

OCTOBER 2023

**APPLICATION TO THE LEGAL SERVICES BOARD TO AMEND PRACTITIONER
AUTHORISATION RULES AND RIGHTS OF AUDIENCE CERTIFICATE RULES TO
AUTHORISE CILEX PRACTITIONERS WITH LITIGATION AND ADVOCACY RIGHTS AND
CHARTERED LEGAL EXECUTIVE ADVOCATES FOR HIGHER RIGHTS OF AUDIENCE**

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PROFESSIONAL STANDARDS FOR SPECIALIST LAWYERS



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A. Summary and Overview

1. This is an application to amend existing regulatory rules relating to rights of audience to enable competent CILEX Practitioners holding litigation and advocacy rights (CILEX Practitioners) and Chartered Legal Executive Advocates to apply for authorisation to conduct advocacy in all courts (Higher Rights of Audience).
2. CILEX Practitioners, chartered legal executives and CILEX Advocates are specialist lawyers, regulated by CILEx Regulation, who are able to practise in a reserved or regulated area of practice without the requirement to be supervised by an authorised person under the Legal Services Act 2007.
3. The Chartered Institute for Legal Executives (CILEX) has, for a number of years, been lobbying for a career path for its members working at the Crown Prosecution Service (CPS) to be able to become Crown Prosecutors without the requirement to cross-qualify as a solicitor.
4. In CILEX's discussions with the Ministry of Justice (MOJ), in addition to re-consideration of the option for CILEX members to become Crown Prosecutors, the possibility of CILEX members to be able to be authorised to undertake advocacy in all courts (Higher Rights) was raised. This was because it would enhance further the options to CILEX members for career progression. This possibility was then raised by the MoJ with CILEx Regulation as the independent regulator of CILEX members.
5. CILEx Regulation sought the views of CILEX Lawyers (chartered legal executives, CILEX Advocates and CILEX Practitioners) in March 2022 to determine interest and support for the proposal to seek additional powers to award Higher Rights of Audience. The response was overwhelmingly in favour of CILEx Regulation making an application to the Legal Services Board to enable CILEx Regulation to authorise suitably competent CILEX Practitioners and Chartered Legal Executive Advocates for Higher Rights of Audience.
6. CILEX Practitioners with litigation and advocacy rights and Chartered Legal Executive Advocates already hold rights of audience in the lower courts (provided they work in a regulated firm or in-house provided they do not offer services to the public or section of the public). The rights of audience are awarded by CILEx Regulation once the applicant has successfully completed a CILEx Regulation approved advocacy skills course and assessment. They can then apply for authorisation.
7. CILEx Regulation has worked with current external assessors for the advocacy skills course to determine additional requirements to enable CILEX Practitioners with litigation and advocacy rights and Chartered Legal Executive Advocates to obtain Higher Rights of Audience.
8. CILEx Regulation awards rights of audience in one of more of the following areas of practice:
 - (a) Civil proceedings
 - (b) Criminal proceedings
 - (c) Family proceedings.

9. Because most family proceedings work is dealt with in the lower courts and the existing advocacy rights course will provide appropriate rights of audience, CILEx Regulation is not proposing to provide a separate Higher Rights qualification for family work. However, family lawyers seeking Higher Rights would be able to take the civil route if they wished to seek Higher Rights of Audience.
10. The new standards have been developed and mapped against the equivalent Solicitors Regulation Authority (SRA) standards to ensure that, as a minimum, the CILEx Regulation standards match those of the SRA. CILEx Regulation estimates that the new standards will require an additional 12 hours training over two days with pre-reading required.
11. The new standards will be offered through accredited Course providers who will be externally quality assured by CILEx Regulation.
12. To ensure prospective candidates have the appropriate experience to undertake advocacy in all courts, they will only become eligible to take the additional training once they have completed their first renewal of Advocacy rights.
13. After undertaking the additional training and successfully completing the assessment activities, candidates will become eligible to apply to CILEx Regulation for authorisation to become a Chartered Legal Executive Litigator and Higher Rights Advocate or Chartered Legal Executive Higher Rights Advocate.
14. Originally, CILEx Regulation had restricted applications for Higher Rights of Audience to those Chartered Legal Executives who hold both litigation and advocacy rights (CILEX Practitioners) and those who only hold Advocacy rights (Chartered Legal Executive Advocates) would not be eligible to apply. Based on responses to CILEx Regulation's consultations on the proposal, CILEx Regulation have made the decision to open the application to both Chartered Legal Executives who hold both litigation and advocacy rights (CILEX Practitioners) and Chartered Legal Executive Advocates.
15. The application proposes to amend the Practitioner Authorisation Rules and the Rights of Audience Certificate Rules as follows:
 - (a) CILEX Litigators and Advocates and Chartered Legal Executive Advocates who have held rights of audience in the lower courts for at least 12 months will be eligible to apply for Higher Rights of Audience in the relevant specialism (Civil Proceedings for those specialising in civil proceedings or family proceedings, and Criminal Proceedings for those specialising in criminal proceedings).
 - (b) Applicants for Higher Rights of Audience will be required to demonstrate their knowledge and competence by attending an additional course and assessment to ensure that they have the necessary knowledge, skills and behaviours required of a Higher Rights Advocate.
 - (c) Once approved, for CILEX Litigators and Advocates the authorised title will be either Chartered Legal Executive Litigator and Higher Rights Advocate (Civil Litigation) or Chartered Legal Executive Litigator and Higher Rights Advocate (Criminal Litigation).
 - (d) Once approved, for Chartered Legal Executive Advocates the title will be Chartered Legal Executive Higher Rights Advocate.

B. Regulatory objectives and better regulation principles

a. Regulatory objectives

16. The following table sets out how the changes proposed are likely to impact on the Regulatory Objectives.

	Regulatory Objective	Impact	Explanation
RO1	Protecting and promoting the public interest	Promotes	- The public interest will be protected as all applicants applying for Higher Rights of Audience must have been qualified for advocacy in the lower courts for a minimum of 1 year and have completed their first renewal of their Advocacy rights prior to undertaking the additional training and assessment required to gain authorisation. - The new standards for the additional training and assessment for both civil and criminal proceedings have been mapped against the equivalent SRA Higher Rights of Audience Standards to ensure that CILEX Practitioners and Chartered Legal Executive Advocates demonstrate the same level of knowledge and competence as Solicitors.
RO2	Supporting the constitutional principles of the rule of law	Neutral	
RO3	Improving access to justice	Promotes	Owing to the diversity within the CILEX membership, enabling CILEX Practitioners and Chartered Legal Executive Advocates to gain authorisation to undertake advocacy in all courts will contribute to a more diverse profession, which should improve access to justice.
RO4		Promotes	Currently, a consumer using the services of a CILEX Practitioner or Chartered Legal

	Protecting and promoting the interests of consumers		Executive Advocate would need to seek alternative council, should their case require representation in the Higher Courts. Subject to LSB Approval, CILEx Regulation will be able to authorise CILEX Practitioners and Chartered Legal Executive Advocates for advocacy in all courts which will allow suitably qualified Chartered Legal Executive Litigator and Higher Rights Advocates and Chartered Legal Executive Higher Right Advocates to represent the client throughout the case journey providing assurance and continuity and reducing inconvenience and, potentially, legal costs to the consumer. • Consumers interests will be protected by knowing that CILEX Practitioners and Chartered Legal Executive Higher Rights Advocates have achieved a qualification equivalent to the standard required for Solicitors. • Consumers will have an increased choice in the type of lawyer they instruct.
RO5	Promoting competition in the provision of legal services	Promotes	• Allowing CILEX Practitioners and Chartered Legal Executive Advocates to gain Higher Rights of Audience, would promote competition in the legal services market as this will be the first opportunity CILEX members will have to be able to undertake advocacy in all courts.
RO6	Encouraging an independent, strong, diverse and effective legal profession	Promotes	• CILEX's purpose is to develop, support an inspire a highly skilled body of legal professionals and make the UK legal sector more efficient, representative and better able to serve society. • In addition to improving the career progression for suitably qualified members, the ability to authorise CILEX Practitioners

			and Chartered Legal Executive Advocates with Higher Rights of Audience would (owing to the diversity within the CILEX membership) have the potential, over time to enhance the diversity of authorised persons within the legal workforce.
RO7	Increasing public understanding of the citizens' legal rights and duties	Neutral	
RO8	Promoting and maintaining adherence (by authorised persons) to the professional principles	Promotes	- Only applications that meet the relevant Practitioner Authorisation Rules and Rights of Audience Certificate Rules relating to Higher Rights of Audience will be successful. - All CILEX members are subject to regulation by CILEx Regulation and to the CILEX Code of Conduct.

b. Better regulation principles.

17. The proposed changes meet the principles of Better Regulation as follows:

Principle	Explanation
Transparent	CILEx Regulation has taken a transparent approach to this proposal by alerting members of CILEX about the proposal through an initial survey and two subsequent consultations to understand their views on the proposed development. CILEx Regulation also shared the consultation more widely than its existing regulated community by emailing directly to external regulators and other regulators, and publicising it through various social media channels, including LinkedIn.
Accountable	- The rules will be published so that everyone can understand the level of knowledge and competence required prior to making an application for authorisation for Higher Rights of Audience. - All individuals seeking authorisation will be required to meet the same application criteria to gain authorisation. - The regulator will continue to determine who is authorised as a Chartered Legal Executive Litigator and Higher Rights Advocate (Civil Litigation), Chartered Legal Executive Litigator and Higher Rights Advocate (Criminal Litigation) and Chartered Legal Executive Higher Rights Advocate . - The Admissions and Licensing Committee will oversee the outcomes of applications for admission as a Chartered Legal Executive Litigator and Higher Rights Advocate (Civil Litigation), Chartered Legal Executive Litigator and Higher Rights Advocate (Criminal Litigation) and Chartered Legal Executive Higher Rights Advocate and include a report of its findings in its annual report.
Proportionate	The proposed amendments, subject to LSB approval, relate solely to applications from suitably qualified individuals seeking authorisation from CILEx Regulation for Higher Rights of Audience.
Consistent	The proposed amendments are consistent with existing rules applied to applications from CILEX Fellows for practice rights and rights of audience in the lower courts.
Targeted	The proposed amendments are targeted solely at existing Chartered Legal Executive Litigators and Advocates and Chartered Legal Executive Advocates wishing to seek authorisation for Higher Rights of Audience.

C. Alterations

a. Detail of each proposed alteration

Practitioner Authorisation Rules

18. CILEx Regulation proposes to amend the Practitioner Authorisation Rules by adding the following new rules:

AWARD OF HIGHER RIGHTS OF AUDIENCE

78. *A Chartered Legal Executive Litigator and Advocate may apply to be authorised to exercise Higher Rights of Audience provided they have successfully completed the first renewal of their advocacy certificate.*
79. *Applicants holding either a Rights of Audience (Civil Proceedings) Certificate or a Rights of Audience (Family Proceedings) Certificate will be eligible to apply for a Higher Rights (Civil Proceedings) Certificate.*
80. *Applicants holding a Rights of Audience (Criminal Proceedings) Certificate will be eligible to apply for a Higher Rights (Criminal Proceedings) Certificate.*
81. *Applicants who seek a Higher Rights (Civil Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out in the Standards for CILEX Higher Court Advocates in Civil Proceedings, in accordance with the application guidelines set by CILEx Regulation.*
82. *Applicants who seek a Higher Rights (Criminal Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out in the Standards for CILEX Higher Court Advocates in Criminal Proceedings, in accordance with the application guidelines set by CILEx Regulation.*

HIGHER RIGHTS ADVOCACY SKILLS COURSE

83. *Upon successful completion of the first renewal of the relevant Rights of Audience Certificate, an applicant will be required to complete a Higher Rights advocacy skills course in accordance with the Higher Rights of Audience they seek.*
84. *Courses must meet the qualification criteria established by CILEx Regulation. Courses will be assessed in accordance with the assessment criteria defined by CILEx Regulation. Higher Rights advocacy skills courses will be provided by course providers who are accredited by CILEx Regulation.*

AWARD OF HIGHER RIGHTS ADVOCACY CERTIFICATE

85. *Upon successfully demonstrating that they meet the criteria for award of Higher Rights advocacy, an applicant may apply for a Higher Rights Advocacy Certificate in their relevant specialism.*
86. *Applicants who seek a Higher Rights Advocacy Certificate must complete all the application forms required by CILEx Regulation and pay such fees as may be fixed by CILEx Regulation from time to time.*
87. *The Officer will process the application for a Higher Rights Advocacy Certificate. The applicant shall be granted a Higher Rights Advocacy Certificate provided the Officer is satisfied that the applicant:*
 - (a) is a Fellow in good standing;*
 - (b) has met the relevant knowledge and competence requirements; and*
 - (c) has completed and passed a Higher Rights advocacy skills course.*
88. *Where the Officer has any doubt as to the suitability of the applicant to be awarded a Higher Rights Advocacy Certificate they may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for a decision.*
89. *Applications referred to the Admissions and Licensing Committee will be governed by rules 46-47.*
90. *Notification of application decisions will be governed by rules 48-50, save that in Rule 49 reference to Practice Rights Certificate should be a reference to Higher Rights Advocacy Certificate.*

Authorised Persons at CILEx Regulation

91. *An applicant who has been awarded Fellowship, a Litigation and Advocacy (Civil Proceedings) Certificate and a Higher Rights Advocacy Certificate will be a **Chartered Legal Executive Litigator and Higher Rights Advocate (Civil Litigation)**.*
92. *An applicant who has been awarded Fellowship, a Litigation and Advocacy (Criminal Proceedings) Certificate and a Higher Rights Advocacy Certificate will be a **Chartered Legal Executive Litigator and Higher Rights Advocate (Criminal Litigation)**.*
19. The proposed amendments have been made in tracked changes in **Annex 1**.

Rights of Audience Certificate Rules

20. CILEx Regulation proposes to amend the Rights of Audience Certificate Rules by adding the following new rules:

APPLICATION FOR HIGHER RIGHTS OF AUDIENCE

55. *A Chartered Legal Executive Advocate may apply to be authorised to exercise Higher Rights of Audience provided that they have successfully completed the first renewal of their advocacy certificate.*
56. *Applicants holding a Rights of Audience (Civil Proceedings) Certificate or a Rights of Audience (Family Proceedings) Certificate will be eligible to apply for a Higher Rights (Civil Proceedings) Certificate.*
57. *Applicants holding a Rights of Audience (Criminal Proceedings) Certificate will be eligible to apply for a Higher Rights (Criminal Proceedings) Certificate.*
58. *Applicants who seek Higher Rights (Civil Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out in the Standards for CILEX Higher Court Advocates in Civil Proceedings, in accordance with the application guidelines set by CILEx Regulation.*
59. *Applicants who seek Higher Rights (Criminal Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out in the Standards for CILEX Higher Court Advocates in Criminal Proceedings, in accordance with the application guidelines set by CILEx Regulation.*

HIGHER RIGHTS ADVOCACY SKILLS COURSES

60. *Upon successful completion of the first renewal of the relevant Rights of Audience Certificate an applicant will be required to complete a Higher Rights advocacy skills course in accordance with the Higher Rights of Audience they seek.*
61. *Courses must meet the qualification criteria established by CILEx Regulation. Courses will be assessed in accordance with the assessment criteria defined by CILEx Regulation. Higher Rights advocacy skills courses will be provided by course providers who are accredited by CILEx Regulation.*

AWARD OF HIGHER RIGHTS CERTIFICATES

62. *Upon successfully demonstrating that they meet the criteria for award of Higher Rights Advocacy, an applicant may apply for a Higher Rights Advocacy Certificate in their relevant specialism.*
63. *Applicants who seek a Higher Rights Advocacy Certificate must complete all the application forms required by CILEx Regulation and pay such fees as may be fixed by CILEx Regulation from time to time.*
64. *The Officer will process the application for a Higher Rights Advocacy Certificate. The applicant shall be granted a Higher Rights Advocacy Certificate provided the Officer is satisfied that the applicant:*

(a) is a Fellow in good standing

- (b) has met the relevant knowledge and competence requirements; and*
(c) has completed and passed a Higher Rights advocacy skills course.

65. *Where the Officer has any doubt as to the suitability of the applicant to be awarded a Higher Rights Advocacy Certificate they may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for a decision.*
66. *Applications referred to the Admissions and Licensing Committee will be governed by Rules 50-51.*
67. *Notification of application decisions will be governed by Rule 52, save that in Rule 52 reference to Advocacy Certificate should be reference to Higher Rights Advocacy Certificate.*
68. *A fellow holding a Higher Rights Advocacy Certificate will be described as a Chartered Legal Executive Higher Rights Advocate.*
21. The proposed amendments have been made in tracked changes in **Annex 2**.

b. Rationale, intent, purpose and effect of proposed alterations

Rationale

Progression pathway

22. Chartered Legal Executive Litigators and Advocates and Chartered Legal Executive Advocates hold rights of audience for the lower courts only and the only way to achieve higher rights of audience would be to requalify as a solicitor or barrister.
23. Through these proposed changes, suitably qualified individuals, would be able to undertake the additional training and assessment required to gain authorisation to hold audience for all courts. This reflects the model that is offered to solicitors.

Increasing diversity

24. CILEX membership is a very diverse community. By providing the opportunity to gain higher rights of audience, this will contribute to diversity within the profession and should improve access to justice.

Improving the consumer interests

25. As CILEX Chartered Legal Executive Litigator and Advocates and Chartered Legal Executive Advocates only hold rights of audience in the lower courts, should a client's case require higher court representation, then the consumer would need to recruit a solicitor or barrister which would be time consuming and incur additional costs.

Practitioner Authorisation Rules

26. The proposed amendment to the Practitioner Authorisation Rules to add new rules 78 to 92 is required to regulate the award of Higher Rights of Audience, the Higher Rights Advocacy skills course, award of Higher Rights Advocacy certificate and Authorised Persons at CILEx Regulation.

AWARD OF HIGHER RIGHTS OF AUDIENCE

78. *A Chartered Legal Executive Litigator and Advocate may apply to be authorised to exercise Higher Rights of Audience provided they have successfully completed the first renewal of their advocacy certificate.*
- (a) This rule confirms that only Chartered Legal Executive Litigators and Advocates who have held advocacy rights in the lower courts for a minimum of 1 year (first renewal of advocacy certificate date) may apply to ensure they have gained sufficient practical experience to undertake Higher Rights of Audience training and assessment.
79. *Applicants holding a Rights of Audience (Civil Proceedings) Certificate or a Rights of Audience (Family Proceedings) Certificate will be eligible to apply for a Higher Rights (Civil Proceedings) Certificate.*
- (b) The rule confirms that potential applicants can only apply for Higher Rights of Audience based on their current Rights of Audience Certificate for the lower courts. It also confirms that there is no specific Higher Rights (Family Proceedings) Certificate available and those CILEX Practitioners with Rights of Audience (Family Proceedings) wishing to gain authorisation for Higher Rights of Audience should undertake the Higher Rights (Civil Proceedings) Certificate.
80. *Applicants holding a Rights of Audience (Criminal Proceedings) Certificate will be eligible to apply for a Higher Rights (Criminal Proceedings) Certificate.*
- (c) The rule confirms that potential applicants can only apply for Higher Rights of Audience based on their current Rights of Audience Certificate for the lower courts.
81. *Applicants who seek a Higher Rights (Civil Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out in the Standards for CILEX Higher Court Advocates in Civil Proceedings, in accordance with the application guidelines set by CILEx Regulation.*
- (d) This rule confirms the standard that potential applicants must meet the knowledge and competence requirements of to enable them to apply for a Higher Rights (Civil Proceedings) Certificate.

82. *Applicants who seek a Higher Rights (Criminal Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out in the Standards for CILEX Higher Court Advocates in Criminal Proceedings, in accordance with the application guidelines set by CILEx Regulation.*

(e) This rule confirms the standard that potential applicants must meet the knowledge and competence requirements of to enable them to apply for a Higher Rights (Criminal Proceedings) Certificate.

HIGHER RIGHTS ADVOCACY SKILLS COURSE

83. *Upon successful completion of the first renewal of the relevant Rights of Audience Certificate, an applicant will be required to complete a Higher Rights advocacy skills course in accordance with the Higher Rights of Audience they seek.*

(f) This rule confirms that once potential applicants have completed the first renewal of their Rights of Audience Certificate in either Civil, Criminal or Family Proceedings, they will be required to undertake additional training and assessment to achieve Higher Rights of Audience in their relevant specialist area.

84. *Courses must meet the qualification criteria established by CILEx Regulation. Courses will be assessed in accordance with the assessment criteria defined by CILEx Regulation. Higher Rights advocacy skills courses will be provided by course providers who are accredited by CILEx Regulation.*

(g) This rule confirms that only courses that meet the stringent qualification and assessment criteria established by CILEx Regulation and are offered by course providers accredited by CILEx Regulation will be recognised as meeting the requirements to enable applicants to apply for a Higher Rights (Civil Proceedings Certificate) or Higher Rights (Criminal Proceedings) Certificate.

AWARD OF HIGHER RIGHTS ADVOCACY CERTIFICATE

85. *Upon successfully demonstrating that they meet the criteria for award of Higher Rights advocacy, an applicant may apply for a Higher Rights Advocacy Certificate in their relevant specialism.*

(h) This rule confirms that potential applicants must first complete the additional training and assessment requirements created by CILEx Regulation and delivered and assessed by CILEx Regulation accredited course providers, prior to applying for a Higher Rights Advocacy Certificate in Higher Rights (Civil Proceedings) or Higher Rights (Criminal Proceedings).

86. *Applicants who seek a Higher Rights Advocacy Certificate must complete all the application forms required by CILEx Regulation and pay such fees as may be fixed by CILEx Regulation from time to time.*

- (i) This rule confirms the application process potential applicants will be required to comply with and that a fee may need to be paid. Subject to LSB Approval, the application form(s) with guidance will be developed and any fees to be levied agreed and published.
- 87. *The Officer will process the application for a Higher Rights Advocacy Certificate. The applicant shall be granted a Higher Rights Advocacy Certificate provided the Officer is satisfied that the applicant:*
 - (a) *is a fellow of good standing*
 - (b) *has met the relevant knowledge and competence requirements; and*
 - (c) *has completed and passed a Higher Rights advocacy skills course.*
- (j) This rule confirms the checks that will be made by CILEx Regulation Officers when considering applications for Higher Rights Advocacy Certificates.
- 88. *Where the Officer has any doubt as to the suitability of the applicant to be awarded a Higher Rights Advocacy Certificate they may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for a decision.*
- (k) This rule confirms that potential applicants may be requested to provide information in addition to that provided in the application form and supporting documents and that their application may be referred to the Admissions and Licensing Committee if the Officer feels they are unable to make a decision as to the suitability of the applicant.
- 89. *Applications referred to the Admissions and Licensing Committee will be governed by rules 46-47.*
- (l) This rule refers individuals to existing rules 46-47 which define how the Admissions and Licensing Committee decide if an application for Higher Rights of Audience should be approved or not.
- 90. *Notification of application decisions will be governed by rules 48-50, save that in rule 49 reference to Practice Rights Certificate should be a reference to Higher Rights Advocacy Certificate.*
- (m) The rule refers individuals to existing rules 48-50 that define what notification of decision the applicants will receive from the Admissions and Licensing Committee, noting that the reference in rule 49 to Practice Rights Certificate should be a reference to Higher Rights Advocacy Certificate.

AUTHORISED PERSONS AT CILEX REGULATION

- 91. *An applicant who has been awarded a Fellowship, a Litigation and Advocacy (Civil Proceedings) Certificate and a Higher Rights Advocacy Certificate will be a **Chartered Legal Executive Litigator and Higher Rights Advocate (Civil Litigation)**.*

(n) This rule confirms what the authorised person at CILEx Regulation meeting the required criteria will be recognised as.

92. *An applicant who has been awarded a Fellowship, a Litigation and Advocacy (Criminal Proceedings) Certificate and a Higher Rights Advocacy Certificate will be a **Chartered Legal Executive Litigator and Higher Rights Advocate (Criminal Litigation)**.*

(o) This rule confirms what the authorised person at CILEx Regulation meeting the required criteria will be recognised as.

Rights of Audience Certificate Rules

27. The proposed amendments to the Rights of Audience Certificate Rules to add new rules 55 to 68 is required to regulate the application for Higher Rights of Audience, Higher Rights Advocacy skills courses and the award of Higher Rights Certificates.

APPLICATION OF HIGHER RIGHTS OF AUDIENCE

55. *A Chartered Legal Executive Advocate may apply to be authorised to exercise Higher Rights of Audience provided that they have successfully completed the first renewal of their advocacy certificate.*

(a) This rule confirms that only Chartered Legal Executive Advocates who have held advocacy rights in the lower courts for a minimum of 1 year (first renewal of advocacy certificate date) may apply to ensure they have gained sufficient practical experience to undertake Higher Rights of Audience training and assessment.

56. *Applicants holding a Rights of Audience (Civil Proceedings) Certificate or Rights of Audience (Family Proceedings) Certificate will be eligible to apply for a Higher Rights (Civil Proceedings) Certificate.*

(b) The rule confirms that potential applicants can only apply for Higher Rights of Audience based on their current Rights of Audience Certificate for the lower courts. It also confirms that there is no specific Higher Rights (Family Proceedings) Certificate available and those Chartered Legal Executive Advocates with Rights of Audience (Family Proceedings) wishing to gain authorisation for Higher Rights of Audience should undertake the Higher Rights (Civil Proceedings) Certificate.

57. *Applicants holding a Rights of Audience (Criminal Proceedings) Certificate will be eligible to apply for a Higher Rights (Criminal Proceedings) Certificate.*

(c) The rule confirms that potential applicants can only apply for Higher Rights of Audience based on their current Rights of Audience Certificate for the lower courts.

58. *Applicants who seek Higher Rights (Civil Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out in the Standards for CILEX Higher Court*

Advocates in Civil Proceedings, in accordance with the application guidelines set by CILEx Regulation.

(d) This rule confirms the standard that potential applicants must meet the knowledge and competence requirements of to enable them to apply for a Higher Rights (Civil Proceedings) Certificate.

59. *Applicants who seek Higher Rights (Criminal Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out in the Standards for CILEX Higher Court Advocates in Criminal Proceedings, in accordance with the application guidelines set by CILEx Regulation.*

(e) This rule confirms the standard that potential applicants must meet the knowledge and competence requirements of to enable them to apply for a Higher Rights (Criminal Proceedings) Certificate.

HIGHER RIGHTS ADVOCACY SKILLS COURSES

60. *Upon successful completion of the first renewal of the relevant Rights of Audience Certificate an applicant will be required to complete a Higher Rights advocacy skills course in accordance with the Higher Rights of Audience they seek.*

(f) This rule confirms that once potential applicants have completed the first renewal of their Rights of Audience Certificate in either Civil, Criminal or Family Proceedings, they will be required to undertake additional training and assessment to achieve Higher Rights of Audience in their relevant specialist area.

61. *Courses must meet the qualification criteria established by CILEx Regulation. Courses will be assessed in accordance with the assessment criteria defined by CILEx Regulation. Higher Rights advocacy skills courses will be provided by course providers who are accredited by CILEx Regulation.*

(g) This rule confirms that only courses that meet the stringent qualification and assessment criteria established by CILEx Regulation and are offered by course providers accredited by CILEx Regulation will be recognised as meeting the requirements to enable applicants to apply for a Higher Rights Advocacy Certificate.

AWARD OF HIGHER RIGHTS CERTIFICATES

62. *Upon successfully demonstrating that they meet the criteria for award of Higher Rights Advocacy, an applicant may apply for a Higher Rights Certificate in their relevant specialism.*

(h) This rule confirms that potential applicants must first complete the additional training and assessment requirements created by CILEx Regulation and delivered and assessed by CILEx

Regulation accredited course providers, prior to applying for a Higher Rights Advocacy Certificate.

63. *Applicants who seek a Higher Rights Advocacy Certificate must complete all the application forms required by CILEx Regulation and pay such fees as may be fixed by CILEx Regulation from time to time.*
- (i) This rule confirms the application process potential applicants will be required to comply with and that a fee may need to be paid. Subject to LSB Approval, the application form(s) with guidance will be developed and any fees to be levied agreed and published.
64. *The Officer will process the application for a Higher Rights Advocacy Certificate. The applicant will be granted a Higher Rights Advocacy Certificate provided the Officer is satisfied that the applicant:*
- (a) is a fellow of good standing*
(b) has met the relevant knowledge and competence requirements; and
(c) has completed and passed a Higher Rights advocacy skills course.
- (j) This rule confirms the checks that will be made by CILEx Regulation Officers when considering applications for Higher Rights Advocacy Certificates.
65. *Where the Officer has any doubt as to the suitability of the applicant to be awarded a Higher Rights Advocacy Certificate, they may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for a decision.*
- (k) This rule confirms that potential applicants may be requested to provide information in addition to that provided in the application form and supporting documents and that their application may be referred to the Admissions and Licensing Committee if the Officer feels they are unable to make a decision as to the suitability of the applicant.
66. *Applicants referred to the Admission and Licensing Committee will be governed by Rules 50-51.*
- (l) This rule refers individuals to existing Rules 50-51 which define how the Admissions and Licensing Committee decide if an application for Higher Rights of Audience should be approved or not.
67. *Notification of application decisions will be governed by Rule 52, save that in Rule 52 reference to Advocacy Certificate should be reference to Higher Rights Advocacy Certificate.*
- (m) The rule refers individuals to existing Rule 52 which defines what notification of the decision the applicants will receive from the Admissions and Licensing Committee, noting that the reference in Rule 52 to Advocacy Certificate should be a reference to Higher Rights Advocacy Certificate.

68. *A fellow holding a Higher Rights Advocacy Certificate will be described as a Chartered Legal Executive Higher Rights Advocate.*

(n) This rule confirms what the authorised person at CILEx Regulation meeting the required criteria will be described as.

Intent

28. The intention of these amendments is to provide a clear progression pathway for qualified and experienced Chartered Legal Executive Litigators and Advocates (CILEX Practitioners) and Chartered Legal Executive Advocates by enabling them to undertake additional training and assessment to be authorised to conduct advocacy in all courts (Higher Rights of Audience).

Purpose

29. The proposed new additions to the Practitioner Authorisation Rules and Rights of Audience Certificate Rules, set out the policies and processes that CILEx Regulation will apply to all potential applicants wishing to apply for Higher Rights of Audience.

Effect

30. Subject to LSB Approval, this will be the first time that CILEX Practitioners and Chartered Legal Executive Advocates have the opportunity to undertake additional training and assessment to enable them to gain authorisation for Higher Rights of Audience.
31. CILEx Regulation firmly believes that suitably competent CILEX Practitioners and Chartered Legal Executives with Higher Rights would enhance the diversity of the legal profession, and that career opportunities would arise for CILEX members as a result of this amendment.

c. The gap or defect in existing regulatory arrangements that the alteration is intended to remedy

32. As this is the first time that CILEX Practitioners and Chartered Legal Executive Advocates will have the opportunity to undertake additional training and assessment to enable them to gain authorisation for Higher Rights of Audience, there are currently no rules in either the Practitioner Authorisation Rules or Rights of Audience Certificate Rules covering this area.

d. Implementation

33. Subject to LSB approval, CILEx Regulation intends to implement the new rules from September 2024.
34. The regulated community would be informed and social media, including the CILEx Regulation website, would be used to update the wider audience.
35. The current draft CILEx Regulation Standards Approval Policy (**Annex 3**) and the draft Training Provider Higher Rights of Audience Approved Standards Handbook (**Annex 4**) will be finalised and published. A current CILEx Regulation Training Provider Approval Application Form will be amended to reflect the data that is required to gain approval to deliver training and assessment against the higher rights of audience standards. This will become part of the CILEx Regulations current EQA model.
36. CILEx Regulation is already in discussion with one training provider which has expressed potential interest in offering the proposed new higher rights of audience standards. Discussions will also be scheduled with other currently accredited training providers.
37. Those training providers which subsequently decide to offer the new standards will be taken through the approval process to ensure readiness for September 2024 launch.

e. Impact on other regulated persons

38. The new arrangements that have been proposed should have no impact on other regulated persons.
39. CILEx Regulation does, however, believe this new opportunity may encourage existing members of the CILEX regulated community to further progress their careers as chartered legal executives.

f. Impact on other approved regulators

40. CILEx Regulation is the independent regulatory body for The Chartered Institute of Legal Executives (CILEX). CILEX is an Approved Regulator for the authorisation of chartered legal executives.
41. CILEx Regulation believes that the proposed changes will have minimal impact on other Approved Regulators. Potentially, as CILEX Practitioners and Chartered Legal Executives will have rights of audience in all courts, this may have some small impact on Solicitor and Barrister caseloads but CILEx Regulation does not anticipate that this will be significant.

