

# **INSTITUTE OF LEGAL EXECUTIVES**

## **RIGHTS TO CONDUCT LITIGATION AND RIGHTS OF AUDIENCE CERTIFICATION RULES**

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## CONTENTS

<b>Certification Rules</b> .....	3
Appendix 1 – Knowledge and experience guidelines.....	31
Appendix 2 – portfolio guidelines.....	45
Appendix 3 – litigation skills course outcomes.....	49
Appendix 4 – litigation course assessment criteria.....	73
Appendix 5 – advocacy course outcomes.....	85
Appendix 6 – advocacy course assessment criteria.....	90
Appendix 7 – practice management course outcomes.....	104
Appendix 8 – accounts course outcomes.....	107
Appendix 9 – accounts course assessment criteria.....	110
Appendix 10 – independent practice criteria.....	113
Appendix 11 – Practice Management and Accounts Rules.....	115
Appendix 12 – Equality and Diversity Code.....	142
Appendix 13 - Publicity code.....	145
Appendix 14 – Poor service scheme.....	147
Appendix 15 – client protection scheme.....	150
Appendix 16 – indemnity insurance rules.....	156
Appendix 17 – Rights of Audience Conduct Rules .....	161

# **RIGHTS TO CONDUCT LITIGATION AND RIGHTS OF AUDIENCE CERTIFICATION RULES**

## **DEFINITIONS**

### **1. In these Rules, except where otherwise indicated:**

- “Advocacy Certificate” means a Rights of Audience Certificate identified in these Rules;
- “Advocacy Skills Course” means an advocacy skills course approved for the purposes of these Rules by ILEX;
- “Authorised Litigator” means a person who has been granted a right to conduct litigation by an authorised body, under the terms of the Act;
- “Certificate of Eligibility” means a Certificate permitting a Fellow or Graduate member to undertake a Litigation Skills Course and an Advocacy Skills Course;
- “Certification Rules” means these Rights to Conduct Litigation and Rights of Audience Certification Rules;
- “Chambers advocacy” means rights of audience exercised in Judge’s room hearings;
- “Council” means the Council of ILEX;
- “Course provider” means a teaching or training organisation which has been approved under these Rules to provide a Litigation, Advocacy or Accounts Course or a teaching or training organisation which provides a practice management course that meets the requirements of these Rules;
- “External adviser” means a person appointed by ILEX to carry out the roles and functions identified for them in these Rules;
- “Fellow or Graduate member of ILEX in good standing” means a Fellow or Graduate member of ILEX whose subscriptions to ILEX 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 Litigator;

- “ILEX” means the Institute of Legal Executives;
- “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;
- “Legal Executive Advocate” means a Fellow who has been granted a Rights of Audience Certificate by ILEX;
- “Legal Executive Litigator” means a Fellow who has been granted a Litigation Certificate by ILEX;
- “Litigation Skills Course” means a Litigation Skills Course approved for the purposes of these Rules by IPS;
- “Practice management and accounts courses” means practice management courses and accounts courses approved for the purposes of these Rules and which meet the requirements of these Rules;
- “The Act” means the Legal Services Act 2007;
- “The Admissions and Licensing Committee” means a Committee established under these Rules to carry out the roles and functions identified for the Committee in these Rules;
- “The Officer” means a person with responsibility for the rights to conduct litigation qualification scheme and 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.

2. Responsibility for this qualification scheme is delegated to IPS by ILEX.

## **THE RIGHTS TO CONDUCT LITIGATION AND RIGHTS OF AUDIENCE CERTIFICATES**

3. A Fellow of ILEX in good standing may apply to IPS to be granted one or more of the following Certificates:
  - (a) A Right to Conduct Litigation (Civil Proceedings) Certificate;

(b) A Right to Conduct Litigation (Family Proceedings) Certificate;

4. A Fellow of ILEX in good standing may apply to IPS to be granted one or more of the following Advocacy Certificates:
- (a) A Rights of Audience (Civil Proceedings) Certificate;
  - (b) A Rights of Audience (Family Proceedings) Certificate.
5. The Rights to Conduct Litigation and Rights of Audience exercisable by Fellows holding Litigation Certificates are set out below:

***Rights to Conduct Litigation (Civil Proceedings) Certificate:***

- To conduct litigation in all civil proceedings excluding family proceedings;
- To exercise rights of audience in Judge's room hearings in the County Court and High Court in all civil proceedings excluding family proceedings.

***Rights to Conduct Litigation (Family Proceedings) Certificate:***

- To conduct litigation in all family proceedings;
- To exercise rights of audience in Judge's room hearings in the County Court and High Court in all family proceedings.

6. The rights of audience exercisable by Litigators holding Rights of Audience Certificates are set out below:

***Rights of Audience (Civil Proceedings) Certificate***

- (a) to appear in open Court in the County Court in all actions, except family proceedings;
- (b) to appear before magistrates, District Judges (Magistrates' Court) or Justices' Legal Advisers in the Magistrates' Courts in relation to all civil and enforcement matters;
- (c) to appear before any tribunal having jurisdiction in England and Wales, which is listed in Schedule 6 of the Tribunals, Courts and Enforcement Act 2007 (as amended or substituted from time to time) where the tribunal rules provide for a non-discretionary right of audience being available to barristers, solicitors and ILEX advocates;
- (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.

A Civil Proceedings Certificate does not confer a right of audience in any proceedings for which a Family Proceedings Certificate is required.

***Rights of Audience (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.

A Family Proceedings Certificate does not confer a right of audience in any proceedings for which a Civil Proceedings Certificate is required.

- 7. A person who had qualified as a Legal Executive Advocate before qualification as a Legal Executive Litigator may continue to exercise all the rights of audience appropriate to the Advocacy Certificate or Certificates he holds, as described in Rule 5 above immediately upon qualification as a Legal Executive Litigator.

**CERTIFICATES OF ELIGIBILITY – RIGHTS TO CONDUCT LITIGATION AND CHAMBERS RIGHTS OF AUDIENCE**

- 8. Graduate members and Fellows of ILEX who seek rights to conduct litigation and rights of audience in Judge's room hearings must make an application to the Admissions and Licensing Committee for a Certificate of Eligibility to enrol onto the qualification scheme.
- 9. 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 legal practice relevant to the litigation and advocacy skills course he wishes to undertake and the rights 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 litigation experience in accordance with the requirements set out in the knowledge and experience guidelines at **Appendix 1**;
  - A portfolio of litigation cases in which the Applicant has been involved during the two years preceding his application, in accordance with the portfolio guidelines at **Appendix 2** unless the applicant is a Legal Executive Advocate who had submitted portfolios for a Certificate of Eligibility under the rights of audience scheme within 12 months of the date of this application;
  - Details of two referees, who are members of the legal profession, who can attest to the applicant's knowledge of civil or family law

and practice, (whichever is relevant), and who are able to offer an informed opinion whether the applicant meets the competence criteria set out in the knowledge and experience guidelines at **Appendix 1**;

- A statement from the applicant confirming that the details provided in his application are true to the best of his knowledge and belief.
10. Upon receiving a Certificate of Eligibility an applicant will complete the litigation skills and chambers advocacy skills course. An applicant who has completed a course in litigation skills and chambers advocacy skills, which meets the course delivery outcomes and assessment criteria at **appendices 3 to 6** to these rules, may make an application for exemption from the ILEX litigation skills and chambers advocacy skills course. The application for exemption will be supported by details of the course completed including its course outcomes and the assessment completed including the results achieved by the applicant. The Admissions and Licensing Committee will assess whether the course meets the course outcomes and assessment criteria. The applicant may be granted an exemption from completing the course and assessment provided over 50% of the course outcomes and assessment criteria are met.

#### **CERTIFICATES OF ELIGIBILITY – ADDITIONAL RIGHTS OF AUDIENCE**

11. Graduate members and Fellows of ILEX who seek open court rights of audience must complete the additional Advocacy Skills Course. They must make an application for a Certificate of Eligibility to enrol onto the qualification course.
12. A Graduate member or Fellow seeking a Certificate of Eligibility must be an authorised Legal Executive Litigator or be seeking a Certificate of Eligibility for litigation rights at the same time.
13. 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 undertake and 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, where relevant, litigation experience in accordance with the requirements set out in the Knowledge and Experience Guidelines at **Appendix 1**;

- a portfolio of advocacy 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 can attest to the applicant's knowledge of civil 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 confirming that the details provided of his litigation and advocacy experience are true to the best of his knowledge and belief.
14. Upon receiving a Certificate of Eligibility an applicant will complete the advocacy skills course. Where an applicant has completed a course in advocacy skills, which meets the course delivery and outcomes and assessment criteria at **appendices 5 to 6** to these Rules, he may make an application to seek exemption from completing the ILEX advocacy skills course. The application for exemption will be supported by details of the course completed including its course outcomes and the assessment completed including the results achieved by the applicant. The Admissions and Licensing Committee will assess whether the course meets the course outcomes and assessment criteria. The applicant may be granted an exemption from completing the course and assessment provided over 50% of the outcomes and assessment criteria are met.

## **ALL CERTIFICATES OF ELIGIBILITY**

15. 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.
16. The Officer will check the application to ensure it meets the criteria set out in the Knowledge and Experience Guidelines at **Appendix 1**. The portfolios which form part of the applications for Certificates of Eligibility will be sent to an external advisor. The external advisor will assess whether the portfolios meet the criteria set out in the Knowledge and Experience Guidelines at **Appendix 1** and the Portfolio Guidelines at **Appendix 2**.
17. Where the external advisor decides that the portfolios are satisfactory and meet the criteria set out in the Knowledge and Experience Guidelines at **Appendix 1** and the Portfolio Guidelines at **Appendix 2** the full



- application will be considered by the Officer. 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 he may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for decision.
18. Where the external advisor decides that the portfolios are not satisfactory and do 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, amend and resubmit his application or make further representations and ask that the full application be referred to the Admissions and Licensing Committee to consider.
  19. The Admissions and Licensing Committee will decide whether or not an application should be approved. In reaching their 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 Litigation and/or Advocacy Skills Courses, civil proceedings or family proceedings the applicant may take; or
    - Refuse the application.
  20. In making any assessment or decision required by these Rules 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.
  21. The Officer will notify an applicant in writing of his decision or the decision of the Admissions and Licensing Committee. Where the application has been approved the notification shall include the Certificate(s) 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 Certificate(s) of Eligibility. Where an application has been unsuccessful the applicant may apply for reconsideration in accordance with Rules 28 and 29.
  22. The Certificate of Eligibility will specify which of the Litigation and/or Advocacy Skills Course options the applicant may take.

## **ADMISSIONS AND LICENSING COMMITTEE**

23. IPS shall appoint a Committee, called the Admissions and Licensing Committee, which will be responsible for the litigation and advocacy scheme. The Committee shall report to the IPS Board.
24. The Admissions and Licensing Committee shall:
  - Apply and monitor the ILEX Rights to Conduct Litigation and Rights of Audience Certification Rules;
  - Assess whether a member meets the knowledge and experience requirements for enrolment onto the rights of audience and rights to conduct litigation schemes in cases referred to it by the Officer;
  - Assess whether a member meets the requirements to be granted litigation or advocacy rights certificates in cases referred to it by the Officer;
  - Assess whether a member meets the requirements to renew their litigation or advocacy certificates in cases referred to it by the Officer;
  - Consider whether or not a Fellow may continue to hold a Litigation or Advocacy Certificate;
  - Assess and determine applications made by course providers for accreditation to deliver courses under the litigation and advocacy schemes referred to it by the Officer;
  - Determine whether accreditation of a course provider to provide a litigation skills or advocacy skills course should be withdrawn;
  - Consider applications made by litigators to practice independently referred to it by the Officer;
  - Receive reports of inspections and moderation of litigation and advocacy skills courses from the external advisors and the Officer;
  - Receive annual reports from course providers;
  - Submit an annual report to the IPS Board;
  - Oversee the rights of audience and litigation rights schemes;

- Review the rights of audience and rights to conduct litigation schemes and make recommendations to IPS for revisions to them;
  - Consider appeals made against decisions made by the Officer in respect of applications;
  - Consider and determine applications for a re-hearing of a decision made by the Committee.
25. The Committee may delegate to the Officer responsibility for making decisions on applications for certificates for eligibility, litigation and advocacy certificates, renewal of certificates, authorisation to practice independently and accreditation of course providers.
  26. 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.
  27. A person or organisation affected by a decision made by the Officer may seek reconsideration of their matter by the Admissions and Licensing Committee.
  28. A person or organisation affected by any decision made by the Admissions and Licensing Committee pursuant to its powers under these Rules may apply for reconsideration of that decision. Such a person must lodge an application for reconsideration at the IPS office within 15 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.
  29. Where an application is reconsidered by the Admissions and Licensing Committee it shall have all the powers that were available to it at the original consideration of the application. The decision of the Admissions and Licensing Committee upon reconsideration shall be final.
  30. 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 schemes for Legal Executive Litigators and Advocates.

31. The membership of the Admissions and Licensing Committee will comprise:
  - Two Fellows of ILEX who shall not be members of ILEX Council;
  - Three independent members, at least 1 of whom shall have knowledge or experience of consumer issues;At least one member will be a member of the IPS Board.
32. Appointments of committee members shall be made by the IPS Board. Each member will be appointed to the Admissions and Licensing Committee for a period of five years. The IPS Board may reappoint a member for one further term or make a new appointment. No member may serve more than two consecutive terms as a member of the Admissions and Licensing Committee.
33. Where a member fails without good reason to fulfil his duties set out in these Rules the IPS Board may terminate his appointment whether or not he has completed his current term of office.
34. 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.
35. The Admissions and Licensing Committee will appoint one of its members as Chair. The Chair will be appointed for a period of one year. The Chair will be eligible for reappointment, but may not serve as Chair for more than three consecutive years.
36. Decisions of the Admissions and Licensing Committee will be reached by a majority vote. In the case of an equality of votes the Chair shall have a casting vote. External advisors may not vote on any matter at a meeting.
37. 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.
38. 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.

39. The IPS Board 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.

### **EXTERNAL ADVISORS**

40. IPS shall appoint external advisors to advise the Admissions and Licensing Committee and IPS on issues relating to litigation and advocacy and practice management and accounts.
41. When making appointments of external advisors in respect of advocacy or litigation IPS shall take into account the following:
- That the person appointed is qualified to practise in the area of specialist work in which they are appointed;
  - That the person appointed has experience of teaching and assessment of law and legal practice, including litigation and advocacy, at degree or post graduate level.
42. When appointing external advisors in respect of practice management or accounts IPS shall take into account the following:
- That the person appointed has a relevant qualification or experience of practice management or accounts;
  - That the person appointed has knowledge and experience of teaching and assessment of practice management skills or accounts.
43. The external advisors appointed in respect of litigation and advocacy will provide advice to the Officer and Admissions and Licensing Committee in respect of the following:
- applications for Certificates of Eligibility to enrol onto the litigation or advocacy qualification scheme;
  - applications for the first renewal of Litigation and Advocacy Certificates;
  - applications by Fellows for subsequent renewal of Litigation and Advocacy Certificates that are referred to them;
  - whether a course provider is suitable or fit to provide or continue to provide Litigation or Advocacy Skills Courses or whether course materials and the course structure is suitable;
  - applications to the Admissions and Licensing Committee for the reconsideration of a decision;

- the structure of Litigation and Advocacy Skills Courses or the qualification scheme generally, and may make recommendations for revision of the qualification scheme;
- any other matter on which the Admissions and Licensing Committee seeks their advice.

The Admissions and Licensing Committee shall consider any advice given by the external advisors, but shall not be bound by such advice.

44. The external advisors appointed in respect of practice management or accounts shall provide advice to the Admissions and Licensing Committee in respect of the following:

- Applications by Litigators to practice in independent practice;
- The suitability of practice management and accounts courses;
- Standards of assessment applied by course providers delivering accounts assessments;
- Applications to the Admissions and Licensing Committee for reconsideration of a decision;
- The structure of practice management and accounts courses or the qualification scheme generally, and may make recommendations for the 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 shall consider any advice given by the external advisors, but shall not be bound by such advice.

45. The external advisors shall decide whether a portfolio submitted with an application for a Certificate of Eligibility or first renewal of a Litigation or 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 Admissions and Licensing Committee accordingly.

46. The external advisors may also decide whether an application submitted by a Litigator to work in independent practice or to provide litigation services to clients of an employer meets the criteria set out at **Appendix 10**.

47. The external advisors shall carry out inspections of litigation and advocacy courses. They shall provide reports on inspections to IPS which shall be made available to the relevant course provider.

48. The external advisors shall moderate assessment materials prepared by a course provider and the standards of assessment applied by course providers for the litigation, advocacy and accounts courses. They shall report their findings to IPS and the course provider.
49. The external advisers' reports on inspections and moderation of course materials and assessment standards shall be taken into account by the Officer and the Admissions and Licensing Committee when considering whether to renew or withdraw accreditation of a course provider.
50. The external advisors shall receive notice of meetings of the Admissions and Licensing Committee and may attend such meetings in their advisory capacity.
51. The external advisors will be appointed for a period of five years. They may be reappointed for one further period of five years. Where an external advisor fails, without good reason, to fulfil any of his duties set out in these Rules or is guilty of any misconduct in carrying out his duties, IPS may terminate his appointment whether or not he has completed his current term of office.
52. 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.

## **QUALIFICATION COURSES**

53. A Fellow or Graduate member who has been granted a Certificate of Eligibility may take Litigation or Advocacy Skills Courses relating to the Certificate for which he has been granted a Certificate of Eligibility.
54. Where a Fellow or Graduate member fails to start a litigation or 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 a litigation or advocacy skills course. In exceptional cases the Admissions and Licensing Committee or the IPS Officer may exercise discretion to extend the duration of a Certificate of Eligibility.
55. Fellows and Graduate members will be required to:
  - successfully complete the training sessions; and
  - demonstrate the necessary levels of competence in the formal assessments during the course so that they satisfy the Assessment Criteria set out in **Appendices 4 and 6**.

56. Litigation and advocacy skills courses will be provided by course providers who are accredited by the Admissions and Licensing Committee.
57. An approved litigation skills course and chambers advocacy course must:
- Meet the litigation skills course delivery criteria set out at **Appendix 3** and the chambers advocacy course delivery criteria set out at **Appendix 5**;
  - Be capable of delivering the course outcomes set out at **Appendix 3** and chambers course outcomes at **Appendix 5**; and
  - Include arrangements for assessment of litigation skills in accordance with the litigation course assessment criteria set out in **Appendix 4** and assessment of chambers advocacy skills in accordance with the assessment criteria set out in **Appendix 6**.
58. An approved advocacy skills course must:
- meet the advocacy skills course delivery criteria set out at **Appendix 5**;
  - be capable of delivering the course outcomes set out at **Appendix 5**; and
  - include arrangements for assessment of advocacy skills in accordance with the criteria set out in **Appendix 6**.
59. An approved accounts course must:
- Meet the accounts course delivery criteria set out at **Appendix 8**;
  - be capable of delivering the course outcomes set out at **Appendix 8**; and
  - Include arrangements for assessment of accounts knowledge and skills in accordance with the course assessment criteria set out in **Appendix 9**.
60. Practice management courses may be provided by any course provider whose course:
- Meets the practice management course delivery criteria set out at **Appendix 7**; and
  - Is capable of delivering the course outcomes set out at **Appendix 7**.

## **COURSE PROVIDERS**

61. Independent teaching or testing organisations will provide litigation skills, advocacy skills and accounts courses. Organisations seeking to offer litigation skills, advocacy skills and accounts courses will apply to IPS for accreditation.



62. Applications for accreditation will be considered by the Officer. Where the Officer has any doubt he may request additional information and/or refer the application to the Admissions and Licensing Committee for decision. The Officer or the Admissions and Licensing Committee may accredit course providers who demonstrate that they are able to provide litigation skills, advocacy skills and accounts courses to deliver the course outcomes and assessment criteria set out at **Appendices 3 to 6 and 8**, as applicable. The Officer and Admissions and Licensing Committee will consider reports and recommendations of the external advisors when considering applications.
63. The Officer and Admissions and Licensing Committee will also have regard to the following criteria when considering applications for accreditation:
- venue, including teaching and study accommodation and other facilities;
  - resources to support teaching and study, including library and research facilities;
  - candidate numbers and proposed tutor/candidate ratios;
  - teaching and assessment experience of the applicant organisation and of those who are to deliver the course;
  - proposed course structure, including teaching/study time;
  - proposed course content;
  - proposed course duration;
  - 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.
64. IPS will produce an accreditation handbook which will set out the accreditation procedure and criteria.
65. Course providers will be accredited for a period of three years but may apply for re-accreditation at the end of that period.
66. Course providers shall be responsible for producing materials for the courses 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.

67. Course providers shall be responsible for carrying out formal assessment of candidates in accordance with the assessment criteria. Standards of assessment will be subject to moderation by external advisors who will be provided with recorded candidate performances or examination scripts across a representative range of attainment for this purpose.
68. The course provider shall have in place procedures for considering appeals by candidates against assessments of competence.
69. Course providers will be inspected. Inspection teams for this purpose will consist of an Officer and an external advisor. 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 62 and 63. The inspection team will observe formal assessments of candidates. At least one course provided by each course provider should be inspected each year.
70. 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 Admissions and Licensing Committee shall take inspection reports into account when considering whether to renew or withdraw accreditation of a course provider.
71. Course providers shall produce annual reports for consideration by the Admissions and Licensing Committee which provide an overview of the courses they have provided during the year. Reports shall include comment on:
  - the course generally;
  - candidate performance in relation to the standards of the course;
  - results of assessments;
  - candidate feed-back;
  - any recommendations for change or improvement in the course structure or materials; and
  - any developments in the course following any previous report by the course provider or by an inspection team.
72. 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.

73. 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 28 and 29.

## **CERTIFICATION**

74. Upon successful completion of a litigation skills and chambers advocacy skills course a Fellow may apply for a Litigation Certificate. Upon successful completion of the full advocacy course a Fellow may apply for a Advocacy Certificate. A Graduate member who has completed a litigation skills and chambers advocacy skills course or full advocacy course may not make an application until he becomes a Fellow.
75. A Fellow may only apply for a Litigation and Advocacy Certificate relating to the type of proceedings covered by the litigation skills and advocacy skills course he has completed.
76. 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.
77. The Officer will process the application. The applicant shall be granted a Litigation Certificate and an Advocacy Certificate which is appropriate to the course he has completed, provided the Officer is satisfied that the applicant:
- is a Fellow of good standing;
  - is the holder of a Certificate of Eligibility; and
  - has passed a litigation skills and chambers advocacy skills course and or an open court advocacy skills course.
78. Where the Officer has any doubt as to the suitability of the applicant to be awarded a Litigation and or Advocacy Certificate he may request additional information from the applicant and or refer the application to the Admissions and Licensing Committee for decision.
79. When considering an application for a Litigation and or Advocacy Certificate to be awarded the Admissions and Licensing Committee will consider all the information before it and may request additional information from any person or source it considers appropriate. It may require or permit the applicant to attend for interview before reaching its decision.

80. 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.
81. The Officer will notify an applicant in writing of a decision whether his application for a Litigation or Advocacy Certificate is successful. Where the application has been approved the notification shall include the Litigation Certificate and or 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 a Litigation Certificate and or Advocacy Certificate. The applicant may apply for reconsideration of his application in accordance with Rules 28 and 29.
82. A Fellow holding a Litigation Certificate will be described as a Legal Executive Litigator.
83. A Fellow holding a Litigation and Advocacy Certificate will be described as a Legal Executive Litigator and Advocate.

#### **APPLICATION FOR ADDITIONAL CERTIFICATES**

84. A Legal Executive Litigator may apply to be granted Litigation or Advocacy Certificates additional to any Certificates already granted to him under these Rules. Prior to seeking an additional Advocacy Certificate the Litigator must obtain a Litigation Certificate in that practice area or make an application for a Litigation Certificate at the same time.
85. Applications for additional Certificates may be made by Graduate members and Fellows of ILEX. Graduate members and Fellows will submit an application for a Certificate of Eligibility in accordance with Rules 9, 13 and 15 to 18.
86. Applications for additional certificates will be processed by the Officer. Where the Officer has any doubt as to the suitability of the applicant he may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for decision.
87. When deciding to issue a Certificate of Eligibility to an applicant seeking grant of an additional Litigation or Advocacy Certificate, the Officer or the Admissions and Licensing Committee shall provide a statement of further

training setting out any further training or assessment in litigation or advocacy skills the applicant is required to undertake. Upon the award of a Certificate of Eligibility the applicant will undertake such parts of the Litigation or Advocacy Skills Course as are required by the statement of further training or assessment attached to it.

88. Where it decides not to issue a Certificate of Eligibility to an applicant seeking an additional Litigation or 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 28 and 29.
89. Upon successful completion of any further training and assessment in litigation or advocacy skills required, Fellows may submit an application for a Litigation or Advocacy Certificate, in accordance with these Rules. A Graduate member may not make an application until he becomes a Fellow.

## **RENEWAL OF CERTIFICATES**

90. The first Litigation and Advocacy Certificate issued to a Fellow, and the first Litigation and 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. Any Litigation Certificate will be valid for a period of 3 years unless the Litigator practices in independent practice or provides litigation services to clients of their employer in which case the Litigation Certificate will be valid for a period of 1 year.
91. 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.
92. An application for the first renewal of a Litigation or Advocacy Certificate must be supported by:
  - Confirmation that the applicant is working as a Legal Executive Litigator and/or Advocate;
  - a record of the applicant's litigation and/or advocacy experience gained during the period since his Litigation and/or Advocacy Certificate was granted;

- a portfolio of cases in which the applicant has been involved during the period since his Litigation and/or Advocacy Certificate was granted, in accordance with the Portfolio Guidelines set out in **Appendix 2**;
  - a statement from the applicant confirming the details provided of his litigation and/or advocacy experience and whether any rights to conduct litigation and/or rights of audience granted will be exercised in the future.
93. The portfolio which forms part of the application for the first renewal of the Litigation and/or Advocacy Certificate will be sent to an external advisor. The external advisor will assess the portfolio against the criteria set out in **Appendices 1 and 2**.
94. Where the external advisor decides that the portfolio is satisfactory and shows that the applicant has applied the litigation or advocacy skills in the cases described in accordance with the Portfolio Guidelines in **Appendix 2** and the Course Outcomes set out in **Appendices 3 and 5** the Officer will consider the application and decide whether it should be approved. In reaching a 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.
95. Where the Officer has any doubt as to the suitability of the applicant he may request additional information from the applicant and/or refer the application to the Admissions and Licensing Committee for decision.
96. Where the external advisor decides that the portfolio is not satisfactory and does not show that the applicant has applied the litigation and/or advocacy skills in the cases described in accordance with the Portfolio Guidelines set out in **Appendix 2** and the Course Outcomes set out in **Appendices 3 and 5** 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.
97. 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. The Committee may approve the application or reject it.

98. 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 **Appendices 3 and 5**.
99. The Officer will notify an applicant in writing of the decision. Where the application has been approved the notification shall include the Litigation and/or Advocacy Certificate. Where the application is unsuccessful the notification shall set out the reasons for the decision and any preconditions to the consideration of any subsequent application for a Litigation and/or Advocacy Certificate.
100. Where the application is unsuccessful an applicant may apply for reconsideration in accordance with Rules 28 and 29. The Admissions and Licensing Committee will have the same powers available as at Rule 97 upon an application for reconsideration.
101. A Fellow making an application for renewal of his Litigation and/or Advocacy Certificate, after the first renewal, must:
- be a Fellow of good standing;
  - be practising as a Legal Executive Litigator, and, where relevant, as Legal Executive Advocate;
  - provide a statement indicating whether any rights to conduct litigation and/or rights of audience granted will be exercised; and
  - have undertaken Continuing Professional Development (CPD) that meets the requirements set out in these Rules.
102. The Officer will process applications for renewal. Where the Officer is satisfied that the Fellow complies with the requirements set out in Rule 101 he will issue a new Litigation and/or Advocacy Certificate.
103. Where he has any doubt whether a Litigation and/or an Advocacy Certificate should be renewed, the Officer may request further information and/or refer the application to the Admissions and Licensing Committee.
104. 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.
105. If the Admissions and Licensing Committee is satisfied that the Litigation and/or 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.

106. 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 Litigation and/or 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 Litigation and/or Advocacy Certificate. Where the application is unsuccessful an applicant may apply for reconsideration in accordance with Rules 28 and 29.

