

## Criminal Litigation Accreditation Scheme

Standards of competence for the accreditation of solicitors representing clients in the magistrates' court

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The standards of competence are in three parts as follows:

**Part 1: Underpinning knowledge**

This sets out the knowledge and understanding that a court duty solicitor must have in order to be competent when advising, assisting and representing a client in the magistrates' court and youth court.

**Part 2: Underpinning skills**

This sets out the skills that a court duty solicitor requires in order to advise, assist and represent a client in the magistrates' court and youth court, and which a duty solicitor should demonstrate in undertaking the activities set out in the units of performance in Part 3.

**Part 3: Standards of performance**

This sets out the standards of performance that a duty solicitor should demonstrate at each stage of the process of advising, assisting and representing a client as duty solicitor in the magistrates' court or youth court. In order to demonstrate competent performance, a duty solicitor will need the knowledge and skills set out in Parts 1 and 2.

## **Part 1 Underpinning knowledge**

### **1.1 An understanding of the role and duties of a duty solicitor**

The solicitor must be able to demonstrate a practical knowledge and understanding of:

- 1.1.1 a solicitor's duty to his or her client
- 1.1.2 a solicitor's duty to the court
- 1.1.3 the role and obligations of, and limitations on, a solicitor acting as duty solicitor as set out in the general criminal contract
- 1.1.4 the eligibility of defendants for legal aid
- 1.1.5 the special needs of, and procedures and laws concerning, vulnerable defendants, whether such vulnerability results from age, mental disorder or handicap, or otherwise
- 1.1.6 the requirements of, and facilities for, defendants who need, or who may need, an interpreter
- 1.1.7 the Law Society's Code for Advocacy
- 1.1.8 the implications of the Human Rights Act 1998 for the work of a court duty solicitor.

### **1.2 An understanding of relevant criminal law and procedure**

The solicitor must be able to demonstrate a practical knowledge and understanding of:

- 1.2.1 the definition of crimes commonly dealt with in the magistrates' court, and of the means of discovering the definition of a crime where this is not known to the solicitor
- 1.2.2 the defences commonly available to defendants appearing in the magistrates' court, and of the means of discovering the requirements of a defence where these are not known to the solicitor
- 1.2.3 the different ways of classifying offences by reference to powers of arrest and mode of trial
- 1.2.4 the different modes of participation in a crime
- 1.2.5 the different methods of commencing criminal proceedings, and the legal requirements of those methods
- 1.2.6 the obligation of the prosecution to keep the decision to prosecute under review, and the power to discontinue a prosecution
- 1.2.7 the methods of funding advice, assistance and representation in respect of a person charged with a criminal offence
- 1.2.8 the sequence of events in criminal cases, whether indictable-only, either-way or summary-only, from charge or summons to conviction and sentence, and the relevant critical factors at each stage
- 1.2.9 the circumstances in which a prosecution may be dismissed for abuse of process
- 1.2.10 the restricted powers of single justices and justices' clerks
- 1.2.11 the obligations on the prosecution to disclose the evidence on which they intend to rely, and to disclose 'unused material', and the discretion or obligation on the defence to serve a defence statement
- 1.2.12 the special procedures and powers relevant to mentally disordered or handicapped defendants.

### **1.3 An understanding of relevant immigration law and procedure**

The solicitor must be able to demonstrate a practical knowledge and understanding of:

- 1.3.1 the main immigration offences

- 1.3.2 the meaning of the terms overstayer, illegal entrant, deportee, refugee, asylum seeker, exceptional leave to remain
- 1.3.3 the possible consequences of committing an immigration offence
- 1.3.4 the need, where appropriate, to refer the defendant to a specialist immigration law practitioner.

#### 1.4 An understanding of criminal law and procedure as it relates to youths

The solicitor must be able to demonstrate a practical knowledge and understanding of:

- 1.4.1 the significance of age and gender for the procedures in and powers available to magistrates' and youth courts
- 1.4.2 the rules concerning the courts in which a youth may, or must, appear and/or be sentenced, the power or duty of a magistrates' court to remit a youth to the youth court, and the power of a magistrates' or youth court to commit a youth to the Crown Court
- 1.4.3 the obligations of parents and guardians of youths appearing in court, and the powers of the court in relation to them
- 1.4.4 the law and practice concerning sentencing of youths
- 1.4.5 the reprimand and final warning schemes, and their implications for sentence.

