



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

ILEX Professional Standards Ltd (IPS)'s rule change application to amend the Chartered Institute of Legal Executives (CILEx)'s regulatory arrangements for Applications for Fellowship (Work Based Learning)

The Legal Services Board (LSB) has granted an application from IPS to:

- amend the Membership Requirements Regulations (Annex A) to make changes to the qualifying employment element for the admission as a Fellow, and
- create two new sets of regulations, the Application for Fellowship Rules (Work Based Learning) (Annex B) and the Application for Fellowship (Transitional Arrangements) (Annex C).

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. CILEx is an approved regulator and IPS is the regulatory arm to which 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

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.

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 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 alterations

5. IPS has proposed alterations to the existing 'Membership Requirements Regulations' of CILEx. These regulations set out the necessary requirements for Graduate Member to be admitted as a Fellow and include:
 - a period of qualifying employment and the basis for that employment;
 - the payment of subscriptions and other fees;
 - a Certificate signed by a supervisor that confirms the nature of work undertaken and the applicant's competency to be a Fellow; and
 - the acceptance of any obligations imposed by the Charter, bye-laws and the Council.
6. The main change to the existing regulations include alterations to the qualifying employment element of the requirements, to introduce a work based learning scheme developed to reflect the key competencies required to become a newly qualified Fellow. The proposed alterations will require an applicant to show competence in a set of eight agreed work based learning outcomes during their qualifying employment period.
7. IPS also proposed that the period of qualifying employment decrease from five years (with two years continuous service as a Graduate Member) to three years qualifying employment (with at least one year as a Graduate Member and two years continuous service).
8. IPS proposed the introduction of the 'Application for Fellowship Rules (Work Based Learning)', a new set of regulations which gives further detail on:
 - the requirements for admission as a Fellow;

² [Rules for Rule Change Applications – Version 2 \(November 2010\)](#)

- the criteria for eligibility for Fellowship;
- the definition of qualifying employment;
- a description of the work based learning outcomes, and
- a description of the decision-making process for an application.

9. IPS also proposed the introduction of 'Application for Fellowship Rules (Transitional Arrangements)', which are a separate set of new regulations valid for two years following the introduction of the scheme. The transitional arrangements will apply to some Graduate Members who are currently in the process of qualifying to become a Fellow.

Decision

10. The LSB welcomes the outcomes-focussed approach adopted by IPS to introduce a work based learning scheme based on a set of learning outcomes which reflect the key competencies required to become a newly qualified Fellow.

11. The LSB broadly agrees with the IPS determination that the previous application process did not objectively and independently consider the competence of an applicant when determining an application for Fellowship.

12. The LSB also concurs with the IPS view that an application process which is based on transparent and agreed criteria in the form of eight agreed work based learning outcomes will ensure the application process for Fellowship is more robust and objective, and therefore fairer to the applicant.

13. Having assessed the application the LSB did not identify any significant issues. However it did identify some points of clarification with the application such as, gaining an assurance from IPS that they have the necessary capacity and resources to deal with the applications under the new rules, to which IPS provided a satisfactory response.

Conclusion

14. The LSB is satisfied that, having considered IPS's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, there is no reason to refuse this application; accordingly, the LSB grants this application.

15. The annexes to this decision notice contain the approved alterations to the CILEx's regulatory arrangements which include:

- Annex A: Membership Requirements Regulations.
- Annex B: Application for Fellowship Rules (Work Based Learning).
- Annex C: Application for Fellowship Rules (Transitional Arrangements).

Chronology

- The LSB confirmed receipt of an application from IPS on 26 February 2013.

- The 28 day initial decision period for considering the application ends on 26 March 2013.
- This Decision Notice is being issued to IPS on 21 March 2013 and will be published on our website on 22 March 2013.

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

Annex A:

MEMBERSHIP REQUIREMENT REGULATIONS

Regulations made by the Council under Bye-Law 4 on 25 January 2013

1. Implementation

These Regulations take effect from 30 January 2012 and supersede previous Bye-Laws and Council decisions, without prejudice to anything done under those previous Bye-Laws and decisions

2. Definitions

In these Regulations the following definitions apply:

“Associate Prosecutor” means a person who is designated by the Director of Public Prosecutions under Section 7A of the Prosecution of Offences Act 1985.

“The Admissions and Licensing Committee” means the Committee established by IPS to deal with matters relating to these Membership Requirement Regulations.

“Chartered Institute” means the Chartered Institute of Legal Executives.

