

APPENDIX 3

Chartered Institute of Legal Executives

Standards for CILEX higher court advocates in criminal proceedings

Introduction:

Only those candidates authorised as CILEX Criminal Litigators and Advocates will be eligible to apply for higher rights of audience and this will also be dependent on them successfully completing their first year renewal as a CILEX advocate.

Advocacy in the higher courts requires demanding standards of knowledge, understanding, application and skills. To meet these standards CILEX higher courts advocates must be able to demonstrate they have the appropriate levels of competence to undertake all forms of higher court criminal advocacy to an appropriate level that will meet the expectations of the client, the judge, other court users and members of the public.

Candidates will not be assessed on every part of the assessment criteria, but will be assessed on a representative selection of the criteria to demonstrate they have attained appropriate standards of competence in relation to their knowledge, understanding, application and skills as a higher courts advocate, whilst also taking into account their having already been assessed as competent in the advocacy skills course as criminal advocates to appear in the lower courts.

A candidate will fail the assessment if they commit a fundamental error that if replicated in practice would result in any one of the following outcomes:

- Where it would result in disciplinary or regulatory proceedings being taken and upheld against the advocate
- A wasted costs order being made against the advocate
- Significantly undermining or harming their client's case

The supporting content to the assessment outcomes and criteria will be updated and adapted to incorporate any important changes to the relevant law, practice or procedure.

Element	Assessment outcomes: What candidates who obtain higher rights will be able to do.	Assessment criteria: What candidates who obtain higher rights will have demonstrated they can do.	Supporting content:
1. Law of evidence Knowledge, understanding and application will be assessed primarily by written and / or multiple choice assessment of the following topics:			
The burden and the standard of proof	1.1 Apply the operation of the burden and standard of proof at a Crown Court trial	a. Applying the burden of proof and reverse burdens b. Demonstrating how evidential burdens operate on the prosecution and defence c. Understanding how the standard of proof applies to the prosecution and defence	<ul style="list-style-type: none"> • The burden of proof including reverse burdens on the defence • The operation of evidential burdens and submissions of no case to answer • The standard of proof • Admissions of fact
Disclosure of evidence	1.2 Apply the rules relating to the disclosure of evidence in the Crown Court	a. Applying the rules relating to disclosure of evidence b. Identifying how privilege can be claimed and waived c. Applying the rules relating to disclosure by third parties	<ul style="list-style-type: none"> • The procedure for disclosure • The continuing duty of disclosure • Public Interest Immunity and privilege • Waiver of privilege • Third party disclosure • Electronic disclosure

Categories of evidence	1.3 Apply the rules of evidence to different categories of evidence as they apply to a Crown Court trial	<ul style="list-style-type: none"> a. Identifying the different types of evidence and the rules relating to admissibility of such evidence b. Explaining how the different types of hearsay evidence may be admitted c. Understanding how the court evaluates hearsay evidence d. Identifying confession evidence and the rules relating to its admissibility e. Recognising and explain how character evidence may be admitted f. Understanding how expert evidence may be admitted as an exception to the rule against opinion evidence g. Explaining the rules relating to the admission of disputed visual and voice identification evidence h. Recognising how improperly obtained evidence may be challenged i. Identifying other types of hazardous evidence requiring a corroboration or other form of warning/direction from the trial judge 	<ul style="list-style-type: none"> • Hearsay evidence, including confession evidence • Character evidence of a defendant and non-defendant • Witnesses of fact and expert witnesses • Visual and voice identification witnesses • Improperly and unfairly obtained evidence • Corroboration warnings • Lucas directions
Evidence from witnesses of fact	1.4 Adduce and evaluate evidence from a witness of fact	<ul style="list-style-type: none"> a. Distinguishing between evidence of fact and opinion b. Analysing and evaluating witness statements from a witness of fact 	<ul style="list-style-type: none"> • Competence and compellability of witnesses • Special measures provisions for vulnerable witnesses

