



# Criminal Litigation and Advocacy Handbook

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## CRIMINAL LITIGATION

### INTRODUCTION

1. This handbook takes you through the application process to obtain criminal litigation and advocacy practice rights with CILEx Regulation and become authorised as a CILEx Litigator and Chartered Legal Executive Advocate in criminal proceedings.
2. We recommend that you read this handbook in conjunction with the Litigation and Advocacy Certification Rules which are at **Appendix 1**.
3. You should read all of the handbook and supporting documentation before starting to make your application.
4. In order to become authorised CILEx Regulation as a CILEx Litigator and Chartered Legal Executive Advocate in criminal proceedings you are required to demonstrate your knowledge and understanding, experience and skills in criminal litigation and advocacy and, where you wish to work in a CILEx Regulation regulated entity, in practice management and accounts management at Level 1. This handbook explains how you will demonstrate each of these elements.
5. Once you have completed the process **and** you have been approved as a CILEx Litigator and Chartered Legal Executive Advocate in criminal proceedings, you will be authorised by CILEx Regulation to undertake litigation and advocacy in criminal matters. You will need to work in a legal practice that is regulated by an approved regulator or you may also work for an unregulated employer as their in-house adviser, provided that the employer does not provide legal services to the public or a section of the public as part of their business.
6. This handbook is divided into different sections:
  - Introduction: this section sets out who is eligible to make an application for litigation and advocacy rights.
  - The application form: this section takes you through the application process including how to complete each part of the application form.
  - The Competence Framework: this section provides an overview of the competence framework. It explains how the knowledge, understanding, experience and skills contained in the framework should be demonstrated through your portfolios and logbook to demonstrate your competence in litigation and advocacy.
  - How your application is assessed: this section explains how your application is assessed, including the role of external assessors in the process.
  - Next steps: this section explains what happens once CILEx Regulation has received the assessment of your portfolios and logbook.

- Appendices and Annexes: these sections provide the competence framework, scheme rules and the Committee Rules.
7. In addition to demonstrating your competence in criminal litigation and advocacy, if you wish to work in a CILEx Regulation regulated entity, you must show your knowledge of Practice Management and Accounts: we call this Level 1. If you intend to set up your own entity to deliver litigation and advocacy services which is regulated by CILEx Regulation, you will also need to undertake the Practice Management and Accounts competencies at Levels 2a, 2b and/or 2c, as appropriate, (see Compliance Manager handbook), and apply to CILEx Regulation to have your entity regulated by CILExRegulation.
  8. If, once you have read this handbook and the supporting documents, you have any questions on the application process, please contact us.

Contact details:

Telephone: (01234) 845770

Email: [practicerrights@cilexregulation.org.uk](mailto:practicerrights@cilexregulation.org.uk)

## Summary of overall process (Litigation Rights)

### INITIAL APPLICATION

- Application form
- Evidence of qualifications
- Evidence of experience
- Evidence of skills
- Fee

### INITIAL REVIEW

- CILEx Regulation review of application
- Further information requests

### ASSESSMENT

- Knowledge, experience and Skills assessment by external assessor

+

- Examination/course exemptions issued by CILEx Regulation

### POSSIBLE OUTCOMES

AMEND AND  
RESUBMIT

### DECISION

NOT YET  
COMPETENT

- Reasons provided
- Preconditions for reapplication provided

COMPETENT

- Letter confirming eligibility for Litigation Certificate

## Summary of overall process (Advocacy Rights)

### INITIAL APPLICATION

- Application form
- Evidence of qualifications
- Evidence of experience
- Evidence of skills
- Fee

### INITIAL REVIEW

- CILEx Regulation review of application
- Further information requests

### ASSESSMENT

- Knowledge, experience and Skills assessment by external assessor

### POSSIBLE OUTCOMES

AMEND AND  
RESUBMIT

### DECISION

- To Admissions and Licensing Committee

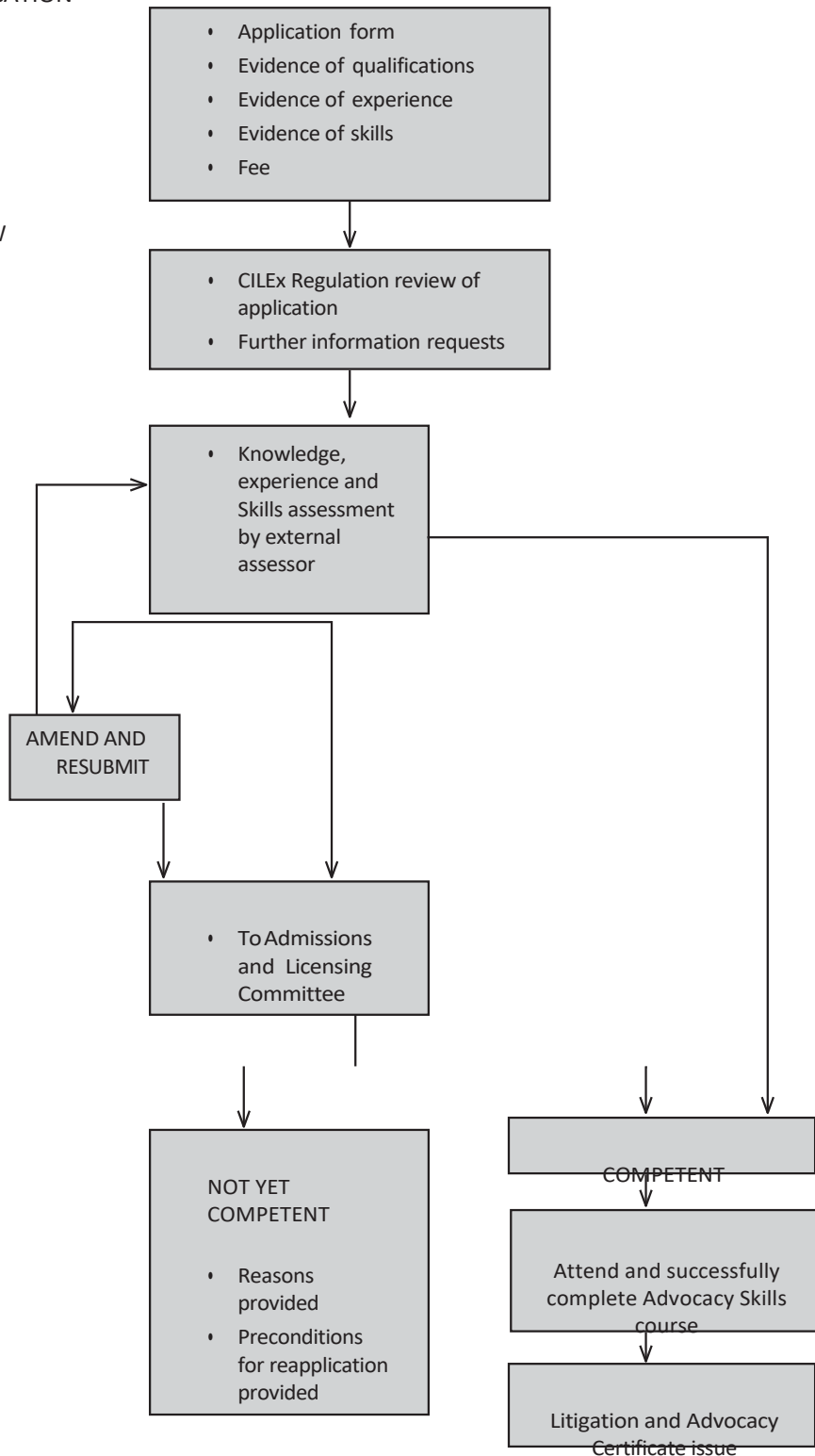
NOT YET  
COMPETENT

- Reasons provided
- Preconditions for reapplication provided

COMPETENT

Attend and successfully  
complete Advocacy Skills  
course

Litigation and Advocacy  
Certificate issue



## What are Litigation and Advocacy practice rights?

9. Under the Legal Services Act 2007 (s12) litigation and advocacy activities can be carried out by an authorised person only. CILEx Regulation is a regulator that can award litigation and advocacy practice rights to enable you to become an authorised person. Litigation and advocacy activities, under the Legal Services Act, means the right to conduct litigation independently and advocacy relates to the right to exercise of rights of audience in the Magistrates, Youth and, in certain instances, Crown Court.
10. CILEx Regulation has split the litigation and advocacy rights into different practice areas. They are civil, criminal and family. Therefore your authorisation will relate to one of these practice areas.
11. This handbook is for applicants applying for criminal litigation and advocacy rights. If you wish to apply also for family and civil rights you will need to refer to those handbooks.

## Who can apply for Litigation and Advocacy rights?

12. Applications to become a CILEx Litigator and Chartered Legal Executive Advocate can be made by a range of applicants, including CILEx members, non-CILEx members, authorised persons from other branches of the legal profession and others who can demonstrate that they have met the necessary knowledge, understanding, experience and skills outlined in this handbook and the scheme rules. **However, you may not be authorised as a CILEx Litigator and Chartered Legal Executive Advocate by CILEx Regulation until you have been admitted to CILEx as a Chartered Legal Executive.** For further information on how to become a Chartered Legal Executive, you should contact the CILEx Membership department.

## What can a Litigator and Advocate do?

13. As a CILEx Litigator and Chartered Legal Executive Advocate authorised by CILEx Regulation to undertake litigation and advocacy in criminal proceedings you will be able to undertake the activities set out on your litigation and advocacy certificate, this will be
  - Criminal Litigation and Advocacy
14. **Litigation and advocacy services can only be delivered through a regulated entity. You can become a CILEx Litigator and Chartered Legal Executive Advocate while you are working. If you want to practise independently in an entity you should apply to CILEx Regulation for regulation of your entity.**

### **If your application is approved**

15. The application process outlined in this document, once successfully completed, will provide you with litigation rights and a certificate of eligibility to enable you to complete the Advocacy Skills course. You will not be authorised as an advocate until you have passed the Advocacy Skills course.
16. If your application is approved, you will become a CILEx Litigator and Chartered Legal Executive Advocate in criminal proceedings, who is an authorised person under the Legal Services Act 2007. This means you can carry out the litigation and advocacy activities set out in your certificate through a legal practice that is regulated or you may also work for an unregulated employer as their in-house adviser, provided that the employer does not provide legal services to the public or a section of the public as part of their business.
17. If you intend to practise independently i.e. to set up your own practice you must also seek regulation of your entity. CILEx Regulation and other regulators are able to regulate legal practices. There is a separate application process for entity regulation.

### **Making your initial application**

18. To make your application to become a CILEx Litigator and Chartered Legal Executive Advocate in criminal proceedings you should submit the following:
  - Application form
  - Evidence of your qualifications
  - Evidence of your experience
  - Evidence of your skills
  - Fee
19. We will work with you during the application and decision process to ensure that we have all the information necessary to enable us to make an informed decision as to whether you have the required knowledge and understanding, experience and skills to become a CILEx Litigator and Chartered Legal Executive Advocate in criminal proceedings.

## THE APPLICATION FORM

20. The application form can be found at [www.cilexregulation.org.uk](http://www.cilexregulation.org.uk)
21. You should fully complete all parts of the Application form which relate to your specialist area of practice unless you are already a Chartered Legal Executive Advocate in which case you need not complete part seven, which is only required for applicants who do not already have advocacy rights.
22. The application form includes sections for you to demonstrate your knowledge, understanding, skills and experience in Criminal Litigation and Advocacy. It also covers your knowledge, understanding, skills and experience in Practice Management and Accounts at Level 1. Level 1 in Practice Management and Accounts must be demonstrated by all applicants seeking to work in an entity regulated by CILEx Regulation. If you also are intending to run your own entity regulated by CILEx Regulation, you will also need a Compliance Manager. This could be you or it could be one or two other people. The Compliance Manager will need to demonstrate Practice Management and Accounts competence at Level 1 and Level 2. There is a separate handbook and application form for seeking additional authorisation as a Compliance Manager.

### Completing the Application Form

23. On the first page of the application form, you should indicate the practice right you seek.
24. You should complete the remaining sections of the application form as follows:

#### Part One: General Information

25. This section asks for your personal information. You should answer all questions in this section.
26. You do not need to be a member of CILEx to apply for Litigation and Advocacy rights. However to be authorised as a CILEx Litigator and Advocate, **you must be a Chartered Legal Executive**. If you are successful in obtaining authorisation by us, we will register you as a CILEx Litigator and Chartered Legal Executive Advocate in criminal proceedings once you have been admitted as a Chartered Legal Executive. You could therefore apply to become a Chartered Legal Executive at the same time as you apply for litigation and advocacy rights, although we recommend that you apply to become a Chartered Legal Executive first.

#### Part Two: Knowledge and Understanding

27. To obtain Criminal Litigation and Advocacy rights, you must demonstrate that you have gained knowledge in Criminal Law and Criminal Litigation to Level 6 standard. We have developed competence frameworks which set out the competencies we require in litigation and in advocacy. They are at **Annex 3**.

28. There are 3 routes through which you can demonstrate competence. This part of the application form requires you to choose one or a combination of options from the three routes. You may find you need to only choose one of these options, or alternatively you may demonstrate your knowledge and understanding through choosing elements from more than one of these options.
29. The options set out how you may demonstrate your knowledge and are explained below.

### ***Option 1: CILEx examinations***

30. If you have passed the CILEx Level 6 examinations in criminal law and criminal litigation you should select this option. You must record the title of the examination and the date on which you passed the examination.
31. If you have not completed either or both of these examinations you may demonstrate your knowledge and understanding, equivalent to the Level 6 examinations in the subject(s) you do not have, through option 2 or option 3 or a combination of the two. Collectively you must demonstrate knowledge of relevant law and practice subjects.

### ***Option 2: Equivalent examinations***

32. You may rely on examinations you have passed in criminal law and criminal litigation with an organisation other than CILEx. The examinations must be to Level 6 standard, which is honours degree level, and map to the competence framework at **Annex 3** which is equivalent to the CILEx examinations. For example, you may have completed these subjects and been assessed in them on a law degree, LPC or BPTC.
33. If you have already been provided with exemptions from the Level 6 CILEx examinations, you will not need to repeat this process for the purpose of making an application for criminal litigation and advocacy rights.
34. We will map the examinations that you rely upon against the competencies at **Annex 3** for equivalency. To enable us to undertake this mapping exercise, we will need you to provide the following information:
  - The name of the Awarding body of each examination on which you seek to rely;
  - The title of each examination passed;
  - The date on which you passed each examination;
  - Evidence of your results (e.g. a certificate or transcript of marks); and
  - The syllabus for each examination.

35. Once we have received all the necessary information, we will map your examinations against the requirements set out in the Competence Framework located in the Litigation and Advocacy Certification Rules at **Annex 3**.
36. Each examination that you rely upon must have covered at least 50% of the competencies in the competence frameworks.
37. Where we do not find that the alternative examinations map to at least 50% of the competence frameworks we may ask you to supply further information about the examinations upon which you rely. Alternatively you may be asked to complete option 3 (the details of which are set out below) or take the relevant examinations. CILEx Regulation's assessment following the mapping exercise is final.

### ***Option 3: Knowledge and understanding obtained through practice***

38. Where you have not passed CILEx Level 6 or equivalent examinations in criminal law and criminal litigation you must use option 3 to demonstrate your knowledge in these subjects. Under this option you are able to demonstrate that through your practical experience you have gained knowledge of criminal law and criminal litigation. You must be able to demonstrate that the knowledge you have gained covers a sufficient breadth and depth to map to at least 50% of the competence frameworks at **Annex 3**.
39. You will be required to produce **five** portfolios of cases that you have dealt with, which set out how you have met the knowledge and understanding requirements as set out in the Litigation and Advocacy Competence Frameworks. A portfolio template can be found at **Annex 1 of the application form**. This template sets out the questions you need to answer in respect of each of the 5 cases. You will therefore need to produce 5 copies of the portfolio form. You should use a separate portfolio form for each of the 5 cases used.
40. You should select cases for your portfolios that demonstrate the range and breadth of your knowledge and understanding of the learning outcomes, as set out in the Competence Framework located in the Litigation and Advocacy Certification Rules at **Annex 3**.
41. We provide further guidance on how to complete the portfolios later in this handbook.

### **Part Three: Experience**

42. In this part of the application form you must set out your experience in criminal litigation and advocacy, by outlining work you have undertaken in the last 5 years and producing portfolios of 3 cases you have dealt with.
43. You must begin by setting out your employment and work experience. This should cover the previous 5 years. If you have had a break in your employment in the last 5 years please provide an explanation for such breaks (e.g. maternity leave etc.).

44. You must have at least 2 years of experience in criminal litigation and advocacy immediately preceding your application. Where you have had a break in your employment, you may rely on litigation and advocacy experience you gained earlier in the preceding 5 years. In exceptional circumstances, CILEx Regulation may accept experience gained from a period longer than 5 years ago.
45. For each of the employment/work roles you have identified on your application form, you should provide the following information:
- A description of the types of cases that you have handled;
  - A description of your typical caseload, including details about the complexity of the caseload and a summary of any difficult cases you have handled;
  - The number of chargeable hours you spend on criminal litigation and advocacy;
  - The proportion of time you spend on criminal litigation, as opposed to other areas of practice;
  - A description of the range and nature of criminal litigation and advocacy matters you have handled; and
  - Any distinctive features of your work.
46. In addition to outlining your experience, you should provide 3 portfolios of cases you have handled. The cases you select for your portfolios must cover a range of matters you have handled and demonstrate the breadth of your experience in criminal litigation and advocacy. We have produced a portfolio template for you to use which can be found at **Annex 2 of the application form**. You will need to make 3 copies of the form in order to produce 3 portfolios. Where you have provided the 5 portfolios required to demonstrate your knowledge and understanding of the relevant area of law and practice and these also demonstrate your experience in criminal litigation, you may rely on these portfolios to evidence this aspect of the application process.

## Part Four: Skills

47. In this part of the application you must demonstrate that you have the skills required to undertake criminal litigation and advocacy, deliver client care and undertake legal research. We have produced skills outcomes for client care, legal research and criminal litigation and advocacy.
48. The Competence Frameworks, located at **Annex 3** of the handbook, set out the skills you must demonstrate. We have called them learning outcomes for litigation and advocacy.
49. You can meet the legal research and client care skills through a number of routes:
- by undertaking the CILEx Level 6 examinations in these subjects;

- through having completed an LL.B (legal research only); and/or
  - LPC/BPTC; or
  - through your work experience.
50. You can demonstrate that you meet criminal litigation and advocacy skills and also in client care and legal research outcomes either by:
- taking a course or examination, which meets the outcomes set out in the Competence Framework;
  - by providing a logbook and portfolio of evidence which demonstrates how you have met each of the outcomes; or
  - a combination of the two options.
51. Where you opt to use the logbook and portfolio option we have produced a logbook template which asks a series of questions about your skills. The template logbook sheet can be found at **Annex 3 of the application form**. You must be able to evidence that your skills cover each learning outcome identified in column 2 of the skills section of the competence frameworks. You do this by completing a logbook sheet and providing supporting evidence for each outcome in column 2 of the competence frameworks. More guidance on how the competence frameworks work is provided in the competence framework part of this handbook. Where you cannot demonstrate that you have met one or more of the learning outcomes, you must complete a course which covers these skills.

## Part Five: Practice Management and Accounts

52. Complete this part of the application form if you intend to deliver criminal litigation and advocacy services through an entity that will be regulated by CILEx Regulation. The form asks you to demonstrate your knowledge, understanding, experience and skills in Practice Management and Accounts to Level 1. You will also need at least one Compliance Manager(s) responsible for practice and/or accounts management. You or the person(s) applying to become the Compliance Manager(s) will also need to complete the Compliance Manager application form, which is available separately.
53. There are two routes through which you can demonstrate competence to Level 1 in practice management and accounts. This part of the application form requires you to choose one or a combination of options from the two routes. You may find you need to only choose one of these options, or alternatively you may demonstrate your knowledge and understanding through choosing elements from both of these options.

