisition is the document setting out the charge for which he is due to appear and the date which he is to attend the Magistrates court. This particular method of bringing a case to court is legislated for by Section 29 of the Criminal Justice Act 2003. It was dated within the six month time limit, which is applied to summary only offences.

Common assault is generally an offence tried only by Magistrates but in certain circumstances can be tried on indictment, for example if the common assault is founded upon the same facts alleging an indictable offence, these circumstances are provided for under section 40 of the Criminal Justice Act 1988. Such circumstances were absent from this case so the trial was held in the lower court.

My client appeared unrepresented at the first hearing when he entered a not guilty plea and the case was set down for trial. He sought legal representation two days before the listed Pre trial review.

My client's instructions were obtained during an appointment in my office. It was decided, on the basis of those instructions, that we would not be ready for trial as a number of enquiries had been identified which had to be pursued in readiness for the trial, an application to vacate the trial was therefore made at the pre trial review hearing.

The court agreed to move the trial to a new date and various case management orders were made with regards the service of the complainant's transcript of evidence, editing of such transcript, the bad character applications and responses and any hearsay notices.

A further hearing was set to enable the court to ensure that all matters were in hand and that the trial date was still achievable.

At the pre trial review hearing some three weeks later the District Judge assigned herself to the case and took over the management of it for trial. By the time of this hearing the Crown had served some information on the defence dealing with the victim's previous bad behaviour. The issue of the bad character application was raised and the Crown agreed to the admission of the information they had supplied. Any further documents/evidence would be considered when received but as a general principle the prosecutor helpfully indicated in open court that they would not seek to oppose our application providing some documentary evidence of some sort was available to support the behaviour complained of.

Matters such as witness requirements and special measures were also agreed between the parties.

The case was then further listed for a mention hearing to ensure that any outstanding disclosure issues had been dealt with.

During the interim the Local Education Authority notified us that they were seeking Public Interest Immunity (PII) in their file. This indication required us to make an application to the court for disclosure.

It involved me applying for a witness summons under the Criminal Procedure Rules, rule 28.4. This was a written application setting out whom I required the summons for, and their full name and address etc, what documents I believed they held and the reasons why the documents/evidence is material to the issues in the case. In my application I set out the nature of the evidence I sought and how it was important to my client's case. This is necessary because the court will not order disclosure on the basis of a defence 'fishing expedition' in the hope some useful material may arise, it had to be evidence that it is relevant and admissible; R v Reading Justices, ex parte Berkshire County Court (1996).

The court issued a summons for the production of local authority files, under section 97 of the Magistrates Court Act 1980.

A hearing was then held to deal specifically with this issue. The legal representative from the local authority had highlighted in her file of papers the documents which she felt fell into the relevant category and it was the job of the District Judge to go through all the material and make a ruling on what she felt ought to be disclosed, if anything.

The defence also made oral submissions to the Judge at the hearing identifying what material we sought in order to achieve our aim with regards the bad character application.

The hearing was successful for the defence and several reports were

disclosed which evidenced other incidents involving aggressive behaviour displayed by the complainant. The details of such incidents were subsequently adduced at trial and the complainant cross examined upon them.

The PII hearing was the last hearing in this case before the trial.

Two weeks before trial I completed a certificate of readiness for which is required by the court to confirm that the case was now ready for trial.

The trial lasted two days and was heard by the District Judge.

A final process issue that arose in this case was in relation to the defence witness. The witness was another teacher whom had witnessed a previous assault upon my client by the complainant in question.

Her contact details were provided by the client and contact was made with her. Due to the teacher's work commitments she agreed to send me, via e-mail, her account of the earlier incident and I would then be aware of what she had to say and if necessary arrangements could be made to take a section 9 witness statement from her. She agreed also to attend the trial and give evidence. Her e-mail however never came and two days before the trial, after numerous unsuccessful attempts to make contact with her again, she e-mailed to say that she wouldn't be attending and what she had to say wouldn't help my client's case.

This e-mail came after I had sent a letter advising her I would be seeking a witness summons to compel her attendance if I didn't hear from her.

