

Statement of standards for solicitor higher court advocates

Introduction

The primary purpose of these standards is to set out what is expected of a competent solicitor higher court advocate both before and during trial, in terms of case analysis, organisation, preparation and presentation.

The standards identify the generic skills and knowledge for all solicitor higher court advocates. Standards specific to civil and criminal proceedings are also set out in Parts 4 and 5 respectively.

Appendix 1 sets out the framework against which the competence and performance of a solicitor higher court advocate can be objectively assessed.

In satisfying the standards advocates need to comply with the relevant legislation and procedures in force at the time.

Part 1 – Evidence

The evidence standards cover civil and criminal advocacy, as the main principles of evidence are generic to both, even though the evidential consequences of admissibility may differ in civil and criminal courts.

There has been no attempt to cover other more specialist types of advocacy, such as family court work, which may have distinctions not referred to in the evidence standards. Advocates engaged in specialist areas of advocacy should ensure that they are familiar with any distinctions or specific requirements as regards evidence.

The evidence standards apply as much to Magistrates' and County Court work as to Crown and High Court work. The generic format reflects the fact that the distinctions between the County and High Court have largely disappeared since the implementation of the Civil Procedure Rules (CPR), though there are some remaining differences in the Magistrates' and Crown Courts as far as the law of evidence is concerned, due in the main to the existence of juries.

Advocates must have a sound knowledge of the applicable rules and law of evidence, as evidential points may arise during a hearing unexpectedly without time for research.

Standards for evidence

Advocates must be able to apply the rules of evidence: determine when evidence is relevant and therefore potentially admissible and be able to demonstrate their understanding of

1. burden and standards of proof and the differing roles of judge and jury,
2. disclosure, including issues relating to confidentiality, privilege and public interest immunity,
3. hearsay evidence including being able to identify hearsay evidence, recognise when it may be admissible, how it may be admitted and its evidential value when adduced,
4. documentary hearsay including laying the evidence for documentary hearsay, any formal requirements and time limits,

5. similar fact and character evidence including being able to recognise when similar fact and character evidence is appropriate as evidence,
6. opinion and expert evidence including when and to what extent opinion and expert evidence is admissible,
7. improperly obtained evidence including being aware of how evidence has been obtained, the evidential constraints and effects of adducing improperly obtained evidence.

Part 2 – Ethics

Ethics Advocates must be familiar with and understand the SRA Principles 2019 [solicitors/standards-regulations/principles] and the Code of Conduct for Solicitors, RELs and RFLs [solicitors/standards-regulations/code-conduct-solicitors] 2019, in particular 2.1-2.7 (Dispute resolution and proceedings before courts, tribunals and inquiries) and 3.1-3.6 (Service and competence).

Standards for ethics

Advocates must be able to

1. advise the client on suitable representation at court including the possibility of instructing a barrister or a solicitor higher court advocate not from his/her own firm or practice,
2. resolve issues arising from unintentional or inadvertent disclosure of confidential or privileged information,
3. resolve potential and actual conflicts including conflicts arising between the advocate's duty owed to the client and the advocate's duty to the Court,
4. advise on potential conflicts between acting as an advocate for a client and becoming a potential witness for that client,
5. recognise when an advocate may become professionally embarrassed and have to withdraw from a case,
6. advise the client of the advocate's need to maintain professional independence and the associated need to draw any unfavourable law of which the advocate is aware to the attention of the court,
7. comply with courtroom etiquette.

Part 3 – Advocacy

A solicitor higher court advocate must be competent in each of the skills areas set out below before they consider starting trial work in the higher courts.

In particular, solicitor higher court advocates must demonstrate appropriate techniques for handling witnesses as well as sound skills in legal and factual submissions in a contested, adversarial context.

Advocates must be able to analyse and understand the case, assimilate the facts and apply relevant statute and case law in order to react to unexpected events in court, and should be able to demonstrate that they have a thorough knowledge of evidence.

The principles outlined in these standards are the same as would be expected in 'lower' court advocacy, but advocates should be aware that evidential and legal submissions may be more

detailed in the higher courts, and that a higher standard of presentation is required. This is particularly true for criminal advocacy, where there is always a professional judge to hear such submissions in the Crown Court, whereas this may not be the case in the Magistrates' Court.

Standards for evidential and legal submissions/interim applications

1. The advocate must be able to

- (a) prepare coherent skeleton arguments and necessary supporting documents and supply the court with copies of the relevant law,
- (b) present legal argument to the court accurately citing only relevant and material law where necessary,
- (c) respond to interventions by the court and develop legal argument,
- (d) respond to the opponent's legal arguments and develop appropriate legal argument in the light of these.

2. When making an application the advocate must be prepared to present the case in detail as required by the court and be able to respond to any application as well as interventions by the court.