“CILEx” means the Chartered Institute of Legal Executives.

“Graduate” means a person who holds a qualifying law degree.

“IPS” means ILEX Professional Standards Ltd.

“Licensed Conveyancer” means a person authorised to provide conveyancing and in some situations probate services by the Council for Licensed Conveyancers.

“Qualifying Law Degree” means a degree recognised by the Solicitors’ Regulation Authority (SRA).

“Registered Person” means a person who is not a Fellow but is registered with CILEx in accordance with its Charter and Bye-Laws and regulations made by the Council.

“Relevant Level 2 Legal Qualification” means a legal qualification which is listed on the Qualifications Credit Framework and is recognised by CILEx and which may be subject to change from time to time.

References to the male gender shall include the female gender.

3. Obligations

3.1 Everyone who is registered with CILEx, in whatever grade, will be bound by the provisions of the Charter and Bye-Laws, and regulations made by the Council.

3.2 Everyone who is registered with CILEx, in whatever grade, must satisfy any requirements in respect of fitness to be registered as a member.

4. Membership

- 4.1 A person wishing to register with CILEx may be registered in any of the following grades, subject to complying with the registration criteria for that grade:
- Student
 - Affiliate
 - Associate
 - Graduate Member
 - Hong Kong Member
 - Legal Accounts Member
 - Legal Accounts Executive
 - Associate Prosecutor
 - Fellow
- 4.2 A person may be registered as a Student provided he has no relevant legal qualification.
- 4.3 A person may be registered as an Affiliate if:
- 4.3.1 He has a relevant Level 2 legal qualification; or
 - 4.3.2 He has gained at least three year's work experience in a legal environment; or
 - 4.3.3 He has passed at least one CILEx Level 3 unit.
- 4.4 Without prejudice to the position of an Associate who qualified and was registered as such before 1 January 1986 a person may be registered as an Associate if:
- 4.4.1 He has passed the CILEx Level 3 Professional Diploma in Law and Practice; or
 - 4.4.2 He is a Graduate with a qualifying law degree.
- 4.5 A person may be registered as a Graduate Member if:
- 4.5.1 He has passed the CILEx Level 3 Professional Diploma in Law and Practice and the CILEx Level 6 Professional Higher Diploma in Law (or equivalent); or
 - 4.5.2 He has completed a Legal Practice Course (LPC); or
 - 4.5.3 He has completed a Bar Professional Training Course (BPTC).
- 4.6 A person may be registered as a Hong Kong Member if he is enrolled on the Professional Diploma in Legal Executive Studies (Hong Kong) or any other Hong Kong course recognised by the Council.

- 4.7 A Legal Accounts Member may be registered as a Legal Accounts Executive if he has passed the qualification in legal and financial matters as are required by CILEx from time to time.
- 4.8 A person may be registered as an Associate Prosecutor member of CILEx if:
 - 4.8.1 He has been designated as an Associate Prosecutor by the Director of Public Prosecutions;
 - 4.8.2 He is employed by the Crown Prosecution Service as an Associate Prosecutor; and
 - 4.8.3 His application for registration is endorsed by a Crown Prosecutor who is responsible for his work.
- 4.9 A person who ceases to be designated as an Associate Prosecutor for any reason, shall continue to be a Registered Person and shall be enrolled as a Student, Affiliate or Associate subject to meeting the registration criteria for that membership grade.
- 4.10 A person who has been registered as an Associate, a Graduate Member, a Legal Accounts Member or a Legal Accounts Executive, but whose registration has lapsed, can apply to re-register if:
 - 4.10.1 He pays any fees owing to CILEx at the time his membership ended; and
 - 4.10.2 He satisfies the requirements of the Council in respect of fitness to be registered with CILEx.

5. Admission as a Fellow

- 5.1 A Graduate Member may be admitted as a Fellow if he is in qualifying employment as defined in the Application for Fellowship Work Based Learning Rules and;
 - 5.1.1 He has been in qualifying employment for an aggregate of 3 years or more;
 - 5.1.2 He has been in qualifying employment for at least 2 consecutive years immediately prior to making application to become a Fellow the latter year being as a Graduate member.
 - 5.1.3 He has met the work based learning outcomes in accordance with the requirements set by IPS which appear in the Application for Fellowship Work Based Learning Rules
 - 5.1.4 He has paid all subscriptions and other fees payable by him to CILEx, or has made arrangements for payment;
 - 5.1.5 He provides a Certificate signed by an authorised person within the meaning of the Legal Services Act 2007, or at the discretion of IPS any other person, who supervises his work or by whom he is

employed, which confirms the nature of his duties and that he is competent to be a Fellow; and

5.1.6 He accepts any obligations imposed on him by the Charter and Bye-Laws and regulations made by the Council.

5.2 A person who has been admitted as a Fellow previously, but whose membership has lapsed, may be re-admitted as a Fellow if he pays any fees owing to the Chartered Institute at the time his membership ended.

