

PROBATE RIGHTS CERTIFICATION RULES

DEFINITIONS

1. In these Rules, except where otherwise indicated:
 - “Probate Certificate” means a Probate Certificate identified in these Rules;
 - “Probate Practitioner” means a person who has been granted a right to undertake probate, under the terms of the Act;
 - “Certification Rules” means the Probate Rights Certification Rules;
 - “External Advisor” means a person appointed by CILEx Regulation to carry out the role and functions identified for them in these Rules;
 - “Applicant in good standing” means a person in respect of whose conduct there is no complaint outstanding, and against whom there is no disciplinary or prior conduct record which, in the view of CILEx Regulation, affects their suitability to be a Probate Practitioner;
 - “CILEx” means the Chartered Institute of Legal Executives;
 - “Investigation, Disciplinary and Appeals Rules” means the Rules of CILEx which are in place from time to time and which govern the complaints handling, misconduct investigation and disciplinary procedures of CILEx Regulation;

- “The Act” means the Legal Services Act 2007; and
- “The Officer” means a person with responsibility for the Probate Practice Rights Scheme.

Words importing the singular include the plural and vice versa.

2. Responsibility for this qualification scheme is delegated by CILEx to CILEx Regulation.

PROBATE PRACTICE CERTIFICATE

3. An applicant in good standing may apply to CILEx Regulation to be granted a Probate Certificate.
4. The probate rights exercisable by a person holding a Probate Certificate are to prepare any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales. Probate papers mean any papers on which to found or oppose a grant of probate or a grant of letters of administration.

QUALIFICATION ARRANGEMENTS

5. Applicants who seek a Probate Certificate must demonstrate that they meet the knowledge, skills and experience criteria in accordance with the knowledge, skills and experience guidelines and the Portfolio Guidelines which appear at **Annexes 1 and 2** and the competence framework at **Annex 3**.
6. Applicants who seek a Probate Certificate must make an application in accordance with the knowledge, skills and experience guidelines which appear

at **Annex 1** and the portfolio guidelines and assessment criteria which appear at **Annex 2**.

7. An application must be made on such form as may be prescribed for the purpose by CILEx Regulation and shall be accompanied by such fees as may be fixed by CILEx Regulation from time to time.
8. CILEx Regulation will consider the application to ensure it meets the criteria set out in the knowledge, skills and experience guidelines which appear at **Annex 1** and the portfolio guidelines and assessment criteria which appear at **Annex 2**.
9. The portfolios which form part of the application will be sent to an external advisor for assessment. The external advisor will assess whether the portfolios meet the knowledge, skills and experience guidelines and the portfolio guidelines and assessment criteria at **Annexes 1 and 2**.
10. Where the external advisor finds that the portfolios are satisfactory and meet the knowledge, skills and experience guidelines and the portfolio guidelines and assessment criteria at **Annexes 1 and 2**, the CILEx Regulation Officer will consider whether the applicant may be granted a Probate Certificate. In reaching their decision, the Officer will consider all the information provided by the applicant and may call for further information from any person or source it considers appropriate. Where the Officer has any doubt as to the suitability of the applicant they may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for decision.
11. Where the external advisor decides that the portfolios do not meet the knowledge, skills and experience guidelines and the portfolio guidelines and assessment criteria at **Annexes 1 and 2** they will give reasons for their decision. The Officer will inform the applicant of the decision. The applicant

may withdraw their application, amend and re-submit their application or make further representation and ask that the full application be referred to the Admissions and Licensing Committee to consider.

12. The Admissions and Licensing Committee will decide whether or not an application 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.
13. The Committee may:
 - approve the application;
 - decide that the applicant does not meet the criteria and indicate which of the criteria the applicant does not meet.
14. In making any assessment or decision required by these Rules, the Admissions and Licensing Committee shall have regard to the knowledge, skills and experience guidelines and the portfolio guidelines and assessment criteria at **Annexes 1 and 2**.
15. The Officer will notify an applicant of their decision or the decision of the Admissions and Licensing Committee.
16. Where the application has been approved, the notification shall include the Probate Certificate.
17. Where the application is unsuccessful, the notification shall set out the Committee's reasons and any pre-conditions to the consideration of any subsequent application. Where an application is unsuccessful, the applicant may apply for reconsideration in accordance with the Admissions and Licensing Committee Rules.

PRACTICE MANAGEMENT AND ACCOUNTS

18. A Probate Practitioner who seeks to practise in an entity seeking regulation by CILEx Regulation must demonstrate that they meet the knowledge, skills and experience in accounts and practice management in accordance with the knowledge, skills and experience guidelines and portfolio guidelines and the competency framework which appear at **Annexes 4 and 5**. They will not be authorised to be an Approved Manager in an entity until these requirements are met.
19. Where an applicant relies upon existing experience they must complete a log in accordance the portfolio guidelines. An applicant who relies upon a qualification as evidence of meeting the competency framework must provide details of that qualification and assessment. CILEx Regulation will consider whether the experience or qualification relied upon demonstrates that the applicant meets the requirements of the competency framework.
20. An applicant who does not meet the knowledge, skills and experience requirements for practice management and or accounts must complete qualification courses and assessment in those areas which meet the competency frameworks at **Annexes 4 and 5**.

ADMISSIONS AND LICENSING COMMITTEE

21. The Admissions and Licensing Committee established under the Admissions and Licensing Committee Rules shall be responsible for the probate rights qualification scheme.

EXTERNAL ADVISORS

22. CILEx Regulation shall appoint external advisors to advise CILEx Regulation and the Admissions and Licensing Committee on issues relating to probate practice rights.

PROBATE PRACTITIONERS

23. An applicant who has been awarded a Probate Certificate will be known as a Probate Practitioner.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

24. Probate Practitioners will be required to undertake Continuing Professional Development (CPD) in accordance with the CPD Regulations issued by CILEx Regulation from time to time applicable to Chartered Legal Executives.
25. Where a Probate Practitioner has failed to undertake CPD which meets the CPD Regulations 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 Probate Practitioner should retain their Probate Certificate.
26. The Probate Practitioner will have the opportunity to make written representations to the Committee and a right to be heard by the Committee.
27. The Committee may decide to:
 - Grant an extension of up to 3 months for the Probate Practitioner to meet their outstanding CPD requirements. The Probate Practitioner will still be required to meet their current CPD requirement in the normal way; or
 - Withdraw the Probate Certificate.