		on behalf of the party calling the witness and an opposing party's witness	<ul style="list-style-type: none"> • The use of and service of witness summons • The rules relating to evidence-in-chief, cross-examination and re-examination and the purpose of each stage of oral testimony • When and how to adduce sexual behaviour evidence of a complainant in a sexual offence case
Expert evidence	1.5 Adduce expert opinion evidence	a. Explaining the purpose of adducing expert evidence and the duty an expert owes to the court b. Describing how expert evidence should be submitted c. Analysing and evaluating expert evidence	<ul style="list-style-type: none"> • The rules relating to the admission of expert opinion evidence • The form and content of an expert report • The expert's role at trial • Meeting of experts and when the use of joint experts is appropriate
Other categories of evidence	1.6 The admissibility of other categories of evidence	a. Adducing real and documentary evidence b. Adducing other forms of evidence including audio, photographic, video and CCTV evidence c. Understanding when it might be appropriate to make a site visit	<ul style="list-style-type: none"> • Real and documentary evidence including public records • The relevance of audio, photographic, video and CCTV evidence
2. Advising a client	2.1 Advise on plea	a. Advising a client on pleading guilty to the offence charged or a	<ul style="list-style-type: none"> • Credit for a guilty plea • Newton hearings

Knowledge, understanding and application will be assessed primarily by written and / or multiple-choice assessment		<p>lesser charge and pleading not guilty</p> <p>b. Identifying and advising on the availability of out of court disposals</p>	<ul style="list-style-type: none"> • Basis of plea • Counts and alternative counts on the indictment • Indication of sentence • Caution and bindovers
	2.2 Advise on pre-trial and preliminary matters	<p>a. Advising on the plea and trial preparation hearing (PTPH) and complying with directions given at the PTPH</p> <p>b. Demonstrating an understanding of the importance of trial preparation and case management</p> <p>c. Understanding when a preliminary hearing will be required and the range of such hearings</p>	<ul style="list-style-type: none"> • Completing a PTPH form • Compliance with directions from the PTPH • Sanctions for non-compliance of directions from the PTPH including costs consequences • Applications for joinder / severance / dismissal • Abuse of process applications
3. Crown Court processes Knowledge, understanding and application will be assessed primarily by written and / or multiple-choice assessment	3.1 Conduct preliminary and interim hearings in the Crown Court including the PTPH	<p>a. Demonstrating an appropriate knowledge of the Criminal Procedure Rules and Practice Directions in relation to pre-trial and preliminary hearings including the PTPH</p> <p>b. Drafting a witness statement, a defence statement, hearsay and bad character notices, applications to exclude hearsay and bad character and applications for special measures</p>	<ul style="list-style-type: none"> • Criminal Procedure Rules and Practice Directions in relation to: <ul style="list-style-type: none"> ○ Case management ○ Service of documents ○ Reporting restrictions ○ Bail and custody time limits ○ Disclosure ○ Witness statements ○ Witness summons ○ Special measures ○ Expert evidence ○ Hearsay evidence

			<ul style="list-style-type: none"> ○ Bad character evidence
4. The law on Sentencing Knowledge, understanding and application will be assessed primarily by written and / or multiple-choice assessment	4.1 Apply the law of sentencing to the higher courts	a. Explaining the principles and practice of sentencing including the range of sentences available and the relevant criteria for their imposition and the range of other financial and ancillary orders	<ul style="list-style-type: none"> • Sentencing Code 2020 • Sentencing Council Guidelines • Guideline sentencing cases • Criminal Procedure Rules Parts 28-32 and Practice Directions Part VII; • Offences to be taken into consideration; • Pre-sentence and other reports • Basis of plea and Newton hearings • Compensation • Costs • Ancillary orders, e.g. Criminal Behaviour Orders, Drinking Banning Orders, Financial Reporting Orders, Serious Crime Prevention, Orders, Sexual Offences Prevention Orders, Violent Offender Orders, Domestic Abuse Protection Orders
5. Trial strategy planning and skeleton arguments These written skills will be assessed primarily in a practical assessment	5.1 Devise an appropriate case theory.	a. Identifying relevant facts, including those which are and which are not in dispute b. Identifying favourable and unfavourable facts	<ul style="list-style-type: none"> • Trial preparation and case theory • Drafting a trial strategy plan to include the identification of: <ul style="list-style-type: none"> ○ Relevant facts and law

