

APPENDIX 2

Chartered Institute of Legal Executives

Standards for CILEX higher court advocates in civil proceedings

Introduction:

Only those candidates authorised as CILEX Civil 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 civil 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 civil 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 Civil trial or interim application	<ul style="list-style-type: none"> a. Applying the burden of proof and reverse burdens b. Demonstrating how evidential burdens operate on the parties to civil litigation c. Understanding how the standard of proof applies 	<ul style="list-style-type: none"> • The burden of proof including reverse burdens on the defence; how the burden may shift by contract; statute; or statement of case • The operation of evidential burdens and submissions of no case to answer • The standard of proof • Admissions of fact and their effect
Disclosure of evidence	1.2 Apply the rules relating to disclosure in the Civil Court under CPR 31	<ul style="list-style-type: none"> a. Applying the rules relating to disclosure at every stage of the civil process 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

			<ul style="list-style-type: none"> • Electronic disclosure
Categories of evidence	1.3 Apply the rules of evidence to different categories of evidence as they apply in a civil trial or interim application	a. Identifying the different types of evidence and the rules relating to admissibility of such evidence b. Explaining how hearsay evidence may be admitted c. Understanding how the court evaluates hearsay evidence d. Understanding how expert evidence may be admitted as an exception to the rule against opinion evidence and the particular rules under CPR 35	<ul style="list-style-type: none"> • Hearsay evidence, • Witnesses of fact and expert witnesses
Evidence from witnesses of fact	1.4 Adduce and evaluate evidence from a witness of fact; drafting of witness statements to stand as evidence in chief	a. Distinguishing between evidence of fact and opinion b. Analysing and evaluating witness statements from a witness of fact on behalf of the party calling the witness and an opposing party's witness c. The use of Part 18 in advance of trial to seek further information from opposing witnesses	<ul style="list-style-type: none"> • Competence and compellability of witnesses • 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
Expert evidence	1.5 Adduce expert opinion evidence; applying the rules in CPR 35 and Guidance for instruction of expert witnesses	a. Explaining the purpose of adducing expert evidence and the duty an expert owes to the court	<ul style="list-style-type: none"> • The rules relating to the admission of expert opinion evidence • The form and content of an expert report

		<ul style="list-style-type: none"> b. Describing how expert evidence should be submitted c. Analysing and evaluating expert evidence d. Joint questions to opposing or joint experts 	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> 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
2. Advising a client Knowledge, understanding and application will be assessed primarily by written and / or multiple-choice assessment	2.1 Advise on liability; quantum; procedure and tactics; and formulating offers of compromise, informally and under CPR 36	<ul style="list-style-type: none"> a. Advising a client on methods of bringing a case to early conclusion b. Identifying and advising on the availability of Alternative Dispute Resolution- variants and options 	<ul style="list-style-type: none"> • The importance throughout of compliance with the Overriding Objective in CPR 1
	2.2 Advise on pre-trial and preliminary matters; including interim applications	<ul style="list-style-type: none"> a. Advising on the likely course and timescale of progress to trial b. Demonstrating an understanding of the importance of trial preparation and case management and compliance with CPR and court directions c. Understanding when an interim hearing will be required or desirable and the range of such hearings 	<ul style="list-style-type: none"> • Completing a Directions Questionnaire and drafting directions for the court • Compliance with directions • Sanctions for non-compliance with directions from the court including costs consequences • Applications for variation of directions including relief from sanctions