Standards for trial advocacy

- 1. The advocate must
 - (a) understand the importance of and be able to draft and present clear trial strategies and plans,.
 - (b) using the trial strategy and plan, be able to outline the facts and evidence, in terminology and detail as appropriate to the type of case,
 - (c) be able to present an effective and coherent opening speech,
 - (d) be able to conduct an examination in chief, if required, by:
 - asking relevant non-leading questions which promote the client's case,
 - identify and place before the court relevant documentation produced by the witness after establishing the necessary evidential foundation;
 - (e) in cross examination:
 - know on what matters in dispute a witness can be cross examined,
 - be able to control the direction and pace of the evidence,
 - appropriately challenge the witness' evidence in accordance with the client's instructions,
 - ensure that all relevant disputed matters are put to the witness,
 - identify and appropriately cross-examine on any previous inconsistent statements;
 - (f) be able to identify situations when re-examination is required to put the client's case and to repair damage done to the witness in cross examination or to clarify or amplify matters raised in cross-examination.
- 2. **Handling special witnesses**
 - (a) The advocate must be able to

- identify and use effectively expert evidence,
 - challenge expert evidence,
 - where necessary confirm or question the expert's qualifications and expertise.
- (b) The advocate must be able to
 - identify vulnerable witnesses,
 - use appropriate techniques when questioning vulnerable witnesses,
 - comply with judicial directions regarding vulnerable witnesses.
- **3. Closing speeches**
 - During the closing speech the advocate must
 - identify and appropriately present
 - the key issues in the client's case
 - the positive and negative evidence elicited from witnesses;
 - anticipate and appropriately address arguments likely to be advanced by the opposing advocate,
 - effectively deal with interventions by the court and respond appropriately to them.

Part 4 – Civil advocacy

Introduction

These standards identify those activities, procedures and practices specific to advocacy in civil proceedings before the High Court and above.

Advocates must

- be aware that much civil advocacy depends on the quality of written documentation put before the court in addition to the quality of the oral advocacy at trial,
- comply with the Civil Procedure Rules throughout the trial process,
- recognise the costs implications faced at all stages of preparation and during the trial,
- apply pre-action protocols where relevant,
- appropriately advise the client on alternative dispute resolution remedies.

Trial preparation

The advocate may not have drafted the Statement of Case and other trial documents but must have the ability to do so and must be able to identify deficiencies in the drafting of such documents.

Preparation for trial must be thorough, and reflect the senior jurisdiction of the High Court, to ensure this advocates must

- be able to prepare a coherent and effective trial strategy and/or produce a trial plan based on
 - Statements of Case,
 - Witness Statements,
 - Other disclosed documents put before the court;
- exercise sound judgement in the making of appropriate interim applications,
- understand the effect of interim orders,
- identify any costs implications resulting from interim orders,
- draft coherent skeleton arguments to assist the court.

Trial Bundle

Advocates must understand the implications and requirements of current Practice Directions as to what needs to be included in the trial bundle and should be able to ensure that the bundle complies with court requirements.

Alternative Dispute Resolution

Advocates must understand the importance of alternative dispute resolution and when it is appropriate and advise their client appropriately.

Part 5 – Criminal advocacy

Introduction

These standards identify those activities, procedures and practices specific to advocacy in criminal proceedings before the Crown Court and above. In contrast to civil advocacy, criminal advocacy is primarily dependent upon oral advocacy, rather than written documentation. Notwithstanding this, advocates must

- understand and comply with the Criminal Procedure Rules throughout the trial process,
- understand and be able to advise on the differing practices styles and policies of other prosecuting authorities,
- ensure that documents which may be put before the judge and jury are in the appropriate format, accurate and material to the case,
- ensure that copies of any law to be argued are prepared for the benefit of the judge and the opposing advocate,
- demonstrate understanding of the potential admissibility of confessions and previous inconsistent statements including the exercise of the courts discretion.

Trial preparation

Preparation for trial must be thorough and reflect the increased seriousness and complexity of cases heard in the Crown Court. To ensure this advocates must

- be able to prepare a coherent and effective trial strategy and/or produce a trial plan based on
 - an understanding of the rules relating to indictments,
 - an understanding of the rules relating to disclosure,

- an understanding of the issues that may arise at and/or from a Plea and Directions Hearings (PDH);
- be able to deal promptly and effectively with issues that may arise at and/or from the PDH.

Trial procedure

Advocates must understand

- the procedure for empanelment of the jury,
- the order of speeches and witnesses,
- when legal submissions should be made to the judge in the absence of the jury,
- matters which the judge should cover in summing up,
- how they can assist the judge with any specific points to be addressed in the summing up,
- actions and attributes that may adversely affect the client's case in the eyes of a jury.

