Introduction to CILEX Advocacy Rights

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What does it mean to have a right of audience?

The right to appear in Court, irrespective as to whether it is a final hearing or an uncontested application, is not something that everyone has.

As it stands today, the Legal Services Act 2007 authorises several of the many legal regulators to allow their members the entitlement to carry out the reserved activity of exercising a right of audience.

Most know that Barristers have a right to appear in all Courts and Solicitors (without higher rights) can appear in the lower courts. The following regulators can authorise members to exercise a right of audience:-

- The Law Society (Solicitors)
- The General Council of the Bar (Barristers)

- The Chartered Institute of Legal Executives (CILEX Fellows)
- The Chartered Institute of Patent Attorneys (Patent Attorneys)
- The Institute of Trade Mark Attorneys (Trade Mark Attorneys)
- The Association of Law Costs Draftsmen (Cost Lawyers)

CILEX was granted the ability to award right of audience to its members following the Institute of Legal Executives Order 1998/1077.

Following the introduction of the CPQ, all CILEX Lawyers who qualify in an area where they practice litigation (civil, family or criminal) will also have the right to conduct litigation and the right of audience in the lower court of their area of law.

Those who qualified prior to the introduction of the CPQ (the 'Legacy route') do not inherit these rights and must apply for them voluntarily. Advocacy rights for CILEX Lawyers have been available since

IMPORTANT – it can be a criminal offence to exercise a right of audience when you do not have that right.

What right of audience do Legacy Route CILEX Fellows have without an Advocacy Certificate?

Civil practitioners can appear in certain circumstances in the course of their employment.

Schedule 3 paragraph 7 of the Legal Services Act 2007 will allow anyone to exercise a right of audience in chambers of the High Court or County Court if:-

(i) their work includes assisting in the conduct of litigation, **and**;

(ii) under instruction and supervision of someone who is authorised to conduct litigation (either generally or in relation to the proceedings in question).

There is no binding authority at this time as to what is 'in chambers', 'assisting in the conduct of litigation', or 'under instruction and supervision of someone authorised to conduct litigation'.

Several County Court decisions at District Level suggested that to be assisting in the conduct of litigation and under instruction and supervision of someone required that person to be working in a law firm and that 'in chambers' was likely to mean a private hearing.

The County Court appeal of **Halborg v Apple (UK) Limited & Another [2022] HHJ Backhouse** gave guidance in respect of what was meant by "in chambers":-

133. I conclude that the correct interpretation of 'in chambers' is (c), namely whether the hearing in question is broadly of the type of hearing which would have been heard in chambers under the CCR [County Court Rules 1981]. Mr Timson's objections to this interpretation are that it is impractical, as new judges will not know about the practice under the CCR and that it does not cover new types of hearings. Mr Jacob points out that online resources enable practitioners and judges to research the question if necessary. Further, it appears that judges have used this interpretation for the last 20 years, as can be seen from the judgment of DDJ Balchin in this case and in the judgments in *McShane* et al, so there is a body of practice.

135. In this case, under CCR Ord.13 r1(4), all applications would have been heard in chambers unless ordered

> otherwise and Ord.13 r5 dealing with applications to strike out did not alter the basic position. As DDJ Balchin held, the First Defendant's application to strike out the claim would have been heard in chambers and so Mr Erridge had a right of audience. Mr Timson suggests it would be an absurd position if all applications were deemed to be in chambers and cites the example of an application in the High Court under s212 Insolvency Act 1986 or an application for committal under CPR81. The short answer is Ord.13 r1(4) related to the County Court only and was always subject to contrary order. A committal application is a clear example of where the practice was for the hearing to be in open court and indeed, CPR81.8 specifically provides that the hearing will usually be in public and the judge and advocates will be robed, whether the hearing is in public or private.

A County Court Judgment at Circuit level is likely to be persuasive but is not binding. It would suggest that most applications would be heard in chambers unless stated otherwise. A review of the County Court Rules 1981 would assist. For example, an injunction (unless otherwise directed or ex parte) is to be heard in open Court (Order 12 para 6(5) of the Count Court Rules 1981).

A Fellow of CILEX can attend a Small Claims hearing even in the absence of their client in accordance with PD27A para 3.2, providing they are employed by a Solicitor or another person authorised under the Legal Service Act 2007.

Family practitioners will also be subject to the same exemptions as civil practitioners. but does not apply to 'reserved legal proceedings' and not in chambers where at least one Judge is a Justice of the Peace as defined in s31C(1)(y) Matrimonial and Family Proceedings Act 1984.

Sadly, criminal practitioners do not have the benefit of a criminal equivalent to schedule 3 Legal Services Act 2007. It is one of the reasons why CILEX acknowledge that criminal practitioners will not

have any advocacy experience they can declare in their advocacy applications.

Employment Tribunal Practitioners have the benefit of not requiring any right of audience to appear in the Employment Tribunal and the Employment Appeal Tribunal. They currently, like their CILEX Advocates, cannot appear in the Court of Appeal nor the Supreme Court.