In order to avoid any issues at trial a witness summons was again sought under the Magistrates Court Act 1980. The application was again a written application on the same form as the summons for the PII. A witness summons was granted but subsequently not served (see discussion below – decisions).

Summarise the evidential issues that arose in the case and how you dealt with them

The question of bad character evidence arose in this case. My client instructed me that this was not the first time he had been assaulted by this pupil nor was it the first time the pupil had actually assaulted a teacher. I was told that this could be evidenced by way of school records which log such incidents and from another teacher who was witness to the previous assault on my client. This was clearly going to be important evidence and accordingly a bad character application was made in accordance with section 100 of the Criminal Justice Act 2003.

The grounds for our application were that the type of behaviour we were seeking to adduce comes within the definition of bad character as defined by

section 98 of the Criminal Justice Act 2003. That definition being ‘...evidence of or a disposition towards, misconduct on his part...’

Misconduct is defined within section 112 of the Criminal Justice Act 2003 as the commission of an offence or reprehensible behaviour. Reprehensible behaviour is defined in the Oxford English Dictionary as ‘...At fault, in the wrong...’

The defence therefore proposed to argue that the evidence of the previous behaviour, as produced by the school records and by witness statement from the other teacher, amounted to bad character.

The ground for admissibility under the 2003 Act were section 100 (1) (a) (b) (i) and (ii).

Section 100 (1) relates to the evidence of bad character of a non defendant, which in this case was the victim, and subsections (a) and (b) relate to whether the evidence in this case is of explanatory importance and has substantial probative value to the case.

In order to meet these requirements the defence argued it was important for the court to be aware of the evidence in order for them to assess whether the actions of my client were reasonable given the knowledge he (my client) had about how the situation could develop given the previous incidents. In assessing the probative value of the evidence the defence maintained that the nature of this evidence goes to show the behaviour displayed on other occasions by the pupil and how the pupil reacts to requests he does not like, given the defence case was he was the aggressor throughout the court could not properly consider this evidence without knowing his previous pattern of behaviour.

The Crown served upon the defence a notice of intention to adduce hearsay evidence. Their application was seeking to put into evidence the account of the incident as told by the pupil to the head teacher immediately after the event.

The admissibility of hearsay evidence in criminal proceedings is governed by section 114 of the Criminal Justice Act 2003. The Crown's application was on the basis that Section 118 of the Criminal Justice Act 2003 preserved certain common law grounds of admissibility, in particular for this case, section 1 (4) (a), Res Gestae.

Res Gestae relates to a ‘statement made by a person who was so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded’. The Crown's submission was that the head teacher's account of what the pupil told her would reveal consistency in what the victim told her on the day of the incident, and what he later told the police when video interviewed. In addition to this they also sought admission under section 114 (1) (d) of the 2003 Act which allows for admission if the court is satisfied that it is in the interests of justice to do so. Again their submission related to the

importance of showing consistency in the pupil's account.

Section 114 (2) of the 2003 Act details several factors which the court must have regard to when admitting the hearsay evidence.

In this particular case however the defence agreed to the evidence being admitted and therefore the court allowed the evidence under section 114 (1) (c) as all parties were in agreement that it be properly obtained.

In relation to the defence bad character application, in order to progress it, it was necessary for us to obtain the relevant information to support it. This was done by dual means.

The first route we took to seek disclosure of any information pertaining to the victim's previous behaviour was to draft and serve a defence case statement. The statement was served in accordance with the Criminal Procedure and Investigations Act 1996, section 6. Service of a defence statement is obligatory in Crown Court cases but in the Magistrates it is discretionary.

The defence case statement must deal with the following points;

1. The nature of the accused's defence
2. The evidence with which he takes issue
3. The reasons for taking such issue
4. Particularise the matters of fact on which he intends to rely.

The latter issue only became required under the Criminal Justice and Immigration Act 2008.

Once a statement is served the duty is then on the prosecution to consider the contents of that statement and examine whether any further material ought to be disclosed. An application can be made to the court for disclosure if there is any dispute with material to be disclosed.