### **LAPSED CERTIFICATES**

107. A Fellow who has held a Litigation Certificate and/or an Advocacy Certificate which has lapsed may apply for that certificate to be renewed. Renewal of a lapsed certificate will be governed by Rules 90 to 100 which deal with first renewal of a litigation and/or advocacy certificate save that in Rule 92:

- the reference to an application for the first renewal of a Litigation and/or Advocacy Certificate should be a reference to an application for renewal of a lapsed Litigation and/or Advocacy Certificate;
  - the applicant will not be required to provide confirmation that they are working as a Legal Executive Litigator and / or advocate;
  - the applicant will be required to provide a record of their litigation and/or advocacy experience since their Litigation and/or Advocacy Certificate lapsed; and
  - the information required to be provided by the applicant shall include, additionally, reasons why the Litigation and/or Advocacy Certificate lapsed and details of CPD undertaken during the 12 months prior to the application.
108. A lapsed Litigation and/or 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.



109. Where a Litigation Certificate and/or 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 101 to 106 above.

## **AUTHORISATION TO PRACTICE**

110. Upon obtaining a Litigation Certificate a Litigator may apply for authorisation to provide litigation services in independent practice or to provide litigation services to customers of their employer.
111. A Litigator may not provide litigation services in independent practice or provide litigation services to customers of their employer until they have been authorised by IPS to do so.
112. 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.
113. An application must meet the independent practice criteria set out at **appendix 10**.
114. The Officer will consider the application and decide whether it should be approved. Where he has any doubt the Officer may request further information and/or refer the application to the Admissions and Licensing Committee.
115. Where an application is referred to it by the Officer, 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 for further information from any person or source it considers appropriate. The Committee may call the applicant for interview. The Committee may approve the application or refuse the application.
116. In making any assessment or decision required by these Rules the Officer and the Admissions and Licensing Committee shall have regard to the Practice Management and Accounts Rules and supporting Codes and Regulations at **Appendices 10 to 17**.

117. The Officer will notify an applicant in writing of their decision or the decision of the Admissions and Licensing Committee. Where the application has been approved the notification shall include the Litigation Certificate with an endorsement authorising the Litigator to practice in independent practice or to provide litigation services to customers of their employers. Where the application is unsuccessful the notification shall set out the reasons for the decision and any preconditions to the consideration of any subsequent application for authorisation to practice in independent practice or to provide litigation services to customers of their employers.
118. Where the application is unsuccessful an applicant may apply for reconsideration in accordance with Rules 28 and 29. The Admissions and Licensing Committee will have the same powers available to it as at Rule 115 upon an application for reconsideration.
119. A Fellow making an application for renewal of the endorsement on his Litigation Certificate authorising him to practice in independent practice or to provide litigation services to third parties must:
- Be a Fellow of good standing;
  - Be practising as an authorised Litigator;
  - Provide details of any revisions he has made to the practice management, accounting, anti-discrimination, complaints handling, equal opportunities, client care and file management procedures of his practice since his last authorisation.
  - Provide a copy of the firm's Certificate of indemnity insurance.
  - Provide confirmation that he will make such contribution to the ILEX compensation fund as determined by IPS once his authorisation to practice has been renewed.
  - Provide an up to date business plan for his practice.
  - Have undertaken Continuing Professional Development (CPD) that meets the requirements set out in these Rules.
120. The Officer will process applications for renewal. Where the Officer is satisfied that the Fellow complies with the requirements set out in Rule 119, he will issue a new Litigation Certificate with an endorsement authorising the Litigator to provide litigation services in independent practice or to provide litigation services to customers of his employer.
121. Where he has any doubt whether a Litigation Certificate with an endorsement authorising the Litigator to provide litigation services in independent practice or to provide litigation services to customers of his

- employer should be renewed, the Officer may request further information and/or refer the application to the Admissions and Licensing Committee.
122. 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.
  123. If the Admissions and Licensing Committee is satisfied that the Litigation Certificate should be issued with an endorsement authorising the Litigator to provide litigation services in independent practice or to provide litigation services to customers of his employer, it shall direct the Officer to issue a Certificate with that endorsement. 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.
  124. 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 Litigation Certificate with an endorsement authorising the Litigator to provide litigation services in independent practice or to provide litigation services to customers of his employer. Where the application is unsuccessful, the notification shall set out the Committee's reasons and any preconditions to the consideration of any subsequent application. Where the application is unsuccessful an applicant may apply for reconsideration in accordance with Rules 28 and 29.
  125. A Fellow may not exercise any rights to conduct litigation or rights of audience which may be granted under these Rules, unless he has a current Litigation or Advocacy Certificate which is appropriate to the Litigation or Advocacy Skills Courses(s) he has completed.
  126. A Legal Executive Litigator may not provide litigation or advocacy services in independent practice or to customers of his employer unless he has a current Litigation Certificate which is appropriately endorsed.
  127. A Legal Executive Litigator who, for any reason, ceases to be a Fellow of ILEX shall automatically cease to be eligible to exercise any right to conduct litigation or right of audience granted under these Rules and shall return his Certificate(s) to ILEX within 28 days of ceasing to be a Fellow.

## **PRACTICE MANAGEMENT AND ACCOUNTS RULES**

128. All Litigators will be required to comply with the practice management and accounts rules, as applicable to them, at **Appendix 11**.
129. All Litigators will be required to comply with the Equality and Diversity Code at **Appendix 12**, the Publicity Code at **Appendix 13**, the Client Protection Scheme at **Appendix 15** and the Rights of Audience Conduct Rules at **Appendix 17**, as applicable to them.
130. Litigators will be required to comply with the Poor Service Scheme at **Appendix 14** until the responsibility for service complaints passes to the Legal Ombudsman.
131. Litigators must ensure that they have in place a scheme of indemnity insurance. Where a Litigator is not covered by a scheme of insurance provided by their employer or does not comply with a scheme of insurance in place by another approved regulator which regulates their practice they must obtain cover in accordance with the ILEX scheme at **Appendix 16**.

## **CONTINUING PROFESSIONAL DEVELOPMENT (CPD)**

132. Legal Executive Litigators are required to undertake at least 3 hours CPD each calendar year by attendance on a training course focussing upon litigation skills.
133. Legal Executive Advocates are required to undertake at least 5 hours CPD each calendar year. CPD must be gained by attendance at a training course focusing upon advocacy skills.
134. Legal Executive Litigators are not required to undertake CPD to meet the requirements set out in Rules 132 and 133 in respect of the period between the date a Litigation or Advocacy Certificate is first granted and December 31<sup>st</sup> of that year.
135. The CPD gained may be part of the CPD that all Fellows of ILEX are required to undertake.
136. Legal Executive Litigators and Advocates must record their advocacy CPD in accordance with guidance issued by ILEX or IPS from time to time.

137. Where a Legal Executive Litigator or 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 Litigator should retain his Litigation or Advocacy Certificate. The Legal Executive Litigator or Advocate will have the opportunity to make written representations to the Committee and a right to be heard by the Committee. The Committee may decide to:
- Grant an extension of up to 6 months for the Legal Executive Litigator or Advocate to meet his outstanding CPD requirements. The Litigator or Advocate will still be required to meet his current CPD requirements in the normal way; or
  - Withdraw the Litigation or 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**

138. Legal Executive Litigators and Advocates will be required to abide by the Code of Conduct of ILEX for the time being in force. They will also be bound by the ILEX Practice Management and Accounts at **Appendices 11 and 17** to these Rules, as appropriate.
139. Where a complaint is made or an issue is brought to the attention of IPS regarding the conduct of a Legal Executive Litigator or Advocate that matter will be dealt with in accordance with IPS' Investigation, Disciplinary and Appeals Rules.
140. Where a Finding, Order or Decision is made against a Legal Executive Litigator or Advocate by a disciplinary tribunal or panel that Finding, Order or Decision will be referred to the Admissions and Licensing Committee. The Admissions and Licensing Committee will decide whether the Legal Executive Litigator or Advocate remains a fit and proper person to hold a Litigation or Advocacy Certificate. The Admissions and Licensing Committee must give reasons for its decision.
141. Rule 140 shall not apply where an Order is made excluding a Legal Executive Litigator or Advocate from membership of ILEX. Rule 127 shall apply in such a case.

142. Where the Admissions and Licensing Committee decides that the Litigator or Advocate is no longer a fit and proper person to hold a Litigation or 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 litigation or advocacy rights granted to him under his Litigation or Advocacy Certificate(s) after he has been notified of the decision.
143. Notwithstanding Rule 28 an appeal against a decision of the Admissions and Licensing Committee that a Litigator or Advocate is no longer a fit and proper person to hold a Litigation or Advocacy Certificate will be considered by a professional member and two lay members drawn from the panel of lay and professional members appointed to serve on IPS' Disciplinary and Appeals bodies.

Rules/2010

**KNOWLEDGE AND EXPERIENCE GUIDELINES**

The knowledge and experience guidelines have been split into applications for Certificates of Eligibility for the rights to conduct litigation qualification and applications for Certificates of Eligibility for the open court rights of audience qualification. An applicant who seeks Certificates of Eligibility for both qualifications will need to satisfy the guidelines for both qualifications.

**KNOWLEDGE AND EXPERIENCE GUIDELINES FOR RIGHTS TO CONDUCT LITIGATION QUALIFICATION**

**CIVIL PROCEEDINGS**

**Certificate of Eligibility**

1. Graduate members and Fellows who make an application for rights to conduct litigation must submit details of the civil litigation experience they have gained. These details will form part of their application for a Certificate of Eligibility to undertake the litigation skills 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 civil litigation work carried out.
  - Typical caseload.
  - Chargeable hours spent on civil litigation work in each year.
  - Proportion of time spent on civil litigation work.
  - Proportion or number of cases which have included preparation for trial.
  - 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 civil litigation experience in compliance with the competence criteria set out below. The portfolio requirements are set out in the **Portfolio Guidelines** at **Appendix 2** to the Certification Rules.
5. The Admissions and Licensing Committee or, in delegated cases, the Officers will consider Applications for Certificates of Eligibility. Graduate members and Fellows will need to satisfy the Committee or Officers 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 civil litigation skills course and, upon successful completion of that course, to exercise the rights to conduct litigation that they will be granted.

### **Competence Criteria**

6. In deciding whether an applicant has adequate knowledge and experience the Admissions and Licensing Committee or Officer will have regard to the Competence Criteria listed below.

#### Knowledge of the law of tort

7. An applicant 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. An applicant 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; misrepresentation; duress; undue influence; illegality; discharge of contract and remedies for breach of contract.



#### Knowledge of civil litigation

9. An applicant 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; interim payments; trial; judgment, enforcement and costs.
  - State and apply relevant legal rules and sources of law in civil proceedings and to be able to discuss their effects.
  - Identify and deal appropriately with issues relating to conduct and ethics as they may arise in factual situations.

#### Analysis, critical judgment and evaluation

10. An applicant will be expected to be able to demonstrate through their portfolios 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 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. An applicant will be expected to be able to demonstrate through their portfolio that they can:
- 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.
12. 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 may be accepted. The Applicant will be expected 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 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. An applicant 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 or Officer will consider the quality of experience that an applicant has gained as well as the quantity of experience. In considering the quality of experience that an applicant has gained the Committee or Officer will look at various factors such as the seriousness and complexity of cases handled, difficult cases handled, the nature of the matter and the types of hearings that have been undertaken.

### Career breaks/illness

15. It will be recognised that applicants could have had a break in their litigation experience due to factors such as career breaks, job changes, maternity leave, long term illness or disability. The Committee or Officer 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 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 Litigators. However, it will be expected that the break has not been longer than 5 years. In exceptional circumstances applications will be accepted from applicants who have had a break in experience which is longer than 5 years.

### Other factors

16. There may be other factors which affect the applicant's litigation experience in the preceding two years, so that they would not give a fair picture of an applicant's experience and practise. The Committee or Officer will consider details of more active periods of litigation work from applicants whose record of litigation experience 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 rights to conduct litigation must submit details of the family proceedings litigation experience they have gained. These details will form part of their application for a Certificate of Eligibility to undertake the litigation skills 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 family 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.
  - 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 experience in compliance with the competence criteria set out below. The portfolio requirements are set out in the **Portfolio Guidelines** at **Appendix 2** to the Certification Rules.
5. The Admissions and Licensing Committee, or in delegated cases, the IPS Officers will consider Applications for Certificates of Eligibility. Graduate members and Fellows will need to satisfy the Committee or Officer 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 family litigation skills course and, upon successful completion of that course, to exercise the rights to conduct litigation they will be granted.

## **Competence Criteria**

6. In deciding whether an applicant has adequate knowledge and experience the Admissions and Licensing Committee or Officer will have regard to the Competence Criteria listed below.

### Knowledge of family law

7. An applicant 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; civil partnership; judicial separation; ancillary relief; child support provisions; matrimonial proceedings in the Family Proceedings Courts; maintenance agreements; family property; protection from violence; the law relating to the unmarried family.

### Knowledge of family practice

8. An applicant 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 or unmarried 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.
  - Understand the principles upon which finance and property orders are made; the statutory charge; costs; 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 cohabitants).

#### Analysis, critical judgement and evaluation

9. An applicant will be expected to be able to demonstrate through their portfolio 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 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. An applicant will be expected to be able to demonstrate through their portfolio that they can:

- 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. 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 may be accepted. The Applicant will be expected 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 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. An applicant 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 or Officer will consider the quality of experience that an applicant has gained as well as the quantity of experience. In considering the quality of experience that an applicant has gained the Committee or Officer will look at various factors such as the seriousness and complexity of cases handled, difficult cases handled, the nature of the matter and the types of hearings that have been undertaken.

### Career breaks/illness

14. It will be recognised that applicants could have had a break in their litigation experience due to factors such as career breaks, job changes, maternity leave, long term illness or disability. The Committee or Officer 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 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 Litigators. However, it will be expected that the break has not been longer than 5 years. In exceptional circumstances applications will be accepted from applicants who have had a break in experience which is longer than 5 years.

### Other factors

15. There may be other factors which affect the applicant's litigation experience in the preceding two years, so that they would not give a fair picture of an applicant's experience and practise. The Committee or Officer will consider details of more active periods of litigation from applicants whose litigation record in the preceding two years discloses a pattern that they regard as atypical.

## **KNOWLEDGE AND EXPERIENCE GUIDELINES FOR RIGHTS OF AUDIENCE QUALIFICATION**

These guidelines apply to Graduate members and Fellows who seek a Certificate of Eligibility for the open court rights of audience qualification and have already obtained a Certificate of Eligibility for the rights to conduct litigation qualification.

Graduate members and Fellows who seek a Certificate of Eligibility for the open court rights of audience qualification at the same time as they seek a Certificate of Eligibility for the rights to conduct litigation qualification must satisfy these guidelines and the knowledge and experience guidelines for the rights to conduct litigation qualification.

### **CIVIL PROCEEDINGS**

#### **Certificate of Eligibility**

1. Graduate members and Fellows who make an application for extended Rights of Audience must submit details of the advocacy experience they have gained. These details will form part of their application for a Certificate of Eligibility to undertake the advocacy course. The Admissions and Licensing Committee, or in delegated cases, the IPS Officers will consider Applications for Certificates of Eligibility.
2. The Applicant must provide the following information about his experience:
  - Total years advocacy experience and number of years as a fee earner.
  - Types of advocacy undertaken.
3. In relation to the 2 years preceding the application applicants must give the following information:
  - General description of the advocacy carried out.
  - Typical caseload.
  - Proportion or number of cases which have included preparation for trial.
  - Range and nature of advocacy experience including observed advocacy.
4. Applicants must also submit a portfolio of cases demonstrating their advocacy experience in compliance with the competence criteria set out below. The portfolio requirements are set out in the **Portfolio Guidelines** at **Appendix 2** to the Certification Rules.

#### Analysis, critical judgment and evaluation

5. An applicant will be expected to be able to demonstrate through their portfolios 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 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

6. An applicant will be expected to be able to demonstrate through their portfolio that they can:
  - 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.
7. Applicants will need to satisfy the Committee or Officer 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.

#### **Evaluating Advocacy Experience**

8. The Committee or Officer will need to be satisfied that an applicant is actively undertaking advocacy. In considering whether an applicant is an active advocate the Committee or Officer will take into account advocacy experience that an applicant has gained outside their normal area of work. It will also take into account that advocacy is part of the dispute resolution process and may be reflected in successful case preparation, negotiation, arbitration and mediation.
9. The Committee or Officer 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.
10. An applicant 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.

11. The Committee or Officer 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

12. It will be recognised that applicants could have had a break in their advocacy experience due to factors such as career breaks, job changes, maternity leave, long term illness or disability. An applicant whose experience has been affected in this way will not be discriminated either directly or indirectly but the Committee or Officer 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. However, it will not be expected that the break has been longer than 5 years. The Committee or Officer will retain discretion in exceptional circumstances to accept applications from applicants who have had a break in experience which is longer than 5 years.

#### Other factors

13. 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 practise. The Committee or Officer 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 advocacy experience they have gained. These details will form part of their application for a Certificate of Eligibility to undertake the advocacy course. The Admissions and Licensing Committee, or in delegated cases, the IPS Officers will consider Applications for Certificates of Eligibility.
2. The Applicant must provide the following information about his experience:

- Total years advocacy experience and number of years as a fee earner.
  - Types of advocacy undertaken.
3. In relation to the 2 years preceding the application applicants must give the following information:
- General description of the advocacy work carried out.
  - Typical caseload.
  - Proportion or number of cases which have included preparation for trial.
  - Range and nature of advocacy experience including observed advocacy.
4. Applicants must also submit a portfolio of cases demonstrating their advocacy experience in compliance with the competence criteria set out below. The portfolio requirements are set out in the **Portfolio Guidelines** at **Appendix 2** to the Certification Rules.

- Analysis, critical judgment and evaluation
5. An applicant will be expected to be able to demonstrate through their portfolios 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 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
6. An applicant will be expected to be able to demonstrate through their portfolio that they can:
- 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.
7. Applicants will need to satisfy the Committee or Officer 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.

### **Evaluating Advocacy Experience**

8. The Committee or Officer will need to be satisfied that an applicant is actively undertaking advocacy. In considering whether an applicant is an active advocate the Committee or Officer will take into account advocacy experience that an applicant has gained outside their normal area of work. They will also take into account that advocacy is part of the dispute resolution process and may be reflected in successful case preparation, negotiation, arbitration and mediation.
9. The Committee or Officer 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.
10. An applicant 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.
11. The Committee or Officer 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

12. It will be recognised that applicants could have had a break in their advocacy experience due to factors such as career breaks, job changes, maternity leave, long term illness or disability. An applicant whose experience has been affected in this way will not be discriminated either directly or indirectly but the Committee or Officer 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. However, it will not be expected that the break has been longer than 5 years. The Committee or Officer will retain discretion in exceptional circumstances to accept applications from applicants who have had a break in experience which is longer than 5 years.

#### Other factors

13. 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 practise. The Committee or Officer 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**

**Introduction**

1. These Guidelines apply to applications for Certificates of Eligibility.
2. The guidelines have been split into applications for certificates of eligibility for the rights to conduct litigation qualification and applications for Certificates of Eligibility for the additional rights of audience qualification.
3. Graduate members and Fellows who seek a certificate of eligibility for rights to conduct litigation must satisfy the guidelines for litigation experience. However, where an applicant has previously qualified as a Legal Executive Advocate they will not need to comply with these portfolio requirements if they submitted portfolios for a Certificate of Eligibility to enrol onto the rights of audience scheme within 12 months of the date of their application.
4. Graduate members and Fellows who seek certificates of eligibility for rights to conduct litigation and open court rights of audience must satisfy the portfolio guidelines for litigation and advocacy experience.
5. Litigators who seek a certificate of eligibility for open court rights of audience must satisfy the portfolio guidelines for advocacy experience.

**Portfolios of experience**

6. The Portfolios provide 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.
7. The details of cases which Applicants provide must therefore reflect those Guidelines. Where, in the opinion of the Admissions and Licensing Committee or IPS Officers, 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**

8. Applicants for Certificates of Eligibility 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 a Litigator or advocate. The cases described must have occurred during the 2 years preceding the application.

9. For each of the 5 cases included in a portfolio of litigation experience applicants 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**

10. Applicants for Certificates of Eligibility to enrol onto the open court rights of audience qualification must provide details of 3 cases in which they have been involved which will demonstrate their advocacy experience relating to the type of proceedings for which they are seeking to qualify as an advocate. The cases described must have occurred during the 2 years preceding the application.

11. For each of the 3 cases included in a portfolio of advocacy experience, applicants 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.

12. 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.

## **RENEWALS OF CERTIFICATES**

13. These Guidelines apply to applications for first renewal of Litigation Certificates and Advocacy Certificates.

### **Litigation Experience Post-Qualification**

14. On the first renewal of their Litigation Certificate Litigators must include with their application portfolios of 3 cases in which they have been involved which will demonstrate their litigation experience since becoming a Litigator. The portfolios provide an opportunity for Litigators to demonstrate that they have conducted litigation in accordance with the Litigation Skills Course Outcomes and Assessment Criteria set out in Appendix 3 of the Certification Rules. When considering applications for renewal, the Admissions and Licensing Committee or IPS Officers will expect those criteria to be reflected and, where they are not, may refuse the Application for renewal. Applicants for renewal should therefore refer to the criteria when preparing case descriptions.

15. The portfolio which must be submitted on first application to renew a Litigation Certificate must include 3 cases in which the applicant has undertaken litigation work since becoming a Litigator. Where possible they should comprise cases in which litigation proceedings have been issued and preferably where the case has concluded. However, the Committee will recognise that cases may not have progressed to litigation or conclusion within a Litigator's first year of practice. Where there are no such cases applicants may include cases where the proceedings had been issued prior to their qualification as a Litigator and which they have continued to progress after qualification. If an applicant is unable to meet these criteria they will be required to produce portfolios of litigation cases within the next year of their practice.

16. For each case, the record of litigation must 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 Post-Qualification**

17. On the first renewal of their Rights of Audience Certificate Advocates must include with their Application portfolios of 3 cases in which they have been involved which will demonstrate their advocacy experience since becoming an Advocate. The portfolios provide an opportunity for advocates to demonstrate that they have conducted advocacy in accordance with the Advocacy Skills Course Outcomes and Assessment Criteria set out in Appendix 5 and Appendix 6 of the Certification Rules. When considering applications for renewal, the Admissions and Licensing Committee or IPS Officers will expect those criteria to be reflected and, where they are not, may refuse the Application for renewal. Applicants for renewal should therefore refer to the criteria when preparing case descriptions.
18. The portfolio which must be submitted on first application to renew an Advocacy Certificate must include 3 cases in which the applicant has undertaken or observed advocacy since becoming an Advocate. Where possible they should comprise cases in which the advocate has exercised the new rights of audience granted. Where no such advocacy has been carried out, the reasons for this must be explained. Applicants who do not have an opportunity to exercise their new rights of audience may include details of no more than one case in which they have observed advocacy in open court.
19. For each case, the record of advocacy must 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 it was a contested hearing.
  - 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.



**COURSE DELIVERY AND OUTCOMES**

**LITIGATION SKILLS – COURSE**

**DELIVERY AND OUTCOMES**

A Litigation Skills course must be effective to develop the core skills contained in the five **ELEMENTS** of the course identified below. The course should focus on the core skills of case analysis, evidence collection, case management and litigation tactics. It is envisaged that an approved course would, in the main, be conducted in small groups with the maximum amount of delegate participation. A significant element of individual appraisal from course presenters would be expected. An accredited course will need to be supported by extensive up to date course materials including realistic and challenging case studies.

Some elements of the course, for example the rules relating to legal professional privilege contained in **ELEMENT 3 (CONDUCT AND ETHICS)** may be dealt with in a more traditional lecture format or online combined with MCQ's (multiple choice questions). Other parts of individual elements might be most effectively provided by means of an assigned project. **ELEMENT 4 (MANAGING LITIGATION WORK)** suggests itself as an obvious candidate for this method.

**OUTCOME CRITERIA**

**ELEMENT 1: CLIENT CARE**

**1. Interviewing**

Upon completion of this course Litigators should be able to conduct effective interviews with clients and potential witnesses.

*Range:*

The Litigator should be able to deal with a diverse cross-section of clients presenting problems concerning a range of civil disputes

In particular, when dealing with **clients** Litigators should be able to:

- Prepare for an initial interview and apply a structured approach to it;
- Greet the client appropriately and end the interview appropriately;
- Use appropriate listening, questioning and feedback techniques to establish the client's case;
- Be able to identify "hidden agendas" in the client's instructions and uncover the underlying presenting problem;

- Maintain rapport with the client during the interview;
- Be sensitive to diversity issues when dealing with individual clients;
- Keep a full and accurate record of the interview;
- Close the interview appropriately.

On completion of the course Litigators should also be able to exercise these skills when interviewing potential **witnesses**. In addition, on completion of this course Litigators should:

- Appreciate the ethical rules relating to the interviewing of witnesses;
- Recognise the need for preserving the record of any interview in such a way as to ensure that its contents can always be admitted in evidence should the witness be unable to testify;
- Be aware of the different methods for introducing witness evidence such as pre-recorded video and live video link;
- Be able to exercise judgement in selecting the appropriate location in which to conduct the interview and whether this task can be appropriately delegated.

## 2. **Advising**

On completion of this course Litigators should be able to give clear, accurate and practical advice on matters relating to law, procedure, strategy and prospects of success.

### *Range:*

Clients of different types:

- (1) Orally; and
- (2) in writing;

### *Context:*

The Litigator should be able to advise a diverse cross-section of clients presenting problems concerning a range of civil disputes

In particular, on completion of the course Litigators should be able to:-

- Accurately identify the problem(s) which require solution;
- Accurately identify what it is the client wants to achieve;
- Give clear advice to the client on all relevant matters arising. This advice should not be confined to purely litigation options but should also encompass other potential solutions provided that these are within the law;
- Accurately summarise the various identified options available and ensure that the client is able to reach an informed decision and how to proceed;

- Give clear and appropriate advice regarding funding of any proceedings and his or his firm's charges;
- Give clear advice to the client regarding the next steps the Litigator will take and any the client will need to take;
- Deal with diversity issues and modify their manner of delivery as appropriate;
- Produce an accurate record of the interview.

### **3. Communicating**

On completion of this course Litigators should be able to maintain effective two-way communication with the client.

*Range:*

Clients of different types; orally and in writing; use of alternative media.

In particular, Litigators should be able to:

- Obtain all relevant information from the client;
- Make the client aware of significant developments in the case;
- Provide advice on options, tactics and strategies as the case develops;
- Explain the "pros" and "cons" of each of those options;
- Provide opportunities to the client to make decisions in the case based on appropriate advice.

## **ELEMENT 2: FUNDING AND COSTS**

### **1. Funding**

On completion of this course, Litigators should be able to give clients clear and accurate advice on available funding options.

*Range:*

Private funding; public funding; insurance; conditional fees and other forms of third party funding across a diverse cross-section of civil proceedings.

In particular, Litigators should be able to:

- Identify the funding available in the particular case;
- Where necessary, advise the client clearly about the suitability of alternative funding sources;
- Communicate clearly the risks and benefits of alternative funding sources;
- Identify and have regard to potential conflicts of interest on funding issues;

- Provide appropriate information to clients regarding the fees which will be charged.

## **2. Costs**

On completion of this course Litigators should have developed an awareness of the requirements of the relevant practice rules that relate to contentious and non-contentious costs, and be able to give clear and accurate advice or information on costs issues arising in the case.

### *Range:*

The Litigator should be able to deal with a diverse cross-section of clients presenting problems concerning a range of civil disputes

In particular, Litigators should be able to:

- Prepare realistic costs estimates at the start of the case and update these as the litigation unfolds;
- Ensure full compliance with the CPR costs rules, including in respect of the filing of costs estimates, and on summary assessment;
- Identify when summary and detailed assessments of costs are required;
- Advise clients of all of the costs which may arise in the case;
- Explain differences between the indemnity and standard costs bases and their effects in individual cases;
- Inform the client of the effects upon him, in costs, of alternative strategies and outcomes for the case;
- Show an awareness of the various procedural steps than can be taken under the CPR to transfer costs risks to the other party;
- Run a case in such a way that a sense of CPR “proportionality” is maintained at all times.

## **3. Documentation:**

On completion of this course Litigators should be able to draft or complete the necessary documents relating to costs and funding.

### *Range:*

Clients; Courts; public funders; insurers, and other third party funders.

In particular, Litigators should be able to:

- Draft client care letters;
- Draft funding agreements;
- Complete applications for funding;
- Prepare estimates and schedules of costs;
- Prepare summary costs assessments;
- Prepare detailed costs assessments or instruct a specialist to do so.

## **ELEMENT 3: CONDUCT AND ETHICS**

### **1. Professional Obligations**

On completion of this course Litigators should be able to show an awareness of their professional obligations in a diverse range of situations.

*Range:*

The Litigator should be able to deal with a diverse cross-section of problems arising in a wide range of civil disputes both in respect of matters relating to substantive law, and the relevant rules of professional conduct.

