

ILEX PROFESSIONAL STANDARDS LIMITED

CONSULTATION

PROPOSAL TO SEEK RIGHTS OF AUDIENCE AND RIGHTS TO CONDUCT LITIGATION FOR ASSOCIATE PROSECUTOR MEMBERS OF ILEX

Introduction

ILEX is an Approved Regulator under the Legal Services Act 2007. In accordance with the requirements of the legislation it has separated out its regulatory and representative functions. The regulatory functions have been delegated to ILEX Professional Standards Limited (IPS). IPS is the regulatory body for Legal Executives and all other grades of member registered with ILEX.

ILEX is making an application under the Legal Services Act 2007 to become an Approved Regulator in respect of advocacy and litigation undertaken by those of its members who are registered in the Associate Prosecutor grade. Associate Prosecutor Members will be those members employed by the Crown Prosecution Service in the Associate Prosecutor grade. ILEX is already an approved regulator in respect of advocacy but not for the right to conduct litigation. This application is limited, so far as litigation is concerned, to the work which Associate Prosecutor members carry out which constitutes litigation.

IPS and ILEX are consulting on the proposals. This consultation begins by outlining the nature of the application and providing a summary of the arrangements by which members will qualify as Associate Prosecutors. The consultation also outlines the Conduct and Practice Rules to which Associate Prosecutor Members will be subject.

This consultation will close on 6 April 2010.

INTRODUCTION

1. ILEX was designated as an authorised body for the purposes of making an application for rights to conduct litigation under the Access to Justice Act 1999. ILEX is also designated as an authorised body for the purposes of granting rights of audience by the Institute of Legal Executives Order 1998 (SI 1998/1077). ILEX remains an authorised body for the purposes of granting of rights of audience under the Legal Services Act 2007.
2. The application ILEX proposes to make under the Legal Services Act will enable it to grant rights to conduct litigation and rights of audience to members registered in the Associate Prosecutor grade. It also seeks approval of its proposed qualification scheme and Conduct Rules in respect of Associate Prosecutor members.
3. Associate Prosecutor is a new category of ILEX membership created in November 2008 for Crown Prosecution Service (CPS) staff employed in the role of Associate Prosecutor.
4. Associate Prosecutors are Prosecution Advocates who, since 1998, have derived their rights of audience and rights to conduct litigation from the Director of Public Prosecutions (DPP) through formal statutory designation under Section 7A(1) Prosecution of Offences Act 1985 (POA). However, Section 7A(8) POA, as inserted by Section 55 Criminal Justice and Immigration Act 2008, states that from 1 May 2011 the DPP will no longer be able to confer these statutory rights of audience and rights to conduct litigation on designated members. By this application, ILEX will assume from the DPP the function of awarding the same litigation and advocacy rights to Associate Prosecutors in respect of proceedings in the Magistrates' Courts and in limited circumstances in the Crown Court in England and Wales to Associate Prosecutors with, effect from 1 May 2011.
5. The Director of Public Prosecutions will, however, using written Instructions issued pursuant to section 7A (3) POA, continue to manage the range of hearing types that Associate Prosecutors may appear in, and the litigation functions that they may perform. As and when the Director of Public Prosecutions amends his written Instructions Associate Prosecutors will be able to exercise a wider range of advocacy and litigation functions, as authorised by ILEX. The Director of Public Prosecutors will set out each year in the annual report to the Attorney General the Instructions that are issued to Associate Prosecutors.

BACKGROUND TO ASSOCIATE PROSECUTORS

6. The CPS is the Government body responsible for prosecuting criminal cases investigated by the Police in England and Wales. It was created by the Prosecution of Offences Act 1985 (POA). Under the POA, the DPP, as head of the CPS, has the power to designate any member of staff holding a general qualification as a Crown Prosecutor. Crown Prosecutors have the powers of the Director to institute and conduct proceedings. Only solicitors and barristers may be employed as Crown Prosecutors.

