



# **MEMORANDUM OF UNDERSTANDING**

**Between**

**The Crown Prosecution Service,  
Chartered Institute of Legal Executives**

**and**

**CILEx Regulation Limited**

**30 April 2019**

# **Memorandum of Understanding between the Crown Prosecution Service, Chartered Institute of Legal Executives and CILEx Regulation Limited**

## **Purpose of document**

1. This Memorandum of Understanding between the Crown Prosecution Service (CPS), Chartered Institute of Legal Executives (CILEx) and CILEx Regulation Limited (CRL) sets out arrangements for the regulation of Associate Prosecutors.

## **Parties to the Memorandum**

2. The CPS, CILEx and CRL recognise and respect their differing statutory and professional duties, operational priorities, constraints and confidentiality requirements. However, all commit themselves to ensuring professional cooperation and to delivery of a system that facilitates the exchange of information for their mutual benefit and in the wider public interest.

## **The Crown Prosecution Service**

3. The CPS was created by the Prosecution of Offences Act 1985 and is the Government Department responsible for determining the charge and prosecuting criminal cases investigated by the police in England and Wales.
4. The head of the Crown Prosecution Service is the Director of Public Prosecutions. The Director is superintended by the Attorney General, who is responsible to Parliament for the Service.
5. The CPS has 14 geographical Areas in England and Wales. Each Area is headed by a Chief Crown Prosecutor (CCP) who is responsible for prosecutions within the Area.



6. The CPS is the principal prosecuting authority in England and Wales and is responsible for determining the charge in all but minor cases, advising the police during the early stages of an investigation, reviewing cases submitted by the police for prosecution, preparing cases for court and the presenting of those cases at court.

### **Chartered Institute of Legal Executives**

7. CILEx is the governing body for Chartered Legal Executives and other CILEx members in England and Wales. CILEx is an approved regulator and a qualifying regulator for immigration advice and services under the Legal Services Act 2007.

### **CILEx Regulation Limited**

8. CILEx Regulation Limited (CRL) was established by CILEx to regulate the professional conduct of CILEx members in accordance with the Legal Services Act 2007. Its Objects are contained in its Memorandum of Association. CRL is a wholly owned subsidiary company of CILEx. It oversees the education, qualification and practice standards of Chartered Legal Executives and other CILEx members and promotes and secures appropriate standards of professional and personal conduct.

### **Associate Prosecutors - General**

9. Section 7A of the Prosecution of Offences Act 1985 (the Act) allows the Director of Public Prosecutions to designate suitably trained lay members of staff, known as Associate Prosecutors, to review cases and appear before the magistrates' courts to prosecute a defined range of proceedings. All Associate Prosecutors so designated are members of CILEx and subject to professional regulation through CRL.
10. Working under the supervision of experienced Crown Prosecutors, who



provide guidance and assistance, Associate Prosecutors divide their time between reviewing and presenting cases at the local magistrates' courts.

11. The role of the Associate Prosecutors is controlled internally by way of Instructions, issued by the Director of Public Prosecution, ensuring that they conduct cases only which they have been trained to do.
12. An Associate Prosecutor must complete continuing professional development (CPD) training on an annual basis and stay up to date with changes in the law and legal practice.
13. Associate Prosecutors are bound by the Code for Crown Prosecutors and assessed by Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI) against the CPS National Standards of Advocacy.

### **Associate Prosecutor Registration**

14. All Associate Prosecutors are subject to regulation by CRL. No lay employee of the CPS may be designated under Section 7A of the Act, deployed as an Associate Prosecutor or be permitted to exercise the rights to conduct litigation or rights of audience granted under the Legal Services Act without being registered by CILEx in the Associate Prosecutor grade.
15. Associate Prosecutors will be subject to CILEx and CRL Rules and Regulations governing registration with CILEx. CILEx will advise the CPS in the event that CILEx membership is removed from any Associate Prosecutor for whatever reason.
16. The CPS will facilitate inspections and reviews of Associate Prosecutors which CRL needs to undertake to regulate Associate Prosecutors effectively.
17. Registration and membership arrangements are set out in AnnexA.



