



## **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 Graduate 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 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) of the Chartered Institute in good standing" means a Fellow or Graduate 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 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 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 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 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 and Fellows wishing to take an advocacy skills course prescribed by CILEx Regulation. Where it does so, no Graduate 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 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 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 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 ADDITIONAL CERTIFICATES**

55. A Chartered Legal Executive Advocate may apply to be granted Advocacy Certificates additional to any already granted to him under these Rules.
56. Applications for additional Certificates may be made by Graduate 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. Applications will be considered by the Admissions and Licensing Committee.
58. 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. 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. 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. 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. 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 may not make an application until he becomes a Fellow.

63. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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 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 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 vulnerable<sup>1</sup>.

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<sup>1</sup> *\*In the Youth Proceedings Advocacy Review, one of the recommendations referred to:*



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*"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.

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>OPPOSED BAIL APPLICATION</b>		
PREPARATION	<ul style="list-style-type: none"> <li>▪ Undertake case analysis</li> <li>▪ Identify likely prosecution objections to bail</li> </ul>	10
CONTENT	<p>The application must:</p> <ul style="list-style-type: none"> <li>▪ Deal with each prosecution objection to bail in turn, arguing why the particular ground is not made out by reference to the relevant facts.</li> <li>▪ Suggest a package of sensible conditions where appropriate</li> <li>▪ Be legally and factually accurate</li> <li>▪ Have appropriate reference to legal sources</li> <li>▪ Use documents appropriately including the client's list of previous convictions where necessary</li> <li>▪ Observe the rules of professional conduct</li> </ul>	30
STRUCTURE	<ul style="list-style-type: none"> <li>▪ Clear and logical</li> <li>▪ Respond to the district judge's / magistrates' questions appropriately</li> </ul>	20
DELIVERY	<ul style="list-style-type: none"> <li>▪ Clear and fluent</li> <li>▪ Appropriate language, pace, volume and mannerisms</li> <li>▪ Referring to notes when required</li> </ul>	20
EFFECTIVE AND PERSUASIVE	The extent to which the application influences the court in relation to the grant of bail	20

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>OPENING SPEECH</b>		
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	<ul style="list-style-type: none"> <li>▪ Summarises legal principles involved</li> <li>▪ Indicates areas where a ruling may be necessary [if relevant]</li> </ul>	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	<ul style="list-style-type: none"> <li>▪ Speaks effectively (including not reading from a prepared text)</li> <li>▪ Maintains suitable court room demeanour</li> <li>▪ Avoids overstating case</li> <li>▪ Deals appropriately with any conduct issues</li> </ul>	25

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>LEGAL SUBMISSIONS</b>		
PREPARATION	<ul style="list-style-type: none"> <li>▪ Undertake case analysis</li> <li>▪ Perform appropriate legal research</li> </ul>	10
CONTENT	<p>The application / response must:</p> <ul style="list-style-type: none"> <li>▪ Be appropriate and relevant</li> <li>▪ Be legally, procedurally, evidentially and factually accurate</li> <li>▪ Reference to legal sources</li> <li>▪ Use documents where necessary</li> <li>▪ Observe the rules of professional conduct</li> </ul>	30
STRUCTURE	<ul style="list-style-type: none"> <li>▪ Clear and logical</li> <li>▪ Respond to the district judge's / magistrates' questions</li> <li>▪ Respond to points raised by the prosecution / defence</li> </ul>	20
DELIVERY	<ul style="list-style-type: none"> <li>▪ Clear and fluent</li> <li>▪ Appropriate language, pace, volume and mannerisms</li> <li>▪ Referring to notes when required</li> </ul>	20
EFFECTIVE AND PERSUASIVE	The extent to which the application / response influences the court to find for the accused / prosecution	20