28. Where a Probate Practitioner's Certificate has been withdrawn for 12 months or more, on the basis that they have not met their CPD requirements, they will be required to make a fresh application for a Probate Certificate in accordance with these Rules.

DISCIPLINARY PROCEDURES AND CODE OF CONDUCT

29. Probate Practitioners will be required to abide by the Code of Conduct of CILEx for the time being in force. They will also be bound by the associated regulatory arrangements in force from time to time.
30. Where a complaint is made, or an issue is brought to the attention of CILEx Regulation, regarding the conduct of a Probate Practitioner, that matter will be dealt with in accordance with CILEx's Investigation, Disciplinary and Appeals Rules. Where a finding, order or decision is made against a Probate Practitioner, that finding, order or decision will be referred to the Admissions and Licensing Committee. The Admissions and Licensing Committee will decide whether the Probate Practitioner remains a fit and proper person to hold a Probate Practice Certificate. The Admissions and Licensing Committee must give reasons for its decision.
31. Rule 30 shall not apply where an order is made excluding a Probate Practitioner from registration of CILEx Regulation or membership of CILEx. In such a case the Probate Practitioner's Certificate shall be invalid from the date the exclusion from membership or registration takes effect.
32. Where the Admissions and Licensing Committee decides that the Probate Practitioner is no longer a fit and proper person to hold a Probate Certificate or their certificate is invalid in accordance with Rule 31, they must return their Certificate to CILEx Regulation within 28 days of them being notified of the

decision. Failure to do so will constitute a disciplinary offence. The Probate Practitioner may not exercise any probate practice rights granted to them under their Certificate after they have been notified of the decision.

33. Notwithstanding the Admissions and Licensing Committee Rules an appeal against the decision of the Admissions and Licensing Committee that a Probate Practitioner is no longer a fit and proper person to hold a Probate Certificate will be considered by a professional member and 2 lay members drawn from the panel of lay and professional members appointed to serve on CILEx Regulation's appeals body.

Probate rules

Annex 1 - KNOWLEDGE, SKILLS AND EXPERIENCE GUIDELINES

1. An applicant who seeks probate practice rights must satisfy the guidelines below.
2. An applicant seeking probate rights must provide the following information in an application to CILEx Regulation:
 - A general outline of the probate practice work, including will writing and estate administration work, where relevant, they have carried out and the total experience they have gained of will writing, probate practice and estate administration;
 - Details of their typical caseload;
 - The number of chargeable hours they spend on will writing, estate administration and probate activities;
 - The proportion or number of cases which have included preparation of papers on which to found or oppose a grant of Probate or a grant of letters of administration;
 - Details of any distinctive features of their work; and
 - Details of any supervisory arrangements under which they work and their own supervisory responsibilities.
3. Applicants must demonstrate that they have the appropriate level of knowledge, skills and experience in probate practice and probate law and succession to be awarded a Probate Practice Certificate in accordance with the criteria set out at **Annex 3**.

Competence Criteria

4. In deciding whether an applicant has adequate knowledge, skills and experience, CILEx Regulation will have regard to the competency framework set out at **Annex 3**.
5. Applicants will be required to demonstrate their knowledge, skills and experience in accordance with the portfolio guidelines and assessment criteria set out at **Annex 2**.
6. In their application, portfolios and logbooks, an applicant will be expected to demonstrate that they can:
 - 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 information in a logical and coherent way;
 - Make critical judgements on the merits of particular courses of action;
 - Present and make a reasoned choice between alternative solutions;
 - Act independently in planning, preparing and undertaking tasks in probate activities;
 - Undertake independent research in probate practice using standard legal information sources; and
 - Reflect on their learning and make constructive use of feedback.

Evaluating Experience

7. An applicant will be expected to have a range of experience across the area in which they work. Applicants will be expected to have handled matters from the beginning to the end, including the administration of estates.
8. CILEx Regulation will consider the quality and quantity of experience that an applicant has gained. In considering the quality of experience, CILEx

Regulation will look at various factors such as the complexity of cases handled, the nature of the matters handled and the types of issues that have arisen within them.

9. CILEx Regulation will recognise that applicants could have had a break in their experience due to factors such as career breaks, job changes, maternity or paternity leave, long term illness, or disability. CILEx Regulation will not discriminate directly or indirectly against an applicant whose experience has been affected in this way. However, CILEx Regulation will need to ensure that an applicant has an acceptable level of experience.
10. Where an applicant has had a break in their experience, they may provide details of experience gained during a different period when they were more actively engaged in probate practice. However, the break must not have been longer than 5 years. In exceptional circumstances, applications may be accepted from applicants who have had a break longer than 5 years.
11. There may be other factors which affect an applicant's experience in the preceding 2 years. CILEx Regulation will consider details of more active periods from applicants whose experience discloses a pattern that they regard as atypical.

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Annex 2 - PORTFOLIO GUIDELINES AND ASSESSMENT CRITERIA

Introduction

1. An applicant seeking reserved legal activity rights must provide evidence of their:
 - Knowledge and understanding of the area of law in which they seek rights, demonstrated to CILEx Level 6 standard;
 - Knowledge and understanding of the area of practice in which they seek rights, demonstrated to CILEx Level 6 standard;
 - Evidence of their experience in the area of law in which they seek rights; and
 - Skills in the legal practice area in which they seek rights.

2. Applicants must demonstrate their knowledge, skills and experience, set out at Rule 1, in accordance with the competency framework which appears at **Annex 3**.

Knowledge of Law and Legal Practice

3. An applicant who has successfully completed and passed an assessment in the CILEx Level 6 examinations in the law and associated legal practice subject relevant to the area in which they seek practice rights will have demonstrated their knowledge of the law and legal practice.

