

Rights of Audience in the Higher Courts

Guidance on the role of mentor and the development of the portfolio

Education and Training Unit
Version 1

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Outline

1. The obligation to produce a portfolio recounting a selection of advocacy experiences over the course of a year goes hand in hand with the requirement that applicants should have the assistance of an advocacy mentor during the same period.
2. The provisions are designed to help applicants to put in place a sound discipline of preparation and reflection, in order to produce clear, focused and effective advocacy from the start of their higher court advocacy careers.

Advocacy experience period

3. The advocacy experience period will run for not less than 12 months before the proposed date of gaining higher court rights. The period may include up to six months during the currency of a training contract and must include at least six months post admission. The advocacy experience period will start with an initial meeting between the applicant and the mentor.
4. During the advocacy experience period the applicant will be expected to use the support, guidance and experience of the advocacy mentor to develop his/her capacity to deliver advocacy at an appropriately high level from the outset of gaining higher court rights.
5. Mentors and applicants must ensure that a suitable context of supportive discussion is maintained throughout the advocacy experience period with sufficient meetings, whether in person or by telephone, to meet that objective.
6. The advocacy experience period will end with a final meeting, at which the mentor will review the applicant's completed portfolio, will certify whether the advocacy experience period appears to have been conscientiously and satisfactorily completed, and whether the portfolio accurately and properly reflects work done during the course of the advocacy experience period.
7. Where, exceptionally, the applicant and mentor are unable to meet in person on any of the occasions envisaged in paragraphs 3, 5 or 6 above, the certificate of satisfactory completion must be endorsed with that fact, and a statement should be attached setting out the additional measures that were devised to ensure that the objective in paragraph 5 above was fulfilled.

Mentor

8. The mentor's role is to assist the development of the applicant's advocacy skills by:
 - establishing and maintaining a supportive relationship from the outset;
 - discussing specific cases both prospectively and reflectively;

- helping applicants to draw lessons from advocacy performances.
9. Ideally the mentor will be a solicitor with a higher courts qualification with five years post qualification experience, currently practising as an advocate and who is experienced in the appropriate proceedings. If no such person is available the mentor must be either a solicitor or barrister admitted/called for at least five years, practising as an advocate and who is experienced in the appropriate proceedings. The mentor may be the applicant's supervising principal but need not be. Indeed, the mentor may be wholly independent of the applicant's firm so long as appropriate and regular contact is maintained. The Law Society has discussed with the Solicitors Association of Higher Court Advocates (SAHCA) the problem that applicants may have difficulty in finding someone suitably qualified and SAHCA has set in place arrangements to assist any applicant to find an appropriately qualified mentor.
 10. The mentor must be prepared to devote at least five hours during the advocacy experience period to discussions with the applicant. The mentor will be expected to devote reasonable additional time if necessary to consider written material including the portfolio.
 11. The relationship between applicant and mentor is not intended to be limited by the requirements of the portfolio. Although the specific appearances detailed in the portfolio will be normally be discussed both prospectively and reflectively, the mentor may be expected to make him/herself available to discuss other advocacy and skills development issues with the applicant.
 12. A mentor must be in place throughout the advocacy experience period. Where it becomes necessary for the mentor to be replaced by another, perhaps due to illness or relocation, the replacement mentor must satisfy him/herself on the basis of his/her own experience of the applicant that the declaration in paragraph 6 above can properly be made on completion of the portfolio.

Portfolio

13. The purpose of the portfolio is to:
 - ensure applicants consider and reflect upon their advocacy performances
 - provide an opportunity for mentors to review applicants' performance and identify any deficiencies.
14. The applicant will select no fewer than five separate occasions, in relation to three or more separate cases, when he/she has acted as an advocate, or observed advocacy, and will write up key aspects of the cases as chapters of a complete portfolio. The balance of the portfolio will reflect the advocacy opportunities available to the applicant, but must include at least one occasion on which the applicant acted as advocate, and at least one occasion on which advocacy was observed.
15. It would be appropriate to include as 'observed advocacy' a case in which the applicant and advocate considered the advocacy issues together in advance, in which the applicant was present throughout the advocacy element, and where

he/she was subsequently able to discuss the outcome with the advocate as well as the mentor.