7. Section 7A(1) POA gave the DPP the power to designate employees of the CPS, who are not Crown Prosecutors, the rights and powers of a Crown Prosecutor in a range of proceedings in Magistrates' Courts. These employees are known as Associate Prosecutors (previously known as Designated Caseworkers).
8. Associate Prosecutors were first introduced by the CPS in November 1998. Instructions issued by the DPP limit the range of statutory powers that an Associate Prosecutor may exercise, including the range of hearings they may appear in. The DPP has issued a number of instructions between 1998 and 2009 which have incrementally increased the work that Associate Prosecutors may undertake.
9. Associate Prosecutors are normally deployed in Court to deal with straightforward cases. As they gain experience they will progress to undertaking the full range of proceedings permitted by the DPP's Instructions. The types of hearings they may engage in range from guilty pleas in criminal damage or theft cases to full bail applications. They will deal with routine pre-trial case management hearings and sentencing hearings.
10. All cases prosecuted by an Associate Prosecutor will be reviewed by a Crown Prosecutor unless they fall within the Associate Prosecutor's review powers. Associate Prosecutors will seek instructions from Crown Prosecutors whenever necessary.
11. When not in Court Associate Prosecutors undertake a range of case work functions including drafting correspondence, preparing instructions to Counsel, and service of evidence and unused material.
12. In October 2008 ILEX and the CPS entered into a Memorandum of Understanding whereby Associate Prosecutor staff of the CPS became members of ILEX in the newly created grade of Associate Prosecutor member. The agreement set in place a regulatory structure for Associate Prosecutors.
13. To register as an Associate Prosecutor member of ILEX an applicant must be designated by the DPP as an Associate Prosecutor and have successfully completed Level 1 of the CPS Associate Prosecutor qualification programme and be of good standing.
14. It was agreed that ILEX would make an application to enable it to award litigation and advocacy rights to Associate Prosecutors when the power of the DPP to award rights ceased in May 2011.

RIGHTS SOUGHT

15. The application seeks approval to grant rights to conduct litigation and rights of audience. The rights are split into two levels: Level 1 and Level 2. The levels correspond with the experience and training of Associate Prosecutors and the authority granted by the DPP to prosecute cases on his behalf.

Level 1 Rights of Audience and Litigation Certificate in Criminal Proceedings

16. New Associate Prosecutor Members will be awarded a Level 1 Rights of Audience and Litigation Certificate in Criminal Proceedings upon completion of a qualification programme.

17. The advocacy rights to be awarded under a Level 1 Certificate are the following:

- to appear before Justices or a District Judge in the Magistrates' Courts (including the youth court) to prosecute all proceedings against all adult and youth offenders, including bail applications and applications in relation to bail, where the CPS is the prosecuting authority except:
 - Trials;
 - Newton Hearings;
 - Special Reasons Hearings;
 - Contested Preventative Civil Orders; and
 - Contested Binding Over proceedings.
- to appear in the Crown Court before a judge to conduct a bail application where the CPS is the prosecuting authority.

18. The rights to be awarded under the Level 1 Certificate reflect the rights being exercised by Associate Prosecutor members under the existing authority of the DPP.

Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings

19. Experienced Level 1 Associate Prosecutors will be eligible to apply to complete a higher qualification programme leading to the award of a Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings.

20. The advocacy rights to be awarded under a Level 2 Certificate are the following:

- to appear before Justices or a District Judge in the magistrates' courts (including the youth court) to prosecute all proceedings against all adult and youth offenders, including bail applications and applications in relation to bail, where the CPS is the prosecuting authority except trials in either-way offences.

Litigation rights

21. Holders of the Level 1 and Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings will be awarded the following litigation rights.

The right to exercise the powers of a Crown Prosecutor to conduct a case outside court, namely:

- review of a prosecution case by applying the Code for Crown Prosecutors; and
- other casework functions necessary to progress prosecution cases that fall within an Associate Prosecutor's statutory remit, that is

- to decide appropriate bail conditions and objections to bail in magistrates' courts and youth court proceedings;
- to decide whether to discontinue a case in the magistrates' courts and youth courts;
- to make disclosure decisions in proceedings in the magistrates' courts and youth courts;
- to decide witnesses to give live evidence, to serve under section 9 of the Criminal Justice Act 1967 and to tender to the defence in magistrates' courts and youth court trials and other contested hearings;
- to amend a charge or summons, prefer a new charge or drop a charge in magistrates' courts and youth court proceedings; and
- to decide whether to apply, vary or discharge a civil preventative order in magistrates' courts and youth court proceedings.

22. The litigation rights will enable Associate Prosecutors to conduct out of Court casework functions in cases where the CPS is a prosecuting authority. This includes the review of a prosecution case by applying the Code for Prosecutors, selecting witnesses in trials in the Magistrates' Court and Youth Court, disclosure of unused material in Magistrates' Court and Youth Court trials and amendment of a charge or a summons.

