

THE LAW SOCIETY STANDARDS OF COMPETENCE

Standards of competence for the accreditation of solicitors and solicitors' representatives advising at the police station

Accreditation of solicitors and solicitors' representatives advising in the police station – standards of competence

The standards of competence are in three parts as follows.

Part 1 Underpinning knowledge

Details the knowledge and understanding that the solicitor or representative will need to have in order to be competent when giving advice in the police station.

Part 2 Underpinning skills

Details the skills which the solicitor or representative will need in order to represent effectively the client in the police station and which should be demonstrated as the solicitor or representative undertakes the activities detailed in the units of performance in Part 3.

Part 3 Standards of performance

Details the standards of performance that the solicitor or representative should demonstrate at each stage of the process of representing the client. In order to demonstrate competent performance the solicitor or representative will need the knowledge and skills detailed in parts 1 and 2. The solicitor or representative's understanding of how and the reasons why each of the performance criteria should be demonstrated in a police station situation may be examined in the written test. The standards of performance will be used to assess the candidate's performance in the critical incidents test.

Part 1 Underpinning knowledge

1.1. The role of defending the client

The solicitor or representative must be able to demonstrate a practical understanding of:

- 1.1.1. ethical rules and principles relevant to advising and assisting a client at the police station
- 1.1.2. a solicitor's or representative's authority to act for a person detained in the police station
- 1.1.3. a solicitor's or representative's role and aims when acting for such a client with regard to the probing of the immigration officer's assessment of a client's immigration status, representations to be made to the immigration officer and the purpose of the advice to be given to the client
- 1.1.4. a solicitor's or representative's role and aims when acting for such a client with regard to the probing of the prosecution case, representations to be made to the police and the purpose of the advice to be given to the client

- 1.1.5. the effect that detention can have on a client's behaviour in the police station and appropriate responses to typical behaviour
- 1.1.6. how to identify a client's vulnerability
- 1.1.7. how to identify inappropriate behaviour by the police and when and how to respond to it
- 1.1.8. the need for accurate records to be made of the information obtained from the police, the instructions obtained from the client, actions taken and advice given to the client
- 1.1.9. the need to give consideration to any conflict of interests and the appropriate course of action where a conflict, or significant risk of a conflict of interests is identified.

1.2. An understanding of criminal law and procedure

The solicitor or representative must be able to demonstrate a practical understanding of:

- 1.2.1. the basic sequence of events in criminal cases from the client's arrest/arrival at the police station, to conviction and sentence and the critical factors at each stage
- 1.2.2. the definition of an arrestable offence
- 1.2.3. the definition of a serious arrestable offence and the significance of an offence being so classified
- 1.2.4. the different ways by which crimes may be tried
- 1.2.5. the meaning of the terms: burden of proof, actus reus, mens rea, intentionally, recklessly, maliciously, dishonestly, knowing or believing, possession
- 1.2.6. the defence of self-defence
- 1.2.7. the modes of participation in crime of sole and joint principal and accomplice
- 1.2.8. the law and procedure relating to young suspects and defendants
- 1.2.9. the implications of the Human Rights Act 1998 for advice and assistance at the police station.

1.3. An understanding of relevant immigration law and procedure

The solicitor or representative must be able to demonstrate a practical understanding of:

- 1.3.1. the basis upon which a person can be detained under the Immigration Act or other similar legislation
- 1.3.2. the meaning of the terms: overstayer; illegal entrant; asylum seeker; deportee refugee; exceptional leave to remain
- 1.3.3. the main Immigration Act offences
- 1.3.4. the basic sequence of events in immigration cases from the client's arrest/arrival at the police station, to interview, the decision of the immigration officer and detention/release, and the critical factors at each stage.

