

INSTITUTE OF LEGAL EXECUTIVES

**APPLICATION TO BECOME APPROVED
REGULATOR TO AWARD RIGHTS OF AUDIENCE
AND RIGHTS TO CONDUCT LITIGATION
TO ASSOCIATE PROSECUTOR MEMBERS OF ILEX**

19 JULY 2010

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PART I

INTRODUCTION

PART I – INTRODUCTION

THE APPLICATION

1. The Institute of Legal Executives (ILEX), an approved regulator under the Legal Services Act, makes an application to be designated by the Lord Chancellor to grant rights of audience and rights to conduct litigation to Associate Prosecutor members of ILEX under Part 2 of Schedule 4 Legal Services Act 2007. The Application is made in accordance with rules issued by the Legal Services Board under Part 2 of Schedule 4 of the Legal Services Act 2007.
2. Associate Prosecutor is a category of ILEX membership created by ILEX in November 2008 for Crown Prosecution Service (CPS) staff employed in the role of Associate Prosecutor.
3. Associate Prosecutors are prosecution advocates who, since 1998, have derived their rights of audience and rights to conduct litigation from the Director of Public Prosecutions (the Director) through formal statutory designation, under section 7A (1) of the Prosecution of Offences Act 1985.
4. However, section 7A (8) of the Prosecution of Offences Act 1985¹, inserted by section 55 of the Criminal Justice and Immigration Act 2008, states that from 1 May 2011 the Director will no longer be able to confer on designated persons any rights of audience or rights to conduct litigation.
5. If this application is successful, from 1 May 2011 ILEX will assume from the Director the function of awarding Associate Prosecutor members the rights of audience and rights to conduct litigation necessary to exercise the rights and powers of a Crown Prosecutor as permitted by section 7A of the Prosecution of Offences Act 1985.
6. The rights of audience sought by ILEX for Associate Prosecutors that are the subject of this application are split into two levels. The levels correspond with the level of experience and training of Associate Prosecutors and the authority granted by the Director to prosecute cases on his behalf.
7. Associate Prosecutors holding the **Level 1** Rights of Audience and Litigation Certificate in Criminal Proceedings will be permitted to appear before Justices or a District Judge in the magistrates' courts (including the youth court) to prosecute all adult and youth offenders where the CPS is the prosecuting authority except in trials, Newton Hearings, Special Reasons Hearings,

¹ Section 7A (8) of the Prosecution of Offences Act 1985 states – as from 1 May 2011 nothing in this section will confer on persons designated under this section (a) any rights of audience, or (b) any right to conduct litigation, for the purposes of Part 3 of the Legal Services Act 2007 (reserved legal activities)

Contested Preventative Civil Orders, and Contested Binding Over proceedings; and appear in the magistrates, youth and Crown Court before a judge to conduct a bail application where the CPS is the prosecuting authority.

8. Associate Prosecutors holding the **Level 2** Rights of Audience and Litigation Certificate will have the same advocacy rights as holders of the Level 1 certificate but also be permitted to prosecute trials in the magistrates' courts (including the youth courts) in summary only offences.
9. The litigation rights sought for Associate Prosecutors will permit them to conduct out of court casework functions in cases where the CPS is the prosecuting authority and where the case falls within their statutory remit² to prosecute. This includes the review of a prosecution case by applying the Code for Crown Prosecutors, selection of witnesses in trials in the magistrates' courts and youth court, disclosure of unused material in magistrates' courts and youth court trials and amendment of a charge or summons.
10. This Application is made in accordance with Part 2 of Schedule 4 of the Legal Services Act 2007 (LSA). ILEX is an approved regulator under the LSA. ILEX believes that its Application to grant rights to conduct litigation and rights of audience to Associate Prosecutors will meet the regulatory objectives and professional principles in the LSA.
11. This Application seeks to establish that:
 - An Associate Prosecutor member of ILEX qualified in accordance with the proposed regulations will have the education, training and experience needed to exercise the rights of audience and rights to conduct litigation set out in this application;
 - ILEX has in place rules of conduct which it is able to enforce against Associate Prosecutors who are members of ILEX; and
 - ILEX will be able to ensure that rights which are granted will be exercised in accordance with the requirements of relevant legislation.
12. **Part II** of this Application sets out the rights sought and outlines how the application will support the regulatory objectives and professional principles. It also provides a commentary on the rights sought and outlines how the application meets the Better Regulation Principles. **Part III** of this Application describes and provides commentary on the Rights of Audience and Litigation qualification scheme, and **Part IV** of this application describes the conduct rules applicable to Associate Prosecutors. The Associate Prosecutor Rights of Audience and Litigation Certification Rules and supporting appendices appear in the separate document.

² The statutory remit of an Associate Prosecutor is set out at section 7A of the Prosecution of Offences Act 1985

THE INSTITUTE OF LEGAL EXECUTIVES (ILEX)

13. ILEX is the professional body which represents Legal Executives and other members, including Associate Prosecutors and enhances their role and standing in the legal profession. It is a company limited by guarantee, not having a capital divided into shares.
14. It was a body authorised to grant Rights of Audience to suitably qualified Fellows, under section 29 of the Courts and Legal Services Act, by virtue of the Institute of Legal Executives Order 1998 (SI 1998/1077), which came into force on 23 April 1998. It is now an approved regulator under the Legal Services Act 2007 for the purposes of awarding rights of audience to ILEX members and the power to administer Oaths and a designated qualifying regulator in respect of immigration advice and services.
15. ILEX is the successor to the Solicitors Managing Clerks Association which was founded in 1892, incorporated in 1928 and adopted its current title of Institute of Legal Executives in 1963. The Memorandum and Articles of Association of ILEX appear at **annex 1** of this Application. ILEX's primary objects are, amongst others, to provide an organisation for those who are registered or studying with ILEX who provide legal services; to provide for the education, training and development of knowledge and skills for Fellows, paralegals, legal assistants and other support staff who wish to become experts in the law; to advance and protect the status and interests of Fellows and those who wish to become experts in the law; to promote professional unity, co-operation and mutual assistance amongst those who are employed in the legal profession or engaged in legal work; to promote and secure professional standards of conduct amongst Fellows and those who are registered with ILEX, by publishing codes of conduct, guides to good practice and the protocol between ILEX and its regulatory body, ILEX Professional Standards Ltd, and regulating the membership through that body to ensure compliance with those standards; and to promote public interest and fair access to justice and the professions.
16. ILEX is governed by its Council, which is responsible for determining its policy. Council comprises Fellows engaged in legal work, who are elected to represent constituencies throughout England and Wales. There are 27 constituency places on Council and 6 places for Fellows who are co-opted onto the Council. A list of the current council members appears at **annex 2**. Council currently meets six times each year. Council members are responsible for ensuring that the affairs of ILEX are conducted diligently, legally and honestly.
17. The ILEX Council has adopted, and maintains, a three year Business Plan which defines the strategic and policy direction that the ILEX group will follow. It provides a focus for ILEX staff to enable them to deliver to targets.

The current business plan, which covers the period 2010 to 2012, appears at **annex 3**.

18. ILEX's current strategic aims include the following:
 - To ensure its professional qualification remains relevant to the needs of law firms, legal departments, employers and clients, and that it is delivered to meet national standards.
 - To develop its role as a natural home for all those seeking education, training or qualification relevant to their role in the legal environment.
 - To make itself more relevant to its members through the services it provides and by seeking new professional opportunities for members.
 - To develop its role in the public interest as an efficient and respected professional association and regulator of legal services.
 - To increase accessibility and diversity amongst the legal profession.
 - To enhance its focus on customer service.
19. ILEX has in place policies, which apply to Council members and employees, designed to ensure compliance with best practice in relation to the ethical management of ILEX including matters such as discrimination, freedom of information and data protection. The policies include the Code of Conduct, Whistleblowers policy and the Equality and Diversity Policy, under which a Group Single Equality and Diversity Scheme and Action Plan is published.
20. Each year the annual accounts of the ILEX group are subject to an audit. A copy of the 2009 annual report and statement from the auditors appears at **annex 4**.

ILEX PROFESSIONAL STANDARDS LTD

21. ILEX is recognised as an approved regulator under the Legal Services Act 2007 (the LSA). In accordance with the provisions of the LSA ILEX has established a subsidiary company to which it has delegated its regulatory activities to ensure that its regulatory functions are carried out independently from its leadership and representative functions. The subsidiary company is called ILEX Professional Standards Ltd (IPS).
22. ILEX Council has delegated to IPS responsibility for complaints handling, development of the Code of Conduct and oversight of professional standards including its qualification schemes and regulatory structures. IPS is also responsible for the continuing professional development scheme and ILEX's

qualifying employment requirements. IPS will regulate in the public interest in accordance with its Memorandum and Articles of Association, which appear at **annex 5**.

23. IPS was incorporated in October 2008. It is governed by a Board of Directors comprising 4 Lay Members and 3 Fellows of ILEX. The Chair of the Board is a Lay Member. A list of the current Board members appears at **annex 6**.
24. Protocols have been agreed between ILEX and IPS to facilitate good working relationships between the two companies and to ensure the requirements of the LSA regarding independent regulation of ILEX members are met. The protocols recognise that each company has its own obligations and priorities and that the best results for the public and ILEX members will be achieved by collaboration. The protocols are supported by a Service Level Agreement. A copy of the protocols and service level agreement appear at **annex 7**.
25. IPS is committed to openness and accountability. It has developed a number of documents setting out how the Board will work and the standards it aims to achieve. The documents are the Code of Conduct for Board members, reserved matters and standing orders. Copies of these documents appear at **annex 8**. IPS also maintains a risk management document, which is reviewed on a regular basis both by the IPS Board and IPS staff.
26. The Board is accountable to ILEX, ILEX members and the Legal Services Board. It has set out its strategy for the next three years and has developed a business plan against which performance can be assessed. Copies of these appear at **annex 9**. It also evaluates the performance of itself and IPS each year, including appraisal of Board members. During 2010, IPS will publish its first annual report to bring all these matters together.
27. The IPS strategy links with the vision statement adopted by the ILEX Group. IPS is committed to underpinning the rule of law and the administration of justice and to acting in accordance with the regulatory objectives and professional principles set out in the Legal Services Act. The strategy commits IPS to:
 - maintain an independent approach in its work
 - develop an understanding of the needs of those to whom ILEX members provide legal services
 - work closely with ILEX to support professional development and sustain good professional practice
 - be a proportionate regulator which targets risk
 - demonstrate good governance and achieve value for money in all it does.
28. The Board has divided its responsibilities into six work streams. The strategy sets out key aims for each of the six work stream areas. The work streams are governance and process; education and standards; registration and accreditation; fitness to practise; communications and partnership; and performance and risk. Each member of the board has special responsibility

for one of these areas, with the chair focusing on overall strategy, finance and relations with the professional leadership side.

REGULATORY CONFLICT

29. The protocols set out arrangements for resolving any conflict that may arise between ILEX and IPS. They set out arrangements for the sharing of information and consultation.
30. Disputes which arise between the Companies, whether in relation to the protocols or otherwise are resolved by discussions involving the Chief Executives of ILEX and IPS, the President for the time being of ILEX and the Chairman of the IPS Board. Where a dispute is unresolved it may be referred to an independent external facilitator. Nothing in the protocols prevents either company from referring a dispute which cannot be settled between them to the Legal Services Board to be resolved. At least 5 working days notice will be given to the other company if either company intends to refer a dispute to the Legal Services Board
31. ILEX and IPS believe that these arrangements offer a suitable and proportionate mechanism for dealing with regulatory conflicts.

APPROVED REGULATOR ROLE

32. IPS has scoped out a plan for the implementation of the associate prosecutor rights qualification scheme. A copy of the implementation plan appears at **annex 10**.
33. The plan sets out the activities that will need to be undertaken to implement the qualification scheme and the proposed timescale for each activity. Each activity has been subdivided to show in detail the work that will be involved.
34. Annexed to the implementation plan is a document setting out the resources that IPS will require to implement and administer the scheme. Wherever possible IPS will make use of existing resources and the expertise of staff who have experience of implementing and administering the present rights of audience scheme. It is envisaged that the level of work that will be required can be incorporated within existing roles of IPS staff.
35. The implementation plan includes a financial forecast outlining the projected income and costs for running the scheme. They also include costs of recruiting committee members and external advisors which will be one off costs. These costs will be shared between the various schemes that ILEX has for practice rights (such as litigation and probate rights).

36. Under the protocol between ILEX and IPS, ILEX agrees that it will make available such resources as are reasonably required and are appropriate to enable IPS to carry out its regulatory functions. The ILEX Chief Executive and President have received and agreed the implementation business plan. It is expected that the scheme will be self financing.

Membership of ILEX

37. ILEX members register in grades of membership appropriate to their level of qualification and experience. ILEX introduced new membership grades in September 2009. The new grades are Student member; Affiliate (level 2 or level 3 qualification or three years legal experience); Associate (level 3 or qualifying law degree); Graduate member (level 3 and 6 qualification or passed the LPC or BVC); and Fellow. A separate grade of Associate Prosecutor was created in November 2008 for Associate Prosecutor employees of the CPS.
38. In July 2010 there were 21,498 members registered with ILEX. Of those, 7,481 were Fellows. 463 members are registered in the Associate Prosecutor grade of which 21 are also Fellows of ILEX.
39. Only Fellows are full corporate members of ILEX and entitled to the benefits and privileges conferred by membership.
40. Since ILEX became an authorised body for the purposes of awarding rights of audience to its members there have been approximately 67 Fellows of ILEX who have qualified as Legal Executive Advocates authorised to appear in criminal, civil or family proceedings.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

41. ILEX has in place a scheme of Continuing Professional Development (CPD). CPD is important to maintaining competence and to developing the ever-changing skills needed by legal practitioners. ILEX monitors compliance with the CPD requirements. A failure to comply may lead to disciplinary action by IPS.
42. Associate Prosecutor members are required to undertake 16 hours CPD each year. All ILEX Fellows, except Retired Fellows, are required to undertake 16 hours CPD each calendar year, Graduate Members are required to undertake 12 hours CPD each calendar year and Associate members are required to undertake 8 hours CPD each calendar year. Half of the CPD must be relevant to the area of law in which the member practices and the other half may be gained in an area of law or practice relevant to their professional development or which may be outside of their specialism.

43. Legal Executive Advocates are required to undertake 5 hours advocacy skills training each year which may be part of the 16 hours required for their general Fellowship.

CROWN PROSECUTION SERVICE

44. The CPS is the government department responsible for prosecuting criminal cases investigated by the police in England and Wales. It was created by the Prosecution of Offences Act 1985³ (POA) and commenced operation across England and Wales in 1986.
45. The POA established the Director of Public Prosecutions as head of the CPS. The Director is Keir Starmer QC. The Director is superintended by the Attorney General, who is accountable to Parliament for the Service.
46. Under the POA the Director has the power to designate any member of staff holding a General Qualification⁴ as a Crown Prosecutor. Crown Prosecutors have the powers of the Director to institute and conduct proceedings under the direction of the Director. Only solicitors and barristers may be employed by the CPS as Crown Prosecutors.
47. The CPS operates through 42 geographical Areas in England and Wales, divided into 15 regional Groups. These Areas correspond with the boundaries of 43 police forces in England and Wales with the London Area covering the operational boundaries of both City of London and Metropolitan Police Forces. Each Area is headed by a Chief Crown Prosecutor who is responsible for prosecutions within the Area.
48. The CPS protects the public by prosecuting cases firmly and fairly, and by doing so in an open, transparent and independent way. Its duty is to serve communities and to do justice in every case.
49. The role of the CPS prosecutor is to:
- engage with their communities to inform their work and address their concerns;
 - advise and assist the police and other investigating agencies pre-charge;
 - address offending and out-of-court disposals where appropriate;
 - decide the charges in all but the most routine cases;
 - take the views of victims into account;
 - take decisions independently of any improper influence;
 - recover assets from criminals;

³ enacted on 23 May 1985

⁴ within the meaning of section 71 of the Courts and Legal Services Act 1990

- ensure that witnesses are able to give their best evidence;
 - present their own cases in court; and
 - help the court to pass an appropriate sentence.
50. In 2009/10, the CPS completed 1,467,980 defendant cases in the magistrates' courts (including the youth courts) and 142,768 in the Crown Court.
51. As at 31 March 2010 the CPS employed 8,768 staff, of which 463 were Associate Prosecutors and 3,126 were Crown Prosecutors (including Crown Prosecutors employed in management roles).

Associate Prosecutors

52. Section 7A (1) POA gives the Director the power to designate employees of the CPS who are not Crown Prosecutors the rights and powers of a Crown Prosecutor in a range of proceedings in the magistrates' courts. Persons designated by the Director are known as Associate Prosecutors (between November 1998 and May 2008 they were known as Designated Caseworkers).
53. Associate Prosecutors were first introduced by the CPS in November 1998. The full powers that an Associate Prosecutor may exercise are set out in section 7A POA and controlled by the CPS using written Instructions, issued by the Director under section 7A (3) and (4) POA.
54. The role of an Associate Prosecutor is that of a court advocate dealing with the range of hearings within their remit. They also conduct a small amount of out of court legal work.

Deployment of Associate Prosecutors

55. The deployment of Associate Prosecutors as advocates was piloted by the CPS in 1998 and evaluated by Her Majesty's Crown Prosecution Service Inspectorate (known then as the CPS Inspectorate). After a successful pilot phase, Associate Prosecutors were introduced by the CPS across all Areas in November 1999.
56. The number of Associate Prosecutors recruited and trained by the CPS has increased slowly over the last 10 years. As of 31 March 2010, the CPS employed 463 Associate Prosecutors across the 42 CPS Areas.
57. Between 1 April 2009 and 31 March 2010, Associate Prosecutors conducted 100,705 half day magistrates' courts sessions, equating to 27.9% of all magistrates' courts sessions in which the CPS was the prosecuting authority.

Directors Instructions

58. Instructions issued by the Director, under sections 7A (3) and (4) of the Prosecution of Offences Act 1985, limit the range of statutory powers that an Associate Prosecutor may exercise, including the range of hearings they may appear in. A copy of the current Instructions issued by the Director is at **annex 11**.

59. The first Director's Instructions were published on 2 November 1998 with the introduction of Associate Prosecutors in the pilot Areas. The most recent Director's Instructions were published on 23 February 2009.

The 1998 Remit

60. Associate Prosecutors were originally limited by Director's Instructions to presenting mainly guilty plea cases in Early First Hearings and road traffic courts. They were also able to prove offences in the absence of the accused where no response had been made to a summons.
61. The Director's Instructions gave Associate Prosecutors a limited out of court function in the formal review of a prosecution case.
62. Director's Instructions also gave Associate Prosecutors the power to amend a charge or summons in court where the amendment was minor e.g. to change a date if incorrect; and to withdraw a charge or summons in a road traffic offence involving the production of documents by the defendant where the defendant had produced the documents to the court.

2004 Extended Remit

63. On 1 April 2004, Associate Prosecutor powers were extended through a revision to the Director's Instructions. The extension permitted Associate Prosecutors to undertake a wider range of hearings in the magistrates' courts and, for the first time, hearings in the youth courts, including:
- Early Administrative Hearings;
 - Cases where a youth was charged with an adult and a guilty plea was anticipated;
 - All cases, including cases in the Youth Court, after a guilty plea where the court had ordered a pre-sentence report;
 - Proofs in absence in summary only cases in the Magistrates Court and cases in the Youth Court except where witnesses were warned to attend;
 - Applications for the removal of a driving disqualification; and
 - Hearings under section 35(1) of the Road Traffic Offenders Act 1988 where a defendant faced disqualification from driving due to the accumulation of penalty points and argued that disqualification would cause grave or exceptional hardship.

64. No changes were made to Associate Prosecutors' out of court review powers.
65. All Associate Prosecutors were trained in the new powers before being permitted by the CPS to exercise them.

2006 Extended Remit

66. On 1 January 2006, the Director's Instructions were amended allowing Associate Prosecutors to conduct a wider range of proceedings, namely, all

criminal proceedings in the magistrates' courts (including the youth court) except:

- offences triable only at the Crown Court;
- either way offences in relation to which the defendant had, at a previous hearing, elected to be tried at the Crown Court or in which the magistrates had decided, at a previous hearing, that Crown Court trial would be more suitable;
- offences in relation to which a notice of transfer had been given under section 4 of the Criminal Justice Act 1987 or section 53 of the Criminal Justice Act 1991;
- trials;
- Special Reasons hearings; and
- Newton hearings.

67. This extension of powers was significant because it permitted Associate Prosecutors to deal with contested applications for bail in adult cases and contested case management hearings for the first time.

68. No changes were made to Associate Prosecutor out of court review powers.

69. All Associate Prosecutors were trained in the new powers before being permitted to exercise them by the CPS.

2008 Extended Remit

70. On 28 July 2008, following the statutory amendment to section 7A POA⁵, the Director's Instructions were amended allowing Associate Prosecutors to undertake proceedings previously excluded by statute. These included:

- bail applications in Indictable Only offences;
- committals to the Crown Court under section 6(2) of the Magistrates' Courts Act 1980 (paper committals);
- uncontested applications for a specified preventative civil order (limited to Anti-Social Behaviour Orders, Football Banning Orders, Drinking Banning Orders; Parenting Orders and Restraining Orders); and
- the conduct of proceedings in connection with the discharge of functions assigned to the Director by the Attorney General under section 2 of the Dogs Act 1871.

71. No changes were made to Associate Prosecutors out of court review powers.

72. All Associate Prosecutors were trained in the new powers before being permitted to exercise them by the CPS.

⁵ Amended by section 55 of the Criminal Justice and Immigration Act 2008

2009 Extended Remit

73. On 23 February 2009, Associate Prosecutor powers were extended so that specially selected and experienced Associate Prosecutors, known as Level 2 Associate Prosecutors, having completed the Associate Prosecutor Higher Qualification Programme could undertake the following contested hearings:
- summary trials in summary only non-imprisonable offences;
 - Newton hearings in summary only non-imprisonable offences;
 - Special Reasons hearings;
 - contested bind over proceedings; and
 - contested specified preventative civil orders.
74. Level 2 Associate Prosecutors were given the power to amend a charge or summons during a trial, and to withdraw a charge relating to a road traffic offence requiring the production of documents during the course of a trial where the defendant produced the documents.
75. Level 2 Associate Prosecutors were also permitted to withdraw or offer no evidence in court in relation to any charge where they formed the opinion that there was no longer sufficient evidence to support the charge and the trial would continue in relation to another charge (or charges) before the court.

ASSOCIATE PROSECUTOR MEMBERSHIP OF ILEX

76. In January 2008, recognising that ILEX was a suitable body to independently regulate Associate Prosecutors, the CPS commenced discussion with ILEX to agree a process for existing and new CPS Associate Prosecutors to become members of ILEX and subject to its regulatory framework.
77. Agreement was reached in October 2008, ratified by Sir Ken Macdonald QC on behalf of the CPS and by Mark Bishop, President of ILEX, describing the arrangements under which Associate Prosecutors would become members of ILEX. The details were set out in a Memorandum of Understanding, a copy of which appears at **annex 12**.
78. In November 2008, a new membership grade of Associate Prosecutor was formally created by ILEX. To register as an Associate Prosecutor member of ILEX an applicant was required to be designated by the Director as an Associate Prosecutor, have successfully completed the CPS Associate Prosecutor Qualification Programme and be of good standing.
79. As of July 2010 there were 463 Associate Prosecutor members registered with ILEX of which 21 were also ILEX Fellows.

SELECTION OF ASSOCIATE PROSECUTORS

80. Selection of Associate Prosecutors is managed by the CPS. Applicants for the Associate Prosecutor role are selected through a robust process involving production of a written application, a short-listing process, a presentation and an interview. Details of the process are provided at **Part III** of this application.
81. Applicants are required to demonstrate that they meet the criteria and satisfy the person competencies for the role, including having experience of casework within the criminal justice system or of lay presentation, and having a working knowledge of criminal law and its application, magistrates' courts procedure and the criminal justice system, or having a specified legal qualification as an alternative to casework experience. Applicants normally gain experience of casework within the criminal justice system through employment as CPS caseworkers where they gain legal experience through observing and assisting advocates in the full range of magistrates' courts, Crown Court and appellate court proceedings.
82. Once selected, applicants must undertake an intensive CPS internal training programme which involves studying a comprehensive Resource Pack through distance learning, attending a Foundation Course, Trial Preparation Course, Youth Course and an Advocacy Skills Course. Applicants must also pass independent assessments of competence.
83. Associate Prosecutors are employed by the CPS at Level B2, the equivalent of Higher Executive Officer (HEO) across other government departments.

THE WORK OF ASSOCIATE PROSECUTORS

84. An Associate Prosecutor will only appear as a prosecuting advocate in cases where the CPS is the prosecuting authority, and as permitted by the Director through Instructions. Associate Prosecutors do not have the statutory right to appear as defence advocates in any legal proceedings.

Nature and range of cases

85. A newly qualified Associate Prosecutor will generally be deployed in court to deal with straightforward road traffic cases and guilty pleas. The number of cases that an Associate Prosecutor will deal with in court will vary depending upon their level of experience and the nature of the cases listed.
86. An experienced Associate Prosecutor will be deployed by the CPS to deal with the full range of proceedings permitted by the Director through Instructions. In a busy city centre court an Associate Prosecutor might deal with a mixture of summary, either-way and indictable only offences. The types of hearings

and offences range from guilty pleas in a criminal damage or shoplifting case to a full bail application in a possession of class A drugs case or a serious assault case.

87. An Associate Prosecutor will deal with routine pre-trial case management hearings and is trained to comply with the Criminal Procedure Rules. An Associate Prosecutor will also deal with sentencing hearings requiring the opening of the facts and assist the court on sentencing matters should the court call upon the prosecution. Associate Prosecutors will have access to an on-line Sentencing Manual that consists of relevant sentencing guidelines or guideline cases; gives details of statutory limitations and maximum sentences; identifies potential aggravating and mitigating factors for a given offence; and highlights relevant ancillary orders, or other provisions relevant to sentence.
88. An experienced Associate Prosecutor will deal with cases where the police have charged a defendant during the night and held them in custody pending first appearance at the magistrates' court. The offences in these cases may range from basic low level public order to serious violence. In serious cases a bail application may be made requiring an Associate Prosecutor to open the facts and provide objections to bail.
89. All cases prosecuted by an Associate Prosecutor will be reviewed by a Crown Prosecutor unless the case falls within the Associate Prosecutor's out of court review powers. If an Associate Prosecutor believes that a review or instructions from a Crown Prosecutor are not clear they must speak with a Crown Prosecutor to discuss the issue and take further instructions. If issues arise during court proceedings that an Associate Prosecutor cannot deal with, for example, a defendant offers a plea to a lesser offence, an Associate Prosecutor must seek an adjournment to take instructions from a Crown Prosecutor. Associate Prosecutors will also have access to extensive legal guidance available through the CPS Infonet providing legal and procedural advice, including relevant case law.

Number of court sessions

90. An Associate Prosecutor's primary function is advocacy. They will conduct on average 6 half-day magistrates' courts sessions each week. The actual number of sessions undertaken will vary depending on the level of experience and ability of an Associate Prosecutor, and the nature of the cases listed. Unlike a defence advocate, an Associate Prosecutor will deal with all the cases listed before the court when deployed to prosecute a court session.
91. An Associate Prosecutor will be given sufficient time to prepare the cases. Preparation of cases on the morning of court may take place where the cases require minimal preparation, for example road traffic document offences, or where there is minimal documentation and there are no complications of fact or law.

Other responsibilities

92. When not in court, an Associate Prosecutor may be required to undertake a range of administrative casework functions that require no rights of audience or rights to conduct litigation and as such may be carried out by any employee of the CPS. These include drafting general correspondence, preparing instructions to counsel and service of evidence and unused material. These functions are administrative in nature and conducted under the supervision and direction of a Crown Prosecutor.

SUPERVISION OF ASSOCIATE PROSECUTORS

93. Written Guidance on deployment and supervision of Associate Prosecutors is issued by the CPS to Chief Crown Prosecutors identifying those types of hearings that an Associate Prosecutor, should not be deployed to conduct even though they are legally permitted by statute and Director's Instructions to do so, because they involve legally complex, technical or sensitive issues. This Guidance is kept under continuous review.
94. Chief Crown Prosecutors are personally accountable for the deployment and supervision of the Associate Prosecutors in their Area. It is their responsibility to consider the appropriate level of supervision required for an individual Associate Prosecutor and ensure they operate within the Director's Instructions.
95. The day to day work of an Associate Prosecutor is supervised by experienced Crown Prosecutors. Crown Prosecutors are responsible for ensuring that the Associate Prosecutors under their direct supervision have adequate time to prepare for court during their normal working hours. They will decide whether an Associate Prosecutor is experienced enough to prepare and present cases having regard to the level of their training and experience. A Crown Prosecutor will be familiar with the types of cases listed during a court session. A suitably experienced Crown Prosecutor will always be available to provide guidance and assistance whilst an Associate Prosecutor is at court should an issue arise that requires legal input.
96. Where an Associate Prosecutor is deployed to deal with routine hearings, such as pre-trial case management hearings, they will have instructions from a Crown Prosecutor. Instructions should be in writing and endorsed on the case file or in a suitable document attached to the file. Where oral instructions are given, the Associate Prosecutor should endorse these on file.
97. Where an Associate Prosecutor expresses any concern in relation to inadequate preparation time or instructions from a suitably experienced lawyer, the Crown Prosecutor manager must reconsider the decision as to who should deal with the case at court.

THE CODE FOR CROWN PROSECUTORS

98. The Prosecution of Offences Act 1985 requires the Director to issue a Code for Crown Prosecutors giving guidance on the general principles to be applied in determining, in any case, whether proceedings for an offence should be instituted or, where proceedings have been instituted, whether they should be discontinued, what charges should be preferred and what representations should be made by the prosecution about the mode of trial suitable for a case. Associate Prosecutors will apply this Code in exercising some of their litigation functions.
99. The Code was recently updated and published in February 2010. It reflects the responsibilities for Crown Prosecutors to advise the police on charges. The Code is attached at **annex 13**.
100. Before advising on charges a Crown Prosecutor must review each case against the Code for Crown Prosecutors. The Code sets out the principles the CPS applies when carrying out its work. Those principles are whether:
- There is enough evidence to provide a realistic prospect of conviction against each defendant on each charge; and, if so,
 - A prosecution is needed under the public interest.
101. There are two tests: the Full Code Test and the Threshold Test. Director's Instructions allow Associate Prosecutors to apply the Code for Crown Prosecutors and use the Full Code Test when reviewing cases. The CPS sought the opinion of First Treasury Counsel, who advised that these are litigation functions. The rights sought under this application include these litigation functions.
- The Full Code Test***
102. The Full Code Test must be applied wherever possible. It has two stages: evidential stage and public interest stage. A case must pass both stages.
103. The evidential stage is the first stage in the decision to prosecute. Prosecutors must be satisfied that there is sufficient evidence to provide a "realistic prospect of conviction" against each suspect on each charge. They must consider whether the evidence can be used and whether it is reliable. They must also consider what the defence case may be and how it is likely to affect the prospects of a conviction.
104. A "realistic prospect of conviction" is an objective test. It means that an impartial and reasonable jury or a bench of magistrates, properly directed and acting in accordance with the law, will be more likely than not to convict the defendant of the charge alleged.

105. If the case does not pass the evidential stage it must not proceed regardless of how important or serious it may be. If the case passes the evidential stage it must proceed to the second stage.
106. At the second stage Crown Prosecutors or Associate Prosecutors must decide whether the prosecution is in the public interest. Each case must be considered on its own facts and merits. Prosecutors must decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and for those factors to be put to the court for consideration when sentence is passed. A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour.

The Threshold Test

107. The Threshold Test is applied to cases where the suspect presents a substantial bail risk if released and not all the evidence is available at the time when he or she must be released from custody unless charged.
108. Under this test a Prosecutor must first determine whether there is at least a reasonable suspicion that the suspect has committed an offence; and secondly if there is, the prosecutor must be satisfied that there are reasonable grounds for believing that the continuing investigation will provide further evidence, within a reasonable period of time, so that the evidence taken together is capable of establishing a realistic prospect of conviction in accordance with the Full Code test.
109. In reaching a decision under the second part of the Threshold Test, the prosecutor must consider:
 - the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;
 - the charges that all the evidence will support;
 - the reasons why the evidence is not already available;
 - the time required to obtain the further evidence and whether any consequential delay is reasonable in all the circumstances;
110. If both parts of the Threshold test are satisfied, prosecutors must apply the public interest of the Full Code test based on the information available at the time.
111. The evidence gathered must be regularly assessed to ensure the charge is still appropriate and that continued objection to bail is justified. The Full Code Test must be applied as soon as reasonably practicable and in any event before the expiry of any applicable custody time limit or extended custody time limit.

CONTINUING PROFESSIONAL DEVELOPMENT

112. Since 1 October 2005, all Associate Prosecutors have been required by the CPS to complete 16 hours of Continuing Professional Development (CPD) each year, mirroring the requirements of their solicitor colleagues. Barristers must complete 14 hours of CPD each year.
113. The completion of 16 CPD hours each calendar year is also a requirement of Associate Prosecutor membership of ILEX. At least 8 hours must be relevant to criminal practice, procedure, advocacy skills or legal knowledge.
114. CPD is acknowledged by ILEX and the CPS as a continuous process of personal growth, to improve the capability and realise the full potential of professional practitioners. It is also important to maintaining public confidence in the profession and to developing the ever changing skills and knowledge needed by advocates.
115. Associate Prosecutors obtain CPD hours by attending a range of courses provided by the CPS, including face to face training and completion of e-learning modules provided through the CPS Prosecution College. CPD may also be obtained by attendance at certified external events including conferences and training events.
116. Compliance with the requirement to complete 16 hours CPD each year will be monitored by ILEX from January 2010 through random sampling. A failure to comply with the full CPD requirements will lead to a referral of the conduct of the Associate Prosecutor to IPS and will be dealt with as a misconduct matter.
117. Failure to comply with CPD will also be referred to the Admissions and Licensing Committee. The Admissions and Licensing Committee will consider whether the Associate Prosecutor can continue to hold a Level 1 or Level 2 Certificate.

REGULATION OF CONDUCT

118. IPS has in place arrangements for regulating the conduct of ILEX members set out in its Investigation, Disciplinary and Appeal Rules. It has established a Professional Conduct Panel to consider complaints or concerns about members' conduct in relation to the legal profession, and the Disciplinary Tribunal to consider cases of alleged misconduct. The Disciplinary Tribunal has the power to exclude persons from membership, or to reprimand or fine them and, where appropriate, to award costs to be paid.

Codes of Conduct

119. ILEX members, including Associate Prosecutor members, are required to abide by the Code of Conduct published by IPS. Associate Prosecutor members must also comply with the Director's Instructions to Associate Prosecutors, Guidance to Chief Crown Prosecutors Concerning Deployment and Supervision and the Statement of Ethical Principles for the Public Prosecutor. They should also have regard to the CPS Code of Conduct and the CPS National Standards of Advocacy.
120. The ILEX Code of Conduct and Investigation, Disciplinary and Appeals Rules are included at **Annexes 14 and 15** of this Application. The Director's Instructions, Guidance to Chief Crown Prosecutors Concerning Deployment and Supervision, Statement of Ethical Principles for the Public Prosecutor, CPS Code of Conduct and the CPS National Standards of Advocacy are included at **Annex 11, 13, 16 and 17**.
121. Those members of ILEX who have qualified as Legal Executive Advocates are required to comply with the ILEX Advocacy Code which was approved by the Lord Chancellor in accordance with section 29 and Schedule 4 Courts and Legal Services Act 1990. The ILEX Advocacy Code is aimed at the conduct of employed advocates providing advocacy services for clients of employing firms. The ILEX Advocacy Code is not applicable to Associate Prosecutors who undertake work on behalf of the CPS. Associate Prosecutors will instead comply with the CPS National Standards of Advocacy, CPS Statement of Ethical Principles and supporting codes.

