



**Joint Advocacy Group consultation on regulatory changes to support the Quality Assurance Scheme for Advocates (Crime)**

## **The Joint Advocacy Group**

The Joint Advocacy Group (JAG) which comprises the Bar Standards Board (BSB), the Solicitors Regulation Authority (SRA) and ILEX Professional Standards (IPS) as the principal regulators of legal advocacy, was established in October 2009 to develop a scheme for the quality assurance of advocates.

JAG comprises representatives from each of the three regulators. JAG's terms of reference are

- to develop, consult upon and implement common standards of advocacy,
- to build on existing quality assurance arrangements and advocacy expertise,
- to develop a proportionate and consistent means to ensure that advocates meet and maintain those standards in the public interest,
- to report its findings to its respective regulatory boards and committees.

## **The Quality Assurance Scheme for Advocates (Crime) (QASA)**

In developing the scheme, JAG has conducted two earlier consultations; the first on the proposed advocacy standards and the second in July-October 2010 on the proposed design and structure of the scheme. JAG has submitted, through the three regulators, full details of the QASA proposals to the Legal Services Board. It is expected that the proposals will be implemented with effect from December 2011 and the proposed scheme have the following key features.

- A single set of standards applying to advocates, and which identifies the skills and behaviours expected of a criminal advocate. The standards are a mandatory requirement for the practice of criminal advocacy.
- A statement of standards for advocacy with four levels, and advocates can be assessed, accredited and certified at any of these levels, and progress through the levels, by means of assessment either by
  - assessment organisation or
  - judicial evaluation.
- The levels are connected, through guidance developed by JAG, to levels of cases. The usual expectation will be that advocates will not undertake work at a level higher than that at which they are certified but there will be circumstances in which the parties will agree that the level of advocate required for a case does not need to accord with the level of case.

- Advocates who remain at the same level for a prolonged period will be required to be recredited after five years of practice at that level. Advocates who, after five years, are not recredited or have not progressed to a higher level will not be able to exercise their rights of audience in criminal proceedings until they have reconfirmed their competence to do so.

Additionally, in respect of level 1:

- As the entry point into the scheme, each regulator's education and training pathway will prepare each advocate to meet the level 1 standard as the entry point into qualification.
- For recreditation, advocates who are conducting level 1 advocacy must evidence that, over the period of accreditation, they have demonstrated that they still meet the level 1 standard by the means specified by their regulator.

The purpose of this consultation is to set out the proposed amendments which are required to embed the scheme within the regulatory framework. We seek your views on these. It is inevitable that, over time, the structure of the scheme will be evaluated and reviewed. The amendments to the regulations within this consultation have been drafted to enable that to be a fluid process which does not require further changes to these underpinning regulations.

The body of this consultation consists of three discrete sections, showing, respectively, the necessary changes to the regulatory framework for the SRA, for the IPS and the BSB.

The changes needed are different in respect of each regulator, as they are embedding QASA within different regulatory frameworks. The style of each section, and the questions asked, are therefore different in order to reflect this.

## **How to respond**

### **By email**

1. Download and save the editable [Word document](http://www.sra.org.uk/sra/consultations/qasa-regulatory-changes.page#download) at [www.sra.org.uk/sra/consultations/qasa-regulatory-changes.page#download](http://www.sra.org.uk/sra/consultations/qasa-regulatory-changes.page#download)

Enter your responses in the editable fields provided after each question, and send the document as an email attachment to [tim.pearce@sra.org.uk](mailto:tim.pearce@sra.org.uk).

2. Please also attach a completed [About you form](http://www.sra.org.uk/sra/consultations/qasa-regulatory-changes.page#download), available to download at [www.sra.org.uk/sra/consultations/qasa-regulatory-changes.page#download](http://www.sra.org.uk/sra/consultations/qasa-regulatory-changes.page#download).

Alternatively, email [tim.pearce@sra.org.uk](mailto:tim.pearce@sra.org.uk), quoting the question numbers you are responding to—please also attach a completed "About you" (see above).

### **By post**

You can also print this PDF, manually write your comments in the boxes provided and post to

Tim Pearce  
Education and Training Unit  
Solicitors Regulation Authority  
Ipsley Court  
Berrington Close  
Redditch  
B98 0TD

Please also send a completed About you form.

### **Deadline for this consultation**

Please send your response by **26 September 2011**.



**Proposed SRA regulatory changes**

## **Proposed SRA Handbook regulatory changes**

The SRA has set out the proposed changes to the SRA Handbook in two ways.

Firstly, each key feature of the QASA scheme—as listed 1-6 in the Introduction above—is set out, followed by a small number of other consequential amendments set out at 7. Each key feature is accompanied by the proposed amendments to the SRA Handbook and questions.

Secondly, all the amendments are attached in the order in which they appear in the SRA Handbook, to allow you to have an overview of all the amendments together.

The amendments are shown as follows: portions of text added to the regulatory requirements are shown in blue and underlined; deletions are in red and crossed out.

Finally, you may wish to note that the SRA will be consulting separately on a simultaneous but unrelated proposed amendment to its Higher Rights of Audience regulations, with the aim of removing an anomaly in relation to domestic and international advocates. That consultation will appear on the SRA website at [www.sra.org.uk/consultations](http://www.sra.org.uk/consultations)

1. **The scheme proposes a single set of standards applying to advocates which identifies the skills and behaviours expected of a criminal advocate. The standards are a mandatory requirement for the practice of criminal advocacy.**

*SRA amendments*

The following amendments to the SRA Higher Rights of Audience Regulations [2011], which as amended become the SRA Advocacy and Higher Rights of Audience Regulations (SAHRAR), ensure that compliance with the QASA requirements is mandatory for solicitor advocates appearing in criminal proceedings. Note that within the amended regulations, the terms "SAHRAR" "QASA", "JAG" and "statement of standards" will be defined by the Glossary to the SRA Handbook - see 7. (other consequential amendments) below.

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## **SRA Advocacy and Higher Rights of Audience Regulations [2011]**

### **Preamble**

**Authority:** Made on the [the date of the approval of the Legal Services Board] by the Solicitors Regulation Authority Board under sections 2, 79 and 80 of the Solicitors Act 1974 with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007

**Date:** These regulations came into force on [\[date in force\]](#)

**Replacing:** Solicitors' Higher Rights of Audience Regulations 2010

**Regulating:** The qualifications [and certification](#) that solicitors and RELs require to [conduct advocacy in criminal proceedings and to](#) exercise rights of audience in the higher courts in England and Wales.

### **Overview**

Outcomes-focused regulation concentrates on providing positive outcomes which when achieved will benefit and protect *clients* and the public. These regulations aim to ensure that *solicitors* and *RELs* who want to exercise rights of audience in ~~the higher courts of~~ England and Wales are competent to do so.

*Solicitors* and *RELs* are granted rights of audience in all courts upon qualification/registration but:

- [must, in criminal proceedings, exercise those rights of audience only where certified under the QASA; and](#)

## Solicitors Regulation Authority – proposed changes

- cannot exercise those rights [of audience](#) in the *higher courts* until they have complied with additional requirements.

We are required to set the education and training requirements which *you* must comply with in order for these rights to be used [in advocacy and in the higher courts](#). These regulations describe the [certification and](#) qualifications available, where rights can be transferred, and set out the process for eligibility to exercise rights of audience in the *higher courts*.

The intention is to give the public confidence that *solicitor* ~~higher-court~~ advocates have met the appropriate standards and adhere to the relevant *Principles*.

### The Principles

These regulations form part of the Handbook, in which the 10 mandatory *Principles* are all-pervasive. They apply to all those *we* regulate and to all aspects of practice. Outcomes relevant to these regulations are listed beneath *the Principles*.

*You* must:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow *your* independence to be compromised;
4. act in the best interests of each *client*;
5. provide a proper standard of service to *your clients*;
6. behave in a way that maintains the trust the public places in *you* and in the provision of legal services;
7. comply with *your* legal and regulatory obligations and deal with *your* regulators and ombudsmen in an open, timely and co-operative manner.
8. run *your* business or carry out *your* role in the business effectively and in accordance with proper governance and sound financial and risk management principles;
9. run *your* business or carry out *your* role in the business in a way that encourages equality of opportunity and respect for diversity;
10. protect *client money* and *assets*.

### Outcomes

The outcomes which apply to these regulations are that:

- O(AHR1)** *you* have achieved the standard of competence required [for advocacy in criminal proceedings, or](#) of *higher courts* advocates;
- O(AHR2)** *you* demonstrate this competence through objective assessment;
- O(AHR3)** *you* maintain competence through relevant ongoing training; and
- O(AHR4)** *you* act so that *clients*, the judiciary and the wider public, have confidence that ~~this has~~ [Outcomes O\(AHR1\) – O\(AHR3\) have been](#) demonstrated.

These outcomes, and the regulations that flow from them, apply to admitted *solicitors*, and *RELS*.

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**Regulation 2. Advocacy in criminal proceedings**

- (1) You must be certified by us under the QASA in order to undertake advocacy in criminal proceedings.

...

Guidance note:

As solicitor or REL you have full rights of audience in criminal proceedings below Crown Court level. However, in accordance with SRA Principle 5, we require those rights to be exercised only where we certify your competence, under QASA, against standards which we set under section 27(2)(a)(ii) of the Courts and Legal Services Act 1990.

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- **Q 1.01** Please comment on these amendments in respect of any impacts you foresee on the interests of the proper administration of justice and the rule of law, or on the public interest.

- **Q 1.02** Please add any other comments you may have on these amendments.

2. **The scheme proposes a statement of standards for advocacy, with four levels, and advocates can be assessed, accredited and certified at any of these levels, and progress through the levels, by means of assessment either by:**
- **assessment organisation or**
  - **judicial evaluation.**

The following amendments to the SRA Training Regulations [2011] Part 1 - Qualification Regulations and the (titled as amended) SAHRAR incorporate into the SRA's regulatory framework the requirements under QASA relating to the statement of standards.

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## **SRA Training Regulations [2011] Part 1 – Qualification Regulations**

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### **Outcomes**

The outcomes which apply to these regulations are that, if you qualify as a solicitor, you:

O(TR1) will have achieved and demonstrated a standard of competence appropriate to the work *you* are carrying out. [In respect of criminal advocacy, this standard of competence is specified under the QASA by the \*statement of standards\*;](#)

...



## SRA [Advocacy and Higher Rights of Audience Regulations \[2011\]](#)

### [Regulation 2. Advocacy in criminal proceedings](#)

...

(2) [In order to be certified at any criminal advocacy level, you must be assessed against the \*statement of standards\* by means of an assessment framework approved by us.](#)

### [Regulation 9. Assessments](#)

- (1) We shall:
- (i) issue guidelines and *standards* for the provision of competence assessments in *higher courts* civil advocacy and *higher courts* criminal advocacy, [and assessment against the \*statement of standards\* by means of an assessment framework approved by us;](#)
  - (ii) validate and authorise organisations to provide assessments; and
  - (iii) monitor the provision of assessments.

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► Q 1.03 Please comment on these amendments in respect of any impacts you foresee on the interests of the proper administration of justice and the rule of law, or on the public interest.

► Q 1.04 Please add any other comments you may have on these amendments.

3. The scheme proposes that the levels are connected, through guidance developed by JAG, to levels of cases. The usual expectation will be that advocates will not undertake work at a level higher than that at which they are certified but there will be circumstances in which the parties will agree that the level of advocate required for a case does not need to accord with the level of case.

The following amendment to the guidance to the (titled as amended) SAHRAR explain this expectation within the SRA's regulatory framework.

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## **SRA Advocacy and Higher Rights of Audience Regulations [2011]**

### **Regulation 2. Advocacy in criminal proceedings**

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*Guidance note*

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*In order to ensure competent performance, the usual expectation is that advocates will not undertake work at a level higher than that at which they are certified. However, there may be circumstances in which the parties will agree that the level of advocate required for a case does not need to accord with the level of case.*

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► **Q 1.05** Please comment on this amendment in respect of any impacts you foresee on the interests of the proper administration of justice and the rule of law, or on the public interest.