1.4. An understanding of the common crimes

The solicitor or representative must be able to demonstrate that they are able to determine the components or elements of any crime, and defences that may relate to such a crime. In particular the solicitor or representative must be able to

demonstrate an awareness of the components of the following common crimes, together with their specific defences sufficient to enable advice to be given to a client about the strengths and weaknesses of the prosecution case including the elements which the prosecution have to prove:

- 1.4.1. assault occasioning actual bodily harm
- 1.4.2. possessing a controlled drug with intent to supply
- 1.4.3. handling stolen goods
- 1.4.4. possessing an offensive weapon
- 1.4.5. taking a motor vehicle
- 1.4.6. theft
- 1.4.7. affray
- 1.4.8. criminal damage
- 1.4.9. robbery
- 1.4.10. burglary

1.5. An understanding of the rules of evidence

The solicitor or representative must be able to demonstrate a practical understanding of:

- 1.5.1. the legal and evidential burdens of proof as they relate to prosecution and defence
- 1.5.2. how facts are proved including the rule against hearsay and its exceptions the evidential consequences of a suspect:
 - remaining silent
 - remaining selectively silent
 - denying guilt at interviews
 - lying
 - making a “mixed” statement
 - making a confession.;
- 1.5.4. legal professional privilege
- 1.5.5. the evidential value of admissions made by a co-accused
- 1.5.6. the exclusion of an unreliable confession or evidence obtained unfairly (PACE s.76 and s.78).

1.6. A practical understanding of PACE and the Codes of Practice under PACE

The solicitor or representative must be able to demonstrate a practical understanding of PACE and the Codes of Practice and of their interpretation in the light of case decisions, and an understanding of the evidential consequences of a breach, as they relate to:

- 1.6.1. the search of the client’s premises
- 1.6.2. arrest, voluntary attendance at the police station and search upon arrest
- 1.6.3. the duties of the custody officer before and after the charge
- 1.6.4. responsibilities in relation to detained persons
- 1.6.5. detention, time limits of detention and reviews
- 1.6.6. searches of detained persons
- 1.6.7. the right to have someone informed when arrested

- 1.6.8. fingerprinting
- 1.6.9. the taking of intimate and other samples
- 1.6.10. the right to legal advice
- 1.6.11. charging
- 1.6.12. bail
- 1.6.13. the special treatment of juveniles and other vulnerable persons
- 1.6.14. the keeping of and entitlement to see the custody record
- 1.6.15. documentary evidence
- 1.6.16. cautions
- 1.6.17. the conduct and tape recording of interviews
- 1.6.18. identification procedures.

Part 2 Underpinning skills

Communication skills

The solicitor or representative must be able to communicate effectively with the client, the police officers involved and any third parties. The solicitor or representative must be able to:

- 2.1.1. use language appropriate for the recipient
- 2.1.2. identify if there is a need for an interpreter
- 2.1.3. express requests, objections, ideas and advice with precision, logic and economy
- 2.1.4. listen actively
- 2.1.5. speak effectively and assertively
- 2.1.6. communicate in a manner and form that takes account of ethnic, cultural or other forms of diversity.

2.2. Negotiating skills

The solicitor or representative must be able to demonstrate negotiating skills. The solicitor or representative must be able to:

- 2.2.1. identify the issues to be resolved
- 2.2.2. assess the relative strengths and weaknesses of the parties' positions
- 2.2.3. identify the strategy and tactics adopted by the other party
- 2.2.4. explain the benefits that would result from an acquiescence to his or her request
- 2.2.5. generate alternative approaches to the issues
- 2.2.6. make accurate records of the negotiation and the outcome.

2.3. Interviewing and advising skills

The solicitor or representative must be able to elicit effectively the relevant information from the client in order to be able to offer appropriate advice. The solicitor or representative must be able to:

- 2.3.1. allow the client to explain his or her position
- 2.3.2. elicit relevant information
- 2.3.3. gain the trust and confidence of the client
- 2.3.4. assist the client to be able to decide upon the best course of action
- 2.3.5. agree on the action to be taken by both the client and the representative
- 2.3.6. deal with the above in a manner which takes proper account of ethnic, cultural and other forms of diversity

- 2.3.7. deal with any ethical problems which may arise when advising the client
- 2.3.8. accurately record the information elicited and the advice given.

Part 3 Standards of performance

The solicitor or representative must act in accordance with relevant ethical rules and principles at all times.

Unit 1 Respond to the request to attend

Element 1

Obtain information about the detained person and his or her circumstances.

Performance criteria

- 3.1.1. Details about the detained person are obtained
- 3.1.2. The relationship between the detained person and the third party is established where appropriate
- 3.1.3. Information about the circumstances of the arrest and any other people involved is sought
- 3.1.4. Information about whether a criminal investigation is being conducted, is sought;
- 3.1.5. Details about the location of the detained person are obtained
- 3.1.6. Reasons for concern regarding the detained person's well-being, vulnerability or police conduct are identified
- 3.1.7. An appropriate assessment of the authority to act for the detained person is made
- 3.1.8. All information obtained is accurately recorded.