The second means of securing disclosure of relevant documents was to make an application to the local education authority for disclosure from their files of any materials which would support our contention concerning the pupil's previous misbehaviour. In the event such material is held on file it is then considered by the court as to its relevance and whether it ought to be disclosed. (See procedure section for discussion)

Finally an application was made on behalf of the victim for him to have special measures for when he gives evidence.

The giving of evidence in criminal proceedings for young, vulnerable or intimidated witnesses is governed by the Youth Justice and Criminal Evidence Act 1999. Section 16 was applicable in this case due to the age of the witness (victim). Section 16 provides assistance by way of live link to give evidence at the trial for anyone under the age of 17 years, it is an automatic right and on this basis the defence did not seek to oppose it, and in fact had

no grounds on which to oppose it.

At the end of the trial, counsel for the defence in her closing speech reminded the District Judge of the defendant's evidence of his previous good character. A defendant of previous good character is entitled to rely on that good character and although it is not a defence it does go to the question of his credibility and propensity. For that reason the court is entitled to take it into account when considering the case.

Provide a summary of any ethical or conduct issues that arose in the case and how you dealt with them

The main conduct issue in this case arose in relation to the defence witness.

The witness was a teacher at the school also and initially agreed that she could help by giving evidence of a previous assault by the pupil in question. She agreed to come to court and give such evidence.

The nearer the trial got however the less contact that we were starting to have with her which started our concern. Very shortly before the trial she was not returning calls nor was she responding to letters or emails.

Unfortunately at this stage I hadn't got a statement as she had agreed to forward by email her account of the incident. We hadn't been able to meet up due to her work commitments so at the time this was the only way of obtaining her account, although the account never subsequently came.

This posed a question for my client as to whether I summons her to court or whether we go on without her. The latter option was chosen by my client (see decisions section for discussion) although a witness summons had been applied for.

One potential ethical issue that arose in this case was in relation to payment of my client's legal fees.

My client didn't qualify for legal aid so he was funding the case privately. He advised us that the school had agreed to pay part of his legal fees and initially I was concerned as to whether that was appropriate given three teachers from that school were due to give evidence at the trial contrary to my client's account and in favour of the pupil. I dealt with this by discussing my thoughts with my head of department. We both concluded that it wasn't an issue as the prosecution was by the pupil and not the school, and although the teachers were party to the proceedings, the school as an entity was not party to the case.

As it turned out in any event the client was going to put the money up front and the school would later reimburse him so the money we received on account from the client was from him.

Provide a summary of the funding issues that arose in the case and how you dealt with them

During my initial meeting with the client it was quickly established that due to his income he would not qualify for Legal Aid.

The Legal Aid officers at the Magistrates Court apply a two strand test when considering whether not a legal aid order is granted in a case.

The first strand of the test is to consider if it is in the Interests of Justice and secondly the means of the applicant.

In this particular case my client was fail to meet the means test as his income was more than the specified limit of £22,325.

The interests of justice test will consider matters such as whether an applicant is at risk of going to prison, whether questions of law are involved that would require the skill of a legal representative and whether it's in the interests of the witnesses that the applicant is not dealing with the case alone.

The client was provided with a quotation of our costs for preparing his case for trial and representing him in the proceedings.

My firm initially asked for a proportion of the costs to commence the work that had been identified and then requested the remaining monies be paid and cleared into our account one week before the trial. This was duly done by our client.

The client informed us that his employer, the school, had agreed to share his legal costs with him. He was to sort out obtaining the costs from them.

At the end of the trial because my client was acquitted it allowed counsel on our behalf to make an application for a defendant's costs order.

The Magistrates can order a defendant's costs order when a '...magistrates court dealing summarily with an offence dismisses the information...' This is provided for by section 16 of the Prosecution of Offences Act 1985. The court did not award a fixed sum it allowed for our bill to be taxed by the National Taxing Team.

Our bill was subsequently prepared and sent for taxing and payment made thereafter. Of course the funds paid to us by our client were refunded to him.