#### 1.5 An understanding of rules of evidence

The solicitor must be able to demonstrate a practical knowledge and understanding of:

- 1.5.1 the legal and evidential burdens of proof on the prosecution
- 1.5.2 the legal and evidential burdens of proof on the defence
- 1.5.3 the mechanisms by which evidence may be adduced, and the rules concerning different forms of evidence
- 1.5.4 the rules concerning admissibility of evidence
- 1.5.5 the court's discretion to exclude evidence
- 1.5.6 the circumstances in which inferences may be drawn under the Criminal Justice and Public Order Act 1994 and the Criminal Procedure and Investigations Act 1996, and the implications of the drawing of inferences
- 1.5.7 legal professional privilege
- 1.5.8 the evidential value of admissions made by a co-accused.

#### 1.6 An understanding of law and practice concerning bail in the magistrates' court and the youth court

The solicitor must be able to demonstrate a practical knowledge and understanding of:

- 1.6.1 the prima facie right to bail of an unconvicted defendant
- 1.6.2 the circumstances in which a court may withhold bail from an unconvicted defendant charged with an imprisonable or non-imprisonable offence
- 1.6.3 the law concerning bail in respect of convicted defendants
- 1.6.4 the power of a court to require a security, to accept a surety, and to impose conditions
- 1.6.5 the availability of facilities such as bail information schemes, duty psychiatric schemes, and bail hostels
- 1.6.6 the powers of the court to remand youths to local authority accommodation (with or without a security requirement), and to make a custodial remand

- 1.6.7 the consequences of a grant of bail, including enforcement of the obligation to surrender and of conditions, variation of bail conditions and the prosecution right of appeal against the grant of bail
- 1.6.8 the consequences of a refusal of bail, including the power to commit the defendant to detention at a police station, the right to make further applications for bail in the magistrates' court, Crown Court and High Court
- 1.6.9 the law concerning custody time limits.

1.7 An understanding of law and procedure concerning sentencing in magistrates' courts, and enforcement of orders of the court

The solicitor must be able to demonstrate a practical knowledge and understanding of:

- 1.7.1 sentencing procedures, including powers to order or dispense with pre-sentence reports
- 1.7.2 the circumstances in which a 'Newton hearing' should be held
- 1.7.3 the implications of a plea of guilty for sentence discount and mitigation
- 1.7.4 the Magistrates' Association Sentencing Guidelines, and relevant aggravating or mitigating factors
- 1.7.5 the sentencing powers of a magistrates' court, including custody and community penalty thresholds, maximum powers of sentence, and the power to commit to the Crown Court for sentence
- 1.7.6 the implications of the imposition of a custodial sentence, including the institution in which the sentence is likely to be served, and the likely length of time to be served
- 1.7.7 the powers of a magistrates' court to sentence, or otherwise deal with, a mentally disordered defendant
- 1.7.8 the powers of a magistrates' court to enforce financial penalties, and other penalties and orders of the court.

1.8 An understanding of law and procedure concerning appeals against and reviews of decisions of a magistrates' court

The solicitor must be able to demonstrate a practical knowledge and understanding of:

- 1.8.1 the power of a magistrates' court to review its own decisions
- 1.8.2 the right of a defendant, and the procedures applicable, to appeal against sentence or conviction to the Crown Court
- 1.8.3 the right of the defendant or prosecution, and the procedures applicable, to appeal by case stated to the Divisional Court
- 1.8.4 the availability of judicial review proceedings in respect of magistrates' court decision
- 1.8.5 the law and procedure concerning bail pending appeal
- 2.3.1 the right to challenge an alleged breach of a defendant's Convention rights under the Human Rights Act 1998.