Complaints against Associate Prosecutors

122. The Memorandum of Understanding between ILEX and the CPS sets out the arrangements for dealing with complaints against an Associate Prosecutor.
123. Where a complaint is made to IPS about the conduct of an Associate Prosecutor the Memorandum confirms that IPS will investigate the complaint in accordance with its Investigation, Disciplinary and Appeal Rules.
124. Complaints that are made directly to the CPS about an Associate Prosecutor will be dealt with in accordance with the CPS Disciplinary Policy which appears at **annex 18**. In appropriate circumstances the CPS will notify IPS about any complaints. In determining whether to notify IPS of the complaint or conduct issue, the relevant Chief Crown Prosecutor will take into consideration the seriousness of the matter, the particular facts and the duties and obligations of an Associate Prosecutor set out in the IPS Code of Conduct. The Chief Crown Prosecutor will furnish IPS with relevant information.

IPS complaints handling

125. IPS investigates complaints under the procedures set out in its Investigation, Disciplinary and Appeals Rules. The Rules incorporate lay involvement in all stages of decision making and adjudication.

126. Although ILEX is not generally subject to the formal jurisdiction of the Legal Services Ombudsman, it has benefited from constructive engagement with her Office. The Ombudsman has formal jurisdiction over complaints handling by ILEX in respect of its Legal Executive Advocates. Whilst her office continues this jurisdiction would also extend to Associate Prosecutors authorised as advocates by ILEX. By 2011, it is likely that oversight of complaints handling by Approved Regulators will have passed to the Legal Services Board. No reference has been made to the Ombudsman of any complaint made against an ILEX Advocate.
127. Since ILEX became authorised to grant advocacy rights, the Ombudsman's Office has carried out two informal inspections of ILEX's case handling arrangements. Both reports commented favourably on the way in which ILEX handles complaints against its members. Any action points identified in the reports have been addressed.
128. IPS has introduced a mechanism to receive feedback from members and complainants about how ILEX handled their case. The feedback mechanism has proved effective in assisting IPS to identify and implement changes to its complaints handling procedures.
129. Part of the remit of the Professional Conduct Panel is to consider applications from prospective Students, or members seeking enrolment into the Associate Prosecutor, Membership or Fellowship grades, where the applicant has made a declaration of prior conduct, including any convictions. All members of ILEX are required to make declarations of 'prior conduct' at the time they renew their annual subscription. IPS has the power to determine what further action, if any, should be taken in relation to applications or declarations. Declarations of previous convictions are for the most part subject to the provisions of the Rehabilitation of Offenders Act 1974. However, ILEX is an exempt body under the provisions of the POA so far as its Fellows are concerned and may therefore require Fellows to declare spent convictions, and take action in regard to such declarations.
130. The CPS also undertakes thorough character and security checks before deploying new staff in posts. This includes confirming identity and requiring applicants to complete a Character Enquiry Form and obtaining National Identification Service clearance. The CPS is covered by Article 3(a) Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and consequently all applicants are required to disclose all convictions including those that are spent. The CPS will decide whether the conduct and behaviour of staff makes them unsuitable for employment at the CPS. Applicants convicted of serious offences will not normally be considered for employment with the CPS.

PART II

THE RIGHTS OF AUDIENCE AND RIGHTS TO CONDUCT LITIGATION SOUGHT BY ILEX

PART II – THE RIGHTS OF AUDIENCE AND RIGHTS TO CONDUCT LITIGATION SOUGHT BY ILEX

THE RIGHTS

1. In this application ILEX seeks rights of audience and rights to conduct litigation for Associate Prosecutors. It is intended that the rights will be awarded by ILEX to Associate Prosecutors from 1 May 2011.
2. The rights of audience sought by ILEX will enable qualified Associate Prosecutors to undertake advocacy in criminal proceedings in magistrates' courts, a function they have been carrying out since 1998.
3. The rights to conduct litigation will allow Associate Prosecutors to exercise the powers of a Crown Prosecutor in the conduct of cases outside of court, including a review involving the consideration of the merits of a case and deciding whether it is appropriate to proceed with the case, and other prosecution casework functions necessary to progress cases that fall within an Associate Prosecutor's statutory remit.
4. Associate Prosecutor members of ILEX will be authorised to exercise these rights whilst they are employed by the CPS as Associate Prosecutors and only after successfully completing the requisite qualification programmes. The rights sought by ILEX are set out below.
5. The rights will be granted by means of two separate certificates: Level 1 and Level 2. New Associate Prosecutors will be awarded a Level 1 Rights of Audience and Litigation Certificate in Criminal Proceedings upon completion of the Qualification Programme. Experienced Level 1 Associate Prosecutors will be eligible to apply to complete a Higher Qualification Programme leading to the award of a Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings.

ADVOCACY RIGHTS

Level 1 Rights of Audience and Litigation Certificate in Criminal Proceedings

6. An Associate Prosecutor qualified to hold the Level 1 Rights of Audience and Litigation Certificate in Criminal Proceedings will be permitted to exercise the following advocacy rights:
 - to appear before Justices or a District Judge in the magistrates' courts (including the youth court) to prosecute all proceedings against all adult and youth offenders, including bail applications and applications in relation to bail, where the CPS is the prosecuting authority except:
 - Trials;

- Newton Hearings;
 - Special Reasons Hearings;
 - Contested Preventative Civil Orders; and
 - Contested Binding Over proceedings.
- to appear in the Crown Court before a judge to conduct a bail application where the CPS is the prosecuting authority.

Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings

7. An Associate Prosecutor holding the Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings will be permitted to exercise the following additional advocacy rights:
 - to appear before Justices or a District Judge in the magistrates' courts (including the youth court) to prosecute all proceedings against all adult and youth offenders, including bail applications and applications in relation to bail, where the CPS is the prosecuting authority except trials of either-way offences.

LITIGATION RIGHTS

8. Holders of the Level 1 and Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings will be awarded rights to exercise the powers of a Crown Prosecutor to conduct a case, namely:
 - review of a prosecution case by applying the Code for Crown Prosecutors; and
 - other casework functions necessary to progress prosecution cases that fall within an Associate Prosecutor's statutory remit, namely –
 - to decide appropriate bail conditions and objections to bail in magistrates' courts and youth court proceedings;
 - to decide whether to discontinue a case in proceedings in the magistrates' courts and youth courts;
 - to make disclosure decisions in proceedings in the magistrates' courts and youth courts;
 - to decide witnesses to give live evidence, to serve statements under section 9 of the Criminal Justice Act 1967, to tender to the defence and any evidence which can be adduced by way of a section 10 admission, and drafting such admissions, in magistrates' courts and youth court trials and other contested hearings;
 - to decide the appropriateness of pleas and bases of plea in magistrates' courts and youth court proceedings;
 - to amend a charge or summons, prefer a new charge or drop a charge in magistrates' courts and youth court proceedings; and
 - to decide whether to apply, vary or discharge a civil preventative order in magistrates' courts and youth court proceedings.

9. The litigation rights sought by ILEX for Associate Prosecutors will enable ILEX, as the regulator, and the CPS, as the prosecuting authority, to enhance Associate Prosecutors' out of court litigation functions to include areas of work not currently specified in the Director's Instructions but in which they are trained. Section 7A POA permits Associate Prosecutors to exercise these functions.
10. Before issuing revised Director's Instructions the CPS will satisfy ILEX that Associate Prosecutors will only undertake litigation that is appropriate to the rights awarded and their education, training and experience.
11. The CPS will consult with ILEX before extending Associate Prosecutors litigation powers beyond those specified in the current Director's Instructions. Any amendment of the Director's Instructions that would widen Associate Prosecutors' litigation remit will be supported by appropriate legal and advocacy skills training accredited by ILEX.

RATIONALE

12. The rights sought by ILEX for Associate Prosecutors have been split into two levels so that Associate Prosecutors can qualify on an incremental basis.
13. The rights of audience awarded under both the Level 1 and Level 2 certificates are the rights which Parliament has determined can be exercised by Associate Prosecutors, set out in section 7A POA.
14. The litigation rights that will be awarded under the Level 1 certificate cover the out of court review powers that Associate Prosecutors have been exercising successfully since 1998 and any other prosecution casework function necessary to progress a case that falls within the Associate Prosecutor statutory remit.
15. Authorising ILEX to award rights to Associate Prosecutor members after 1 May 2011 will allow the continued exercise of advocacy and litigation rights that have been exercised since their introduction.

FORMULATION

16. When introduced in 1998, Associate Prosecutor powers were limited by the Director to mainly straightforward guilty pleas and road traffic hearings. As Associate Prosecutors have grown in confidence, the powers they may exercise have increased incrementally through amendments to the Instructions issued by the Director.
17. The contribution made by Associate Prosecutors to an efficient and effective criminal justice system is significant and was recognised by Parliament during the debates leading to the Criminal Justice and Immigration Act 2008. Continued

exercise of rights of audience and rights to litigate by Associate Prosecutors is essential to the continued effective administration of justice by the CPS.

18. The proposals in this application build upon the positive contribution that Associate Prosecutors have made to the criminal justice system by introducing a regulatory scheme for the award and exercise of those rights. This will enable the CPS to continue to select new staff for qualification as Associate Prosecutors by professionalising the role and making it an attractive option for skilled individuals seeking a career in the law.

THE LEGAL SERVICES ACT 2007

The Regulatory Objectives

19. The LSA sets out eight objectives to be pursued by those engaged in the regulation of legal services. ILEX is an approved regulator under the LSA. ILEX submits that its application for rights of audience and litigation for Associate Prosecutors supports the regulatory objectives set out under the LSA.

20. The regulatory objectives are:

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving access to justice;
- Protecting and promoting the interests of consumers;
- Promoting competition in the provision of services provided by authorised persons;
- Encouraging an independent, strong, diverse and effective legal profession;
- Increasing public understanding of the citizen's legal rights and duties;
- Promoting and maintaining adherence to the professional principles which are that:
 - authorised persons should act with independence and integrity;
 - authorised persons should maintain proper standards of work;
 - authorised persons should act in the best interests of their clients;
 - persons who exercise a right of audience or conduct litigation should comply with their duty to the court to act with independence in the interests of justice; and
 - that the affairs of clients should be kept confidential.

21. Awarding ILEX the authority to grant Associate Prosecutors rights of audience and rights to conduct litigation will benefit the CPS and wider criminal justice system through:

- widening the choice of service providers available to the CPS;
- making best use of an already skilled, suitably qualified and experienced workforce;
- cost effective and proportionate deployment of magistrates' courts advocates;

- increasing public confidence in the Associate Prosecutor role through independent regulation and accountability; and
- enhancing confidence of the legal profession, including the courts, in the work of Associate Prosecutors.

Protecting and promoting the public interest and the interests of consumers

22. The award of litigation and advocacy rights to Associate Prosecutors will protect and promote the CPS aims of improving public confidence in the fairness and effectiveness of the criminal justice system and the effectiveness and efficiency of the criminal justice system in bringing offenders to justice. This will be done through the following:

- The scheme proposed in this Application will ensure that Associate Prosecutors will be suitably qualified and trained in litigation and advocacy rights before they are authorised to practise by ILEX.
- There will be suitable controls on eligibility exercised by the CPS to ensure that only suitable persons will be selected to undertake the Associate Prosecutors' qualification and to conduct prosecution advocacy and litigation.
- IPS' Code of Conduct and the CPS Code of Conduct, Statement of Ethical Principles and National Standards of Advocacy place suitable and appropriate conduct requirements upon Associate Prosecutors to ensure there is adequate protection available for the public in ensuring that the CPS is an effective and independent prosecuting authority and in maintaining the confidence of criminal justice system partners.
- The Investigation, Disciplinary and Appeal Rules assist IPS' ability to govern the conduct of Associate Prosecutors and enforce the codes applicable to Associate Prosecutors.

23. Parliament recognised the value that a wider choice of advocates would bring to the CPS through the introduction of Associate Prosecutors in 1998. The statutory extension of Associate Prosecutor powers in 2008⁶ confirmed their position as effective advocates within a modern, effective and independent criminal prosecution service.

Supporting the constitutional principle of the rule of law

24. The conduct rules applicable to Associate Prosecutors as members of ILEX and employees of the CPS will ensure that they will always act to support the constitutional principle of the rule of law.

25. As Civil Servants, Associate Prosecutors have a duty to comply with the law and to uphold the administration of justice. This duty is expressly reaffirmed in the Civil Service Code.

⁶ section 55 of the Criminal Justice and Immigration Act 2008

26. When appearing as an advocate, an Associate Prosecutor must conduct prosecutions fairly and in accordance with the common law duty of any prosecutor (*R v Banks [1916] 2 KB 621*), and must comply with the principles in the Code for Crown Prosecutors. These duties include ensuring that cases are conducted fairly, independently, objectively and effectively.
27. Associate Prosecutors must also comply with the Statement of Ethical Principles. The duties it places on Associate Prosecutors include:
- a) assisting the court in the administration of justice and not deliberately, knowingly or recklessly misleading the court;
 - b) not doing anything likely to diminish public confidence in the administration of justice or otherwise bring it into disrepute; and
 - c) not engage in conduct which is dishonest or otherwise discreditable to another advocate.
28. The ILEX regulatory scheme provides a new and fully independent assurance that Associate Prosecutors will support the principle of the rule of law by providing an independent route of complaint to deal with any allegations that an Associate Prosecutor did not support the principle.

Improving access to justice

29. The introduction of Associate Prosecutors in 1998 extended the choice of advocate and litigator available to the CPS. The award of advocacy and litigation rights to Associate Prosecutors by ILEX from 1 May 2011 will enable the CPS to continue to deploy in appropriate cases a wide range of suitably skilled, qualified and effective prosecutors providing an efficient service to the public.
30. Crown Prosecutors and Associate Prosecutors undertake the majority of magistrates' courts sessions where the CPS is the prosecuting authority. The CPS also instructs external solicitors or self employed barristers, known as agents, to conduct a small proportion of magistrates' courts sessions. Between 1 April 2009 and 31 March 2010, Associate Prosecutors conducted 27.9% of magistrates' courts sessions. Crown Prosecutors conducted 57.3% and agents conducted 14.8%.
31. The training provided by the CPS to Associate Prosecutors ensures they have the knowledge and skills to deal with the advocacy and litigation that falls within their remit. Associate Prosecutors quickly become experienced in magistrates' courts cases because of the frequency of their deployment in court.
32. Associate Prosecutors, as employees of the CPS and members of ILEX, will increase and improve victim and witness care through their knowledge and understanding of victim issues. They will apply the CPS published policy on victims and witnesses consistently and effectively.

33. Associate Prosecutors increase public confidence in efficient, effective and proportionate prosecutions by applying the Code for Crown Prosecutors when reviewing a case. The proper application of the Code for Crown Prosecutors ensures that strong and evidentially sound cases are brought to court.
34. The deployment of Associate Prosecutors in court frees up Crown Prosecutors to focus on other areas of work that require their specialist legal input, including case preparation and pre-charge advice to the police. Increasing the amount of time that Crown Prosecutors can spend on case preparation reduces delays in the criminal justice system, and reduces ineffective and cracked trials by ensuring that trials are ready to proceed with victims and witnesses warned to attend and preliminary legal and administrative issues dealt with effectively and, where there is not a realistic prospect of conviction, ensuring that cases are discontinued at an early stage.

Promoting competition in the provision of services provided by authorised persons

35. Only qualified solicitors and barristers may be appointed as Crown Prosecutors. Therefore, the introduction of Associate Prosecutors in 1998 made available to the CPS an alternative source of suitably trained and authorised advocates who could undertake prosecutions and review files.
36. The increased use of Crown Prosecutors and Associate Prosecutors as advocates in the magistrates' courts ensures the efficient and proportionate use of public funds. Associate Prosecutors provide a good quality service to the courts ensuring that cases are progressed by applying the Criminal Procedure Rules. Associate Prosecutors will also develop specialist knowledge of the law and procedure in magistrates' courts cases because of the frequency of their deployment in court.
37. CPS caseworkers provide essential support to Crown Prosecutors in the preparation of magistrates' courts and Crown Court case files for trial, and other hearings, and help ensure smooth communication with other members of the criminal justice system. Therefore, Associate Prosecutors who were CPS caseworkers before qualifying as Associate Prosecutors will already possess a good understanding of the law, court procedure and the prosecution process through their previous criminal casework experience, increasing their effectiveness.
38. In February 2009, the CPS introduced a qualification scheme allowing specially selected and trained Associate Prosecutors, known as Level 2 Associate Prosecutors, to conduct a limited range of trials and other similar contested hearings. The use of Level 2 Associate Prosecutors in this area of work has enabled experienced Associate Prosecutors, selected as being suitable by the CPS, to exercise enhanced rights thereby further extending the choice of advocate available to the CPS. To date 28 Associate Prosecutors are qualified to Level 2.

39. The value of Associate Prosecutors has been recognised during various reviews:

- The Public Accounts Committee⁷ and the National Audit Office⁸ recommended their further use to achieve a more efficient and effective running of the magistrates' court.
- Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI) regularly acknowledge the high standard of Associate Prosecutors during the programme of CPS Area inspections. HMCPPI received positive feedback about the quality of Associate Prosecutors' (then known as Designated Caseworkers) performance which was confirmed by observations reported in various reports, including the 2007 CPS Gwent Area Inspection Report, the CPS Hertfordshire Area Inspection Report 2007 and the CPS Bedfordshire Area Inspection Report 2007. Each provided positive feedback from a number of court users on the high standard of Associate Prosecutors' preparation and presentation.

Encouraging an independent, strong, diverse and effective legal profession

40. The Memorandum of Understanding agreed between ILEX and the CPS in October 2008 introduced an independent scheme of regulation for Associate Prosecutors. Under those arrangements, a person will become an Associate Prosecutor member of ILEX upon successful completion of the Associate Prosecutor Qualification Scheme and only when designated by the CPS as an Associate Prosecutor.
41. Regulation of Associate Prosecutors by ILEX will develop strong and independent legal practitioners specialising in criminal prosecutions in the summary jurisdiction. The regulatory regime comprises compliance with the ILEX Code of Conduct and the requirement that Associate Prosecutors comply with the CPS Code of Conduct, the Director's Instructions to Associate Prosecutors, the Statement of Ethical Principles and CPS National Standards of Advocacy. There is in place a complaints handling scheme that will address any breaches of the Codes by Associate Prosecutors.
42. Since 1998, Associate Prosecutors have provided an efficient and effective service to the CPS and the courts. The value added by Associate Prosecutors to the CPS has resulted in extensions of their powers in 2004, 2006, 2008 and 2009. The CPS has increased the number of persons it employs as Associate Prosecutors in recognition of the effective and valuable service they provide.
43. The introduction of a new level of advocacy and litigation service providers to the CPS has helped to encourage a diverse range of advocates at the CPS.

⁷ Public Accounts Committee report (61st 05/06)

⁸ National Audit Officer report "Crown Prosecution Service – effective use of magistrates' courts hearings" (15 February 2006)

Increasing public understanding of the citizen's legal rights and duties

44. The CPS has published policies on the treatment of victims and witnesses. Associate Prosecutors apply these policies consistently ensuring that all witnesses will be treated fairly and with respect according to their needs irrespective of race, religion, background, gender, age, sexuality or any disability.
45. Associate Prosecutors contribute to improving public confidence in the criminal justice system through the effective and efficient prosecution of cases in the magistrates' courts.

Promoting and maintaining adherence to the professional principles

46. Associate Prosecutors are required to act in accordance with the ILEX Code of Conduct. They must also comply with the CPS Code of Conduct, Statement of Ethical Principles and CPS National Standards of Advocacy. These rules require them to conduct cases fairly, independently, objectively and effectively. Associate Prosecutors have a duty to comply with the law and uphold the administration of justice.
47. Under the Code of Conduct Associate Prosecutors owe a duty to preserve confidentiality. All Associate Prosecutors in the course of their employment sign the Official Secrets Act and agree not to disclose information acquired through official duties to any unauthorised person or authority. The CPS Code of Conduct states that Associate Prosecutors must not inappropriately disclose or misuse confidential information relating to individuals involved in a case or organisations working with the CPS.
48. The ILEX Code also requires that they maintain proper standards of work and only act in cases within their competence.

BETTER REGULATION PRINCIPLES

49. ILEX submits that its proposed scheme is consistent with the better regulation principles.

Proportionate

50. The application proposes a proportionate route to qualification as a Level 1 and Level 2 Associate Prosecutor. In developing its qualification structures ILEX assessed what skills and knowledge a Associate Prosecutor would require to enable them to undertake litigation and advocacy work falling within their remit at Level 1 and Level 2. It built upon the current qualification scheme developed by the CPS. That approach assisted in developing a proportionate qualification and entry scheme.
51. ILEX's proposed qualification scheme is aimed at ensuring Associate Prosecutors are competent for the work they will be authorised to undertake.

Accountable

52. The proposed scheme includes suitable accountability arrangements. ILEX, through IPS, will be accountable through its Admissions and Licensing Committee for the administration and application of the scheme rules. The Committee will be responsible for producing an annual report of its work to the IPS Board.
53. The CPS will be accountable to IPS for application of the scheme rules. IPS will monitor application through inspection and monitoring arrangements for courses.

Consistent

54. The approach to the qualification scheme is consistent with that currently in place at the CPS for the Associate Prosecutor qualification, building upon it where appropriate.
55. The qualification proposal is also consistent with the rights of audience qualification scheme, for which ILEX is already an approved regulator. That scheme requires members to complete a qualification course and assessment. The proposed litigation rights qualification has adopted the same approach of initial assessment at entry stage followed by a qualification scheme aimed at developing the skills of ILEX members.
56. Also the qualification and assessments standards are set out clearly and will be monitored by independent assessment and external moderation.

Transparent

57. ILEX has taken a transparent approach to developing the qualification and regulatory scheme. IPS has consulted key stakeholders on its proposed scheme. The consultation was sent to approved regulators and their respective regulatory bodies, consumer groups and representative bodies including CPS stakeholders. Notifications were sent to ILEX members through the Legal Executive Journal and IPS website.
58. IPS received 9 responses to its consultation. The consultation responses have been analysed to determine whether any amendments were required to its proposals. Some amendments were made in response to feedback received from consultees. A copy of the consultation paper, responses and analysis appears at **annex 20**.
59. The qualification content and assessment standards are clearly stated in the application. IPS has ensured that there is a suitable level of independent involvement in maintaining those standards. Candidate results will be subject to scrutiny by IPS, providing a further level of scrutiny and assurance of transparency.

Targeted

60. ILEX has developed a qualification scheme which has been targeted at assessing and developing the skills and knowledge required by Associate Prosecutors to undertake advocacy and litigation at Level 1 and Level 2.

61. Similarly the regulatory structure has been developed by targeting itself at the risks that can arise and which require to be addressed.

PART III

QUALIFICATION SCHEME

PART III – QUALIFICATION SCHEME

INTRODUCTION

1. The qualification scheme under which CPS employees will be selected and qualify as Associate Prosecutors is summarised below. The Certification Rules and the supporting Appendices 1 to 7 set out in detail the eligibility and qualification criteria.

SELECTION OF TRAINEE ASSOCIATE PROSECUTORS

2. CPS Areas will identify vacancies for posts of Associate Prosecutors according to business need. Vacancies will be advertised by the CPS and any employee who meets the selection criteria may apply. In exceptional cases vacancies may be advertised externally.
3. Applicants will undergo a rigorous selection process, at the conclusion of which suitable applicants will be selected to undergo the Associate Prosecutor qualification programme. A person will not be entitled to exercise the rights and powers of an Associate Prosecutor until they have successfully completed the qualification process and become an Associate Prosecutor member of ILEX.
4. The selection process is summarised below. It involves the following stages:
 - Completion of an application form;
 - Application form shortlist;
 - Case study presentation; and
 - Interview.
5. The process has been designed to test the skills required in the person specification for an Associate Prosecutor role. Each aspect of the selection process will assess competencies of applicants. The CPS guidance for conducting Associate Prosecutor recruitment, which appears at **annex 19**, outlines the competencies tested at each stage of the recruitment process. Copies of the person specifications for level 1 and level 2 posts appear at **appendix 1 to the Certification Rules**.
6. Applicants are marked using a scale of 1 to 5 with 1 being 'not met' and 5 being 'consistently met including providing detailed relevant evidence across the criteria that are measured'. Applicants are expected to achieve at least a score of 3 against each competency which denotes that applicants 'provided relevant information and that minimum standards are evidenced across most criteria that are measured'.

APPLICATIONS FOR LEVEL1 ASSOCIATE PROSECUTOR

7. All applicants will complete a written application from which they will be short listed. At the shortlist stage applicants will be marked as to whether their application displays examples and evidence of how they meet the competence

criteria for the post. The competencies assessed at this stage are Leadership, Communication and Negotiation, Reasoning and Decision Making, and Specialist Skills, Knowledge and Experience. Applicants who are short listed at the application form stage will proceed to the case study presentation and interview stages.

8. At the case study stage, applicants will be provided with a case study setting out a basic scenario that they may encounter as an Associate Prosecutor. Applicants will be asked to read the case study and prepare it as if they were to prosecute it in court as an Associate Prosecutor. For example, the case study may involve an application to amend a charge. The applicant will be required to consider any applications to be made to the court and further information they may require before appearing in court, and then to present the case as a guilty plea.
9. The case study stage will test the competencies of Specialist Skills and Knowledge as well as the skills of Reasoning and Decision Making, Communication and Negotiation, and Equality and Diversity Awareness and Management. These skills are tested through requiring applicants to make an application in a mock court set up.
10. After the presentation candidates will be asked questions on the presentation by a selection panel. Questions may cover the Code for Crown Prosecutors used for reviewing cases, CPS policy on victims and witnesses, use of special measures, the remit of Associate Prosecutors and dealing with unrepresented defendants.
11. The presentation will be assessed by the selection panel using a standardised assessment sheet determining whether the applicant meets the required standard. The assessment form and an example of a case study that may be used for this part of the selection process appear at **annex 21**.
12. Applicants will then proceed to an interview stage. During the interview stage applicants will be asked questions designed to test each competency from the person specification. The interview will assess the competencies of Leadership, Achieving Results, Planning and Organising and Continuous Self Development. The CPS has developed standard questions that can be used by selection panels.
13. The selection panel will comprise a job sponsor and two other CPS employees. The panel will select suitable candidates at the conclusion of the process to undergo the Associate Prosecutor training. The selection process will ensure that suitable candidates have the relevant skills to become Associate Prosecutors.

LEVEL 1 QUALIFICATION SCHEME

14. Trainee Associate Prosecutors will undergo a rigorous training process to ensure that they have the knowledge and skills to undertake the Associate Prosecutor role. It will include attendance at training courses and pre-course work which will include observational experience.

Pre-course work

15. Each trainee Associate Prosecutor will have a mentor appointed to work with them. The mentor will be either an experienced Associate Prosecutor or a Crown Prosecutor. The trainee Associate Prosecutor will have access to the mentor for the purposes of seeking guidance throughout the qualification process and after deployment. They will also shadow the mentor, and other experienced Crown Prosecutors, for the purposes of observing them at court. Trainee Associate Prosecutors will be provided with a list of hearings that they should observe before commencing the training courses. A copy of the observation grid appears at **appendix 2 to the Certification Rules**. It is expected that trainees will spend at least one full day per week carrying out observations. Wherever possible they will observe their mentor. The observations and mentoring arrangements will provide trainee Associate Prosecutors with experience of the types of cases that they will conduct upon qualification as an Associate Prosecutor and will assist them with the qualification courses. The observations will take place over a period of up to 12 weeks.

16. The trainee also is required to download the Associate Prosecutor Manual from the CPS Infonet, which is aimed at developing their knowledge. Trainees must complete this self-study manual prior to attendance on the first face to face course (the Foundation Course). The manual will cover the role of Associate Prosecutors, review powers and the law, practice and procedure relating to the offences and types of cases that Associate Prosecutors will encounter. It is expected that trainees will require at least 20 hours to read and study the manual. A copy of the index to the manual appears at **annex 22**. The manual will act as a reference guide for Associate Prosecutors upon qualification. In addition they will have access to the CPS Infonet which contains up to date case law, legislation and procedural rules. Associate Prosecutors also receive bulletins through the Infonet which update them on developments in law and procedure.

Foundation course

17. Approximately one month after selection trainee Associate Prosecutors will attend the five day Foundation Course, which is designed to develop further their knowledge of the law and procedure for the offences they will encounter as a qualified Associate Prosecutor and of evidential matters. The course will build upon the self-study manual and will include reference to relevant case law, as appropriate.

18. The Foundation Course will meet the course outcomes which appear at **appendix 3 to the Certification Rules**. A draft course outline showing how the course outcomes are met appears at **annex 23**. During the course trainee Associate Prosecutors' knowledge of law and procedure will be tested. The test will be conducted by multiple choice assessment and will cover the range of the syllabus. Test results will be used to identify areas where trainees need to develop their knowledge.

19. After completing the Foundation Course, trainee Associate Prosecutors will return to their CPS Areas and continue undertaking observations and maintaining contact with their mentor.

Trial preparation course

20. Applicants will then undertake a Trial Preparation Course which is aimed at training them to exercise the litigation rights that they will be awarded. The course will develop the practical knowledge and skills that Associate Prosecutors will require to undertake summary trial preparation. It will also provide trainee Associate Prosecutors with the practical skills and knowledge they will require to review and assess charges and summonses and to decide upon and draft amendments thereto or take decisions to discontinue charges. The Trial Preparation Course will meet the course outcomes which appear at **appendix 3 to the Certification Rules**. A draft course outline appears at **annex 24**.

21. The course will conclude with a practical assessment. During the assessment trainee Associate Prosecutors may be asked to identify how the evidence available on a case may affect the charges and be expected to suggest an amendment or new charges. Trainee Associate Prosecutors may be asked to make a decision about which witnesses to call, serve and tender and whether any applications should be made. The assessment criteria appear at **appendix 4 to the Certification Rules**.

Advocacy Skills Course

22. Trainees will then undertake the Advocacy Skills Course which will conclude with an assessment of advocacy skills. Trainees will receive the assessment materials the night before the assessment. They will be given adequate time to prepare for the assessment. This approach reflects actual practice.

23. The Advocacy Skills Course will meet the course outcomes which appear at **appendix 3 to the Certification Rules**. They include the development of advocacy skills and the skills needed to exercise litigation rights, which include case analysis skills. A draft course outline showing how the course outcomes are met appears at **annex 25**. The applicant must meet the assessment criteria which appear at **appendix 4 to the Certification Rules**.

24. Upon successful completion of this course and assessment the trainee will have completed the qualification process and will make an application to ILEX to be registered as an Associate Prosecutor member.

Bail Application course

25. Approximately 4 to 6 weeks after designation the Associate Prosecutor will undertake the Bail Course. The course will meet the course outcomes which appear at **appendix 3 to the Certification Rules**. The Bail Course is designed to develop the ability of Associate Prosecutors to represent the CPS in adult bail hearings. A draft course outline for the bail course appears at **annexes 27**.

26. The Bail Course will involve an assessment. The assessment criteria appear at **appendix 4 to the Certification Rules**. Prior to attendance on the bail courses Associate Prosecutors will observe bail hearings. A copy of the observation grid appears at **appendix 2 to the Certification Rules**.

Youth Court Courses

27. Associate prosecutors will also undertake the Youth Court courses. The courses will meet the course outcomes which appear at **appendix 3 to the Certification Rules**. The Youth Course will develop the skills required by Associate Prosecutors to prosecute cases in the youth courts. The Youth Bail course will train Associate Prosecutors how to deal with bail applications in relation to youths.

28. The Youth Court Course and Youth Bail course will also involve assessments. The assessment criteria appear at **appendix 4 to the Certification Rules**.

29. A draft course outline showing how the Youth Course outcomes could be met appears at **annex 26** and a draft course outline for the Youth Court Bail course appears at **annex 28**.

Certification

30. Applicants who successfully complete the Foundation Course, Trial Preparation Course, and Advocacy Skills Course will be able to apply to ILEX to register as an Associate Prosecutor member. Their application will be approved provided they are of good standing, will be employed by the CPS in an Associate Prosecutor role and have successfully completed the Associate Prosecutor qualification process. Applications will be processed by ILEX officers. An applicant may not be deployed by the CPS as an Associate Prosecutor until they have been successfully enrolled with ILEX.

31. The CPS may not deploy an Associate Prosecutor to undertake bail work until they have completed the bail course. The CPS may not deploy an Associate Prosecutor to appear in the Youth Court or undertake youth bail work until they have completed the Youth Court course and Youth Bail course.

APPLICATION FOR LEVEL 2 ASSOCIATE PROSECUTOR

32. Experienced Level 1 Associate Prosecutors may apply to become Level 2 Associate Prosecutors. CPS Areas will determine vacancies for Level 2 Associate Prosecutor posts according to business need.

33. The selection of Level 2 Associate Prosecutors will follow the same format as the application, presentation and interview process for Level 1 Associate Prosecutors, except that applicants will be assessed against the competencies and criteria for Level 2 Associate Prosecutors.

34. The written application process will test the competencies of Leadership, Communication and Negotiation, Reasoning and Decision Making, and Specialist Skills, Knowledge and Experience. The presentation exercise will test the competencies of Leadership, Communication and Negotiation, Reasoning and Decision Making, and Specialist Skills, Knowledge and Experience. At the presentation stage applicants will be asked to present a case to the panel. This may include a remand application and contested bail application. The applications will test advocacy skills, judgement and analytical skills of applicants. A copy of a sample case study appears at **annex 29**. The interview will test all the competencies tested at the application and presentation stage as well as those relating to competency of Achieving Results, Planning and Organising, Diversity Awareness and Management, and Continuous Self-Development.
35. Upon selection applicants will complete the Level 2 qualification process. The Level 2 qualification process will follow a similar format to the Level 1 qualification. Associate Prosecutors will be assigned to a mentor who will usually be an experienced Crown Prosecutor. The Associate Prosecutor will have access to the mentor for the purposes of seeking guidance from them. They will also shadow their mentor and other experienced Crown Prosecutors for the purposes of observing the cases that appear in their observation grid, a copy of which appears at **appendix 5 to the Certification Rules**. Observations will take place over approximately a 10 week period. Associate Prosecutors are required to reflect upon the cases that they observe and complete a reflective learning log. These activities will develop the experience of Associate Prosecutors in the range of work that they will undertake at Level 2.
36. Associate Prosecutors will attend an induction day during which the qualification programme, e-learning modules and assessment format will be explained to them. During this day they will also be provided with their reflective learning journal, a copy of which appears at **appendix 5 to the Certification Rules**.

LEVEL 2 QUALIFICATION SCHEME

Pre-course work

37. Associate Prosecutors will study the e-learning modules which cover the course of the trial, questioning skills, hearsay, examination in chief and competence and compellability of witnesses.

Level 2 Foundation Course

38. Approximately one month after the induction day Associate Prosecutors will attend the Foundation Course, which is designed to develop their knowledge of the offences they will encounter in their roles and of evidence. The course materials used for the Foundation Course will act as a reference point for Associate Prosecutors in their roles.
39. The course will meet the course outcomes which appear at **appendix 6 to the Certification Rules**. A draft course outline showing how the course outcomes

are met appears at **annex 30**. During the course Associate Prosecutors will be tested on their knowledge of law and procedure. The testing process will act as an aide to identifying areas where an Associate Prosecutor needs to develop their knowledge. Tests will take place by a multiple choice test and by a case analysis exercise.

40. After completing the first course Associate Prosecutors will return to their CPS Areas and continue undertaking observations and maintaining contact with their mentor.

Level 2 Advocacy Skills Course

41. Approximately one month after completion of the first course Associate Prosecutors will return to undertake the Level 2 Advocacy Skills Course which will conclude with an independent assessment of advocacy skills.

42. The Advocacy Skills Course will meet the course outcomes which appear at **appendix 6 to the Certification Rules**. A draft course outline showing how the course outcomes are met appears at **annex 31**. This course is aimed at developing the trial skills of Associate Prosecutors and will cover delivering an opening speech and examination of witnesses in chief and in cross-examination. The applicant will be assessed against the assessment criteria which appear at **appendix 7 to the Certification Rules**.

43. Upon successful completion of the courses and assessment the Associate Prosecutor will have qualified as a Level 2 Associate Prosecutor. The Associate Prosecutor will apply to ILEX for the Level 2 certificate.

44. Level 1 and Level 2 Associate Prosecutors will continue to be designated as Associate Prosecutors as long as they continue to be deployed as such and remain registered as Associate Prosecutor members of ILEX.

CONTINUING PROFESSIONAL DEVELOPMENT

45. Each year Associate Prosecutors must undertake at least 16 hours CPD. The CPD year runs from January to December. Associate Prosecutors must undertake at least 8 hours of CPD in criminal practice, procedure, knowledge or advocacy skills training. ILEX will monitor compliance with CPD.