Outline any research that you undertook into law or procedure when handling this case

Most of the research I conducted in this case related to the procedure before the Magistrates Court as this was one of the first cases that I had

responsibility for in the lower court. The advocacy of course was conducted by my head of department, then counsel, but day to day preparation on the file was conducted by myself. The majority of my experience was dealing with crown Court cases and therefore I was anxious to ensure that I was fully aware of the procedure and case management issues that would arise before the magistrates. I attended all hearing with my head of department so I was fully aware of what happened, what ancillary trial orders were made, and of course to show continuity to the client. This enabled me to make sure that the case was always fully prepared for each particular hearing and all orders were complied with.

I spoke with the legal adviser at the local Magistrates Court on a few occasions too when dealing with applications for summons for the PII and the defence witness and again this was simply to ensure that I was following the correct protocol for their court.

With regards to the law, despite the fact that I had had experience in responding to bad character applications served on behalf of the prosecution in relation to the defendant's bad character, I hadn't had much experience in applying for a non defendant's bad character. Part of the reason for this being that counsel generally deal with such applications in the Crown Court and so the opportunity to prepare applications myself was not as frequent. In order to prepare the application I did reconsider and research the provisions of the Criminal Justice Act 2003, in particular section 100 and the ground applicable thereafter.

Summarise any decisions you had to make, how you made them and whether you had to take any advice on strategic issues in the case

The service of a defence case statement is discretionary in the Magistrates Court.

The disadvantages in doing so are that you are giving the prosecution early notice of your client's case and secondly you are relying on your client having told you everything he/she is likely to cover during the course of his/her evidence, because of course anything that is missing out of the statement could subsequently form part of your client's cross examination if he departs or adds to the account he has given in the statement. It therefore has to be considered very carefully whether to submit a statement in circumstances which doesn't actually require you to.

The advantage however is it may render further material to be disclosed to us that's helpful to our client's case.

Service of a statement was a decision that we had to take in this case.

The matter was discussed fully with my client and the above pro's and con's aired. It was decided that we would serve a statement.

This decision was reached on the basis that my client's account had not changed in any respect despite the fact that on three occasions he had been asked to give it. The first occasion was when he made a written account of the incident for the school internal enquiry, secondly he provided the same account during the police interview and thirdly in his instructions to me. This gave us confidence that he would not materially depart from a defence statement and then fall foul under cross examination.

Another decision that had to be taken as part of the case was in relation to pursuing the defence witness.

At the start of the case when I had initially spoken to her she was a willing witness and appeared to be supportive of my client's case, albeit a full account was not taken from her at that stage for reasons referred to above. She was happy for me to make contact and agreed to send me her account via email for me to consider the relevance and usefulness of what she had to say. However just shortly before the trial the contact stopped and I was unable to get hold of her. She was not responding to calls nor answering my letters. I was growing more concerned seeing as she hadn't yet sent me her account either. A decision had to be taken as to whether we summons her or not pursue her further. My client felt that her sudden lack of willingness may be due to pressure she was having at school, as she still worked there and still taught the pupil in question. He felt she was maybe not strong enough to stand by him at trial then go back to her job. Nonetheless I had my client's interests at the forefront of my mind and we discussed carefully what we ought to do. Our initial decision was to summons her, this had with it its own problems seeing as I didn't actually have a full statement at that time the court may be more cautious about granting a summons for someone we just believed could help, also summoning a witness can sometimes turn a simple situation hostile and I didn't want this to have a negative effect. We had decided to summons her for the first day of the trial to try and obtain a statement from her then and then I would have the chance to assess her attitude to the case and whether in fact she would help. Even were somewhat overtaken though when close to trial the witness emailed me to say that she would not come voluntarily and what she had to say would not help my client's case. We therefore had to reconsider our position as I was worried about damaging the defence case with an 'unknown' witness.