23. ILEX's proposals seek to ensure that Associate Prosecutors who are qualified in accordance with the education, training and experience proposed in ILEX's submission will be competent to exercise the rights sought. ILEX also proposes that its conduct arrangements are sufficient to regulate Associate Prosecutors.

Questions

Q1. ILEX seeks rights to conduct litigation and rights of audience for Associate Prosecutor Members. Do you have any comments on the rights sought? If so, please set them out.

Q2. ILEX proposes that the rights will be awarded through two Certificates: Level 1 and Level 2. Do you have comments on the proposed split between the two Certificates? If so, please set them out.

REGULATORY OBJECTIVES

24. IPS believes that the application complies with the regulatory objectives set out in the Legal Services Act 2007. Associate Prosecutors will:

- Protect and promote the CPS aims to improve public confidence in the fairness and effectiveness of the criminal justice system and the effectiveness and efficiency of bringing offenders to justice by ensuring that prosecutions are conducted by suitably qualified and regulated people.

- Support the constitutional principle of the Rule of Law by ensuring an appropriate delegation of powers to prosecute Associate Prosecutors, by the DPP, in compliance with the requirements of the law.
- Improve access to justice for victims and witnesses through increasing the knowledge and understanding of Associate Prosecutor's victim issues.
- Promote competition in the provision of services by ensuring the CPS is able to make the best possible use of suitably trained and authorised advocates to undertake prosecutions and review files, making efficient and proportionate use of public funds.
- Encourage a strong, independent, diverse and effective legal profession through the introduction of an independent scheme on regulation for Associate Prosecutors.
- Increase the public's understanding of a citizen's legal rights and duties through the CPS published policies on treatment of victims and witnesses and the effective and efficient prosecution of cases in the Magistrates' Courts.
- Promote and maintain adherence to the professional principles through compliance with the CPS Codes and Policies which require them to conduct cases fairly, independently, objectively and effectively.

25. The IPS application seeks to establish that:

- An Associate Prosecutor will be suitably qualified in accordance with the proposed regulations regarding education, training and experience to exercise the rights to conduct litigation and rights of audience.
- IPS has in place rules of conduct, reflecting both ILEX and CPS rules, which it is able to enforce against Associate Prosecutor Members.

SELECTION OF TRAINEE ASSOCIATE PROSECUTORS

26. The CPS will select staff to train as Associate Prosecutors in accordance with the rules set out in the application. CPS areas will identify vacancies, according to business needs. Vacancies will be advertised by the CPS and any employee meeting the criteria may apply. In exceptional instances vacancies may also be advertised externally.

27. Applicants will undergo a rigorous selection process, at the conclusion of which suitable applicants will undergo the Associate Prosecutor qualification programme.

28. The selection process involves the following stages:

- Completion of an application form;

- Application form short list;
- Case study presentation; and
- Interview.

29. The CPS has developed a Person Specification for an Associate Prosecutor role. The selection processes have been designed to test the skills and competencies required in the Person Specification, suitability of candidates to undertake the qualification scheme and eventually exercise the litigation and advocacy rights.

30. Applicants will show how they meet the criteria and provide examples to support their application. Accordingly their prior experience will be assessed at the beginning of the qualification process.

31. The CPS guidance for conducting Associate Prosecutor outlines the competencies to be tested at each stage of the recruitment process. Copies of the Person Specification for the Level 1 and Level 2 Associate Prosecutor posts appear at **Appendix 1**.

32. Applicants are marked using a scale of 1 to 5, with 1 being 'requirements not met' and 5 being 'requirements consistently met'. Applicants are expected to achieve at least a score of 3 against each competency which denotes that they have provided relevant information and met minimum standards across the criteria.

Questions

Q3. Do you have any comments on the CPS selection process? If so, please set them out.

Q4. Do you have any comments on the proposed competencies for the Associate Prosecutor selection process? If so, please set them out.

LEVEL 1 ASSOCIATE PROSECUTOR

APPLICATION PROCESS

33. All applicants will complete a written application form which will be used for short listing. At the short list stage applicants will be marked as to whether their application displays examples and evidence of how they meet the competence criteria for the post. Shortlisted applicants then proceed to the case study presentation and interview stages.
34. At the case study stage they will be provided with a scenario that they may encounter upon qualification as an Associate Prosecutor. Applicants will be expected to prepare as if they were due to prosecute that case in Court. They will be required to consider any applications they would make and to outline any further information they would require before appearing in Court. They will then be required to present the case as a guilty plea in a simulated court hearing.
35. After the presentation they will be asked questions upon the case study. The presentation will be assessed by the selection panel using standardised assessment sheets which show whether the applicant meets the required standard.
36. Applicants then proceed to an interview stage where they will be asked questions designed to assess the competencies appearing in the Person Specification.
37. Successful candidates will then undertake the Level 1 qualification scheme.

