

ASSOCIATE PROSECUTOR RIGHTS OF AUDIENCE AND LITIGATION CERTIFICATION RULES

July 2019~~August 2017~~

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DEFINITIONS

1. In these Rules, except where otherwise indicated:

"The Act" means the Legal Services Act 2007 and, where the context permits, includes any orders or regulations made under that Act;

"Appeal Panel" means the Panel established to hear appeals against decisions made by the Admissions and Licensing Committee following a rehearing.

"The Admissions and Licensing Committee" means the Committee established under the Admissions and Licensing Committee Rules;

"Associate Prosecutor member of CILEx in good standing" means a member of CILEx registered in the Associate Prosecutor grade whose subscriptions to CILEx are fully paid, whose CPD is up to date, in respect of whose conduct there is no complaint outstanding and against whom there is no disciplinary record which in the view of the Admissions and Licensing Committee affects their suitability to be an Associate Prosecutor;

"Bar Standards Board (BSB)" means the regulatory body for barristers;

"Certification Rules" means the Associate Prosecutor Rights of Audience and Litigation Certification Rules;

"CILEx" means The Chartered Institute of Legal Executives;

"Course provider" means a teaching or training organisation which has been approved under these Rules to provide Associate Prosecutor qualification courses;

"External adviser" means a person appointed by CILEx to carry out the roles and functions identified for him in these Rules;

"~~Investigation, Disciplinary and Appeals~~Enforcement Rules" means the rules of CILEx Regulation which are in place from time to time and which govern the complaints handling and disciplinary procedures of CILEx Regulation;

"JAG" means the Joint Advocacy Group;

“Joint Advocacy Group” means the joint body, made up of representatives from the SRA, BSB and CILEx Regulation, responsible for the development and oversight of the Scheme;

“The Officer” means the CILEx Regulation officer with responsibility for the Associate Prosecutor qualification scheme;

~~“QASA”, “the Quality Assurance Scheme for Advocates” or “the Scheme” means the scheme under which the competence of criminal advocates appearing in the courts in England and Wales is assured by the SRA, BSB and CILEx Regulation;~~

“Qualification course” means a Foundation Course, Advocacy Skills Course or other course approved for the purposes of these Rules by CILEx;

“Reaccreditation” means the process by which an advocate demonstrates their competence and renews their accreditation for a further five years;

“the Scheme” means the Quality Assurance Scheme for Advocates ;

“Solicitors Regulation Authority (SRA)” means the regulatory body for solicitors;

“Standards” means the nine expectations which are assessed by judicial evaluation, assessment organisation, assessed CPD, independent assessor or any other method approved by JAG;

Commented [DI1]: Do we need this if removing QASA?

Words importing the male gender include the female gender and vice versa; and words importing the singular include the plural and vice versa.

2. In accordance with its powers under the Charter Bye Laws CILEx will delegate to CILEx Regulation responsibility for the rights of audience and litigation qualification scheme for Associate Prosecutors.

THE RIGHTS OF AUDIENCE AND LITIGATION CERTIFICATES

3. An Associate Prosecutor member of CILEx in good standing may apply to be granted the following Certificates:
 - (a) A Level 1 Rights of Audience and Litigation Certificate in Criminal Proceedings (Level 1 Certificate);
 - (b) A Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings (Level 2 Certificate).

4. The rights exercisable by Associate Prosecutors holding these Certificates are set out below:

Level 1 Rights of Audience and Litigation Certificate in Criminal Proceedings

(a) Rights of audience:

- to appear before Justices or a District Judge in the magistrates' courts (including the youth court) to prosecute all proceedings against all adult and youth offenders, including bail applications and applications in relation to bail, where the CPS is the prosecuting authority except:
 - Trials;
 - Newton Hearings;
 - Special Reasons Hearings;
 - Contested Preventative Civil Orders; and
 - Contested Binding Over proceedings.
- to appear in the Crown Court before a judge to conduct a bail application where the CPS is the prosecuting authority.

