

**RIGHTS OF AUDIENCE**  
**DRAFT CERTIFICATION RULES**

**8 February 2011 draft**

## **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;

"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;

"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;

"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;

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

"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;

"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 the IPS officer with responsibility for the rights of audience qualification scheme;

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

## **THE RIGHTS OF AUDIENCE CERTIFICATES**

2. A Fellow of the 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 ~~the Admissions and Licensing Committee~~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;
  - ◆ a record of the applicant's advocacy and litigation experience in accordance with the requirements set out in the Knowledge and Experience Guidelines at Appendix 1;
  - ◆ 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 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 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 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 [refer the application to](#)

the Admissions and Licensing Committee to 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 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.

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 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 at Appendix 2 to these Rules.

14. The Officer will notify an applicant in writing ~~of the decision~~ 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 18 and 19~~Rules 20 and 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;
- ◆ 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 Advocacy 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.
- ◆ 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 Officer 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.

~~18-20.~~ 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 sSuch a 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 Committee's 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.

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~~19-21.~~ Where an application is reconsidered by the Admissions and Licensing Committee it shall have all the powers available that were available to it to at the original

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consideration of the application. The decision of the Admissions and Licensing Committee upon a reconsideration shall be final.

20-22. 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.

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21-23. The Admissions and Licensing Committee will comprise:

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- 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.

22-24. 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.

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23-25. A Fellow who is a member of IPS' Disciplinary and Appeals Panel shall not be eligible to serve as a member of the Admissions and Licensing Committee.

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24-26. Appointments of independent members and Fellows shall be made by the IPS Board.

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25-27. 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.

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26-28. 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.

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| ~~27-29.~~ 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. Formatted: Bullets and Numbering

| ~~28-30.~~ 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. Formatted: Bullets and Numbering

| ~~29-31.~~ 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. Formatted: Bullets and Numbering

| ~~30-32.~~ 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. Formatted: Bullets and Numbering

| ~~31-33.~~ 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. Formatted: Bullets and Numbering

| ~~32-34.~~ 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. Formatted: Bullets and Numbering

## EXTERNAL ADVISORS

| ~~33-35.~~ 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. Formatted: Bullets and Numbering

| ~~34-36.~~ When making such appointments IPS shall take into account the following: Formatted: Bullets and Numbering

- ◆ 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.

~~35-37.~~ The external advisors will provide advice to the Admissions and Licensing Committee and IPS in respect of the following:

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- ◆ 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.

~~36-38.~~ 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 at Appendix 2 and shall advise the Officer Admissions and Licensing Committee accordingly.

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~~37-39.~~ 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.

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~~38-40.~~ 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.

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~~39-41.~~ The external advisers' reports on inspections and moderation of course materials and assessment standards shall be taken into account by the Officer or Admissions and Licensing Committee, as appropriate, when ~~it~~ they considers whether to renew or withdraw accreditation of a course provider.

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~~40-42.~~ The external advisors shall receive notice of meetings of the Admissions and Licensing Committee and may attend such meetings in their advisory capacity.

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~~41-43.~~ 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.

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~~42-44.~~ 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.

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## ADVOCACY SKILLS COURSE

~~43-45.~~ 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

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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.

44.46. 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.

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45.47. Fellows and Graduate members will be required:

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- ◆ 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 Appendix 4 .

46.48. Advocacy Skills Courses will be provided by course providers who are accredited by [the Admissions and Licensing Committee IPS](#).

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47.49. An Advocacy Skills Course must:

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- ◆ meet the Advocacy Skills Course Delivery criteria set out at Appendix 3;
- ◆ be capable of delivering the Course Outcomes set out at Appendix 3; and
- ◆ include arrangements for assessment of advocacy skills in accordance with the criteria set out in Appendix 4.

## COURSE PROVIDERS

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

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49.51. Applications for accreditation will be considered by the [Admissions and Licensing Committee Officer](#). The [Admissions and Licensing Committee 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 at Appendices 3 and 4. The [Admissions and Licensing Committee 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.

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50-52. The ~~Admissions and Licensing Committee~~ Officer will also have regard to the following criteria when considering applications for accreditation:

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- ◆ 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.

51-53. IPS will produce an accreditation handbook which will set out the accreditation procedure and criteria.

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52-54. Course providers will be accredited for a period of three years but may apply for re-accreditation at the end of that period.

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53-55. 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.

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54-56. Course providers shall be responsible for carrying out formal assessment of candidates in accordance with the assessment criteria set out in 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.

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55-57. The course provider shall have in place procedures for considering appeals by candidates against assessments of competence.

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56-58. 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 4951 and 5052. The inspection team will observe formal assessments of candidates.

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57-59. 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 ~~or~~ Admissions and Licensing Committee, as appropriate, shall take inspection reports into account when considering whether to renew or withdraw accreditation of a course provider, shall take inspection reports into account.

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58-60. 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:

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- ◆ 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.

59-61. 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.

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~~60-62.~~ 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 ~~18-20~~ and ~~19-21~~.

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## CERTIFICATION

~~61-63.~~ 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.

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~~62-64.~~ A Fellow may only apply for an Advocacy Certificate relating to the type of proceedings covered by the Advocacy Skills Course he has completed.

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~~63-65.~~ 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.

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~~64-66.~~ 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:

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- ◆ 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.

~~65-67.~~ 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.

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~~66-68.~~ 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

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appropriate. It may require or permit the applicant to attend for interview before reaching its decision.

~~67-69.~~ 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.