In particular, Litigators should have developed an awareness of their obligations to:

- The court;
- Their client;
- other lawyers;
- The public;
- money laundering legislation.

### **2. Conflicts**

On completion of this course Litigators should be able to identify and deal appropriately with conflicts of interest.

*Range:*

On initial interview, taking instructions and during the period of any retainer to conduct civil litigation.

In particular, Litigators should be able to identify and deal appropriately with conflicts:

- Arising between him/her and his/her client;
- Arising between him/her and his/her duty to the court or the administration of justice generally.

### **3. Withdrawal from the Case**

On completion of this course Litigators should be able to demonstrate an awareness of when they can and/or must withdraw from a case; the proper steps to be taken when doing so whilst observing the interest of the client; and the appropriate treatment of costs issues on withdrawal from a case.

*Range:*

The Litigator should be able to deal with a diverse cross-section of clients

presenting problems concerning a range of civil disputes

#### **4. Undertakings**

On completion of this course Litigators should be able to show that they understand the bases for the giving of professional undertakings to clients, the court and others, and demonstrate awareness of the appropriate use of undertakings in legal proceedings.

*Range:*

A variety of civil disputes in relation to clients; other parties; regulatory bodies, the court, and insurers.

#### **5. Confidentiality and Privilege**

On completion of this course Litigators should be able to show that they understand and can apply the law and practice of confidentiality and privilege in a variety of practical contexts.

*Range:*

The Litigator should be able to deal with a diverse cross-section of clients presenting problems concerning a range of civil disputes

In particular, Litigators should be able to:

- Distinguish between legal advice privilege, litigation privilege and confidential information;
- Apply the law and relevant practice rules relating to privilege and confidence in individual cases;
- Identify when confidential or privileged information may be disclosed, and to whom.

#### **6. Complaints and Negligence**

On completion of this course Litigators should be able to demonstrate an awareness of how complaints and allegations of negligence may arise and appropriate measures for preventing or dealing with them.

*Range:*

The Litigator should be able to deal with problems arising in a range of civil disputes in relation to clients; other parties; regulatory bodies, the court, and insurers;

In particular, Litigators should be able to:

- Describe the complaints procedures operated by his professional body;
- Describe actions which should be taken when a complaint or an allegation of negligence is made;

- Describe procedures or processes which can be adopted to reduce the risk of complaints or allegations of negligence being made;
- Describe the consequences of a successful complaint or allegation of negligence being made.

## **ELEMENT 4: MANAGING LITIGATION WORK**

### **1. Case Management**

It is a requirement of this course that Litigators should have exhibited an ability to plan and manage litigation.

*Range:*

- (1) Caseload generally;
- (2) Casework;
- (3) Civil proceedings;

In particular, Litigators will be expected in their portfolios to have demonstrated an ability to:

- Allocate time and resources appropriately;
- Plan casework;
- Adopt and maintain an appropriate case strategy;
- Be aware of relevant procedural requirements and protocols;
- Actively manage cases;
- Maintain appropriate communications with clients, other parties and the Courts.

### **2. Case Analysis**

On completion of this course Litigators should be able to formulate a case strategy which, as well as being compatible with the client's aims or requirements, is legally, procedurally and ethically sustainable.

*Range:*

The Litigator should be able to deal with a diverse cross-section of clients presenting problems concerning a range of civil disputes

In particular, Litigators should be able to:

- Identify 'good' and 'bad' facts in the case;
- Identify gaps in the available evidence;
- Draw up a realistic case theory;
- Relate the case theory to the client's objectives and expectations;
- Recommend a strategy for the case;
- Provide the client with a balanced view of the likely risks, costs and benefits of the case strategy.

### **3. Research Skills**

On completion of this course Litigators should be able to undertake research needed to prepare a case thoroughly.

*Range:*

Law; procedural rules; library; internet; professional journals in the context of a diverse cross-section of clients presenting problems concerning a range of civil disputes

In particular, Litigators should be able to:

- Access up to date sources of law and practice;
- Access up to date rules of practice and procedure;
- Identify technical issues requiring expert evidence;
- Apply research skills in the context of the case in hand.

### **4. Assembly Skills**

On completion of this course Litigators should be able to assemble all the materials relevant to the case, in accordance with the case analysis.

*Range:*

Law; and evidence in relation to a range of civil disputes

In particular, Litigators should be able to:

- Identify relevant law;
- Collect efficiently all the evidence relevant to the case;
- Summarise the relevant law and evidence succinctly and coherently;
- Locate and interview witnesses;
- Locate and make proper use of and instruct expert witnesses in accordance with relevant civil procedure rules.

### **5. Instructing Advocates**

On completion of this course Litigators should be able to instruct an Advocate when necessary.



*Range:*

The Litigator should be able to deal with a diverse cross-section of clients presenting problems concerning a range of civil disputes

In particular, Litigators should be able to:

- Identify when specialist legal opinion is needed;
- Identify when it is necessary to instruct an Advocate;
- Locate an appropriate Advocate;
- Agree an appropriate fee basis for work to be carried out by the Advocate;
- Draft a clear and relevant brief to the Advocate;
- Liaise appropriately between client and the Advocate;
- Demonstrate awareness of the obligations of the Advocate at law, to the Court and under his professional rules.

## **6. Instructing Experts**

On completion of this course Litigators should have developed an awareness of the wide diversity of expertise that may be needed in order to resolve civil cases.

*Range*

The Litigator should be able to deal with a diverse cross-section of clients presenting problems concerning a range of civil disputes

On completion of the course Litigators should:-

- Have an outline knowledge of the nature and functions of different types of expert, for example, consultant surgeon, consulting engineer, forensic accountant;
- Be aware of when it may be appropriate to instruct an expert;
- Be aware of the available registers and databases through which an appropriate expert may be identified and located;
- Have sufficient knowledge of the detailed procedural rules, for example under the Expert Evidence Protocol, to be able to instruct an expert appropriately;
- Have an understanding of the substantive law relating to expert evidence and the ways in which such evidence may be appropriately challenged.

## **7. Concluding Cases**

On completion of this course Litigators should be able to identify steps to be taken to conclude cases and be able to carry out those which are relevant to the case in-hand.

*Range:*

Parties; clients; courts; civil proceedings.

In particular, Litigators should be able to:

- Draft and check orders of the court and/or agreements of the parties;
- Check judgments;
- Advise clients on the outcome of the proceedings or disputes and any further steps necessary or possible;
- Take steps necessary to implement agreements or enforce or appeal against a judgment;
- Deal with costs issues arising in cases.

## **ELEMENT 5: SETTLEMENT SKILLS**

### **1. Litigation**

On completion of this course Litigators should be able to identify when settlement of a case is in his client's interest, give clear and accurate advice to the client on settling his case, and take the steps necessary to secure settlement.

*Range:*

The Litigator should be able to deal with a diverse cross-section of clients presenting problems concerning a range of civil disputes

In particular, Litigators should be able to:

- Explain the value of case settlement in achieving clients' objectives;
- Make and give consideration to offers and payments into Court under Part 36 of the CPR;
- Apply the principles of proportionality in the CPR, to his client's case.

### **2. Negotiation**

On completion of this course Litigators should be able to negotiate in a client's case.

*Range:*

The Litigator should be able to negotiate effectively in the context of a variety of civil disputes, in relation to clients; other parties; regulatory bodies, the court, and insurers.

In particular, Litigators should be able to:

- Determine the client's and opponent's underlying interests and expectations;

- Identify the strength and weaknesses of the client's and opponent's positions;
- Identify the issues to be covered and the most appropriate order in which to deal with them;
- Identify the most and least favourable outcomes for his client;
- Identify the likely outcome if the case goes to trial;
- Draft negotiated agreements and secure relevant orders.

### **3. Alternative Dispute Resolution**

On completion of this course Litigators should be aware of the ADR processes available and be able to identify those which are relevant to the case in hand, and when they are required to be applied.

*Range:*

- (1) Civil proceedings;
- (2) Arbitration;
- (3) Expert determination;
- (4) Mediation;
- (5) Early neutral evaluation.

In particular, Litigators should be able to:

- Explain to the client the nature and procedures of alternative dispute mechanisms;
- Explain the benefits and disadvantages of relevant mechanisms;
- Make recommendations whether any ADR process is appropriate and in the client's interest;
- Advise the client on the ways in which any form of ADR recommended may be taken forward.

## **FAMILY LITIGATION SKILLS – COURSE**

### **DELIVERY AND OUTCOMES**

A Family Litigation Skills course must be effective to develop the core skills contained in the five **ELEMENTS** of the course identified below. The course should focus on the core **forensic** skills of case analysis, evidence collection, case management and litigation tactics. It is envisaged that an approved course would, in the main, be conducted in small groups with the maximum amount of delegate participation. A significant element of individual appraisal from course presenters would be expected. An approved course will need to be supported by extensive up to date course materials including realistic and challenging case studies.

Some elements of the course, for example the rules relating to legal professional privilege contained in **ELEMENT 3 (CONDUCT AND ETHICS)** may be adequately dealt with in a more traditional lecture format or online combined with MCQ's. Other parts of individual elements might be most effectively provided by means of an assigned project. **ELEMENT 4 (MANAGING LITIGATION WORK)** suggests itself as an obvious candidate for this method.

### **OUTCOME CRITERIA**

#### **ELEMENT 1: CLIENT CARE**

##### **1. Interviewing**

Upon completion of this course family Litigators should be able to conduct effective interviews with clients and potential witnesses.

*Range:*

The Litigator should be able to deal with a diverse range of clients presenting with problems concerning:

- (1) Matrimonial and Civil Partnership proceedings;
- (2) Relationship breakdown between cohabitantes;
- (3) Domestic violence;
- (4) Issues relating to children involving both parents and the wider family;
- (5) Public children proceedings;
- (6) Adoption;
- (7) Bankruptcy and insolvency so far as it may affect family problems;
- (8) Welfare benefits and housing.

In particular, when dealing with clients family Litigators should be able to:

- Prepare for an initial interview and apply a structured approach to it;
- Greet the client appropriately and end the interview appropriately;
- Use appropriate listening, questioning and feedback techniques to establish the client's case;
- Be able to identify "hidden agendas" in the client's instructions and uncover the underlying presenting problem;
- Maintain rapport with the client during the interview;
- Be sensitive to diversity issues when dealing with individual clients;
- Keep a full and accurate record of the interview;
- Close the interview appropriately

On completion of the course family Litigators should also be able to exercise these skills when interviewing potential witnesses. In addition, on completion of this course Litigators should:

- Appreciate the ethical rules relating to the interviewing of witnesses;
- Recognise the need for preserving the record of any interview in such a way as to ensure that its contents can always be admitted in evidence should the witness be unable to testify;
- Be aware of the different methods for introducing witness evidence such as pre-recorded video and live video link;
- Be able to exercise judgment in selecting the appropriate location in which to conduct the interview and whether this task can be appropriately delegated.

## **2. Advising**

On completion of this course family Litigators should be able to give clear, accurate and practical advice on matters relating to law, procedure, strategy and prospects of success. Where necessary the family Litigator will be able to refer the client on to agencies and professionals better able to deal with the wider aspects of their problems.

### *Range:*

Clients of different types and facing a diversity of difficult personal situations such as domestic violence:

- (1) Orally; and
- (2) in writing;

### *Context:*

- (1) Matrimonial and Civil Partnership proceedings.
- (2) Relationship breakdown between cohabitants.

- (3) Domestic violence.
- (4) Issues relating to children involving parents and the wider family;
- (5) Public children proceedings.
- (6) Adoption.
- (7) Bankruptcy and insolvency so far as it may affect family problems.
- (8) Welfare benefits and housing

In particular, on completion of the course family Litigators should be able to:

- Accurately identify the problem(s) which require solution;
- Accurately identify what the client seeks to achieve;
- Give clear advice to the client on all relevant matters arising. This advice should not be confined to purely litigation options but should also encompass other potential solutions within the law;
- Accurately summarise the various identified options available and ensure that the client is able to reach an informed decision;
- Give clear and appropriate advice regarding funding of any proceedings and his or his firm's charges;
- Give clear advice to the client regarding the next steps the family Litigator will take and any the client will need to take;
- Deal with diversity issues and modify their manner of delivery as appropriate;
- Produce an accurate record of the interview;
- The family Litigator will also be able to refer the client on to other agencies and professionals to help them with the wider aspects of their problems, for example, refuges and relationship counselling, where required.

### 3. **Communicating**

On completion of this course family Litigators should be able to maintain effective two-way communication with the client.

*Range:*

Clients of different types; orally and in writing; use of alternative media.

In particular, family Litigators should be able to:

- Obtain all relevant information from the client;
- Make the client aware of significant developments in the case;
- Provide advice on options, tactics and strategies as the case develops;
- Explain the "pros" and "cons" of each of those options;
- Provide opportunities to the client to make decisions in the case based on appropriate advice;
- Handle emotionally distressed clients in a sensitive and professional

manner.

## **ELEMENT 2: FUNDING AND COSTS**

### **1. Funding**

On completion of this course, family Litigators should be able to give clients clear and accurate advice on available funding options.

*Range:*

Private funding; public funding; third party funding; and maintenance pending suit.

In particular, family Litigators should be able to:

- Identify the funding available in the particular case
- Where necessary, advise the client clearly about the suitability of alternative funding sources;
- Communicate clearly the risks and benefits of alternative funding sources;
- Identify and have regard to potential conflicts of interest on funding issues;
- Provide appropriate information to clients regarding the fees which will be charged.
- If the client is in receipt of public funding, provide appropriate advice including any relevant financial implications

### **2. Costs**

On completion of this course family Litigators should have developed an awareness of the requirements of the relevant practice rules that relate to contentious and non-contentious costs, and be able to give clear and accurate advice or information on costs issues arising in the case.

*Range:*

- (1) Matrimonial and Civil Partnership proceedings.
- (2) Relationship breakdown between cohabitantes.
- (3) Domestic violence.
- (4) Issues relating to children involving both parents and the wider family.
- (5) Public children proceedings.
- (6) Adoption.
- (7) Bankruptcy and insolvency so far as it may affect family problems.
- (8) Welfare benefits and housing.

In particular, family Litigators should be able to:

- Prepare realistic costs estimates at the start of the case and update these as the litigation unfolds;
- Ensure full compliance with the FPR, FP(FPC)R and CPR costs rules, for example, as to the filing of costs estimates in particular in respect of ancillary relief proceedings, and on summary assessment;
- Identify when summary and detailed assessments of costs are required;
- Advise clients of all of the costs which may arise in the case;
- Explain differences between the indemnity and standard costs bases and their effects in individual cases;
- Inform the client of the costs implications of alternative strategies and outcomes for the case;
- Show an awareness of the various procedural steps that can be taken under the CPR and the FPR to transfer costs risks to the other party;
- Run a case in such a way that a sense of FPR and CPR “proportionality” is maintained at all times.
- Explain the significance of the statutory charge in publicly funded cases where this might have an impact and take all necessary steps to protect both the interests of the client and the CLS fund.

### **3. Documentation:**

On completion of this course family Litigators should be able to draft or complete the necessary documents relating to costs and funding.

*Range:*

Clients; Courts; public funders; and other third party funders.

In particular, family Litigators should be able to:

- Draft client care letters;
- Draft funding agreements;
- Complete all the appropriate documents in publicly funded cases.
- Prepare estimates and schedules of costs in particular in respect of ancillary relief proceedings;
- Prepare summary costs assessments;
- Prepare detailed costs assessments or instruct specialist to do so.

## **ELEMENT 3: CONDUCT AND ETHICS**

### **1. Professional Obligations**

On completion of this course family Litigators should be able to show an awareness of their professional obligations in a diverse range of situations.



*Range:*

- (1) Matrimonial and Civil Partnership proceedings.
- (2) Relationship breakdown between cohabitantes.
- (3) Domestic violence.
- (4) Issues relating to children involving both parents and the wider family.
- (5) Public children proceedings.
- (6) Adoption.
- (7) Bankruptcy and insolvency so far as it may affect family problems.
- (8) Welfare benefits and housing.

Both in respect of matters relating to substantive law, and the relevant rules of professional conduct.

In particular, family Litigators should have developed an awareness of their obligations to:

- The court;
- Their client;
- Other lawyers;
- The public;
- The Community Legal Service.
- Money laundering legislation.

## **2. Conflicts**

On completion of this course family Litigators should be able to identify and deal appropriately with conflicts of interest.

*Range:*

On initial interview, taking instructions and during the period of any retainer; family proceedings.

In particular, Litigators should be able to identify and deal appropriately with conflicts:

- Arising between him/her and his/her client;
- Arising between him/her and his/her duty to the court or the administration of justice generally.
- Arising between the client and associated parties, for example, the client's spouse, civil partner or co-parent.

## **3. Withdrawal from the Case**

On completion of this course family Litigators should be able to demonstrate an awareness of when they can and/or must withdraw from a case; the proper steps to be taken when doing so whilst observing the

interest of the client; and the appropriate treatment of costs issues on withdrawal from a case.

*Range*

- (1) Matrimonial and Civil Partnership proceedings.
- (2) Relationship breakdown between cohabitants.
- (3) Domestic violence.
- (4) Issues relating to children involving both parents and the wider family.
- (5) Public children proceedings.
- (6) Bankruptcy and insolvency so far as it may affect family problems.
- (7) Welfare benefits and housing.

**4. Undertakings**

On completion of this course family Litigators should be able to show that they understand the bases for the giving of professional undertakings to clients, the court and others, and demonstrate awareness of the appropriate use of undertakings in legal proceedings.

*Range:*

- (1) Matrimonial and Civil Partnership proceedings.
- (2) Relationship breakdown between cohabitants.
- (3) Domestic violence.
- (4) Issues relating to children involving both parents and the wider family.
- (5) Public children proceedings.
- (6) Adoption.
- (7) Bankruptcy and insolvency so far as it may affect family problems.
- (8) Welfare benefits and housing.

**5. Confidentiality and Privilege**

On completion of this course family Litigators should be able to show that they understand and can apply the law and practice of confidentiality and privilege in a variety of practical contexts.

*Range:*

- (1) Matrimonial and Civil Partnership proceedings.
- (2) Relationship breakdown between cohabitants.
- (3) Domestic violence.
- (4) Issues relating to children involving both parents and the wider family.
- (5) Public children proceedings.
- (6) Adoption.
- (7) Bankruptcy and insolvency so far as it may affect family problems.

(8) Welfare benefits and housing.  
Both in relation to self employed and employed practice.

In particular, Litigators should be able to:

- Distinguish between legal advice privilege, litigation privilege and confidential information;
- Apply the law and relevant practice rules relating to privilege and confidence in individual cases;
- Identify when confidential or privileged information may be disclosed, and to whom.

## **6. Complaints and Negligence**

On completion of this course family Litigators should be able to demonstrate an awareness of how complaints and allegations of negligence may arise and appropriate measures for preventing or dealing with them.

*Range:*

- (1) Family proceedings; and
- (2) Civil proceedings with a family element.

In relation to clients; other parties; regulatory bodies, the court, and insurers;

In particular, Litigators should be able to:

- Describe the complaints procedures operated by his professional body;
- Describe actions which should be taken when a complaint or an allegation of negligence is made;
- Describe procedures or processes which can be adopted to reduce the risk of complaints or allegations of negligence being made;
- Describe the consequences of a successful complaint or allegation of negligence being made.

## **ELEMENT 4: MANAGING LITIGATION WORK**

### **1. Case Management**

It is a requirement of entry to this course that family Litigators should have achieved an ability to plan and manage litigation.

*Range:*

- (1) Caseload generally;
- (2) Casework;
- (3) Matrimonial and Civil Partnership proceedings.

- (4) Relationship breakdown between cohabittees.
- (5) Domestic violence.
- (6) Issues relating to children involving both parents and the wider family.
- (7) Public children proceedings.
- (8) Adoption.
- (9) Bankruptcy and insolvency so far as it may affect family problems.
- (10) Welfare benefits and housing

In particular, family Litigators should have demonstrated in their portfolios the ability to:

- Allocate time and resources appropriately;
- Apply project planning principles to casework;
- Adopt and maintain an appropriate case strategy;
- Be aware of relevant procedural requirements including applicable protocols;
- Actively manage cases;
- Maintain appropriate communications with clients, other parties, the Courts and the CLS.

## **2. Case Analysis**

On completion of this course family Litigators should be able to formulate a case strategy which, as well as being compatible with the client's aims or requirements, is legally, procedurally and ethically sustainable. In particular, the family Litigator should at all times be aware of and have regard to the "paramountcy principle" in cases concerning children.

*Range:*

- (1) Matrimonial and Civil Partnership proceedings.
- (2) Relationship breakdown between cohabittees.
- (3) Domestic violence.
- (4) Issues relating to children involving both parents and the wider family.
- (5) Public children proceedings.
- (6) Adoption.
- (7) Bankruptcy and insolvency so far as it may affect family problems.
- (8) Welfare benefits and housing.

In particular, family Litigators should be able to:

- Identify 'good' and 'bad' facts in the case;
- Identify gaps in the available evidence;

- Draw up a realistic case theory;
- Relate the case theory to the client's objectives and expectations;
- Recommend a strategy for the case;
- Provide the client with a balanced view of the likely risks, costs and benefits of various case strategies;
- Adopt a cost effective, analytical and pragmatic approach to the wider factual matrices.

### **3. Research Skills**

On completion of this course family Litigators should be able to undertake research needed to prepare a case thoroughly.

*Range:*

Law, procedural rules, library, internet, professional journals, housing, welfare, social work and medico-legal publications.

In particular, Litigators should be able to:

- Access up to date sources of law;
- Access up to date legal practice rules;
- Identify technical issues requiring expert evidence;
- Apply research skills in the context of the case in hand.

### **4. Assembly Skills**

On completion of this course family Litigators should be able to assemble all the materials relevant to the case, in accordance with the case analysis.

*Range:*

Law and evidence in relation to:

- (1) Matrimonial and Civil Partnership proceedings.
- (2) Relationship breakdown between cohabitants.
- (3) Domestic violence.
- (4) Issues relating to children involving both parents and the wider family.
- (5) Public children proceedings.
- (6) Adoption.
- (7) Bankruptcy and insolvency so far as it may affect family problems.
- (8) Welfare benefits and housing.

In particular, Litigators should be able to:

- Identify relevant law;
- Collect efficiently all the evidence relevant to the case;
- Summarise the relevant law and evidence succinctly and coherently;
- Locate and interview witnesses;
- Locate, make proper use of and instruct expert witnesses in accordance with relevant family procedure rules.

### **5. Instructing Advocates**

On completion of this course family Litigators should be able to instruct an Advocate when necessary.

*Range:*

- (1) Matrimonial and Civil Partnership proceedings.
- (2) Relationship breakdown between cohabitants.
- (3) Domestic violence.
- (4) Issues relating to children involving both parents and the wider family.
- (5) Public children proceedings.
- (6) Adoption.
- (7) Bankruptcy and insolvency so far as it may affect family problems.
- (8) Welfare benefits and housing.

In particular, family Litigators should be able to:

- Identify when specialist legal opinion is needed;
- Identify when it is necessary to instruct an Advocate;
- Locate an appropriate Advocate;
- Agree an appropriate fee basis for work to be carried out by the Advocate;
- Draft a clear and relevant brief to the Advocate;
- Liaise appropriately between client and the Advocate;
- Demonstrate awareness of the obligations of the Advocate at law, to the Court and under his professional rules.

## **6. Instructing Experts**

On completion of this course family Litigators should have developed an awareness of the wide diversity of expertise that may be needed in order to resolve family cases.

*Range*

- (1) Matrimonial and Civil Partnership proceedings.
- (2) Relationship breakdown between cohabitants.
- (3) Domestic violence.
- (4) Issues relating to children involving both parents and the wider family.
- (5) Public children proceedings.
- (6) Adoption.
- (7) Bankruptcy and insolvency so far as it may affect family problems.
- (8) Welfare benefits and housing.

On completion of the course family Litigators should:-

- Have an outline knowledge of the nature and functions of different types of expert, for example, child psychiatrist, educational psychologist and forensic accountant.
- Be aware of when it may be appropriate to instruct an expert.
- Be aware of the available registers and databases through which an appropriate expert may be identified and located.
- Have sufficient knowledge of the detailed procedural rules, for example under the Public Children Act Protocol, to be able to instruct an expert appropriately.
- Have an understanding of the substantive law relating to expert

evidence and the ways in which such evidence may be appropriately challenged.

## **7. Concluding cases**

On completion of this course family Litigators should be able to identify steps to be taken to conclude cases and be able to carry out those which are relevant to the case in-hand.

*Range:*

Parties; clients; courts; civil proceedings, and family proceedings.

In particular, Litigators should be able to:

- Draft and check orders of the court and/or agreements of the parties;
- Check judgments;
- Advise clients on the outcome of the proceedings or disputes and any further steps necessary or possible;
- Take steps necessary to implement agreements or enforce or appeal against a judgment;
- Deal with costs issues arising in cases.

## **ELEMENT 5: SETTLEMENT SKILLS**

### **1. Litigation**

On completion of this course family Litigators should be able to identify when settlement of a case is in his client's interest, give clear and accurate advice to the client on settling his case, and take the steps necessary to secure settlement.

*Range:*

- (1) Matrimonial and Civil Partnership proceedings.
- (2) Relationship breakdown between cohabitants.
- (3) Domestic violence.
- (4) Issues relating to children involving both parents and the wider family.
- (5) Public children proceedings.
- (6) Adoption.
- (7) Bankruptcy and insolvency so far as it may affect family problems.
- (8) Welfare benefits and housing.

In particular, Litigators should be able to:

- Explain the value of case settlement in achieving clients' objectives;
- Make and give consideration to offers under Part 36 of the CPR in family cases falling outside the definition of "family proceedings".
- Understand the significance of "open" offers under the new ancillary relief costs rules
- In family cases, explain the purpose and value of the reconciliation process, counseling and mediation;
- Apply the principles of proportionality in the CPR and the FPR, to his

client's case.

## **2. Negotiation**

On completion of this course Litigators should be able to negotiate in a client's case.

*Range:*

- (1) Matrimonial and Civil Partnership proceedings,
- (2) Relationship breakdown between cohabitants.
- (3) Domestic violence.
- (4) Issues relating to children involving both parents and the wider family.
- (5) Public children proceedings.
- (6) Adoption.
- (7) Bankruptcy and insolvency so far as it may affect family problems.
- (8) Welfare benefits and housing.

In particular, Litigators should be able to:

- Determine the client's and opponent's underlying interests and expectations;
- Identify the strength and weaknesses of the client's and opponent's positions;
- Identify the issues to be covered and the most appropriate order in which to deal with them;
- Identify the most and least favourable outcomes for his client;
- Identify the likely outcome if the case goes to trial;
- Draft negotiated agreements and secure relevant orders.

## **3. Alternative Dispute Resolution**

On completion of this course Litigators should be aware of the ADR processes available and be able to identify those which are relevant to the case in hand, and when they are required to be applied.

*Range:*

- (1) All types of family proceedings;
- (2) Mediation;
- (3) Early neutral evaluation including Financial Dispute Resolution appointments in ancillary relief cases.

In particular, Litigators should be able to:

- Explain to the client the nature and procedures of alternative dispute mechanisms;
- Explain the benefits and disadvantages of relevant mechanisms;
- Make recommendations whether any ADR process is appropriate and in the client's interest;
- Advise the client on the ways in which any form of ADR recommended may be taken forward.



**ASSESSMENT CRITERIA – LITIGATION SKILLS COURSE**

**GENERAL**

**Assessment Criteria**

The competence of candidates will be assessed in accordance with the criteria set out in this document.

**Assessment Standard**

The standard of competence for each assessment will be 50% and candidates will be 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 will not be required to reach this standard on the formative assessments which will take place at various stages during the Litigation Skills Course. Course providers will decide which assessments will be formal assessments.

The Assessment Organisation(s) will be required to develop their own mark and weighting bands for each element of the formal assessment criteria to be approved by ILEX. Assessors should have the flexibility to mark in between the weighting bands devised by the Assessment Organisation(s).

Assessors will retain a general discretion to determine overall competence even if a candidate reaches the appropriate mark of 50% in each formal assessment. Examples that may affect the assessor's overall assessment of competence include:

- errors relating to gross professional misconduct;
- fundamental errors of law / evidence / procedure.

**Resubmissions**

A candidate who is assessed as being not yet competent in one or more of the formal assessments will be allowed one further opportunity to achieve the required standard of competence in relation to that assessment(s). If he or she is successful they may be awarded a pass mark. If they are still assessed as being not yet competent on this resubmission then they will be required to undertake all the assessments again before they can achieve the appropriate level of competence.

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.

