

**RESPONSE OF ILEX PROFESSIONAL STANDARDS LTD
TO ADVICE FROM MANDATORY CONSULTEES TO APPLICATION TO
AWARD RIGHTS OF AUDIENCE AND RIGHTS TO CONDUCT LITIGATION
TO ASSOCIATE PROSECUTOR MEMBERS OF ILEX**

1. This document sets out representations made by ILEX Professional Standards Ltd (IPS) to the advice received by the LSB from the mandatory consultees. A response is made to the advice given by each mandatory consultee in turn.

OFFICE OF FAIR TRADING (OFT)

2. IPS agrees with the views expressed by the OFT that if the application were granted there is no evidence or theory to suggest that the continued supply of services by Associate Prosecutors or the proposed regulatory rules would prevent, restrict or distort competition within the market in the supply of rights of audience and rights to conduct litigation.
3. Associate Prosecutors will indeed broaden access to justice by continuing to make available to the CPS an alternative supply of services.

THE RIGHT HONOURABLE LORD JUDGE

4. The Lord Chief Justice (LCJ) office asked IPS for information about the scope of section 7A Prosecution of Offences Act 1985 and thereby the scope of ILEX's application. IPS made a response which the LSB has been copied in to. Further copies can be made available if it assists.
5. Briefly, the rights of Associate Prosecutors are governed by s7A Prosecution of Offences Act 1985, as amended by s55 Criminal Justice and Immigration Act 2008,. Presently Associate Prosecutors may conduct criminal proceedings in magistrates' courts other than trials of offences triable either way or offences which are punishable with imprisonment in the case of persons aged 21 or over.
6. However, section 7A(11) allows the Attorney General to amend s7A(2)(a)(ii) (quoted above) to omit the words 'or offences which are punishable with imprisonment in the case of persons aged 21 or over'. The amendment can be made under section 7A(12) by statutory instrument laid before and approved by a resolution of each House of Parliament.
7. Parliament had clearly intended that the Attorney General could in the future seek an extension of Associate Prosecutor rights to include imprisonable offences in the magistrates' courts. The Attorney General assured the Lords, when the 2008 Act was being considered, that no such order would be brought before 1 May 2011, the point at which the rights of Associate

Prosecutors must be granted through the Legal Services Act. The CPS has no intention at present that an extension of powers be considered.

8. The application made by ILEX includes these additional rights that the Attorney General can seek. The proposed qualification courses and assessment are intended to be sufficient to cover these additional rights, if they were granted. However, IPS and CPS both recognise that the rights can only be granted to Associate Prosecutors in accordance with section 7A(12) Prosecution of Offences Act.
9. The practical position is that the rights of Associate Prosecutors are limited internally by the CPS through instructions issued by the Director of Public Prosecutions (DPP). The instructions record the limitation of Associate Prosecutor rights and limit their rights accordingly. In fact the rights of Level 1 Associate Prosecutors are limited compared to the rights available through statute. Any extension to imprisonable offences in the magistrates' courts would be limited to Level 2 Associate Prosecutors who have completed the appropriate training and assessment.
10. The LCJ commented that an amendment to the statutory scheme to permit Associate Prosecutors to deal with prosecutions punishable with a term of imprisonment must be subject to full and proper consultation with the judiciary and other interested parties.
11. The Parliamentary procedure ensures that the decision to extend the rights which the DPP may permit Associate Prosecutors to exercise to include imprisonable offences will itself be aligned to public scrutiny. IPS agrees that it will consult on proposals for training and assessment should the extension be sought and granted by Parliament in the future.

LEGAL SERVICES CONSUMER PANEL (LSCP)

12. The LSCP raised a number of issues to which responses are made individually below.

Relationship between the proposed regulatory arrangements and QAA

13. The LSCP questioned what proposals IPS had to bring Associate Prosecutors into the quality assurance of advocates (QAA) scheme. IPS made a response to this query by telephone. In its advice the LSCP has commented that it would be desirable to see a public commitment to transition to QAA within the shortest possible timeframe.
14. IPS responded by telephone to the LSCP when it raised its query about the application of QAA to Associate Prosecutors. The QAA scheme commenced

as a mechanism of assuring the quality of defence advocates. Its mandatory application is in respect of those advocates providing services for which funding is provided by the Legal Services Commission.