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>EXAMINATION-IN-CHIEF</b>		
WITNESS DETAILS	Name, address, occupation [leading or non-leading]	5
DIRECTIONS	Where to direct answers, clarity and pace	10
EVIDENCE	<ul style="list-style-type: none"> <li>▪ Develops in a chronological/logical order</li> <li>▪ Covers all relevant issues on which the witness is required and able to comment</li> <li>▪ Anticipates matters likely to be raised in xx</li> <li>▪ Produces exhibits/documents appropriately</li> </ul>	50
CONCLUDES	Appropriate "out" line including direction to witness to remain for xx	5
GENERAL	<ul style="list-style-type: none"> <li>▪ Appropriate range of non-leading questions</li> <li>▪ Speaks effectively (including not reading from a prepared text)</li> <li>▪ Maintains suitable court room demeanour</li> <li>▪ Deals appropriately with any conduct issues</li> </ul>	30

ACTIVITY	CRITERIA	WEIGHTING %
<b>CROSS-EXAMINATION</b>		
TECHNIQUES	<ul style="list-style-type: none"> <li>▪ Leading questions to control witness</li> <li>▪ Short questions that witness understands</li> <li>▪ Asks one question at a time</li> <li>▪ Listens to witnesses answers and makes appropriate notes</li> <li>▪ Avoids: Making statements; asking too many questions; introducing irrelevant material; inadvertently attacking the witness's character (if this has implications for bad character evidence); misquoting witness; echoing witness' reply inappropriately</li> </ul>	<p>10 10 10 10 10</p>
OBJECTIVES	<p>Does the advocate achieve the following objectives where appropriate:</p> <ul style="list-style-type: none"> <li>▪ Obtains favourable information from the witness</li> <li>▪ Demonstrates that the witness is wrong (mistaken/lying)</li> <li>▪ Undermines the witnesses' credibility</li> <li>▪ Puts the accused's / prosecution's case to the witness</li> </ul>	30
GENERAL	<ul style="list-style-type: none"> <li>▪ Appropriate range of leading questions</li> <li>▪ Speaks effectively (including not reading from a prepared text)</li> <li>▪ Maintains suitable court room demeanour</li> <li>▪ Deals appropriately with any conduct issues</li> </ul>	20



<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>CLOSING SPEECH</b>		
ISSUES	Identifies the outstanding issues	20
EVIDENCE	Summarises the evidence appropriately by highlighting the points which <ul style="list-style-type: none"> <li>▪ Strengthen accused's case</li> <li>▪ Weaken prosecution 's case</li> </ul> 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	<ul style="list-style-type: none"> <li>▪ Speaks effectively (including not reading from a prepared text)</li> <li>▪ Maintains suitable court room demeanour</li> <li>▪ Avoids giving evidence/introducing new matters</li> <li>▪ Responding appropriately to any questions / concerns of the court</li> <li>▪ Deals with any conduct issues</li> </ul>	30

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>PLEA IN MITIGATION</b>		
PREPARATION	<ul style="list-style-type: none"> <li>▪ Identifies likely sentence</li> <li>▪ Appropriate objective(s)</li> </ul>	10
CONTENT	<p>The mitigator must:</p> <ul style="list-style-type: none"> <li>▪ Highlight relevant mitigation relating to the commission of the offence</li> <li>▪ Highlight relevant mitigation relating to the offender's personal circumstances</li> <li>▪ Recommend a realistic sentence (taking into account sentencing guidelines)</li> <li>▪ Reference to legal authority where appropriate</li> <li>▪ Use documents where necessary including record of previous convictions and pre-sentence report</li> <li>▪ Observe the rules of professional conduct</li> </ul>	40
STRUCTURE	<ul style="list-style-type: none"> <li>▪ Clear and logical</li> <li>▪ Respond to the district judge's / magistrates' questions</li> </ul>	10
DELIVERY	<ul style="list-style-type: none"> <li>▪ Clear and fluent</li> <li>▪ Appropriate language, pace, volume and mannerisms</li> <li>▪ Maintains suitable court room demeanour</li> </ul>	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.