COMMENTARY ON THE QUALIFICATION SCHEME

Admissions and Licensing Committee

46. ILEX will establish an Admissions and Licensing Committee which will have oversight over the Associate Prosecutor qualification scheme. This Committee will also have oversight over other schemes proposed by ILEX.

47. The Committee will be a committee of ILEX Professional Standards Ltd (IPS), carrying out functions of a regulatory nature, and will report to the IPS Board. The reporting line will ensure that there is a direct line of accountability between the Committee and the IPS Board. The Committee will make an annual report to the IPS Board.
48. The Admissions and Licensing Committee will be responsible for monitoring and maintenance of standards of assessment and the general overview of the qualification scheme. It will be responsible for the application of the Certification Rules. The Rules have been adopted by the IPS Board and by ILEX Council, as the approved regulator. The Committee will be able to delegate to the IPS Officers responsibility for approving course material. The Officers will be able to refer back to the Committee any matter which they are unable to determine or approve. The Officers will be required to report to the Committee on all decisions made under the delegated procedure.
49. The Committee will comprise two ILEX Fellows and three independent members. One of the Committee members will be a member of the IPS Board, with responsibility for registration and accreditation matters. One of the ILEX Fellows will be a contentious law practitioner and the other a non-contentious law practitioner. ILEX Council members will not be eligible to serve on the Committee due to conflicts of interest. At least one of the independent members will be appointed on the basis of their knowledge and experience of consumer issues. Appointments of committee members will be made by the IPS Board. IPS will commence recruitment of Committee members immediately to ensure that the Committee is in place by May 2011.
50. The Committee will receive expert advice from an External Advisor on issues relating to advocacy and litigation skills, course delivery and assessment standards. The External Advisor will have qualifications in law and legal practice and experience of criminal proceedings and of advocacy. The External Advisor will also need to have experience of teaching and assessing advocacy skills.
51. Terms of reference for the Admissions and Licensing Committee and the External Advisors are set out in the Certification Rules of this Application.

Selection criteria

52. The person specification and selection criteria will thoroughly test the suitability of candidates to qualify for training as Level 1 or Level 2 Associate Prosecutors. The selection process effectively involves three levels at which suitability will be tested: application, presentation and interview.
53. During the process applicants will show how they meet the person specification for the post and provide examples in support of their application. Accordingly, applicants' prior experience will be assessed at the beginning of the qualification process.

54. Applicants will rely upon observation experience at the first stage of the qualification because they do not have any rights to undertake advocacy on behalf of the CPS until qualified as Associate Prosecutors.

The Qualification Process

55. The qualification process is set out simply and follows a logical process. Applicants will begin by developing their experience of the range of cases they will encounter through their observations and contact with their mentor. The observation of hearings will enable applicants to gain experience of cases and discuss them during the courses in context of the types of proceedings they may encounter.

56. The time spent on observations will be substantial and will enable trainee Associate Prosecutors to build upon their experience. Trainee Level 1 Associate Prosecutors will undertake observations for up to a 12 week period and trainee Level 2 Associate Prosecutors will undertake observations for approximately a 10 week period.

Knowledge

57. Applicants will develop their knowledge of law (including relevant case law), procedure and evidence through the Foundation Course. The course material for this course is extensive and will cover all the offences that an Associate Prosecutor is likely to encounter. The Foundation Course and the pre-course and observation work will develop knowledge of evidence and procedure. Subsequent courses will reinforce that knowledge in the context of practical skills training. The tests conducted during the level 1 and level 2 Foundation Courses will identify areas where trainees need to develop their knowledge. Trainees will be able to address these knowledge gaps during the courses and during the observation and mentoring periods.

58. The Trial Preparation Course will develop the competence of Associate Prosecutors to exercise litigation functions that fall within their remit. The Advocacy Skills Course and Youth Course will teach and assess knowledge and procedure in the context of advocacy skills in magistrates' and youth courts. Associate Prosecutors will then receive training on how to deal with bail applications and complete a specific course covering bail proceedings in the youth courts. The bail courses will teach and assess knowledge of bail matters in the context of practical advocacy exercises. ILEX believes that these issues will be tested more practically and to an appropriate depth, in the context of the exercise of advocacy skills, as compared with separate examinations.

59. It is recognised that some applicants for the Associate Prosecutor role may have knowledge of law and procedure through studying, for example, law degrees and legal practice qualifications. Other applicants will have gained extensive practical experience of law and procedure from working in the legal field. The CPS will ensure all applicants receive the same training in legal knowledge and procedure, thereby ensuring that all Associate Prosecutors possess the required level of knowledge of law and procedure before deployment.

60. After qualification, the course materials will act as reference materials for Associate Prosecutors. In addition they will be able to seek advice and assistance, if required, from mentors, course tutors and supervising Crown Prosecutors.

Practical skills courses

61. The skills courses for both Level 1 and Level 2 Associate Prosecutors will cover the teaching of both litigation and advocacy skills appropriate to the rights that will be granted under each certificate. In addition applicants will benefit from a specific course on how to deal with youth offenders and youth bail hearings. Each course will incorporate informal presentations and formal assessment of trial preparation skills, advocacy skills, evidence and ethics on the final days. Applicants will receive regular feedback during the informal presentations.

62. At the end of the Level 1 courses applicants will be able to use case analysis techniques, exercise review powers and be able to amend and withdraw charges where necessary. They will also be able to outline the facts of cases clearly and effectively, prepare and present coherent submissions to the courts, apply relevant communication skills and techniques, and understand the ethics, etiquette and conventions of advocacy in magistrates' and youth courts.

63. Applicants undertaking the Level 1 course will be formally assessed by means of applications relevant to the rights they may exercise based on case studies. Ethics, professional conduct and knowledge of law and procedure will be assessed within the case study scenarios. The case study scenarios will also test the litigation skills of applicants through their ability to endorse files and decide whether to withdraw or amend charges. Trainees will receive the assessment materials the night before the day of the assessment. They will be given adequate time to prepare for the assessment. This approach reflects actual practice.

64. The assessment may include applications to proceed in the absence of a defendant, plea before venue hearings, bail applications, applications to amend or withdraw a charge, or dealing with the previous convictions of a defendant. The case studies may include a motoring offence and an either way offence and will be different to case studies used during the course. The use of multiple cases will enable the assessment to reflect a mini-court list where applicants move from one case to another.

65. During the Advocacy Skills Course assessment two course tutors will act as defendants and two tutors will act as District Judges. An independent external organisation will undertake the actual assessment. The independent assessor will use the assessment criteria to determine whether applicants meet the standards expected of Associate Prosecutors.

66. The Level 2 Advocacy Skills Course will ensure that Associate Prosecutors are able to prepare a case for trial, undertake an opening speech, examine witnesses

both in chief and in cross-examination, deal with unexpected situations and conduct a trial.

67. During the course of the assessment applicants will represent the CPS in a mock trial which again is externally assessed. Applicants will be expected to open the trial, examine a witness in chief, cross-examine the defendant who will be a course tutor, and deal with unexpected occurrences during the course of the mock trial.
68. Unexpected occurrences may include a witness being unable to understand a question, a defendant responding with a question or the defendant asserting a fact in closing which was not established in evidence. The procedure will test the ability of applicants to react to the situation, think on their feet and deal with the matter.
69. Course and assessment materials will be subject to scrutiny by External Advisors appointed by ILEX to ensure they are consistent with the course outcomes and the assessment criteria set out at **appendices 4 and 7 of the Certification Rules**. The CPS will ensure its course materials and teaching methods will be effective in ensuring applicants achieve the intended Course Delivery or Outcomes set by ILEX, which appear at **appendices 3 and 6 to the Certification Rules**.
70. The External Advisors will also be responsible for inspection of courses and moderation of standards of assessment applied by the assessors. Inspections may be carried out with an ILEX Officer. They will observe applicants when they are being formally assessed. An external organisation may be responsible for assessing candidates but assessment standards will be moderated by External Advisors reviewing recordings of applicants' performances. The applicant assessment which is reviewed will cover a representative range of performance. External Advisors will be required to have regard to the Course Delivery and Outcomes at **appendices 3 and 6 to the Certification Rules** and the Assessment Criteria at **appendices 4 and 7 to the Certification Rules** when undertaking inspections and carrying out moderations.
71. The assessment criteria and standards are provided in **appendices 4 and 7 to the Certification Rules**. On the Trial Preparation Course trainee Associate Prosecutors must be assessed as competent in at least two main criteria and three aspects of another criterion.
72. On the Level 1 Advocacy Skills Course candidates must be assessed as "good" or "competent" in at least 8 of the 10 aspects of the assessment. On the Level 2 Advocacy Skills Course candidates must be assessed as "good" or "satisfactory" in each of the 4 core areas and in at least 12 of the 15 other areas.
73. Draft course outlines are set out at **annexes 22 to 28 and 30 to 31** to this Application. They demonstrate the way in which the courses can be built around the course outcomes. They reflect the course delivery, outcomes and

assessment criteria contained in **appendices 3, 4, 6 and 7 to the Certification Rules**. They are not definitive as there may prove to be alternative ways in which the outcomes for the course can be achieved and therefore are not included as part of the Certification Rules.

Bail Application Course

74. Level 1 Associate Prosecutors will complete a course on bail applications shortly after deployment. The course will develop their knowledge of law and procedure of bail hearings in magistrates' courts. By the end of the course Associate Prosecutors will be able to present identified objections to bail on behalf of the CPS in a fair, clear and structured manner. They will also be able to deal with breach of bail hearings, defence arguments in relation to bail and understand how to deal with appeals against grant of bail. The course will conclude with skills assessments.

Youth Courses

75. Level 1 Associate Prosecutors will also undertake a Youth Course and a second course on Youth Bail. The courses will develop the knowledge of law and procedure of youth court hearings and of bail hearings youth courts. By the end of the courses Associate Prosecutors will be able to present identified objections to bail on behalf of the CPS in a fair, clear and structured manner in relation to youths. They will also be able to deal with breach of bail hearings, defence arguments in relation to bail and understand how to deal with appeals against grant of bail in relation to youths. The courses will conclude with skills assessments.

76. On the Youth Course trainee Associate Prosecutors must be assessed as competent in three criteria, two aspects of a fourth criterion and one aspect of a fifth criterion.

Assessment of Advocacy Skills Post-Qualification

77. Post assessment monitoring of Associate Prosecutors will be carried out through a variety of methods. The work of Associate Prosecutors will be monitored by a supervising Crown Prosecutor who will assess their advocacy skills with reference to the CPS National Standards of Advocacy.

78. In addition under IPS general Code of Conduct and CPS Statement of Ethical Principles, Associate Prosecutors may only undertake work that they are competent to undertake.

79. Furthermore, the training and assessment incorporated in the Advocacy Skills Course will have established that they are competent advocates and litigators and there will be an annual requirement imposed as to Continuing Professional Development training in Advocacy.

80. In addition the CPS has developed its own assessment processes. These are the CPS Core Quality Standards. The CPS has appointed assessors who may assess the advocacy of any CPS advocate against these quality standards. Further CPS

local unit heads will conduct at least one advocacy assessment each year of all advocates against the CPS National Standards of Advocacy. These ongoing assessments identify areas where Associate Prosecutors may need to develop themselves.

Course Providers

81. The CPS will deliver the Associate Prosecutor qualification courses. ILEX will retain ultimate responsibility for maintaining standards through the reporting and monitoring procedures established under the Rules.
82. External Advisors and Officers of IPS will carry out inspection visits of courses, as necessary; to ensure that resources are appropriate to the course and the quality of course provision is maintained. Reports of inspection visits will be provided to the Admissions and Licensing Committee. The Reports will include feedback from candidates who have attended the courses. Inspection visits may take place on final course days when assessment of candidates is being carried out.
83. The Admissions and Licensing Committee will receive annual reports from the CPS, as course provider, on how the course has progressed during the preceding 12 months and on candidates' performance. As indicated above, the External Advisors will moderate assessment materials prepared by the course provider and will review samples of applicants' advocacy on the course in order to monitor assessment standards applied by the assessment provider.

PART IV

CONDUCT RULES

PART IV – CONDUCT RULES

1. All members of ILEX, including Associate Prosecutors, will be required to comply with the ILEX Code of Conduct. Associate Prosecutors must also comply with the CPS National Standards of Advocacy and the CPS Statement of Ethical Principles. Copies of these documents appear at **annexes 17 and 18.**
2. The ILEX Code of Conduct places general duties upon members to act in the best interests of clients, with integrity and recognise their overriding duty to the court. The Code also confirms the duty upon Associate Prosecutor members of ILEX to comply with appropriate other Codes. These will be the CPS National Standards of Advocacy and the CPS Statement of Ethical Principles.
3. The Statement of Ethical Principles for the Public Prosecutor places the same obligations upon Associate Prosecutors as are placed upon other prosecution advocates. It lays down the standards of conduct and practice expected of prosecutors working for the CPS. It recognises the duties upon advocates to act impartially, within their competence and within the framework of the law. It also confirms the responsibility to preserve confidentiality, not to act in a conflict of interest situation and to act in accordance with the Director's Instructions. A breach of the ethical principles is dealt with as a disciplinary matter in accordance with the CPS Disciplinary Policy which appears at **annex 19.**
4. The CPS National Standards of Advocacy set out standards that the CPS expects from prosecution advocates so that it can serve the public and uphold justice. The standards act as prompts for prosecution advocates. They require advocates to act fearlessly, transparently, in accordance with the Criminal Procedure Rules and to recognise their overriding objective to deal with cases justly and to the courts. The standards confirm the responsibility of Associate Prosecutors to act within the ILEX Code and other CPS policies and procedures. They specifically set out the responsibilities of Associate Prosecutors in planning and preparing cases, and undertaking advocacy both in writing and in the courts.

Disciplinary Proceedings

5. A Memorandum of Understanding has been agreed between ILEX and the CPS which appears at **annex 12.** Amongst other matters the Memorandum sets out the arrangements agreed between the two organisations for dealing with complaints made against an Associate Prosecutor. The Memorandum recognises that complaints may be made about the conduct of an Associate Prosecutor to the CPS or to ILEX. It sets out arrangements for the sharing of information between ILEX and the CPS, as appropriate, about the complaints each body may receive.

6. The CPS will be able to deal with complaints it receives in accordance with its disciplinary policy which appears at **annex 19**. The policy sets out the procedure that the CPS will follow. The CPS will report the outcome of its investigation to IPS where appropriate. IPS will then decide what action to take against an Associate Prosecutor.
7. Any complaint or referral made about the conduct of an Associate Prosecutors to IPS will be dealt with through the normal disciplinary procedures. Those procedures are set out at **Annex 15** and are the Investigation, Disciplinary and Appeal Rules (IDAR).
8. A complaint made to IPS which results in the exclusion of an Associate Prosecutor from membership of ILEX will lead to the Associate Prosecutor losing their rights to conduct litigation or exercise rights of audience. The CPS will not be able to deploy them as an Associate Prosecutor.

**ANNEX 1 ILEX MEMORANDUM AND
ARTICLES OF ASSOCIATION**

**The Institute of Legal Executives
Memorandum & Articles of Association**

**Adopted at the Annual General Meeting
16 July 1999 as amended by Special
Resolutions passed on 20 July 2001, 23
July 2004, 15 July 2005, 2 June 2006, 16
September 2006, 17 July 2009 and 27
November 2009**

THE COMPANIES ACT 1985

**COMPANY LIMITED BY GUARANTEE AND NOT
HAVING A CAPITAL DIVIDED INTO SHARES**

MEMORANDUM OF ASSOCIATION

of

THE INSTITUTE OF LEGAL EXECUTIVES

- 1 The company's name is "THE INSTITUTE OF LEGAL EXECUTIVES" (hereinafter referred to as "ILEX").
- 2 ILEX is a company limited by guarantee not having a share capital and its registered office is to be situated in England.
- 3 ILEX's objects are
 - 3.1 To provide an organisation for persons who are either:
 - 3.1.1 Fellows of ILEX; or
 - 3.1.2 Registered with ILEX and provide or are employed in providing legal services of any kind or any services ancillary to legal services; or
 - 3.1.3 Registered with ILEX for the purpose of studying or becoming qualified in law or other subjects provided by ILEX; and who are resident in England and Wales or elsewhere.
 - 3.2 To advance and protect the status and interests of Fellows and those persons referred to by Clause 3.1.
 - 3.3 To promote professional unity, co-operation and mutual assistance amongst persons employed in the legal profession or engaged in legal work.
 - 3.4 To promote and secure professional standards of conduct amongst Fellows and those who are registered with ILEX, and regulate Fellows and Registered Person in the public interest to ensure compliance with those standards.
 - 3.5 To provide for the education and training of and developing the proficiency of Fellows and persons who wish to become proficient in the law, including those seeking to qualify as Fellows, in all subjects and skills, whether in the law or otherwise.
 - 3.6 To recognise and promote proficiency in the law and other subjects by the award of diplomas, certificates, prizes, scholarships, bursaries or other awards, and to award such special qualifications as ILEX may from time to time think fit, and to carry out such assessment and

- validation and regulation as may be necessary or expedient for such purposes.
- 3.7 To establish trust funds, bursaries and scholarships and to make payments out of the funds of ILEX to promote the educational and professional advancement of persons referred to in Clause 3.1.
 - 3.8 To prepare, publish, acquire, distribute or disseminate books, papers, periodicals or any information relating to law and legal practice or any other subject relative to the education and training provided by ILEX.
 - 3.9 To establish, maintain and control branches of ILEX and to determine and modify the constitution, rights, privileges, obligations and duties of branches and, when thought fit, to dissolve them.
 - 3.10 To provide financial assistance or relief to persons who are or have been Fellows of or registered with ILEX, or their dependants, who are in distressed circumstances and to establish and maintain a charitable fund for making such grants, provided ILEX shall not apply any monies under this clause except out of revenue and shall not apply more than 10% of the revenue of any year for such purposes.
 - 3.11 To carry out any other lawful trade or business whatsoever which can in the opinion of the Council or governing body be carried out advantageously to ILEX.
- 4 In furtherance of the said objects but not otherwise ILEX shall have the power:
- 4.1 To acquire any property, business or rights, which appear to be necessary or convenient for ILEX's purposes.
 - 4.2 To sell, mortgage, develop, lease, maintain, improve, and operate or use any property, business or rights which belong to ILEX or in which ILEX has an interest.
 - 4.3 To form or promote or be involved in forming or promoting any company whose objects directly or indirectly benefit ILEX (including but not limited to any company intended to provide a regulatory function), and to acquire and hold any shares, debentures or other securities in such companies as majority shareholder and to invest money in those companies and delegate rights and powers of ILEX to those companies subject to any limitation which the Council or governing body may from time-to-time determine.
 - 4.4 To share profits, enter into a joint venture or cooperate with any person or organisation who carries on, or proposes to carry on, any activity within ILEX's Objects, and to acquire and hold any securities of any such company.
 - 4.5 To accept grants of money and of land, donations, gifts, subscriptions and other assistance and to undertake and execute any trusts in furtherance of ILEX's objects.
- A To borrow or raise any money that may be required by ILEX, upon appropriate terms.
 - B To charge fees in respect of membership, examinations, practice certificates, regulation and any other matters as determined by the Council from time to time.
 - C To establish and manage compensation funds, professional indemnity schemes or any other financial schemes or arrangements in the

- interest of the public or of Fellows and Registered Persons in respect of the acts of the Fellows and Registered Persons.
- 4.6 To invest the monies of ILEX not immediately required for its purposes, in such investments, securities or property as it determines to be appropriate, and to take professional financial advice where necessary.
 - 4.7 To award pensions, allowances, gratuities and bonuses to past or present employees of ILEX or its subsidiary companies (including their dependants and people connected with them), and to set up and maintain or be involved in any other way with the setting up and maintaining of trusts, funds or schemes (whether contributory or non-contributory) intended to provide pensions or other benefits for any of them.
 - 4.8 To take out and renew insurances for or for the benefit of anyone who is or has been at any time a director, officer or employee of ILEX or of any of its subsidiary companies, including any person acting as a trustee of pension or charitable funds established by ILEX. Such insurance will include insurance against any liability incurred by such persons:
 - 4.8.1 As a result of anything they do or omit to do in carrying out or purporting to carry out their duties or using or purporting to use their powers in relation to ILEX or any of its subsidiary companies; or
 - 4.8.2 In any other way in connection with their duties, powers or posts in relation to ILEX or any of its subsidiary companies.
 - 4.9 To do all such other things as are incidental or conducive to the attainment of the said objects.
- 5 The said objects and powers are not to be interpreted narrowly and the widest interpretation shall be given to them that is possible consistently with the law of England and Wales.
- 6 [Intentionally blank to preserve numbering].
- 7 Save as herein otherwise provided, the income and property of ILEX shall be applied solely towards the promotion of the objects set out herein. No portion of income or property shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise by way of profit to members of ILEX and no member of its Council or governing body shall be appointed to any office of ILEX paid by salary or fees or receive any remuneration or benefit in money or money's worth from ILEX.
- 8 Notwithstanding Article 7, ILEX may make payment in good faith:
- 8.1 Of reasonable and proper remuneration to any member, officer or servant of ILEX (not being a member of its Council or governing body) for any services rendered to ILEX;
 - 8.2 Of interest on money lent by any member of ILEX or of its Council or governing body at a rate per annum not exceeding 2 per cent less than the minimum lending rate prescribed for the time being by the Bank of England or 3 per cent, whichever is the greater;
 - 8.3 Of reasonable and proper rent for premises let to ILEX by any member of ILEX or of its Council or governing body;
 - 8.4 Of fees, remuneration or other benefit in money or money's worth to a company of which a member of the Council or governing body is a member, provided he does not hold more than one one-hundredth part

- of the capital of that company;
- 8.5 Of out of pocket expenses to any member of its Council or governing body; and
- 8.6 Of a sum of money, the frequency and amount to be agreed by the Council or governing body, to the employer of a member of the Council or governing body, or, if the member is self-employed, the legal entity through which that member practises or the member himself as appropriate.
- 9 The liability of the members of ILEX is limited.
- 10 Every member of ILEX undertakes to contribute such amount as may be required (not exceeding £1) to ILEX's assets if it should be wound up while he is a member, or within one year after he ceases to be a member, for payment of ILEX's debts and liabilities contracted before he ceases to be a member and of the costs, charges and expenses of winding up ILEX, and for the adjustment of the rights of the contributories among themselves.
- 11 If on the winding up or dissolution of ILEX there remains after the satisfaction of its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the members of ILEX, but shall be given or transferred to some other association or institution having objects similar to the objects of ILEX and which shall prohibit the distribution of its income and property among its members to an extent at least as great as that as is imposed on ILEX by clauses 7 and 8 of this Memorandum. The association or institution to which such property is to be transferred shall be determined by the members of ILEX at or before the time of dissolution. If effect cannot be given to the provision of this clause, then the property shall be transferred to some charitable object.
- 12 ILEX shall keep true accounts of:
- 12.1 Sums of money received and expended by it;
- 12.2 The matters in respect of which receipts and expenditure take place;
- 12.3 The property, credits and liabilities of ILEX.
- Any such accounts shall be open to the inspection of the members, subject to any reasonable restrictions as to the time and manner of inspecting them that may be imposed by ILEX in accordance with its regulations. Once at least in every year the accounts of ILEX shall be examined and the correctness of the balance sheet ascertained by auditors.

THE COMPANIES ACT 1985

**COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL**

ARTICLES OF ASSOCIATION

of

THE INSTITUTE OF LEGAL EXECUTIVES

**Adopted by Special Resolution passed on 16 July 1999 as amended by
Special Resolutions passed on 20 July 2001, 23 July 2004, 15 July 2005, 2
June 2006, 16 September 2006, 17 July 2009 and 27 November 2009**

PRELIMINARY

- 1 “In these articles (including the appendices), unless the context otherwise requires-
- “The Act” means the Companies Act 1985 and every statutory modification or re-enactment thereof for the time being in force;
 - “the Adoption Date” means the date on which these articles are adopted as the articles of association of ILEX;
 - “these articles” means these articles of association as originally framed or as altered from time to time by special resolution;
 - “the bye-laws” means the bye-laws of ILEX for the time being in force (whether made pursuant to these articles or any previous articles of association of ILEX);
 - “Company Secretary” means any person appointed by the Council to perform the duties of the Company Secretary;
 - “Constituency Member” means a Fellow elected to the Council under these articles to represent a constituency;
 - “Co-opted Member” means a Fellow appointed to Council under these articles to fulfil needs identified by Council;
 - “The Council” means the Council for the time being of ILEX which shall comprise the Board of Directors for the purposes of the Act;
 - “Disciplinary Bodies” means any committee, tribunal or other body established by ILEX or any subsidiary company of ILEX to deal with complaints, declarations of prior conduct and allegations of misconduct;

“Fees” means any fees payable by a Fellow or Registered Person to ILEX in accordance with Article 10 or to any subsidiary of ILEX by virtue of powers delegated to it under Article 19;
“Fellow” means a person admitted or enrolled for the time being as such in accordance with the provisions of these articles;
“ILEX” means the Institute of Legal Executives;
“the Journal” means the official journal of ILEX;
“Member of Council” means a Constituency Member or Co-opted Member;
“office” means the Registered Office of ILEX;
“Registered Person” means a person who is not a Fellow but is registered with ILEX in accordance with these articles;
and, subject as aforesaid, any word or expression to which a meaning is assigned by the Act has the meaning so assigned to it on the adoption date.

References to the male gender shall include the female gender.

MEMBERSHIP

- 2 A The Membership of ILEX shall comprise the following:
- (i) Fellows; and
 - (ii) Registered Persons with current authority granted by the Council of ILEX to be qualified persons for the purposes of section 84(2) of the Immigration and Asylum Act 1999 (as amended).
- B The Council of ILEX shall have the power to create additional grades into which persons may be registered according to criteria determined by the Council, and shall publish bye-laws setting out the conditions for registration into any grade.
- 3 A (i) A person shall be eligible to be admitted as a Fellow if he is able to satisfy the Council that he has the requisite qualifications and experience for admission as a Fellow and that he has satisfied any other requirements of the Council in respect of fitness for admission as a Fellow.
- A (ii) The Council shall publish bye-laws setting out the conditions for admission as a Fellow.
- B (i) A Registered Person shall be granted the authority to be a qualified person for the purposes of section 84(2) of the Immigration and Asylum Act 1999 (as amended) if he is able

to satisfy the Council that he has the requisite qualifications, skills and experience to provide immigration advice or services and provided that he has satisfied the Council regarding his fitness to be granted such authority.

B (ii) The Council shall publish bye-laws setting out the conditions for Registered Persons to be granted authority to be a qualified person under Article 2A(ii) above.

4 Every application to be admitted as a Fellow shall be made in a form prescribed by Council and will contain an agreement by the applicant to become a member of ILEX for the purposes of the Act.

The Council shall have power to call for evidence as to the qualifications and experience and fitness to be a Fellow of any person seeking to be admitted as a Fellow.

5 The Council will have power to decide the requirements for a person to be registered with ILEX as a Registered Person. Its decision whether or not to admit an applicant for admission as a Fellow or registration as a Registered Person shall be final and binding. The Council may in its discretion refuse to enrol or admit an applicant as a Fellow or to register any person although he is otherwise eligible for admission or registration; and permit a person to be admitted or registered although he is not otherwise eligible.

6 A Every Fellow shall be entitled to receive a Certificate showing that he is a Fellow; and to describe himself as a Fellow of the Institute of Legal Executives or as a Legal Executive and to add after his name the letters "F.Inst.L.Ex."

B The Council shall have the power to issue each year Practice Certificates to those persons it deems fit, subject to such rules and criteria as adopted by the Council from time to time.

7 The Council shall have the power to award designatory letters and status descriptions to Fellows, Registered Persons and others even though they are not members of ILEX for the purpose of the Act or these Articles.

8 Membership of ILEX shall not be transferable or transmissible.

QUALIFICATIONS

9 The Council has the power to make bye-laws to regulate the provision of tests of knowledge and assessments of competence for those seeking to obtain qualifications offered by ILEX or by any subsidiary or associated

company and for those seeking to be admitted as Fellows.

ENROLMENT FEES AND SUBSCRIPTIONS

- 10 The Council shall have the power to set and levy fees relating to membership or registration with ILEX, for examinations, assessments and exemptions and any other fees relating to qualification with or admission to ILEX, or to any registration grade, or in respect of professional regulation, or for any other purpose as determined by the Council from time to time.
- 11 Every Fellow and every Registered Person shall pay to ILEX in advance on 1 January in each year an annual subscription of the amount prescribed in accordance with the provisions of Article 12. The amount of a Fellow's or Registered Person's subscription for each year shall be determined by reference to his class of membership or registration grade at the beginning of that year.
- 12 Council shall prescribe each year the amount of subscription fee payable by Fellows and by Registered Persons.
- 13 The Council may decide whether subscription fees prescribed include value added tax or not and may prescribe an additional sum to be paid to meet any value added tax leviable on the subscriptions.
- 14 ILEX shall give notice before 1 November in each year of the Fees payable by Fellows and Registered Persons which will apply from the following 1 January.
- 15 The Council may, in its discretion, remit in whole or in part any Fee payable by a Fellow or Registered Person for any year or years.
- 16 A person who ceases to be a Fellow or to be a Registered Person during a year shall (subject to the provisions of Article 15) pay the whole of his Fees for that year without any rebate.
- 17
 - A Unless the Council decides otherwise, a Fellow whose Fees are wholly or partly in arrear, or who has not made arrangements to pay the whole of his Fees, shall not be entitled to receive notice of, or to attend or vote at, any general meeting, or to exercise or enjoy any other rights of membership or privileges accorded to them.
 - B The Council may determine that any Registered Person whose Fees are unpaid shall not exercise or enjoy any rights or privileges accorded to them.

CESSATION OF MEMBERSHIP

- 18 A Fellow or Registered Person shall immediately cease to be a Fellow or Registered Person if:
- (i) he resigns by giving notice in writing to ILEX;
 - (ii) he dies;
 - (iii) he fails to pay the whole or any part of any Fee or other sum payable by him for a period of 12 months from the date on which it became due for payment and the Council resolves that he ceases to be a Fellow or Registered Person;
 - (iv) he is guilty of conduct which makes him unfit to be a Fellow or Registered Person, or commits a breach of these Articles or of the bye-laws and an Order is made by the Disciplinary Body excluding him from membership or cancelling his registration;

save that no resignation under paragraph (i) or resolution by Council under paragraph (iii) shall be valid if a complaint has been received about that Fellow or Registered Person, or any proceedings against such Fellow or Person have been begun by any Disciplinary Body, until the final determination of the matter by the relevant Disciplinary Bodies (and the expiration of any time allowed for appeals therefrom).

- 19 The Council may delegate to any subsidiary company of ILEX any or all of its powers relating to its functions and responsibilities as an approved regulator designated as such by the Legal Services Act 2007 including (but not limited to) the oversight of education standards and standards relating to the conduct and fitness to practise of Fellows and Registered Persons and the right to charge fees in respect of those functions and responsibilities delegated to it.
- 20 A A person who ceases to be a Fellow or to be a Registered Person shall remain liable for any Fees under these Articles or the bye-laws or for any sums which become payable by him under the Memorandum of Association, but neither he nor his representatives shall have any interest in or claim against the funds or property of ILEX.
- B A person who ceases to be a Fellow or Registered Person shall forthwith cease to use any designatory letters or status description relating to ILEX.

BRANCHES

- 21 A The Council may make bye-laws to establish and constitute branches of ILEX. Every branch shall be established and constituted by deed and subject to any requirements or qualifications or restrictions set out in such deed.
- B Council may agree such changes in the regulations of individual branches as it thinks fit, but the regulations of branches must be consistent with the provisions of these Articles and of the deed by which the branch is established.
- C The Council shall have power to make payments to branches to support and assist them in carrying out their role and functions.
- 22 Every branch existing on the Adoption Date shall be deemed to have been properly established under these Articles.

GENERAL MEETINGS

- 23 All general meetings other than annual general meetings shall be called extraordinary general meetings.
- 24 The Council may convene a general meeting and, on a requisition of Fellows made in accordance with the Act, shall convene an extraordinary general meeting for a date not later than eight weeks after ILEX has received the requisition.

NOTICE OF GENERAL MEETINGS

- 25 An annual general meeting and an extraordinary general meeting for the passing of a special resolution shall be called by at least 21 clear days notice and all other extraordinary general meetings shall be called by at least 14 clear days notice. Every notice shall specify the time and place of the meeting and the general nature of the business to be transacted. Subject to the provisions of these Articles, the notice shall be given to all the Fellows and to the auditors of ILEX.
- 26 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting. Any Fellow present at a meeting, whether in person or by proxy, shall be deemed to have received notice of the meeting.

PROCEEDINGS AT GENERAL MEETINGS

- 27 No business shall be transacted at any general meeting unless a quorum is present. Except as otherwise provided in these articles, 10 Fellows present in person and entitled to vote at the meeting shall be a quorum.
- 28 If a quorum is not present within 15 minutes from the time appointed for the meeting (or such longer period as the chairman of the meeting may allow), the meeting, if convened on the requisition of Fellows, shall be dissolved and, in any other case, shall stand adjourned to the same day in the next week at the same time and place, or to such time and place as the Council may determine.
- 29 The president or, in his absence, the vice-president shall preside as chairman at every general meeting; but if neither of them is present within 15 minutes after the time appointed for the meeting and is willing to preside, the members of the Council present shall elect one of their number to be chairman or, if there is only one of them present who is willing to preside, he shall be chairman. If no member of the Council who is willing to preside is present within 15 minutes after the time appointed for the meeting, the Fellows present in person and entitled to vote shall elect one of them to be chairman.
- 30 The chairman of the meeting may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time or indefinitely and from place to place. No business shall be transacted at an adjourned meeting except business which might properly have been transacted at the meeting from which the adjournment took place.
- 31 If a meeting is adjourned for 14 days or more or indefinitely, at least 7 clear days notice specifying the time and place of the adjourned meeting and the general nature of the business to be transacted shall be given. Otherwise notice of an adjourned meeting need not be given.
- 32 A Registered Person who is not a Fellow may (subject as otherwise provided by these articles) attend and speak at any general meeting.
- 33 If an amendment proposed to a resolution shall be allowed or ruled out of order by the chairman of the meeting in good faith, any error in the ruling shall not invalidate the proceedings on the substantive resolution. An amendment to a special resolution or an extraordinary resolution (except an amendment to correct a patent clerical error) shall not be allowed.
- 34 A resolution put to the vote of a general meeting shall be decided on a

show of hands unless, before or on the declaration of the result of the show of hands, a poll is demanded by:

- (i) The chairman of the meeting; or
 - (ii) At least 5 Fellows having the right to vote at the meeting; or
 - (iii) A Fellow or Fellows representing not less than one-tenth of the total voting rights of all the Fellows having the right to vote at the meeting.
- 35 Unless a poll is duly demanded and not withdrawn a declaration by the chairman of the meeting that a resolution has been carried, carried unanimously or by a particular majority or lost or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 36 A poll demanded on the election of a chairman of the meeting or on the question of an adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such time (being not more than 30 days after the poll was demanded) and place as the chairman of the meeting directs. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than that on which the poll has been demanded.
- 37 A poll shall be taken in such manner as may be directed by the chairman of the meeting, who may appoint scrutineers (who need not be Fellows) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 38 The demand for a poll may be withdrawn before the poll is taken only with the consent of the chairman of the meeting. If the demand is so withdrawn, the meeting shall continue as if it had not been made and its withdrawal shall not invalidate the result of a show of hands declared before the demand was made.
- 39 If a poll is not taken immediately and if the time and place at which it is to be taken are not announced at the meeting at which it was demanded, 7 clear days notice of the time and place shall be given. Otherwise notice of a poll need not be given.
- 40 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting shall be entitled to a casting vote in addition to any other vote he may have.