Question

- Q5. Do you have any comments on the selection process for Associate Prosecutors at Level 1? If so, please set them out.**

LEVEL 1 QUALIFICATION SCHEME

38. Trainee Associate Prosecutors will undergo a rigorous training process to ensure they have the knowledge and skills to exercise the powers designated by the DPP at Level 1. The process encompasses training courses, pre-course work and observational experience. The qualification process is designed to develop the necessary knowledge and skills incrementally.

Mentor

39. Each trainee will be allocated a mentor who will be an experienced Associate Prosecutor or a Crown Prosecutor. The trainee will be expected to seek advice and guidance from their mentor both throughout the qualification process and after deployment. They will also shadow their mentor and observe them at Court.

Observation

40. Trainees will be required to observe hearings at court prior to commencement of the training courses and between training courses. The hearings to be observed are set out in an observation grid, a copy of which appears at **Appendix 2**. It is expected that trainees should spend at least 1 full day per week carrying out observations.
41. The observation and mentoring arrangements are expected to develop the experience of trainees of the types of cases they will conduct upon qualification. They will then be able to discuss their experience during the courses.

Manual

42. Trainees must complete self-study of the Associate Prosecutor manual prior to attendance at the first course. The manual covers the role of Associate Prosecutors, review powers, and the law, practice and procedure relating to the offences and types of cases they will encounter. Study of the manual takes at least 20 hours study.

Question

- Q6. Do you have any comments on the pre-course work required to be completed by Associate Prosecutors? If so, please set them out.**

Foundation course

43. Trainees will then progress onto the Foundation course, which is designed to further develop their knowledge of the law and procedure for the offences they will encounter. The course will also cover evidential matters and will build upon the self-study manual. The course is designed to be delivered through face to face sessions which take place over 5 days.
44. The course outcomes for the Foundation course appear at **Appendix 3**. The knowledge that trainees will acquire through the foundation course and pre-study work will be reinforced through the subsequent practical skills training.
45. After completing the Foundation course trainees will return to their CPS areas and continue undertaking observation work and maintaining contact with their mentor. This will allow them the opportunity to understand the knowledge they have acquired through its application to practical situations.

Question

- Q7. Do you have any comments on the contents of the Foundation course? If so, please set them out.**

Trial preparation course

46. Applicants next undertake a Trial Preparation course, which is aimed at training them to exercise the litigation rights they will be awarded upon qualification. The

Trial Preparation course will meet the course outcomes which appear at **Appendix 3**.

47. The course will develop the practical knowledge and skills of trainees to undertake summary trial preparation. It will also provide them with the skills required to review and assess charges and summonses and to decide upon and draft amendments to charges or summonses or take decisions to discontinue charges.
48. The course will conclude with a practical assessment for which trainees will be given a case study. The assessment criteria for the Trial Preparation course appear at **Appendix 3**. Trainees must be assessed as competent in at least 2 main criteria and 3 aspects of the other criteria to pass the assessment.

Questions

- Q8. Do you have comments on the contents of the Trial Preparation course? If so, please set them out.**
- Q9. Do you have any comments on the assessment criteria for the Trial Preparation course? If so, please set them out.**

Advocacy skills and Youth Court courses

49. Trainees then undertake the Advocacy Skills course and Youth course. These two courses will provide them with practical advocacy skills training in the context of Magistrates' and Youth Court hearings. They will also provide another opportunity to apply their knowledge of relevant law and procedure to practical scenarios.
50. The Advocacy Skills course will meet the course outcomes which appear at **Appendix 3**. They include the development of advocacy skills and skills needed to exercise litigation rights, including case analysis.
51. Trainees will be formally assessed during the Advocacy Skills Course. They will be required to make applications relevant to the rights they may exercise. The applications will be based on case study scenarios which will also test their litigation skills through their ability to endorse files and decide whether to withdraw or amend charges. Assessments will also cover knowledge of ethics, professional conduct and relevant law and procedure.
52. Assessments may include an application to proceed in the absence of the defendant, plea before venue hearings, bail applications, applications to amend or withdraw a charge or dealing with the previous convictions of a defendant. The assessment may use multiple cases representing a court list where applicants will be expected to move from one case to another.