► **Q 1.06** Please add any other comments you may have on this amendment.

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4. **The scheme proposes that advocates who remain at the same level will be required to be reaccredited after 5 years of practice at that level. Advocates who, after 5 years, are not reaccredited or have not progressed to a higher level will not be able to exercise their rights of audience in criminal proceedings without reconfirming their competence to do so.**

The following amendment to the (titled as amended) SAHRAR incorporate into the SRA's regulatory framework the reaccreditation requirements under QASA.

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## **SRA [Advocacy and Higher Rights of Audience Regulations \[2011\]](#)**

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### **[Regulation 2. Advocacy in criminal proceedings](#)**

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- (3) [Certification of an advocate by us at any level of criminal advocacy under QASA lasts for a period of five years. At the end of that period, you must not undertake advocacy in criminal proceedings unless you are re-certified by us under the QASA.](#)

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► **Q 1.07** Please comment on this amendment in respect of any impacts you foresee on the interests of the proper administration of justice and the rule of law, or on the public interest.

► **Q 1.08** Please add any other comments you may have on this amendment.

**5. The scheme proposes that as the entry point into the scheme, each regulator's education and training pathway will prepare each advocate to meet the level 1 standard as the entry point into qualification**

The following changes are proposed to elements of the SRA's education and training pathways, as follows:

- The Practice Skills Standards
- The Professional Skills Course Outcomes
- The Day One Outcomes, which are used as the basis for the assessment of transferring lawyers under the Qualified Lawyers' Transfer Scheme.



## **Practice Skills Standards**

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### **Advocacy and Oral Presentation**

On completing the training contract, trainee solicitors should be competent to exercise the rights of audience available to solicitors on admission. Their experience will enable them to understand:

- the communication skills of the advocate;
- the techniques and tactics of examination, cross-examination and re-examination;
- the need to act in accordance with the ethics, etiquette and conventions of the professional advocate.
- [equality and diversity principles in the context of advocacy, recognising the needs and circumstances of clients and acting accordingly, and treating clients, colleagues and parties fairly and without unlawful discrimination.](#)

The tasks trainees perform must enable them to grasp the principal skills required to prepare, conduct and present a case:

- identifying the client's goals; [taking all reasonable steps to help the lay client understand the process, and recording the decision making process.](#)
- identifying and analysing relevant factual and legal issues, and relating them to one another ;
- summarising the strengths and weaknesses of the case;
- planning how to present the case;
- outlining the facts in simple narrative form;

## Solicitors Regulation Authority – proposed changes

- formulating a coherent submission based on the facts, general principles and legal authority in a structured, concise and persuasive manner
- [assisting the court on sentencing, and conducting effective pleas in mitigation.](#)

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### Professional Skills Course Outcomes

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#### Advocacy and Communication Skills

In the context of a civil and a criminal case:

- use language appropriate to the client, witness(es) and triers of fact and law;
- listen, observe and interpret the behaviour of triers of fact and law, clients, witnesses and other advocates and be able to respond to this behaviour as appropriate;
- speak and question effectively and thereby competently use appropriate presentation skills to open and close a case;
- use a variety of questioning skills to conduct examination in chief, cross examination and re-examination;
- prepare and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner;
- present a submission as a series of propositions based on the evidence;
- organise and present evidence in a coherent and organised form.
- [assists the court on sentencing, and conducts effective pleas in mitigation.](#)
- [takes all reasonable steps to help the lay client understand the process, and records the decision making process.](#)
- [has a demonstrable understanding of equality and diversity principles, recognises the needs and circumstances of clients and acts accordingly, and treats clients, colleagues and parties fairly and does not discriminate unlawfully against them.](#)

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## Day One Outcomes

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### **Outcome D6: Ability to Advocate A Case 4 on Behalf of A Client**

Understand basic skills in presentation of cases before courts and tribunals;

Ability to formulate and present a coherent submission

Should be able to:

- understand the importance of preparation and the best way to undertake it;
- understand the basic skills in the presentation of cases before courts and tribunals;
- be able to formulate and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner.

### **Element 1: Case Analysis and Preparation**

Should be able to:

- identify and analyse the relevant facts, the legal context in which the factual issues arise, and how they relate to each other;
- summarise the strengths and weakness of the case from each party's perspective;
- prepare the legal framework of the case, and a simple narrative outline of the facts;
- prepare the submission as a series of propositions based on the evidence;
- identify, analyse and assess the purpose and tactics of examination, cross-examination and re-examination to adduce, rebut and clarify evidence;
- [take all reasonable steps to help the lay client understand the process, and records the decision making process.](#)
- [demonstrate understanding of equality and diversity principles, recognising the needs and circumstances of clients and acting accordingly, treating clients, colleagues and parties fairly and without unlawful discrimination.](#)

### **Element 2: Oral Presentations**

Should be able to:

- identify, analyse and assess the specific communication skills and techniques employed by a presenting advocate;
- [use language appropriate to the client, witness\(es\) and triers of fact and law](#)
- [speak and question effectively and thereby competently using appropriate presentation skills to open and close a case and use a variety of questioning skills to conduct examination in chief, cross examination and re-examination.](#)

## Solicitors Regulation Authority – proposed changes

- [listen, observe and interpret the behaviour of triers of fact and law, clients, witnesses and other advocates and be able to respond to this behaviour as appropriate.](#)
- [assist the court on sentencing, and conduct effective pleas in mitigation.](#)
- demonstrate an understanding of the ethics, etiquette and conventions of advocacy.

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The transition period before newly qualified solicitors have followed these potentially revised pathways is explained in the following guidance note to Regulation 12 of the SAHRAR.

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### **SRA [Advocacy and Higher Rights of Audience Regulations \[2011\]](#)**

#### **[Regulation 12. Transitional arrangements](#)**

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##### Guidance note:

From the coming into force of these regulations, you may, as a solicitor or REL, only undertake advocacy in criminal proceedings at level 1 of the statement of criminal advocacy standards from the point at which you are certified by us.

From the time at which training related to the statement of criminal advocacy standards is incorporated into the training and qualification standards and processes under Part 1 of the Training Regulations, solicitors and RELs qualifying under that process will not require additional certification at level 1. They will be able to conduct advocacy in criminal proceedings at level 1 from their date of qualification until either they progress to a higher level or their certification at level 1 lapses, whichever is sooner.

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► **Q 1.09** Please comment on these amendments in respect of any impacts you foresee on the interests of the proper administration of justice and the rule of law, or on the public interest.

► **Q 1.10** Please add any other comments you may have on these amendments.

6. The scheme proposes that for reaccreditation, advocates who are conducting level 1 advocacy must evidence that, over the period of accreditation, they have demonstrated that they still meet the level 1 standard by means of assessed advocacy Continuing Professional Development (CPD) as specified by their regulator.

The following amendment to the SAHRAR, and to a guidance note to Regulation 3 of the SRA Training Regulations [2011] Part 3 - CPD Regulations, implement the CPD requirements relating to certification at level 1 under QASA.

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## SRA Training Regulations [2011] Part 3 – CPD Regulations

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### 3. Basic CPD requirement

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#### **Guidance note**

*Any hours accrued over and above the 16 hours per year minimum cannot be carried over to the next CPD year.*

*Separate legislation may detail further CPD requirements. For example, in order to be able to continue to exercise the relevant rights of audience, [the SAHRAR require that:](#)*

- *[if you are undertaking advocacy in criminal proceedings at level 1 of the QASA you must demonstrate to us your continuing competence by meeting the requirements for assessed advocacy CPD specified under the QASA during the five-year period following certification and preceding re-certification; and](#)*
- *[if you are undertaking advocacy in the higher courts, you must complete five hours of the annual CPD requirement relating to the provision of advocacy services in the higher courts in each of the first five CPD years following the grant of the higher rights qualification.](#)*

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## SRA [Advocacy and Higher Rights of Audience Regulations \[2011\]](#)

### **10. Continuing professional development**

- [\(1\)](#) If you are undertaking advocacy in criminal proceedings at level 1 of the QASA you must demonstrate to us your continuing competence by meeting the requirements for assessed advocacy CPD specified under the QASA during the five-year period following certification and preceding re-certification.
- [\(2\)](#) If you have gained a *higher courts advocacy qualification* under regulation 3(1), you must undertake at least five hours of CPD relating to the provision of advocacy services in the *higher courts* in each of the first five CPD years following the grant of the qualification.
- [\(3\)](#) If you have gained a *higher courts advocacy qualification* under regulation 5(1) or are exercising any right of audience in the *higher courts* by virtue of any exemption you have under regulation 6, you must undertake at least five hours of CPD relating to the provision of advocacy services in the *higher courts* in each of the first five CPD years following the date of your first exercise of the right.

#### **Guidance note**

The requirements in regulation [10\(2\)](#) and [10\(3\)](#) are not an additional requirement to that required by the SRA Training Regulations Part 3 - CPD Regulations.

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► Q 1.11 Please comment on these amendments in respect of any impacts you foresee on the interests of the proper administration of justice and the rule of law, or on the public interest

► Q 1.12 Please add any other comments you may have on these amendments

## 7. Other consequential amendments

Text has been added to a reference in the SAHRAR Regulation 11, which is specific to higher rights of audience and does not relate to QASA, to make that specific application clear.

The Glossary to the SRA Handbook includes new defined terms relating to QASA.

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## SRA [Advocacy and Higher Rights of Audience Regulations \[2011\]](#)

### [11. Applications and reviews](#)

- (1) You shall make an application [for higher rights of audience](#) under *these regulations* in the manner prescribed by *us* and accompanied by the appropriate fee fixed from time to time.



## SRA Handbook - Glossary

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### ["JAG"](#)

[means the Joint Advocacy Group established by the SRA, the BSB and ILEX Professional Standards;](#)

...

### ["QASA"](#)

[means the Quality Assurance Scheme for Advocates \(Crime\);](#)

...

### ["SAHRAR"](#)

[means the SRA Advocacy and Higher Rights of Audience Regulations \[2011\];](#)

...

### ["statement of standards"](#)

[means the statement of standards developed by JAG and used under QASA as the standard against which the competence of advocates is assessed;](#)

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**► Q 1.13** Please comment on these amendments in respect of any impacts you foresee on the interests of the proper administration of justice and the rule of law, or on the public interest.

**► Q 1.14** Please add any other comments you may have on these amendments.

The following proposed changes to the Handbook and other regulatory materials, previously set out in the order in which they relate to the key features of QASA, are here presented in the order in which they appear in the SRA Handbook, followed by the other regulatory materials.

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## **SRA Training Regulations [2011] Part 1 – Qualification Regulations**

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### **Outcomes**

The outcomes which apply to these regulations are that, if you qualify as a solicitor, you:

O(TR1) will have achieved and demonstrated a standard of competence appropriate to the work *you* are carrying out. [In respect of criminal advocacy, this standard of competence is specified under the QASA by the \*statement of standards\*;](#)

...



## SRA Training Regulations [2011] Part 3 – CPD Regulations

...

### 3. Basic CPD requirement

...