(b) Litigation rights:

to exercise the powers of a Crown Prosecutor to conduct a case outside court, namely:

- review of a prosecution case by applying the Code for Crown Prosecutors; and
- other casework functions necessary to progress prosecution cases that fall within an Associate Prosecutor statutory remit, namely –
 - to decide appropriate bail conditions and objections to bail in magistrates' courts and youth court proceedings;
 - to decide whether to discontinue a case in magistrates' courts and youth courts proceedings;
 - to make disclosure decisions in proceedings in the magistrates' courts and youth courts;
 - to decide witnesses to give live evidence, to serve statements under section 9 of the Criminal Justice Act 1967, to tender to the defence and any evidence which can be adduced by way of a section 10 admission, and drafting such admissions, in magistrates' courts and youth court trials and other contested hearings;
 - to decide the appropriateness of pleas and bases of plea in magistrates' courts and youth court proceedings;

- to amend a charge or summons, prefer a new charge or drop a charge in magistrates' courts and youth court proceedings; and
- to decide whether to apply, vary or discharge a civil preventative order in magistrates' courts and youth court proceedings.

Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings

(a) advocacy rights to appear before Justices or a District Judge in the magistrates' courts (including the youth court) to prosecute all proceedings against all adult and youth offenders, including bail applications and applications in relation to bail, where the CPS is the prosecuting authority except trials in either-way offences or trials for summary offences which are punishable with imprisonment in the case of persons aged 21 or over; and

(b) litigation rights

to exercise the powers of a Crown Prosecutor to conduct a case outside court, namely:

- review of a prosecution case by applying the Code for Crown Prosecutors; and
- other casework functions necessary to progress prosecution cases that fall within an Associate Prosecutor statutory remit, namely –
 - to decide appropriate bail conditions and objections to bail in magistrates' courts and youth court proceedings;
 - to decide whether to discontinue a case in magistrates' courts and youth courts proceedings;
 - to make disclosure decisions in proceedings in the magistrates' courts and youth courts;
 - to decide witnesses to give live evidence, to serve statements under section 9 of the Criminal Justice Act 1967, to tender to the defence and any evidence which can be adduced by way of a section 10 admission, and drafting such admissions, in magistrates' courts and youth court trials and other contested hearings;
 - to decide the appropriateness of pleas and bases of plea in magistrates' courts and youth court proceedings;
 - to amend a charge or summons, prefer a new charge or drop a charge in magistrates' courts and youth court proceedings; and

- to decide whether to apply, vary or discharge a civil preventative order in magistrates' courts and youth court proceedings.
5. A person who is registered as an Associate Prosecutor member of CILEx when these Rules come into effect may exercise all the rights of audience and litigation appropriate to the Certificate he holds, as described in Rule 3 above.

SELECTION

6. CPS Areas will advertise vacancies for posts of Level 1 or Level 2 Associate Prosecutor. Any employee who meets the selection criteria may apply. Vacancies may be advertised externally.
7. Applicants will undergo a selection process, at the conclusion of which applicants will be selected by a selection panel to undergo the Associate Prosecutor qualification programme. The selection panel will comprise a job sponsor and at least one other CPS employee.
8. The selection process will involve:
- Completion of an application form;
 - Application form shortlist;
 - Case study presentation; and
 - Interview.
9. The process will test the skills required in the person specification for an Associate Prosecutor role. Each aspect of the selection process will assess competencies of applicants. The Level 1 and 2 Associate Prosecutor person specifications, which appear at **appendix 1** outline the competencies tested at each stage of the recruitment process.
10. Applicants will be marked using a scale of 1 to 5 with 1 being not met and 5 being consistently met including providing detailed relevant evidence across the criteria that are measured. Applicants will be expected to achieve at least a score of 3 against each competency which denotes that applicants provided relevant information and that minimum standards are evidenced across most criteria that are measured.
11. All applicants will complete a written application from which they will be short listed. Applicants who are short listed at the application form stage will proceed to the case study presentation and interview stages.
12. At the case study stage, applicants will prepare a case as if they were to prosecute it in court as an Associate Prosecutor. After the presentation

applicants will be asked questions on the presentation by an interview panel. The presentation will be assessed by the selection panel using a standardised assessment sheet determining whether the applicant meets the required standard.

13. Applicants will then proceed to an interview stage. During the interview stage applicants will be asked questions designed to test each competency from the person specification.
14. The selection panel will select suitable candidates at the conclusion of the process to undergo the Associate Prosecutor training.