VOTES AT GENERAL MEETINGS

- 41 Every Fellow entitled to vote shall have one vote on a show of hands if he is present in person and, where a poll is taken, one vote on a poll. Only Fellows shall be entitled to vote at a general meeting either in person or on a poll.
- 42 No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote in dispute is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.
- 43 A Fellow entitled to vote at a general meeting may appoint any other Fellow entitled to vote at the meeting as his proxy to vote for him on a poll.
- 44 The instrument appointing a proxy shall be in writing in any usual form or in any other form approved by the Council, and shall be signed by the Fellow appointing the proxy or by his agent who is duly authorised in writing. Instruments of proxy need not be witnessed.
- 45 To be valid, the instrument appointing a proxy and the authority (if any) under which it is signed, or a copy of the authority certified notarially or in another way approved by the Council, must be deposited at the Office or at such other place in the United Kingdom as is specified in, or in any document accompanying, the notice convening the meeting not less than 48 hours before the time appointed for the meeting or adjourned meeting or (in the case of a poll taken more than 48 hours after it was demanded) the time appointed for taking the poll at which it is to be used. Unless the contrary is stated in the instrument, it shall be valid also for any adjournment of the meeting to which it relates.
- 46 A vote cast or a poll demanded by a proxy shall not be invalidated by the previous termination of his authority unless notice of the termination has been received by ILEX at the Office or at the place specified for the deposit of instruments of proxy for use at the meeting not less than 3 hours before the time appointed for the meeting or adjourned meeting at which the vote is cast or the poll demanded or (in the case of a vote cast on a poll not taken on the day it was demanded) the time appointed for taking the poll.

THE COUNCIL

- 47 A The Council shall consist of not more than 27 Fellows elected as Constituency Members and 6 Fellows appointed as Co-opted Members.

- B England and Wales shall be divided into 12 constituencies, the boundaries of which to be determined from time to time by Council. Each constituency shall be represented by 1 or more Constituency Members, the number of Constituency Members per constituency to be determined from time to time by Council.
 - C The Council shall make arrangements for the co-option of Fellows to serve on the Council and shall have the power to determine the criteria on which Fellows are to be co-opted.
 - D Subject to these Articles, Co-opted Members will have the same status, rights and privileges as Constituency Members.
- 48 A A Fellow shall be eligible for appointment or re-appointment as a Constituency Member to represent a constituency only if he:
- (i) Is engaged in legal work; and
 - (ii) Is either so engaged in that constituency or resident there.
- B No Fellow may represent more than one Constituency at one time.
- 49 Members of the Council in office before these Articles come into force shall continue as members of Council after these Articles come into force. The term of office of a member of the Council shall expire at the same time as it would have expired under the Articles in force immediately before these Articles come into force, regardless of any change in the constituency he represents.

**APPOINTMENT AND RETIREMENT
OF MEMBERS OF THE COUNCIL**

- 50 A Subject as otherwise provided by these articles, every member of the Council shall retire at the annual general meeting held in the third calendar year next following that in which he was appointed or last re-appointed to office.
- B Notwithstanding any other provisions of these Articles, save for Article 50C, any member of Council who has held such office at any time in each of twelve contiguous calendar years shall retire at the AGM held in such twelfth calendar year and shall not be eligible for re-appointment at such AGM or at any time before the AGM in the following calendar year.
- C Article 50B shall not apply to those members of Council who are in office at the date of the passing of the resolution to adopt Article 50B. Instead the following shall apply:

- (i) Any member of Council who has held such office at any time in each of 12 or more contiguous calendar years at the date of the passing of the resolution to adopt Article 50B shall be entitled to hold office for a further three years from the date at which his current term of office expires;
 - (ii) Any other member of Council at the date of the passing of the resolution to adopt Article 50B shall be entitled, after holding office at any time in each of 12 contiguous calendar years, to hold office for a further 3 years.

- 51 A member of the Council who has been the president shall retire at the third annual general meeting next following the date on which he ceased, or last ceased, to be the president, instead of any earlier annual general meeting at which he would otherwise have retired under article 50.

- 52 A
 - A Constituency Member who retires at an annual general meeting shall vacate his office at the conclusion of the meeting and shall be eligible for re-appointment.

 - B A Co-opted Member who retires at an annual general meeting shall vacate his office at the conclusion of the meeting and shall be eligible for re-appointment at Council's discretion. The Council may decide not to re-appoint a particular Co-opted Member and may decide to appoint someone else. The maximum number of terms a Co-opted Member may serve consecutively is 2. Once 2 terms have been served consecutively, a Co-opted Member shall not be eligible for re-appointment at any time before a full calendar year has passed.

 - C A Co-opted Member may stand during the period of co-option for a Council constituency seat. If he is unsuccessful in that election, he may continue to serve the remainder of his term as a Co-opted Member.

- 53 The office of a member of the Council shall be vacated if:
 - (i) He resigns his office by notice signed by him and deposited at the Office;
 - (ii) He ceases to be a Fellow of ILEX;
 - (iii) He is prohibited by law from being a member of the Council;
 - (iv) He is absent from two consecutive meetings of the Council and the

Council resolves that his office be vacated;

- (v) He is excluded from membership or is fined or reprimanded by any Disciplinary Body established by any subsidiary company of ILEX to which powers are delegated under Article 19;
- (vi) He is a Constituency Member and either ceases to be engaged in legal work in the constituency which he represents and is not resident there, or he ceases to live in the constituency which he represents and is not engaged in legal work there, but the vacating of his office shall not take effect until the event specified by Article 54.
- (vii) The Council has determined that he has engaged in conduct capable of bringing ILEX into disrepute and has resolved that he be removed as a member of the Council before the expiration of his period of office provided:
 - (a) Such resolution of the Council is passed by two thirds of those members of the Council present whether or not voting at a meeting for which not less than twenty-eight days notice specifying the intention to propose the resolution has been given;
 - (b) There are (in addition to the quorum requirements of Article 71) present at the meeting at least two thirds of the members of the Council;
 - (c) The member of Council concerned has been given, in addition to notice of the meeting, reasonable particulars of the conduct giving rise to the proposing of the resolution;
 - (d) ILEX shall have sent a copy to all members of the Council of any representations (not exceeding a reasonable length and provided the same are not defamatory) made by the member of Council concerned which are received by ILEX at least seven days before the meeting; and
 - (e) The member of Council concerned has been given the opportunity of being heard before Council and has been permitted to be represented or assisted by a Fellow, authorised practitioner or some other person.

Any member of Council removed from office pursuant to this Article 53 (vii) shall not be eligible for re-appointment until the Annual General Meeting held in the third calendar year following his

removal.

- 54 Fellow who ceases to be eligible to be a Constituency Member under Article 53(vi) shall continue in office for the remainder of his current term of office.
- 55 The provisions of section 293 of the Act (age limit for directors) shall not apply to ILEX Council members unless ILEX shall otherwise determine by ordinary resolution either generally or in any particular case.
- 56 Only those Fellows who are engaged in legal work within the constituency represented by a member of the Council who has vacated, or is about to vacate, his office shall be qualified to nominate a candidate, or to vote on the election of a candidate, to fill the vacancy.
- 57 A The Council shall give notice of every vacancy arising or about to arise in a Council constituency to all those Fellows eligible to nominate a candidate to fill the vacancy:
- (i) In the case of a vacancy due to arise at an Annual General Meeting, before 1 April immediately preceding the meeting; and
 - (ii) In any other case, within 56 days after the vacancy has arisen.
- B 30 days will be allowed from the date of publication of a notice of a vacancy for nominations to be made to ILEX of Fellows to fill the vacancy.
- C
- (i) Fellows may be nominated at any time to fill an existing vacancy.
 - (ii) An existing vacancy is a vacancy which remains unfilled after an annual general meeting.
 - (iii) Where a nomination is received in respect of an existing vacancy, Council shall, within 56 days, give notice of the nomination to Fellows in the constituency in which the vacancy exists. 30 days will be allowed from the date of publication of the notice for other nominations to be made in respect of the vacancy.
 - (iv) If an existing vacancy remains unfilled, it becomes a vacancy arising at an annual general meeting when notice is

given of the vacancy prior to the next annual general meeting.

- 58 A Nominations for appointment of Fellows to the Council to represent a constituency must:
- (i) Be made in writing;
 - (ii) Be supported by at least 8 Fellows qualified to vote in the constituency in which the vacancy arises, or is about to arise, and who are not employed by the Fellow nominated; and
 - (iii) Be delivered to the Office.
- B The Fellow nominated must provide confirmation in writing to the office that:
- (i) He is eligible to serve as a Council member for the constituency in which the vacancy exists, or will arise; and
 - (ii) He wishes to be appointed to the Council.
- 59 A Constituency Member who is due to retire at an Annual General Meeting shall be deemed to have been duly nominated in accordance with the provisions of Article 58 for re-appointment to the Council to fill the vacancy if he has delivered to the office within 30 days of the notice published under Article 57A (i) notice signed by him that he wishes to be re-appointed.
- 60 A Where one or more vacancies arises or arise in a constituency, if the number of nominations is the same or less than the number of vacancies, the Fellow or Fellows nominated will be appointed to the Council.
- B If the number of nominations received for a vacancy or vacancies exceeds the number of vacancies for that constituency, a ballot will be held in accordance with bye-laws published by the Council.
- C The candidate who receives the highest number of votes on a ballot will be elected to Council if there is only one vacancy within a constituency. If there is more than one vacancy, the candidates will be elected to Council according to which of them receives the highest number of votes, in descending order, until all the vacancies in that constituency are filled.

- D In the event of an equality of votes between 2 or more candidates, the election as between those candidates shall be decided by drawing lots.
- 61 The accidental omission to give notice of a vacancy on the Council or of a ballot to fill the vacancy to, or the non receipt of the notice by, any Fellow shall not invalidate the appointment or re-appointment of a person to the Council.
- 62 The appointment or re-appointment of a person to fill a constituency vacancy on the Council shall be effective:
- (i) In the case of a vacancy arising at an annual general meeting, as from the conclusion of the meeting;
 - (ii) On the expiry of a period of 30 days after notice has been given of a vacancy under Article 57A (ii) or a nomination under Article 57C (iii); or
 - (iii) If a ballot is held under the provisions of Article 60, as soon as the result of the ballot has been ascertained or, in the case of a vacancy arising at an annual general meeting, from the conclusion of the meeting.
- 63 A Council shall give notice of every vacancy amongst Co-opted Members arising or about to arise to all those Fellows eligible to fill the vacancy:
- (i) In the case of a vacancy due to arise at an Annual General Meeting, before 1 April immediately preceding the meeting; and
 - (ii) In any other case, within 56 days after the vacancy has arisen.
- B At least 30 days will be allowed from the date of publication of a notice of a vacancy for applications to be made to Council by Fellows who wish to be appointed as a Co-opted Member.
- C Following such notice Council may select the Co-opted Member or Members to be appointed to Council in its absolute discretion. Council need not appoint any candidates.
- D Council will publish the names of Co-opted members after they have been co-opted.

PRESIDENT AND VICE-PRESIDENT

64 At the first meeting of the Council held after each annual general meeting the Council shall appoint one of its members to hold office as the President of ILEX, and others to hold office as the Vice-President and Vice-President Elect save that Co-opted Members shall not be eligible for such appointments. If a casual vacancy shall occur in any of those offices the Council may appoint any of its eligible members to fill the vacancy. A person holding office as the President, the Vice-President or the Vice-President Elect shall vacate the office upon the earlier of:

- (i) His vacation of office as a member of the Council; and
- (ii) The appointment of his successor to the office.

A person vacating office under paragraph (ii) of this Article shall be eligible for re-appointment to the office.

65 The members of the Council holding the offices of president, vice-president and vice-president elect on the Adoption Date shall be deemed to have been duly appointed pursuant to these Articles.

POWERS OF THE COUNCIL

66 Subject to the provisions of the Act, the Memorandum of Association and these Articles, the business of ILEX shall be managed by the Council, which shall constitute the Board of Directors of ILEX and may exercise all the powers of ILEX. The powers given by this Article shall not be limited by any special power given to the Council by any other Article.

67 The Council may make bye-laws (being not inconsistent with the provisions of these Articles) to enable it to manage ILEX and may alter or rescind any bye-laws so made.

68 The Council may (subject as otherwise provided by these articles) delegate any of its powers, except the power to make, alter or rescind bye-laws:

- (i) To the Chief Executive; or
- (ii) To any committee consisting of two or more members of the Council.

Any such delegation may be made subject to any conditions which the Council may impose, and either collaterally with or to the exclusion of its own powers, and may be revoked or altered. Subject to any such conditions, the proceedings of every committee shall be governed by the provisions of these Articles regulating the proceedings of the Council so

far as they are capable of applying. The president and the vice-president shall be entitled to attend and vote as members of every committee.

PROCEEDINGS OF THE COUNCIL

- 69 The Council may regulate its proceedings as it thinks fit. Save as otherwise provided by these Articles, questions arising at any meeting shall be decided by a majority of votes on a show of hands. In the case of an equality of votes the chairman of the meeting shall have a second or casting vote.
- 70 The president may, and on the request of at least 7 members of the Council the Company Secretary shall, convene a meeting of the Council. At least 7 clear days notice of every meeting shall be given to the members of the Council. The notice shall specify the time and place of the meeting and, in the case of a meeting convened at the request of Council Members, the general nature of the business to be transacted, and only the business so notified shall be transacted at the meeting.
- 71 Unless the Council determines otherwise, the quorum for the transaction of the business of the Council shall be 10 of its members. If at any meeting a quorum is not present within 15 minutes from the time appointed for the meeting (or such longer period as the chairman of the meeting may allow) the meeting shall be adjourned to the same time on the third business day next following and to the same place, or to such later time and to such other place as the members present may determine, and at the adjourned meeting 2 members of the Council shall be a quorum. Notice of an adjourned meeting need not be given. For the purpose of this Article a business day is a day which is not a Saturday or Sunday or a bank holiday in England and Wales.
- 72 The Council can continue to act even though there is one or more vacancies in its membership; but if the number of members falls below 10 the continuing members may act for the purpose only of convening a general meeting.
- 73 The president or, in his absence, the vice-president shall preside at all meetings of the Council; but if neither of them is present within 5 minutes after the time appointed for the meeting, the members of the Council present may choose one of their number to be chairman.
- 74 All acts done by a meeting of the Council or of a committee of the Council or by a person acting as a member of the Council shall, even though it is afterwards discovered that there was a defect in the appointment of any of the members of the Council or that any of them was disqualified or had vacated office or was not entitled to vote, be as valid as if every such person had been duly appointed, was qualified, had continued to be a

member of the Council and had been entitled to vote.

- 75 Save as otherwise provided by the articles, a member of the Council shall not vote at a meeting of Council or of a committee of Council on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of ILEX. For the purposes of this article, an interest of a person who is, for any purpose of the Act (excluding any statutory modification thereof not in force when this article becomes binding on the company), connected with a Council Member shall be treated as an interest of the Council Member.
- 76 A Council Member shall not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.
- 77 The company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of the articles prohibiting a member of the Council from voting at a meeting of the Council or of a committee of the Council.
- 78 Where proposals are under consideration concerning the appointment of two or more Council Members to offices or employments with the company or any body corporate in which the company is interested the proposals may be divided and considered in relation to each Council Member separately and (provided he is not for another reason precluded from voting) each of the Council Members concerned shall be entitled to vote and be counted in the quorum in respect of each resolution except that concerning his own appointment.
- 79 If a question arises at a meeting of Council Members or of a committee of Council as to the right of a Council Member to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any Council Member other than himself shall be final and conclusive.

MINUTES

- 80 The Council Members shall cause minutes to be made in books kept for the purpose:
- (i) Of all appointments of officers made by the Council; and
 - (ii) Of all proceedings at meetings of the company and of the Council, including the names of the Council Members present at each such meeting.

CHIEF EXECUTIVE

- 81 The Council may appoint any person (not being a member of the Council) to be the Chief Executive (formerly the Secretary General) of ILEX on such terms and for such period as the Council thinks fit. The Chief Executive shall be entitled to attend and speak at all meetings of the Council, unless the Council resolves otherwise. The Chief Executive shall not be counted in the quorum or vote at any Council or committee meeting.

COMPANY SECRETARY

- 82 The Council shall, subject to the provisions of the Act, appoint the Chief Executive, or another person, to be Company Secretary, on such terms as it thinks fit. The Council may also appoint any other person, either generally or specially, to perform all or any of the duties of the Company Secretary.

SEAL

- 83 The seal shall be used only with the authority of the Council or a committee of the Council authorised by the Council. Every instrument to which the seal is affixed shall be signed by one member of the Council and either the Chief Executive or, if so determined by the Council, the Company Secretary, or by two members of the Council.

NOTICES

- 84 Any notice to be given by or to ILEX pursuant to these Articles shall be in writing. A notice to be given by ILEX generally to the Fellows or to a group of the Fellows may be given by publishing it in the Journal.
- 85 A notice and an edition of the Journal containing a notice shall be given by ILEX to a Fellow either personally or by delivering it or posting it in a prepaid envelope addressed to him at the communication address held on ILEX's records.
- 86 A Fellow who does not have a communication address in the United Kingdom shall not be entitled to receive any notice from ILEX.
- 87 A notice sent by post or published in the Journal shall be deemed to have been given on the expiry of 48 hours after the envelope containing the notice, or the edition of the Journal in which it is published, was posted. Proof that the envelope was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given.

INDEMNITY

- 88 Subject to the provisions of the Act, ILEX will indemnify out of its assets every member of the Council and other officers, (including an auditor) and employees against any costs, charges, expenses, loss or liability incurred

by him in carrying out his duties or trying to do so.

DISSOLUTION

- 89 Clause 11 of the Memorandum of Association relating to the winding up and dissolution of the Institute shall have effect as if its provisions were repeated in these Articles.

ANNEX 2 LIST OF ILEX COUNCIL MEMBERS

PRESIDENT - David McGrady, F.Inst.L.Ex.

VICE-PRESIDENT - Susan Silver (Miss)

DEPUTY VICE-PRESIDENT - Nicholas Hanning, F.Inst.L.Ex

Keith M. Barrett, F.Inst.L.Ex.

Gillian Birchnall (Miss)

Mark Bishop F.Inst.L.Ex.

Martin N. Callan, F.Inst.L.Ex.

David Edwards F.Inst.L.Ex.

Frances Edwards (Mrs) F.Inst.L.Ex.

Mary French (Mrs) F.Inst.L.Ex.

Judith Gordon-Nichols (Miss)

Stephen Gowland F.Inst.L.Ex.

Lesley Graham (Mrs) F.Inst.L.Ex.

Julie Hughes (Mrs) F.Inst.L.Ex.

Kevin McCarthy, F.Inst.L.Ex

Rachael N. Palmer (Ms) F.Inst.L.Ex.

Roger Ralph F.Inst.L.Ex.

Mark Anthony Reeves F.Inst.L.Ex.

Laurence J. Shaw F.Inst.L.Ex.

Dawn Slow (Mrs) F.Inst.L.Ex.

ANNEX 3 ILEX BUSINESS PLAN

Executive Summary

The Institute of Legal Executives (ILEX) is the professional association which represents 22,000 trainee and practising Legal Executives. Our role is to enhance the role and standing of Legal Executives in the legal profession.

For almost fifty years, we have been offering unparalleled access to a flexible career in law. We work closely with Government and the Ministry of Justice and are recognised in England and Wales as one of the three core regulators of the legal profession alongside barristers and solicitors.

ILEX has branches throughout England and Wales and many members overseas.

2.0 Financial Considerations

The period under review is one of considerable challenge and change. The Institute's strategic policy of balancing costs with income will be relaxed necessarily during this period to absorb the additional cost of supporting the Legal Services Board (LSB) and Office for Legal Complaints (OLC) operations. Income levels must be progressively increased over the period to provide the additional £500,000 per annum required by 2012 to fund the ILEX share of LSB and OLC running costs, this cost being shared by those in all membership grades.

The ILEX share of the LSB set-up costs £250,000, together with the estimated shortfall of income over this three-year period £120,000, will be met from reserves accrued for such contingency in previous years. Please see ILEX's three year budget at Appendix 1.

3.0 Objectives

- 3.1 To provide an organisation for those who are registered or studying with ILEX who provide legal services and who are a resident in England and Wales or elsewhere
- 3.2 To provide for the education, training and development of knowledge and skills for Fellows, paralegals, legal assistants and other support staff who wish to become experts in the law
- 3.3 To advance and protect the status and interests of Fellows and those who wish to become experts in the law
- 3.4 To promote professional unity, co-operation and mutual assistance amongst those who are employed in the legal profession or engaged in legal work
- 3.5 To promote and secure professional standards of conduct amongst Fellows and those who are registered with ILEX, by publishing codes of conduct, guides to good practice and the protocol between ILEX and its regulatory body, ILEX Professional Standards (IPS), and regulating the membership through that body to ensure compliance with those standards

- 3.6 To award diplomas, certificates, prizes, scholarships, bursaries or other awards to those who demonstrate knowledge and skills in the law
- 3.7 To promote public interest and fair access to justice and the professions.

4.0 **The ILEX Vision for 2012**

ILEX is regarded by the legal profession, the legal media, Government and relevant institutions and the public, as a modern, well governed membership association, catering for the needs of a range of legal staff, nationally and internationally, and celebrating the career and status of the Legal Executive lawyer.

ILEX is recognised and applauded by the Legal Services Board as a benchmark for proportionate, efficient and good value regulation of individual lawyers and legal services businesses. ILEX is regulating Legal Executive businesses and businesses in which Legal Executive Lawyers are partners and directors.

ILEX is recognised by the Office of the Qualifications and Examinations Regulator (Ofqual) for its awarding organisation function and by the Department of Children Schools and Families and relevant institutions as a benchmark amongst professional membership associations. ILEX will have robust and transparent processes for the development of syllabi, the preparation and marking of assessments and the awarding of legal qualifications, and will do so for an increasing range of qualifications. ILEX will have effective and proportionate arrangements for accrediting prior learning and experience, and for accrediting training and development offered in-house by employers in the legal sector.

ILEX is financially sound. It continues to raise income to support and enhance its activities from membership subscriptions. Significant income is from providing the types of services to members and non-members that such groups are prepared to pay for because of their relevance and good value.

ILEX is firmly established as a provider of legal and legal services related training and development. It will continue to be the leading provider of flexible learning through e-learning developments. ILEX is recognised as the trusted and respected voice championing credible supported distance learning in all its forms. ILEX will also be creating a favourable reputation as a provider of training and development through more traditional methods.

5.0 **Organisational Summary**

5.1 **Governance**

ILEX is a company limited by guarantee and is governed by elected Council representatives. Council members are drawn from and represent the 12 constituencies in England and Wales. Additional members may be appointed to the Council as Specialist or Co-opted Members to represent particular areas of legal practice or special knowledge.

Council members are responsible for ensuring that the affairs of the Institute are conducted diligently, legally and honestly.

Council makes all the strategic and policy decisions of ILEX as a professional association, which are implemented at an operational level by the Chief Executive and her team of officers and staff (102 in total). See Appendix 2.

The Articles of Association of the Institute regulate in general terms the powers and obligations of the Council, including membership criteria and its number.

5.2 Management Summary

ILEX's strategy and policy decisions are implemented and managed by the Chief Executive, supported by a Group Management Team (GMT), managers and staff. The Chief Executive holds fortnightly meetings with individual GMT members. GMT hold monthly meetings to discuss the Business Plan, managers meet formally each fortnight to discuss operational matters which are then relayed to each team. Staff meetings are held on a regular basis.

There are clear lines of communication and responsibility across the Group. Each GMT has a schedule of activities and objectives which relate directly to the Business Plan. These are built in to the Appraisal and Review processes, and cascade down to the appropriate teams and individuals. GMT report formally on progress to the ILEX Council 6 times per year, and through the various Working Parties and Committees that are in place.

5.3 Equality & Diversity

Equality & Diversity is about the recognition and valuing of difference in its broadest sense. It is about creating a working culture and practices that recognise, respect, value and harness difference for the benefit of the organisation and the individual.

It is also about creating a fairer society where everyone can participate and has the opportunity to fulfill their potential. It is backed by legislation designed to address unfair discrimination based on membership of a particular group.

ILEX is focused and committed to equality and diversity in relation to the members it represents, the staff it employs and its stakeholders. ILEX published an Equality and Diversity Policy and a Group Single Equality and Diversity Scheme and Action Plan, which sets out our objectives and action plans for the next three years. See Appendix 3.

Summary of Equality & Diversity objectives:

- At all times treats its customers with dignity and respect.
- As an Awarding Body, ILEX will ensure that its qualifications, its standards for accrediting providers of those qualifications, its examinations and other methods of assessment, are designed to make study with ILEX accessible to all, regardless of gender, marital status, family status, sexual orientation, disability, race, ethnicity religion, belief or age.
- ILEX will ensure that it meets its commitment to equality of opportunity by monitoring and evaluating its performance against equality and diversity policy objectives, which will be set annually by the Council.

6.0 Services

ILEX offers a range of services, which are accessible to all. We have recently extended our membership grades to offer further flexibility and wider access to those wishing to join us. The ILEX route is the ideal way to obtain a law qualification for school leavers, graduates, legal support staff, paralegals, mature students, career changers and those with family commitments.

Our highly cost-effective qualifications courses offer an accessible route to becoming a lawyer without having to complete a law degree (although graduates of law or non-law subjects can still choose to become a lawyer using the ILEX route). Entry is accessible to those holding a variety of qualifications at various levels.

Typically those studying through ILEX receive on-the-job training in law firms or in-house legal departments, whilst also attending classes in law and practice at one of our 86 ILEX accredited centres. Our wholly owned subsidiary, ILEX Tutorial College, delivers the ILEX qualifications through world-class supported distance learning.

As a professional association, we actively lobby for change and improvements to the legal system on behalf of our members. Most recently we have secured access to prescribed judicial appointments for our Fellows. We are represented by many Legal Executive Advocates and Legal Executive Partners.

Regulation was listed by our members as one of the key services that ILEX offers. Our newly established regulatory company, IPS, provides such independent regulation for our Legal Executive lawyers, and monitors our Code of Conduct and Fitness to Practice activities. It is governed by an independent Board, Chief Executive and team of staff. See Appendix 4.

ILEX is committed to becoming a regulator for the full range of reserved legal activities and a licensing authority for Alternative Business Structures (ABS).

Members of ILEX receive access to a wide range of benefits, including the award winning monthly Legal Executive Journal magazine. Members have personalised access to the MYILEX website, enabling online CPD recording, subscription renewals and much more.

7.0 **The ILEX Qualifications**

ILEX offers a full range of qualifications in law and legal practice at all levels for both those already working in the legal profession, and those who wish to start their career in law. We also offer qualifications for those members wishing to become advocates.

ILEX offers a range of qualifications which can enable a student to become a fully qualified lawyer and a member of the Institute.

7.1 Training for non-lawyers

In conjunction with City and Guilds which is the awarding organisation, ILEX offers an extensive range of qualifications at Levels 2 and 3 for paralegals, legal secretaries and those in other legal support roles where knowledge of the law is needed. These qualifications are available for study at 114 approved City & Guilds centres nationwide. They offer a flexible route with no entry requirements (although a Grade C or above in English Language GCSE is desirable) and are assessed by task based assignments.

7.2 Training to become a Legal Executive lawyer – Level 3

The ILEX Level 3 Professional Diploma in Law and Practice is the first stage of the academic training needed to become a Legal Executive lawyer. It is aimed at anyone wishing to qualify as a legal executive lawyer who holds no prior legal qualifications. It is ideal for career changers interested in entering the legal profession, law clerks, senior legal secretaries, unqualified paralegals seeking to gain a recognised legal qualification. It is set and assessed at Level 3 equivalent to A' level standard (each unit is worth seven Level 3 credits on the Qualifications and Credit Framework). Individual or groups of units are useful for a wide range of individuals who don't wish to become a lawyer.

7.3 Training to become a Legal Executive lawyer – Level 6

The ILEX Level 6 Professional Higher Diploma in Law and Practice is the second stage of the academic training needed to become a Legal Executive lawyer. The Professional Higher Diploma in Law and Practice comprises six units chosen from 23 in law, practice and professional skills. It is set and assessed at Level 6 equivalent to Honours degree level.

7.4 Fast-Track Diploma – Law Graduates

The ILEX Graduate 'Fast-Track' Diploma is aimed at those who already hold a qualifying law degree awarded within the last seven years. Exemptions are given and students are required to pass two Level 6 Practice units and one Professional Skills unit.

7.5 Careers and training for qualified staff & fee earners

ILEX offers qualifications for those wishing to pursue further ambitions, such as becoming a Partner in a firm, or training to become a Legal Executive Advocate or a Solicitor.

Additionally ILEX can also offer specialist in-depth training in the form of the ILEX Level 6 Single Subject Certificate. The certificates are ideal for qualified or unqualified personnel (working in a legal or quasi-legal environment) who wish to increase their specialist in-depth knowledge of a particular legal subject or professional skills, for example:

- solicitors or legal executives entering a new area of practice
- unqualified fee earners in specialist law firms
- managers outside the legal profession.

7.6 The ILEX Qualifications Strategy 2010 – 2012:

- Successful satisfaction of a variety of critical regulatory requirements;
- Continued communication and support for students, centres and employers in relation to the opportunities provided by the new qualifications;
- Continued improvement to the systems and processes necessary to deliver the qualifications effectively;

- Positioning of ILEX and its provision to take advantage of a fast-evolving funding and vocational qualification context;
- Formalisation, expansion and delivery of related projects, i.e. work-based learning and Customised Awards.
- Consolidating the ILEX qualifications.

8.0 **Membership of our Professional Association**

ILEX offers accessibility and flexibility to all, through a wide variety of membership grades and accompanying benefits. There are clear progression routes for those members wishing to qualify as Legal Executive lawyers, and additional choices for those wishing to extend their legal knowledge and skills.

Accompanying the monthly Journal publication, members can take advantage of a range of affinity products and services, offering exclusive discounts and savings from leading suppliers. ILEX also has a Benevolent Fund, which is available to those members who find themselves in sudden financial hard-ship.

8.1 **The ILEX Membership Strategy 2010 – 2012:**

- New membership grades to make access wider and transparent
- Continue to use technology to drive down costs through efficiency gains
- Increase knowledge of the business by continuing to promote relevant qualifications both in the administrative (includes customer service) and legal field to staff
- To tip the activities of the department from reactive to proactive in dealing with our members
- To support the careers aspirations of all our members
- To provide support to other Group functions that require changes to the Membership Database
- To provide pastoral support for the branch network
- Provide appropriate regional points of contact through the Regional Liaison Officers
- Provide a Continuing Professional Development information and data collection portal through the ILEX website
- Provide relevant timely and accurate information to Careers Services and other agencies on the route to becoming an ILEX lawyer
- Provide advice and encouragement to members to progress through the ILEX membership grades to achieve their optimum potential
- To develop products that enhance the value of membership

9.0 **Overseas development**

For the period of this Business Plan, the international strategy will be to build upon the progress made throughout the Caribbean and other Commonwealth jurisdictions relating to the promotion of the ILEX suite of programmes. In particular, the Legal Studies Level 2 and the Legal Secretary programmes have been designed in such a way that provides access to an ILEX qualification in those countries whose jurisdictions differ from England and Wales. The Legal Secretarial programmes based on the National Occupational Standards (NOS) in Administration are increasingly considered as the international benchmark for secretaries and administrators working in the legal environment.

Profile raising will continue throughout the commonwealth, through our membership of the Commonwealth Lawyers Association (CLA) and other activities which promote ILEX as a rigorous awarding organisation.

10. Regulation by ILEX as an Approved Regulator

ILEX established IPS as an independent company during 2008. Whilst ILEX is an approved regulator under the Legal Services Act 2007, it has delegated its regulatory functions to IPS. The companies manage their working relationships through a set of Protocols and a Service Level Agreement, which allow IPS to fulfill its obligations independently. See Appendix 5.

IPS manages the ILEX advocacy qualification programme. It is supporting ILEX in preparing the applications which ILEX needs to make to the LSB to become an approved regulator in respect of the full range of reserved legal activities and to become a Licensing Authority under the Legal Services Act.

10.1 Overriding principles of IPS

- underpin the rule of law and the administration of justice
- maintain clear independence of sectoral interests
- develop our understanding of the needs of those for whom legal executive lawyers provide services
- work in close partnership with ILEX to support effective professional development and the provision of consistently good professional practice
- act proportionately, targeting risk
- demonstrate proper governance and good value for money
- act in accordance with the regulatory principles set down in legislation.

10.2 Key aims of IPS

The work of IPS has been split into six areas of responsibility, namely:

- Education and standards
- Registration and accreditation
- Fitness to practise
- Governance and process

- Performance and risk
- Visibility and image

11. **The ILEX Marketing and Communications Strategy 2010 - 2012**

The next three years will be our most challenging yet. We will continue to build upon our success by extending further our PR activity, making the ILEX route as accessible as possible to everyone. The following projects will be delivered:

- Issue external ILEX press releases (on average 40 annually, both nationally and regionally)
- Raise the profile of the ILEX route to becoming a regulated and qualified lawyer amongst the general public
- Raise the profile of the ILEX route to becoming a regulated and qualified lawyer, or a career in law, amongst those deciding their career options, their parents, as well as careers advisors and the educational community in general through web activity (www.ilexcareers.org.uk), careers brochures and flyers, editorial/advertorial, press work and other campaign methods
- Raise awareness of ILEX and an understanding of the skills and expertise of Legal Executives as qualified lawyers amongst professionals through web activity, careers brochures, editorial/advertorial, press work and other campaign methods
- Raise the profile of the ILEX President within the legal and public sector through gala lunches and receptions
- Provide a monthly press cuttings monitoring service to inform internal ILEX personnel on key trends of an educational, political, social and technological nature which affect ILEX and the sector
- Encourage high standards amongst ILEX members by designing and delivering medals and awards ceremonies, both confined to the membership and amongst other groups of lawyers or professionals
- Deliver workshops and conferences of interest to ILEX members to encourage CPD and refresh/enhance learning
- Support the Employers Project team, and other emerging focus groups
- Support and advise the regulatory company, IPS
- Undertake research amongst members, stakeholders and the public to inform and guide ILEX Group strategy
- Produce corporate communications materials, such as Annual Reports

12. **Employers**

ILEX recognises the importance of developing its relationships with employers, many of whom support our members through their ILEX qualifications. An Employer Project

Group was established for 2009, the strategic objectives for which are set on an annual basis. For 2010, the key objectives are as follows:

- CRM: review communications to ensure marketing and sales opportunities are maximised, and co-ordinated.
- Create a combined ILEX Group marketing pack aimed at a range of employers
- Research: Host three employer focus groups in the second quarter of 2010

13. **The ILEX Qualification**

Over the past 3 years the ILEX professional qualification has been reviewed and is accredited as a unitised qualification at Level 3 and Level 6 on the Qualifications and Credit Framework (QCF).

There are fairly low barriers to entry within our sector. The Awards team, to meet competition from new entrants, and indeed from what has proven to be a slow movement by law firms to develop in-house training, is able to accredit third party training. ILEX is also able to offer progression onto the ILEX unitised qualification through exemptions. The new unitised flexible qualification structure now enables ILEX as an Awarding organisation to meet a much more diverse range of needs. The inclusion of two professional skills units in legal research and client care skills at both Levels 3 and 6 potentially makes combinations of units much more attractive to those who do not necessarily wish to qualify as Legal Executives but who wish to have demonstrable skills based qualification.

The Awards team is also developing opportunities to enable the Level 3 qualification to be an additional learning part of the recently launched Business, Administration Diploma which will be primarily delivered in schools.

ILEX will continue to monitor and proactively respond to any activity within the sector, which may have an impact on our qualifications and/or membership.

14. **ILEX – Three Year Strategy and Implementation Summary**

The above sections have provided more detailed discussion of our strategic intentions for the three years ending December 2012, they can be summarised as follows:

- To ensure that ILEX's professional qualification remains relevant to the needs of law firms, legal departments, employers and clients and that it is delivered to national standards
- To develop our role as the natural home for all those seeking education, training or qualification relevant to their role in the legal environment
- To make ourselves more relevant to our members through the services we provide and by seeking new professional opportunities for members
- To develop our role in the public interest as an efficient and respected professional association and regulator of legal services
- To extend our international reach through the delivery of our qualification to other jurisdictions, increasing access to the legal profession
- To strengthen our relationships with a range of employers in the legal services market, aligning our products and services to the requirements of the market

- To raise awareness of ILEX, the ILEX route and the skills of our members amongst the professions and more widely to the public
- To increase accessibility and diversity amongst the legal profession
- To enhance our focus on customer service

We will deliver this three year strategy using five key focus areas, namely:

- Engagement with Employers
- Having a commercial focus
- Internationalisation
- Increasing the profile of the membership and of ILEX
- Membership engagement and customer service

Each of these five key focus areas are supported by supplementary commercial plans to include, objectives, activities and milestones for 2010 – 2012.