D. Consultation and Engagement

42. CILEx Regulation sought the views of CILEX Lawyers (chartered legal executives, CILEX Advocates and CILEX Practitioners) in March 2022 to determine interest and support for the proposal to seek additional powers to award Higher Rights of Audience. The response was overwhelmingly in favour of CILEx Regulation making an application to the Legal Services Board to enable CILEx Regulation to authorise suitably competent CILEX Practitioners and Chartered Legal Executive Advocates for Higher Rights of Audience.
43. Based on the outcomes of this survey, CILEx Regulation agreed to take the proposal forward and a 12-week consultation was launched on the CILEx Regulation website between 30 September 2022 and 3 January 2023. A copy of the consultation can be found at **Annex 5**.
44. CILEx Regulation received 13 responses in total, of which 11 were from members of CILEX. 10 of the 11 members responses agreed that CILEx Regulation should seek Higher Rights of Audience for suitably qualified CILEX Practitioners.
45. We also received responses from the Bar Standards Board and CILEX (The Chartered Institute of Legal Executives) both of which were also supportive.
- 46.. Based on this support, CILEx Regulation commissioned current external assessors of the advocacy skills course to develop new standards for Higher Rights of Audience for Civil and Criminal Proceedings.
47. The Standards for CILEX Higher Court Advocates in Civil Proceedings can be found at **Annex 6**.
48. The Standards for CILEX Higher Court Advocates in Criminal Proceedings can be found at **Annex 7**.
49. Both these standards were fully mapped against the SRA Standards for Solicitor Higher Court Advocates Criminal Proceedings and Standards for Solicitor Higher Court Advocates in Criminal Proceedings to ensure a level of parity between CILEX Chartered Legal Executive Litigator and Higher Court Advocates, CILEX Chartered Legal Executive Higher Court Advocates and Solicitors.
50. Mapping of Standards for CILEX Higher Court Advocates in Civil Proceedings to SRA Standards for Solicitor Higher Court Advocates Civil Proceedings can be found at **Annex 8**.
51. Mapping of Standards for CILEX Higher Court Advocates in Criminal Proceedings to SRA Standards for Solicitor Higher Court Advocates Criminal Proceedings can be found at **Annex 9**.
52. A second 6-week consultation of the proposed changes and the new standards was launched on the CILEx Regulation website between 31 July 2023 and 11 September 2023. A copy of the second consultation can be found at **Annex 10**.

53. CILEx Regulation received 105 responses in total, of which 89 responses were members of CILEX, 11 respondents were members of the public and 2 respondents who did not identify their status. We also received responses from the Criminal Bar Association (CBA), The Bar Council and CILEX (The Chartered Institute of Legal Executive) and CILEX. Full details of the responses can be found at **Annex 11**.
54. The responses received were largely supportive of the proposed changes with the exception of Question 6: Do you agree that the application for Higher Rights of Audience should be restricted to those Chartered Legal Executives who hold both Litigation and Advocacy rights (CILEX Practitioners) and that those who hold only Advocacy rights (Chartered Legal Executive Advocates) would not be eligible to apply for Higher Rights of Audience. 63% of respondents stated no with very valid reasons.
55. Based on the consultation responses regarding this question, CILEx Regulation, following lengthy consideration, agreed to change the original proposal to allow Higher Rights of Audience to be available to both CILEX Practitioners and Chartered Legal Executive Advocates.

E. Impact Assessment

a. Equality impact assessment

56. CILEx Regulation conducted an equality impact assessment for this proposal. The analysis and consultation exercise has not raised any evidence to suggest that implementing these changes will have a differential impact on individuals with any protected characteristics.
57. Subject to the LSB approval of this application, the effect of the proposed new arrangements would be monitored by the Admissions and Licensing Committee and reported in its annual report. In part, it will consider the outcomes of applications made by individuals seeking recognition as a Chartered Legal Executive Litigator and Higher Rights Advocate (Civil Litigation), Chartered Legal Executive Litigator and Higher Rights Advocate (Criminal Litigation) and Chartered Legal Executive Higher Rights Advocate.

b. Impact on regulated persons, consumers and the public interest

Regulated persons

58. The new arrangements that have been proposed will have a positive impact on the regulated community and will provide those individuals who are suitably qualified with an additional career progression pathway without the need to requalify as a solicitor or barrister. In addition, those members of the CILEx Regulation regulated community may feel encouraged to further progress their career to become suitably qualified to undertake the additional training and assessment for higher rights of audience.

Consumers

59. CILEx Regulation believes that the proposal to authorise CILEX Practitioners and Chartered Legal Executive Advocates with Higher Rights of Audience will improve the consumer experience as, currently, a consumer using the services of a CILEX Practitioner or Chartered Legal Executive Advocate would need to seek alternative counsel, should their case require representation in the Higher Courts. Subject to LSB Approval, CILEx Regulation will be able to authorise CILEX Practitioners and Chartered Legal Executive Advocates for advocacy in all courts which will allow suitably qualified Chartered Legal Executive Litigator and Higher Rights Advocates and Chartered Legal Executive Higher Right Advocates to represent the client throughout a matter.
60. It will also provide the consumer with a greater choice of legal services representative to instruct.

The public interest

61. CILEx Regulation believes the public interest will be protected as only suitably qualified and experienced CILEX Practitioners and Chartered Legal Executive Advocates can apply to undertake the additional training and assessment required for Higher Rights of Audience which has been mapped to similar standards used by the Solicitor's Regulatory Authority (SRA).

F. Evaluation and monitoring

62. Subject to LSB approval of the proposed new arrangements, CILEx Regulation will implement an evaluation and monitoring programme.
63. Pre-launch in September 2024, the monitoring would be based on the number of training providers who had sought approval to offer the standards.
64. From Q1 2025, quarterly evaluation and monitoring would be introduced to capture data on the following:
 - Number of applicants applying to undertake additional training and assessment per specialist area
 - Number of applicants completing the additional training and successfully completing the associated assessment per specialist area
 - Number of applications for a Higher Rights Advocacy Certificate
 - Feedback from course providers on the knowledge and competence requirements set out in the Standards for CILEX Higher Court Advocates in Civil Proceedings and Standards for CILEX Higher Court Advocates in Criminal Proceedings.
65. The results of the evaluation and monitoring and any changes or improvements made as a result, will be part of the Admissions and Licensing Committee annual report.
66. As part of CILEx Regulations annual CPD cycle, it mandates the number of CPD activities that must be undertaken by the regulated community based on their level of authorisation. A random sample of members is selected each year and those selected are required to provide further evidence of CPD activities undertaken in that CPD year. With the introduction of the LSB's statutory Statement of policy on ongoing competence, CILEx Regulation has introduced a risk rating for each specialist area, eg probate, conveyancing. An additional sample will be selected from members failing into those specialist areas that are rated as higher risk. As higher rights of audience is a new area for CILEx Regulation, it will automatically fall into the higher risk area so an additional sample from members within that area will also be conducted.

G. Any draft guidance or policy that will support implementation of the alterations

67. CILEx Regulation has drafted the following:

- CILEx Regulation Standards Approval Policy – **Annex 3**
- CILEx Regulation Training Provider Higher Rights of Audience Approved Standards Handbook – **Annex 4**

68. Subject to the LSB granting this application, these documents will be formally approved and published.

OCTOBER

ANNEXES

- Annex 1** Practitioner Authorisation Rules with Tracked Changes (**Pages 31 – 52**)
- Annex 2** Rights of Audience Certificate Rules with Tracked Changes (**Pages 53 – 98**)
- Annex 3** DRAFT CILEx Regulation Standards Approval Policy (**Pages 99 – 101**)
- Annex 4** DRAFT CILEx Regulation Training Provider Higher Rights of Audience Approved Standards Handbook (**Pages 102 – 113**)
- Annex 5** CILEx Regulation 1st Consultation (**Pages 114 – 120**)
- Annex 6** Standards for CILEX Higher Court Advocates in Civil Proceedings (**Pages 121 – 134**)
- Annex 7** Standards for CILEX Higher Court Advocates in Criminal Proceedings (**Pages 135 – 151**)
- Annex 8** Mapping of Standards for CILEX Higher Court Advocates in Civil Proceedings to SRA Standards for Solicitor Higher Court Advocates Civil Proceedings (**Pages 152 – 170**)
- Annex 9** Mapping of Standards for CILEX Higher Court Advocates in Criminal Proceedings to SRA Standards for Solicitor Higher Court Advocates Criminal Proceedings (**Pages 171 – 190**)
- Annex 10** CILEx Regulation 2nd Consultation (**Pages 191 – 195**)
- Annex 11** Consultation responses (**Pages 196 – 220**)



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CILEx Regulation Practitioner Authorisation Rules

Definitions

1. In these rules, the following definitions apply:
 - “Admissions and Licensing Committee” means the Committee established by CILEx Regulation to deal with matters relating to these 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;
 - “Applicant in good standing” means a person in respect of whose conduct there is no complaint or misconduct matter outstanding, and against whom there is no disciplinary record which, in the view of CILEx Regulation, affects their suitability to be a Chartered Legal Executive or CILEx Practitioner;
 - “Authorised person” means a person so described in the Legal Services Act 2007. An authorised person is defined by the Act as “a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity”;
 - “Business Certificate” means a Business Certificate identified in these Rules;
 - “Certificate of Eligibility” means a Certificate permitting an applicant to undertake an Advocacy Skills Course;
 - “Chartered Legal Executive” means a CILEx member authorised by CILEx Regulation to conduct one or more reserved activities (also known as a Fellow of CILEx)
 - “Chartered Legal Executive Litigator and Advocate” means a Fellow who has been granted a Litigation Certificate and a Rights of Audience Certificate by CILEx Regulation;
 - “CILEx Institute Board” means the Board of the Chartered Institute;
 - “CILEx Practitioner” means a person authorised to conduct Probate practice or Conveyancing practice as defined in these rules, but not authorised as a Chartered Legal Executive/Fellow of CILEx;
 - “CILEx Regulation” means CILEx Regulation Ltd;
 - “CILEx” means the Chartered Institute of Legal Executives;
 - “Conveyancing Certificate” means a Conveyancing Certificate identified in these Rules;
 - “CPD Regulations” means the Rules of CILEx Regulation which are in place to govern the continuing professional development of Chartered Legal Executives, CILEx Practitioners and members of CILEx;
 - “Employment Certificate” means an Employment Certificate identified in these Rules;

- “Enforcement Rules” means the Rules of CILEx Regulation which are in place from time to time and which govern the complaints handling, misconduct investigation and disciplinary procedures of CILEx Regulation;
- “External advisor” means a person appointed by CILEx Regulation to carry out the roles and functions identified for them by CILEx Regulation;
- “Fellow” means a person who has met the requirements of CILEx Regulation (also known as a Chartered Legal Executive) and has paid all subscriptions and other fees to CILEx or has made arrangement for payment;
- “General Certificate” means a General Certificate identified in these Rules;
- “Immigration Advice” means advice which
 - a) Relates to a particular individual;
 - b) Is given in connection with one or more relevant matters;
 - c) Is given by a person who knows that he is giving it in relation to a particular individual and in connection with one or more relevant matters; and
 - d) Is not given in connection with representing an individual before a Court in criminal proceedings or matters ancillary to criminal proceedings;
- “Immigration Certificate” means a certificate authorising a person to provide immigration advice and services, as identified in these Rules;
- “Immigration Services” means the making of representations on behalf of a particular individual:
 - a) In civil proceedings before a Court, Immigration Services Tribunal or Adjudicator in the United Kingdom, or
 - b) In correspondence with a Minister of the Crown or Government department, in connection with one or more of the following matters:
 - (i) A claim for asylum;
 - (ii) An application for, or the variation of, entry clearance or leave to enter or remain in the United Kingdom;
 - (iii) Unlawful entry into the United Kingdom;
 - (iv) Nationality and Citizenship under the law of the United Kingdom;
 - (v) Citizenship of the European Union;
 - (vi) Admission to a Member State under Community Law;
 - (vii) Residence in a Member State in accordance with rights conferred by or under Community Law;
 - (viii) Removal or deportation from the United Kingdom;
 - (ix) An application for bail under the Immigration Act or under the Special Immigration Appeals Commission Act 1997;
 - (x) An appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to in Paragraph (i) to (x);
- “Litigation and Advocacy Certificate” means a litigation and advocacy certificate identified in these Rules;
- “Litigation Certificate” means a litigation certificate identified in these Rules;
- “Practice Certificate” means a “Practice Rights Certificate” or a “Litigation Certificate” or an “Advocacy Certificate” identified in these Rules;
- “Practice Rights Certificate” means a Conveyancing Certificate, Immigration Certificate, Probate Certificate, Employment Certificate, Business Certificate or General Certificate identified in these Rules;
- “Probate Certificate” means a Probate Certificate identified in these Rules;

- “Regulated legal activity” means
 - a) a reserved legal activity;
 - b) immigration advice or immigration services;
- “Reserved legal activity” has the same meaning as in the Act;
- “The Act” means the Legal Services Act 2007;
- “The Officer” means a person with responsibility for the Authorisation Rules.

NOTES ON THESE RULES

2. Reference to the male gender also includes female gender.
3. Words importing the singular include the plural and vice versa.

DELEGATIONS

4. Responsibility for this authorisation scheme is delegated to CILEx Regulation by CILEx.

Fellowship

ELIGIBILITY

5. Applications for Fellowship can only be made by applicants who:
 - are currently in qualifying employment;
 - have at least three years qualifying employment; and
 - have been in qualifying employment for two consecutive years immediately preceding the date of the application.
6. A period of up to 43 weeks spent in attendance on a Legal Practice Course recognised by the Law Society of England and Wales in connection with qualification as a solicitor or the Bar Professional Training Course recognised by the Bar Council in connection with qualification as a Barrister will be treated as qualifying employment.
7. A break in employment for any reason does not count as qualifying employment. Where the break is less than 12 months, it will not break continuity of employment for the purpose of the requirement to serve 2 consecutive years in qualifying employment immediately preceding the date of the application.

DEFINITION OF QUALIFYING EMPLOYMENT

8. A person is in qualifying employment if he is employed either:
 - by an authorised person in private practice;
 - by an organisation where the employment is subject to supervision by an authorised person employed in duties of a legal nature by that organisation; and in either case
 - the work under the terms of his employment is, for at least 20 hours per week, wholly of a legal nature.
9. An applicant for Fellowship will be regarded as being employed if:

- he is employed under a contract of service and is engaged on his employer's business for specified hours; or
 - he is a partner in any firm or is an owner of any company; or
 - at the discretion of CILEx Regulation, he is employed under a contract for services, whether he works as an independent contractor or provides services through an intervening agent.
10. Part-time employment may be accepted as qualifying employment, if the work undertaken provides the opportunity for practical expertise to be developed. Part-time employment is employment for less than 20 hours per week. CILEx Regulation shall have the power to determine that employment for less than 20 hours per week shall be regarded as part-time qualifying employment, where it decides it is appropriate to do so.
11. Unpaid work may be regarded as 'employment' for the purposes of these rules.

ADMISSION

12. An applicant may be admitted as a Fellow if he is in qualifying employment and:
- He has been in qualifying employment for an aggregate of three years or more;
 - He has been in qualifying employment for at least two consecutive years immediately preceding the date of the application;
 - He has met the Chartered Legal Executive knowledge and competence requirements in accordance with the requirements set by CILEx Regulation;
 - He has paid all subscriptions and other fees payable by him to CILEx or has made arrangement for payment;
 - He provides an Employer's Endorsement signed by an authorised person within the meaning of the Legal Services Act 2007, or at the discretion of CILEx Regulation, any other person, who supervises his work or by whom he is employed, which confirms the nature of that work and that he is competent to be a Fellow; and
 - He accepts any obligations imposed on him by the Charter and Bye Laws and regulations and rules made by the CILEx Institute Board.

APPLICATIONS

13. To qualify as a Fellow, applicants must be able to demonstrate competence against the knowledge and competence requirements set out at Annex A.
14. Applicants for Fellowship should demonstrate meeting the knowledge and competence requirements using the documentation prescribed by CILEx Regulation to produce a portfolio of evidence.
15. Applicants for Fellowship must complete all application forms required by CILEx Regulation and pay such fees as may be fixed by CILEx Regulation from time to time.

DECISION MAKING

16. The decision to accept an applicant for Fellowship on the basis of his submitted application and portfolio of evidence may be made by an Officer of CILEx Regulation.

17. The Officer is not able to make a decision the on the following:

- Where an individual seeks guidance or a decision as to whether or not their employment constitutes qualifying employment and no earlier precedent has been set.
- Where an individual may be undertaking work which is similar to qualifying employment, but there is no authorised person employed to supervise his work.
- Applications from individuals who seek to rely on qualifying employment which took place more than three years preceding the date of their application.
- Where there is doubt about the nature of the work and whether the work constitutes qualifying employment.
- Where there is doubt as to whether the outcomes have been met or have been properly written up.

The Admissions and Licensing Committee will determine applications for Fellowship in accordance with the Membership Requirement Regulations, these rules and the Admissions and Licensing Committee Rules.

Practice Rights

ELIGIBILITY

Immigration Certificate

18. An applicant in good standing who

- is applying for Fellowship, and
 - has three years' general legal experience including immigration practice experience in the two years preceding the application,
- may apply to CILEx Regulation to be granted an Immigration Certificate.

19. The immigration practice rights exercisable by a person holding an Immigration Certificate are to provide immigration advice and immigration services.

Conveyancing Certificate

20. An applicant in good standing who

- has three years' general legal experience including conveyancing practice experience in the two years preceding the application, or
 - is applying for Fellowship and has three years' general legal experience including conveyancing practice experience in the two years preceding the application,
- may apply to CILEx Regulation to be granted a Conveyancing Certificate.

21. The Conveyancing Certificate will authorise a person to exercise reserved instrument rights. The reserved instrument rights exercisable by a person holding a Conveyancing Certificate are to:

- a) Prepare any instrument of transfer or charge for the purposes of the Land Registration Act 2002;
- b) Make an application or lodge a document for registration under that Act;
- c) Prepare any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to Court proceedings in England and Wales.

Instrument includes a contract for the sale or other disposition of land (except a contract to grant a short lease), but does not include

- a) A will or other testamentary instrument,
- b) An agreement not intended to be executed as a Deed, other than a contract that is included by virtue of the preceding provisions of this sub paragraph,
- c) A letter or Power of Attorney, or
- d) A transfer of stock containing no trust or limitation of the transfer.

“A short lease” means a lease referred to in Section 54(2) of the Law of Property Act 1925.

Probate Certificate

- 22. An applicant in good standing who
 - has three years’ general legal experience including probate practice experience in the two years preceding the application, or
 - is applying for Fellowship and has three years’ general legal experience including probate practice experience in the two years preceding the application,
 may apply to CILEx Regulation to be granted a Probate Certificate.
- 23. The practice rights exercisable by a person holding a Probate Certificate are to prepare any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales. Probate papers mean any papers on which to found or oppose a grant of probate or a grant of letters of administration.

Employment Certificate

- 24. An applicant in good standing who
 - is applying for Fellowship, and
 - has three years’ general legal experience including employment practice experience in the two years preceding the application
 may apply to CILEx Regulation to be granted an Employment Certificate.
- 25. The Employment Certificate will authorise a person to exercise rights to administer oaths.

Business Certificate

- 26. An applicant in good standing who
 - is applying for Fellowship, and
 - has with three years’ general legal experience including business practice experience in the two years preceding the application

may apply to CILEx Regulation to be granted a Business Certificate.

27. The Business Certificate will authorise a person to exercise rights to administer oaths.

General Certificate

28. An applicant in good standing who

- is applying for Fellowship,
 - and has three years' general legal experience, including experience in a distinct area of practice in the two years' preceding the application,
- may apply to CILEx Regulation to be granted a General Certificate.

29. The General Certificate will authorise a person to exercise rights to administer oaths.

APPLICATIONS

30. Applicants who seek a Practice Rights Certificate should demonstrate meeting the knowledge and competence requirements by using the documentation prescribed by CILEx Regulation to produce a portfolio of evidence.

31. Applicants who seek a Practice Rights Certificate must complete all application forms required by CILEx Regulation and pay such fees as may be fixed by CILEx Regulation from time to time.

Immigration Certificate

32. Applicants who seek an Immigration Certificate must be able to demonstrate they meet the knowledge and competence requirements set out at Annex 4 in accordance with the application guidelines set by CILEx Regulation.

Conveyancing Certificate

33. Applicants who seek a Conveyancing Certificate must be able to demonstrate they meet the knowledge and competence requirements set out at Annex 5 in accordance with the application guidelines set by CILEx Regulation.

Probate Certificate

34. Applicants who seek a Probate Certificate must be able to demonstrate they meet the knowledge and competence requirements set out at Annex 6 in accordance with the application guidelines set by CILEx Regulation.

Employment Certificate

35. Applicants who seek an Employment Certificate must be able to demonstrate they meet the knowledge and competence requirements set out at Annex 7 in accordance with the application guidelines set by CILEx Regulation.

Business Certificate

36. Applicants who seek a Business Certificate must be able to demonstrate they meet the knowledge and competence requirements set out at Annex 8 in accordance with the application guidelines set by CILEx Regulation.

General Certificate

37. Applicants who seek a General Certificate must be able to demonstrate they meet the knowledge and competence requirements set out at Annex 9 in accordance with the application guidelines set by CILEx Regulation.

DECISION MAKING

38. The Admissions and Licensing Committee established under the Admissions and Licensing Committee Rules shall be responsible for matters relating to these Rules.
39. In making any assessment or decision required by these Rules, the Admissions and Licensing Committee shall have regard to the relevant eligibility criteria, application guidelines, and the knowledge and competence requirements.
40. CILEx Regulation shall appoint external advisors to advise CILEx Regulation and the Admissions and Licensing Committee on matters relating to these Rules.
41. CILEx Regulation will consider an application for a Practice Rights Certificate to ensure it meets the relevant eligibility criteria, the application guidelines and the related knowledge and competence requirements.
42. The decision to approve an application for a Practice Rights Certificate may be made by an Officer of CILEx Regulation. 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.
43. The portfolios which form part of the application may be sent to an external advisor for assessment. The external advisor will assess whether the portfolios meet the application guidelines and the relevant knowledge and competence requirements.
44. Where the external advisor finds that the portfolios are satisfactory, the CILEx Regulation Officer will decide whether the application 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.
45. Where the external advisor decides that the portfolios do not meet the relevant knowledge and competence requirements they will 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, amend and re-submit their application or make further representation and ask that the full application be referred to the Admissions and Licensing Committee to consider.

46. 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.
47. The Admissions and Licensing Committee may:
 - Approve the application;
 - Decide that the applicant does not meet the criteria and indicate which of the criteria the applicant does not meet.
48. The Officer will notify an applicant of their decision or the decision of the Admissions and Licensing Committee.
49. Where the application has been approved, the notification shall include the Practice Rights Certificate.
50. Where the application is unsuccessful, the notification shall set out the reasons and any pre-conditions to the consideration of any subsequent application. Where an application is unsuccessful, the applicant may apply for reconsideration in accordance with the Admissions and Licensing Committee Rules.

Litigation and Advocacy Practice Rights

ELIGIBILITY

51. An applicant in good standing who
 - is applying for Fellowship, and
 - has three years' general legal experience including relevant litigation and advocacy experience in the two years preceding the application,
 may apply to CILEx Regulation to be granted one or more of the following Certificates:
 - A Rights to Conduct Litigation (Civil Proceedings) Certificate;
 - A Rights to Conduct Litigation (Family Proceedings) Certificate;
 - A Rights to Conduct Litigation (Criminal Proceedings) Certificate.
52. An applicant 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 Rights of Audience (Civil Proceedings) Certificate in Judge's Room;
 - A Rights of Audience (Family Proceedings) Certificate in Judge's Room;
 - A Rights of Audience (Civil Proceedings) Certificate;
 - A Rights of Audience (Family Proceedings) Certificate;
 - A Rights of Audience (Criminal Proceedings) Certificate.
53. The Rights to Conduct Litigation exercisable by a person holding a Litigation Certificate 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.
54. The rights of audience exercisable by a person holding an Advocacy Certificate 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.
 - 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.

APPLICATIONS

Rights to Conduct Litigation Certificates

55. Applicants who seek a Rights to Conduct Litigation (Civil Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out at Annex 1, in accordance with the application guidelines set by CILEx Regulation.
56. Applicants who seek a Rights to Conduct Litigation (Criminal Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out at Annex 2, in accordance with the application guidelines set by CILEx Regulation.
57. Applicants who seek a Rights to Conduct Litigation (Family Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out at Annex 3, in accordance with the application guidelines set by CILEx Regulation.
58. Applicants who seek a Litigation Certificate should demonstrate meeting the knowledge and competence requirements by using the documentation prescribed by CILEx Regulation to produce a portfolio of evidence.

Rights of Audience – Application for Certificate of Eligibility

59. Applicants must make an application for a Certificate of Eligibility to undertake the rights of audience skills course relevant to the Certificate they seek.
60. Applicants who seek a Rights of Audience (Civil Proceedings) Certificate in Judge's room or a Rights of Audience (Civil Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out at Annex 1, in accordance with the application guidelines set by CILEx Regulation.
61. Applicants who seek a Rights of Audience (Criminal Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out at Annex 2, in accordance with the application guidelines set by CILEx Regulation.
62. Applicants who seek a Rights of Audience (Family Proceedings) Certificate in Judge's Room or a Rights of Audience (Family Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out at Annex 3, in accordance with the application guidelines set by CILEx Regulation.
63. Applicants who seek a Certificate of Eligibility should demonstrate meeting the knowledge and competence requirements by using the documentation prescribed by CILEx Regulation to produce a portfolio of evidence.

64. Where an applicant who has met the criteria set out in the application guidelines, the relevant knowledge and competence requirements, and 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 in the Rights of Audience Qualification Scheme. 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 in the Rights of Audience Qualification Scheme. 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.
65. 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.

Decision making

66. Decisions about applications for a Rights to Conduct Litigation Certificate and a Certificate of Eligibility for Rights of Audience will be governed by Rules 41 to 48, save that in Rule 41, reference to Practice Rights Certificate should be a reference to a Rights to Conduct Litigation Certificate and a Certificate of Eligibility for Rights of Audience.
67. 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 Certificate of Eligibility for Rights of Audience will specify which of the advocacy skills course options the applicant may take. The Litigation Certification may only be granted on the successful completion of the associated Rights of Audience skills course and assessment, and admission as a Fellow.
68. Where the application is unsuccessful, the notification shall set out the reasons and any preconditions to the consideration of any subsequent application. Where an application has been unsuccessful the applicant may apply for reconsideration in accordance with the Admissions and Licensing Committee Rules.

Advocacy Skills Courses

69. 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.
70. Courses must meet the qualification criteria which are set out in the Rights of Audience Qualification Scheme. Courses will be assessed in accordance with the assessment criteria which are set out in the Rights of Audience Qualification Scheme. Advocacy

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

71. 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.

AWARD OF LITIGATION AND ADVOCACY CERTIFICATE

72. 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.
73. Applicants who seek a Litigation and Advocacy Certificate must complete all application forms required by CILEx Regulation and pay such fees as may be fixed by CILEx Regulation from time to time.
74. 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 relevant knowledge and competence requirements; and
 - has completed and passed an advocacy skills course and assessment.
75. 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.
76. Applications referred to the Admissions and Licensing Committee will be governed by Rules 46-47.
77. Notification of application decisions will be governed by Rules 48-50, save that in Rule 49 reference to Practice Rights Certificate should be a reference to the Litigation and Advocacy Certificate.

AWARD OF HIGHER RIGHTS OF AUDIENCE

78. A Chartered Legal Executive Litigator and Advocate may apply to be authorised to exercise Higher Rights of Audience provided they have successfully completed the first renewal of their advocacy certificate.
79. Applicants holding either a Rights of Audience (Civil Proceedings) Certificate or a Rights of Audience (Family Proceedings) Certificate will be eligible to apply for a Higher Rights (Civil Proceedings) Certificate.
80. Applicants holding a Rights of Audience (Criminal Proceedings) Certificate will be eligible to apply for a Higher Rights (Criminal Proceedings) Certificate.

81. Applicants who seek a Higher Rights (Civil Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out in the ~~CRL Higher Rights course outline~~ Standards for CILEX Higher Court Advocates in Civil Proceedings, in accordance with the application guidelines set by CILEx Regulation.
82. Applicants who seek a Higher Rights (Criminal Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out in the ~~Higher Rights course outline~~ Standards for CILEX Higher Court Advocates in Criminal Proceedings, in accordance with the application guidelines set by CILEx Regulation.

Higher Rights Advocacy Skills Courses

83. Upon successful completion of the first renewal of the relevant Rights of Audience Certificate, an applicant will be required to complete a Higher Rights advocacy skills course in accordance with the Higher Rights of Audience they seek.
84. Courses must meet the qualification criteria established by CILEx Regulation. Courses will be assessed in accordance with the assessment criteria defined by CILEx Regulation. Higher Rights advocacy skills courses will be provided by course providers who are accredited by CILEx Regulation.

AWARD OF ~~LITIGATION AND~~ HIGHER RIGHTS ADVOCACY CERTIFICATE

85. Upon successfully demonstrating that they meet the criteria for award of Higher Rights advocacy, an applicant may apply for a Higher Rights Advocacy Certificate in their relevant specialism.
86. Applicants who seek a Higher Rights Advocacy Certificate must complete all the application forms required by CILEx Regulation and pay such fees as may be fixed by CILEx Regulation from time to time.
87. The Officer will process the application for a Higher Rights Advocacy Certificate. The applicant shall be granted a Higher Rights Advocacy Certificate provided the Officer is satisfied that the applicant:
- is a Fellow in good standing;
 - has met the relevant knowledge and competence requirements; and
 - has completed and passed a Higher Rights advocacy skills course ~~and assessment~~.
88. Where the Officer has any doubt as to the suitability of the applicant to be awarded a Higher Rights Advocacy Certificate they may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for decision.
89. Applications referred to the Admissions and Licensing Committee will be governed by Rules 46-47.
90. Notification of application decisions will be governed by Rules 48-50, save that in Rule 49 reference to Practice Rights Certificate should be a reference to the Higher Rights Advocacy Certificate.

Authorised Persons at CILEx Regulation

91. An applicant who has been awarded Fellowship, a Litigation and Advocacy (Civil Proceedings) Certificate and a Higher Rights Advocacy Certificate will be a **Chartered Legal Executive Litigator and Higher Rights Advocate (Civil Litigation)**.
92. An applicant who has been awarded Fellowship, a Litigation and Advocacy (Criminal Proceedings) Certificate and a Higher Rights Advocacy Certificate will be a **Chartered Legal Executive Litigator and Higher Rights Advocate (Criminal Litigation)**.
- ~~78.~~93. An applicant who has been awarded Fellowship and a Litigation and Advocacy (Civil Proceedings) Certificate will be a **Chartered Legal Executive Litigator and Advocate (Civil Litigation)**.
- ~~79.~~94. An applicant who has been awarded Fellowship and a Litigation and Advocacy (Criminal Proceedings) Certificate will be a **Chartered Legal Executive Litigator and Advocate (Criminal Litigation)**.
- ~~80.~~95. An applicant who has been awarded Fellowship and a Litigation and Advocacy (Family Proceedings) Certificate will be a **Chartered Legal Executive Litigator and Advocate (Family Litigation)**.
- ~~81.~~96. An applicant who has been admitted as a Fellow and awarded an Immigration Certificate will be known as a **Chartered Legal Executive (Immigration)**.
- ~~82.~~97. An applicant who has been admitted as a Fellow and awarded a Conveyancing Certificate will be known as a **Chartered Legal Executive (Conveyancing)**.
- ~~83.~~98. An applicant who has been admitted as a Fellow and awarded a Probate Certificate will be known as a **Chartered Legal Executive (Probate)**.
- ~~84.~~99. An applicant who has been awarded a Conveyancing Certificate will be known as a **CILEx Practitioner (Conveyancing)**.
- ~~85.~~100. An applicant who has been awarded a Probate Certificate will be known as a **CILEx Practitioner (Probate)**.
- ~~86.~~101. An applicant who has been admitted as a Fellow and awarded an Employment Certificate will be known as a **Chartered Legal Executive (Employment)**.
- ~~87.~~102. An applicant who has been admitted as a Fellow and awarded a Business Certificate will be known as a **Chartered Legal Executive (Business)**.
- ~~88.~~103. An applicant who has been admitted as a Fellow and awarded a General Certificate will be known as a **Chartered Legal Executive**.

RENEWAL OF ADVOCACY CERTIFICATES

- ~~89.~~104. The first Advocacy Certificate issued to a Chartered Legal Executive Litigator and Advocate 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.
- ~~90.~~105. Applicants who seek first renewal of an Advocacy certificate must complete all application forms required by CILEx Regulation and pay such fees as may be fixed by CILEx Regulation from time to time.
- ~~91.~~106. An applicant for first renewal of an Advocacy certificate must be able to demonstrate he meets the relevant knowledge and competence requirements using

documentation prescribed by CILEx Regulation to produce a portfolio of evidence. Criminal advocates will also be required, as part of their CPD requirements, to undertake and evidence completion of vulnerable witness training as stipulated by CILEx Regulation as part of their first Advocacy Certificate renewal.

~~92-107.~~ _____ Decisions about applications for the first renewal of an Advocacy Certificate will be governed by Rules 42 to 50, save that in Rule 49, reference to Practice Rights Certificate should be a reference to the Advocacy Certificate.

LAPSED ADVOCACY CERTIFICATES

~~93-108.~~ _____ A Chartered Legal Executive Litigator and Advocate who has held a Litigation and Advocacy Certificate which has lapsed may apply for that certificate to be renewed.

~~94-109.~~ _____ Applicants who seek renewal of a lapsed Litigation and Advocacy certificate must complete all application forms required by CILEx Regulation and pay such fees as may be fixed by CILEx Regulation from time to time.

~~95-110.~~ _____ An applicant for renewal of a lapsed Litigation and Advocacy certificate must be able to demonstrate he meets the relevant knowledge and competence experience requirements using documentation prescribed by CILEx Regulation to produce a portfolio of evidence.

~~96-111.~~ _____ CILEx Regulation will consider an application to renew a lapsed Litigation and Advocacy Certificate to ensure it meets the relevant eligibility criteria, the application guidelines and the related knowledge and competence requirements.

~~97-112.~~ _____ Decisions about applications to renew a lapsed Litigation and Advocacy Certificate will be made by the Admissions and Licensing Committee.

~~98-113.~~ _____ The portfolios which form part of the application may be sent by the Officer to an external advisor for assessment. The external advisor will assess whether the portfolios meet the application guidelines and the relevant knowledge and competence requirements.

~~99-114.~~ _____ Where the Officer/external advisor finds that the portfolios are satisfactory, the Officer will refer the application to the Admissions and Licensing Committee for decision.