The one disadvantage identified to not using her was that we had no other means of evidence of one particular incident and it was important in the sense that we were relying upon it in support of our bad character application, on the other hand however we had secured by way of PII disclosure, school reports of other incidents of violent and aggressive behaviour by the pupil and therefore the application was not wholly lost or without merit. Another consideration had to be whether it was wise to summons a witness who is likely to go hostile in the witness box (as per the indication in her last email). If she turned hostile we had no ammunition, like a signed statement from her, to then apply to the court to treat her as such. The pro's and con's were discussed at length with my client and he made the final decision and that was to leave her out and not pursue the summons.

For both decisions that faced me I discussed the matters fully with my head of department who agreed with my reasoning and analysis of the situations.

Summarise any training or development needs you identified while you dealt with this case

Given this was one of the first cases I had dealt with before the Magistrates Court it was immediately apparent that I had to familiarise myself with the case management procedure before the lower court in the event it was different to protocol followed in the Crown Court, where the bulk of my experience has been. I therefore took the opportunity to attend at the Magistrates Court with my head of department when possible, and certainly at every hearing of this case so I could expand my knowledge and become familiar with how things are done.

Similarly with the process for applying for witness summons for both the PII proceedings and the defence witness, this was something that albeit I didn't think would be any different as both courts use the same forms I wanted to ensure was done correctly so as to avoid any procedural error which may affect the case.

Perhaps the most obvious training need highlighted in this case was in relation to the situation with the witness. With hindsight I should have obtained an account from her myself at the first opportunity rather than agree to hear from her via email. I could have perhaps made myself more accessible to her around her work commitments and made it more difficult for her to say she couldn't make an appointment by me perhaps agreeing to see her in her lunch break or out of hours. This is definitely a situation I will deal with differently if it was to arise again.

DECLARATION

I confirm that the information contained on this form is accurate to the best of my knowledge and belief.

Signed Date

PORTFOLIO FORM – LITIGATION CASES – FAMILY CASE

Date you were instructed in the case

Provide a concise description of the case, its progression and outcome

Being instructed on behalf of a mother in connection with two children who were in foster care as a result of mental health problems that she was suffering. The Local Authority then issued care proceedings under Section 31 of the Children Act, the case was issued in the Family Proceedings Court and then transferred to the County Court. During the course of the proceedings mother's mental health then become an issue and the Official Solicitor was instructed to act on behalf of the mother. Mother's mental health then improved and the Official Solicitor was not involved and at the end of the case mother gave her own evidence at the final hearing. There were various professional meetings and meetings with Social Services, there was a care plan that was amended with a view to rehabilitation following further assessments and contact increases, the care plan was drafted for a final hearing when rehabilitation was not an option. At the end of the final hearing a care order was made which mother consented but the care plan was approved in its format.

Outline the law arising in the case and its application to the facts of the case

The law arising in respect of the case was Section 31 of the Children Act, the Threshold Criteria. Considering mother's position and her mental health issues, obtaining leave for the Official Solicitor to be instructed, dealing with the Official Solicitor. Considering later on in the case application under Section 34 of the Children Act for contact to children in care. Considering with mother the ability in the future of her to make application for contact under Section 34 should she feel that it was relevant and necessary. Consideration of whether it was a case appropriate for a Section 386 application which it was not.

Summarise the procedural or process issues that arose in the case. Your answer should include the Court, and in civil cases, the track to which the case was allocated

This was a care proceedings case issued by the Local Authority in the Family Proceedings Court which was then transferred to the County Court. The procedural and process issues that arose in this case that I had to consider was the necessity of requesting leave to instruct the Official Solicitor due to the Mental Health of mother and her inability to give proper instructions. Arranging for the appropriate examination and certificate from the Psychiatrist instructed in the case to deal with. When mother became well considering her ability to give instructions under her mental capacity and obtaining a relevant certificate from a Psychiatrist, advising the Official Solicitor and for them to withdraw from the case.

Considering the procedural issues when the Official Solicitor was involved, importance of close contact with them and obtaining an "opinion" of mother rather than her instructions, finding her wishes and feelings and reverting to taking instructions once she was certified with capacity to continue the matter herself.