Range statement

The initial request to attend might be received from a friend or relative, existing or former client, an appropriate adult, the duty solicitor service, or the detained person choosing from a list at the police station.

Element 2

Consult with the custody officer by telephone.

Performance criteria

- 3.2.1. The custody officer is informed of the solicitor's or representative's status
- 3.2.2. Information is sought regarding the client and associated suspects, the alleged offence and the circumstances of the arrest
- 3.2.3. Information is sought regarding the evidence in support, detention, bail and charging decisions, the police officers involved, the police investigation and the officer's assessment of the client and actions taken
- 3.2.4. Where appropriate, information is sought regarding the immigration officer involved and as to whether a criminal investigation is being conducted
- 3.2.5. An appropriate response is given to non disclosure of the information requested
- 3.2.6. Access to the client is sought and an appropriate response is given to a refusal to allow access.

Element 3

Consultation with the client by telephone, if access is obtained.

Performance criteria

- 3.3.1. The client is informed of the representative's status
- 3.3.2. The client is reminded that the conversation might not be private
- 3.3.3. The client is directly questioned about admissions, treatment and police responses to requests
- 3.3.4. Information is sought to enable an assessment about the client's vulnerability to be made
- 3.3.5. The client's right to free legal advice service is explained
- 3.3.6. The client is advised to exercise the right to silence if questioned prior to the solicitor's or representative's attendance.

Element 4

Decide what action to take and communicate this decision.

Performance criteria

- 3.4.1. An assessment of the solicitor's or representative's competence to advise on the case is made
- 3.4.2. If the case is outside the solicitor's or representative's competence appropriate action is taken;
- 3.4.3. An assessment of the need to make a personal visit is made
- 3.4.4. The urgency of the need for advice is determined
- 3.4.5. The custody officer and client are informed of the proposed course of action.

Unit 2 Consult with the appropriate officers at the police station.

Element 1

Consult with the custody officer.

Performance criteria

- 3.5.1. The custody officer is informed of the solicitor's or representative's status if this information has not been given previously
- 3.5.2. Information about the client, the allegation and the investigation are sought
- 3.5.3. A copy or sight of the custody record is sought and an appropriate response is given to a refusal to allow access to the custody record
- 3.5.4. A private consultation of adequate duration with the client is sought and an appropriate response is given to a refusal to allow such consultation
- 3.5.5. The solicitor's or representative's presence during the police interview of the client is sought and an appropriate response given to a refusal to allow such attendance.

Element 2

Consult with the investigating officer.

Performance criteria

- 3.6.1. The investigating officer is informed of the representative's status if this information has not been given previously
- 3.6.2. Information about the strength and nature of the prosecution case is sought and an appropriate response is given to a refusal to disclose such information

- 3.6.3. Information regarding the purpose of the interview is sought
- 3.6.4. The proper arrangement of the interview room is sought
- 3.6.5. The solicitor's or representative's presence at the interview is sought and an appropriate response given to a refusal to allow such a presence
- 3.6.6. The investigating officer's consideration of the client's possible vulnerability and fitness for interview is confirmed.

Unit 3 Consult with the client

Element 1

Introduction to and assessment of the client.

Performance criteria

- 3.7.1. The client is informed of the solicitor's or representative's status, if this information has not been given previously
- 3.7.2. The client's trust and confidence are sought
- 3.7.3. An assessment is made of the client's vulnerability and fitness for interview
- 3.7.4. Complaints of maltreatment of the client by the police or immigration service are ascertained together with any response made to such complaints
- 3.7.5. Full records are kept of the consultation with the client.

Element 2

Inform and advise the client.