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~~68-70.~~ 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 18 and 19~~ Rules 20 and 21.

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~~69-71.~~ A Fellow holding an Advocacy Certificate will be described as a Legal Executive Advocate.

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~~70-72.~~ 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.

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## APPLICATION FOR ADDITIONAL CERTIFICATES

~~71-73.~~ A Legal Executive Advocate may apply to be granted Advocacy Certificates additional to any already granted to him under these Rules.

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~~72-74.~~ 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 ~~the Admissions and Licensing Committee~~ IPS, in accordance with these Rules.

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75. Applications will be considered by the Admissions and Licensing Committee.

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76. 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

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appropriate. It may require or permit the applicant to attend for interview before reaching its decision.

76-77. 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.

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74-78. 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.

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75-79. 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 18 and 19 Rules 20 and 21.

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76-80. 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.

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77-81. 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.

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## **RENEWAL OF CERTIFICATES**

78-82. The first Advocacy Certificate issued to a Fellow, and the first Advocacy Certificate issued in respect of any additional proceedings, will be valid until either 1 June or 1 December, whichever is the earlier, after 12 months have elapsed from the date on which that Certificate was issued. Thereafter, any Advocacy Certificate will be valid for a period of 3 years.

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79-83. Applications for renewal 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.

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80-84. An application for the first renewal of an Advocacy Certificate must be supported by:

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- ◆ 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 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.

81-85. 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 Appendices 2 and 3.

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86. 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 Appendix 3 the Officer will ~~refer the application to the Admissions and Licensing Committee to 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:

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- 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.

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~~83-87.~~ 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 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.

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~~84-88.~~ 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.

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~~85-89.~~ 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 in Appendix 3.

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~~86-90.~~ 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 for an Advocacy Certificate.

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~~87-91.~~ Where the application is unsuccessful an applicant may apply for reconsideration in accordance with ~~Rules 18 and 19~~ Rules 20 and 21. The Admissions and Licensing Committee will have the ~~same~~ powers available as set out at Rule ~~84-88~~ upon an application for reconsideration.

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~~88-92.~~ A Fellow making an application for renewal of his Advocacy Certificate, after the first renewal, must:

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- ◆ 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.

[89-93.](#) The Officer will process applications for renewal. Where the Officer is satisfied that the Fellow complies with the requirements set out in Rule ~~88~~[92](#), he will issue a new Advocacy Certificate.

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[90-94.](#) 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.

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[91-95.](#) 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.

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[92-96.](#) 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.

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[93-97.](#) 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 18 and 19~~[Rules 20 and 21](#).

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[94-98.](#) 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.

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~~95-99.~~ 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.

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## LAPSED CERTIFICATES

~~96-100.~~ 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 ~~79-813~~ to ~~87-8991~~ which deal with first renewal of an advocacy certificate save that in Rule ~~80824~~:

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- ◆ 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.

~~97-101.~~ 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.

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~~98-102.~~ Where an Advocacy Certificate which has lapsed is renewed ~~by the Admissions and Licensing Committee~~ 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 ~~88-92~~ to ~~93-97~~ above.

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## CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

~~99-103.~~ 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.

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~~100-104.~~ 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.

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~~101.~~105. 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.

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~~102.~~106. 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.

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~~103.~~107. 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:

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- ◆ 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**

~~104.~~108. 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.

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~~105.~~109. 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.

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~~106.~~110. 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

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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.

~~107.111.~~ Rule ~~106-110~~ 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 ~~95-99~~ shall apply in such a case.

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~~108.112.~~ 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.

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~~109.113.~~ Notwithstanding Rule ~~18-20~~ 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 Advocacy Certificate will be considered by a Fellow and two lay members drawn from the panel of ~~lay~~ members appointed to serve on the IPS Disciplinary and Appeals panels.

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## APPENDIX 1

### KNOWLEDGE AND EXPERIENCE GUIDELINES

#### CIVIL PROCEEDINGS

##### Certificate of Eligibility

1. Graduate Members and Fellows who make an application for extended Rights of Audience must submit details of the civil 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 litigation work in each year.
  - Proportion of time spent on litigation work.
  - 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 Admissions and Licensing Committee will consider Applications for Certificates of Eligibility.~~ Graduate members and Fellows will need to [satisfy the Committee show](#) that they have an appropriate level of knowledge of civil law, particularly the law of tort and contract, civil procedure and the rules of evidence in civil proceedings and that their experience of civil proceedings work 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 the law of tort***

7. ~~The Committee will expect an a~~[Applicants will be expected](#) to have successfully completed an ILEX Level 6 Professional Higher Diploma paper in the Law of Tort or equivalent qualification, so that they are able to:
- Understand the nature of liability in tort and defences.
  - Know and understand the elements of liability in tort.
  - Analyse a factual situation in terms of relevant tort concepts.
  - Apply the rules and principles of liability in tort.
  - Analyse factual situations using the law of tort.

### ***Knowledge of the law of contract***

8. ~~The Committee will expect an a~~[Applicants will be expected](#) to have successfully completed an ILEX Level 6 Professional Higher Diploma paper in the Law of Contract or equivalent qualification, so that they are able to:
- Demonstrate knowledge of the law of contract.
  - Analyse factual situations using the law of contract.
  - Apply the rules and principles relating to the law of contract so that they understand – the nature of contract; offer, acceptance and termination of offer; intention to create legal relations; consideration; terms of contract; exemption clauses; mistake; misrepresentation; duress; undue influence; incapacity; illegality; privity of contract; discharge of contract and remedies for breach of contract.