LEVEL 1 ASSOCIATE PROSECUTOR

15. Each trainee Associate Prosecutor will be assigned to a mentor who will be either an experienced Associate Prosecutor or a Crown Prosecutor. The trainee Associate Prosecutor will shadow the mentor, and other experienced Crown Prosecutors, for the purposes of observing them at court. Trainee Associate Prosecutors will be provided with a list of hearings that they should observe before commencing the training courses. A copy of the observation grid appears at **appendix 2**.
16. The trainee also is required to download the Associate Prosecutor Manual from the CPS Infonet. They must read the Manual prior to attendance on the Foundation Course.
17. Associate Prosecutor trainees will then attend a Foundation Course, designed to develop their knowledge of the law and procedure for the offences they will encounter as a qualified Associate Prosecutor. The Foundation Course will meet the course outcomes which appear at **appendix 3**.
18. After completing the Foundation Course, trainee Associate Prosecutors will return to their CPS Areas and continue undertaking observations and maintaining contact with their mentor.
19. Associate Prosecutor trainees will then undertake the Trial Preparation Course which will conclude with an assessment of trial preparation skills. The course will meet the course outcomes which appear at **appendix 3** and trainees will be assessed against the assessment criteria which appear at **appendix 4**.
20. Associate Prosecutor trainees will next undertake an Advocacy Skills Course which will conclude with an assessment of advocacy skills. The Advocacy Skills Course will meet the course outcomes which appear at

appendix 3. The assessment must meet the assessment criteria which appear at **appendix 4.**

21. Upon successful completion of the Trial Preparation, and Advocacy Skills Courses and assessments the trainee will have qualified as an Associate Prosecutor and will make an application to CILEx to be registered as an Associate Prosecutor member.
22. The application shall be made on such a form as may be prescribed for the purpose by CILEx and shall be accompanied by such fee as may be fixed by CILEx from time to time.
23. CILEx will receive and consider the application. Applications will be processed by CILEx officers. Applicants will be registered as Associate Prosecutor members of CILEx if they are of good standing, are employed by the CPS in the Associate Prosecutor role and have successfully completed the Associate Prosecutor qualification process. An applicant may not be deployed by the CPS as an Associate Prosecutor until they have been successfully enrolled with CILEx and thereby authorised by CILEx to exercise the rights of audience and litigation exercisable under the Level 1 Certificate.

~~24. Successful completion of the Level 1 Certificate will also grant the Associate prosecutor five years accreditation under the QASA at Level 1 of the scheme, valid from the date of Certification.~~

~~25-24.~~ The Officer will notify an applicant in writing of the decision. Where the application has been approved the notification shall include confirmation that the applicant has been registered as an Associate Prosecutor and may exercise the powers awarded under the Level 1 Certificate. Where the application is unsuccessful, the notification shall set out the reasons and any preconditions to the consideration of any subsequent application. Where an application has been unsuccessful the applicant may apply for reconsideration in accordance with the Admissions and Licensing Committee Rules.

~~26-25.~~ Approximately 4 to 6 weeks after designation the Associate Prosecutor will undertake a Bail Course. The course will meet the course outcomes which appear at **appendix 3.** Prior to attendance on the course applicants will observe bail hearings. A copy of the observation grid appears at **appendix 2.** The courses will be assessed against assessment criteria which appear at **appendix 4.** Associate Prosecutors may not undertake bail applications until they are assessed as competent to do so.

~~27-26.~~ Subsequently the Associate Prosecutor will undertake a Youth Course and a Youth Bail course which will conclude with an assessment of

advocacy skills in the context of youth hearings. The Youth Course and Youth Bail Course will meet the course outcomes which appear at **appendix 3**. The assessments must meet the assessment criteria which appear at **appendix 4**. Associate Prosecutors may not appear in the Youth court or deal with youth bail applications until they are assessed as competent to do so.

LEVEL 2 ASSOCIATE PROSECUTOR

~~28-27~~. CPS Areas will determine and advertise vacancies for Level 2 Associate Prosecutor posts. Experienced Level 1 Associate Prosecutors may apply to become Level 2 Associate Prosecutors.

~~29-28~~. All applicants will complete a written application from which they will be short listed. At the shortlist stage applicants will be marked as to whether their application includes examples and evidence of how they meet the competence criteria for the Level 2 Associate Prosecutor post. Applicants who are short listed at the application form stage will proceed to the case study presentation and interview stages.

~~30-29~~. At the case study stage, applicants will prepare a case as if they were to prosecute it in court.

