

To come to effect on 31 January 2021

Standards for solicitor higher court advocates in criminal proceedings
Evidence Unit



No.	Assessment outcome: what candidates with higher rights will be able to do:	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
	<p>General note: These evidence standards cover criminal advocacy generically. They apply to all criminal proceedings but do not extend to specialist areas of law, for instance family courts. Advocates should ensure they are familiar with the particular rules of evidence, practice and procedure for the courts in which they practise.</p> <p>Advocates must be able to apply the rules of evidence to a set of facts, determine what evidence is relevant and understand its admissibility in the context of case and cost management.</p>		
1.	1. Apply the burden and standard of proof to the factual analysis of a dispute.	1 a. Apply the burden of proof in criminal proceedings including the incidence of the reverse burden. 1 b. Distinguish the evidential burdens from the legal burdens of proof. 1 c. Apply the standard of proof correctly in criminal proceedings.	<ul style="list-style-type: none">• The burden of proof.• The incidence of the reverse burden.• The evidential and legal burden.• The standard of proof.• Admissions of fact.• Presumptions of fact and adverse inferences.

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2.	Apply the rules of disclosure of documents in criminal proceedings.	2 a. Apply the rules governing disclosure. 2 b. Recognise and explain the different ways of claiming (and waiving) privilege. 2 c. Apply the rules governing inadvertent disclosure. 2 d. Apply the rules governing third party disclosure.	<ul style="list-style-type: none"> • CPR Part 8 and 15 and especially the provisions governing: <ul style="list-style-type: none"> ○ The procedure for disclosure ○ The continuing duty of disclosure ○ PII (Public Interest Immunity) ○ Specific disclosure. • Documents which are privileged and the grounds for claiming privilege. • Part 8 Compliance. • Waiver of privilege. • Third party disclosure. • The SRA Code of Conduct for Solicitors, RELs and RFLs and inadvertent disclosure. • Electronic disclosure and disclosure of management documents.
3.	Distinguish between the different categories of evidence in criminal proceedings.	3 a. Identify what evidence is and is not admissible and for what purpose. 3 b. Recognise hearsay evidence and explain how it can be adduced in criminal proceedings. 3 c. Demonstrate an understanding of how the court evaluates hearsay evidence. 3 d. Recognise bad character and explain how it can be adduced. 3 e. Demonstrate an understanding of expert evidence.	<ul style="list-style-type: none"> • The difference between witnesses of fact and expert witnesses. • CPR 20 hearsay evidence. • Bad character. • Expert. • In the Criminal Justice Act 2003 the provisions dealing with: <ul style="list-style-type: none"> ○ The definition of hearsay evidence. ○ Previous statements. ○ Hearsay notices. • Criminal Justice Act 2003, chapter 2, sections 114 to 126. • Criminal Justice Act 2003, chapter 1, sections 98 to 112. • Definition of expert evidence, CPR Part 19, compliance and Part 21, bad character.

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4.	Adduce admissible evidence from witnesses of fact.	4 a. Differentiate between factual and opinion evidence. 4 b. Prepare and evaluate the advocate's own witness statements. 4 c. Analyse and evaluate the opponent's witness statements.	<ul style="list-style-type: none"> • The competence and compellability of witnesses. • The use of witness summonses. • The formal requirements for the content and service of witness statements. • The rules governing evidence in chief, cross examination and re-examination and the role of each. • Special measures under the Youth Justice and Criminal Evidence Act 1999 Section 16 to 28.
5.	Adduce admissible expert evidence.	5 a. Apply the rules governing expert witnesses, the preparation of their evidence and their duty to the court. 5 b. Obtain and submit expert evidence in the proper form. 5 c. Analyse and evaluate the opponent's expert evidence.	<ul style="list-style-type: none"> • The role of expert evidence in criminal procedure. • CPR 19: the form and content of an expert report. • Joint experts and meetings of experts. • Opinion evidence given by witnesses of fact.
6.	Utilise other categories of evidence.	6 a. Make appropriate use of 'real' evidence and exhibits. 6 b. Adduce other forms of evidence. 6 c. Demonstrate an understanding and use of exclusionary discretions.	<ul style="list-style-type: none"> • The definition of 'real' evidence. • The relevance, importance and use of photographs, models, visual aids, and site visits. • Provisions dealing with public records, works of reference, business and public authority records. • Section 78 PACE 1984 exclusionary discretions. • Section 76 PACE Confessions. • Section 41 Youth Justice and criminal evidence act 1999 – cross examination of sexual history.