## **ASSESSMENT CRITERIA AND FRAMEWORK FOR THE CIVIL LITIGATION SKILLS COURSE**

In order to pass the formal assessments for the Litigation Skills Course a candidate must demonstrate competence in the following criteria for those activities in which he is assessed:

### **ELEMENT 1: CLIENT CARE**

It will normally be expected that Element 1 will be assessed by an oral assessment of an interview with a client and a witness followed by the drafting of a letter to the client and a detailed attendance note of the interview with the client.

### **INTERVIEWING, ADVISING & COMMUNICATING**

<b><i>ACTIVITY</i></b>	<b><i>CRITERIA</i></b>
INTERVIEWING THE CLIENT	<ul style="list-style-type: none"> <li>▪ Appropriate preparation.</li> <li>▪ Meet &amp; greet client appropriately.</li> <li>▪ Establish client's case by appropriate use of listening, questioning &amp; feedback techniques.</li> <li>▪ Identify any "hidden agendas".</li> <li>▪ Maintain rapport with client.</li> <li>▪ Deal appropriately with any diversity issues.</li> <li>▪ Close interview appropriately.</li> <li>▪ Keep a full and accurate record of the interview.</li> </ul>
ADVISING	<ul style="list-style-type: none"> <li>▪ Accurately identify the client's problems requiring a solution.</li> <li>▪ Accurately identify what it is the client seeks to achieve.</li> <li>▪ Provide clear advice on all relevant matters arising.</li> <li>▪ Accurately summarise the available options open to the client to ensure the client is able to make an informed decision.</li> <li>▪ Provide clear advice on funding options and the firm's charging rates.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Provide clear advice on the next steps to be taken by the civil litigator and the client.</li> <li>▪ Deal appropriately with any diversity issues.</li> </ul>
COMMUNICATING	<ul style="list-style-type: none"> <li>▪ Obtain all relevant information from the client.</li> <li>▪ Advise the client of significant developments in the case.</li> <li>▪ Provide appropriate advice on options, tactics and strategies as the case develops.</li> <li>▪ Explain the advantages and disadvantages of each available option.</li> </ul>
INTERVIEWING WITNESSES	<ul style="list-style-type: none"> <li>▪ Understand the ethical rules relating to interviewing witnesses.</li> <li>▪ Prepare a record of interview so that it may be admitted in evidence if the witness is unable to testify.</li> <li>▪ Understand the different methods by which a witness's evidence-in-chief may be admitted.</li> </ul>

## **ELEMENT 2: FUNDING & COSTS**

It will normally be expected that Element 2 will be assessed by the drafting of a letter to a client and the completion of the necessary documentation relating to costs and funding.

### **FUNDING, COSTS & DOCUMENTATION**

<b><i>ACTIVITY</i></b>	<b><i>CRITERIA</i></b>
FUNDING	<ul style="list-style-type: none"> <li>▪ Identify and advise on available funding options.</li> <li>▪ Advise the client on the suitability of alternative funding sources.</li> <li>▪ Explain clearly the risks and benefits of alternative funding options.</li> <li>▪ Identify and take into account potential conflicts of interest on funding issues.</li> <li>▪ Provide appropriate information on fees to be charged on funding options.</li> </ul>
COSTS	<ul style="list-style-type: none"> <li>▪ Prepare realistic costs estimates at the start of the case.</li> <li>▪ Ensure full compliance with the CPR costs rules such as the filing of costs estimates and Form N260's on summary assessment.</li> <li>▪ Identify the circumstances when summary and detailed assessments of costs are required.</li> <li>▪ Advise a client of all the costs that may arise in a case.</li> <li>▪ Explain the differences between the indemnity and standard costs bases in any given case.</li> <li>▪ Advise the client of the costs implications on alternative strategies and different outcomes for the case.</li> <li>▪ Demonstrate an awareness of the various procedural steps that may be taken under the CPR to transfer costs risks to the other party.</li> <li>▪ Conduct a case so as to comply with the concept of "proportionality" under the CPR at all times.</li> </ul>
DOCUMENTATION	<p>Draft the following:</p> <ul style="list-style-type: none"> <li>▪ client care letter;</li> <li>▪ funding agreements.</li> </ul> <p>Prepare the following:</p> <ul style="list-style-type: none"> <li>▪ estimates and schedules of costs;</li> <li>▪ summary costs assessments (Form N260).</li> </ul>

### **ELEMENT 3: CONDUCT & ETHICS**

It will normally be expected that Element 3 will be assessed by the use of multiple choice questions or a case study. This element is also a pervasive topic and so may appear in any of the assessments.

<b><i>ACTIVITY</i></b>	<b><i>CRITERIA</i></b>
PROFESSIONAL OBLIGATIONS	Demonstrate an understanding of the professional obligations in relation to: <ul style="list-style-type: none"><li>▪ the court;</li><li>▪ the client;</li><li>▪ other lawyers;</li><li>▪ the public;</li><li>▪ money laundering legislation.</li></ul>
CONFLICT	Identify and deal appropriately with conflicts arising between the: <ul style="list-style-type: none"><li>▪ litigator and the client;</li><li>▪ litigator and the court;</li><li>▪ client and associated parties.</li></ul>
WITHDRAWAL	Demonstrate an understanding of: <ul style="list-style-type: none"><li>▪ when to withdraw from a case;</li><li>▪ the appropriate steps to take when withdrawing from a case;</li><li>▪ the appropriate treatment of costs on withdrawal from a case.</li></ul>
UNDERTAKINGS	Demonstrate an understanding of: <ul style="list-style-type: none"><li>▪ the appropriate use of undertakings in legal proceedings;</li><li>▪ the bases of giving professional undertakings to the client, the court and to others;</li><li>▪ when to give a professional undertaking to the client, the court and to others.</li></ul>
CONFIDENTIALITY & PRIVILEGE	<ul style="list-style-type: none"><li>▪ Identify and distinguish between legal advice privilege, litigation privilege and confidential information.</li><li>▪ Apply the relevant law and practice rules relating to privilege and confidence.</li><li>▪ Identify when confidential and privileged information may be disclosed and to whom.</li></ul>
COMPLAINTS & NEGLIGENCE	Describe: <ul style="list-style-type: none"><li>▪ the complaints procedure operated by the litigator's professional body;</li><li>▪ what actions should be taken when a complaint or allegation of negligence is made;</li><li>▪ the procedures and processes that can be adopted to reduce the risk of complaints or allegations of negligence being made;</li><li>▪ the consequences of a complaint or allegation of negligence being upheld.</li></ul>

#### **ELEMENT 4: MANAGING LITIGATION WORK**

It will normally be expected that Element 4 will be assessed by way of a written assessment which could consist of one or more of the following methods of assessment: drafting a brief to counsel; drafting a letter to the client; drafting instructions to an expert; drafting relevant documentation; questions based on a case study; multiple choice questions.

#### **LITIGATION MANAGEMENT SKILLS**

<b>ACTIVITY</b>	<b>CRITERIA</b>
CASE ANALYSIS	<ul style="list-style-type: none"> <li>▪ Identify both "good and bad" facts in a case.</li> <li>▪ Identify gaps in the available evidence.</li> <li>▪ Draw up a realistic case theory.</li> <li>▪ Apply the case theory to the client's objectives and expectations.</li> <li>▪ Recommend a strategy for the case.</li> <li>▪ Provide a realistic view on the likely costs, risks and benefits of the case strategy.</li> <li>▪ Adopt a cost effective, analytical and pragmatic approach.</li> </ul>
RESEARCH SKILLS	<p>Undertake appropriate research to ensure that a case is thoroughly prepared by:</p> <ul style="list-style-type: none"> <li>▪ accessing the relevant substantive law;</li> <li>▪ accessing the relevant legal practice and procedure rules;</li> <li>▪ accurately applying the relevant substantive law and procedural rules to a given case.</li> </ul>
ASSEMBLY SKILLS	<p>In accordance with the case analysis:</p> <ul style="list-style-type: none"> <li>▪ identify the relevant law and procedural rules;</li> <li>▪ collect all the relevant evidence;</li> <li>▪ summarise the relevant law and evidence succinctly and coherently;</li> <li>▪ locate and interview potential witnesses;</li> <li>▪ locate, make proper use of and instruct expert witnesses in accordance with the relevant procedural rules.</li> </ul>
INSTRUCTING ADVOCATES	<ul style="list-style-type: none"> <li>▪ Identify when specialist legal opinion is needed.</li> <li>▪ Identify when it is necessary to instruct an advocate.</li> <li>▪ Locate an appropriate advocate.</li> <li>▪ Agree an appropriate fee basis with the advocate.</li> <li>▪ Draft an appropriate brief to the advocate.</li> <li>▪ Liaise appropriately between the advocate and the client.</li> <li>▪ Understand the legal and professional obligations of the advocate.</li> </ul>
INSTRUCTING EXPERTS	<p>Demonstrate:</p> <ul style="list-style-type: none"> <li>▪ an understanding of the nature and functions of different types of expert witnesses;</li> <li>▪ when it may be appropriate to instruct an expert;</li> <li>▪ how to locate an appropriately qualified expert through available registers and databases;</li> <li>▪ sufficient knowledge of the relevant procedural rules so</li> </ul>

	<p>that the expert can be instructed properly;</p> <ul style="list-style-type: none"> <li>▪ sufficient knowledge of the substantive law relating to expert evidence and how such evidence may be challenged.</li> </ul>
CONCLUDING CASE	<ul style="list-style-type: none"> <li>▪ Accurately draft court orders and agreements of the parties.</li> <li>▪ Check judgments.</li> <li>▪ Advise the client on the outcome of the case and what further steps may need to be taken.</li> <li>▪ Take appropriate steps to implement, enforce or appeal against a judgment.</li> <li>▪ Deal appropriately with costs issues arising from a case.</li> </ul>

### **ELEMENT 5: SETTLEMENT SKILLS**

It will normally be expected that Element 5 will be assessed by way of drafting a letter and a Part 36 offer and / or multiple choice questions in relation to the assessment of litigation skills and ADR and an oral assessment in relation to negotiation skills.

<b><i>ACTIVITY</i></b>	<b><i>CRITERIA</i></b>
LITIGATION	<ul style="list-style-type: none"> <li>▪ Explain the value of case settlement in achieving the client's objectives.</li> <li>▪ Make and give consideration to offers and payments into court under Part 36 of the CPR.</li> <li>▪ Apply the principles of proportionality in the CPR to a client's case.</li> </ul>
NEGOTIATION	<ul style="list-style-type: none"> <li>▪ Determine the client's and opponent's underlying interests and expectations.</li> <li>▪ Identify the strengths and weaknesses of the client's and opponent's positions.</li> <li>▪ Identify the relevant issues to cover and the most appropriate order in which to deal with them.</li> <li>▪ Identify the most and least favourable outcomes for the client.</li> <li>▪ Identify the most likely outcome if the case proceeds to trial.</li> <li>▪ Draft an agreement following a negotiated settlement and secure the relevant court order(s).</li> </ul>
ALTERNATIVE DISPUTE RESOLUTION	<ul style="list-style-type: none"> <li>▪ Explain to a client the nature and procedures of alternative dispute resolution (ADR).</li> <li>▪ Explain to a client the advantages and disadvantages of such procedures.</li> <li>▪ Advise on whether any such procedures would be appropriate for a client.</li> <li>▪ Advise on how an appropriate ADR procedure may be taken forward.</li> </ul>

## **ASSESSMENT CRITERIA AND FRAMEWORK DOCUMENT FOR THE FAMILY LITIGATION SKILLS COURSE**

In order to pass the formal assessments for the Family Litigation Skills Course a candidate must demonstrate competence in the following criteria for those activities in which he is assessed:

### **ELEMENT 1: CLIENT CARE**

It will normally be expected that Element 1 will be assessed by an oral assessment of an interview with a client and a witness followed by the drafting of a letter to the client and a detailed attendance note of the interview with the client.

### **INTERVIEWING, ADVISING & COMMUNICATING**

<b><i>ACTIVITY</i></b>	<b><i>CRITERIA</i></b>
INTERVIEWING THE CLIENT	<ul style="list-style-type: none"> <li>▪ Appropriate preparation.</li> <li>▪ Meet &amp; greet client appropriately.</li> <li>▪ Establish client's case by appropriate use of listening, questioning &amp; feedback techniques.</li> <li>▪ Identify any "hidden agendas".</li> <li>▪ Maintain rapport with client.</li> <li>▪ Deal appropriately with any diversity issues.</li> <li>▪ Close interview appropriately.</li> <li>▪ Keep a full and accurate record of the interview.</li> </ul>
ADVISING	<ul style="list-style-type: none"> <li>▪ Accurately identify the client's problems requiring a solution.</li> <li>▪ Accurately identify what it is the client seeks to achieve.</li> <li>▪ Provide clear advice on all relevant matters arising.</li> <li>▪ Accurately summarise the available options open to the client to ensure the client is able to make an informed decision.</li> <li>▪ Provide clear advice on funding options and the firm's charging rates.</li> <li>▪ Provide clear advice on the next steps to be taken by the family litigator and the client.</li> <li>▪ Deal appropriately with any diversity issues.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Provide appropriate advice in relation to referring the client on to other agencies and professionals to help the client with the wider aspects of their problems such as refuges and relationship counsellors, where required.</li> </ul>
COMMUNICATING	<ul style="list-style-type: none"> <li>▪ Obtain all relevant information from the client.</li> <li>▪ Advise the client of significant developments in the case.</li> <li>▪ Provide appropriate advice on options, tactics and strategies as the case develops.</li> <li>▪ Explain the advantages and disadvantages of each available option.</li> <li>▪ Handle the client in a sensitive and professional manner.</li> </ul>

INTERVIEWING WITNESSES	<ul style="list-style-type: none"> <li>▪ Understand the ethical rules relating to interviewing witnesses.</li> <li>▪ Prepare a record of interview so that it may be admitted in evidence if the witness is unable to testify.</li> <li>▪ Understand the different methods by which a witness's evidence-in-chief may be admitted.</li> </ul>
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**ELEMENT 2: FUNDING & COSTS**

It will normally be expected that Element 2 will be assessed by the drafting of a letter to a client and the completion of the necessary documentation relating to costs and funding.

**FUNDING, COSTS & DOCUMENTATION**

<b>ACTIVITY</b>	<b>CRITERIA</b>
FUNDING	<ul style="list-style-type: none"> <li>▪ Identify and advise on available funding options.</li> <li>▪ Advise the client on the suitability of alternative funding sources.</li> <li>▪ Explain clearly the risks and benefits of alternative funding options.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Identify and take into account potential conflicts of interest on funding issues.</li> <li>▪ Provide appropriate information on fees to be charged on funding options.</li> <li>▪ Provide appropriate advice where the client is in receipt of public funding including any relevant financial implications relating to public funding.</li> </ul>
COSTS	<ul style="list-style-type: none"> <li>▪ Prepare realistic costs estimates at the start of the case.</li> <li>▪ Ensure full compliance with the FPR, FP(FPC)R and CPR costs Rules (in particular Form H in ancillary proceedings and Form N260 on summary assessment).</li> <li>▪ Identify the circumstances when summary and detailed assessments of costs are required.</li> <li>▪ Advise a client of all the costs that may arise in a case.</li> <li>▪ Explain the differences between the indemnity and standard costs bases in any given case.</li> <li>▪ Advise the client of the costs implications on alternative strategies and different outcomes for the case.</li> <li>▪ Demonstrate an awareness of the various procedural steps that may be taken to transfer costs risks to the other party.</li> <li>▪ Conduct a case so as to comply with the concept of "proportionality" at all times.</li> <li>▪ Advise a client on the significance of the statutory charge in publicly funded cases where this might have an impact and take all relevant steps to protect the interests of the client and the CLS fund.</li> </ul>



DOCUMENTATION	<p>Draft the following:</p> <ul style="list-style-type: none"> <li>▪ client care letter;</li> <li>▪ funding agreements.</li> </ul> <p>Prepare the following:</p> <ul style="list-style-type: none"> <li>▪ complete all appropriate documents in publicly funded cases;</li> <li>▪ estimates and schedules of costs in ancillary proceedings;</li> <li>▪ summary costs assessments.</li> </ul>
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**ELEMENT 3: CONDUCT & ETHICS**

It will normally be expected that Element 3 will be assessed by the use of multiple choice questions or a case study. This element is also a pervasive topic and so may appear in any of the assessments.

**PROFESSIONAL CONDUCT & ETHICS**

<b>ACTIVITY</b>	<b>CRITERIA</b>
PROFESSIONAL OBLIGATIONS	<p>Demonstrate an understanding of the professional obligations in relation to:</p> <ul style="list-style-type: none"> <li>▪ the court;</li> <li>▪ the client;</li> <li>▪ other lawyers;</li> <li>▪ the public;</li> <li>▪ the Community Legal Service;</li> <li>▪ money laundering legislation.</li> </ul>
CONFLICT	<p>Identify and deal appropriately with conflicts arising between the:</p> <ul style="list-style-type: none"> <li>▪ family litigator and the client;</li> <li>▪ family litigator and the court;</li> <li>▪ client and associated parties.</li> </ul>
WITHDRAWAL	<p>Demonstrate an understanding of:</p> <ul style="list-style-type: none"> <li>▪ when to withdraw from a case;</li> <li>▪ the appropriate steps to take when withdrawing from a case;</li> <li>▪ the appropriate treatment of costs on withdrawal from a case.</li> </ul>
UNDERTAKINGS	<p>Demonstrate an understanding of:</p> <ul style="list-style-type: none"> <li>▪ the appropriate use of undertakings in legal proceedings;</li> <li>▪ the bases of giving professional undertakings to the client, the court and to others;</li> <li>▪ when to give a professional undertaking to the client, the court and to others.</li> </ul>
CONFIDENTIALITY & PRIVILEGE	<ul style="list-style-type: none"> <li>▪ Identify and distinguish between legal advice privilege, litigation privilege and confidential information.</li> <li>▪ Apply the relevant law and practice rules relating to privilege and confidence.</li> <li>▪ Identify when confidential and privileged information may</li> </ul>

	be disclosed and to whom.
COMPLAINTS & NEGLIGENCE	Describe: <ul style="list-style-type: none"> <li>▪ the complaints procedure operated by the family litigator’s professional body;</li> <li>▪ what actions should be taken when a complaint or allegation of negligence is made;</li> <li>▪ the procedures and processes that can be adopted to reduce the risk of complaints or allegations of negligence being made;</li> <li>▪ the consequences of a complaint or allegation of negligence being upheld.</li> </ul>

**ELEMENT 4: MANAGING LITIGATION WORK**

It will normally be expected that Element 4 will be assessed by way of a written assessment which could consist of one or more of the following methods of assessment: drafting a brief to counsel; drafting a letter to the client; drafting instructions to an expert; drafting relevant documentation; questions based on a case study; multiple choice questions.

**LITIGATION MANAGEMENT SKILLS**

<b>ACTIVITY</b>	<b>CRITERIA</b>
CASE ANALYSIS	<ul style="list-style-type: none"> <li>▪ Identify both “good and bad” facts in a case.</li> <li>▪ Identify gaps in the available evidence.</li> <li>▪ Draw up a realistic case theory.</li> <li>▪ Apply the case theory to the client’s objectives and expectations.</li> <li>▪ Recommend a strategy for the case.</li> <li>▪ Provide a realistic view on the likely costs, risks and benefits of the case strategy.</li> <li>▪ Adopt a cost effective, analytical and pragmatic approach to the wider factual matrices that tend to arise in family cases.</li> </ul>
RESEARCH SKILLS	<p>Undertake appropriate research to ensure that a case is thoroughly prepared by:</p> <ul style="list-style-type: none"> <li>▪ accessing the relevant substantive law;</li> <li>▪ accessing the relevant legal practice rules;</li> <li>▪ accurately applying the relevant substantive law and procedural rules to a given case.</li> </ul>
ASSEMBLY SKILLS	<p>In accordance with the case analysis:</p> <ul style="list-style-type: none"> <li>▪ identify the relevant law and procedural rules;</li> <li>▪ collect all the relevant evidence;</li> <li>▪ summarise the relevant law and evidence succinctly and coherently;</li> <li>▪ locate and interview potential witnesses;</li> <li>▪ locate, make proper use of and instruct expert witnesses</li> </ul>

	in accordance with the relevant procedural rules.
INSTRUCTING ADVOCATES	<ul style="list-style-type: none"> <li>▪ Draft an appropriate brief to the advocate.</li> <li>▪ Liaise appropriately between the advocate and the client.</li> <li>▪ Understand the legal and professional obligations of the advocate.</li> </ul>
INSTRUCTING EXPERTS	<p>Demonstrate:</p> <ul style="list-style-type: none"> <li>▪ an understanding of the nature and functions of different types of expert witnesses;</li> <li>▪ when it may be appropriate to instruct an expert;</li> <li>▪ how to locate an appropriately qualified expert through available registers and databases;</li> <li>▪ sufficient knowledge of the relevant procedural rules so that the expert can be instructed properly;</li> <li>▪ sufficient knowledge of the substantive law relating to expert evidence and how such evidence may be challenged.</li> </ul>
CONCLUDING CASE	<ul style="list-style-type: none"> <li>▪ Accurately draft court orders and agreements of the parties.</li> <li>▪ Check judgments.</li> <li>▪ Advise the client on the outcome of the case and what further steps may need to be taken.</li> <li>▪ Take appropriate steps to implement, enforce or appeal against a judgment.</li> <li>▪ Deal appropriately with costs issues arising from a case.</li> </ul>

### **ELEMENT 5: SETTLEMENT SKILLS**

It will normally be expected that Element 5 will be assessed by way of drafting a letter and a Part 36 offer and / or multiple choice questions in relation to the assessment of litigation skills and ADR and an oral assessment in relation to negotiation skills.

<b><i>ACTIVITY</i></b>	<b><i>CRITERIA</i></b>
LITIGATION	<ul style="list-style-type: none"> <li>▪ Make and give consideration to offers to settle under Part 36 of the CPR in family cases that fall outside the definition of "family proceedings".</li> <li>▪ Explain the significance of "open" offers under the new ancillary relief costs rules.</li> <li>▪ Apply the principles of proportionality in the CPR and FPR to a client's case.</li> </ul>

NEGOTIATION	<ul style="list-style-type: none"> <li>▪ Determine the client's and opponent's underlying interests and expectations.</li> <li>▪ Identify the strengths and weaknesses of the client's and opponent's positions.</li> <li>▪ Identify the relevant issues to cover and the most appropriate order in which to deal with them.</li> <li>▪ Identify the most and least favourable outcomes for the client.</li> <li>▪ Identify the most likely outcome if the case proceeds to trial.</li> <li>▪ Draft an agreement following a negotiated settlement and secure the relevant court order(s).</li> </ul>
ALTERNATIVE DISPUTE RESOLUTION	<ul style="list-style-type: none"> <li>▪ Explain to a client the nature and procedures of alternative dispute resolution (ADR).</li> <li>▪ Explain to a client the advantages and disadvantages of such procedures.</li> <li>▪ Advise on whether any such procedures would be appropriate for a client.</li> <li>▪ Advise on how an appropriate ADR procedure may be taken forward.</li> </ul>

**ADVOCACY SKILLS COURSE DELIVERY AND OUTCOMES FOR CANDIDATES SEEKING LITIGATION RIGHTS**

**COURSE DELIVERY**

An accredited Advocacy Skills Course must be effective to develop the advocacy skills of candidates in accordance with the Outcomes set out below for civil and/or family proceedings. For those candidates seeking open court rights of audience, it must comprise not less than 24 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. For those candidates seeking Judge's room rights of audience, the course must comprise of not less than 12 hours tuition, delivered over not less than two days.

Appropriate feedback must be provided on all formative assessments or exercises during the sessions. Facilities must be available to record candidate performance 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 for those candidates seeking open court rights of audience must be formally assessed during a skills course by means of a written or multiple choice test devised by the course provider.

**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** [For all candidates]

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 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. **Case Analysis and Theory** [For all candidates]

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.
- Understand the relevant law in context.
- Prepare a case theory that is both succinct and persuasive.

3. **Skeleton Arguments** [For all candidates]

Candidates should be able to:-

- Draft a skeleton argument and consent forms.
- Identify appropriately the relevant chronology and issues.
- Make effective submissions on these issues by use of numbered paragraphs; citing relevant authorities; argue the case and use appropriate factual and legal arguments.

4. **Judge's Room Advocacy** [For all candidates]

Candidates should be able to:-

- 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.
- 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 in relation to an interim application,
- Understand and appreciate the relevant communication skills and techniques used by an advocate.

5. **Trial Advocacy** [For candidates seeking open court rights of audience]

Candidates should be able to:-

- 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.
- 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 convention of advocacy.
6. **Evidence** [For candidates seeking open court rights of audience]  
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 significance and admissibility of circumstantial evidence
  - 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.
7. **Negotiating** [For candidates seeking open court rights of audience]  
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 client's strengths and weaknesses.
  - Identify the other party's strengths and weaknesses.
  - 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.

## **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** [For all candidates]  
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 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. **Case Analysis and Theory** [For all candidates]  
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.
  - Understand the relevant law in context.
  - Prepare a case theory that is both succinct and persuasive.
3. **Skeleton Arguments** [For all candidates]  
Candidates should be able to:-
- Draft a skeleton argument and consent forms.
  - Identify appropriately the relevant chronology and issues.
  - Make effective submissions on these issues by use of numbered paragraphs; citing relevant authorities; argue the case and use appropriate factual and legal arguments.
4. **Judge's Room Advocacy** [For all candidates]  
Candidates should be able to:-
- 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.
  - 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 in relation to a without notice application in domestic violence proceedings,
  - Understand and appreciate the relevant communication skills and techniques used by an advocate.



5. **Trial Advocacy** [For candidates seeking open court rights of audience]

Candidates should be able to:-

- 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.
- Undertake competently an opening speech, examination-in-chief, cross-examination, re-examination and a closing speech.
- Deal appropriately with client care and ethical issues.
- Demonstrate an understanding of the ethics, etiquette and convention of advocacy.

6. **Evidence** [For candidates seeking open court rights of audience]

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 rules relating to expert evidence.

7. **Negotiating** [For candidates seeking open court rights of audience]

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 client's strengths and weaknesses.
- Identify the other party's strengths and weaknesses.
- 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.

### ASSESSMENT CRITERIA AND FRAMEWORK DOCUMENT 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 Standard

The standard of competence for each assessment will be 50% and candidates will be 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 will not be required to reach this standard on the formative assessments which will take place at various stages during the Advocacy Skills Course. Course providers will decide which assessments will be formally assessed.

The Assessment Organisation(s) will be required to develop their own mark and weighting bands for each element of the formal assessment criteria to be approved by ILEX. Assessors should have the flexibility to mark in between the weighting bands devised by the Assessment Organisation(s).

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 is 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 that candidates seeking open court rights of audience 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 is assessed as being not yet competent in one or more of the formal assessments will be allowed one further opportunity to achieve the required standard of competence in relation to that assessment(s). If he or she is successful they may be awarded a pass mark. If they are still assessed as being not yet

competent on this resubmission then they will be required to undertake all the assessments again before they can achieve the appropriate level of competence.

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 age, 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 advocacy assessments for the Civil Proceedings Certificate a candidate seeking chambers rights of audience must demonstrate competence in the following assessment categories:

- (1) Case Analysis & Theory or Skeleton Arguments
- (2) Interim Applications.

In order to pass the advocacy assessments for the Civil Proceedings Certificate a candidate seeking open court rights of audience must demonstrate competence in one assessment from each of the following assessment categories:

- (1) Opening speech or closing speech
- (2) Examination in Chief, Cross Examination or Exchanged witness statement/ sworn statement and re-examination
- (3) Legal submission

A candidate who completes the chambers and open court rights of audience course at the same time must demonstrate competence in one assessment from each of the following assessment categories:

- (1) Case analysis and theory or skeleton arguments
- (2) Opening speech or closing speech
- (3) Examination in Chief, Cross Examination or Exchanged witness statement/ sworn statement and re-examination
- (4) Interim application / legal submission

## **ANALYSIS & THEORY**

It will normally be expected that this element will be assessed by a written assessment where candidates are required to produce a case theory based on a case study and / or to make use of such a case theory during an interim application, a piece of cross-examination or a closing speech.

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

## **SKELETON ARGUMENTS**

It will normally be expected that this element will be assessed by a written assessment where candidates are required to produce a skeleton argument based on a case study.

<b>ACTIVITY</b>	<b>CRITERIA</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>
SUBMISSIONS	States and develops a sound argument in an effective and persuasive manner on the above issues
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>

## **INTERIM APPLICATION / LEGAL SUBMISSIONS**

It will normally be expected that this element will be assessed by an oral assessment where candidates are required to represent a party in an interim application or to make legal submissions to a court in the context of a case study scenario.