## **Review of the CPS Associate Prosecutor training programme**

18. The training scheme for Associate Prosecutors will remain consistent with the course outcomes and assessment criteria set out in the Associate Prosecutor Rights of Audience and Litigation Certification Rules. CRL, or persons appointed by CRL, will periodically review the CPS Associate Prosecutor training programme and assessment material for the purpose of ensuring it does meet the criteria in the Associate Prosecutor Rights of Audience and Litigation Certification rules.
19. The CPS will notify CRL of any proposals to change the Associate Prosecutor training programme or to develop new training modules for Associate Prosecutors. CRL will review such material to determine whether the changes are consistent with the criteria set out in the Associate Prosecutor Rights of Audience and Litigation Certification Rules.

## **CILEx Conduct Rules**

20. All persons registered as Associate Prosecutors with CILEx will be bound by and adhere to the CILEx Code of Conduct and supporting guides.
21. Rules governing professional conduct and discipline are set out in the CRL Enforcement Rules (the Rules). The Rules establish a process to consider declarations of prior conduct made by members and prospective members, complaints against members, potential breaches of CILEx Rules and possible misconduct by members. The Rules set out the disciplinary powers available where a matter of misconduct is found proved.

## **Complaints made to CRL about an Associate Prosecutor**



22. The CPS acknowledges that CRL has the power to investigate complaints made against Associate Prosecutors in respect of an alleged breach of the duties and obligations set out in the CILEx Code of Conduct and supporting guides. CRL will deal with conduct matters in accordance with the Rules.
23. CRL will inform the CPS of complaints received against Associate Prosecutors. CRL will provide the CPS with:
  - The name of the Associate Prosecutor concerned;
  - The date the complaint was received by CRL;
  - The details of the complaint;
  - The proposed timetable for investigation of the complaint; and
  - The current status of the investigation.
24. Where the investigator appointed by CRL to investigate the complaint requires clarification of CPS policy or procedure, the investigator shall contact the relevant Chief Crown Prosecutor in writing.
25. CRL will notify the Director of Public Prosecutions and the relevant Chief Crown Prosecutor of the outcome of the CRL investigation within 7 days of the decision being made.

### **Complaints made to the CPS about an Associate Prosecutor**

26. A complaint made to the CPS about an Associate Prosecutor, or an Associate Prosecutor whose conduct appears to fall short of the expected standards, will be dealt with in accordance with the CPS Disciplinary Policy.
27. Where a complaint is made against an Associate Prosecutor, the relevant Chief Crown Prosecutor, or other nominated person, will notify CRL of the complaint if it relates to the duties and obligations of the Associate Prosecutor under the CILEx Code of Conduct and supporting



guides.

28. Where the Chief Crown Prosecutor notifies CRL of a complaint or conduct issue, the CPS will provide CRL with:
  - The name of the Associate Prosecutor concerned;
  - The date the complaint was received by the CPS;
  - The details of the complaint;
  - The proposed timetable for investigation of the complaint; and
  - The current status of the investigation.
  
29. The CPS will notify CRL of the outcome of the CPS investigation where CRL has previously been informed of the complaint or conduct issue. The CPS will provide CRL with:
  - a summary of the allegations and whether each allegation was proved; and
  - action taken by the CPS to deal with the matter if proved e.g. verbal warning, written warning, dismissal.
  
30. Where CRL requires further information on the allegation or the outcome of the CPS investigation, they will write to the relevant Chief Crown Prosecutor. Where agreement cannot be reached between the CPS and CRL on the information to be provided by the CPS to CRL in respect of internal disciplinary proceedings the matter will be escalated to the Chief Executive of the CPS and the Chief Executive of CRL.

## Updates

31. Where CRL investigates a complaint or conduct issue referred to it by the CPS, or the CPS investigates a case referred to it by CRL, the investigating body shall provide regular updates on the case at intervals of no more than 28 days.