**Standards for solicitor higher court advocates in criminal proceedings
Advocacy Unit**

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
	<p>Introduction: Advocacy in the higher courts requires demanding standards of skill and knowledge. To meet those standards a solicitor must demonstrate that he is competent to undertake both trial and interim advocacy at a level commensurate with the reasonable expectations of the client, the judge and other court users.</p>	<p>Introduction: As with any examination or assessment, it is not anticipated that every candidate will be tested on every criterion. A flexible assessment will test a representative selection of knowledge and skills.</p> <p>However, a candidate will fail the assessment if he commits an egregious error meaning an error which, had it been replicated in practice would have justified disciplinary or regulatory proceedings or a wasted costs order or would inevitably have caused serious and irreparable harm to their client's case.</p> <p>By way of example only, a candidate may commit an egregious error if he attempts to mislead the court by inventing helpful, or suppressing unhelpful, evidence, if he significantly misrepresents the law, if their advocacy, taken as a whole, demonstrably harms their client's case or if he is grossly discourteous to the court or a witness.</p>	<p>Introduction: The syllabus will, as a matter of course, be adapted to include any significant future changes in the law, procedure or practice.</p>

Knowledge: to be assessed primarily in a written assessment

Successful candidates will be able to:

The successful candidate can:

The syllabus will include:

1. Advise on plea.

1 a. Advise client on pleading guilty or not guilty.

1 b. Demonstrate an awareness of out of court disposal.

- Credit for guilty plea.
 - Understanding of attorney general guidelines regarding guilty pleas.
 - Basis of plea/Newton hearings.
 - Alternative counts on Indictment.
 - Indication of sentence.
 - Caution, bindover.
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2. Advise on essential preliminaries for trial in the higher courts.

2 a. Demonstrate knowledge and importance of preparation for trial and case management.

2 b. Advise on and comply with PTPH directions.

2 c. Demonstrate an understanding of preliminary issues.

- PTPH form completion.
 - Formulation of appropriate directions.
 - Sanctions for non-compliance.
 - Compliance with PTPH directions and practice directions.
 - Joinder/severance.
 - Abuse of process/dismissal.
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3. Advise on and conduct the interim and preparatory stages of criminal litigation in the higher courts.

3 a. Demonstrate a good working knowledge of the Criminal Procedure Rules generally and a detailed knowledge of the Rules and Practice Directions as specified in the syllabus.

- The Criminal Procedure Rules and Practice Directions and specifically those dealing with:

- Time limits and service of documents.
- Disclosure and privilege.
- Preparation for trial and trial procedures.

- Part 15, criminal procedure rules.
- Part 6, reporting restrictions.
- Part 9, Allocation and sending.
- Part 17, witness summonses.
- Part 14, Bail and custody time limits.
- Part 18, special measures.

3 b. Revise, correct and improve a defective or incomplete draft of a defence statement, indictment, hearsay/bad character notice: alternatively draft the entire document.

- The function and importance of a defence statement, indictment, hearsay/bad character notice.

- The form and content of a witness statement.

- The use of precedents and conventional wording.

- Amending indictments.

3 c. Understand an advocate's responsibilities with regard to a defective indictment and rules of amendment.

3 d. Demonstrate an understanding of how to prepare for and/or conduct an effective PTPH process.

- The rules governing PTPHs, including telephone hearings and video hearings.

- Case summaries.

- Time limits.

- Sanctions, and the consequences of non-compliance, including orders for costs.

3 e. Advise on case management directions and the sanctions and costs consequences of non-compliance.

Skills: to be assessed primarily in a practical assessment

Successful candidates will be able to:

The successful candidate can:

The syllabus will include:

4. Conduct an effective examination in chief (and re-examination) in the higher courts.

- 4 a. Conduct an effective examination in chief in compliance with the rules.
- 4 b. Demonstrate an understanding of the practice in relation to the examination of a hostile witness.
- 4 c. Demonstrate an understanding of the practice in relation to the examination of expert witnesses.
- 4 d. Understand when re-examination is required.