~~31-30~~. After the presentation candidates will be asked questions on the presentation by a selection panel. The selection panel will comprise a job sponsor and at least one other CPS employee. The presentation will be assessed by the selection panel using a standardised assessment sheet determining whether the applicant meets the required standard.

~~32-31~~. Applicants will then proceed to an interview stage. During the interview stage applicants will be asked questions designed to test each competency from the person specification for Level 2 Associate Prosecutors.

~~33-32~~. The panel will select suitable candidates at the conclusion of the process to undergo the Level 2 Associate Prosecutor training.

~~34-33~~. Associate Prosecutors will be assigned to a mentor who will be an experienced Crown Prosecutor. The Associate Prosecutor will shadow their mentor and other experienced Crown Prosecutors for the purposes of observing the cases that appear in their observation grid, a copy of which appears at **appendix 5**. Associate Prosecutors are required to reflect upon the cases that they observe and complete a reflective learning log.

~~35-34.~~ Associate Prosecutors will attend an Induction Day during which the Level 2 qualification programme, e-learning modules and assessment format will be explained to them.

~~36-35.~~ Associate Prosecutors will study the e-learning modules which cover the course of the trial, questioning skills, hearsay, examination in chief and competence and compellability of witnesses. The course outcomes for the pre-course work appear at **appendix 6**.

~~37-36.~~ Associate Prosecutors will attend the Foundation Course, which is designed to develop their knowledge of the offences they will encounter in their roles. The course will meet the course outcomes which appear at **appendix 6**.

~~38-37.~~ After completing the foundation course Associate Prosecutors will return to their CPS Areas and continue undertaking observations and maintaining contact with their mentor.

~~39-38.~~ Associate Prosecutors will return to undertake the Level 2 Advocacy Skills Course which will conclude with an independent assessment of advocacy skills. The Advocacy Skills Course will meet the course outcomes which appear at **appendix 6**. The assessment must meet the assessment criteria which appear at **appendix 7**.

~~40-39.~~ Upon successful completion of the courses and assessment the Associate Prosecutor will have qualified as a Level 2 Associate Prosecutor.

~~41.~~ ~~Successful completion of the Level 2 Certification will grant the Associate Prosecutor five years accreditation under the QASA at Level 1 valid from the date of Certification.~~

~~42-40.~~ Level 1 and Level 2 Associate Prosecutors will continue to be designated as Associate Prosecutors as long as they continue to be deployed as such and remain registered as Associate Prosecutor members of CILEx. An Associate Prosecutor who ceases to be deployed as such by the CPS or ceases to be registered as an Associate Prosecutor member of CILEx ~~or who has not reaccredited under the QASA on or before the expiry of the accreditation period without having applied for an extension~~ may not exercise any right of audience or litigation granted to them under these Rules.

ADMISSIONS AND LICENSING COMMITTEE

~~43-41.~~ The Admissions and Licensing Committee established under the Admissions and Licensing Committee Rules will be responsible for the Associate Prosecutor qualification scheme.

EXTERNAL ADVISORS

~~44-42.~~ CILEx shall appoint external advisors to advise the Admissions and Licensing Committee and CILEx Regulation on issues relating to Associate Prosecutor training and assessment.

~~45-43.~~ When making such appointments CILEx shall take into account the following:

- ◆ That the person appointed is qualified in criminal litigation and has experience as a criminal practitioner; and
- ◆ That the person appointed has experience of teaching and assessment of law and legal practice, including criminal advocacy and litigation, at degree or post graduate level.

~~46-44.~~ The external advisors will provide advice to the Admissions and Licensing Committee in respect of the following:

- ◆ the procedures for selecting trainee Associate Prosecutors;
- ◆ applications to the Admissions and Licensing Committee for the reconsideration of a decision;
- ◆ the structure of Associate Prosecutor qualification courses or the qualification scheme generally, and may make recommendations for revision of any Course or the qualification scheme;
- ◆ any other matter on which the Admissions and Licensing Committee seeks their advice.

The Admissions and Licensing Committee shall consider any advice given by the external advisors, but shall not be bound by such advice. Where necessary the Committee may seek advice on matters under its consideration from other persons or sources.

~~47-45.~~ The external advisors shall carry out inspections of Associate Prosecutor qualification Courses. They shall provide reports on inspections to the Admissions and Licensing Committee which shall be made available to the CPS.

~~48-46.~~ The external advisors shall moderate selection and course assessment materials prepared by the CPS and the standards of assessment applied in respect of Associate Prosecutors. They shall report their findings to the Admissions and Licensing Committee and the CPS.