## **Part 2 Underpinning skills**

### **2.1 Communication skills**

The solicitor must be able to communicate effectively with the client, the prosecutor, the court clerk, and other relevant persons. In doing so, the solicitor must be able to:

- 2.1.1 use language that is appropriate to the person who is being addressed
- 2.1.2 express him or herself clearly and assertively
- 2.1.3 listen actively
- 2.1.4 identify if there is a need for an interpreter
- 2.1.5 identify whether there are indications of vulnerability in respect of the client, whether resulting from age, mental disorder or handicap, or otherwise
- 2.1.6 communicate in a manner and form that takes account of ethnic, cultural and other forms of diversity
- 2.1.7 do the above when working under pressure resulting from acting for a number of clients on the same occasion
- 2.1.8 make an appropriate written record of information obtained, steps taken, advice given and decisions taken.

### **2.2 Interviewing and advising skills**

The solicitor must be able to obtain relevant information from the client, the prosecutor and relevant others, and give appropriate advice to the client in a form that is likely to be understood by the client. The solicitor must be able to:

- 2.2.1 convey to the client in appropriate language the role of the duty solicitor
- 2.2.2 allow the client to explain his or her position
- 2.2.3 take appropriate steps in order to gain the trust and confidence of the client, taking into account ethnic, cultural and other forms of diversity
- 2.2.4 elicit relevant information from the client, the prosecutor, and other relevant persons
- 2.2.5 formulate appropriate advice by correctly identifying and analysing the legal and non-legal issues raised by the case
- 2.2.6 give appropriate advice to the client in a form that assists them to decide upon the best course of action
- 2.2.7 agree on the action to be taken by both the client and the solicitor
- 2.2.8 deal appropriately with any ethical issues that may arise when advising the client
- 2.2.9 do the above when working under pressure resulting from acting for a number of clients on the same occasion.

### **2.3 Advocacy skills**

The solicitor must be able to advocate effectively on behalf of his or her client in the magistrates' court and youth court. The solicitor must be able to:

- 2.3.1 establish a suitable rapport with the court
- 2.3.2 use appropriate body language, and speak audibly, clearly, and at an appropriate pace, using appropriate language
- 2.3.3 present a coherent and persuasive case that is consistent with the client's instructions, and which takes proper account of ethnic, cultural and other forms of diversity

- 2.3.4 demonstrate that they have a practical understanding of substantive and procedural law applicable to the case
- 2.3.5 correctly apply the relevant law to the facts of the instant case
- 2.3.6 demonstrate that they understand and can apply relevant ethical rules, rules of etiquette and conventions
- 2.3.7 do the above when working under pressure resulting from acting for a number of clients on the same occasion.

## **Part 3 Standards of Performance**

### **Unit 1: Gathering information**

#### **Element 1:**

Obtain information from the police and/or court and/or prosecutor.

Performance criteria:

- 3.1.1 Defendants who wish to speak to the duty solicitor are identified
- 3.1.2 The location of such defendants is ascertained, in particular, whether or not they are in custody
- 3.1.3 Information as to the alleged offence(s), breach of court order, or other reason for the court hearing is obtained
- 3.1.4 Information about the prosecution case is sought
- 3.1.5 Information is sought about whether the client is likely to have any disability or vulnerability
- 3.1.6 Information about previous convictions, previous bail record, previous compliance with court orders (as appropriate) is sought
- 3.1.7 The attitude of the prosecutor to bail, acceptable pleas, bind-over, etc. (as appropriate) is ascertained
- 3.1.8 Information obtained is accurately recorded.

#### **Range statement:**

The information contained in 3.1.3 to 3.1.6 may be sought or obtained before or after the duty solicitor has had a consultation with the client, depending on the availability of the prosecutor and on local arrangements.

#### **Element 2:**

Consult with the client and take instructions.