54. The options set out how you may demonstrate your knowledge and are explained below.

### ***Option 1: Course(s)***

55. If you have completed or passed a course which demonstrates your competence in some or all of the outcomes as set out in the competence framework, you may rely on this as evidence of meeting the required standard to achieve authorisation in practice management and accounts. You must record the course provider/awarding body, the title of the course and the date on which you completed or passed the course.
56. In addition, you should also supply the syllabus/course outline for the course on which you seek to rely, together with any transcript of marks and proof of having completed and, where appropriate, passed the course.
57. We will map the courses that you rely upon against the competencies at **Annex 4** for equivalency. To enable us to undertake this mapping exercise, we will need you to provide the following information:
- The name of the Awarding body/course provider of each course on which you seek to rely;
  - The title of each course completed/passed;
  - The date on which you completed/passed each course;
  - Evidence of your completion/results (e.g. confirmation of attendance, a certificate or transcript of marks); and
  - The syllabus/course outline for each course.
58. Once we have received all the necessary information, we will map your course(s) against the requirements set out in the Practice Management and Accounts Competence Framework at **Annex 4**.
59. Where we do not find that the course(s) map to each of the outcomes in the competence frameworks we may ask you to supply further information about the course(s) upon which you rely. Alternatively you may be asked to complete option 2 (the details of which are set out below).
60. CILEx Regulation's assessment following the mapping exercise is final.
61. If you have not completed a course which demonstrates meeting some or all of the outcomes as set out in the competence framework you must demonstrate these through option 2. Collectively you must demonstrate knowledge, understanding, experience and skills in practice management and accounts management to the level equivalent with the authorisation you seek.

## ***Option 2: Knowledge, understanding, experience and skills obtained through practice***

62. Where you have not passed course(s) which meet the relevant outcomes required for authorisation in practice management and accounts management, you must use option 2 to demonstrate your knowledge, understanding, experience and skills in these outcomes. Under this option you are able to demonstrate that through your practical experience you have gained knowledge of the relevant outcomes. You must be able to demonstrate that the knowledge you have gained covers a sufficient breadth and depth to map to each of the outcomes set out in the competence frameworks at **Annex 4**.
63. Where you opt to use the logbook and portfolio option we have produced a logbook template which asks a series of questions about your skills. The template logbook sheet can be found at **Annex 3 of the application form**. You must be able to evidence that your skills cover each learning outcome at the appropriate level for your desired authorisation in practice management and accounts management. These are identified in column 2 of the competence frameworks.
64. You do this by completing a logbook sheet and providing supporting evidence for each outcome in column 2 of the competence frameworks. More guidance on how the competence frameworks work is provided later in this handbook. Where you cannot demonstrate that you have met one or more of the learning outcomes, you must complete a course which covers these skills.

## **Part Six: Membership of Professional Bodies and Conduct**

65. This part of the application form asks you to outline any memberships you have of other professional bodies and your prior conduct.

### **Membership of Professional Bodies**

66. You should complete the table, setting out details of all memberships you hold of professional bodies. You should include past and present memberships you hold or have held and set out the dates of each period of membership where you have held membership more than once with the same organisation.
67. You should include a statement of good standing for each of these memberships. A statement of good standing confirms that you have maintained any CPD requirements required as a member of each organisation and, that for current memberships, your subscriptions or regulatory fees are up to date.

### **Statement of prior conduct**

68. This section asks you about your past conduct. You must answer all questions on the statement of prior conduct.

69. Where you have answered 'yes' to any of the questions, you must provide full details of the circumstances giving rise to the declaration, including dates of any declared conduct.
70. We will refer any prior conduct matters you declare to the CILEx Regulation Investigation Team, which will ask you for further information. A decision will be made whether the prior conduct matter affects your application for Litigation and Advocacy rights.

### **Declaration of conduct**

71. You should then sign this part of the document. This declaration relates specifically to the information declared in this section in respect of prior conduct. You will also be asked to sign the application form at the end, to confirm that the information you have provided within your whole application is accurate and complete.

### **Part Seven: Advocacy Application**

72. If you are not currently a Chartered Legal Executive Advocate in criminal proceedings you will need to seek advocacy rights along with your litigation application. To do that you must complete this section of the application form and provide 3 portfolios which demonstrate your criminal advocacy experience. This will provide you with a certificate of eligibility which you must have before you can undertake the criminal advocacy skills course.
73. You should indicate which advocacy right you are applying for. For criminal litigation rights, you must choose open court rights and this will provide you with rights of audience in the Magistrates' and Youth Courts and some matters in the Crown Court (appeals and bail hearings).
74. Once you have selected the advocacy rights that you want to apply for, you should complete **Annex 4 of the application**, in which you set out your criminal advocacy experience.
75. This part of the application requires that you demonstrate the experience you have developed in criminal advocacy.
76. In relation to the 2 years preceding the application you must give the following information about advocacy or similar work you have undertaken:
  - Proportion of time spent on criminal proceedings work.
  - Proportion or number of cases which have included preparation for trial.
  - Range and nature of advocacy experience including observed advocacy.
  - Details of supervisory arrangements under which you work and/or your supervisory responsibilities.

77. You must also submit a portfolio of cases demonstrating your advocacy experience in compliance with the competence criteria set out in the competence framework. The portfolio template can be found at Annex 5 of the application form. Where you have not undertaken advocacy you may complete portfolios for advice you have given at the police station. This form is at Annex 6 of the application form.
78. The portfolio requires you demonstrate the learning outcomes through answering the questions set out below. We have outlined how you can answer the questions.

If you are completing advocacy portfolios (Annex 5) the following guidance applies.

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

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

- Summarise the nature of the advocacy that you undertook, including any negotiation and arbitration

*Outline the advocacy that you undertook. You should set out what representations you made in the case, any responses you made to issues raised by the other side and any other submissions you made.*

- State the court in which the advocacy took place and whether it was a contested matter.

*State the type of court, eg county court, that the hearing took place in. State whether it was contested or uncontested. If it was contested indicate what elements were contested.*

- Outline the preparation work you undertook before the hearing.

*Summarise what you did to prepare for the hearings such as gathering information, preparing a case outline, preparing submissions.*

- Set out the client's objectives and how you managed them.

*Summarise what your client expected from the case and how you dealt with those expectations in your advocacy.*

- Summarise the legal, procedural, evidential and ethical issues that arose during the hearing or advocacy and how you dealt with them.

*Detail the legal issues that applied and the steps undertaken to progress the case, for example were any forms lodged with the court and what action did you take before that? Outline the procedures and processes involved in the case. The question is not limited to situations where a problem arose in relation to procedures and/or processes used in the case.*

*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. The question is not limited to situations where a problem arose in relation to evidence used in the case.*

*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?*

- Outline the effectiveness of your advocacy

*State how well you managed to advance your client's case. You do need to have been the successful litigant. The question is about reflecting on your advocacy in advancing your client's case*

- 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.*

79. If you are completing police station portfolios (Annex 6) the following guidance applies.

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

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

- Summarise the manner in which instructions were received by you.

*Outline how you were instructed. For example, you or your firm may have been on the duty rota or the client may have contacted you.*

- Indicate the context in which the advice was provided.

*For example, you may have provided advice at the police station, over the telephone or made representations to the duty officer.*

- Provide a summary of any legal issues that arose during the course of the advice, assistance and representation you provided to the client and how you dealt with them.

*Summarise the legal issues. For example, this may include advising the client on the caution, the offence for which they were being questioned.*

- Provide a summary of any procedural issues that arose during the course of the advice, assistance and representation you provided to the client and you dealt with them.

*Summarise what procedural elements were. For example, outline the process that was followed in the before, during and after the police interview and you ensured your client was aware of the procedure.*

- Provide a summary of any conduct or ethical issues that arose during the course of advising, assisting and representing the client and how you dealt with them.

*It is very important you demonstrate that you are aware of your obligations to your client and your responsibilities under the Code of Conduct. For example, were you being asked to represent more than one client? Was there any conflict of interest? Did your client's instructions change?*

- Summarise the action you took after you had provided advice, assistance and representation to the client

*Set out what you did after the advice. For example, you may have made representations on bail, you will have written up a file note.*

- Indicate how effective your advice, assistance and representation of the client was in the case

*State how well you managed to advance your client's case. You do need to have been successful in charges being dismissed. The question is about reflecting on your ability in advancing your client's case*

- Summarise any training or development needs you identified arising out of your advice, assistance or representation

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

**Examples of draft portfolios can be found in Appendix 3 of this handbook.**

## **Part Eight: References, Endorsement and Declaration**

80. This part of the application asks you to provide details of two legal professionals who have knowledge of your work and are willing to provide a reference for you. The legal professionals should be authorised persons or members of the judiciary. An authorised person is defined in section 18 of the Legal Services Act 2007 as a solicitor, barrister, CILEx Fellow, CILEx Practitioner, Licensed Conveyancer, Patent Agent, Trade Mark Attorney, Costs Lawyer or Notarial Agent.
81. You should provide full contact details of your referees, including their name, address, telephone number and professional position. We will write to your referees and ask for a reference. We treat references as confidential and therefore will not ordinarily share them with you.
82. The final section of the application form asks you to choose the practice right for which you are applying. In this case you should delete all parts, with the exception of the relevant Criminal Litigation and Advocacy rights applied for in the second part of the declaration.
83. You should then sign and date the application form, stating that you have provided full and complete information to the best of your knowledge and that you agree to be bound by the rules governing authorisation as a CILEx Litigator and Chartered Legal Executive Advocate in criminal proceedings by CILEx Regulation.

## THE COMPETENCE FRAMEWORK

84. This handbook makes reference to the Competence Frameworks, which are located within the Litigation and Rights of Audience Rules at **Annex 3** of this document.
85. You may not be familiar with competence frameworks, in which case you should read this section before you start to complete the portfolios.
86. The framework has 3 columns.
  - The first column identifies the nature of the learning outcomes and supporting experience. This is where we identify which sections relate to knowledge and understanding, experience or skills elements.
  - The second column identifies each learning outcome to be addressed. Learning outcomes set out what you are able to do, either because you have completed a course/examination or because you have developed the knowledge, understanding, experience or skill through your work. When completing your portfolio or logbooks you should refer to the outcomes in this column for the knowledge, skills or experience part.
  - The final column sets out the experience that you must have gained in order to meet the learning outcome set out in column 2. Where relevant they explain the steps you should take to evidence the corresponding outcome.
87. You should focus on column 2, which sets out the relevant learning outcome. Column 3 sets out the necessary knowledge and skills that support meeting the learning outcome.

### Completion of the Knowledge and Understanding Portfolios – Annex 1 of Application Form

88. You must demonstrate your knowledge and understanding of the elements set out in the competence framework included in the Litigation and Rights of Audience Certification Rules located at **Annex 3** of this document.
89. If you have not passed the CILEx Level 6 examinations or equivalent examinations in criminal law and criminal litigation you must complete portfolios to demonstrate your knowledge and understanding of each of the knowledge and understanding learning outcomes. This section guides you on completing the portfolios.
90. You must complete portfolios of **five** cases to demonstrate your knowledge and understanding of the relevant area of law and practice in accordance with the learning outcomes from the relevant competence framework (column 2 of the knowledge and understanding section of the framework).
91. Whilst you need not demonstrate all of the outcomes in each portfolio, you should demonstrate each knowledge and understanding learning outcome at least once across the five portfolios.

92. Each learning outcome has an explanation of what information is needed to demonstrate that you have met that learning outcome. These are located in column 3 of the framework. You must explain how your case example demonstrates these as this in turn demonstrates that you have met the learning outcome. For example:

Knowledge & Understanding	Learning Outcome	Supporting Experience
Criminal law and practice	<p><i>This is made up of learning outcomes:</i></p> <p>Demonstrate knowledge and understanding of criminal law as it operates in practice.</p>	<p><i>The information in this column sets out what you need to demonstrate in your case study to have met this learning outcome:</i></p> <ul style="list-style-type: none"> <li>- The criminal law relating to analysis of actus reus, mens rea etc</li> </ul>

93. To meet this outcome, you could outline a case where you took instructions from a person seeking representation following arrest by police. In your explanation, you should demonstrate that you covered the steps outlined in the supporting experience column to show that you have satisfied this outcome of knowledge and understanding of Criminal law and practice. In this case you would demonstrate how you outlined to your client the elements of the offence that the prosecution must demonstrate.
94. Although each portfolio does not need to cover all of the learning outcomes, ideally you should demonstrate that you meet each learning outcome at least once across the 5 portfolios. The minimum requirement is to demonstrate overall that you meet at least 50% of the learning outcomes. You should indicate in your portfolios the learning outcomes you believe they demonstrate.
95. The portfolio requires you demonstrate the learning outcomes through answering the questions set out below. We have outlined how you can answer the questions.
- Provide an outline of the facts of the case/matter

*You should provide an outline of the facts of the case/matter that you handled that you are using. You could for example set out the facts of a case where a client asks you to represent them in a charge of theft.*

- Provide an explanation of the law arising in the case/matter and how the law applies to the facts outlined above

*You should provide an outline of the law which you identify as relevant to the facts, in the matter that you are using, to illustrate the learning outcomes from the knowledge and understanding section of the competence framework. You may find that you are able to demonstrate some of the law competencies from the competence framework in this section of the portfolio. For example you could set out the law in the Theft Act.*

- Provide an outline of any procedural and process matters that arose in the case/matter and how they were dealt with

*You should outline the steps undertaken to progress the case. This may include the process for dealing with an either way offence.*

- Provide an outline of the evidential issues that arose in the case and how they were dealt with

*You should provide an outline of the evidence you had and how you dealt with this to illustrate the learning outcomes from the knowledge and understanding section of the competence framework. For example evidential issues relating to a speeding matter where your client is alleging they were not driving the vehicle.*

*You should note that 'Issues' does not mean problems. By this we mean that you should outline all the evidential matters involved in the case. The question is not limited to situations where a problem arose in relation to the evidence used in the case.*

- Provide an outline of any ethical or conduct issues that arose in the case and how they were dealt with

*You should provide an outline of any relevant ethical or conduct issues that arose in the matter that you are using to illustrate the learning outcomes from the knowledge and understanding section of the competence framework. It is important that you are aware of your obligations to your client and act with honesty and integrity. For example, where your client changes their instructions part way through a matter.*

- Provide an outline of any funding issues that arose in the case and how they were dealt with

*You should provide an explanation of how the case was funded.*

*You should note that 'Issues' does not mean problems. By this we mean that you should outline all the funding matters involved in the case. The question is not limited to situations where a problem arose in relation to the funding used in the case.*

- Provide an outline of the advice provided to the applicant and the outcome of the matter

*You should provide an outline of the advice you provided to your client which was relevant to progressing the matter that you are using to illustrate the learning outcomes from the knowledge and understanding section of the competence framework. For example, the advice on the charge against them.*

- Provide an outline of the decisions you had to make in the case and whether you had to take any strategic decisions in the case

*You should provide an outline of any decisions you had to make, including strategic decisions relevant in the matter that you are using to illustrate the learning outcomes from the knowledge and understanding section of the competence framework.*

- Provide a description of any training or development needs you have identified as a result of having dealt with the case

*Having reflected on the case/matter you used in your portfolio, you should consider whether any training or development arose either during the case or on reflection following completion of the matter which would assist you in dealing with similar cases in future. You should also outline how you have addressed the training need identified.*

96. At the end of each portfolio you should identify which of the knowledge and understanding outcomes you believe you have met in the portfolio.

## Completion of the Experience Portfolios – Annex 2 of Application Form

97. You are required to demonstrate your experience of the elements set out in the 'Entry Experience All Applicants' section of the competence framework included in the Litigation and Rights of Audience Certification Rules. The competence frameworks are at **Annex 3** of this document.
98. All applicants must complete this part of the form unless you have already completed five portfolios to demonstrate your knowledge.
99. You should complete portfolios of **three** cases to demonstrate your experience of criminal litigation and **three** portfolios to demonstrate your experience of advocacy, in accordance with the relevant elements identified in the competence framework.
100. Where you have not produced 5 portfolios to demonstrate knowledge and experience of Criminal law and Criminal Litigation, you should produce 3 portfolios which demonstrate your breadth of experience in these areas. You should follow the guidance set out at above on answering the questions.
101. Each portfolio must cover a range of the learning outcomes from the knowledge and understanding part of the competence framework so as to demonstrate your experience of the relevant area of litigation and advocacy gained in the last 2 years.

102. Where the knowledge and understanding portfolios do not demonstrate your experience to meet this requirement, you should submit additional portfolios to demonstrate your experience of criminal litigation and advocacy gained in accordance with the experience requirements. The portfolios will be marked by an external assessor.
103. At the end of each portfolio you should identify how the portfolio demonstrates your experience in the relevant area of litigation and advocacy.

### **Completion of the Skills Logbook and Portfolio of Evidence – Annex 3 of Application Form**

104. The following guidance explains how to complete and present your logbook and portfolio for the skills part of your application. You must demonstrate your skills in criminal litigation and advocacy, client care and legal research by completing a logbook sheet for each skills element. Alternatively, you may complete a skills course or qualification to meet the learning outcomes.
105. This section gives you guidance where you opt to complete a logbook and portfolio of evidence.
106. The skills that you are required to demonstrate can be found in 2 parts of the competence framework labelled: 'Stage 1: Entry Skills' and 'Stage 2 Qualification Criteria: Skills'. In the first column of the competence framework, there are 6 skills elements identified.
107. Entry Skills element 1 is client care. This can be demonstrated in a number of ways:
  - By passing the CILEx Level 6 Client Care examination;
  - completion and passing the LPC or BPTC;
  - another examination which meets the outcomes set out in column 2 of the competence framework; or
  - through completion of a logbook and portfolio of evidence which demonstrates how you meet these outcomes from your work experience.
108. Entry Skills element 2 is legal research. This can be demonstrated in a number of ways:
  - By passing the CILEx Level 6 Legal Research examination;
  - through completion of a qualifying law degree;
  - another examination which meets the outcomes set out in column 2 of the competence framework; or
  - through completion of a logbook and portfolio of evidence which demonstrates how you meet these outcomes from your work experience.

109. Qualification Skills elements 1-5 are specific to criminal litigation and advocacy. They cover the following elements:
- Interviewing, advising and communicating
  - Costs and funding
  - Conduct and ethics
  - Managing litigation work
  - Legal writing and drafting
110. These can be demonstrated either through:
- successfully completing a course which meets the outcomes set out in column 2 of the competence framework; or
  - through completion of a logbook and portfolio of evidence which demonstrates how you meet these outcomes from your work experience.
111. You should complete a separate logbook sheet (located at **Annex 3 of the application form**) for each of the skills learning outcomes that are set out in column 2 of the Competence Framework located in the Litigation and Rights of Audience Certification Rules at **Annex 3**. In producing your logbook for each of these outcomes in column 2 you should aim to address the experience elements in column 3 of the framework.
112. For each piece of evidence you provide to support meeting the skills outlined in column 2 you should provide a logbook sheet which explains what the evidence is that you have provided and how it meets the learning outcome and supporting experience (located in columns 2 and 3). For example, to meet the skill element 5 (drafting), learning outcome 1 (an ability to understand and apply the principles of good writing and drafting), you could provide evidence of having drafted a witness statement.
113. You should then outline how the evidence shows you have put the outcome into practice in your workplace. For example, to explain how the witness statement will be used to support your clients defence to a charge against them.
114. Where your activity in meeting the outcome has highlighted opportunities for you to develop your legal knowledge or professional skills, you should identify this on the logbook sheet. You may also want to include any steps you have taken to address this opportunity for development.
115. The evidence used must come from matters that you have dealt with and must support the learning outcomes and supporting evidence identified on the logbook sheet.
116. The evidence should be provided in a page numbered portfolio, with the relevant logbook sheet attached to the evidence.

117. A template logbook sheet can be found at **Annex 3** of the application form.
118. There are up to 2 entry skills elements and 6 qualification skills to be satisfied through preparation of a logbook and portfolio of evidence (depending on how you have chosen to demonstrate you meet these outcomes) and each has a series of learning outcomes attached to them. Ideally you should demonstrate competence against each of the learning outcomes in the competence framework. However, the minimum requirement is to achieve a mark of at least 50% from the external assessor.
119. You should provide the date upon which each outcome was completed on the logbook sheet; this will be the most recent date of the evidence supplied. The evidence on which you rely should not normally be more than 2 years old by the date on which you submit your portfolio. Where you have had a break in your employment, you may rely on litigation and advocacy experience you gained earlier in the preceding 5 years. In exceptional circumstances, CILEx Regulation may accept experience gained from a period longer than 5 years ago.
120. You should sign and date each logbook sheet with the date you complete the logbook entry.
121. You should not present your logbook and portfolio in a ring-binder or any other binding or wallet. You should not staple sheets together or use comb binding. You may connect pages using a treasury tag or an elastic band only.