4. An applicant who has obtained a qualification which is not the CILEx Level 6 qualification, but of an equivalent standard, may rely upon that as evidence of their knowledge. In determining whether to accept an alternative qualification, CILEx Regulation will assess the syllabus of that qualification, date upon which the qualification was obtained and details of the assessment the applicant undertook, to determine whether an exemption may be granted. In assessing the details of the qualification, CILEx Regulation will determine

whether the qualification relied upon is of an equivalent standard and covered at least 50% of the syllabus of the relevant CILEx Level 6 subject(s).

5. Where an applicant does not rely upon an alternative qualification, or the qualification is deemed as not providing sufficient coverage to the same standard as the CILEx Level 6 subject(s), they may rely upon experience which has developed their knowledge of the relevant law area and/or legal practice.

6. Applicants seeking to rely upon their experience must demonstrate how they have developed their knowledge of the relevant law and/or legal practice subject area(s) through their experience. Applicants will complete portfolios of 5 cases they have handled, within the 2 years preceding the date of their application, which demonstrate the knowledge they have gained through experience.

7. Applicants will be required to select a range of cases and provide an outline of the following in respect of each portfolio:
 - The facts of the case;
 - The law arising in the case and its application to the facts of the case;
 - The appropriate procedural and process matters that arose in the case and how they were dealt with;
 - The evidential issues that arose in the case and how they were dealt with;
 - An outline of any ethical or conduct issues that arose in the case and how they were dealt with;
 - The funding issues that arose in the case and how they were dealt with;
 - The advice the applicant provided to the client and the outcome of the matter;
 - Decisions the applicant had to make in the case and whether they had to take advice on any strategic issues in the case; and
 - Any training or development needs the applicant identified from having dealt with the case.

8. CILEx Regulation will assess the portfolios to establish whether they demonstrate that an applicant has acquired sufficient knowledge, through experience, to the same standard as CILEx Level 6 subject. The knowledge gained must cover at least 50% of the syllabus of the CILEx Level 6 subject.
9. In making its assessment, CILEx Regulation will take into account the competence criteria set out at **Annex 3** which outline the knowledge requirements for the relevant subject area.

Experience

10. All applicants must provide an outline of their experience in the area of practice in which they seek to become an authorised person for the purposes of conducting reserved legal activities.
11. Applicants must provide an outline of their experience in an application along with 3 portfolios of cases they have handled which demonstrate their experience.
12. The experience outlined in an application must set out the following information for the 2 years preceding the date of the application:
 - A description of cases that the applicant has handled;
 - A description of the applicant's typical case load, including details about the complexity of the case load and a summary of any difficult cases the applicant has handled;
 - The number of chargeable hours spent on the practice area in which rights are sought;
 - The proportion of time spent on that area of law;
 - A description of the range and nature of matters that the applicant has handled in the area of practice in which rights are sought; and
 - Details of any distinctive features of the applicant's work.

13. An applicant will be required to produce portfolios of 3 cases which demonstrate their experience in the area in which rights are sought.
14. In the portfolios, applicants must provide the following information:
 - The facts of the case;
 - The law arising in the case and its application to the facts of the case;
 - The procedural and process matters that arose in the case and how they were dealt with;
 - The evidential issues that arose in the case and how they were dealt with;
 - Any ethical or conduct issues that arose in the case and how they were dealt with;
 - The funding issues that arose in the case and how they were dealt with;
 - The advice the applicant provided to the client and the outcome of the case;
 - Decisions that the applicant had to make in the case, including whether they had to take advice on any strategic issues; and
 - Any training or development needs that the applicant identified from having dealt with the case.
15. CILEx Regulation will assess the outline of experience provided in the application, along with the 3 portfolios. The assessment will consider whether the applicant meets the experience requirements set out in the competency framework at **Annex 3**.

Skills

16. An applicant must provide evidence of their skills in the area in which they seek reserved legal activity rights in accordance with the skills criteria for each practice and law area which appear at **Annex 3**.

17. An applicant may demonstrate their skills through either undertaking a skills course which meets the outcomes set out at **Annex 3**, or producing a log of their experience which demonstrates their skills.
18. Where an applicant seeks to rely upon a course, they must demonstrate that the course meets the outcomes set out at **Annex 3**.
19. An applicant who seeks to rely upon their experience as evidence of their skills must demonstrate that they meet each of the outcomes set out at **Annex 3** through the production of a log book and supporting evidence. Applicants will be required to evidence in the log book the outcome that has been met and reflect upon how the outcome was met. Each outcome must be met at least once.
20. CILEx Regulation will assess the log and supporting evidence provided by applicants to determine whether an applicant has demonstrated that they meet the skills criteria set out at **Annex 3**.

Practice management and accounts

21. An applicant who relies upon their existing practical experience of practice management and accounts must provide evidence of their knowledge, skills and experience of accounts and practice management in accordance with the competency criteria which appear at **Annexes 4 and 5**.
22. An applicant must demonstrate their knowledge, skills and experience through producing a log which demonstrates that they meet each of the outcomes set out at **Annexes 4 and 5**. The log must be supported by evidence. Applicants will be required to evidence in the log book the outcome that has been met and reflect upon how the outcome was met. Each outcome must be met at least once.

23. CILEx Regulation will assess the log and supporting evidence provided by applicants to determine whether an applicant has demonstrated that they meet the competency requirements set out at **Annexes 4 and 5**.