		<ul style="list-style-type: none"> c. Advising on the application of the relevant law to a given set of facts d. Identifying and advising on the potential admissibility of evidence relevant to the facts in dispute e. Devising relevant argument to adduce or challenge the admissibility of such evidence 	<ul style="list-style-type: none"> ○ Gaps and weaknesses in the evidence ○ Good fact / bad fact analysis ○ A plausible case theory to persuade a jury
	5.2 Draft a skeleton argument	<ul style="list-style-type: none"> a. Drafting an accurate, persuasive and concise skeleton argument b. Undertaking up to date and relevant legal research to support a skeleton argument c. Complying with relevant rules and practice directions when drafting a skeleton argument d. Making appropriate use of the skeleton argument when making legal submissions 	<ul style="list-style-type: none"> ● The form and content of a skeleton argument including: <ul style="list-style-type: none"> ○ Heading ○ Introductions ○ Chronologies ○ Citations ○ Relevant argument ○ Conclusion
6 Applications and submissions These advocacy skills will be assessed primarily in a practical assessment	6.1 Make an effective and persuasive application and / or legal submission in the higher courts	<ul style="list-style-type: none"> a. Outlining the relevant background of the case b. Identifying the issues the court will be required to make decisions on and the orders sought c. Applying the relevant facts to the law d. Addressing unfavourable / missing evidence e. Correctly citing relevant and favourable authority whilst also 	<ul style="list-style-type: none"> ● Appropriate format and structure when making an application / legal submission ● Accurate citation of relevant authority and indication whether binding or of persuasive value only ● Appropriate and proportionate use of legal authority ● The court's overriding objective and relevant powers

		acknowledging unhelpful authority f. Managing time effectively including any time limits imposed by the court g. Responding appropriately to any questions asked by the judge h. Maintaining professional standards throughout the application / submission	
7 Speeches These advocacy skills will be assessed primarily in a practical assessment	7.1 Prepare and make an effective opening and closing speech in the higher courts	a. Preparing and delivering an effective opening speech b. Preparing and delivering an effective and persuasive closing speech c. Maintaining professional standards throughout	<ul style="list-style-type: none"> • The purpose and requirements of an opening speech and the implications of a defence 'opening statement' • The purpose and requirements of a closing speech and an appropriate structure to adopt • The importance of taking an accurate note of the evidence • Accurately reviewing and evaluating the evidence • Using the evidence and the relevant law to effectively persuade the court • Using the jury bundle appropriately • Whether and when to pre-empt the trial judge
8 Examination of witnesses	8.1 Conduct an effective examination-in-chief in the higher courts	a. Conducting an effective examination-in-chief in compliance with the rules	<ul style="list-style-type: none"> • The rules governing the examination-in-chief of your own witness