## **PRACTICE MANAGEMENT AND ACCOUNTS**

122. If you seek to deliver criminal litigation and advocacy services through an entity that is regulated by CILEx Regulation you must obtain authorisation to Level 1 in Practice Management and Accounts.
123. In addition all entities must have Compliance Manager(s) responsible for practice management and accounts. The person(s) who will be the Compliance Manager(s) (whether in practice management, accounts or both) must complete the Compliance Manager application form. The Compliance Manager does not have to become a CILEx Litigator and Chartered Legal Executive Advocate in criminal proceedings if they are not undertaking litigation work. Alternatively you may be the CILEx Litigator and Chartered Legal Executive Advocate in criminal proceedings and the Compliance Manager for your practice.
124. Once you have demonstrated competence in criminal litigation and advocacy, passed the advocacy course and demonstrated competence in accounts and practice management to level 1 you will be authorised by CILEx Regulation to deliver litigation and advocacy services.
125. If you intend to practise independently i.e. to set up your own practice you must also seek regulation of your entity. CILEx Regulation and other regulators are able to regulate entities. There is a separate application process for entity regulation.

## The Practice Management and Accounts Competence Framework

126. This handbook makes reference to the Practice Management Competence Framework and Accounts Management Competence Framework, which are located at **Annex 4** of this document.
127. You may not be familiar with competence frameworks, in which case you should read this section before you start to complete the portfolios.
128. The framework has 3 columns.
  - The first column identifies the nature of the learning outcomes and supporting experience. This is where we identify the required knowledge, understanding, experience and skills elements.
  - The second column identifies each learning outcome to be addressed. Learning outcomes set out what you are able to do, either because you have completed a course/examination or because you have developed the knowledge, understanding, experience or skills through your work. When completing your logbook you should refer to the outcomes in this column for the knowledge, understanding, skills and experience.
  - The final column sets out the experience that you must have gained in order to meet the learning outcome set out in column 2. Where relevant they explain the steps you should take to evidence the corresponding outcome.
129. You should focus on column 2, which sets out the relevant learning outcome. Column 3 sets out the necessary knowledge and skills that support meeting the learning outcome.
130. Each learning outcome has an explanation of what information is needed to demonstrate that you have met that learning outcome. These are located in column 3 of the framework. You must explain how your case example demonstrates these as this in turn demonstrates that you have met the learning outcome. For example (from Practice Management Competence Framework):

Knowledge, Understanding, Skills and Experience	Learning Outcome	Supporting Experience
Being part of a profession	<p><i>This is made up of 1 learning outcome: It states:</i></p> <p>Demonstrate knowledge, understanding and application of the current legal market and legal entities which may be created to provide a legal service</p>	<p><i>The information in this column sets out what you need to demonstrate in your case study to have met this learning outcome. It has 2 levels (level 1 and level 2a). All applicants must complete level 1, those seeking authorisation as a Compliance Manager must also complete level 2a.</i></p> <p><i>Level 1 states:</i></p> <ul style="list-style-type: none"> <li>– Knowledge and understanding of the types of structure through which a legal entity may be formed</li> <li>– Knowledge and understanding of those able to regulate reserved legal activities</li> <li>– Understanding that the structure and regulation of legal entities and activities may change and be able to identify these changes</li> <li>– Knowledge and understanding of a business plan, taking into account recent and current changes to the legal services market</li> <li>– Knowledge, understanding and ability to comply with a complaints procedure in line with LeOguidelines.</li> </ul>

131. To meet level 1 of this outcome you should outline your knowledge and understanding of each element, set out in the supporting experience column and explain how you apply this knowledge to your practice. This will demonstrate that you have satisfied this outcome at level 1 in practice management.

## Completion of the Skills Logbook and Portfolio of Evidence

132. The following guidance explains how to complete and present your logbook and portfolio for your application. You must demonstrate your knowledge, understanding, experience and skills in the relevant level of competence for practice management and accounts management by completing a logbook sheet for each skills element. Alternatively, you may complete a course or courses to meet the learning outcomes.

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133. This section gives you guidance where you opt to complete a logbook and portfolio of evidence.
134. The knowledge, understanding, experience and skills that you are required to demonstrate can be found in the competence frameworks. In the first column of the competence framework, there are 4 elements identified in the practice management competence framework and 3 elements identified in the accounts management competence framework.
135. The elements identified in the practice management competence framework cover the following elements:
- Being part of a profession
  - CILEx regulations
  - Management of a legal entity
  - Business acumen
136. The elements identified in the accounts competence framework cover the following elements:
- CILEx Accounts Rules
  - General Bookkeeping
  - Finances
137. Each of the outcomes which fall within each element are levelled, at either level 1, level 2a, level 2b or level 2c. If you are not seeking authorisation as a Compliance Manager, you need only demonstrate competence at level 1.
138. The outcomes can be demonstrated either through:
- successfully completing a course which meets the outcomes set out in column 2 of the competence framework; or
  - through completion of a logbook and portfolio of evidence which demonstrates how you meet these outcomes from your work experience.
139. You should complete a separate logbook sheet (located at **Annex 3 of the application form**) for each of the knowledge, understanding, skills and experience learning outcomes that are set out in column 2 of the Competence Framework at **Annex 4**. In producing your logbook for each of these outcomes in column 2 you should aim to address the experience elements set out in column 3 of the framework.

140. For each piece of evidence you provide to support meeting the skills outlined in column 2 you should provide a logbook sheet which explains what the evidence is that you have provided and how it meets the learning outcome and supporting experience (located in columns 2 and 3). For example, in the Accounts Management Competence Framework, to meet element 2 (General Bookkeeping), learning outcome 1 (Double Entry Bookkeeping) you could provide evidence of your knowledge and understanding of client ledgers, making entries into legal cashbooks, trial balances and a bill of costs.
141. You should then outline how the evidence shows you have put the outcome into practice in your workplace. For example, to explain how the financial statement clearly sets out the position of the client and how your knowledge of time costing has been applied to benefit reporting.
142. Where your activity in meeting the outcome has highlighted opportunities for you to develop your knowledge or professional skills, you should identify this on the logbook sheet. You may also want to include any steps you have taken to address this opportunity for development.
143. The evidence used must come from matters that you have dealt with and must support the learning outcomes and supporting evidence identified on the logbook sheet.
144. The evidence should be provided in a page numbered portfolio, with the relevant logbook sheet attached to the evidence.
145. A template logbook sheet can be found at **Annex 3** of the application form.
146. There are 7 elements to be satisfied to the required level (as set out above) through preparation of a logbook and portfolio of evidence (depending on how you have chosen to demonstrate you meet these outcomes) and each has a series of learning outcomes attached to them. You should demonstrate meeting each learning outcome at least once.
147. You should provide the date upon which each outcome was completed on the logbook sheet; this will be the most recent date of the evidence supplied. The evidence on which you rely should not normally be more than 2 years old by the date on which you submit your portfolio. Where you have had a break in your employment, you may rely on experience you gained earlier in the preceding 5 years. In exceptional circumstances, CILEx Regulation may accept experience gained from a period longer than 5 years ago.
148. You should sign and date each logbook sheet with the date you complete the logbook entry.
149. You should not present your logbook and portfolio in a ring-binder or any other binding or wallet. You should not staple sheets together or use comb binding. You may connect pages using a treasury tag or an elastic band only.

## HOW YOUR APPLICATION IS ASSESSED

### General Guidance

150. The assessment of your application for litigation and advocacy rights will be made on the basis of the evidence you have provided to demonstrate you have met each of the learning outcomes in relation to your knowledge and understanding, experience and skills in litigation and advocacy, client care and legal research.
151. Assessment is set at a level which is considered to be equivalent with Level 6 on the Qualifications and Credit Framework, except for practice management and accounts management, which is not levelled in this way.
152. You should be able to demonstrate that you are able to:
- refine and apply knowledge, understanding and application of the law to complex problems;
  - take responsibility for planning and developing courses of action autonomously;
  - make a judgement and take into account changes and developments in the law.

This means that the evidence you provide should demonstrate the following standards:

### Knowledge and understanding

- Ability to refine and use facts, law and evidence involved in the matter to create ways forward;
- Ability to critically analyse, interpret and evaluate complex information in the context of legal practice;
- Ability to understand the matter in the context of the area of practice;
- Awareness of recent legal developments in area of practice;
- Ability to understand different approaches, perspectives and developments in the law and business in the legal context, including the legal theory which underpins these approaches.

### **Application and action**

- Ability to address problems that have limited definition and involve a number of related issues;
- Ability to determine, refine, adapt and use appropriate methods and skills;
- Ability to use and/or develop legal research to inform actions;
- Ability to evaluate the likely outcome of actions and methods and the implications of these.

### **Autonomy and accountability**

- Ability to demonstrate responsibility for planning and developing courses of action in the context of legal practice;
  - Ability to initiate and lead tasks and processes in the context of legal practice;
  - Ability to exercise broad autonomy and judgement.
153. In determining whether your application has met the required standard, we will consider your ability to do the following:
- 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 information in a logical and coherent way;
  - Make critical judgements on the merits of particular courses of action;
  - Present and make a reasoned choice between alternative solutions;
  - Act independently in planning, preparation and undertaking tasks in probate activities;
  - Undertake independent research in probate practice using standard legal information sources; and
  - Reflect on learning and make constructive use of feedback.

## WHAT HAPPENS NEXT?

154. Once you have completed your application form and supporting evidence, you should submit your application to:

CILEx Regulation  
Kempston Manor  
Kempston  
Bedford  
MK42 7AB

155. You should also submit the required fee with your application. The current fee for submitting your application can be found on the CILEx Regulation website [www.cilexregulation.org.uk](http://www.cilexregulation.org.uk)
156. When we receive your application, we will send a letter of acknowledgement to you. This will provide you with a likely timescale for the internal review of your application.
157. Once we have reviewed your application, it is usual for us to come back to you for additional information. This is to ensure that as far as possible, your application appears to fully demonstrate that you have met all of the learning outcomes set out on the Competence Framework at **Annex 1**, before we submit your portfolios covering your knowledge (where appropriate) and experience to our external assessors.
158. Our external assessors are experienced academics and assessors who are subject matter experts in your area of practice. They will review the information and evidence you have submitted in your application in order to assess whether the information you have provided meets the learning outcomes and supporting experience from columns 2 and 3 of the Competency Framework. Your portfolios may be sent to different assessors based on the subject matter of the relevant portfolio.
159. External assessment may take a few weeks. The external assessors will review all of the evidence and portfolios that you have provided to demonstrate your knowledge, understanding, skills and experience and will assess your portfolios against each of the learning outcomes.
160. There are a number of outcomes from assessment:
- Where you meet the outcomes your portfolio/logbook will be considered to demonstrate that you are competent in that element; or
  - Where we cannot determine a matter on the evidence provided, we or the external assessor may seek further information before we can reach a decision, for example, we may ask for additional evidence or more detailed explanation of the matter(s) you have relied upon; or

- The assessor may assess you as not yet competent in which case they will provide reasons for their decision.

Once we have received the outcome of the assessment from the external assessor, we will decide the next action required.

161. Our action, once we have received the external assessor's assessment may be to:

- Approve the application in the office as all elements have been assessed as 'Competent' in accordance with the Competence Framework.
- Where the portfolio/logbook has been assessed as overall competent, but issues have been identified by the assessor, the office may refer your application to the Admissions and Licensing Committee for their decision.
- Request further information from you and resubmit the application and/or ask you to make further submissions in support of your application. We will then submit this with your existing application to the Admissions and Licensing Committee for a decision.

### **Where the application is approved in the office**

162. If you have demonstrated that you meet all of the learning outcomes set out in the competence framework, covering knowledge and understanding, experience and skills and the external adviser has assessed all of your portfolios as competent, your application for litigation rights and for the certificate of eligibility in relation to the advocacy skills course can be approved by a CILEx Regulation Officer.
163. We will write to you confirming that you have been successful in your application as a Litigator and that you have received your certificate of eligibility to undertake the advocacy skills course.

### **Advocacy skills course**

164. On the award of a Certificate of Eligibility you will be eligible to undertake the advocacy skills course.
165. The course will involve the teaching of advocacy skills relevant to the rights you seek (chambers or open court). 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.
166. You will be advised, when you obtain your Certificate of Eligibility, to obtain and study a self-study manual in the law of evidence. This will assist you in your preparation for the evidence test.

167. Once you have passed the advocacy skills course, we will send out your certificate confirming that you have been authorised as a CILEx Litigator and Chartered Legal Executive Advocate in criminal proceedings in the area of practice applied for and will send out your practising certificate.

**NOTE: If you are seeking to practise litigation and advocacy in an entity regulated by CILEx Regulation and act as the Compliance Manager for that entity, you must also satisfy the requirements as set out in the Compliance Manager handbook and for entity regulation.**

## **Where the application cannot be approved in the office**

168. Where the external adviser has identified areas for further development in your application before you can be assessed as competent, you will be asked to provide further information, make representations to the Admissions and Licensing Committee or you may decide to withdraw your application.

## **Withdrawing your application**

169. If you decide to withdraw your application where the external adviser has assessed your application as not yet competent, your application will be cancelled. Your fee will not be refunded. If you would like to seek authorisation as a CILEx Litigator and Chartered Legal Executive Advocate in the future, you will be required to make a fresh application.

## **The Admissions and Licensing Committee**

170. If you decide to continue with your application, you should provide additional supporting information to demonstrate your competence and/or make representations to the Committee as to your competence.
171. Once your additional information has been received, your application will be presented to the next available meeting of the Admissions and Licensing Committee for their decision.
172. The Committee may decide to approve or refuse your application.
173. If the Committee determines that your application demonstrates that you are competent to become a CILEx Litigator/undertake the advocacy skills course, we will write to you confirming that you have been successful in your application as a CILEx Litigator and that you have received your certificate of eligibility to undertake the advocacy skills course.

## Advocacy skills course

174. On the award of a Certificate of Eligibility you will be eligible to undertake the advocacy skills course.
175. The course will involve the teaching of advocacy skills relevant to the certificate you seek. 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.
176. You will be advised, when you obtain your Certificate of Eligibility, to obtain and study a self-study manual in the law of evidence. This will assist you in your preparation for the evidence test.
177. Once you have passed the advocacy skills course, we will send out your certificate confirming that you have been authorised as a CILEx Litigator and Chartered Legal Executive Advocate in criminal proceedings and will send out your practising certificate.

**NOTE: If you are seeking to practise litigation and advocacy in an entity regulated by CILEx Regulation and act as the Compliance Manager for that entity, you must also satisfy the requirements as set out in the Compliance Manager handbook and for entity regulation.**

178. If the Committee determines that your application does not demonstrate that you have yet met the competence requirements necessary to become a Litigator and Advocate they will refuse your application.
179. In this situation, your application will be cancelled. Your fee will not be refunded. If you would like to seek authorisation as a CILEx Litigator and Chartered Legal Executive Advocate you will be required to make a fresh application.
180. You may appeal the outcome of the Committee's decision. The rules governing appeal are located in the Admissions and Licensing Committee's rules and Investigation, Disciplinary and Appeal Rules.

**APPENDIX 1**

**RIGHTS TO CONDUCT LITIGATION**

**AND**

**RIGHTS OF AUDIENCE**

**CERTIFICATION RULES**

# **RIGHTS TO CONDUCT LITIGATION AND RIGHTS OF AUDIENCE CERTIFICATION RULES**

## **DEFINITIONS**

1. In these Rules, except where otherwise indicated:

- Admissions and Licensing Committee means the committee established under the Admissions and Licensing Committee Rules
- “Advocacy Certificate” means a Rights of Audience Certificate identified in these Rules;
- “Advocacy Skills Course” means an advocacy skills course approved in accordance with the Rights of Audience Certification Rules;
- “Appeals Panel” means the Panel established to hear appeals against decisions made by the Admissions and Licensing Committee following a rehearing;
- “Authorised Litigator” means a person who has been granted a right to conduct litigation by an approved regulator, under the terms of the Act;
- “Certificate of Eligibility” means a Certificate permitting an applicant to undertake an Advocacy Skills Course;
- “Certification Rules” means these Rights to Conduct Litigation and Rights of Audience Certification Rules;
- “Chambers advocacy” means rights of audience exercised in Judge’s room hearings;
- “CILEX” means the Chartered Institute of Legal Executives;
- “External adviser” means a person appointed by CILEx Regulation to carry out the roles and functions identified for them by CILEx Regulation;
- “Fellow of CILEX or applicant in good standing” means a Fellow of CILEx whose subscriptions to CILEX are fully paid or an applicant seeking registration with CILEx Regulation and, in both cases, in respect of whose conduct there is no complaint or misconduct matter outstanding, whose CPD requirements are up to date and against whom there is no disciplinary record which in the view of CILEx Regulation affects their suitability to be a Chartered Legal Executive Litigator and Advocate;
- “CILEX” means the Chartered Institute of Legal Executives;
- “EnforcementRules” means the rules which are in place from time to time which govern the complaints handling and disciplinary procedures of CILEx Regulation;

- “Chartered Legal Executive Advocate” means a Fellow who has been granted a Rights of Audience Certificate by CILEx Regulation;
- “Chartered Legal Executive Litigator” means a Fellow who has been granted a Litigation Certificate by CILEx Regulation;
- “The Act” means the Legal Services Act 2007;
- “Litigation Certificate” means a litigation certificate identified in these Rules;
- “The Officer” means a person with responsibility for the rights to conduct litigation qualification scheme and the rights of audience qualification scheme;
- “a Relevant Advocacy Certificate” means an advocacy certificate in either civil, family or criminal proceedings, which relates to a litigation certificate in civil, family or criminal proceedings, respectively;

Words importing the singular include the plural and vice versa.

2. Responsibility for this qualification scheme is delegated to CILEx Regulation by CILEX.

## **THE RIGHTS TO CONDUCT LITIGATION AND RIGHTS OF AUDIENCE CERTIFICATES**

3. A Fellow of CILEX or an applicant eligible to qualify as a Fellow of CILEX who is in good standing may apply to CILEx Regulation to be granted one or more of the following Certificates:
  - (a) A Right to Conduct Litigation (Civil Proceedings) Certificate;
  - (b) A Right to Conduct Litigation (Family Proceedings) Certificate;
  - (c) A Right to Conduct Litigation (Criminal Proceedings) Certificate.
4. A Fellow of CILEX in good standing who does not already hold a relevant advocacy certificate must, at the same time as their application for a litigation certificate, apply to CILEx Regulation to be granted one or more of the following Rights of Audience Certificates which relate to the same proceedings as the Litigation Certificate:
  - (a) A Rights of Audience (Civil Proceedings) Certificate in Judge’s Room;
  - (b) A Rights of Audience (Family Proceedings) Certificate in Judge’s Room;
  - (c) A Rights of Audience (Civil Proceedings) Certificate;
  - (d) A Rights of Audience (Family Proceedings) Certificate;
  - (e) A Rights of Audience (Criminal Proceedings) Certificate.

5. The Rights to Conduct Litigation exercisable by Chartered Legal Executive Litigators holding Litigation Certificates are set out below:

***Rights to Conduct Litigation (Civil Proceedings) Certificate:***

To conduct litigation in all civil proceedings excluding family proceedings;

***Rights to Conduct Litigation (Family Proceedings) Certificate:***

To conduct litigation in all family proceedings;

***Rights to Conduct Litigation (Criminal Proceedings) Certificate:***

To conduct litigation in all criminal proceedings.

6. The rights of audience exercisable by Litigators holding Rights of Audience Certificates are set out below:

***Rights of Audience (Civil Proceedings) Certificate in Judge's Room:***

- to exercise rights of audience in Judge's room hearings in the County Court and High Court in all civil proceedings excluding family proceedings.

***Rights of Audience (Civil Proceedings) Certificate:***

- to exercise rights of audience in Judge's room hearings in the County Court and High Court in all civil proceedings excluding family proceedings;
- to appear in open Court in the County Court in all actions, except family proceedings;
- to appear before Magistrates, District Judges (Magistrates' Court) or Justices' Legal Advisers in the Magistrates' Courts in relation to all civil and enforcement matters;
- to appear before any tribunal having jurisdiction in England and Wales, which is listed in Schedule 6 of the Tribunals, Courts and Enforcement Act 2007 (as amended or substituted from time to time) where the tribunal rules provide for a non-discretionary right of audience being available to barristers, solicitors and CILEx advocates;
- 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.

A Civil Proceedings Certificate does not confer a right of audience in any proceedings for which a Family Proceedings Certificate is required.

***Rights of Audience (Family Proceedings) Certificate in Judge's Room:***

- to exercise rights of audience in Judge's room hearings in the Family Court and High Court, except reserved proceedings, in all family proceedings.

***Rights of Audience (Family Proceedings) Certificate:***

- to exercise rights of audience in Judge's room hearings in the Family Court and High Court, in all family proceedings;
- to appear in the Family Court in all proceedings;
- 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.

***A Rights of Audience (Criminal Proceedings) Certificate:***

- to appear before Justices Clerks, 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 Clerks, 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 they, or any approved person in the same employment as them, 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.
7. A person who has qualified as a Chartered Legal Executive Advocate before qualification as a Chartered Legal Executive Litigator may continue to exercise all the rights of audience appropriate to the Advocacy Certificate or Certificates they hold, as described in Rule 6 above immediately upon qualification as a Chartered Legal Executive Litigator.