Performance criteria:

- 3.2.1 The client is seen in a confidential setting (where the available facilities permit)
- 3.2.2 The client is informed of the identity of the duty solicitor and of the duty solicitor's role, and of the confidentiality of solicitor/client communications
- 3.2.3 The client is informed that the services of the duty solicitor are free
- 3.2.4 The client is informed that they are not obliged to instruct the duty solicitor, and is asked whether they have a solicitor that they wish to instruct
- 3.2.5 The duty solicitor considers the level of service that he or she can provide in accordance with the terms of the general criminal contract, and the client is informed accordingly
- 3.2.6 Information is sought to enable an assessment to be made about any disability or vulnerability of the client, and to assess whether an interpreter will be required
- 3.2.7 The client is informed of the information that the duty solicitor has obtained in relation to the case.
- 3.2.8 General information regarding the client is obtained or confirmed, including the client's name, address, telephone number, date of birth, nationality, immigration status (if relevant), marital status, dependants, and financial circumstances (as appropriate)
- 3.2.9 Instructions relevant to the reason why they are appearing in court are taken



3.2.10 Information given and obtained is accurately recorded.

## Unit 2: Giving advice

### Element 1:

Inform and advise the client as to general procedure and venue

- 3.3.1 Appropriate advice is given in respect of the client's vulnerability (if any), including the need for an interpreter, the presence in court of a parent or guardian etc
- 3.3.2 An assessment is made of the client's fitness to plead, and appropriate advice is given
- 3.3.3 An assessment is made, where relevant, of the client's immigration status and appropriate advice is given, including as to whether the client should instruct an immigration law specialist
- 3.3.4 Advice is given as to the procedure of the court hearing, when the client's case is likely to be called, and what decisions the court may make
- 3.3.5 Advice is given as to what is likely to happen after the court hearing, including arrangements for the client's representation
- 3.3.6 An assessment is made of the client's likely eligibility for legal aid, and the client is advised accordingly
- 3.3.7 An assessment is made of the decisions as to venue that may be made by the client or the court, and the client is advised as to the venue representations that may be made on behalf of the client and/or the venue choices that the client may make, and as to the power of the court to commit for sentence
- 3.3.8 Instructions are taken as to venue, and as to representations and applications to be made
- 3.3.9 Information given and obtained, and advice given and the reasons for that advice, is accurately recorded.

### Element 2:

Advise the client as to plea.

- 3.4.1 Consideration is given to whether sufficient information is available from the prosecution and from the client to advise on plea (including information as to the likely admissibility of prosecution evidence), and on whether a plea or indication of plea should be entered at this stage, and the client is advised accordingly
- 3.4.2 Where the client is appearing in respect of a summary-only offence, consideration is given to whether advice on plea should be delayed until disclosure has been requested from the prosecution, and the client is advised accordingly
- 3.4.3 Subject to paragraph 3.4.4, where the client is appearing in respect of an offence triable either-way, consideration is given to whether advice on plea or indication of plea should be delayed until advance information has been obtained from the prosecution, and the client is advised accordingly
- 3.4.4 Where the client is appearing in respect of an offence triable only on indictment, or an either-way offence that is governed by the notice of transfer provisions under s4 of the Criminal Justice Act 1987 or s53 of the Criminal Justice Act 1991 (or similar legislation), the client is advised of the implications of those provisions
- 3.4.5 Where the solicitor concludes that there is sufficient information to enable advice to properly be given on plea or indication of plea, the client is advised as to plea and, if relevant, is advised of the mitigation advantages of an early indication of a guilty plea
- 3.4.6 Where the solicitor concludes that it is appropriate to advise the client to plead guilty or to give an indication of a guilty plea, consideration is given to whether

- there is sufficient information available in relation to mitigation, and the client is advised accordingly
- 3.4.7 Where the solicitor concludes that it is appropriate to advise the client to plead guilty or to give an indication of a guilty plea, consideration is given to the need for a 'Newton hearing', and the client is advised accordingly
  - 3.4.8 Instructions are taken as to the course of action that the client wishes to take, and the solicitor confirms with the client that they understand the consequences of their decision
  - 3.4.9 Where appropriate, negotiations are conducted with the prosecutor as to acceptable pleas
  - 3.4.10 Information given and obtained, and advice given and the reasons for that advice, is accurately recorded.