Summarise the evidential issues that arose in the case and how you dealt with them

Being a representative, instructing the Psychiatrist Dr Ann Stanley to conduct interviews and prepare a report with regard to mother's psychiatric condition and her ability to parent the two children. Considering the report together with that of the Child Psychologist Lori Beth Bisbey and ultimately that of the Guardian. When mother had capacity to instruct taking her detailed instructions with regard to reports going through them with her and advising her of the implications with regard to the conclusions of the reports. Considering the evidence of the Local Authority and dealing with mother's replies to the threshold criteria. Going through the professional report with mother when her capacity enabled her to give instructions, taking those instructions and preparing her statement having advised her of the implications of the reports. When mother was not incapacitated obtaining her wishes and feelings and her opinions with regard to issues that had arisen in evidence, advising the Official Solicitor of this information. Mother came back into capacity and therefore preparing her final statement. Advising her with regard to the Guardian's report and the final care plan of the Local Authority, trying to prepare mother for a 5 day hearing.

Provide a summary of any ethical or conduct issues that arose in the case and how you dealt with them

No ethical issues arose in the case. As far as conduct issues are concerned making a decision to request leave for Official Solicitor to be instructed due to mental health issues of mother and again requesting discharge of Official Solicitor once mother's capacity returned.

Provide a summary of the funding issues that arose in the case and how you dealt with them

Mother entitled to Public Funding under care proceedings as parent with parental responsibility, keeping a close eye on costings, making appropriate applications for increase in level of costs to take on board the professionals' charges and the 5 day hearing. Preparing high cost plan and submitting to Reading Office of Legal Services Commission, having the same approved.

Outline any research that you undertook into law or procedure when handling this case

Refreshing memory with regard to procedures concerning the Official Solicitor

time limits and duties prior to requesting leave from the Court on receipt of documentation from Official Solicitor, again refreshing memory (have previously instructed Official Solicitor in care case).

Summarise any decisions you had to make, how you made them and whether you had to take any advice on strategic issues in the case

Making the decision that it was important for mother to see Adult Psychiatrist on the day that her interview had been arranged despite the fact that mother was clearly suffering from mental health problems. Making a decision that it was in mother's best interests to see the Psychiatrist so that appropriate steps can be taken for her to receive medical attention later on in that day and to be hospitalised for her own safety.

Summarise any training or development needs you identified while you dealt with this case

I decided that I would like to undertake further work with regard to care proceedings either on behalf of parents or ultimately the children's guardian and therefore the need to obtain the appropriate advocacy certificate and to embark upon the care training and ultimately apply for being placed on the Children's Panel.

DECLARATION

I confirm that the information contained on this form is accurate to the best of my knowledge and belief.

Signed Date

PORTFOLIO FORM – LITIGATION CASES – CIVIL CASE

Date you were instructed in the case

Provide a concise description of the case, its progression, outcome and the date you were instructed in the matter.

I represented the claimant who received an apparently serious back injury while working as a labourer on a large development project involving the conversion of a dilapidated Victorian mill into luxury flats.

The first difficulty was to identify the correct defendant. The claimant was working for an employment agency who had placed him with an engineering subcontractor. However at the relevant time that subcontractor had “loaned” him for two days to the main developer. The employment agency denied liability and relied on clauses in its terms of business purporting to make the claimant self-employed; and excluding liability for injury. The subcontractor denied liability contending it was not in control of the activity where the claimant was injured; this was denied by the main developer, which also raised allegations of fabrication, contributory negligence, and engaging in horseplay against the claimant. There were also serious difficulties with quantum issues as the claimant’s previous work history was erratic.

The decision was taken to sue all three potential defendants. Medical evidence was disputed and the defendants were allowed to obtain their own orthopaedic evidence. A firm denial of liability was maintained up to the first case management conference, which I conducted, when disputes about working practices, medical issues, and a continuing loss claim, were thoroughly explored and directions given. The case was allocated to the multi-track.

The third defendant failed to give proper disclosure and I made application for an “unless order” which was granted and with which the defendant complied. Further issues arose about medical evidence and there was a further CMC which I conducted, opposed by counsel for all three defendants.

