



Legal Services Board – decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

ILEX Professional Standards rule change application for approval of alterations to regulatory arrangements: Continuing Professional Development (CPD) Regulations

The Legal Services Board (LSB) has granted an application from ILEX Professional Standards (IPS) who sought to make changes to its regulatory arrangements and introduce new CPD Regulations to replace the existing CPD regulations and consequential changes to IPS Rights of Audience Certification Rules and IPS Associate Prosecutor Rights of Audience and Litigation Rules.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Chartered Institute of Legal Executives (CILEx) is an approved regulator and IPS is the regulatory arm to which the CILEx has delegated its regulatory functions.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. For example, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant's

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

² Rules for Rule Change Applications – Version 2 (November 2010)

obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.

4. The chronology for the LSB's handling of this application can be found towards the end of this decision notice.

Proposed changes

5. The proposed alterations to regulatory arrangements involve the introduction of CPD Regulations which implement a new CPD scheme (effective 1 October 2013). In June 2012 IPS published a consultation on proposed changes to its CPD regulations³ and between January and March 2013, IPS piloted the changes it proposes to introduce.
6. The principal changes the new IPS CPD Regulations propose are:
 - Removal of the hours requirement, replacing this with an outputs based scheme where at least nine completed outcomes are identified on a member's CPD record each year. Members in the relevant membership grades must reflect on current and future practice to identify areas in which they need to develop or refresh their knowledge and skills, in addition to evaluating the effectiveness of CPD against the intended outcome.
 - Replacing the requirement that at least 50% of CPD should be undertaken in the member's specialism with the requirement that all CPD should be relevant to the member's practice.
 - Requirements for all members to complete at least one planned CPD activity focused on professionalism which addresses ethical issues. Members need to comply with the requirements in the new CPD scheme when completing this CPD activity.
 - Requirements for members who are absent from work for more than six months to provide evidence of having kept up to date with changes to the law and legal practice. Members who need to meet this requirement will have the option of completing a 'Return to Work' course provided by CILEx.
 - A monitoring activity which includes a random sampling of members' CPD records, in addition to a targeted sample which is chosen on the basis of a risk analysis of members' CPD compliance.
7. The new IPS CPD regulations include transitional arrangements which phase in the implementation of the new CPD scheme over a period of three years. As different membership grades are brought within the new scheme the old requirements will be phased out of the rules.

³ <http://www.cilex.org.uk/PDF/IPS%20con%20CPD%20Jun%2012.pdf>

8. Consequential amendments are also made to the IPS Rights of Audience Certification Rules and IPS Associate Prosecutor Rights of Audience and Litigation Rules. The changes simplify these rules by removing references to specific CPD requirements and incorporating this information into the CPD Regulations (Part C and Part D respectively).

LSB Decision

9. During its consideration of the application, the LSB raised a number of issues with IPS about which IPS provided clarification. The most substantive of these issues are covered in this notice.
10. The LSB queried how the decision to implement different approaches for different membership grades had been reached. In its response, IPS explained that the phased approach would allow it time to engage with its regulated community in batches and that it had decided to start with Authorised Persons, as these members will have been in practice for the longest period since any initial study.
11. IPS explained that the reason Associate members will not be required to comply with the new requirements was because many of these members will currently be undertaking CILEx qualifications which will lead to qualification as an Authorised Person and at that point, they would become subject to the new CPD requirements. IPS provided the LSB with a provisional timetable for the research planned on the appropriateness of the new CPD scheme for these members. The LSB is content with the response from IPS on this matter and is pleased that IPS is proposing a phased introduction to allow adequate communication with its regulated community and to give authorised persons time to adjust.
12. Clarification was also sought by the LSB on the steps IPS is taking to ensure adequate resources are in place to meet the demands of the new CPD scheme. IPS confirmed that it recognises the new scheme will introduce significant changes for members which will require a substantial investment of resources. A project plan has been developed to ensure that the planned engagement activity occurs at the right time and an analysis has taken place of the resource demands presented by the 'Return to Work' course and sampling of CPD records. The LSB is content with this response from IPS and IPS' suggestion that it will be able to develop capacity in light of experiences in the operation of the early stages of the CPD scheme.
13. The LSB raised some matters of drafting which IPS responded to and made minor amendments to the regulations as a result.
14. The LSB has considered IPS' application against the criteria in paragraph 25(3) of Schedule 4 to the Act, and is satisfied that there is no reason to refuse this application; accordingly, the LSB grants this application. The revised IPS CPD Regulations and consequential amendments to the rules set out in Annex 1 are therefore approved.
15. Annex 1 to this decision notice contains the approved IPS CPD Regulations, IPS Rights of Audience Certification Rules and IPS Associate Prosecutor Rights of Audience and Litigation Rules.