~~100-115.~~ _____ Where the Officer/external advisor decides that the portfolios do not meet the relevant knowledge and competence requirements they will 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, amend and re-submit their application or make further representation and ask that the full application be referred to the Admissions and Licensing Committee to consider.

~~101-116.~~ _____ Applications to renew of a lapsed Litigation and Advocacy certificate referred to the Admissions and Licensing Committee will governed by rules 46 to 50 save that in rule 49 reference to a Practice Rights Certificate should be reference to the Litigation and Advocacy Certificate.

~~102-117.~~ 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.

~~103-118.~~ Where a Litigation and Advocacy Certificate which has lapsed is renewed by the Admissions and Licensing Committee it will be valid indefinitely.

CONTINUING PROFESSIONAL DEVELOPMENT

~~104-119.~~ Chartered Legal Executives and CILEx Practitioners are required to undertake Continuing Professional Development (CPD) in accordance with the CPD regulations issued by CILEx Regulation from time to time.

~~105-120.~~ Where a Chartered Legal Executive or CILEx Practitioner's Practice Certificate has been withdrawn for 12 months or more, on the basis that they have not met their CPD requirements, they will be required to make a fresh application for a Practice Certificate in accordance with these Rules.

DISCIPLINARY PROCEDURES AND CODE OF CONDUCT

~~106-121.~~ Chartered Legal Executives and CILEx Practitioners will be required to abide by the Code of Conduct of CILEx for the time being in force. They will also be bound by the associated regulatory arrangements in force from time to time.

~~107-122.~~ Where a complaint is made, or an issue is brought to the attention of CILEx Regulation, regarding the conduct of a Chartered Legal Executive or CILEx Practitioner, that matter will be dealt with in accordance with the CILEx Regulation Enforcement Rules.

~~108-123.~~ Where a finding, order or decision is made against a Chartered Legal Executive or CILEx Practitioner, 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 or CILEx Practitioner remains a suitable person to hold a Practice Certificate. The Admissions and Licensing Committee must give reasons for its decision.

~~109-124.~~ Rule 108 shall not apply where an order is made excluding a Chartered Legal Executive or CILEx Practitioner from registration of CILEx Regulation or membership of CILEx. In such a case the Chartered Legal Executive or CILEx Practitioner's Practice Certificate shall be invalid from the date the exclusion from membership or registration takes effect.

~~110-125.~~ Where the Admissions and Licensing Committee decides that the Chartered Legal Executive or CILEx Practitioner is no longer a suitable person to hold a Practice Certificate or their Practice Certificate is invalid in accordance with Rule 108, they must return their Practice Certificate to CILEx Regulation within 28 days of them being notified of the decision. Failure to do so will constitute a disciplinary offence. The Chartered Legal Executive or CILEx Practitioner may not exercise any practice rights granted to them under their Practice Certificate after they have been notified of the decision.

~~111-126.~~ Notwithstanding the Admissions and Licensing Committee Rules an appeal against the decision of the Admissions and Licensing Committee that a Chartered Legal

Executive or CILEx Practitioner is no longer a suitable to hold a Practice 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 CILEx Regulation's Appeals Panel.

Annexes

Annex A: Chartered Legal Executive knowledge and competence requirements

Annex 1: Chartered Legal Executive Litigator and Advocate (Civil Litigation)

Annex 2: Chartered Legal Executive Litigator and Advocate (Criminal Litigation)

Annex 3: Chartered Legal Executive Litigator and Advocate (Family Litigation)

Annex 4: Chartered Legal Executive (Immigration)

Annex 5: Chartered Legal Executive (Conveyancing)

Annex 6: Chartered Legal Executive (Probate)

Annex 7: Chartered Legal Executive (Employment)

Annex 8: Chartered Legal Executive (Business)

Annex 9: Chartered Legal Executive

ANNEX A - Chartered Legal Executive knowledge and competence requirements

Technical knowledge requirements

General knowledge requirements for all Chartered Legal Executives / Fellows

Minimum content:

Stage 1

- Introduction to law and legal practice
- Introduction to dispute resolution
- Introduction to conveyancing
- Introduction to criminal practice
- Introduction to wills and probate
- Introduction to public law
- Introduction to equality and human rights law
- Introduction to legal technology
- Conduct and professional ethics

Stage 2

- Contextualised legal technology
- Conduct and professional ethics

Chartered Legal Executive

- Basic accounts
- Specialist legal technology
- Conduct and professional ethics

Knowledge requirements specific to a Chartered Legal Executive

Minimum Content:

This will depend on the distinct area of practice in which Chartered Legal Executive status is sought, but the minimum requirements will be:

- Law element: set and assessed at Level 6, comprising not less than 15 credits (approximately 150 hours of guided learning)
- Practice element: set and assessed at Level 6, comprising not less than 15 credits (approximately 150 hours of guided learning)

Competence requirements

Application of law and practice

- Undertake legal research
- Critically analyse facts and law
- Synthesise all relevant information
- Find solutions
- Draft legal documents

Communication

- Communicate orally and in writing clearly and effectively
- Negotiate effectively
- Advocate (formally or informally as appropriate)
- Develop, maintain and manage 3rd party relationships

Client relationship

- Take instructions
- Evaluate options and risks to the client
- Communicate advice
- Manage expectations
- Provide good customer service

Effective working practices

- Progress matters
- Plan workload and manage files
- Caseload management
- Understand and utilise innovation

Business awareness

- Identify and evaluate options and risks
- Undertake business development
- Network
- Identify marketing opportunities
- Understand and use financial management tools

Self development

- Reflect and self-evaluate, including understanding your own limitations and the need for adaptability.
- Develop awareness of the role of your own emotions within the workplace and recognise the emotions and vulnerabilities of clients.
- Foster personal physical and mental wellbeing and contribute where possible to a positive workplace environment.
- Identify and undertake professional development necessary to ensure competence and good practice and a commitment to supervisory requirements.
- Demonstrate leadership and management skills (optional).

Conduct, ethics and professionalism

- Identify, understand and put into practice the CILEx Regulation Code of Conduct
- Identify, understand and put into practice all relevant legal and regulatory requirements (e.g. data protection)
- Understand and put into practice the principles of client care
- Provide certainty and clarity as to the legal services being provided and the basis of charging
- Understand and put into practice complaint handling requirements
- Understand and put into practice, principles of equality and diversity, including the needs of vulnerable consumers

- Identify situations where ethical, legal or regulatory requirements are engaged and take appropriate action
- Resist pressure to condone, ignore or act unethically

Use of technology

- Use available technology
- Identify uses for emerging technology and recommend implementation appropriately
- Understand ethical challenges of technology and use technology ethically



RIGHTS OF AUDIENCE CERTIFICATION RULES

DEFINITIONS

1. In these Rules, except where otherwise indicated:

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

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

"Advocacy Certificate" means one of the Rights of Audience Certificates identified in these Rules;

"Advocacy Skills Course" means an Advocacy Skills Course approved for the purposes of these Rules by CILEx Regulation;

"the Appeal 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 a Fellow (or CILEX Fellow) or Graduate member (or CILEX Member – Advanced Paralegal member) to undertake an Advocacy Skills Course;

"Certification Rules" means the Rights of Audience Certification Rules;

"the Chartered Institute" means The Chartered Institute of Legal Executives (CILEX);

"Chartered Legal Executive Advocate" means a Fellow (or CILEX Fellow) who has been granted a right to exercise rights of audience under these Rules and holds an Advocacy Certificate;

"Course provider" means a teaching or training organisation which has been approved under these Rules to provide an Advocacy Skills Course;

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

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

"Fellow or Graduate member (this includes members of CILEX who have completed the academic stage of the CILEX Professional Qualification and registered as a CILEX Member – Advanced Paralegal member) of the Chartered Institute in good standing" means a Fellow (or CILEX Fellow) or Graduate member (or CILEX Member – Advanced Paralegal member) of the Chartered Institute whose subscriptions to the Chartered Institute are fully paid, in respect of whose conduct there is no complaint outstanding, whose CPD requirements are up to date and against whom there is no disciplinary record which in the view of the Admissions and Licensing Committee affects their suitability to be a Chartered Legal Executive Advocate;

"independent assessor" means an individual that has been appointed by the Joint Advocacy Group to undertake assessments/evaluations of advocates in court;

"manager" means a person who falls within the definition of a manager contained in section 207 of the Legal Services Act 2007;

"The Officer" means a CILEx Regulation officer with responsibility for the rights of audience qualification scheme;

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

THE RIGHTS OF AUDIENCE CERTIFICATES

2. A Fellow of the Chartered Institute in good standing may apply to CILEx Regulation to be granted one or more of the following Advocacy Certificates:
 - (a) A Civil Proceedings Certificate;
 - (b) A Family Proceedings Certificate;
 - (c) A Criminal Proceedings Certificate.
3. The rights of audience exercisable by Fellows holding Rights of Audience Certificates are set out below:

Civil Proceedings Certificate

- (a) To appear in open Court in the County Court in all actions, except family proceedings;
- (b) to appear before Justices or a District Judge (Magistrates' Court) in the Magistrates' Courts in relation to all matters originating by complaint or application, including applications under the licensing, betting and gaming legislation;
- (c) to appear before any tribunal under the supervision of the Administrative Justice and Tribunals Council where the tribunal rules provide for a non-discretionary right of audience being available to barristers and solicitors;
- (d) 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.

The holding of a Civil Proceedings Certificate does not confer a right of audience in any proceedings for which a Family or Criminal Proceedings Certificate is required.

Family Proceedings Certificate

- (a) To appear in Family Court in all family proceedings;
- (b) 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.

The holding of a Family Proceedings Certificate does not confer a right of audience in any proceedings for which a Civil or Criminal Proceedings Certificate is required.

Criminal Proceedings Certificate

- (a) To appear before Justices or a District Judge (Magistrates' Court) in all adult Magistrates' Courts in relation to all matters within that Court's criminal jurisdiction;
- (b) to appear before Justices or a District Judge (Magistrates' Court) in all Youth Courts in relation to all matters within that Court's criminal jurisdiction;
- (c) to appear in the Crown Court or High Court before a judge in chambers to conduct bail applications;
- (d) 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 he, or any solicitor by whom he is employed or any other solicitor or

Fellow in the same employment as him, appeared on behalf of the defendant in the Magistrates' Court or Youth Court;

- (e) 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.

The holding of a Criminal Proceedings Certificate does not confer a right of audience in any proceedings for which a Civil or Family Proceedings Certificate is required.

4. A person who is a Chartered Legal Executive Advocate when these Rules come into effect may exercise all the rights of audience appropriate to the Advocacy Certificate or Certificates he holds, as described in Rule 3 above.

CERTIFICATES OF ELIGIBILITY

5. Graduate members (or CILEX Member – Advanced Paralegal members) and Fellows of the Chartered Institute who wish to undertake an Advocacy Skills Course must make an application to CILEx Regulation for a Certificate of Eligibility.
6. A Graduate member (or CILEX Member – Advanced Paralegal) or Fellow who wishes to apply for a Certificate of Eligibility must:
 - ◆ be employed by or be a manager in an organisation which is owned or managed by persons authorised to provide litigation services, or which is authorised to provide litigation services under the Legal Services Act 2007; or
 - ◆ be employed by an organisation in which he works under the supervision of a person who is authorised to provide litigation services under the Legal Services Act 2007.
7. 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 the legal practice relevant to the Advocacy Skills Course he wishes to take and to the rights of audience he wishes to be granted in accordance with the Competence Criteria set out in the Knowledge and Experience Guidelines in the Rights of Audience qualification scheme;
 - ◆ a record of the applicant's advocacy and litigation experience in accordance with the requirements set out in the Knowledge and Experience Guidelines in the Rights of Audience qualification scheme;

- ◆ a portfolio of cases in which the Applicant has been involved during the two years preceding his application, in accordance with the Portfolio Guidelines set out in the Rights of Audience qualification scheme;
 - ◆ 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 his advocacy skills, and who are able to offer an informed opinion as to the applicant's suitability to be granted the rights of audience he wishes to be granted in accordance with the Competence Criteria set out in the Knowledge and Experience Guidelines in the Rights of Audience qualification scheme;
 - ◆ a statement from the applicant's current or prospective employer or the organisation in which the applicant is a manager confirming his employment, the details provided of his litigation and advocacy experience and whether any rights of audience granted will be exercised.
8. An application for a Certificate of Eligibility 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.
 9. The portfolio which forms part of the application for a Certificate of Eligibility will be sent to an external advisor. The external advisor will assess whether the portfolio meets the criteria set out in the Knowledge and Experience Guidelines and the Portfolio Guidelines in the Rights of Audience qualification scheme.
 10. Where the external advisor decides that the portfolio is satisfactory and meets the criteria set out in the Knowledge and Experience Guidelines and the Portfolio Guidelines the Officer will consider the application. The Officer will decide whether the application can be approved. Where it can be approved the Officer will approve the application and indicate which of the Advocacy Skills Courses – civil proceedings, family proceedings or criminal proceedings – the applicant may take. Where the Officer has any doubt as to whether an application can be approved they will refer it to the Admissions and Licensing Committee for further consideration. An application can be approved by the Officer where:
 - ◆ The applicant has passed the Level 6 examinations necessary for the certificate sought.
 - ◆ The applicant's litigation and advocacy/police station experience meets the knowledge and experience criteria set out in the Rights of Audience qualification scheme.

- ◆ The case portfolios have all been assessed by the external advisors as meeting the knowledge and experience requirements.
 - ◆ Satisfactory references have been obtained. References will be satisfactory where the two referees can attest to the applicant's knowledge of civil, criminal or family law and practice (whichever is relevant) and their advocacy skills, and are able to offer an informed opinion as to the applicant's suitability to be granted the rights of audience they wish to be granted in accordance with the competence criteria set out in the Knowledge and Experience Guidelines.
 - ◆ the applicant's current or prospective employer or the organisation in which the applicant is a manager has provided a statement confirming his employment, the details provided of his litigation and advocacy experience and whether any rights of audience granted will be exercised.
11. Where the external advisor decides that the portfolio is not satisfactory and / or does not meet the criteria set out in the Knowledge and Experience Guidelines and/or the Portfolio Guidelines he will give reasons for his decision. 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.
 12. The Admissions and Licensing Committee will decide whether or not an application that has been 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 information from any person or source it considers appropriate. The Committee may:
 - ◆ Approve the application, and indicate which of the Advocacy Skills Courses – civil proceedings, family proceedings or criminal proceedings – the applicant may take;
 - ◆ Refuse the application.
 13. In making any assessment or decision required by these Rules the Officer and the Admissions and Licensing Committee shall have regard to the Knowledge and Experience Guidelines and the Portfolio Guidelines set out in the Rights of Audience qualification scheme.
 14. The Officer will notify an applicant in writing of their decision or of the decision of the Admissions and Licensing Committee. Where the application has been approved the notification shall include the Certificate of Eligibility. Where the application is unsuccessful, the notification shall set out the Committee's reasons and any preconditions to the consideration of any subsequent application for a Certificate of Eligibility. Where an application has been unsuccessful

the applicant may apply for reconsideration or appeal in accordance with The Admissions and Licensing Committee Rules.

15. The Certificate of Eligibility will specify which of the Advocacy Skills Course options the applicant may take.

ADMISSIONS AND LICENSING COMMITTEE

16. The Admissions and Licensing Committee established under the Admissions and Licensing Committee Rules shall be responsible for the rights of audience scheme.

EXTERNAL ADVISORS

17. CILEx Regulation shall appoint 3 external advisors to advise the Admissions and Licensing Committee and CILEx Regulation on issues relating to advocacy skills and advocacy training. One advisor shall be appointed in respect of civil proceedings, one shall be appointed in respect of family proceedings, and one shall be appointed in respect of criminal proceedings.
18. When making such appointments CILEx Regulation shall take into account the following:
 - ◆ That the person appointed is a law graduate or has qualifications in law of a comparable level;
 - ◆ That the person appointed is qualified in legal practice relevant to the area of specialist work in which they are appointed;
 - ◆ That the person appointed has knowledge and experience of the teaching and practice of advocacy;
 - ◆ That the person appointed has experience of teaching and assessment of law and legal practice, including advocacy, at degree or post graduate level.
19. The external advisors will provide advice to the Admissions and Licensing Committee and CILEx Regulation in respect of the following:
 - ◆ applications by Graduate members (or CILEX Member – Advanced Paralegal) and Fellows for Certificates of Eligibility;
 - ◆ applications for the first renewal of Advocacy Certificates;
 - ◆ applications by Fellows for Advocacy Certificates and renewal of Advocacy Certificates that are referred to the Admissions and Licensing Committee by the Officer;

- ◆ whether a course provider is suitable or fit to provide or continue to provide Advocacy Skills Courses;
- ◆ applications to the Admissions and Licensing Committee for the reconsideration of a decision;
- ◆ the structure of Advocacy Skills Courses or the qualification scheme generally, and may make recommendations for revision of any Course or the qualification scheme;
- ◆ any other matter on which the Admissions and Licensing Committee seeks their advice.

The Admissions and Licensing Committee and the Officer shall consider any advice given by the external advisors, but shall not be bound by such advice.

20. The external advisors shall decide whether a portfolio submitted with an application for a Certificate of Eligibility or first renewal of an Advocacy Certificate meets the criteria set out in the Knowledge and Experience Guidelines and the Portfolio Guidelines in the Rights of Audience qualification scheme and shall advise the Officer accordingly.
21. The external advisors shall carry out inspections of Advocacy Skills Courses. They shall provide reports on inspections to the Admissions and Licensing Committee which shall be made available to the relevant course provider.
22. The external advisors shall moderate assessment materials prepared by a course provider and the standards of assessment applied by course providers. They shall report their findings to the Officer, Admissions and Licensing Committee and the course provider.
23. The external advisers' reports on inspections and moderation of course materials and assessment standards shall be taken into account by the Officer when the Officer considers whether to renew accreditation of a course provider and by the Admissions and Licensing Committee when it considers whether to renew or withdraw accreditation of a course provider.
24. The external advisors shall receive notice of meetings of the Admissions and Licensing Committee and may attend such meetings in their advisory capacity.
25. The external advisors will be appointed by CILEx Regulation for a period of three years. They may be reappointed for further periods of three years, but shall not serve more than three consecutive periods of three years. Where an external advisor fails, without good reason, to fulfil any of his duties set out in these Rules, CILEx Regulation may

terminate his appointment whether or not he has completed his current term of office.

26. CILEx Regulation shall have the power to pay fees to the external advisors and shall, from time to time, determine the amount and basis of payment of such fees.

ADVOCACY SKILLS COURSE

27. A Fellow or Graduate member (or CILEX Member – Advanced Paralegal member) who has been granted a Certificate of Eligibility may take an Advocacy Skills Course relating to the Advocacy Certificate for which he has been granted the Certificate of Eligibility. CILEx Regulation may prescribe a course fee to be paid by Graduate members (or CILEX Member – Advanced Paralegal members) and Fellows wishing to take an advocacy skills course prescribed by CILEx Regulation. Where it does so, no Graduate member (or CILEX Member – Advanced Paralegal member) or Fellow will be permitted to start a course until a prescribed fee has been paid in full.
28. Where a Fellow or Graduate member (or CILEX Member – Advanced Paralegal member) fails to start an Advocacy Skills Course within 12 months of being granted a Certificate of Eligibility, he must make a fresh application for such a Certificate before he may start an Advocacy Skills Course.
29. Fellows and Graduate members (or CILEX Member – Advanced Paralegal members) will be required:
 - ◆ to complete the training sessions successfully; and
 - ◆ to demonstrate the necessary levels of competence in the formal assessments during the course so that they satisfy Assessment Criteria set out in the Rights of Audience qualification scheme .
30. Advocacy Skills Courses will be provided by course providers who are accredited by CILEx Regulation.
31. An Advocacy Skills Course must:
 - ◆ meet the Advocacy Skills Course Delivery criteria;
 - ◆ be capable of delivering the Course outcomes; and
 - ◆ include arrangements for assessment of advocacy skills in accordance with the assessment criteria set out in the Rights of Audience qualification scheme.

COURSE PROVIDERS

32. Independent teaching or testing organisations will provide Advocacy Skills Courses. Organisations seeking to offer Advocacy Skills Courses will apply to CILEx Regulation for accreditation.
33. Applications for accreditation will be considered by the Officer. The Officer may accredit course providers who demonstrate that they are able to provide advocacy skills courses to deliver the course outcomes and assessment criteria set out in the Rights of Audience qualification scheme. The Officer may seek guidance from the external advisors when considering applications. Where the Officer has any doubt as to whether an application can be approved they will refer it to the Admissions and Licensing Committee for further consideration.
34. The Officer will also have regard to the following criteria when considering applications for accreditation:
 - ◆ venue, including teaching and study accommodation and other facilities;
 - ◆ resources to support teaching and study, including library and research facilities;
 - ◆ candidate numbers and proposed tutor/candidate ratios;
 - ◆ teaching and assessment experience of the applicant organisation and of those who are to deliver the course;
 - ◆ course structure proposed, including teaching/study time;
 - ◆ course content proposed;
 - ◆ course duration proposed
 - ◆ suitability of course materials;
 - ◆ candidate support and feed-back arrangements;
 - ◆ arrangements for appeals against course assessments;
 - ◆ arrangements for assessing candidates; and
 - ◆ health and safety and equal opportunities policies adopted by the applicant organisation.
35. CILEx Regulation will produce an accreditation handbook which will set out the accreditation procedure and criteria.
36. Course providers will be accredited for a period of three years but may apply for re-accreditation at the end of that period.
37. Course providers shall be responsible for producing materials for an Advocacy Skills Course to facilitate teaching and assessment. The content and type of course materials must be described in an application for accreditation. Assessment materials produced by accredited course providers will be subject to moderation by the external advisors.
38. Course providers shall be responsible for carrying out formal assessment of candidates in accordance with the assessment criteria set out in the Rights of Audience qualification scheme. Standards of

assessment will be subject to moderation by external advisors who will be provided with recorded candidate performances across a representative range of attainment for this purpose.

39. The course provider shall have in place procedures for considering appeals by candidates against assessments of competence.
40. Course providers will be inspected by CILEx Regulation. After the inspection a report will be compiled on the management and content of courses generally, and it will have regard to all of the matters referred to in Rules 34 and 35. The inspector will observe formal assessments of candidates.
41. The report of the inspection visit shall be submitted to the Admissions and Licensing Committee. The report will make such recommendations as deemed appropriate. Course providers shall receive copies of inspection reports. The Officer, when considering whether to renew accreditation, and the Admissions and Licensing Committee, when considering whether to renew or withdraw accreditation of a course provider, shall take inspection reports into account.
42. Course providers shall produce annual reports for consideration by the Admissions and Licensing Committee which provide an overview of the courses they have provided during the year. Reports shall include comment on:
 - ◆ the course generally;
 - ◆ candidate performance in relation to the standards of the course;
 - ◆ results of assessments;
 - ◆ candidate feed-back;
 - ◆ any recommendations for change or improvement in the course structure or materials; and
 - ◆ any developments in the course following any previous report.
43. The Admissions and Licensing Committee may withdraw accreditation from a course provider, subject to it giving not less than six months' notice of its intention to do so and providing a statement of its reasons to the course provider.
44. A course provider may apply for reconsideration of a decision by the Admissions and Licensing Committee, either to refuse to accredit it or to withdraw accreditation, or appeal a decision, in accordance with the Admissions and Licensing Committee Rules.

CERTIFICATION

45. Upon successful completion of an Advocacy Skills Course a Fellow may apply for an Advocacy Certificate. A Graduate member (or CILEX Member – Advanced Paralegal member) who has completed an Advocacy Skills Course may not make an application until he becomes a Fellow.
46. A Fellow may only apply for an Advocacy Certificate relating to the type of proceedings covered by the Advocacy Skills Course he has completed.
47. 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.
48. The Officer will process the application. The applicant shall be granted an Advocacy Certificate which is appropriate to the Advocacy Skills Course he has completed, provided the Officer is satisfied that the applicant:
 - ◆ is a Fellow of good standing;
 - ◆ is employed by or is a manager in an organisation referred to in Rule 6 of these Certification Rules;
 - ◆ is the holder of a Certificate of Eligibility; and
 - ◆ has passed an Advocacy Skills Course.
49. Where the Officer has any doubt as to the suitability of the applicant to be awarded an Advocacy Certificate he may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for decision.
50. When considering an application for an Advocacy Certificate to be awarded 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.
51. 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.
52. The Officer will notify an applicant in writing of a decision whether his application for an Advocacy Certificate is successful. 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 and any preconditions to the consideration of any subsequent application by the applicant for an Advocacy Certificate. The applicant may apply for reconsideration of his application or appeal a decision in accordance with the Admissions and Licensing Committee Rules.

53. A Fellow holding an Advocacy Certificate will be described as a Chartered Legal Executive Advocate.
54. A Chartered Legal Executive Advocate who ceases to be employed by or to be a manager in an organisation referred to in Rule 6 of these Certification Rules may not exercise any right of audience granted to him under these Rules.

APPLICATION FOR HIGHER RIGHTS OF AUDIENCE

55. A Chartered Legal Executive Advocate may apply to be authorised to exercise Higher Rights of Audience provided they have successfully completed the first renewal of their advocacy certificate.
56. Applicants holding a Rights of Audience (Civil Proceedings) Certificate or a Rights of Audience (Family Proceedings) Certificate will be eligible to apply for a Higher Rights (Civil Proceedings) Certificate.
57. Applicants holding a Rights of Audience (Criminal Proceedings) Certificate will be eligible to apply for a Higher Rights (Criminal Proceedings) Certificate.
58. Applicants who seek a Higher Rights (Civil Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out in the Standards for CILEX Higher Court Advocates in Civil Proceedings, in accordance with the application guidelines set by CILEx Regulation.
59. Applicants who seek a Higher Rights (Criminal Proceedings) Certificate must demonstrate that they meet the knowledge and competence requirements set out in the Standards for CILEX Higher Court Advocates in Criminal Proceedings, in accordance with the application guidelines set out by CILEx Regulation.

HIGHER RIGHTS ADVOCACY SKILLS COURSES

60. Upon successful completion of the first renewal of the relevant Rights of Audience Certificate an applicant will be required to complete a Higher Rights advocacy skills course in accordance with the Higher Rights of Audience they seek.
61. Courses must meet the qualification criteria established by CILEx Regulation. Courses will be assessed in accordance with the assessment criteria defined by CILEx Regulation. Higher Rights advocacy skills courses will be provided by course providers who are accredited by CILEx Regulation.

AWARD OF HIGHER RIGHTS CERTIFICATES

62. Upon successfully demonstrating that they meet the criteria for award of Higher Rights Advocacy, an applicant may apply for a Higher Rights Advocacy Certificate in their relevant specialism.
63. Applicants who seek a Higher Rights Advocacy Certificate must complete all the application forms required by CILEx Regulation and pay such fees as may be fixed by CILEx Regulation from time to time.
64. The Officer will process the application for a Higher Rights Advocacy Certificate. The applicant shall be granted a Higher Rights Advocacy Certificate provided the Officer is satisfied that the applicant:
- Is a Fellow in good standing
 - Has met the relevant knowledge and competence requirements; and
 - Has completed and passed a Higher Rights advocacy skills course.
65. Where the Officer has any doubt as to the suitability of the applicant to be awarded a Higher Rights Advocacy Certificate they may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for decision.
66. Applications referred to the Admissions and Licensing Committee will be governed by Rules 50-51.
67. Notification of application decisions will be governed by Rule 52, save that in Rule 52 reference to Advocacy Certificate should be reference to Higher Rights Advocacy Certificate.
68. A fellow holding a Higher Rights Advocacy Certificate will be described as a Chartered Legal Executive Higher Rights Advocate.

APPLICATION FOR ADDITIONAL CERTIFICATES

- ~~55-69.~~ A Chartered Legal Executive Advocate may apply to be granted Advocacy Certificates additional to any already granted to him under these Rules.
- ~~56-70.~~ Applications for additional Certificates may be made by Graduate members (or CILEX Member – Advanced Paralegal members) and Fellows of the Chartered Institute. Graduate members and Fellows will submit an application for a Certificate of Eligibility to CILEx Regulation, in accordance with these Rules.
- ~~57-71.~~ Applications will be considered by the Admissions and Licensing Committee.
- ~~58-72.~~ When considering an application for an Advocacy Certificate to be awarded 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.

~~59.73.~~ When deciding to issue a Certificate of Eligibility to an applicant seeking grant of an additional Advocacy Certificate, the Admissions and Licensing Committee shall provide a statement of further training setting out any further training or assessment in advocacy skills the applicant is required to undertake.

~~60.74.~~ Upon the award of a Certificate of Eligibility the applicant will undertake such parts of the Advocacy Skills Course as are required by the statement of further training attached to it.

~~61.75.~~ Where it decides not to issue a Certificate of Eligibility to an applicant seeking an additional Advocacy Certificate, the Admissions and

Licensing Committee shall give its reasons and may impose preconditions to any subsequent application by the applicant. The applicant may apply for reconsideration of his application or appeal a decision in accordance with the Admissions and Licensing Committee Rules

~~62.76.~~ Upon successful completion of any further training and assessment in advocacy skills required, Fellows may submit an application for an Advocacy Certificate, in accordance with these Rules. A Graduate member (or CILEX Member – Advanced Paralegal member) may not make an application until he becomes a Fellow.

~~63.77.~~ Fellows may gain Advocacy Certificates in each of the areas where advocacy rights are available provided they meet the criteria set out in these Rules.

RENEWAL OF CERTIFICATES

~~64.78.~~ The first Advocacy Certificate issued to a Fellow, 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 for a period of 3 years. Criminal advocates will be required, as part of their CPD requirements, to undertake vulnerable witness training as stipulated by CILEx Regulation as part of their first Advocacy Certificate renewal.

~~65.79.~~ Applications for renewal of Certificates 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.

~~66.80.~~ An application for the first renewal of an Advocacy Certificate must be supported by:

- ◆ Confirmation that the applicant is employed by or is a manager in an organisation referred to in Rule 6 of these Certification Rules;
- ◆ a record of the applicant's advocacy and litigation experience during the period since his Advocacy Certificate was granted;
- ◆ a portfolio of cases in which the applicant has been involved during the period since his Advocacy Certificate was granted, in accordance with the Portfolio Guidelines set out in the Rights of Audience qualification scheme;
- ◆ a statement from his current employer or the organisation in which he is a manager confirming the details provided of his litigation and

advocacy experience and whether any rights of audience granted will be exercised in the future.

67-81. The portfolio which forms part of the application for the first renewal of the Advocacy Certificate will be sent to an external advisor. The external advisor will assess the portfolio against the criteria set out in the Rights of Audience qualification scheme.

68-82. Where the external advisor decides that the portfolio is satisfactory and shows that the applicant has applied the advocacy skills in the cases described in accordance with the Portfolio Guidelines and the Course Outcomes set out in the Rights of Audience qualification scheme the Officer will consider the application. The Officer will decide whether to approve the application. Where the Officer has any doubt as to whether an application can be approved they will refer it to the Committee for consideration. An application can be approved where:

- ◆ The applicant's litigation and advocacy/police station experience meets the knowledge and experience criteria set out in the Rights of Audience Certification Rules.
- ◆ The case portfolios have all been marked as meeting the knowledge and experience requirements.
- ◆ his current employer or the organisation in which he is a manager has provided a statement confirming the details provided of his litigation and advocacy experience and whether any rights of audience granted will be exercised in the future.
- ◆ For criminal advocates only, evidence of successful completion of vulnerable witness advocacy training.

69-83. Where the external advisor decides that the portfolio is not satisfactory and does not show that the applicant has applied the advocacy skills in the cases described in accordance with the Portfolio Guidelines and the Course Outcomes set out in the Rights of Audience qualification scheme the external advisor shall give reasons for his decision. He 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 his application or make further representations and ask that the full application be referred to the Admissions and Licensing Committee to consider.

70-84. The Admissions and Licensing Committee will decide whether or not an application that has been 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 refuse it.

71.85. 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 and the course outcomes set out in the Rights of Audience qualification scheme

72.86. 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 Committee's reasons and any preconditions to the consideration of any subsequent application for an Advocacy Certificate.

73.87. Where the application is unsuccessful an applicant may apply for reconsideration or appeal a decision in accordance with Admissions and Licensing Committee Rules. The Admissions and Licensing Committee will have the powers set out at Rule 70 upon an application for reconsideration.

74.88. A Fellow making an application for renewal of his civil or family Advocacy Certificate, after the first renewal, must:

- ◆ be a Fellow of good standing;
- ◆ be an employee or a manager in an organisation referred to in Rule 6 of these Certification Rules;
- ◆ provide a statement from his employer or the organisation in which he is a manager confirming his employment and indicating whether any rights of audience granted will be exercised; and
- ◆ have undertaken Continuing Professional Development (CPD) that meets the requirements set out in these Rules.

75.89. The Officer will process applications for renewal. Where the Officer is satisfied that the Fellow complies with the requirements set out in Rule 74, he will issue a new Advocacy Certificate.

76.90. Where he has any doubt whether an Advocacy Certificate should be renewed, the Officer may request further information and/or refer the application to the Admissions and Licensing Committee.

77.91. Where an application for renewal is referred to it by the Officer, the Admissions and Licensing Committee shall consider all the information before it and may request additional information from any person or source it considers appropriate, and may require the applicant to attend for interview before reaching its decision.

78.92. If the Admissions and Licensing Committee is satisfied that the Advocacy Certificate should be renewed, it shall direct the Officer to issue a Certificate. If it is not so satisfied, it must give its reasons and

indicate any preconditions to the consideration of any subsequent application by the applicant.

~~79-93.~~ The Officer will notify an applicant in writing of the decision of the Admissions and Licensing Committee. Where the application has been approved the notification shall include the Advocacy Certificate. Where the application is unsuccessful, the notification shall set out the Committee's reasons and any preconditions to the consideration of any subsequent application by the applicant to renew his Advocacy Certificate. Where the application is unsuccessful an applicant may apply for reconsideration or appeal a decision in accordance with the Admissions and Licensing Committee Rules.