Appendix 1 – ILEX 3 year budgets

	Budget 2010				Budget 2011				Budget 2012			
	Reg	PP*	Other	Total	Reg	PP	Other	Total	Reg	PP	Other	Total
	£000	£000	£000	£000	£000	£000	£000	£000	£000	£000	£000	£000
Income:												
Practising Fees - Fellows	1540	0	0	1540	1694	0	0	1694	1762	0	0	1762
Membership Fees	0	0	1293	1293	0	0	1422	1422	0	0	1479	1479
Assessment Income	0	670	0	670	0	890	0	890	0	917	0	917
Awarding Body Income	0	93	232	325	0	96	239	335	0	99	246	345
Training	18	0	2430	2448	19	0	2623	2641	19	0	2822	2841
	1558	763	3955	6276	1713	986	4284	6983	1781	1015	4547	7343
Expenses 1 - By Type												
LSB Fees	145	0	0	145	325	0	0	325	335	0	0	335
OLC Fees	0	0	0	0	125	0	0	125	250	0	0	250
Operating Expenses	529	633	1147	2309	578	719	1201	2498	595	741	1257	2593
Salaries	737	982	1567	3286	759	1011	1614	3385	782	1042	1663	3486
Administrations Expenses	199	302	544	1045	205	311	561	1076	211	320	578	1109
Sub total	1610	1917	3258	6785	1992	2041	3376	7409	2173	2103	3497	7773
less Departmental Income	20	40	262	322	21	41	270	332	21	43	278	342
	1589	1877	2997	6463	1971	2000	3106	7078	2152	2060	3220	7431
Expenses 2 - By Department												
ILEX Professional Standards	506	0	0	506	521	0	0	521	537	0	0	537
ILEX Membership Department	187	374	83	643	192	385	85	662	198	396	88	682
ILEX Awards & International Department	345	691	205	1241	389	778	211	1378	401	801	217	1420
ILEX Journal	28	56	251	334	29	57	258	344	30	59	266	354

* Permitted Purposes

ILEX Corp. Affairs Department	67	133	15	215	69	137	15	221	71	142	16	228
ILEX Communications & Marketing Department	99	199	34	332	102	205	35	342	106	211	36	352
ILEX Central Resources	357	425	166	948	669	437	171	1277	810	451	176	1437
ILEX Tutorial College	0	0	2244	2244	0	0	2331	2331	0	0	2421	2421
	1589	1877	2997	6463	1971	2000	3106	7078	2152	2060	3220	7431
Net Group Expenses	1589	1877	2997	6463	1971	2000	3106	7078	2152	2060	3220	7431
Group Income	1558	763	3955	6276	1713	986	4284	6983	1781	1015	4547	7343
Net Surplus/(Deficit)	-31	-1114	958	-187	-259	-1014	1178	-95	-371	-1044	1327	-88

ANNEX 4 ILEX ANNUAL REPORT

The annual report appears as a separate PDF document

ANNEX 5 IPS MEMORANDUM AND ARTICLES OF ASSOCIATION

THE COMPANIES ACTS 1985 TO 2006

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

-of-

ILEX PROFESSIONAL STANDARDS LIMITED

- The name of the Company is "**ILEX Professional Standards Limited**"
- The registered office of the Company will be situate in England.
- The objects of the Company will be:
 - 15.45-16.0 to carry out on behalf of the Institute of Legal Executives ("**ILEX**") the functions and responsibilities of ILEX as an approved regulator designated as such by The Legal Services Act 2007 (as amended, modified or re-enacted from time to time); and
 - 15.45-17.0 to carry out on behalf of ILEX such functions and responsibilities of ILEX as a regulator of its membership generally as ILEX may from time to time delegate to the Company;
- 15.46 to carry on business as a general commercial company (the generality of which object shall not be prejudiced by the terms of object 3.1).
- Without prejudice to the generality of object 3.2 and the powers of the Company derived from Section 3A of the Companies Act 1985 the Company has power to do all or any of the following things:
 - 15.47 To carry on any other business which, in the opinion of the Company, may be capable of being conveniently or profitably carried on in conjunction with or subsidiary to any other business of the Company and is calculated to enhance the value of the Company's property;
 - 15.48 To guarantee or give security for the payment or performance of any contracts, debts, obligations of any person, company or firm, for any purpose whatsoever, and to act as agents for the collection, receipt or payment of money and generally to act as agents for and render services to customers and others and generally to give any guarantee, security or indemnity;
 - 15.49 To take on lease, purchase or in exchange, hire or otherwise acquire and hold for any interest or estate any buildings, lands, easements, privileges, rights, concessions, patent rights, patents, secret processes, licences, machinery, plant, stock-in-trade, and any real or

personal property of any kind convenient or necessary for the purposes of or in connection with the Company's business or any department or branch thereof;

- 15.50 To apply for, purchase or otherwise acquire and hold any patents, licences, concessions, brevets d'invention, copyrights and the like, conferring any right to use or publish any secret or other information and to use, develop, exercise, or grant licences in respect of the property, rights and information so acquired;
- 15.51 To erect, build, construct, or reconstruct, lay down, alter, enlarge and maintain any factories, buildings, works, shops, stores, plant and machinery necessary or convenient for the Company's business and to contribute to or subsidise the construction, erection and maintenance of any of the aforesaid;
- 15.52 To subscribe for, take, purchase or otherwise acquire and hold, sell, deal with or dispose of any shares, stocks, debentures, debenture stocks, bonds, obligations and securities, guaranteed by any company constituted or carrying on business in any part of the world and debentures, debenture stocks, bonds, obligations and securities guaranteed by any Government or Authority, Municipal, Parochial, Local or otherwise, within and without the United Kingdom and to subscribe for the same either conditionally or otherwise and to guarantee the subscription thereof and to enforce and exercise all rights and powers conferred by the ownership thereof;
- 15.53 To promote by way of advertising the products and services of the Company in any manner and to reward customers or potential customers and to promote and take part in any scheme likely to benefit the Company;
- 15.54 To borrow or raise money and secure or discharge any debt or obligation of or binding on the Company in such manner as may be thought fit and in particular by mortgages of or charges upon the undertaking and all or any of the real or heritable and personal or moveable property (present and future) and the uncalled capital for the time being of the Company or by the creation and issue of debenture stock, debentures or other obligations or securities of any description;
- 15.55 To support, guarantee and/or secure either with or without consideration the payment of any debenture stock, debentures, mortgages, charges, obligations, bonds, interest, securities, dividends, shares or moneys or the performance of engagements or contracts of any other company or person and in particular (but without prejudice to the generality of the foregoing) of any company which is, for the time being, the Company's holding company as defined by Section 736 of the Companies Act 1985 or another subsidiary, as defined by the said section, of the Company's holding company or otherwise associated with the Company in business and to give indemnities and guarantees of all kinds and by way of security as aforesaid either with or without consideration to mortgage and charge the undertaking and all or any of the real and personal property and assets present or future, to issue debentures and debenture stock and collaterally or further to secure any securities of the Company by a Trust Deed or other assurance and to enter into partnership or any joint purse arrangement with any person, persons, firm or company;
- 15.56 To make advances to customers and others with or without security, and upon such terms as the Company may approve, and to guarantee the dividends, interest and capital of the stocks, shares or securities of any company of or in which the Company is a member or is otherwise interested;

- 15.57 To take part in the management, formation, control or supervision of the business or operation of any company or undertaking and for that purpose to appoint and remunerate any directors, experts or agents;
- 15.58 To employ experts to examine and investigate into the character, prospects, value, condition and circumstances of any undertakings and business concerns and generally of any property, assets or rights;
- 15.59 To draw, make, accept, endorse, negotiate, discount and execute promissory notes, bills of exchange and other negotiable instruments; to receive money on deposit or loan upon such terms as the Company may approve, and generally to act as bankers for customers and others;
- 15.60 To promote or establish or concur in promoting or establishing any other company whose objects shall include the taking over of or the acquisition of all or any of the assets or liabilities of this Company or the promotion of which shall be in any manner calculated to advance directly or indirectly the objects or interests of this Company and to hold, acquire, dispose of stocks, shares or securities issued by or any other obligations of any such company;
- 15.61 To deal with and invest the moneys of the Company not immediately required for the purposes of the business of the Company in or upon such investments and in such manner as the Company may approve;
- 15.62 To accept payment for any rights or property sold or otherwise disposed of or dealt with by the Company, either in cash, by instalments or otherwise, or in partly or fully paid-up shares or stock of any corporation or company, with or without deferred or preferred or special rights or restrictions in respect of repayment of capital, dividend, voting or otherwise, or in mortgages or debentures or other securities of any corporation or company or partly in one mode and partly in another, and generally on such terms as the Company may determine and to hold, dispose of or otherwise deal with any stock, shares or securities so acquired;
- 15.63 To enter into any partnership or amalgamate with or enter into any arrangement for sharing profits, interests, or co-operate or enter into co-operation with any company, person or firm carrying on or proposing to carry on any business within the objects of this Company or which is capable of being carried on so as to benefit this Company, whether directly or indirectly and to acquire and hold, deal with, sell or dispose of any stock, shares or securities of or other interests in any such company, and to guarantee the contracts or liabilities of, otherwise assist or subsidise, any such company;
- 15.64 To pay for any right or property acquired by the Company either in cash or partly or fully paid-up shares with or without deferred or preferred or special rights or restrictions in respect of repayment of capital, dividend, voting or otherwise, or by any securities which the Company has power to issue, and generally on such terms and conditions as the Company may determine;
- 15.65 To develop, improve, manage, sell, turn to account, let on rent, royalty, exchange, share of profits or otherwise, grant easements, licences and other rights in or over, and in any other manner dispose of or deal with the undertaking and all or any of the assets and property for the time being of the Company for such consideration as the Company may think fit;
- 15.66 To acquire, purchase, take over and undertake part or all of the business, property, assets, liabilities and engagements of any firm, person or company carrying on any business the

carrying on of which is calculated to benefit this Company or to advance its interests generally;

- 15.67 To aid in the support and establishment of any educational, scientific, religious or charitable institutions or trade associations or societies, whether such associations, societies or institutions be solely connected with the business carried on by the Company or its predecessors in business or not, and to maintain and institute any club, society or other organisation;
- 15.68 To grant pensions, gratuities, allowances and bonuses to employees or ex-employees, officers or ex-officers of the Company or its predecessors in business or the dependents of such persons and to maintain and establish or concur in maintaining funds, trusts or schemes, (whether contributory or non-contributory) with a view to providing pensions or other funds for any such persons or their dependents as aforesaid;
- 15.69 To distribute in specie any of the shares, debentures or securities of the Company or any proceeds of sale or disposal of any property of the Company between the members of the Company in accordance with the rights, but so that no distribution amounting to a reduction of capital be made except with the sanction (if any) for the time being required by law;
- 15.70 Subject to and in accordance with due compliance with the provisions of Section 155 to 158 (inclusive) of the Companies Act 1985 (if and so far as such provisions shall be applicable) to give whether directly or indirectly any kind of financial assistance (as defined in Section 152(1)(a) of the said Act) for any such purpose as is specified in Section 151(1) and/or Section 151(2) of the said Act;
- 15.71 To do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them;

The objects set forth in each sub-clause of this Clause shall not be restrictively construed but the widest interpretation shall be given thereto, and they shall not, except where the context expressly so requires, be in any way limited or restricted by reference to or inference from any other object or objects set forth in such sub-clause or from the terms of any other sub-clause or from the name of the Company. None of such sub-clauses or the object or objects therein specified or the powers thereby conferred shall be deemed subsidiary or ancillary to the objects or powers mentioned in any other sub-clause, but the Company shall have as full a power to exercise all or any of the objects conferred by and provided in each of the said sub-clauses as if each sub-clause contained the objects of a separate company. The word "company" in this clause, except where used in reference to the Company, shall be deemed to include any partnership or other body of persons, whether incorporated or unincorporated and whether domiciled in the United Kingdom or elsewhere.

- The liability of the members is limited.
- The Share Capital of the Company is £1 divided into 1 Share of £1, with power to increase or to divide the shares in the capital for the time being into different classes having such rights, privileges and advantages as to voting and otherwise as the Articles of Association may from time to time prescribe.

I, the person whose name and address is subscribed, wish to be formed into a company, in pursuance of this Memorandum of Association, and I agree to take the number of Shares in the capital of the Company set opposite my name.

**Name, Address and Description
of Subscriber**

**Number of Shares taken
by Subscriber**

One

.....
for and on behalf of
**THE INSTITUTE OF LEGAL
EXECUTIVES**

Dated: 2008

Witness to above signature:

Witness' name:

Witness' occupation:

Witness' address:

THE COMPANIES ACTS 1985 to 2006

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

-of-

ILEX PROFESSIONAL STANDARDS LIMITED

1. TABLE A

1.1.1.1.1 The Company is a private company and, subject as hereinafter provided and except where the same are varied or excluded by or are inconsistent with these Articles, the regulations contained in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No. 805) as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (SI 1985 No. 1052), the Companies Act 1985 (Electronic Communications) Order 2000 (SI 2000 No. 3373), the Companies (Tables A to F) (Amendment) Regulations 2007 (SI 2007 No. 2541) and the Companies (Tables A to F) (Amendment) (No2) Regulations 2007 (SI 2007 No. 2826) so far as it relates to private companies limited by shares (such Table being hereinafter called "**Table A**") shall apply to the Company and shall be deemed to form part of these Articles. References herein to Regulations are to regulations in Table A unless otherwise stated.

2. INTERPRETATION

a. In these Articles unless the context otherwise requires:

" the 1985 Act "	means the Companies Act 1985 but so that any reference in these Articles to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force;
" the 2006 Act "	means the Companies Act 2006 but so that any reference in these Articles to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force;
" these Articles "	means these Articles of Association in their present form or as from time to time altered;
" Director "	means a director of the Company;
" the Board " or " the Directors "	means the board of directors of the Company or a duly authorised committee thereof or the directors present at a meeting of the board of directors of the Company or a duly authorised committee thereof, in each case at which a quorum is present;

"Member" means a member of the Company;

"paid up" means paid up or credited as paid up;

- b. References in Table A and in these Articles to writing include references to any method of representing or reproducing words in a legible and non-transitory form.
- c. Save as expressly provided in these Articles, words and expressions which bear particular meanings in Table A shall bear the same respective meanings in these Articles.

3. SHARE CAPITAL

- a. Pursuant to Section 91 of the 1985 Act, sub-section (1) of Section 89 and sub-sections (1) to (6) inclusive of Section 90 of the 1985 Act shall be excluded from applying to the Company.
- b. Unless otherwise determined by the Company by Special Resolution, any shares for the time being unissued shall, before they are issued, be offered to the existing holders of shares in proportion, as nearly as may be practicable, to the number of existing shares held by them respectively. Such offer shall be made by notice in writing to each such holder specifying the number of shares offered to him and the subscription price therefor and inviting him to state in writing within such period as the Board may prescribe (being not less than fourteen days after the date of the notice) whether he wishes to accept any, and if so what number, of shares offered to him and whether he wishes to subscribe for shares in excess of his entitlement and, if so, what maximum number. If within such period, such holders have expressed their willingness to accept all or any of the Shares offered to them, such shares shall be so issued to them accordingly. Any Shares so offered to any such holder and not taken up within such period shall be issued to those holders who have taken up their full entitlement of shares and who have indicated a willingness to subscribe. Any shares not taken up pursuant to such offer as aforesaid and any shares released from the provisions of this Article by any such Special Resolution shall be under the control of the Board who may allot, grant options over or otherwise dispose of the same to such persons on such terms and in such manner as it thinks fit provided that in the case of any shares not disposed of pursuant to such offer as aforesaid, such shares shall not be disposed of on terms more favourable to the subscribers therefor than the terms on which they were offered to the Company's existing Members. The foregoing provisions of this paragraph shall have effect subject to Section 80 of the 1985 Act and also the preceding provisions of this Article.

4. CALLS ON SHARES AND FORFEITURE

1.1.1.1.2 The liability of any Member in default of payment of a call shall, if the Board so directs, also include any costs and expenses suffered or incurred by the Company in respect of such non-payment and the powers conferred on the Board by Regulation 18 and the provisions of Regulation 21 shall be extended accordingly.

5. TRANSFER AND TRANSMISSION OF SHARES

- a. The Directors shall have absolute discretion to refuse to register the transfer of any share.
- b. No share shall be transferred to any infant, bankrupt or person of unsound mind.

6. PROCEEDINGS AT GENERAL MEETINGS

- a. Regulation 40 shall apply to the Company but with the addition of the words "at the time when the meeting proceeds to business" at the end of the first sentence thereof.
- b. If within half an hour from the time appointed for a general meeting, a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board may determine. If a quorum is not present at any such adjourned meeting within half an hour from the time appointed for that meeting, the meeting shall be dissolved. Regulation 41 shall not apply to the Company.
- c. A poll may be demanded at any general meeting by the Chairman or by any Member present in person or by proxy and entitled to vote. Regulation 46 shall be modified accordingly.
- d. In the case of a corporation, the signature of a director or the secretary thereof and in the case of joint holders of a share the signature of any one of such joint holders shall be sufficient for the purposes of passing resolutions in writing pursuant to sections 288-300 of the 2006 Act.

7. VOTES OF MEMBERS

1.1.1.1.3 Subject to any special rights or restrictions as to voting attached to any shares by or in accordance with these Articles, on a show of hands every Member who (being an individual) is present in person or (being a corporation) is present by a representative, shall have one vote, and on a poll every Member who is present in person or by proxy or (being a corporation) is present by a representative or by proxy shall have one vote for every share in the capital of the Company of which he is the holder. Regulation 54 shall not apply to the Company.

8. NUMBER OF DIRECTORS

1.1.1.1.4 The minimum number of Directors is two and, unless otherwise determined by ordinary resolution, the maximum number of Directors shall be seven.

9. APPOINTMENT OF DIRECTORS AND ALTERNATE DIRECTORS

- a. No Director or Council Member of the Institute of Legal Executives (Company Number: 00235139) ("**ILEX**") may be appointed as a Director of the Company.
- b. No Director may appoint any other Director, or any other person to be an alternate Director and Regulations 65-69 inclusive shall not apply.

10. DISQUALIFICATION AND REMOVAL OF DIRECTORS

1.1.1.1.5 The office of a Director shall be vacated:

- a. if he ceases to be a Director by virtue of any provision of the 1985 Act or of these Articles or of any resolution passed pursuant to any such provision;
- b. if he becomes bankrupt or enters into any arrangement or composition with his creditors generally;

- c. if he becomes prohibited by law from being a Director;
- d. if he resigns his office by notice in writing to the Company delivered to the Company at its registered office or tendered at a meeting of the directors;
- e. if he shall have been absent without permission of the directors from meetings of the Directors held during a period of six successive months and the Directors resolve that his office be vacated;
- f. if in the opinion of all the other Directors he either becomes incapable by reason of mental disorder of carrying out his duties as a Director or engages in activities inconsistent with those duties;

and Regulation 81 shall not apply to the Company.

11. DIRECTORS' REMUNERATION AND EXPENSES

- a. The Directors shall be entitled to such remuneration (if any) by way of fee as shall from time to time be determined by the Company in general meeting. Unless and until so determined, remuneration shall be at such rate as the Board shall from time to time determine. Such remuneration shall be deemed to accrue from day to day. The Directors shall also be entitled to be paid their reasonable travelling, hotel and other expenses of attending and returning from meetings of the Company or otherwise incurred while engaged on the business of the Company or in the discharge of their duties. The end of the first sentence of Regulation 66 shall be modified accordingly and Regulations 82 and 83 shall not apply to the Company.

12. DIRECTORS' INTERESTS

- a. Subject to written consent from the Members, a Director:
 - i. may not be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is in any way interested;
 - ii. may not be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is in any way interested;
 - iii. may not, or any firm or company of which he is a member or director may not, act in a professional capacity for the Company or any body corporate in which the Company is in any way interested;
 - iv. shall, by reason of his office, be accountable to the Company for any benefit which he derives from such office, service or employment or from any such transaction or arrangement or from any interest in any such body corporate and any such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and
- b. For the purposes of these Articles:
 - i. an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and

- ii. an interest of a person who is, for any purpose of the 1985 Act (excluding any statutory modification not in force when this Article becomes binding on the Company), connected with a Director shall be treated as an interest of the Director. Regulations 85 and 86 shall not apply to the Company.

13. PROCEEDINGS OF DIRECTORS

- a. The quorum for the transaction of the business of the Directors is two except when there is only one Director. When there is only one Director, he may exercise all the powers conferred on Directors by these Articles. Regulation 89 shall not apply.
- b. A Director may participate in a meeting of the Directors or of a committee of which he is a member by conference telephone or similar communications equipment by means of which all the persons participating in the meeting can hear each other at the same time. Participation in a meeting in this manner is treated as presence in person at the meeting.
- c. The President for the time being of ILEX shall be entitled to receive notice of, attend and address any meeting of the Directors, but shall have no vote.
- d. Regulation 88 is amended:
 - i. by replacing “It shall not be necessary to give notice of a meeting to a Director who is absent from the United Kingdom.” with:

“A Director who is or is intending to be absent from the United Kingdom may request the secretary to give him notice of meetings at an address provided by him for that purpose. Notices of meetings of the Directors shall be sent to him at that address but, if he does not provide an address, it shall not be necessary to give notice of meetings to him while he is absent from the United Kingdom. The notice calling a meeting of the directors need not be in writing.”; and
 - ii. by deleting the last sentence.

14. THE SEAL

- a. If the Company has a seal it shall only be used with the authority of the Directors or of a committee of Directors. The Directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Director and by the Secretary or second Director. The obligation under Regulation 6 relating to the sealing of share certificates shall apply only if the Company has a seal. Regulation 101 shall not apply to the Company.
- b. The Company may exercise the powers conferred by Section 39 of the 1985 Act with regard to having an official seal for use abroad, and such powers shall be vested in the Directors.

15. INDEMNITY

- a. Subject to the provisions of the 1985 Act but without prejudice to any indemnity to which a Director may otherwise be entitled, every Director or other officer or auditor of the Company shall be indemnified out of the assets of the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution of his duties or in relation thereto including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given

in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company. Regulation 118 shall not apply to the Company.

- b. The Directors shall have power to purchase and maintain for any Director, officer or Auditor of the Company insurance against any such liability as is referred to in Section 310(1) of the 1985 Act.

**Name, Address and Description
of Subscriber**

**Number of Shares taken
by Subscriber**

One

.....
for and on behalf of
**THE INSTITUTE OF LEGAL
EXECUTIVES**

Dated: 2008

Witness to above signatures:

Witness' name:

Witness' occupation:

Witness' address:

ANNEX 6 IPS BOARD MEMBERS LIST

Chair – Mr Alan Kershaw
Mrs Sandra Barton
Mrs Thelma Brown
Ms. Hilary Daniels
Mr Faizal Essat
Mr Andrew Middleton
Dr Nicholas Smedley

ANNEX 7 ILEX AND IPS PROTOCOLS AND SERVICE LEVEL AGREEMENT



Protocols setting out the working relationships between The Institute of Legal Executives and ILEX Professional Standards Ltd

Introduction

1. This document provides a framework to enable the Institute of Legal Executives (ILEX) and ILEX Professional Standards Ltd (IPS) (jointly 'the Companies') to fulfil their representative and regulatory functions as defined in the Legal Services Act 2007 (the LSA) and in accordance with the Objects of the companies set out in their respective Memoranda of Association.
2. The aim of the Protocols is to facilitate the companies working together to promote and secure high standards of practise by Legal Executives and other members of ILEX in the public interest and to enhance the recognition and standing of Legal Executives and other ILEX members.
3. ILEX is the governing body for Legal Executives and trainee Legal Executives in England and Wales. It is a company limited by guarantee. Its powers and duties derive from the Memorandum and Articles of Association of the Company. ILEX is an authorised body in relation to rights of audience under the Courts and Legal Services Act 1990, an approved regulator under the Legal Services Act 2007 and a designated professional body under the Immigration and Asylum Act 1999.
4. The Objects of ILEX which are relevant to these protocols are set out in Annex 1.
5. IPS has been established by ILEX to regulate the professional conduct of ILEX members, including disciplinary matters. Its Objects contained in its Memorandum of Association are set out in Annex 2 to these protocols. IPS is a wholly owned subsidiary company of ILEX.

The Legal Services Act (LSA)

6. The LSA requires ILEX as an approved regulator to separate its regulatory and representational functions. ILEX through its Articles has delegated the power to regulate the professional conduct and standards of ILEX members to IPS. The LSA also requires ILEX, and in consequence IPS, to act in a way which is compatible with the regulatory objectives set out in the LSA and to have regard to the

principles of good regulation. The regulatory objectives and professional principles contained in the LSA are set out in Annex 3 to these protocols.

7. Under the LSA, as an approved regulator ILEX must ensure: that its regulatory functions are carried out independently, without being prejudiced by its representative functions; that its regulatory body is free to communicate with the Legal Services Board and other legal services stakeholders; and that resources are made available which are reasonably required to enable regulatory functions to be carried out.

The Protocol Principles

8. The Companies will work together to enhance public respect for and confidence in ILEX members and the work they carry out. Together they will ensure continuing compliance with the requirements of the LSA.
9. Relations and communications between the companies will be based upon mutual respect and openness so far as is consistent with their obligations under the LSA, the general law and the public interest.
10. IPS aspires to regulate effectively and efficiently in accordance with the principles of good regulation, which are proportionality, accountability, consistency, transparency and targeting. ILEX will support and assist IPS in becoming an effective and independent regulator of ILEX Fellows and other ILEX members.
11. Each of the Companies will contribute to and support the attainment of objectives set out from time to time in the other's strategy and business plans consistent with the requirements of the LSA. IPS will give due weight to the aspirations of ILEX and its members as expressed through ILEX Council.

Finance – *ILEX will make available such resources as are reasonably required and appropriate to enable IPS to carry out its regulatory functions*

12. Each year IPS will prepare a budget for its expenditure in the following year for ILEX to consider in conjunction with its own budget. IPS budget will be based upon the activities and expenditure necessary to carry out its regulatory functions.
13. The Companies will work together to agree a budget which fairly reflects the activities and expenditure which are necessary for IPS to carry out its regulatory functions. Where ILEX cannot agree an IPS budget it will set out its reasons in writing for any variation it proposes. If a revised budget proposed by ILEX is not agreed by IPS, paragraph 31 of these protocols will come into effect
14. ILEX will have regard to a budget agreed with IPS when setting practice, membership and other fees for the following year.
15. IPS will provide information to the ILEX Group Finance Director to enable proper accounts to be maintained. IPS Board of Directors will receive regular reports on its financial performance. ILEX Council will receive a report on IPS finances at each Council meeting.

Communications – *Communications between the companies will be based on mutual respect and openness*

16. The Companies will provide information to each other regularly regarding their representational and regulatory work. Each will provide copies of the minutes of their Council or Board meetings to the other. So far as it is practical to do so and is necessary to meet the obligations imposed by the LSA, they will each respond to a reasonable request by the other for information relating to their roles and will do so within 15 working days of a request being received.
17. ILEX will provide support necessary to enable IPS, in carrying out its functions, to communicate with ILEX members, the legal services regulators, consumer groups, legal services employers, relevant parts of the government and civil service and the public. IPS may communicate separately with ILEX members and these stakeholder groups.
18. The Companies will consult with each other whenever either body wishes to review or propose changes to any rules or policies which impact on the leadership, representational or regulatory roles or obligations of the other. Where appropriate they will consult external bodies jointly and will respond jointly to the consultations of external bodies on matters which affect their roles or obligations.
19. Where either of the Companies decides to issue a separate or independent communication on matters likely to affect the other they will inform the other of their intention and reasons for doing so; copy the communication to them; and give a reasonable time for them to comment on the communication.
20. The Companies will share information regarding members including membership records and correspondence where it is necessary to do so to fulfil their respective obligations but only so far as the sharing of information does not contravene any principle or law safeguarding the rights of members or others in relation to data protection or personal privacy.
21. Subject to paragraph 20, the Companies will treat as confidential information each holds about members or others which is not also held by the other, except where it is in the public interest to disclose the information to the other or, in the case of IPS, it is necessary to do so in order to fulfil its obligations under the LSA, its Memorandum and Articles of Association and these protocols, or to meet its general obligations under the law. The public interest will normally be engaged where the information reveals a serious breach of the law or professional ethics or would assist the investigation of crime or fraud.
22. The ILEX 'Whistle blower' policy applies to the staff of both Companies, ILEX Council members and IPS Board members.

Accountability – *ILEX must ensure its regulatory functions are carried out independently*

23. The Chief Executive of ILEX is accountable to the ILEX Council. ILEX employees whose work relates to the leadership and representative functions of ILEX are accountable to the Chief Executive of ILEX. The Chief Executive of IPS is an employee of ILEX but is accountable to the IPS Board of Directors. ILEX employees

whose work relates to the regulatory functions of ILEX are accountable to the Chief Executive of IPS. The Chairman of IPS is accountable to ILEX Council for the performance of IPS.

24. The arrangements for appointing or re-appointing a Chairman or members of the IPS Board are set out at Annexe 4 to these Protocols. They take into account the objectives of the LSA regarding the effective and independent regulation of legal services and the requirements of the Internal Governance Rules made by the Legal Services Board, pursuant to the LSA. Remuneration of the Chair and members of the IPS Board will be dealt with in accordance with Annexe 5 to these Protocols.
25. The performance of the IPS Board members and Chief Executive, during their terms of office will be assessed each year by the IPS Board, in accordance with arrangements which the Board will determine. The performance of IPS employees will be assessed in accordance with arrangements which apply to other ILEX employees. The Companies will agree arrangements for the appointment of a new Chief Executive of IPS.

Education Standards and Fitness to Practise – *The companies will work together to promote and secure high standards of practise.*

26. IPS is responsible for checking that arrangements adopted by ILEX and the standards set relating to: qualifications and experience; study and training for ILEX qualifications; assessment of candidates; and continuing professional development are fit for purpose and are capable of securing the minimum standards of competence expected of Fellows, Associates, Graduate Members, Associate Prosecutor Members and other ILEX members.
27. IPS is responsible for setting the standards relating to the personal and professional conduct and continuing fitness to practise of Fellows and other ILEX members. IPS will be responsible for ensuring ILEX members comply with those standards and ILEX will support IPS in doing so.
28. ILEX will not seek to challenge decisions properly made by any of the disciplinary or regulatory bodies subject to oversight by IPS in respect of the conduct, competence or fitness to practise of individual ILEX members.
29. The Companies will work together to develop arrangements for the regulation of legal disciplinary practices and alternative business structures permitted to provide legal services under the LSA and persons owning or managing them. IPS will be responsible for setting standards of conduct and ensuring owners, managers and employees comply with them.

Services – *ILEX will make resources available to enable regulatory functions to be carried out.*

30. The Companies will agree a service level agreement in respect of the provision to IPS of the finance, membership records, information technology, communications, post and telephony and human resources services which are reasonably required to enable IPS to carry out its regulatory functions.

Resolving differences

31. Disputes which arise between the Companies, whether in relation to these protocols or otherwise will be resolved by discussions involving the Chief Executives of ILEX and IPS, the President for the time being of ILEX and the Chairman of the IPS Board. Nothing in these protocols prevents either company from referring a dispute which cannot be settled between them to the Legal Services Board or if appropriate to an independent mediator to be resolved. At least 5 working days notice will be given to the other company if either company intends to refer a dispute to the Legal Services Board.

Review

32. These protocols may be reviewed at any time at the request of either ILEX or IPS; and will, in any event, be reviewed formally after one year and, thereafter, at intervals to be agreed between the two companies.

Mark Bishop
ILEX President
25 February 2009

Alan Kershaw
IPS Chair
25 February 2009

Protocols v.2 Amended 23/01/10

PROTOCOLS

ANNEXE 1

OBJECTS OF ILEX

The Objects of ILEX set out in its Memorandum of Association are, amongst other things:

1. To provide an organisation for persons who are Fellows of ILEX, are registered with ILEX, provide or are employed in providing legal services of any kind or any services ancillary to legal services or are registered with ILEX for the purpose of studying or becoming qualified in law or other subjects provided by ILEX;
2. To advance and protect the status and interest of Fellows and other members registered with ILEX;
3. To promote professional unity, co-operation and mutual assistance amongst those who are employed in the legal profession or are engaged in legal work;

4. To promote and secure professional standards of conduct amongst Fellows and those who are registered with ILEX and to regulate Fellows and registered persons in the public interest to ensure compliance with those standards;
5. To provide for the education and training of Fellows and persons who wish to become proficient in the law, including those who wish to qualify as Fellows, in all subjects and skills whether in the law or otherwise; and
6. To recognise and promote proficiency in the law and other subjects by awarding diplomas, certificates, prizes, scholarships, bursaries or other awards and to award such qualification as ILEX may from time to time think fit and to carry out assessment and validation and regulation as may be necessary for such purposes.

IPS protocols ann 1

PROTOCOLS

ANNEXE 2

OBJECTS OF IPS

The Objects of ILEX Professional Standards set out in its Memorandum of Association include the following:

1. To carry out on behalf of ILEX the functions and responsibilities of ILEX as an approved regulator designated as such by the Legal Services Act 2007; and
2. To carry out on behalf of ILEX such functions and responsibilities of ILEX as a regulator of its membership generally as ILEX may from time to time delegate to the Company.

IPS protocols ann 2

PROTOCOLS

ANNEXE 3

1. The Statutory Objectives set out in the Legal Services Act are as follows:
 1. protecting and promoting the public interest;
 2. supporting the constitutional principle of the rule of law;
 3. improving access to justice;
 4. protecting and promoting the interests of consumers;
 5. promoting competition in the provision of services provided by authorised persons;
 6. encouraging an independent, strong, diverse and effective legal profession;
 7. increasing public understanding of citizen's legal rights and duties; and
 8. promoting and obtaining adherence to the professional principles.

2. The professional principles referred to above are:
 1. authorised persons should act with independence and integrity;
 2. authorised persons should maintain proper standards of work;
 3. authorised persons should act in the best interests of their clients;
 4. persons who exercise before any court a right of audience or conduct litigation in relation to proceedings in any court by virtue of being authorised persons comply with their duty to the court to act with independence in the interest of justice; and
 5. the affairs of clients should be kept confidential.

IPS protocols ann3

PROTOCOLS

Annexe 4

Appointment of Chairman and Board Members

1. The IPS Board will create an Appointments Committee. Membership will be agreed for each appointment, so it is not a standing Committee.
2. The Appointments Committee will have delegated authority for the whole process from agreeing an updated information pack including a revised job and person specification, to running the appointment process, including interviewing. Administrative support will be required from the ILEX HR team.
3. For the Chairman's appointment, this Committee will include an ILEX Council representative and two IPS Board members, one independent and one legal, supported by the IPS CEO, although (s)he would not be a formal member of the Committee.
4. For Board member appointments the Committee will include the Chairman and one member of the IPS Board, plus the IPS CEO.
5. For all appointments, a member independent of IPS and ILEX would be included within the Committee membership, to give legitimacy and to validate the process. The process for identifying this individual would be agreed for each appointment.
6. The ad hoc nature of the appointment committees gives a useful degree of flexibility, whilst being sufficiently structured to ensure appointments are treated fairly and consistently.

Reappointment of Chairman and Board Members

7. It will be for the Chairman and CEO to agree the reappointment of Board members. The annual appraisals will be the basis for reappointments. The following factors will need to be satisfied for reappointment of Board members:
 - Willingness to be reappointed

- Satisfactory annual appraisals
- Acceptable attendance record
- Continues to meet the person specification for role
- Has complied with the Code of Conduct for Board members

8. For discussions regarding the reappointment of the Chairman, an Appointments Committee will be created, constituted as set up in the Chairman's appointments process above, to review a similar list of factors and agree the way forward.

*Agreed by IPS Board June 2009
IPS protocols Ann 4*

PROTOCOLS

ANNEXE 5

REMUNERATION OF THE BOARD

The President and CEO of ILEX and the Chair and CEO of IPS will meet each year in May or June, as appropriate, to determine the remuneration of the Chair and members of the IPS Board for the following year. The meeting will take place as part of the budget setting processes of the companies. The Chair of IPS will not take part in any discussion or decision regarding his/her remuneration. Factors which are taken into account in setting the remuneration of the Board members will be taken into account in determining the Chair's remuneration.