<p>These advocacy skills will be assessed primarily in a practical assessment</p>	<p>8.2 Conduct an effective re-examination in the higher courts 8.3 Conduct an effective cross-examination of an opposing witness in the higher courts in order to advance a client's case 8.4 Witness handling skills</p>	<p>b. Understanding when and how to conduct an examination of a hostile witness c. Understanding when and how to conduct a re-examination in compliance with the rules d. Conducting an effective cross-examination in compliance with the rules e. Using effective witness handling skills f. Maintaining professional standards throughout</p>	<ul style="list-style-type: none"> • The rules governing the examination of a hostile witness • The rules governing re-examination of your own witness • The rules governing cross-examination of an opposing witness including: <ul style="list-style-type: none"> ○ The requirement to put your client's case ○ Previous inconsistent statements ○ The rules relating to finality and credit questions ○ Expert witnesses and opinion evidence • Witness handling <ul style="list-style-type: none"> ○ Dealing appropriately with a reluctant, unintelligent, difficult or awkward witness • Young and vulnerable witnesses • Complainants in sexual offence cases
<p>9 A plea in mitigation This piece of advocacy will be assessed primarily in a practical assessment</p>	<p>9.1 Conduct an effective and persuasive plea in mitigation</p>	<p>a. Conducting an effective and persuasive plea in mitigation that is concise and realistic b. Advising a client on likely sentence</p>	<ul style="list-style-type: none"> • The purpose and requirements of a plea in mitigation • Sentencing Council Guidelines for the Crown Court • Criminal Appeal Act 1968 and relevant case law

		c. Advising a client on appealing against sentence and / or conviction	
10 Court etiquette and professionalism These will be assessed primarily in a practical assessment	10.1 Use the correct terminology when addressing the court 10.2 Adopt a professional and persuasive speaking style when addressing the court	a. Using the correct terminology when addressing the court b. Adopting a professional and persuasive speaking style when addressing the court including: <ul style="list-style-type: none"> ○ Speaking clearly, audibly and at an appropriate pace ○ Using correct, plain and professional English ○ Avoiding distracting mannerisms or behaviour ○ Maintaining appropriate posture and body language ○ Being accurate and concise ○ Dealing appropriately with judicial intervention 	<ul style="list-style-type: none"> • Preparation skills • Oral presentation skills including: <ul style="list-style-type: none"> ○ Precision and brevity ○ Management of documentation ○ Time management ○ Engaging and persuading the court ○ Court attire and etiquette
11 Conduct and ethics This is a pervasive topic and can be assessed in any part of the assessment	11.1 Comply with the professional duties and responsibilities of a CILEx advocate towards the court, the client, other court users and members of the public 11.2 Act with honesty and integrity in the preparation and presentation of a client's case 11.3 Exercise professional judgment and discipline when advancing a client's case and examining witnesses	a. Comply with the statutory and other rules of professional conduct b. Comply with the Criminal Procedure Rules applicable to professional conduct c. Act in accordance with the advocate's overriding duty to the court d. Act with honesty and integrity at all times when advising, preparing and presenting a client's case	<ul style="list-style-type: none"> • The Civil Procedure Rules and especially: <ul style="list-style-type: none"> ○ Part 1. The overriding objective ○ Part 3. The court's case management powers ○ Part 16. Statement of case ○ Part 22. Statement of trust ○ Part 31. Disclosure

	<p>11.4 Uphold the rule of law and the proper administration of justice when acting in the client's best interests</p>	<ul style="list-style-type: none"> e. Assist the court with the effective management of a case and the application of the overriding objective f. Ensure the advocate's independence to fearlessly advance the client's case g. Comply with the advocate's duty of confidentiality towards the client and all documentation relating to the client's case except where disclosure is permitted or required h. Disclose all relevant material to the client except where disclosure is prohibited i. Identify any actual or potential conflicts of interest with a client or between potential or existing clients j. Recognise when a conflict of interest may require the advocate to decline instructions or withdraw from a case k. Recognise those circumstances when an advocate may have to withhold information from a client or disclose otherwise confidential information l. Avoid cross-examining an opposing witness by asking questions which are aimed at merely insulting, humiliating or annoying that witness 	<ul style="list-style-type: none"> ○ Part 32. Witness statements ○ Part 35. Expert evidence • The CILEx Regulation Code of Conduct and especially: <ul style="list-style-type: none"> ○ Core principles • The CILEX Rights of Audience Conduct Rules and especially: <ul style="list-style-type: none"> ○ Fundamental duties ○ The decision to appear ○ Ceasing to act as an advocate ○ Conduct of work
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