Annex 3 - INTRODUCTION – PROBATE PRACTICE RIGHTS

The entry criteria, learning outcomes and evidence of competency stated in this schedule set out:

- the level of competency, knowledge and understanding required to practise in the area of probate work, that is obtaining a grant of representation and related issues together with will preparation and estate administration
- the elements required to evidence that level of competency, knowledge and understanding
- the level of competency required in the relevant skills for this area of practice – client care, research, drafting, letter writing, interviewing and advising
- the elements required to evidence the required level of competence for these relevant skills
- a statement of the study and work-based experience that demonstrates that an applicant has attained the required level of competence, knowledge and understanding in all the required elements

Certification of probate practice rights will ensure that the applicant has:

- met the application requirements
- an appropriate level of experience in the field of probate work in practice which must include not less than 2 years relevant experience immediately preceding the application
- an appropriate level of knowledge and appreciation of the key legal features of probate work, including the ability to apply for different types of grant of representation, to prepare wills and to administer estates. Whilst emphasis will be given to the aspects of dealing with property passing under a will and/or intestacy, a level of knowledge and understanding of the other ways in which property can devolve on death is also expected so that the applicant can not only deal with it in the context of grants and estate administration but also as an aspect of will preparation and ancillary advice
- the ability and experience to research aspects of statute and case law, legal practice, procedures and documentation that is current
- the ability and experience to interview clients appropriately and identify each client's objectives and different means of achieving those objectives if options are available, together with the ability and experience to advise such clients and be aware of the personal, commercial, financial, tax and other fiscal priorities and constraints (including fiduciary and other duties owed to others and the court) that must be taken into account together with the costs, benefits and risks involved in any procedure, transaction or course of action
- the ability and experience to perform the tasks required to advance procedures, transactions or matters, to include (but not restricted to), drafting

letters of advice to clients, drafting and completing documents, and communicating with co-professionals, the Probate Registry/Court, Her Majesty's Revenue and Customs and other bodies and organisations

- the ability and experience to prepare wills and applications for grants of representation and associated documentation such as (but not restricted to) that required by the Probate Registry/Court or Her Majesty's Revenue and Customs necessary to progress and finalise the administration of an estate

demonstrate a level of experience, knowledge and understanding of all aspects of professional conduct and regulation which includes an understanding of the key ethical requirements contained in relevant conduct rules and other law and regulations and, where these may impact, be able to apply them in context.

	Learning Outcomes	Supporting Experience
	The entry requirement to obtain the right to undertake probate activities seeks to ensure that the applicant:	The applicant will need to provide evidence of:
	<p>NOTE: Knowledge Element 1 reflects what is currently the reserved activity in the Legal Services Act 2007 s12 and Sch 2 (there called 'probate activities'); Knowledge Element 2 and Knowledge Element 3 reflect will drafting and ancillary matters. Knowledge Element 4 reflects administration of a deceased's estate and ancillary matters.</p>	
<p>STAGE 1 ENTRY CRITERIA</p> <ul style="list-style-type: none"> • KNOWLEDGE • UNDERSTANDING • EXPERIENCE 	<ul style="list-style-type: none"> • has practical knowledge, understanding and experience 	<p>Either</p> <ul style="list-style-type: none"> • successful completion of CILEx Level 6 Professional Higher Diploma in Probate Practice and Wills and Succession <p>Or</p> <ul style="list-style-type: none"> • qualification and/or experience of an equivalent standard <p>Experience which demonstrates knowledge and understanding of Probate Practice and Wills and Succession through the submission of 5 portfolios in accordance with the Portfolio Guidelines. Examples will be drawn from a range of cases from the applicant's case load.</p>
<p>Knowledge Element 1 OBTAINING OR OPPOSING A GRANT OF REPRESENTATION AND ITS PURPOSE IN CASES WHERE THERE IS A WILL AND WHERE THERE IS NOT</p>	<p>Demonstrate knowledge, understanding and application of the types of grant of representation and the circumstances when:</p> <ul style="list-style-type: none"> - each is appropriate - an application for a grant of representation may be opposed 	<ul style="list-style-type: none"> • The types of common grants including administration <i>de bonis non</i> (and an awareness of expedited, limited and special grants) and the circumstances when each is appropriate • The purpose and effect of a grant of representation

	Learning Outcomes	Supporting Experience
	<ul style="list-style-type: none"> - application may be made to amend or revoke a grant of representation. 	<ul style="list-style-type: none"> • Identify when a grant is not necessary such as with property not passing to the personal representatives or property that can be dealt with without a grant • Entitlement to the appropriate grant in particular cases under the applicable statutory provisions • Matters affecting the application for a grant by executors and the appointment of administrators such as those relating to capacity; multiple applicants; number; renunciation; reserving power; clearing off and the power of the court to pass over an applicant • The purpose and effect of caveats, citations, and standing searches; procedure for their issue; procedure for removal and up to the point that a matter becomes contentious • The circumstances when an application may be made for a grant of representation to be amended or revoked and the procedure to do so up to the point that a matter becomes contentious
	<p>Demonstrate knowledge, understanding and application of the practical steps taken before making an application to obtain a grant of representation</p>	<ul style="list-style-type: none"> • Identifying type of grant needed and advising proposed applicants for the grant (if necessary, having first identified beneficial entitlements by critical analysis of the will or applicable intestacy rules); as required, explaining the functions of a personal representative to proposed applicants • Taking required steps to obtain any will and

	Learning Outcomes	Supporting Experience
		<p>identifying action to deal with perceived “difficulties”, such as locating it or obtaining evidence of due execution, or requirements if a will is lost, or accidentally or mistakenly destroyed</p> <ul style="list-style-type: none"> • Identifying sources of interim financial assistance that may be available if needed, for example by deceased’s dependants and offering practical advice and assistance accordingly • Registering, notifying and advising the consequences of the death as required; notifying potential beneficiaries of their interest in the estate and progress of the grant application and administration • Ascertaining and arranging for valuation of the deceased’s assets and liabilities; selecting and instructing professional agents and valuers as required • An awareness of solemn form procedure and being able to advise when this procedure is appropriate
	<p>Demonstrate knowledge, understanding and application of the requirements of the court when applying for a grant of representation</p>	<ul style="list-style-type: none"> • The nature, purpose and effect of oaths in support of an application for a grant of representation and the required content of each • Obtaining the information to complete an oath for Executors or Administrators with will annexed or simple Administrators or Administrators <i>de bonis non</i> so as to meet the requirements of the court when making

