

ANNEX 10 ASSOCIATE PROSECUTOR ADVOCACY AND LITIGATION RIGHTS BUSINESS IMPLEMENTATION PLAN

IMPLEMENTATION BUSINESS PLAN

This document sets out ILEX's proposals for implementing the rights to conduct litigation and rights of audience qualification scheme for Associate Prosecutors. Staff at ILEX Professional Standards Ltd will be responsible for implementing the business plan.

The implementation work has been split up into a number of categories. However, much of the work can be undertaken concurrently.

1. Establishment of Admissions and Licensing Committee

The Admissions and Licensing Committee will be established to receive and consider inspection and monitoring reports and annual reports.

The Committee will comprise two Fellows of ILEX and three independent members. One member will be a member of the IPS Board. The Board member will be the portfolio holder for registration and accreditation matters. The present portfolio holder is a Fellow of ILEX. The committee appointments will be part-time appointments on a self-employed basis.

The Committee will be required for other schemes to be established by ILEX. Depending on timing it might be established before the Associate Prosecutor scheme. If that is the case these timescales will not apply.

Otherwise IPS will need to commence the work to recruit the Committee in January 2010 to ensure the Committee is in place by May 2011.

- Recruitment of committee members
 - Development of advertisement (Fellows and independent) 1 week
 - Placing advert in appropriate publications 1 week
 - Application timescale 3 weeks
 - Application short listing 2 weeks
 - Invite for interview and interviews 3 weeks
 - Make appointments 1 week
 -
 - Total 11 weeks

- Induction and training
 - Develop training programme 2 weeks
 - Set training dates 2 weeks
 - Hold training session 2 weeks
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RESOURCES AND CAPABILITY

This document sets out ILEX's proposals by which it will resource the Associate Prosecutor rights to conduct litigation and rights of audience qualification schemes. It is assumed that the schemes will be implemented and administered by staff at ILEX Professional Standards Ltd.

1. Admissions and Licensing Committee and external advisors

- Recruitment – professional standards manager and HR manager
- Interviews – IPS Board members and one IPS staff member
- Induction – IPS Board and Professional Standards Manager
- Administrative assistance by IPS Administrator and Professional Standards Assistant

The professional standards manager led on the recruitment of the Advocacy Rights Committee members and External advisors under the rights of audience scheme. The IPS Administrator and HR manager provided support.

2. Course and assessment material approval

- Initial review of material - professional standards manager and professional standards assistant.
- External advisors provide technical input and undertake formal review of material.

The professional standards manager has experience of conducting initial review of material. The external advisors will be recruited on the basis that they will have the expertise to assess course material and assessment material.

FINANCIAL RESOURCES

Costs

External advisors - £500 annual retainer
£350 assessing course and assessment material
£350 course inspections (per course)

Admissions & Licensing Committee - £500 retainer
£350 per meeting
£175 – telephone meetings
Committee costs will be shared with other schemes

Income

Applications for enrolment as an Associate Prosecutor member of ILEX- £140
Approximately 67 applications per year at level 1 (total income £9380)

Annual renewal of Associate Prosecutor certificates - £140
(total income £64,820)

ANNEX 11

INSTRUCTIONS ISSUED BY THE DIRECTOR OF PUBLIC PROSECUTIONS TO ASSOCIATE PROSECUTORS OF THE CROWN PROSECUTION SERVICE PURSUANT TO SECTION 7A OF THE PROSECUTION OF OFFENCES ACT 1985 AS AMENDED

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1. Introduction

1.1 These instructions are issued by the Director of Public Prosecutions pursuant to sections 7A (3) and (4) of the Prosecution of Offences Act 1985 (the Act) which apply generally to CPS non legal employees designated by the Director in accordance with section 7A (1) of the Act.

1.2 They will take effect on the 23rd February 2009.

1.3 A non-legal employee designated in accordance with section 7A (1) will be referred to in these instructions as an Associate Prosecutor (AP).

1.4 These instructions apply whether an AP has been designated prior to the date specified in paragraph 1.2, upon that date, or subsequently.

1.5 Upon these instructions taking effect in accordance with paragraph 1.1, all previous instructions issued to APs pursuant to section 7A(3) and (4) of the Act, and set out in the appropriate Annex of the Director's annual report to the Attorney General in accordance with section 7A (7)(c) of the Act, will cease to have effect.

1.6 The Director may from time to time issue guidance to Chief Crown Prosecutors on the implementation of these instructions, and dealing with related matters including procedures for supervision of APs and training requirements relevant to certain duties.