### ***Knowledge of civil litigation***

9. ~~The Committee will expect an a~~[Applicants will be expected](#) to have successfully completed an ILEX Level 6 Professional Higher Diploma paper in Civil Litigation or equivalent qualification, so that they are able to:
- Demonstrate knowledge and understanding of the following aspects of civil procedure and the law of evidence – financing civil litigation and conduct; pre-action considerations; commencing proceedings; allocation, progress to trial and directions; the small claims track; the fast track; the multi track;

preparation for trial and applications for interim orders; payments into court and interim payments; Part 20 proceedings; special categories of litigant; trial; judgment, enforcement and costs.

- State and apply relevant legal rules and sources of law in civil proceedings and to be able to explain their effects.
- Demonstrate awareness of the impact of the Human Rights Act 1998 in civil litigation.
- Identify and deal appropriately with issues relating to conduct and ethics as they may arise in factual situations.

#### ***Analysis, critical judgment and evaluation***

10. ~~The Officer or committee will expect an a~~ 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 judgments of the merits of particular arguments.
- Present and make a reasoned choice between alternative solutions.

#### ***Autonomy and an ability to learn***

11. ~~The Officer or committee will expect an a~~ 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 to make constructive use of feedback.

12. The Admissions and Licensing Committee may accept alternative evidence of the applicant's knowledge of the law of tort, the law of contract and of civil 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*

13. ~~The Committee will expect a~~ Applicants will be expected to have a range of experience across the area in which they are employed. 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.
14. The ~~Committee will consider 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 ~~the Committee will look at~~ various factors will be taken into account such as the seriousness and complexity of cases handled, difficult cases handled, advocacy conducted in contested proceedings, the nature of the matter and the types of hearings that have been undertaken.

### *Advocacy Experience*

15. The Officer or Committee will need to be satisfied that an applicant is actively undertaking advocacy. In considering whether an applicant is an active advocate ~~the Committee will take into account~~ advocacy experience that an applicant has gained outside their normal area of work will be taken into account. ~~It will also take into account~~ The fact that advocacy is part of the dispute resolution process and may be reflected in successful case preparation, negotiation, arbitration and mediation will also be taken into account.
16. 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.
17. ~~The Committee will expect a~~ 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.
18. 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**

19. 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**

20. 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.

## FAMILY PROCEEDINGS

### Certificate of Eligibility

1. Graduate Members and Fellows who make an application for extended Rights of Audience must submit details of the family proceedings 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 family proceedings work in each year.
  - Proportion of time spent on family proceedings work.
  - 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 family proceedings 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 family law and procedure and that their experience of family proceedings work is sufficient to enable them to undertake the advocacy course and, upon successful completion of that course, to exercise the extended rights of audience 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 family law**

7. ~~The Committee will expect an~~ Applicants will be expected to have successfully completed an ILEX Level 6 Professional Higher Diploma paper in Family Law or equivalent qualification, so that they are able to:

- Demonstrate an understanding of the rules of family law and the principles on which those rules are based.
- Analyse and explain the theoretical basis of relevant aspects of family law.
- Apply the rules and case law principles to problematic factual scenarios and demonstrate an ability to analyse the relevant facts in the application of principle so as to be able to provide accurate advice as to the likely outcomes in prescribed situations, covering the following subject areas – jurisdiction of English courts in matrimonial causes; nullity; dissolution of marriage; judicial separation; ancillary relief; child support provisions; matrimonial proceedings in the Family Proceedings Courts; maintenance agreements; matrimonial property; protection from violence; the law relating to the unmarried family; the law relating to children including powers and duties of local authorities..

### **Knowledge of family practice**

8. ~~The Committee will expect an~~ Applicants will be expected to have successfully completed an ILEX Level 6 Professional Higher Diploma paper in Family Practice or equivalent qualification, so that they are able to:

- Identify the relevant facts and law and advise a married client on the relevant law and procedure in divorce proceedings.
- Complete a divorce petition and statement of arrangements.
- Identify and complete the necessary forms to process the divorce petition through the court to decree absolute.
- Complete the required forms under the Legal Help Scheme and an application for CLS funding and an emergency application to cover the intended proceedings.
- Understand the principles upon which finance and property orders are made; the tax position; pensions; the statutory charge; costs; variation and enforcement of orders and the relevant procedures involved. Complete an application for ancillary relief and a draft statement.

- Identify terms of agreement to include in a consent order and terms which should be recorded in an undertaking within a consent order.
- Draft a consent order.
- Understand the jurisdictions available for protection from domestic violence, the procedures for obtaining relevant orders and methods of enforcement and to be able to complete an appropriate application for protection from domestic violence.
- Understand the jurisdictions available to obtain orders relating to children; the procedures and principles upon which such orders are made and the procedures available to assist in the recovery of abducted children.
- Understand the rules for the protection of the rights of occupation and acquisition of an interest in the matrimonial home (including cohabitantes).
- Demonstrate awareness of the impact of the Human Rights Act 1998 in Family Law.
- Demonstrate awareness of and deal appropriately with issues relating to conduct and ethics.

***Analysis, critical judgement and evaluation***

9. ~~The committee will~~ Applicants will ~~be~~ expected ~~an applicant~~ 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. ~~The committee will~~ Applicants will ~~be~~ expected ~~an applicant~~ 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 to make constructive use of feedback.