~~80-94.~~ A Chartered Legal Executive may not exercise any rights of audience which may be granted under these Rules, unless he has a current Advocacy Certificate which is appropriate to the Advocacy Skills Course(s) he has completed.

~~81-95.~~ A Chartered Legal Executive Advocate who, for any reason, ceases to be a Fellow of the Chartered Institute shall automatically cease to be eligible to exercise any right of audience granted under these Rules and shall return his Certificate(s) to CILEx Regulation within 28 days of ceasing to be a Fellow.

LAPSED CERTIFICATES

~~82-96.~~ A Fellow who has held an Advocacy Certificate which has lapsed may apply for that certificate to be renewed. Renewal of a lapsed certificate will be governed by Rules 64 to 73 which deal with first renewal of an advocacy certificate save that in Rule 66:

- ◆ the reference to an application for the first renewal of an Advocacy Certificate should be a reference to an application for renewal of a lapsed Advocacy Certificate;
- ◆ where the certificate which has lapsed is a Criminal Proceedings Certificate the reference to the record of the applicant's advocacy experience shall include police station advice and observed advocacy in accordance with the Portfolio Guidelines to these Certification Rules; and
- ◆ the information required to be provided by the applicant shall include, additionally, reasons why the Advocacy Certificate lapsed and details of CPD undertaken during the 12 months prior to the application.

~~83-97.~~ A lapsed Advocacy Certificate is one which has expired and has not been renewed, whether by decision of the holder of the certificate, as a result of a decision of the Admissions and Licensing Committee,

because the holder has ceased to be eligible to hold a certificate for any reason..

~~84.~~98. Where an Advocacy Certificate which has lapsed is renewed, it will be valid until either 1 June or 1 December, whichever is the earlier, after 36 months have elapsed from the date on which the certificate was issued. Thereafter it will be renewable in accordance with the provisions of Rules 74 to 81 above.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

~~85.~~99. Chartered Legal Executive Advocates must undertake CPD in accordance with the CPD Regulations. Those who hold a criminal proceedings certificate must also comply with the requirement to remain competent in relation to work undertaken in the Youth Court.

DISCIPLINARY PROCEDURES AND CODE OF CONDUCT

~~86.~~100. Chartered Legal Executive Advocates will be required to abide by the Code of Conduct and Guides to Good Practice of CILEx Regulation for the time being in force. They will also be bound by the Rights of Audience Conduct Rules.

~~87.~~101. Where a complaint is made or an issue is brought to the attention of CILEx Regulation regarding the conduct of a Chartered Legal Executive Advocate that matter will be dealt with in accordance with the CILEx Regulation Enforcement Rules.

~~88.~~102. Where a Finding, Order or Decision is made against a Chartered Legal Executive Advocate by the Disciplinary Tribunal, Appeals Panel, or Professional Conduct 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 Advocate remains a fit and proper person to hold an Advocacy Certificate. The Admissions and Licensing Committee must give reasons for its decision.

~~89.~~103. Rule 88 shall not apply where an Order is made by the Disciplinary Tribunal or Appeals Panel excluding a Chartered Legal Executive Advocate from membership of the Chartered Institute. Rule 90 shall apply in such a case.

~~90.~~104. Where the Admissions and Licensing Committee decides that the Advocate is no longer a fit and proper person to hold an Advocacy Certificate, they must return their Certificate(s) to CILEx Regulation within 28 days of being notified of the decision. Failure to do so will constitute a disciplinary offence. The Fellow may not exercise any

advocacy rights granted to him under his Advocacy Certificate(s) after he has been notified of the decision.

~~91.105.~~ An appeal against a decision of the Admissions and Licensing Committee that an Advocate is no longer a fit and proper person to hold an Advocacy Certificate will be considered by a Fellow and two lay members drawn from the panel of members appointed to serve on the CILEx Regulation Disciplinary and Appeals panels.

CILEx Regulation/ROA/June 2021

RIGHTS OF AUDIENCE QUALIFICATION SCHEME

KNOWLEDGE AND EXPERIENCE GUIDELINES

CRIMINAL PROCEEDINGS

Certificate of Eligibility

1. Graduate Members (or CILEX Member – Advanced Paralegal members) and Fellows who make an application for extended Rights of Audience must submit details of the criminal litigation and advocacy experience they have gained. These details will form part of their application for a Certificate of Eligibility to undertake the advocacy course.
2. The Applicant must provide the following information about his experience:
 - ◆ Total years litigation experience and number of years as a fee earner.
 - ◆ Types of litigation undertaken and main areas of specialism currently and previously.
3. In relation to the 2 years preceding the application applicants must give the following information:
 - ◆ General description of the litigation work carried out.
 - ◆ Typical caseload.
 - ◆ Chargeable hours spent on criminal proceedings work in each year.
 - ◆ Proportion of time spent on criminal proceedings work.
 - ◆ Nature and extent of police station representation work.
 - ◆ Whether they are or have been accredited as police station representatives by the Legal Services Commission or under any duty solicitor scheme.
 - ◆ Proportion or number of cases which have included preparation for trial.
 - ◆ Range and nature of advocacy experience including observed advocacy.
 - ◆ Details of any distinctive features of the applicant's work.
 - ◆ Details of supervisory arrangements under which the applicant works and/or his supervisory responsibilities.
4. Applicants must also submit a portfolio of cases demonstrating their litigation and advocacy experience in compliance with the competence criteria set out below. The portfolio requirements are set out in the **Portfolio Guidelines**.

5. The Officer or Admissions and Licensing Committee will consider Applications for Certificates of Eligibility. Graduate members (or CILEX Member – Advanced Paralegal members) and Fellows will need to satisfy the Officer or Committee that they have an appropriate level of knowledge of criminal law, procedure and the rules of evidence and that their experience of criminal practice is sufficient to enable them to undertake the advocacy course and, upon successful completion of that course, to exercise the extended rights of audience that they will be granted.

Competence Criteria

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

Knowledge of criminal law

7. Applicants will be expected to have successfully completed a CILEx Level 6 Professional Higher Diploma paper in Criminal Law or equivalent qualification, so that they are able to:
 - ◆ Understand the nature of criminal liability and defences.
 - ◆ Categorise, distinguish and relate the elements of crimes.
 - ◆ Analyse and categorise the elements of defences.
 - ◆ Apply the rules and principles of criminal liability.

Knowledge of criminal litigation

8. Applicants will be expected to have successfully completed a CILEx Level 6 Professional Higher Diploma paper in Criminal Litigation or equivalent qualification, so that they are able to:
 - ◆ Demonstrate a detailed understanding of criminal procedure and the law of evidence as it operates in practice covering the following areas – role and jurisdiction of the criminal courts; public funding of criminal cases; bail; police investigative powers; disclosure obligations of the prosecution; summary proceedings; the magistrates' courts case management powers; how and why cases go to the crown court; trial on indictment; youth courts; sentencing; appeals; and the rules of evidence in criminal proceedings.
 - ◆ Identify and assess problems arising in a factual situation and to respond appropriately to them.
 - ◆ Identify key issues in advising clients in criminal matters.
 - ◆ Practise as an effective member of a criminal litigation team.
 - ◆ Demonstrate awareness of the impact of the Human Rights Act 1998 in criminal litigation.
 - ◆ Demonstrate awareness of and identify and deal appropriately with issues relating to conduct and ethics.

Analysis, critical judgement and evaluation

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

Autonomy and an ability to learn

10. Applicants will be expected to be able to:
- ◆ Act independently in planning, preparing and undertaking tasks in the above areas of law.
 - ◆ Undertake independent research in the above areas of law using standard legal information sources.
 - ◆ Reflect on his or her learning and make constructive use of feedback.
11. The Admissions and Licensing Committee may accept alternative evidence of the applicant's knowledge of criminal law and of criminal litigation other than the successful completion of the relevant head of the Level 6 Professional Higher Diploma in Law. The Applicant would need to provide evidence that the content of an alternative qualification substantially covered the criteria above and that the qualification was assessed at a comparable standard. An applicant who seeks to rely on knowledge gained through experience or means other than qualifications must submit evidence to the Admissions and Licensing Committee to demonstrate that he has knowledge of the law required by the competence criteria and that his level of knowledge is to a comparable standard to the Level 6 Professional Higher Diploma in Law.

Evaluating Experience

Litigation Experience

12. Applicants will be expected to have experience across a wide range of criminal proceedings and to be currently undertaking criminal litigation work. Their experience should include police station representation. Applicants should have handled cases from the beginning to the end of

the process, which should include preparing cases for trial and undertaking post-trial work.

13. The quality of experience that an applicant has gained will be considered as well as the quantity of experience. In considering the quality of experience that an applicant has gained various factors will be taken into account such as the seriousness and complexity of cases handled and difficult cases handled.

Advocacy Experience

14. The Officer or Committee will have regard to the fact that it is likely members of the Chartered Institute who undertake criminal work will not have gained any advocacy experience in the criminal courts because they do not have rights of audience in those courts. The Officer or Committee may therefore take into account advocacy experience applicants have gained in other forums. They will also recognise that applicants may have gained advocacy experience through representing clients at police stations. Applicants will need to provide information as to the types of representation undertaken.
15. The Officer or Committee will also need to be satisfied that applicants have extensive first-hand experience of the style and standards of practice and advocacy expected in the courts for which they are seeking extended rights of audience.
16. Applicants 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 that they have observed and indicate the nature of the cases concerned.
17. The Officer or Committee will need to take a balanced view about an applicant's experience in deciding whether his experience is sufficient to grant a Certificate of Eligibility particularly where an applicant relies in part on observed advocacy.

Career breaks/illness

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

Other factors

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

APPENDIX 2

PORTFOLIO GUIDELINES

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

Litigation Experience

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

Advocacy Experience – Civil and Family Proceedings

5. For each of the 3 cases included in a portfolio of advocacy experience, applicants for a Certificate of Eligibility in respect of a Civil or Family Proceedings certificate will need to set out the following:
 - ◆ A concise description of the case, its progression and outcome.
 - ◆ The nature of advocacy undertaken, including negotiation and arbitration, where relevant.
 - ◆ The Court in which the advocacy took place, and whether the hearing was contested.
 - ◆ Preparation work carried out for the hearing and the client's objectives for the case.
 - ◆ Legal, procedural, evidential and ethical issues arising in the course of the hearing or advocacy.
 - ◆ Effectiveness of the advocacy.
 - ◆ Any training or development needs identified, arising from the advocacy.
6. The Advocacy described may be in relation to the litigation cases described in the Portfolio, but need not be. One of the cases described may be observed advocacy, rather than advocacy carried out by the Applicant.

Police Station Experience – Criminal Proceedings

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

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

8. Observed Advocacy

Applicants for a Certificate of Eligibility in respect of Criminal Proceedings may include descriptions of advocacy they have undertaken or observed in place of cases in which they have provided police station advice. No more than 2 of the 3 cases may relate to observed advocacy, the remaining case or cases must relate to police station attendance or advocacy undertaken in criminal proceedings. Where the Applicant describes cases in which they have undertaken or observed advocacy, they must set out the information which applicants for civil and family proceedings certificates must set out in relation to their advocacy experience described at paragraph 6 above.

APPENDIX 3

ADVOCACY SKILLS COURSE DELIVERY AND OUTCOMES

COURSE DELIVERY

An Advocacy Skills Course accredited by the Officer or Admissions and Licensing Committee must be effective to develop the advocacy skills of candidates in accordance with the Outcomes set out below for each of the types of proceedings civil, family and criminal. It must comprise not less than 36 hours tuition, delivered over not less than 6 one day sessions. Teaching shall focus on the development of candidates' advocacy skills and be provided in groups of no more than 10 candidates, to encourage the maximum amount of individual participation. It must be supported by course materials which include guidance on preparation work for each session and case studies to be used for teaching and formative assessments during each session.

Appropriate feedback must be provided on all formative assessments or exercises during the sessions. Facilities must be available to record candidate performance on video for both training and assessment purposes and to enable candidates to be given a copy of their recorded performance for review and reflection.

The rules of evidence must be formally assessed during a skills course by means of a written or multiple choice test devised by the course provider. Candidates shall be required to apply the rules of evidence in the context of case studies in addition to demonstrating knowledge and understanding of them through the written test.

ADVOCACY SKILLS COURSE OUTCOMES FOR THE CRIMINAL PROCEEDINGS CERTIFICATE

Candidates who have attended the Advocacy Skills Course will by the end of the course have attained the outcomes set out below.

1. Case Analysis and Theory

On conclusion of the course candidates should be able to

- ◆ Identify the relevant factual, legal and evidential issues in a given case.
- ◆ Identify the evidence available to both parties to prove these issues.
- ◆ Identify the strengths and weaknesses of a case.
- ◆ Understand the relevant law.
- ◆ Prepare a case theory that is both succinct and persuasive.

2. Advocacy

On conclusion of the course candidates should be able to, by way of preparation:

- ◆ Understand the importance of preparation and effective ways to undertake this.
- ◆ Identify the client's goals.
- ◆ Analyse the relevant factual issues.
- ◆ Understand the legal, procedural and evidential context in which these factual issues arise and how they relate to each other.
- ◆ Summarise the strengths and weaknesses of each party's case.
- ◆ Develop an effective case presentation strategy.
- ◆ 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; making a submission of no case to answer; a trial, a voire dire hearing and a plea in mitigation.
- ◆ Understand and appreciate the relevant communication skills and techniques used by an advocate.
- ◆ 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.

and, at the hearing,

- ◆ Outline the relevant facts in a clear, effective format.
- ◆ Understand and use the English language proficiently in relation to legal issues.
- ◆ Present a sustained argument in a way which is comprehensible to others.
- ◆ 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.
- ◆ Use and apply the relevant communication skills and techniques used by an advocate.
- ◆ Undertake competently an opening speech, examination-in-chief, cross-examination, re-examination and a closing speech in the context of a trial.
- ◆ Understand good practice guidance when dealing with vulnerable witnesses and the available procedures relating to vulnerable witnesses.
- ◆ Understand how to deal effectively with uncooperative witnesses.
- ◆ Understand when it is appropriate to call expert evidence and how to use and challenge expert evidence effectively.
- ◆ Deal with the court's questions / concerns promptly.
- ◆ Respond to an opponent's points.
- ◆ Deal appropriately with client care and ethical issues.

- ◆ Demonstrate an understanding of the ethics, etiquette and conventions of advocacy.

3. Evidence

On conclusion of the course candidates should be able to demonstrate knowledge and understanding of the following rules of evidence as they apply in a criminal trial:-

- ◆ The incidence of the burden and standard of proof.
- ◆ The rules relating to competence and compellability of the accused and all other witnesses.
- ◆ The ways in which evidence may be adduced.
- ◆ The rules relating to memory refreshing.
- ◆ The rules relating to hostile and unfavourable witnesses.
- ◆ 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.
- ◆ The rules relating to finality to collateral issues.
- ◆ The rule against hearsay evidence in criminal trials and the operation of common law and statutory exceptions.
- ◆ The admissibility of confessions in criminal trials and the interplay of the provisions of the Police and Criminal Evidence Act 1984 with the Codes of Practice.
- ◆ The extent to which inferences may be drawn under Sections 34 to 37 of the Youth Justice and Public Order Act 1994.
- ◆ The rules relating to the admissibility of and weight to be attached to disputed visual identification evidence.
- ◆ The rules relating to the admissibility of improperly obtained evidence.
- ◆ The statutory rules relating to the admissibility of character evidence of the accused and non-defendants.
- ◆ The rules relating to the admissibility of opinion evidence including expert opinion evidence.
- ◆ The rules relating to the prosecution's disclosure obligations.
- ◆ The rules relating to legal professional privilege.
- ◆ The relevance of human rights issues.

4. Professional Conduct

On conclusion of the course candidates should be able to demonstrate knowledge and understanding of the Rights of Audience Conduct Rules as they apply in criminal proceedings including the following:

- ◆ The fundamental duties, including the duty to act with independence; to advise the court of adverse authorities and when they arise, procedural irregularities; to assist the court in the proper administration of justice.;
- ◆ The decision to appear.
- ◆ Ceasing to act as an advocate.
- ◆ Conduct of work.
- ◆ Understanding equality and diversity issues.

Competency standards for Youth Court Proceedings and Handling Vulnerable Witnesses

9. Specialist knowledge of youth justice law and components of the youth justice system.

Advocates should have:

- ◆ knowledge of the role and functions of the youth justice system.
- ◆ an awareness of sentencing guidance and options for children and young persons at court; out of court and diversion provision; bail and remand provisions.
- ◆ an understanding of approaches to questioning children and young persons either as defendants or witnesses.
- ◆ use of The Advocacy Gateway toolkits and guidance on “Achieving Best Evidence”.

and be able to apply the above effectively.

10. Communication, engagement and wider social skills.

Advocates should:

- ◆ use straightforward language that their client can understand.
- ◆ be able to explain what a client can expect in and after court.
- ◆ avoid legal jargon.
- ◆ be aware of likely attention and comprehension difficulties amongst children and young persons at court.
- ◆ be able to build a positive relationship to maintain rapport with, and the trust of, their client.

11. Knowledge of children and young persons’ needs.

Advocates should:

- ◆ have knowledge and awareness of the needs and backgrounds of clients.
- ◆ be able to identify cultural, educational or social influences/issues.

- ♦ understand the developmental, communication and mental health needs commonly experienced by children and young persons in the youth justice system.
- ♦ be aware of the realities of children and young persons' lives.
- ♦ identify whether additional support is needed, such as an intermediary.

to aid their client's effective participation in court proceedings.

12. Identify and deal with vulnerability

Advocates should:

- ♦ be able to identify when a child or young person might be vulnerable.
- ♦ be able to recognise learning difficulties e.g., speech, language and communication.
- ♦ be aware of potential methods to safeguard and support this type of vulnerable person in court.
- ♦ understand the role of an intermediary and the use of ground rules hearings to plan the questioning of this type of vulnerable witness or defendant.
- ♦ have knowledge of and how to apply for an appropriate range of special measures for defendants under the age of 18.

13. Knowledge and awareness of wider youth justice and children's services

Advocates should:

- ♦ understand the role and value of the Youth Offending Team (YOT) as a source of information about, and support for, young defendants.
- ♦ possess an awareness of diversion options to avoid unnecessary criminalisation.
- ♦ appreciate the scope for engagement with other agencies and key organisations.
- ♦ be aware of available court adaptations and support for children and young persons at court.

14. Professionalism

Advocates should:

- ♦ demonstrate commitment, engagement, thorough case preparation and attention to detail.
- ♦ know where to access practical, evidence-based guidance on the treatment of vulnerable witnesses and defendants such as TAG's toolkits and the pan-profession training for all advocates undertaking cases involving the vulnerable¹.

¹ **In the Youth Proceedings Advocacy Review, one of the recommendations referred to:*

"The scope for development of a mandatory youth justice module as part of CPD, potentially linked to the vulnerable witness advocacy training currently being developed by HHJ Peter Rook QC."

APPENDIX 4

ASSESSMENT CRITERIA FOR ADVOCACY SKILLS COURSES

GENERAL

Assessment Criteria

The competence of candidates will be assessed in accordance with the criteria set out in this appendix by means of case studies relating to a trial or an application. Assessment in civil or family proceedings may be means of an application for committal.

Assessment Standard

All elements of the Assessment Criteria referred to below will be assessed out of a total mark of 100 for each assessment. The standard of competence for each assessment will be 50% and candidates are 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 are not required to reach this standard on the formative assessments which will take place at various stages during the Advocacy Skills Course.

Assessors are not required to mark to the bands referred to in the weighting and may mark in between bands.

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 are 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 candidates 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 fails one or more of the formal assessments will be allowed one further opportunity to achieve the required standard of competence. If he or she is successful they may be awarded a bare pass mark. 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 in accordance with the Rights of Audience Conduct Rules. 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, his 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 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 the following activities.

ACTIVITY	CRITERIA	WEIGHTING %
OPPOSED BAIL APPLICATION		
PREPARATION	- Undertake case analysis - Identify likely prosecution objections to bail	10
CONTENT	The application must: - Deal with each prosecution objection to bail in turn, arguing why the particular ground is not made out by reference to the relevant facts. - Suggest a package of sensible conditions where appropriate - Be legally and factually accurate - Have appropriate reference to legal sources - Use documents appropriately including the client's list of previous convictions where necessary - Observe the rules of professional conduct	30
STRUCTURE	- Clear and logical - Respond to the district judge's / magistrates' questions appropriately	20
DELIVERY	- Clear and fluent - Appropriate language, pace, volume and mannerisms - Referring to notes when required	20
EFFECTIVE AND PERSUASIVE	The extent to which the application influences the court in relation to the grant of bail	20

ACTIVITY	CRITERIA	WEIGHTING %
OPENING SPEECH		
INTRODUCTION	Appropriate “in” line introducing self, opponent and nature of allegation	10
FACTS	Summarise incident, including where relevant what was said by accused on arrest; interview; charge.	15
LAW	▪ Summarises legal principles involved ▪ Indicates areas where a ruling may be necessary [if relevant]	15
DEFENCE	Indicate nature of defence where this is known	15
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	15
CONCLUSION	Appropriate “out” line	5
GENERAL	▪ Speaks effectively (including not reading from a prepared text) ▪ Maintains suitable court room demeanour ▪ Avoids overstating case ▪ Deals appropriately with any conduct issues	25

ACTIVITY	CRITERIA	WEIGHTING %
LEGAL SUBMISSIONS		
PREPARATION	▪ Undertake case analysis ▪ Perform appropriate legal research	10
CONTENT	The application / response must: ▪ Be appropriate and relevant ▪ Be legally, procedurally, evidentially and factually accurate ▪ Reference to legal sources ▪ Use documents where necessary ▪ Observe the rules of professional conduct	30
STRUCTURE	▪ Clear and logical ▪ Respond to the district judge's / magistrates' questions ▪ Respond to points raised by the prosecution / defence	20
DELIVERY	▪ Clear and fluent ▪ Appropriate language, pace, volume and mannerisms ▪ Referring to notes when required	20
EFFECTIVE AND PERSUASIVE	The extent to which the application / response influences the court to find for the accused / prosecution	20

ACTIVITY	CRITERIA	WEIGHTING %
EXAMINATION-IN-CHIEF		
WITNESS DETAILS	Name, address, occupation [leading or non-leading]	5
DIRECTIONS	Where to direct answers, clarity and pace	10
EVIDENCE	▪ Develops in a chronological/logical order ▪ Covers all relevant issues on which the witness is required and able to comment ▪ Anticipates matters likely to be raised in xx ▪ Produces exhibits/documents appropriately	50
CONCLUDES	Appropriate “out” line including direction to witness to remain for xx	5
GENERAL	▪ Appropriate range of non-leading questions ▪ Speaks effectively (including not reading from a prepared text) ▪ Maintains suitable court room demeanour ▪ Deals appropriately with any conduct issues	30

ACTIVITY	CRITERIA	WEIGHTING %
CROSS-EXAMINATION		
TECHNIQUES	▪ Leading questions to control witness ▪ Short questions that witness understands ▪ Asks one question at a time ▪ Listens to witnesses answers and makes appropriate notes ▪ Avoids: - Making statements; asking too many questions; introducing irrelevant material; inadvertently attacking the witness's character (if this has implications for bad character evidence); misquoting witness; echoing witness' reply inappropriately	10 10 10 10 10
OBJECTIVES	Does the advocate achieve the following objectives where appropriate: ▪ Obtains favourable information from the witness ▪ Demonstrates that the witness is wrong (mistaken/lying) ▪ Undermines the witnesses' credibility ▪ Puts the accused's / prosecution's case to the witness	30
GENERAL	▪ Appropriate range of leading questions ▪ Speaks effectively (including not reading from a prepared text) ▪ Maintains suitable court room demeanour ▪ Deals appropriately with any conduct issues	20

ACTIVITY	CRITERIA	WEIGHTING %
CLOSING SPEECH		
ISSUES	Identifies the outstanding issues	20
EVIDENCE	Summarises the evidence appropriately by highlighting the points which ▪ Strengthen accused's case ▪ Weaken prosecution 's case Deals appropriately with unfavourable evidence	30
LAW	Makes appropriate submissions on points of law (with copies of authorities if necessary)	15
CONCLUSION	Appropriate "out" line	5
GENERAL	▪ Speaks effectively (including not reading from a prepared text) ▪ Maintains suitable court room demeanour ▪ Avoids giving evidence/introducing new matters ▪ Responding appropriately to any questions / concerns of the court ▪ Deals with any conduct issues	30

ACTIVITY	CRITERIA	WEIGHTING %
PLEA IN MITIGATION		
PREPARATION	- Identifies likely sentence - Appropriate objective(s)	10
CONTENT	The mitigator must: - Highlight relevant mitigation relating to the commission of the offence - Highlight relevant mitigation relating to the offender's personal circumstances - Recommend a realistic sentence (taking into account sentencing guidelines) - Reference to legal authority where appropriate - Use documents where necessary including record of previous convictions and pre-sentence report - Observe the rules of professional conduct	40
STRUCTURE	- Clear and logical - Respond to the district judge's / magistrates' questions	10
DELIVERY	- Clear and fluent - Appropriate language, pace, volume and mannerisms - Maintains suitable court room demeanour	20
EFFECTIVE AND PERSUASIVE	The extent to which the mitigator influences the court in relation to sentence	20

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 exam 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 defendants 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 to 37 of the Criminal Justice & Public Order Act 1994.
- ◆ Privilege and public interest immunity.
- ◆ The relevance of human rights issues in criminal proceedings.



DRAFT

CILEx Regulation Standards Approval Policy

Purpose

1. This policy sets out the standards approval policy at CILEx Regulation, which enables training providers to seek approval for the following standards:

CILEx Higher Court Advocates in Civil Proceedings
 CILEx Higher Court Advocates in Criminal Proceedings

Further information can be found in the related handbook.

2. A fee will be charged for making an application.

Assessment criteria for training providers

Introduction

This document sets out the assessment criteria that CILEx Regulation (CRL) will apply to:

Training providers seeking approval to deliver training and assessment to become a:

- (i) Chartered Legal Executive Litigator and Higher Rights Advocate (Civil Litigation)
- (ii) Chartered Legal Executive Litigator and Higher Rights Advocate (Criminal Litigation)
- (iii) Chartered Legal Executive Higher Rights Advocate

The criteria for training providers applying for standards approval will cover the following elements:

Capacity and capability: we will seek to ensure that the training provider has the right level of experience to deliver legal knowledge and skills against the standards

Assessment methods: We do not prescribe assessment methodology but we would expect the assessment to include the following:

- (i) A Trial Strategy Plan (TSP)
- (ii) Additional written training to extend the knowledge gained on the current Advocacy Skills course in relation to evidence
- (iii) Crown Court processes, conduct, ethics and etiquette
- (iv) Speeches, applications and submissions, appeals, skeleton arguments
- (v) Sentencing and mitigation

Assessment delivery: we require that the training provider provides information which demonstrates that assessment will be conducted appropriately in accordance with the chosen method of assessment, including confidentiality of assessment where appropriate

Quality Assurance: we request that the training provider provide information which sets out its overarching policy in relation to quality assurance of its delivery and assessment

Costs: we request that the training provider provides all fees and costs that an individual learner must pay to undertake the training and assessment

Annual reporting requirements for re-approval: where a training provider has been approved to deliver the standards, approval will be renewed annually provided the organisation provides us with an annual report. Details of the contents of the report can be found in the Training Provider handbook. This report is submitted to the CILEx Regulation Board to confirm re-approval.

How the application will be assessed: the application will be reviewed by a CILEx Regulation Officer who will ensure all parts of the application are present, further information may be requested from the applicant at this point in the process. The application will, either be approved by the Officer, or in cases where the Officer is not able to approve the qualification, be submitted to the Admissions and Licensing Committee for consideration. The Committee will make a recommendation to approve or refuse the application to the CILEx Regulation Board who will make the final decision.

Appendix 1: Approval fees

For approval, CRL charges the institution £200 for consideration of an application and an additional £300 if the application is approved.

An annual fee of £300 will be charged on successful renewal.

The institution will be invoiced for the fee within 5 working days.

Fee increases

Fees will be reviewed periodically to ensure they are maintained in line with inflation and/or cost of completing the administration of the approval process.



DRAFT

**TRAINING PROVIDER HIGHER RIGHTS
OF AUDIENCE APPROVED STANDARDS
HANDBOOK**

Introduction

Our regulated activity includes overseeing the training and assessment of Chartered Legal Executive Litigator and Advocates and Chartered Legal Executive Advocates who qualify with higher rights of audience.

In carrying out this work, we focus training and assessment on requirements provided by our standards and training providers, which ensure the competence standards are maintained.

This handbook provides advice and guidance to training providers seeking to have approval to deliver training and assessment of the CILEx Regulation Higher Rights of Audience Standards. CILEx Regulation assesses an individual's experience and competence requirements of the standards centrally.

This handbook provides information to training providers on what is expected from a CILEx Regulation Higher Rights of Audience standards approved training provider as follows:

- Capacity and capability
- Assessment methods
- Assessment delivery
- Quality Assurance
- Costs
- Approval process
- Annual reporting requirements for re-approval
- Making an application for standards approval
- Required policies and procedures to be included with the application

Capacity and capability

When considering an application for approval from a training provider, we will seek to ensure that the training provider has the right level of experience to train and assess the higher rights of audience standards that can lead to authorisation as:

- Chartered Legal Executive Litigator and Higher Rights Advocate (Civil Proceedings)
- Chartered Legal Executive Litigator and Higher Rights Advocate (Criminal Proceedings)
- Chartered Legal Executive Higher Rights Advocate

We will ask the training provider for the following information:

- Evidence that the provider can demonstrate breadth of both legal academic and legal practice experience in developing training and assessments in the development and assessment of the higher rights of audience standards.
- Evidence that the provider can demonstrate experience of developing and delivery assessments and training of a similar type and scale.
- Evidence that the provider can demonstrate knowledge and understanding of CILEx Regulation's higher rights of audience standards
- If the applicant is proposing to sub-contract any element of the assessment and/or training, these have been fully identified and their role explained.

Assessment methods

It is crucial that consumers, the regulators, the profession and other stakeholders have confidence in the assessment, and this must drive the decisions to be made as to the type of assessment, the standard of assessment, the standard applied to be assured for an individual's competence, and by who, and how it is delivered.

We do not prescribe the assessment methodology to be used within the standards but would expect to see the following included:

- A trial strategy plan (TSP)
- Additional written training to extend the knowledge gained on the current Advocacy Skills course in relation to evidence
- Crown Court processes, conduct, ethics and etiquette
- Speeches, applications and submissions, appeals, skeleton arguments
- Sentencing and mitigation

However, the training provider must demonstrate that the chosen assessments are driven by the following minimum essential criteria:

- Validity – it must measure what it is intended to measure and the inferences and decisions that are made (i.e. the competence of passing/failing candidate) on the basis of the assessment can be justified. This is achieved by making sure that assessment questions align to the relevant competencies.
- Reliability – the results must provide confidence that repeated or equivalent assessments would provide consistent results about a candidate's level of achievement. Reliability is essential to the defensibility of the pass mark and outcome for candidates.
- Fair – it is non-discriminatory.
- Feasibility – affordable and efficient.
- Acceptable to stakeholders.

Assessment delivery

In addition to ensuring the assessment methodology chosen meets the requirements set out in the previous section, we request that the training provider provides information which demonstrates that the assessment will be conducted appropriately in accordance with the chosen method of assessment, including confidentiality of assessment where appropriate (for example, where the assessment is a closed-book examination under timed conditions, how will the organisation ensure that there is appropriate security around the venue for the examination, how will the organisation ensure that the student is correctly identified as the point of sitting the examination etc).

Where the organisation provides both training and assessment, it should set out how potential issues of confidentiality will be managed.

In addition, the training provider should provide information which describes how it will apply effective and robust approaches to standardisation, marking, moderation and appeals to ensure reliability and consistence of assessment decisions. It must outline how it would deal with the issue of incorrect results to candidates.

Finally, the assessment process should ensure that the delivery of the standards takes into account reasonable adjustments (action to be taken to assist in reducing the effect of a disability or a physical or mental health condition, which may place a person at a disadvantage) and special consideration (adjustment which takes place after the assessment to compensate a candidate suffering from a temporary illness, condition or who were otherwise disadvantaged at the time of the assessment).

Quality Assurance

In addition to the specific requirements set out above, we request that training providers provide information which sets out its overarching policy in relation to quality assurance of its qualifications, to demonstrate:

- The quality assurance processes that operate in the applicant organisation (e.g. the use of internal quality assurers, second marking, use of external examiners etc.)
- How relevant stakeholders are involved in the quality assurance processes for training and assessment delivery.
- That the roles and responsibilities of those involved in the quality assurance processes for the qualifications are clear.
- That there is a feedback process in operation, including a complaints procedure, which enables the end user of the standards and other stakeholders to provide feedback to the organisation which is used as part of the process for continuous improvement.
- That there is a regular review process in operation to ensure that the training and assessment remains relevant and up to date.
- Where the organisation decides to withdraw the offer of the standards, that there is an appropriate period of transition to protect on-programme learners.

Costs

We are committed to ensure that costs charged by training providers do not prohibit entry. This ensures that the CILEx community continues to be a diverse profession, which reflects the characteristics of those seeking legal advice.

In relation to the costs of the qualification, we request that the training provider provides in the application all fees and costs that an individual learner must pay in order to complete the training and assessment. Elements of the training and assessment which go beyond the minimum standards required by CILEx Regulation should be identified and explained.

In addition, we expect that these fees will be publicly available in a prominent position in any literature and on the training providers website.

Approval process

Once CILEx Regulation has received an application from a training provider to deliver the higher rights of audience standards, the application will be reviewed by a CILEx Regulation Officer.