### **Element 3:**

Advise the client regarding bail (where relevant)

- 3.5.1 Consideration is given to whether an application for bail is relevant and appropriate, and the client is advised accordingly
- 3.5.2 Consideration is given to the relevant law governing bail, including the implications of the Human Rights Act 1998, and to the relevant bail facilities in the area concerned
- 3.5.3 Consideration is given to the known, or likely, prosecution objections to bail, and the likely attitude of the court
- 3.5.4 The client is advised regarding their prima facie right to bail (where applicable), as to securities, sureties and conditions (where relevant) and as to the consequences of non-compliance with bail obligations
- 3.5.5 Instructions are taken as to the client's objectives regarding bail, previous convictions and previous bail record (if any) and, where relevant, as to securities, sureties and conditions, and the client is advised as to the most suitable arguments for achieving their objectives
- 3.5.6 Instructions are taken as to whether a bail application is to be made and, if appropriate, as to what securities, sureties or conditions are to be offered
- 3.5.7 The client is advised, where appropriate, as to the consequences of refusal by the court to grant bail, including the place where the client is likely to be remanded, the power of the court to commit the defendant to detention at a police station, and the opportunities for further applications for bail to be made.
- 3.5.8 In the case of a client who is a juvenile, they are advised as to the power of the court to remand them to local authority secure accommodation or direct to prison (as appropriate)
- 3.5.9 The client is advised, where appropriate, as to the right of the prosecution to appeal against the grant of bail
- 3.5.10 Where the client is appearing for breach of the obligation to surrender to bail, or for breach of bail conditions, instructions are taken as to whether the client accepts the breach, and advice is given as to whether the prosecution are likely to be able to prove the breach, and as to the appropriate application or submission to be made
- 3.5.11 Appropriate negotiations are conducted with the prosecutor concerning bail and bail conditions
- 3.5.12 Where bail is refused, or conditions imposed, advice is given to as to appropriate courses of action available to the client
- 3.5.13 Information given and obtained, and advice given and the reasons for that advice, is accurately recorded.

#### **Element 4:**

Advise the client as to sentence and other orders of the court

- 3.6.1 Instructions relevant to mitigation and sentence are obtained from the client, including information about previous convictions and sentences, compliance with previous sentences and orders, reasons for and attitude to the offence, any consequences for the client of committing the offence, positive steps take by the client (eg. in respect of any drug or alcohol abuse, reparation to the victim, practical expressions of remorse, etc.), and the likely consequences for the client and others of possible sentences
- 3.6.2 Consideration is given to the sentencing powers, and power to commit for sentence, available to the court given the nature and circumstances of the client and of the offence including, where relevant, the custody and community sentence thresholds
- 3.6.3 Consideration is given to the likely attitude of the court to sentence, to the relevant available mitigating factors, to the relevant aggravating factors and to the desirability of a pre-sentence and/or medical or other report
- 3.6.4 Instructions are taken as to the client's objectives regarding sentence, reasoned advice is given as to the way in which mitigation should be conducted, and agreement is sought as to the conduct of the mitigation plea
- 3.6.5 Advice is given as to the likely sentence range
- 3.6.6 In the case of enforcement proceedings, whether concerning fines imposed or other orders of the court, relevant instructions are obtained from the client as to whether they accept the non-compliance and, if so, the reasons for non-compliance, and (if relevant) the client's attitude to future compliance with the relevant order and (if relevant) their financial circumstances. Advice is given as to the appropriate representations to be made to the court, and agreement is sought as to such representations
- 3.6.7 When the court has made its sentence or enforcement decision, advice is given as to the implications for the client of the decision and as to appropriate courses of action available to the client if they wish to contest the decision
- 3.6.8 Information given and obtained, and advice given and the reasons for that advice, is accurately recorded.

#### **Range statement:**

The Elements in Unit 2 will not all apply in every case. Which element or elements will apply will depend upon the nature of the case concerned. The client must be advised as to sentence where they are advised to plead guilty or indicate a guilty plea, and may be advised as to sentence in other circumstances.

Unit 3:           Appearing before the court

#### **Element 1:**

Making or resisting a procedural application.