The third defendant then took over the conduct of the case and made successive Part 36 offers of 7,000, 9,000 and 12,000 pounds over a six week period. After a lengthy conference with counsel and client I put forward an offer of 18,000 which led to a round-table meeting four weeks before trial, where I represented my client. A settlement was agreed at 15,500 pounds plus costs, each defendant bearing their own costs.

Outline the law arising in the case and its application to the facts of the case

The main issue was Health and Safety and a proper system of work. However before we could get to that point it was vital to ensure we had the proper defendant(s) before the court. The employment agency contended that our

client was self-employed. It was necessary to consider this, and the purported exemption clause referred to above. The claimant did not actually know who he was assigned to. The agency had told him to go to the site and “ask for Mr Knowles”. This person proved to be the site owner’s Project Manager, and not employed by any of the defendants. He had just directed him on to the subcontractor who was a worker short. The claimant was paid (gross) by the agency and it proved very difficult to establish who their end client was. Eventually as the evidence remained obscure we decided to rely on a combination of Employer’s, and Occupier’s, liability arguments, and join all potentially liable parties, a view facilitated by their failure to co-operate in the Protocol period.

The law relevant to the cause of action was also not clearcut. I considered the various relevant Manual Handling and Construction Site regulations but generally speaking these are merely evidence of common law negligence. It was necessary to refresh my mind of the scope of contributory negligence where outright disobedience to instructions, and horseplay are alleged, although most of the authorities are simply factual illustrations rather than precedents in the true sense.

Other legal issues concerned conduct and disclosure duties, see below.

There were also remoteness of damage arguments. The claimant had been a self-employed taxi-driver who was working for the agency while serving a driving ban. He sought indefinite future loss of earnings since he claimed his back injury precluded him from driving for more than an hour at a time. This was not supported by the medical evidence.

Summarise the procedural or process issues that arose in the case. Your answer should include the Court, and where relevant, the track to which the case was allocated

The claim was allocated to the Multi-Track by Manchester County Court. There were two CMC’s, the second raising very contentious issues about disclosure, late permission for the defendants to rely on video surveillance evidence, medical evidence, and even accountancy evidence in relation to the claimant’s pre-accident earnings.

There was also a successful application for an “unless” order which I conducted against counsel, obtaining the order I sought and costs.

We were relatively close to trial, for which I had prepared, when a round-table meeting led to settlement.

Summarise the evidential issues that arose in the case and how you dealt with them

We had substantial problems on liability. Two workmates were the only

witnesses and our client told us that both would support him. In fact one refused to be involved and the other wrote a brief letter confirming the claimant's account but proved difficult to tie down to a detailed version until close to the time of exchange of statements.

The evidence on continuing loss of earnings was even more difficult, the claimant's accounts needing to be re-worked by an accountant who told us that the claimant had obviously under-declared income for tax purposes. It was thus necessary to negotiate in the knowledge of the problems these issues would cause at trial, which is why we settled at such a relatively low figure (the claim having initially been valued above 100k.)

There were strong disagreements between the medical experts, the defendant's consultant contending that the claimant was malingering. Questions, and a joint meeting failed to resolve this and an order was obtained permitting oral expert evidence at trial.

Provide a summary of any ethical or conduct issues that arose in the case and how you dealt with them

The first issue was that the managing director of the employment agency wrote to us to complain of a conflict of interest in that our firm had acted for him on his divorce 12 years before, and requesting we ceased to act for the claimant. After consulting a partner we responded that no issue arose, since the agency (a limited company) was the defendant, and no point concerning his conduct or finances would arise; that the partner who acted for him had retired; his file was archived; and he would anyway be represented by insurers.

The other issue arose with our own client who wished us to conduct the litigation inappropriately and dishonestly, particularly so far as compliance with court orders and disclosure were concerned. We had to give him strong advice and threaten to withdraw from the case on two occasions. Eventually he accepted our advice and authorised us to complete proper disclosure.