## Order of Investigation



32. Under normal circumstances CRL will investigate all conduct complaints made to it before the CPS and the CPS will investigate all complaints and conduct issues raised with it before CRL and complaints will not be pursued by CRL and CPS in parallel. However, this may be reviewed on a case by case basis. Where agreement cannot be reached between the CPS and CRL on the order in which the investigation should take place the matter will be escalated to the Chief Executive of the CPS and the Chief Executive of CRL.

### **Exchange of Information**

33. It is agreed that such management information relating to Associate Prosecutors as is necessary to facilitate their effective regulation by CRL shall be shared between CRL, CILEx and CPS.
34. Full details of the information to be shared and exchanged are set out in Annex B.

### **Liaison Meeting**

35. The CPS, CRL and CILEx will meet at least once annually to discuss the issues covered by this Memorandum of Understanding including, but not limited to:
- Complaints or disciplinary action taken against Associate Prosecutors.
  - The Associate Prosecutor training scheme.
  - Registration, certification and information exchange procedures.
  - Any other information required by CRL to carry out its regulatory functions.

### **Review**

36. This Memorandum of Understanding will come into effect on 1 May 2019. It will be subject to review 12 months from the date on which it is





executed, or earlier if requested by either party.

37. This document can only be subject to change with the agreement of the CPS, CILEx and CRL.

### Signatories

38. The signatories to this memorandum are:

**SIGNED** by  
duly authorised for and on behalf

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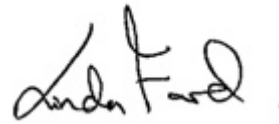
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**The Director of Public  
Prosecutions**

Date: 30 April 2019

**SIGNED** by  
duly authorised for and on behalf  
of the Chartered Institute of Legal Executives

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**The Chief Executive of the  
Chartered Institute of Legal  
Executives**

Date: 31/01/2019

**SIGNED** by  
duly authorised for and on behalf  
of CILEx Regulation Limited

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**The Chief Executive of CILEx  
Regulation Limited**

Date: 06/02/2019



## Registration and membership with CILEx

### Applying for Registration

1. A person shall apply to become registered as an Associate Prosecutor with CILEx on successful completion of the CPS Associate Prosecutor training programme. Each form for registration must be countersigned by the relevant Chief Crown Prosecutor and returned to CILEx within the agreed timescale.
2. CILEx shall notify the Associate Prosecutor and the CPS in writing of the outcome of each application for registration within 14 days of the application being received.
3. CILEx will issue an Associate Prosecutor's Certificate to each Associate Prosecutor member to the end of the certification year.
4. If an application for registration as an Associate Prosecutor with CILEx is refused, CILEx will notify the Director of Public Prosecutions, the applicant and the relevant Chief Crown Prosecutor in writing as soon as practicable, but no more than 7 days after the decision has been made, giving reasons for the decision. No CPS Area will deploy a person as an Associate Prosecutor whose application for registration as an Associate Prosecutor has been refused.

### Practice Fees

5. The CPS will pay CILEx the Practice Certificate fee of each new Associate Prosecutor member. CIL will consult the CPS each year on proposed Practice Certificate fees and take account of CPS representations on fees.



6. On receipt of a new application for registration as an Associate Prosecutor with CILEx, CILEx shall invoice the CPS Area the cost of the practice certificate fee to the end of the certification year, unless otherwise agreed.
7. Where an Associate Prosecutor is already registered in a grade of membership with CILEx, the CPS will meet the cost of Associate Prosecutor registration and the individual Associate Prosecutor will be responsible for the payment of the balance of the membership fee in respect of the other grade of membership.