The Officer will review all of the documentation and will make an initial review of the application. The training provider may be asked to provide additional information at this point in the process.

Once all the documentation has been received, either the Officer will approve the application, or in cases where the Officer is not able to approve the application, the application will be submitted to the Admissions and Licensing Committee (ALC) for their review. The ALC will then make a recommendation to the CILEx Regulation Board to either accept or refuse the application.

The outcome of the decision-making process will be communicated to the training provider. Where the application has not been approved, reasons why will be provided.

Annual reporting requirements for re-approval

Where a training provider has been approved to deliver the standards, approval will be renewed annually provided the organisation provides CILEx Regulation with an annual report, which outlines the following information:

- Proposed changes to the range of law, practice and skills elements of the approved standards
- Proposed changes to the training or assessment of any law, practice or skills elements of the qualification
- Information provided should include reasons and costs implications for the changes
- Proposed changes to the methods of assessment
- Proposed changes to the procedures for ensuring the integrity of an examination/assessment papers
- Proposed changes to the procedures for ensuring the integrity of the examination/assessment process
- Proposed changes to the procedures for ensuring consistency of examination/assessments both over time and between scripts
- Evaluation of data for assessment sessions that have been undertaken in the approval period, providing reasoned analysis of risks arising and which may pose a threat to the quality of the standards
- Proposed changes to the processes used to ensure the integrity of centre accreditation (where third-party centres deliver the standards to learners)
- Evaluation of the risk monitoring of centres to identify potential threats to the integrity of the standards (where third-party centres deliver the standards to learners)
- Proposed changes to the criteria or process for awarding exemptions
- Evaluation of the numbers receiving an exemption from some or all of the approved qualifications
- Notification of any threat to the quality or integrity of the standards

Where a major change to the standards training and/or assessment is proposed, the approved organisation is asked to provide as much notice as possible and to provide a comprehensive report which sets out all the proposed changes which may impact on the perception of cost or quality standard of the standards.

Making an application for the approval of the standards

The organisation should provide the following information on the application form:

Questions to be addressed (all applicants)

1. Please explain how your organisation has the capacity and capability to design and deliver training and assessment to meet the higher rights of audience standards, this should include:
 - Evidence that you can demonstrate a breadth and depth of experience in developing and delivering training and assessment in the acquisition of the skills and knowledge contained within the standards.
 - Evidence that you can demonstrate experience in developing and delivering assessments and training of a similar type and scale.
 - Evidence that you can demonstrate knowledge and understanding of CILEx Regulation's higher rights of audience standards
 - If you proposing to sub-contract any element of the assessment and/or training, have these been fully identified and their role explained.
2. Outline which standard you intend to offer
3. Please explain your chosen assessment methods for the standard(s)
4. Please provide evidence that the chosen assessment methods will be implemented appropriately in accordance with the method chosen
5. Please explain how you will apply effective and robust approaches to standardisation, marking, moderation, appeals and incorrect provision of results to ensure reliability and consistency of assessment decisions
6. Please explain how your reasonable adjustments and special consideration policies operate
7. Please set out the fees that you intend to charge to deliver the qualification and explain how these fees will be promoted to prospective learners.

Additional requirements where applicant organisation is not regulated by a qualifications' provider

8. Please provide any policies and procedures which govern the accreditation of third-party centres that may be authorised by the applicant organisation to deliver the approved qualification.

9. Please confirm that the organisation is/has not:

- Being/been convicted of a criminal offence.
- Being/been held by a court or any professional, regulatory, or government body to have breached any provision of the Competition Law, Equalities Law or Data Protection Law.
- Being/been held by a court or any professional, regulatory, or government body to have breached a provision of any other legislation or any regulatory obligation to which it is subject.
- (Becoming) insolvent or subject to corporate financial restructuring.

10. Please provide sufficient information to ensure CILEx Regulation can assure itself that the organisation has sufficient financial resources to develop and deliver the training and assessment for the higher rights of audience standards.

Required policies and procedures to be included with the application

- Organisation chart
- CVs of management team
- Sample assessment
- Training strategy that sample outline training programme/schedule
- Exemptions policy
- Training and assessment development policy
- Assessment policy (to cover assessment methodology and delivery)
- Reasonable adjustments policy
- Special considerations policy
- Quality assurance policy
- Complaints policy
- Qualification withdrawal policy
- Qualification fees policy
- Centre accreditation policy
- Conflicts of interest policy
- Risk management policy
- Business continuity policy
- Malpractice and Maladministration policy
- Prevent policy
- Fair access policy
- Modern slavery statement
- Public liability Insurance Certificate
- Safeguarding Policy



Consultation: to consider whether to make an application to be able to authorise CILEX Practitioners with litigation and advocacy rights for Higher Rights of Audience

This consultation would be of interest to members of our regulated community and other stakeholders including approved regulators and consumers of legal services.

1. CILEx Regulation (CRL) is the independent regulator for chartered legal executives, other grades of CILEX membership, CILEX Practitioners and firms. We take a risk based and outcomes focused approach to regulation, by working constructively with our regulated community to ensure that they deliver the best outcomes for clients. We have set clear principles within our Code of Conduct and inform the public of the standards they can expect. We believe this provides a balanced approach.
2. The purpose of this consultation is to determine whether CRL should make an application to the Legal Services Board to enable competent CILEX Practitioners holding litigation and advocacy rights to apply for authorisation to conduct advocacy in all courts (Higher Rights of Audience).
3. CILEX and CRL have identified support for the initiative from a range of stakeholders. Additionally, there is the likelihood that suitably competent CILEX Practitioners with Higher Rights would enhance the diversity of the legal profession, and that career opportunities would arise for CILEX members as a result of this change. It is against this background that CRL is now proposing to extend its delegation to authorise CILEX Practitioners to enable them to exercise rights of audience in all courts relevant to their specialism.
4. This consultation sets out how CRL proposes to assess applicants for authorisation in all courts (Higher Rights) and CRL is seeking views on these proposals.
5. We welcome responses from our regulated community and other stakeholders including other approved regulators, consumers of legal services and any other interested parties.
6. This consultation will run for 12 weeks, from **30 September 2022**, closing at **4pm on 3 January 2023**.

Background

7. CILEX Practitioners are specialist lawyers, regulated by CRL, who are able to practise in a reserved or regulated area of practice without the requirement to be supervised by an [authorised person](#) under the Legal Services Act 2007.
8. CILEX Practitioners with litigation and advocacy (rights of audience) rights can undertake litigation and advocacy in the lower courts¹ in one of the following areas:
 - a. Civil litigation
 - b. Criminal litigation
 - c. Family litigation

¹ provided they work in a regulated law firm or in-house provided they do not offer services to the public or a section of the public



Why is CILEx Regulation proposing to seek the right to authorise competent CILEX Practitioners with litigation and advocacy rights in all courts in England and Wales?

a. Enhancing diversity and fairness in the legal sector/ Equality of opportunity

9. The Chartered Institute of Legal Executives (CILEX) has, for a number of years, been lobbying for a career path for its members working at the Crown Prosecution Service to be able to become Crown Prosecutors without the requirement to cross-qualify as a solicitor.
10. In CILEX's discussions with the Ministry of Justice (MoJ), in addition to re-consideration of the option for CILEX members to become Crown Prosecutors, the possibility for CILEX members to be able to be authorised to undertake advocacy in all courts (Higher Rights) was raised. This was because it would enhance further the options open to CILEX members for career progression. This possibility was then raised, by the MoJ, with CRL, as the independent regulator of CILEX members.
11. Following a survey of chartered legal executives and CILEX Practitioners (see below), CRL agreed to take the proposal forward.

b. Survey of CILEX authorised persons

12. CRL sought the views of CILEX Lawyers (chartered legal executives, CILEX Advocates and CILEX Practitioners) to determine interest and support for the proposal to seek additional powers to award Higher Rights of Audience. The response was overwhelmingly in favour of CRL making an application to the Legal Services Board to enable CRL to authorise suitably competent CILEX Practitioners for Higher Rights of Audience (see **Appendix 1** for data).

c. Improving diversity in the legal profession and the judiciary

13. In addition to improving the career progression for suitably qualified CILEX members, it has also been noted that the ability to authorise CILEX Practitioners to undertake advocacy in all courts would (owing to the diversity within the CILEX membership) have the potential, in the longer-term, to enhance the diversity of the judiciary.

How CILEx Regulation proposes to introduce the changes

Proposed Training and Assessment for those seeking Higher Rights of Audience

a. Existing Training and Assessment for Advocacy in the lower courts

14. As outlined at paragraph 8, CILEX Litigators and Advocates already hold rights of audience in the lower courts. The rights of audience are awarded by CRL once the applicant has successfully completed a CRL approved advocacy skills course and assessment (the right to conduct litigation is assessed separately).
15. The current advocacy skills course is outlined below (full details can be found [here](#) and [here](#)):

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- It consists of 36 hours tuition, delivered over 6 one day sessions (including one day of home study to complete the law of evidence requirements).
- It develops candidates' advocacy skills and tuition is provided in to encourage the maximum amount of individual participation.
- Candidates are provided with feedback throughout the course, after which the candidate is formally assessed through simulated court proceedings.
- The skills developed during the course build on pre-existing skills that the candidates have developed in the workplace, and cover:
 - Professional Conduct
 - Interviewing
 - Negotiation
 - Case Analysis and Theory
 - Skeleton Argument
 - Advocacy (preparation and at the hearing), and
 - Evidence

16. CRL has worked with our current external assessors for the advocacy skills courses and with the current training provider to determine additional requirements to enable CILEX Litigators and Advocates to obtain Higher Rights of Audience.

b. Proposals for additional training and assessment to award Higher Rights of Audience to suitably competent CILEX Litigators and Advocates

17. CRL awards rights of audience in one or more of the following areas of practice:

- a. Criminal proceedings,
- b. Civil proceedings, or
- c. Family proceedings

18. However, because most family proceedings work is dealt with in the lower courts, and the existing advocacy rights course will provide appropriate rights of audience, CRL is not proposing to provide a separate Higher Rights qualification for family work. However, family lawyers seeking Higher Rights would be able to take the civil route if they wished to seek Higher Rights of Audience.

19. As part of developing the additional skills required to undertake advocacy in all courts, CRL proposes that the additional training should include formative assessments to cover:

- a. A Trial Strategy Plan (TSP).
- b. Additional written training to extend the knowledge gained on the current Advocacy Skills course in relation to evidence
- c. Crown Court processes, conduct, ethics, and etiquette
- d. Speeches, applications and submissions, appeals, skeleton arguments
- e. Sentencing and mitigation



20. CRL estimates that this will require an additional 12 hrs training over two days with pre-reading required.
21. CRL would propose that prospective candidates will become eligible to take the additional training once they have completed their first renewal of their Advocacy rights. This is to ensure that they have the appropriate experience to undertake advocacy in all courts.
22. On completion of the additional training, candidates would be required to demonstrate competence against each of the elements listed at paragraph 19 a-e inclusive. After which, candidates would be able to apply to CRL for authorisation to become a Chartered Legal Executive Litigator and Higher Rights Advocate.

Proposed amendments to the Practitioner Authorisation Rules

23. To bring the proposals into effect, CILEx Regulation is proposing to amend the Practitioner Authorisation Rules which can be found at **Appendix 2**.
24. The amendments to the rules are as follows:
 - a. CILEX Litigators and Advocates who have held rights of audience in the lower courts for at least 12 months will be eligible to apply for Higher Rights of Audience in the relevant specialism (Civil Proceedings for those specialising in either civil proceedings or family proceedings, and Criminal Proceedings for those specialising in criminal proceedings).
 - b. Applicants seeking Higher Rights of Audience will be required to demonstrate their knowledge and competence by attending an additional course and assessment to ensure that they have the necessary knowledge, skills and behaviours required of a Higher Rights Advocate.
 - c. Once approved, the authorised title will be either Chartered Legal Executive Litigator and Higher Rights Advocate (Civil Litigation) or Chartered Legal Executive Litigator and Higher Rights Advocate (Criminal Litigation)
25. CRL is not proposing to enable Chartered Legal Executive Advocates (i.e., those who do not hold litigation rights) to be able to become Higher Rights Advocates.

Consultation questions

26. CILEx Regulation welcomes the views of all interested parties as these will inform its next steps with regards to any future rule change application.

Q1. Do you agree that CRL should seek Higher Rights of Audience for suitably qualified CILEX Practitioners?

Yes/No? Please provide comments:

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Q2. Do you agree with CRL's proposals to ensure that applicants to exercise rights of audience in all courts should complete the training and assessment outlined in the consultation?

Yes/No? Please provide comments:

Q3. Are there any additional elements of the training and assessment that you believe should be included within the proposed Higher Rights course and assessment?

Yes/No? Please provide comments:

Q4. Do you foresee any issues with the revised Practitioner Authorisation Rules?

Yes/No? Please provide comments:

Q5. Do you agree that the application for Higher Rights of Audience should be restricted to those Chartered Legal Executives who hold both Litigation and Advocacy rights (CILEX Practitioners) and that those who only hold Advocacy rights (Chartered Legal Executive Advocates) would not be eligible to apply for Higher Rights of Audience?

Yes/No? Please provide comments:

Q5. Do you have any other comments?

Yes/No? Please provide comments:

How to respond

Please send your response to CILEx Regulation by email to consultations@cilexregulation.org.uk. Please mark it for the attention of Vicky Purtill.

Submission deadline

Please respond by **4pm on 3 January 2023**.

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Appendix 1

Summary of survey outcomes

1. CRL received a total of 549 responses to the survey of which 458 were chartered legal executives, 18 were CILEX Practitioners and 73 were CILEX Advocates.
2. Of the 549 respondents 72 worked in criminal litigation, 230 worked in civil litigation and 78 worked in family litigation.
3. 98% (482) respondents were in favour of CRL progressing with an application to enable it to authorise suitably competent CILEX Practitioners for Higher Rights of Audience.

Diversity data from respondents

Age

4. The majority of respondents were aged between 25-54, with 24% aged 25-34, 32% aged 35-44 and 25% aged 45-54. This compares with the age groups with the highest number of CILEX members are consistently age groups 25-34 (29.6%), 35-44 (27.2%), and 45-54 (20.4%), and in that order.

Gender

5. The male to female ratio of respondents was 29:69 with a small number of individuals identifying as other or prefer not to say. This compares with a male to female ratio of 22:79 for CILEX members as a whole.

Ethnicity

Ethnicity	% Respondents	% CILEX Practitioners (Litigation and Advocacy rights)	% CILEX members as a whole
Asian	6	6	7
Black	4	4	5.5
Mixed	2	Not recorded	2.4
Other	1	2	0.3
White	83	86	84.4
PNS	4	2	2.4

Disability

6. 10% respondents identified as having a disability. This compares with 4.4% of CILEX members as a whole.

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Socio-economic background

7. 7% respondents attended an independent school, 5% attended a school outside of the UK with 1% attending 'other' types of school. 81% attended a state school and 6% preferred not to answer this question. This compares with 83% CILEX members attending state school as a whole and 6.4% attending an independent school.
8. 39% respondents did not attend university and a further 35% were the first in their family to attend university. This compares with 30% of the CILEX membership as a whole who were the first in their family to attend university.

Ends

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Chartered Institute of Legal Executives**Standards for CILEX higher court advocates in civil proceedings****Introduction:**

Only those candidates authorised as a CILEX Chartered Legal Executive Litigator and Advocate (Civil Litigation) and a Chartered Legal Executive Advocate 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	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	• 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	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	• 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 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	• 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	• 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	• The rules relating to the admission of expert opinion evidence • The form and content of an expert report

		b. Describing how expert evidence should be submitted c. Analysing and evaluating expert evidence d. Joint questions to opposing or joint experts	• 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	• 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	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	• The importance throughout of compliance with the Overriding Objective in CPR 1
	2.2 Advise on pre-trial and preliminary matters; including interim applications	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	• 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	• Civil Procedure Rules and Practice Directions in relation to: ○ 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	• Trial preparation and case theory • Drafting a trial strategy plan to include the identification of: ○ 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	• The form and content of a skeleton argument including: ○ Heading

		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	○ 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	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	● 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

6 Speeches These advocacy skills will be assessed primarily in a practical assessment	6.1 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	• 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
7 Examination of witnesses These advocacy skills will be assessed primarily in a practical assessment	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	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	• 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: ○ The requirement to put your client's case

	7.4 Witness handling skills		○ Previous inconsistent statements ○ The rules relating to finality and credit questions ○ Expert witnesses and opinion evidence ● Witness handling ○ 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: ○ 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	● Preparation skills ● Oral presentation skills including: ○ 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	a. Comply with the statutory and other rules of professional conduct	● The Civil Procedure Rules and especially:

any part of the assessment		b. Comply with the Civil Procedure Rules applicable to professional conduct c. Comply with the CILEx Regulation Code of Conduct d. Comply with the CILEx Rights of Audience Conduct Rules	○ 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: ○ Core principles ● The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear ○ Ceasing to act as an advocate ○ Conduct of work ○ Conduct of work
	9.2 Comply with the duties of a CILEx advocate towards the court	a. Act in accordance with the advocate's overriding duty to the court b. Act with honesty and integrity in the presentation of a case before the court	● The CILEx Regulation Code of Conduct and especially: ○ Core principles

		c. Assist the court in the effective management of litigation and pursuance of the overriding objective	• The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear ○ Ceasing to act as an advocate ○ Conduct of work • Inform the court of all relevant legislation and case law of which the advocate is aware, whether or not adverse to the advocate's case • Avoid advancing any contention which the advocate does not consider to be properly arguable • Client intending to or committing perjury • Promoting equality, diversity and inclusion
	9.3 Comply with the duties of a CILEx advocate towards the client	a. Assert the advocate's independence in fearlessly advancing the client's case b. Keep the client's information and documents confidential, except when disclosure is permitted or required	• The CILEx Regulation Code of Conduct and especially: ○ Core principles • The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear

		c. Maintain any legitimate claim to confidentiality or legal professional privilege d. Disclose all material information to the client except, where, in very rare circumstances, disclosure is forbidden e. Assert the advocate's duty as owed expressly to the client and not to any intermediary or third-party funder	○ Ceasing to act as an advocate ○ Conduct of work
	9.4 Act with honesty and integrity in the preparation and presentation of evidence	a. Avoid attempting to influence a witness after taking a statement from them as to the contents of that statement b. Avoid seeking to persuade a witness to change their evidence c. Avoid encouraging a witness to give misleading or untruthful evidence d. Avoid rehearsing or coaching a witness in respect of their evidence e. Avoid attempting to suppress or conceal unhelpful evidence f. How to correct any errors properly	● The CILEx Regulation Code of Conduct and especially: ○ Core principles ● The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear ○ Ceasing to act as an advocate ○ Conduct of work
	9.5 Exercise professional discipline in advancing the client's case and questioning witnesses	a. Avoid alleging fraud (unless pleaded and instructed to do so and given material which the advocate reasonably believes	● The CILEx Regulation Code of Conduct and especially: ○ Core principles

		to show, on the face of it, a case of fraud) b. Avoid making statements or asking questions merely to insult, humiliate or annoy a witness or any other person c. Avoid making any serious allegation against a witness whom the advocate is able to cross examine without putting the allegation to the witness d. Avoid alleging any crime, fraud or misconduct (unless the allegation goes to a matter in issue material to the advocate's case and appears to be supported by reasonable grounds) e. Avoid putting questions, making statements or advancing arguments which are misleading or vexatious	• The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear ○ Ceasing to act as an advocate ○ Conduct of work
	9.6 Advise on and where possible reconcile the advocate's concurrent duties to the client, the rule of law and the administration of justice	a. Identify any actual or potential conflict of interest b. Recognise when conflict requires the advocate to withhold information from the client or disclose confidential information c. Recognise when any such conflict requires the advocate to decline instructions or withdraw from the case	• The CILEx Regulation Code of Conduct and especially: ○ Core principles • The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear ○ Ceasing to act as an advocate

			☐ Conduct of work
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Chartered Institute of Legal Executives**Standards for CILEX higher court advocates in criminal proceedings****Introduction:**

Only those candidates authorised as a CILEX Chartered Legal Executive Litigator and Advocate (Criminal Litigation) or a Chartered Legal Executive Advocate 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	• 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	• 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	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	• 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	a. Distinguishing between evidence of fact and opinion b. Analysing and evaluating witness statements from a witness of fact	• 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	• 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	• 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	• 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	• Credit for a guilty plea • Newton hearings

Knowledge, understanding and application will be assessed primarily by written and / or multiple-choice assessment		lesser charge and pleading not guilty b. Identifying and advising on the availability of out of court disposals	• 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	a. Advising on the plea and trial preparation hearing (PTPH) and complying with directions given at the PTPH b. Demonstrating an understanding of the importance of trial preparation and case management c. Understanding when a preliminary hearing will be required and the range of such hearings	• 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	a. Demonstrating an appropriate knowledge of the Criminal Procedure Rules and Practice Directions in relation to pre-trial and preliminary hearings including the PTPH 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	• Criminal Procedure Rules and Practice Directions in relation to: ○ Case management ○ Service of documents ○ Reporting restrictions ○ Bail and custody time limits ○ Disclosure ○ Witness statements ○ Witness summons ○ Special measures ○ Expert evidence ○ Hearsay evidence

			○ 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	• 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	• Trial preparation and case theory • Drafting a trial strategy plan to include the identification of: ○ Relevant facts and law

		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	○ 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	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	● The form and content of a skeleton argument including: ○ 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	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	● 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	• 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	• The rules governing the examination-in-chief of your own witness

These advocacy skills will be assessed primarily in a practical assessment	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	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	• 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: ○ 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 ○ Dealing appropriately with a reluctant, unintelligent, difficult or awkward witness • Young and vulnerable witnesses • Complainants in sexual offence cases
9 A plea in mitigation This piece of advocacy will be assessed primarily in a practical assessment	9.1 Conduct an effective and persuasive plea in mitigation	a. Conducting an effective and persuasive plea in mitigation that is concise and realistic b. Advising a client on likely sentence	• 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: ○ 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	• Preparation skills • Oral presentation skills including: ○ 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	a. Comply with the statutory and other rules of professional conduct b. Comply with the Criminal Procedure Rules applicable to professional conduct c. Comply with the CILEx Regulation Code of Conduct	• The Criminal Procedure Rules and especially: ○ Part 1. The overriding objective ○ Part 3. The court's case management powers ○ Part 22. Statement of trust ○ Part 15. Disclosure ○ Part 16. Witness statements ○ Part 19. Expert evidence

			• The CILEx Regulation Code of Conduct and especially: ○ Core principles • The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear ○ Ceasing to act as an advocate ○ Conduct of work
	12.1 Comply with the duties of a CILEX advocate towards the court	a. Act in accordance with the advocate's overriding duty to the court b. Act with honesty and integrity in the presentation of a case before the court c. Assist the court in the effective case management and application of the overriding objective	• CPR Part 3.1 to 3.27 • The CILEx Regulation Code of Conduct and especially: ○ Core principles • The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear ○ Ceasing to act as an advocate ○ Conduct of work • Dealing with wasted cost orders • Never construct facts to support the client's case • Never knowingly, recklessly, directly or indirectly mislead the court

		• Correct any errors at the first opportunity (For example, if your <i>client</i> tells you that they have previous <i>convictions</i> of which the prosecution is not aware, you may not disclose this without their consent. However, in a case where mandatory sentences apply, the non-disclosure of the previous <i>convictions</i> will result in the <i>court</i> failing to pass the sentence that is required by law. In that situation, you must advise your <i>client</i> that if consent is refused to your revealing the information you will have to cease to act. In situations where mandatory sentences do not apply, and your <i>client</i> does not agree to disclose the previous <i>convictions</i>, you can continue to represent your <i>client</i> but in doing so must not say anything that misleads the <i>court</i>. This will constrain you from what you can say in mitigation. For example, you could not advance a positive case of
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			previous good character knowing that there are undisclosed prior <i>convictions</i>. Moreover, if the <i>court</i> asks you a direct question you must not give an untruthful answer and therefore have to withdraw if, on your being asked such a question, your <i>client</i> still refuses to allow you to answer the question truthfully. You should explain this to your <i>client</i>.) • Inform the court of all relevant legislation and case law of which the advocate is aware, whether or not adverse to the advocate's case • Avoid taking any legal point which the advocate does not consider to be properly arguable
	13. Comply with the duties of a CILEx advocate towards the client	a. Assert the advocate's independence in fearlessly advancing the client's case b. Keep the client's information and documents confidential, except when disclosure is permitted or required	• The CILEx Regulation Code of Conduct and especially: ○ Core principles • The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear

		c. Maintain any legitimate claim to confidentiality or legal professional privilege d. Disclose all material information to the client except, where, in very rare circumstances, disclosure is forbidden e. Assert the advocate's duty as owed expressly to the client and not to any intermediary or third-party funder	○ Ceasing to act as an advocate ○ Conduct of work
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	14. Act with honesty and integrity in the preparation and presentation of evidence	a. Avoid attempting to influence a witness after taking a statement from them as to the contents of that statement b. Avoid seeking to persuade a witness to change their evidence c. Avoid encouraging a witness to give misleading or untruthful evidence d. Avoid rehearsing or coaching a witness in respect of their evidence e. Avoid attempting to suppress or conceal unhelpful evidence	• The CILEx Regulation Code of Conduct and especially: ○ Core principles • The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear ○ Ceasing to act as an advocate ○ Conduct of work • Expert witness • Lay witness
	15. Exercise professional discipline in advancing the client's case and questioning witnesses	a. Avoid alleging fraud (unless pleaded and instructed to do so and given material which the advocate reasonably believes to show, on the face of it, a case of fraud) b. Avoid making statements or asking questions merely to insult, humiliate or annoy a witness or any other person c. Avoid making any serious allegation against a witness whom the advocate is able to cross examine without putting the allegation to the witness	• The CILEx Regulation Code of Conduct and especially: ○ Core principles • The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear ○ Ceasing to act as an advocate ○ Conduct of work

		d. Avoid alleging any crime, fraud or misconduct (unless the allegation goes to a matter in issue material to the advocate's case and appears to be supported by reasonable grounds) e. Avoid putting questions, making statements or advancing arguments which are misleading or vexatious	
	16. Advise on and where possible reconcile the advocate's concurrent duties to the client, the rule of law and the administration of justice	a. Identify any actual or potential conflict of interest b. Recognise when conflict requires the advocate to withhold information from the client or disclose confidential information c. Recognise when any such conflict requires the advocate to decline instructions or withdraw from the case	• The CILEx Regulation Code of Conduct and especially: ○ Core principles • The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear ○ Ceasing to act as an advocate ○ Conduct of work • Representing at trial a client who confidentially admits guilt and the considerations that arise

File Note: Mapping between SRA Higher Court Advocates Training and Assessment and CRL's proposed Higher Rights of Audience Training and Assessment
Wednesday, 26 July 2023

Summary

CRL will be applying to LSB in September 2023 for Higher Audience Rights for Chartered Legal Executive Litigator and Advocate's practising in Civil and Criminal Courts.

CRL will be using the same Training and Assessment Provider used by SRA. To facilitate this, the additional training and assessment required for CRL's regulated community must reflect that required by SRA for their Solicitor Higher Court Advocates.

This document maps the SRA Training and Assessment against that produced by Sean Hutton (Criminal Law) and Craig Osborne (Civil Law) for CRL which is currently in draft format.

Civil Proceedings

SRA	CRL
Evidence Unit	Law of evidence
LO1 Apply the burden and standard of proof to the factual analysis of a dispute AC1 Apply the burden of proof in civil proceedings including the incidence of the reverse burden AC2 Distinguish the evidential from the persuasive burden of proof AC3 Apply the standard of proof in civil proceedings and show how that standard applies to allegations of criminal or dishonest behaviour Indicative content	Apply the operation of the burden and standard of proof at Civil trial or interim application AC1 Applying the burden of proof and reverse burdens AC2 Demonstrating how evidential burdens operate on the parties to civil litigation AC3 Understanding how the standard of proof applies Indicative content

• The burden of proof • The incidence of the reverse burden • The evidential and the persuasive burden • The standard of proof and the balance of probabilities • Admissions of fact and notices to admit • Admissions, denials and requirement of proof in statements of case • Withdrawing admissions • Presumptions of fact and law including doctrine of <i>res ipsa loquitur</i> • Adverse inferences	• 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
LO2 Apply the rules of disclosure and inspection of documents (or a suite of documents) in civil proceedings AC1 Differentiate between disclosure and inspection AC2 Apply the rules governing disclosure and inspection AC3 Recognise and explain the different ways of claiming (and waiving) privilege from inspection and how privilege might be waived AC4 Apply the rules governing inadvertent inspection AC5 Apply the rules governing pre-action and non-party disclosure Indicative content • CPR 31 and especially the provisions governing: ○ The procedure for disclosure and inspection and the meaning of 'document' and 'control' of documents ○ The continuing duty and scope of disclosure and the search for documents ○ Specific disclosure ○ Documents which are privileged from inspection and the grounds for claiming privilege ○ Waiver of privilege, express and implied ○ Pre-action disclosure	Apply the rules relating to disclosure in the Civil Court under CPR 31 AC1 Applying the rules relating to disclosure at every stage of the civil process AC2 Identifying how privilege can be claimed and waived AC3 Applying the rules relating to disclosure by third parties Indicative content • The procedure for disclosure • The continuing duty of disclosure • Public Interest Immunity and privilege • Waiver of privilege • Third part disclosure • Electronic disclosure

○ Non-party disclosure ○ The SRA Code of Conduct for Solicitors, RELs and RFLs and inadvertent inspection ○ Electronic disclosure	
LO3 Distinguish between the different categories of evidence in civil proceedings AC1 Identify what evidence is and is not admissible and for what purpose AC2 Recognise hearsay evidence and explain how it can be adduced in civil proceedings AC3 Demonstrate an understanding of how the court evaluates the weight of hearsay evidence Indicative content • The difference between witnesses of fact and expert witness • CPR32 (evidence generally) • In the Civil Evidence Act 1995 the provisions of dealing with: ○ The definition of hearsay evidence ○ The weight to be attached to hearsay evidence ○ The credibility of hearsay evidence ○ Previous statements ○ Hearsay notices	Apply the rules of evidence to different categories of evidence as they apply in a civil trial or interim application AC1 Identifying the different types of evidence and the rules relating to admissibility of such evidence AC2 Explaining how hearsay evidence may be admitted AC3 Understanding how the court evaluates hearsay evidence AC4 Understanding how expert evidence may be admitted as an exception to the rule against opinion evidence and the particular rules under CPR35 Indicative content • Hearsay evidence • Witnesses of fact and expert witnesses
LO4 Adduce admissible evidence from witnesses of fact AC1 Differentiate between factual and opinion evidence AC2 Apply the different rules governing factual evidence (i) in preliminary proceedings and (ii) at trial AC3 Prepare and evaluate the advocate's own witness statements AC4 Analyse and evaluate the opponent's witness statements	Adduce and evaluate evidence from a witness of fact; Drafting of witness statements to stand as evidence-in-chief AC1 Distinguish between evidence of fact and opinion AC2 Analysing and evaluating witness statements from a witness of fact on behalf of the party calling the witness and an opposing party's witness

Indicative content • The competence and compellability of witnesses • The use of witness summonses • The formal requirements for the content and service of witness statements • Witness statements in case management proceedings • The rules governing evidence in chief, cross examination and re-examination and the role of each • Live evidence given remotely, eg by video link	AC3 The use of Part 18 in advanced of trial to see further information from opposing witnesses Indicative content • Competence and compellability of witnesses • The use of and service of witness summons • The rules relating to evidence-in-chief and re-examination and the purpose of each stage of oral testimony
LO5 Adduce admissible expert evidence AC1 Apply the rules governing expert witnesses, the preparation of their evidence and their duty to the court AC2 Make or resist an application for permission to adduce expert evidence AC3 Obtain and submit expert evidence in the proper form AC4 Analyse and evaluate the opponent's expert evidence Indicative content • The role of expert evidence in civil procedure • Obtaining permission to rely on expert evidence and the factors the court will consider when giving or refusing permission • The protocol for the instruction of experts in civil proceedings • CPR35 and PD35: the form and content of an expert report • Joint experts and meetings of experts • Opinion evidence given by witnesses of fact • Cost implications of expert witnesses	Adduce expert opinion evidence; Applying the rules in CPR 35 and Guidance for instruction of expert witnesses AC1 Explaining the purpose of adducing expert evidence and the duty an expert owes to the court AC2 Describing how the expert evidence should be submitted AC3 Analysing and evaluating expert evidence AC4 Putting joint questions to opposing or joint experts Indicative content • The rules relating to 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

LO6 Utilise other categories of evidence AC1 Make appropriate use of ‘real’ evidence and exhibits AC2 Recognise and manage similar fact evidence AC3 Recognise and manage bad character evidence AC4 Adduce other forms of evidence AC5 Apply the rules governing late evidence and relief of sanctions Indicative content • The definition of ‘real’ evidence • The use of photographs, models, visual aids, and site visits • The relevance and importance of photographs, models, visual aids, and site visits • The two-stage test for similar fact evidence • PD 16.8.1: Using the defendant’s previous convictions • Cross examining a witness on their bad character • In the Civil Evidence ACT 1995 provisions dealing with public records, works of reference, business and public authority records • Late evidence, sanctions and relief from sanctions	The admissibility of other categories of evidence AC1 Adducing real and documentary evidence AC2 Adducing other forms of evidence including audio, photographic, video and CCTV evidence AC3 Understanding when it might be appropriate to make a site visit Indicative content • Real and documentary evidence including public records
Advocacy Unit	Advising a client
LO1 Advise on alternatives to litigation and the essential preliminaries for litigation in the higher courts AC1 Advise on negotiated settlement and the various types of alternative dispute resolution and offers to compromise AC2 Advise on and comply with the pre-action protocols AC3 Advise on the law and practice relating to offers to compromise Indicative content	Advise on liability; quantum; procedure and tactics; formulating offers of compromise, informally and under CPR36 AC1 Advising a client on methods of bringing a case to early conclusion AC2 Identifying and advising on the availability of Alternative Dispute Resolution – variants and options Indicative Content