53. The assessment criteria for the Advocacy Skills course appear at **Appendix 4**. Trainees must be assessed as good or competent in at least 8 out of the 10 assessments.
54. The Youth course will meet the course outcomes which appear at **Appendix 3**. The course will develop the skills required by Associate Prosecutors to prosecute cases in the Youth Court.
55. The Youth course will also conclude with an assessment against the criteria which appear at **Appendix 4**. Trainees must be assessed as competent in 3 criteria, 2 aspects of a fourth criteria and 1 aspect of a fifth criteria.
56. An independent external organisation will undertake the assessments during these courses. The assessor will use the assessment criteria to determine whether trainees meet required standards.

Questions

- Q10. Do you have any comments on the course criteria for the Advocacy Skills course? If so, please set them out.**
- Q11. Do you have any comments on the assessment criteria for the Advocacy Skills course? If so, please set them out.**
- Q12. Do you have any comments on the course criteria for the Youth course? If so, please set them out.**
- Q13. Do you have any comments on the assessment criteria for the Youth Court? If so, please set them out.**

Qualification outcomes

57. At the end of the Level 1 course applicants will be able to use case analysis techniques, exercise review powers and be able to amend and withdraw charges. They will also be able to outline the facts of the cases clearly and effectively, prepare and present submissions to the Courts, apply communication skills and techniques, and understand the ethics and etiquette of advocacy in Magistrates' and Youth Courts.
58. The training will ensure that all Associate Prosecutors possess the required standard and level of knowledge of law and procedure and practical skills before deployment as Associate Prosecutors. After qualification the course materials will act as a reference point for Associate Prosecutors.

Question

- Q14. Do you have any comments on the structure or content of the Level 1 qualification? If so, please set them out.**

Certification

59. Applicants who successfully complete the Foundation course, Trial Preparation course, Youth course and Advocacy Skills course will make an application to ILEX to register as an Associate Prosecutor Member. The application will be approved provided they are of good standing, will be employed by the CPS in an Associate Prosecutor role and have successfully completed the qualification process, including assessments. The CPS will be unable to deploy a person as an Associate Prosecutor until they have successfully enrolled with ILEX.

Bail course

60. Approximately 4 to 6 weeks after designation Associate Prosecutors will undertake two practical Bail courses which will meet the criteria which appear at **Appendix 3**.
61. The first Bail course is designed to develop the ability of Associate Prosecutors to represent the CPS in adult bail hearings. The second course will train Associate Prosecutors to deal with bail applications in relation to youths. Those courses will involve assessments, the criteria for which appear at **Appendix 4**.
62. Prior to attendance on the Bail courses Associate Prosecutors will observe bail hearings which meet the criteria set out in the observation grid, that appears at **Appendix 2**.
63. The Bail Application course and Youth Bail course will develop Associate Prosecutors' knowledge of law and procedure in relation to bail hearings in Magistrates' and Youth Courts. By the end of the course Associate Prosecutors will be able to present identified objections to bail on behalf of the CPS in a fair, clear and structured manner. They will also be able to deal with breach of bail hearings, defence arguments in relation to bail and understand how to deal with appeals against grant of bail and how to handle bail applications in relation to youths. Associate Prosecutors will be unable to undertake bail hearings until successful completion of the qualification courses and assessments.

Questions

Q 15 Do you have any comments on the observation grid for bail hearings? If so, please set them out.

Q 16 Do you have any comments on the criteria for the Bail courses? If so, please set them out.

Q17 Do you have any comments on the assessment criteria for the Bail courses? If so, please set them out.

LEVEL 2 ASSOCIATE PROSECUTORS

APPLICATION PROCESS

64. Experienced Level 1 Associate Prosecutors will be able progress to become Level 2 Associate Prosecutors, as opportunities arise. The CPS areas will advertise for vacancies according to business needs.
65. The selection of Level 2 Associate Prosecutors will follow the same format as the application, presentation and interview process for Level 1 Associate Prosecutors, except that applicants will be assessed against the competencies and criteria for Level 2 Associate Prosecutors, as appear in the Person Specification at **Appendix 1**.
66. At the presentation stage applicants will be asked to make a remand application and oppose a bail application. The presentation stage will test the advocacy skills, judgement and analytical skills of applicants.
67. Upon selection applicants will complete the Level 2 qualification process.
68. The Level 2 Advocacy Skills course will ensure Associate Prosecutors are able to prepare a case for trial, undertake an opening speech, examine witnesses, deal with unexpected situations and conduct a trial.