**QUALIFICATION ARRANGEMENTS – RIGHTS TO CONDUCT LITIGATION**

8. Applicants who seek rights to conduct litigation must demonstrate that they meet the knowledge, skills and experience for the certificate they seek in accordance with the knowledge, skills and experience guidelines and portfolio guidelines which appear at **Annexes 1 and 2** and the competence framework at **Annex 3**.

**QUALIFICATION ARRANGEMENTS – RIGHTS OF AUDIENCE**

9. Unless they already hold a relevant rights of audience certificate, applicants who seek rights to conduct litigation must also make an application for rights of audience. In the case of rights to conduct litigation in civil proceedings, an applicant must make an application in civil proceedings either for a Rights of Audience (Civil Proceedings) Certificate in Judge's room or Rights of Audience (Civil Proceedings) Certificate. In the case of family proceedings, an applicant must make an application for either a Rights of Audience (Family Proceedings) Certificate in Judge's room or Rights of Audience (Family Proceedings) Certificate. In the case of criminal proceedings, an applicant must make an application for a Rights of Audience (Criminal Proceedings) Certificate.
10. Applicants must make an application for a Certificate of Eligibility to undertake the rights of audience skills course relevant to the Certificate they seek. In their application they must demonstrate that they meet the entry criteria for the certificate they seek in accordance with the knowledge, skills and experience guidelines which appear at **Annex 1**.

11. An application for a Certificate of Eligibility must be supported by:
  - Evidence of the applicant's knowledge of the law, the rules of evidence and legal practice relevant to the practice area in which they seek rights of audience in accordance with the competence criteria set out at **Annex 3**;
  - A portfolio of cases in which the Applicant has been involved during the two years preceding their application, in accordance with the portfolio guidelines at **Annex 2**;
  - Details of two referees, who are members of the legal profession, who can attest to the applicant's knowledge of civil, criminal or family law and practice, whichever is relevant, and who are able to offer an informed opinion on whether the applicant meets the competence criteria set out in the knowledge, skills and experience guidelines at **Annex 1**;
  - A statement from the applicant confirming that the details provided in their application are true to the best of their knowledge and belief.
12. CILEx Regulation will assess an application for a Certificate of Eligibility in accordance with the criteria set out in the knowledge, skills and experience guidelines and the portfolio guidelines at **Annexes 1 and 2** and the criteria at **Annex 3**. An applicant who meets the criteria will be granted a Certificate of Eligibility.
13. Upon receiving a Certificate of Eligibility an applicant will complete a Judge's room or full advocacy skills course in accordance with the Rights of Audience they seek. Courses must meet the qualification criteria which appear at **Annex 3**. Courses will be assessed in accordance with the assessment criteria which appear at **Annex 4**.
14. Where an applicant who has met the criteria set out in the knowledge, skills and experience guidelines and the portfolio guidelines, has completed an advocacy skills course and qualification which is of a similar standard they may seek an exemption from the requirement to undertake the advocacy skills course and assessment. In making such an application for exemption, the applicant will be required to provide an outline of the advocacy skills course and assessment they completed, along with the results they obtained. CILEx Regulation will assess whether the course and assessment meet the advocacy skills course and assessment criteria set out at **Annexes 3 and 4**. An exemption will be granted where an applicant is able to demonstrate that the course and assessment covered at least 50% of the course outcomes and assessment criteria set out at **Annexes 3 and 4**. Where an applicant is unable to demonstrate that they meet the course outcomes and assessment criteria, they will be required to complete the advocacy skills course and assessment.

## ALL APPLICATIONS

15. An application for a Rights to Conduct Litigation Certificate and a Certificate of Eligibility for Rights of Audience shall be made on such a form as may be prescribed for the purpose by CILEx Regulation and shall be accompanied by such fee as may be fixed by CILEx Regulation from time to time.
16. CILEx Regulation will check the application to ensure it meets the criteria set out in the knowledge, skills and experience guidelines at **Annex 1**. The portfolios which

form part of the application will be sent to an external advisor. The external advisor will assess whether the portfolios meet the criteria set out at **Annexes 1 to 3**.

17. Where the external advisor decides that the portfolios are satisfactory and meet the criteria set out at **Annexes 1 to 3**, a CILEx Regulation Officer will consider whether the application for a Rights to Conduct Litigation Certificate and a Certificate of Eligibility for Rights of Audience may be approved. In reaching their decision the Officer will consider all the information provided by the applicant and may call for further information from any person or source it considers appropriate. Where the Officer has any doubt as to the suitability of the applicant they may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for decision.
18. Where the external advisor decides that the portfolios are not satisfactory and do not meet the criteria set out at **Annexes 1 to 3** they will give reasons for their decision. The Officer will inform the applicant of the decision. The applicant may withdraw their application, amend and resubmit their application or make further representations and ask that the full application be referred to the Admissions and Licensing Committee to consider.
19. The Admissions and Licensing Committee will decide whether or not an application should be approved. In reaching its decision the Committee will consider all the information provided by the applicant, and may call the applicant for interview or call for information from any person or source it considers appropriate. The Committee may:
  - approve the application; or
  - decide that the applicant does not meet the criteria and indicate which of the criteria the applicant does not meet.
20. In making any assessment or decision required by these Rules the Admissions and Licensing Committee shall have regard to the criteria at **Annexes 1 to 3** to these Rules.
21. The Officer will notify an applicant in writing of their decision or the decision of the Admissions and Licensing Committee.
22. Where the application has been approved the notification shall include the Certificate(s) of Eligibility for Rights of Audience and an indication that the Rights to Conduct Litigation Application has been approved. The Litigation Certification may only be granted on the successful completion of the associated Rights of Audience skills course and assessment.
23. Where the application for a Certificate of Eligibility in Rights of Audience has been approved but the application for the Rights to Conduct Litigation Certificate identifies gaps in an applicant's knowledge, skills or experience, the notification shall set out details of the gaps and the reasons why the assessment has identified the full knowledge, skills and experience guidelines and portfolio guidelines have not been met. An applicant may defer their application while they develop their knowledge, skills or experience or attend a course. A course must meet the outcomes set out at **Annex 3** in respect of the outcomes the applicant has not met. Upon completion of a course or development of experience, CILEx Regulation will reassess the application to determine whether the applicant meets the knowledge,

skills and experience guidelines. Where an application meets the guidelines, they may then undertake the Rights of Audience Skills Course and Assessment.

24. Where the application is unsuccessful, the notification shall set out the Committee's 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.
25. The Certificate of Eligibility for Rights of Audience will specify which of the advocacy skills course options the applicant may take.

## ADMISSIONS AND LICENSING COMMITTEE

26. The Admissions and Licensing Committee established under the Admissions and Licensing Committee Rules shall be responsible for the Rights to Conduct Litigation and Rights of Audience schemes.

## EXTERNAL ADVISORS

27. CILEx Regulation shall appoint external advisors to advise the Admissions and Licensing Committee and CILEx Regulation on issues relating to litigation and advocacy.

## ADVOCACY SKILLS COURSES

28. An applicant who has been granted a Certificate of Eligibility in Rights of Audience may take advocacy skills courses relating to the Certificate for which they have been granted a Certificate of Eligibility.
29. Where an applicant fails to start an advocacy skills course within 12 months of being granted a Certificate of Eligibility, they must make a fresh application for such a Certificate before they may start an advocacy skills course. In exceptional cases the Admissions and Licensing Committee or the CILEx Regulation Officer may exercise discretion to extend the duration of a Certificate of Eligibility.
30. Applicants will be required to:
  - successfully complete the training sessions; and
  - pass the formal assessments in accordance with the Assessment Criteria set out in **Annexes 3 and 4**.
31. An approved advocacy skills course must:
  - Meet the course delivery criteria set out at **Annex 3**; and
  - Include arrangements for assessment of advocacy skills in accordance with the assessment criteria set out at **Annex 4**.

## COURSE PROVIDERS

32. Advocacy skills courses will be provided by course providers who are accredited by CILEx Regulation in accordance with the Rights of Audience Certification Rules.

## **CERTIFICATION**

33. Upon successfully demonstrating that they meet the criteria for a Rights to Conduct Litigation Certificate and successful completion of the Judge's room or full advocacy course an applicant may apply for a Litigation and Advocacy Certificate. An applicant who is not a Fellow and has completed an advocacy course may not make an application for a certificate until they become a Fellow of CILEX.
34. A Fellow may only apply for a Litigation and Advocacy Certificate relating to the type of proceedings covered by the litigation application and advocacy skills course they completed.
35. An application shall be made on a form prescribed by CILEx Regulation from time to time for this purpose and shall be accompanied by such fee as may be fixed by CILEx Regulation from time to time.
36. The Officer will process the application for a Litigation and Advocacy Certificate. The applicant shall be granted a Litigation and Advocacy Certificate provided the Officer is satisfied that the applicant:
- is a Fellow in good standing;
  - has met the litigation skills criteria; and
  - has completed and passed an advocacy skills course and assessment.
37. Where the Officer has any doubt as to the suitability of the applicant to be awarded a Litigation and Advocacy Certificate they may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for decision.
38. When considering an application to award a Litigation and Advocacy Certificate the Admissions and Licensing Committee will consider all the information before it and may request additional information from any person or source it considers appropriate. It may require or permit the applicant to attend for interview before reaching its decision.
39. If the Admissions and Licensing Committee is satisfied that the applicant is a fit and proper person to be issued with a Certificate it shall grant the Certificate. If it is not satisfied, it must give its reasons and indicate any preconditions to the consideration of any subsequent application by the applicant.
40. The Officer will notify an applicant in writing of the decision as to whether their application for a Litigation and/or Advocacy Certificate is successful. Where the application has been approved the notification shall include the Litigation and Advocacy Certificate. Where the application is unsuccessful, the notification shall set out the reasons and any preconditions to the consideration of any subsequent application by the applicant for a Litigation and Advocacy Certificate. The applicant may apply for reconsideration of their application in accordance with the Admissions and Licensing Committee Rules.

41. A Fellow holding a Litigation and Advocacy Certificate will be described as a Chartered Legal Executive Litigator and Advocate.

## APPLICATION FOR ADDITIONAL CERTIFICATES

42. A Chartered Legal Executive Litigator and Advocate may apply to be granted Litigation and Advocacy Certificates additional to any Certificates already granted to them under these Rules. Prior to seeking an additional Advocacy Certificate the Litigator must obtain a Litigation Certificate in that practice area or make an application for a Litigation Certificate at the same time.
43. Applications shall be processed in accordance with these Rules.

## RENEWAL OF CERTIFICATES

44. The first Advocacy Certificate issued to a Chartered Legal Executive Litigator, and the first Advocacy Certificate issued in respect of any additional proceedings, will be valid until either 1 June or 1 December, whichever is the earlier, after 12 months have elapsed from the date on which that Certificate was issued. Thereafter, any Advocacy Certificate will be valid indefinitely.
45. Applications for the first renewal of a certificate will be made on a form prescribed by CILEx Regulation from time to time for the purpose and shall be accompanied by such fee as may be fixed by CILEx Regulation from time to time.
46. An application for the first renewal of an Advocacy Certificate must be supported by:
- Confirmation that the applicant is working as a Chartered Legal Executive Litigator and Advocate;
  - a record of the applicant's litigation and advocacy experience gained during the period since their Certificate was granted;
  - a portfolio of cases in which the applicant has been involved during the period since their Certificate was granted, in accordance with the Portfolio Guidelines set out in **Annex 2**;
  - a statement from the applicant confirming the details provided of their litigation and advocacy experience and whether any rights to conduct litigation and rights of audience granted will be exercised in the future.
47. The portfolio which forms part of the application for the first renewal of the Certificate will be sent to an external advisor. The external advisor will assess the portfolio against the criteria set out in **Annexes 1 and 2**.
48. Where the external advisor decides that the portfolio is satisfactory and shows that the applicant has applied the litigation and advocacy skills in the cases described in accordance with the Portfolio Guidelines in **Annex 2** and the criteria set out in the competence and assessment frameworks at **Annexes 3 and 4** the Officer will consider the application and decide whether it should be approved. In reaching a decision the Officer will consider all the information provided by the applicant and may call for further information from any person or source it considers appropriate.

49. Where the Officer has any doubt as to the suitability of the applicant they may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for decision.
50. Where the external advisor decides that the portfolio is not satisfactory and does not show that the applicant has applied the litigation and/or advocacy skills in the cases described in accordance with the Portfolio Guidelines set out in **Annex 2** and the criteria set out in the competence and assessment frameworks at **Annexes 3 and 4** the external advisor shall give reasons for their decision. They shall indicate what action the applicant needs to take to provide a satisfactory portfolio. The Officer will inform the applicant of the decision. The applicant may withdraw their application or make further representations and ask that the full application be referred to the Admissions and Licensing Committee to consider.
51. The Admissions and Licensing Committee will decide whether or not an application referred to it should be approved. In reaching its decision the Committee will consider all the information provided by the applicant and may call the applicant for interview or call for further information from any person or source it considers appropriate. The Committee may approve the application or reject it.
52. In making any assessment or decision required by these Rules the Officer and the Admissions and Licensing Committee shall have regard to the portfolio guidelines in **Annex 2** and the criteria set out in the competence and assessment frameworks at **Annexes 3 and 4**.
53. The Officer will notify an applicant in writing of the decision. Where the application has been approved the notification shall include the Advocacy Certificate. Where the application is unsuccessful the notification shall set out the reasons for the decision and any preconditions to the consideration of any subsequent application for an Advocacy Certificate.
54. Where the application is unsuccessful an applicant may apply for reconsideration in accordance with the Admissions and Licensing Committee Rules. The Admissions and Licensing Committee will have the powers set out in Rule 54 available upon an application for reconsideration.

## **LAPSED CERTIFICATES**

55. A Fellow who has held a Litigation and Advocacy Certificate which has lapsed may apply for that certificate to be renewed. Renewal of a lapsed certificate will be governed by Rules 46 to 57 which deal with first renewal of an advocacy certificate save that in Rule 49:
  - the reference to an application for the first renewal of a Advocacy Certificate should be a reference to an application for renewal of a lapsed Litigation and Advocacy Certificate;
  - the applicant will not be required to provide confirmation that they are working as a Chartered Legal Executive Litigator and Advocate;

- the applicant will be required to provide a record of their litigation and advocacy experience since their Litigation and Advocacy Certificate lapsed, except where the Certificate which has lapsed is a Criminal Litigation and Criminal Advocacy Certificate, reference to the record of the applicant's advocacy experience shall include police station advice and observed advocacy in accordance with the Portfolio Guidelines; and
  - the information required to be provided by the applicant shall include, additionally, reasons why the Litigation and Advocacy Certificate lapsed and details of CPD undertaken during the 12 months prior to the application.
56. A lapsed Litigation and Advocacy Certificate is one which has expired and has not been renewed, whether by decision of the holder of the certificate or as a result of a decision of the Admissions and Licensing Committee or,
57. In the case of a Criminal Proceedings Litigation and Advocacy Certificate, where the certificate has lapsed because the holder has ceased to be eligible to hold a certificate for any reason.
58. Where a Litigation and Advocacy Certificate which has lapsed is renewed by the Admissions and Licensing Committee it will be valid indefinitely.

## **PRACTICE MANAGEMENT AND ACCOUNTS**

59. A Chartered Legal Executive Litigator and Advocate who seeks to practise in an entity seeking regulation by CILEx Regulation must demonstrate that they meet the knowledge, skills and experience in accounts and practice management in accordance with the knowledge, skills and experience guidelines and portfolio guidelines and the competency frameworks which appear at **Annexes 5 and 6**. They will not be authorised to be an approved manager in an entity until these requirements are met.
60. Where an applicant relies upon existing experience they must complete a log in accordance with the portfolio guidelines. An applicant who relies upon a qualification as evidence of meeting the competency framework must provide details of that qualification and assessment. CILEx Regulation will consider whether the experience or qualification relied upon demonstrates that the applicant meets the requirements of the competency framework.
61. An applicant who does not meet the knowledge, skills and experience requirements for practice management and/or accounts must complete qualification courses and assessment in those areas which meet the competency frameworks at **Annexes 5 and 6**.

## **CONTINUING PROFESSIONAL DEVELOPMENT (CPD)**

62. Chartered Legal Executive Litigators and Advocates are required to undertake CPD in accordance with the CPD Regulations issued by CILEx Regulation from time to time. Those who hold a criminal proceedings certificate must also comply the CPD requirements to undertake vulnerable witness handling training prior to the first advocacy certificate renewal.

## **DISCIPLINARY PROCEDURES AND CODE OF CONDUCT**

63. Chartered Legal Executive Litigators and Advocates must abide by the Code of Conduct of CILEX for the time being in force.
64. Where an issue relating to the competence of a Chartered Legal Executive Litigator and Advocate who holds a Criminal Litigation and Criminal Advocacy Certificate is brought to the attention of CILEx Regulation, the Admissions and Licensing Committee will consider whether the Chartered Legal Executive Litigator and Advocate remains a fit and proper person to hold a Litigation and Advocacy Certificate. The Admissions and Licensing Committee must give reasons for its decision. The Committee may ask for further information or evidence, including a report from an independent assessor regarding the competence of the Litigator and Advocate in order to assist in its decision making.
65. Where a complaint is made or an issue is brought to the attention of CILEx Regulation regarding the conduct of a Chartered Legal Executive Litigator and Advocate that matter will be dealt with in accordance with CILEx Regulation's Investigation, Disciplinary and Appeals Rules.
66. Where a Finding, Order or Decision is made against a Chartered Legal Executive Litigator and Advocate by a Disciplinary Tribunal or Panel that Finding, Order or Decision will be referred to the Admissions and Licensing Committee. The Admissions and Licensing Committee will decide whether the Chartered Legal Executive Litigator and Advocate remains a fit and proper person to hold a Litigation and Advocacy Certificate. The Admissions and Licensing Committee must give reasons for its decision.
67. Rule 67 shall not apply where an Order is made excluding a Chartered Legal Executive Litigator and Advocate from membership of CILEX. Rule 69 shall apply in such a case.
68. Where the Admissions and Licensing Committee decides that the Chartered Legal Executive Litigator and Advocate is no longer a fit and proper person to hold a Litigation and Advocacy Certificate, they must return their Certificate(s) to CILEx Regulation within 28 days of them being notified of the decision. Failure to do so will constitute a disciplinary offence. The Fellow may not exercise any litigation or advocacy rights granted to them under their Litigation and Advocacy Certificate(s) after they have been notified of the decision.
69. Notwithstanding the Admissions and Licensing Committee Rules an appeal against a decision of the Admissions and Licensing Committee that a Chartered Legal Executive Litigator and Advocate is no longer a fit and proper person to hold a Litigation or Advocacy Certificate will be considered by a professional member and two lay members drawn from the panel of lay and professional members appointed to serve on the CILEx Regulation Appeals Panel.

8. In their application, portfolios and logbook, an applicant will be expected to demonstrate that they can:
  - 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 on the merits of particular arguments;
  - Present and make a reasoned choice between alternative solutions;
  - Act independently in planning, preparing and undertaking tasks in the area in which they seek reserved legal activity rights;
  - Undertake independent research in the areas where rights are sought using standard legal information sources; and
  - Reflect on their learning and make constructive use of feedback.

## Evaluating Experience

9. An applicant will be expected to have a range of experience across the litigation practice area in which they seek rights. Applicants should have handled cases from the beginning to the end of the process, including preparing cases for trial and undertaking post trial work.
10. CILEx Regulation will consider the quality of experience that an applicant has gained, as well as the quantity of their experience. In considering the quality of experience an applicant has gained, CILEx Regulation will look at various factors such as the seriousness and complexity of cases handled, difficult cases handled, the nature of the matter and the types of hearings that have been undertaken.
11. CILEx Regulation will recognise that applicants could have had a break in their experience due to factors such as career breaks, job changes, maternity or paternity leave, long term illness, or disability. CILEx Regulation will not discriminate directly or indirectly against an applicant whose experience has been affected in this way. However, CILEx Regulation will need to ensure that an applicant has an acceptable level of experience.
12. Where an applicant has had a break in their experience, they may provide details of experience gained during a different period when they were more actively engaged in practice in the area where rights are sought. However, the break must not have been longer than 5 years. In exceptional circumstances, applications may be accepted from applicants who have had a break longer than 5 years.

13. There may be other factors which affect an applicant's experience in the preceding 2 years. CILEx Regulation will consider details of more active periods from applicants whose experience discloses a pattern that they regard as atypical.