15. The CPS has internal schemes in place to assure itself of the quality of its advocates. It developed its own advocacy quality assurance scheme in 2009. As part of those arrangements the quality of advocacy of CPS staff is assessed in the court room. Assessments commenced at Crown Court level and are now being rolled out to include advocacy that is undertaken by level 2 Associate Prosecutors. The CPS is also rolling out the scheme to Level 1 Associate Prosecutors.
16. The QAA scheme is at development stage. The proposals in respect of Level 1 advocates (which is the grade that Associate Prosecutors would be at) is that re-accreditation procedures will assure the quality of ongoing advocacy. The CPS procedures provide alternative and equally suitable, if not more rigorous, mechanisms to assure the ongoing quality of advocacy.
17. The LSB should take into account that any arrangements to bring Associate Prosecutors into the QAA scheme will have implications for other CPS prosecutors. The CPS will need to discuss QAA with the BSB and SRA in respect of the solicitors and barristers it employs who are Crown Prosecutors.
18. It is submitted that the CPS arrangements provide a suitable alternative for assuring the quality of advocacy undertaken by Associate Prosecutors until such time as the QAA scheme is in place and can be considered for all CPS advocates.

Complaints

19. The LSCP commented that it expected the Legal Ombudsman (LeO) to be able to deal with complaints made about the service provided by Associate Prosecutors. There are a number of issues that arise here.

Client

20. Associate Prosecutors are employees of the CPS and provide a legal service, in this case advocacy and litigation, to the CPS. Therefore their client is the CPS. This reflects the position applicable to all advocates and other legal service providers, employed by government and other organisations, who act on behalf of their employer. LeO agreed with the view of IPS when the query was raised with it by the LSCP. They took the view that a complaint from a witness or victim is not from a client of the lawyer and therefore does not fall within the Act.

Voluntary arrangements with Legal Ombudsman and jurisdiction

21. The LSCP commented that Associate Prosecutors may come into contact with the public, especially when dealing with victims and witnesses, which may give rise to a complaint which should be dealt with by an independent and impartial body with the power to award redress. The LSCP added that IPS should explore with LeO how independent resolution of such complaints can be achieved within the Act, possibly using the voluntary jurisdiction provisions under the Legal Services Act 2007. Again any such arrangement would need to apply to all CPS employees, including those that are solicitors and barristers. In any event IPS is unsure whether the voluntary arrangements could be used for the purpose of bringing Associate Prosecutors within the LeO scheme.
22. IPS has considered the Legal Services Act. Its understanding is that a complainant must fall within the definition in section 128 to come within the Ombudsman's jurisdiction under section 125. Sections 128(3) and (4) together require that an authorised person must have provided services to a person in order for that person to be a complainant. Associate prosecutors (and solicitors and barristers, whether employed or contracted) provide services to the CPS. There is no such relationship with victims or witnesses who are involved in cases brought by the CPS. Therefore IPS is doubtful that a complaint can be made to LeO.
23. Sections 164 and 166 set out arrangements under which a voluntary scheme can be established for dealing with legal service complaints of such kind as may be specified by an order made by the Lord Chancellor. Section 164(4) restricts legal services complaints to circumstances in which services have been provided to the prospective complainant. Associate Prosecutors do not provide services to members of the public. It also restricts legal services complaints to an act or omission of an eligible person in the course of that person providing legal services. Under section 164(5) a person is eligible if at the time the act or omission took place there was no activity in relation to which the person was an authorised person. This would preclude complaints made against Associate Prosecutors as they will be an authorised person. Section 164(10) defines legal services by reference to 'legal activity' which appears to be defined at section 12 as including legal advice or assistance which is not provided by Associate Prosecutors to victims and witnesses.

Protecting victims and witnesses

24. The LSCP concern was that victims and witnesses in cases presented by Associate Prosecutors should be able to make a complaint. IPS submits that the CPS has suitable arrangements in place to protect the position of victims and witnesses. These are outlined below.

25. The CPS has obligations under the Code of Practice for Victims of Crime (Victim's Code), upon which all CPS employees are trained, by way of an e-learning module. It also has the Prosecutor's Pledge and a Witness Charter. Each is discussed below.
26. The ***Victim's Code*** represents the minimum standard of service that must be provided to victims. Its aim is to ensure that victims of crime are provided with timely and accurate information about their case and at all stages of the criminal justice process. The obligation to comply with the Code is re-iterated in the Statement of Ethical Principles for the Public Prosecutor. Breaches of the Code will initially be referred to the service provider. If a complainant remains dissatisfied the complaint can be referred to the Parliamentary Ombudsman.
27. The ***Prosecutors Pledge*** sets out standards that the Prosecutor will comply with in the delivery of services to victims. In particular the pledge states that prosecutors will protect victims, maintain communication with them and keep them informed of progress in cases.
28. The ***Witness Charter*** has been developed to tell witnesses how they can expect to be treated by the police if they are a witness to a crime or incident. It also covers subsequent standards of care that must be provided by other criminal justice agencies and lawyers if witnesses are asked to give evidence for the prosecution or defence in a criminal court. The Charter sets out what help and support each witness can expect to receive at every stage of the process from all the agencies and lawyers involved.
29. The concern of the LSCP lies with the determination of complaints by an independent and impartial body. The CPS has its own procedures for dealing with complaints made by victims and witnesses, which can ultimately lead to a referral to the Attorney General's office. The complaints procedure contains four stages. At the first stage a complaint will be reviewed by a local manager. At the second stage it will be reviewed by a senior manager, who will be the Chief Crown Prosecutor, Area Business Manager or Headquarters Director. At the third level a complaint will be referred via the Correspondence Unit at CPS Headquarters for consideration by the Director of Public Prosecutions or the Chief Executive or a senior manager nominated on their behalf. If the complainant remains dissatisfied with the way the complaint has been handled by the CPS they may refer the matter to the Attorney General's office. The Attorney General's office will consider whether the CPS has applied its complaints policy and guidance correctly. IPS believes that these arrangements provide suitable routes for complaints about the service provided by Associate Prosecutors to be dealt with.