<b>ACTIVITY</b>	<b>CRITERIA</b>
PREPARATION	<ul style="list-style-type: none"><li>▪ Undertake case analysis</li><li>▪ Perform appropriate legal research</li></ul>

CONTENT	The application / submission must: <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>
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>
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>
EFFECTIVE AND PERSUASIVE	The extent to which the application / response influences the tribunal to find for the applicant / respondent

### **OPENING SPEECH**

It will normally be expected that this element will be assessed by an oral assessment where candidates are required to represent a party in a contested trial in the context of one or more case study scenarios.

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

## EXCHANGED WITNESS STATEMENT / SWORN STATEMENT & RE-EXAMINATION

It will normally be expected that this element will be assessed by an oral assessment where candidates are required to represent a party in a contested trial in the context of one or more case study scenarios.

<b>ACTIVITY</b>	<b>CRITERIA</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>▪ Elicits further evidence with an appropriate range of non-leading questions</li> <li>▪ Confirms truth to the best of knowledge and belief</li> <li>▪ "Out" line (with appropriate directions to remain for xx)</li> </ul>
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>
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>

## CROSS-EXAMINATION

It will normally be expected that this element will be assessed by an oral assessment where candidates are required to represent a party in a contested trial in the context of one or more case study scenarios.

OBJECTIVES	Does the advocate achieve the following objectives where appropriate:
<b>ACTIVITY</b>	<b>CRITERIA</b>
TECHNIQUES	<ul style="list-style-type: none"> <li>▪ Obtains favourable information from the witness</li> <li>▪ Leading questions to control witness</li> <li>▪ Demonstrates that the witness is wrong (mistaken/lying)</li> <li>▪ Short questions that witness understands</li> <li>▪ Asks one question at a time</li> <li>▪ Undermines the witnesses' credibility</li> <li>▪ Listens to witnesses answers and makes appropriate notes</li> <li>▪ Puts the client's case to the witness</li> </ul>
GENERAL	<ul style="list-style-type: none"> <li>▪ Avoids: <ul style="list-style-type: none"> <li>▪ Appropriate range of leading questions</li> <li>▪ Making statements, asking too many questions; misquoting witness, echoing witness reply (prepared text)</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>▪ Maintains suitable court room demeanour</li> <li>▪ Deals appropriately with any conduct issues</li> </ul>

## **CLOSING SPEECH**

It will normally be expected that this element will be assessed by an oral assessment where candidates are required to represent a party in a contested trial in the context of one or more case study scenarios.

<b><i>ACTIVITY</i></b>	<b><i>CRITERIA</i></b>
ISSUES	Identifies the outstanding issues
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
LAW	Makes appropriate submissions on points of law (with copies of authorities if necessary)
CONCLUSION	Appropriate "out" line
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>



## **EVIDENCE**

Candidates seeking open court rights of audience 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 admissibility and significance of circumstantial evidence.
- 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 advocacy assessments for the Family Proceedings Certificate a candidate seeking chambers rights of audience must demonstrate competence in the following assessment categories:

- (1) Case Analysis & Theory or Skeleton Arguments
- (2) Interim Application

In order to pass the advocacy assessments for the Family Proceedings Certificate a candidate seeking open court rights of audience must demonstrate competence in one assessment from each of the following assessment categories:

- (1) Opening speech or closing speech
- (2) Examination in Chief, Cross Examination or Exchanged witness statement/  
sworn statement and re-examination
- (3) Legal submission

A candidate who completes the chambers and open court rights of audience course at the same time must demonstrate competence in one assessment from each of the following assessment categories:

- (1) Case analysis and theory or skeleton arguments
- (2) Opening speech or closing speech
- (3) Examination in Chief, Cross Examination or Exchanged witness statement/  
sworn statement and re-examination
- (4) Interim application / legal submission

### **CASE ANALYSIS & THEORY**

It will normally be expected that this element will be assessed by a written assessment where candidates are required to produce a case theory based on a case study and / or to make use of such a case theory during an interim application, a piece of cross-examination or a closing speech.

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

### **SKELETON ARGUMENTS**

It will normally be expected that this element will be assessed by a written assessment where candidates are required to produce a skeleton argument based on a case study.

<b>ACTIVITY</b>	<b>CRITERIA</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>
SUBMISSIONS	States and develops a sound argument in an effective and persuasive manner on the above issues
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>

### **WITHOUT NOTICE APPLICATION / LEGAL SUBMISSIONS**

It will normally be expected that this element will be assessed by an oral assessment where candidates are required to represent a party in an interim application or to make legal submissions to a court in the context of a case study scenario.

<b>ACTIVITY</b>	<b>CRITERIA</b>
PREPARATION	<ul style="list-style-type: none"><li>▪ Undertake case analysis</li><li>▪ Perform appropriate legal research</li></ul>

CONTENT	The application / submission must: <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>
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>
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>
EFFECTIVE AND PERSUASIVE	The extent to which the application / response influences the tribunal to find for the applicant / respondent

### **OPENING SPEECH**

It will normally be expected that this element will be assessed by an oral assessment where candidates are required to represent a party in a contested trial in the context of one or more case study scenarios.

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

## **EXCHANGED WITNESS STATEMENT / SWORN STATEMENT & RE-EXAMINATION**

It will normally be expected that this element will be assessed by an oral assessment where candidates are required to represent a party in a contested trial in the context of one or more case study scenarios.

<b>ACTIVITY</b>	<b>CRITERIA</b>
EXAMINATION-IN-CHIEF	<ul style="list-style-type: none"> <li>▪ Name, address, occupation</li> <li>▪ Directions</li> <li>▪ Identifies witness statement, Form E or sworn statement</li> <li>▪ Identifies signature</li> <li>▪ Confirms date signed</li> <li>▪ Elicits further evidence with an appropriate range of non-leading questions</li> <li>▪ Confirms truth to the best of knowledge and belief</li> <li>▪ "Out" line (with appropriate directions to remain for xx)</li> </ul>
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>
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>

## **CROSS-EXAMINATION**

It will normally be expected that this element will be assessed by an oral assessment where candidates are required to represent a party in a contested trial in the context of one or more case study scenarios.

<b>ACTIVITY</b>	<b>CRITERIA</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>
<b>OBJECTIVES</b>	<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> </ul>

	<ul style="list-style-type: none"> <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>
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>

### **CLOSING SPEECH**

It will normally be expected that this element will be assessed by an oral assessment where candidates are required to represent a party in a contested trial in the context of one or more case study scenarios.

<b><i>ACTIVITY</i></b>	<b><i>CRITERIA</i></b>
ISSUES	Identifies the outstanding issues
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
LAW	Makes appropriate submissions on points of law (with copies of authorities if necessary)
CONCLUSION	Appropriate "out" line
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>

## **EVIDENCE**

Candidates seeking open court rights of audience 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.

**PRACTICE MANAGEMENT COURSE  
DELIVERY AND OUTCOMES**

A Practice Management Course must be effective to develop the practice management skills of ILEX Practitioners in accordance with the outcomes set out below. The teaching should focus on the development of ILEX Practitioners' skills in Practice Management. The course should be provided in small groups to encourage 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 during each session.

ILEX Practitioners should also develop their own knowledge of the ILEX Practice Management and Accounts Rules.

**COURSE OUTCOMES FOR THE PRACTICE MANAGEMENT COURSE**

ILEX Practitioners who have attended the Practice Management Course will by the end of the course have attained the following outcomes.

**1. Managing a Legal Services Business**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- How to manage a business. An ILEX Practitioner should develop an awareness of the skills needed to manage his business in terms of work, managing resources and compliance with the practice management and accounts rules.
- The general trends relating to legal practice. A ILEX Practitioner will develop an awareness of the likely changes to the legal profession in the short to medium term, including the size and structure of law firms, the way in which information technology impacts and will impact on the ILEX Practitioner's work, changes to career structures in law firms, new service models and changes to the ways in which clients view legal services.
- Developing and maintaining a client base. An ILEX Practitioner will be able to recognise where his clients will come from, which types of work or advice is required, whether clients will be funded or private paying. An ILEX Practitioner will be able to recognise what volume of work or client base they will need to work cost effectively and also be able to recognise their maximum workload capacity.
- How to build a practice and plan for the future. ILEX Practitioners will be able to plan how a business will expand in terms of areas of work undertaken, increasing the client base, taking on new staff, moving into new forms of practice structures and taking on new partners or directors.
- How to manage change. An ILEX Practitioner will be able to recognise, accept and plan for changes in legal practice and law, sources of work, areas of work, changes in practice structures and new service models.



- Practice structures. An ILEX Practitioner will be able to identify what practice structure will suit him and the reasons why.
- Developing an IT strategy and introducing an IT system and package suitable to a practice.

## **2. Managing Finance**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- Understanding the firm's finances. An ILEX Practitioner will be able to recognise and interpret a basic profit and loss account and balance sheet.
- Managing Cash flow. An ILEX Practitioner will understand the principles of cash flow and how to exercise appropriate cash flow controls.
- Financial control. An ILEX Practitioner will understand the reasons for a business' financial difficulties and the remedies and safeguards which can be put in place to improve a firm's financial situation.

## **3. Managing Client Relationships**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- How to plan the firm's workload, be able to delegate work and allow for contingencies and avoid interruptions to maximise client satisfaction.
- How to regularly review the firm's working practices and allocation of staff resources to provide an effective and efficient service for clients.
- How to ensure work is carried out in a timely manner.
- How to identify methods of communication suitable to the needs of a practice.
- How to communicate effectively with a client, identify what client care information should be provided to clients and be able to keep the client updated on the progress of a case.
- How to establish a client's needs and manage their expectations.
- How to deliver client focussed services and introduce and use quality assurance systems, the use of quality standards and quality benchmarking processes.
- How to develop an internal complaints handling procedure which identifies how complaints will be dealt with and by who.

## **4. Managing Others**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

### **Allocation of Work**

- How to identify the remit of a team and allocate work within the team fairly taking into account the skills, experience and knowledge of the individual.
- How to recognise when to delegate and be able to delegate appropriately.
- How to provide opportunities to the individuals to learn and therefore undertake work in new areas.

## **Leadership and Staff Development**

- How to build good working relationships with team members.
- How to motivate and encourage staff by keeping employees informed, consulting with them, encouraging contributions and recognising employees' ideas.
- How to monitor staff effort and supervise their work, including coaching/mentoring and appraisal.
- How to develop and maintain awareness of equal opportunities and anti-discrimination legislation.
- How to identify and meet training needs.

## **5. Quality Assurance and Enhancement**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- The ILEX Indemnity Insurance Rules and be able to comply with them in practice.
- How to identify and manage risks.
- Introducing procedures and arrangements in a practice to prevent mistakes and therefore avoid claims occurring.
- Developing quality standards to minimise the firm's exposure to risk.
- Establishing a system to inform the Partners or Directors of any exposure to risk and be able to manage that exposure.
- The need to communicate the requirements about managing risk to staff.
- The need to keep both their and their employees' knowledge and skills up to date.
- The need to undertake regular reviews of files and working practices to identify the firm's exposure to risk, including the need to train staff on reviewing files.
- Introducing client care and complaint handling procedures in the firm.

**ACCOUNTS COURSE DELIVERY AND OUTCOMES**

An Accounts Course must be effective to develop the accounts skills and knowledge of ILEX Practitioners in accordance with the outcomes set out below. The teaching should focus on the development of knowledge and application of Accounts. The course may be provided by face to face tuition or it may alternatively be provided by distance learning. The course must be supported by course materials which include guidance on preparation work and relevant case studies to be used for teaching during each session.

ILEX Practitioners should develop their own knowledge of the ILEX Practice Management and Accounts Rules.

**ACCOUNTS**

ILEX Practitioners who have attended the accounts course will by the end of the course have attained the following outcomes:

**1. General**

Upon completion of the course, ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- The ILEX Accounts Rules and their powers to secure compliance with those rules.
- The general principles of double entry book keeping, and how to implement them in practice.

**2. Client Account**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- The requirements to maintain separate office and client ledgers and bank accounts.
- The types of accounts which can be operated, i.e., designated and general accounts and be able to decide which account would be appropriate to the client's case.
- How to identify what constitutes client money and what can be paid into the client account.
- How to identify what constitutes a disbursement, when it becomes due and how it should be paid.
- What withdrawals can be made from client account, the method of withdrawing, what action should be taken before a withdrawal is made and who has authority to make a withdrawal.
- The need to record all client transactions in a separate ledger for each matter.
- The need to record transfers from client to office account and vice versa, and the principles of transferring money from client to office account and vice versa and the need to record transfers for each matter for each client.

### **3. Office Account**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- What constitutes an office account.
- What payments can be made into an office account and how and when they should be made.
- The need to record transfers from office to client account and vice versa, and the principles of transferring money from office to client account and vice versa.
- The requirement to record all transactions relating to office money having reference to a client.

### **4. Costs**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- When to send a bill of costs to a client and when to send interim bills to clients.
- The format and content of a bill of costs.
- How to identify whether a payment of costs constitutes client or office money.
- How to deal with mixed payments and be able to identify the options available for processing mixed payments.
- The treatment of VAT on costs and the VAT element of disbursements.
- The need to record abatements of costs and bad debts.

### **5. Interest**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- The ILEX Rules on identifying whether interest is payable on clients' money.
- How to calculate the amount of interest due on a client account and the funding of interest payments.

### **6. Accounting Records**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- Identifying how accounting records must be kept, the format they should take and be able to decide whether they should be manual, computerised or both.
- What transactions should be recorded and how to record the transactions.
- How to operate a system of double entry book keeping.
- Modern accounting procedures and identifying whether they would suit the practice.
- Reconciliation of accounts, be able to identify how reconciliations should be done, when they should be done, how to check entries and make adjustments.
- What documents must be retained and for how long.

## **7. Accountant's Reports**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- Identifying the need for an accountant's report.
- Identifying when an accountant's report must be produced and submitted to ILEX.
- How to select and instruct an accountant, be able to send out a letter of instruction, and ensure that the accountant is aware of the ILEX Accounts Rules.
- Format of the accountant's report.
- The duties owed by the accountant.

## **8. Business Accounting**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- The need for business accounts, the principles of book keeping, the terms used in accounts and basic accounting concepts and their use.
- The process involved in recording transactions and how accounting data is used to prepare a trial balance.
- The need to make provision for depreciation and other year-end adjustments.
- The nature of shareholder funds and the need to account for taxation and the circumstances in which consolidated final accounts are needed.
- Partnerships and company accounting procedures.
- The need to audit final accounts.
- How to produce balance sheets, profit and loss accounts, be able to read and understand them, and identify future business needs and trends and structure the practice accordingly.
- Knowledge of VAT and how it applies to the practice
- Managing the finance of the firm, identifying sources and availability of finance.
- How to control finances and costs, keeping records of expenditure, identify and implement improvements.
- The benefits of a credit control policy for the firm and how to implement such a policy for the firm and methods for recovery of money owed to the firm.
- Management working capital.
- How to produce cash flow statements for the firm which check actual income against expenditure and against the budget and appropriate ways to report upon any variations.
- How budgets may be produced that are realistic and economical and allow for contingencies, working within the constraints of a budget.
- Methods of monitoring receipts and payments and managing cash balances.
- Time recording systems relevant to lawyers firms.

**ASSESSMENT CRITERIA AND FRAMEWORK DOCUMENT FOR ACCOUNTS**

A candidate's knowledge and understanding of Elements 1-7 below shall normally be assessed by written examination which will include assessment of the candidate's ability to:

- a) recognise and record receipts into and payments from office and client accounts;
- b) analyse and interpret relevant ledger entries;
- c) prepare a simple financial statement for a client on completion of a matter;
- d) answer questions on the application of the ILEX Accounts rules in practice;

A candidate's knowledge and understanding of Element 8 shall normally be assessed by written examination which will include assessment of the candidate's ability to:

- a) understand the construction of a simple profit and loss account and balance sheet;
- b) analyse and interpret information contained in a simple profit and loss account and balance sheet;
- c) answer questions on the practical aspects of business accounting as applied to the activities of the firm;

In order to pass the formal assessments for Accounts a candidate must demonstrate:

- a clear understanding of the ILEX Accounts rules, which should be gained in the context of systems and procedures to which they will be exposed in practice, as well as
- a clear understanding of the basic principles of business accounting and an awareness of the need to interpret business accounts to ensure clients are appropriately advised.

In particular, a candidate should be able to demonstrate knowledge and understanding of the following;

***Element 1 General***

- The ILEX Accounts Rules and the powers of ILEX Practitioners to secure compliance with those rules.
- The general principles of double entry book keeping, and how to implement them in practice.

***Element 2 Client Account***

- The requirements to maintain separate office and client ledgers and bank accounts.

- The types of accounts which can be operated, i.e., designated and general accounts and be able to decide which account would be appropriate to the client's case.
- How to identify what constitutes client money and what can be paid into the client account.
- How to identify what constitutes a disbursement, when it becomes due and how it should be paid.
- What withdrawals can be made from client account, the method of withdrawing, what action should be taken before a withdrawal is made and who has authority to make a withdrawal.
- The need to record all client transactions in a separate ledger for each client.
- The need to record transfers from client to office and vice versa, and the principles of transferring money from client to office account and vice versa, and the need to record transfers between clients.

### ***Element 3 Office Account***

- What constitutes an office account.
- What payments can be made into an office account and how and when they should be made.
- The need to record transfers from office to client account and vice versa, and the principles of transferring money from office to client account and vice versa.
- The requirement to record all transactions relating to office money having reference to a client.

### ***Element 4 Costs***

- When to send a bill of costs to a client and when to send interim bills to clients.
- The format and content of a bill of costs.
- How to identify whether a payment of costs constitutes client or office money.
- How to deal with mixed payments and be able to identify the options available for processing mixed payments.
- The treatment of VAT on costs and the VAT element of disbursements.
- The need to record abatements of costs and bad debts.

### ***Element 5 Interest***

- The ILEX Rules on identifying whether interest is payable on clients' money.
- How to calculate the amount of interest due on a client account and the funding of interest payments.

### ***Element 6 Accounting Records***

- How accounting records must be kept, the format they should take and decide whether they should be manual, computerised or both.
- What transactions should be recorded and how to record the transactions.
- How to operate a system of double entry book keeping.
- Modern accounting procedures and identifying whether they would suit the practice.
- Reconciliation of accounts, and be able to identify how reconciliations should be done, when they should be done, how to check entries and make adjustments.

- What documents must be retained and for how long.

### ***Element 7 Accountant's Reports***

- Why an accountant's report is needed.
- When an accountant's report must be produced and submitted to ILEX.
- How to select and instruct an accountant, be able to send out a letter of instruction, and ensure that the accountant is aware of the ILEX Accounts Rules.
- Format of the accountant's report.
- The duties owed by the accountant.

### ***Element 8 Business Accounting***

- The need for business accounts, the principles of book keeping, the terms used in accounts and basic accounting concepts and their use.
- The process involved in recording transactions and how accounting data is used to prepare a trial balance.
- The need to make provision for depreciation and other year-end adjustments.
- The nature of shareholder funds and the need to account for taxation and the circumstances in which consolidated final accounts are needed.
- Partnerships and company accounting procedures.
- The need to audit final accounts.
- How to produce balance sheets and profit and loss accounts, and how to read and understand them, and identify future business needs and trends and structure the practice accordingly.
- VAT and how it applies to the practice
- The management of the firm's finance, identifying sources and availability of finance.
- How to control finances and costs, keep records of expenditure, and how to identify and implement improvements.
- How to introduce a credit control policy for the firm and identify a mechanism to recover money owed to the firm.
- How to manage working capital.
- How to produce cash flow statements for the firm which check actual income against expenditure and against the budget and be able to report upon any variations.
- How to produce budgets that are realistic and economical and allow for contingencies, working within the constraints of a budget.
- How to monitor receipts and payments and manage cash balances.
- How to produce a time recording system for the firm.



**INDEPENDENT PRACTICE CRITERIA**

1. An ILEX Practitioner must seek authorisation from IPS to practice in independent practice or to provide legal services to clients of their employer.

**INDEPENDENT PRACTITIONERS**

2. A ILEX Practitioner who seeks to practice in independent practice or provide legal services to clients of their employer must provide the following information about his proposed practice in support of his application:
  - Confirmation that he is an authorised ILEX Practitioner;
  - An outline of the method of practice for which he seeks authorisation;
  - Confirmation that he has completed the practice management course and accounts course and that the courses meet the course delivery and, where relevant, the assessment criteria set out in Appendices 7 to 9;
  - Details of the practice management procedures to be implemented in the practice.
  - Copy of his Certificate of indemnity insurance.
  - Confirmation that he will make such contribution to the compensation fund as determined by IPS once he has been authorised to practice.
  - A business plan setting out how he will develop his practice.
  - The file management and client care structures of the practice.
  - The accounting structures of the practice.
  - The policies and procedures of the practice.
  - Undertakings to IPS, in such form and covering such matters as IPS may require.

**Modes of Practice**

3. An ILEX Practitioner may practice in any practice structure permissible by IPS. This may include as a sole practitioner, in a partnership or limited liability partnership, in a company or any structure permissible in the future.

**Business Plan**

4. An ILEX Practitioner will be required to submit a copy of his business plan to IPS. The business plan should deal with the following matters:
  - Business aims and objectives of the practice
  - The profile and structure of the practice
  - A financial plan

**File Management and Client Care Structures**

5. ILEX Practitioners will provide details of the file management and client care structures that will be implemented in the practice.

**Accounting Structures**

6. ILEX Practitioners will provide details of accounting structures that will be implemented in the practice.

## **Undertakings**

7. ILEX Practitioners will provide undertakings to ILEX that they will:
  - Deliver annual accountants reports to ILEX.
  - Comply with any monitoring and inspection visits undertaken by ILEX.
  - Comply with the ILEX Practice Management and Accounts Rules.

## **Policies and Procedures of the Practice**

8. ILEX Practitioners will provide to ILEX details of the following policies, procedures and facilities that they will have in their practices:
  - The practice management and accounting procedures.
  - The equality and diversity policies of the practice.
  - The complaints handling procedures to be implemented in the practice.
  - The health and safety policy.
  - Details of the insurance cover available for the practice against fire and theft.
  - Details of arrangements which will be made to assure clients that work in hand will be managed in the ILEX Practitioner's absence from the practice due to holiday or illness.
9. The Admissions and Licensing or Officer will note the business plan, file management and client care structures, accounting structures and the policies and procedures of the practice.
10. An ILEX Practitioner making an application for renewal of the endorsement on his Certificate authorising him to practice in independent practice or to provide legal services to clients of their employer must:
  - be a Fellow of good standing;
  - be practising as an authorised ILEX Practitioner;
  - Provide details of the business plan, file management and client care structures, accounting structures and the policies and procedures of the practice of his practice since his last authorisation.
  - Provide a copy of the firm's Certificate of indemnity insurance.
  - Provide confirmation that he will make such contribution to the compensation fund as determined by IPS once he has been authorised to practice.
  - Provide an up to date business plan for the practice. An ILEX Practitioner will be expected to up date the business plan each year.
  - Have undertaken Continuing Professional Development (CPD) that meets the requirements set out in these Rules.

**THE ILEX PRACTITIONERS PRACTICE AND ACCOUNTS RULES**

**1. Authority, Commencement and Interpretation**

- 1.1 ILEX has delegated to IPS responsibility for these rules.
- 1.2 These Rules are binding upon ILEX Practitioners following from undertakings provided by each of them to ILEX in the form required by these Rules and are enforceable by ILEX against any ILEX Practitioner, both as rules of conduct and as contractually binding obligations.
- 1.3 These Rules may be changed from time to time by resolution of the IPS Board subject to such statutory approval as may be required and are binding upon ILEX Practitioners as varied. A breach of these Rules may result in civil proceedings through the courts or disciplinary proceedings.
- 1.4 Definitions:
- Account Period – means the period referred to in Rule 20.2
  - Appealable Decisions – means a decision of ILEX hereunder which may be appealed in accordance with the Appeals Procedure set out in Schedule 2.
  - Approved Practitioner – means a Fellow, a solicitor, a licensed conveyancer, a chartered patent attorney, a trade mark attorney, a law costs draftsman or a barrister approved for the purpose of clause 7..
  - Authorised Person – means a person authorised under the Legal Services Act 2007
  - Certification Rules – means the Certification Rules for ILEX Practitioners
  - Client Account – means an account at a bank or building society in England and Wales in the name of the ILEX Practitioner or their firm and which includes in its title the words "Client Account". A Client Account may be an account pooling funds from more than one client or an account designated for a particular purpose.
  - Client Money – means money beneficially owned by anyone other than the ILEX Practitioner or their firm.
  - Code – means the ILEX Code of Conduct.
  - Compensation Scheme – means the scheme referred to in Rule 29.
  - Continuing Professional Development – means those matters required by ILEX's Continuing Professional Development Guidelines.
  - Council – means the Council of ILEX.
  - Designated Client Account – means a deposit or share account for money relating to a single client and which includes in its title 'client account'.
  - Employed ILEX Practitioners – means an ILEX Practitioner who does not act for or provide any services for the benefit of any client other than their employer.
  - Fellow – means a Fellow of ILEX.
  - Firm – means a practice offering legal services

- Guidance Note – means written guidance published by ILEX from time to time and describing itself as a Guidance Note for the purpose of these rules.
- ILEX – means the Institute of Legal Executives
- ILEX Practitioner – means a Fellow authorised by ILEX rules to undertake reserved legal activities
- ILEX Practitioners Certificate – means a certificate authorising a Legal Executive to undertake reserved legal activities.
- IPS – means ILEX Professional Standards Ltd.
- Office Account – means an account at a bank or building society in England and Wales in the name of the ILEX Practitioner or their firm and which includes in its title the words "Office Account".
- Office Money – means money beneficially owned by the ILEX Practitioner or their firm.
- Poor Service Scheme – means the scheme referred to in Rule 31.
- Practice Company - means a company or limited partnership permitted by Rule 7.2.
- Publicity Code – means the Code referred to in Rule 5.6.1
- Professional Indemnity Insurance– means the insurance required by the ILEX Practitioners Indemnity Insurance Scheme.
- Professional Indemnity Insurance Code – means the code issued by ILEX as varied from time to time.
- Referrer - means a person who in the course of their business regularly recommends clients to providers of legal services and has some commercial or financial interest in the affairs of those clients to which the services relate.
- Required Accounts Records – means the accounts records required by these rules and any Accounts Guidance issued by ILEX.
- Rights of Audience Conduct Rules – means the rules referred to in Rule 5.5.
- Solicitors Accounts Rules – means the Accounts Rules applicable to Solicitors.
- Self-employed ILEX Practitioner – means ILEX Practitioners practising on their own account.
- Supervised ILEX Practitioners – means ILEX Practitioners employed by a firm of solicitors or another approved practitioner.

1.5 An ILEX Practitioner must maintain a high level of knowledge and understanding of these rules and any formal guidance issued by ILEX from time to time.

## I. **THE PRACTICE RULES**

### 2. **The Principal Duties**

An ILEX Practitioner must:

- 2.1.1 act at all times with complete integrity;

- 2.1.2 act in the best interests of their client and maintain proper standards of work;
- 2.1.3 support the rule of law and the fair and efficient administration of justice and discharge a duty of good faith to the Court;
- 2.1.4 maintain confidentiality in relation to their clients' affairs;
- 2.1.5 not treat any person less favourably because of that person's age, disability, race, colour, ethnic or national origin, gender, sexual orientation, religion or belief, marital or family status, or nationality;
- 2.1.6 not bring discredit on themselves or ILEX;
- 2.1.7 act in their professional dealings with fairness and courtesy;
- 2.1.8 maintain professional independence and avoid conflicts of interest;
- 2.1.9 observe the Code and other rules applying to Fellows and members of ILEX generally. Where the Code is in conflict with these rules, these rules shall take precedence.

### **3. Client Care**

#### **3.1 Basis of retainer**

An ILEX Practitioner must adequately explain and agree with their client the basis upon which their services are to be provided including (but not limited to) the extent of the services, the basis of the ILEX Practitioner's remuneration and the likely total cost of the matter to the client.

#### **3.2 Required information**

An ILEX Practitioner must confirm to their client in writing as soon as practicable:

- 3.2.1 the basis of their retainer including confirmation of how the ILEX Practitioner's remuneration is to be calculated and the breakdown of the likely total cost of the matter to the client including any likely payments to third parties;
- 3.2.2 the extent and likely duration of the work to be undertaken;
- 3.2.3 the ILEX Practitioner's complaints procedure and that in the event they cannot be satisfactorily concluded the complainant can refer the matter to the Legal Ombudsman;
- 3.2.4 the identity of the individuals with whom the client is intended to deal and their respective roles and status;
- 3.2.5 the basis upon which any payment on account of costs or disbursements may be withdrawn from Client Account;
- 3.2.6 their status as an ILEX Practitioner authorised to practise as such by ILEX in accordance with these rules and the effect and implication of the requirements of paragraph 3.3.3 hereof;
- 3.2.7 the period within which any account rendered to the client must be paid and the consequences of non-payment in accordance with the terms of engagement including (if applicable) any right to suspend services, any lien and the right to recover sums by action;
- 3.2.8 the circumstances in which any sum may be payable by a client who is publicly funded or who has entered a conditional fee agreement;
- 3.2.9 information concerning referral arrangements as required by paragraph 5.4.3;

and thereafter confirm any material change as soon as possible.

