

# ANNEX 6: CHARTERED LEGAL EXECUTIVE (PROBATE & PRIVATE CLIENT) OR CILEx PRACTITIONER (PROBATE & PRIVATE CLIENT)

There are two available routes that individuals can take to be authorised to practise probate independently.

Individuals seeking to be authorised as a Chartered Legal Executive (Probate & Private Client) must follow the Chartered Legal Executive route to qualification.

Alternatively, an individual may complete the knowledge requirements specific to becoming a CILEx Practitioner (Probate & Private Client) (for stage 1 highlighted in grey + stage 2), in which case they will be authorised as a CILEx Practitioner (Probate) and not a Chartered Legal Executive.

The technical knowledge requirements are set out below and must be coupled with the general qualification route to Chartered Legal Executive status. Where knowledge outcomes have been met as part of the route to qualification as a Chartered Legal Executive, this need not be repeated.

In addition to demonstrating this knowledge, individuals must also demonstrate the requirements set out in the competence framework, contextualised for their area of practice.

Chartered Legal Executive and CILEx Practitioner requirements should be set and assessed at Level 6 as a minimum

## TECHNICAL KNOWLEDGE REQUIREMENTS:

### GENERAL KNOWLEDGE REQUIREMENTS FOR ALL CHARTERED LEGAL EXECUTIVES

<b>MINIMUM CONTENT:</b>
<b>STAGE 1</b>
Introduction to law and legal practice
Introduction to dispute resolution
Introduction to conveyancing
Introduction to criminal practice
Introduction to wills and probate
Introduction to public law
Introduction to equality and human rights law
Introduction to legal technology
Conduct and professional ethics
<b>STAGE 2</b>
Contextualised legal technology
Conduct and professional ethics
<b>CHARTERED LEGAL EXECUTIVE Or CILEx PRACTITIONER</b>
Basic accounts
Specialist legal technology
Conduct and professional ethics

### KNOWLEDGE REQUIREMENTS SPECIFIC TO A CHARTERED LEGAL EXECUTIVE (PROBATE & PRIVATE CLIENT) OR CILEX PRACTITIONER (PROBATE & PRIVATE CLIENT)

<b>MINIMUM CONTENT:</b>
<b>Wills and Probate Practice</b>
Formal requirements for making a will
Testamentary capacity and intention
Duress and undue influence
Legal principles relating to legacies and devises
Execution of a will
Alterations to a will and the use of codicils

Revocation
Principles of construction
Assets passing outside of a will
Statutory rules for entitlement to property on intestacy, including the Inheritance and Trustees Powers Act 2014
Law and procedure relating to Grants of Representation
Powers, duties and liabilities of personal representatives
Law and practice relating to the administration and distribution of the estate including taxation
Claims against the estate under the Inheritance (Provision For Family and Dependants) Act 1975 and the effect on the distribution of the estate and the operation of the intestacy rules
Effect of post death variations and disclaimers
The preparation of estate accounts
Key principles of inheritance tax relating to lifetime transfers, potentially exempt transfers and transfers on death
Inheritance Tax – exemptions and reliefs, anti-avoidance provisions
Rules for the submission of IHT accounts to HMRC
Basic principles of income tax, capital gains tax and IHT applying to trusts
Basic inheritance tax planning in lifetime and in the will
The law and procedure relating to Enduring and Lasting Powers of Attorney
Living and statutory wills
Requirements for mental capacity
<b>Equity and trusts</b>
The role of equity and equitable principles
Equitable remedies
The creation of trusts including when trusts will be implied by law (resulting trusts, constructive trusts and secret trusts)
Rules relating to purpose trusts
The duties, remedies and powers of personal representatives and trustees
Rights, remedies and powers of beneficiaries
Anti-money laundering legislation

## **COMPETENCE REQUIREMENTS:**

### **1. APPLICATION OF LAW AND PRACTICE**

Using the technical knowledge from the wills and probate framework, you will be able to:

- ✓ Undertake legal research
  - Use relevant sources and appropriate research tools
  - Apply current law to the research problem
  - Record and present findings accurately and clearly
- ✓ Critically analyse facts and law
- ✓ Synthesise all relevant information to provide
- ✓ Find solutions where possible
- ✓ Draft legal documents
  - Apply the principles of good drafting to produce clear, unambiguous and accurate documents and agreements with appropriate language, structure and formatting which meet all formal and legal requirements
  - Select precedents and templates and use, adapt and edit them in a way that is appropriate to the matter or transaction
  - Correctly use numbering, schedules, recitals, definitions and boilerplate provisions in the drafting of documents and agreements
  - Draft a document, whether from scratch or by using precedents, that forms a coherent whole, which reflects the clients objectives and, where appropriate, advances the matter or transaction and manages client risk

### **2. COMMUNICATION**

- ✓ Communicate orally and in writing, clearly and effectively:
  - Choose the most appropriate method of communication, including electronic communication and observing appropriate etiquette
  - Use language tailored to the audience and the purposes of the communication
  - Apply oral communication and listening skills to build trust, ask questions and understand, to provide explanation and advice, as appropriate
  - Produce clear, unambiguous and accurate written communications with appropriate language and structure
  - Demonstrate emotional competence to achieve effective communication
- ✓ Negotiate effectively
  - Identify when negotiation is necessary
  - Demonstrate effective preparation and planning and apply strategies which reflect an understanding of the client's objectives, expectations and risk, and which seeks to manage those appropriately as far as possible