Chronology

- The LSB confirmed receipt of an application from IPS on 9 July 2013.
- The 28 day initial decision period for considering the application ends on 5 August 2013.
- This decision notice is effective from and is being issued to IPS on 25 July 2013. It will be published on our website on 26 July 2013.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
25 July 2013

CPD REGULATIONS

A DEFINITION

- (1) Continuing Professional Development (CPD) is defined as:

‘To maintain, improve and extend the skills and qualities necessary for the proper performance of professional and legal duties and compliance required by IPS, so as to ensure confidence in the professionalism and competence of CILEx members.’

- (2) For the purpose of these regulations references to ‘members’ means Fellows, Legal Accounts Executives, Graduate members, Legal Accounts Members, Associate members and Associate Prosecutor members of the Chartered Institute of Legal Executives (CILEx)

B CPD REQUIREMENT

- (1) The CPD year begins on 1 October and ends on 30 September.
- (2) Members of CILEx resident either in the United Kingdom or overseas, with the exception of retired members, are required to undertake CPD in accordance with their grade of membership at the commencement of the CPD year.
- (3) Members who are registered in the grades of Fellows, Legal Accounts Executives and Associate Prosecutor must:
- For the CPD year commencing 1 October 2013 undertake a minimum of 16 hours CPD in accordance with the requirements set out at Regulations B(8) to B(15) and complete at least one planned CPD entry on professionalism in accordance with the requirements set out at Regulations B(17) to B(25), except that at Regulation B(19) the references to 5 and 3 entries shall be replaced with 1 entry.
 - From the CPD year commencing 1 October 2014 undertake CPD in accordance with the requirements set out at Regulations B(16) to B(25).
- (4) Members who are registered in the grades of Graduate members and Legal Account members must:
- For the CPD years commencing 1 October 2013 and 1 October 2014 undertake a minimum of 12 hours CPD each CPD year in accordance with

the requirements set out at Regulations B(8) to B(15) and complete at least one planned CPD entry each CPD year on professionalism in accordance with the requirements set out at Regulations B(17) to B(25), except that at Regulation B(19) the references to 5 and 3 entries shall be replaced with 1 entry.

- From the CPD year commencing 1 October 2015 undertake CPD in accordance with the requirements set out at Regulations B(16) to B(25).
- (5) Members who are registered in the Associate member grade must undertake a minimum of 8 hours CPD during each CPD year in accordance with the requirements set out at Regulations B(8) to B(15) and complete at least one planned CPD entry on professionalism in accordance with the requirements set out at Regulations B(17) to B(25), except that at Regulation B(19) the references to 5 and 3 entries shall be replaced with 1 entry.
- (6) A member who is registered during a CPD year into a grade of membership which is subject to CPD requirements will not need to undertake CPD until the following year.
- (7) A member who is entered into a new grade of membership which is subject to different CPD requirements to the grade of membership they were in at the commencement of the CPD year will undertake CPD in accordance with the grade of membership they were in at the commencement of the CPD year.

CPD Hours

- (8) A member must complete CPD hours commensurate with their grade of membership.
- (9) At least half of the CPD hours completed during the year must be in the member's chosen specialist area (the specialist area) and the rest may be in an area relevant to the member's professional development outside their chosen specialist area (the non-specialist area).
- (10) CPD activities in a member's nominated specialist area may be claimed for up to all the required CPD hours per CPD year.
- (11) CPD activities in a member's non specialist areas may be claimed for up to half of the CPD requirement for the CPD year.
- (12) A member working outside legal practice is required to undertake the full CPD hours, but need not designate a specialist area.
- (13) Excess hours over the minimum required may not be carried forward to the following CPD year.
- (14) A member must record CPD activities undertaken in the CPD year through the online log book recording system available through 'myCILEx'. Sufficient information must be recorded to show the activity undertaken meets the

regulations for CPD. Valid CPD activities are described in the guidance to the CPD regulations.