11. The Admissions and Licensing Committee may accept alternative evidence of the applicant's knowledge of family law and of family practice 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. ~~The Committee will expect a~~ Applicants will be expected to have a range of experience across the area in which they are employed. 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 ~~Committee will consider 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 ~~the Committee will look at~~ various factors will be taken into account such as the seriousness and complexity of cases handled, difficult cases handled, advocacy conducted in contested proceedings, the nature of the matter and the types of hearings that have been undertaken.

### ***Advocacy Experience***

14. The Officer or Committee will need to be satisfied that an applicant is actively undertaking advocacy. In considering whether an applicant is an active advocate ~~the Committee will take into account~~ advocacy experience that an applicant has gained outside their normal area of work will be taken into account. ~~It will also take into account~~ The fact that advocacy is part of the dispute resolution process and may be reflected in successful case preparation, negotiation, arbitration and mediation will also be taken into account.
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. ~~The Committee will expect a~~ 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, in so far as it is possible for them to do so, given the private nature of many family court proceedings. 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.

## 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. ~~The Committee will expect an a~~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. ~~The Committee will expect an a~~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; summary proceedings; 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. ~~The committee will expect an a~~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. ~~The committee will expect an applicant~~ 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. ~~The Committee will expect an applicant~~ 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 ~~Committee will consider 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 ~~the Committee will look at~~ 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. ~~It-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. ~~The Committee will expect a~~ 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.

**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.
  - 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 CIVIL PROCEEDINGS CERTIFICATE

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

##### 1. Interviewing

On conclusion of the course candidates should be able to:

- ◆ Prepare effectively for an interview with a client.
- ◆ Identify the client's goals.
- ◆ Gather information from the client so that the client can be advised on the available means to realise these goals.
- ◆ Enable the client to express any concerns they may have.

- ◆ Make use of effective listening and questioning techniques.
- ◆ Identify what, if any, further information and / or documentation is required from the client.
- ◆ Identify the relevant factual, legal and evidential issues and be able to explain these effectively to the client.
- ◆ Help the client to make a decision on the most appropriate course of action to take.
- ◆ Accurately record the interview, the advice given and the action / steps that need to be taken following the interview.
- ◆ Deal appropriately with client care and ethical issues that may arise before, during and after the interview.

## 2. Negotiation

On Conclusion of the course candidates should be able to:

- ◆ Prepare effectively prior to negotiating with the other party.
- ◆ Identify the client's interests and expectations.
- ◆ Identify the other party's interests and expectations.
- ◆ Identify the strengths and weaknesses of the client's case.
- ◆ Identify the strengths and weaknesses of the other party's case.
- ◆ Anticipate difficult questions and effective strategies to deal with them.
- ◆ Identify strategies to highlight the other party's weaknesses.
- ◆ List the main issues to cover in order to identify the most favourable outcome to the least favourable outcome.
- ◆ Prepare an agenda to deal with the relevant issues.
- ◆ Understand the range of alternatives to a contested hearing in court such as mediation and conciliation.

## 3. 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 in context.
- ◆ Prepare a case theory that is both succinct and persuasive.

#### 4. Skeleton Arguments

On conclusion of the course candidates should be able to:

- ◆ Draft a skeleton argument.
- ◆ Identify appropriately the relevant chronology.
- ◆ Identify appropriately the relevant issues.
- ◆ Make effective submissions on these issues by use of numbered paragraphs.
- ◆ Cite relevant authorities and use appropriate factual and legal arguments.
- ◆ Prepare draft orders reflecting the client's instructions.

#### 5. Advocacy

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

- ◆ Understand the importance of preparation and effective ways to undertake this.
- ◆ Identify the client's goals.
- ◆ Analyse the relevant factual issues.
- ◆ Understand the legal 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.
- ◆ Understand and appreciate the relevant communication skills and techniques used by an advocate.
- ◆ Understand in particular the purpose, technique and tactics of opening speeches; 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.
- ◆ Prepare and 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 an interim application, a case management conference, an interim injunction application, a contested trial and during a committal hearing.

- ◆ 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.
- ◆ Deal appropriately with client care and ethical issues.
- ◆ Demonstrate an understanding of the ethics, etiquette and conventions of advocacy.

## 6. 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 civil proceedings:-

- ◆ The incidence of the burden and standard of proof.
- ◆ The rules relating to competence and compellability of witnesses.
- ◆ The ways in which evidence may be adduced.
- ◆ 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 rules relating to the admissibility of hearsay evidence.
- ◆ The application of the criminal standard of proof in committal hearings.
- ◆ The relevance of human rights issues.

## 7. 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 civil proceedings including the following:

- ◆ The fundamental duties.
- ◆ The decision to appear.
- ◆ Ceasing to act as an Advocate.
- ◆ Conduct of work.

## **ADVOCACY SKILLS COURSE OUTCOMES FOR THE FAMILY PROCEEDINGS CERTIFICATE**

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

### 1. Interviewing

On conclusion of the course candidates should be able to:

- ◆ Prepare effectively for an interview with a client.
- ◆ Identify the client's goals.
- ◆ Gather information from the client so that the client can be advised on the available means to realise these goals.
- ◆ Enable the client to express any concerns they may have.
- ◆ Make use of effective listening and questioning techniques.
- ◆ Identify what, if any, further information and / or documentation is required from the client.
- ◆ Identify the relevant factual, legal and evidential issues and be able to explain these effectively to the client.
- ◆ Help the client to make a decision on the most appropriate course of action to take.
- ◆ Accurately record the interview, the advice given and the action / steps that need to be taken following the interview.
- ◆ Deal appropriately with client care and ethical issues which may arise before, during and after the interview.