Question

Q 18 Do you have any comments on the selection process for Level 2 Associate Prosecutors? If so, please set them out.

LEVEL 2 QUALIFICATION SCHEME

69. The Level 2 qualification process will follow a similar format to the Level 1 qualification. Associate Prosecutors will be assigned to a mentor who will usually be an experienced Crown Prosecutor. They will be able to seek guidance from the mentor and work-shadow their mentor and other Crown Prosecutors.
70. Associate Prosecutors undertaking the Level 2 qualification will be expected to observe cases that will fall within the remit of Level 2 Associate Prosecutors. A copy of the observation grid appears at **Appendix 5**. Associate Prosecutors will be expected to reflect upon the cases they have observed and complete a reflective log.
71. Associate Prosecutors will then attend an Induction Day during which the qualification programme, modules and assessment format will be explained to them.

Question

Q19 Do you have any comments on the observation and mentoring arrangements for Level 2 Associate Prosecutors? If so, please set them out.

E-learning modules

72. Associate Prosecutors will commence Level 2 qualification by studying e-learning modules. These modules will cover course of the trial, questioning skills, hearsay, examination in chief and competence and compellability of witnesses. The knowledge that will be acquired through this course will be developed further, in the context of practical training, through the subsequent courses.

Foundation course

73. Associate Prosecutors next undertake the Foundation course, which is designed to develop their knowledge of the offences they will encounter and of evidence. The course will meet the outcomes which appear at **Appendix 6**. It will provide Associate Prosecutors with the legal knowledge they will require.

74. After completing the first course Associate Prosecutors will return to their CPS areas and continue undertaking observation work and maintaining contact with their mentor. They will be able to apply their knowledge of the law and offences to cases they will observe.

Question

Q20 Do you have any comments on the course outcomes for the Level 2 Foundation course? If so, please set them out.

Advocacy skills course

75. Approximately 1 month after completion of the first course Associate Prosecutors will undertake the Level 2 Advocacy Skills course. This course will conclude with an independent assessment of advocacy skills.

76. The Advocacy Skills course will meet the course outcomes which appear at **Appendix 6**. The course will develop trial skills of Associate Prosecutors, including delivery of an opening speech, examination of witnesses in chief and cross examination.

77. The course will conclude with an assessment that must meet the assessment criteria which appear at **Appendix 7**. During the assessment Associate Prosecutors will represent the CPS in a mock trial which is externally assessed. Associate Prosecutors will be expected to open the trial, examine a witness in chief, cross examine the defendant, and deal with unexpected occurrences during the course of the mock trial. This will test the ability of Associate Prosecutors to react to the situation, think on their feet and deal with a matter.

78. Associate Prosecutors must be assessed as good or satisfactory in each of the 4 core areas and in at least twelve of the fifteen other areas to pass the assessment.

Questions

Q21 Do you have any comments on the course outcomes for the Advocacy Skills course? If so, please set them out.

Q22 Do you have any comments on the assessment criteria for the Advocacy Skills course? If so, please set them out.

Certification

79. Upon successful completion of the course and assessments the Associate Prosecutor will qualify as a Level 2 Associate Prosecutor. They will make an application to ILEX for the Level 2 Certificate.

Question

Q23 Do you have any comments on the content or structure of the Level 2 qualification? If so, please set them out.

COURSE ACCREDITATION AND MONITORING

80. IPS has introduced a number of arrangements through which it will assure itself that course delivery and assessment meets required standards.
81. The CPS will be expected to seek accreditation from IPS to deliver the Associate Prosecutor qualification courses. In its application the CPS will be expected to show how their proposed course outlines meet the course outcomes and assessment criteria which are set out in this consultation. The CPS will be required to map course outlines against the course outcomes to demonstrate how they will deliver courses.
82. The CPS appoints external organisations to conduct assessment of candidates. In their accreditation application they will be expected to set out details of that assessment process. IPS will assess the process to ensure it meets the requirements and standards expected of course providers and assessors.
83. The CPS will be accredited as a course provider by IPS if its application meets the criteria established by IPS for the accreditation of course providers for advocacy and other ILEX courses. The criteria will include location, suitability of premises, teaching resources and support, teaching and assessment experience, course content, and candidate contact and support mechanisms.
84. IPS will also monitor course provision to ensure that standards of course delivery and assessment are maintained. IPS will appoint external advisors who will be responsible for inspecting courses and moderation of standards of assessment. In meeting their responsibilities the advisors may observe applicants when they are being formally assessed. They may also review recordings of trainees' performances.
85. The external advisors will also scrutinise course and assessment materials. The scrutiny of materials will ensure that they are consistent with the criteria.
86. IPS will carry out inspection visits of courses to ensure resources are appropriate to the course and the quality of course provision is maintained.
87. The CPS will also be expected to make an annual report to IPS on how courses have progressed and on candidate performance.