	Learning Outcomes	Supporting Experience
		<p>application; use of pro-forma templates and drafting oaths and using the settling facility offered by the Registry in appropriate cases</p> <ul style="list-style-type: none"> • The need for, and nature of, further affidavit evidence if required by the court under the appropriate probate rules, for example to confirm due execution, or prove the contents of a lost or missing will; drafting affidavits in appropriate form after obtaining required information • The lodging of papers at a Probate Registry including: the sworn or affirmed oath; the will (if any) together with copies as required; necessary documents to meet the requirements of Her Majesty's Revenue and Customs (HMRC); any further supporting documents as required; payment of probate fees
	<p>Demonstrate knowledge, understanding and application of the requirements of HMRC on application for a grant of representation and subsequently during the estate administration</p>	<ul style="list-style-type: none"> • Duty on applicants (and generally on personal representatives and others accountable) to undertake full enquiries before submitting information to HMRC about the assets, liabilities and other matters concerning the estate and the potential liability to inheritance tax (IHT); risk of penalties for non-compliance with this duty and payment of interest for late payment of tax due • Identification of assets and liabilities that comprise the estate for IHT purposes including assets not passing to the personal representatives; the need to identify who is accountable for the IHT that is due and where

	Learning Outcomes	Supporting Experience
		<p>the burden (incidence) falls</p> <ul style="list-style-type: none"> • Identify if an estate is “excepted” within the meaning of the relevant Regulations • The completion and submission of the relevant IHT forms as appropriate to the type of estate, exemptions and reliefs and the calculation and payment of tax due • The need for and use of other IHT returns such as a corrective account and returns necessary for income tax and capital gains tax, dealing with both pre-death and post-death income and capital gains • The funding of tax due by utilising, for example, credit balances in deceased’s bank accounts, loans from institutional lenders or beneficiaries, or sale of assets; attending to payment of tax due on delivery of the IHT account (or at other times) using available methods
<p>Knowledge Element 2 MAKE, ALTER OR REVOKE A WILL AND ANCILLARY MATTERS RELEVANT TO THE PREPARATION AND EXECUTION OF TESTAMENTARY DISPOSITIONS INCLUDING UNDERSTANDING THE IMPORTANCE OF RISK MANAGEMENT</p>	<p>Demonstrate knowledge, understanding and application of the statutory requirements to make an effective will and the meaning of testamentary capacity and intention</p>	<ul style="list-style-type: none"> • The statutory rules relating to formalities for making a will (or codicil) including an awareness of those for privileged wills and statutory wills • The evidence required by the court to establish testamentary capacity and the testator’s intention by knowing and approving the contents of a will • The overall duty of care owed (both to the testator and others) to ensure a valid and effective execution and recognition of

	Learning Outcomes	Supporting Experience
		<p>circumstances where risk management is particularly important such as making a will for a very elderly or infirm testator, or an unsupervised execution of a will</p> <ul style="list-style-type: none"> • Ensuring appropriate arrangements are made for the safe custody of a will and that it can be located when required
	<p>Demonstrate knowledge, understanding and application of the means by which a will can be validly altered or revoked</p>	<ul style="list-style-type: none"> • The application of the law and practice in relation to alterations, additions and obliterations to a will including the use of codicils • The ways a will can be revoked by destruction, marriage or civil partnership, or by later testamentary document and an awareness of the possible limitations on the effect of revocation, for example, by conditional revocation and by the rules on mutual wills
<p>Knowledge Element 3 TAKE FULL INSTRUCTIONS FROM THE TESTATOR AND PROVIDE ADVICE ON THE TERMS OF A WILL (AND ANCILLARY MATTERS) AND TO THEN PREPARE A WILL WHICH GIVES EFFECT TO THE TESTATOR'S WISHES</p>	<p>Demonstrate knowledge, understanding and application of the extent to which a will is capable of disposing of the testator's property and how property devolves on death if it cannot be dealt with by will</p>	<ul style="list-style-type: none"> • The property and interests of the testator capable of passing by will and that which does not; the manner of devolution of property on death which devolves outside the testator's will; action that may be taken by a testator now, such as severing a joint tenancy, so as to be able to dispose of property by will • An awareness of the extent to which a will may deal with property abroad and the extent to which a foreign will may deal with UK property • Restrictions on the testator's ability to freely dispose of property on death

	Learning Outcomes	Supporting Experience
	<p>Demonstrate knowledge, understanding and application of the statutory rules relating to the devolution of property wholly, or in part, on an intestacy</p>	<ul style="list-style-type: none"> • The distribution of property and entitlement of spouses, civil partners, issue and others in cases of total and partial intestacy; recognition of when and how a partial intestacy might arise when there is a will; rights of cohabitees (if any) • Appreciation that the intestacy rules may make insufficient or no provision for those the deceased might have wished to benefit • The operation of the statutory trusts arising under the intestacy rules and the availability of statutory powers; special rules and rights applying to surviving spouses and civil partners
	<p>Demonstrate knowledge, understanding and application of the need to take full instructions from the testator on a range of matters including the testator's present and, (if relevant), future circumstances and objectives</p>	<ul style="list-style-type: none"> • Taking instructions on a wide range of factual issues including, but not restricted to: <ul style="list-style-type: none"> - the testator and his present and future circumstances - the testator's immediate and wider family - the testator's dependants (both within the family and outside it) - the testator's property interests (both personal and business) including those passing outside the will, such as interests under trusts and in jointly owned property - the testator's financial situation as to both capital and income including expectancies and future interests - any existing or previous wills (including foreign wills) and steps already taken as regards financial, estate and succession

	Learning Outcomes	Supporting Experience
		<p>planning such as creating powers of attorney or making lifetime gifts</p> <ul style="list-style-type: none"> - assessment of the estate of any spouse/civil partner. • Identifying the testator’s aims and objectives as regards the disposition of his estate on death and other terms of the will • Identifying situations where the aims and objectives of the testator in making provision might be met by arrangements outside of any will • Identifying circumstances where the will or its provisions might later be opposed, in particular, but not restricted to: potential claims that could be made under the Inheritance (Provision for Family and Dependants) Act 1975; mutual will agreements; enforceable promises to leave property to others (contract or estoppel); claims that testator lacked capacity or testamentary intention including that testator was subject to undue influence • Identifying appropriate measures and precautions (where available) to deal with circumstances above if arising
	<p>Demonstrate knowledge, understanding and application of the taxation principles relevant to will preparation and associated tax planning measures</p>	<ul style="list-style-type: none"> • Explain the principles of the charge to IHT and its calculation including but not restricted to: transfers of value; chargeable transfers; excluded property; dispositions not transfers of value or which are exempt; potentially exempt transfers; chargeable lifetime transfers; gifts