## **Rights of Audience – Guidelines**

14. These guidelines apply to applicants who seek a Certificate of Eligibility for the rights of audience qualification. Applicants must satisfy these guidelines in addition to the knowledge, skills and experience guidelines for the rights to conduct litigation certificate.

## **Certificate of Eligibility**

15. An applicant who seeks litigation rights in civil and family proceedings must, at the same time, make an application for rights of audience, either in Judge's room proceedings, or Judge's room and open court proceedings. An applicant who seeks litigation rights in criminal proceedings must, at the same time, make an application for rights of audience in open court proceedings.
16. The applicant must provide the following information about their experience:
  - Total years advocacy experience and the number of years' experience in advocacy gained as a fee earner;
  - The types of advocacy they have undertaken.
17. Applicants will complete a form which sets out the following information:
  - A general description of the advocacy they have carried out;
  - Details of their typical case load;
  - The proportion or number of cases which have included preparation for trial;
  - The range and nature of their advocacy experience, including experience of observed advocacy.
18. Applicants must submit a portfolio of cases demonstrating their advocacy experience in compliance with the criteria set out at **Annex 3** and portfolio criteria at **Annex 2**.
19. In their application, applicants will need to satisfy CILEx Regulation that they have an appropriate level of knowledge of law and practice, experience and skills to enable them to undertake the rights of audience skills course and upon successful completion of that course, to exercise the right of audience they seek.

## Evaluating Advocacy Experience

20. CILEx Regulation will need to be satisfied that an applicant is actively undertaking advocacy. In considering whether an applicant is an active advocate, CILEx Regulation 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.
21. CILEx Regulation 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 course for which they are seeking extended rights of audience.
22. An applicant will be expected 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 they have observed and indicate the nature of the cases concerned.
23. CILEx Regulation will take a balanced view about an applicant's experience in deciding whether it is sufficient to grant them a Certificate of Eligibility, particularly where they rely in part on observed advocacy.
24. CILEx Regulation will recognise that applicants could have had a break in their experience due to factors such as career breaks, job changes, maternity or paternity leave, long term illness, or disability. CILEx Regulation will not discriminate directly or indirectly against an applicant whose experience has been affected in this way. However, CILEx Regulation will need to ensure that an applicant has an acceptable level of experience.
25. Where an applicant has had a break in their experience, they may provide details of experience gained during a different period when they were more actively engaged in practice in the area where rights are sought. However, the break must not have been longer than 5 years. In exceptional circumstances, applications may be accepted from applicants who have had a break longer than 5 years.
26. There may be other factors which affect an applicant's experience in the preceding 2 years. CILEx Regulation will consider details of more active periods from applicants whose experience discloses a pattern that they regard as atypical.

## ANNEX 2 - PORTFOLIO GUIDELINES AND ASSESSMENT CRITERIA

### Introduction

1. An applicant seeking reserved legal activity rights must provide evidence of their:
  - Knowledge and understanding of the area of law in which they seek rights, demonstrated to CILEx Level 6 standard;
  - Knowledge and understanding of the area of practice in which they seek rights, demonstrated to CILEx Level 6 standard;
  - Experience in the area of law in which they seek rights; and
  - Skills in the legal practice area in which they seek rights.
2. Applicants must demonstrate their knowledge, skills and experience, set out at Rule 1, in accordance with the competency framework which appears at **Annex 3**.

### Knowledge of Law and Legal Practice

3. An applicant who has successfully completed and passed an assessment in the CILEx Level 6 examinations in the law and associated legal practice subject relevant to the area in which they seek practice rights will have demonstrated their knowledge of the law and legal practice.
4. An applicant who has obtained a qualification which is not the CILEx Level 6 qualification, but of an equivalent standard, may rely upon that as evidence of their knowledge. In determining whether to accept an alternative qualification, CILEx Regulation will assess the syllabus of that qualification, date upon which the qualification was obtained and details of the assessment the applicant undertook, to determine whether an exemption may be granted. In assessing the details of the qualification, CILEx Regulation will determine whether the qualification relied upon is of an equivalent standard and covered at least 50% of the syllabus of the relevant CILEx Level 6 subject(s).
5. Where an applicant does not rely upon an alternative qualification, or the qualification is deemed as not providing sufficient coverage to the same standard as the CILEx Level 6 subject(s), they may rely upon experience which has developed their knowledge of the relevant law area and/or legal practice.
6. Applicants seeking to rely upon their experience must demonstrate how they have developed their knowledge of the relevant law and/or legal practice subject area(s) through their experience. Applicants will complete portfolios of 5 cases they have handled, within the 2 years preceding the date of their application, which demonstrate the knowledge they have gained through experience.

7. Applicants will be required to select a range of cases and provide an outline of the following in respect of each portfolio:
  - The facts of the case;
  - The law arising in the case and its application to the facts of the case;
  - The appropriate procedural and process matters that arose in the case and how they were dealt with;
  - The evidential issues that arose in the case and how they were dealt with;
  - An outline of any ethical or conduct issues that arose in the case and how they were dealt with;
  - The funding issues that arose in the case and how they were dealt with;
  - The advice the applicant provided to the client and the outcome of the matter;
  - Decisions the applicant had to make in the case and whether they had to take advice on any strategic issues in the case;
  - Advice given in the case and how it has been recorded; and
  - Any training or development needs the applicant identified from having dealt with the case.
8. CILEx Regulation will assess the portfolios to establish whether they demonstrate that an applicant has acquired sufficient knowledge, through experience, to the same standard as the CILEx Level 6 subject. The knowledge gained must cover at least 50% of the syllabus of the CILEx Level 6 subject.
9. In making its assessment, CILEx Regulation will take into account the competence criteria set out at **Annex 3** which outline the knowledge requirements for the relevant subject area.

## Experience

10. All applicants must provide an outline of their experience in the area of practice in which they seek to become an authorised person for the purposes of conducting reserved legal activities.
11. Applicants must provide an outline of their experience in an application along with 3 portfolios of cases they have handled which demonstrate their experience.
12. The experience outlined in an application must set out the following information for the 2 years preceding the date of the application:
  - A description of cases that the applicant has handled;

- A description of the applicant's typical case load, including details about the complexity of the case load and a summary of any difficult cases the applicant has handled;
  - The number of chargeable hours spent on the practice area in which rights are sought;
  - The proportion of time spent on that area of law;
  - A description of the range and nature of matters that the applicant has handled in the area of practice in which rights are sought;
  - Details of any distinctive features of the applicant's work; and
  - Details of any supervisory arrangements under which the applicant works and any supervisory responsibilities they have.
13. An applicant will be required to produce a portfolio of 3 cases which demonstrate their experience in the area in which rights are sought.
14. In the portfolios, applicants must provide the following information:
- The facts of the case;
  - The law arising in the case and its application to the facts of the case;
  - The procedural and process matters that arose in the case and how they were dealt with;
  - The evidential issues that arose in the case and how they were dealt with;
  - Any ethical or conduct issues that arose in the case and how they were dealt with;
  - The funding issues that arose in the case and how they were dealt with;
  - The advice the applicant provided to the client and the outcome of the case;
  - Decisions that the applicant had to make in the case, including whether they had to take advice on any strategic issues; and
  - Any training or development needs that the applicant identified from having dealt with the case.
15. CILEx Regulation will assess the outline of experience provided in the application, along with the 3 portfolios. The assessment will consider whether the applicant meets the experience requirements set out in the competency framework at **Annex 3**.

## Skills

16. An applicant must provide evidence of their skills in the area in which they seek reserved legal activity rights in accordance with the skills criteria for each practice and law area which appear at **Annex 3**.
17. An applicant may demonstrate their skills through either undertaking a skills course which meets the outcomes set out at **Annex 3**, or producing a log of their experience which demonstrates their skills.
18. Where an applicant seeks to rely upon a course, they must demonstrate that the course meets the outcomes set out at **Annex 3**.
19. An applicant who seeks to rely upon their experience as evidence of their skills must demonstrate that they meet each of the outcomes set out at **Annex 3** through the production of a log book and supporting evidence. Applicants will be required to evidence in the log book the outcome that has been met and reflect upon how the outcome was met. Each outcome must be met at least once.
20. CILEx Regulation will assess the log and supporting evidence provided by applicants to determine whether an applicant has demonstrated that they meet the skills criteria set out at **Annex 3**.

## Advocacy Experience Post Qualification

21. At the first renewal of the rights of audience certificate Advocates must produce portfolios of 3 cases which demonstrate their advocacy experience since they qualified as a Chartered Legal Executive Advocate.
22. In selecting cases for their portfolio, Advocates should identify cases which demonstrate that they have conducted advocacy in accordance with the skills course outcomes set out at **Annex 3**.
23. When considering applications for renewal CILEx Regulation will expect the skills course outcomes to be reflected in the portfolios and, where they are not, may refuse the application for renewal of the certificate.
24. Where no such advocacy has been carried out, the applicant must explain the reasons. Applicants who have not had an opportunity to exercise their new rights of audience may include details of no more than one case in which they have observed advocacy in open court.
25. Where an applicant has not been able to demonstrate through 3 portfolios that they have conducted advocacy which meets the course outcomes set out at **Annex 3**, they may be granted a certificate for a further year and be required to produce 3 additional portfolios demonstrating exercise of their rights the following year.

26. For each portfolio, the record of advocacy must set out the following:
- Description of the case, its progression and outcome;
  - The nature of the advocacy the applicant has undertaken, including details of any negotiation and arbitration undertaken;
  - The court in which the advocacy took place, and whether it was a contested hearing;
  - The preparation work the applicant carried out before the hearing;
  - The client's objectives for the case;
  - The legal, procedural, evidential and ethical issues that arose during the course of the hearing or advocacy and an outline of how the applicant dealt with them;
  - A statement as to the effectiveness of the advocacy undertaken by the applicant; and
  - Any training or development needs the applicant identified from having dealt with the case.

### **Practice Management and Accounts**

27. An applicant who relies upon their existing practical experience of practice management and accounts must provide evidence of their knowledge, skills and experience of accounts and practice management in accordance with the competency criteria which appear at **Annexes 5 and 6**.
28. An applicant must demonstrate their knowledge, skills and experience through producing a log which demonstrates that they meet each of the outcomes set out at **Annexes 5 and 6**. The log must be supported by evidence. Applicants will be required to evidence in the log book the outcome that has been met and reflect upon how the outcome was met. Each outcome must be met at least once.
29. CILEx Regulation will assess the log and supporting evidence provided by applicants to determine whether an applicant has demonstrated that they meet the competency requirements set out at **Annexes 5 and 6**.

**Lit portfolio**

## ANNEX 3 – COMPETENCE FRAMEWORKS

### CRIMINAL LITIGATION PRACTICE RIGHTS

#### INTRODUCTION

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

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

**Note:** applicants seeking rights of audience in hearings in open court and chambers should refer to the criteria set out in the Advocacy Rights competence framework.

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

- met the application requirements
- an appropriate level of experience in the field of criminal litigation in practice which must include not less than two years relevant experience immediately preceding the application
- an appropriate level of knowledge and appreciation of the key legal features of criminal litigation, including the ability to advise, manage and undertake all aspects of case management commonly associated within this field of practice
- the ability and experience to research aspects of case law, legal procedure and documentation that is current
- the ability and experience to interview clients appropriately, identify the client's objectives and different means of achieving those objectives and advise and be aware of the financial and personal priorities and constraints to be taken account of together with the costs, benefits and risks involved in a procedure or course of action

- the ability and experience to perform the tasks required to advance matters, to include (but not restricted to) drafting letters of advice to clients, communicating with co-professionals, the police, the Crown Prosecution Service and with the court
- the ability and experience to draft all relevant documentation including (but not restricted to) drafting applications and notices to the court, case management forms, witness statements and documentation required to obtain public funding
- the ability and experience to undertake advocacy in the required fields within this practice area
- demonstrate a level of experience, knowledge and understanding of all aspects of professional conduct and regulation which includes an understanding of the key ethical requirements contained in the relevant conduct rules and other law and regulations and where these may impact and be able to apply them in context.

Entry Level Competencies	Learning Outcome To obtain Criminal Litigation Practice Rights an applicant must:	Supporting Experience The applicant will need to provide evidence of:
<p><b>STAGE 1</b></p> <p><b>ENTRY CRITERIA</b></p> <ul style="list-style-type: none"> <li>• KNOWLEDGE</li> <li>• UNDERSTANDING</li> <li>• SKILLS</li> <li>• EXPERIENCE</li> </ul> <p><b>ENTRY KNOWLEDGE AND UNDERSTANDING</b></p>	<ul style="list-style-type: none"> <li>• Have practical knowledge, understanding, experience and skills</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Knowledge and understanding qualifications</b></li> <li>• <b>Legal Skills qualifications</b></li> <li>• <b>Fellowship</b></li> </ul> <p><b>Knowledge and understanding qualifications</b></p> <ul style="list-style-type: none"> <li>• Successful completion of CILEx Level 6 Professional Higher Diplomas in criminal litigation practice and criminal law</li> </ul> <p><b>Or</b></p> <ul style="list-style-type: none"> <li>• Supplied evidence of qualification of an equivalent standard</li> </ul> <p><b>Or</b></p> <ul style="list-style-type: none"> <li>• Supplied evidence of experience of an equivalent standard</li> </ul> <p><b>Legal Skills qualifications</b></p> <ul style="list-style-type: none"> <li>• Successful completion of CILEx Level 6 Professional Higher Diplomas in Legal Research and ClientCare</li> </ul> <p><b>Or</b></p> <ul style="list-style-type: none"> <li>• Supplied evidence of qualification of an equivalent standard</li> </ul> <p><b>Or</b></p> <ul style="list-style-type: none"> <li>• Supplied evidence of experience of an equivalent standard</li> </ul> <p><b>Fellowship</b></p> <ul style="list-style-type: none"> <li>• Is a Fellow of CILEx</li> </ul> <p><b>Note 1:</b> Where the applicant holds appropriate qualifications which enable an application for Fellowship to be made, this can be made concurrently with the application for Criminal Litigation Practice Rights</p> <p><b>Note 2:</b> Where the applicant does not hold the relevant Level 6 examinations (or equivalent), they are required to demonstrate their knowledge and understanding through the submission of 5 portfolios, in accordance with <b>the Portfolio Guidelines</b>. Examples will be drawn from a range of cases from the applicant's case load.</p>
<p><b>KNOWLEDGE AND UNDERSTANDING</b></p> <p><b>ENTRY SKILLS</b></p>	<p><b>Demonstrate knowledge and understanding of criminal law as it operates in practice.</b></p> <p><b>Demonstrate knowledge and understanding of criminal procedure and the law of evidence as they operate in practice.</b></p>	<p><b>Note: elements in italics are optional</b></p> <ul style="list-style-type: none"> <li>• The criminal law relating to analysis of actus reus, mens rea, offences of strict liability, negligence giving rise to criminal liability and defences. This may be in the context of non-fatal offences, sexual offences, homicide offences, offences against property, road traffic offences and inchoate offences</li> <li>• Application and critical evaluation of criminal liability in given factual situations</li> </ul>

Entry Level Competencies	Learning Outcome To obtain Criminal Litigation Practice Rights an applicant must:	Supporting Experience The applicant will need to provide evidence of:
		<ul style="list-style-type: none"> <li>• Police investigative powers; public funding of criminal cases; bail; summary proceedings; how and why cases go the Crown Court; trial on indictment; sentencing; appeals and the rules of evidence in criminal proceedings</li> <li>• <i>Cases dealt with in the Youth Court that demonstrate any of the above subject matter.</i></li> </ul>
Client care	<b>Demonstrate knowledge and understanding of the role of client interviewing and negotiation in legal practice</b>	<ul style="list-style-type: none"> <li>• Understand successful client interviewing</li> <li>• Interviews which the applicant considers to be successful and identify what made them successful</li> <li>• Understand negotiation and its importance in legal practice, including identification of a number of types of negotiation and the importance of preparation in successful negotiation. Identify a number of media through which negotiation can take place</li> <li>• Examples of the following which have been overcome in a negotiation situation:               <ul style="list-style-type: none"> <li>• The use of different types of negotiation using different media</li> <li>• A situation in which preparation for negotiation was central to success</li> <li>• A situation in which communication barriers were overcome for a successful outcome</li> <li>• Use of persuasion to achieve a successful outcome</li> </ul> </li> </ul>
	<b>Demonstrate good practice in legal writing</b>	<p>Legal writing which demonstrates understanding of the following key areas of good practice:</p> <ul style="list-style-type: none"> <li>• Accurate, succinct, complete and precise writing</li> <li>• Awareness of the need to use 'plain English' and writing using correct grammar and spelling</li> <li>• Legal English is used only when necessary and is appropriately explained</li> <li>• Judicious use of structure to clearly and logically set out information</li> <li>• The synthesis of a variety of sources to provide advice to the client</li> <li>• Use of appropriate communication, including use of appropriate tone and style, to sensitively manage client expectations.</li> </ul>
	<b>Demonstrate knowledge and understanding of professional conduct issues arising in practice</b>	<ul style="list-style-type: none"> <li>• Explain where the applicant will find the rules of professional conduct which affect their practice of the law</li> <li>• Identify situations in which an ethical issue may have arisen in their practice and how the applicant dealt with those situations</li> <li>• Identify any professional organisations that exist within the applicant's area of practice and explain benefits of membership.</li> </ul>

Entry Level Competencies	Learning Outcome To obtain Criminal Litigation Practice Rights an applicant must:	Supporting Experience The applicant will need to provide evidence of:
	<b>Demonstrate knowledge and understanding of the importance of client care in legal practice</b>	<ul style="list-style-type: none"> <li>• Explain the conduct rules relating to client care and evidence use of the rules in practice</li> <li>• Evidence use of client care letters and complaint management, 'Your Clients, Your Business' and the benefits of LEXCEL membership etc.</li> <li>• Demonstrate understanding of the need for good client care to benefit the business.</li> </ul>
<b>Legal Research</b>	<p><b>Demonstrate knowledge and understanding of legal research and be able to analyse the scope and complexity of situations which need legal research</b></p> <p><b>Demonstrate knowledge and understanding of and be able to evaluate legal research sources</b></p> <p><b>Demonstrate knowledge and understanding of and be able to perform appropriate legal research</b></p> <p><b>Demonstrate knowledge and understanding of and be able to analyse the law in relation to practical problems</b></p> <p><b>Ability to record and evaluate information</b></p> <p><b>Ability to synthesise research to present advice</b></p>	<ul style="list-style-type: none"> <li>• Identify situations in which the need for legal research has arisen in their work</li> <li>• Explain the steps the applicant undertook to identify relevant sources of information and how they determined the reliability, accuracy and currency of the information discovered</li> <li>• Explain their understanding of primary and secondary sources and how these sources can be used to ensure the applicant sufficiently researched the problem</li> <li>• Identify relevant statutes, case law and other sources from research</li> <li>• How research was prioritised and analysed and used to better understand the issues raised in the legal matter</li> <li>• Synthesis of the research materials to provide a structured and accurate report</li> <li>• How the applicant evaluated the research ensuring that it is comprehensive and sensitive to the needs of the recipient.</li> </ul>
<b>ENTRY EXPERIENCE:  ALL APPLICANTS</b>	Criminal proceedings litigation experience in the 2 years preceding the application	<ul style="list-style-type: none"> <li>• General description of criminal work carried out</li> <li>• Description of typical case load</li> <li>• An indication of chargeable hours spent on criminal proceedings work in each of the last 2 years</li> <li>• The proportion of time spent on criminal proceedings work</li> <li>• The number of cases which have included preparation for trial</li> <li>• Details of the supervisory arrangements under which the applicant works and/or their supervisory responsibilities</li> </ul> <p>The applicant is required to demonstrate their experience of criminal law, practice and litigation through the submission of 3 portfolios in accordance with <b>the Portfolio Guidelines</b>. Examples will be drawn from a range of cases from the applicant's case load.</p>