Immigration Practitioners only those who work in an OISC (Office of the Immigration Services Commissioner) regulated law firm and have level 3 OISC status can carry out any immigration advocacy. This includes advocacy in First-Tier and Upper Tribunal (Immigration and Asylum Chamber) but not in respect of Judicial Review.

There are other areas of law and practice where advocacy takes place, but this is intended to focus on advocacy that practice rights provide.

CILEX Advocacy Certificates

The available CILEX Advocacy Certificates are as follows:-

Rights of Audience (Civil Proceedings) Certificate in Judge's Room:

• to exercise rights of audience in Judge's room hearings in the County Court and High Court in all civil proceedings excluding family proceedings.

Rights of Audience (Civil Proceedings) Certificate:

- to exercise rights of audience in Judge's room hearings in the County Court and High Court in all civil proceedings excluding family proceedings;
- to appear in open Court in the County Court in all actions, except family proceedings;
- to appear before Magistrates, District Judges (Magistrates' Court) or Justices' Legal Advisers in the Magistrates' Courts in relation to all civil and enforcement matters;

- to appear before any tribunal having jurisdiction in England and Wales, which is listed in Schedule 6 of the Tribunals, Courts and Enforcement Act 2007 (as amended or substituted from time to time) where the tribunal rules provide for a non-discretionary right of audience being available to barristers, solicitors and CILEX advocates;
- to appear before Coroners' Courts in respect of all matters determined by those Courts and to exercise rights of audience similar to those exercised by solicitors and barristers.

Rights of Audience (Family Proceedings) Certificate in Judge's Room:

- to exercise rights of audience in Judge's room hearings in the Family Court and High Court, except reserved proceedings, in all family proceedings.

Rights of Audience (Family Proceedings) Certificate:

- to exercise rights of audience in Judge's room hearings in the Family Court and High Court, in all family proceedings;
- to appear in the Family Court in all proceedings;
- to appear before Coroners' Courts in respect of all matters determined by those Courts and to exercise rights of audience similar to those exercised by solicitors and barristers.

Rights of Audience (Criminal Proceedings) Certificate:

- to appear before Justices Clerks, Justices or a District Judge (Magistrates' Court) in all adult Magistrates' Courts in relation to all matters within that Court's criminal jurisdiction;
- to appear before Justices Clerks, Justices or a District Judge (Magistrates' Court) in all Youth Courts in relation to all matters within that Court's criminal jurisdiction;
- to appear in the Crown Court or High Court before a judge in chambers to conduct bail applications;
- to appear in the Crown Court on appeal from the Magistrates' Court, the Youth Court or on committal of an adult for sentence or to be dealt with, if they, or any approved person in the same

employment as them, appeared on behalf of the defendant in the Magistrates' Court or Youth Court;
- to appear before Coroners' Courts in respect of all matters determined by those Courts and to exercise rights of audience

Those who practice in immigration and obtain Immigration Practice Rights will be able to appear in First-Tier and Upper Tribunal (Immigration and Asylum Chamber), just like an OSIC Level 3 practitioner. Judicial Review hearings are strictly reserved for those with the rights of audience to appear in the High Court.

Why obtaining advocacy rights may be beneficial for you?

CILEX are pushing for Fellows to obtain full practice rights to have **parity with Solicitors**. Having the ability to appear in open court takes CILEX Fellows on huge step forwards.

Undertaking the training will **improve your litigation** and will help you think like an advocate - even if you have no interest in conducting the advocacy yourself.

Certain legal roles are now open to not just Solicitors but Fellow of CILEX too, however some roles will require you to have either rights of audience in your area of practice or litigation rights too. Obtaining rights now secures the possibility of further **career opportunities** later if you so wish.

It can be daunting to step outside your comfort zone but undertaking advocacy will help **build your confidence** and increase your skills and knowledge as you always are required to do as part of your **continuing professional development**.

There are more roles within the judiciary, thanks to the huge effort by CILEX. You do not need advocacy experience to follow your **judicial**

aspirations but having some experience may assist any application you make to the Judicial Appointment Commission.

Why you may not want to obtain advocacy rights?

Funding can be a significant obstacle for many. If your employer has many CILEX Fellows then they may struggle to justify the outlay. If you want to obtain the rights, then look to advocate to your employers as to why it is an investment for the firm. Both the training and the prospect of making a return on the investment by keeping advocacy in house.

It can be very hard to justify to yourself and to your employers if your particular role does not require you to conduct advocacy. If **advocacy is not part of your role** and you still want those rights, then consider what your long-term plan is and see if you can justify that to your employer. If your long-term plan is to move into advocacy, start to invest into your future.

There are various ways of obtaining advocacy certificates. Some may be exempt from the advocacy course. Many will need to spend **time and effort** in obtaining rights. It is worth it and it is completely understandable when life is busy to try and find the time. If you really want it, then you can look to allocate time (even if only 15-20 minutes a day or week) to work towards your goal.

Contact Alec at alec@ajh-advocacy.co.uk if you have further questions

The contents of this handout, the presentation and webinar are intend to be a guide to assist CILEX members. This does not constitute legal advice and further information should be obtained from CILEX Regulation Limited