Sentencing

Advocates must understand the issues involved in dealing with sentencing including

- matters relating to advice on a plea of guilty,
- sentencing guidelines and case law, the judge's sentencing powers and the range of sentencing tariffs,
- the obligation of advocates, whether for the prosecution or the defence, to draw the trial judges attention to limitation on his/her sentencing powers.

Part 6 – Equality and Diversity Pervasive Standards

Advocates must have an understanding and awareness of equality and diversity issues, must act as role models for others in handling issues of diversity and difference, and confront discrimination and prejudice when observed in others.

Performance indicators

Statement of standards for solicitor higher courts advocates – performance indicators

Introduction

This document supplements the Statement of standards for solicitor higher courts advocates by setting out key performance indicators for solicitor higher courts advocates.

The performance indicators are designed to inform the users of advocacy services provided by a solicitor of the standard of performance that can reasonably be expected of a solicitor higher courts advocate.

The performance indicators also form the basis for assessments for accreditation under the SRA 's Solicitor Higher Courts Advocate Accreditation Scheme. Such assessment will be provided by independent organisations specifically approved for the purpose.

Performance indicators	Standards
Part 1 – Evidence	<p>Accurately identifies key legal, factual and evidential issues</p> <p>Understands opponent's case and assimilates opponent's evidence</p> <p>Provides appropriate disclosure of evidence</p> <p>Responds appropriately to new evidence</p> <p>Makes appropriate objections and/or submissions</p> <p>Throughout the trial obtains instructions when appropriate</p>
Part 2 – Ethics	<p>Advises client in autonomous decision making</p> <p>Observes duties to the court and duty to act with independence</p> <p>Advises the court of adverse authorities and, where they arise, procedural irregularities</p> <p>Assists the court with the proper administration of justice</p> <p>Observes professional etiquette in court</p>
Part 3 – Advocacy	<p>Has a clear strategy for the case supported by questions asked and evidence called</p> <p>Observes restrictions and judicial rulings on questioning</p> <p>Questioning strategy is clear and asks questions only relevant to issues</p> <p>Demonstrates appropriate techniques for witness handling skills</p> <p>Uses and challenges expert evidence effectively</p> <p>Questions to witnesses are clear and understandable</p> <p>Deals appropriately with vulnerable witnesses</p> <p>Deals effectively with uncooperative witnesses</p> <p>Avoids introducing irrelevant matters in cross-examination</p> <p>Ensures that copies of any law to be argued are prepared for the benefit of the judge and opposing advocate</p> <p>Locates materials and evidence quickly</p> <p>Develops arguments in a logical order</p> <p>Makes appropriate objections and/or submissions</p> <p>Responds appropriately to interventions by the court</p>
Part 4 – Civil Advocacy	<p>Complies with the Civil Procedure Rules throughout the trial process</p> <p>Follows pre-action protocols where relevant</p> <p>Drafts clear skeleton arguments</p> <p>Questioning strategy is clear and asks questions only relevant to issues</p>

Performance indicators	<p>Deals promptly and effectively with issues arising from case management directions</p>
	<p>Makes only appropriate interim applications</p> <p>Understands the effect of and costs implications arising from interim orders</p> <p>Has a coherent and effective trial strategy based on statements of case, witness statements and other disclosed documents</p> <p>Ensures that the trial bundle complies with the court's requirements</p> <p>Understands the procedural steps involved in obtaining leave to appeal</p>
Part 5 – Criminal Advocacy	<p>Complies with the Criminal Procedure Rules throughout the trial process</p> <p>Understands the rules relating to indictments</p> <p>Gives clear advice to help a defendant to decide how to plead</p> <p>Deals promptly and effectively with issues arising from a plea and case management hearing</p> <p>Understands the advocates role in the empanelment of a jury</p> <p>Drafts clear skeleton arguments</p> <p>Understands matters which the judge should cover in summing up and implications for the client's case</p> <p>Acts appropriately to assist the judge with any specific points to be addressed during the summing up</p> <p>Does not act in a manner which may adversely affect the client's case in the eyes of the jury</p> <p>Understands the judge's sentencing powers and the range of sentencing tariffs</p> <p>Is able to structure an effective plea in mitigation</p> <p>Understands the procedural steps involved in obtaining leave to appeal</p>
Part 6 – Equality and Diversity	<p>Is aware of the diverse needs of individuals resulting from differences in race or ethnicity, gender, sexual orientation, religion or belief, age, disability or social disadvantage and responds appropriately and sensitively</p> <p>Is aware of the impact of diversity and cultural issues on witnesses, parties to proceedings and others as well as on own client, and adjusts own behaviour accordingly</p> <p>Understands needs and circumstances of others and acts accordingly</p>