Entry Level Competencies	Learning Outcome To obtain Criminal Litigation Practice Rights an applicant must:	Supporting Experience The applicant will need to provide evidence of:
<b>STAGE 2</b>  <b>QUALIFICATION CRITERIA: SKILLS</b>	The qualification requirement to obtain Criminal Litigation Practice Rights will require the applicant to demonstrate that they meet the following skills:	In order to obtain accreditation the applicant needs to demonstrate the outcomes by either: <ul style="list-style-type: none"> <li>• Attendance on a course, or</li> <li>• Through work experience and by satisfying the assessment criteria.</li> </ul> Applicants must show the required level of skills in 4 elements, across a range of criminal matters which may include representing a client in proceedings before: <ol style="list-style-type: none"> <li>(1) a Magistrates' Court;</li> <li>(2) a Youth Court</li> <li>(3) a Crown Court.</li> </ol>
<b>Element 1.</b>  INTERVIEWING, ADVISING AND COMMUNICATING	<b>INTERVIEWING</b> An ability to conduct effective interviews with the client and potential witnesses across a range of criminal matters	<ul style="list-style-type: none"> <li>• Prepare for an initial interview and apply a structured approach to it</li> <li>• Greet the interviewee appropriately</li> <li>• Use appropriate listening, questioning and feedback techniques</li> <li>• Maintain rapport with the interviewee</li> <li>• Be sensitive to diversity issues</li> <li>• Keep a full and accurate record of the interview</li> <li>• Close the interview appropriately.</li> </ul>
	<b>ADVISING &amp; COMMUNICATING</b> An ability to give and communicate clear accurate and practical advice both orally and in writing on matters relating to law, procedure, strategy and prospects of success (either orally, in writing or other media). Where necessary, the applicant will be able to refer the client on to outside agencies or professionals better able to deal with the wider aspect of their problem	<ul style="list-style-type: none"> <li>• Obtain all relevant information and identify the client's objectives</li> <li>• Give clear advice on all relevant matters arising</li> <li>• Identify the options available and explain the pros and cons of each of those options</li> <li>• Enable the client to make decisions in the case based on appropriate advice</li> <li>• Give clear, appropriate and accurate advice regarding costs and funding</li> <li>• Seek appropriate instructions and give clear advice regarding the next steps to be taken</li> <li>• Deal appropriately with any diversity issues that arise</li> <li>• Handle an emotionally distressed client in a sensitive and professional manner</li> <li>• Produce an accurate record of the interview</li> </ul>
<b>Element 2.</b>  COSTS AND FUNDING	<b>COSTS</b> An ability to provide clear and accurate advice on the power of the court to make orders in relation to costs	<ul style="list-style-type: none"> <li>• Provide appropriate advice and information about the court's powers to make an order in relation to a client paying a contribution towards prosecution costs and when defence costs may be paid from central funds or by the prosecution.</li> </ul>

Entry Level Competencies	Learning Outcome To obtain Criminal Litigation Practice Rights an applicant must:	Supporting Experience The applicant will need to provide evidence of:
	<b>FUNDING</b> An ability to provide clear, accurate and regular advice on funding options to include private funding and public funding	<ul style="list-style-type: none"> <li>Advise a client about their eligibility for publicly funded legal advice and representation</li> <li>Explain what supporting documentation will be required to obtain publicly funded representation</li> <li>Advise the client on the financial and other implications of obtaining publicly funded representation</li> <li>Provide appropriate information to privately funded clients regarding the fees which will be charged.</li> </ul>
	<b>DOCUMENTATION</b> Draft or complete the necessary documents relating to funding	<ul style="list-style-type: none"> <li>Draft client care letters</li> <li>Complete all relevant Criminal Defence Solicitor Forms required in order to obtain public funding</li> <li>Complete all relevant Criminal Defence Solicitor Forms required in order to obtain authority to instruct experts when this is necessary</li> <li>Prepare estimates and schedules of costs for privately funded clients.</li> </ul>
<b>Element 3.</b>  PROFESSIONAL CONDUCT AND ETHICS	<b>CONDUCT AND ETHICS</b> <ul style="list-style-type: none"> <li>An awareness of their professional obligations in a diverse range of situations in respect of matters relating to substantive law and the rules of professional conduct</li> <li>An awareness of their obligations to: the court; their client; other lawyers; the public; and the Community Legal Service in respect of money laundering legislation and regulation</li> </ul>	<ul style="list-style-type: none"> <li>Identify situations and their obligations to: the court; their client; other lawyers; the public and money laundering legislation and regulation in practice.</li> </ul>
	<b>CONFLICTS</b> An ability to identify and deal appropriately with conflicts of interest throughout their handling of the matter	<ul style="list-style-type: none"> <li>Identify and deal appropriately with conflicts; arising between the applicant and the client; arising between the applicant and their duty to the court; or arising between the applicant and any relevant third party.</li> </ul>
	<b>WITHDRAWAL FROM THE CASE</b> An awareness of when they can and/or must withdraw from a case; the proper steps to be taken when doing so whilst observing the interest of the client	<ul style="list-style-type: none"> <li>Show an awareness of the need to withdraw when the client's interests conflict with their duties to the court or any other circumstances where withdrawal is required</li> <li>The appropriate steps to take when withdrawing from a case.</li> </ul>

Entry Level Competencies	Learning Outcome To obtain Criminal Litigation Practice Rights an applicant must:	Supporting Experience The applicant will need to provide evidence of:
	<b>CONFIDENTIALITY AND PRIVILEGE</b> An understanding of and the ability to apply the law and practice of confidentiality and privilege in a variety of practical contexts	<ul style="list-style-type: none"> <li>• Distinguish between legal advice privilege and litigation privilege</li> <li>• Distinguish between confidential information and privileged information</li> <li>• Identify when confidential and privileged information may or must be disclosed and to whom.</li> </ul>
	<b>COMPLAINTS AND NEGLIGENCE</b> An awareness of how complaints and allegations of negligence might arise and appropriate measures/procedures for preventing and dealing with them	<ul style="list-style-type: none"> <li>• Describe/explain the complaints procedure operated by their professional body</li> <li>• Be aware of procedures or processes which can be adopted to reduce the risk of complaints or allegations of negligence being made</li> <li>• Describe the consequences of a successful complaint or allegation of negligence being made.</li> </ul>
<b>Element 4.</b>  MANAGING LITIGATION WORK	<b>FILE HANDLING</b> An ability to plan and manage litigation effectively	<ul style="list-style-type: none"> <li>• Allocate time and resources appropriately</li> <li>• Adopt and maintain an appropriate case strategy</li> <li>• Be aware of procedural requirements including relevant practice directions and procedural rules</li> <li>• Actively manage cases.</li> </ul>
	<b>CASE ANALYSIS AND CASE PREPARATION</b> <ul style="list-style-type: none"> <li>• An ability to effectively analyse a case</li> <li>• An ability to formulate a case strategy which is:               <ul style="list-style-type: none"> <li>• compatible with the client's objectives</li> <li>• legally and procedurally sustainable</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Identify the key points the prosecution must prove in order to secure a conviction</li> <li>• Identify the available evidence the prosecution has to prove these points</li> <li>• Identify what defence, if any, the client is raising and what evidence is available in relation to this defence</li> <li>• Identify the strengths and weaknesses in the case</li> <li>• Identify gaps in the available evidence</li> <li>• Draw up a realistic case theory</li> <li>• Relate the case theory to the client's objectives and expectations</li> <li>• Draw up a strategy for the case.</li> </ul>
	<b>ASSEMBLY SKILLS</b> An ability to assemble all materials relevant to the case, in accordance with the case analysis	<ul style="list-style-type: none"> <li>• Identify relevant law and procedural rules</li> <li>• Efficiently collate all relevant evidence</li> <li>• Summarise relevant law, procedure and evidence</li> <li>• Locate and interview witnesses</li> <li>• Locate and instruct expert witnesses in accordance with relevant Criminal Procedure Rules.</li> </ul>

Entry Level Competencies	Learning Outcome To obtain Criminal Litigation Practice Rights an applicant must:	Supporting Experience The applicant will need to provide evidence of:
	<b>INSTRUCTING ADVOCATES</b> An ability to instruct an advocate when necessary	<ul style="list-style-type: none"> <li>Identify when a specialist legal opinion is required/ when it is necessary to instruct an advocate</li> <li>Identify a suitably qualified/experienced advocate</li> <li>Agree an appropriate fee for work to be carried out by the advocate</li> <li>Draft a brief to the advocate where necessary</li> <li>Liaise between the client and the advocate</li> <li>Awareness of the obligations of the advocate to the court and under their professional obligations.</li> </ul>
	<b>EXPERTS</b> An ability to instruct an expert when necessary	<ul style="list-style-type: none"> <li>Appreciate the nature and function of different types of experts relevant to criminal practice</li> <li>Identify when it is appropriate to instruct an expert</li> <li>Be familiar with the available registers and databases through which an appropriate expert may be identified and located</li> <li>Understand the relevant procedural rules to ensure that an expert is instructed properly</li> <li>Understand the substantive law relating to expert evidence and the ways in which such evidence can be challenged.</li> </ul>
	<b>INSTRUCTING OTHER PROFESSIONALS</b> <ul style="list-style-type: none"> <li>An ability to correspond or otherwise communicate with the court and these other parties when it is necessary to do so</li> </ul>	<ul style="list-style-type: none"> <li>Communicate with the relevant prosecuting agency as the case progresses in relation to the variety of legal, procedural and evidential issues which may arise during the case</li> <li>Communicate with legal advisers of a co-defendant in relation to any issues arising between the defendants and court as the case progresses in relation to the variety of legal, procedural and evidential issues which may arise during the case.</li> </ul>
<b>Element 5.</b>  LEGAL WRITING AND DRAFTING	An ability to understand and apply the principles of good writing and drafting	<ul style="list-style-type: none"> <li>Understand and apply the principles of good writing</li> <li>Use accurate, straightforward and modern language</li> <li>Use correct spelling, grammar, syntax and punctuation</li> <li>Draft a document that is clear, logical, consistent and with appropriate structure and format</li> <li>Draft a document that forms a coherent whole and, where appropriate, advances the matter</li> <li>Understand the appropriate uses of e-mails, letters, memoranda and other forms of written communication</li> <li>Choose the appropriate medium, form and style of written communication</li> <li>Tailor the written communication to suit the purposes of the communication and the needs of different clients or recipients.</li> </ul>

## CRIMINAL PRACTICE ADVOCACY RIGHTS

### INTRODUCTION

In open court in the Magistrates' Courts (including Youth Courts), bail before judge in chambers in the Crown Court, in open court in the Crown Court for appeals against conviction and sentence where the applicant or their firm represented the defendant in the Magistrates'/Youth Court and on committal for sentence where the applicant or their firm represented the defendant in the Magistrates' Court.

The entry criteria and evidence of competency stated in this schedule set out and envisages:

- that an applicant for Criminal Practice Advocacy Rights will already have obtained or is making a combined application for Criminal Litigation Practice Rights provided they have met the Stage 1 entry requirement for Criminal Litigation Practice Rights
- that the applicant has provided the required evidence to demonstrate the level of competency, knowledge and understanding set out in this document
- that the applicant has the required level of competency in the relevant skills of: advocacy, client care, research and interviewing
- that the applicant has entered onto and passed the CILEx Rights of Audience advocacy skills course

**NOTE:** an application may also be combined with one for Family Litigation Practice Rights or Civil Litigation Practice Rights (or a combination of these).

Qualification Competencies	Learning Outcome	Supporting Experience
<p><b>Stage 1</b> <b>ENTRY LEVEL COMPETENCY CRITERIA:</b> In order to apply for the rights of audience qualification the applicant must meet the criteria for criminal litigation rights, And will have, relevant experience on the determination of the Admissions and Licensing Committee in the 2 years immediately preceding their application.</p>	<p>The criminal practice advocate will be able to demonstrate:</p> <ul style="list-style-type: none"> <li>• 2 years advocacy experience</li> <li>• Either appropriate experience of the style and standards of practice of advocacy expected in the courts for which they are seeking rights of audience, or have observed advocacy in those areas where currently no rights of audience exist but where they will be granted rights upon achieving the qualification</li> <li>• Analysis, critical judgment and evaluation</li> <li>• Autonomy and ability to learn.</li> </ul>	<p>In relation to the 2 years preceding the application, applicants must give by way of a statement the following information:</p> <ul style="list-style-type: none"> <li>• A general description of the advocacy, trial preparation and trial involvement carried out</li> <li>• A breakdown of the proportion or number of cases which have included preparation for trial or been prepared for trial and the stage when the cases were concluded if before trial</li> <li>• A description of the applicant's typical caseload</li> <li>• A description of the range and nature of advocacy experience including observed advocacy (this may include advocacy experience gained through representing clients at police stations).</li> </ul> <p>The applicant must also submit a portfolio of cases which demonstrates their advocacy experience based on the caseload in which they have been involved (stating their level of involvement) in compliance with the competence criteria set out below. The portfolio requirements are set out in the Portfolio Guidelines.</p> <p>The applicant will be expected to be able to demonstrate through their portfolios that they can:</p> <ul style="list-style-type: none"> <li>• Recognise and rank items and issues in terms of relevance and importance</li> <li>• Integrate information and materials from a variety of different sources</li> <li>• Undertake the analysis of factual information in a logical and coherent way</li> <li>• Make critical judgements of the merits of particular arguments</li> <li>• Present and make a reasoned choice between alternative solutions</li> <li>• Act independently in planning, preparing and undertaking tasks in the above areas of law</li> <li>• Undertake independent research in the above areas of law using standard legal information sources</li> <li>• Reflect on their learning and make constructive use of feedback.</li> </ul>
<p><b>Stage 2</b></p>	<p><b>Stage 2</b></p> <p>The applicant must be able to demonstrate:</p>	<p>This can be evidenced by the applicant demonstrating the ability to:</p>

Qualification Competencies	Learning Outcome	Supporting Experience
<b>Case Analysis and Theory</b>	<ul style="list-style-type: none"> <li>• An appropriate level of case analysis, critical judgement and evaluation</li> </ul>	<ul style="list-style-type: none"> <li>• Identify the relevant factual, legal, procedural and evidential issues in a given case</li> <li>• Identify the evidence available to the prosecution to prove these issues and the evidence available to the defence to challenge these issues and where appropriate to prove or support a defence</li> <li>• Identify the strengths and weaknesses of a case</li> <li>• Understand the relevant law in context</li> <li>• Prepare a case theory that is both succinct and persuasive</li> <li>• Prepare a case theory that observes the rules of professional conduct</li> </ul>
<b>Trial Advocacy</b>	<ul style="list-style-type: none"> <li>• An appropriate level of trial advocacy</li> </ul>	<ul style="list-style-type: none"> <li>• Understand the importance of preparation and effective ways to undertake this</li> <li>• Identify the client's goals</li> <li>• Analyse the relevant factual issues</li> <li>• Understand the legal, procedural and evidential context in which these factual issues arise and how they relate to each other</li> <li>• Summarise the strengths and weaknesses of the prosecution's case and the defence case</li> <li>• Develop an effective case presentation strategy</li> <li>• Prepare a coherent and reasonable submission to the court based upon relevant facts, general principles and legal authority in a structured, concise and persuasive manner in a practical setting which may include a contested bail application or bail appeal; making a submission of no case to answer; a trial; a voir dire hearing; and a plea in mitigation</li> <li>• Understand and appreciate the relevant communication skills and techniques used by an advocate</li> <li>• Understand in particular the purpose, technique and tactics of examination-in-chief; cross-examination; re-examination; and closing speeches to adduce, rebut and clarify evidence</li> <li>• Deal appropriately with client care and ethical issues</li> <li>• Demonstrate an understanding of the ethics, etiquette and conventions of advocacy.</li> </ul> <p>and at the hearing,</p> <ul style="list-style-type: none"> <li>• Outline the relevant facts in a clear effective format</li> <li>• Understand and use the English language proficiently in relation to legal issues</li> <li>• Present a sustained argument in a way which is comprehensible to others</li> </ul>

Qualification Competencies	Learning Outcome	Supporting Experience
		<ul style="list-style-type: none"> <li>• Present a coherent submission to the court based upon relevant facts, general principles and legal authority in a structured, concise and persuasive manner in a practical setting which may include a contested bail application; making a submission of no case to answer; a trial; a voire dire hearing; and a plea in mitigation</li> <li>• Use and apply the relevant communication skills and techniques used by an advocate</li> <li>• Undertake competently an opening speech, examination in chief, cross-examination, re-examination and a closing speech in the context of a trial</li> <li>• Understand good practice guidance when dealing with vulnerable witnesses and the available procedures relating to vulnerable witnesses</li> <li>• Understand how to deal effectively with uncooperative witnesses</li> <li>• Understand when it is appropriate to call expert evidence and how to use and challenge expert evidence effectively</li> <li>• Deal with the court's questions and concerns promptly</li> <li>• Respond to an opponent's points</li> <li>• Deal appropriately with client care and ethical issues</li> <li>• Demonstrate an understanding of the ethics, etiquette and conventions of advocacy.</li> </ul>
<b>Evidence</b>	<ul style="list-style-type: none"> <li>• Knowledge and understanding of the rules of evidence as they apply in criminal proceedings</li> </ul>	<ul style="list-style-type: none"> <li>• The incidence of the burden and standard of proof</li> <li>• The rules relating to competence and compellability of the accused and all other witnesses</li> <li>• The ways in which evidence may be adduced</li> <li>• The rules relating to memory refreshing</li> <li>• The rules relating to hostile and unfavourable witnesses</li> <li>• The rules relating to admissibility and weight to be attached to prior consistent statements and to impugning the testimony of witnesses by their prior inconsistent statements</li> <li>• The rules relating to finality to collateral issues</li> <li>• The rules relating to the admissibility of hearsay evidence</li> <li>• The admissibility of confessions in criminal trials</li> <li>• The rules relating to inferences</li> <li>• The rules relating to the admissibility of and weight to be attached to disputed visual identification evidence</li> <li>• The rules relating to the admissibility of improperly obtained evidence</li> <li>• The statutory rules relating to the admissibility of character evidence of the accused and non-defendants</li> </ul>

Qualification Competencies	Learning Outcome	Supporting Experience
		<ul style="list-style-type: none"> <li>• The relevance of human rights issues</li> <li>• The rules relating to the admissibility of opinion evidence including expert opinion evidence</li> <li>• The rules relating to the prosecution's disclosure obligations</li> <li>• The rules relating to legal professional privilege.</li> </ul>
<b>Professional Ethics and Conduct</b>	Knowledge and understanding of the conduct rules as they apply in criminal practice	<ul style="list-style-type: none"> <li>• The fundamental duties to the court and the administration of justice including: the duty to act with independence; to advise the court of adverse authorities and when they arise, procedural irregularities.</li> <li>• The decision to appear</li> <li>• Ceasing to act as an advocate</li> <li>• Conduct of work</li> <li>• Understanding equality and diversity issues.</li> </ul>

## ASSESSMENT CRITERIA AND FRAMEWORK DOCUMENT FOR ADVOCACY SKILLS COURSES

### GENERAL

#### Assessment Criteria

The competence of candidates will be assessed in accordance with the criteria set out in this annex by means of case studies relating to a trial or an application.

#### Assessment Standard

The standard of competence for each assessment will be 50% and candidates will be required to meet this standard of attainment for each formal assessment to attain an overall level of competence. This requirement only applies to formal assessments and candidates will not be required to reach this standard on the formative assessments which will take place at various stages during the Advocacy Skills Course. Course providers will decide which assessments will be formally assessed.

The Assessment Organisation(s) will be required to develop their own mark and weighting bands for each element of the formal assessment criteria to be approved by CILEx Regulation. Assessors should have the flexibility to mark in between the weighting bands devised by the Assessment Organisation(s).

Assessors will retain a general discretion to determine overall competence even if a candidate reaches the appropriate mark of 50% in each formal assessment. The following is a non-exhaustive list of examples that may affect the assessor's overall assessment of competence:

- errors relating to gross professional misconduct;
- fundamental errors of law / evidence / procedure;
- making a majority of submissions from a prepared script;
- engaging in inappropriate court room behaviour.

#### Written Test

The standard that candidates seeking open court rights of audience will be required to achieve in evidence will be comparable to the standard required generally. However, the marks required to achieve a comparable standard may be higher than 50% where a multiple choice question format is adopted. The nature of the written test and the proposed standard of competence will be considered by the Admissions and Licensing Committee.

## Resubmissions

A candidate who is assessed as being not yet competent in one or more of the formal assessments will be allowed one further opportunity to achieve the required standard of competence in relation to that assessment(s). If they are successful they may be awarded a pass mark. If they are still assessed as being not yet competent on this resubmission then they will be required to undertake all the assessments again before they can achieve the appropriate level of competence.

A candidate who is unable to complete one or more of the formal assessments owing to ill health or other such cause, beyond their control, will be allowed a further opportunity to achieve the required standard of competence.

## Professional Conduct

Case studies will enable candidates to be assessed on their ability to recognise and deal with issues of professional and ethical conduct in the course of advocacy. The conduct issues to be assessed may include:

- The overriding duty to the court.
- The duty not to engage in conduct which is dishonest/discreditable, prejudicial to the administration of justice or likely to diminish public confidence in the administration of justice or the legal profession.
- The duty to the client to promote and protect their interests, to act in good faith towards them and to avoid or deal with any conflict.
- The interests of the client and the advocate, their employer and any other party to the proceedings.
- The duty not to discriminate against, nor treat less favourably any person, including the client, on the grounds of their age, race, colour, ethnic or national origin, sex, sexual orientation, religion or political persuasion of the client.
- The duty of confidentiality in relation to a client's affairs and misuse of confidential information.
- The duties owed to other advocates in court.