- (15) The guidance sets out the amount of hours that may be claimed for various CPD activities.

Outputs Based Scheme

- (16) A member must complete at least 9 CPD entries under the outputs based scheme each CPD year in accordance with Regulations B(17) to B(25).
- (17) A member undertaking CPD in accordance with the outputs based scheme must reflect upon their practice and identify training and development needs. They must then complete training and development to meet those needs and reflect upon the effectiveness of the learning gained from those training needs. This will be known as the planned CPD.
- (18) A member undertaking CPD in accordance with the outputs based scheme may also count as CPD training and development they have undertaken without planning. In these instances they must reflect upon the learning gained from that activity. This will be known as the unplanned CPD.
- (19) At least 5 entries each year must be planned CPD, of which at least 3 entries must be planned at the commencement of the CPD year. The remaining entries may comprise planned CPD or unplanned CPD.
- (20) At least one of the planned entries must relate to professionalism. Professionalism is defined as CPD which covers ethics, business awareness, social awareness, client care, communication, equality and diversity or time management.
- (21) Additional CPD entries over the minimum required may not be carried forward to the following CPD year.
- (22) A member must maintain a record of the entries of planned CPD, the evaluation of the CPD activity undertaken and how it met or did not meet their training needs and the CPD log. Records must be retained for a period of at least 2 years from the end of the CPD year.
- (23) IPS will sample CPD records. A member whose records are called for sampling must supply to IPS their planned CPD document, evaluation of CPD and CPD log within 28 days of the request.
- (24) IPS may interview members whose records are called for sampling.
- (25) A member whose records are called for sampling or who is selected for interview must respond to reasonable enquiries made by IPS about their CPD activities and CPD records.

Recording CPD

- (26) By 30 September of the CPD year a member must complete and submit to CILEx using the 'myCILEx' CPD recording system a record of the CPD they undertook during that year in the form of CPD hours or CPD entries, as applicable.
- (27) A false declaration regarding completion of CPD will be regarded as misconduct.
- (28) A member who is completing the work based learning scheme may make an application to IPS to reduce the number of CPD entries they complete each CPD year to five entries per year for a maximum period of two years. The reduction will be granted during their participation in the work based learning scheme.

C CHARTERED LEGAL EXECUTIVE ADVOCATES

CPD year 1 October 2013 to 30 September 2014

- (1) For the CPD year 1 October 2013 to 30 September 2014 Chartered Legal Executive Advocates must complete five hours advocacy skills training which will form part of the overall 16 hours CPD required for that CPD year.
- (2) CPD must be gained by attendance at a training course focusing upon advocacy skills.

CPD year commencing 1 October 2014

- (3) From the CPD year commencing 1 October 2014 Chartered Legal Executives are required to undertake at least two CPD entries relating to advocacy skills. These entries will form part of the 9 entries overall required for each CPD year.

General

- (4) Chartered Legal Executive Advocates are not required to undertake any CPD in respect of the period between the date an Advocacy Certificate is first granted and 30 September of that year.
- (5) Chartered Legal Executive Advocates must send a record of their advocacy CPD to CILEx. The Officer will check the record to ensure that it complies with these Rules.
- (6) Where a Chartered Legal Executive Advocate has failed to undertake CPD which meets the requirements of these Rules or fails to provide a record of such

CPD the Officer will refer the matter to the Admissions and Licensing Committee. The Admissions and Licensing Committee will consider whether the Chartered Legal Executive Advocate should retain their Advocacy Certificate. The Chartered Legal Executive Advocate will have the opportunity to make written representations to the Committee and has a right to be heard by the Committee. The Committee may decide to:

- Grant an extension of up to 6 months for the Chartered Legal Executive Advocate to meet their outstanding CPD requirements. The Advocate will still be required to meet their current CPD requirements in the normal way; or
- Withdraw the Advocacy Certificate until the Fellow complies with the CPD requirements;
and, in either case,
- Refer the failure to comply with the CPD requirements to IPS for investigation.