### 3.3 Required terms

The terms of the ILEX Practitioner's retainer with the client must include:

#### 3.3.1 An agreement that:

- In any Court proceedings relating to the ILEX Practitioner's costs (the ILEX Practitioner having given the client notice of their intention to sue) the ILEX Practitioner and the client are bound to consent to an order in those proceedings for the detailed assessment of those costs by the Court if in the same circumstances the assessment of a solicitor's bill would be ordered; and
- In the event of a dispute concerning the ILEX Practitioner's costs (where no Court proceedings have been commenced) the ILEX Practitioner and the client will refer the matter to ILEX for adjudication and they will be bound by the decision of ILEX. ILEX may nominate an arbitrator to adjudicate the dispute on its behalf. The decision of the adjudicator may also include a determination as to which party is to pay the costs of the adjudicator.

3.3.2 a requirement for specific agreement by the client to any sharing by the ILEX Practitioner of fees paid by the client to the ILEX Practitioner with any third party;

3.3.3 the irrevocable agreement of the client to the ILEX Practitioner's compliance with these rules and for IPS to exercise its Regulatory Powers set out in Part III hereof notwithstanding any rights of confidentiality or privilege belonging to that client.

### 3.4 Forbidden terms

An ILEX Practitioner may not attempt to exclude liability to their client but may limit liability for professional negligence provided that such limit is evidenced in writing and is not below the minimum level of Professional Indemnity Insurance required by ILEX.

### 3.5 Risks

An ILEX Practitioner must ensure that their client is fully informed at all relevant times of all material risks to such client arising from the matter in which the ILEX Practitioner is instructed including (but not limited to) the risk of liability to any other party's costs, the application of a statutory charge over recoveries in publicly funded matters and the risk that a client's own costs may not be recovered. An ILEX Practitioner must advise their client as to any possible mitigation of those risks including but not limited to insurance.

### 3.6 Objectives

An ILEX Practitioner must ensure that at appropriate points the client is advised of reasonable and obtainable objectives in relation to the instructions they give to the ILEX Practitioner. The advice should be given in writing where practicable.

### 3.7 Estimates of time and cost

3.7.1 An ILEX Practitioner must during the course of acting provide regular and timely advice as to progress and confirm in writing the cost expected of all further stages until the conclusion of the matter.

3.7.2 An ILEX Practitioner must provide regular and timely indications in writing to their client of the costs incurred to date.

### 3.8 Ability to fund

An ILEX Practitioner must discuss with their client the client's ability to meet the costs to be incurred in the matter and must advise their client as to the possible availability of any other source of funding including (without limit) public funding, insurance, contingency fees or conditional fees.

### 3.9 Expedition

An ILEX Practitioner must use their best endeavours to progress each client's matter with reasonable expedition.

### 3.10 Communication

An ILEX Practitioner must maintain appropriate communication as to the progress of the matter with their client.

### 3.11 Billing requirements

An ILEX Practitioner must render bills for professional services promptly in accordance with the terms of their retainer and each such bill must include sufficient information for the client to be able to appreciate the nature and extent of the work done. All bills and intimations of costs must distinguish between fees, disbursements not yet paid at the time of the bill or intimation and paid disbursements.

### 3.12 Contingency fees

An ILEX Practitioner may only act in proceedings under a contingency or conditional fee to the extent permitted by law.

### 3.13 Counsel and experts

An ILEX Practitioner must advise their client as to the appropriate use of Counsel, experts, enquiry agents and other third parties so as to ensure that their client is aware of when and the extent to which their use is appropriate and the likely cost.

### 3.14 Availability

An ILEX Practitioner must ensure that arrangements are in place to ensure:

3.14.1 that clients by whom they are retained can obtain information and advice as and when it is reasonably required; and

3.14.2 that third parties wishing to communicate with the ILEX Practitioner concerning any client's matter are reasonably able to do so.

### 3.15 Complaints procedure

An ILEX Practitioner must operate documented procedures which demonstrate a commitment to the resolution of client complaints in a speedy and satisfactory way. An ILEX Practitioner must use their best endeavours to resolve client complaints speedily and to the satisfaction of the client. The complaints procedure must ensure that:

- 3.15.1 complaints are handled fairly and efficiently; and
- 3.15.2 an initial response is made to any written complaint as soon as reasonably practicable and in any event within twenty-one days; and
- 3.15.3 all clients are aware of how and to whom to complain; and
- 3.15.4 details of how a complaint may be made are given to clients in writing; and
- 3.15.5 in the event the complaint cannot be satisfactorily concluded the client can refer the matter to the Legal Ombudsman

An ILEX Practitioner must not charge a client for the cost of handling a complaint.

## **4. Professional Duty to the Client**

### 4.1 Conflicts of interest

4.1.1 An ILEX Practitioner must not act (or continue to act) for a client or clients whose interests conflict with:

- any other person for whom the ILEX Practitioner is acting; or
  - the interests of the ILEX Practitioner, any member of the ILEX Practitioner's family, any employee or partner of the ILEX Practitioner's practice or any person with whom the ILEX Practitioner has a material business relationship; or
  - any former client of the ILEX Practitioner where the ILEX Practitioner is in possession of relevant confidential information and the instructions would include acting against that former client;
  - the ILEX Practitioner's responsibilities in any other capacity;
- or where there is a substantial risk of such a conflict.

4.1.2 If an ILEX Practitioner acts for more than one client in a matter during the course of which a conflict of interest arises the ILEX Practitioner may continue to act for a client (or clients whose interests do not conflict) provided that to do so would not be inconsistent with the ILEX Practitioner's duty of confidence and they obtain the written consent of both clients to continue to act.

### 4.2 Confidentiality

An ILEX Practitioner must keep confidential any information about their client's, or former client's, affairs as well as information which the ILEX Practitioner has in their possession as a result of acting in a capacity other than as an ILEX Practitioner except where that duty is overridden by law, these rules or modified by the client's informed consent.

### 4.3 Withdrawal



- 4.3.1 An ILEX Practitioner having accepted instructions to act may only withdraw from acting for good and substantial reasons communicated on reasonable notice to their client.
- 4.3.2 An ILEX Practitioner may not whilst continuing to be retained by a client cause any prejudice to that client by delaying that client's matter in circumstances in which the ILEX Practitioner would be entitled to withdraw but has not done so.

#### 4.4 Referral arrangements

- 4.4.1 An ILEX Practitioner must prior to accepting instructions fully disclose in writing to their proposed client any financial arrangement with any third party by which that client has been referred or recommended to the ILEX Practitioner.
- 4.4.2 An ILEX Practitioner must fully disclose to their client in writing prior to any referral of or recommendation to that client any commission financial or other benefit which the ILEX Practitioner expects to receive as a result from any third party.
- 4.4.3 An ILEX Practitioner must disclose and explain to the client any conditions or limitations resulting from their relationship with a third party which affect the steps they can take on their client's behalf.
- 4.4.4 An ILEX Practitioner must not enter any arrangement with a Referrer nor deal with any client referred to the ILEX Practitioner by a Referrer unless the ILEX Practitioner can demonstrate to ILEX that any arrangement and any dealings do not interfere with the integrity of the ILEX Practitioner and their duties to their client.
- 4.4.5 An ILEX Practitioner may only enter into an arrangement with a referrer who is authorised to act as a claims manager under the Compensation Act 2006.

#### 4.5 Declining to act

- 4.5.1 An ILEX Practitioner may decide not to take on any new matter for any reason other than a reason contrary to these rules or law.
- 4.5.2 An ILEX Practitioner must decline to take on a new matter if they are likely to have insufficient experience, time or resources to deal with that matter in the manner the client might reasonably expect.
- 4.5.3 An ILEX Practitioner must decline to accept instructions if to comply would involve the ILEX Practitioner in any impropriety.

#### 4.6 Receiving instructions

- 4.6.1 An ILEX Practitioner must take reasonable steps to ensure that a person giving instructions has sufficient capacity and authority to do so.
- 4.6.2 An ILEX Practitioner must ensure that a client has sufficient opportunity to give instructions without the involvement of a third party and to be confident that those instructions represent the client's wishes in the matter.

#### 4.7 Borrowing from client

An ILEX Practitioner must not accept any loan from any person who is or has been a client within the previous three years or any family member of such a client unless that client is a corporation for which lending is a substantial element of its business.

#### 4.8 Accepting gifts from clients

If a client proposes to make a lifetime gift or gift on death to, or for the benefit of an ILEX Practitioner, any employee of their firm or a member of the ILEX Practitioner's family or their employee's family and the gift is of a significant amount the ILEX Practitioner must advise the client to take independent advice unless the client is a member of the beneficiary's family. If the client refuses, the ILEX Practitioner must stop acting for the client in relation to the gift.

### **5. The ILEX Practitioner's Other Duties**

#### 5.1 The Court

5.1.1 An ILEX Practitioner must not intentionally mislead the Court.

5.1.2 An ILEX Practitioner must comply with any proper order of the Court and any undertaking they have given to any Court.

5.1.3 An ILEX Practitioner must not engage in or assist in conduct which is prejudicial to the administration of justice.

#### 5.2 Undertakings

An ILEX Practitioner must honour undertakings. An undertaking is a promise made by an ILEX Practitioner or a member of their firm in the course of legal practice to someone who reasonably relies upon it.

#### 5.3 Disbursements

An ILEX Practitioner must pay any disbursement incurred by them promptly upon payment becoming due whether or not the ILEX Practitioner has received funds from their client.

#### 5.4 Fees of lawyers of other jurisdictions

An ILEX Practitioner who instructs a lawyer of another jurisdiction must pay the lawyer's proper fees unless they have expressly disclaimed that responsibility at the outset or at a later date expressly disclaimed responsibility for any fees incurred after that date.

#### 5.5 Advocates

An ILEX Practitioner who is an Authorised Advocate must comply with ILEX's Rights of Audience Conduct Rules.

#### 5.6 Publicity

5.6.1 An ILEX Practitioner must comply with ILEX's Publicity Code.

5.6.2 An ILEX Practitioner's stationery and business communications must bear the words "regulated by ILEX Professional Standards Ltd".

#### 5.7 Equality and Diversity Code

An ILEX Practitioner must comply with ILEX's Equality and Diversity Code.

## 5.8 Reporting Misconduct

An ILEX Practitioner must report in writing any suspicion that another ILEX Practitioner or a member of their staff has been guilty of a serious breach of these rules to ILEX without delay.

## 5.9 Rules of other bodies

An ILEX Practitioner who is employed must not by their own acts or omissions place their employer in breach of any regulatory requirement or rule of professional conduct applicable to their employer.

## 5.10 Contacting the opposing party

Other than in exceptional circumstances, where the other party in a matter is represented by an authorised practitioner, an ILEX Practitioner must only communicate with the other party in a matter through that party's retained authorised practitioner.

## 5.11 Appearing as a witness

An ILEX Practitioner should not act in litigation if it is expected that they or anyone within their firm will be called as a witness unless there is no material risk to their independence, the interests of their client or the fair and efficient administration of justice.

## 5.12 Payments to witnesses

An ILEX Practitioner must not make, or offer to make payments to a witness dependent upon the nature of the evidence given or upon the outcome of the case.

# **6. The ILEX Practitioner's Practice**

## 6.1 Qualification to practise

An ILEX Practitioner must ensure that their services as such are offered or advertised and/or instructions accepted and/or services provided only whilst:

- 6.1.1 the ILEX Practitioner has an appropriate ILEX Practitioners Certificate; and
- 6.1.2 the ILEX Practitioner is complying with any condition or limit contained in their ILEX Practitioners Certificate; and
- 6.1.3 the ILEX Practitioner is covered by Professional Indemnity Insurance in accordance with the Professional Indemnity Insurance Scheme; and
- 6.1.4 the ILEX Practitioner has the necessary experience and expertise competently to provide the services offered and/or provided.

## 6.2 Investment business

An ILEX Practitioner must not conduct any activity which is regulated by the Financial Services and Markets Act 2000 unless authorised to do so by the appropriate authority.

### 6.3 Money Laundering

An ILEX Practitioner must comply with the Money Laundering legislation in force from time to time.

### 6.4 Supervision and risk management

6.4.1 An ILEX Practitioner must ensure that their practice is properly supervised by either themselves or have in place suitable arrangements for supervision.

6.4.2 An ILEX Practitioner must operate effective systems to ensure that so far as possible all individuals working within the ILEX Practitioner's practice fully comply with applicable legal and regulatory obligations.

6.4.3 An ILEX Practitioner must not operate a practice which they know to be insolvent.

### 6.5 Separate business

An ILEX Practitioner must not participate in any business which is not in the usual course of practice as an ILEX Practitioner unless:

6.5.1 that business is operated so as to ensure that no-one dealing with that business could reasonably believe that it was part of the ILEX Practitioner's practice ; and

6.5.2 any client aware of the existence of such a business has been informed in writing by the ILEX Practitioner that it does not form part of the ILEX Practitioner's practice regulated by ILEX.

### 6.6 Principal place of business

An ILEX Practitioner must only practice from a place of business in England and Wales unless expressly authorised by ILEX to practice elsewhere.

### 6.7 Branch Offices

6.7.1 An ILEX Practitioner may operate one or more offices within England and Wales provided that the ILEX Practitioner has made arrangements for supervision which comply with paragraph 6.4 hereof.

6.7.2 An ILEX Practitioner may retain the Accounting Records required by Rule 17 hereof either together at their principal place of business for all offices or at each office in respect of the records for that office.

### 6.8 Membership of ILEX

An ILEX Practitioner's Certificate terminates immediately upon that ILEX Practitioner ceasing to be a member of ILEX for any reason.

## **7. Permitted Practice Structures**

### 7.1 Principal or partner ILEX Practitioners

An ILEX Practitioner may practice:

- as a sole principal;
- in partnership with one or more ILEX Practitioners;

- in partnership with authorised persons and or non-authorised persons where the practice is authorised by an approved regulator under the Legal Services Act;
- in a limited liability partnership with one or more ILEX Practitioners which is registered in England and Wales;
- in a limited liability partnership with authorised persons and or non-authorised persons licensed under the Legal Services Act 2007, provided they are specifically authorised to do so by their ILEX Practitioners Certificate.

#### 7.2 Corporate practice ("Corporate ILEX Practitioners")

An ILEX Practitioner may practice through:

- a company which is wholly owned and controlled by ILEX Practitioners and registered in England and Wales,
- a company whose owners or managers include authorised persons and non-authorised persons which is authorised by an approved regulator under the Legal Services Act 2007,

provided they are specifically authorised to do so by their ILEX Practitioners Certificate.

#### 7.3 Legal practices ("Supervised ILEX Practitioners")

An ILEX Practitioner may be employed by or a manager in any legal practice regulated by an approved regulator under the Legal Services Act 2007.

#### 7.4 Employment ("Employed ILEX Practitioners")

An ILEX Practitioner may be employed other than in a legal practice regulated by an approved regulator under the Legal Services Act 2007 but may not provide services to persons other than their employer unless specifically authorised to do so by their ILEX Practitioners Certificate. Practitioners authorised to provide legal services to customers of their employer will be called Employed ILEX Practitioners authorised to provide legal services to customers of their employer.

#### 7.5 Other practice structures

ILEX Practitioners must not practice other than as expressly permitted by rule 7 or by express prior written consent of ILEX.

### **8. Principal or Partner ILEX Practitioners**

An ILEX Practitioner who is the sole principal or is held out as a partner or member of a practice is personally responsible for the compliance with these rules by every individual working within that practice, except where the practice is regulated by another approved regulator. In those circumstances they may in the event of any conflict between these rules and the rules of the approved regulator apply in writing to ILEX for an appropriate waiver and if granted shall be relieved from compliance with these rules to the extent of the waiver given.

## **9. Corporate ILEX Practitioners**

- 9.1 The ILEX Practitioner or ILEX Practitioners who together wholly own and control a Practice Company are each personally responsible for the conduct of the practice to the same extent as if the practice had been conducted directly by him or her or them as principal or partner ILEX Practitioners.
- 9.2 ILEX Practitioners operating through a Practice Company must procure that it complies with these rules to the same extent as if it was an ILEX Practitioner operating as a sole principal.
- 9.3 ILEX may only authorise an ILEX Practitioner to practice through a Practice Company if that company has provided a binding undertaking to ILEX to comply with these rules and submit to ILEX's Regulatory Powers to the same extent as if it were itself an ILEX Practitioner unless the Practice Company is regulated by another approved regulator.
- 9.4 Where an ILEX Practitioner practices in a company whose owners or managers include authorised persons and non-authorised persons, which is authorised by an approved regulator under the Legal Services Act 2007, they may in the event of any conflict between these rules and the rules of the approved regulator apply in writing to ILEX for an appropriate waiver and if granted shall be relieved from compliance with these rules to the extent of the waiver given.

## **10. Supervised ILEX Practitioners**

An ILEX Practitioner employed by or a manager in any legal practice regulated by an approved regulator under the Legal Services Act 2007:

- 10.1 must comply with rule 2 of these rules and the rules of conduct of the approved regulator but whilst the ILEX Practitioner is so employed Parts I and II of these rules shall not apply and only rules 27, 29.1, 29.3, 29.4, 32, 33 and 34 of Part III shall apply;
- 10.2 may in the event of any conflict between those rules apply in writing to ILEX for an appropriate waiver and if granted shall be relieved from compliance with these rules to the extent of the waiver given;
- 10.3 must upon first becoming aware of any breach of these rules or the rules of conduct of the approved regulator in relation to any client with whom or matter with which the ILEX Practitioner has had any personal dealings report such breaches to ILEX and appropriate approved regulators in writing.

## **11. Employed ILEX Practitioners**

- 11.1 An Employed ILEX Practitioner who does not act for or provide any services for the benefit of any client other than their employer is required to comply with these rules including but not limited to the Principal Duties but is not required to comply with:

- 11.1.1 any of the rules in either section 3 "Client Care" or section 4 "Professional Duty to the Client";
- 11.1.2 rules 5.4 and 5.6.
- 11.2 An Employed ILEX Practitioner may be authorised by ILEX to provide services to clients, other than that ILEX Practitioner's employer, by endorsement upon the ILEX Practitioners Certificate.
- 11.3 Authorisation under paragraph 11.2 may only be given if the ILEX Practitioner satisfies ILEX that the documented arrangements by which the services are to be provided ensure that:
  - 11.3.1 the ILEX Practitioner is and will remain able to fully comply with all of these rules; and
  - 11.3.2 clients for whom the ILEX Practitioner acts will be in no worse position in any respect than if the ILEX Practitioner had been acting as a sole principal; and
  - 11.3.3 ILEX is and will remain able to exercise the regulatory powers in these rules in relation to any matter or client (other than the employer) to no less an extent in any respect than if the ILEX Practitioner had been a sole principal.
- 11.4 An Employed ILEX Practitioner who receives or holds clients' money (including that of their employer) must comply with the Accounts Rules.

## II. **THE ACCOUNTS RULES**

### **12 Client Money**

- 12.1 An ILEX Practitioner must as soon as is practicable pay Client Money received into their Client Account and only into that account unless:
  - 12.1.1 the client gives written instructions for the cheque or cash to be held as such for the client's own convenience; or
  - 12.1.2 the money received represents unpaid professional disbursements included in a payment of costs which may be paid into Office Account provided they are then paid within two working days.
- 12.2 An ILEX Practitioner must use each client's money for that client's matter only.
- 12.3 Subject to rule 13.9 an ILEX Practitioner may only withdraw money from Client Account upon the instructions of the client to whom the money belongs.
- 12.4 An ILEX Practitioner may withhold money from client account on the written authorisation of ILEX. ILEX may impose a condition that the ILEX Practitioner pay the money to a charity which gives an indemnity against any subsequent legitimate claim for the sum received.

- 12.5 An ILEX Practitioner may transfer a client's money from Client Account to Office Account to settle that client's liability for costs incurred or disbursements paid by the ILEX Practitioner in accordance with the terms of the ILEX Practitioner's retainer and following the rendering of the relative account and a written intimation to that client that the funds are to be transferred.
- 12.6 Nothing in these Rules deprives an ILEX Practitioner of any recourse or right, whether by way of lieu, set off, counter claim or otherwise, against money standing to the credit of a client account.
- 12.7 Regular payments from the Legal Services Commission must be paid into the ILEX Practitioner's office account. An ILEX Practitioner must within 28 days of submitting a report to the Legal Services Commission, notifying completion of the matter, either pay any unpaid professional disbursements or transfer into a client account that sum equivalent to the amount of unpaid professional disbursements relating to that matter. Where the Legal Services Commission permits an ILEX Practitioner to submit regular reports at various stages during a matter the provisions relating to unpaid professional disbursements apply to any such disbursements included in each report. Regular payments can be either standard monthly payments paid by the Commission under civil legal aid contracting arrangements or any other payments received from the Commission under an arrangement for payments on a regular basis.
- 12.8 An ILEX Practitioner must maintain accurate and up to date accounts in accordance with these rules and any guidance issued by ILEX from time to time.
- 12.9 An ILEX Practitioner must retain their ability to repay client money immediately unless the client agrees otherwise in writing.
- 12.10 Notwithstanding any provision herein to the contrary in relation to matters which are publicly funded:
- 12.10.1 Payments received from the Legal Services Commission may be paid into Office Account with the written consent of the Commission provided that any payment in respect of unpaid disbursements must within 14 days of receipt either be applied to pay those disbursements or transferred to Client Account unless the payments are regular payments in which case Rule 12.7 applies.
- 12.10.2 Payments received from any other party must be paid into Client Account and recorded in a ledger which notes any interest the Legal Services Commission has in such receipt.
- 12.10.3 An ILEX Practitioner may transfer any funds held on Client Account to which they are entitled after delivering to the Commission a



report comprising an up to date and comprehensive cash account in relation to the matter in question and an intimation of the ILEX Practitioner's intention to effect a transfer to Office Account indicating the amount of the proposed transfer.

12.10.4 An ILEX Practitioner must comply with their obligations to the Legal Services Commission including but not limited to any obligation to preserve the Commission's statutory charge.

### **13. Client Account**

- 13.1. An ILEX Practitioner must not pay any of their own money into Client Account except either when under a duty to do so imposed by these rules or any nominal sum required to open or maintain the account or where a payment is made under rule 13.2.
- 13.2 An ILEX Practitioner may pay into client account an advance from the ILEX Practitioner to fund a payment on behalf of a client or controlled trust. The money becomes client money or controlled trust money. Rule 16 (interest) will not apply to that money.
- 13.3 An ILEX Practitioner must not allow any client to overdraw their cleared funds held on Client Account.
- 13.4 An ILEX Practitioner must not effect any payments or receipts through Client Account unless those payments and receipts are incidental to the provision of substantive legal services by the ILEX Practitioner to a client.
- 13.5 An ILEX Practitioner may transfer client money between Client Accounts.
- 13.6 An ILEX Practitioner may withdraw money from Client Account to reverse a payment into Client Account made in error.
- 13.7 An ILEX Practitioner must make good any deficiency in Client Account, immediately that it becomes known, from their own funds through Office Account.
- 13.8 An ILEX Practitioner must pay a receipt of mixed client money and other funds into Client Account and within 14 days transfer the amount of other funds to Office Account without an intimation of transfer otherwise required under 12.5.
- 13.9 An ILEX Practitioner may only transfer amounts from a ledger in the name of one client to a ledger in the name of another client with the prior written authority of both clients and provided that it would have been permissible to withdraw that sum from the account in accordance with these rules and it would have been permissible to pay that sum into the account under these rules.

13.10 An ILEX Practitioner may hold funds jointly with the Client, another ILEX Practitioner or solicitor's practice or a third party when instructed in writing by their client to do so provided that:

13.10.1 the funds are held on a joint account designated as to beneficiary and purpose; and

13.10.2 the ILEX Practitioner maintains available together for inspection by ILEX the client's written authority for every payment made from the joint account upon the ILEX Practitioner's signature and duplicate original bank statements for the joint account; and

13.10.3 compliance with these requirements is confirmed in the Accountants report required by paragraph 20 of these Rules.

13.11 ILEX may by written consent relieve an ILEX Practitioner of their duty to comply with these rules in whole or part in relation to a specific client's funds where ILEX considers it appropriate in the circumstances to do so and ILEX is satisfied that adequate other arrangements exist to safeguard that client's interests.

#### **14 Method and authority for withdrawals from client account**

14.1 A withdrawal from a client account may be made only on specific authority in respect of that withdrawal which has been signed by at least one of the following:-

- an ILEX Practitioner
- a Fellow of ILEX who is employed by an ILEX Practitioner
- an authorised practitioner of at least three years good standing who is employed by an ILEX Practitioner or in practice with an ILEX Practitioner.

14.2 A signed authority shall not be required for the transfer of money from one client account to another client account at the same bank or building society except where either is a separate designated account.

14.3 A withdrawal from a client account in favour of an ILEX Practitioner or the practice must be made either by way of a cheque to the ILEX Practitioner or their practice or by way of a transfer to their office account. The withdrawal in favour of an ILEX Practitioner or their practice must not be made in cash.

#### **15. Office Account**

15.1 An ILEX Practitioner must effect all payments and receipts of the ILEX Practitioner's own money in connection with their practice through an Office Account.

15.2 An ILEX Practitioner must maintain as part of their Required Accounts Records accurate and up to date records of payments from and receipts into Office Account.

## **16. Interest on Client Account**

- 16.1 An ILEX Practitioner must place client money on deposit so as to earn interest unless it would be unreasonable or inappropriate to do so.
- 16.2 An ILEX Practitioner must account to each client for the proper proportion of any interest earned on that client's money (or which ought to have been earned) except to the extent that:
- 16.2.1 the amount due does not exceed such amount as ILEX may from time to time stipulate in a Guidance Note; or
  - 16.2.2 the interest is in respect of client money held on account of costs or disbursements;
  - 16.2.3 the interest is in respect of money held for the Legal Services Commission.
- 16.3 An ILEX Practitioner may not exclude their obligations to pay interest in accordance with these rules by contract with their client.
- 16.4 An ILEX Practitioner who holds money as a stakeholder must pay interest to the recipient of the stake.
- 16.5 An ILEX Practitioner's client may, without prejudice to any other remedy, apply to ILEX for a Certificate as to whether or not interest, or a sum in lieu of interest, should have been paid, and, if so, the amount. If ILEX certifies that interest, or a sum in lieu of interest, should have been paid, the ILEX Practitioner must pay the certified sum.

## **17. Accounting Records**

- 17.1 An ILEX Practitioner must operate proper accounting systems and controls resulting in the maintenance of complete and accurate accounting records sufficient to demonstrate the entitlements to all Client Money held by the ILEX Practitioner and document every payment or receipt effected in the course of the ILEX Practitioner's practice.
- 17.2 In particular (but without limit) an ILEX Practitioner must have available together for inspection by ILEX the following:
- 17.2.1 a record for every payment from Client Account;
  - 17.2.2 written vouchers describing and authorising every Client Account and Office Account transaction;
  - 17.2.3 an up to date ledger for each matter for each client showing all Office Account and Client Account transactions for that matter and the balance of client money held in relation to that matter for that client;
  - 17.2.4 Client Account and Office Account cash books showing every transaction on those accounts;
  - 17.2.5 all Client Account and Office Account bank statements and passbooks;
  - 17.2.6 all Client Account and Office Account chequebooks and paying in books with all counterfoils properly completed;

- 17.2.7 documentary reconciliations of Client Account;
  - 17.2.8 all written authorities obtained for inter-client ledger transfers required by rule 13.9;
  - 17.2.9 all bills and written intimations of costs sent by the ILEX Practitioner;
  - 17.2.10 a list of all joint accounts with the records required by paragraph 13.10.
- 17.3 An ILEX Practitioner may maintain Accounting Records in either or both written and computer form but insofar as records are maintained on computer an ILEX Practitioner must:
- 17.3.1 electronically "back up" all information held on computer at the end of business each week and store the most recent copy away from the ILEX Practitioner's premises whenever the office is closed;
  - 17.3.2 use a system which is capable of providing printed copies of ledgers and other information held immediately upon it being required.
- 17.4 An ILEX Practitioner must take every necessary step to ensure that all Accounting Records are kept safe and in good order.