## ASSESSMENT CRITERIA FOR THE CRIMINAL PROCEEDINGS CERTIFICATE

In order to pass the formal advocacy assessments for the Criminal Proceedings Certificate a candidate must demonstrate competence in one assessment from each of the following assessment categories:

- (1) Opposed bail application
- (2) Examination in Chief, Cross Examination
- (3) Opening speech, closing speech, legal submission
- (4) Plea in mitigation

<b>ACTIVITY: OPPOSED BAIL APPLICATION</b>	<b>CRITERIA</b>
PREPARATION	<ul style="list-style-type: none"> <li>• Undertake case analysis</li> <li>• Identify likely prosecution objections to bail</li> </ul>
CONTENT	<p>The application must:</p> <ul style="list-style-type: none"> <li>• Deal with each prosecution objection to bail in turn, arguing why the particular ground is not made out by reference to the relevant facts.</li> <li>• Suggest a package of sensible conditions where appropriate</li> <li>• Be legally and factually accurate</li> <li>• Have appropriate reference to legal sources</li> <li>• Use documents appropriately including the client's list of previous convictions where necessary</li> <li>• Observe the rules of professional conduct</li> </ul>
STRUCTURE	<ul style="list-style-type: none"> <li>• Clear and logical</li> <li>• Respond to the district judge's / magistrates' questions appropriately</li> </ul>
DELIVERY	<ul style="list-style-type: none"> <li>• Clear and fluent</li> <li>• Appropriate language, pace, volume and mannerisms</li> <li>• Referring to notes when required</li> </ul>
EFFECTIVE AND PERSUASIVE	<p>The extent to which the application influences the court in relation to the grant of bail</p>

<b>ACTIVITY: OPENING SPEECH</b>	<b>CRITERIA</b>
INTRODUCTION	Appropriate “in” line introducing self, opponent and nature of allegation
FACTS	Summarise incident, including where relevant what was said by accused on arrest; interview; charge.
LAW	<ul style="list-style-type: none"> <li>• Summarises legal principles involved</li> <li>• Indicates areas where a ruling may be necessary [if relevant]</li> </ul>
DEFENCE	Indicate nature of defence where this is known
EVIDENCE	Introduces evidence by reference to the witnesses intend to call [and matters contained in agreed documents / statements where relevant] and the operation of the burden of proof
CONCLUSION	Appropriate “out” line
GENERAL	<ul style="list-style-type: none"> <li>• Speaks effectively (including not reading from a prepared text)</li> <li>• Maintains suitable court room demeanour</li> <li>• Avoids overstating case</li> <li>• Deals appropriately with any conduct issues</li> </ul>

<b>ACTIVITY: EXAMINATION-IN-CHIEF</b>	<b>CRITERIA</b>
WITNESS DETAILS	Name, address, occupation [leading or non-leading]
DIRECTIONS	Where to direct answers, clarity and pace
EVIDENCE	<ul style="list-style-type: none"> <li>• Develops in a chronological/logical order</li> <li>• Covers all relevant issues on which the witness is required and able to comment</li> <li>• Anticipates matters likely to be raised in xx</li> <li>• Produces exhibits/documents appropriately</li> </ul>
CONCLUDES	Appropriate “out” line including direction to witness to remain for xx
GENERAL	<ul style="list-style-type: none"> <li>• Appropriate range of non-leading questions</li> <li>• Speaks effectively (including not reading from a prepared text)</li> <li>• Maintains suitable court room demeanour</li> <li>• Deals appropriately with any conduct issues</li> </ul>

<b>ACTIVITY: LEGAL SUBMISSIONS</b>	<b>CRITERIA</b>
PREPARATION	<ul style="list-style-type: none"> <li>• Undertake case analysis</li> <li>• Perform appropriate legal research</li> </ul>
CONTENT	<p>The application / response must:</p> <ul style="list-style-type: none"> <li>• Be appropriate and relevant</li> <li>• Be legally, procedurally, evidentially and factually accurate</li> <li>• Reference to legal sources</li> <li>• Use documents where necessary</li> <li>• Observe the rules of professional conduct</li> </ul>
STRUCTURE	<ul style="list-style-type: none"> <li>• Clear and logical</li> <li>• Respond to the district judge's / magistrates' questions</li> <li>• Respond to points raised by the prosecution / defence</li> </ul>
DELIVERY	<ul style="list-style-type: none"> <li>• Clear and fluent</li> <li>• Appropriate language, pace, volume and mannerisms</li> <li>• Referring to notes when required</li> </ul>
EFFECTIVE AND PERSUASIVE	<p>The extent to which the application / response influences the court to find for the accused / prosecution</p>

<b>ACTIVITY: CROSS-EXAMINATION</b>	<b>CRITERIA</b>
TECHNIQUES	<ul style="list-style-type: none"> <li>• Leading questions to control witness</li> <li>• Short questions that witness understands</li> <li>• Asks one question at a time</li> <li>• Listens to witnesses answers and makes appropriate notes</li> <li>• Avoids: Making statements; asking too many questions; introducing irrelevant material; inadvertently attacking the witnesses character (if this has implications for bad character evidence); misquoting witness; echoing witness' reply inappropriately</li> </ul>
OBJECTIVES	<p>Does the advocate achieve the following objectives where appropriate:</p> <ul style="list-style-type: none"> <li>• Obtains favourable information from the witness</li> <li>• Demonstrates that the witness is wrong (mistaken/lying)</li> <li>• Undermines the witnesses' credibility</li> <li>• Puts the accused's / prosecution's case to the witness</li> </ul>
GENERAL	<ul style="list-style-type: none"> <li>• Appropriate range of leading questions</li> <li>• Speaks effectively (including not reading from a prepared text)</li> <li>• Maintains suitable court room demeanour</li> <li>• Deals appropriately with any conduct issues</li> </ul>

<b>ACTIVITY: CLOSING SPEECH</b>	<b>CRITERIA</b>
ISSUES	Identifies the outstanding issues
EVIDENCE	<p>Summarises the evidence appropriately by highlighting the points which</p> <ul style="list-style-type: none"> <li>• Strengthen accused's case</li> <li>• Weaken prosecution's case</li> </ul> <p>Deals appropriately with unfavourable evidence</p>
LAW	Makes appropriate submissions on points of law (with copies of authorities if necessary)
CONCLUSION	Appropriate "out" line
GENERAL	<ul style="list-style-type: none"> <li>• Speaks effectively (including not reading from a prepared text)</li> <li>• Maintains suitable court room demeanour</li> <li>• Avoids giving evidence/introducing new matters</li> <li>• Responding appropriately to any questions/concerns of the court</li> <li>• Deals with any conduct issues</li> </ul>

<b>ACTIVITY: PLEA IN MITIGATION</b>	<b>CRITERIA</b>
PREPARATION	<ul style="list-style-type: none"> <li>• Identifies likely sentence</li> <li>• Appropriate objective(s)</li> </ul>
CONTENT	<p>The mitigator must:</p> <ul style="list-style-type: none"> <li>• Highlight relevant mitigation relating to the commission of the offence</li> <li>• Highlight relevant mitigation relating to the offender's personal circumstances</li> <li>• Recommend a realistic sentence (taking into account sentencing guidelines)</li> <li>• Reference to legal authority where appropriate</li> <li>• Use documents where necessary including record of previous convictions and pre-sentence report</li> <li>• Observe the rules of professional conduct</li> </ul>
STRUCTURE	<ul style="list-style-type: none"> <li>• Clear and logical</li> <li>• Respond to the district judge's / magistrates' questions</li> </ul>
DELIVERY	<ul style="list-style-type: none"> <li>• Clear and fluent</li> <li>• Appropriate language, pace, volume and mannerisms</li> <li>• Maintains suitable court room demeanour</li> </ul>
EFFECTIVE AND PERSUASIVE	<p>The extent to which the mitigator influences the court in relation to sentence</p>

## EVIDENCE

Candidates will be required to sit an examination on the rules and principles of evidence as they operate in criminal proceedings. The examination will be in the format of a written test or multiple choice questions.

Candidates must achieve a mark 50% or above to be assessed as competent in this examination.

The examination will assess candidates' knowledge and understanding on a number of the following rules and principles of the law of evidence as they apply to criminal proceedings:

- The operation of the burden and standard of proof.
- The operation of the evidential burden.

- Competence and compellability of witnesses.
- The means of adducing evidence
- Disclosure obligations on the prosecution
- The admissibility of opinion evidence including expert evidence
- Examination-in-chief and re-examination of witnesses.
- Previous consistent and inconsistent statements made by witnesses.
- Hostile and unfavourable witnesses
- Cross-examination of witnesses.
- Finality to collateral issues.
- Evidence of good character of the defendant
- Evidence of bad character of the defendant and non-defendants under Part 11 Chapter 1 of the Criminal Justice Act 2003
- Hearsay evidence under Part 11 Chapter 2 of the Criminal Justice Act 2003
- Disputed identification evidence
- Improperly obtained evidence
- Confession evidence.
- The drawing of inferences under sections 34-37 of the Criminal Justice and Public Order Act 1994
- Character and disposition in relation to a party or a witness to the proceedings.
- Privilege and public interest immunity.
- The relevance of human rights issues in family proceedings.

## ANNEX 4 - PRACTICE MANAGEMENT

### INTRODUCTION

The qualification criteria, learning outcomes and evidence of competency stated in this schedule set out:

- the level of competency, knowledge and understanding required to run a business which provides a legal service, having consideration for rules and regulations, both professional and legislative
- the elements required to evidence that level of competency, knowledge and understanding.
- the level of competency required in the relevant skills for this area of practice –what it means to be part of a profession, CILEx regulations, management of a legal entity and business acumen
- the elements required to evidence the required level of competence for these relevant skills
- a statement of the study and work-based experience that demonstrates that an applicant has attained the required level of competence, knowledge and understanding in all the required elements.

Certification of practice management will ensure that the applicant has:

- met the application requirements
- an appropriate level of suitability to manage a practice
- an appropriate level of knowledge and appreciation of the key features both financial and non-financial of practice management to include the ability to deal with risk, have a strategy, make informed business decisions, manage and motivate others, the benefits of IT and the external and internal forces which will ultimately will affect an organisation's ability to succeed
- the ability and skill to advance the organisation through the creation of a strategy appropriate to the market sector the organisation wishes to target, to include the use of a business plan, marketing plan, corporate social responsibility policy and other appropriate associated documents which may be needed to support the organisation's strategy
- the ability and skill to manage a client's expectations appropriately, not just at the outset of a case, but throughout the life of the retainer relationship
- the ability and skill to read and interpret the firm's accounts, in addition to any supporting

budgets, cash flows, management accounts and ad hoc reports pertaining to the firm's profitability and financial position

- the ability and skill to perform the tasks required to evaluate the benefits of IT and the need for good project management
- to demonstrate a level of experience, knowledge and understanding of professional conduct and regulation contained in the relevant conduct rules and other law and regulations, including government legislation, and where these may impact and to be able to apply them in context.

QUALIFICATION CRITERIA	Learning Outcome An applicant must meet the following outcomes:	Supporting Experience The applicant will need to provide evidence of:
<ul style="list-style-type: none"> <li>• KNOWLEDGE</li> <li>• UNDERSTANDING</li> <li>• EXPERIENCE</li> <li>• SKILLS</li> </ul>	<ul style="list-style-type: none"> <li>• Sufficient practical knowledge, understanding, experience and skills – note these are different depending of the role of the applicant</li> </ul>	<p>SUPPORTING EVIDENCE</p> <p>The applicant will need to provide evidence to: Demonstrate they meet the outcomes set out below by:</p> <ul style="list-style-type: none"> <li>• attendance on a course, or</li> <li>• practical experience</li> </ul> <p>The outcomes are split into the following levels:</p> <ul style="list-style-type: none"> <li>• Level 1 - mandatory for all applicants</li> <li>• Level 2a - mandatory for compliance managers</li> <li>• Level 2b - mandatory for compliance manager undertaking practice management</li> <li>• Level 2c - mandatory for compliance manager undertaking accounts management</li> </ul>
<p><b>Element 1</b></p> <p>BEING PART OF A PROFESSION</p>	<p>EXTERNAL INFLUENCES</p> <p><b>Demonstrate knowledge, understanding and application of the current legal market and legal entities which may be created to provide a legal service</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Knowledge and understanding of the types of structure through which a legal entity may be formed</li> <li>• Knowledge and understanding of those able to regulate reserved legal activities</li> <li>• Understanding that the structure and regulation of legal entities and activities may change and be able to identify these changes</li> <li>• Knowledge and understanding of a business plan, taking into account recent and current changes to the legal services market</li> <li>• Knowledge, understanding and ability to comply with a complaints procedure in line with LeO guidelines.</li> </ul> <p>LEVEL 2a:</p> <ul style="list-style-type: none"> <li>• Ability to prepare a business plan, taking into account recent and current changes to the legal services market</li> <li>• Ability to create a complaints procedure in line with LeO guidelines.</li> </ul>

QUALIFICATION CRITERIA	Learning Outcome An applicant must meet the following outcomes:	Supporting Experience The applicant will need to provide evidence of:
	<p>REGULATION</p> <p><b>Demonstrate knowledge, understanding and application of the relevant conduct rules and other laws and regulation affecting the professional and legal practice</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Knowledge, understanding and application of obligations to the court, the client, other lawyers and barristers, stakeholders, third parties and the general public</li> <li>• Knowledge, understanding and application of the regulations for which an individual is personally responsible</li> <li>• Knowledge, understanding and application of obligations to the client</li> <li>• Knowledge and understanding of how and when a retainer relationship should be terminated</li> <li>• Knowledge and understanding of professional indemnity insurance.</li> </ul> <p>LEVEL 2a:</p> <ul style="list-style-type: none"> <li>• Ability to complete a professional indemnity proposal form, gathering and identifying relevant information for proposal.</li> </ul>
	<p><b>Demonstrate knowledge, understanding and appropriate application of effective procedures for compliance</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Knowledge and understanding of the nomination procedure and suitability for the Money Laundering Reporting Officer (MLRO)</li> <li>• Knowledge and understanding of the Money Laundering regulations.</li> </ul> <p>LEVEL 2b:</p> <ul style="list-style-type: none"> <li>• Ability to identify and appoint a MLRO</li> <li>• Knowledge, understanding and application of procedures which a legal entity must follow in order to produce an office policy on money laundering</li> <li>• Knowledge, understanding and application of appropriate file testing which ensures files are only opened after necessary money laundering checks</li> <li>• Knowledge, understanding and application of the requirements of the Information Commissioner's Office (ICO) and why legal entities must register with them</li> <li>• Knowledge, understanding and application of equality and diversity monitoring both in the workplace and through contracting of third parties.</li> </ul>
<p><b>Element 2</b></p> <p>CILEx REGULATIONS</p>	<p>CILEx PRACTICE RULES (GENERAL)</p> <p><b>Demonstrate knowledge, understanding and appropriate application of the scope of the CILEx practice rules</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Knowledge and understanding of situations which would give rise to a breach of the practice rules</li> <li>• Knowledge, understanding and application of the duty of confidentiality, including identification of when this starts and ends</li> </ul>

QUALIFICATION CRITERIA	Learning Outcome An applicant must meet the following outcomes:	Supporting Experience The applicant will need to provide evidence of:
	<p>CILEx PRACTICE RULES (ADMINISTRATION)</p> <p><b>Demonstrate knowledge, understanding and appropriate application of the administration requirements of a CILEx regulated entity in addition to any requirements to remain individually compliant</b></p>	<p>LEVEL 2b:</p> <ul style="list-style-type: none"> <li>Knowledge, understanding and application of the requirements to fulfil the role of practice manager.</li> </ul> <p>LEVEL 2c:</p> <ul style="list-style-type: none"> <li>Knowledge, understanding and application of the requirements to fulfil the role of the financial manager.</li> </ul> <p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>Knowledge, understanding and ability to provide appropriate advice regarding fees to be charged and the merits of the case following a cost benefit analysis</li> <li>Knowledge, understanding and ability to provide realistic cost estimates in the form of a 'costing' of all costs and disbursements at the start of the case and to provide regular updates throughout the life of the file</li> <li>Knowledge and understanding of identification, documentation and dealing appropriately with potential conflicts of interests both at the outset and throughout a retainer relationship</li> <li>Knowledge and understanding of situations which may give rise to an undertaking and the implications of giving an undertaking</li> <li>Knowledge and understanding of situations which would result in a breach of the equality and diversity code.</li> </ul> <p>LEVEL 2a:</p> <ul style="list-style-type: none"> <li>Knowledge, understanding and demonstration of good internal governance</li> <li>Knowledge, understanding and application of systems, procedures and reporting to monitor compliance</li> <li>Application of monitoring equality and diversity, both in the workplace and in the selection of external resources.</li> </ul> <p>LEVEL 2b:</p> <ul style="list-style-type: none"> <li>Knowledge, understanding and implementation of procedures to review and test systems put in place to meet the outcomes of the CILEx practice rules (including management of undertakings, cost information, file reviews, client care, referral arrangements and conflicts of interest</li> <li>Ability to identify when a fee earner has undertaken work in the absence of sufficient resources and outside their competence</li> <li>Ability to draft policies which promote equality and diversity</li> <li>Ability to draft appropriate safeguards for the issuing of undertakings and the consequences of not fulfilling the created obligation</li> </ul>

QUALIFICATION CRITERIA	Learning Outcome An applicant must meet the following outcomes:	Supporting Experience The applicant will need to provide evidence of:
	<p>CILEx PRACTICE RULES (COMMUNICATION)</p> <p><b>Demonstrate the ability to communicate the requirements of the CILEx practice rules appropriately</b></p>	<ul style="list-style-type: none"> <li>• Knowledge and understanding of the difference between an introduction and a referral</li> <li>• Knowledge, understanding and ability to draft an outsourcing policy.</li> </ul> <p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Ability to establish good relationships with client and third parties, including the ability to adapt the style, medium or method of communication for a diverse range of clients to identify the client's objective(s)</li> <li>• Ability to communicate to the client how legal services will be provided including expected time frame, what the client must do and duties and obligations applicant will carry out</li> <li>• Ability to draft a letter which identifies the client's objectives and advises them of the right to complain</li> <li>• Ability to communicate to ensure the client is kept up to date with progress of a matter and advise who is dealing with the matter, including the status of that person.</li> </ul> <p>LEVEL 2b:</p> <ul style="list-style-type: none"> <li>• Ability to communicate values to all staff which promote client outcomes, transparency of costs</li> </ul> <p>Ability to manage client expectations and evaluate overall client satisfaction.</p>
	<p>FILE MANAGEMENT</p> <p><b>Demonstrate knowledge, understanding and appropriate application of good file management</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Knowledge and understanding of examples of key dates and the methods which could be used in recording such dates in a diarised system and on the client's file</li> <li>• Ability to identify and record key dates.</li> </ul> <p>LEVEL 2a:</p> <ul style="list-style-type: none"> <li>• Knowledge and understanding of the elements of a good case management system, including the potential benefits</li> <li>• Ability to implement and operate a case management system, including for use as a supervision and compliance monitoring tool</li> <li>• Ability to design and implement a file closure procedure.</li> </ul> <p>LEVEL 2b:</p> <ul style="list-style-type: none"> <li>• Ability to create and perform a file review process covering both legal and administrative obligations</li> <li>• Ability to participate significantly in the successful application of an accreditation standard.</li> </ul>