3. Civil Procedure Knowledge, understanding and application will be assessed primarily by written and / or multiple-choice assessment	3.1 Conduct interim hearings in the Civil Court including an allocation/directions hearing and a Case and Costs Management Hearing	a. Demonstrating an appropriate knowledge of the Civil Procedure Rules and Practice Directions in relation to pre-trial and interim hearings including the Case Management Hearing b. Drafting a witness statement	<ul style="list-style-type: none"> • Civil Procedure Rules and Practice Directions in relation to: <ul style="list-style-type: none"> ○ Case management ○ Service of documents ○ Disclosure ○ Witness statements ○ Expert evidence ○ Substantial interim applications including (this list is non-exhaustive) for:- summary judgment; strike outs; interim payments; security for costs; search orders; freezing orders
4. Trial strategy planning and skeleton arguments These written skills will be assessed primarily in a practical assessment	4.1 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 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"> • 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 ○ Gaps and weaknesses in the evidence ○ Good fact / bad fact analysis ○ A plausible case theory to persuade the court
	4.2 Draft a skeleton argument	a. Drafting an accurate, persuasive and concise skeleton argument	<ul style="list-style-type: none"> • The form and content of a skeleton argument including: <ul style="list-style-type: none"> ○ Heading

		<ul style="list-style-type: none"> 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"> ○ Introductions ○ Chronologies ○ Citations ○ Relevant argument ○ Conclusion
5 Applications and submissions These advocacy skills will be assessed primarily in a practical assessment	5.1 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 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 	<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

<p>6 Speeches These advocacy skills will be assessed primarily in a practical assessment</p>	<p>6.1 Prepare and make an effective opening and closing speech in the higher courts</p>	<p>a. Preparing and delivering an effective opening speech b. Preparing and delivering an effective and persuasive closing speech c. Maintaining professional standards throughout</p>	<ul style="list-style-type: none"> • The purpose and requirements of an opening speech and possibility that the court will direct a written opening/position 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 trial bundle appropriately • Whether and when to pre-empt the trial judge
<p>7 Examination of witnesses These advocacy skills will be assessed primarily in a practical assessment</p>	<p>7.1 Given that usually witness statements will be directed to stand as evidence-in-chief understanding the importance of careful and thorough drafting on quantum issues as well as liability 7.2 Conduct an effective re-examination in the higher courts 7.3 Conduct an effective cross-examination of an opposing witness in the higher courts in order to advance a client's case</p>	<p>a. Applying where necessary to amplify a witness's written statement b. Understanding when and how to conduct a re-examination in compliance with the rules c. Conducting an effective cross-examination in compliance with the rules d. Using effective witness handling skills e. Maintaining professional standards throughout</p>	<ul style="list-style-type: none"> • The rules governing the examination-in-chief of your own 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

	7.4 Witness handling skills		<ul style="list-style-type: none"> ○ 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
8 Court etiquette and professionalism These will be assessed primarily in a practical assessment	8.1 Use the correct terminology when addressing the court 8.2 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
9 Conduct and ethics This is a pervasive topic and can be assessed in	9.1 Comply with the professional duties and responsibilities of a CILEx advocate towards the court, the client, other court	a. Comply with the statutory and other rules of professional conduct	<ul style="list-style-type: none"> ● The Civil Procedure Rules and especially:

any part of the assessment	<p>users and members of the public</p> <p>9.2 Act with honesty and integrity in the preparation and presentation of a client's case</p> <p>9.3 Exercise professional judgment and discipline when advancing a client's case and examining witnesses</p> <p>9.4 Uphold the rule of law and the proper administration of justice when acting in the client's best interests</p>	<p>b. Comply with the Civil Procedure Rules applicable to professional conduct</p> <p>c. Act in accordance with the advocate's overriding duty to the court</p> <p>d. Act with honesty and integrity at all times when advising, preparing and presenting a client's case</p> <p>e. Assist the court with the effective management of a case and the application of the overriding objective</p> <p>f. Ensure the advocate's independence to fearlessly advance the client's case</p> <p>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</p> <p>h. Disclose all relevant material to the client except where disclosure is prohibited</p> <p>i. Identify any actual or potential conflicts of interest with a client or between potential or existing clients</p> <p>j. Recognise when a conflict of interest may require the advocate to decline instructions or withdraw from a case</p>	<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 ○ 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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