Provide a summary of the funding issues that arose in the case and how you dealt with them

Our firm operates a system whereby we first act on a full-fees basis while we assess the case for a CFA.

Thereafter I completed a risk assessment and put the case to the small committee which considers these which agreed with my assessment that the difficulties with parties, supporting evidence, quantum issues, and a client who even by that early stage I had assessed as unreliable meant we should offer a CFA on a 100% uplift basis.

I clarified that the claimant had no relevant legal expenses insurance.

We obtained ATE insurance but had to report our misgivings at the stages mentioned above.

We were confident that the losing defendant would be called on to bear the winning defendants' costs as the defendants had blamed each other. In accordance with the principle in the (admittedly pre-CPR case of *Hodgson v Guardall* 1991.

Outline any research that you undertook into law or procedure when handling this case

I have already described the essential difficulties of establishing whether the claimant was "employed" at all and if so by whom. This occupied me in the library for two hours. My firm does a lot of personal injury work but no-one could remember a case with this point. My research was in Employment Law books rather than Tort, although it was also necessary to consider who the occupier was, as well as the employer, since the physical condition of the premises had contributed to the accident.

I refreshed my mind on issues of disclosure and privilege in view of problems raised by my own client's conduct.

Summarise any decisions you had to make, how you made them and whether you had to take any advice on strategic issues in the case

I took counsel's advice twice; on parties, and quantum of damages; and a partner's advice on the conduct issues.

I made the key decisions to persevere with the claim when the evidence looked unpromising; to refuse 3 offers, despite the costs risk, (having of course taken instructions), and to strongly advise the client to reduce his expectations in view of the risk of losing outright if the court formed an adverse view of his credibility.

I conducted the successful settlement meeting having decided to accept any offer above 13,000 pounds.

Summarise any training or development needs you identified while you dealt with this case

I specialise in Employer's liability claims for a Trade Union where no issues of "Employee or not" or self-employed earnings loss arise. I became aware that if I was to take on a more varied case-load I should attend some CPD training on Employment Law, which would also assist in my wish to advise on pure employment issues and develop a second string to my bow.

I was a little in the dark about the approach to accountancy evidence, but

fortunately my firm has begun a series of in-house talks on “understanding business accounts” which I attend and has proved excellent

DECLARATION

I confirm that the information contained on this form is accurate to the best of my knowledge and belief.

Signed Date

SYLLABUSES FOR THE RELEVANT SUBJECTS

Civil Proceedings Certificate

1. You will be expected to have passed or gained exemption from the CILEx Level 6 examinations in Contract, Tort and Civil Litigation. (The Level 6 examinations have previously been called the Membership Part II and Level 4 examinations).
2. You can access the syllabuses for these subjects on the CILEx website at www.ilex.org.uk/study/lawyer_qualifications/level_6_-_new_qualifications/level_6_units.aspx.
3. Copies of the syllabuses for the relevant subjects do not appear within these notes as they are updated regularly. You must ensure that you obtain an up to date syllabus.

Criminal Proceedings Certificate

1. You will be expected to have passed or gained exemption from the CILEx Level 6 examinations in Criminal Law and Criminal Litigation. (The Level 6 examinations have previously been called the Membership Part II and Level 4 examinations).
2. You can access the syllabuses for these subjects on the CILEx website at www.ilex.org.uk/study/lawyer_qualifications/level_6_-_new_qualifications/level_6_units.aspx.
3. Copies of the syllabuses for the relevant subjects do not appear within these notes as they are updated regularly. You must ensure that you obtain an up to date syllabus.

Family Proceedings Certificate

1. You will be expected to have passed or gained exemption from the CILEx Level 6 examinations in Family Law and Family Practice. (The Level 6 examinations have previously been called the Membership Part II and Level 4 examinations).
2. You can access the syllabuses for these subjects on the CILEx website at www.ilex.org.uk/study/lawyer_qualifications/level_6_-_new_qualifications/level_6_units.aspx.
3. Copies of the syllabuses for the relevant subjects do not appear within these notes as they are updated regularly. You must ensure that you obtain an up to date syllabus.