QUALIFICATION CRITERIA	Learning Outcome An applicant must meet the following outcomes:	Supporting Experience The applicant will need to provide evidence of:
<b>Element 3</b>  MANAGEMENT OF A LEGAL ENTITY	EXTERNAL INFLUENCES  <b>Demonstrate knowledge, understanding and impact of external influences on a business</b>	LEVEL 1: <ul style="list-style-type: none"> <li>• Knowledge and understanding of recent and/or current external issues facing business/legal entities</li> <li>• Knowledge and understanding of the impact of inflation, how this impacts on business and actions which can be taken to counterbalance this.</li> </ul> LEVEL 2a: <ul style="list-style-type: none"> <li>• Ability to assess the impact of the current economic environment.</li> </ul> LEVEL 2b: <ul style="list-style-type: none"> <li>• Knowledge, understanding and ability to identify pending legislation or professional changes which could affect the business.</li> </ul>
	INTERNAL INFLUENCES  <b>Demonstrate knowledge, understanding and appropriate application of internal influences which can affect a business</b>	LEVEL 1: <ul style="list-style-type: none"> <li>• Knowledge and understanding of the internal influences which a business is likely to face and effective ways of controlling them.</li> </ul> LEVEL 2a: <ul style="list-style-type: none"> <li>• Ability to develop a culture of accountability, compliance and openness for the business</li> <li>• Ability to manage a team.</li> <li>• Knowledge and understanding of the different types of risk affecting a business</li> <li>• Ability to identify examples of risks and to identify how these risks can be managed.</li> </ul>
	RISK MANAGEMENT  <b>Demonstrate knowledge, understanding and appropriate application of risk management</b>   CONTINGENCY PLANNING  <b>Demonstrate knowledge, understanding and application of basic contingency planning</b>	LEVEL 2a: <ul style="list-style-type: none"> <li>• Ability to respond to risks</li> <li>• Knowledge and understanding of collection, review, evaluation and management of risk</li> <li>• Ability to produce a risk management policy</li> <li>• Knowledge, understanding and implementation of appropriate supervision</li> <li>• Knowledge and understanding of the principles supporting delegation.</li> </ul>
		LEVEL 2b: <ul style="list-style-type: none"> <li>• Knowledge and understanding of the key contents of an effective contingency plan, and the need for regular review</li> <li>• Ability to draft a contingency plan</li> <li>• Ability to test a contingency plan.</li> </ul>

QUALIFICATION CRITERIA	Learning Outcome An applicant must meet the following outcomes:	Supporting Experience The applicant will need to provide evidence of:
	<p>PEOPLE MANAGEMENT</p> <p><b>Demonstrate knowledge, understanding and application of good supervision; including appropriate management, motivation and delegation</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Knowledge and understanding of the negative effects of poor management</li> <li>• Ability to manage and motivate others.</li> </ul> <p>LEVEL 2a:</p> <ul style="list-style-type: none"> <li>• Ability to identify the link between low motivation and low production</li> <li>• Knowledge, understanding and application of procedures to manage and motivate</li> <li>• Ability to use specific, measurable, achievable, relative, time bound objectives to delegate</li> <li>• Ability to encourage a culture of continuous improvement</li> </ul>
	<p>PROJECT MANAGEMENT</p> <p><b>Demonstrate knowledge, understanding and application of planning, control, managing and evaluating a project successfully</b></p> <p>INFORMATION TECHNOLOGY (IT)</p> <p><b>Demonstrate knowledge, understanding and application of IT in a legal environment</b></p>	<p>LEVEL 2a:</p> <ul style="list-style-type: none"> <li>• Knowledge and understanding of the need for a project plan and the elements which should be included in the plan</li> <li>• Ability to apply these elements to allow for successful project management</li> <li>• Ability to evaluate the success of the project.</li> </ul> <p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Knowledge, understanding and application of bespoke third party software to complete prescribed electronic applications/submissions.</li> </ul> <p>LEVEL 2a:</p> <p>Knowledge and understanding of the use of IT in monitoring compliance and understand its advantages, including as a time saving device.</p>
<p><b>Element 4</b></p> <p>BUSINESS ACUMEN</p>	<p>STRATEGY</p> <p><b>Demonstrate knowledge, understanding and appropriate application of strategy and the use of a business plan to underpin that strategy</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Knowledge and understanding of a strategy</li> <li>• Ability to perform an analysis which identifies the strengths, weaknesses, opportunities and threats (SWOT analysis) of/to the business</li> <li>• Knowledge and understanding of how a competitive advantage arises and how a firm can differentiate themselves from competitors.</li> </ul> <p>LEVEL 2b:</p> <ul style="list-style-type: none"> <li>• Implementation and creation of strategy</li> <li>• Knowledge, understanding and application of likely trends evident following changes to internal and external influences and use these to identify a firm's current market position</li> <li>• Knowledge, understanding and application of the critical success factors (CSF) of a business and use these to identify the factors which are likely to be critical to the success of the business.</li> </ul>

QUALIFICATION CRITERIA	Learning Outcome An applicant must meet the following outcomes:	Supporting Experience The applicant will need to provide evidence of:
	<p>MARKETING</p> <p><b>Demonstrate knowledge, understanding and application of a marketing strategy which supports the business plan</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Knowledge and understanding of what is meant by a marketing mix</li> <li>• Ability to implement and evaluate a marketing plan which supports the business plan</li> <li>• Knowledge and understanding of the importance of a website (or where appropriate provide a rationale as to why a website would not meet client needs).</li> </ul> <p>LEVEL 2b:</p> <ul style="list-style-type: none"> <li>• Ability to create an effective marketing plan</li> <li>• Knowledge and understanding of various methods of social media</li> <li>• Ability to identify potential benefits of effective use of social media</li> <li>• Ability to identify the potential risks presented by social media both internally and externally.</li> </ul>
	<p>PROFITABILITY</p> <p><b>Demonstrate knowledge, understanding and application of appropriate tools to determine profitability</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Knowledge and understanding of working within budgets</li> <li>• Knowledge and understanding of a cash flow forecast.</li> </ul> <p>LEVEL 2a:</p> <ul style="list-style-type: none"> <li>• Ability to budget and analyse the variances which arise through a given period</li> <li>• Ability to create a cash flow forecast and update it for a given period</li> <li>• Knowledge, understanding and identification of key performance indicators (KPIs), including how these can be met and used to measure a firm's success in comparison with the business strategy.</li> </ul> <p>LEVEL 2c:</p> <ul style="list-style-type: none"> <li>• Knowledge and understanding of /and ability to differentiate between fixed and variable costs and direct and indirect costs</li> <li>• Knowledge and understanding of the use of appropriate ratios and formulae to ascertain an organisation's overall profitability and department profitability</li> <li>• Ability to calculate 2 ratios to assist in ascertaining overall profitability</li> <li>• Ability to use appropriate formulae to ascertain a department's profitability</li> <li>• Knowledge and understanding of what is meant by direct, indirect, fixed and variable costs</li> <li>• Knowledge and understanding of what is meant by inefficiencies and how processes can be measured for value</li> <li>• Ability to identify inefficiencies which would lead to a loss of profit:</li> </ul>

## ACCOUNTS

### INTRODUCTION

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

- the level of competency, knowledge and understanding required to keep the books of accounts specific to a legal entity and to apply a minimum standard of accountancy for a business
- the elements required to evidence that level of competency, knowledge and understanding
- the level of competency required in the relevant skills for this area of practice – to accurately account for clients' money, run the firm's own accounts, apply CILEx Accounts Rules, bring the accounts from trial balance to profit and loss /balance sheet account position
- the elements required to evidence the required level of competence for these relevant skills
- a statement of the study and work-based experience that demonstrates that an applicant has attained the required level of competence, knowledge and understanding in all the required elements.

Certification of accounts will ensure that the applicant has:

- met the application requirements
- an appropriate level of expertise to manage the firm's accounts and finances to an acceptable standard
- an appropriate level of knowledge and appreciation of the key features of protecting client's money, effective billing and efficient financial management
- the appropriate level of knowledge and skill to perform double entry booking, raise a valid invoice and a three way bank reconciliation.

QUALIFICATION CRITERIA	Learning Outcome An applicant must meet the following outcomes:	Supporting Experience The applicant will need to provide evidence of:
<ul style="list-style-type: none"> <li>• KNOWLEDGE</li> <li>• UNDERSTANDING</li> <li>• EXPERIENCE</li> <li>• SKILLS</li> </ul>	<ul style="list-style-type: none"> <li>• Has sufficient practical knowledge, understanding, experience and skills – note these are different depending of the role of the applicant</li> </ul>	<p>Demonstrate they meet the outcomes set out below by:</p> <ul style="list-style-type: none"> <li>• attendance on a course, or</li> <li>• practical experience</li> </ul> <p>The outcomes are split into the following levels:</p> <ul style="list-style-type: none"> <li>• Level 1 - mandatory for all applicants</li> <li>• Level 2a - mandatory for compliance managers</li> <li>• Level 2b - mandatory for compliance manager undertaking practice management</li> <li>• Level 2c - mandatory for compliance manager undertaking accounts management</li> </ul>
<p><b>Element 1</b></p> <p>CILEx ACCOUNTS RULES</p>	<p><b>Demonstrate knowledge, understanding and where appropriate apply the rules and regulations relating to the handling of client money</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Knowledge and understanding of the accounts rules</li> <li>• Ability to complete a three way bank reconciliation to accurately account for all client money</li> <li>• Ability to record and account for client money, ensuring it is banked promptly and not left unattended or unsecure</li> <li>• Understand the importance of the audit trail and ensure there is a clear audit trail</li> <li>• Understand the need to keep client money safe and separate from that of the business</li> <li>• Knowledge and understanding of the situations where it is fair and reasonable to account for interest to the client</li> <li>• Knowledge and understanding of money held as an agent/stakeholder</li> <li>• Knowledge, understanding and application of the internal policy on who can withdraw money</li> <li>• Knowledge and understanding of what is meant by trust money and an individual's legal responsibility as a trustee.</li> </ul> <p>LEVEL 2a:</p> <ul style="list-style-type: none"> <li>• Ability to apply controls to safeguard client money</li> <li>• Communicate knowledge and understanding of the accounts rules to staff to ensure compliance</li> <li>• Understand the difference between client money and client account.</li> </ul> <p>LEVEL 2c:</p> <ul style="list-style-type: none"> <li>• Ability to draft, implement and test robust internal controls, including who can withdraw client money and be able to distinguish between a material and non-material breach</li> <li>• Ability to perform an internal audit</li> <li>• Ability to draft, implement and communicate a fair and reasonable interest policy</li> <li>• Ability to make a calculation of interest</li> <li>• Ensure files are closed in a timely manner and surplus funds are returned promptly</li> </ul>

QUALIFICATION CRITERIA	Learning Outcome An applicant must meet the following outcomes:	Supporting Experience The applicant will need to provide evidence of:
		<ul style="list-style-type: none"> <li>• Ability to draft, implement and periodically review a compliance register and maintain complete records of all breaches</li> <li>• Control the release of client bank details outside of the legal entity</li> <li>• Knowledge, understanding and application of time costing and understanding the benefits of this information for reporting purposes.</li> </ul>
<b>Element 2</b>  GENERAL BOOKKEEPING	DOUBLE ENTRY BOOKKEEPING  <b>Demonstrate knowledge, understanding and application of double entry bookkeeping</b>	LEVEL 1: <ul style="list-style-type: none"> <li>• Knowledge and understanding of posting entries to the client ledger account and appropriate cashbooks of a legal entity</li> <li>• Knowledge and understanding of a bill of costs</li> <li>• Knowledge and understanding of a trial balance.</li> </ul> LEVEL 2c: <ul style="list-style-type: none"> <li>• Ability to post entries to client ledger account and cashbooks</li> <li>• Ability to produce bill of costs</li> <li>• Ability to produce trial balance.</li> </ul>
	FINANCIAL STATEMENTS  <b>Demonstrate knowledge and understanding of the use of financial statements</b>	LEVEL 1: <ul style="list-style-type: none"> <li>• Knowledge and understanding of when it is appropriate to provide the client with a financial statement.</li> </ul> LEVEL 2c: <ul style="list-style-type: none"> <li>• Ability to produce clear and informative financial statements which reflect the client's position and which include balances due to the client or to the legal entity</li> <li>• Ability to draft a financial statement</li> <li>• Knowledge, understanding and application of time costing and understanding the benefits of this information for reporting purposes.</li> </ul>
<b>Element 3</b>  FINANCES	VALUE ADDED TAX (VAT)  <b>Demonstrate knowledge, understanding and appropriate application of VAT</b>	LEVEL 1: <ul style="list-style-type: none"> <li>• Knowledge and understanding as to how to calculate VAT payable</li> <li>• Knowledge and understanding of a vatable disbursement and a re-charge and understand the difference between the two.</li> </ul> LEVEL 2c: <ul style="list-style-type: none"> <li>• Ability to post a vatable disbursement and a re-charge to a client ledger</li> <li>• Ability to perform a partial exemption calculation</li> <li>• Ability to complete a UK VAT return.</li> </ul>

QUALIFICATION CRITERIA	Learning Outcome An applicant must meet the following outcomes:	Supporting Experience The applicant will need to provide evidence of:
	<p>CREDIT CONTROL AND DEBT COLLECTION</p> <p><b>Demonstrate knowledge, understanding and appropriate application of the creation of a credit control policy</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>Knowledge and understanding of how credit control including business payment terms and debt collection policies and procedures are created.</li> </ul> <p>LEVEL 2:</p> <ul style="list-style-type: none"> <li>Ability to implement and communicate a credit control policy including business payment terms and debt collection policies and procedures.</li> </ul> <p>LEVEL 2c:</p> <ul style="list-style-type: none"> <li>Ability to create a credit control policy</li> <li>Ability to create and communicate a set of business terms and conditions relevant to a legal entity</li> <li>Ability to draft debt collection procedures.</li> </ul>
	<p>NOMINAL LEDGERS</p> <p><b>Demonstrate knowledge, understanding and appropriate application of nominal ledgers for a legal entity</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>Knowledge and understanding of maintaining a nominal ledger</li> <li>Ability to post a small selection of non-vatable entries to a nominal ledger</li> <li>Ability to explain what is meant by 'drawings' and the use of the capital and current accounts.</li> </ul> <p>LEVEL 2c:</p> <ul style="list-style-type: none"> <li>Knowledge, understanding and ability to distinguish between profit and loss ledgers and a balance sheet nominal ledger</li> <li>Ability to post entries to a nominal ledger.</li> </ul>
	<p>ACCOUNTS</p> <p><b>Demonstrate knowledge, understanding and application of information relating to the financial position of a legal entity</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>Ability to read and interpret management reports which include Profit and Loss Accounts and Balance Sheet</li> <li>Ability to identify significant variations to the accounts from previous years.</li> </ul> <p>LEVEL 2a:</p> <ul style="list-style-type: none"> <li>Ability to determine the general financial position of a legal entity.</li> </ul> <p>LEVEL 2c:</p> <ul style="list-style-type: none"> <li>Ability to produce Profit and Loss Accounts and Balance Sheet</li> <li>Ability to calculate a liquidity ratio, provide commentary on the findings and provide guidance on what is viewed as a poor liquidity ratio</li> <li>Ability to understand and explain working capital and how it can be effectively and efficiently managed</li> <li>Ability to explain different finance options available to each type of legal structure.</li> </ul>

QUALIFICATION CRITERIA	Learning Outcome An applicant must meet the following outcomes:	Supporting Experience The applicant will need to provide evidence of:
	<p>TAXATION</p> <p><b>Demonstrate outline knowledge and understanding of taxation</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Knowledge and understanding of the taxation system as it applies to individuals and corporations.</li> </ul> <p>LEVEL 2c:</p> <ul style="list-style-type: none"> <li>• Ability to apply rules of taxation to individuals and corporations.</li> </ul>
	<p>SET OF ACCOUNTS</p> <p><b>Demonstrate knowledge, understanding and appropriate application of the creation and interpretation of accounts</b></p>	<p>LEVEL 1:</p> <ul style="list-style-type: none"> <li>• Ability to understand a profit and loss account and balance sheet and relationship with a trial balance</li> <li>• Ability to interpret a profit and loss account and balance sheet.</li> </ul> <p>LEVEL 2a:</p> <ul style="list-style-type: none"> <li>• Ability to identify that the business is unlikely to meet its forthcoming liabilities and when it is appropriate to notify ILEX Professional Standards of this.</li> </ul> <p>LEVEL 2c:</p> <ul style="list-style-type: none"> <li>• Ability to produce profit and loss account and balance sheet from a trial balance</li> <li>• Ability to make the necessary annual adjustments to produce an accurate set of accounts</li> <li>• Ability to calculate a liquidity ratio</li> <li>• Ability to identify and explain the early indicators of a failing business</li> <li>• Ability to identify the point when a business is no longer a going concern.</li> </ul>

## **APPENDIX2**

# **ADMISSIONS AND LICENSING COMMITTEE RULES**

## **ADMISSIONS AND LICENSING COMMITTEE RULES**

1. CILEx Regulation shall establish an Admissions and Licensing Committee.
2. The Admissions and Licensing Committee shall:
  - ◆ apply and monitor the Certification Rules, Fellowship Rules, guidance and criteria for the reserved legal activity and regulated legal activity schemes;
  - ◆ consider and determine applications by applicants for reserved or regulated legal activity rights, applications for Certificates of Eligibility for rights of audience, applications for the assessment of qualifying experience and applications for admission as a Chartered Legal Executive referred to it;
  - ◆ consider and determine applications for the renewal of advocacy certificates, including lapsed certificates, referred to it;
  - ◆ consider and determine applications by prospective or current course providers for accreditation or renewal of accreditation to provide courses referred to it by the Officer;
  - ◆ consider whether or not an authorised person may continue to hold a Certificate which authorises them to undertake a reserved or regulated legal activity;
  - ◆ determine whether accreditation of a course provider to provide a course should be withdrawn;
  - ◆ receive reports of inspections of courses from the external advisors and the Officer;
  - ◆ receive reports of the moderation of course assessments from the external advisors;
  - ◆ receive annual reports from course providers;
  - ◆ submit an annual report to the CILEx Regulation Board.
3. The Officers will report all decisions made by them to the Admissions and Licensing Committee.
4. Wherever the Officer is unable to make a decision or takes the view that the matter requires Committee consideration they may refer the matter to the Admissions and Licensing Committee.
5. A person or organisation affected by any decision which the Admissions and Licensing Committee makes pursuant to its powers under these Rules may apply for reconsideration of that decision. Any such person or organisation must lodge an application for reconsideration at the CILEx Regulation offices within 20 working days of receiving written notification of the decision. The application must include written reasons why it should be reconsidered. The applicant shall have a right to be heard by the Committee when it reconsiders their application.

6. Where an application is reconsidered by the Admissions and Licensing Committee it shall have all the powers that were available to it at the original consideration of the application.
7. An appeal may be made against the decision reached by the Admissions and Licensing Committee in accordance with Rule 5. Appeals will be considered by an Appeal Panel comprising a professional member and two lay members drawn from the panel of lay and professional members appointed to serve on CILEx Regulation's appeal bodies under the Enforcement Rules. The Appeal Panel will have available to it all the powers available to the Admissions and Licensing Committee at the original consideration of the application.
8. Appeals against decisions to refuse or revoke renewal or certification of a Chartered Legal Executive Litigator and Advocate who holds or has held a Criminal Proceedings Certificate will be made to the Appeals Panel.
9. The Admissions and Licensing Committee shall report annually to the CILEx Regulation Board on its work during the preceding calendar year, and make such recommendations as it thinks fit concerning the operation of the scheme Rules falling within its remit.
10. The Admissions and Licensing Committee will comprise:
  - Fellows of CILEx; and
  - Independent members, at least 1 of whom shall have knowledge or experience of consumer issues, who are not members of CILEx Council or the CILEx Regulation Board and provided that the independent members are in the majority.
11. A Fellow who is a member of CILEx Regulation's Professional Conduct, Disciplinary or Appeals Panel shall not be eligible to serve as a member of the Admissions and Licensing Committee.
12. Appointments of independent members and Fellows shall be made by the CILEx Regulation Board.
13. Each independent member and Fellow will be appointed to the Admissions and Licensing Committee by CILEx Regulation for a period of up to five years. Upon the termination of the five year period of their appointment the Board may reappoint them for a further period of up to five years or make a new appointment.
14. No Fellow or independent member may serve more than two consecutive terms as a member of the Admissions and Licensing Committee. Where they fail without good reason to fulfil their duties set out in these Rules CILEx Regulation may terminate their appointment whether or not they have completed their current term of office.
15. The external advisors shall be invited to attend meetings of the Admissions and Licensing Committee. Where necessary the Committee may seek advice on matters under its consideration from other persons or sources.
16. At least three members of the Admissions and Licensing Committee must be present at a meeting to constitute a quorum. The external advisors will not form part of the quorum.
17. The Admissions and Licensing Committee will appoint one of its members as Chair. The Chair will be appointed for a period of one year. The Chair will be eligible for reappointment, but may not serve as Chair for more than three consecutive years.

18. Decisions of the Admissions and Licensing Committee will be reached by a majority vote. In the case of an equality of votes the Chair shall have a casting vote. External advisors may not vote on any matter at a meeting.
19. The Admissions and Licensing Committee shall meet at least once each year. Subject to this, where the Committee deems it appropriate it may consider applications and any other matter by way of a postal agenda or telephone conference.
20. CILEx Regulation shall have the power to pay fees to members of the Admissions and Licensing Committee and shall from time to time, determine the amount and basis of payments of such fees.

## APPENDIX 3: DRAFT ADVOCACY PORTFOLIOS

### PORTFOLIO FORM – CRIMINAL 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 is 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. Event 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 effect 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 .....

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