16. The first chapter of the portfolio is expected to be completed within the first two months of the advocacy experience period, and the remaining chapters are expected to be spread over the remaining months of the period.
17. In compiling each chapter, the applicant should:
 - briefly outline the nature of the case/application and/or issues
 - identify an issue which the case/application described above provided for the advocate
 - identify how the advocate dealt with the issue
 - reflect on the way in which the advocate dealt with the issue and what s/he would do differently next time.
18. The applicant should be prepared to discuss the above issues with the mentor and to identify development needs and opportunities which may flow from the advocacy experience. The applicant should include in the portfolio a note of the dates on which such discussions occurred, whether they were conducted in person or by telephone, the outline of the discussions and conclusions which were drawn.
19. The mentor will be expected to write an assessment of the applicant's advocacy experience and the lessons drawn. The mentor will sign a certificate confirming whether the portfolio has been completed satisfactorily in accordance with the criteria set out in paragraph 6 above. The mentor's assessment and signed certificate of satisfactory completion of the advocacy experience should be submitted to the Solicitors Regulation Authority (SRA) at the same time as the applicant applies for higher rights.
20. The SRA reserves the right to call for the submission of the complete portfolio at any time within two years of the submission of a certificate of satisfactory completion of the advocacy experience period.

General guidance on the presentation of the portfolio

21. When constructing the portfolio, it may be useful to use the suggested front page and chapter pro formas prepared by the SRA which are available on the SRA's website but may also be emailed on request.
22. Applicants should **ensure** that their mentor signs off their portfolio using the SRA's certificate of completion which is available on the SRA's website but may also be emailed on request.
23. Preferably, the portfolio should be typed, presented in a single-sided format and securely bound. It is suggested that the issues arising from each of the five

instances of advocacy should be dealt with on no more than one or two sides of A4 paper. The expectation is that the complete portfolio would be a maximum of 10 sides of typed A4.

24. If asked to present the portfolio for inspection, **two copies** of the portfolio should be sent to the SRA within one week of the request being received by the applicant.

Procedure for the consideration of applications via the development route

25. Applications via the development route must be submitted with the following:
- (i) the development route application form
 - (ii) a certificate from a course provider confirming completion of the ethics, procedure and evidence stage
 - (iii) a certificate from a course provider confirming completion of the advocacy stage
 - (iv) a certificate confirming satisfactory completion of the portfolio which is signed by the mentor
 - (v) a mentor's assessment setting out the applicant's advocacy experience gained and the lessons drawn during the portfolio period
 - (vi) the application fee.
26. The portfolio should not be submitted with the application. On receipt of the application, the SRA will decide whether or not to call the portfolio for inspection. The SRA operates a quality assurance programme which includes selecting portfolios randomly. There is every chance therefore that a portfolio will be called for simply as a result of this random procedure.
27. Where the SRA decides to call for the portfolio, the SRA's officers will consider whether or not the portfolio is satisfactory.
28. Where a portfolio is considered unsatisfactory by the SRA's officers, the application and portfolio will be referred to the Higher Courts Qualification Casework Committee for consideration. The applicant will be advised that their application will be submitted to the Committee in order that they may make representations in support of their application.
29. The Higher Courts Qualification Casework Committee will make the final determination on the outcome of the application and the applicant will be advised accordingly. The Committee may reach any decision it wishes with regard to the application, but by way of example only, it is likely that the Committee will decide to either:
- (i) accept the portfolio and approve the application under the development route
 - (ii) defer the application and ask that the portfolio be re-submitted within a specified time period reflecting the observations of the SRA's officers and the Committee
 - (iii) defer the application for clarification or further information where there is an issue other than that relating to the portfolio
 - (iv) refuse the application.

30. There is a right of appeal. See Section 8 of the 'Guidance notes for solicitors who wish to apply for Rights of Audience in the Higher Courts' for details on making an appeal.
31. The Law Society has delegated powers to specified SRA officers to approve applications under the development route. However, if for any reason it is inappropriate or outside the terms of the delegated powers for an application to be approved by an SRA officer, the application will be referred to the Higher Courts Qualification Casework Committee.
32. Circumstances where an application might be referred to the Committee might include, for example, where the applicant is subject to an investigation conducted by the Legal Complaints Service or perhaps holds a conditional practising certificate. This is not meant to be an exhaustive list of reasons for referral.
33. As part of the quality assurance programme, an application and portfolio may be referred to the Committee for inspection purely as a matter of course.
34. Where an application cannot be dealt with using powers delegated to SRA officers, and is referred to the Higher Courts Qualification Casework Committee for consideration, the applicant will be advised that their application will be submitted to the Committee in order that they may make representations in support of their application if necessary.
35. The outcome of any consideration by the Committee will be communicated in writing.