### **18. Reconciliation of Client Account**

An ILEX Practitioner must, at least once every five weeks:

- 18.1 compare the balance on the Client Account cashbook with the balance shown on the statements and passbooks (after allowing for all unrepresented items) of all Client Accounts; and
- 18.2 as at the same date prepare a listing of balances shown by the client ledgers of the liabilities to clients, and compare the total of those balances with the Client Account cashbook; and
- 18.3 prepare a reconciliation statement that explains the cause of the difference if any; and
- 18.4 take appropriate action promptly to correct any differences in order to balance the reconciliation statement.

### **19. Retention of Records**

- 19.1 An ILEX Practitioner must retain for a period of at least six years from the date of the last entry those materials referred to in rule 17.2 and all other records (whether held electronically or otherwise) pertaining to transactions on each Client Account, whether held as a general Client Account or a separate designated Client Account.
- 19.2 An ILEX Practitioner must retain paid cheques and other authorities for withdrawals from Client Account for a period of at least two years but these may remain in the physical possession of a bank or building society held on the ILEX Practitioner's behalf.

## **20. Accountants Report**

- 20.1 An ILEX Practitioner must deliver an Accountants Report from a Reporting Accountant to ILEX prior to the renewal of their ILEX Practitioners Certificate.
- 20.2 The Accountants Report must cover a period of no more than twelve months contiguous with the period of the last previous Accountants Report delivered by the ILEX Practitioner or, if there is no previous Accountants Report, beginning upon the date upon which the ILEX Practitioner first held Client Money.
- 20.3 If an ILEX Practitioner has not held Client Money during the whole of a period for which an Accountants Report would otherwise be required they may in relation to that reporting period provide to ILEX in place of an Accountants Report a certificate (in such form as ILEX may stipulate in a Guidance Note) to that effect and such certificate shall be deemed to be an Accountants Report for the purpose of rule 20.1.
- 20.4 An ILEX Practitioner's Accountants Report must relate to the ILEX Practitioner's most recently concluded period of account and the end of that period must not be more than three months prior to the renewal date of the ILEX Practitioners Certificate.
- 20.5 An ILEX Practitioner must deliver an Accountants Report to ILEX for the period up to and including the date upon which for any reason they ceased to hold Client Money.

## **21. Test Procedures**

- 21.1 The reporting accountant must examine the accounting records selected by them and make the following checks and tests:-
- 21.1.1 confirm that the accounting system in the ILEX Practitioner's practice complies with the requirements for accounting records in these rules and that
- an appropriate client ledger is kept for each client
  - the client ledger shows details of all money received, held or paid on account for each client
  - the transactions relating to client money are accurately recorded;
- 21.1.2 make test checks of postings to the client ledger accounts from records of receipts and payments of client money;
- 21.1.3 compare a sample of payments into and from the client account as shown in the bank or building society statements or passbooks with the ILEX Practitioner's records of receipts and payments of client money;

- 21.1.4 test check the system for recording costs and making transfers of costs from the client accounts;
- 21.1.5 examine a selection of documents to confirm that the documentary evidence of the financial transactions comply with these rules and that the entries relating to those transactions comply with these rules;
- 21.1.6 select details of the balances on client ledgers for at least two dates and
- compare the total shown by the client ledger accounts of liabilities to the clients with the cash account balance, and
  - reconcile that cash account balance with the balances held as client monies;
- 21.1.7 confirm that reconciliation statements have been kept in accordance with these rules;
- 21.1.8 check the client ledger accounts to see whether any payments have been made from the client account in excess of money held on behalf of that client;
- 21.1.9 check the office ledgers, office cash accounts and the bank statements for any office account to see whether any client money has been improperly paid into an office account, or if it has been improperly paid into office account and has been kept there in breach of the rules;
- 21.1.10 check the records for any client money held outside of a client account to ascertain what transactions have been effected in respect of their money and to confirm that the client has given the appropriate instructions in accordance with these rules;
- 21.1.11 test check the client ledgers to ensure these rules have been complied with in respect of maintaining records;
- 21.1.12 check that statements and passbooks are being kept in accordance with these rules and cross check transactions with client files where appropriate;
- 21.1.13 check that interest earned on designated client accounts and accounts opened on clients instructions are credited in accordance with these rules; and
- 21.1.14 ask for any information or explanations from the ILEX Practitioner which is required as a result of these tests and checks.

- 21.2 The Reporting Accountant must examine the ILEX Practitioner's accounting records, files and other documents at the ILEX Practitioner's office.
- 21.3 The Reporting Accountant must request and the ILEX Practitioner must provide details of all accounts kept or operated by the ILEX Practitioner in connection with their practice at any time during the accounting period to which the report relates.
- 21.4 The Reporting Accountant must note in the accountants report any substantial departures from the ILEX rules discovered by him whilst carrying out work in preparation of the report.

## **22. Matters outside the accountant's remit**

The Reporting Accountant is not required to:-

- 22.1 Extend their enquiries beyond the information contained in the documents produced, supplementary information and explanations given by the ILEX Practitioner;
- 22.2 enquire into stocks, shares, securities or documents of title held by the ILEX Practitioner on behalf of their clients;
- 22.3 consider whether accounting records have been properly written up at a time that does not fall within the period of time to which their report relates;
- 22.4 check compliance with the provisions relating to payments of sums in lieu of interest.

## **23. Reporting Accountant**

- 23.1 A person is eligible to be a Reporting Accountant for the purpose of these rules if they are an accountant who is:
  - 23.1.1 a member of an accountancy body incorporated by Royal Charter or the Association of Authorised Public Accountants;
  - 23.1.2 a person who is a registered auditor within the terms of Section 35(1)(a) of the Companies Act 1989 or the employee, director or partner of a firm or company which is so registered unless they are disqualified by the provisions of 23.2; or
  - 23.1.3 is eligible within guidelines which may be published by ILEX from time to time but not otherwise.
- 23.2 A person may not be a Reporting Accountant if:
  - 23.3.1 they have at any time within the previous five years been a partner, shareholder, member, employee or officer in the practice to which the report relates; or
  - 23.3.2 they are the parent, spouse, sibling or child of the ILEX Practitioner; or
  - 23.3.3 they have been disqualified from acting as such by ILEX by written notice given after such person has had a fair opportunity to make representations that such notice should not be given.

- 23.3 An ILEX Practitioner must include the following provisions in the terms upon which the Reporting Accountant is to act:
- 23.3.1 The Reporting Accountant undertakes to deliver the required Accountants Report which will have been prepared for submission to ILEX who may rely upon it in renewing the ILEX Practitioners Certificate; and
  - 23.3.2 The Reporting Accountant may immediately report in writing to ILEX any suspicion of dishonesty or any serious breach of these rules coming to their attention or any other matter which might constitute circumstances representing a material risk to client funds;
  - 23.3.3. The Reporting Accountant warrants that they are eligible to act as such under these rules and under those of their own professional body;
  - 23.3.4 The ILEX Practitioner consents to the disclosure of confidential information by the Reporting Accountant to ILEX if required by ILEX for any purpose under these rules;
  - 23.3.5 The Reporting Accountant is instructed to notify ILEX in writing immediately of the termination of their retainer as Reporting Accountant indicating any matter which could have given rise to a notification under rule 23.3.2.
  - 23.3.6 If a Reporting Accountant is unable for any reason to provide an Accountants Report to ILEX at the time and in the form required by these rules they are instructed to immediately notify ILEX in writing with a full and appropriate explanation.

## **24. Content of Accountants Report**

- 24.1 The Accountants Report shall be in such form as may be stipulated by ILEX from time to time but must include statements that:
- 24.1.1 the ILEX Practitioner's accounting systems and records comply with rule 17 hereof;
  - 24.1.2 reconciliations have been carried out in accordance with rule 18 hereof;
  - 24.1.3 sufficient tests and checks have been carried out to properly express the opinion that as at the end of the relevant financial period the amounts due to clients balance the funds in client account;
  - 24.1.4 on the basis of a reasonable number of checked balances, interest has been paid to clients in accordance with these rules;
  - 24.1.5 the test procedures set out in the current ILEX's Guidance Note to Reporting Accounts have been applied; and
  - 24.1.6 the ILEX Practitioner has (or if it is the case has not) declined to produce any document or disclose any information requested by the Reporting Accountant whether on grounds of confidentiality, privilege or otherwise.

## **25. Statutory Rules or Regulations**

- 25.1 An ILEX Practitioner who in the course of practice acts as a liquidator, a trustee in bankruptcy, a Court of Protection receiver or a trustee of an



occupational pension scheme must comply with the appropriate statutory rules and regulations and will not be in breach of these rules to the extent that any action or omission is required by applicable statutory rules and regulations.

- 25.2 An ILEX Practitioner must obtain the authorisation of ILEX before accepting any appointment referred to in paragraph 25.1 and must comply with any conditions referable thereto which are attached to the ILEX Practitioners Certificate.

## **26. Accounts Rules Waivers**

ILEX may grant any ILEX Practitioner who does not hold client funds a written waiver from compliance with these Accounts Rules whilst they continue not to do so.

### **III. Regulatory Powers of ILEX**

## **27. ILEX Practitioners Certificates**

### **27.1 Approval**

A member of ILEX may only engage in activities for which the authorisation of ILEX is required as an approved regulator for the purposes of the Legal Services Act 2007 if and to the extent that they hold a current ILEX Practitioners Certificate.

### **27.2 Certification Rules**

An ILEX Practitioner's Certificate may only be issued to a member of ILEX who meets the requirements for Certification set out in appropriate Certification Rules.

### **27.3 Conditional Certificates**

27.4.1 ILEX may by written notice to the ILEX Practitioner attach conditions to any ILEX Practitioners Certificate upon issue, renewal or at any other time as it considers necessary or expedient taking into account the holder's experience, past conduct, proposed arrangements for practice or any matter relevant to the protection of the public or ILEX.

27.4.2 ILEX may vary or remove any condition it has attached at any time.

## **28. Inspections**

### **28.1 ILEX's right of inspection**

An ILEX Practitioner must provide ILEX or any person authorised to act on behalf of ILEX upon production of written authority with:

28.1.1 full and unimpeded access to all of the ILEX Practitioner's practice papers, accounts records and client files; and

28.1.2 full co-operation both personally and by direction to the ILEX Practitioner's staff with the inspection process; and

28.1.3 any information relating to the ILEX Practitioner's practice requested by such person; and

- 28.1.4 reasonable office facilities for such period as is required; and
- 28.1.5 copies of any document requested for removal without charge and forthwith; and
- 28.1.6 authority to the ILEX Practitioner's present or previous Reporting Accountant(s), banker(s) or any other person to provide such information and/or documents to the authorised person and/or ILEX as he, she or it may require.

## 28.2 Occasion of inspection

ILEX shall not be required to have or disclose a reason to inspect nor to give prior notice of any proposed inspection

## **29. Suspension of ILEX Practitioner's Certificate**

- 29.1 ILEX may by written notice suspend an ILEX Practitioner's certificate where such suspension is required to protect the public if:
  - 29.1.1 there is reason to suspect dishonesty on the part of the ILEX Practitioner or their staff or an Approved Practitioner in connection with the ILEX Practitioner's practice; or
  - 29.1.2 the ILEX Practitioner is in serious or persistent breach of these rules; or
  - 29.1.3 bankruptcy or insolvency proceedings are issued against the ILEX Practitioner or the ILEX Practitioner enters into an individual Voluntary Arrangement; or
  - 29.1.4 the ILEX Practitioner has been committed to prison or convicted of an offence of dishonesty; or
  - 29.1.5 the ILEX Practitioner is physically or mentally incapacitated to such extent as to be unable to attend to their practice; or
  - 29.1.6 the ILEX Practitioner has practised as an ILEX Practitioner at any time without an ILEX Practitioner's Certificate or in breach of any condition thereon; or
  - 29.1.7 the ILEX Practitioner has ceased to properly supervise their practice.
- 29.2 Upon suspension of an ILEX Practitioner's Certificate or the termination of the ILEX Practitioner's Certificate for any other reason:
  - 29.2.1 ILEX shall be entitled through its authorised agent to possession of all documents in the possession of the ILEX Practitioner or their staff in connection with their practice and the ILEX Practitioner shall procure delivery of such documents forthwith and following receipt of such documents ILEX shall be entitled to distribute them in accordance with the directions of each of the clients to whom they relate or to any other person entitled to possession of them.
  - 29.2.2 ILEX shall be entitled to receive all Client Monies held by or on behalf of the ILEX Practitioner in connection with their practice and the ILEX Practitioner shall give all necessary instructions and authority for the payment of such monies as ILEX shall direct and such monies will upon receipt by ILEX or its authorised agent be held by ILEX upon trust for those beneficially entitled to them.

29.2.3 An ILEX Practitioner must co-operate with ILEX in protecting the interests of the ILEX Practitioner's clients including (but not limited to) providing immediately upon request:

- written authority for the redirection of post, telephone, faxes or emails as ILEX may direct;
- full information relating to the operation of the ILEX Practitioner's practice;
- a written instruction to all the ILEX Practitioner's staff to co-operate with ILEX in relation to the steps arising under these rules from the suspension;
- a list of all matters requiring urgent attention.

29.2.4 ILEX's powers in rule 29.2 shall not apply to an Employed ILEX Practitioner to the extent that papers and monies are the property of their employer.

29.2.5 ILEX's powers in 29.2 shall apply to a Practice Company if any of the matters set out in rule 29.1 apply to that Practice Company or any Corporate ILEX Practitioner practising through it. However, they shall not apply if the Practice Company is regulated by another approved regulator.

29.2.6 ILEX's powers in rule 29.2 shall not apply to a Supervised ILEX Practitioner or an ILEX Practitioner in partnership with an authorised person and or non-authorised person which is regulated by another approved regulator.

29.3 If an ILEX Practitioner disputes ILEX's entitlement to suspend their certificate the ILEX Practitioner may seek the order of an appropriate court to restrain such suspension and if such an application is made ILEX will consent to such reasonable directions or arrangements as will produce the most urgent hearing in relation to the suspension as is practical.

29.4 ILEX may apply to an appropriate court either with or without notice to the ILEX Practitioner for orders enforcing its rights under these rules.

### **30. Client Files and Original Documents**

30.1 An ILEX Practitioner must deliver any client file or original document within their possession to ILEX's authorised agent immediately upon ILEX requiring them to do so by written notice if ILEX requires possession either:

30.1.1 to assist in any investigation by ILEX; or

30.1.2 to deliver that file or original document to the person entitled to it following a failure on the part of the ILEX Practitioner to do so.

30.2 ILEX will afford the ILEX Practitioner an opportunity to copy any such file or original document or will provide the ILEX Practitioner with copies within a reasonable time at the ILEX Practitioner's expense.

30.3 ILEX may use any document obtained under paragraphs 28.1, 29.2 or 30 in any proceedings including disciplinary proceedings but:

30.3.1 shall not (except under the direction of a court) use it to the disadvantage of any client entitled to legal professional privilege in respect of it;

30.3.2 shall preserve client confidentiality except to the extent that it reasonably considers disclosure of confidential information to an appropriate authority is required in the public interest or any disclosure is made with the express or implied consent of the relevant client or disclosure is required by law.

30.4 Any failure by the ILEX Practitioner to have included the term required by 3.3 hereof which results in any impediment to the exercise of ILEX's powers under Part III of these rules will amount to a serious breach of these rules.

### **31. Poor Service Scheme**

An ILEX Practitioner must comply with the obligations imposed upon ILEX Practitioners by the Legal Ombudsman as varied from time to time.

### **32. Compensation Scheme**

32.1 ILEX will operate a discretionary scheme to compensate clients who lose money by reason of a deficiency in an ILEX Practitioner's Client Account.

32.2 An ILEX Practitioner shall indemnify ILEX in respect of any payment made or costs incurred by the operation of such scheme in relation to their client account.

32.3 An ILEX Practitioner must comply with any requirements imposed upon them by the rules of such scheme as varied from time to time.

### **33. Cost of Regulatory Action**

33.1 An ILEX Practitioner must indemnify ILEX for any cost incurred by it (including, without limit, costs fairly attributable to the use of ILEX's staff or spent upon the services of others) in investigation, the taking of any action under these rules or in any proceedings.

33.2 An ILEX Practitioner will not be liable to indemnify under paragraph 33.1:

- 33.2.1 in respect of the costs of investigation if such investigation does not either result from or discover or confirm any breach of these rules by the ILEX Practitioner; or
- 33.2.2 in respect of the costs of any other action if such action did not result from either a breach of these rules by the ILEX Practitioner or a reasonable suspicion of such a breach on the part of ILEX; or
- 33.2.3 in respect of the costs of any proceedings to the extent of an order of the court to the contrary.

### **34. Waivers**

34.1 ILEX may grant an ILEX Practitioner a written waiver relieving them of a duty to comply with such part of these ILEX Practitioners Practice and Accounts Rules as ILEX considers just and proper in the circumstances.

34.2 An ILEX Practitioner who practices in partnership or in a corporate practice regulated by an approved regulator, other than ILEX, may apply to ILEX for a waiver of all or part of these Rules if they are complying with the practice rules of another approved regulator, which are comparable to the standards required in these rules.

**ILEX EQUALITY AND DIVERSITY CODE**

1. An ILEX Practitioner must not in the course of their professional dealings unlawfully directly or indirectly discriminate against any person, nor victimise or harass them on the grounds of their age, gender, disability, race, colour, ethnic or national origin, nationality, sexual orientation, marital or family status, religion or belief (“unlawful discrimination”). An ILEX Practitioner must also comply with all equality and diversity legislation in force from time to time.
2. Professional dealings will include all dealings by the ILEX Practitioner in the course of their work or business including, but not limited to, dealings with clients, employees, colleagues, other lawyers and those involved in the administration of justice. They will include dealings with opponents to the ILEX Practitioner’s clients in litigation proceedings.
3. All ILEX Practitioners practices which are not regulated by other approved regulators must:
  - (a) either adopt the ILEX equality and diversity policy or have in place their own policy for avoiding discrimination and promoting equal opportunities. Such a policy should include those principles set out in the ILEX equality and diversity policy as a minimum standard; and
  - (b) comply with the applicable policy.
4. An ILEX Practitioner who is employed must comply with the equality and diversity policy of their employers.
5. A finding against an ILEX Practitioner by a competent court or tribunal of unlawful discrimination will be treated as evidence of a breach of this Code and as conduct bringing discredit upon the ILEX Practitioner and ILEX.

**ILEX EQUALITY AND DIVERSITY POLICY**

1. This firm is committed to eliminating discrimination and to providing equal opportunities. All members of the firm including all staff will comply with this policy.
2. This firm will comply with the ILEX equality and diversity code and with anti-discrimination legislation in force from time to time.
3. This firm will also comply with Codes of Practice, issued from time to time by the Commission for Equality and Human Rights and any such other bodies set up by legislation from time to time, in so far as they apply to this firm.

4. All clients, employees, colleagues, partners, job applicants, counsel, experts and third parties will be treated equally without unlawful discrimination.
5. This firm will not behave in any of the following ways:
  - Direct discrimination – where a person is treated less favourably than another person because of unlawful discrimination.
  - Indirect discrimination – where a requirement or condition which cannot be justified is applied equally to all groups but has a disproportionately adverse effect on one particular group.
  - Victimization – where a person is treated less favourably than others because he or she has brought proceedings against the firm or its employees under anti-discriminatory legislation or made allegations of discrimination against the firm or its employees.
  - Harassment – where a person behaves in a way that violates another person’s dignity, creates a humiliating, intimidating or hostile environment or causes distress. It includes physical, verbal and non-verbal actions.

### **Employees**

6. This firm will ensure that there are equal opportunities for all partners, employees or applicants for employment with the firm including but not limited to recruitment, appointment, terms and conditions of appointment, opportunities for promotion, training, facilities and benefits.
7. Allegations of discrimination made against employees or partners of the firm or the firm will be investigated under the firm’s grievance procedures. Where a partner or employee of the firm is found not to have complied with this policy disciplinary action will be taken against them.

### **Clients**

8. Although this firm is free to decide whether or not to accept instructions, it will not refuse instructions on the basis of unlawful discrimination.

### **Instructing Counsel or experts**

9. This firm will avoid refusing to brief Counsel or an expert on discriminatory grounds.
10. This firm will comply with a request from a client to brief a particular counsel or to instruct a particular expert subject to their suitability to deal with the matter. However, where a client’s instructions to brief counsel or instruct an expert are based unfairly or unreasonably on discriminatory grounds the firm will cease to act for the client unless the instructions are revised.
11. This firm will comply with legislation in force from time to time relating to discrimination when instructing counsel or experts.

**All dealings**

12. This firm will keep appropriate data to enable it to monitor the effectiveness of this policy. A senior member of the firm will be appointed to monitor the policy and compliance with it by the firm.



**ILEX PUBLICITY CODE**

1. For the purposes of this code 'publicity' means all means of communication (including electronic transmissions) used by an ILEX Practitioner as a means of advertising or promoting his business.
2. Publicity must not be misleading, inaccurate or disreputable.
3. Publicity must always comply with the law.
4. An ILEX Practitioner may delegate responsibility for the form or content of publicity to any other person but the ILEX Practitioner shall remain accountable for compliance with this Code.

**Name of the firm**

5. An ILEX Practitioner may practise using any practice name provided it is not unlawful, misleading or disreputable.

**Firm's communications**

6. Any firm which includes an ILEX Practitioner as principal, partner, member, manager or owner which is not regulated by another approved regulator must comply with this paragraph. All written or electronic communications must include the following information:
  - 6.1 all information required by law; and
  - 6.2 where any names of individuals are required by law to be shown (or are shown), the status and relevant regulator of each individual;
  - 6.3 the contact address and telephone number of the firm;
  - 6.4 a statement that the ILEX Practitioners within the practice and the firm is regulated by ILEX Professional Standards Ltd;
  - 6.5 information clearly identifying whether any named individual is a partner, member, manager or owner (as appropriate) or not.
7. An ILEX Practitioner who is named in any written or electronic communication must ensure that their status as an ILEX Practitioner and the fact that they are regulated by IPS is also shown, where appropriate.

**Holding out**

8. An ILEX Practitioner must not hold a person out (or permit any member of their firm to be held out):

- 8.1 as a Legal Executive nor display the letters F.Inst.L.Ex. after their name unless that person is in good standing as a fully paid up Fellow entered in the Register of members of ILEX;
- 8.2 as an ILEX Practitioner unless that person is in good standing as a fully paid up member who has qualified as ILEX Practitioner through ILEX and, where relevant, has a current rights to conduct litigation certificate.

### **Advertising**

9. An ILEX Practitioner must comply with any applicable general advertising codes of practice in force from time to time including, but not limited to, all applicable generally recognised Codes of Advertising and Sales Promotion.
10. An ILEX Practitioner must not make or cause to be made unsolicited visits or telephone calls to members of the public. For the purposes of this rule, 'member of the public' does not include current or former clients, commercial organisations, professional contacts or public bodies.
11. Advertising material must state where it is the case, that the firm is a firm of ILEX Practitioners.
12. Advertising material which makes reference to the fees charged must fairly convey the total cost, including VAT and disbursements, and the services included. References to contingency fees or fee comparisons are not permitted.
13. Advertising material should not state that an ILEX Practitioner acts for a particular client without that client's express prior consent.
14. Advertising by leafleting or mailshots is permissible provided it is lawful, clear, concise and accurate and not otherwise in breach of this Code.
15. Advertising must not be offensive or be likely to cause distress or offence to any recipient.

### ***Breach of the Code***

16. IPS may by written notice require the ILEX Practitioner to cease any publicity with immediate effect which IPS in its discretion considers to be damaging to the reputation of ILEX Practitioners (whether or not such material is in breach of this Code) or in breach of this Code and thereupon the ILEX Practitioner shall comply with such notice. In the event that an ILEX Practitioner does not comply, IPS shall be entitled to bring proceedings to enforce this obligation and shall if successful be entitled to costs on an indemnity basis.
17. A breach of the Code may also lead to an investigation of the ILEX Practitioner's conduct by IPS.

**POOR SERVICE SCHEME**

1. These rules deal with how a complaint made by a client against an ILEX Practitioner that the service the client received was inadequate should be dealt with. Poor service means a professional service which in the circumstances falls below that which might reasonably be expected of an ILEX Practitioner. This Scheme creates obligations upon ILEX Practitioners which are legally enforceable agreements between ILEX Practitioners and IPS. It is not restricted to matters which could form the basis of a claim for negligence.

***Duties of the ILEX Practitioner***

2. An ILEX Practitioner should ensure that they comply with rule 3.15 of the ILEX Practice Management Rules. The rule requires that an ILEX Practitioner must operate documented procedures which demonstrate a commitment to the resolution of client complaints in a speedy and satisfactory way.
3. Where a client has a complaint that they have received an inadequate professional service from an ILEX Practitioner or their practice they should initially refer the complaint to the ILEX Practitioner. The ILEX Practitioner is obliged to investigate the complaint in accordance with rule 3.15 of the ILEX Practice Management Rules.

***Referral to ILEX***

4. Where a client is dissatisfied by the ILEX Practitioner's handling of their complaint or the outcome of the complaint they may refer the complaint to IPS. A client must have exhausted the firm's procedure before their complaint about poor service will be considered by IPS, unless they can show good reason why the complaint should not be referred to the ILEX Practitioner in the first instance.
5. Complaints about poor service should be referred to IPS within 6 months of the ILEX Practitioner concluding their attempt to resolve the complaint under their complaints handling procedures (or if, exceptionally, that procedure does not apply, within 6 months of the cause for complaint). IPS may exercise discretion to accept complaints after this time limit has expired.
6. When the Office of Legal Complaints (OLC) is established, complaints regarding poor service which the ILEX Practitioner has been unable to resolve with the client, will be referred to the OLC.

***Settlement of the Complaint by Negotiation***

7. Upon receipt of the complaint IPS will, at the first instance, try to resolve the dispute between the client and ILEX Practitioner by negotiation unless it is inappropriate to do so. The negotiator may be a member of IPS staff who negotiates with the parties with the aim of settling the dispute.

8. The negotiation will commence within 14 days of IPS receiving the complaint.
9. Where an attempt to settle the complaint by negotiation fails or is not appropriate the complaint will be referred for investigation.

### ***Investigation by IPS***

10. Where it has not been possible to resolve the dispute through negotiation or IPS believes it is inappropriate IPS will deal with the complaint in accordance with the procedure set out in its Investigation, Disciplinary and Appeals Rules (IDAR).
11. Where IPS decides that the client should first make use of any other procedure it may suspend its own investigation into the complaint while the client exhausts that other form of redress.
12. IPS or its nominee shall have the power to require by written notice that the ILEX Practitioner produce to IPS or the nominee the client file (and any related accounting or other records) to assist in the investigation of the complaint. The ILEX Practitioner should retain a copy of the file before submitting the original.
13. An ILEX Practitioner against whom an investigation is being conducted is obliged to deal promptly with correspondence sent to them during the course of the investigation. Where an ILEX Practitioner fails to reply promptly or at all or does not co-operate with the investigation IPS will consider whether that conduct amounts to misconduct. If IPS decides that it does amount to misconduct it will decide what, if any, action to take in accordance with the powers available to it under the IDAR.

### ***Powers of IPS***

14. Where IPS decides that an ILEX Practitioner has provided poor service it may in addition to any other powers and options available to it under the Investigation, Disciplinary and Appeals Rules direct that the ILEX Practitioner:
  - Correct the error which led to the complaint at their own cost.
  - Undertake any action that IPS requires in the client's interest at the ILEX Practitioner's own cost.
  - Waive all or part of the fees and/or disbursements otherwise chargeable to the client.
  - Pay compensation to the client (or any other person intended to benefit from the ILEX Practitioner's services) up to a maximum limit set by the IPS Board from time to time.
  - Take any other remedial action that IPS may consider appropriate.
  - Pay IPS a sum in respect of the cost of dealing with the complaint.
15. IPS may direct the ILEX Practitioner to pay interest on any payment due to the client.
16. IPS may direct the ILEX Practitioner to deliver the client's monies and files held by or on behalf of the ILEX Practitioner to IPS or the client.

17. An ILEX Practitioner is contractually bound by IPS to comply with any direction made by IPS and may, in addition to any other consequence, be the subject of court proceedings by way of enforcement.

18. In addition to any other remedy a failure by an ILEX Practitioner to comply with a decision of IPS may result in the complaint being referred to the IPS Disciplinary Tribunal.

### ***Compensation***

19. An order of compensation may include recompense for:

- Financial loss
- Distress and inconvenience

Directly caused to the client by the ILEX Practitioner's poor service.

20. In deciding the level of compensation to be paid IPS will take into account any action the ILEX Practitioner has taken to deal with the complaint including any remedial action that has been taken.

21. IPS may conclude a complaint on the basis that no further action is required if it considers that the ILEX Practitioner has dealt with the complaint appropriately and, if applicable, made a reasonable offer of compensation.