~~49-47.~~ The external advisors shall receive notice of meetings of the Admissions and Licensing Committee and may attend such meetings in their advisory capacity.

QUALIFICATION COURSES

~~50-48.~~ The Level 1 and Level 2 Associate Prosecutor qualification courses will be provided by the CPS.

~~51-49.~~ The Level 1 and Level 2 Associate Prosecutor qualification courses must:

- ◆ meet the Course Delivery criteria set out at **Appendices 3 and 6**;
- ◆ be capable of delivering the Course Outcomes set out at **Appendices 3 and 6**; and
- ◆ include arrangements for assessment of advocacy skills in accordance with the criteria set out in **Appendices 4 and 7**.

~~52-50.~~ The CPS shall be responsible for producing materials for qualification courses to facilitate teaching and assessment. Assessment materials produced by the CPS will be subject to moderation by the external advisors.

~~53-51.~~ The CPS shall be responsible for carrying out formal assessment of candidates in accordance with the assessment criteria set out in **Appendices 4 and 7** or alternatively it may delegate responsibility for assessment to an independent organisation provided the arrangements meet the assessment criteria at **Appendices 4 and 7**. Standards of assessment will be subject to moderation by external advisors who will be provided with recorded candidate performances across a representative range of attainment for this purpose.

~~54-52.~~ The CPS shall have in place procedures for considering appeals by candidates against assessments of competence.

~~55-53.~~ The CPS will be inspected by CILEx Regulation. The report on the inspection will cover the management and content of courses generally. The inspection may include observation of formal assessments of candidates.

~~56-54.~~ The reports of the inspection visits will be made to the Admissions and Licensing Committee. It will make such recommendations as deemed appropriate. The CPS shall receive copies of inspection reports.

~~57-55.~~ The CPS shall produce annual reports for consideration by the Admissions and Licensing Committee which provide an overview of the courses they have provided during the year. Reports shall include comment on:

- the course generally;
- candidate performance in relation to the standards of the course;
- results of assessments;
- candidate feed-back;
- any recommendations for change or improvement in the course structure or materials; and
- any developments in the course following any previous report.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

~~58-56.~~ Associate Prosecutors must undertake CPD in accordance with the CPD Regulations. ~~Associate Prosecutors must also comply with the CPD requirements for reaccreditation under QASA once the scheme is implemented.~~

DISCIPLINARY PROCEDURES AND CODE OF CONDUCT

~~59-57.~~ Associate Prosecutors will be required to abide by the Code of Conduct of CILEx for the time being in force. They will also be bound by the Director's Instructions to Associate Prosecutors, Guidance to Chief Crown Prosecutors Concerning Deployment and Supervision and the Statement of Ethical Principles for the Public Prosecutor. They should also have regard to the CPS Code of Conduct and the CPS National Standards of Advocacy.

~~60-58.~~ Where a complaint is made or an issue is brought to the attention of CILEx regarding the conduct of an Associate Prosecutor that matter will be dealt with in accordance with the CILEx Regulation misconduct rules.

~~61-59.~~ Where a Finding, Order or Decision is made against an Associate Prosecutor under the misconduct rules, that Finding, Order or Decision will be referred to the Admissions and Licensing Committee. The Admissions and Licensing Committee will decide whether the Associate Prosecutor remains a fit and proper person to hold a Level 1 or 2 Certificate. The Admissions and Licensing Committee must give reasons for its decision.

~~62-60.~~ **Rule 61** shall not apply where an Order is made by the Disciplinary Tribunal or Appeals Panel excluding an Associate Prosecutor from membership of CILEx. **Rule 63** shall apply in such a case.

~~63-61.~~ Where an Order has been made excluding an Associate Prosecutor from membership of CILEx the Associate Prosecutor shall cease to be eligible to exercise the rights of audience or litigation awarded under their Level 1 or Level 2 Certificate.

~~64-62.~~ Where the Admissions and Licensing Committee decides that the Associate Prosecutor is no longer a fit and proper person to hold a Level 1 or 2 Certificate, he must return his Certificate(s) to CILEx within 28 days of him being notified of the decision. Failure to do so will constitute a disciplinary offence. The Associate Prosecutor may not exercise any advocacy and litigation rights granted to him under his Certificate after he has been notified of the decision.