- The rules governing examination in chief.
- Relevance and objectives.
- Young or vulnerable witnesses.
- Hostile witnesses.
- Opinion evidence and expert witnesses
- Re-examination – rules of/ protecting your witness.

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| <p>5. Arrive at a logical theory of the case by the most plausible explanation, consistent with the evidence, as to why their client(s) should succeed.</p> | <p>5 a. Identify and analyse disputed and undisputed facts and, as to disputed facts, how the evidence stands and what further evidence might be obtained.</p> <p>5 b. Identify and analyse 'good' (favourable) and 'bad' (unfavourable) facts. (<i>alternatively</i>, strengths and weaknesses).</p> <p>5 c. Analyse and advise on any relevant issues of law.</p> <p>5 d. Identify any admissibility arguments or submissions to be made or resisted and advise on tactical considerations.</p> <p>5 e. Explain how, in the light of those analyses, the court might best be persuaded to give a favourable verdict.</p> <p>5 f. Identify lines of investigation and preparation to be "trial ready".</p> | <ul style="list-style-type: none"> • The definition of a case theory. • Its importance in preparing for trial. • The drafting of a trial strategy plan, articulating the case theory and: <ul style="list-style-type: none"> ○ Identifying the issues of fact and law. ○ Identifying gaps and weaknesses in the evidence. ○ Addressing the opponent's evidence to identify supportive facts and challenges to be made. ○ Good fact / bad fact analysis. (<i>alternatively</i>, strengths and weaknesses). ○ Finding an 'angle' on the case. (<i>alternatively</i>, a plausible theory to persuade a jury). |
| <p>6. Write a persuasive skeleton argument and use it to support a legal submission in the higher courts.</p> | <p>6 a. Write a concise, accurate and persuasive skeleton argument.</p> <p>6 b. Support a persuasive skeleton argument with accurate and up-to-date legal research.</p> <p>6 c. Comply with the Criminal Procedure Rules and the relevant Practice Directions and Practice Notes when producing a skeleton argument.</p> <p>6 d. Explain, within the skeleton argument, the issues and what findings and/or order(s) the court is asked to make.</p> <p>6 e. Use the skeleton argument effectively in the course of a legal submission.</p> <p>6 f. Maintain professional standards throughout.</p> | <ul style="list-style-type: none"> • The role and importance of written advocacy. • The conventional form of a skeleton argument. • The content of a skeleton argument (eg heading, declare the application, jurisdiction/power, relevant law, identifying the legal text). • Introductions. • Chronologies. • Cross-references to the evidence. • Citation of authorities and legislation. • Level of detail of the argument in support • Conclusions. • Using a written skeleton to support an oral submission. |
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7. Make an effective legal submission in the higher courts.

- 7 a. Manage preliminary matters ('housekeeping').
- 7 b. Outline the background of the case.
- 7 c. Set out and expand upon the issue(s) for the court's decision and the order(s) sought.
- 7 d. Persuasively apply the evidence to the law.
- 7 e. Address unfavourable and missing evidence.
- 7 f. Cite relevant and helpful authority and address unhelpful authority.
- 7 g. Manage time effectively complying with any time limits imposed by the court.
- 7 h. Assist the court generally and respond appropriately to judicial intervention.
- 7 i. Maintain professional standards throughout.

- The conventional format of a legal submission.
- The correct use of evidence.
- The research and citation of authority whether binding or persuasive.
- Proportionate use of authorities in submissions.
- The significance of time limits.
- The overriding objective and the powers of the court.

8. Prepare and deliver effective opening and closing speeches in the higher courts.

8 a. Prepare and deliver an effective opening speech.

- The purpose of an opening speech and how it differs from a legal submission and a closing speech.
- Requirements of a defence opening speech and the implications of a defence 'opening statement'.
- How to challenge the content of a prosecution opening speech.

8 b. Prepare and deliver an effective and persuasive closing speech.

8 c. Maintain professional standards throughout.

- The purpose of a closing speech: how it differs from a legal submission and an opening speech, commenting on the evidence.
- The structure of a persuasive speech.
- The importance of an accurate note.
- Reviewing and evaluating the evidence on both sides, and how it was given.
- Using the evidence and the law to persuade the court.
- Inviting specific findings of fact and specific conclusions on disputed points of law.
- Use of the jury bundle.
- Whether and when to pre-empt the Judge.