	Learning Outcomes	Supporting Experience
		<p>with reservation of benefit; occasions of charge to tax; composition of the IHT estate; cumulation, rates and reliefs; liability and burden</p> <ul style="list-style-type: none"> • Explain the basic principles of income tax, capital gains tax (CGT) and IHT applying to trusts (post-Finance Act 2006) including but not restricted to: income tax liability of trustees and beneficiaries; CGT on creation and subsequent liability of trustees and beneficiaries; IHT liability on creation and on subsequent chargeable events according to the type of trust
	<p>Demonstrate knowledge, understanding and application of the non-beneficial provisions relevant to a will</p>	<ul style="list-style-type: none"> • The functions of executors, trustees and testamentary guardians and the choices available to a testator • The matters to be taken into account in implementing the appointment of executors, trustees and testamentary guardians in a will as is appropriate to a testator's circumstances and the terms of a proposed will • The duties, powers and responsibilities of personal representatives and trustees that are imposed by statute or by the courts • The suitability and desirability of appropriate express provisions which modify, extend, exclude or limit the powers, duties and responsibilities of personal representatives and trustees that would otherwise apply by default • Other common provisions typically included in,

	Learning Outcomes	Supporting Experience
		or supporting, a will (such as burial requests, organ donation or a letter of wishes)
	Demonstrate knowledge, understanding and application of the advice to a testator on the terms of a will and associated planning measures	<ul style="list-style-type: none"> • Identifying the objectives of the testator and providing the testator with options, as appropriate, for the terms of a will, covering both beneficial and non-beneficial provisions which are capable of meeting those objectives • Identifying other measures open to the testator which meet the testator's objectives such as advising on the making of lifetime dispositions or providing for succession planning as regards a business interest; if appropriate, advising on the making of a lasting power of attorney • Identify and explain appropriate opportunities for basic tax and succession planning in lifetime and through a will (or otherwise on death) including but not restricted to: use of exemptions and reliefs; IHT potentially exempt transfers; trust policies and similar products; issues relating to gifts to spouses/civil partners and minors; use of trusts to control use of property and entitlement to capital and income; interaction with CGT and income tax • The need to advise on the making of a will which implements the testator's instructions in a given situation and according to the testator's circumstances
	Demonstrate knowledge, understanding and application necessary to produce a draft and then execute a will which gives effect to the testator's instructions and is consistent with the legal principles of construction and	<ul style="list-style-type: none"> • The classification of legacies, devises and other testamentary dispositions and the difference between vested or absolute, and contingent or limited gifts

	Learning Outcomes	Supporting Experience
	<p>interpretation of testamentary dispositions</p>	<ul style="list-style-type: none"> • The effective drafting of legacies and other testamentary disposition to take account of potential failure through lapse, ademption, abatement, forfeiture, divorce, annulment etc. • The legal rules of construction and interpretation, including those applicable to adopted and illegitimate children and others referred to by description, and how those rules are applied by the court to ascertain the testator’s expressed intention in the will • Compliance with the principles of good will drafting including but not restricted to: reflecting the testator’s instructions in so far as effect can be given to them; ability to select, use and adapt appropriate precedents and templates to produce a complete draft will and drafting provisions “freehand” in the absence of an appropriate precedent being available; using a logical structure and layout; using clear and concise language; avoiding uncertainty, ambiguity or inconsistency in the will’s interpretation; ensuring the will is legally effective both as to formal and essential validity • The need to understand fully the testator’s circumstances and wishes in order to provide an appropriately drafted will; seeking the testator’s approval to the draft and if necessary refining the draft to take account of any required changes • Identifying the requirements for a valid and

	Learning Outcomes	Supporting Experience
		<p>effective execution of a will according to the testator's circumstances including the manner of the testator's signature or that of someone directed by the testator to sign in the testator's presence and the choice of witnesses; identifying any supporting actions to later assist in proving due execution; making and retaining at all times full file notes of the will making process</p>
<p>Knowledge Element 4 LAW AND PRACTICE RELATING TO THE ADMINISTRATION OF A DECEASED'S ESTATE</p>	<p>Demonstrate knowledge, understanding and application of the fundamental duties of personal representatives and exercise of administrative powers</p>	<ul style="list-style-type: none"> • Identifying the statutory duties imposed on, and the powers available to, personal representatives and trustees; identifying duties and powers imposed or conferred by a will or trust document; identifying those to whom any such duties are owed or in whose favour powers may be exercised; identifying how a breach or abuse of a duty or power by a personal representative or trustee can give rise to liability to others • Duty of personal representatives to give effect to the will though an analysis of its provisions, or, if appropriate, the intestacy rules, and that failure to do so may give rise to: administration proceedings; actions to recover "loss" by either personal action against personal representatives or tracing or personal action against recipients of estate assets • Identifying the fiduciary nature of particular duties and powers by reference to statutory provisions and relevant case law including but not limited to: delegation; investment and purchase of land; maintenance out of income;