• An overview of the various types of alternative dispute resolution eg arbitration, mediation and judicial evaluation • An overview of the pre-action protocols, eg the personal injury and professional negligence protocols • The requirements of the pre-action Practice Direction when no protocol is prescribed • Sanctions for non-compliance • Cost implications • Limitation deadlines • Part 36 offers and the costs consequences • Calderbank letters and their costs implications	• The importance throughout of compliance with the Overriding Objective in CPR 1
	Advise on pre-trial and preliminary matters; including interim applications AC1 Advising on the likely course and timescale of progress to trial AC2 Demonstrating an understanding of the importance of trial preparation and case management and compliance with CPR and court directions AC3 Understanding when an interim hearing will be required or desirable and the range of such hearings Indicative content • 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

LO2 Advise on and conduct the interim and preparatory stages of litigation in the higher courts AC1 Demonstrate a good working knowledge of the Civil Procedure Rules generally and a detailed knowledge of the more important Rules and Practice Directions as specified in the syllabus AC2 Demonstrate familiarity with the Queen’s Bench Guide AC3 Revise, correct and improve a defective or incomplete draft of a statement of case, court order, or witness statement; alternatively draft the entire document AC4 Demonstrate an understanding of how to prepare for and/or conduct an effective cost and case management conference AC5 Advise on case management directions and the sanctions and costs consequences of non-compliance Indicative content • The Civil Procedure Rules and Practice Directions and specifically those dealing with: ○ Time limits and service of documents ○ Statements of case ○ Default and summary judgments and striking out ○ Interim remedies and injunctions ○ Costs, including costs budgeting, security for costs and interim cost orders ○ Disclosure, inspection of documents and privilege ○ Preparation for trial and trial procedures ○ Appeals ○ Pre-action disclosure ○ Non-party disclosure • An overview of the Queen’s Bench Guide • Rules of allocation and venue	Conduct interim hearings in the Civil Court including an allocation/ direction of hearing and a Case and Costs Management Hearing AC1 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 AC2 Drafting a witness statement Indicative content • Civil Procedure Rules and Practice Directions in relation to: ○ Case management ○ Service of documents ○ Disclosure ○ Witness statements ○ Expert evidence ○ Substantial interim applications including (this list is not exhaustive) for: summary judgement; strike outs; interim payments; security for costs; search orders; freezing orders
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• Case management • The function and importance of statements of case, including requests for further information, and the rules which govern them • The rules applicable in certain types of case, eg contract and personal injury claims • Pleading the appropriate remedy • The form and content of a witness statement • The distinction between evidence and statements of case • The use of precedents and conventional wording • Consent and Tomlin orders • The rules governing case management conferences, including telephone hearings • Case summaries • Standard and special directions • Time limits • Sanctions, and the consequences of non-compliance, including orders for costs: relief from sanctions	
LO3 Conduct an effective examination in chief (and re-examination) in the higher courts AC1 Conduct an effective examination in chief in compliance with the rules AC2 Demonstrate and understanding of the practice in relation to additional or supplementary questions to a witness who has verified their written statements AC3 Demonstrate an understanding of the practice in relation to the examination of a hostile witness AC4 Demonstrate and understanding of the practice in relation to the examination of expert witnesses AC5 Understand when re-examination is required	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 Conduct an effective re-examination AC1 Applying where necessary to amplify a witness's written statement AC2 Understanding when and how to conduct a re-examination in compliance with the rules AC3 Using effective witness handling skills AC4 Maintaining professional standards throughout Indicative content • The rules governing examination-in-chief of your own witness

Indicative content • The rules governing examination in chief • The verification of witness statements • Additional and supplementary questions • Relevance and objectives • Young or vulnerable witnesses • Hostile witnesses • Opinion evidence and expert witness • The rules and technique of re-examination	• The rules governing re-examination of your own witness • Witness handling: ○ Dealing appropriately with a reluctant, unintelligent, difficult or awkward witness • Young and vulnerable witnesses
LO4 Write a concise and accurate case theory setting out the most plausible explanation, consistent with the evidence, as to why their client(s) should succeed AC1 Identify and analyse disputed and undisputed facts and, as to disputed facts, how the evidence stands and what further evidence might be obtained AC2 Identify and analyse 'good' (favourable) and 'bad' (unfavourable) facts AC3 Analyse and advise on any relevant issues of law AC4 Explain how, in the light of those analyses, the court might best be persuaded to give a favourable judgment Indicative content • The definition of a case theory • Its importance in preparing for trial • Identifying the issues of fact and law • Identifying gaps and weaknesses in the evidence • Addressing the opponent's evidence • Good fact/bad fact analysis	Devise and appropriate case theory AC1 Identifying relevant facts, including those which are and which are not in dispute AC2 Identifying favourable and unfavourable facts AC3 Advising on the application of the relevant law to a given set of facts AC4 Identifying and advising on the potential admissibility of evidence relevant to the facts in dispute AC5 Devising relevant argument to adduce or challenge the admissibility of such evidence Indicative content • Trial preparation and case theory • Drafting a trial strategy plan to include the identification of: ○ Relevant facts and law ○ Gaps and weaknesses in the evidence ○ Good fact/bad fact analysis ○ A plausible case theory to persuade the court

Finding an 'angle' on the case	
LO5 Write a persuasive skeleton argument and use it to support a legal submission in the higher courts AC1 Write a concise, accurate and persuasive skeleton argument AC2 Support a persuasive skeleton argument with accurate and up-to-date legal research AC3 Comply with the Civil Procedure Rules and the relevant Practice Directions and Practice Notes when producing a skeleton argument AC4 Explain, within the skeleton argument, the issues and what findings and/or order(s) the court is asked to make AC5 Use the skeleton argument effectively in the course of a legal submission AC6 Maintain professional standards throughout Indicative content - The role and importance of written advocacy - The conventional form of a skeleton argument - The content of a skeleton argument - Introductions - Chronologies - Cross-references to the evidence - Citation of authorities and legislation - Conclusions - Using a written skeleton to support an oral submission	Draft a skeleton argument AC1 Drafting an accurate, persuasive and concise skeleton argument AC2 Undertaking up to date and relevant legal research to support a skeleton argument AC3 Complying with relevant rules and practice directions when drafting a skeleton argument AC4 Making appropriate use of the skeleton argument when making legal submissions Indicative content - The form and content of a skeleton argument including: - Heading - Introductions - Chronologies - Citations - Relevant argument - Conclusion
LO6 Make an effective legal submission in the higher courts AC1 Manage preliminary matters ('housekeeping') AC2 Outline the background of the case AC3 Set out the issue(s) for the court's decision and the order(s) sought	Make an effective and persuasive application and/or legal submission in the higher courts AC1 Outline the relevant background of the case

AC4 Persuasively apply the evidence to the law AC5 Address unfavourable and missing evidence AC6 Cite relevant and helpful authority and address unhelpful authority AC7 Manage time effectively complying with any time limits imposed by the court AC8 Assist the court generally AC9 Maintain professional standards throughout Indicative content • The conventional format of a legal submission • The papers before the court • The correct use of evidence • The research and citation of authority whether binding or persuasive • Proportionate use of authorities in submissions • The significance of time limits • The overriding objective and the powers of the court	AC2 Identifying the issues the court will be required to make decisions on and the orders sought AC3 Applying the relevant facts to the law AC4 Addressing unfavourable/missing evidence AC5 Correctly citing relevant and favourable authority whilst also acknowledging unhelpful authority AC6 Managing time effectively including any time limits imposed by the court AC7 Responding appropriately to any questions asked by the judge AC8 Maintaining professional standards throughout the application/submission Indicative content • 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
LO7 Prepare and deliver effective opening and closing speeches in the higher courts AC1 Prepare and deliver an effective opening speech AC2 Prepare and deliver an effective and persuasive closing speech AC3 Maintain professional standards throughout Indicative content • The purpose of an opening speech and how it differs from a legal submission and a closing speech • Opening the statements of case and outlining the evidence	Prepare and make an effective opening and closing speech in the higher courts AC1 Preparing and delivering an effective opening speech AC2 Preparing and delivering an effective and persuasive closing speech AC3 Maintaining professional standards throughout Indicative content • The purpose and requirements of an opening speech and possibility that the court will direct a written opening/position statement

• The use of the trial bundle • The purpose of a closing speech: how it differs from a legal submission and an opening speech • The structure of a persuasive speech • The importance of an accurate note • Reviewing and evaluating the evidence on both sides, and how it was given • Using the evidence and the law to persuade the court • Inviting specific findings of fact and specific conclusions on dispute points of law, and • Specifying precisely what orders the court is invited to make	• 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
LO8 Conduct a cross examination in which skilful questioning effectively advances the client's case or undermines the opponent's case in the higher courts AC1 Conduct an effective cross examination in compliance with the rules AC2 Select appropriate topics and adopt a logical structure AC3 Lay the foundation for the questions in sufficient detail AC4 Elicit useful information AC5 Introduce and use exhibits correctly AC6 Put the client's case, directly challenging adverse evidence AC7 Undermine the opponent's case, when appropriate by impeaching or attacking the credibility of the witness AC8 Control the evidence by using short, closed and leading questions, one at a time, in clear, precise and professional English AC9 Listen to answers and formulate and/or adapt questions appropriately AC10 Focus on essentials, using patience and persistence when necessary AC11 Control the direction and pace of the examination, without quarrelling with the witness AC12 Maintain professional standards throughout	Conduct an effective cross-examination of an opposing witness in the higher courts AC1 Conducting an effective cross-examination in compliance with the rules AC2 Using effective witness handling skills AC3 Maintaining professional standards throughout Indicative content • The rules governing cross-examination of an opposing witness including: • 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: ○ Dealing appropriately with a reluctant, unintelligent, difficult or awkward witness • Young and vulnerable witnesses

Indicative content • The rules governing cross examination • The requirements to put the client's case • What other essential challenges there may be • Previous inconsistent statements • Questioning going only to credit • Opinion evidence and expert witnesses • The techniques of cross examination • The use and importance of leading questions • Brevity, style and pace • Thinking on your feet • Listening and responding appropriately to a change in direction • Avoiding discussion and digression • Dealing with quarrelsome, prolix, un-cooperative, young or vulnerable witnesses	
LO9 Use presentational skills in the higher courts both when addressing the court and examining a witness AC1 Adopt a persuasive and professional manner dressing appropriately and speaking clearly and audibly at an appropriate pace and with appropriate emphasis AC2 Use correct, plain and professional English AC3 Avoid distracting language or behaviour AC4 Maintaining suitable posture and body language AC5 Convey authority by displaying a command of the documents and evidence AC6 Always be accurate AC7 Deal appropriately with judicial intervention	Use the correct terminology when addressing the court Adopt a professional and persuasive speaking style when addressing the court AC1 Using the correct terminology when addressing the court AC2 Adopting a professional and persuasive speaking style when addressing the court Indicative content • Preparation skills • Professional and persuasive speaking style including: ○ Speaking clearly, audibly and at an appropriate pace

Indicative content • Presentational skills • The importance of preparation • Precision and brevity • The management of document • The techniques of persuasion • Engaging the court • Stress management • Addressing the court • Court dress • Etiquette	○ 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 • Oral presentation skills including: ○ Precision and brevity ○ Management of documentation ○ Time management ○ Engaging and persuading the court ○ Court attire and etiquette
Ethics and Professional Conduct	Conduct and Ethics
LO1 Comply with the professional duties and responsibilities of a solicitor advocate AC1 Comply with the statutory and other rules of professional conduct AC2 Comply with the Civil Procedure Rules applicable to professional conduct AC3 Comply with the SRA Code of Conduct for Solicitors, RELs and RFLs Indicative content • The Civil Procedure Rules and especially: ○ 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	LO1 Comply with the professional duties and responsibilities of a CILEX advocate towards the court, the client, other court users and members of the public LO2 Act with honesty and integrity in the preparation and presentation of a client's case LO3 Exercise professional judgement and discipline when advancing a client's case and examining witnesses LO4 Uphold the rule of law and the proper administration of justice when acting in the client's best interests AC1 Comply with the statutory and other rules of professional conduct AC2 Comply with the Civil Procedure Rules applicable to professional conduct AC3 Act in accordance with the advocate's overriding duty to the court AC4 Act with honesty and integrity at all times when advising, preparing and presenting a client's case

○ Part 32. Witness statements ○ Part 35. Expert evidence ● The SRA Code of Conduct for Solicitors, RELs and RFLs and especially but not limited to: ○ The Principles ○ Maintaining trust and acting fairly ○ Dispute resolution and proceedings before courts, tribunals and inquiries ○ Service and competence ○ Co-operation and accountability ○ Acting with integrity	AC5 Assist the court with the effective management of a case and the application of the overriding objective AC6 Ensure the advocate's independence to fearlessly advance the client's case AC7 Comply with the advocate's duty of confidentiality towards the client and all documentation relating to the case except where disclosure is permitted or required AC8 Disclose all relevant material to the client except where disclosure is prohibited AC9 Identify any actual or potential conflicts of interest with a client or between potential or existing clients AC10 Recognise when a conflict of interest may require the advocate to decline instructions or withdraw from a case AC11 Recognise those circumstances when an advocate may have to withhold information from a client or disclose otherwise confidential information AC12 Avoid cross-examining an opposing witness by asking questions which are aimed at merely insulting, humiliating or annoying that witness AC13 Avoid making allegations against a witness or other person of criminal, fraudulent or other misconduct unless this is concerned with a matter in issue and appears to be supported by reasonable grounds AC14 Avoid asking questions, making statements or advancing arguments which are misleading or vexatious Indicative content ● The Civil Procedure Rules and especially: ○ Part 1. The overriding objective ○ Part 3. The court's case management powers ○ Part 16. Statement of case ○ Part 22. Statement of truth
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	○ Part 31. Disclosure ○ Part 32. Witness statements ○ Part 35. Expert evidence ● The CILEx Regulation Code of Conduct and especially: ○ Core principles ● The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear ○ Ceasing to act as an advocate ○ Conduct of work
LO2 Comply with the duties of a solicitor advocate towards the court AC1 Act in accordance with the advocate's overriding duty to the court AC2 Act with honesty and integrity in the presentation of a case before the court AC3 Assist the court in the effective management of litigation and pursuance of the overriding objective Indicative content ● The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: ○ Dealing with wasted costs orders and indemnity costs orders ○ Never construct facts to support the client's case ○ Never knowingly, recklessly, direct or indirectly mislead the court ○ How to correct any errors at the first opportunity ● Inform the court of all relevant legislation and case law of which the advocate is aware, whether or not adverse to the advocate's case ● Avoid advancing any contention which the advocate does not consider to be properly arguable ● Client intending to or committing perjury ● Promoting equality, diversity and inclusion	

LO3 Comply with the duties of a solicitor advocate towards the client AC1 Assert the advocate's independence in fearlessly advancing the client's case AC2 Keep the client's information and documents confidential, except when disclosure is permitted or required AC3 Maintain any legitimate claim to confidentiality or legal professional privilege AC4 Disclose all material information to the client except where disclosure is forbidden AC5 Assert the advocate's duty as owed expressly to the client and not to any intermediary or third-party funder Indicative content • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: ○ Client care ○ Equality and diversity ○ Conflicts of interest ○ Confidentiality and disclosure	
LO4 Act with honesty and integrity in the preparation and presentation of evidence AC1 Avoid attempting to influence a witness after taking a statement from him as to the contents of that statement AC2 Avoid seeking to persuade a witness to change their evidence AC3 Avoid encouraging a witness to give misleading or untruthful evidence AC4 Avoid rehearsing or coaching a witness in respect of their evidence AC5 Avoid attempting to suppress or conceal unhelpful evidence	

AC6 How to correct any errors properly Indicative content • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: ○ Chapter 5: Your client and the court ○ Expert witness ○ Lay witness	
LO5 Exercise professional discipline in advancing the client's case and questioning witnesses AC1 Avoid alleging fraud (unless pleaded and instructed to do so and given material which the advocate reasonably believes to show, on the fact of it, a case of fraud) AC2 Avoid making statements, or asking questions merely to insult, humiliate or annoy a witness or any other person AC3 Avoid making serious allegation against a witness whom the advocate is able to cross examine without putting the allegation to the witness AC4 Avoid alleging any crime, fraud or misconduct (unless the allegation goes to a matter in issue material to the advocate's case and appears to be supported by reasonable grounds) AC5 Avoid putting questions, making statements or advancing arguments which are misleading or vexatious Indicative content • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: ○ Common law authorities	

LO6 Advise on and where possible reconcile the advocate's concurrent duties to the client, the rule of law and the administration of justice AC1 Identify any actual or potential conflict of interest AC2 Recognise when conflict requires the advocate to withhold information from the client or disclose confidential information AC3 Recognise when any such conflict requires the advocate to decline instructions or withdraw from the case AC4 Managing a client where a conflict arise or there is a breach of the rules Indicative content • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: ○ Conflicts of interest ○ Confidentiality and disclosure	
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File Note: Mapping between SRA Higher Court Advocates Training and Assessment and CRL's proposed Higher Rights of Audience Training and Assessment
Wednesday, 26 July 2023

Summary

CRL will be applying to LSB in September 2023 for Higher Audience Rights for Chartered Legal Executive Litigator and Advocate's practising in Civil and Criminal Courts.

CRL will be using the same Training and Assessment Provider used by SRA. To facilitate this, the additional training and assessment required for CRL's regulated community must reflect that required by SRA for their Solicitor Higher Court Advocates.

This document maps the SRA Training and Assessment against that produced by Sean Hutton (Criminal Law) and Craig Osborne (Civil Law) for CRL which is currently in draft format.

Criminal Proceedings

SRA	CRL
Evidence Unit	Law of Evidence
LO1 Apply the burden and standard of proof to the factual analysis of a dispute AC1 Apply the burden of proof in criminal proceedings including the incidence of the reverse burden AC2 Distinguish the evidential burdens from the legal burdens of proof AC3 Apply the standard of proof correctly in criminal proceedings Indicative content	Apply the operation of the burden and standard of proof at a Crown Court trial AC1 Applying the burden of proof and reverse burdens AC2 Demonstrating how evidential burdens operate on the prosecution and defence AC3 Understanding how the standard of proof applies to the prosecution and defence Indicative content

• The burden of proof • The incidence of the reverse burden • The evidential and the legal burden • The standard of proof • Admissions of fact • Presumptions of fact and adverse inferences	• 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
LO2 Apply the rules of disclosure of documents in criminal proceedings AC1 Apply the rules governing disclosure AC3 Recognise and explain the different ways of claiming (and waiving) privilege AC3 Apply the rules governing inadvertent disclosure AC4 Apply the rules governing third party disclosure Indicative content • CPR Part 8 and 15 and especially the provisions governing: ○ The procedure for disclosure ○ The continuing duty of disclosure ○ PII (Public Interest Immunity) ○ Specific disclosure • Documents which are privileged and the grounds for claiming privilege • Part 8 Compliance • Waiver of privilege • Third party disclosure • The SRA Code of Conduct for Solicitors, RELs and RFLs and inadvertent disclosure • Electronic disclosure and disclosure of documents	Apply the rules relating to the disclosure of evidence in the Crown Court AC1 Applying the rules relating to disclosure of evidence AC2 Identifying how privilege can be claimed and waived AC3 Applying the rules relating to disclosure by third parties Indicative content • The procedure for disclosure • The continuing duty of disclosure • Public Interest Immunity and privilege • Waiver of privilege • Third party disclosure • Electronic disclosure

LO3 Distinguish between the different categories of evidence in criminal proceedings AC1 Identify what evidence is and is not admissible and for what purpose AC2 Recognise hearsay evidence and explain how it can be adduced in criminal proceedings AC3 Demonstrate an understanding of how the court evaluates hearsay evidence AC4 Recognise bad character and explain how it can be adduced AC5 Demonstrate an understanding of expert evidence Indicative content • The difference between witnesses of fact and expert witnesses • CPR 20 (hearsay evidence) • Bad character • Expert • In the Criminal Justice Act 2003 the provisions dealing with: ○ The definition of hearsay evidence ○ Previous statements ○ Hearsay notices • Criminal Justice Act 2003, Chapter 2, sections 114 to 126 • Criminal Justice Act 2003, Chapter 1, sections 98 to 112 • Definition of expert evidence, CPR Part 19, compliance and Part 21, bad character	Apply the rules of evidence to different categories of evidence as they apply to a Crown Court AC1 Identifying the different types of evidence and the rules relating to admissibility of such evidence AC2 Explaining how the different types of hearsay evidence may be admitted AC3 Understanding how the court evaluates hearsay evidence AC4 Identifying confession evidence and the rules relating to admissibility AC5 Recognising and explain how character evidence may be admitted AC6 Understanding how expert evidence may be admitted as an exception to the rules against opinion evidence AC7 Explaining the rules relating to the admission of disputed visual and voice identification evidence AC8 Recognising how improperly obtained evidence may be challenged AC9 Identifying other types of hazardous evidence requiring a corroboration or other form of warning/direction from the trial judge Indicative content • 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
LO4 Adduce admissible evidence from witnesses of fact	Adduce and evaluate evidence from a witness of fact

AC1 Differentiate between factual and opinion evidence AC2 Prepare and evaluate the advocate's own witness statements AC3 Analyse and evaluate the opponent's witness statements Indicative content • The competence and compellability of witnesses • The use of witness summonses • The formal requirements for the content and service of witness statements • The rules governing evidence in chief, cross examination and re-examination and the role of each • Special measures under the Youth Justice and Criminal Evidence Act 1999, Section 16 to 28	AC1 Distinguishing between evidence of fact and opinion AC2 Analysing and evaluating witness statements from a witness of fact on behalf of the party calling the witness and an opposing party's witness Indicative content • Competence and compellability of witnesses • Special measures provisions for vulnerable witnesses • The use of and service of witness summons • The rules relating to evidence-in-chief, cross 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
LO5 Adduce admissible expert evidence AC1 Apply the rules governing expert witnesses, the preparation of their evidence and their duty to the court AC2 Obtain and submit expert evidence in the proper form AC3 Analyse and evaluate the opponent's expert evidence Indicative content • The role of expert evidence in criminal procedure • CPR 19: the form and content of an expert report • Joint experts and meetings of experts • Opinion evidence given by witnesses of fact	Adduce expert opinion evidence AC1 Explaining the purpose of adducing expert evidence and the duty an expert owes to the court AC2 Describing how expert evidence should be submitted AC3 Analysing and evaluating expert evidence Indicative content • 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
LO6 Utilise other categories of evidence AC1 Make appropriate use of 'real' evidence and exhibits AC2 Adduce other forms of evidence	The admissibility of other categories of evidence AC1 Adducing real and documentary evidence

AC3 Demonstrate an understanding and use of exclusionary discretions Indicative content • The definition of ‘real’ evidence • The relevance, importance and use of photographs, models, visual aids, and site visits • Provisions dealing with public records, works of reference, business and public authority records • Section 78 PACE 1984 exclusionary discretions • Section 76 PACE Confessions • Section 41 Youth Justice and criminal evidence act 1999 – cross examination of sexual history	AC2 Adducing other forms of evidence including audio, photographic, video and CCTV evidence AC3 Understanding when it might be appropriate to make a site visit Indicative content Real and documentary evidence including public records The relevance of audio, photographic, video and CCTV evidence
Advocacy Unit	Advising a Client
LO1 Advise on plea AC1 Advise client on pleading guilty or not guilty AC2 Demonstrate an awareness of out of court disposal Indicative content • Credit for guilty plea • Understanding of attorney general guidelines regarding guilty pleas • Basis of plea/Newton hearings • Alternative counts on indictment • Indication of sentence • Caution, bindovers	Advise on plea AC1 Advising a client on pleading guilty to the offence charged or a lesser charge and pleading not guilty AC2 Identifying and advising on the availability of out of court disposals Indicative content • Credit for a guilty plea • Newton hearings • Basis of plea • Counts and alternative counts on the indictment • Indication of sentence • Caution and bindovers

LO2 Advise on essential preliminaries for trial in the higher courts AC1 Demonstrate knowledge and importance of preparation for trial and case management AC2 Advise on and comply with PTPH directions AC3 Demonstrate an understanding of preliminary issues Indicative content • PTPH form completion • Formulation of appropriate directions • Sanctions for non-compliance • Compliance with PTPH directions and practice directions • Joinder/severance • Abuse of process/dismissal	Advise on pre-trial and preliminary matters AC1 Advising on the plea and trial preparation hearing (PTPH) and complying with the directions given at the PTHP AC2 Demonstrating an understanding of the importance of trial preparation and case management AC3 Understanding when a preliminary hearing will be required and the range of such hearings Indicative content • Completing a PTPH form • Compliance with directions from the PTHP • Sanctions for non-compliance of directions from the PTHP including costs consequences • Applications for joinder/severance/dismissal • Abuse of process applications
LO3 Advise on and conduct the interim and preparatory stages of criminal litigation in the higher courts AC1 Demonstrate a good working knowledge of the Criminal Procedure Rules generally and a detailed knowledge of the Rules of Practice Directions as specified in the syllabus AC2 Revise, correct and improve a defective or incomplete draft of a defence statement, indictment, hearsay/bad character notice: alternatively draft the entire document AC3 Understand an advocate's responsibilities with regard to a defective indictment and rules of amendment AC4 Demonstrate an understanding of how to prepare for and/or conduct an effective PTPH process	Conduct preliminary and interim hearings in the Crown Court including the PTHP AC1 Demonstrating an appropriate knowledge of the Criminal Procedure Rules and Practice Directions in relation to pre-trial and preliminary hearings including the PTHP AC2 Drafting a witness statement, a defence statement, hearsay and bad character notices, applications to exclude hearsay and bad character applications for special measures Indicative content • Criminal Procedure Rules and Practice Directions in relation to: ○ Case management

AC5 Advise on case management directions and the sanctions and costs consequences of non-compliance Indicative content • The Criminal Procedure Rules and Practice Directions and specifically those dealing with: ○ Time limits and service of documents ○ Disclosure and privilege ○ Preparation for trial and trial procedures • Part 15, criminal procedure rules • Part 6, reporting restrictions • Part 9, Allocation and sending • Part 17, witness summonses • Part 14, Bail and customer time limits • Part 18, special measures • The function and importance of a defence statement, indictment, hearsay/bad character notice • The form and content of a witness statement • Amending indictments • The rules governing PTPHs, including telephone hearings and video hearings • Case summaries • Time limits • Sanctions, and the consequences of non-compliance, including orders for costs	○ Service of documents ○ Reporting restrictions ○ Bail and custody time limits ○ Disclosure ○ Witness statements ○ Witness summons ○ Special measures ○ Expert evidence ○ Hearsay evidence ○ Bad character evidence
NO SRA EQUIVALENT	Apply the law of sentencing to the higher courts AC1 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

	Indicative content • 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, eg Criminal Behaviour Orders, Drinking Banning Orders, Financial Reporting Orders, Serious Crime Prevention Orders, Sexual Offences Prevention Orders, Violent Offender Orders, Domestic Abuse Protection Orders
LO4 Conduct an effective examination in chief (and re-examination) in the higher courts AC1 Conduct an effective examination in chief in compliance with the rules AC2 Demonstrate an understanding of the practice in relation to the examination of a hostile witness AC3 Demonstrate an understanding of the practice in relation to the examination of expert witnesses AC4 Understand when re-examination is required Indicative content • The rules governing examination in chief	Conduct an effective examination-in-chief in the higher courts Conduct an effective re-examination in the higher courts Witness handling skills AC1 Conducting an effective examination-in-chief in compliance with the rules AC2 Understanding when and how to conduct an examination of a hostile witness AC3 Understanding when and how to conduct a re-examination in compliance with the rules AC4 Using effective witness handling skills AC5 Maintaining professional standards throughout Indicative content

• Relevance and objectives • Your or vulnerable witnesses • Hostile witnesses • Opinion evidence and expert witnesses • Re-examination – rules of/protecting your witness	• The rules governing the examination-in-chief of your own witness • The rules governing the examination of a hostile witness • The rules governing re-examination of your own witness • Witness handling: ○ Dealing appropriately with a reluctant, unintelligent, difficult or awkward witness • Young and vulnerable witnesses • Complainants in sexual offence cases
LO5 Arrive at a logical theory of the case by the most plausible explanation, consistent with the evidence, as to why their client(s) should succeed AC1 Identify and analyse disputed and undisputed facts and, as to disputed facts, how the evidence stands and what further evidence might be obtained AC2 Identify and analyse ‘good’ (favourable) and ‘bad’ (unfavourable) facts. (<i>alternatively</i>, strengths and weaknesses) AC3 Analyse and advise on any relevant issues of law AC4 Identify any admissibility arguments or submissions to be made or resisted and advise on tactical considerations AC5 Explain how, in the light of those analyses, the court might best be persuaded to give a favourable verdict AC6 Identify lines of investigation and preparation to be ‘trial ready’ Indicative content • The definition of a case theory • Its importance in preparing for trial • The drafting of a trial strategy plan, articulating the case theory and: ○ Identifying the issues of fact and law ○ Identifying gaps and weaknesses in the evidence	Devise an appropriate case theory AC1 Identifying relevant facts, including those which are and which are not in dispute AC2 Identifying favourable and unfavourable facts AC3 Advising on the application of the relevant law to a given set of facts AC4 Identifying and advising on the potential admissibility of evidence relevant to the facts in dispute AC5 Devising relevant argument to adduce or challenge the admissibility of such evidence Indicative content • Trial preparation and case theory • Drafting a trial strategy plan to include the identification of: ○ Relevant facts and laws ○ Gaps and weaknesses in the evidence ○ Good fact/bad fact analysis ○ A plausible case theory to persuade a jury

○ Addressing the opponent's evidence to identify supportive facts and challenges to be made ○ Good fact/bad fact analysis. (<i>alternatively</i>, strengths and weaknesses) ○ Finding an 'angle' on the case. (<i>alternatively</i>, a plausible theory to persuade a jury)	
LO6 Write a persuasive skeleton argument and use it to support a legal submission in the higher courts AC1 Write a concise, accurate and persuasive skeleton argument AC2 Support a persuasive skeleton argument with accurate and up-to-date legal research AC3 Comply with the Criminal Procedure Rules and the relevant Practice Directions and Practice Notes when producing a skeleton argument AC4 Explain, within the skeleton argument, the issues and what findings and/or order(s) the court is asked to make AC5 Use the skeleton argument effectively in the course of a legal submission AC6 Maintain professional standards throughout Indicative content • The role and importance of written advocacy • The conventional form of a skeleton argument • The content of a skeleton argument (eg heading, declare the application, jurisdiction/power, relevant law, identifying the legal text) • Introductions • Chronologies • Cross-references to the evidence • Citation of authorities and legislation • Level of detail of the argument in support • Conclusions	Draft a skeleton argument AC1 Draft an accurate, persuasive and concise skeleton argument AC2 Undertaking up to date and relevant legal research to support a skeleton argument AC3 Complying with relevant rules and practice directions when drafting a skeleton argument AC4 Making appropriate use of the skeleton argument when making legal submissions Indicative content • The form and content of a skeleton argument including: ○ Heading ○ Introductions ○ Chronologies ○ Citations ○ Relevant arguments ○ Conclusion

Using a written skeleton to support an oral submission	
LO7 Make an effective legal submission in the higher courts AC1 Manage preliminary matters ('housekeeping') AC2 Outline the background of the case AC3 Set out and expand upon the issue(s) for the court's decision and the order(s) sought AC4 Persuasively apply the evidence to the law AC5 Address unfavourable and missing evidence AC6 Cite relevant and helpful authority and address unhelpful authority AC7 Manage time effectively complying with any time limits imposed by the court AC8 Assist the court generally and respond appropriately to judicial intervention AC9 Maintain professional standards throughout Indicative content - The conventional format of a legal submission - The correct use of evidence - The research and citation of authority whether binding or persuasive - Proportionate use of authorities in submissions - The significance of time limits - The overriding objective and the powers of the court	Make an effective and persuasive application and/or legal submission in the higher courts AC1 Outlining the relevant background to the case AC2 Identifying the issues the court will be required to make decisions on and the orders sought AC3 Applying the relevant facts to the law AC4 Addressing unfavourable/missing evidence AC5 Correctly citing relevant and favourable authority whilst also acknowledging unhelpful authority AC6 Managing time effectively including any time limits imposed by the court AC7 Responding appropriately to any questions asked by the judge AC8 Maintaining professional standards throughout the application/submission Indicative content - 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
LO8 Prepare and deliver effective opening and closing speeches in the higher courts AC1 Prepare and deliver an effective opening speech AC2 Prepare and deliver an effective and persuasive closing speech AC3 Maintain professional standards throughout	Prepare and make an effective opening and closing speech in the higher courts AC1 Preparing and delivering an effective opening speech AC2 Preparing and delivering an effective and persuasive closing speech AC3 Maintaining professional standards throughout

Indicative content • The purpose of an opening speech and how it differs from a legal submission and a closing speech • Requirements of a defence opening speech and the implications of a defence 'opening statement' • How to challenge the content of a prosecution opening speech • The purpose of a closing speech; how it differs from a legal submission and an opening speech, commenting on the evidence • The structure of a persuasive speech • The importance of an accurate note • Reviewing and evaluating the evidence on both sides, and how it was given • Using the evidence and the law to persuade the court • Inviting specific findings of fact and specific conclusions on disputed points of law • Use of the jury bundle • Whether and when to pre-empt the Judge	Indicative content • 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
LO9 Conduct a cross examination in which skilful questioning effectively advances the client's case in the higher courts AC1 Conduct an effective cross examination in compliance with the rules AC2 Select appropriate topics and adopt a logical structure AC3 Lay the foundation for the questions in sufficient detail AC4 Elicit useful information AC5 Introduce and use exhibits correctly AC6 Put the client's case, directly challenging adverse evidence AC7 Undermine the opponent's case, when appropriate by impeaching or attacking the credibility of the witness	Conducting an effective cross-examination of an opposing witness in the higher courts in order to advance a client's case AC1 Conducting an effective cross-examination in compliance with the rules AC2 Using effective witness handling skills AC3 Maintaining professional standards throughout Indicative content • The rules governing cross-examination of an opposing witness including:

AC8 Control the evidence by using short, closed and leading questions, one at a time, in clear, precise and professional English AC9 Listen to answers and formulate and/or adapt questions appropriately AC10 Focus on essentials, using patience and persistence when necessary AC11 Control the direction and pace of the examination, without quarrelling with the witness AC12 Maintain professional standards throughout Indicative content • The rules governing cross examination • The requirement to put the client's case • Other essential challenges • Previous inconsistent statements • Questions going only to credit • Opinion evidence and expert witnesses • The techniques for cross examination • The use and importance of leading questions • Brevity, style and pace • Thinking on your feet • Listening and responding appropriately to a change in direction • Avoiding discussion and digression • Dealing with quarrelsome, prolix, un-cooperative, young and vulnerable witnesses	○ 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 ○ Dealing appropriately with a reluctant, unintelligent, difficult or awkward witness • Young and vulnerable witnesses • Complainants in sexual offence cases
NO SRA EQUIVALENT	Conduct an effective and persuasive plea in mitigation AC1 Conducting an effective and persuasive plea in mitigation that is concise and realistic AC2 Advising a client on likely sentence AC3 Advising a client on appealing against sentence and/or conviction

	Indicative content • The purpose and requirements of a plea of mitigation • Sentencing Council Guidelines for the Crown Court • Criminal Appeal Act 1968 and relevant case law
LO10 Use presentational skills in the higher courts both when addressing the court and examining a witness AC1 Adopt a persuasive and professional manner dressing appropriately and speaking clearly and audibly at an appropriate pace and with appropriate emphasis AC2 Use correct, plain and professional English AC3 Avoid distracting language or behaviour AC4 Maintaining suitable posture and body language AC5 Convey authority by displaying a command of the documents and evidence AC6 Always be accurate AC7 Deal appropriately with judicial intervention Indicative content • Presentational skills • The importance of preparation • Precision and brevity • The management of documents • The techniques of persuasion • Engaging the court • Stress management • Addressing the court • Court dress	Use the correct terminology when addressing the court Adopt a professional and persuasive speaking style when addressing the court AC1 Using the correct terminology when addressing the court AC2 Adopting a professional and persuasive speaking style when addressing the court Indicative content • Preparation skills • Professional and persuasive speaking style including: ○ 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 • Oral presentation skills including: ○ Precision and brevity ○ Management of documentation ○ Time management ○ Engaging and persuading the court ○ Court attire and etiquette

• Etiquette	
Ethics and Professional Conduct	Conduct and ethics
LO1 Comply with the professional duties and responsibilities of a solicitor advocate AC1 Comply with the statutory and other rules of professional conduct AC2 Comply with the Criminal Procedure Rules applicable to professional conduct AC3 Comply with the SRA Code of Conduct for Solicitors, RELs and RFLs Indicative content • The Criminal Procedure Rules and especially: ○ Part 1. The overriding objective ○ Part 3. The court's case management powers ○ Part 22. Statements of trust ○ Part 15. Disclosure ○ Part 16. Witness statements ○ Part 19. Expert evidence • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: ○ The Principles ○ Chapter 1 Client care ○ Chapter 2 Equality and Diversity ○ Chapter 3 Conflicts of interest ○ Chapter 4 Confidentiality and disclosure ○ Chapter 5 Your client and the court	Comply with the professional duties and responsibilities of a CILEX advocate towards the court, the client, other court users and members of the public Act with honesty and integrity in preparation and presentation of a client's case Exercise professional judgement and discipline when advancing a client's case and examining witnesses Uphold the rule of law and the proper administration of justice when acting in the client's best interests AC1 Comply with the statutory and other rules of professional conduct AC2 Comply with the Criminal Procedure Rules applicable to professional conduct AC3 Act in accordance with the advocate's overriding duty to the court AC4 Act with honesty and integrity at all times when advising, preparing and presenting a client's case AC5 Assist the court with the effective management of a case and the application of the overriding objective AC6 Ensure the advocate's independence to fearlessly advance the client's case AC7 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 AC8 Disclose all relevant material to the client except where disclosure is prohibited AC9 Identify any actual or potential conflicts of interest with a client or between potential or existing clients AC10 Recognise when a conflict of interest may require the advocate to decline instructions or withdraw from a case

	AC11 Recognise those circumstances when an advocate may have to withhold information from a client or disclose otherwise confidential information AC12 Avoid cross-examining an opposing witness by asking questions which are aimed at merely insulting, humiliating or annoying that witness AC13 Avoid making allegations against a witness or other person of criminal, fraudulent or other misconduct unless this is concerned with a matter in issue and appears to be supported by reasonable grounds AC14 Avoid asking questions, making statements or advancing arguments which are misleading or vexatious Indicative content • The Civil Procedure Rules and especially: ○ 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: ○ Core principles • The CILEX Rights of Audience Conduct Rules and especially: ○ Fundamental duties ○ The decision to appear ○ Ceasing to act as an advocate ○ Conduct of work
LO2 Comply with the duties of a solicitor advocate towards the court	

AC1 Act in accordance with the advocate's overriding duty to the court AC2 Act with honesty and integrity in the presentation of a case before the court AC3 Assist the court in the effective case management and application of the overriding objective Indicative content • CPR Part 3.1 to 3.27 • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: ○ Your client and the court • Dealing with wasted costs orders • Never knowingly, recklessly, directly or indirectly mislead the court • Correct any errors at the first opportunity (For example, if your <i>client</i> tells you that they have previous <i>convictions</i> of which the prosecution is not aware, you may not disclose this without their consent. However, in a case where mandatory sentences apply, the non-disclosure of the previous <i>convictions</i> will result in the <i>court</i> failing to pass the sentence that is required by law. In that situation, you must advise your <i>client</i> that if consent is refused to your revealing the information you will have to cease to act. In situations where mandatory sentences do not apply, and your <i>client</i> does not agree to disclose the previous <i>convictions</i>, you can continue to represent your <i>client</i> but in doing so must not say anything that misleads the <i>court</i>. This will constrain you from what you can say in mitigation. For example, you could not advance a positive case of previous good character knowing that there are undisclosed prior <i>convictions</i>. Moreover, if the <i>court</i> asks you a direct question you must not give an untruthful answer and therefore have to withdraw if, on your being asked such a question, your <i>client</i> still refuses to allow you to answer the question truthfully. You should explain this to your <i>client</i>.) • Inform the court of all relevant legislation and case law of which the advocate is aware, whether or not adverse to the advocate's case	
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• Avoid taking any legal point which the advocate does not consider to be properly arguable	
LO3 Comply with the duties of a solicitor advocate towards the client AC1 Assert the advocate's independence in fearlessly advancing the client's case AC2 Keep the client's information and documents confidential, except when disclosure is permitted or required AC3 Maintain any legitimate claim to confidentiality or legal professional privilege AC4 Disclose all material information to the client except where, in very rare circumstances, disclosure is forbidden AC5 Assert the advocate's duty as owed expressly to the client and not to any intermediary or third-party funder Indicative content • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: ○ Client care ○ Equality and diversity ○ Conflicts of interest ○ Confidentiality and disclosure eg money laundering tipping off and where disclosure may endanger the life of a third party	
LO4 Act with honesty and integrity in the preparation and presentation of evidence AC1 Avoid attempting to influence a witness after taking a statement from them as to the contents of that statement AC2 Avoid seeking to persuade a witness to change their evidence	

AC3 Avoid encouraging a witness to give misleading or untruthful evidence AC4 Avoid rehearsing or coaching a witness in respect of their evidence AC5 Avoid attempting to suppress or conceal unhelpful evidence Indicative content • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: ◦ Chapter 4 and 5: Your client and the court • Expert witness • Lay witness	
LO5 Exercise professional discipline in advancing the client's case and questioning witnesses AC1 Avoid alleging fraud (unless pleaded and instructed to do so and given material which the advocate reasonably believes to show, on the fact of it, a case of fraud) AC2 Avoid making statements, or asking questions merely to insult, humiliate or annoy a witness or any other person AC3 Avoid making serious allegation against a witness whom the advocate is able to cross examine without putting the allegation to the witness AC4 Avoid alleging any crime, fraud or misconduct (unless the allegation goes to a matter in issue material to the advocate's case and appears to be supported by reasonable grounds) AC5 Avoid putting questions, making statements or advancing arguments which are misleading or vexatious Indicative content • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially:	

○ Chapter 4 and 5: Your client and the court	
LO6 Advise on and where possible reconcile, the advocate's concurrent duties to the client, the rule of law and the administration of justice AC1 Identify any actual or potential conflict of interest AC2 Recognise when conflict requires the advocate to withhold information from the client or disclose confidential information AC3 Recognise when any such conflict requires the advocate to decline instructions or withdraw from the case Indicative content • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: ○ Conflicts of interest ○ Confidentiality and disclosure • Representing at trial a client who confidentially admits guilt and the considerations that arise	

Consultation: to consider proposed changes to the Practitioner Authorisation Rules and the new Standards to be able to authorise CILEX Practitioners with litigation and advocacy rights for Higher Rights of Audience

This consultation would be of interest to members, other approved regulators, consumers of legal services and any other interested parties.

1. CILEx Regulation (CRL) is the independent regulator for chartered legal executives, other grades of CILEX membership, CILEX Practitioners and firms. We take a risk based and outcomes focused approach to regulation, by working constructively with our regulated community to ensure that they deliver the best outcomes for clients. We have set clear principles within our Code of Conduct and inform the public of the standards they can expect. We believe this provides a balanced approach.
2. The purpose of this consultation is to consider changes to the CRL Practitioner Authorisation Rules and the draft content of the new standards for CILEX higher court advocates for civil proceedings and standards for CILEX higher court advocates for criminal proceedings (hereafter, referred to as 'the standards'). Once this is done it is CRL's intention to make an application to the Legal Services Board to enable competent CILEX Practitioners holding litigation and advocacy rights to apply for authorisation to conduct advocacy in all courts (Higher Rights of Audience).
3. CILEX and CRL have identified support for the initiative from a range of stakeholders. Additionally, there is the likelihood that suitably competent CILEX Practitioners with Higher Rights would enhance the diversity of the legal profession, and that career opportunities would arise for CILEX members as a result of this change. It is against this background that CRL is now proposing to extend its delegation to authorise CILEX Practitioners to enable them to exercise rights of audience in all courts relevant to their specialism.
4. We have previously consulted our regulated community on whether CRL should make this application and how CRL proposes to assess applicants for authorisation in all courts (Higher Rights). CRL is now seeking views on these proposals from other approved regulators, consumers of legal services and other interested parties, as well as the standards to be used to assess competency.
5. This consultation will run for 6 weeks, from **31 July 2023**, closing at **4pm on 11 September 2023**.

Background

6. CILEX Practitioners, chartered legal executives and CILEX Advocates are specialist lawyers, regulated by CRL, who are able to practise in a reserved or regulated area of practice without the requirement to be supervised by an [authorised person](#) under the Legal Services Act 2007.
7. CILEX Practitioners with litigation and advocacy (rights of audience) rights can undertake litigation and advocacy in the lower courts¹ in one of the following areas:

- a. Civil litigation

¹ provided they work in a regulated law firm or in-house provided they do not offer services to the public or a section of the public

- b. Criminal litigation
- c. Family litigation

Why is CILEx Regulation proposing to seek the right to authorise competent CILEX Practitioners with litigation and advocacy rights in all courts in England and Wales?

a. Enhancing diversity and fairness in the legal sector/Equality of opportunity

8. CILEX has, for a number of years, been lobbying for a career path for its members working at the Crown Prosecution Service to be able to become Crown Prosecutors without the requirement to cross-qualify as a solicitor.
9. In CILEX's discussions with the Ministry of Justice (MoJ), in addition to re-consideration of the option for CILEX members to become Crown Prosecutors, the possibility of CILEX members to be able to be authorised to undertake advocacy in all courts (Higher Rights) was raised. This was because it would enhance further the options to CILEX members for career progression. This possibility was then raised, by the MoJ, with CRL, as the independent regulator of CILEX members.
10. Following a survey of chartered legal executives and CILEX Practitioners, and a formal consultation in late 2022, CRL has agreed to take this proposal forward.

b. Views of CILEX authorised persons

11. CRL sought the views of CILEX lawyers (chartered legal executives, CILEX Advocates and CILEX Practitioners) to determine interest and support for the proposal to seek additional powers to award Higher Rights of Audience. The response was overwhelmingly in favour of CRL making an application to the Legal Services Board to enable CRL to authorise suitably competent CILEX Practitioners for Higher Rights of Audience).

c. Improving diversity in the legal profession and the judiciary

12. In addition to improving the career progression for suitably qualified CILEX members, it has also been noted that the ability to authorise CILEX Practitioners to undertake advocacy in all courts would (owing to the diversity within the CILEX membership) have the potential, in the longer-term, to enhance the diversity of the judiciary.

How CILEx Regulation proposes to introduce the changes

Proposed Training and Assessment for those seeking Higher Rights of Audience

a. Existing Training and Assessment for Advocacy in the lower courts

13. As outlined at paragraph 8, CILEX Practitioners with litigation and advocacy already hold rights of audience in the lower courts. The rights of audience are awarded by CRL once the applicant has successfully completed a CRL approved advocacy skills course and assessment (the right to conduct litigation is assessed separately). They can then apply for authorisation.

14. The current advocacy skills course is outlined below:

- It consists of 36 hours tuition, delivered over 6 one day sessions (including one day of home study to complete the law of evidence requirements).
- It develops candidates' advocacy skills and tuition is provided in to encourage the maximum amount of individual participation.
- Candidates are provided with feedback throughout the course, after which the candidate is formally assessed through simulated court proceedings.
- The skills developed during the course build on pre-existing skills that the candidates have developed in the workplace, and cover:
 - Professional Conduct
 - Interviewing
 - Negotiation
 - Case Analysis and Theory
 - Skeleton Argument
 - Advocacy (preparation and at the hearing), and
 - Evidence

15. CRL has worked with our current external assessors for the advocacy skills courses to determine additional requirements to enable CILEX Litigators and Advocates to obtain Higher Rights of Audience.

b. Proposals for additional training and assessment to award Higher Rights of Audience to suitably competent CILEX Litigators and Advocates

16. CRL awards rights of audience in one or more of the following areas of practice:

- a. Criminal proceedings,
- b. Civil proceedings, or
- c. Family proceedings

17. However, because most family proceedings work is dealt with in the lower courts, and the existing advocacy rights course will provide appropriate rights of audience, CRL is not proposing to provide a separate Higher Rights qualification for family work. However, family lawyers seeking Higher Rights would be able to take the civil route if they wished to seek Higher Rights of Audience.

18. The new standards to develop the additional skills required to undertake advocacy in all courts can be found at **Appendix 2** for Standards for CILEX higher court advocates for civil proceedings and **Appendix 3** for Standards for CILEX higher court advocates for criminal proceedings.

19. As part of developing these additional skills, CRL proposes that the additional training should include formative assessments to cover:

- a. A Trial Strategy Plan (TSP).
- b. Additional written training to extend the knowledge gained on the current Advocacy Skills course in relation to evidence
- c. Crown Court processes, conduct, ethics, and etiquette
- d. Speeches, applications and submissions, appeals, skeleton arguments
- e. Sentencing and mitigation

20. CRL estimates that this will require an additional 12 hrs training over two days with pre-reading required.
21. CRL would propose that prospective candidates will become eligible to take the additional training once they have completed their first renewal of their Advocacy rights. This is to ensure that they have the appropriate experience to undertake advocacy in all courts.
22. On completion of the additional training, candidates would be required to demonstrate competence against each of the elements listed at paragraph 19 a-e inclusive. CRL is considering the best way for candidates to be assessed and this will be set out in the final application. After successfully completing the assessment(s), candidates would be able to apply to CRL for authorisation to become a Chartered Legal Executive Litigator and Higher Rights Advocate.

Proposed amendments to the Practitioner Authorisation Rules

23. To bring the proposals into effect, CILEx Regulation is proposing to amend the Practitioner Authorisation Rules which can be found at **Appendix 1**.
24. The amendments to the rules are as follows:
 - a. CILEX Litigators and Advocates who have held rights of audience in the lower courts for at least 12 months will be eligible to apply for Higher Rights of Audience in the relevant specialism (Civil Proceedings for those specialising in either civil proceedings or family proceedings, and Criminal Proceedings for those specialising in criminal proceedings).
 - b. Applicants seeking Higher Rights of Audience will be required to demonstrate their knowledge and competence by attending an additional course and assessment to ensure that they have the necessary knowledge, skills and behaviours required of a Higher Rights Advocate.
 - c. Once approved, the authorised title will be either Chartered Legal Executive Litigator and Higher Rights Advocate (Civil Litigation) or Chartered Legal Executive Litigator and Higher Rights Advocate (Criminal Litigation)
25. CRL is not proposing to enable Chartered Legal Executive Advocates (i.e., those who do not hold litigation rights) to be able to become Higher Rights Advocates.

Consultation questions

26. CILEx Regulation welcomes the views of all interested parties as these will inform its next steps with regards to any future rule change application.

Q1. Do you agree that CRL should seek Higher Rights of Audience for suitably qualified CILEX Practitioners?

Yes/No? Please provide comments:

Q2. Do you agree with CRL's proposals to ensure that applicants to exercise rights of audience in all courts should complete the training and assessment outlined in the consultation?

Yes/No? Please provide comments:

Q3. Are there any additional elements of the training and assessment that you believe should be included within the standards for CILEX higher court advocates in civil proceedings?

Yes/No? Please provide comments:

Q4. Are there any additional elements of the training and assessment that you believe should be included within the standards for CILEX higher court advocates in criminal proceedings?

Yes/No? Please provide comments:

Q5. Do you foresee any issues with the revised Practitioner Authorisation Rules?

Yes/No? Please provide comments:

Q6. Do you agree that the application for Higher Rights of Audience should be restricted to those Chartered Legal Executives who hold both Litigation and Advocacy rights (CILEX Practitioners) and that those who only hold Advocacy rights (Chartered Legal Executive Advocates) would not be eligible to apply for Higher Rights of Audience?

Yes/No? Please provide comments:

Q7. Do you have any other comments?

Yes/No? Please provide comments:

How to respond

Please send your response to CILEx Regulation by email to consultations@cilexregulation.org.uk. Please mark it for the attention of Mark Wood.

Submission deadline

Please respond by **4pm on 11 September 2023**.



Responses to Higher Rights of Audience Consultation

This document details the responses to the Consultation to consider proposed changes to the Practitioner Authorisation Rules and the new Standards to be able to authorise CILEX Practitioners with litigation and advocacy rights for Higher Rights of Audience.

This consultation ran for 6 weeks from 31 July 2023 to 11 September 2023 and invited member of the CILEX regulated community, other regulators, members of the public and other interested parties to respond.

A total of 105 responses were received:

- 56 Chartered Legal Executives
- 22 CILEX Practitioners
- 11 CILEX Advocates
- 11 members of the public
- CILEX
- The Criminal Bar Association
- The Bar Council
- 2 respondents did not identify their status

The consultation posed the following questions:

1. Do you agree that CRL should seek Higher Rights of Audience for suitably qualified CILEX Practitioners?
2. Do you agree with CRL's proposals to ensure that applicants exercise rights of audience in all courts should complete the training and assessment outlined in the consultation?
3. Are there any additional elements of the training and assessment that you believe should be included within the standards for CILEX high court advocates in civil proceedings?
4. Are there any additional elements of the training and assessment that you believe should be included within the standards for CILEX higher court advocates in criminal proceedings?
5. Do you foresee any issues with the revised Practitioner authorisation rules?
6. Do you agree that the application for Higher Rights of Audience should be restricted to those Chartered Legal Executives who hold both Litigation and Advocacy rights (CILEX Practitioners) and that those who only hold Advocacy rights (Chartered Legal Executive Advocates) would not be eligible to apply for Higher Rights of Audience?
7. Do you have any other comments?

Q1: Do you agree that CILEX Regulation should seek Higher Rights of Audience for suitably qualified CILEX Practitioners?		
Yes	No	Did not answer
97	8	0

Comments from those who agreed that CILEX Regulation should seek Higher Rights of Audience for suitably qualified CILEX Practitioners include:

- ‘The present arrangements are anomalous. Higher Rights of Audience qualifications for solicitors (in differing configurations) have been open to solicitors since the 1990s. Registered Trademark and Patent Attorneys have been able to exercise extended litigation conduct and advocacy rights of audience on assessment, post licensure, since 2012. The intended arrangements seek to open rights to CILEX in the same configuration as those applying to solicitors and constitute an important regulatory aim within the s 1(1) Legal Service Act 2007. See Ching J, “Solicitors’ Rights of Audience, Competence and Regulation: a Responsibility Rights Approach” (2021) 41 Legal Studies 585.’
- ‘It is my position that there are many roads to Rome and that diversity is best achieved by having heterogeneous paths and avenues to qualification rather than a homogenous motorway which can become congested with the same experiences. The Legal Services Act 2007 sought to achieve a liberalisation of the marketplace in England & Wales for the provision of legal services. In order to achieve this aim it is necessary that all legal regulators be seen as on par with each other rather than swallowed up and amalgamated as smaller wings of larger regulators or as lower ranking but independent regulators. To achieve this aim this will require securing Higher Authorisation for suitably qualified practitioners such that eventually this will in turn see such practitioners being eligible for senior judicial offices. It is important to stress that this is not a substitution for quality assurance. This is not a quantity of practitioner rather than a quality of practitioner. There must be strict quality assurance procedures and processes in place save that they can be done via different models and criterion to the more traditional form of legal regulation.’
- ‘CILEX Practitioners are excellent in what they do. Not to recognise them as such is merely undermining their ability to expand their scope to practice and sharpen their skills.’
- ‘There is no reason why CILEX Practitioners shouldn’t be given the opportunity to develop and grow providing they meet the requisite criteria to ensure the public are protected.’
- ‘The inclusion of higher rights enables career progression for CILEX qualified litigators and advocates, together with the prospect of drawing in greater applicants for CILEX generally due to the ability to attain senior level qualifications matching that of the Bar or the SRA. This would be a very positive next step for CILEX Practitioners and with consideration that CILEX supports Judicial appointments, the ability to offer Higher Rights qualifications is both logical and beneficial.’
- ‘CILEX members are specialist lawyers, and as a specialist should be able to practice at all levels including Higher Courts level.’

CILEX (The Chartered Institute of Legal Executives) responded by confirming:

- 'CILEX is supportive of the proposed regulatory changes to enable CILEX Practitioners with Litigation and Advocacy Rights to be authorised for Higher Rights of Audience. The momentum for this change, driven by the Ministry of Justice, is, as we know, in turn driven by CILEX's work to enable suitably qualified members to undertake the role of Crown Prosecutors for the CPS. A facilitative change like CILEx Regulation's proposed one, similar in principle to the arrangements open to solicitors to 'top-up' and acquire Higher Rights, can only be positive and in the public interest.'

Comments from those respondents who did not agree that CILEx Regulation should seek Higher Rights of Audience for suitably qualified CILEX Practitioners were as follows:

- 'A staggeringly small percentage of CILEX Fellows have become Practitioners with rights of Audience and litigation. A far better use of CILEx Regulation's time would be to enable fellows to have rights of Litigation in all domains. It was not until 1972 that Solicitors Rights of Audience were extended. Instead of running down this rabbit hole, I would rather CILEx Regulation spent it's time decoupling rights of litigation from rights of audience. Instead being able to grant Fellows the right to fill in and send a form to Court in their own right, which they do, regularly, on a daily basis.' Whilst CILEx Regulation understands the concerns raised by this respondent, the majority of its regulated community have supported this proposal and CILEx Regulation believe the number of CILEX Fellows becoming Practitioners will increase if we are able to offer Rights of Audience in all Courts.
- 'Not necessary for certain legal sectors and it's making fellows do exams when they have done the job for years.' CILEx Regulation would point out that this proposal only relates to Civil, Criminal and Family proceedings and does not impact on other reserved areas such as Probate, Conveyancing etc.
- 'This is out of line with SRA and CLC. Why is it necessary from your point of view to require those of us with decades of experience achieving significant qualification to prove ourselves further. It completely undermines what we have achieved so far and how others perceive us, which I thought was supposed to be your aim of us being seen equal. Partners and directors of firms cannot even carry out work under your rules.' CILEX understands and sympathises with the respondent, but it is not relevant to the consultation.

Comments from The Bar Council

No.

The current training for CILEX practitioners to obtain rights of audience in the lower courts as follows:

- At para 13 – *"...CILEX Practitioners with litigation and advocacy already hold rights of audience in the lower courts. The rights of audience are awarded by CRL once the applicant has successfully completed a CRL approved advocacy skills course and assessment (the rights to conduct litigation is assessed separately). They can then apply for authorisation."*
- At para 14 – *"The current advocacy skills course is outlined below:*
 - *It consists of 36 hours tuition, delivered over 6 one day sessions (including one day of home study to complete the law evidence requirements)*
 - *It develops candidates' advocacy skills and tuition is provided in to encourage the maximum amount of individual participation.*

- *Candidates are provided with feedback throughout the course after which the candidate is formally assessed through simulated court proceedings.*
- *The skills developed during the course build on pre-existing skills that the candidates have developed in the workplace, and cover: Professional Conduct, Interviewing, Negotiation, Case Analysis and Theory, Skeleton Argument o Advocacy (preparation and at the hearing) and Evidence.*

The additional training proposed by for CILEX practitioners to obtain Higher Rights of Audience is set out as follows:

- *At para 15 – “CRL has worked with our current external assessors for the advocacy skills courses to determine additional requirements to enable CILEX Litigators and Advocates to obtain Higher Rights of Audience.”*
- *At para 17 – “because most family proceedings work is dealt with in the lower courts, and the existing advocacy rights course will provide appropriate rights of audience, CRL is not proposing to provide a separate Higher Rights qualification for family work. However, family lawyers seeking Higher Rights would be able to take the civil route if they wished to seek Higher Rights of Audience. This also applies to immigration lawyers.”*
- *At para 19 – “As part of developing these additional skills, CRL proposed that the additional training should include formative assessments to cover:*
 - a. A Trail Strategy Plan (TSP)*
 - b. Additional written training to extend the knowledge gained on the current Advocacy Skills course in relation to evidence*
 - c. Crown Court processed, conduct, ethics, and etiquette*
 - d. Speeches, applications and submissions, appeals, skeleton arguments*
 - e. Sentencing and mitigation*
- *At para 20 – “CRL estimates that this will require an additional 12 hours of training over 2 days with pre-reading required.”*
- *At para 21 – “CRL would propose that prospective candidates will become eligible to take the additional training once they have completed their first renewal of their Advocacy rights. This is to ensure that they have the appropriate experience to undertake advocacy in all courts.”*

In other words, a CILEX Practitioner need only complete 36 hours tuition, delivered over 6 one day sessions (including one day of home study to complete the law of evidence requirements) plus an additional 12 hours of training over two days to be eligible to apply for Higher Rights of Audience in the criminal and civil courts.

There is no provision for specific training for practitioners who seek Higher Rights to appear in family or immigration cases. It is wrongly assumed that these two highly specialist areas of law, with rules, regulations and practice directions of their own, can somehow be subsumed within the training offered in Civil Law.

The established route to the Bar involved independent checks of intellectual ability, stamina, skills in written and oral advocacy, and the ability to consistently make swift and correct judgements. These checks are made at multiple stages in a training route that lasts for years and includes at least an undergraduate degree, the Bar vocational course, and then a year of pupillage. For many, there will be added into the list conversion course qualification, and periods of alternative employment which enable them further to develop such skills. At each stage, there is the involvement of external assessors who have little vested interest in whether the person succeeds or fails. This ensures that the standards of the respective institution – the quality of the degree

course, the status of the postgraduate course provider and the reputation of the status remain high.

The results of the training is that those who attain the qualifications, have proved themselves to possess the high quality of skills needed properly to act as a barrister. The courts and their clients can be confident in their intellectual abilities, judgement and integrity because they have proved them at many stages. That serves to ensure that the high standards necessary to ensure the effective administration of justice are maintained.

The CILEX proposal brings very little of this and overlook such complex matters. There is concern that these standards will be relaxed for CILEX practitioners whilst they continue to be strengthened for barristers in the public interest. To address this issue, there should be an appropriate and rigorous standard of training and expertise should be equal to the standards expected of solicitor-advocates and barrister to ensure that no client is misrepresented.

Comments from The Criminal Bar Association

No we do not agree.

The proposal creates a two-tier system of advocates in the higher courses with CILEX practitioners only required to carry out 36 hours of training. The route to becoming a Criminal barrister involves a lengthy process of study, training and supervision. All Criminal barristers are graduates who then undertake a year of specialist Bar legal training and advocacy followed by pupillage. This ensure the highest intellectual ability, resilience and skills in written and oral advocacy with the ability to consistently make swift judgements under pressure of time that are correct at multiple stages of proceedings.

The training process over so many years is equivalent to medical training for doctors who equally begin with general training moving to increasingly specialised work. At each stage, there are external assessors who have little vested interest in whether the individual succeeds or fails. In particular, during pupillage, criminal barristers have one-to-one training and supervision from a supervisor ensuring that the high standards of advocacy at the Criminal Bar are maintained. The quality of the graduate course, the status of the postgraduate provider and the reputation of the Criminal Bar remain high. The CILEX proposals do not compare to this level and quality of study, training and supervision which not only maintains high standards but preserves the integrity of the Criminal courts and efficiently manages the Criminal courts' workloads.

Following pupillage, new practitioners continue to receive formal and informal training: they must comply with the requirements to show proof of approved continuing professional development (including attending lectures and training conferences run by the CBA), and they receive mentoring and guidance from more established colleagues in Chambers. They will not have acquired the advocacy skills needed for advocacy in Crown Court or the Court of Appeal after 36 hours of training.

The CILEX proposals risk introducing a third and lower tier in criminal advocacy, by admitting individuals whose training and experience falls far beneath that which the Criminal Bar (or the Solicitor's profession) provides. It cannot be in the public interest for insufficiently qualified advocates to exercise higher rights. The profession of criminal court advocacy should not be deskilled in the manner proposed.

The CILEX consultation paper gives two reasons for seeking higher rights: to ‘enhance diversity’ and to provide ‘career opportunities’ for legal executives. It is troubling that these two reasons are given equal weight and no mention is made of the vocational aspect of being “called” to defend the cause of justice in our courts. The CBA recognises the importance of diversity and has long championed it, but only as a contributing factor to maintaining public confidence in the rule of law, not at all costs. As for career enhancement, the career interests of individual lawyers can never be a reason for deskilling the profession. Indeed, the Criminal barrister do not pursue their profession for personal gain, far from it. A legal executive who wishes to advance their career by practising advocacy is free to train to be a solicitor or a barrister with proper training and support that the profession providers.

CILEx Regulation response to the comments from The Bar Council and The Criminal Bar Association:

Prior to beginning the 6-day Advocacy Course in either Civil, Criminal or Family Proceedings a CILEX member will have already completed the following:

Academic Stage:

- CILEX Level 3 Diploma in Law and Legal Practice AND CILEX Level 6 Higher Diploma in Law and Legal Practice; or
- CILEX Level 6 Diploma in Legal Practice (Graduate Fast Track Diploma having already completed a law degree)

OR

- LLB (qualifying law degree); and
- Either LPC or BPTC

PLUS

- 2,300 Qualifying Experience which is supervised and approved by CILEx Regulation.

PLUS

- Completed an extensive portfolio of log sheets and evidence which demonstrate 8 competencies that define a Chartered Legal Executive, namely:
 - Application of law and legal practice
 - Communication skills
 - Client relationships
 - Planning and managing work
 - Understanding the business environment that you work in
 - Professional conduct
 - Self-development
 - Working with others

The portfolio contains evidence produced over their 5 years legal experience, 2 years of which must be in their chosen specialism, i.e. civil, criminal or family. The portfolio is assessed by occupationally competent and qualified CILEx Regulation Assessors.

For those wishing to obtain practice rights with litigation and advocacy, their portfolio must include details of their litigation and advocacy experience through case studies they have been involved with and applicants are required to complete and submit an application to be deemed eligible to being the 6-day advocacy training course.

Once they have achieved status as a Chartered Legal Executive Litigator and Advocate and received Rights of Audience for their chosen specialism, they are unable to apply to undertake the proposed CILEX Higher Court Advocates training. For their application to be approved to undertake the additional training and assessment, they must submit a further portfolio demonstrating how they have used their Advocacy Skills. These portfolios are assessed by sector-specific external assessors.

As we do not award Rights of Audience for Immigration, we will not be offering Higher Rights relating to this specialism.

Most Family cases are dealt with in the lower courts, there is not a requirement for a specific Higher Rights programme for Family. However, if we have CILEX Practitioners or Advocates specialising in Family cases, they can choose to apply for and undertake the Higher Rights for Civil Proceedings. This is in line with the SRA Higher Rights training.

The Standards for Higher Court Advocates (Civil Proceedings) and Standards for Higher Court Advocates (Criminal Proceedings) have been developed by highly qualified, experienced and competent experts.

Both standards have been mapped to the SRA standards: Standard for solicitor higher court advocates for criminal proceedings and Standard for solicitor higher court advocates for civil proceedings.