Questions

Q24 Do you have comments on the process by which IPS will accredit the CPS to deliver courses? If so, please set them out.

Q25 Do you have any comments on the oversight and monitoring role to be undertaken by IPS to ensure standards of course delivery and assessment are maintained? If so, please set them out.

POST QUALIFICATION COMPETENCE

88. Associate Prosecutors will be expected to keep their knowledge and skills up to date. IPS has developed a number of methods through which the competence of Associate Prosecutors will be monitored.
89. Each year Associate Prosecutors will be required to undertake 16 hours of Continuing Professional Development (CPD). They must undertake at least 8 hours CPD in criminal practice, procedure, knowledge or advocacy skills training. IPS will monitor compliance with the CPD requirements.
90. The work of Associate Prosecutors will be monitored by a supervising Crown Prosecutor. The supervising Crown Prosecutor will provide instructions to Associate Prosecutors which are required to enable them to carry out their functions. Crown Prosecutors will also undertake general supervisory functions which will enable them to ensure Associate Prosecutors act within their remit and competence.
91. In addition under the ILEX general Code of Conduct and CPS Statement of Ethical Principles, Associate Prosecutors may only undertake work for which they are competent.

Question

Q26 Do you have any comments on the number of hours CPD Associate Prosecutors are required to undertake? If so, please set them out.

CONDUCT

92. All members of ILEX, including Associate Prosecutors will be expected to comply with the ILEX Code of Conduct and Guide to Good Practice, as applicable to them. Associate Prosecutors will also be required to comply with the CPS National Standards of Advocacy and the CPS Statement of Ethical Principles. Copies of these appear at **Appendices 8 to 10**.
93. The ILEX Code and Guide to Good Practice place general duties upon all members to act with integrity and recognise their overriding duty to the Court.
94. The Statement of Ethical Principles for Associate Prosecutors places similar obligations upon them as are placed upon other advocates by their regulatory bodies. It lays down the standards of conduct and good practice expected of prosecutors working for the CPS. It recognises the duty upon advocates to act impartially, within their competence and within the framework of the law. It also confirms the responsibility of Associate Prosecutors to preserve confidentiality, not to act in a conflict of interest situation and to act in accordance with the DPP's instructions. A breach of the Statement of Ethical Principles will be dealt with as a disciplinary matter in accordance with the CPS Disciplinary Policy which appears at **Appendix 11**.

95. The CPS National Standards of Advocacy set out the standards the CPS expects from prosecution advocates so that it serves the public and upholds justice. The standards act as an aide memoire to prosecution advocates. They require advocates to act fearlessly, transparently, in accordance with the Criminal Procedural Rules and to recognise their overriding objective to deal with cases justly and their duty to the Courts. The standards confirm the responsibility of Associate Prosecutors to act within the ILEX Code and other CPS policies and procedures. They specifically set out the role of Associate Prosecutors in planning and preparing cases, and undertaking advocacy both in writing and in the Courts.

Question

Q27 Do you have any comments on the standards of conduct that IPS expects Associate Prosecutors to observe? If so, please set them out.

DISCIPLINARY PROCEEDINGS

96. The Memorandum of Understanding agreed between ILEX and the CPS sets out the arrangements agreed between the two organisations for dealing with complaints made against Associate Prosecutors. The Memorandum recognises that complaints may be made about the conduct of Associate Prosecutors to the CPS or to IPS. It sets out the arrangements for the sharing of information between the two organisations, as appropriate, and about the complaints each body may receive.

97. Complaints made to the CPS will be dealt with in accordance with the CPS Disciplinary Policy. The CPS will be required to report the outcome of its investigation to IPS, where appropriate. IPS will then decide what action to take against an Associate Prosecutor.