30. Complaints about Associate Prosecutors can also be made to the Parliamentary and Health Service Ombudsman. This Ombudsman undertakes independent investigations into complaints referred on behalf of individuals by MPs that government departments, a range of other public bodies in the UK, and the NHS in England have not acted properly or fairly or have provided a poor service. It has jurisdiction to consider complaints that a criminal justice agency has failed to provide the service set out in the Victim's Code.
31. The position of victims is also protected by the Victims' Commissioner. The role of the Victims' Commissioner includes working across the criminal justice system to improve the support for victims and witnesses, chairing the new Victims Advisory Panel and working with local and national victims groups to make sure the voice of victims is fed-back to and impacts directly on Government policy. The Commissioner is also responsible for reviewing the Code of Practice for Victims of crime, which provides a guarantee to victims of crime of the level of service they are entitled to. In addition the National Victims Service provides support to victims.
32. In considering this issue the LSB should note that the amount of contact which takes place between Associate Prosecutors and witnesses and victims is limited. Level 1 Associate Prosecutors are unlikely to have much contact given the range of matters they undertake. Contact with Level 2 Associate Prosecutors is limited to non-imprisonable offences. Furthermore contact is limited to proceedings at court. All other contact with victims and witnesses is conducted through witness care units, which have their own minimum standards that must be met.
33. IPS does not believe it is within the Legal Ombudsman's jurisdiction to deal with complaints about the service Associate Prosecutors provide, and that a voluntary scheme would also be outside their jurisdiction. IPS submits that the concerns of the LSCP regarding complaints by victims and witnesses are met by the arrangements already in place for dealing with such complaints.

Training – client care skills

34. The LSCP commented that it expected the training for Associate Prosecutors to include 'soft skills' to cover the skills needed to deal with victims and witnesses.
35. The CPS and police have joint witness care units. These units are responsible for maintaining contact and providing information to witnesses and victims. The staff working in these units have been appropriately trained.

36. Due to the existence of the witness care units the contact taking place between Associate Prosecutors and victims and witnesses is limited to court hearings. It should be noted that Level 1 Associate Prosecutors will be dealing with straightforward guilty pleas where witnesses are not required and the victim will not be required to participate at hearings. Level 2 Associate Prosecutors will encounter witnesses and victims in respect of summary offences which do not carry a term of imprisonment.
37. Contact taking place between Associate Prosecutors and victims and witnesses will be governed by the Prosecutors Pledge and Victim Code. These have been discussed above.
38. The LSCP points out in its advice that Associate Prosecutors will be assessed against the competencies of communication and negotiation. These are competencies that are assessed when recruiting candidates both at Level 1 and Level 2. The competencies at both levels also include reasoning and decision making, the criteria for which include balancing the needs of the public, police, victims, witnesses and defendants. Therefore these soft skills are already assessed at entry level.
39. Although not taught as a stand alone course, soft skills feature in many aspects of the Associate Prosecutor qualification programme. At Level 1 the foundation course will cover the obligations placed upon Associate Prosecutors including conduct and ethics. The Level 1 advocacy course includes the application of communication skills.
40. At Level 2 the procedures to be observed before attending the qualification course include liaison by an advocate with witnesses and witness care. In addition the observation of trials during this period will provide Associate Prosecutors with examples of how communication with witnesses and victims should be conducted. The Level 2 advocacy assessment criteria assess the courtroom manner of applicants and the foundation course covers the professional duties and responsibilities of Associate Prosecutors and a session on witness care and potential witness problems. These are suitable alternative mechanisms for training and assessing soft skills.
41. The CPS National Standards of Advocacy also include the obligations that all advocates at the CPS must meet in respect of witnesses. These include ensuring that their needs have been considered, being courteous to others in the court, preparing and circulating a running order of witnesses and introducing themselves to victims and witnesses to put them at their ease and to explain to them the court procedures. IPS recognises that these obligations are not the same as actual training. However, reference to the

National Standards of Advocacy during training courses will remind Associate Prosecutors of their obligations.

42. IPS believes that the above arrangements provide suitable mechanisms for covering soft skills that are expected of Associate Prosecutors and does not believe any amendment needs to be made to the training scheme for Associate Prosecutors in this respect.

BB/AP