22. On section 114 of the Legal Services Act 2007 coming into force, powers to order redress in relation to complaints of poor service will lie with the Office of Legal Complaints.

### ***Obstruction of complaints and investigation***

23. It is unprofessional conduct for an ILEX Practitioner to seek to prevent a client from reporting the ILEX Practitioner's conduct or making a complaint.

24. It will not be unprofessional conduct for an ILEX Practitioner to propose an agreement in full and final settlement, provided that the client understands that while it does not prevent a complaint being made, IPS will take the agreement into account in its investigation.

### **Modification or termination**

25. IPS may terminate this Scheme at any time and may from time to time modify its provisions as it thinks appropriate.

**THE ILEX CLIENT PROTECTION SCHEME**

**1. Introduction**

This Scheme has been established for the benefit of the clients of ILEX Practitioners who suffer loss as a result of an ILEX Practitioner's dishonesty or failure to account. It is established by contract between IPS and each authorised ILEX Practitioner. Under the Scheme IPS may make grants to clients from a Protection Fund but is not legally obliged to do so. This document sets out how money is raised for the Protection Fund and the policies IPS intends to apply in deciding in its discretion whether or not to make a grant from the Protection Fund.

**2. The Establishment and Maintenance of the Protection Fund**

2.1 IPS shall establish and maintain a fund called the Protection Fund of such amount as it shall consider appropriate.

2.2 Each ILEX Practitioner shall make such contribution to the Protection Fund at such time as IPS (acting through the IPS Board) shall decide and such contribution shall be due to IPS as a debt upon written notification of the amount due.

2.3 IPS shall hold such part of the Protection Fund as is not immediately required to make payments on interest bearing deposit or in other appropriate investments and shall accrue all income to the Protection Fund.

2.4 IPS shall hold the Protection Fund pursuant to its obligations hereunder but shall not do so as trustee.

For the purpose of this Scheme an ILEX Practitioner is a person authorised to practise as such by IPS in accordance with any ILEX practitioner rules.

**3. Payments from the Protection Fund**

IPS shall be entitled in its discretion to make payments from the Protection Fund for any of the following purposes:

3.1 the making of grants or payments to clients of ILEX Practitioners who have suffered loss as a result of a ILEX Practitioner's dishonesty or failure to account;

3.2 to meet the costs of operating the Fund;

3.3 to refund contributions;

3.4 to pay premiums in relation to any insurance effected for the purpose of the Scheme;

- 3.5 to repay any loan or liability incurred for the purposes of the Scheme;
- 3.6 to make any other payment which in the reasonable opinion of IPS is desirable to further the purposes of the Scheme.

**4. Accounts**

IPS shall annually publish a report on the operation of the Scheme and Accounts for the Protection Fund.

**5. Borrowing and Late Payments**

5.1 For the avoidance of doubt IPS shall be entitled to borrow for the purposes of the Scheme and deposit the Protection Fund or charge any assets comprised within it as security for any loan or facility taken for the purposes of the Scheme.

5.2 Any sum due from an ILEX Practitioner to IPS shall carry interest from seven days after due date at a rate to be decided from time to time.

**6. Policies**

6.1 IPS adopts the Scheme Policy set out at Annex 1 hereof for the operation of the Scheme but may in its discretion modify that Policy from time to time provided that any modification is published prior to taking effect.

6.2 IPS will exercise discretion in relation to any application under the Scheme and will not be bound by the Scheme Policy in any case it considers exceptional.

**7. Application Procedures**

IPS adopts the Application Procedure set out at Annex 2 hereof but may in its discretion modify that procedure from time to time provided that any modification is published prior to taking effect.

**8. ILEX Practitioner's Indemnity**

8.1 Any ILEX Practitioner in respect of whom a grant is made shall indemnify IPS to the extent of any sums paid from the Protection Fund.

8.2 Any ILEX Practitioner who is in default of any obligation to pay client funds or whose client account is probably deficient shall upon written notice given by IPS lodge with IPS such sum as IPS may by that notice require as security against any future liability under 8.1 above.

8.3 Any ILEX Practitioner who fails to lodge or pay any sum required under this clause shall not deal with or dispose of any asset or make any payment except insofar as the ILEX Practitioner's personal net assets substantially exceed the amount required by notice under paragraph 8.2.

## **Annex 1    SCHEME POLICIES**

### **A. BASIC PRINCIPLES**

#### **1. Composition of Fund**

The fund shall comprise of:

- Contributions made to the fund by ILEX members and ILEX Practitioners;
- Such of ILEX's reserves as ILEX shall make available for the compensation fund from time to time;
- Interest received on the fund;
- Money borrowed for the benefit of the fund;
- Money recovered by IPS as a result of payments it had made out of the fund;
- Any other money deemed by IPS to form part of the fund.

#### **2. A Limited Fund**

The Protection Fund does not have unlimited resources and therefore its application must be the subject of priorities. Its object is to replace funds misappropriated from an ILEX Practitioner's client account where no other possibility of recovery exists.

#### **3. A Discretionary Fund**

Applicants have no right to a grant but seek a favourable exercise of IPS' discretion to make a payment in appropriate cases.

#### **4. Applications**

It is for an applicant to provide IPS with all of the evidence necessary for a grant to be considered.

### **B. FACTORS IN THE EXERCISE OF DISCRETION**

#### **5. Applicants who will generally not receive a grant**

Applicants who:

- 5.1 have not acted throughout with integrity; or
- 5.2 have contributed to their loss by their conduct or carelessness; or
- 5.3 have applied on the basis of a failure to account but have not suffered significant hardship as a result of that failure; or
- 5.4 have failed to co-operate with an investigation or enquiry conducted by IPS or any other authority;

will generally not receive a grant or may receive a reduced grant.

#### **6. Applications which will generally not be successful**

Applications which:

- 6.1 do not contain all necessary facts and documentary evidence; or
- 6.2 are not made as a last resort; or
- 6.3 are not made promptly and in any event within six months of loss;

will generally not be successful.



## **7. Losses which will generally not be the subject of a grant**

The following losses would not generally lead to the making of a grant:

- 7.1 losses other than those arising from the dishonest misappropriation of, or failure to account for, funds on client account; or
- 7.2 lost interest agreed to be paid; or
- 7.3 lost profits or consequential expenses; or
- 7.4 losses arising from professional negligence; or
- 7.5 losses arising from poor service; or
- 7.6 losses arising outside of the normal course of an ILEX Practitioner's practice.

## **8. Supplementary grants**

When a grant is made a supplementary grant may also be made as a contribution to:

- 8.1 the loss of deposit interest from the date of loss until the date of grant; and/or
- 8.2 any legal costs reasonably incurred in making the application for a grant.

## **9. Maximum grants and interim grants**

- 9.1 IPS will publish from time to time the maximum amount that may be awarded as a grant from the Protection Fund.
- 9.2 In cases of exceptional urgency and severe hardship IPS may make interim grants of a proportion of the amount expected to be paid upon completion of any application and such interim grants may be subject to such conditions as IPS shall consider appropriate including (without limit) repayment.

## **10 Subrogated rights**

As a condition of the making of any grant applicants will be required to execute such documents as are required by IPS for it:

- 10.1 to be subrogated to any rights and remedies of the applicant in relation to the act or default in respect of which a grant is to be made and to permit IPS (subject to a sufficient indemnity against costs) to sue in the applicant's name for the benefit of the Protection Fund to the extent of the grant, interest and costs; and/or
- 10.2 to receive the benefit of any such right or remedy as referred to in 9.1 and to the same extent by way of assignment or otherwise.

## **11 Further conditions of any grant**

As further conditions of any grant IPS may require an applicant:

- 11.1 to undertake to co-operate with any enquiry by IPS or any other authority or person into the conduct of any person;
- 11.2 to provide evidence and/or assistance in relation to any proceedings.

## **12 General issues**

- 12.1 A grant may be made in respect of a person who was previously an authorised ILEX Practitioner and continues to hold themselves out as such

to an applicant who reasonably believes that they continue to be an authorised ILEX Practitioner.

- 12.2 Applications under the Scheme must be made in the form required by IPS as modified from time to time.
- 12.3 A failure to respond promptly and adequately to queries in relation to an application raised by IPS may result in the application being rejected.
- 12.4 An applicant may only make a further application for a grant in respect of the same loss if they are able to provide significant new evidence which was not previously available to them.
- 12.5 The amount of any grant will be reduced to take into account any costs which an applicant might reasonably have been expected to incur but for the circumstances leading to the application.

## **Annex 2 APPLICATION PROCEDURE**

### **1. Procedural Requirements**

- a. Applications shall be made in writing in the required form with accompanying documentary evidence to IPS;
- b. IPS will give written notice of any application to the Scheme to the relevant ILEX Practitioner or his representative before any grant is made;
- c. IPS will provide written notice of its decision in relation to any application with brief reasons to the applicant and the relevant ILEX Practitioner.

**ILEX PRACTITIONERS' INDEMNITY INSURANCE SCHEME**

**1. Introduction**

ILEX Practitioners have both a professional duty and a contractual obligation to maintain professional indemnity insurance in accordance with this scheme. ILEX Practitioners may obtain indemnity insurance through their own scheme or the IPS Master Policy scheme, once it is established.

**2. Own Indemnity Insurance Scheme**

Where an ILEX Practitioner obtains indemnity insurance cover through their own scheme they must ensure that it meets minimum terms and conditions. The minimum terms and conditions will be the same as those set out at Annex 1 in respect of the Master Policy scheme, except any references to the Master Policy scheme. An ILEX Practitioner may arrange for cover additional to the minimum terms and conditions.

**3. The Master Policy**

The Master Policy provides cover for all ILEX Practitioners' practices for the mandatory limit set by the IPS Board from time to time for each claim. ILEX Practitioners may arrange for additional cover through a facility operated by the Master Policy Brokers appointed by IPS.

The Master Policy covers any civil liability incurred in connection with the ILEX Practitioners practice in the normal course of such practice. It includes cover for the dishonest acts of partners or employees but does not indemnify a person who is themselves dishonest or condones dishonesty. The Master Policy is subject to an excess or deductible.

The detailed terms of the Master Policy as agreed by IPS from time to time are published by IPS and available online, and appear at Annex 1.

**4. ILEX Practitioners Certificate**

IPS will only issue an ILEX Practitioners certificate to an ILEX Practitioner upon receipt of an application in the required form accompanied by:

Evidence that a certificate of insurance has been issued to the practice in which the ILEX Practitioner is a principal in the terms of the Master Policy and that cover has been continuously in place since the last renewal or issue of the ILEX Practitioners certificate or evidence that a certificate of insurance will be issued to the ILEX Practitioner upon issue of a first ILEX Practitioners Certificate; or

Evidence that the ILEX Practitioner has been exempted from that requirement on the basis of the application of equivalent cover by other means, including their own scheme of indemnity insurance.

4. **Insurance Certificate**

It is the responsibility of each ILEX Practitioner to arrange for his inclusion within their own policy of insurance or, in the case of the Master Policy, by application and payment to the IPS Brokers.

5. **Uninsured Practise**

5.1 An ILEX Practitioner must not practise whilst uninsured. IPS may take steps by court proceedings or otherwise to restrain an ILEX Practitioner from practising whilst uninsured.

5.2 The conduct of an ILEX Practitioner who practises without a policy of indemnity insurance in place will be investigated under the ILEX Investigation, Disciplinary and Appeals Rules.

5.3 The conduct of an ILEX Practitioner who makes dishonest or fraudulent declarations when submitting an application for insurance cover will be investigated under the ILEX Investigation, Disciplinary and Appeals Rules.

5.4 IPS may include within the minimum terms and conditions or Master Policy such cover to protect the public against unsatisfied claims against uninsured ILEX Practitioners as it shall think appropriate. IPS shall be entitled to recover against any ILEX Practitioner to whom that cover has applied for any period (whether or not a claim has been made) such contributions to the cost of the Master Policy to IPS as IPS shall direct by written notice or notices. Such contributions shall be recoverable as debts of the ILEX Practitioner.

6. **Run-off Cover**

An ILEX Practitioner who ceases practise must provide IPS with a certificate of "run-off" cover provided by their own policy of insurance or on the terms of the Master Policy for a minimum of 6 years from the date of cessation.

7. **Evidence of Cover**

An ILEX Practitioner must disclose the identity of their insurer to any client upon written request.

8. **Compliance with Policy Terms**

An ILEX Practitioner must comply fully with the terms of their own policy of insurance or the Master Policy including (without limit) as to changes in circumstances and requirements for notification.

9. **Exchange of Information**

IPS shall be entitled to:

9.1 require ILEX Practitioners to produce any information it might require concerning a claim;

- 9.2 exchange information concerning a claim with Insurers and Brokers;
- 9.3 receive evidence from Insurers when any insurance is voided;
- 9.4 disclose to Insurers any information concerning the conduct of an ILEX Practitioner or his practice which may affect the insurance policy.

## **Annex 1 THE CURRENT MASTER POLICY TERMS AND SPECIMEN CERTIFICATE OF INSURANCE**

1. IPS will take out a Master Policy with an insurance company. The policy may be arranged through an Insurance Broker.
2. The insurance company will be known as the Authorised Insurer.
3. The policy will indemnify the ILEX Practitioner and their practice against civil liability and defence costs arising from the provision of legal services except any sums that they have recovered from the other party to the proceedings.
4. The policy will cover claims made during the period of the policy and claims made during the period of the policy relating to events that occurred within the previous 6 years.
5. The policy will cover the acts or omissions of the current and former ILEX Practitioners, partners, co-members or co-directors and employees of the practice or, in the case of run-off cover, the preceding practice.
6. The minimum level of cover will be set from time to time by the IPS Board.
7. Where separate claims are made arising from the same or related acts or omissions they can be aggregated and regarded as one claim.
8. There will be no limit on defence costs.
9. The level of excess that an ILEX Practitioner is liable to pay will be set at £2,500, however, a ILEX Practitioner may vary the level of excess. There will be no excess for defence costs.
10. A policy of indemnity insurance may only be cancelled where the practice is merged with a successor practice which has obtained cover for the new entity.
11. The insurance must not exclude or limit the liability of the Insurer in cases of negligence or breach of duty by the insured except to the extent that any civil liability or defence costs arise from the following matters:
  - Any liability of the insured for causing or contributing to death or bodily injury (but it must cover psychological injury or emotional distress arising from the negligence or breach of duty);
  - Any liability of the insured for causing or contributing to damage, destruction or loss of any property (other than property in the care custody or control of the firm and used in connection with it) except that the insurance must cover such liability which arises from the negligence or breach of duty;

- Partnership disputes or any disputes between the principals of the insured;
- Employment breaches or disputes;
- Any debts or liabilities, whether trading or personal, that the insured incurs;
- Any fines or penalties howsoever caused.
- The insurer need not cover or assume any liabilities incurred through the fraud or dishonesty of the insured where the insured admits or is found guilty by a court or other judicial body of fraud or dishonesty.



**RIGHTS OF AUDIENCE CONDUCT RULES**

**1. Introduction**

For the purpose of maintaining the proper and efficient administration of justice, these Rules set out the standards to be observed by all members of ILEX when exercising rights of audience. These obligations are in addition to those imposed by law or by other professional rules of IPS and where necessary take precedence over any instruction given to ILEX Advocates by their employers.

**2. Definitions**

In these Rules, except where otherwise indicated:

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

"advocacy services" means advocacy services as defined in schedule 2 of the Act

"authorised advocate" means an exempt person as defined in schedule 3 of the Act or an authorised person as defined in schedule 5 of the Act

"client" means the employer's lay client and also (where there is a professional intermediary) the employer's professional client; where the context permits, the expression also includes a prospective client

"court" means:

- (a) the High Court and any County Court, Crown Court, Magistrates' Court or Coroner's Court; and
- (b) any tribunal which is listed in Schedule 6 of the Tribunals, Courts and Enforcement Act 2007 (as amended or substituted from time to time).

"ILEX Advocate" means any Fellow exercising a right of audience pursuant to a Rights of Audience Certificate issued by IPS or a Right to Conduct Litigation Certificate issued by IPS which awards rights of audience in judge's room proceedings.

"ILEX" means the Institute of Legal Executives

"IPS" means ILEX Professional Standards Ltd

"The Law Society" means The Law Society of England and Wales

"right of audience" means a right of audience as defined in Section 119 of the Act

"Rights of Audience Certificate" means any of the following certificates issued by ILEX as an approved regulator under the Act:

- (a) A Civil Proceedings Certificate
- (b) A Family Proceedings Certificate

"Rights to Conduct Litigation Certificate" means any of the following certificates issued by ILEX as an approved regulator under the Act:

- (a) A Civil Proceedings Certificate
- (b) A Family Proceedings Certificate

### **Fundamental Duties**

3. Upon accepting instructions to act in the capacity of a Legal Executive Advocate, the Legal Executive must at the earliest opportunity, disclose that status to the client and all other interested parties.
4. ILEX Advocates have a primary and an overriding duty to the court to ensure in the public interest, that the proper and efficient administration of justice is achieved. They must assist the court in the administration of justice, and must not deceive the court or knowingly or recklessly mislead it.
5. ILEX Advocates must not engage in conduct, whether in the exercise of their rights of audience or otherwise, which is:
  - (a) dishonest or otherwise discreditable to an advocate;
  - (b) prejudicial to the administration of justice; or
  - (c) likely to diminish public confidence in the legal profession or the administration of justice, or otherwise bring the legal profession into disrepute.
6. ILEX Advocates must promote and fearlessly protect clients' best interests by all proper and lawful means and without regard to their own or, where applicable, their employer's or practice's interests or to any consequences to themselves, their employer, or any other person (including professional clients (see below), fellow advocates or other members of the legal profession).
7. As between a lay client and a professional client, ILEX Advocates owe their primary duty to the lay client, and must not permit a professional client to limit their discretion in deciding how the interests of the lay client may best be served.
8. ILEX Advocates must act in good faith towards clients at all times.

9. ILEX Advocates must not discriminate against, nor treat any person (including a client or another advocate) less favourably because of their age, gender, disability, race, colour, ethnic or national origin, nationality, sexual orientation, marital or family status, religion or belief than they would treat others.
10. When accepting instructions to act as an advocate, and from time to time as the matter proceeds, ILEX Advocates must consider whether the client's best interests would be served by another advocate providing the advocacy services. In making this assessment, ILEX Advocates should consider, where relevant, in consultation with their partners, employer or colleagues:
  - (a) the circumstances of the case, including its gravity and complexity, and the likely costs;
  - (b) if applicable, the nature of their or their employer's practice;
  - (c) their own ability and experience; and
  - (d) their own or their employer's relationship with the client.
11. ILEX Advocates must not decline to accept instructions to act as an advocate:
  - (a) on grounds relating to the age, gender, disability, race, colour, ethnic or national origin, nationality, sexual orientation, marital or family status, religion or belief of the client;
  - (b) on the grounds that the nature of the case is objectionable to them or to any section of the public;
  - (c) on the grounds that the conduct, opinions or beliefs of the client are unacceptable to them or to any section of the public;
  - (d) on any ground relating to the source of any financial support which may properly be given to the client for the proceedings in question (for example, on the grounds that such support will be provided by public funding).
12. ILEX Advocates are individually and personally responsible for their own conduct in the exercise of their rights of audience and must exercise their own personal judgement in all their activities as an advocate.

### **The Decision to Appear**

13. ILEX Advocates must not accept instructions either from clients or, where applicable, from their employer which will require them to exercise rights of audience for which they do not hold a current and appropriate Rights of Audience Certificate or Rights to Conduct Litigation Certificate authorising them to exercise rights of audience in chambers proceedings.

14. ILEX Advocates must not accept instructions to exercise a right of audience if to do so would cause them or, where applicable, their partners, colleagues or employer to be professionally embarrassed. For this purpose, professional embarrassment occurs:
- (a) if they lack sufficient experience or competence to handle the matter;
  - (b) if, having regard to their other professional commitments, they will be unable to do (or will not have adequate time and opportunity to prepare for) what they are required to do;
  - (c) if the instructions seek to limit the ordinary authority or discretion of an advocate in the conduct of proceedings in court, or to impose on an advocate an obligation to act otherwise than in accordance with these Rules;
  - (d) if the matter is one in which -
    - (i) they have reason to believe that they are likely to be witnesses; or
    - (ii) it will be difficult for them to maintain professional independence, or where the administration of justice might be or appear to be prejudiced because of any connection of the advocate (or of the advocate's employer, partner or colleague) with the client, or with the court or any member of it, or for any other reason;
  - (e) if there is or appears to be some conflict, or a significant risk of some conflict, either between the interests of the advocate (or of the advocate's employer, partner or colleague) and some other person, or the interests of any clients; or
  - (f) if the matter is one in which there is a risk of a breach of confidence entrusted to them (or to their employer, partner or colleague) by another client, or where the knowledge which they possess of the affairs of another client would give an undue advantage to the new client.
15. ILEX Advocates, whether they are instructed on their own or with another authorised advocate, must in each case consider whether the best interests of the client are served by them being instructed or continuing to be instructed. In making this assessment, the advocate must, where applicable, consult with their partners, employer, or colleagues, and have regard to:
- (a) the proper and efficient administration of justice;

- (b) the circumstances of the case, including its gravity and complexity, and the likely costs;
  - (c) where applicable, the nature of their or their employer's practice;
  - (d) their ability, experience and seniority (including in particular the need or desirability of having studied appropriate specialist papers in ILEX's Level 6 examination syllabus); and
  - (e) their relationship with the client.
16. If ILEX Advocates consider that the best interests of the client would not be served by their continuing to represent the client, they must immediately advise the lay client accordingly and, where applicable, their partners, colleagues, employer or the qualified litigator by whom they are instructed.
17. ILEX Advocates must have or have ready access to library, research and information facilities which are adequate having regard to the nature of the rights of audience they propose to exercise.

#### **Ceasing to Act as an Advocate**

18. ILEX Advocates must consider and, where relevant, must consult with their partners, employer, or colleagues:
- (a) if continuing to act would cause them or, where relevant, their partners, employer or colleagues to be professionally embarrassed within the meaning of rule 14 (provided that if the professional embarrassment arises only because it appears to them that they are likely to be witnesses on a material question of fact they may retire or withdraw only if they can do so without jeopardising the client's interests);
  - (b) if, instructions having been accepted on behalf of more than one client, and there is or appears to be:
    - (i) a conflict, or a significant risk of a conflict, between the interests of any one or more of them; or
    - (ii) a risk of a breach of confidence; and
    - (iii) the clients do not all consent to them continuing to act;
  - (c) if in any publicly funded case (whether civil or criminal) it has become apparent to them that:

- (i) funding has been wrongly obtained by false or inaccurate information, and action to remedy the situation is not immediately taken by the client; or
  - (ii) the certificate has been discharged and they, their partners, colleagues or employer has not received instructions direct from that formerly legally funded client;
- (d) if the circumstances set out at rules C30 and C31 of the Funding Code arise at a time when it is impracticable for the Legal Services Commission or a Committee appointed by the Commission for the purposes of these rules to meet in time to prevent an abuse of the Fund;
- (e) if the client refuses to authorise them to make some disclosure to the court which their duty to the court requires them to make;
- (f) if, having become aware during the course of a case of the existence of a document which should have (but has not) been disclosed on discovery, the client fails forthwith to disclose it or to permit disclosure of the same, or
- (g) if -
- (i) having improperly come into possession of a document belonging to another party;
  - (ii) having read it before they realised that it ought to have been returned unread to the person entitled to possession of it; and
  - (iii) they would be professionally embarrassed in the discharge of their duties by their knowledge of the contents of the document.
19. ILEX Advocates must withdraw from a case where (after consultation with their partners, employer, or colleagues) they are satisfied that:
- (a) the instructions have been withdrawn or their or their employer's retainer terminated;
  - (b) their professional conduct, or that of their partner, employer, other authorised practitioners employed in their practice or a colleague, is being impugned; or
  - (c) there is some other substantial reason for doing so.
20. Having considered themselves or, where relevant, having consulted with their partners, employer, or colleagues, ILEX Advocates must not:

- (a) cease to act as an advocate unless their reasons for doing so have first been explained to the client;
- (b) pass on the instructions to another advocate without the consent of the client.

### **Conduct of Work**

21. ILEX Advocates must take all reasonable steps to ensure that:

- (a) the advocacy services for which they are responsible, are administered competently and efficiently, and are properly staffed having regard to the nature of the matters being handled;
- (b) proper records are kept;
- (c) all colleagues and employees for whom they are responsible, or who are engaged in matters in respect of which the advocate will exercise a right of audience -
  - (i) carry out their duties in a correct and efficient manner; and
  - (ii) are made clearly aware of such provisions of these Rules as may affect or be relevant to the performance of their duties.

Where applicable, ILEX Advocates must act in consultation with their partners, employer, or colleagues, in considering the above.

22. In exercising their rights of audience, ILEX Advocates must:

- (a) in all their professional activities -
  - (i) be courteous and act promptly, conscientiously, diligently and with reasonable competence; and
  - (ii) take all reasonable and practicable steps to avoid unnecessary expense or waste of the court's time, and to ensure that professional engagements are fulfilled;
- (b) not undertake any task which -
  - (i) they know or ought to know they are not competent to handle;
  - (ii) they do not have adequate time and opportunity to prepare for or perform; or
  - (iii) they cannot discharge within a reasonable time, having regard to the pressure of other work;

- (c) promptly read all instructions and papers delivered to them;
  - (d) have regard to any relevant written standards adopted by IPS for the conduct of professional work;
  - (e) inform their client and, where relevant, their partners, employer forthwith if -
    - (i) it becomes apparent that they will not be able to do the work within a reasonable time after receiving the instructions; or
    - (ii) there is an appreciable risk that they may not be able to fulfil the instructions or any other professional engagement which they have accepted.
23. Whether or not ILEX Advocates continue to exercise rights of audience in respect of any particular matter, they:
- (a) must preserve the confidentiality of the client's affairs;
  - (b) must not (without the client's prior consent or as permitted by law) lend or reveal the contents of the instructions or any papers;
  - (c) must not communicate to any third person information which has been entrusted to them in confidence (other than to their partners, employer or colleagues);
  - (d) must not use such information to their own or another client's advantage.
24. ILEX Advocates must not offer their personal views or opinions to or in any news or current affairs media on the facts or issues arising in any current client matter.
25. ILEX Advocates must not, when interviewing a witness out of court:
- (a) place such a witness under any pressure to provide anything other than a truthful account of his or her evidence; or
  - (b) rehearse, practise or coach that witness in relation to their evidence or the way in which he or she should give it.
26. ILEX Advocates must not devise facts which will assist in advancing the client's case, and must not draft any originating process, pleading, affidavit, witness statement or notice of appeal containing:



- (a) any statement of fact or contention (as the case may be) which is not supported by the client or by their instructions;
- (b) any contention which they do not consider to be properly arguable;
- (c) any allegation of fraud, unless they have clear instructions to make such allegation and have before them reasonably credible material which, as it stands, establishes a prima facie case of fraud; or
- (d) any statement of fact other than the evidence which, according to their instructions, the advocate reasonably believes the witness would in substance give if the evidence contained in any affidavit or witness statement was being given viva voce;

provided that nothing in this rule shall prevent an ILEX Advocate drafting a pleading, affidavit or witness statement which contains specific facts, matters or contentions subject to the confirmation of their accuracy by the client.

27. When exercising rights of audience, ILEX Advocates:

- (a) are personally responsible for the conduct and presentation of the case, and must exercise personal judgement on the substance and purpose of statements made and questions asked;
- (b) must not assert a personal opinion on the facts or the law unless invited to do so by the court or when appearing before a tribunal where it is their duty to do so;
- (c) must –
  - (i) ensure that the court is informed of all relevant decisions and legislative provisions of which they are aware, whether the effect is favourable or unfavourable towards the contention for which they argue; and
  - (ii) bring any procedural irregularity to the court's attention during the hearing, and not reserve it to be raised on appeal;
- (d) must not adduce evidence obtained otherwise than from or through the client, or devise facts which will assist in advancing the client's case;
- (e) must not make statements or ask questions which are merely scandalous or are intended or calculated only to vilify, insult or annoy either a witness or some other person;
- (f) must, if possible, avoid naming in open court third parties whose character would thereby be impugned;

- (g) must not, by assertion in a speech, impugn a witness whom they have had an opportunity to cross-examine, unless in cross-examination they have given the witness an opportunity to answer the allegation; and
- (h) must not -
  - (i) suggest that a witness or other person is guilty of crime, fraud or misconduct; or
  - (ii) attribute to another person the crime or conduct of which the client is accused;

unless such allegations go to a matter in issue (including the credibility of a witness) which are material to the client's case, and which appear to them to be supported by reasonable grounds.