1.7 Nothing in these instructions prevents an AP from reminding a court of its duties and powers in relation to any proceedings (including sentencing).

2. The Statutory powers under section 7A

2.1 Subject to any exceptions or limitations contained within these instructions, Section 7A, as amended, confers on APs the powers and rights of audience of a Crown Prosecutor in relation to:

- (i) bail applications;
- (ii) The conduct of criminal proceedings in the magistrates' courts (including the youth court) other than trials of either way offences tried summarily or offences punishable with a term of imprisonment;
- (iii) The conduct of applications or other proceedings relating to preventative civil orders;
- (iv) The conduct of proceedings (other than criminal proceedings) in connection with the discharge of the functions assigned to the Director by the Attorney General; and
- (v) Any other powers of a Crown Prosecutor not involving the exercise of rights of audience in relation to the conduct of proceedings falling within (ii), (iii) and (iv) above.

2.2 Section 7A does not give APs power to institute or commence criminal proceedings.

3. Powers and rights of audience

3.1 Subject to the exceptions or limitations specified in Schedules 1 to 5 and completion of the approved AP training, all APs will exercise the statutory powers under section 7A.

Bail applications (paragraph 2.1 (i) above)

3.2 Bail applications include a defendant's application for bail, or application in relation to bail (including proceedings for breach and variation) in the Crown Court or the magistrates' court, subject to the exceptions listed in Schedule 1.

Conduct of criminal proceedings (paragraph 2.1 (ii) above)

3.3 The powers and rights of audience in relation to the conduct of criminal proceedings relate to all stages of the proceedings in magistrates' courts after a person has been charged. However the power to conduct trials is restricted to trials of non-imprisonable summary offences.

3.4 In applying these instructions a 'trial' is defined in section 7A (5A) of the Act as beginning *with the opening of the prosecution case after a not guilty plea and ends with the conviction or acquittal of the accused.*

3.5 APs exercise these powers and rights of audience on the instructions of a Crown Prosecutor and do not have a power of review under the Code for Crown Prosecutors for this purpose, except in accordance with paragraph 3.14 below.

3.6 APs are not designated to exercise the powers and rights of audience of Crown Prosecutors in the magistrates' court, (including the youth court,) in relation to the proceedings specified in Schedule 2.

Preventative Civil Orders (paragraph 2.1 (iii) above)

3.7 APs are designated to conduct applications or other proceedings relating to those Preventative Civil Orders (PCOs) set out in paragraph 3.8 below. The conduct

of proceedings that APs may undertake varies according to the legislative requirements of the particular PCO. This gives APs, where the legislation applies, authority to conduct an application for an order, or adduce further evidence, or apply for the variation or discharge of an order.

3.8 PCOs relate only to the following:

- (i) Anti-Social Behaviour Order – the conduct of applications for orders made after a verdict or finding; variation and discharge of such orders.
- (ii) Football Banning Order – the conduct of applications on complaint or after a verdict or finding; to adduce and lead further evidence where appropriate; and to appeal against the refusal of a court to impose such an order.
- (iii) Drinking Banning Order (to come into force on a day to be appointed) – the conduct of applications for orders made after a verdict or finding; variation and discharge of such orders.
- (iv) Parenting Orders – a duty to assist the court on request.
- (v) Restraining Orders – in relation to orders made after a verdict or finding to adduce and lead further evidence; and to apply for a variation or discharge of such an order. In relation to orders on acquittal to adduce and lead further evidence; and to apply for a variation or discharge of such an order.

3.9 A breach of a PCO is a criminal offence. Each PCO carries a different penalty. APs have power to deal with breaches subject to Schedule 2 and 4 below.

3.10 APs shall only exercise the powers and rights of audience as specified in Schedule 3.

Functions assigned by the Attorney General to the Director (paragraph 2.1 (iv) above)

3.11 The Attorney General has assigned to the Director the following functions:

- (i) applications for warrants of further detention under section 43(1) of the Police and Criminal Evidence Act 1984 and their extension under section 44 of that Act;
- (ii) applications by other countries for extradition of persons in the UK;
- (iii) conduct of proceedings relating to case stated and Habeas Corpus;

(iv) conduct of proceedings under section 2 of the Dogs Act 1871 instituted by a police force (dangerous dogs that may be destroyed)

and

(v) applications for removal of driving disqualifications under section 42 Road Traffic Offenders Act 1988.

3.12 APs are designated to conduct proceedings only in relation to paragraphs 3.11 (iv) and (v) above, (proceedings under section 2 of the Dogs Act 1871 and those under section 42 of the Road Traffic Offenders Act 1988).