### 2. Negotiating

On conclusion of the course candidates should be able to:

- ◆ Prepare effectively prior to negotiating with the other party.
- ◆ Identify the client's interests and expectations.
- ◆ Identify the other party's interests and expectations.
- ◆ Identify the strengths and weaknesses of their client's case.
- ◆ Identify strengths and weaknesses of the other party's case.
- ◆ Anticipate difficult questions and effective strategies to deal with them.
- ◆ Identify strategies to highlight the other party's weaknesses.
- ◆ List the main issues to cover in order to identify the most favourable outcome to the least favourable outcome.
- ◆ Prepare an agenda to deal with the relevant issues.

- ◆ Understand the range of alternatives to a contested hearing in court such as mediation and conciliation.

### 3. 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 in context.
- ◆ Prepare a case theory that is both succinct and persuasive.

### 4. Skeleton Arguments

On conclusion of the course candidates should be able to:

- ◆ Draft a skeleton argument.
- ◆ Identify appropriately the relevant chronology.
- ◆ Identify appropriately the relevant issues.
- ◆ Make effective submissions on these issues by use of numbered paragraphs.
- ◆ Cite relevant authorities and use appropriate factual and legal arguments.
- ◆ Prepare draft orders reflecting the client's instructions.

### 5. Advocacy

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

- ◆ Understand the importance of preparation and effective ways to undertake this.
- ◆ Identify the client's goals.
- ◆ Analyse the relevant factual issues.
- ◆ Understand the legal 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 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 without notice application in domestic violence proceedings, during a contested application for

maintenance / ancillary relief, at a directions hearing concerned with children and at a contested application for an occupation order.

- ◆ Understand and appreciate the relevant communication skills and techniques used by an advocate.
- ◆ Understand in particular the purpose, technique and tactics of opening speeches; 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 without notice application in domestic violence proceedings, during a contested application for maintenance / ancillary relief, at a directions hearing concerned with children and at a contested application for an occupation order.
- ◆ 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 and committal proceedings.
- ◆ Deal appropriately with client care and ethical issues.
- ◆ Demonstrate an understanding of the ethics, etiquette and conventions of advocacy.

## 6. 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 family proceedings:-

- ◆ The incidence of the burden and standard of proof.
- ◆ The rules relating to competence and compellability of witnesses.
- ◆ The ways in which evidence may be adduced.
- ◆ 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 rules relating to the admissibility of hearsay evidence.

- ◆ The relevance of human rights issues.
- ◆ The application of the criminal standard of proof in committal proceedings.

7. 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 family proceedings including the following:

- ◆ The fundamental duties.
- ◆ The decision to appear.
- ◆ Ceasing to act as an advocate.
- ◆ Conduct of work.

## **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:-

### **1. Case Analysis and Theory**

On conclusion of the course candidates should be able to

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

### **2. Advocacy**

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

- ◆ Understand the importance of preparation and effective ways to undertake this.
- ◆ Identify the client's goals.
- ◆ Analyse the relevant factual issues.
- ◆ Understand the legal 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 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.
- ◆ 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.
- ◆ 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.
- ◆ The decision to appear.
- ◆ Ceasing to act as an advocate.
- ◆ Conduct of work.

## 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:

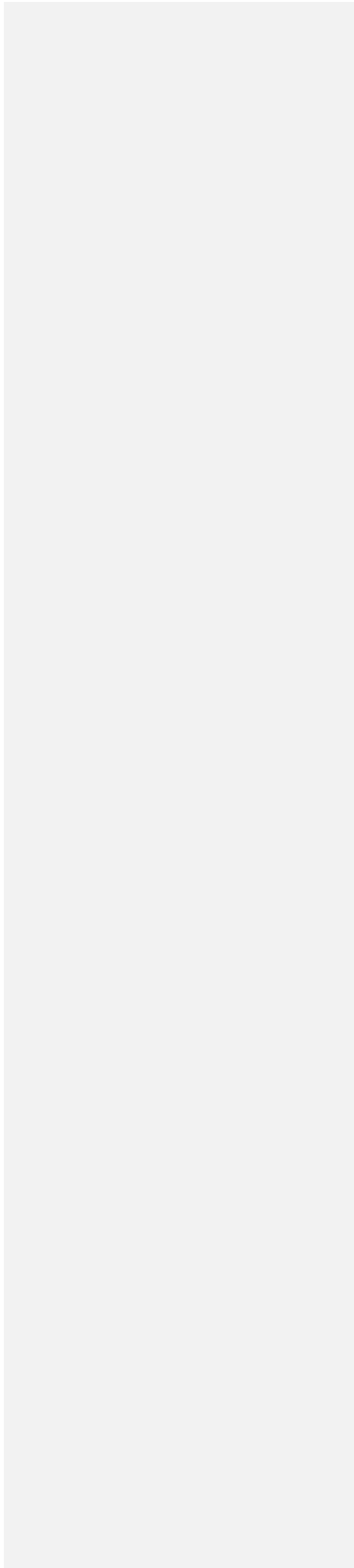
- ◆ The overriding duty to the court.
- ◆ The duty not to engage in conduct which is dishonest/discreditable, prejudicial to the administration of justice or likely to diminish public confidence in the administration of justice or the legal profession.
- ◆ The duty to the client to promote and protect 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 CIVIL PROCEEDINGS CERTIFICATE

In order to pass the formal advocacy assessments for the Civil Proceedings Certificate a candidate must demonstrate competence in the following activities:

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>ANALYSIS &amp; THEORY</b>		
CASE ANALYSIS	Factual issues	20
	<ul style="list-style-type: none"> <li>▪ 3 best facts</li> <li>▪ 3 worst facts</li> </ul>	
	Available evidence to prove factual issues	20
	Legal issues	20
	Relevant law	20
CASE THEORY	<ul style="list-style-type: none"> <li>▪ Succinct</li> </ul>	10
	<ul style="list-style-type: none"> <li>▪ Provable</li> </ul>	10

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>SKELETON ARGUMENTS</b>		
STRUCTURE	Identifies appropriately: <ul style="list-style-type: none"> <li>▪ Parties</li> <li>▪ Chronology</li> <li>▪ List of issues</li> <li>▪ Relevant facts</li> <li>▪ Relevant law</li> </ul>	40
SUBMISSIONS	States and develops a sound argument in an effective and persuasive manner on the above issues	40
GENERAL	<ul style="list-style-type: none"> <li>▪ Divided into numbered paragraphs</li> <li>▪ Paged consecutively</li> <li>▪ Cites main authorities relied on</li> <li>▪ Avoids formality</li> <li>▪ Appropriate use of abbreviations</li> <li>▪ Use of clear, grammatical English</li> </ul>	20



<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>INTERIM APPLICATION / 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 / submission must:</p> <ul style="list-style-type: none"> <li>▪ Be appropriate and relevant to context</li> <li>▪ Be legally, evidentially and factually accurate</li> <li>▪ Have appropriate 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 judge's questions</li> <li>▪ Respond to points raised by the other side</li> </ul>	20
DELIVERY	<ul style="list-style-type: none"> <li>▪ Clear and fluent</li> <li>▪ Appropriate language, pace, volume and mannerisms</li> <li>▪ Refer to documents when required</li> </ul>	20
EFFECTIVE AND PERSUASIVE	The extent to which the application / response influences the tribunal to find for the applicant / respondent	20

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>OPENING SPEECH</b>		
INTRODUCTION	Appropriate "in" line introducing self, opponent and nature of case	10
DOCUMENTS	Check court has relevant documents and the opportunity to read them	10
SUMMARISES DISPUTE	<ul style="list-style-type: none"> <li>▪ Background</li> <li>▪ Identifies legal and factual issues in dispute</li> </ul>	15
EVIDENCE	Introduces evidence by reference to the witnesses intend to call and matters contained in agreed documents	15
LAW	<ul style="list-style-type: none"> <li>▪ Summarises legal principles involved</li> <li>▪ Indicates areas where a ruling will be necessary</li> </ul>	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>	30

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>EXCHANGED WITNESS STATEMENT / SWORN STATEMENT &amp; RE-EXAMINATION</b>		
EXAMINATION-IN-CHIEF	<ul style="list-style-type: none"> <li>▪ Name, address, occupation</li> <li>▪ Directions</li> <li>▪ Identifies witness statement/ sworn statement</li> <li>▪ Identifies signature</li> <li>▪ Confirms date signed</li> <li>▪ Whether anything to add</li> <li>▪ Confirms truth to the best of knowledge and belief</li> <li>▪ "Out" line (with appropriate directions to remain for xx)</li> </ul>	50
RE-EXAMINATION	<ul style="list-style-type: none"> <li>▪ Was it necessary to re-examine?</li> <li>▪ No inappropriate leading questions</li> <li>▪ Only deals with issues already raised</li> <li>▪ "Out" line</li> </ul>	20
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>▪ Deals appropriately with any conduct issues</li> </ul>	30

<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 which the witness is required and able to comment on</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

<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; misquoting witness; echoing witness' reply inappropriately</li> </ul>	<p>10 10 10 10 10</p>
OBJECTIVES	<p>Does the advocate achieve the following objectives where appropriate:</p> <ul style="list-style-type: none"> <li>▪ Obtains favourable information from the witness</li> <li>▪ Demonstrates that the witness is wrong (mistaken/lying)</li> <li>▪ Undermines the witnesses' credibility</li> <li>▪ Puts the client's case to the witness</li> </ul>	30
GENERAL	<ul style="list-style-type: none"> <li>▪ Appropriate range of leading questions</li> <li>▪ Speaks effectively (including not reading from a prepared text)</li> <li>▪ Maintains suitable court room demeanour</li> <li>▪ Deals appropriately with any conduct issues</li> </ul>	20

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>CLOSING SPEECH</b>		
ISSUES	Identifies the outstanding issues	20
EVIDENCE	Summarises the evidence appropriately by highlighting the points which <ul style="list-style-type: none"> <li>▪ Strengthen own case</li> <li>▪ Weaken opponent's case</li> </ul> Deals appropriately with unfavourable evidence Deals appropriately with burden of proof	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>▪ Deals with any conduct issues</li> </ul>	30

## **EVIDENCE**

Candidates will be required to sit an examination on the rules and principles of evidence as they operate in civil proceedings. The examination will be in the format of a written test 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 civil proceedings:

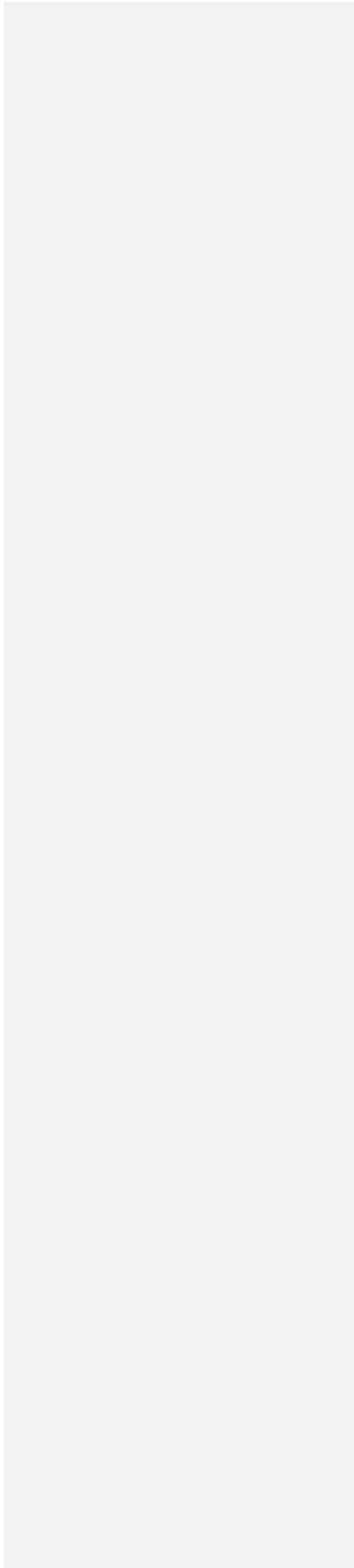
- The operation of the burden and standard of proof.
- Competence and compellability of witnesses.
- The court's power to control evidence.
- Expert opinion evidence.
- Examination-in-chief and re-examination of witnesses called by that party.
- Admissibility and relevance of previous consistent and inconsistent statements made by witnesses.
- Cross-examination of witnesses called for the other party.
- Finality to collateral issues.
- Admissibility and weight to be given to hearsay evidence.
- Improperly obtained evidence.
- Character and disposition in relation to a party or a witness to the proceedings.
- Privilege and public interest immunity.
- The relevance of human rights issues in civil proceedings.

## ASSESSMENT CRITERIA FOR THE FAMILY PROCEEDINGS CERTIFICATE

In order to pass the formal advocacy assessments for the Family Proceedings Certificate a candidate must demonstrate competence in the following activities:

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>ANALYSIS &amp; THEORY</b>		
CASE ANALYSIS	Factual issues	20
	<ul style="list-style-type: none"> <li>▪ 3 best facts</li> <li>▪ 3 worst facts</li> </ul>	
	Available evidence to prove factual issues	20
	Legal issues	20
	Relevant law	20
CASE THEORY	<ul style="list-style-type: none"> <li>▪ Succinct</li> </ul>	10
	<ul style="list-style-type: none"> <li>▪ Provable</li> </ul>	10

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>SKELETON ARGUMENTS</b>		
STRUCTURE	Identifies appropriately: <ul style="list-style-type: none"> <li>▪ Parties</li> <li>▪ Chronology</li> <li>▪ List of issues</li> <li>▪ Relevant facts</li> <li>▪ Relevant law</li> </ul>	40
SUBMISSIONS	States and develops a sound argument in an effective and persuasive manner on the above issues	40
GENERAL	<ul style="list-style-type: none"> <li>▪ Divided into numbered paragraphs</li> <li>▪ Paged consecutively</li> <li>▪ Cites main authorities relied on</li> <li>▪ Avoids formality</li> <li>▪ Appropriate use of abbreviations</li> <li>▪ Use of clear, grammatical English</li> </ul>	20



<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>INTERIM APPLICATION / 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 to context</li> <li>▪ Be legally, evidentially and factually accurate</li> <li>▪ Have appropriate 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 judge's questions</li> <li>▪ Respond to points raised by the other side</li> </ul>	20
DELIVERY	<ul style="list-style-type: none"> <li>▪ Clear and fluent</li> <li>▪ Appropriate language, pace, volume and mannerisms</li> <li>▪ Refer to documents when required</li> </ul>	20
EFFECTIVE AND PERSUASIVE	The extent to which the application / response influences the tribunal to find for the applicant / respondent	20

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>OPENING SPEECH</b>		
INTRODUCTION	Appropriate "in" line introducing self, opponent and nature of case	10
DOCUMENTS	Check court has relevant documents and the opportunity to read them	10
SUMMARISES DISPUTE	<ul style="list-style-type: none"> <li>▪ Background</li> <li>▪ Identifies legal and factual issues in dispute</li> </ul>	15
EVIDENCE	Introduces evidence by reference to the witnesses intend to call and matters contained in agreed documents	15
LAW	<ul style="list-style-type: none"> <li>▪ Summarises legal principles involved</li> <li>▪ Indicates areas where a ruling will be necessary</li> </ul>	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>	30

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>EXCHANGED WITNESS STATEMENT / SWORN STATEMENT &amp; RE-EXAMINATION</b>		
EXAMINATION-IN-CHIEF	<ul style="list-style-type: none"> <li>▪ Name, address, occupation</li> <li>▪ Directions</li> <li>▪ Identifies witness statement / sworn statement</li> <li>▪ Identifies signature</li> <li>▪ Confirms date signed</li> <li>▪ Whether anything to add</li> <li>▪ Confirms truth to the best of knowledge and belief</li> <li>▪ "Out" line (with appropriate directions to remain for xx)</li> </ul>	50
RE-EXAMINATION	<ul style="list-style-type: none"> <li>▪ Was it necessary to re-examine?</li> <li>▪ No inappropriate leading questions</li> <li>▪ Only deals with issues already raised</li> <li>▪ "Out" line</li> </ul>	20
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>▪ Deals appropriately with any conduct issues</li> </ul>	30