### **Renewal of Certification**

8. No later than 30 November of each year, practice certificate fee renewal forms will be sent by CILEx to each Associate Prosecutor to complete.
9. CILEx will invoice the CPS the practice certificate fees payable for each completed renewal form received.
10. CILEx will issue an Associate Prosecutor's Certificate to each Associate Prosecutor in respect of the new practice year provided the Associate Prosecutor has met their continuing professional development requirements for the preceding CPD year.
11. The CPS is under no obligation to pay practice fees for CPS employees who are not employed as Associate Prosecutors or who are no longer performing the Associate Prosecutor role.
12. Where an Associate Prosecutor is already registered in a grade of membership with CILEx, paragraph 7 above will apply.



## Cessation of Registration

13. An Associate Prosecutor who ceases to act or be deployed as an Associate Prosecutor may continue in membership with CILEx until the end of the subscription year. If such a person ceases to work as an Associate Prosecutor and the practice fees are not paid by the CPS they may continue in membership of CILEx in any other grade subject to meeting the requirements for that grade and provided their membership or practice certificate fees are up to date.
14. An Associate Prosecutor who resigns from membership of CILEx will cease to be eligible to be deployed as an Associate Prosecutor and may not resume acting as an Associate Prosecutor until he has been reinstated as an Associate Prosecutor member of CILEx.

**Date: 1 May 2019**

**Review date: 1 May 2020**



## Exchange of information

1. To facilitate the effective regulation of Associate Prosecutors and the review of the training of Associate Prosecutors the CPS will provide to CRL by way of a periodic report (initially annually):
  - a brief summary of each required training course
  - the level of candidate performance on the required training course
  - the results of any training assessments where applicable
  - any recommendations for alteration to the course structure or materials and
  - any developments since the last periodic report
  - a summary of the advocacy quality assessments and other quality assurance reports, including the HMCPSP reports, conducted in relation to Associate Prosecutors
  - the instructions to Associate Prosecutors issued under S.7A Prosecution of Offences Act 1985 and the guidance issued by the DPP to Chief Crown Prosecutors on the deployment of Associate Prosecutors
  - Details of the CPS staff disciplinary procedure currently in force.
  - Details of Continuing Professional Development undertaken by Associate Prosecutors.
  - Any other information required by CRL to carry out its regulatory function.
  
2. To facilitate the review of the course materials and assessment criteria and inspection of courses required for the training of Associate Prosecutors the CPS will provide to CRL:
  - details of the training that is required to be completed by Associate Prosecutors including the training materials, the



candidate selection process and any assessment criteria applied.

- a selection of recorded assessments.
3. The CPS will notify CRL of any proposal to change the qualification scheme, the rights to be exercised by Associate Prosecutors or instructions to Associate Prosecutors under s7A Prosecution of Offences Act, as amended, and guidance of the Director of Public Prosecutions in accordance with paragraph 18 of this Memorandum.
4. CILEx and CRL will inform the CPS of the following when reasonably requested but primarily on an annual basis:
- The number of Associate Prosecutor members of CILEx;
  - The number of Associate Prosecutor members also registered in other grades of membership of CILEx;
  - The number of complaints received directly by CRL regarding Associate Prosecutor members;
  - The outcomes of the complaints;
  - The time taken to conclude complaints received directly by CRL;
  - The time taken to conclude complaints referred to CRL by the CPS; and
  - Details of any measures taken or actions required arising from the complaints and disciplinary process.
5. The CPS will inform CRL of the following when reasonably requested but primarily on an annual basis:
- The number of complaints received by the CPS regarding Associate Prosecutors;
  - The outcomes of the complaints;
  - The time taken to conclude complaints investigated by the CPS;
  - The time taken to conclude complaints referred to the CPS by CRL; and
  - Details of any measures taken or actions



required arising from the complaints and disciplinary process.

6. CRL will inform the CPS of any alteration it proposes in the rules relating to the Associate Prosecutors' training scheme or registration arrangements for Associate Prosecutors.
7. Requests by CRL for the disclosure of information relating to a current or completed prosecution, or information that is of a sensitive or personal nature or marked as Restricted or with a higher protective classification, will be referred to the relevant Chief Crown Prosecutor in writing to be dealt with in accordance with CPS policy.

**Date: 1 May 2019**

**Review date: 1 May 2020**