Q2: Do you agree with CILEx Regulation's proposals to ensure that applicants to exercise rights in all courts should complete the training and assessment outlined in the consultation?		
Yes	No	Did not answer
74	30	1

Comments from those who agreed with CILEx Regulation's proposals to ensure that applicants to exercise rights in all courts should complete the training and assessment outlined in the consultation include:

- 'This gives customers a level of guaranteed standards.'
- 'This will equip them with the skills required to conduct trials at the Higher Courts.'
- 'Training should be applied and at the same time should be at the same standard that Solicitor Advocates have to undertake (at the minimum). Making it on par, or equal to the Bar (insofar as there is a difference between the Bar and Solicitor Advocate training) is where this course should be set.'
- 'Courses are appropriate to ensure people are properly qualified for the position.'
- 'I think it is extremely important, more so in criminal where there is no prior experience for CILEX Criminal Advocates. The standards must be sufficiently high for both criminal and civil certificates.'

Comments received from respondents who did not support CILEx Regulation's proposals to ensure that applicants to exercise rights in all courts should complete the training and assessment outlined in the consultation as follows:

- 4 respondents raised the concern that we were imposing additional training on members with many years practical experience and the requirement of this training would cause issues due to full-time careers. CILEx Regulation understand these concerns, however, this is the first-time members of the CILEX regulated community will have the opportunity to take Higher Rights of Audience training and assessment and though the additional training may be perceived as troublesome, it will be up to the individual course provider(s), who decide to offer the qualification, to implement the most appropriate delivery methodology to meet the customer's variable requirements.
- 4 respondents also raised the issue of exemptions if they have already undertaken alternative Higher Rights training and assessment on other programmes of study. CILEx Regulation has considered the merits of exemptions but, again, this will be at the discretion of the individual course provider(s), who decide to offer the qualification(s), to identify what exemptions could be applied to the training element. However, all members wishing to achieve the Higher Rights of Audience qualification will need to successfully complete the identified assessments.
- 3 respondents raised concerns that solicitors do not need to undertake training and assessment for Higher Rights of Audience. CILEx Regulation have confirmed that this is not the case. According to the SRA Website 'Solicitors and registered European Lawyers (RELS) are granted rights of audience when they are admitted or registered. However, they cannot

exercise those rights in the higher courts until they have complied with additional assessment requirements.’

- (d) 1 respondent agreed that the training and assessments should be completed but that the option to undertake it should be open to all members of CILEX. CILEx Regulation has taken onboard this comment but feels that only those Chartered Legal Executive Litigator and Advocates and Chartered Legal Executive Advocates who have held rights of audience in the lower courts for at least 12 months are ready to undertake the Higher Rights of Audience training and assessment.
- (e) 1 respondent raised concerns over the cost of the additional training and assessment as this may inhibit some members. CILEx Regulation shares this concern but has no say in the fees that will be levied for the training and assessment – the fees will be set and levied by the individual course provider(s) who decide to offer the qualification.

Comments from The Bar Council

No. (We assume the question means 2... should complete only the training ...”).

The training process to become a barrister and solicitor (then solicitor-advocate once qualified as a solicitor) is detailed and clear. The content of the training and assessment proposed for CILEX practitioners to obtain Higher Rights of Audience remain unclear and are not specified within the proposals. That is a significant failure.

For many years, the Bar has significantly developed compulsory advocacy training, particularly for those at the early years of practice. The New Practitioners Programme, and the implementation of compulsory advocacy training in the first six months of pupillage, underpins the profession’s commitment to protecting the public interest. This advocacy training is ongoing even after the completion of the Bar’s vocational component to ensure that newly qualified barristers can provide high quality advocacy to their clients.

CILEX CPD REQUIREMENTS

CPD Guidance Document Updated May 2022 set out the CPD CILEC practitioners are expected to engage it.

CILEX Practitioners and Advocates required to complete 9 CPD outcomes each year, at least 5 of which must be planned.

For CILEX Litigators and Advocates at least 2 of the 5 planned outcomes must be related to advocacy focused activities to develop skills as an advocate and knowledge of procedure.

Outcomes can be met through variety of CPD activities including: attendance at courses, shadowing other advocates, webinars focused on drafting arguments.

Other requirements for other types of CILEC members e.g. Paralegal members required to complete 8 hours CPD and 1 professional outcome.

“A planned outcome would be a learning outcome which you plan in advance; you need to know what you want to update your knowledge/ competence on. Once you have set a learning outcome, you would undertake an activity which would be you completing the outcome.”

“An unplanned outcome is simply how it sounds; we would describe this an unexpected learning. This would be an activity which you undertake and have not planned beforehand. An example of this would be reading the CILEX Journal, you are unable to plan what topics will arise therefore if you did benefit from the article it would be an unplanned outcome.”

The Bar Council cannot see any specific provision for continuing professional development set within CRL’s proposed training and assessment. The general provision for continuing professional development set out for CILEX practitioners is inadequate to assist those with Higher Rights of Audience to undertake focused advocacy training to ensure continued improvement of their advocacy, the currency in their thinking and remain practitioners who are across the detail of developments in law.

As presently drafted, the CILEX proposals do not enforce the same standards that are established in the current Bar route. This is no multi-centre quality assurance built in, with then entire process deal with within CILEX. There is no indication of who it is within CILEX who possesses the skills and experience needed to teach, for example, cross-examination, drafting documents for Court of Appeal, or the application of the disclosure regime. There is no indication of how the process would link membership of or training offered by the Inns of Court. There is no indication as to how long the training process will last, nor is there any indication of its rigour.

The proposals for training and assessment lack detail and the information provided is not only inadequate to assist the reader assess the quality of the training it also lacks specificity. By way of example, how will the training and assessment compare with the solicitor-advocate training, and the Bar Training? These questions remain unanswered in the current proposal.

CILEx Regulation Response

The content of the training and assessment in the Standards for Higher Court Advocates (Civil Proceedings) and Standards for Higher Court Advocates (Criminal Proceedings) are very clear, are expressed in terms of assessment outcomes, assessment criteria and content and have been mapped against the equivalent SRA Standards.

Comments from The Criminal Bar Association

No we do not agree.

The proposed training and assessment falls short of the same standards that are established in the Criminal Bar. There is no multi-centre independent quality assurance proposed as the entire process will be dealt with within one body, CILEX. There is no indication of who it is within CILEX, with the extensive practical skills and experience needed, who will teach and monitor skills that include ethical decision-making, cross-examination of vulnerable and young witnesses, drafting of documents for the Court of Appeal or the application of the disclosure regime. There is no comparison with the membership or training provided by the Inns of Court. There is no indication as to how long the training process will last, nor is there any indication of its rigour. Unless the training prescribed for CILEX members compares directly with the years of training supervision and experience of Criminal barristers, a two-tier system of representation will develop. The public will have no confidence in the proposals unless a detailed and rigorous training programme is set out which is at least equivalent of that which barristers or solicitors with higher rights undergo.

CILEx Regulation response:

Delivery of the training and assessment stipulated in the Standards for Higher Court Advocates (Civil Proceedings) and Standards for Higher Court Advocates (Criminal Proceedings), will be delivered and assessed through accredited course providers. CILEx Regulation has a robust and stringent course provider accreditation process which includes reviews of staff and physical resources, delivery and design of training and assessment and policies and processes related to assessment and quality assurance.

CILEx Regulation is an External Quality Assurer (EQA) for the following:

- Paralegal Level 3 Apprenticeship Standard
- Chartered Legal Executive Level 6 Apprenticeship Standard
- Chartered Legal Executive Level 7 Apprenticeship Standard

This status was awarded to CILEx Regulation and regulated by the Institute for Apprenticeships and Technical Education (IfATE).

Our role as an EQA is to monitor the end-point assessment that apprentices undertake at the end of end of their apprenticeship, to ensure that it is fair, consistent and robust. We are responsible for ongoing quality assurance audits of End-point assessment organisations through application of a quality assurance framework designed to ensure that high standards are maintained, and assessments are reliable, valid and fit for purpose. This is achieved through undertaking of bi-annual audits of all approved End-point Assessment Providers (EPAOs). This framework will also be applied to ongoing regulation and monitoring of accredited course-providers for the new Higher Rights standards.

There were 2 comments from respondents that did not directly relate to the question being asked. These were as follows:

- (a) 'I think it is unfair to make all students studying litigation undertake an advocacy course when their job will never require them to advocate unless they chose to. It should be a choice to undertake the advocacy course and shouldn't delay litigation students from qualifying in comparison to non-litigation students.' And
- (b) 1 respondent simply stated, 'Forced to provide an answer by the survey format'.

Q3: Are there any additional elements of the training and assessment that you believe should be included within the standards for CILEX higher court advocates in civil proceedings?		
Yes	No	Did not answer
7	96	2

Comments from respondents who did not feel that there are any additional elements of training and assessment that should be included within the standards for CILEX higher court advocates in civil proceedings include:

- 'It should mirror the qualification/requirements that Solicitor Advocates have to undertake.'
- 'I think is sufficient to cover all.'
- 'As appropriate for the role.'
- 'The course should be in line with the Higher Rights qualification for solicitors.'
- 'Not immediately. I think the current framework is suitable to get a base level of CILEx Practitioners to Higher Rights of Audience. I do think in the long-term once a successful pool of experience in the Senior Courts is generated by CILEX Advocates with Higher Rights of Audience, then an evolved training and assessment package can be developed as a transitional measure to include a panel of Higher Rights CILEx Advocates with experience in the Senior Courts to offer a shadow or fellowship program in which CILEX Practitioners without Higher Rights can observe CILEX Practitioners with Higher Rights in the Senior Courts and dissect and debrief those with more senior CILEX Practitioners to utilise the wealth of experience gained by them to enhance their own future practices and vice versa senior learning from more junior (because complacency isn't good. You should be able to teach an old dog new tricks).'

1 comment from a respondent who did feel that there are any additional elements of training and assessment that should be included within the standards for CILEX higher court advocates in civil proceedings was as follows:

- 'For the most part, the elements suggested track the requirements of the SRA Higher Rights of Audience (Civil Route). This alignment is sensible as the assessment lead to the same rights as those of a solicitor advocate. There are, however, two additional points that may need to be considered. Firstly, it may be necessary to provide additional support for those who may have followed the Family or Immigration track under the CILEX Authorised Practitioner Authorisation Rules, paras 51-65, and who must obtain additional rights via the proposed CILEX Higher Rights of Advocacy (Civil Route). The context of such work is unlikely to involve the level of engagement with the Civil Procedure Rules envisaged in the training and assessment arrangement. Secondly, it would be helpful to see more extensive coverage of the new rules relating to vulnerable witnesses in civil proceedings under CPR Practice Direction 1A in respect of coverage of the rules, application of the rules by the courts and the development and assessment of associated practical skills.'

CILEx Regulation takes onboard these comments but they relate to the content of delivery of the new training and assessment standard, and this will be defined by the course provider(s) who decide to offer the qualification. CILEx Regulation's standard stipulates only the learning outcomes that must be covered and the criteria that must be assessed to judge competence.

Comments from The Bar Council

As we note below in our response to Question 4, trial advocacy is as high-level skills requiring academic, intellectual, and vocational training that barristers receive and develop over an extended period of time. The vocational aspect of the bar course is rigorous in its testing which aims to ensure that barristers can manage the pressured situations that they are regularly required to face. In civil proceedings, those can involve not only the inevitable emotional stresses of dealing with clients and others in a context where their homes, children and/or livelihoods are threatened, but also highly technical matters where it is necessary to understand the evidence experts across a wide range of fields and challenge that evidence with incisive cross-examination. Barristers are expected to engage effectively with people across the whole spectrum of society, to manage the stresses and challenges and to respond appropriately in a formal and structured setting. This requires a set of skills that is developed through the vocational component of the course and is strengthened during pupillage. Given the significant amount of time and energy dedicated to this area in training for the Bar, The Bar Council does not feel that the current training and assessment model is able to deliver these standards.

Further there are specific aspects of civil litigation that are either not included in the assessment outcomes and criteria or appear to have little emphasis given to them (i) written advocacy skills does not include draft of statements of case; (ii) pre action processes and requirements; (iii) cost management; (iv) appeals and (v) in the context of conduct and ethics an awareness of the importance of diversity and equality considerations.

Response from CILEx Regulation:

CILEX Chartered Legal Executive Litigators and Advocates and Chartered Legal Executive Advocates will undergo training and assessment mapped against that required by the SRA Standards for solicitor higher court advocates in criminal proceedings and Standards for solicitor higher court advocates in civil proceedings

Although not specifically written in the new Standards for Higher Rights Advocates (Civil Proceedings):

- (i) Draft statements of case
- (ii) Pre-action processes and requirements
- (iii) Cost management
- (iv) Appeals

Are part of the assessment outcomes and assessment criteria and again, have been fully mapped against the SRA equivalent standard

In terms of (v) conduct and ethics, the new Standards contain an entire unit focussed solely on conduct and ethics.

There were a number of comments from respondents that did not directly relate to the question being asked. These include:

- (a) 1 respondent stated 'N/A' and 1 confirmed they were unable to answer as they are a criminal advocate.
- (b) 1 respondent simply stated, 'Forced to provide an answer by the survey format'.

- (c) 1 comment related to the proposed transfer of CILEX regulator responsibilities to the SRA.
- (d) 1 suggested the development of an CILEx Regulation Intranet for members to use on a regular basis to keep refreshing their learning free of charge.
- (e) 1 member responded by asking if there was a consultation in relating to Higher Rights of Audience for conveyancing.

Q4: Are there any additional elements of the training and assessment that you believe should be included within the standards for CILEX higher court advocates in criminal proceedings?		
Yes	No	Did not answer
5	97	2

Comments from respondents who did not feel that there are any additional elements of training and assessment that should be included within the standards for CILEX higher court advocates in criminal proceedings include:

- 'As a Civil Attorney/Practitioner or Specialist Lawyer there are more experienced persons who are better able to comment in this area than myself. Suffice to say I do recognise there is an urgent need for CILEx Advocates with Higher Rights in criminal proceedings given the lack of available representation from elsewhere due to funding cuts. I accept there is an increasing and ever-growing policy or resource need for further Authorised Practitioners in this area and indeed a sense of urgency in terms of "Access to Justice" but again it must be quality over quantity and substance over form.'
- 2 'No' and 1 'N/A' responses.
- 'There are already enough elements.'
- 'Should mirror the qualification requirements that Solicitor Advocates need to undertake (cannot really comment as don't practice criminal law).'
- 'I think it sufficiently covers all.'

Comments from respondents who did feel that there are additional elements of training and assessment that should be included within the standard for the CILEX higher court advocates in criminal proceedings were as follows:

- 'In addition to the points raised above regarding the requirement for only 12 hours training, there should be a clearer delineation of the context of the Crown Court work as an advocate as opposed to that of the Magistrates' Court specialist.'
- 'All CILEX members should have experience of the EU law firms and Practice, and most importantly regulation.'

The above 2 comments both relate to the content of delivery of the new training and assessment standard, and this will be defined by the course provider(s) who decide to offer the qualification. CILEx Regulation's standard stipulates only the learning outcomes that must be covered and the criteria that must be assessed to judge competence.

'Civil proceedings and also how to represent cases in the High Court'. CILEx Regulation feels that this respondent appears to have misunderstood the question as there is a separate standard for Civil Proceedings as identified in Question 3 of the consultation.

There were a number of comments from respondents that did not directly relate to the question being asked. These include:

- (a) 1 respondent commented that they were unable to comment as they did not work in criminal.
- (b) 1 respondent simply stated, 'Forced to provide an answer by the survey format'.
- (c) 1 respondent stated that the advocacy course they attended is the exact same course as the solicitor's higher rights course.
- (d) 1 member responded by asking if there was a consultation in relating to Higher Rights of Audience for conveyancing.

Comments from The Bar Council

Trial advocacy is a high-level skill requiring academic, intellectual and vocational training. Practitioners need to have speed of thought, precision of language, and clarity of judgement. Those who are successful in qualifying as barristers through the existing route to the Bar gain those skills. They learn, for example, the need to make important decisions quickly, and get them right – whether that be in answering exam questions and justifying their answers, or in mock trials or mooting. The vocational aspect of the course is rigorous in its testing. It ensures that barristers can manage the pressurised situations that they will be facing in the course of adversarial litigation in the criminal courts. In criminal proceedings, situations are often emotionally as well as intellectually challenging, and barristers are expected to manage these stresses and act appropriately – in accordance with the duties to the court and to their clients. They are able to do this because it is a skill that is developed through the vocational component of the course and is strengthened during pupillage. Given the significant amount of time dedicated to this area, The Bar Council does not feel that CILEX's training and assessment model is able to deliver these standards.

CILEX Regulation response:

To gain Higher Rights of Audience, CILEX Practitioners and Chartered Legal Executives must have experience of litigation and advocacy prior to gaining permission to undertake the Advocacy course in their specialist area, attend and successfully complete the assessments contained within the Advocacy course and then practice advocacy for a minimum of 1 years before undertaking the standards for Higher Rights of Advocacy.

Q5: Do you foresee any issues with the revised Practitioner Authorisation Rules?		
Yes	No	Did not answer
16	87	2

Comments from respondents who did not foresee any issues with the revised Practitioner Authorisation Rules were as follows:

- 'I don't have a crystal ball. I am sure that these will need to be re-visited and adjusted as time moves forward however, they seem very suitable as a working but living document to get the ball rolling. They must not become static or rigid or set in stone and must be able to evolve and adapt to their surroundings with the passage of time and the growing and re-shaping needs of the legal marketplace in England & Wales.'
- 'No I believe no issues.'
- 'No but this is on the assumption that the MOJ are aware of the changes to rights of audience and do not require explanation from the practitioner every time they utilise their higher rights.'
- 'Any amendments will be necessary to assist/enable practitioners to obtain these rights and for CILEX REGULATION to regulate them.'
- 'CILEX REGULATION is sufficient to govern these changes.'

Comments from respondents who did foresee issues with the revised Practitioner Authorisation Rules were as follows:

- 'It will be necessary to make consequential amendments in relation to legislation which is configured to pre-existing post licensure rights which envisage only barrister and solicitor advocates.'
- 'Confusion on the 'rights' a CILEX practitioner will have if this goes ahead – needs to be made very clear to stop confusion within the industry.'

Both of the above comments are being addressed by CILEX (The Chartered Institute of Legal Executives) in their representative capacity.

- 'The revised PAR may become too complex.' CILEX shares this concern and undertakes regular reviews of all the rules to ensure they are as clear and understandable as possible which still meeting requirements.
- 'There should be exemptions/fast track applications for those with relevant qualifications e.g. BVC, BPTC or BTC'. CILEx Regulation has considered the merits of exemptions but this will be at the discretion of the individual course provider(s), who decide to offer the qualification, to identify what would provide exemption for the training element. However, all members wishing to achieve the Higher Rights of Audience qualification will need to successfully complete the identified assessments.

Comments from The Bar Council:

Yes.

CILEX' document is premised on the assertion, "*[a]s the legal sector evolves there's a growing demand for a new kind of lawyer – a specialist lawyer.*" A specialist lawyer is not a "new" kind of lawyer, they exist in every area of law. The Bar is made up entirely of specialist lawyers: specialists because of their core emphasis on advocacy, whether written or oral; and specialist because all will have fields of law in which they operate.

CILEX suggests that "*specialist lawyers are the future of law*". That may or may not be so, but if it is, then the Bar in its present form already provides such specialists. But like doctors, they are specialists who arrive at the specialism having had a lengthy training starting at the basics and honing their specialist skills through years of training.

There is no indication of what minimum standards are needed for CILEX practitioners to access Higher Rights, and how they will be fulfilled. One key issue is that there is limited reference made to the duty to the court and duty to the client which is fundamental in all Bar training and practice.

CILEX Regulation Response:

In terms of minimum standards for CILEX Practitioners and Chartered Legal Executives to access Higher Rights detailed in Rules 78 to 87 within the revised Practitioner Authorisation Rules and Rules 55-64.

Duty to the court and duty to the client are both integral components of the Conducts and Ethics unit built into both standards.

Comments from The Criminal Bar Association

Yes, we foresee serious issues with the revised Practitioner Authorisation Rules.

As mentioned above, the Revised Practitioner Authorisation Rules do not address the disparity in education, training, supervision and experience of other criminal advocates.

The CILEX document asserts "*[a]s the legal sector evolves there's a growing demand for a new kind of lawyer – a specialist lawyer.*" and "*specialist lawyers are the future of law*".

It is mistaken to suppose that a new class of specialist is required.

The Criminal bar are specialist lawyers; they specialise in criminal law, in particular advocacy, as the majority of their work relates to appearing in court. Anyone acquainted with the reality of legal practice in the UK will already know that it is highly specialised. The Bar alone comprises criminal, family, chancery, environment, copyright, commercial, immigration, landlord and tenant specialists (and others), as does our sister profession of solicitors. Like doctors, who also study train and are supervised for a number of years and who specialise in particular areas of medicine, Criminal barristers are specialists who achieve that specialism by devoting their time to criminal law.

There were a number of comments from respondents that did not directly relate to the question being asked. These include:

- (a) 1 'Maybe', 1 'Not known' and 1 'N/A'.
- (b) 1 respondent simply stated, 'Forced to provide an answer by the survey format'.
- (c) 1 respondent asked if the Practitioners had approved them.
- (d) 1 respondent commented 'If I were actively pursuing this, I would spend my time converting to be a solicitor and then a solicitor advocate as opposed to doing so with CILEX REGULATION'.

Q6: Do you agree that the application for Higher Rights of Audience should be restricted to those Chartered Legal Executives who hold both Litigation and Advocacy rights (CILEX Practitioners) and that those who hold only Advocacy rights (Chartered Legal Executive Advocates) would not be eligible to apply for Higher Rights of Audience?		
Yes	No	Did not answer
38	65	2

Comments from respondents who agree that the application for Higher Rights of Audience should be restricted to those Chartered Legal Executives who hold both Litigation and Advocacy rights (CILEX Practitioners) and that those who hold only Advocacy rights (Chartered Legal Executive Advocates) would not be eligible for Higher Rights of Audience as follows:

- ‘Without a pass in the associated Civil or Criminal Route Litigation rights assessment (such as a family or immigration specialist) it would not be possible to exercise advocacy rights before the higher courts. To do otherwise would result in a potential competence gap and a regulatory quality assurance gap.’
- ‘Because they miss that extra element of training their counterparts have and it doesn’t take much for them to be on the same level.’
- ‘Having both litigation and advocacy rights ensure that I am a well-rounded lawyer – this is a serious application and therefore applications at the highest levels should be met’.
- ‘It brings a greater standard of level and consistence of approach with others in the legal profession.’
- ‘Have seen comments that this isn’t necessary because Barristers don’t have the right to conduct litigation (but they can achieve it if they want) but any solicitor can achieve Higher Rights and so, to enable parity it should be restricted to those with appropriate litigation and advocacy rights (to be honest, don’t care really – just want to have these rights available!).’

Of the 64 respondents who did not agree that the application for Higher Rights of Audience should be restricted to those Chartered Legal Executives who hold both Litigation and Advocacy rights (CILEX Practitioners) and that those who hold only Advocacy rights (Chartered Legal Executive Advocates) would not be eligible to apply for Higher Rights of Audience, 27 commented. Comments include:

- ‘It is my experience as I am a European advocate that an advocate knows the law.’
- ‘Why should an existing advocate not wishing to conduct litigation on their own not be able to appear in a higher court. It is inconsistent with the existing restrictions (which only permit advocacy they work in a regulated law firm or in-house provided they do not offer services to the public or a section of the public).’
- ‘I believe that both Litigation and Advocacy are very similar in their approach to reaching an agreement and this should be open to both Litigation and Advocacy Legal Executives.’
- ‘It’s nonsense to require a good advocate to also be a litigator, even if they have no intention of ever conducting litigation. A barrister can appear in the Supreme Court without needing

to conduct litigation, and in many ways is banned from conducting litigation. This proposal is illogical and beyond my understanding.’

- ‘This will create a two-tier system within one discipline and there is no reasonable justification.’
- ‘Some matters before the higher courts do not rest heavily on litigation and so long as members feel they can adequately represent their client, litigation rights are not as fundamental as advocacy.’
- ‘By restricting those CILEX lawyer who have and have not Higher Rights of Audience will divide how CILEX lawyers as professionals are viewed in practice and devalue CILEX as a professional route for many choosing either to be Barristers, Solicitors or CILEX lawyers.’
- It is not clear to CILEX what regulatory risk is being mitigated or regulatory standard being compromised by making this requirement. Holders of Advocacy Rights often have many years’ experience of operating in the lower courts and, whilst it is not now possible to qualify with solely Advocacy Rights without also obtaining Litigation Rights (with the CPQ crystallising this approach for future CILEX Lawyers) and there is a general momentum being created to encourage current Advocacy Rights holders to seek to acquire Litigation Rights too, there is also a public interest argument in ensuring that suitably qualified CILEX members can acquire Higher Rights as soon as possible. There is a public interest behind enabling more lawyers to obtain Higher Rights to specifically assist in addressing the current court case backlogs by becoming Crown Prosecutors. If therefore the regulatory rationale for this proposed requirement is not clear enough, in terms of managing risk and meeting standards, then it may be disproportionately not in the public interest.

Based on the consultation responses regarding this question, CILEx Regulation, following lengthy consultation, have agreed to change the original proposal to allow Higher Rights of Audience to be available to both CILEX Practitioners and Chartered Legal Executive Advocates.

Comments from The Bar Council

No, because the Bar Council contents that none of the above should be eligible to apply for such rights.

The Bar requires consistent testing to ensure barristers are competent to delivery high quality advocacy to their clients. This is primarily emphasised through the vocational component and is supported by the Inns of Court. As a new Practitioner it is expected that a total of 45 hours’ worth of advocacy training must be undertaken by the end of the first three years of independent practice following the completion of the BTC and Pupillage. There is a significant amount of investment into developing these skills as a barrister, which is not currently addressed under CILEX’s training proposal. Until CILEX can demonstrate that they can deliver the same standard, The Bar Council does not support the application for Higher Rights of Audience to be administered to any CILEX practitioners.

Q7: Do you have any other comments?		
Yes	No	Did not answer
36	0	69

We received 34 other comments which include:

- (a) 12 comments stated 'No'
- (b) 6 comments were expressing respondent's enthusiasm for the proposal
- (c) The remaining comments were not directly related to the proposal, for example:
 - Proposed CILEX move to regulation by the SRA
 - Costs of proposed training
 - Lack of recognition of the Courts relating to the qualification of CILEX Lawyers etc.

Comments from The Bar Council

The CILEX proposals do not provide the training necessary to attain Higher Rights of Audience and properly practise at such a level.

The failure to provide specific and bespoke training and assessment for those practitioners who would wish to practice in the higher courts which deal with family and immigration cases is a material omission and demonstrates a fundamental lack of understanding and appreciation for the specialism of those areas.

In recognition of the demands of higher rights advocacy, the training for a practising barrister includes the following (subject to any exceptional waivers due to e.g. equivalent training received abroad):

Academic component

- Law degree or non-law degree plus graduate diploma in law (GDL).
- Degree covers seven foundations of legal knowledge.
- Minimum of 2:2 to be accepted onto a Bar vocational course.

Vocational component

- Bar vocational course
- Also must be part of an Inn and complete qualifying sessions before being called to the Bar.
- Qualifying sessions often educational e.g. aimed at improving advocacy/knowledge.

Pupillage

- Extremely competitive – successful candidates likely to have high academic attainment, prior advocacy experience, mini-pupillages etc.
- Must demonstrate competencies set out by BSB in Professional Statement:
 - Legal knowledge, skills and attributes
 - Practical knowledge skills and attributes i.e. good written and oral communication

- Advocacy
- Professional standards
- Personal values and standards
- Working with others
- Management of practice
- Allocated several experienced supervisors to mentor throughout pupillage.
- Frequent attendance at courts across all levels and range of practice areas.
- Likely to include not just shadowing but drafting, research, conferences etc.
- Own caseload in second six.

New Practitioner CPD

- For barristers who have held a practising certificate for less than three years.
- Must complete 45 hours of CPD within the three-year period.
- This must comprise of:
 - At least nine hours on advocacy; and
 - At least three hours on ethics.
- Advocacy and ethics courses provided by Inns of Court
- CPD must be recorded on New Practitioner Programme Record Card

Established Practitioner CPD

- For barristers who have held a practising certificate for more than three years.
- No minimum number of hours.
- Individual responsibility to decide what training is required.
- Four stage process:
- Review – required to prepare a written CPD plan setting out learning objectives and proposed activities for the year.
- Record – keep a written record of CPD activities over past three years, including reflections on CPD activities and any variation in plans and an assessment of future learning objectives.
- Reflect – reflect on planned and completed CPD activities to assess whether have met objectives.
- Report – declare annually to BSB that CPD has been completed when renewing practising certificate.

Examples of BSB approved CPD activities: formal training courses, conferences, listening to podcasts, seminars and webinars, reading and research, authorship and editing of published works of a professional nature, presenting seminars/lectures, teaching a relevant legal course.

The proposals from CILEX do nothing to demonstrate that those who meet them will be able to practise advocacy at the high levels needed. They do nothing to demonstrate that those who meet them will be able to make important decisions correctly and within a tight – often instantaneous – timeframe. They do nothing to demonstrate that those who meet them will have the intellectual ability to stand up for their client against those who have taken an established route to the Bar. They do nothing to demonstrate that an equivalent to the Barrister’s duty to the

court will have been deeply embedded in those so trained. Such skills and abilities are developed through the years of training in the established route to the Bar. Their purpose is to ensure that the standards of the profession remain high, and the quality of work provided to clients, and displayed in court, is maintained. For these reasons, The Bar Council's Education & Training Committee does not support the scheme proposed by CILEX.

What would be needed before it could be appropriate to grant higher rights to CILEX Members

If there were ever to be a move to extend higher rights of audience to CILEX members it would need to be supported by a much more careful analysis than has so far been proposed. That analysis would need to include a thorough and careful comparison of the content and form of the training and experience of (a) barristers, (b) solicitors with higher rates of audience, and (c) the present position of CILEX members and (d) the proposed additional training and qualification requirements for CILEX members seeking higher rights of audience. It would need to demonstrate that (c) plus (d) was equivalent to (a).

Nothing in the present proposal properly addresses this task.

If and when such an analysis had been performed, and if and when it were established that the necessary equivalence had been demonstrated, it would then be necessary to ask whether it would be better simply to require CILEX members who sought higher rights of audience to requalify either as barristers or solicitors, or to permit a system in which some proportion of CILEX members were able to acquire higher advocacy rights. The answer to that question is neither obvious nor straightforward and depends in part on assessing the potential confusion for consumers that might arise. But the second question does not arise on the present proposals because they do not come close to demonstrating equivalence.

Comments from The Criminal Bar Association

The critical question is whether the introduction of this cohort of advocates will serve the public interest and assist the courts and judges in fulfilling their 'overriding objective' of 'acquitting the innocent and convicting the guilty and dealing with a case efficiently and expeditiously'.

The CBA believes that these proposals mean that those with far less training will find themselves thrown into our specialist, fast moving Criminal courts. Risks of error in criminal cases can have the most devastating consequences resulting in the loss of liberty for individuals and additional distress for witnesses and victims. These proposals undermine the current standards of the Criminal advocate but also risk causing further delay in our Criminal courts where historic backlogs are being addressed as efficiently and quickly as possible.

Criminal barristers work the hours needed in the administration of justice and are dedicated to doing what is necessary to ensure justice is done. Independence from the need to meet the profit targets of a business fosters the independence that characterizes the Criminal Bar's ethos. They give unwelcome but accurate advice to whoever they represent based on deep knowledge of law and procedure derived from their training and career-long learning and experience.

Our independence is demonstrated by the fact that many barristers practice as both prosecutors and defenders. The duty to accept whatever brief arrives in the cab as it pulls up at the cab rank, whether it is to prosecute or defend helps maintain this independence and impartiality. This risks being compromised where advocates only conduct cases on behalf of their employer and have not been educated and trained to adhere to the demanding ethical standards of the Bar.

We remind those considering these proposals that independence of Criminal advocates and their good conduct is crucial to the functioning of an effective criminal justice system. The integrity of our criminal courts, and their legitimacy in the eyes of the public depends on elements that include: the independence of our Judiciary, safeguarding of human rights and the rule of law, provision of transparent and objective recourse and the maintenance of the highest ethical standards of legal professionals held to account by their professional bodies with the necessary serious disciplinary sanctions

The value to the integrity of our criminal justice system of independent advocates at the Criminal Bar, prosecuting and defending in our courts should be protected and not undermined. We point out that the UK State is required to take measures to strengthen integrity in our courts. Article 11 of the UN Convention against Corruption defines integrity as “the ability to resist corruption, fully respecting the core values of independence, impartiality, personal integrity, propriety, equality, competence and diligence.” (UNODC The Doha Declaration: Promoting a Culture of Lawfulness 9-10 7 April 2018). These values are identified in the Commission on Human Rights resolution 2003/43 on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers; and in resolution 2003/39 on the integrity of the judicial system.

Advocates with limited CILEX training are unlikely to be as effective and efficient in their role as those with much more training and supervision which will cause further delays in our already over-burdened system. With the backlog in criminal cases to address, lowering standards is not the answer. In fact to lower standards of advocates to address this need is both patronizing and short-sighted.

For all these reasons, the CBA does not support the scheme proposed by CILEX. That is not to say that CILEX members with the same qualifications, training, supervision and experience as Criminal barristers should be excluded as advocates, indeed they would be welcomed to the Criminal Bar. Half of entrants to the Criminal Bar are now women and BAME entrants are increasing in numbers, indeed some groups are over-represented compared to the general population. Funding is available to assist and support those with different backgrounds to come to the Criminal Bar. All who are motivated by a dedication to criminal justice and who are prepared to study, train and work hard to achieve the high standards required are welcome.