Disputes regarding the remuneration of the Chair or Board members of IPS will be determined in accordance with paragraph 31 of the Protocols.

*Agreed by ILEX/IPS march 2010
IPS protocols ann 5*

ANNEXE 6

ILEX/IPS PROTOCOLS: Education

General

1. This Appendix to the ILEX/IPS Protocols sets out the methods by which ILEX and IPS will meet the requirements of paragraph 26 of the Protocols relating to education matters. IPS's role, set out in Paragraph 26, is to ensure that the arrangements adopted by ILEX in respect of qualifications and experience are capable of securing the minimum standards of competence expected of Fellows and other ILEX members. The role of ILEX is to decide the qualification standards and to manage the delivery of the qualifications and assessment of experience and the quality assurance arrangements for them.

Reporting arrangements for qualifications

2. To enable IPS to carry out its role, ILEX will provide sufficient information to demonstrate that the qualification arrangements establish and maintain the stated standards. Each year, ILEX will supply to IPS a range of information that enables it to review ILEX's work and performance both strategically and operationally.

The following documents will be supplied at the following specified times:

a) Assessment session information

Qualification performance data – after each assessment session (ie, after Jan and June sessions), ILEX will produce a report which it will share with IPS in relation to key assessment session metrics.

This report will be delivered by a senior member of the Awards team to the IPS board at a mutually agreed time.

The report will consist of the following data:

- Candidate entries
- Candidates sitting examinations or submitting assessments
- Grade boundaries for examined units
- Candidate performance including pass rates for each unit and feedback from assessors
- Statistics for qualification completion
- Centre performance including centre pass rates
- Data on results enquiries and appeals
- Data on applications for and approvals of reasonable adjustments and special considerations
- Stakeholder feedback and complaints
- Summary of any malpractice allegations (student and centre)
- Awards department performance against key performance indicators and targets.

Minutes of the Awards Performance and Strategy Committee (APSC) – ILEX will share these minutes with IPS after each APSC meeting, and at the same time as the performance data.

b) Annual information

Executive Summary for the ILEX Self-Assessment Report, feedback from Ofqual re ILEX's self-assessment return, annual self-assessment action plan, annual development plan, summary of Awards Malpractice Committee and Awards Appeal Committee outcomes and (from 2011) a report on centre risk management – at a mutually agreed time, in the first quarter of each year, ILEX will share the above documents with IPS as a part of an annual round of reporting. These reports will be delivered by a senior member of the Awards team.

3. The Education Portfolio Holder has been appointed as a member of the Awards Performance and Strategy Committee (APSC). The Education Portfolio Holder will take responsibility for the main reporting between APSC and IPS outside of the above mentioned formal reporting, and will report to IPS on those specific issues covered by APSC which have an interest for IPS.

Qualification development

4. Where ILEX develops new qualifications it wishes to award, whether in relation to rights to undertake regulated legal activities or otherwise, it will be required to consult and seek IPS approval in relation to whether the arrangements for qualification are capable of securing the minimum standards of competence expected of ILEX members holding that qualification.
5. IPS will be responsible for developing qualification arrangements supporting applications by ILEX to become an Approved Regulator in relation to activities regulated under the Legal Services Act. IPS will consult with ILEX in relation to the development of any such arrangements. ILEX and IPS will agree which of them should be responsible for managing the qualification arrangements.

Experience

6. IPS and ILEX will work together to determine what experience ILEX members should have to be admitted as Fellows of ILEX or to be enrolled in any other membership grade for which evidence of experience is required.
7. IPS will be responsible for determining what experience is required by ILEX members to become authorised practitioners. ILEX will support the development of experience requirements and be responsible for the arrangements by which ILEX members are able to demonstrate whether they meet the experience criteria set by IPS.

Ed protocol v3b

SERVICE LEVEL AGREEMENT

THIS AGREEMENT is made on

2010

BETWEEN:

ILEX PROFESSIONAL STANDARDS (IPS)

and

INSTITUTE OF LEGAL EXECUTIVES (ILEX)

This Service Level Agreement forms the basis of a relationship between ILEX and IPS regarding the provision of services.

The purpose of the Agreement is to lay out the respective roles and responsibilities of each party in the provision of services.

The Agreement facilitates the parties carrying out its respective regulatory and representative functions independently and to ensure that resources are made available which are reasonably required to enable regulatory functions to be carried out.

ILEX has agreed to provide the services to IPS set out in Schedule 1 to 9.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. In the Agreement the following expressions shall have the following meanings unless the context requires otherwise:

“Agreement”	means this agreement concluded between ILEX and IPS including the: (a) the clauses contained herein; (b) the schedules attached hereto; (c) any other documents which are relevant to the Agreement and expressly incorporated herein as appendices to, and part of, the relevant schedules; and (d) such variations in writing as shall be agreed by ILEX and IPS according to the provisions of Clause 4.
“Effective Date”	means the date of this Agreement;
“IPS Manager”	means IPS Chief Executive or Professional Standards Manager
“Lead Officer”	means any of the following: ILEX Chief Executive, IPS Chief Executive or Head of Corporate Affairs; who oversees the creation, variation, development and management of the Agreement;
“Service”	means the service provided by ILEX to IPS which enables regulatory functions to be carried out;

“Service Levels”	means the standards of Service which ILEX is required to meet in the performance of Services details of which are contained in Clause 7 and Schedules 1 to 9;
“SLA Manager”	means the individual who oversees and/or provides the Service;
“Working Day”	means a day, not being a Saturday, Sunday or Public Holiday

2. TERM

2.1. This Agreement shall continue in effect from the Effective Date until the end of the ILEX financial year (the “Expiry Date”).

3. RENEWAL AND TERMINATION

3.1. This Agreement shall be renewed at the end of the current term and each succeeding year unless either party gives written notice of its intention not to renew, to the other, to be served no later than 6 months prior to expiration of the current term.

3.2. Termination of the Agreement will be subject to the requirements of the internal governance rules made by the Legal Services Board.

3.3. In the event that a dispute is not resolved in accordance with Clause 10 either party shall have the right to terminate the Agreement without further notice.

4. TERMS OF AGREEMENT

4.1. Throughout the life of the Agreement, variations to the agreement can be proposed, negotiated and implemented as circumstances warrant.

4.2. Substantive variations to the Agreement must be approved by the ILEX President and IPS Board Chair before taking effect.

4.3. Minor variations to the Agreement will be agreed by the Chief Executives of ILEX and IPS before taking effect.

4.4. Variations to the Agreement will be implemented by a Lead Officer.

4.5. Conditions that warrant variations to the Agreement include, not wholly and exclusively, changes in business or Service needs, significant variations from agreed Service Levels, unanticipated events or an adjustment in the division of responsibility between the parties.

4.6. In the event that variations to the Agreement cannot be agreed, both parties will follow the dispute resolution mechanism in accordance with Clause 10.

5. SUB-CONTRACTING

5.1. ILEX shall have the right to subcontract its obligations under the Agreement provided that any such subcontracting shall not increase the burden on ILEX of the obligations accepted by ILEX under this Agreement.

- 5.2. Notwithstanding any sub-contracting permitted hereunder, ILEX shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.

6. CHARGES

- 6.1. Charges will be reviewed on an annual basis when both parties work together to agree a budget which fairly reflects the activities and expenditure which are necessary for IPS to carry out its regulatory functions.
- 6.2. Charges are recoverable on an annual basis in accordance with Clause 6.1 as a result of any variations according to Clause 4.1.

7. SERVICE STANDARDS BY ILEX

- 7.1. ILEX shall provide the Services specified in Schedules 1 to 9.
- 7.2. ILEX's performance of the Services shall be measured in accordance with the methods and procedures set out in Schedules 1 to 9.
- 7.3. ILEX's performance of the Services shall also be measured in accordance with the obligations and responsibilities of IPS described within Clauses, 8.1, 8.3 and 8.4.
- 7.4. ILEX's performance of the Services shall be required to meet any reasonable Service Level and timeframe specified in Schedules 1 to 9 or as otherwise agreed, from the commencement of the Services.
- 7.5. Urgent matters are to be commenced within specifically agreed timeframes from receipt of instructions; such instructions to be approved by an IPS Manager and communicated to the relevant SLA Manager.
- 7.6. If ILEX fails to achieve any Service Level and timeframe as determined under the provisions of Clause 7.2 to 7.4, ILEX shall carry out corrective action agreed at the time between the parties, such agreement not to be delayed or withheld unreasonably.
- 7.7. If, notwithstanding any corrective actions taken in accordance with Clause 7.6, ILEX persistently fails in any material respect, to achieve any Service Level; such failure shall be considered to be a dispute and shall entitle IPS to follow the dispute resolution process in accordance with the provisions of Clause 10.

8. OBLIGATIONS AND RESPONSIBILITIES OF IPS

- 8.1. IPS shall receive the Service specified in Schedules 1 to 9.
- 8.2. IPS's obligations and responsibilities shall be measured in accordance with the methods and procedures set out in Schedules 1 to 9.
- 8.3. IPS shall be obliged to meet any reasonable timeframes specified within the methods and procedures set out in Schedules 1 to 9.

- 8.4. IPS shall provide ILEX with any relevant requests/permission, information/ documents and/or equipment within a reasonable timeframe or as otherwise agreed, prior to commencement and during the provision of the Services as required which are necessary to enable the Services to be provided.

9. MONITORING, REVIEW AND QUALITY ASSURANCE

- 9.1. The above performance standards will be monitored by the Head of Corporate Affairs who will conduct a quarterly review.
- 9.2. A comprehensive review of performance standards will be conducted at review meetings of this Agreement which will be held annually.
- 9.3. The review meetings will also deal with any quality assurance matters that may require addressing.
- 9.4. ILEX Chief Executive, IPS Chief Executive, and the relevant IPS Manager(s) and SLA Manager(s) shall attend these meetings as required.

10. DISPUTE RESOLUTION

- 10.1. If any dispute arises, in relation to the Agreement, the dispute in the first instance will be considered in discussions involving the IPS Manager and the SLA Manager overseeing or providing the Service which is the subject of dispute.
- 10.2. In the event that the parties are unable to settle the dispute in accordance with Clause 10.1 any outstanding issues will be considered in discussions involving the Chief Executives of ILEX and IPS and, if necessary the President of ILEX and the Chair of the IPS Board.
- 10.3. If the parties are unable to settle the dispute in accordance with Clause 10.2, the parties will attempt to settle it by independent mediation or by referral to the Legal Services Board.
- 10.4. To initiate a referral to the Legal Services Board, a party by one of its Lead Officers must give at least 5 days written notice to the other party, before referring the dispute to the Legal Services Board in accordance with Clause 10.3.
- 10.5. On commencement of independent mediation, no party may commence referral to the Legal Services Board until independent mediation has terminated.
- 10.6. Either party may refer a dispute to the Legal Services Board before referral to independent mediation.

11. THIRD PARTIES

- 11.1. Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term in this Agreement.

12. SERVICE LEVEL AGREEMENT SIGNED BY

..... **ILEX President**

..... **IPS Board Chair**

SCHEDULE 1

HUMAN RESOURCES

Service Specification

<p>Service:</p> <ol style="list-style-type: none"> 1. Sickness Absence Recording 2. Sickness Absence Reports – Bradford Score 3. Advice on handling sickness absence 4. Information to Payroll 5. Recruitment of Staff 6. Assisting with recruitment of IPS Board Members 7. Staff Induction 8. Advice on performance management 9. Advice on handling disciplinary/grievance 10. Arranging training 11. Training Needs Analysis 12. Calculation of holiday entitlement 13. Holiday cards 	<p>Service Level/Timeframe:</p> <ol style="list-style-type: none"> 1. Monthly * 2. Monthly * 3. Ad hoc * 4. Monthly # 5. Ad hoc # 6. Ad hoc # 7. Ad hoc # 8. Ad hoc # 9. Ad hoc # 10. Ad hoc # 11. Annual + 12. Annual + 13. Annual +
<p>Methods and Procedures:</p> <ul style="list-style-type: none"> • HR department to liaise with IPS in order to provide the services above. <p>* In order to provide the above services ILEX will need to receive from IPS sickness absence records on monthly basis.</p> <p># In order to provide the above services ILEX will need to receive from IPS details of staff salary, appointments and training, staff performance information and disciplinary/grievance requirements, on an ad hoc basis.</p> <p>+ In order to provide the above services ILEX will need to receive from IPS training requirements, holiday cards and holiday entitlement calculations on annual basis.</p>	
<p>Policy Application (Policies that apply to both ILEX and IPS):</p> <ul style="list-style-type: none"> • Equality & Diversity Policy • Grievance Policy • Disciplinary and Dismissal Policy • General Dismissal Policy • Capability Policy • Sickness Absence Policy • Learning & Development Policy • Personal Harassment & Bullying • Whistleblowers Policy • Staff Members Expenses Policy • Code of Conduct • Electronic and Telephonic Communications Policy • Health & Safety Policy 	

- Car Drivers Policy

Charge:

- As per 2010 Financial Budget

SLA Manager:

- HR Manager for ILEX Group

SCHEDULE 2

FINANCE

Service Specification

Service:	Service Level/Timeframe:
<ol style="list-style-type: none"> 1. Staff payroll administration 2. Staff expense claims and Board invoices administration 3. Credit card administration 4. Vehicle administration 5. Preparation of Management Accounts 6. Preparation of Budget statements 7. Audit and Preparation of Statutory Accounts 8. Processing of Customer invoices 9. Processing and payment of Supplier invoices 10. Completion of Group VAT returns 11. Bank statement reconciliation 12. Sales Ledger reconciliation 13. Cash management routines 14. Petty Cash reconciliation 15. Direct Debit Collections 16. Debt Chasing 17. Management of fixed assets 18. Year end payroll administration 19. Group VAT annual adjustment calculation 20. Liaison with auditors 21. Management of Group insurance covers 22. Administration of AA cover for company vehicles 23. Preparation of Annual Report 24. Corporation tax reconciliation and payment 	<ol style="list-style-type: none"> 1. Monthly * 2. Weekly * 3. Weekly * 4. As required * 5. Monthly # 6. Annually # 7. Annually # 8. Weekly # 9. Weekly # 10. Quarterly # 11. Weekly + 12. Weekly + 13. Weekly + 14. Monthly + 15. Monthly + 16. Monthly + 17. Monthly + 18. Annual + 19. Annual + 20. Annual + 21. Annual + 22. Annual + 23. Annual + 24. Annual +
<p>Methods and Procedures:</p> <ul style="list-style-type: none"> • Finance department to liaise with IPS when necessary in order to provide the above services * Provided directly to IPS staff in conjunction with services provided to all staff # Provided directly to IPS in conjunction with services provided to all departments + Shared provision of general Finance activities 	
<p>Policy Application (Policies that apply both to ILEX and IPS):</p> <ul style="list-style-type: none"> • Staff expenses policy 	
<p>Charge:</p> <ul style="list-style-type: none"> • To be assessed on figures per 2010 Financial Budget 	
<p>SLA Manager:</p> <ul style="list-style-type: none"> • Director of Finance and Resources 	

SCHEDULE 3

INFORMATION TECHNOLOGY

Service Specification

<p>Service:</p> <ol style="list-style-type: none">1. Hardware equipment - desktop PC's, printers, laptops equipment and related consumables.2. Network facilities including – storage/email/security, local and wide area (wireless and Internet) infrastructure and connectivity.3. Management Information System (MIS) software– Concept CRM, includes system (applications and services supported by IRIS), Data and admin support via IT.4. Other Client Software – Security/Anti-virus, MS-Office, Acrobat, Browsers, CMS editors.5. IT Management/development support including MIS/Web/IT development advisory, project and programme management & implementation.
<p>Service Level/Timeframe:</p> <ul style="list-style-type: none">• Hardware equipment provided on standard replacement 4 year depreciation.• Provide '1st line' support for all the above.• Contracts for core systems including MIS (Concept), Web services and SAGE are in place.• Access to an IT helpdesk on a daily basis during office hours and out of office as required.• MIS Software developments in accordance with what is decided by the MIS Strategy Group.• Provide related consumables upon request.
<p>Methods and Procedures:</p> <ul style="list-style-type: none">• ILEX and IPS to attend MIS Strategy Group meetings; the mechanism by which IT work/projects are timetabled and prioritised.• IT department to respond to requests for hardware equipment and IT queries.
<p>Policy Application (Policies that apply to both ILEX and IPS):</p> <ul style="list-style-type: none">• Electronic and Telephonic Communications Policy
<p>Charge:</p> <ul style="list-style-type: none">• As per 2010 Financial Budget
<p>SLA Manager:</p> <ul style="list-style-type: none">• Head of Group IT

SCHEDULE 4

PROCUREMENT

Service Specification

<p>Service:</p> <ol style="list-style-type: none">1. In-house and out of house facilities for print procurement.2. Support contracts with Xerox and Oce for the maintenance of the printing machines.3. Access to suppliers, manufacturers and service providers with whom ILEX and subsidiary companies have long standing arrangements.
<p>Service Level/Timeframe:</p> <ul style="list-style-type: none">• Provide '1st line' technical and professional support.• Provide '1st line' helpdesk support.• Provide customer account management and changing arrangements.• Provide varied and diverse range of products and services including printed matter, confidential print in-house, motor vehicles and stationery.
<p>Methods and Procedures:</p> <ul style="list-style-type: none">• In-house facilities for print procurement provided by ILEX staff.• IPS to give in-house printing department reasonable notice in relation to printing requirements.• Procurement department to liaise with IPS in relation to products and services.• Printed matter and stationery to be provided/ordered on request by IPS.
<p>Charge:</p> <ul style="list-style-type: none">• As per 2010 Financial Budget
<p>SLA Manager:</p> <ul style="list-style-type: none">• Director of Group Purchasing

SCHEDULE 5

FACILITIES

Service Specification

Service: <ol style="list-style-type: none">1. Accommodation2. Post room and DX mail services3. Telecoms4. Reception5. Utilities6. Cleaning7. Gardening8. Car Parking	Service Level/Timeframe: <ol style="list-style-type: none">1. 4 managed and fully furnished offices on a daily basis, use of meeting rooms as required.2. Daily collection and delivery service to include postage costs allocated to IPS code.3. 5 Siemens Dect cordless telephones, 1 fax machine, 2 mobile phones, 1 photocopier. Telecoms support available via Facilities and IT department.4. Daily service for staff, visitors, IPS Board members, to include call diverting from switchboard, message handling.5. Electricity, gas, water, daily use of kitchen facilities, fire safety equipment, first aid6. Cleaning – daily service provided by third party.7. Gardening – ad hoc services provided by third party to ILEX Group.8. Cars/Car Parking – One company vehicle, daily parking for IPS Staff, ad hoc parking for IPS visitors.
Methods and Procedures: <ul style="list-style-type: none">• The above services are made available to IPS and supported by ILEX Facilities.• IPS to give reasonable notice of meeting requirements.• Post, DX mail and reception services provided by ILEX staff and managed by the Office Manager.• Utilities, cleaning and gardening services provided by third parties.• Mobile phone contracts to be managed by IPS.• Photocopier provided as a shared facility for unlimited use.• Maintenance of car park provided by ILEX staff.	
Charge: <ul style="list-style-type: none">• As per 2010 Financial Budget	
SLA Manager(s): <ul style="list-style-type: none">• Director of Group Purchasing• Office Manager	

SCHEDULE 6

MARKETING AND COMMUNICATIONS

Service Specification

Service: <ol style="list-style-type: none">1. IPS Website2. Content Management System and hosting3. Code of Conduct brochure and IPS Banner4. Administration of Oaths leaflet5. IPS Launch Event and PR coverage6. Annual Report7. IPS Brochure8. Publicity and public relations	Service Level/Timeframe: <ol style="list-style-type: none">1. Support on an ad hoc basis2. On ad hoc basis with training for relevant IPS staff, supported by Marketing & Communications and IT Departments3. Design, print and distribute by Spring 2010, supported by Marketing & Communications and Journal Departments4. As required5. Scheduled for March 2010, supported by Marketing & Communications Department and external PR Agency6. Annual7. Annual8. Advise and action as required
Methods and Procedures: <ul style="list-style-type: none">• Timing and resource input by Marketing and Communications department to be decided when required.• Marketing and Communications department to support the IPS website in liaison with IPS.• IPS to manage content in liaison with Marketing and Communications department.• IPS to give Marketing and Communications department reasonable notice in relation to publicity and press releases.• ILEX to advise IPS on how to deal with press and stakeholders.	
Charge: <ul style="list-style-type: none">• As per 2010 Financial Budget	
SLA Manager: <ul style="list-style-type: none">• Head of Communications and Marketing	

SCHEDULE 7

LEGAL EXECUTIVE JOURNAL

Service Specification

Service: 1. Use of Legal Executive Journal publication 2. Editorial support 3. Direct mailings to members and other stakeholders	Service Level/Timeframe: 1. 1½ - 2 pages per monthly issue, additional advertising space as required to, include notices, inserts, recruitment and advertisements. 2. Ad hoc, supported by Journal department 3. Supported by the Marketing & Communications and Journal departments.
Methods and Procedures: <ul style="list-style-type: none">• The above services are made available to IPS and supported by Journal department.• Journal department to liaise with IPS in order to provide the services above.• IPS to meet publication deadlines and to produce material for publication.• IPS to keep the Legal Executive Journal Editor informed.	
Charge: <ul style="list-style-type: none">• As per 2010 Financial Budget	
SLA Manager: <ul style="list-style-type: none">• Journal Business Manager	

SCHEDULE 8

MEMBERSHIP

Service Specification

<p>Service:</p> <ol style="list-style-type: none"> 1. Collect and record information regarding declarations of Prior Conduct and or contacts concerning complaints and allegations. 2. Refer applications where declarations are made or information where allegations are made to IPS. 3. Record on the database when any matter is declared or disclosed and the date when referred to IPS. 4. Check disciplinary records of applicants for Fellowship. 5. Maintain accurate membership records. 6. Provide information to IPS about members or other contacts and make checks to database and paper records. 7. Provide statistics for membership, including equality and diversity information. 8. Maintain records of qualifying employment waiver applications, decisions and reasons. 9. Maintain records of CPD on membership database. 10. Provide the number and grades of members who have not complied with the requirement to record relevant CPD. 11. Provide resources (people/admin) to secure CPD compliance by members. 12. Provide details to IPS of members who have not complied or have not made arrangements to comply with CPD requirements. 	<p>Service Level/Timeframe:</p> <ol style="list-style-type: none"> 1. Within 1 working day of receipt 2. Within 2 working days of receipt 3. Within 1 working day of receipt 4. Every application when received 5. Ongoing 6. Within 5 working days 7. Monthly 8. Ongoing 9. Ongoing 10. Annual, by end of February 11. By end of May 12. By mid-June
<p>Methods and Procedures:</p> <ul style="list-style-type: none"> • The above services are provided to IPS and supported by Membership department. • Membership department to liaise with IPS in order to provide the services above. • IPS and ILEX will share information regarding members including membership records and correspondence where it is necessary to do so to fulfil their respective obligations, or so far as the sharing of information does not contravene any principle or law safeguarding the rights of members or others in relation to data protection or personal privacy. • The parties will treat as confidential information each holds about members or others which is not also held by the other, except where it is in the public interest to disclose the information to the other or, in the case of IPS, it is necessary to do so in order to fulfil its obligations under the Legal Services Act 2007, its Memorandum and Articles of Association and the protocols, or to meet its general obligations under the law. • IPS to give Membership department 5 working days notice of requests for database and paper record checks on members and requests for monthly statistics for membership. 	
<p>Policy Application (Policies that apply to both ILEX and IPS):</p>	

<ul style="list-style-type: none">• Protocols between ILEX and IPS (annex 1)• CPD Regulations• ILEX/CPS Memorandum of Understanding
Charge: <ul style="list-style-type: none">• As per 2010 Financial Budget
SLA Manager: <ul style="list-style-type: none">• Head of Membership

SCHEDULE 9

AWARDS

Service Specification

<p>Service:</p> <ol style="list-style-type: none"> 1. Support the work of IPS to ensure that existing and newly developed standards, qualifications, assessments and delivery are fit for purpose and are capable of securing the minimum standards of competence expected of ILEX members. 2. Ensure that there is an ongoing level and breadth of reporting to IPS that is appropriate to ensure a rigorous and yet proportionate scrutiny of annual activities: <ul style="list-style-type: none"> - Qualification performance data; - APSC minutes - Executive summary of the Awards self-assessment report; - Ofqual self-assessment return feedback; - Self-assessment action plan; - Development plan; - Malpractice/Appeals reporting; - Centre risk management reporting 3. Ensure that the appropriate staff deliver the above reporting regime at the appropriate IPS forum. 4. Ensure that the IPS Education post-holder is a member of APSC (Awards Performance and Strategy Committee). 5. Ensure that the appropriate staff attend and contribute appropriately to IPS-led working groups in connection with projects and initiatives. 6. Respond appropriately to all additional IPS queries and requests for information, and for appearances before the IPS Board. 7. Provide details of candidates found to be guilty of malpractice in assessments, including details of findings and evidence. 8. Share with IPS any report or feedback from Ofqual relating to the ongoing accreditation of ILEX as an awarding organisation. 	<p>Service Level/Timeframe:</p> <ol style="list-style-type: none"> 1. Ongoing 2. See timeframe below: July and November (annually) In the first quarter of the calendar year 3. Ongoing 4. Ongoing 5. As appropriate 6. As appropriate 7. Within 5 working days of expiry of appeal against malpractice decision 8. Within 10 working days
<p>Methods and Procedures:</p> <ul style="list-style-type: none"> • The above services are provided to IPS by the Awards Team. • The Awards Department will liaise with IPS in order to provide the services above. • Where appropriate, both sides will give each other a minimum of 3 weeks' notice in respect of work deadlines, meeting attendances etc. 	
<p>Policy Application (ILEX policies that apply to both ILEX and IPS):</p> <ul style="list-style-type: none"> • Protocols between ILEX and IPS • Examination regulations • Professional Skills regulations • Student malpractice policy and procedures 	

- Centre malpractice policy and procedures
- Instructions to examination centres and invigilators

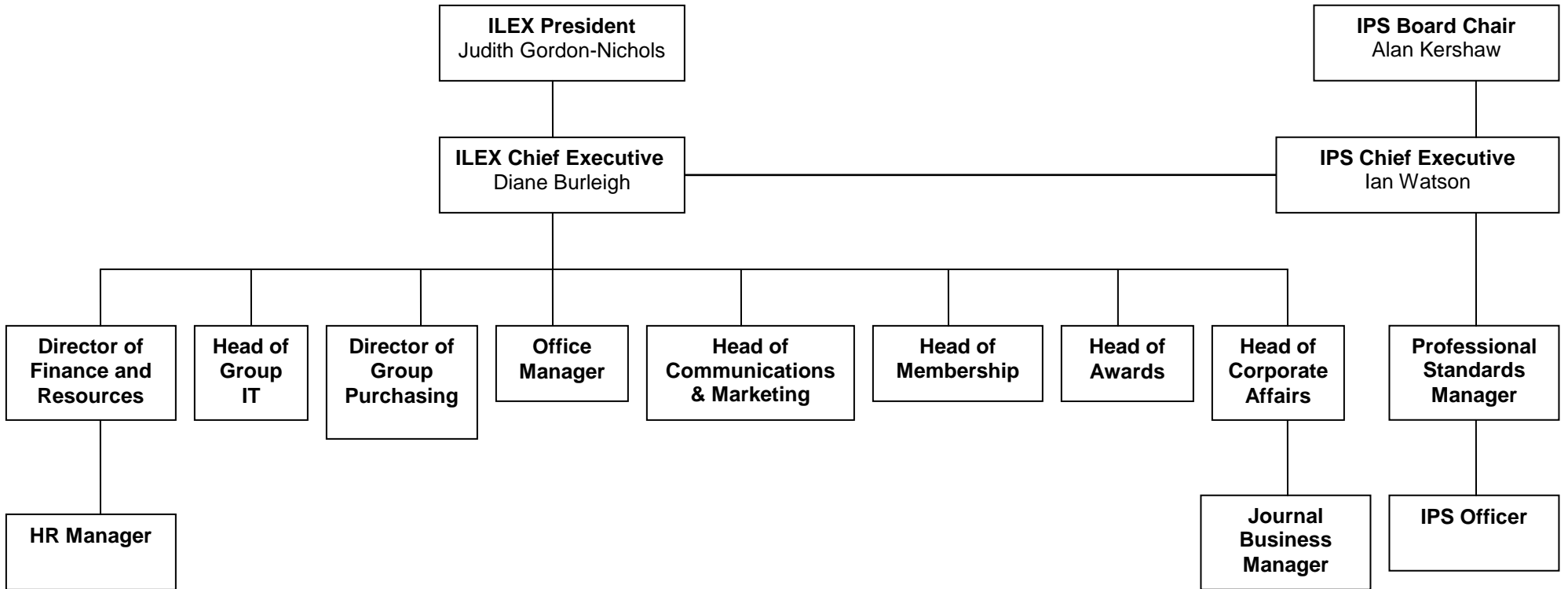
Charge:

- As per 2010 Financial Budget

SLA Manager:

- Head of Awards

**ILEX
SLA ORGANISATION CHART**



ANNEX 8 IPS BOARD MEMBERS CODE OF CONDUCT, RESERVED MATTERS & STANDING ORDERS

Code of Conduct for Board members

As a Board Member for IPS, I promise to abide by the fundamental values that underpin all the activity of this organisation. These are:

Accountability

Everything IPS does will be able to stand the test of scrutiny by the public, the media, regulators, ILEX Council, ILEX members, other stakeholders, and the courts.

Integrity and honesty

These will be the hallmarks of all conduct when dealing with colleagues within IPS and ILEX and equally when dealing with individuals and institutions outside it.

Transparency

IPS strives to maintain an atmosphere of openness throughout the organisation to promote confidence of the public, stakeholders, staff, regulators and Parliament.

Additionally, I agree to the following points:

Law, mission, policies

- I will endeavour not to break the law or go against Company regulations in any aspect of my role as a Board member.
- I will support any mission developed by the Board and consider myself its guardian.
- I will abide by organisational policies.

Handling Conflicts of interest

- I will always strive to act in good faith and in the best interests of the organisation.
- I will complete an annual return for the organisation's register of interests and ensure that it is kept up to date if there are any changes in year.
- I will declare any conflict of interest, or any circumstance that might be viewed by others as a conflict of interest, as soon as it arises.
- I will follow the guidance on conflicts of interest contained within the Conduct and Administration of Meetings.
- I will submit to the judgement of the Chair and the Board on whether I take part in the discussion and determination of matters where I have a direct pecuniary interest, either particular to me, or where a member of my family may have a direct pecuniary interest. Where I have a non-pecuniary interest, I will consider whether participation in the discussion and determination of a matter would suggest a real danger of bias.

Person to person

- I will endeavour not to break the law, go against Company regulations or act in disregard of organisational policies in my relationships with fellow Board members, staff, stakeholders, members, service recipients, contractors or anyone I come into contact with in my role.
- I will strive to ensure that my conduct in my professional and private life does not impact adversely on my role as a Board member.
- I will strive to establish respectful, collegial and courteous relationships with all I come into contact with in my role.

Protecting the organisation's reputation

- When speaking as a private citizen I will strive to uphold the reputation of the organisation and those who work in it.
- I will not speak as a Board member of this organisation to the media or in a public forum without the prior knowledge and approval of the Chair or Chief Executive.
- When I am speaking as a Board member of this organisation, my comments will reflect current organisational policy even when these do not agree with my personal views.
- I will respect organisational, board and individual confidentiality.
- I will take an active interest in the organisation's public image, noting news articles, books, television programmes and the like about the organisation, about similar organisations or about important issues for the organisation.

Personal gain

- I will not personally gain materially or financially from my role, nor will I permit others to do so as a result of my actions or negligence.
- I will document expenses and seek reimbursement according to procedure.
- I will not accept substantial gifts or hospitality without prior consent of the Chair (see guidance in standing orders).
- I will use organisational resources responsibly, when authorised, in accordance with procedure.

In the Boardroom

- I will strive to embody the principles of leadership in all my actions and live up to the trust placed in me by IPS.
- I will abide by board governance procedures and practices.
- I will strive to attend all board meetings, giving apologies ahead of time to the Chair, if unable to attend.
- I agree to attend a minimum of 75% of Board meetings each year and accept that failure to reach this level may mean that I am asked to leave the Board.
- I will study the agenda and other information sent to me in good time prior to the meeting and be prepared to debate and vote on agenda items during the meeting.

- I will honour the authority of the Chair and respect his or her role as meeting leader.
- I will engage in debate and voting in meetings according to procedure, maintaining a respectful attitude toward the opinions of others while making my voice heard.
- I will accept a majority board vote on an issue as decisive and final.
- I will maintain confidentiality about what goes on in the boardroom unless authorised by the Chair or Board to speak of it.
- I accept collective responsibility for Board decisions, including representing these decisions in contact with stakeholders and other bodies, even where I do not personally agree with them. If I am unable to support Board decisions in this way, then I will resign from the Board.

Enhancing governance

- I will participate in induction, appraisal, training and development activities.
- I will continually seek ways to improve Board governance practice.
- I will support the Chair in his/her efforts to improve his/her leadership skills.
- I will support the CEO in his/her executive role and, with my fellow board members, be involved in appraisal and appointment processes including seeking development opportunities for him/her.

Leaving the board

- I understand that substantial breach of any part of this code may result in my removal from the Board.
- Should I resign from the Board, I will inform the Chair in advance in writing, giving 3 months notice and stating my reasons for resigning. Additionally, I will participate in an exit interview.
- The Chair, subject to following agreed procedures, may terminate a Board member's appointment on the grounds of failure to attend meetings, of insolvency, of physical or mental incapacity, of criminal conviction or of conduct that, in the Chair's opinion, makes it inappropriate that he/she remains a Board member.
- Once I have left the Board, I will ensure that I maintain the confidentiality of matters discussed within the Board by not speaking or disclosing anything about, and the workings of IPS, ILEX, Board members and staff.

Approved by the Board 15 April 2009

ILEX Professional Standards Ltd

Matters to be reserved to the Board

1. Strategy and Finance	
1.1	Responsible for the overall management of IPS, ensuring compliance with the objects of the Company
1.2	Approval of IPS's long term objectives and strategies. Any decisions relating to their implementation
1.3	Approve or amend budgets, including decisions on allocation of budget between individual programmes, operating costs and any central contingency in the light of guidance from the Chief Executive as to available resources.
1.4	Approve Protocols and methods of working with ILEX and other Stakeholders
1.5	Any decision, which alters a policy formally agreed by the Board
1.6	Decisions relating to legal proceedings against or on behalf of IPS
1.7	Decisions on the adoption of risk management policies.
1.8	Receiving reports on and reviewing the effectiveness of the risk management processes.
1.9	Decisions on the allocation of unforeseen income to a particular budget.
1.10	Review of performance in the light of the agreed strategy, objectives, business plans and budgets and ensuring that any corrective action is taken
2. Regulations and control, etc	
2.1	Responsible for ensuring the registration of the Company and the provision of information to Companies House, as requested
2.2	Making recommendations to ILEX to change/amend the Company's objects, M&As etc
2.3	Approval of standing orders and the schedule of matters reserved for the Board.
2.4	Change or amend Standing Orders or reserved matters
2.5	Approve arrangements for dealing with complaints
2.6	Decisions on the creation, maintenance, terms of reference, leadership and membership of board committees.
2.7	Receive reports from board committees and ratify/reject any recommendations
2.8	Decisions to grant, or vary, power, role, responsibilities and authority levels to the Chief Executive; and in doing so specify by implication the ones that the Board reserves to itself.
2.9	Establish, review, amend approve key organisational policies
2.10	Approve protocols and MoUs between IPS and other

	organisations, review these where appropriate and approve revisions.
3. Appointments	
3.1	Decisions to appoint or remove senior staff following proper procedures agreed by the Board Members. Decisions on the timing of the appointment or removal of Directors.
3.2	Agree procedures for the effective evaluation of the Board and of individual Board Members
3.3	Approval and appointment of professional advisors and consultants and determine their remuneration
3.4	Decisions to appoint or remove the external auditors and to determine their remuneration
4. Contracts and Transactions	
4.1	Decisions to enter into any contracts of a gross value of more than £50,000, subject to the Chief Executive's advice.
4.2	Significant decisions relating to any transaction in which a Board member or a member of staff has a direct or indirect material interest.
4.3	Any matter where a Board Member or member of staff's personal interest might conflict with his, or her, duty to the IPS, e.g. procurement issues.
5. Regulatory Matters	
5.1	Referral of matters or issues to the LSB
5.2	Decisions on what matters should be reserved to the Board
6. Disclosure	
6.1	The approval of the Annual Report and Accounts.
6.2	Decisions on when and how to make key information public
6.3	PR Policy and decisions around image

Approved: by the Board on 12 February 2009

ILEX Professional Standards Ltd

Conduct and Administration of Meetings (Standing Orders)

Board Meetings

1. Board meetings are held at regular intervals with the time and place determined by the Board, and confirmed at each preceding meeting of the Board.
2. A calendar of Board and Committee meetings will be drafted before each calendar year for the following year's business for approval during autumn.
3. Additional meetings may be held at such time and place as may be determined by the Board.
4. At each meeting of the Board the minutes of the last meeting shall, if available, be taken as an agenda item and, if agreed to be accurate, signed as a true record by the Chair of the meeting. Minutes of the previous meeting will always be taken as an agenda item at scheduled meetings of the Board.
5. The agenda and papers for each meeting will normally be despatched to Board Members no later than six days before the meeting. Late papers shall be sent only in exceptional circumstances, and shall be considered only with the consent of the Chair.
6. At a meeting, the Chair shall preside. If the Chair is absent, the Committee members in attendance shall choose one of their number to preside for that meeting.