Performance criteria

- 3.8.1. The client is informed about the offence(s) alleged, what the prosecution would need to prove, the evidence in support, the strengths and weaknesses of the police case and prosecution evidence, the likely procedures to be followed in the event of the client being charged
- 3.8.2. Instructions are taken from the client and any information obtained is kept confidential
- 3.8.3. Reasoned and considered advice is given to the client concerning the answering of questions, the right to silence, the making of a written statement under caution, or the signing of a written record of any comment made to the police
- 3.8.4. Where relevant, instructions are taken to establish the client's immigration status, and advice is given as to what action the police and/or immigration service may take, and as to the appropriate action to be taken by the client
- 3.8.5. An explanation is given of how the information gathered has been used to formulate the advice
- 3.8.6. An explanation of the conduct of a tape-recorded interview and its implications is given to the client
- 3.8.7. The solicitor's or representative's role during the interview is explained to the client
- 3.8.8. Where appropriate an assessment is made of the solicitor's or representative's position with regard to the representation of more than one detained person.

Unit 4 Monitoring of and intervening during the interview.

Element 1

Ensure the proper conduct of the interview.

Performance criteria

- 3.9.1. An opening statement is made as appropriate
- 3.9.2. Representations are made to the police or immigration officer if the interview room is not satisfactorily arranged and an appropriate response is made if these representations are ignored
- 3.9.3. Improper behaviour by or questions from the police or immigration officer is recognised and responded to appropriately
- 3.9.4. Attempts to undermine a decision by the client to exercise a right to silence are recognised and responded to appropriately
- 3.9.5. Appropriate action is taken to ensure that the interview is accurately recorded
- 3.9.6. The time at which the interview should cease is recognised and responded to appropriately
- 3.9.7. Full and accurate records of the interview are made.

Element 2

Advise the client during the interview.

Performance criteria

- 3.10.1. The client is advised without stopping the interview when appropriate
- 3.10.2. The interview is stopped in order to give the client legal advice in private, when appropriate
- 3.10.3. The client is made to understand the questions put and is allowed to answer freely.

Unit 5 Representing a vulnerable client.

Element 1

Identify a vulnerable client and ensure appropriate action is taken.

Performance criteria

- 3.11.1. The representative identifies a vulnerable client
- 3.11.2. Appropriate representations are made to the police or immigration service to ensure that suitable provisions are made to prevent the client from being disadvantaged
- 3.11.3. The client is advised about the role of an appropriate adult or an interpreter, as appropriate, and the need to ensure that confidentiality is maintained.

Element 2

Working with an appropriate adult or interpreter.

Performance criteria

- 3.12.1. The appropriate adult or interpreter is made aware of his or her role
- 3.12.2. The interpreter is made aware of his or her duty to be impartial and to keep information confidential.

Range statement

The client might be vulnerable due to age, mental disorder or disability, a difficulty in understanding English, or a hearing or speech disability.

Unit 6 Identification procedures.

Element 1

Advising the client on identification procedures.

Performance criteria

- 3.13.1. Details of the witnesses' descriptions of the suspect to the police are sought and an appropriate response is given to a refusal to disclose this information
- 3.13.2. The client is given appropriate advice on the advantages and disadvantages of different identification procedures
- 3.13.3. The client is advised of the right to request an identification parade and the advantages and disadvantages of doing so
- 3.13.4. The client is advised of the consequences of not agreeing to take part in any identification procedure.

Element 2

Ensure that identification procedures are conducted fairly.

Performance criteria

- 3.14.1. Representations are made to the police and precautions taken to ensure that the identification procedure is conducted fairly
- 3.14.2. Appropriate advice is given to the client on participation in the form of identification chosen
- 3.14.3. A written record is kept of the identification procedure.

Range statement

The identification procedures on which advice might be given are identification parades; group identification; video film identification; confrontation; fingerprinting; identification by body samples, swabs, impressions.

Unit 7 Representing the client after the interview or identification procedure

Element 1

Ensure that improper questioning does not take place.

Performance criteria

- 3.15.1. Appropriate representations are made to the police and at reviews that the client should be charged or released without further questioning
- 3.15.2. Attempts are made to ensure that the client is not questioned further in the representative's absence.

Element 2

Ensure that after charge bail is given to the client where appropriate.

Performance criteria

3.16.1. Appropriate representations to the police after charge about bail

3.16.2. The client is informed about bail decisions.

Element 3

Advising the client.

Performance criteria

3.17.1. An explanation is given to the client about charging and bail decisions

3.17.2. The client is advised how to respond to subsequent approaches by the police to question him or her in the solicitor's or representative's absence

3.17.3. The client is referred to a specialist immigration advisor where appropriate having regard to the nature and complexity of the case and the knowledge and experience of the solicitor or representative.