- Identify and evaluate the interests, strengths, weaknesses and risks of other parties who have an interest in the matter being negotiated
- Choose and explain the most appropriate method of negotiation (e.g. letter, face to face meeting etc.)
- Take the necessary steps to ensure agreement or compromise reached is clear and lawful, and where appropriate, legally binding
- Behave ethically in negotiating agreement or compromise
- ✓ Advocacy/oral presentation
  - Make oral presentations that are clear, succinct, focused, relevant to the context, persuasive and appropriate to the audience
- ✓ Develop, maintain and manage 3<sup>rd</sup> party relationships
  - Work both independently and as part of a team
  - Deal with others involved in a matter appropriately, professionally and ethically
  - Provide others involved in a matter with appropriate information, instructions and guidance
  - Identify and where appropriate instruct an advocate or expert
- ✓ Develop, maintain and manage 3<sup>rd</sup> party relationships
  - Work both independently and as part of a team
  - Deal with other professionals involved in a matter appropriately, professionally and ethically
  - Provide other professionals involved in a matter with appropriate information, instructions and guidance
  - Identify when to instruct an advocate or expert

### **3. CLIENT RELATIONSHIP**

- ✓ Take instructions
  - Conduct effective interviews with a client to achieve a full understanding of the client's wishes, objectives and concerns
  - Identify and obtain all relevant information necessary to achieve the client's wishes, objectives and concerns
  - Recognise where information is missing or held by 3<sup>rd</sup> parties and acquire the necessary consents to obtain it
  - Obtain all information necessary to understand the roles and interests of the parties involved in the matter to give advice, plan for the progress and completion of the matter
  - Identify actual or potential conflicts and act accordingly
- ✓ Evaluate options and risks to the client
  - Be alert to issues of undue influence and duress
  - Identify issues, including the client's personal circumstances, which may impact on the achievement of the client's wishes and objectives,
  - Identify any alternative means of achieving the client's wishes and objectives

- ✓ Give advice
  - Communicate clear, accurate and practical advice, both orally and in writing, relevant to the matter
- ✓ Manage expectations
- ✓ Provide good customer service
  - Identify the steps which need to be taken to achieve the client's wishes or further their objectives, as far as practicable, and plan and implement their progress
  - Communicate with the client on progress towards achieving their objectives, including any risks which have not previously been identified

#### **4. EFFECTIVE WORKING PRACTICES**

- ✓ Progress matters
  - Deal with matters without causing delay
  - Identify and manage risks as far as practicable to the achievement of the client's objectives
- ✓ Plan workload and manage files
  - Plan and prioritise workload and manage files and tasks concurrently and efficiently, making best use of resources and exercising effective judgement
  - Maintain files and records in accordance with office and regulatory procedures
  - Seek support where necessary
  - Manage financial transactions on the file
- ✓ Caseload management
- ✓ Understand and utilise innovation where appropriate

#### **5. BUSINESS AWARENESS**

- ✓ Identify and evaluate options and risks to the business in which you work
- ✓ Undertake business development
- ✓ Network
- ✓ Identify marketing opportunities
- ✓ Understand and use financial management tools

## **6. SELF DEVELOPMENT**

You will be able to:

- ✓ Reflect and self-evaluate, including understanding your own limitations and the need for adaptability.
- ✓ Develop awareness of the role of your own emotions within the workplace and recognise the emotions and vulnerabilities of clients.
- ✓ Foster personal physical and mental wellbeing and contribute where possible to a positive workplace environment.
- ✓ Identify and undertake professional development necessary to ensure competence and good practice and a commitment to supervisory requirements.
- ✓ Demonstrate leadership and management skills (optional).

## **7. CONDUCT, ETHICS AND PROFESSIONALISM**

- ✓ Understand and put into practice the CILEx Regulation Code of Conduct
  - Apply professional obligations in a diverse range of situations relating to substantive law and the rules of professional conduct
  - Apply obligations to the court, clients, other lawyers and the public
- ✓ Understand and put into practice all relevant legal and regulatory requirements (e.g. data protection, anti-money laundering legislation and regulation, conflicts, withdrawal from a case, undertakings, confidentiality and privilege)
- ✓ Understand and put into practice the principles of client care
- ✓ Provide certainty and clarity as to the legal services being provided and the basis of charging and draft compliant client care letters
- ✓ Understand and put into practice complaint handling requirements
  - Apply the conduct rules
  - Take the necessary steps required in the event that a mistake (or an act of negligence) has occurred
- ✓ Understand and put into practice, principles of equality, diversity and inclusion, including the needs of vulnerable consumers
- ✓ Identify situations where ethical, legal or regulatory requirements are engaged and take appropriate action
- ✓ Resist pressure to condone, ignore or act unethically

## **8. USE OF TECHNOLOGY**

- ✓ Use available technology as it is used in will drafting and the administration of estates and associated matters
- ✓ Identify uses for emerging technology in wills and probate practice and recommend its implementation where appropriate
- ✓ Understand ethical challenges and the limitations of technology and use technology ethically and use technology ethically