Powers not involving rights of audience (paragraph 2.1 (v) above)

3.13 The powers of a Crown Prosecutor that do not involve rights of audience relate to all other criminal proceedings conducted in the magistrates' court.

3.14 APs shall only review magistrates' court cases which are straight forward and which involve no difficult technical issues, or other complication of fact or law.

Consistent with that principle, the power to review and determine such proceedings shall only be exercised in accordance with Schedule 4.

SCHEDULE 1

APs are not designated to conduct bail applications (including any variations, breaches and appeals) in the following matters.

1. Bail applications in the Crown Court.
2. Bail applications in youth courts.
3. Bail applications in relation to youths charged with an adult in the magistrates' court or a youth appearing alone in the magistrates' court.

SCHEDULE 2

Otherwise than as provided for in Schedule 5 APs are not currently designated to exercise the powers and rights of audience of Crown Prosecutors in the magistrates' court (including the youth court) for the following proceedings.

1. Trials relating to summary only non-imprisonable offences. Summary trials relating to either way offences and those punishable with a term of imprisonment are excluded from section 7A of the Act.

2. Post conviction hearings commonly known as 'Newton Hearings'.
3. Hearings in relation to committal proceedings where there is consideration of the evidence (section 6(1) of the Magistrates' Courts Act 1980).
4. Matters that involve obligatory driving disqualification where evidence will be called in respect of 'special reasons' as to why the court should not impose disqualification.

SCHEDULE 3

APs shall only exercise the powers and rights of audience of Crown Prosecutors in relation to Preventative Civil Orders in the following circumstances.

APs shall only conduct proceedings for PCOs where the conditions in (i) and (ii) both apply. The conditions are:

- (i) Instructions have been given by a Crown Prosecutor in relation to the application, variation, or discharge or in adducing or leading further evidence, where applicable: and
- (ii) The proceedings are not contested.

SCHEDULE 4

APs shall only exercise the powers of a Crown Prosecutor (including the power to review and determine criminal proceedings) in the following circumstances.

1. To review summary or either way offences only where:
 - the defendant is an adult; and
 - the matter is summary-only or considered to be suitable for summary disposal; and
 - a guilty plea is reasonably expected; or
 - (if otherwise) the offence is a minor road traffic offence, provided the defendant is not a youth.

A guilty plea may reasonably be expected where

- a. The suspect has made a clear and unambiguous admission to the offence to be proved and has said nothing that could be used as a possible defence

Or

- b. Though the suspect has made no admission in interview¹, the commission of the offence and the identification of the offender can be established by good quality evidence (e.g. of a police officer or another reliable independent witness) or the suspect can be seen clearly committing the offence on a good quality visual recording.
2. To amend a charge or summons where the amendment is minor, for example:
- An error as to the value of any property;
 - The date upon which an offence took place;
 - The venue for the offence;
 - The description of any relevant object.
3. To withdraw a charge or summons where:
- a road traffic offence involves the production of documents by the defendant (otherwise than in specified proceedings), and the defendant has produced the relevant documents to the court's Police Liaison Officer or other police officer; and
 - the AP is satisfied that the charge or summons is no longer sustainable.

Schedule 5

1. The following provisions of these instructions do not apply to those members of staff designated under Section 7A (1) of the Prosecution of Offences Act 1985 who have been appointed as Level 2 Associate Prosecutors:
- Schedule 2, paragraph 1 (Trials relating to summary only non-imprisonable offences).
 - Schedule 2, paragraph 2 (Newton Hearings in relation to summary only non-imprisonable offences only).
 - Schedule 2, paragraph 4 ('special reasons hearings').
 - Schedule 3, paragraph (ii) (thus allowing Level 2 Associate Prosecutors to conduct contested PCOs)

¹ Either because he made no comment, or because he was not interviewed at all, but has not at any time denied the offence or otherwise indicated that the charge will be contested at court.

2. Level 2 Associate Prosecutors will be able to exercise the powers contained in Schedule 4 (2) and (3) to amend a charge or summons, or to withdraw a road traffic offence requiring the production of documents during the course of a trial.

3. Level 2 Associate Prosecutors have the following additional powers also exercisable during the course of prosecuting a trial:
 - i. To withdraw or offer no evidence or no further evidence in relation to any charge where:
 - They form the opinion that there is no longer sufficient evidence to support the charge and the trial will continue in relation to other charge(s) which are before the court

ANNEX 12 MOU BETWEEN ILEX AND CPS

The MOU appears as a separate PDF document

ANNEX 13 CPS CODE OF CONDUCT

The Code appears as a separate PDF document