- 3.7.1 The court is informed, as appropriate, of the solicitor's name, the fact that they appear as duty solicitor, and the identity of the defendant or person for whom they appear
- 3.7.2 Where relevant, the solicitor makes the appropriate application, having regard to relevant law and facts, and in a coherent and persuasive manner, in accordance with the client's instructions

- 3.7.3 Where relevant, the solicitor resists an application made by the prosecution or other party, having regard to relevant law and facts, and in a coherent and persuasive manner, in accordance with the client's instructions
- 3.7.4 Where the application, or resistance to an application, is unsuccessful, the solicitor considers, and advises the client upon whether they have realistic grounds for challenging the decision
- 3.7.5 The decision of the court, and any reasons given, is accurately recorded.

**Element 2:**

Making or resisting a venue application in either-way cases.

- 3.8.1 The solicitor indicates to the court that his or her client intends, or does not intend, to plead guilty (as appropriate)
- 3.8.2 Where the client does not indicate a guilty plea at the plea before venue procedure, and following any representations by the prosecutor, the solicitor makes appropriate representations to the court regarding venue, in accordance with his or her client's instructions, and by reference to the relevant statutory criteria and Mode of Trial guidelines
- 3.8.3 Where the court indicates that that it believes that the case is suitable for summary trial, the solicitor (if necessary) reminds the client of their decision as to the desired trial venue
- 3.8.4 The decision of the court, and any reasons given, is accurately recorded.

**Element 3:**

Making a bail application.

- 3.9.1 The solicitor confirms with the prosecutor the prosecutor's attitude to bail with, or without, conditions
- 3.9.2 The solicitor indicates to the court whether they will be applying for bail on behalf of their client
- 3.9.3 Following the presentation to the court of the prosecutor's objections to bail, the solicitor makes a coherent and persuasive application for bail, taking into account the relevant law and facts, the objections to bail put to the court by the prosecutor, the likely attitude of the court, and the client's instructions, and indicating (where relevant) appropriate conditions
- 3.9.4 Where the prosecution apply for a remanded defendant to be committed for detention in a police station, the solicitor makes appropriate representations regarding whether the defendant should be so committed and/or the period of such committal
- 3.9.5 Where the court grants bail with conditions, the solicitor advises the client as to any course of action open to them if they are dissatisfied with those conditions
- 3.9.6 Where the court denies bail, the solicitor considers the reasons given for refusal of bail, and advises the client as to the courses of action open to them to try to secure bail
- 3.9.7 The decision of the court, and any reasons given, and advice given to the client and the reasons for that advice, is accurately recorded.

**Element 4:**

Making a plea in mitigation.

- 3.10.1. Where the client has pleaded guilty (in a summary-only case) or where the client has indicated that they intend to plead guilty (in an either-way case), the solicitor

- mitigates on behalf of his or client, having regard to his or client's instructions, as set out below
- 3.10.2 Where appropriate, the solicitor makes a coherent and persuasive application for an adjournment to enable a pre-sentence and, if appropriate, other reports to be prepared
  - 3.10.3 Where appropriate, the solicitor makes a coherent and persuasive plea in mitigation, having regard to the client's instructions, the relevant law, and the relevant factors
  - 3.10.4 The solicitor makes appropriate representations regarding any costs order that may be made by the court
  - 3.10.5 Following the sentence of the court, the solicitor advises the client of the implications of the sentence, and (if appropriate) advises the client of their right of appeal
  - 3.10.6 An accurate record is made of the decision of the court, and any instructions from and advice given to the client, including the reasons for such advice.

#### **Element 5:**

Representations in enforcement proceedings.

- 3.11.1 In fine enforcement proceedings, the solicitor makes appropriate representations regarding his or her client's financial circumstances, the reasons for non-payment, and the appropriate order of the court, in accordance with the client's instructions and having regard to the relevant law
- 3.11.2 In other enforcement proceedings, the solicitor makes appropriate representations in accordance with the client's instructions and having regard to the relevant law
- 3.11.3 The solicitor makes appropriate representations regarding any costs order that may be made by the court
- 3.11.4 Following the order of the court, the solicitor advises the client of the implications of the order and, if appropriate, advises the client of their right of appeal
- 3.11.5 An accurate record is made of the decision of the court, and any instructions from and advice given to the client, including the reasons for such advice.

#### **Range statement:**

The elements in Unit 3 will not all apply in every case. Which element or elements are relevant will depend upon the nature of the application, submission or representations made.