

Practising advocacy in the higher courts

31 August 2022

What is involved

The key challenges that advocates need to meet when dealing with cases in the higher courts can include:

- Identifying and mastering more complex issues of evidence, law and procedure.
- Developing and presenting more complex and sophisticated case theories and arguments, orally and in writing.
- Dealing effectively with more complex and sophisticated arguments from the other side, orally and in writing.
- Handling more challenging issues of procedure, admissibility and disclosure.
- Successfully examining multiple witnesses, including expert and vulnerable witnesses, on more complex issues of law or evidence.
- Sustaining high standards of effective advocacy over a longer period of time.

Key differences between practising criminal advocacy in Magistrates' Courts and the Crown Court

- Crown Court advocates make their submissions to an experienced judge so the knowledge requirements for effective advocacy are more advanced. For example, submissions about the law often need to be supported by legal authorities, which is usually not the case in Magistrates' Courts.
- The Crown Court deals with the most serious offences and can impose a maximum sentence of life in prison. Magistrates' Courts can usually impose a maximum sentence of six months. This means that Crown Court cases necessarily involve more complex issues and preparation. The impact of a miscarriage of justice, including as a result of incompetence on the part of an advocate, is more severe. Therefore advocates need to have advanced knowledge of the relevant:
 - case law
 - facts
 - legislation
 - sentencing guidelines
- The seriousness of Crown Court matters can create a lot of additional pressure. For example, the discount available for a guilty plea is usually measured in years rather than months. To advise on issues which have such serious repercussions, advocates need to fully grasp all elements of a case.



- Crown Court trials are conducted with a jury that makes decisions on the facts while the judge makes decisions on the law. As a result, advocates need to be able to identify when an issue is for the jury and when legal submissions need to be made to the judge.
- Crown Court advocates also need to be familiar with jury directions, which can be complex, and are often required to contribute to them. They can use the Crown Court Bench Book to help. The presence of a jury can also create specific issues that advocates need to deal with quickly and effectively. This includes the discharge of jurors and written notes submitted by the jury to the judge.
- When junior advocates start practising in the Crown Court their opponents can be very experienced, even in less serious cases. This highlights the importance of rigorous preparation, robust knowledge and effective advocacy. Without these things experienced opponents can put more junior advocates at a strategic disadvantage.
- Crown Court advocates may be required to advise in writing on appeals to the Court of Appeal. So you need to be able to research case law and understand what can make a conviction unsafe or a sentence excessive. This is not the case in Magistrates' Courts because there is an automatic right of appeal to the Crown Court.

Differences between practising advocacy in the County Court and the High Court

- The surroundings of the High Court and the seniority of the judges who sit in it can be more imposing, particularly for less experienced advocates.
- In the High Court judges are more likely to have had time to read into a case in advance so tend to be more fast paced and on top of the basics. Advocates need to be prepared to move at pace with the judge and deal with more detail. Knowing the appropriate pace to adopt can be challenging – don't rush, but don't waste time either.
- As the knowledge requirements for effective advocacy in the High Court are more advanced advocates also need to be prepared to explain their submissions in more detail.
- The complexity of cases that can be dealt with by the High Court can make it harder for advocates to focus on their best arguments and remain calm. These are key indicators of effective advocacy.

Your obligations

Preparing effectively for higher court advocacy can help meet your [Code of Conduct](https://consultations.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) [https://consultations.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] obligation to maintain your competence to carry out your role and keep your professional knowledge and skills up to date.

If you start to practise advocacy in the higher courts then you must make sure you meet the following competences from our Competence Statement:

- [A2 Maintain the level of competence and legal knowledge needed to practise effectively taking into account changes in your role and/or practice context and developments in the law.](https://consultations.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#a2) [<https://consultations.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#a2>]
- [A3 Work within the limits of your competence and the supervision which you need.](https://consultations.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#a3) [<https://consultations.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#a3>]

How to prepare for higher court advocacy

If practising in the higher courts is one of your goals then you should regularly reflect on the quality of your advocacy and the knowledge and skills needed to practise there.

You should then take steps to address the learning and development needs, improve your advocacy and prepare yourself for the higher courts. Talking to experienced practitioners, observing hearings or trials in the higher courts, or attending trials in cases where you have acted as instructing solicitor can all help.

To help, you can use our:

- [Competence Statement](https://consultations.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/) [<https://consultations.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/>]
- [Continuing competence resources](https://consultations.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/) [<https://consultations.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/>]
- [Statement of standards for higher court advocates](https://consultations.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/accreditation/higher-rights-of-audience/statement-of-standards-for-solicitor-higher-court-advocates/) [<https://consultations.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/accreditation/higher-rights-of-audience/statement-of-standards-for-solicitor-higher-court-advocates/>], which forms the basis of the higher rights of audience assessment, which you need to pass to practise advocacy in the higher courts.

Appropriate advocacy experience

You should not practise advocacy in the higher courts until you feel confident that you are sufficiently experienced.

Ideally, you should have practised advocacy in a range of cases in the lower courts and worked your way up to more complex, serious or high-profile cases.

If possible, you could supplement your practice by taking part in advocacy competitions and completing advocacy training or pro bono work.

Reflect on the quality of your advocacy, knowledge and skills

As stated, you can use our continuing competence resources, Competence Statement and Statement of standards for solicitor higher court advocates to help.

In addition to the outcomes of your cases and your own reflection you should collect and reflect on feedback from your clients, colleagues and other advocates.

You should also try to engage with solicitor higher court advocates, barristers and judges: they are well placed to help identify what you need to do to prepare for higher court advocacy.

This is particularly important if you are professionally isolated because you are a sole practitioner or the only advocate in a firm.

Address your learning and development needs

To prepare effectively for higher court advocacy your learning and development could include:

- observing advocacy in the higher courts
- researching the matters of law and procedure that are dealt with in the higher courts
- mentorship from a solicitor higher court advocate, barrister or judge
- taking on more challenging cases in the lower courts
- completing pro bono advocacy work
- taking part in advocacy training and competitions.

The [Maintaining your competence as an advocate](https://consultations.sra.org.uk/solicitors/resources/specific-areas-of-practice/maintaining-competence-advocate/) [<https://consultations.sra.org.uk/solicitors/resources/specific-areas-of-practice/maintaining-competence-advocate/>] section of these resources helps you reflect on the quality of your advocacy practice. There are examples of learning and development activities and a case study.