**Guidance note:**

*Any hours accrued over and above the 16 hours per year minimum cannot be carried over to the next CPD year.*

*Separate legislation may detail further CPD requirements. For example, in order to be able to continue to exercise the relevant rights of audience, [the SAHRAR require that:](#)*

- *[if you are undertaking advocacy in criminal proceedings at level 1 of the QASA you must demonstrate to us your continuing competence by meeting the requirements for assessed advocacy CPD specified under the QASA during the five-year period following certification and preceding re-certification; and](#)*
- *[if you are undertaking advocacy in the higher courts, you must complete](#) five hours of the annual CPD requirement relating to the provision of advocacy services in the higher courts in each of the first five CPD years following the grant of the higher rights qualification.*



## **SRA Advocacy and Higher Rights of Audience Regulations [2011]**

### **Preamble**

**Authority:** Made on the [the date of the approval of the Legal Services Board] by the Solicitors Regulation Authority Board under sections 2, 79 and 80 of the Solicitors Act 1974 with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007

**Date:** These regulations came into force on [\[date in force\]](#)

**Replacing:** Solicitors' Higher Rights of Audience Regulations 2010

**Regulating:** The qualifications [and certification](#) that solicitors and RELs require to [conduct advocacy in criminal proceedings and to](#) exercise rights of audience in the higher courts in England and Wales.

### **Overview**

Outcomes-focused regulation concentrates on providing positive outcomes which when achieved will benefit and protect *clients* and the public. These regulations aim to ensure that *solicitors* and *RELs* who want to exercise rights of audience in ~~the higher courts of~~ England and Wales are competent to do so.

*Solicitors* and *RELs* are granted rights of audience in all courts upon qualification/registration but:

- [must, in criminal proceedings, exercise those rights of audience only where certified by us in accordance with the QASA; and](#)
- cannot exercise those rights [of audience](#) in the *higher courts* until they have complied with additional requirements.

We are required to set the education and training requirements which *you* must comply with in order for these rights to be used [in advocacy in criminal proceedings and in the higher courts](#). These regulations describe the [certification and](#) qualifications available, where rights can be transferred, and set out the process for eligibility to exercise rights of audience in the *higher courts*.

The intention is to give the public confidence that *solicitor higher-court* advocates have met the appropriate standards and adhere to the relevant *Principles*.

### **The Principles**

These regulations form part of the Handbook, in which the 10 mandatory *Principles* are all-pervasive. They apply to all those we regulate and to all aspects of practice. Outcomes relevant to these regulations are listed beneath *the Principles*.

*You* must:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow *your* independence to be compromised;
4. act in the best interests of each *client*;
5. provide a proper standard of service to *your clients*;
6. behave in a way that maintains the trust the public places in *you* and in the provision of legal services;
7. comply with *your* legal and regulatory obligations and deal with *your* regulators and ombudsmen in an open, timely and co-operative manner.
8. run *your* business or carry out *your* role in the business effectively and in accordance with proper governance and sound financial and risk management principles;
9. run *your* business or carry out *your* role in the business in a way that encourages equality of opportunity and respect for diversity;
10. protect *client money* and *assets*.

## Outcomes

The outcomes which apply to these regulations are that:

- O(AHR1)** *you* have achieved the standard of competence required [for advocacy in criminal proceedings, or](#) of *higher courts* advocates;
- O(AHR2)** *you* demonstrate this competence through objective assessment;
- O(AHR3)** *you* maintain competence through relevant ongoing training; and
- O(AHR4)** *you* act so that *clients*, the judiciary and the wider public, have confidence that ~~this has~~ [Outcomes O\(AHR1\) – O\(AHR3\) have been demonstrated.](#)

These outcomes, and the regulations that flow from them, apply to admitted *solicitors*, and *REs*.

## 1. Interpretation and definitions

Unless the context otherwise requires, the definitions and interpretation provisions as set out within the SRA Glossary shall apply to these regulations.

## 2. Advocacy in criminal proceedings

- (1) [You must be certified by us under the QASA in order to undertake advocacy in criminal proceedings.](#)
- (2) [In order to be certified at any criminal advocacy level, you must be assessed against the \*statement of standards\* by means of an assessment framework approved by us.](#)
- (3) [Certification of an advocate by us at any level of criminal advocacy under QASA lasts for a period of five years. At the end of that period, you must not undertake advocacy in criminal proceedings unless you are re-certified by us under the QASA.](#)

### **Guidance note**

[As solicitor or REL you have full rights of audience in criminal proceedings below Crown Court level. However, in accordance with SRA Principle 5, we require those rights to be exercised only where we certify your competence, under QASA, against standards which we set under section 27\(2\)\(a\)\(ii\) of the Courts and Legal Services Act 1990.](#)

*In order to ensure competent performance, the usual expectation is that advocates will not undertake work at a level higher than that at which they are certified. However, there may be circumstances in which the parties will agree that the level of advocate required for a case does not need to accord with the level of case.*

### **3. Rights of audience in the higher courts**

Subject to the provisions of these regulations *you* may be authorised by *us* to exercise rights of audience in the *higher courts*.

#### **Guidance note:**

*As a solicitor or REL you already have full rights of audience in Tribunals, Coroners' Courts, Magistrates' Courts, County Courts and European Courts. ~~A qualification in An application~~ ~~for~~ higher rights of audience allows you to also appear, subject to which qualification you obtain, in proceedings in the Crown Court, High Court, Court of Appeal and Supreme Court, and the criminal advocacy qualification certifies you under the QASA at level 2 of the statement of standards.*

### **4. Qualifications to exercise extended rights of audience**

- (1) If *you* meet the requirements of these regulations in respect of higher rights of audience, we may grant one or both of the following qualifications, which authorise *you* to conduct advocacy in the *higher courts*:
  - (a) Higher Courts (Civil Advocacy) Qualification which entitles the *solicitor* or *REL* to exercise rights of audience in all civil proceedings in the *higher courts*, including judicial review proceedings in any *court* arising from any criminal cause;
  - (b) Higher Courts (Criminal Advocacy) Qualification which:
    - (i) entitles the *solicitor* or *REL* to exercise rights of audience in all criminal proceedings in the *higher courts* and judicial review proceedings in any *court* arising from any criminal cause; and
    - (ii) certifies the *solicitor* or *REL* under the QASA at level 2 of the statement of standards.
- (2) If *you* have been granted a higher courts qualification by the Law Society or *us* under the *previous regulations*, *you* shall be deemed to have been granted the equivalent qualification or qualifications under regulation 3(1) above.

#### **Guidance note**

*If you have been granted a higher courts advocacy qualification under previous regulations, you are not required to re-apply under these regulations.*

### **5. Qualifying to exercise extended rights of audience**

- (1) When applying for a *higher courts advocacy qualification* *you* must demonstrate to *us* that *you* are competent to undertake advocacy in the proceedings in relation to which *you* have applied by:
  - (i) successfully completing assessments prescribed by *us*; or
  - (ii) having gained an equivalent qualification in a *comparable jurisdiction* or a jurisdiction listed in Article 1 of the *Establishment Directive* and undertaken any further step(s) as may be specified by *us* under regulation 5.
- (2) We will issue standards against which the competence of those applying for a *higher courts advocacy qualification* and exercising those rights of audience conferred by the qualification awarded will be assessed. The *standards* do not form part of these regulations and may be amended from time to time by *us*.

## **6. Qualification gained in another jurisdiction and extended rights of audience**

- (1) You may apply for a qualification to exercise rights of audience in all proceedings in the *higher courts* if you are a *qualified lawyer* in any *comparable jurisdiction* or a jurisdiction listed in Article 1 of the *Establishment Directive*.
- (2) Each application will be considered by *us* on its merits and we may require you to undertake such steps as we may specify in order to gain the qualification.

## **7. Conversion provisions for barristers and extended rights of audience**

In accordance with paragraph 86 of Schedule 19 of the *LSA*, a *barrister* with existing higher rights of audience will automatically be awarded the *solicitors'* higher rights of audience when applying to the roll.

### **Guidance note**

You will be required to declare when applying to be admitted to the roll that you were formerly a *barrister* with higher rights of audience and that you have no disciplinary proceedings in progress against you.

## **8. Conversion provision for RELs and extended rights of audience**

If you are an *REL* who is granted a qualification listed in regulation 3(1), you shall keep that qualification upon being admitted as a *solicitor*.

## **9. Assessments**

- (1) We shall:
  - (i) issue guidelines and *standards* for the provision of competence assessments in *higher courts* civil advocacy and *higher courts* criminal advocacy, [and assessment against the statement of standards by means of an assessment framework approved by us](#);
  - (ii) validate and authorise organisations to provide assessments; and
  - (iii) monitor the provision of assessments.

### **Guidance note**

You are not required to undertake any training before taking the assessments, but you may decide that you need to undertake additional training, which will be offered by assessment organisations. Whether or not you require additional training is a decision for you.

In satisfying the standards, you will need to comply with the relevant legislation and procedures in force at the time.

You can apply for the qualification in either civil or criminal proceedings. Assessment providers will offer assessments that cover the generic standards in evidence, ethics, advocacy and equality and diversity as well as specific standards in either civil or criminal proceedings. If you wish to obtain the qualification in both proceedings you must take both assessments.

A trainee may undertake the assessments but will not be permitted to exercise the rights until admission as a *solicitor*.

## **10. Continuing professional development**

- (1) [If you are undertaking advocacy in criminal proceedings at level 1 of the QASA you must demonstrate to us your continuing competence by meeting the requirements for assessed advocacy CPD specified under the QASA during the five-year period following certification and preceding re-certification.](#)
- (2) If you have gained a *higher courts advocacy qualification* under regulation 3(1), you must undertake at least five hours of CPD relating to the provision of advocacy services in the *higher courts* in each of the first five CPD years following the grant of the qualification.
- (3) If you have gained a *higher courts advocacy qualification* under regulation 5(1) or are exercising any right of audience in the *higher courts* by virtue of any exemption you have under regulation 6, you must undertake at least five hours of CPD relating to the provision of advocacy services in the *higher courts* in each of the first five CPD years following the date of your first exercise of the right.

### **Guidance note**

The requirements in regulation [10\(2\)](#) and [10\(3\)](#) are not an additional requirement to that required by the SRA Training Regulations Part 3 - CPD Regulations.

This requirement commences the CPD year following the year in which the qualification is **awarded** or from the date you first undertake advocacy in the *higher courts* if qualifying via a comparable qualification. It is up to you to decide what your training needs are in relation to the advocacy services you provide. Therefore, the training may be advocacy training, training on new procedures or on substantive law if relevant to higher court practice.

## **11. Applications and reviews**

- (1) You shall make an application [for higher rights of audience](#) under these regulations in the manner prescribed by us and accompanied by the appropriate fee fixed from time to time.

### **Guidance note**

An application for higher rights of audience should be made via our website – [www.sra.org.uk](http://www.sra.org.uk).

- (2) You shall not apply for a *higher courts advocacy qualification* until one of the requirements of regulation [5](#) has been met.
- (3) When applying for a *higher courts advocacy qualification*, you may within 28 days of receiving notification of our decision ask for the decision to be reviewed.
- (4) You may not apply to us for a review of a decision by an assessment provider where you have failed an assessment.

## **12. Transitional arrangements**

- (1) If, at the time the Solicitors' Higher Rights of Audience Regulations 2010 came into force you had undertaken in part the requirements specified in regulation 5 of the Higher Courts Qualification Regulations 2000 (the development route) and have not been granted the Higher Courts (All Proceedings) Qualification, you may either:
  - (i) within 24 months of the coming into force of the Solicitors' Higher Rights of Audience Regulations 2010, complete the requirements set out in regulations 5(1)(a) and 5(1)(b) of the Higher Courts Qualification Regulations 2000, which will be treated as meeting the requirements of regulation 4 of these regulations, and may be granted both the Higher Courts (Civil Advocacy) Qualification and the Higher Courts (Criminal Advocacy) Qualification; or

## Solicitors Regulation Authority – proposed changes

- (ii) apply for a *higher courts advocacy qualification* in accordance with *these regulations*.
  