D ASSOCIATE PROSECUTOR MEMBERS

CPD year 1 October 2013 to 30 September 2014

- (1) For the CPD year 1 October 2013 to 30 September 2014 Associate Prosecutor members must undertake at least 16 hours CPD.
- (2) At least 8 hours of the CPD must be in advocacy skills training gained by attendance on a training course focusing upon advocacy skills, criminal practice, procedure or knowledge

CPD year commencing 1 October 2014

- (3) From the CPD year commencing 1 October 2014 Associate Prosecutor members must undertake at least nine CPD entries of which at least five entries relate to advocacy skills training, criminal practice, procedure or knowledge.

General

- (4) Associate Prosecutors are not required to undertake any CPD in respect of the period between the date a Level 1 Associate Prosecutor Certificate is first granted and September 30th of that year.
- (5) CILEx will monitor compliance with the CPD requirements. An Associate Prosecutor must send a record of their advocacy CPD to CILEx. The Officer will check the record to ensure that it complies with these Rules.

- (6) Where an Associate Prosecutor has failed to undertake advocacy CPD which meets the requirements of these Rules or fails to provide a record of such CPD the Officer will refer the matter to the Admissions and Licensing Committee. The Admissions and Licensing Committee will consider whether the Associate Prosecutor should retain their Level 1 or Level 2 Certificate. The Associate Prosecutor will have the opportunity to make written representations to the Committee and has a right to be heard by the Committee. The Committee may decide to:
- Grant an extension of up to 6 months for the Associate Prosecutor to meet their outstanding CPD requirements. The Associate Prosecutor will still be required to meet their current CPD requirements in the normal way; or
 - Withdraw the Certificate until the Associate Prosecutor complies with the CPD requirements;
and, in either case,
 - Refer the failure to comply with the CPD requirements for investigation by IPS under its misconduct rules.

E DISPENSATION FROM CPD REQUIREMENTS

- (1) A member who is absent from employment during any CPD year, whether in legal practice or otherwise, for more than 6 months due to illness, unemployment or maternity or paternity leave, need not fulfill their CPD requirement for the year. However, where such members do not meet their CPD obligations, they should undertake a suitable 'Return to Work' scheme prior to, or at the time of, their return to work. This should be completed no later than 2 months after their return to work
- (2) The reason for the absence and the dates must be entered on the member's logbook. Evidence of the reasons for absence from employment due to illness, unemployment, maternity or paternity leave, may be requested by IPS.

F FAILURE TO COMPLY WITH CPD REQUIREMENTS

- (1) A member must complete their CPD logbook online by 30 September each year.
- (2) A member who believes they will be unable to meet the CPD requirements by 30 September may apply for dispensation in respect of Regulation F(1). A request for dispensation must be made no later than 31 August of that year and must include an explanation of the circumstances which have prevented the member from meeting the CPD requirements. It must also include an action plan to comply with the requirement by 31 December following the end of the CPD year for which the dispensation is sought.

- (3) Unless a reduction has been granted under regulation B(28), or a dispensation has been granted under regulations F(1) or F(2), a member who fails to comply with the CPD requirements by 30 September will have the rights which attach to their grade of Membership suspended from 1 January of the next calendar year. They will not be able to use their grade title or designatory letters or, in the case of Fellows and immigration practitioners, exercise any of their practice rights unless they comply with the requirements.

Rights of Audience Certification Rules

The IPS Rights of Audience Certification Rules shall be amended as follows:

Insert Rule 92 as follows:

“92 A Fellow making an application for renewal of his Advocacy Certificate, after the first renewal, must:

- be a Fellow of good standing;
- be an employee or a manager in an organisation referred to in Rule 6 of these Certification Rules;
- provide a statement from his employer or the organisation in which he is a manager confirming his employment and indicating whether any rights of audience granted will be exercised; and
- have undertaken Continuing Professional Development (CPD) that meets the requirements set out in the CPD Regulations.”

Insert Rule 103 as follows:

“103 Chartered legal Executive Advocates must comply with the Continuing Professional Development Regulations.”

Rule 104: [Deleted]

Rule 105: [Deleted]

Rule 106: [Deleted]

Rule 107: [Deleted]

Associate Prosecutor Rights of Audience and Litigation Certification Rules

The IPS Rights of Audience Certification Rules shall be amended as follows:

Insert Rule 70 as follows:

“70 Associate Prosecutors must comply with the Continuing Professional Development Regulations.”

Rule 71: [Deleted]

Rule 72: [Deleted]

Rule 73: [Deleted]

Rule 74: [Deleted]