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| 9. Conduct a cross examination in which skilful questioning effectively advances the client's case in the higher courts. | 9 a. Conduct an effective cross examination in compliance with the rules.
9 b. Select appropriate topics and adopt a logical structure.
9 c. Lay the foundation for the questions in sufficient detail.
9 d. Elicit useful information.
9 e. Introduce and use exhibits correctly.
9 f. Put the client's case, directly challenging adverse evidence.
9 g. Undermine the opponent's case, when appropriate by impeaching or attacking the credibility of the witness. | • The rules governing cross examination.
• The requirement to put the client's case.
• Other essential challenges.
• Previous inconsistent statements.
• Questions going only to credit.
• Opinion evidence and expert witnesses. |
| | 9 h. Control the evidence by using short, closed and leading questions, one at a time, in clear, precise and professional English.
9 i. Listen to answers and formulate and/or adapt questions appropriately.
9 j. Focus on essentials, using patience and persistence when necessary.
9 k. Control the direction and pace of the examination, without quarrelling with the witness.
9 l. Maintain professional standards throughout. | • The techniques of cross examination.
• The use and importance of leading questions.
• Brevity, style and pace.
• Thinking on your feet.
• Listening and responding appropriately to a change in direction.
• Avoiding discussion and digression.
• Dealing with quarrelsome, prolix, un-cooperative, young or vulnerable witnesses. |
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10. Use presentational skills in the higher courts both when addressing the court and examining a witness.
- 10 a. Adopt a persuasive and professional manner dressing appropriately and speaking clearly and audibly at an appropriate pace and with appropriate emphasis.
 - 10 b. Use correct, plain and professional English.
 - 10 c. Avoid distracting language or behaviour.
 - 10 d. Maintaining suitable posture and body language.
 - 10 e. Convey authority by displaying a command of the documents and evidence.
 - 10 f. Always be accurate.
 - 10 g. Deal appropriately with judicial intervention.
- Presentational skills.
 - The importance of preparation.
 - Precision and brevity.
 - The management of documents.
 - The techniques of persuasion.
 - Engaging the court.
 - Stress management.
 - Addressing the court.
 - Court dress.
 - Etiquette.
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**Standards for solicitor higher court advocates in criminal proceedings
Ethics and Professional Conduct Unit**

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
<p>General note: The standards of professional conduct and ethical behaviour set out below are applicable to all solicitor advocates at whatever level but will be specifically assessed for the Higher Rights qualification.</p>			<p>Introduction: The syllabus will, as a matter of course, be adapted to include any significant changes in the law, procedure or practice.</p>
<p>1. Comply with the professional duties and responsibilities of a solicitor advocate.</p>	<p>1 a. Comply with the statutory and other rules of professional conduct. 1 b. Comply with the Criminal Procedure Rules applicable to professional conduct. 1 c. Comply with the SRA Code of Conduct for Solicitors, RELs and RFLs.</p>	<ul style="list-style-type: none"> • The Criminal Procedure Rules and especially: <ul style="list-style-type: none"> ○ Part 1. The overriding objective. ○ Part 3. The court's case management powers. ○ Part 22. Statements of truth. ○ Part 15. Disclosure. ○ Part 16. Witness statements. ○ Part 19. Expert evidence. • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: <ul style="list-style-type: none"> ○ The Principles ○ Chapter 1 Client care. ○ Chapter 2 Equality and Diversity. ○ Chapter 3 Conflicts of interest. ○ Chapter 4 Confidentiality and disclosure. ○ Chapter 5 Your client and the court. 	

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| 2. Comply with the duties of a solicitor advocate towards the court. | 2 a. Act in accordance with the advocate's overriding duty to the court.
2 b. Act with honesty and integrity in the presentation of a case before the court.