- (2) If, at the time the Solicitors' Higher Rights of Audience Regulations 2010 came into force, *you* had applied to *us* under regulation 6 of the Higher Courts Qualification Regulations 2000 (the accreditation route) but have not been granted a higher courts advocacy qualification, *you* may either:
  - (i) within 24 months of the coming into force of the Solicitors' Higher Rights of Audience Regulations 2010 regulations complete the requirements set out in regulations 4(1)(b) and 6 of the Higher Courts Qualification Regulations 2000, which will be treated as meeting the requirements of regulation 4 of *these regulations*, and may be granted one of or both the Higher Courts (Civil Advocacy) Qualification and the Higher Courts (Criminal Advocacy) Qualification; or
  - (ii) withdraw *your* application under the Higher Courts Qualification Regulations 2000 and apply for one of or both the Higher Courts (Civil Advocacy) Qualification and the Higher Courts (Criminal Advocacy) Qualification in accordance with *these regulations*.
  
- (3) We have the power to waive in writing any of the provisions of regulation 12 and to place conditions on and to revoke such waiver.

### Guidance note

From the coming into force of these regulations, you may, as a solicitor or REL, only undertake advocacy in criminal proceedings at level 1 of the statement of criminal advocacy standards from the point at which you are certified by us.

From the time at which training related to the statement of standards is incorporated into the training and qualification standards and processes under Part 1 of the Training Regulations, solicitors and RELs qualifying under that process will not require additional certification at level 1. They will be able to conduct advocacy in criminal proceedings at level 1 from their date of qualification until either they progress to a higher level or their certification at level 1 lapses, whichever is sooner.



## SRA Handbook - Glossary

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### "JAG"

means the Joint Advocacy Group established by the SRA, the BSB and ILEX Professional Standards;

...

### "QASA"

means the Quality Assurance Scheme for Advocacy developed by JAG;

...

### "SAHRAR"

means the SRA Advocacy and Higher Rights of Audience Regulations [2011];

...

### "statement of standards"

means the statement of standards developed by JAG and used under QASA as the standard against which the competence of advocates is assessed;

...



## Practice Skills Standards

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### Advocacy and Oral Presentation

On completing the training contract, trainee solicitors should be competent to exercise the rights of audience available to solicitors on admission. Their experience will enable them to understand:

- the communication skills of the advocate;
- the techniques and tactics of examination, cross-examination and re-examination;
- the need to act in accordance with the ethics, etiquette and conventions of the professional advocate.
- [equality and diversity principles in the context of advocacy, recognising the needs and circumstances of clients and acting accordingly, and treating clients, colleagues and parties fairly and without unlawful discrimination.](#)

The tasks trainees perform must enable them to grasp the principal skills required to prepare, conduct and present a case:

- identifying the client's goals; [taking all reasonable steps to help the lay client understand the process, and recording the decision making process.](#)
- identifying and analysing relevant factual and legal issues, and relating them to one another ;
- summarising the strengths and weaknesses of the case;
- planning how to present the case;
- outlining the facts in simple narrative form;
- formulating a coherent submission based on the facts, general principles and legal authority in a structured, concise and persuasive manner
- [assisting the court on sentencing, and conducting effective pleas in mitigation.](#)

...



## Professional Skills Course Outcomes

...

### **Advocacy and Communication Skills**

In the context of a civil and a criminal case:

- use language appropriate to the client, witness(es) and triers of fact and law;
- listen, observe and interpret the behaviour of triers of fact and law, clients, witnesses and other advocates and be able to respond to this behaviour as appropriate;
- speak and question effectively and thereby competently use appropriate presentation skills to open and close a case;
- use a variety of questioning skills to conduct examination in chief, cross examination and re-examination;
- prepare and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner;
- present a submission as a series of propositions based on the evidence;
- organise and present evidence in a coherent and organised form.
- [assists the court on sentencing, and conducts effective pleas in mitigation.](#)
- [takes all reasonable steps to help the lay client understand the process, and records the decision making process.](#)
- [has a demonstrable understanding of equality and diversity principles, recognises the needs and circumstances of clients and acts accordingly, and treats clients, colleagues and parties fairly and does not discriminate unlawfully against them.](#)

...



## Day One Outcomes

...

### **Outcome D6: Ability to Advocate A Case 4 on Behalf of A Client**

Understand basic skills in presentation of cases before courts and tribunals [LPC/Training Contract/PSC];

Ability to formulate and present a coherent submission [LPC/Training Contract/PSC]

LPC Outcomes should:

- understand the importance of preparation and the best way to undertake it;
- understand the basic skills in the presentation of cases before courts and tribunals;
- be able to formulate and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner;

### **Element 1: Case Analysis and Preparation**

Should be able to:

- identify and analyse the relevant facts, the legal context in which the factual issues arise, and how they relate to each other;
- summarise the strengths and weakness of the case from each party's perspective;
- prepare the legal framework of the case, and a simple narrative outline of the facts;
- prepare the submission as a series of propositions based on the evidence;
- identify, analyse and assess the purpose and tactics of examination, cross-examination and re-examination to adduce, rebut and clarify evidence;
- [take all reasonable steps to help the lay client understand the process, and records the decision making process.](#)
- [demonstrate understanding of equality and diversity principles, recognising the needs and circumstances of clients and acting accordingly, treating clients, colleagues and parties fairly and without unlawful discrimination.](#)

### **Element 2: Oral Presentations**

Should be able to:

- identify, analyse and assess the specific communication skills and techniques employed by a presenting advocate;
- [use language appropriate to the client, witness\(es\) and triers of fact and law](#)
- [speak and question effectively and thereby competently, use appropriate presentation skills to open and close a case and use a variety of questioning skills to conduct examination in chief, cross examination and re-examination.](#)

## Solicitors Regulation Authority – proposed changes

- [listen, observe and interpret the behaviour of triers of fact and law, clients, witnesses and other advocates and be able to respond to this behaviour as appropriate.](#)
  - [assist the court on sentencing, and conduct effective pleas in mitigation.](#)
  - demonstrate an understanding of the ethics, etiquette and conventions of advocacy.
- ...



**Proposed ILEX Professional Standards regulatory changes**

## **Proposed ILEX Professional Standards regulatory changes**

### **Introduction**

1. IPS proposes to amend the Rights of Audience Certification Rules to incorporate the principles developed by JAG for the quality assurance scheme for criminal advocacy.
2. The Rights of Audience Certification Rules set out the arrangements by which ILEX members can qualify and practise as Legal Executive Advocates in civil, criminal and family proceedings. The principles of the quality assurance scheme relate to criminal advocacy. Therefore at appropriate instances IPS has differentiated between rules applicable to the criminal advocacy scheme and those applicable to the civil and family advocacy scheme.
3. The amendments that IPS proposes to make to the Rights of Audience Certification Rules are shown in 'track change'. In some instances they are purely administrative changes, such as changes to rule numbers which have occurred by the introduction of additional rules. The following summary outlines the substantive changes that have been made to the Rules.

### **Separating rules from course and entry criteria and reference to the scheme principles**

4. The Rights of Audience Rules include the entry criteria and the course qualification criteria as appendices to the Rules. IPS has removed the entry and course criteria, which will now appear in a separate document titled 'the Rights of Audience qualification scheme documents'. This is because it is believed specific references to document numbers within the Rules is inflexible and unnecessary. The change will not affect the need for approval by the LSB for amendments to the Rules in the future.
5. The Rules now include a reference that the entry and course criteria reflect those principles introduced by JAG in respect of the criminal advocacy scheme.

- **Q 2.01**            **Should IPS separate the entry and course criteria from the Rights of Audience Certification Rules. If not please give reasons.**

## Definitions

6. The definitions appearing at Rule 1 have been updated to include appropriate references to new definitions introduced by the advocacy quality assurance scheme. The new definitions are for authorised CPD provider, independent assessor, Joint Advocacy Group, judicial evaluation form, Statement of Criminal Advocacy Standards and QASA.

- ▶ **Q 2.02**      **Provide any comments you have on the definitions added into the Rules. Do you agree that the definitions adequately reflect the principles of the quality assurance scheme? If not, please indicate any changes that should be made.**

## Appeals

7. The scheme proposed by JAG introduces an appeal panel that will consider appeals made against decisions to refuse or revoke reaccreditation or certification of a Legal Executive Advocate who holds or has held a criminal proceedings certificate.
8. The Rights of Audience Certification Rules have been developed to include the appeal structure introduced to hear these appeals. The right of appeal appears at Rule 22 and the detailed rules relating to appeals brought under this Rule appear within Rules 35 to 49.
9. Any appeal that does not fall within the ambit of the appeals introduced by the quality assurance scheme for criminal advocates will continue to be

considered in accordance with existing appeal procedures appearing within Rules 20 and 21.

► **Q 2.03 Do the appeal rules adequately reflect the proposals on appeals developed by JAG?**

**Reaccreditation and CPD**

10. Under the quality assurance scheme ILEX advocates holding the criminal proceedings certificate fall within Level 1 advocates. Level 1 advocates will continue to be required to renew their first advocacy certificate one year after issue. This proposal is similar to the 'green plate' proposal developed by JAG in respect of other advocates.
11. After their first renewal advocates holding the criminal proceedings certificate will be required to meet reaccreditation requirements developed by JAG. These are that advocates must be reaccredited every 5 years and subject to that their certificates will be valid indefinitely. This is reflected at Rule 98.
12. To be reaccredited Advocates may either undertake assessed CPD incrementally during the 5 years to cover all of the level 1 standards developed by JAG or cover the standards by means of assessment by an assessment course provider accredited by JAG. The rules also provide for assessment by judicial evaluation, in accordance with the scheme, but it is not expected that such judicial evaluation will be introduced for level 1 reaccreditation at this stage. The reaccreditation arrangements appear at Rule 120.
13. Advocates will continue to be required to undertake 5 hours advocacy CPD each year as part of their normal ILEX Fellowship CPD. However, they will not be required to renew criminal advocacy certificates every 3 years as required under the existing scheme.
14. An advocate holding the criminal proceedings certificate who fails to comply with the requirements for reaccreditation will lose their certificate until such time as they meet the requirements of the quality assurance scheme. Failure to complete annual CPD may be dealt with under general CPD provisions and could also result in an advocacy certificate being

suspended or cancelled. Rule 120 sets out that the certificate of an advocate who fails to meet reaccreditation provisions lapses and Rule 123, which has not changed, deals with general failures to meet CPD obligations.

- **Q 2.04**      **Do the rules adequately reflect the proposals developed by JAG as to reaccreditation.**



### **Conduct referrals and independent assessors**

15. Under the scheme a judge may complete a CAEF (criminal advocacy evaluation form) to bring to the attention of JAG issues relating to the competence of an advocate. JAG will determine whether to refer the matter onto the appropriate regulator. Rule 125 has been introduced to confirm that IPS may receive referrals from JAG.
16. JAG proposes to appoint independent assessors to attend court to assess criminal advocates. Rule 127 has therefore been updated to enable IPS to ask an independent assessor to assess an ILEX advocate.

- **Q 2.05** Do the rules adequately reflect the proposals developed by JAG that IPS may receive referrals about the competence of advocates from JAG and seek an independent assessor to assess an advocate.

**Course entry criteria, outcomes and assessment criteria**

17. The Rights of Audience Rules set out course entry criteria, the course outcomes and assessment criteria for the criminal proceedings course. IPS has reviewed these to ensure that they are consistent with the Statement of Criminal Advocacy Standards for Level 1 of the quality assurance scheme, in accordance with Rule 65.

18. IPS had identified that some amendments were required to the entry criteria, which are the knowledge and experience guidelines and the portfolio guidelines. It also identified some changes that were required to the course outcomes and assessment criteria. The amendments have been made and appear in the document headed Rights of Audience Qualification scheme.

- **Q 2.06** Do the knowledge and experience guidelines, portfolio guidelines, course outcomes and assessment criteria adequately reflect the standards developed for the quality assurance scheme for advocates.