6. Designatory Letters

6.1.1 A Graduate Member is entitled to receive a certificate showing that he is a Graduate Member of The Chartered Institute of Legal Executives, to describe himself as a Graduate Member of The Chartered Institute of Legal Executives, and to use the designatory letters GCILEx

6.1.2 An Associate Member is entitled to receive a certificate showing that he is an Associate Member of The Chartered Institute of Legal Executives, to describe himself as an Associate Member and to use the designatory letters ACILEx.

Annex B:

APPLICATION FOR FELLOWSHIP RULES (WORK BASED LEARNING)

DEFINITIONS

1. In these rules, the following definitions apply:

'Admissions and Licensing Committee' means the Committee established by IPS to deal with matters relating to these rules.

'Authorised person' means a person so described in the Legal Services Act 2007. An authorised person is defined by the Act as 'a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity'.

'CILEx' means the Chartered Institute of Legal Executives

'Fellow' means a person who has complied with regulations made by Council regarding qualifying employment, has paid all subscriptions and other fees to CILEx or has made arrangement for payment and has provided a certificate signed by an authorised person who supervises their work, or by whom they are employed, which confirms the nature of their duties and that they are competent to be a Fellow.

'Graduate member' means a person registered as such by CILEx who is not a Fellow.

'IPS' means ILEX Professional Standards Ltd

'Registered person' means a person who is not a Fellow but is registered with CILEx in accordance with its Charter and Bye Laws and regulations made by CILEx Council.

Reference to the male gender also includes female gender.

ADMISSION AS A FELLOW

2. A Graduate Member may be admitted as a Fellow if he is in qualifying employment and:
 - He has been in qualifying employment for an aggregate of 3 years or more;
 - He has been in qualifying employment for at least 2 consecutive years immediately preceding the date of the application;
 - He has served at least 1 year in the Graduate grade of membership;
 - He has met the work based learning outcomes in accordance with the requirements set by IPS;
 - He has paid all subscriptions and other fees payable by him to CILEx or has made arrangement for payment;
 - He provides a Certificate of Fitness signed by an authorised person within the meaning of the Legal Services Act 2007, or at the discretion of IPS, any other person, who supervises his work or by whom he is employed, which confirms the nature of that work and that he is competent to be a Fellow; and
 - He accepts any obligations imposed on him by the Charter and Bye Laws and regulations and rules made by the CILEx Council.

ELIGIBILITY

3. Applications for Fellowship can only be made by Graduate Members of CILEx who:
 - are currently in qualifying employment;
 - have at least 3 years qualifying employment, of which at least 1 year has been served in the Graduate grade of membership; and
 - have been in qualifying employment for 2 consecutive years immediately preceding the date of the application.
4. A period of up to 43 weeks spent in attendance on a Legal Practice Course recognised by the Law Society of England and Wales in connection with qualification as a solicitor or the Bar Professional Training Course recognised by the Bar Council in connection with qualification as a Barrister will be treated as qualifying employment.
5. A break in employment for any reason does not count as qualifying employment. Where the break is less than 12 months, it will not break continuity of employment for

the purpose of the requirement to serve 2 consecutive years in qualifying employment immediately preceding the date of the application.

DEFINITION OF QUALIFYING EMPLOYMENT

6. A person is in qualifying employment if he is employed either:
 - by an authorised person in private practice;
 - by an organisation where the employment is subject to supervision by an authorised person employed in duties of a legal nature by that organisation; and in either case; and
 - the work under the terms of his employment is, for at least 20 hours per week, wholly of a legal nature.
7. An applicant for Fellowship will be regarded as being employed if:
 - he is employed under a contract of service and is engaged on his employer's business for specified hours; or
 - he is a partner in any firm or is an owner of any company; or
 - at the discretion of IPS, he is employed under a contract for services, whether he works as an independent contractor or provides services through an intervening agent.
8. Part-time employment may be accepted as qualifying employment, if the work undertaken provides the opportunity for practical expertise to be developed. Part-time employment is employment for less than 20 hours per week. IPS shall have the power to determine that employment for less than 20 hours per week shall be regarded as part-time qualifying employment, where it decides it is appropriate to do so.
9. Unpaid work may be regarded as 'employment' for the purposes of these rules.