	Learning Outcomes	Supporting Experience
		<p>advancement of capital; appropriation; receipts for property; insurance; running or participating in a business; settling claims by or against the estate; express powers, that is, extensions and modifications to statutory powers commonly found in wills</p> <ul style="list-style-type: none"> • The requirements of complying with any statutory obligations regarding the handling and management of estate or trust funds including (where relevant) compliance with rules or regulations of regulatory bodies
	<p>Demonstrate knowledge, understanding and application of the protection available to personal representatives and trustees against claims</p>	<ul style="list-style-type: none"> • The law in relation to duties, powers, and liabilities of personal representatives and trustees and when relief may be granted from this liability, for example by court order, advertising for creditors and claimants, indemnity from beneficiaries, relieving provision in the will or by insurance • Particular situations facing personal representatives or trustees where they may seek protection including (but not restricted to): issues over the construction and interpretation of the will; issues over beneficial entitlements; claims by unknown beneficiaries or creditors and missing beneficiaries or creditors; claims under the family provision legislation or for rectification of a will; claims from HMRC for unpaid tax such as IHT on lifetime gifts; claims from other creditors including Department for Work and Pensions claiming reimbursement of overpaid benefits

	Learning Outcomes	Supporting Experience
	<p>Demonstrate knowledge, understanding and application of the collection and realisation of assets and the payment of debts and testamentary expenses</p>	<ul style="list-style-type: none"> • Registration of grant of representation with asset holders; prioritising the collection of sums due to the estate and the payment of liabilities; practical constraints on realisation or disposal of estate assets • Identifying secured creditors and whether an estate is solvent or insolvent; prioritising payment of debts from available assets according to the terms of the will or as required by statute • Advising personal representatives as to the above
	<p>Demonstrate knowledge, understanding and application of the post-death changes affecting distribution of the estate</p>	<ul style="list-style-type: none"> • Disclaimers and variations of interests arising under a will, intestacy or passing by survivorship; identifying the necessary requirements according to the desired succession and tax consequences • Claims for family provision made under the Inheritance (Provision for Family and Dependants) Act 1975 or rectification under Administration of Justice Act 1982, either settled by negotiation or as a result of court order and any tax consequences • Identifying the benefits of negotiation where this may be relevant such as (but not restricted to) disputed inheritances or family provision claims and advising accordingly
	<p>Demonstrate knowledge, understanding and application of the tax liability of personal representatives during</p>	<ul style="list-style-type: none"> • Identifying deceased's income arising before death and income of the administration period;

	Learning Outcomes	Supporting Experience
	administration	<p>liability to income tax of personal representatives and position of beneficiaries</p> <ul style="list-style-type: none"> • Identifying deceased's capital gains made in lifetime and disposals made by personal representatives in the course of estate administration; transfers by personal representatives to "legatees"; liability to CGT of personal representatives and position of beneficiaries • Finalising and discharging liability for income tax and CGT of the deceased and for the administration period • Finalising and discharging IHT liability of deceased and the estate, including but not limited to: negotiating with HMRC over probate valuations; claiming IHT loss relief if land/qualifying investments sold at a loss within permissible period after death; submitting corrective accounts (additional assets/liabilities or loss relief claim); applying for certificates of discharge; recovery of IHT for the benefit of the residuary estate from those who bear its burden
	Demonstrate knowledge, understanding and application of the payment of legacies and ascertainment and distribution of residue	<ul style="list-style-type: none"> • Identifying specific gifts, general and pecuniary legacies and terms of entitlement; application of rules on: ademption and abatement; giving effect to the gift or legacy by appropriation; receipts; position where beneficiary is a minor; time and manner of payment; entitlement to interest and income • Paying administration expenses: reasonable

	Learning Outcomes	Supporting Experience
		<p>funeral expenses; legal costs and remuneration under a charging clause; fees of other professionals; payment of legacies</p> <ul style="list-style-type: none"> • Ascertaining residue for distribution and preparation of estate accounts for residuary beneficiaries or residuary trustees • Transfer and assent of assets by personal representatives to beneficiaries or vesting in trustees appropriate to terms of the will or intestacy and the nature of the asset; receipt and discharge of personal representatives by beneficiaries or trustees
<p>ENTRY EXPERIENCE ALL APPLICANTS</p>	<ul style="list-style-type: none"> • Probate practice experience in the 2 years preceding the application 	<ul style="list-style-type: none"> • General description of probate work carried out • Description of typical case load • An indication of chargeable hours spent on probate work in each of the last 2 years • The proportion of time spent on probate work • Details of the supervisory arrangements under which the applicant works and/or their supervisory responsibilities <p>The applicant is required to demonstrate their experience of Probate Practice through the submission of 3 portfolios in accordance with the Portfolio Guidelines. Examples will be drawn from a range of cases from the applicant's case load.</p>

	Learning Outcomes	Supporting Experience
STAGE 2 QUALIFICATION CRITERIA: SKILLS		<p>In order to obtain accreditation the applicant needs to demonstrate the outcomes by either:</p> <ul style="list-style-type: none"> • attendance on a course, or • through work experience and by satisfying the qualification criteria.
	<ul style="list-style-type: none"> • Client Care and Legal Research 	<p>Either</p> <ul style="list-style-type: none"> • successful completion of CILEx Level 6 Professional Higher Diplomas in the skills of Legal Research and Client Care <p>Or</p> <ul style="list-style-type: none"> • qualification and/or experience of an equivalent standard <p>Experience which demonstrates how they meet each of the outcomes in Elements 1 and 2 set out below. Examples will be drawn from a range of cases from the applicant's case load. Guidance on this can be found in the Portfolio Guidelines</p>
Skills Element 1 CLIENT CARE	Demonstrate good practice in interviewing and advising	<ul style="list-style-type: none"> • Understanding of successful client interviewing • Identify interviews which the applicant considers to be successful and identify what made them successful. This may be evidenced by demonstrating ability to:

	Learning Outcomes	Supporting Experience
		<ul style="list-style-type: none"> • Prepare for the interview and apply a structured approach to it • Greet the interviewee appropriately and maintain the interviewee’s confidence • Use appropriate listening, questioning and feedback techniques • Be sensitive to diversity and other relevant issues and handle any emotionally distressed client in a sensitive and professional manner • Give appropriate advice when required (including the need to take further instructions or undertake research before doing so) • Keep a full and accurate record of the interview • Close the interview appropriately and deal with any follow-up issues as required. • Demonstrate the ability to give and communicate clear, accurate and practical advice both orally and in writing on matters relating to probate activities. This may be evidenced by ability to: <ul style="list-style-type: none"> • Obtain all relevant information and identify the client’s objectives • Give clear advice on all relevant matters arising • Where necessary, refer the client to other professionals better able to deal with the issues • Identify the options available and explain the advantages and disadvantages of each of those options • Enable and assist the client to reach a