**RIGHTS OF AUDIENCE**

**DRAFT CERTIFICATION RULES**

**12 August 2011**

## **RIGHTS OF AUDIENCE CERTIFICATION RULES**

### **DEFINITIONS**

1. In these Rules, except where otherwise indicated:

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

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

["authorised CPD provider" means an organisation authorised by JAG to provide CPD courses;](#)

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

"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;

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

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

"Fellow or Graduate member of the Institute in good standing" means a Fellow or Graduate member of the Institute whose subscriptions to the Institute are fully paid, in respect of whose conduct there is no complaint outstanding, and against whom there is no disciplinary record which in the view of the Admissions and Licensing Committee affects their suitability to be a Legal Executive Advocate;

["independent assessor" means a person appointed by JAG to assess the competence of advocates;](#)

"Investigation, Disciplinary and Appeals Rules" means the rules of IPS which are in place from time to time and which govern the complaints handling and disciplinary procedures of IPS;

"IPS" means ILEX Professional Standards Ltd;

["JAG" means the Joint Advocacy Group;](#)

["Joint Advocacy Group" means the group established by the Bar Standards Board, the Solicitors' Regulation Authority and ILEX Professional Standards to](#)

[oversee and administer the quality assurance and accreditation of criminal advocacy;](#)

[“judicial evaluation form” means a form completed by a judge to record an assessment of the competence of an advocate to conduct criminal advocacy against the Statement of Criminal Advocacy Standards published by JAG;](#)

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

“the Institute” means The Institute of Legal Executives;

“Certification Rules” means the Rights of Audience Certification Rules;

“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;

[“Statement of Criminal Advocacy Standards” means the standards developed by JAG which identify the skills and behaviours expected of a criminal advocate;](#)

“The Admissions and Licensing Committee” means the Committee established under these Certification Rules to carry out the roles and functions identified for it in these Rules;

“The Officer” means an IPS officer with responsibility for the rights of audience qualification scheme;

[“QASA” means the Quality Assurance Scheme for Advocacy established and maintained by JAG.](#)

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 Institute in good standing may apply to IPS 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 IPS on Tribunals 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 Court (including in open court) in all County Court family proceedings;
- (b) to appear before Justices or a District Judge (Magistrates' Court) in the Family Proceedings Courts;
- (c) 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 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 Institute who wish to undertake an Advocacy Skills Course must make an application to IPS 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 ~~at Appendix 1~~ [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](#) ~~at Appendix 1~~;

## ILEX Professional Standards – proposed changes

- ◆ 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](#)~~set out in Appendix 2~~;
  - ◆ details of two referees, who are members of the legal profession, who can attest to the applicant's knowledge of civil, criminal or family law and practice (whichever is relevant) and 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](#)~~at Appendix 1~~;
  - ◆ 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 IPS and shall be accompanied by such fee as may be fixed by IPS 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 ~~at Appendix 1~~ and the Portfolio Guidelines [in the Rights of Audience qualification scheme](#)~~at Appendix 2~~.
  10. Where the external advisor decides that the portfolio is satisfactory and meets the criteria set out in the Knowledge and Experience Guidelines ~~at Appendix 1~~ and the Portfolio Guidelines ~~at Appendix 2~~ 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](#)~~set out in the Rights of Audience Certification Rules~~.
    - 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 ~~at Appendix 1~~ and/or the Portfolio Guidelines ~~at Appendix 2~~ he will give reasons for his decision. The Officer will inform the applicant of the decision. The applicant may withdraw ~~his~~ [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 ~~set out at Appendix 1~~ and the Portfolio Guidelines ~~set out in the Rights of Audience qualification scheme at Appendix 2 to these Rules~~.
  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 in accordance with Rules 20 and 21. An applicant may appeal against a decision made on reconsideration in accordance with Rule 21.
  15. The Certificate of Eligibility will specify which of the Advocacy Skills Course options the applicant may take.

## **ADMISSIONS AND LICENSING COMMITTEE**

16. IPS shall establish an Admissions and Licensing Committee.
17. The Admissions and Licensing Committee shall:
  - ◆ apply and monitor the Institute’s Rights of Audience Certification Rules [and the guidelines and criteria in the Rights of Audience qualification scheme](#);
  - ◆ consider and determine applications by Graduate members and Fellows for Certificates of Eligibility referred to it;
  - ◆ consider and determine applications for the first renewal of advocacy certificates referred to it;
  - ◆ consider and determine applications by Fellows referred to it by the Officer for [Advocacy Certificates](#) and renewal of [civil and family Advocacy Certificates and renewal of lapsed certificates](#);
  - ◆ consider and determine applications by prospective or current course providers for accreditation or renewal of accreditation to provide advocacy skills courses referred to it by the Officer;
  - ◆ consider whether or not a Fellow may continue to hold an Advocacy Certificate;
  - ◆ [consider referrals made to it by JAG relating to the competence of an advocate](#);
  - ◆ determine whether accreditation of a course provider to provide an advocacy skills course should be withdrawn;
  - ◆ receive reports of inspections of advocacy skills courses from the external advisors and the Officer;
  - ◆ receive reports of the moderation of the advocacy skills course assessments from the external advisors;
  - ◆ receive annual reports from advocacy course providers;
  - ◆ submit an annual report to the IPS Board.
18. The Officers will report all decisions made by them to the Admissions and Licensing Committee.
19. Wherever the Officer is unable to make a decision or takes the view that the matter requires Committee consideration they may refer the matter to the Admissions and Licensing Committee.
20. A person or organisation affected by any decision which the Admissions and Licensing Committee makes pursuant to its powers under these Rules may apply for reconsideration of that decision. Any such person or organisation must lodge an application for reconsideration at the IPS offices at Kempston

Manor within 20 working days of receiving written notification of the decision. The application must include written reasons why it should be reconsidered. The applicant shall have a right to be heard by the Committee when it reconsiders his application.

21. Where an application is reconsidered by the Admissions and Licensing Committee it shall have all the powers available that were available to it at the original consideration of the application. An appeal may be made [to the Appeal Panel](#) against the decision of the Admissions and Licensing Committee upon a reconsideration, [except a decision to refuse or revoke reaccreditation or certification of a Legal Executive Advocate who holds or has held a criminal proceedings certificate](#). ~~Appeals will be considered by an~~The Appeal Panel ~~will comprising~~ [comprise](#) a professional member and two lay members drawn from the panel of lay and professional members appointed to serve on IPS' Disciplinary and Appeal bodies. The Appeal Panel will have available to it all the powers available to the Admissions and Licensing Committee at the original consideration of the application.

~~22.~~ [Appeals against decisions to refuse or revoke reaccreditation or certification of a Legal Executive Advocate who holds or has held a criminal proceedings certificate will be made to the Accreditation Appeals Panel.](#)

~~22.23.~~ The Admissions and Licensing Committee shall report annually to the IPS Board on its work during the preceding calendar year, and make such recommendations as it thinks fit concerning the operation of these Rules and the qualification scheme for Legal Executive Advocates.

~~23.24.~~ The Admissions and Licensing Committee will comprise:

- Fellows of ILEX who shall not be members of ILEX Council; and
- Independent members, at least 1 of whom shall have knowledge or experience of consumer issues

Provided that the independent members are in the majority. ~~At least one member will be a member of the IPS Board.~~

~~24.25.~~ The external advisors appointed in accordance with these Rules shall be invited to attend all meetings of the Admissions and Licensing Committee. Where necessary the Committee may seek advice on matters under its consideration from other persons or sources.

~~25.26.~~ A Fellow who is a member of IPS' [Professional Conduct Panel or](#) Disciplinary and Appeals Panel shall not be eligible to serve as a member of the Admissions and Licensing Committee.

~~26.27.~~ Appointments of independent members and Fellows shall be made by the IPS Board.

~~27.28.~~ Each independent member and Fellow will be appointed to the Admissions and Licensing Committee by IPS for a period of five years. Upon the termination of the five year period of his appointment the Board may reappoint him or make a new appointment.

- ~~28-29.~~ No Fellow or independent member may serve more than two consecutive terms as a member of the Admissions and Licensing Committee. Where he fails without good reason to fulfil his duties set out in these Rules IPS may terminate his appointment whether or not he has completed his current term of office.
- ~~29-30.~~ At least three members of the Admissions and Licensing Committee must be present at a meeting to constitute a quorum. The external advisors will not form part of the quorum.
- ~~30-31.~~ The Admissions and Licensing Committee will appoint one of its members as Chairman. The Chairman will be appointed for a period of one year. The Chairman will be eligible for reappointment, but may not serve as Chairman for more than three consecutive years.
- ~~31-32.~~ Decisions of the Admissions and Licensing Committee will be reached by a majority vote. In the case of an equality of votes the Chairman shall have a casting vote. External advisors may not vote on any matter at a meeting.
- ~~32-33.~~ The Admissions and Licensing Committee shall meet at least once each year. Subject to this, where the Committee deems it appropriate it may consider applications for Certificates of Eligibility and any other matter by way of a postal agenda or telephone conference.
- ~~33.— Any person who is a member of the Advocacy Rights Committee established under the Rights of Audience Certification Rules which came into effect in 2006, and whose term of office has not expired at the date these Rules come into effect, may continue as a member of the Admissions and Licensing Committee until their original term of office expires, provided that they remain, otherwise, eligible to be a member of the Admissions and Licensing Committee under the terms of these Rules.~~
- ~~34.—~~
- ~~35-34.~~ IPS shall have the power to pay fees to members of the Admissions and Licensing Committee and shall from time to time, determine the amount and basis of payments of such fees.

#### **ACCREDITATION APPEALS PANEL**

35. An appeal may only be brought under Rule 22 on the grounds that:
- the decision reached was one which no reasonable person would find comprehensible; and/or
  - there was a procedural error in the decision making process of the Committee and the disadvantage caused by that error to the appellant was sufficient to have materially affected the decision, making it unsound.
36. IPS shall constitute an Accreditation Appeals Panel to consider appeals brought under Rule 22. The Accreditation Appeals Panel shall comprise no less than three panellists drawn from a pool appointed by JAG and shall include an ILEX advocate, an educator and a judge, of which one will be elected Chair.

37. No person shall sit as a panellist if they are a member of the ILEX Council, IPS Board or any of their committees;
38. The Accreditation Appeals Panel may determine its own procedure when considering an appeal, and may give such directions regarding the conduct of the proceedings as it considers just.
39. An appeal shall be considered on the papers at a meeting held in private but where the appellant attends the hearing it will be held in public, unless either party has made an application that the hearing shall not be held in public and the public interest does not require that it shall be held in public.
40. The panel shall, no less than 28 days before the date of the meeting or hearing at which the appeal is to be determined, serve notice on the appellant, specifying the date, time and venue of the meeting or hearing.
41. The panel may admit any evidence which it considers fair and relevant to the appeal, whether or not such evidence would be admissible in a court of law, save that no person is to give oral evidence at a hearing unless the Panel considers such evidence is desirable to enable it to discharge its functions.
42. The appeal shall be by way of a re-hearing.
43. The panel may at any time, whether of its own motion or upon the application of a party, adjourn the proceedings until such time and date as it thinks fit.
44. The appellant may attend and be represented at an appeal hearing, however where they are neither present nor represented, the panel may nevertheless proceed to consider and determine the appeal if it is satisfied that all reasonable efforts have been made to serve them with notice of the hearing in accordance with Rule 41.
45. Decisions of the panel will be reached by simple majority and no panellist may abstain from voting.
46. The panel may:
- dismiss the appeal;
  - allow the appeal;
  - substitute for the decision appealed against any other decision that it is open to the Admissions and Licensing Committee to make under these Rules; or
  - remit the decision to the Admissions and Licensing Committee for reconsideration on such terms as the panel consider to be appropriate in the circumstances.
47. The panel may order, in the event of a successful appeal, a refund of any appeal fee paid to IPS.
48. The panel shall give notice of its decision in writing, together with reasons for its decision.

49. [There is no appeal against a decision of the panel.](#)

## **EXTERNAL ADVISORS**

~~36.~~50. IPS shall appoint 3 external advisors to advise the Admissions and Licensing Committee and IPS 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.