WORK BASED LEARNING OUTCOMES

10. To qualify as a Fellow, applicants must be able to demonstrate competence against each of the learning outcomes set out below:

Competency 1: Practical Application of the law and legal Practice
1.1 Apply the law to the matter.

1.2 Apply relevant legal procedure to a matter.
1.3 Identify and deal with the issues arising in a matter.
1.4 Undertake legal research.
Competency 2: Communication skills
2.1 Communicate legal issues using appropriate methods.
2.2 Use suitable language in communication.
2.3 Address all issues in communication.
2.4 Seek appropriate information through communication.
2.5 Represent a client through effective communication and other skills.
Competency 3: Client relations
3.1 Identify and understand a client's or service user's position.
3.2 Take accurate instructions relating to a legal matter from clients or service users.
3.3 Provide clear legal advice to clients or service users.
3.4 Evaluate the risks, costs and benefits of alternative courses of action.
3.5 Take action to deal with instructions received.
3.6 Manage a client's or service user's expectations.
Competency 4: Management of workload
4.1 Progress matters expeditiously.
4.2 Plan your workload to deliver a good legal service to clients or service users.
4.3 Maintain files and records in accordance with procedures.
Competency 5: Business Awareness
5.1 Demonstrate an understanding of the business environment of a legal practice or organisation.
5.2 Evaluate the risks, costs and benefits of alternative courses of action to the business.
Competency 6: Professional Conduct

6.1 Apply the rules of professional conduct appropriately to relevant situations
6.2 Provide appropriate information to clients and service users.
6.3 Understand the need to avoid discrimination and promote equality and diversity
Competency 7: Self-awareness and development
7.1 Evaluate your professional skills and legal knowledge.
7.2 Understand the limitations of your professional skills and knowledge.
Competency 8: Working with others
8.1 Establish effective working relationships with others involved in a legal matter.
8.2 Demonstrate ability to select and provide appropriate information to others as required by the law

11. Learning outcomes shaded in grey should be met once; all other outcomes should be met 3 times.
12. Applicants for Fellowship should demonstrate meeting the learning outcomes by using the documentation prescribed by IPS to produce a portfolio of evidence.
13. Applicants for Fellowship must also complete all application forms required by IPS from time to time.

DECISION MAKING

14. The decision to accept an applicant for Fellowship on the basis of his submitted application and portfolio of evidence may be made by an Officer of IPS.
15. The Officer is not able to make a decision the following:
 - Where a member seeks guidance or a decision as to whether or not their employment constitutes qualifying employment and no earlier precedent has been set.

- Where a registered person may be undertaking work which is similar to qualifying employment, but there is no authorised person employed to supervise his work.
- Applications from members who seek to rely on qualifying employment which took place more than 3 years preceding the date of their application
- Where there is doubt about the nature of the work and whether the work constitutes qualifying employment.
- Where there is doubt as to whether the outcomes have been met or have been properly written up.

The Admissions and Licensing Committee will determine these applications in accordance with the Membership Requirement Regulations and these rules.

December 2012

Annex C:

APPLICATION FOR FELLOWSHIP RULES (TRANSITIONAL ARRANGEMENTS)

Definitions

1.1 In these Regulations the following definitions apply:

“Admissions and Licensing Committee” means the Committee established by IPS to deal with matters relating to the Application for Fellowship rules.

“Chartered Institute” means the Chartered Institute of Legal Executives.

“CILEx” means the Chartered Institute of Legal Executives.

“IPS” means ILEX Professional Standards Ltd.

“Licensed Conveyancer” means a person authorised to provide conveyancing and in some situations probate services by the Council for Licensed Conveyancers.

“Registered Person” means a person who is not a Fellow but is registered with CILEx in accordance with its Charter and Bye-Laws and regulations made by the Council.

References to the male gender shall include the female gender.