Power to call Meetings

7. Any quorate group of Board Members can declare itself a Board meeting. However, other than in exceptional circumstances, Board Members will request additional meetings of the Board at any time through the Chair. The Chair and Secretariat will use best endeavours to arrange, within ten working days of such a request, a quorate meeting that the maximum possible number of Board members can attend.

Notice of Meeting

8. Once a meeting has been scheduled, a notice of the meeting, specifying the business proposed to be transacted, shall be delivered to every Board Member, or sent by post to the usual place of residence of each Member or to such other address as may be specified by the Member. This notice will be available to Board Members at least six clear days before the meeting; or if the meeting is called at short notice, then as early as possible before the meeting which, except in exceptional circumstances, should be at least 48 hours of notice must be given of a meeting.

9. An accidental omission to serve such notice on any Member shall not affect the validity of the meeting.

Quorum for meetings

10. The memorandum and articles of association of IPS Ltd identify that a quorum is 2 Board Members. Other than in exceptional circumstances to be agreed by the Chair, the Chief Executive should ensure that a minimum of 3 Board Members are present at each meeting, with at least one of these being an Independent Member and one a Professional Member.
11. There is the presumption that members will make best efforts to be physically present at meetings, but the Chair may agree to a particular meeting being conducted by video or telephone conferencing if a Board Member requests it in advance. For the avoidance of doubt, the presence of a Board Member by telephone or video conference constitutes attendance at the meeting, and, therefore, counts towards the quorum.
12. The rules on the quorum apply throughout the meeting, for example when the numbers present change as a result of members arriving late, leaving early or declaring an interest. The Secretary shall keep a note of attendance, including any changes, which take place during the meeting. If a meeting is at risk of becoming inquorate, the Secretary shall immediately inform the Chair.
13. Whilst it is possible for an inquorate meeting to continue in respect of items purely for discussion, it does not constitute a meeting of the Board and no business decisions can be taken by an inquorate meeting. Specifically, Board Members cannot, when inquorate, exercise statutory discretion. Nor do the opinions expressed or conclusions reached, by an inquorate meeting, constitute those of the Board.

Resolutions

14. Decisions of the Board shall be taken and recorded in the Minutes of that meeting.
15. The Board will normally reach decisions by consensus. However, if any resolution or other question is put to the vote at a meeting, it shall be determined by a majority of the votes of the Members present and voting on the question, and shall be decided on a show of hands.
16. In the case of equality of votes, there is no casting vote.
17. Any member may require their vote, or the fact of their abstention, to be recorded in the minutes of a meeting. However, a declaration by the person presiding at the meeting that a resolution has been carried or not, and an entry to that effect made in the minutes of a meeting, shall

be conclusive evidence of the fact, without proof of the number of votes recorded in favour of, or against, the resolution.

18. A resolution (i.e. any formal decision by the Board) may be rescinded or varied at any subsequent meeting of the Board. However, where possible this will not be done unless its reconsideration appears on the agenda for that meeting. A resolution should not normally be overturned or varied, for instance, simply as part of discussions of matters arising from previous minutes. The subject matter must appear as a substantive item on the agenda, including the fact that there is a proposal to vary or rescind a previous decision and the reasons for that proposal.

Register of Attendance

19. The names of the person presiding and other Members present at a meeting shall be recorded. Members attending by video or telephone link will be identified as such.

Minutes

20. The minutes of the proceedings of each meeting shall be drawn up and submitted for agreement at the next ensuing meeting of the Board where, if affirmed as a correct record, they will be signed off by the person presiding at the meeting. If, exceptionally, no staff member is available to take a note of the meeting, one of the Board Members present shall be nominated to take a minute of the meeting and it will be supplied to the Secretary of the Board to be held as part of the record.

Briefing papers between meetings

21. The Executive will send update briefings to Board Members, in the format of Agenda Papers and with the appropriate Item Number, as necessary between meetings. Wherever possible, no more than one briefing by correspondence will occur between any two meeting dates.

Agreement by correspondence

22. It may be necessary for the Board, between meetings, to agree items by correspondence. This procedure will be adopted only in exceptional circumstances when necessary and with the prior approval of the Chair on behalf of the Board. The procedure will be as follows:
 - If there is an issue requiring the Board's support/agreement, Board Members will be asked to sign and date a declaration, **if** they are in agreement with the recommendation.
 - If there is more than one option/recommendation, the Board shall be asked to choose the preferred option and sign and date a declaration confirming this.
23. Exceptional circumstances will be matters that are judged by the Chair and Chief Executive as too urgent to await the next Board Meeting.

24. The Secretary to the Board will keep a full record of any items agreed by correspondence and these will be confirmed and minuted in the next meeting of the Board.

Handling conflicts of interest

25. The Chair, and other Board Members, should declare any personal or business interests that may conflict, or give the appearance that they may conflict, with their responsibilities as Board Members. The guidance that follows is intended to ensure that such conflicts are identified at any early stage so that appropriate action can be taken to resolve them. It is also intended to ensure that Board Members do not profit personally from the position of Board Member, including using for personal gain information or opportunities obtained as a result of being a Board Member. Board Members are required to keep a Register of Interests and to register any gifts and hospitality. Guidance on gifts and hospitality forms part of the Code of Practice.
26. For the avoidance of doubt, the inclusion of an Interest on the Register does not remove the requirement for it to be declared at a meeting.

Declarations of interest

27. Board Members should not participate in the discussion or determination of matters in which they have a direct pecuniary interest, which is particular to them, ie, Professional Members may take part in debates and decisions relating to general ILEX matters, such as subscription rates, without declaring an interest or leaving the Board meeting.
28. When an interest is not of a direct pecuniary kind, Board Members should decide whether consideration in the discussion or determination of a matter would suggest a real danger of bias. This should be interpreted in the sense that Board Members might unwittingly or otherwise unfairly regard with favour, or disfavour, the case of a party to the matter under consideration.
29. In considering whether a real danger of bias exists in relation to a particular decision, Board Members should take into account:
- whether they, a close family member, or person living in the same household, or a firm, business or other organisation with which the Board Member is connected, are likely to be affected by more than the generality of those affected by the decision in question.
 - whether they, a close family member, or person living in the same household, or a firm, business or other organisation with which the Board Member is connected, has an involvement with the decision in another capacity which might prejudice, or be perceived to prejudice, the decision making.

30. When a Board Member personally benefits, in a similar capacity to any other member of the public, from something that is being discussed, there will not normally be a need to declare an interest. However, there may be occasional circumstances where a Board Member feels that there is a danger of perceived bias in their decision-making and, therefore, may choose to declare an interest.
31. On receipt of an agenda and papers for a meeting, Board Members should alert the Chair to any items where they are considering declaring an interest, in order to resolve any uncertainties in advance. This enables staff to establish if the scheduled meeting is likely to become inquorate during its course.
32. At the start of each Board and Committee meeting, Board Members will be asked to declare any interests. This will be a regular, standing item on the agenda for each meeting.
33. In the meeting, Board Members should declare any interests as soon as possible after the meeting begins. Where Board Members do not participate in the discussion or determination of a matter, they should normally withdraw from the Board meeting at all points in the meeting where that matter is discussed. This is because the continued presence of someone who has declared an interest might be thought likely to influence the judgement of the other Board Members present.
34. Where Board Members sit on a committee, the same procedures apply where the committee is being asked for advice prior to a decision being taken by the Board. If a Board Member would expect to declare an interest when an item is presented to the Board for decision, they should declare that same interest when the same item comes to committee for advice.

Conduct of Committee Meetings

35. The Board may establish any committee or working party for any such purpose as it considers appropriate and determine the powers, terms of reference and timescale of any such committee or working party.
36. Committees must include at least one member or employee of the Board, but may also include persons who are neither members nor employees. The conduct of committee meetings will be regulated in the same manner as Board Meetings.

Minuting Policy

37. In the interests of transparency, IPS formally present its approved minutes to the ILEX Council, will publish the approved minutes on the website and will make copies available to enquirers.

Register of Decision items/Board and Committee Meeting follow up

38. IPS keeps a Register of Decision Items for each Board and Committee meeting. The Register is updated after each meeting and it is a useful

reference document to accompany the full minutes of Board and Committee meetings. If any Board/Committee member wishes to have a copy of the most up to date register, they can obtain this from the Secretary to the Board.

39. Each set of minutes has an action sheet appended. The action sheet reflects agreed actions from that meeting and the required follow up.

Public access to IPS information

40. IPS does not operate within the auspices of the Freedom of Information Act.

Claiming of Expenses

41. Members of the Board are entitled to claim expenses incurred in respect of carrying out Board business. Expenses that are incurred should be appropriate and value for money and detailed guidance is provided in the ILEX's Financial and Administrative Procedures. All claims should be submitted on a claim form and supported by receipts. In the exceptional circumstances where a receipt is not available, full details in respect of the expense should be provided. Claims should normally be submitted on a monthly basis and a claim will not be paid if it is submitted more than three months after it has been incurred. Claims will be settled by cheque until ILEX has the facilities to pay by BACs transfer into the Board Member's bank account.

Gifts and Hospitality Register

42. The upper limit on the value of gifts, which may be accepted by staff or members of the Board, is set at £25. Board Members should normally refuse to accept any gift offered to them personally unless it is of negligible value or is a promotional item of a value under the £25 ceiling. Presentational items may be accepted by the Chief Executive who will keep a register of such gifts and ensure that they are displayed or used appropriately by IPS/ILEX.
43. Board Members should accept offers of hospitality only if there is a genuine benefit to the IPS, through the opportunity to impart or receive information or to represent the IPS in the community, or where a meal is in the nature of a working lunch or representational dinner. All hospitality received should be notified to the Chief Executive, who will enter it in a register.
44. If a Board member has any doubt about the propriety of accepting a gift or an invitation, they should consult the Chair.
45. The Register of Gifts and Hospitality is open to public inspection.

Approved by the Board: 12 February 2009

ANNEX 9 IPS BUSINESS PLAN

STRATEGY FOR THE FIRST THREE YEARS

Statement of intent

We will define, promote and secure, in the public interest, proper standards of professional conduct and behaviour among ILEX members.

Overriding principles

We will aim in all our work to:

- underpin the rule of law and the administration of justice
- maintain clear independence of sectoral interests
- develop our understanding of the needs of those for whom legal executive lawyers provide services
- work in close partnership with ILEX to support effective professional development and the provision of consistently good professional practice
- act proportionately, targeting risk
- demonstrate proper governance and good value for money
- act in accordance with the regulatory principles set down in legislation.

Key aims

The work of IPS has been split into six areas of responsibility. Each area has key aims. The six areas are:

- Education and standards
- Registration and accreditation
- Fitness to practise
- Governance and process
- Performance and risk
- Visibility and image

EDUCATION AND STANDARDS

- the quality of all educational programmes which lead to entitlement to ILEX membership is assured
- all ILEX members are fit on entry to exercise the privileges and responsibilities which belong to their category of membership
- the arrangements for progression to ILEX fellowship are robust, consistent and defensible
- any organisation regulated by IPS is delivering services to the standard the public are entitled to expect
- the standards of professional conduct and competence expected of ILEX members and fellows are clear, explicit and readily understood by practitioners and the public

Key Target 1: the quality of all educational programmes which lead to entitlement to ILEX membership is assured

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
AM to serve on Awards Performance Strategy Committee (ASPC) and identify quality assurance issues for IPS to consider	Ongoing	AM	AM attending APSC meetings regularly
IPS Board to receive minutes of meetings of Awards Performance Strategy Committee to enable it to assure quality of education issues	Ongoing	AH	Minutes of APSC meetings are received by the Board.
IPS Board to receive and consider annual report of work of Awards department	Ongoing	AH	First report due early 2010 for year ending 2009
IPS Board to receive and monitor ILEX's self-assessment submission to Ofqual	Ongoing	AH	First self assessment reviewed by AM

Key Target 2: all ILEX members are fit on entry to exercise the privileges and responsibilities which belong to their category of membership

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Quality assure the ILEX education scheme through ongoing monitoring processes	Ongoing	AM IW	IPS Board has agreed process of review through receiving copies of relevant documentation
Quality assurance of advocates to feed into ILEX advocacy scheme, as appropriate	Ongoing	IW AK	IPS participating in JAG (approved regulators) work on development of qualify standards in advocacy

Key Target 3: the arrangements for progression to ILEX fellowship are robust, consistent and defensible

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Quality assure the ILEX education scheme through ongoing monitoring processes.	Ongoing	AM IW	IPS Board has agreed process of review through receiving copies of relevant documentation
Review and develop work based learning outcomes and assessment methodology for qualifying employment	Ongoing	TB, AM, AK, JW, MR IW/BB/Awards dept	Working party set up to progress this work. Work based learning outcomes have been developed. WP considering recording methodology (log books)
Ensure compliance with CPD scheme	Ongoing	BB	Annual monitoring (membership dept working with 2008 non-compliers, will result in referral to IPS)

Key Target 4: any organisation regulated by IPS is delivering services to the standard the public are entitled to expect

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
IPS to position itself to regulate alternative business structures	July 2012	BB / GB IW	Working party agreed that application should be made. Decision to be agreed by IPS Board and ILEX Council. Scoping work on practice structures, PII and fitness commenced.
Monitor and respond to LSB consultations on development of regulatory structure for ABS	Ongoing	IW / GB / BB	Responses were submitted to latest LSB consultations on ABS regulation, LSB rules issued
Liaise with other approved regulators on ABS matters	Ongoing	IW / GB BB	IW & GB attending regular meetings with other regulators to liaise on developments arising from the Legal Services Act and through the Legal Services Board Responses submitted to SRA consultations on ABS
IPS to position itself to regulate special bodies	July 2012	IW/BB/AK/IL EX	Participate in LSB discussion with special bodies to develop regulatory scheme to license them
Seek new practice rights for ILEX members before IPS can be in a position to regulate entities Rights being sought in litigation and probate Submit applications to LSB	May 2010	BB IW	Applications to be submitted to LSA. Consultation responses being analysed and amendments being made.
Seek conveyancing rights for ILEX members	Sept 2011	BB/ IW	Application to be made- includes scoping of rights, qualification structure, regulatory scheme, consultation, draft of application for submission to LSB by Dec 2010, approval by June 2010 and then move to implementation
Seek advocacy and litigation rights for Associate Prosecutors employed by CPS	May 2010	BB IW	Application to be resubmitted to LSA. Consultation responses being analysed and amendments being made to application.
Implement new practice rights in litigation and probate	April 2011	BB IW/LN	Implementation to begin once new rights granted (Dec 2010 and conclude by April 2011)
Develop compensation fund arrangements for ILEX independent practitioners	April 2011	BB IW	Scheme rules developed, to be implemented once we have new rights (Dec 2010 to Apr 2011)
Develop indemnity insurance arrangements for ILEX independent practitioners	April 2011	BB IW	Scheme rules developed, to be implemented once we have new rights (Dec 2010 to Apr 2011)
Identify and seek new practise rights	Dec 2010	BB / IW	Applications being prepared for conveyancing and criminal litigation rights. Decision made not to seek independent advocacy rights.

Key Target 5: the standards of professional conduct and competence expected of ILEX members and fellows are clear, explicit and readily understood by practitioners and the public

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Develop and promote new Code of Conduct	May 2010	BB FTP WP DMD	New Code submitted to LSB for approval. Once approved it can be promoted.
Launch new Code	May 2010	BB / AK	Provisional launch at ILEX conference (March 2010) followed by formal launch after approval
Embed code of conduct training into ILEX qualifications through communication of relevant issues to Awards Department	Ongoing	BB	Sharing relevant fitness to practise issues with Awards Department as they arise
Educate ILEX members on conduct issues through regular articles in Legal Executive Journal	Ongoing	BB	Regular journal articles being written
Ethics advice to be available to ILEX members.	Ongoing	BB IW ILEX	IPS to agree standards and provide information, ILEX to deliver one to one advice. System being developed.

REGISTRATION AND ACCREDITATION

- membership and fellowship of ILEX are recognised in the UK and abroad as the definitive touchstone of continuing competence among legal executives
- information published about ILEX members and fellows is accurate, validated and up to date, and indicates clearly to enquirers their current registration status, accreditations, specific rights and relevant fitness to practise history
- ILEX members and fellows are able to demonstrate that they have maintained competence and stayed up to date throughout their professional careers
- the regulation of new categories of ILEX membership is designed to ensure consistency between categories and compatibility with IPS's regulatory aims

Key Target 1: membership and fellowship of ILEX are recognised in the UK and abroad as the definitive touchstone of continuing competence among legal executives

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Conduct a detailed review of the ILEX qualifying employment arrangements, develop work based learning outcomes, assessment methodology and assessment arrangements (including committee structure).	Sept 2010	TB, AM, AK IW, BB Awards dept	Working party set up. Developed work based learning outcomes and Committee structure. Recording methodology being developed.
Consult on qualifying employment proposals	Sept 2010	BB/ Awards dept	Consultation to be produced after proposals agreed
Submit application to approve qualifying employment proposals to LSB	Oct 2010	BB	Application to be made after above work concluded

Key Target 2: information published about ILEX members and fellows is accurate, validated and up to date, and indicates clearly to enquirers their current registration status, accreditations, specific rights and relevant fitness to practise history

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Website to be updated to reflect membership information accurately and clarify specialism information	December 2010	BB IW	Specialisms clarified on published directory
Website to include specialist rights awarded to members	December 2010	BB LN	Advocates rights identified. Immigration advisors register developed. Further work being undertaken on web functionality.

Key Target 3: ILEX members and fellows are able to demonstrate that they have maintained competence and stayed up to date throughout their professional careers

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Conduct comprehensive review of CPD scheme for implementation on 1 January 2011	July 2010	BB	Board to review position
Consider ongoing appraisal mechanisms for ILEX members to ensure continued competence	July 2010	BB	Board to review position

Key Target 4: the regulation of new categories of ILEX membership is designed to ensure consistency between categories and compatibility with IPS's regulatory aims

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Keep under review criteria for entry into any new membership categories created by ILEX in future and what each category means	Ongoing	TB	

FITNESS TO PRACTISE

- robust procedures are in place for dealing with ILEX members or fellows whose professional conduct, competence or state of health may call in question their continued registration
- those procedures are conducted in a fair, thorough, impartial and timely fashion, with proper regard to the rights and reasonable expectations of the respondent practitioner and the complainant
- the handling of cases is focused primarily on remediation and professional improvement, while recognising the need for sanctions wherever these are necessary
- the procedures operate independently of the IPS Board and ILEX Council, members of neither playing any part in the handling of fitness to practise casework
- cases are disposed of in a timely and consistent way, with the reasons for decisions at each stage explained in sufficient detail for interested parties to understand.

Key Target 1: robust procedures are in place for dealing with ILEX members or fellows whose professional conduct, competence or state of health may call in question their continued registration

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Recruit three additional lay members to disciplinary panel	August 2010	BB	Recruitment process to be commenced.
Suitable accreditation procedures are in place to regulate immigration advisors	December 2010	BB	Need to develop regulatory regime for immigration advisors

Key Target 2: those procedures are conducted in a fair, thorough, impartial and timely fashion, with proper regard to the rights and reasonable expectations of the respondent practitioner and the complainant

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Investigations to be completed in a timely fashion	Ongoing	BB EP/LN/GB	New rules expedite procedure wherever possible. Case completion times to be monitored

Key Target 3: the handling of cases is focused primarily on remediation and professional improvement, while recognising the need for sanctions wherever these are necessary

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Sanctions guidelines developed	May 2010	BB	On Board agenda for approval
Publish findings in Legal Executive Journal to educate members and help them to identify areas for their improvement	Ongoing	BB	Regular items published

Key Target 4: the procedures operate independently of the IPS Board and ILEX Council, members of neither playing any part in the handling of fitness to practise casework

Key Target 5: cases are disposed of in a timely and consistent way, with the reasons for decisions at each stage explained in sufficient detail for interested parties to understand.

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Performance against key performance indicators to be regularly monitored	Ongoing	BB LN	Quarterly monitoring mechanism introduced
Clear reasoning is given by adjudicatory committees and communicated to the parties	Ongoing	BB EP/GB/LN	Clear reasoning is given by all committees involved in complaints and disciplinary cases. Developing reasoned determinations
Cases will be reviewed on a quarterly basis to identify learning outcomes and monitor performance	Ongoing	BB LN	Reviewing system to be introduced
Standardised format of reasoned determinations to be introduced for use by all disciplinary and complaints committees	October 2009	BB EP	Format to be developed

GOVERNANCE AND PROCESS

- IPS conducts itself, at Board and Executive level, in accordance with best practice in organisational governance
- relations with the ILEX Council and other key stakeholders are governed by unambiguous protocols and statements of understanding and partnership, making clear where boundaries lie and how responsibilities, accountabilities and powers are shared between organisations
- members of the Board and Executive conduct themselves with integrity and probity, demonstrating compliance with established principles of public life and putting the public interest first at all times
- best use is made of the knowledge, skills and experience of each member of the Board and Executive, and all such individuals are effectively resourced, supported, appraised and rewarded in the exercise of their duties
- Board and committee members are selected in a transparent way, using an open appointment process, with independent input, in which applicants are assessed against published criteria.

Key Target 1: IPS conducts itself, at Board and Executive level, in accordance with best practice in organisational governance

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Monitor compliance with Code of Conduct for Board members	Ongoing	HD	Monitoring on regular basis
Agree reserved matters on Education and Standards for the APSC	May 2010	AH, IW AM	Second draft being considered

Key Target 2: relations with the ILEX Council and other key stakeholders are governed by unambiguous protocols and statements of understanding and partnership, making clear where boundaries lie and how responsibilities, accountabilities and powers are shared between organisations

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Develop service level agreements to protocols	March 2010	IW GB	SLA developed and final copy on agenda
Review ILEX and IPS protocol after one year of operation	December 2010	HD IW	First review completed. Next review due December 2010.
Develop protocols with other regulatory bodies and with LSB and OLC	June 2010	IW GB	Work commenced to develop protocols and initial drafts produced
Review ILEX protocol with OISC once remit passes to LSB	June 2010	IW BB	Protocol to be substantially revised as OISC will not be overarching regulator

Key Target 3: members of the Board and Executive conduct themselves with integrity and probity, demonstrating compliance with established principles of public life and putting the public interest first at all times

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Review performance of Board Members against Code of Conduct for Board members.	October 2010	AK	Review as part of Board Member appraisal. Attendance at Board meetings recorded and monitored
Board to review its performance	December 2010	All	Review process completed. Next review due December 2010

Key Target 4: best use is made of the knowledge, skills and experience of each member of the Board and Executive, and all such individuals are effectively resourced, supported, appraised and rewarded in the exercise of their duties

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Board Members are set annual objectives	December 2009	AK Board members	2009 objectives were agreed. 2010 objectives to be set
Appraisals undertaken of chair and Board members. Appraisal system used to identify any training needs.	December 2010	AK HD Board members	Appraisals completed for 2009. Next due October 2010. skills audit also completed

Key Target 5: Board and committee members are selected in a transparent way, using an open appointment process, with independent input, in which applicants are assessed against published criteria.

PERFORMANCE AND RISK

- future opportunities and challenges are identified through a continuous process of horizon scanning and intelligence gathering
- key risks facing IPS are monitored, assessing the likelihood and impact of each of these and putting in place measures for their effective mitigation
- budgets are set at the level required to deliver regulation to an appropriate standard, recognising the need to demonstrate that spending is reasonable in the eyes of those who pay the bills
- spending is closely monitored against budgets, securing effective use of resources and good value for money
- IPS's performance is continuously monitored against key indicators reflecting the priorities set by the Board
- data are readily available to enable the Board to measure performance, give account where required and answer criticism whether founded or unfounded
- IPS complies at all times with the established principles of good regulation.

Key Target 1: key risks facing IPS are monitored, assessing the likelihood and impact of each of these and putting in place measures for their effective mitigation

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Risk register developed to monitor risks faced by IPS	February 2010	FE IW / BB	Risk register developed. Reviewed and agreed by Board
Risk register updated regularly and risks kept under review	Ongoing	BB	Regular monitoring taking place. Risk levels updated as necessary

Key Target 2: budgets are set at the level required to deliver regulation to an appropriate standard, recognising the need to demonstrate that spending is reasonable in the eyes of those who pay the bills

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Budgets to be agreed by IPS Board and ILEX for 2011	October 2010	IW	2010 budgets were agreed. Work will next commence on 2011 budgets
Business planning to take place to identify budgetary needs	October 2010	IW BB	Business planning to commence
Comply with LSB on independent regulation and transparent fee setting	April 2010	IW/DB/TC	Matter on IPS Board agenda
ILEX members are provided with clear information about subscription fees for regulation, representative services and LSB/OLC levy	October 2010	IW ILEX	Budgetary work to be undertaken to split fees into three categories for subscriptions due January 2011

Key Target 3: spending is closely monitored against budgets, securing effective use of resources and good value for money

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Regular monitoring of spending takes place against budget	Ongoing	IW	Reports of budget to Board at each meeting

Key Target 4 IPS' performance is continuously monitored against key indicators reflecting the priorities set by the Board

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Monitor performance against KPI	Ongoing	BB LN	Regular performance reports to Board

Key Target 5: data are readily available to enable the Board to measure performance, give account where required and answer criticism whether founded or unfounded

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Good use made of 'profile concept' to record complaints work so that data can be extracted	Ongoing	BB/EP/GB/L N/SF	Database used for all complaints cases
Annual report of complaints work accounts for performance	March 2010	BB EP	Report written
Annual report of IPS Board	March 2010	GB IW	Report being written

Key Target 6 IPS complies at all times with the established principles of good regulation.

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
IPS to ensure it works to PACTT better regulation principles	Ongoing	AK / IW	Embed PACTT principles in IPS work
IPS ensures it regulates in accordance with regulatory objectives and professional principles under Legal Services Act 2007	Ongoing	AK / IW	Embed regulatory objectives and professional principles in IPS work

COMMUNICATION AND PARTNERSHIP

- the visual identity and public face of IPS closely reflect its values and aspirations
- those values and aspirations run throughout the organisation and are shared and exemplified by all members of the Board and Executive
- IPS listens to and communicates regularly with all who have an interest in its work, explaining its decisions and actions clearly, succinctly and at the appropriate times, and making effective use of all available means of communication
- the needs of different stakeholders and audiences are clearly understood, ensuring effective communication with each by using the media most appropriate for them
- IPS takes active steps to give account of itself, promoting positively the benefits of its work and of professional regulation in general.

Key Target 1: the visual identity and public face of IPS closely reflect its values and aspirations. Those values and aspirations run throughout the organisation and are shared and exemplified by all members of the Board and Executive

	ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS	
Key 2:	IPS corporate image is embedded into all of its documentation	Ongoing	IW / BB All	Corporate logo has been developed and used in all documents including corporate brochures and banner stands. Developing corporate images.	Target

IPS listens to and communicates regularly with all who have an interest in its work, explaining its decisions and actions clearly, succinctly and at the appropriate times, and making effective use of all available means of communication

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
IPS to report regularly to ILEX council and ILEX at Board and Executive level	Ongoing	IW	Regular reporting of IPS minutes to council Regular meetings between IW and DB Regular meetings between AK and ILEX President & vice-President
IPS liaises with and consults LSB and OLC	Ongoing	IW GB/BB	IPS attend LSB meetings
IPS consults widely on its proposals	Ongoing	IW All	Consultations sent to wide audience, posted on website
IPS consults and liaises with consumer bodies	Ongoing	IW All	Consultations take place with consumer organisations
IPS consults and liaises with other regulatory bodies	Ongoing	IW All	Attend regular meetings with approved regulators and regulatory bodies
Method developed for Board members to provide input into consultations to which IPS responds	Ongoing	All	Email input arrangements were introduced
Information to be communicated through website	Ongoing	LN/BB/IW	Web pages produced for IPS consultation documents

Key Target 3: the needs of different stakeholders and audiences are clearly understood, ensuring effective communication with each by using the media most appropriate for them

Key

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Use to be made of website, correspondence and other mediums to communicate with stakeholders	Ongoing	All	Identify and use appropriate mediums on a needs basis
Develop programme of stakeholder engagement	June 2010	All	

Target 4 IPS takes active steps to give account of itself, promoting positively the benefits of its work and of professional regulation in general.

ACTION	DATE	LEAD/ RESOURCE	UPDATED PROGRESS
Annual report of IPS to be produced	March 2010	IW GB	Report to be written
IPS writes regular articles in Legal Executive Journal updating members on its work	Ongoing	AK / IW	Several articles written
IPS writes articles in other journals promoting its work and ILEX	Ongoing	AK / IW	Article written in magistrates publication
IPS communicates with consumer bodies on its work	Ongoing	AK / IW	

ANNEX 10 ASSOCIATE PROSECUTOR ADVOCACY AND LITIGATION RIGHTS BUSINESS IMPLEMENTATION PLAN

IMPLEMENTATION BUSINESS PLAN

This document sets out ILEX's proposals for implementing the rights to conduct litigation and rights of audience qualification scheme for Associate Prosecutors. Staff at ILEX Professional Standards Ltd will be responsible for implementing the business plan.

The implementation work has been split up into a number of categories. However, much of the work can be undertaken concurrently.

1. Establishment of Admissions and Licensing Committee

The Admissions and Licensing Committee will be established to receive and consider inspection and monitoring reports and annual reports.

The Committee will comprise two Fellows of ILEX and three independent members. One member will be a member of the IPS Board. The Board member will be the portfolio holder for registration and accreditation matters. The present portfolio holder is a Fellow of ILEX. The committee appointments will be part-time appointments on a self-employed basis.

The Committee will be required for other schemes to be established by ILEX. Depending on timing it might be established before the Associate Prosecutor scheme. If that is the case these timescales will not apply.

Otherwise IPS will need to commence the work to recruit the Committee in January 2010 to ensure the Committee is in place by May 2011.

- Recruitment of committee members

Development of advertisement (Fellows and independent)	1 week
Placing advert in appropriate publications	1 week
Application timescale	3 weeks
Application short listing	2 weeks
Invite for interview and interviews	3 weeks
Make appointments	1 week

Total	11 weeks

- Induction and training

Develop training programme	2 weeks
Set training dates	2 weeks
Hold training session	2 weeks

Total	6 weeks

2. Recruitment of external advisors

Under the scheme IPS will need to recruit at least one and possibly two external advisors covering advocacy and litigation. IPS will replicate processes used for recruitment of external advisors for the rights of audience scheme. It is intended that the external advisors will be able to attend the same training sessions as the committee members.

Again due to timing issues recruitment of external advisors will need to commence in January 2011 to ensure the external advisors are in post by May 2011.

• Recruitment	
Development of advertisement	1 week
Placing advert in appropriate publications	1 week
Application timescale	3 weeks
Application short listing	1 week
Invite for interview and interviews	2 weeks
Make appointments	1 week

Total	9 weeks

3. Course and assessment material

The CPS course and assessment material will need to be approved by IPS for the Associate Prosecutor training courses. Most of the material is in place already by the CPS. The CPS will need to review its material to ensure it is suitable.

The review will commence in January 2011 with a view to submission by Spring 2011 and approval by IPS by May 2011.

Review material	2 months
Approval of material	1 month

Total	3 months

RESOURCES AND CAPABILITY

This document sets out ILEX's proposals by which it will resource the Associate Prosecutor rights to conduct litigation and rights of audience qualification schemes. It is assumed that the schemes will be implemented and administered by staff at ILEX Professional Standards Ltd.

1. Admissions and Licensing Committee and external advisors

- Recruitment – professional standards manager and HR manager
- Interviews – IPS Board members and one IPS staff member
- Induction – IPS Board and Professional Standards Manager
- Administrative assistance by IPS Administrator and Professional Standards Assistant

The professional standards manager led on the recruitment of the Advocacy Rights Committee members and External advisors under the rights of audience scheme. The IPS Administrator and HR manager provided support.

2. Course and assessment material approval

- Initial review of material - professional standards manager and professional standards assistant.
- External advisors provide technical input and undertake formal review of material.

The professional standards manager has experience of conducting initial review of material. The external advisors will be recruited on the basis that they will have the expertise to assess course material and assessment material.

FINANCIAL RESOURCES

Costs

External advisors - £500 annual retainer
£350 assessing course and assessment material
£350 course inspections (per course)

Admissions & Licensing Committee - £500 retainer
£350 per meeting
£175 – telephone meetings
Committee costs will be shared with other schemes

Income

Applications for enrolment as an Associate Prosecutor member of ILEX- £140
Approximately 67 applications per year at level 1 (total income £9380)

Annual renewal of Associate Prosecutor certificates - £140
(total income £64,820)

ANNEX 11

INSTRUCTIONS ISSUED BY THE DIRECTOR OF PUBLIC PROSECUTIONS TO ASSOCIATE PROSECUTORS OF THE CROWN PROSECUTION SERVICE PURSUANT TO SECTION 7A OF THE PROSECUTION OF OFFENCES ACT 1985 AS AMENDED

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1. Introduction

1.1 These instructions are issued by the Director of Public Prosecutions pursuant to sections 7A (3) and (4) of the Prosecution of Offences Act 1985 (the Act) which apply generally to CPS non legal employees designated by the Director in accordance with section 7A (1) of the Act.

1.2 They will take effect on the 23rd February 2009.

1.3 A non-legal employee designated in accordance with section 7A (1) will be referred to in these instructions as an Associate Prosecutor (AP).

1.4 These instructions apply whether an AP has been designated prior to the date specified in paragraph 1.2, upon that date, or subsequently.

1.5 Upon these instructions taking effect in accordance with paragraph 1.1, all previous instructions issued to APs pursuant to section 7A(3) and (4) of the Act, and set out in the appropriate Annex of the Director's annual report to the Attorney General in accordance with section 7A (7)(c) of the Act, will cease to have effect.

1.6 The Director may from time to time issue guidance to Chief Crown Prosecutors on the implementation of these instructions, and dealing with related matters including procedures for supervision of APs and training requirements relevant to certain duties.

1.7 Nothing in these instructions prevents an AP from reminding a court of its duties and powers in relation to any proceedings (including sentencing).

2. The Statutory powers under section 7A

2.1 Subject to any exceptions or limitations contained within these instructions, Section 7A, as amended, confers on APs the powers and rights of audience of a Crown Prosecutor in relation to:

- (i) bail applications;
- (ii) The conduct of criminal proceedings in the magistrates' courts (including the youth court) other than trials of either way offences tried summarily or offences punishable with a term of imprisonment;
- (iii) The conduct of applications or other proceedings relating to preventative civil orders;
- (iv) The conduct of proceedings (other than criminal proceedings) in connection with the discharge of the functions assigned to the Director by the Attorney General; and
- (v) Any other powers of a Crown Prosecutor not involving the exercise of rights of audience in relation to the conduct of proceedings falling within (ii), (iii) and (iv) above.

2.2 Section 7A does not give APs power to institute or commence criminal proceedings.

3. Powers and rights of audience

3.1 Subject to the exceptions or limitations specified in Schedules 1 to 5 and completion of the approved AP training, all APs will exercise the statutory powers under section 7A.