~~37.~~51. When making such appointments IPS 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.

~~38.~~52. The external advisors will provide advice to the Admissions and Licensing Committee and IPS 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.

- ~~39.53.~~ 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 ~~at Appendix 1~~ and the Portfolio Guidelines in the Rights of Audience qualification scheme ~~at Appendix 2~~ and shall advise the Officer accordingly.
- ~~40.54.~~ 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.
- ~~41.55.~~ 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.
- ~~42.56.~~ 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.
- ~~43.57.~~ The external advisors shall receive notice of meetings of the Admissions and Licensing Committee and may attend such meetings in their advisory capacity.
- ~~44.58.~~ The external advisors will be appointed by IPS 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, IPS may terminate his appointment whether or not he has completed his current term of office.
- ~~45.59.~~ IPS 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**

- ~~46.60.~~ 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. IPS may prescribe a course fee to be paid by Graduate members and Fellows wishing to take an advocacy skills course prescribed by IPS. 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.
- ~~47.61.~~ 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.

~~48.62.~~ Fellows and Graduate members will be required:

- ◆ to successfully complete the training sessions; 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](#) ~~in Appendix 4.~~

~~49.63.~~ Advocacy Skills Courses will be provided by course providers who are accredited by IPS.

~~50.64.~~ An Advocacy Skills Course must:

- ◆ meet the Advocacy Skills Course Delivery criteria ~~set out at Appendix 3;~~
- ◆ be capable of delivering the Course [outcomes](#) ~~Outcomes set out at Appendix 3;~~ and
- ◆ include arrangements for assessment of advocacy skills in accordance with the [assessment](#) criteria ~~set out in Appendix 4.~~ [set out in the Rights of Audience qualification scheme](#)

[65. The course delivery criteria, course outcomes and assessment criteria for the criminal proceedings certificates will be consistent with the Statement of Criminal Advocacy Standards for Level 1 of the QASA.](#)

## COURSE PROVIDERS

~~51.66.~~ Independent teaching or testing organisations will provide Advocacy Skills Courses. Organisations seeking to offer Advocacy Skills Courses will apply to IPS for accreditation.

~~52.67.~~ 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](#) ~~at Appendices 3 and 4.~~ 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 Committee for further consideration.

~~53.68.~~ 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.

~~54.~~69. IPS will produce an accreditation handbook which will set out the accreditation procedure and criteria.

~~55.~~70. Course providers will be accredited for a period of three years but may apply for re-accreditation at the end of that period.

~~56.~~71. 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.

~~57.~~72. 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](#)~~Appendix 4~~. 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.

~~58.~~73. The course provider shall have in place procedures for considering appeals by candidates against assessments of competence.

~~59.~~74. Course providers will be inspected by IPS. Inspection teams for this purpose will consist of an Officer and any two of the external advisors. The Inspection team will report on the management and content of courses generally, and will have regard to all of the matters referred to in Rules ~~51~~67 and ~~52~~68. The inspection team will observe formal assessments of candidates.

~~60.~~75. The external advisors and the Officer shall submit reports of their inspection visits to the Admissions and Licensing Committee. Inspection teams will make such recommendations in their reports as they deem 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.

~~61.~~76. 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.

~~62.77.~~ 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.

~~63.78.~~ 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, in accordance with Rules 20 and 21. A course provider may appeal against a decision made on reconsideration in accordance with Rule 21.

## **CERTIFICATION**

~~64.79.~~ 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.

~~65.80.~~ A Fellow may only apply for an Advocacy Certificate relating to the type of proceedings covered by the Advocacy Skills Course he has completed.

~~66.81.~~ An application shall be made on a form prescribed by IPS from time to time for this purpose and shall be accompanied by such fee as may be fixed by IPS from time to time.

~~67.82.~~ 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.

- ~~68~~83. 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.
- ~~69~~84. 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.
- ~~70~~85. 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.
- ~~71~~86. 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 in accordance with Rules 20 and 21. The applicant may appeal against a decision made on reconsideration in accordance with Rule 21 or Rule 22, as appropriate.
- ~~72~~87. A Fellow holding an Advocacy Certificate will be described as a Legal Executive Advocate.
- ~~73~~88. A 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**

- ~~74~~89. A Legal Executive Advocate may apply to be granted Advocacy Certificates additional to any already granted to him under these Rules.
- ~~75~~90. Applications for additional Certificates may be made by Graduate members and Fellows of the Institute. Graduate members and Fellows will submit an application for a Certificate of Eligibility to IPS, in accordance with these Rules.
- ~~76~~91. Applications will be considered by the Admissions and Licensing Committee.
- ~~77~~92. 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.

~~78.~~93. 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.

~~79.~~94. 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.

~~80.~~95. 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 in accordance with Rules 20 and 21. The applicant may appeal against a decision made on reconsideration in accordance with Rule 21.

~~81.~~96. 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.

~~82.~~97. 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

~~83.~~98. 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 [civil or family](#) Advocacy Certificate will be valid for a period of 3 years and any criminal Advocacy Certificate will be valid indefinitely subject to meeting the requirements prescribed by the QASA.

~~84.~~99. Applications for renewal [of Certificates](#) will be made on a form prescribed by IPS from time to time for the purpose and shall be accompanied by such fee as may be fixed by IPS from time to time.

~~85.~~100. 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](#)~~Appendix 2~~;
- ◆ 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.

~~86.101.~~ 101. 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](#)~~Appendices 2 and 3~~.

~~87.102.~~ 102. 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 ~~in Appendix 2~~ and the Course Outcomes set out in [the Rights of Audience qualification scheme](#) ~~Appendix 3~~ 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 from confirming the details provided of his litigation and advocacy experience and whether any rights of audience granted will be exercised in the future.

~~88.103.~~ 103. 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~~set out in Appendix 2~~ and the Course Outcomes set out in [the Rights of Audience qualification scheme](#)~~Appendix 3~~ 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.

~~89.104.~~ 104. 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.

~~90.105.~~ 105. In making any assessment or decision required by these Rules the Officer and the Admissions and Licensing Committee shall have regard to the portfolio guidelines ~~in Appendix 2~~ and the course outcomes set out in the Rights of Audience qualification scheme~~in Appendix 3.~~

~~91.106.~~ 106. 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.

~~92.107.~~ 107. Where the application is unsuccessful an applicant may apply for reconsideration in accordance with Rules 20 and 21. The Admissions and Licensing Committee will have the powers set out at Rule ~~88-104~~ upon an application for reconsideration. The applicant may appeal against a decision made on reconsideration in accordance with Rule 21 or Rule 22, as appropriate.

~~93.108.~~ 108. 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.

~~94.109.~~ 109. The Officer will process applications for renewal. Where the Officer is satisfied that the Fellow complies with the requirements set out in Rule ~~92-108~~, he will issue a new Advocacy Certificate.

~~95.110.~~ 110. 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.

~~96.111.~~ 111. 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.

~~97.112.~~ 112. 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.

~~98~~113. 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 in accordance with Rules 20 and 21. An applicant may appeal against a decision made on reconsideration in accordance with Rule 21.

~~99~~114. A Fellow 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.

~~100~~115. A Legal Executive Advocate who, for any reason, ceases to be a Fellow of the Institute shall automatically cease to be eligible to exercise any right of audience granted under these Rules and shall return his Certificate(s) to IPS within 28 days of ceasing to be a Fellow.

## LAPSED CERTIFICATES

~~101~~116. 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 ~~83-99~~ to ~~91-107~~ which deal with first renewal of an advocacy certificate save that in Rule ~~84~~100:

- ◆ 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; 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.

~~102~~117. A lapsed Advocacy Certificate is one which has expired and has not been renewed, whether by decision of the holder of the certificate, or as a result of a decision of the Admissions and Licensing Committee or because the holder has ceased to be eligible to hold a certificate for any reason.

~~103~~118. Where a ~~an~~ civil or family 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 ~~92-108~~ to ~~97-113~~ above. Where a criminal Advocacy Certificate, which has lapsed is renewed, it will be valid indefinitely subject to meeting the requirements as to reaccreditation.

## CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

119. Legal Executive Advocates are required to undertake at least 5 hours CPD each calendar year in addition to the CPD that they are required to undertake as Fellows of the Institute. CPD must be gained by attendance at a training course focusing upon advocacy skills.

~~104.~~120. Legal Executive Advocates holding the criminal proceedings certificate must apply for reaccreditation every 5 years beginning from the date of the renewal of the first advocacy certificate. To be re-accredited an advocate must provide evidence that they have been assessed against the standards set out in the QASA. Assessment may be by means of assessed CPD, by judicial evaluation, by an assessment organisation or by an independent assessor appointed by JAG, as provided by QASA. Where an advocate is not reaccredited their certificate will lapse until such time as they demonstrate their competence in accordance with the QASA.

~~CPD must be gained by attendance at a training course focusing upon advocacy skills which has been accredited by the Institute under its CPD regulations~~

~~105.~~121. Legal Executive Advocates are not required to undertake any CPD in respect of the period between the date an Advocacy Certificate is first granted and December 31<sup>st</sup> of that year.

~~106.~~122. Legal Executive Advocates must send a record of their advocacy CPD to ILEX by 15 December in each CPD year. The Officer will check the record to ensure that it complies with these Rules.

~~107.~~123. Where a Legal Executive Advocate has failed to undertake CPD which meets the requirements of these Rules or fails to provide a record of such CPD the Officer will refer the matter to the Admissions and Licensing Committee. The Admissions and Licensing Committee will consider whether the Legal Executive Advocate should retain his Advocacy Certificate. The Legal Executive Advocate will have the opportunity to make written representations to the Committee and has a right to be heard by the Committee. The Committee may decide to:

- Grant an extension of up to 6 months for the Legal Executive Advocate to meet his outstanding CPD requirements. The Advocate will still be required to meet his current CPD requirements in the normal way; or
- Withdraw the Advocacy Certificate until the Fellow complies with the CPD requirements; and, in either case,
- Refer the failure to comply with the CPD requirements to IPS for investigation.

## DISCIPLINARY PROCEDURES AND CODE OF CONDUCT

~~108.~~124. Legal Executive Advocates will be required to abide by the Code of Conduct and Guides to Good Practice of IPS for the time being in force. They will also be bound by the Rights of Audience Conduct Rules ~~set out at~~

~~Appendix 5 to these Rules.~~ Those holding a criminal proceedings certificate will, additionally be required to comply with the QASA.

125. Issues relating to the conduct or competence of a Legal Executive Advocate holding the criminal proceedings certificate may be brought to the attention of JAG by means of a completed judicial evaluation form. JAG may refer the matter onto IPS. The Admissions and Licensing Committee will consider whether the 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. In reaching its decision the Committee may ask an independent assessor to attend court to assess the competence of the advocate.

~~109.~~126. Where a complaint is made or an issue is brought to the attention of IPS regarding the conduct of a Legal Executive Advocate that matter will be dealt with in accordance with the IPS' Investigation, Disciplinary and Appeals Rules.

127. Where a Finding, Order or Decision is made against a 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 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. In the case of Legal Executive Advocates holding a criminal proceedings certificate the Committee may ask an independent assessor appointed by JAG to attend court to observe the advocate and report on their findings to the Committee. The Committee shall take such information into account in reaching its decision.

~~110.~~128. Rule ~~110–128~~ shall not apply where an Order is made by the Disciplinary Tribunal or Appeals Panel excluding a Legal Executive Advocate from membership of the Institute. Rule ~~99-115~~ shall apply in such a case.

~~111.~~129. Where the Admissions and Licensing Committee decides that the Advocate is no longer a fit and proper person to hold an Advocacy Certificate, he must return his Certificate(s) to IPS within 28 days of him 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.

~~112.~~130. Notwithstanding Rule 20 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~~a civil or family Advocacy Certificate will be considered by a Fellow and two lay members drawn from the panel of members appointed to serve on the IPS Disciplinary and Appeals panels. An appeal against a decision that an Advocate is no longer a fit and proper person to hold a criminal Advocacy Certificate will be considered in accordance with Rule 22.