2 c. Assist the court in the effective case management and application of the overriding objective. | <ul style="list-style-type: none">• CPR Part 3.1 to 3.27.• The SRA Code of Conduct for Solicitors, RELs and RFLs and especially:<ul style="list-style-type: none">○ Your client and the court.• Dealing with wasted costs orders.• Never construct facts to support the client's case.• Never knowingly, recklessly, directly or indirectly mislead the court.• Correct any errors at the first opportunity (For example, if your <i>client</i> tells you that they have previous <i>convictions</i> of which the prosecution is not aware, you may not disclose this without their consent. However, in a case where mandatory sentences apply, the non-disclosure of the previous <i>convictions</i> will result in the <i>court</i> failing to pass the sentence that is required by law. In that situation, you must advise your <i>client</i> that if consent is refused to your revealing the information you will have to cease to act. In situations where mandatory sentences do not apply, and your <i>client</i> does not agree to disclose the previous <i>convictions</i>, you can continue to represent your <i>client</i> but in doing so must not say anything that misleads the <i>court</i>. This will constrain what you can say in mitigation. For example, you could not advance a positive case of previous good character knowing that there are undisclosed prior <i>convictions</i>. Moreover, if the <i>court</i> asks you a direct question you must not give an untruthful answer and therefore you would have to withdraw if, on your being asked such a question, your <i>client</i> still refuses to allow you to answer the question truthfully. You should explain this to your <i>client</i>.) |
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3.	Comply with the duties of a solicitor advocate towards the client.	<p>3 a. Assert the advocate's independence in fearlessly advancing the client's case.</p> <p>3 b. Keep the client's information and documents confidential, except when disclosure is permitted or required.</p> <p>3 c. Maintain any legitimate claim to confidentiality or legal professional privilege.</p> <p>3 d. Disclose all material information to the client except where, in very rare circumstances, disclosure is forbidden.</p> <p>3 e. Assert the advocate's duty as owed expressly to the client and not to any intermediary or third-party funder.</p>	<ul style="list-style-type: none"> • Inform the court of all relevant legislation and case law of which the advocate is aware, whether or not adverse to the advocate's case. • Avoid taking any legal point which the advocate does not consider to be properly arguable. <p>The SRA Code of Conduct for Solicitors, RELs and RFLs and especially:</p> <ul style="list-style-type: none"> ○ Client care. ○ Equality and diversity. ○ Conflicts of interest. ○ Confidentiality and disclosure, eg money laundering tipping off and where disclosure may endanger the life of a third party.

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4.	Act with honesty and integrity in the preparation and presentation of evidence.	4 a. Avoid attempting to influence a witness after taking a statement from them as to the contents of that statement. 4 b. Avoid seeking to persuade a witness to change their evidence. 4 c. Avoid encouraging a witness to give misleading or untruthful evidence. 4 d. Avoid rehearsing or coaching a witness in respect of their evidence. 4 e. Avoid attempting to suppress or conceal unhelpful evidence.	<ul style="list-style-type: none"> • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: <ul style="list-style-type: none"> ○ Chapter 4 and 5: Your client and the court. • Expert witness. • Lay witness.
5.	Exercise professional discipline in advancing the client’s case and questioning witnesses.	5 a. Avoid alleging fraud (unless pleaded and instructed to do so and given material which the advocate reasonably believes to show, on the face of it, a case of fraud). 5 b. Avoid making statements or asking questions merely to insult, humiliate or annoy a witness or any other person. 5 c. Avoid making any serious allegation against a witness whom the advocate is able to cross examine without putting the allegation to the witness. 5 d. Avoid alleging any crime, fraud or misconduct (unless the allegation goes to a matter in issue material to the advocate’s case and appears to be supported by reasonable grounds). 5 e. Avoid putting questions, making statements or advancing arguments which are misleading or vexatious.	<ul style="list-style-type: none"> • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: <ul style="list-style-type: none"> ○ Chapter 5: Your client and the court.

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6.	Advise on and where possible reconcile the advocate's concurrent duties to the client, the rule of law and the administration of justice.	<p>6 a. Identify any actual or potential conflict of interest.</p> <p>6 b. Recognise when conflict requires the advocate to withhold information from the client or disclose confidential information.</p> <p>6 c. Recognise when any such conflict requires the advocate to decline instructions or withdraw from the case.</p>	<ul style="list-style-type: none"> • The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: <ul style="list-style-type: none"> ○ Conflicts of interest. ○ Confidentiality and disclosure. • Representing at trial a client who confidentially admits guilt and the considerations that arise.