	Learning Outcomes	Supporting Experience
		<p>decision based on appropriate advice</p> <ul style="list-style-type: none"> • Give clear, appropriate and accurate advice regarding costs, disbursements and funding • Seek appropriate instructions and give clear advice regarding the next steps to be taken in the matter • Deal appropriately with any diversity or other issues that might arise • Keep an accurate record of the advice given and the information on which that advice was based.
	Demonstrate good practice in legal writing	<p>Provide evidence of legal writing which demonstrates understanding of the following key areas of good practice:</p> <ul style="list-style-type: none"> • Accurate, succinct, complete and precise writing • Awareness of the need to use 'plain English' and writing using correct grammar and spelling • The use of legal English is used only when necessary and is appropriately explained • Judicious use of structure to clearly and logically set out information • Provide evidence to demonstrate the synthesis of a variety of sources to provide advice to the client • Provide evidence of use of appropriate communication, including use of appropriate tone and style, to sensitively manage client expectations.
	Demonstrate knowledge and understanding of professional conduct issues arising in practice	<ul style="list-style-type: none"> • Explain where the applicant will find the rules of professional conduct which affect their practice of the law • Identify situations in which an ethical issue may

	Learning Outcomes	Supporting Experience
		<p>have arisen in the applicant's practice and how they dealt with those situations</p> <ul style="list-style-type: none"> Identify any professional organisations that exist within the applicant's area of practice and explain benefits of membership
	Demonstrate knowledge and understanding of the importance of client care in legal practice	<ul style="list-style-type: none"> Explain the conduct rules relating to client care and evidence use of the rules in practice Evidence use of client care letters and complaint management handling Demonstrate understanding of the need for good client care to benefit the business
Skills Element 2 LEGAL RESEARCH	<p>Demonstrate knowledge and understanding of and be able to:</p> <ol style="list-style-type: none"> analyse the scope and complexity of situations which need legal research evaluate legal research sources perform appropriate legal research analyse the law in relation to practical problems record and evaluate information synthesise research to present advice. 	<ul style="list-style-type: none"> Identify situations in which the need for legal research has arisen in the applicant's work Explain the steps the applicant undertook to identify relevant sources of information and how they determined the reliability, accuracy and currency of the information discovered Explain their understanding of primary and secondary sources and how these sources can be used to ensure they have sufficiently researched the problem Identify relevant statutes, case law and other sources from their research Explain how the applicant prioritised and analysed the research and used this to better understand the issues raised in the legal matter Demonstrate the applicant's synthesis of the research materials to provide a structured and accurate report Show how the applicant evaluated the research ensuring that it is comprehensive and sensitive to the needs of the recipient

	Learning Outcomes	Supporting Experience
Skills Element 3 DRAFTING	Probate Papers <ul style="list-style-type: none"> Draft and complete probate papers; that is papers which are to found or oppose a grant of representation 	Preparing and amending as required documents to found or oppose a grant of probate or grant of letters of administration to include (but not restricted to): <ul style="list-style-type: none"> The oath HMRC accounts and supporting schedules Supporting evidence as required (affidavits or statements) Renunciations Applications for caveats, citations and standing searches Other applications pursuant to the non-contentious probate rules Covering letters in support.
	Wills <ul style="list-style-type: none"> Draft and complete wills and ancillary documents 	Preparing and amending as required documents relating to the preparation of wills to include (but not restricted to): <ul style="list-style-type: none"> Wills and codicils Letters of wishes Covering letters to clients Instructions for execution of a will or codicil Letters to others ancillary to will preparation such as medical practitioners, accountants and other professionals.
	Administration of Estates <ul style="list-style-type: none"> Draft and complete documents required in the administration 	Preparing and amending as required (including but

	Learning Outcomes	Supporting Experience
	of an estate	not restricted to): <ul style="list-style-type: none"> • Statutory notices • Letters to asset holders and documents necessary to realise assets • Tax returns and information for beneficiaries • Assents, transfers and other documents to transfer title • Post-death disclaimers and variations • Estate and (where relevant) trust accounts • Letters to personal representatives and trustees, beneficiaries, creditors and others.
Skills Element 4 MANAGING ACTIVITIES PROBATE	Demonstrate an ability to plan and manage probate activities effectively	<ul style="list-style-type: none"> • Allocate time and resources appropriately • Adopt and maintain an appropriate case strategy • Be aware of procedural requirements and time limits including relevant directions, rules and regulations • Actively manage case files to meet expectations of clients and beneficiaries whenever possible including the timely provision of interim payments if required • Properly comply with all relevant accounting requirements relating to the handling of funds.
	<ul style="list-style-type: none"> • Demonstrate an ability to assemble all materials relevant to the matter in hand, in accordance with its requirements 	<ul style="list-style-type: none"> • Identify relevant law and procedural rules • Identify and efficiently locate and collate all relevant documents • Identify the need to update information as required by the relevant law and procedure • Commission reports, valuations and other information from experts such as agents and valuers

	Learning Outcomes	Supporting Experience
		<ul style="list-style-type: none"> Recognise the need to act without undue delay in the preparation of documents including (but not restricted to) wills
	<ul style="list-style-type: none"> Demonstrate an ability to instruct other professionals 	<ul style="list-style-type: none"> Appreciate the nature and function of different types of experts and agents relevant to probate activities Identify when it is appropriate to instruct an expert or agent including when a specialist legal opinion is required Be familiar with the available registers, databases and organisations through which an appropriate expert or agent may be identified and located Understand any relevant statutory requirements to ensure that an expert or agent is instructed properly and is suitably qualified and experienced Identify when it is appropriate to delegate work and any relevant law or procedure which may limit the right or power to delegate Agree an appropriate fee for work to be carried out by an expert or agent Draft instructions to an expert or agent Deal with any expert or agent in a professional manner