Admission as a Fellow

- 1.1 Subject to Regulation 2.4 a Graduate Member who has fewer than 24 months of post Graduate membership to complete by [2 years from date of WBL coming into effect] **and** at the time that he has completed 2 years in the post Graduate grade of membership has a total of 5 years qualifying employment may be admitted as a Fellow if he is in qualifying employment and:
- 1.1.1 He has been in qualifying employment for an aggregate of 5 years or more;
 - 1.1.2 He has been in qualifying employment as a Graduate Member for at least 2 consecutive years immediately prior to making application to become a Fellow;
 - 1.1.3 He has paid all subscriptions and other fees payable by him to CILEx, or has made arrangements for payment;
 - 1.1.4 He provides a Certificate signed by an authorised person, or at the discretion of IPS any other person, who supervises his work or by whom he is employed, which confirms the nature of his duties and that he is competent to be a Fellow; and
 - 1.1.5 He accepts any obligations imposed on him by the Charter and Bye-Laws and regulations made by the Council.
- 1.2 A person who has been admitted as a Fellow previously, but whose membership has lapsed, may be re-admitted as a Fellow if he pays any fees owing to the Institute at the time his membership ended.

Qualifying Employment

- 2.1 A person is in qualifying employment if he is employed either:
- by an authorised person as defined by the Legal Services Act 2007 in private practice; or

- by an organisation where the employment is subject to supervision by an authorised person employed in duties of a legal nature by that firm, corporation, undertaking, department or office; and

in each case, undertakes work that is ***wholly of a legal nature*** for at least 20 hours per week.

- 2 An applicant for Fellowship will be regarded as being employed if:
 - 2.2.1 He is employed under a contract of service and is engaged on his employer's business for specified hours; or
 - 2.2.2 He is a partner in any firm or is an owner of any company; or
 - 2.2.3 at the discretion of IPS, he is employed under a contract for services, whether he works as an independent contractor or provides services through an intervening agent.
- 2.3 A period of up to 43 weeks spent in attendance on a Legal Practice Course recognised by the Law Society of England and Wales in connection with qualification as a Solicitor will be treated as qualifying employment.
- 2.4. Part-time employment may be accepted as qualifying employment, if the work undertaken provides the opportunity for practical expertise to be developed. However the two years required to be served in the Graduate Membership grade before admission as a Fellow may be extended by up to one further year where a Graduate Member is employed part-time during that period.
 - 2.4.1 For the purpose of this bye-law, part-time employment is employment for less than 30 hours per week. Employment for less than 20 hours per week will not normally be accepted as qualifying employment, but IPS shall have power to determine that employment for less than 20 hours per week shall be regarded as part-time qualifying employment, where it decides it is appropriate to do so.

- 2.4.2 Decisions as to whether part-time employment may be counted as qualifying employment and whether any additional periods are required to be served in the Graduate Membership grade before admission as a Fellow may be made by the IPS Officer responsible for checking applications for admission to Fellowship.
- 2.5 Unpaid work may be regarded as “employment” for the purpose of these bye-laws.
- 2.6 Time spent on maternity leave will not count as qualifying employment. However maternity leave taken whilst registered as a Graduate Member will not break the continuity of the employment for the purpose of Regulation 1.1.2.
- 2.7 Periods out of employment owing to redundancy will not count as qualifying employment but, if they occur during the period of Graduate Membership they will not break the continuity of employment for the purpose of Regulation 1.1.2.
- 2.8 Breaks in qualifying employment caused by illness or change of employment will be disregarded in determining periods of qualifying employment provided they do not exceed six consecutive weeks.
- 2.8.1 Where such breaks occur during the period of Graduate Membership they will not break the continuity of employment for the purpose of Regulation 1.1.2, unless they exceed three consecutive months.
- 2.8.2 Where a break of more than six weeks occurs, caused by illness or change of employment, none of that period will count for the purpose of calculating the qualifying employment.
- 2.9 A Committee of IPS, to be known as “The Admissions and Licensing Committee” will consider applications or requests relating to these Membership Requirement Requirements on behalf of IPS.

Its terms of reference will be as follows:

- 2.9.1 To make decisions on behalf of IPS on cases referred to the Committee by the Officer where a member of the Chartered Institute seeks guidance or a decision on whether or not their employment constitutes 'qualifying employment', and where no earlier precedent has been set.
- 2.9.2 To determine whether a registered person may be deemed to be in 'qualifying employment' in cases where the work he undertakes is similar to 'qualifying employment', but there is no authorised person employed to supervise his work.
- 2.9.4 To consider appeals from decisions of the Officer whether part time employment may be counted as qualifying employment and whether any additional periods are required to be served in the Graduate Membership grade before admission as a Fellow.
- 2.9.5 To develop a body of precedent relating to quality of experience and demonstrable competency.
- 2.9.6 To make recommendations to the IPS Board from time to time on all matters within the remit of the Committee.

25 February 2013