## 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 an ILEX 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 an ILEX 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 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 ~~following~~ outcomes set out below. These outcomes will cover, but are not limited to, the standards established under QASA.

##### 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.

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- ◆ 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 ~~common law and~~ 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.](#)

## 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. [These criteria will include, but are not limited to, the advocacy standards set out in the QASA➤](#) :

<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

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<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

ILEX Professional Standards – proposed changes

<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, <a href="#">procedurally</a>, 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

ILEX Professional Standards – proposed changes

<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

ILEX Professional Standards – proposed changes

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<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; <a href="#">introducing irrelevant material</a>; <a href="#">inadvertently attacking the witness's character (if this has implications for bad character evidence)</a>; misquoting witness; echoing witness' reply inappropriately</li> </ul>	<p>10</p> <p>10</p> <p>10</p> <p>10</p> <p>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>	<p>30</p>
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>	<p>20</p>

ILEX Professional Standards – proposed changes

<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>▪ <a href="#"><u>Responding appropriately to any questions / concerns of the court</u></a></li> <li>▪ Deals with any conduct issues</li> </ul>	30

ILEX Professional Standards – proposed changes

<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 (<a href="#">taking into account sentencing guidelines</a>)</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.

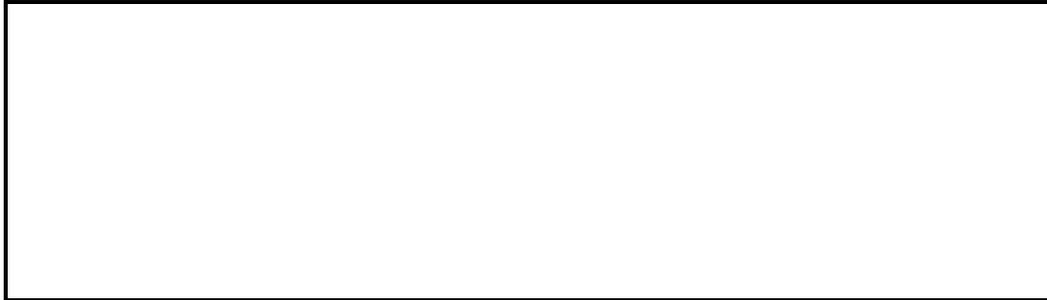


## **Proposed Bar Standards Board regulatory changes**

## Proposed Bar Standards Board regulatory changes

1. The BSB proposes that a separate annex to the Code of Conduct should be introduced which sets out the requirements on advocates under the Scheme. In addition to this annex minor amendment has been made to the main body of the Code to introduce reference to the Scheme in respect of competence to undertake a particular piece of advocacy. The proposed Rules are set out below.
2. The proposed Rules set out the scope of the Scheme and provide the requirements for accreditation, re-accreditation and progression under the Scheme. In addition, the Rules set out the approach to assessment and the mechanisms for appealing decisions under the Scheme.
3. The detail of the Scheme has been approved by the Bar Standards Board; this consultation therefore seeks comment on the proposed Rules.
4. The Rules will be complemented by the Scheme Handbook which will provide more administrative level detail on the operation of the Scheme as well as guidance for advocates. The Handbook will be published in November 2011.
5. General comments on the Rules are invited. In addition, specific comments are welcome on:
  - ▶ **Q 3.01**     **whether the Rules create any difficulty in their application either for individual barristers or for any particular group (protected groups or otherwise) of advocates; and**

- **Q 3.02**     **the impact of the Rules on the interests of the proper administration of justice and the rule of law, or on the public interest.**



### **Specialist Practitioners**

6. The focus of the Scheme at present is on the conventional criminal practitioner and the framework of the Scheme was designed on that basis. In doing so, it is recognised that those advocates who occasionally appear in non-conventional criminal matters in the criminal courts will not usually be able to meet the requirements laid down in the Scheme Rules in order to be accredited. There are a range of specialist practitioners with varied practice models who fall within this category. In order to give this matter due consideration, a small group was established with representatives from the main specialist areas of practice where this issue particularly arises. That Group has now reported its preliminary findings. From initial discussions within the Joint Advocacy Group, it is agreed that the underlying principle must be that the Scheme should not prevent specialist practitioners who are currently competent to take on work before the Criminal Courts from continuing to do so;
7. Whilst no final detailed view on whether, and if so how, the Scheme should extend to specialist practitioners has been reached, the current thinking on the relationship between the Scheme and this type of practitioner is set out below:
  - i. The regulatory risk posed by these practitioners is small given the numbers and the infrequent nature of their appearance in the criminal courts and the clients in such cases are likely to be informed in the sense that they too are experienced in their particular field and instruct counsel on the advocate's similar expertise;
  - ii. Clients in these cases will tend to have in place their own quality assurance processes by way of Panels of advocates who will be vetted, or block contracting in which quality of advocacy skills will be a necessary component. Clients tend to have existing relationships with particular firms of solicitors or Barristers Chambers who specialise in the particular areas of work in question and therefore are experienced in these type of cases and the issues and sensitivities they involve;
  - iii. Enforcement investigations by Regulatory Bodies will often start as joint criminal and regulatory investigations and it is only much later on

that a decision is made whether the evidence and public interest justifies a criminal prosecution or a regulatory disposal. If the Scheme applies, a specialist advocate instructed in such a case for either side may be put in the invidious position of having to explain to the client that, although they can advise on the investigation, if a decision is taken to institute criminal proceedings, their involvement must cease.

8. In the light of this analysis, it is seen to be disproportionate and unnecessary to bring specialist practitioners within the Scheme at its implementation. To attempt to impose a one size fits all Scheme on any advocate who at any time appears in a criminal court is disproportionate to the regulatory (and public interest) risks that specialist advocates pose.

9. Given that stance, the issue for the BSB is how to reflect this view within the Scheme Rules so that it is clear which type of practitioner comes within the Scheme upon implementation and which type does not. The BSB proposes to address this through a clear definition of ‘criminal advocacy’. The current draft suggests that:

*“criminal advocacy” means advocacy in cases relating to offences falling within the Table of Offences Within Each Level document set out in the Quality Assurance Scheme for Advocates published by the Joint Advocacy Group.*

10. The ‘Table of Offences’ document, which is currently being finalised, includes all of the conventional criminal offences. It does not include most of the offences that specialist practitioners are likely to conduct – such as Health and Safety Offences, Financial Planning and Markets Act 2000 offences, Insider Dealing and Planning and Environmental Offences. This however is not a complete answer. For example, an advocate who specialises in Health and Safety law, may be instructed in a Manslaughter case (an offence which appears in the Table) where the issues are Health and Safety related or a financial regulatory specialist may be instructed in a case in which the indictment contains a mixture of FMSA offences and Fraud Act or Money Laundering offences (some of which come within the Table and some of which don’t).

11. The proposal is therefore to include two exceptions to the general definition above. These are:

- i. Cases in which the primary allegations are offences that do not appear in the Table (the hybrid indictment);
- ii. Cases which arise out of an advocate’s other areas of expertise

12. Barristers involved in cases that fall within the exceptions will be exempt from the Scheme.

13. ► Q 3.03

**Comments are invited on this proposal.**

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## Proposed amendments to the Code of Conduct

### Paragraph 603

A barrister must not accept any instructions if to do so would cause him to be professionally embarrassed and for this purpose a barrister will be professionally embarrassed:

(a)....

....

(i) \_\_\_\_\_ if the task is criminal advocacy, you are not accredited at the correct level to undertake it, in accordance with the Quality Assurance Scheme for Advocates Rules at Annex X

## Proposed new Annex to the Code of Conduct

### QUALITY ASSURANCE SCHEME FOR ADVOCATES RULES

#### Interpretation

1. In these Rules:

“approved assessment centre” means an organisation approved by the Joint Advocacy Group to assess the competence of advocates to conduct criminal advocacy against the Statement of Standards published by the Joint Advocacy Group;

“Assessment Panel” means a panel constituted by the Joint Advocacy Group to provide advice to regulators in relation to the accreditation or competence of advocates under the Quality Assurance Scheme for Advocates;

“criminal advocacy” means advocacy in cases relating to offences falling within the levels set out in the Quality Assurance Scheme for Advocates published by the Joint Advocacy Group;

“independent assessor” means a person appointed by the Joint Advocacy Group to attend court to assess the competence of an advocate to conduct criminal advocacy against the Statement of Standards published by the Joint Advocacy Group;

“judicial evaluation form” means a form completed by a judge to record the competence of an advocate to conduct criminal advocacy against the Statement of Standards published by the Joint Advocacy Group; and

“Joint Advocacy Group” means the group established by the Bar Standards Board, the Solicitors’ Regulation Authority and ILEX Professional Standards, in order to oversee and administer the quality assurance and accreditation of criminal advocacy.

#### Scope of the scheme

2. You may not undertake criminal advocacy unless accredited to do so in accordance with these Rules.

3. Accreditation shall be awarded under these Rules at levels of competence from 1 to 4, corresponding to the increasing seriousness and complexity of criminal cases falling within those levels, as set out in the Quality Assurance Scheme for Advocates published by the Joint Advocacy Group.
4. You shall only accept instructions to conduct advocacy in criminal cases which you are satisfied fall within the level at which you are accredited, or any level below the same, unless you are satisfied that you are competent to accept instructions for a case at a higher level in light of the particular circumstances of the case, and strictly in accordance with the prescribed criteria set out in the Scheme.
5. Subject to Rule 4, if you are accredited at level 3 or 4, you may act as a leader in a criminal case and you may seek the assistance of a junior who should normally be accredited at no more than one level below you, unless a larger gap is justified in the particular circumstances of the case.

**General provisions relating to applications for accreditation**

6. You may apply for accreditation, re-accreditation or progression under these Rules, including an application to convert provisional accreditation to full accreditation under Rule 25, by:
  - 6.1 completing the relevant application form supplied by the Bar Standards Board and submitting it to the Bar Standards Board;
  - 6.2 submitting such information in support of the application as may be prescribed under these Rules; and
  - 6.3 paying the appropriate fee in the amount determined in accordance with the Accreditation Scheme Fee Schedule published by the Bar Standards Board.
7. An application will only have been made once the Bar Standards Board has received the application form completed in full, together with all information required in support of the application and confirmation from you in the form of a declaration that the information contained within, or submitted in support of, the application is full and accurate.

8. You are personally responsible for the contents of your application and any information submitted to the Bar Standards Board by you or on your behalf, and you must not submit (or cause or permit to be submitted on your behalf) information to the Bar Standards Board which you do not believe is full and accurate.
9. On receipt of an application, the Bar Standards Board shall decide whether to grant or refuse the application, and shall notify you accordingly, giving reasons for any decision to refuse the application.
10. Before reaching a decision on the application, the Bar Standards Board may:
  - 10.1 appoint an independent assessor to conduct an assessment of your competence to conduct criminal advocacy at the relevant level;
  - 10.2 recommend you undertake remedial training in accordance with Rule 30.2; or
  - 10.3 require, from you or a third party, such additional information, documents or references as it considers appropriate to the consideration of your application.

### **Accreditation**

11. In support of an application for accreditation, you shall confirm the level at which you are competent to conduct criminal advocacy, together with evidence to demonstrate your competence, comprising:
  - 11.1 if you are applying for accreditation at level 1, evidence that you hold a full, [provisional or limited] practising certificate [or a registered European lawyer's practising certificate], or have otherwise complied with such qualification or training requirements as may be imposed by the Bar Standards Board;
  - 11.2 if you are applying for accreditation at level 2, 3 or 4, details of the cases and hearings undertaken by you in the 12 months preceding the date of the application.