98. Any complaint or referral made to IPS about the conduct of an Associate Prosecutor will be dealt with through the IPS disciplinary procedures. These procedures have been consulted by IPS previously.

99. A complaint made to IPS which results in the exclusion of an Associate Prosecutor from membership of ILEX will lead to the Associate Prosecutor losing their rights to conduct litigation or exercise rights of audience. The CPS will therefore be unable to deploy them in that role.

Questions

Q28 Do you have any comments on the arrangements by which IPS will investigate the conduct of Associate Prosecutors? If so, please set them out.

Q29 Do you agree that the CPS should be expected to refer any conduct matters to IPS as appropriate? If not, please state why.

CONSULTATION QUESTIONS

The questions are listed below. Please provide your responses on the attached response form providing reasons for your answers.

- Q1.** ILEX seeks rights to conduct litigation and rights of audience for Associate Prosecutor Members. Do you have any comments on the rights sought? If so, please set them out.
- Q2.** ILEX proposes that the rights will be awarded through two Certificates: Level 1 and Level 2. Do you have comments on the proposed split between the two Certificates? If so, please set them out.
- Q3.** Do you have any comments on the CPS selection process? If so, please set them out.
- Q4.** Do you have any comments on the proposed competencies for the Associate Prosecutor selection process? If so, please set them out.
- Q5.** Do you have any comments on the selection process for Associate Prosecutors at Level 1? If so, please set them out.
- Q6.** Do you have any comments on the pre-course work required to be completed by Associate Prosecutors? If so, please set them out.
- Q7.** Do you have any comments on the contents of the Foundation course? If so, please set them out.
- Q8.** Do you have comments on the contents of the Trial Preparation course? If so, please set them out.
- Q9.** Do you have any comments on the assessment criteria for the Trial Preparation course? If so, please set them out.
- Q10.** Do you have any comments on the course criteria for the Advocacy Skills course? If so, please set them out.
- Q11.** Do you have any comments on the assessment criteria for the Advocacy Skills course? If so, please set them out.
- Q12.** Do you have any comments on the course criteria for the Youth course? If so, please set them out.
- Q13.** Do you have any comments on the assessment criteria for the Youth Court? If so, please set them out.
- Q14.** Do you have any comments on the structure or content of the Level 1 qualification? If so, please set them out.

- Q15.** Do you have any comments on the observation grid for bail hearings? If so, please set them out.
- Q16.** Do you have any comments on the criteria for the Bail courses? If so, please set them out.
- Q17.** Do you have any comments on the assessment criteria for the Bail courses? If so, please set them out.
- Q18.** Do you have any comments on the selection process for Level 2 Associate Prosecutors? If so, please set them out.
- Q19.** Do you have any comments on the observation and mentoring arrangements for Level 2 Associate Prosecutors? If so, please set them out.
- Q20.** Do you have any comments on the course outcomes for the Level 2 Foundation course? If so, please set them out.
- Q21.** Do you have any comments on the course outcomes for the Advocacy Skills course? If so, please set them out.
- Q22.** Do you have any comments on the assessment criteria for the Advocacy Skills course? If so, please set them out.
- Q23.** Do you have any comments on the content or structure of the Level 2 qualification? If so, please set them out.
- Q24.** Do you have comments on the process by which IPS will accredit the CPS to deliver courses? If so, please set them out.
- Q25.** Do you have any comments on the oversight and monitoring role to be undertaken by IPS to ensure standards of course delivery and assessment are maintained? If so, please set them out.
- Q26.** Do you have any comments on the number of hours CPD Associate Prosecutors are required to undertake? If so, please set them out.
- Q27.** Do you have any comments on the standards of conduct that IPS expects Associate Prosecutors to observe? If so, please set them out.
- Q28.** Do you have any comments on the arrangements by which IPS will investigate the conduct of Associate Prosecutors? If so, please set them out.
- Q29.** Do you agree that the CPS should be expected to refer any conduct matters to IPS as appropriate? If not, please state why.

HOW TO RESPOND

A response form has been produced for completion. Please send the response form to IPS through one of the following methods:

- Email to bbasra@ilexstandards.org.uk
- By post to ILEX Professional Standards Ltd, Kempston Manor, Kempston, Bedford MK42 7AB
- By DX to ILEX Professional Standards Ltd, DX 124780 Kempston 2

SUBMISSION DEADLINE

The deadline for the submission of responses is 6 April 2010.