<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 on</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

<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; misquoting witness; echoing witness' reply inappropriately</li> </ul>	<p>10 10 10 10 10</p>
OBJECTIVES	<p>Does the advocate achieve the following objectives where appropriate:</p> <ul style="list-style-type: none"> <li>▪ Obtains favourable information from the witness</li> <li>▪ Demonstrates that the witness is wrong (mistaken/lying)</li> <li>▪ Undermines the witnesses' credibility</li> <li>▪ Puts the client's case to the witness</li> </ul>	30
GENERAL	<ul style="list-style-type: none"> <li>▪ Appropriate range of leading questions</li> <li>▪ Speaks effectively (including not reading from a prepared text)</li> <li>▪ Maintains suitable court room demeanour</li> <li>▪ Deals appropriately with any conduct issues</li> </ul>	20

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>CLOSING SPEECH</b>		
ISSUES	Identifies the outstanding issues	20
EVIDENCE	Summarises the evidence appropriately by highlighting the points which <ul style="list-style-type: none"> <li>▪ Strengthen own case</li> <li>▪ Weaken opponent's case</li> </ul> Deals appropriately with unfavourable evidence Deals appropriately with burden of proof	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>▪ Deals with any conduct issues</li> </ul>	30

## **EVIDENCE**

Candidates will be required to sit an examination on the rules and principles of evidence as they operate in family proceedings. The examination will be in the format of a written test 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 family proceedings:

- The operation of the burden and standard of proof.
- The court's power to control evidence.
- Competence and compellability of witnesses.
- Expert opinion evidence.
- Examination-in-chief and re-examination of witnesses called by that party.
- Previous consistent and inconsistent statements made by witnesses.
- Cross-examination of witnesses called for the other party.
- Finality to collateral issues.
- Admissibility and weight to be given to hearsay evidence.
- Improperly obtained evidence.
- Character and disposition in relation to a party or a witness to the proceedings.
- Privilege and public interest immunity.
- The relevance of human rights issues in family proceedings.

## ASSESSMENT CRITERIA FOR THE CRIMINAL PROCEEDINGS CERTIFICATE

In order to pass the formal advocacy assessments for the Criminal Proceedings Certificate a candidate must demonstrate competence in the following activities:

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

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>OPENING SPEECH</b>		
INTRODUCTION	Appropriate "in" line introducing self, opponent and nature of allegation	10
FACTS	Summarise incident, including where relevant what was said by accused on arrest; interview; charge.	15
LAW	<ul style="list-style-type: none"> <li>▪ Summarises legal principles involved</li> <li>▪ Indicates areas where a ruling may be necessary [if relevant]</li> </ul>	15
DEFENCE	Indicate nature of defence where this is known	15
EVIDENCE	Introduces evidence by reference to the witnesses intend to call [and matters contained in agreed documents / statements where relevant] and the operation of the burden of proof	15
CONCLUSION	Appropriate "out" line	5
GENERAL	<ul style="list-style-type: none"> <li>▪ Speaks effectively (including not reading from a prepared text)</li> <li>▪ Maintains suitable court room demeanour</li> <li>▪ Avoids overstating case</li> <li>▪ Deals appropriately with any conduct issues</li> </ul>	25

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

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

<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; misquoting witness; echoing witness' reply inappropriately</li> </ul>	<p>10 10 10 10 10</p>
OBJECTIVES	<p>Does the advocate achieve the following objectives where appropriate:</p> <ul style="list-style-type: none"> <li>▪ Obtains favourable information from the witness</li> <li>▪ Demonstrates that the witness is wrong (mistaken/lying)</li> <li>▪ Undermines the witnesses' credibility</li> <li>▪ Puts the accused's / prosecution's case to the witness</li> </ul>	30
GENERAL	<ul style="list-style-type: none"> <li>▪ Appropriate range of leading questions</li> <li>▪ Speaks effectively (including not reading from a prepared text)</li> <li>▪ Maintains suitable court room demeanour</li> <li>▪ Deals appropriately with any conduct issues</li> </ul>	20

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>CLOSING SPEECH</b>		
ISSUES	Identifies the outstanding issues	20
EVIDENCE	Summarises the evidence appropriately by highlighting the points which <ul style="list-style-type: none"> <li>▪ Strengthen accused's case</li> <li>▪ Weaken prosecution 's case</li> </ul> Deals appropriately with unfavourable evidence	30
LAW	Makes appropriate submissions on points of law (with copies of authorities if necessary)	15
CONCLUSION	Appropriate "out" line	5
GENERAL	<ul style="list-style-type: none"> <li>▪ Speaks effectively (including not reading from a prepared text)</li> <li>▪ Maintains suitable court room demeanour</li> <li>▪ Avoids giving evidence/introducing new matters</li> <li>▪ Deals with any conduct issues</li> </ul>	30

<b>ACTIVITY</b>	<b>CRITERIA</b>	<b>WEIGHTING %</b>
<b>PLEA IN MITIGATION</b>		
PREPARATION	<ul style="list-style-type: none"> <li>▪ Identifies likely sentence</li> <li>▪ Appropriate objective(s)</li> </ul>	10
CONTENT	<p>The mitigator must:</p> <ul style="list-style-type: none"> <li>▪ Highlight relevant mitigation relating to the commission of the offence</li> <li>▪ Highlight relevant mitigation relating to the offender's personal circumstances</li> <li>▪ Recommend a realistic sentence</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.
- 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.