### **Re-accreditation**

12. If you are accredited to conduct criminal advocacy, then you shall apply for re-accreditation at the level at which you are accredited, at least once in every five year period.
13. The Bar Standards Board may require an advocate or a class of advocates to apply for re-accreditation within a different period to that specified in Rule 12, where it thinks fit to do so, and gives reasons for doing so, and you shall apply for re-accreditation within any different period that may be required by the Bar Standards Board under this Rule.
14. You shall submit, in support of an application for re-accreditation, evidence to demonstrate your competence to conduct criminal advocacy at the level at which you are accredited, comprising:
  - 14.1 if you are accredited at level 1, evidence of the assessed continuing professional development undertaken by you in the field of advocacy in the period since you were accredited at level 1 or, if you have previously been re-accredited at that level, since your most recent re-accreditation;
  - 14.2 if you are accredited at level 2, 3 or 4:
    - 14.2.1 judicial evaluation forms in respect of no less than three and no more than five consecutive court appearances undertaken by you in the 12 months preceding your application, confirming your competence to conduct criminal advocacy at your current level; or
    - 14.2.2 evidence of satisfactory completion of an assessment by an approved assessment centre of your competence to conduct criminal advocacy at your current level, together with one judicial evaluation form completed in respect of a court appearance undertaken by you in the 12 months preceding your application confirming your competence to conduct criminal advocacy at your current level.
  - 14.3 Your application shall include all completed judicial evaluation forms obtained by you in the 12 months preceding the application, which shall number no more than five.

**Lapse of accreditation**

15. Failure to apply for re-accreditation in the period set out in Rule 12 or 19 will result in the lapse of your accreditation at your current level.
16. If your accreditation lapses, you may re-apply for accreditation at that level in accordance with Rule 11, save that if you are applying for accreditation at level 1 you shall submit evidence of the assessed continuing professional development undertaken by you in the field of advocacy in the period since you were accredited at level 1 or, if you have previously been re-accredited at that level, since your most recent re-accreditation.

**Transitional arrangements on the coming into force of these Rules**

17. These Rules will come into force in respect of criminal cases or hearings falling within:
  - 17.1 levels 3 and 4, from [April 2012];
  - 17.2 levels 1 and 2 from [date].
18. The Bar Standards Board may receive applications for accreditation prior to the date of the coming into force of these Rules:
  - 18.1 in respect of level 2, between April 2012 and [date];
  - 18.2 in respect of level 3 or 4, between 1 December 2011 and 28 February 2012; and
  - 18.3 in respect of level 1, between 1 September 2012 and 31 December 2012
19. If you have been granted accreditation at level 1 under Rule 18.3 and you were called to the Bar:
  - 19.1 three or more years prior to the date your application was granted, you shall be required to apply for re-accreditation in accordance with Rule 14 within the period of 24 months from the date of grant;

- 19.2 less than three years prior to the date your application was granted, you shall be required to apply for re-accreditation in accordance with Rule 14 within the period of five years from the date of Call.
20. If you have been appointed Queen's Counsel within five years prior to the date set out in Rule 17.1 and you have applied to the Bar Standards Board in accordance with Rule 18, you shall be accredited to conduct criminal advocacy at all levels on the coming into force of these Rules in accordance with Rule 17.1.

### **Progression**

21. If you are accredited to conduct criminal advocacy and wish to apply for accreditation at a level higher than your current level, you may apply for progression by submitting an application accompanied by evidence to demonstrate your competence to conduct criminal advocacy at the higher level, comprising:
- 21.1 judicial evaluation forms in respect of no less than three and no more than five consecutive court appearances undertaken by you in the 12 months preceding your application confirming your competence to conduct criminal advocacy at the higher level;
- 21.2 evidence of having satisfactorily completed an assessment conducted by an approved assessment centre of your competence to conduct criminal advocacy at the higher level, together with reasons why you are unable to provide evidence in accordance with 21.1, and, where you are applying for progression to level 3 or 4, one judicial evaluation form completed in respect of a court appearance undertaken by you in the 12 months preceding your application confirming your competence to conduct criminal advocacy at the higher level; or
- 21.3 where you are applying for progression to level 2, completed judicial evaluation forms in respect of five consecutive court appearances conducted by you at level 2, where you have been granted approval by the Bar Standards Board to conduct criminal advocacy at level 2 on a provisional basis, accordingly.

22. Your application shall include all completed judicial evaluation forms obtained by you in the 12 months preceding the application, which shall number no more than 5.
23. Where your application for progression is refused, you may continue to accept instructions to conduct criminal advocacy at your current level, and may re-apply for progression at any time after the expiry of a period of six months from the date of refusal.

### **Provisional accreditation**

24. Where:
  - 24.1 your application under Rule 18 for accreditation at level 3 or 4 has been granted;
  - 24.2 your application for accreditation under Rule 11 or progression under Rule 21 has been granted in respect of level 2, 3 or 4,  
  
you will be entitled to accept instructions to conduct criminal advocacy at the relevant level on a provisional basis.
25. Where accreditation is granted on a provisional basis under Rule 24 you shall apply to convert this to full accreditation by submitting to the Bar Standards Board, within 12 months from the date of grant of provisional accreditation, completed judicial evaluation forms in respect of two of the first five court appearances undertaken by you under the provisional accreditation, confirming that you are competent to conduct criminal advocacy at that level.
26. If your application for full accreditation under Rule 25 is unsuccessful, you shall be accredited at the level below on a provisional basis and shall be required to apply convert this to full accreditation at that lower level in accordance with Rule 25.

### **Applications for variation**

27. Where your individual circumstances result in you encountering difficulties:
  - 27.1 in obtaining completed judicial evaluation forms, then you may apply to the Bar Standards Board for your competence to conduct criminal

advocacy to be assessed by an independent assessor, and you may submit the results of the assessment in support of your application for re-accreditation or progression in the place of [one or more] judicial evaluation forms; or

27.2 in obtaining completed judicial evaluation forms within the period specified in Rule 14.2, 21 or 25, then you may apply to the Bar Standards Board which may decide to apply a different period.

### **Remedial measures**

28. The Bar Standards Board may receive judicial evaluation forms raising concerns regarding your competence to conduct criminal advocacy, at any time during the currency of your accreditation.

29. Where concerns regarding your competence to conduct criminal advocacy are brought to the attention of the Bar Standards Board, either during the course of its consideration of an application brought by you under these Rules, or as a result of concerns raised under Rule 29, it may decide to do one or more of the following:

29.1 appoint an independent assessor to conduct an assessment of your criminal advocacy;

29.2 recommend that you undertake, at your own cost, such remedial training for such period as it may specify;

29.3 revoke your accreditation at your current level;

29.4 refer you for consideration of your health or conduct under the Fitness to Practise Rules, the Complaints Rules or the Interim Suspension Rules, as it considers appropriate,

and shall notify you accordingly, giving reasons for its decision.

30. Subject to Rule 32 below, where your accreditation has been revoked or an application by you for re-accreditation refused, you shall be permitted to conduct criminal advocacy at the level below, on a provisional basis, and shall be required to apply to convert this to full accreditation in accordance with Rule 25.

31. Where you have applied for accreditation or re-accreditation at level 1, and your application has been refused, you will not be entitled to accept any instructions to conduct criminal advocacy, and the Bar Standards Board may recommend that you undertake remedial training in accordance with Rule 29.2 before you re-apply for accreditation or re-accreditation as appropriate.
32. If your further application is successful, you shall be permitted to conduct criminal advocacy at level 1 on a provisional basis and shall be required to apply to convert this to full accreditation in accordance with Rule 25, save that Rule 26 shall not apply and if your application for full accreditation is unsuccessful, your accreditation shall be revoked.
33. Where you have undertaken remedial training under rule 29.2, the Bar Standards Board shall, at the end of the specified period, assess whether you have satisfactorily completed the remedial training before reaching a decision in relation to a pending application, any further application you may submit under Rule 31, or any further steps that it may consider appropriate to take in accordance with rule 29.

#### **Assessment Panel**

34. The Bar Standards Board may at any time refer any question or matter arising during the course of an application brought under these Rules, or relating to concerns regarding your competence to conduct criminal advocacy, to an Assessment Panel for advice, and shall take such advice into account, accordingly.

#### **Appeals**

35. You may appeal to the Bar Standards Board against any decision reached by it to:
  - 35.1 refuse your application for accreditation, re-accreditation or progression, including an application to convert provisional accreditation to full accreditation under Rule 25; or
  - 35.2 revoke your accreditation at your current level.

save that where a decision was reached on the basis of an assessment of your competence conducted by an approved assessment centre, any appeal against the decision will be made to the centre in accordance with its own appeal procedures.

36. You may bring an appeal to the Bar Standards Board under Rule 35 by serving notice in writing on the Board within 21 days from the date of the notice of the relevant decision under Rule 9.
37. A notice of appeal under Rule 36 shall confirm:
- 37.1 the decision appealed against;
  - 37.2 the grounds of appeal; and
  - 37.3 whether or not you require your appeal to be disposed of at an oral hearing.

and shall be accompanied by any fee payable in accordance with the Accreditation Scheme Fee Schedule published by the Bar Standards Board.

38. An appeal may only be brought on the grounds that:
- 38.1 the decision reached was one which no reasonable person would find comprehensible;
  - 38.2 there was a procedural error in the assessment [or decision-making] process and that you suffered disadvantage as a result which was sufficient to have materially affected the decision, making it unsound.

#### **Accreditation Appeals Panel**

39. The Bar Standards Board shall constitute an Accreditation Appeals Panel to consider appeals brought to it under Rule 35.
40. The panel shall comprise no less than three panellists drawn from a pool held by the Joint Advocacy Group, and shall include an advocate, an educator and a judge, one of which shall be Chair.
41. No person shall sit as a panellist:
- 38.1 if they are a member of the Bar Council or of any of its committees;
  - 38.2 if they are a member of the Bar Standards Board or of any of its committees; or

38.3 to consider an appeal in respect of an application that they have previously considered or adjudicated upon in another capacity.

**Procedure for considering appeals**

42. Subject to Rule 43, the Accreditation Appeals Panel may determine its own procedure when considering an appeal, and may give such directions regarding the conduct of the proceedings as it considers just.
43. An appeal shall be considered on the papers at a meeting, in private, unless you have requested that it shall be considered at a hearing, in which case it shall be heard at a hearing in public unless either party has made an application that the hearing shall not be in public and the public interest does not require that it shall be held in public.
44. The panel shall, no less than 28 days before the date of the meeting or hearing at which the appeal is to be determined, serve notice on you, specifying the date, time and venue of the meeting or hearing.
45. The panel may admit any evidence which it considers fair and relevant to the appeal, whether or not such evidence would be admissible in a court of law, save that no person is to give oral evidence at a hearing unless the Panel considers such evidence is desirable to enable it to discharge its functions.
46. The appeal shall be by way of a re-hearing.
47. The panel may at any time, whether of its own motion or upon the application of a party, adjourn the proceedings until such time and date as it thinks fit.
48. You may attend and be represented at an appeal hearing, however where you are neither present or represented, the panel may nevertheless proceed to consider and determine the appeal if it is satisfied that all reasonable efforts have been made to serve you with notice of the hearing in accordance with Rule 44.
49. No panellist may abstain from voting.
50. Decisions of the panel are to be taken by simple majority and, where the votes are equal, the Chair is to have a casting vote.
51. The panel may:
  - 48.1 dismiss the appeal;
  - 48.2 allow the appeal;

48.3 substitute for the decision appealed against any other decision that it is open to the Bar Standards Board to make under these Rules; or

46.4 remit the decision to the Bar Standards Board for reconsideration on such terms as the panel consider to be appropriate in the circumstances.

52. The panel may order, in the event of a successful appeal, a refund of any appeal fee paid to the Bar Standards Board in accordance with rule 37 above.
53. The panel shall give notice of its decision in writing, together with reasons for its decision.
54. There is no appeal against a decision of the panel.