Bail applications (paragraph 2.1 (i) above)

3.2 Bail applications include a defendant's application for bail, or application in relation to bail (including proceedings for breach and variation) in the Crown Court or the magistrates' court, subject to the exceptions listed in Schedule 1.

Conduct of criminal proceedings (paragraph 2.1 (ii) above)

3.3 The powers and rights of audience in relation to the conduct of criminal proceedings relate to all stages of the proceedings in magistrates' courts after a person has been charged. However the power to conduct trials is restricted to trials of non-imprisonable summary offences.

3.4 In applying these instructions a 'trial' is defined in section 7A (5A) of the Act as beginning *with the opening of the prosecution case after a not guilty plea and ends with the conviction or acquittal of the accused.*

3.5 APs exercise these powers and rights of audience on the instructions of a Crown Prosecutor and do not have a power of review under the Code for Crown Prosecutors for this purpose, except in accordance with paragraph 3.14 below.

3.6 APs are not designated to exercise the powers and rights of audience of Crown Prosecutors in the magistrates' court, (including the youth court,) in relation to the proceedings specified in Schedule 2.

Preventative Civil Orders (paragraph 2.1 (iii) above)

3.7 APs are designated to conduct applications or other proceedings relating to those Preventative Civil Orders (PCOs) set out in paragraph 3.8 below. The conduct of proceedings that APs may undertake varies according to the legislative requirements of the particular PCO. This gives APs, where the legislation applies, authority to conduct an application for an order, or adduce further evidence, or apply for the variation or discharge of an order.

3.8 PCOs relate only to the following:

- (i) Anti-Social Behaviour Order – the conduct of applications for orders made after a verdict or finding; variation and discharge of such orders.
- (ii) Football Banning Order – the conduct of applications on complaint or after a verdict or finding; to adduce and lead further evidence where appropriate; and to appeal against the refusal of a court to impose such an order.
- (iii) Drinking Banning Order (to come into force on a day to be appointed) – the conduct of applications for orders made after a verdict or finding; variation and discharge of such orders.
- (iv) Parenting Orders – a duty to assist the court on request.
- (v) Restraining Orders – in relation to orders made after a verdict or finding to adduce and lead further evidence; and to apply for a variation or discharge of such an order. In relation to orders on acquittal to adduce and lead further evidence; and to apply for a variation or discharge of such an order.

3.9 A breach of a PCO is a criminal offence. Each PCO carries a different penalty. APs have power to deal with breaches subject to Schedule 2 and 4 below.

3.10 APs shall only exercise the powers and rights of audience as specified in Schedule 3.

Functions assigned by the Attorney General to the Director (paragraph 2.1 (iv) above)

3.11 The Attorney General has assigned to the Director the following functions:

- (i) applications for warrants of further detention under section 43(1) of the Police and Criminal Evidence Act 1984 and their extension under section 44 of that Act;
- (ii) applications by other countries for extradition of persons in the UK;
- (iii) conduct of proceedings relating to case stated and Habeas Corpus;
- (iv) conduct of proceedings under section 2 of the Dogs Act 1871 instituted by a police force (dangerous dogs that may be destroyed)
and
- (v) applications for removal of driving disqualifications under section 42 Road Traffic Offenders Act 1988.

3.12 APs are designated to conduct proceedings only in relation to paragraphs 3.11 (iv) and (v) above, (proceedings under section 2 of the Dogs Act 1871 and those under section 42 of the Road Traffic Offenders Act 1988).

Powers not involving rights of audience (paragraph 2.1 (v) above)

3.13 The powers of a Crown Prosecutor that do not involve rights of audience relate to all other criminal proceedings conducted in the magistrates' court.

3.14 APs shall only review magistrates' court cases which are straight forward and which involve no difficult technical issues, or other complication of fact or law. Consistent with that principle, the power to review and determine such proceedings shall only be exercised in accordance with Schedule 4.

SCHEDULE 1

APs are not designated to conduct bail applications (including any variations, breaches and appeals) in the following matters.

1. Bail applications in the Crown Court.
2. Bail applications in youth courts.
3. Bail applications in relation to youths charged with an adult in the magistrates' court or a youth appearing alone in the magistrates' court.

SCHEDULE 2

Otherwise than as provided for in Schedule 5 APs are not currently designated to exercise the powers and rights of audience of Crown Prosecutors in the magistrates' court (including the youth court) for the following proceedings.

1. Trials relating to summary only non-imprisonable offences. Summary trials relating to either way offences and those punishable with a term of imprisonment are excluded from section 7A of the Act.
2. Post conviction hearings commonly known as 'Newton Hearings'.
3. Hearings in relation to committal proceedings where there is consideration of the evidence (section 6(1) of the Magistrates' Courts Act 1980).

4. Matters that involve obligatory driving disqualification where evidence will be called in respect of 'special reasons' as to why the court should not impose disqualification.

SCHEDULE 3

APs shall only exercise the powers and rights of audience of Crown Prosecutors in relation to Preventative Civil Orders in the following circumstances.

APs shall only conduct proceedings for PCOs where the conditions in (i) and (ii) both apply. The conditions are:

- (i) Instructions have been given by a Crown Prosecutor in relation to the application, variation, or discharge or in adducing or leading further evidence, where applicable:
and
- (ii) The proceedings are not contested.

SCHEDULE 4

APs shall only exercise the powers of a Crown Prosecutor (including the power to review and determine criminal proceedings) in the following circumstances.

1. To review summary or either way offences only where:

- the defendant is an adult; and
- the matter is summary-only or considered to be suitable for summary disposal; and
- a guilty plea is reasonably expected; or
- (if otherwise) the offence is a minor road traffic offence, provided the defendant is not a youth.

A guilty plea may reasonably be expected where

- a. The suspect has made a clear and unambiguous admission to the offence to be proved and has said nothing that could be used as a possible defence

Or

- b. Though the suspect has made no admission in interview⁹, the commission of the offence and the identification of the offender can be established by good quality evidence (e.g. of a police officer or another reliable independent

⁹ Either because he made no comment, or because he was not interviewed at all, but has not at any time denied the offence or otherwise indicated that the charge will be contested at court.

witness) or the suspect can be seen clearly committing the offence on a good quality visual recording.

2. To amend a charge or summons where the amendment is minor, for example:
 - An error as to the value of any property;
 - The date upon which an offence took place;
 - The venue for the offence;
 - The description of any relevant object.
3. To withdraw a charge or summons where:
 - a road traffic offence involves the production of documents by the defendant (otherwise than in specified proceedings), and the defendant has produced the relevant documents to the court's Police Liaison Officer or other police officer; and
 - the AP is satisfied that the charge or summons is no longer sustainable.

Schedule 5

1. The following provisions of these instructions do not apply to those members of staff designated under Section 7A (1) of the Prosecution of Offences Act 1985 who have been appointed as Level 2 Associate Prosecutors:
 - i Schedule 2, paragraph 1 (Trials relating to summary only non-imprisonable offences).
 - ii Schedule 2, paragraph 2 (Newton Hearings in relation to summary only non-imprisonable offences only).
 - iii Schedule 2, paragraph 4 ('special reasons hearings').
 - iv Schedule 3, paragraph (ii) (thus allowing Level 2 Associate Prosecutors to conduct contested PCOs)
2. Level 2 Associate Prosecutors will be able to exercise the powers contained in Schedule 4 (2) and (3) to amend a charge or summons, or to withdraw a road traffic offence requiring the production of documents during the course of a trial.
3. Level 2 Associate Prosecutors have the following additional powers also exercisable during the course of prosecuting a trial:

i. To withdraw or offer no evidence or no further evidence in relation to any charge where:

- They form the opinion that there is no longer sufficient evidence to support the charge and the trial will continue in relation to other charge(s) which are before the court

ANNEX 12 MOU BETWEEN ILEX AND CPS

The MOU appears as a separate PDF document

ANNEX 13 CPS CODE OF CONDUCT

The Code appears as a separate PDF document

ANNEX 14 ILEX CODE OF CONDUCT

About this document

Membership of ILEX carries both privileges and responsibilities. It requires you to:

- develop and use your professional knowledge and skills for the benefit of those who use your professional services
- maintain good professional relationships with others
- act in a way that promotes confidence and trust in the legal professions.

This Code of Conduct has been drawn up by IPS, the regulatory body for ILEX members. It sets out the principles you must follow as an ILEX member. It is our core guidance on the conduct, practice and professional performance expected of you.

The following nine principles are intended to guide and support you in the work you do and the decisions you make. They also inform the general public of the standards of behaviour that can be expected of ILEX members: the public interest must be at the forefront.

You must at all times ensure public confidence in you and your profession. You must also ensure that you avoid engaging in action unbecoming to ILEX or likely to bring disrepute upon you or ILEX.

These are the nine principles. You must:

1. Uphold the rule of law and the impartial administration of justice
2. Maintain high standards of professional and personal conduct
3. Behave with honesty and integrity
4. Comply with the ILEX and IPS rules and bye-laws
5. Act in the best interests of your client
6. Treat everyone equally and fairly
7. Ensure your independence is not compromised
8. Respect confidentiality and trust
9. Act within your competence

These principles, and the supporting explanations below, encapsulate what it means to be a member of ILEX. Making this part of your professional life will help you maintain your professionalism and will underpin public confidence in you and your profession.

Status of the Code of Conduct

You must comply with this Code wherever it applies to you. Your professional and personal conduct will be judged against it, and a breach may lead to action under the Investigation, Disciplinary and Appeal Rules. Compliance with the Code will be taken into account in considering information which raises a question about a member. The supporting explanations are not however exhaustive and are not limited solely to the matters mentioned in the Code.

You must:

1. Uphold the rule of law and the impartial administration of justice

You must uphold the constitutional principle of the rule of law. You must act lawfully and must not knowingly breach the law. You must be familiar with and comply with the law as it applies to you.

You have a duty to uphold the impartial administration of justice. You also have a duty to act in the best interests of your client. However, your primary and overriding duty is to the courts. You must not knowingly allow the court to be misled. You must obey court orders and do nothing which would place you in contempt of court.

2. Maintain high standards of professional and personal conduct

High standards are expected of you in both your professional and personal life. You must not engage in any conduct that could affect or undermine the confidence placed in you and your profession by your client, other members of the legal profession and the public.

Personal conduct that may affect or undermine the confidence placed in you includes criminal convictions, breaches of the law, financial misconduct, dishonesty and any other behaviour deemed by IPS to bring disrepute upon yourself or ILEX.

3. Behave with honesty and integrity

You must be honest in all your dealings. You must maintain your integrity and uphold the respect and confidence placed in you and your profession by your client, the courts, the public, colleagues, employers and others. You must not wilfully mislead your client or anyone else you deal with.

You must deal honestly in financial matters, particularly with regard to transactions affecting office and client accounts and money which belongs to others.

4. Comply with the ILEX and IPS rules and bye-laws

You must comply with all the ILEX and IPS rules and bye-laws which apply to you. These include the Memorandum and Articles of Association, membership and examination bye-laws, rules and regulations, codes of conduct and the complaints handling rules. You must ensure that you are familiar with the rules and bye-laws relevant to you and keep your knowledge of them up to date. You must also co-operate with ILEX and IPS.

You must not register in a grade of membership to which you do not belong. You must not claim to be a non-practising member when you do not meet the criteria for that grade of membership.

5. Act in the best interests of your client

Except where they conflict with your duty to the court, your client's interests are paramount and you must act in their best interests. The work you undertake for your client must always be to a proper standard.

You must provide clear advice to your client and act on their instructions except when to do so would involve a breach of the law.

You must have in place good client care and communication procedures. You must provide clear and accurate information and advice. You must ensure your client understands your professional status, advise them openly and honestly and keep them up to date with the information they need about their case or transaction. You must inform them fully and honestly about details of costs and complaints procedures.

You must keep contemporaneous records of matters such as communications with clients, professional colleagues and others.

You must maintain proper standards of work and keep accurate records.

6. Treat everyone equally and fairly

You must treat everyone equally and fairly regardless of their age, gender, disability, race, colour, ethnic or national origin, sexual orientation, marital or family status, religion, belief or perceived social status. You owe this duty to clients, colleagues, employers, third parties including the other party in a transaction, and anyone else with whom you may have dealings.

7. Ensure your independence is not compromised

You must ensure that your independence is not compromised and that you remain impartial in all your dealings. Independence may be compromised in a variety of ways, including conflicts with a client, external pressure and financial interest in a client's matter. Members working in a business structure that includes a range of professions need to be particularly aware of the conflicts that could arise.

You must not act where there is a conflict of interest or a significant risk that a conflict may arise. This can include conflicts between:

- you and a client
- two or more clients for whom you act
- a client and your employer or colleagues
- a client and the commercial, financial or political interests of your employer.

There are some instances where you may act in a situation where a conflict would otherwise arise - for example, where two or more clients agree in writing to your acting for each of them and you can separate the duties you owe to each.

You should act for a client only where you are satisfied that there is no risk that they are providing instructions under duress or undue influence. You must also confirm with your client instructions given by a third party to ensure they are your client's own instructions.

You must ensure that no financial arrangements you have in place can affect the independence of your advice or your ability to act impartially. This includes any introduction and referral arrangements you have in place.

8. Respect confidentiality and trust

You must respect the trust placed in you and your profession by your client, the public, employers and colleagues. You must act with probity, honesty and trustworthiness and must not engage in any conduct that may undermine that confidence or trust.

You must keep the affairs of your client confidential. You may disclose information only to those entitled to receive it or to whom you have been authorised to disclose it. You must use information only for the purpose it was intended.

In certain rare circumstances the law or other provisions may require or authorise you to make disclosures, such as to prevent the commission of a serious criminal offence.

You have a duty to ensure the safety and security of electronic and paper documents in your possession. They must be stored safely and disclosed only to those entitled to receive them.

9. Act within your competence

You must act only on matters that are within your competence. These are cases or transactions where you have the knowledge, skills and experience to undertake the work. If you are not competent to act you must decline to do so.

It is your personal responsibility to keep your professional skills and knowledge up to date by undertaking relevant training and complying with our Continuing Professional Development regulations.

You must not act for a client in an area of law where you have insufficient knowledge or experience. Neither may you act in a matter where you do not have the right to act, for example, where you are not authorised to provide legal services. This does not prevent you from working in a structured environment on aspects of the law where you are developing your knowledge and skills.

You must not hold yourself out as having a qualification that you do not. This includes holding yourself out as a Legal Executive when you have not qualified as a Fellow of ILEX.

You must ensure you properly supervise tasks that you have delegated to others, recognising that you remain accountable for work which you have delegated to someone else.

Other Codes

If you are also regulated by or a member of another professional organisation, as well as IPS, you must also comply with Codes of Conduct, rules and regulations, however described, which apply to you.

Further help and guidance

If you are unsure about how this Code applies to you contact IPS on 01234 845770 or info@ilexstandards.org.uk

ANNEX 15 INVESTIGATION, DISCIPLINARY AND APPEAL RULES

ILEX PROFESSIONAL STANDARDS LTD

INVESTIGATION, DISCIPLINARY AND APPEALS RULES

PART I GENERAL

Application of Rules, establishment of Panels and Tribunal

1. (1) Any complaint about the conduct of a member shall be dealt with in accordance with these Rules.
- (2) The Professional Conduct Panel is hereby established for the purposes set out in Part II of these Rules.
- (3) There shall continue to be a body known as the Disciplinary Tribunal established for the purposes set out in Part III of these Rules.
- (4) The Appeals Panel is hereby established for the purposes set out in Part IV of these Rules.

Appointment of panellists and chairmen

2. (1) IPS shall appoint and maintain in accordance with paragraphs (2) – (4):
 - (a) a list of lay and professional members to act as panellists on the Professional Conduct Panel; and
 - (b) a list of lay and professional members to act as panellists on the Disciplinary Tribunal and Appeals Panel.
- (2) IPS shall remove from the lists of panellists the name of any person:
 - (a) whose term of appointment has come to an end, unless his appointment to the relevant list has been renewed;
 - (b) who resigns from the relevant list by giving 3 months notice in writing to that effect to IPS (save that IPS may where it deems appropriate to do so accept shorter notice); or
 - (c) who in the opinion of IPS has ceased to be an appropriate person.
- (3) The term of appointment of a panellist shall be 5 years and no panellist shall serve for more than two terms.
- (4) A person shall not at any one time be included in both the lists maintained by IPS under paragraph (1) above.

Glossary

3. In these Rules, unless otherwise provided, the following words and phrases have the meanings assigned to them in this clause:
 - “**Appeals Panel**” means the Panel established under Rule 1(4) of these Rules and as constituted from time to time;
 - “**applicant**” means a person applying to register with the Institute;

“**appropriate person**” means a person of good character who is fit to act as a panellist in accordance with Rule 2;

“**approved regulator**” has the same meaning as in s.20 of the Legal Services Act 2007;

“**authorised person**” has the same meaning as in s.18 of the Legal Services Act 2007;

“**Council**” means the Council of the Institute of Legal Executives;

“**Council member**” means a duly elected member of the Council;

“**day**” means a business day which is not a Saturday, a Sunday or a public holiday or bank holiday in England and Wales;

“**Disciplinary Tribunal**” means the Disciplinary Tribunal established by Rule 1(3) of these Rules and as constituted from time to time;

“**the Institute**” means the Institute of Legal Executives (ILEX);

“**IPS**” means ILEX Professional Standards Ltd, a wholly owned subsidiary company of the Institute established to regulate the professional conduct of members;

“**lay member**” means a person who is not and who has never been an authorised person or a person registered with the Institute in any grade;

“**legal services body**” has the same meaning as in s.9A of the Administration of Justice Act 1985;

“**licensed body**” has the same meaning as in s.71 of the Legal Services Act 2007;

“**member**” means a person registered with the Institute in any grade;

“**notice**” means a notice given in accordance with Rules 17, 22(1)(c), 25(1), 31(2), 38(1), 38(3) (save that it shall not be necessary for the applicant to comply with Rule 5 in respect of any notice lodged with the Officer), 46(4) and 51(8);

“**Professional Conduct Panel**” means the Panel established under Rule 1(2) of these Rules and as constituted from time to time;

“**professional member**” means a Fellow of ILEX who is not a Council member or Board member of IPS and who is otherwise eligible to be appointed by IPS to either of the lists of panellists under clause 2 of these Rules.

Delegation and extension of time

4. (1) Where these Rules permit the Professional Conduct Panel to delegate a function, power or duty to a person, that power to delegate shall be interpreted in accordance with this clause.
- (2) Where a delegate has performed or exercised a duly delegated function, power or duty, that performance or exercise shall, for the purposes of these Rules, be deemed to have been performed or exercised by the Professional Conduct Panel that delegated the function, power or duty.
- (3) Where the Professional Conduct Panel has delegated a function, power or duty, it may still continue to perform or exercise that function, power or duty.
- (4) The Professional Conduct Panel may at any time revoke or amend a delegation.
- (5) Where these Rules prescribe that a person may or must do anything within a certain time or provide that a person may not do something after a certain

time, the Professional Conduct Panel, the Disciplinary Tribunal or the Appeals Panel (as the case may be) may, upon application setting out good grounds for the extension of time, extend time as necessary.

Service of documents

5. (1) Any notice required to be given under these Rules may be given personally to the member or his or her representative or by sending it by guaranteed post to his or her last known address or by such other method as the Professional Conduct Panel, the Disciplinary Tribunal or the Appeals Panel (as the case may be) may direct.
- (2) A notice which is served in accordance with paragraph (1) shall be deemed to be served at the time of personal service or delivery or on the second working day after it was posted.
- (3) The service of any notice or document under these Rules may be proved by:
 - (a) a confirmation of posting issued by or on behalf of the Post Office or other postal operator or delivery service; or
 - (b) a signed statement from any person serving the notice or document by hand.
- (4) Where it is satisfied on reasonable grounds that it is in the public interest to do so, the Professional Conduct Panel, the Disciplinary Tribunal or the Appeals Panel (as the case may be) may:
 - (a) deem service to be effective even though the requirements of paragraph (1) have not been complied with; or
 - (b) dispense with the requirement of service altogether.

Forms

6. Where within these Rules a person is required to complete a form, in order to comply with that rule that person must duly complete a form substantially in the same format as the relevant template form appended to these Rules or prescribed from time to time by IPS.

PART II INVESTIGATION OF COMPLAINTS AND THE PROFESSIONAL CONDUCT PANEL

SECTION A: GENERAL

Interpretation

7. In this Part, unless the context otherwise requires, the following words and phrases have the meanings assigned to them in this clause:
 - “**complainant**” means a person making a complaint to IPS against a member;
 - “**complaint**” means any document, communication or record of conversation setting out matters of complaint against a member;

“determination by consent” means an agreement authorised by one lay and one professional member of the Professional Conduct Panel between IPS and a member that any complaint or investigation under Rules 21 or 22 below about that member be disposed of by the member accepting that he or she has committed professional misconduct and an appropriate sanction;

“independent practitioner” means a self –employed member;

“investigating practitioner” means an authorised person appointed by IPS to investigate a complaint against a member;

“Officer” means an officer of IPS serving the Professional Conduct Panel;

“professional misconduct” means professional misconduct, a breach of the Institute’s Articles of Association, Bye-laws, Regulations or Code of Conduct, or any personal conduct likely to call into question a member’s registration with the Institute or to bring the Institute or its members into disrepute.

Purpose of the Professional Conduct Panel

8. The Professional Conduct Panel is charged with considering:
 - (a) complaints against members;
 - (b) declarations of prior conduct made by members or persons applying to be members;
 - (c) whether a member has committed professional misconduct whether or not a complaint has been made against the member by a third party; and
 - (d) what, if any, action should be taken or penalty should be imposed as a result of (a), (b) or (c) above.

SECTION B: COMPOSITION OF THE PROFESSIONAL CONDUCT PANEL

Composition of the Panel

9.
 - (1) At the start of any meeting, panellists shall elect one person from among their number to chair the meeting.
 - (2) The quorum for meetings shall be 3, provided that there shall always be a majority of lay members.
 - (3) Save as provided for in section F, decisions of the Professional Conduct Panel will be made at a meeting by those members attending that meeting.
 - (4) Decisions of the Professional Conduct Panel shall be made by a majority, and no panellist may abstain from voting.

SECTION C: PRIOR CONDUCT

Duty to declare prior conduct

10. (1) Every applicant and every member must declare in writing to IPS or the Institute:
 - (a) any prior caution or conviction recorded against him or her in the UK or elsewhere (subject to the provisions of the *Rehabilitation of Offenders Act 1974*);
 - (b) any declaration of bankruptcy made against him or her and any arrangement made by him or her with creditors;
 - (c) any County Court Judgments against him or her;
 - (d) any proceedings taken against him or her under the *Solicitors Act 1974*;
 - (e) any order made against him or her by the Office of Legal Complaints; and
 - (f) any decision (whether under appeal or not) excluding or expelling him or her from any professional body.
- (2) Each of the matters referred to in paragraph (1) is referred to in these Rules as “**prior conduct**”.

Time of declaration

11. (1) Every applicant must disclose full details of prior conduct at the earliest opportunity and, unless the conduct occurs later:
 - (a) on application for enrolment as a member of ILEX; and
 - (b) on application for reinstatement.
- (2) Every member must disclose full details of prior conduct at the earliest opportunity and in any event (if not previously disclosed to IPS or the Institute):
 - (a) on any application to upgrade membership;
 - (b) on any application for higher rights of audience; and
 - (b) on the annual subscription form.

Effect of failure to disclose

12. Non-compliance with any part of this Section may be considered as professional misconduct for the purposes of these Rules.

Further details

13. Where requested by IPS, an applicant or member must provide further details of any declared prior conduct.

Procedure

14. (1) Save for where there has been a delegation under Rule 18 where a declaration of prior conduct has been made the Officer shall put before the Professional Conduct Panel the declaration, application or subscription form and all known details of the prior conduct.
- (2) The Professional Conduct Panel shall decide in accordance with Rule 16 what action is appropriate as a result of the prior conduct.

Preliminary view in relation to potential members

15. (1) A person who is not a member but is considering becoming a member and who has prior conduct may request a preliminary decision from the Professional Conduct Panel before he completes an application.
- (2) Where a request is made under paragraph (1), the Professional Conduct Panel shall consider the request, including all relevant facts and matters, and shall:
 - (a) declare that the conduct is likely to be a bar to registration as a member; or
 - (b) declare that the conduct is not likely to be a bar to registration as a member.
- (3) Where a request is made under paragraph (1), the Professional Conduct Panel may:
 - (a) impose requirements consistent with these Rules and any other Rules of the Institute in order for the application to be successful; and
 - (b) make suggestions in relation to the application.
- (4) The Professional Conduct Panel shall give reasons for any declaration under paragraph (2)(a) and any requirement under paragraph (3)(a).

Powers of the Professional Conduct Panel

16. (1) In making its decision, the Professional Conduct Panel has the power:
 - (a) to request a member or applicant to provide references as to his or her conduct and suitability to be a member of the Institute;
 - (b) to accept an applicant for enrolment;
 - (c) to accept an application for upgrading of membership;
 - (d) to refuse an applicant for enrolment;
 - (e) to refuse an application for upgrading of membership;
 - (f) to seek advice from or refer the matter to any officer or other committee of the Institute as IPS may prescribe in guidance from time to time;
 - (g) to impose any conditions on a member or an applicant in respect of his or her conduct or in regard to his or her employment that it may think appropriate;

- (h) to request a member or applicant to give an undertaking as to his or her future conduct;
 - (i) to warn or reprimand a member;
 - (j) to decide to take no further action; and
 - (k) to refer a case to the Disciplinary Tribunal.
- (2) Before it reaches a decision, the Professional Conduct Panel has the power to request a member or an applicant who has declared an issue of prior conduct to appear before the Panel.
- (3) Failure by a member to comply with a request under paragraph (2) may constitute professional misconduct.
- (4) The Professional Conduct Panel shall give reasons for any decision under this Rule.

Notification of decision

17. The Officer shall notify the member or applicant of the decision within 5 days of the meeting of the Professional Conduct Panel.

Delegation of decisions about prior conduct

18. (1) The Officer may determine that no action will be taken in relation to a declaration of prior conduct where:
- (a) the applicant or member has declared an outstanding judgment, unless there is evidence of
 - (i) persistent or deliberate failure to meet financial obligations, or
 - (ii) a related criminal offence, or
 - (iii) no arrangements being made to pay off the debts;
 - (b) the applicant or member has declared a spent conviction, (provided he/she is not a Fellow or is not applying for Fellowship);
 - (c) the applicant or member has declared a driving offence unless
 - (i) there is a persistent pattern of offending,
 - (ii) a custodial sentence is applied, or
 - (iii) a period of disqualification has been imposed of 18 months or more;
 - (d) the applicant or member is or has been subject to a bankruptcy Order or has entered into an arrangement with his creditors; or
 - (e) the applicant or member is applying for Fellowship and has declared prior conduct to the Institute or IPS that the Professional Conduct Panel has previously determined should not result in further action in a previous decision.

- (2) The Professional Conduct Panel may also delegate to the Officer its power to determine that no action should be taken in relation to other matters of declared prior conduct.

Duties of the Officer in the exercise of his delegate powers

19. (1) Notwithstanding the powers delegated to him or her under Rule 18, the Officer may refer a declaration of prior conduct to the Professional Conduct Panel for decision..
- (2) The Officer shall notify the applicant or member within 5 days of his or her decision including a decision to refer the declaration of prior conduct to the Professional Conduct Panel.
- (3) The Officer shall provide details to the Professional Conduct Panel at its next meeting of all applications where he/she has determined that no action should be taken since its previous meeting.

SECTION D: INVESTIGATING COMPLAINTS AND POTENTIAL MISCONDUCT

Complaints and potential misconduct

20. (1) Subject to Rule 23 below, IPS shall receive and investigate every complaint that a member has committed professional misconduct in accordance with Rule 21 and the other rules of this section.
- (2) Where IPS receives information that a member may have committed professional misconduct, IPS may investigate in accordance with Rule 22 and the other rules of this section, whether or not there has been a complaint by a third party.

Initial procedure on a complaint

21. The following initial procedure for dealing with a complaint under this Section shall be followed:
 - (a) The Officer shall receive from the complainant all information about the complaint that the complainant wishes to give.
 - (b) The Officer shall obtain the consent of the complainant to copy the complaint and any information provided under paragraph (a) to the member against whom the complaint is made. If the complainant does not consent to a copy of the complaint being placed before the member, the complaint will not be investigated any further.
 - (c) The Officer shall notify the member that a complaint or allegation has been made against him which will be investigated by an investigating practitioner or the Officer in accordance with these Rules. A copy of the Rules shall be supplied to the member.

- (d) Where the Officer is of the opinion that the potential seriousness or potential complexity of the complaint merits it, he may refer the complaint or allegation to an investigating practitioner.
 - (e) The investigating practitioner or Officer (as the case may be) may request such further information as he may require from the complainant.
 - (f) Save to the extent previously provided, the investigating practitioner or Officer (as the case may be) shall provide to the member against whom the complaint or allegation has been made, a copy of the complaint and any information received, and the member shall be given an opportunity to respond to the issues raised against him.
 - (g) A member is obliged to comply with and respond to reasonable enquiries made by the investigating practitioner or Officer (as the case may be). Failure to do so may constitute professional misconduct for the purposes of instigating disciplinary proceedings against the member.
- (h) The member shall have the opportunity to provide details of any matters he wishes the Professional Conduct Panel to take into account when considering the complaint.
- (i) The investigating practitioner or the Officer (as the case may be) shall supply to the complainant a copy of any response of the member to the complaint or allegation made against him and shall allow not less than 10 days for the complainant to comment in writing on the member's response.
 - (j) The investigating practitioner or the Officer (as the case may be) may seek information or advice from a third party about any issue raised.
 - (k) The investigating practitioner or the Officer (as the case may be) shall prepare a written summary of the evidence or information and an analysis of the issues for consideration by the Professional Conduct Panel.
 - (l) The investigating practitioner or the Officer (as the case may be) shall forward the summary to the complainant and the member, and shall invite both of them to comment in writing on the summary of the evidence or information and the analysis within not less than 10 days.
 - (m) Upon receipt of comments from both the complainant and the member or the expiry of the time allowed for comments (whichever is the sooner), the investigating practitioner or the Officer (as the case may be) shall pass the matter (including all the papers and his or her summary) to the Professional Conduct Panel.

Initial procedure on potential misconduct

22. (1) Where IPS receives information which suggests a member has committed professional misconduct, the Officer shall investigate the matter as follows:
- (a) The Officer shall gather information about and investigate the issues involved.
 - (b) Where the Officer is of the opinion that the potential seriousness or potential complexity of the matter merits it, he/she may refer the matter to an investigating practitioner.
 - (c) The Officer shall notify the member if he/she believes that there is an issue of professional misconduct against the member to be investigated in accordance with these Rules and shall supply him or her with a copy of these Rules.
 - (d) The Officer may seek information or advice from third parties.
- (2) Upon completing his investigation, the Officer shall prepare a written summary of the evidence or information and an analysis of the issues for consideration by the Professional Conduct Panel and shall forward the same to the member, and shall invite him or her to comment in writing on the summary within not less than 10 days.
- (3) Upon receipt of comments from the member or the expiry of the time allowed for comments (whichever is the sooner), the Officer shall pass the matter including all the papers and his or her summary) to the Professional Conduct Panel.

Delegation of decisions about certain cases

23. (1) Where, following receipt of a complaint or information under Rule 20(1) or (2) and before passing the matter to the Professional Conduct Panel under Rule 21(m) or 22(3), the Officer is of the opinion that:
- (a) there is no evidence available to substantiate the complaint, allegation or issue of professional misconduct;
 - (b) the complaint, allegation or issue of professional misconduct does not disclose any misconduct on the part of the member;
 - (c) IPS has no jurisdiction to consider the complaint, allegation or issue of professional misconduct; or
 - (d) the events giving rise to the complaint or information (or the date the complainant became aware of the grounds for his or her complaint, if later) occurred more than 1 year prior to the date the complaint was made to or information was received by IPS;
- he may, with the agreement of a lay and a professional member, reject the complaint or information without further reference to the Professional Conduct Panel.
- (2) Where, following receipt of a complaint or information under Rule 20(1) or

(2) and before passing the matter to the Professional Conduct Panel under Rule 21(m) or 22(3), the Officer is of the opinion that:

- (a) the evidence available demonstrates a prima facie case that the member has committed professional misconduct; and either
- (b) the conduct involved is of a serious nature; or
- (c) the member has previously been subject to an adverse finding by the Professional Conduct Panel or Disciplinary Tribunal and the conduct involved in the current case is of a similar nature to that in the previous case;

he or she may, with the agreement of a lay and a professional member, refer the complaint or information directly to the Disciplinary Tribunal without further reference to the Professional Conduct Panel.

- (3) The Officer and panellists shall provide reasons for rejecting or referring to the Disciplinary Tribunal any complaint or information under this Rule.
- (4) The Officer shall report to the Professional Conduct Panel all decisions made under this Rule.

Time-scales

- 24. (1) IPS, the Officer, the Professional Conduct Panel and the investigating practitioner shall aim to abide by the schedule of time scales set out in Appendix 1 of these rules when considering a complaint against or investigating information received about a member.
- (2) Failure to abide by the schedule of time scales set out in Appendix 1 of these rules will not invalidate the complaint, investigation or proceedings (as the case may be).

Notification

- 25. (1) IPS shall notify the member or applicant and the complainant of the date scheduled for the Professional Conduct Panel meeting when a complaint or an issue of potential misconduct will be considered.
- (2) Notification will be sent at least 10 days before the date of the meeting unless it is impractical to do so, in which case notification shall be sent as soon as possible, and in any event at least 5 days before the date of the meeting.

Powers of the Professional Conduct Panel

- 26. The Professional Conduct Panel shall have the power to:
 - (a) accept the member's response to a complaint, allegation or issue of professional misconduct and decide to take no further action in relation to it;

- (b) decide that the complaint, allegation or issue of professional misconduct concerns matters beyond the jurisdiction of IPS;
- (c) call for further information or evidence;
- (d) request the member to provide references from employers or others as to his character and professional conduct;
- (e) defer a decision so that legal advice may be taken;
- (f) request a member to give undertakings as to his or her future conduct;
- (g) impose conditions on a member in respect of his or her conduct or in regard to his or her employment that it may think appropriate;
- (h) reject a complaint, allegation or issue of potential misconduct;
- (i) reprimand a member or warn him or her about his or her future conduct;
- (j) refer the matter to the Disciplinary Tribunal.

Reprimands and warnings

27. The Panel may decide to reprimand a member or warn him or her about his or her future conduct only if it finds that the conduct complained of has been proved on the balance of probabilities, on the basis of the evidence and information before it.

Powers pending proceedings

28. A member shall not be able to resign from membership of the Institute whilst an investigation is taking place or disciplinary proceedings are being taken against him or her.

Further powers of the Professional Conduct Panel

29. (1) Before it reaches a decision, the Professional Conduct Panel has the power to request a member against whom a complaint has been made under Rule 21 or who is being investigated pursuant to Rule 22 to appear before it.
- (2) Failure to comply with a request to attend may constitute professional misconduct.

SECTION E: MEETINGS OF THE PROFESSIONAL CONDUCT PANEL

Conduct of meetings

30. (1) Meetings of the Professional Conduct Panel shall be held in private.
- (2) Save in the case of a hearing under Rule 31 below, where a member is entitled as of right to appear, where a member or applicant so requests within 3 days of receiving the notice of the date scheduled for the meeting, he or she has the right to appear before and be heard by the Professional Conduct Panel regardless of whether the Panel requested his or her attendance.

- (3) A member or applicant who appears before the Professional Conduct Panel shall have the opportunity of being heard before it and to be represented or assisted by a Fellow, an authorised person or, with the leave of the Professional Conduct Panel, some other person.
- (4) Where the Professional Conduct Panel decides it is appropriate, or where the member or applicant requests it within 3 days of receiving the notice of the date scheduled for the meeting, the Officer will arrange for an interpreter, reader or signer to be appointed to attend the meeting.
- (5) All meetings shall be held at The Institute of Legal Executives offices at Kempston Manor unless the Panel decides otherwise. Nothing in these Rules shall be read as requiring a meeting to be held outside the United Kingdom where a member is resident outside the United Kingdom.
- (6) Minutes shall be taken of the meetings and a record made of the decisions of the Professional Conduct Panel against the entry for the member concerned for such periods as IPS shall indicate in guidance from time to time.
- (7) The Professional Conduct Panel shall make an annual report to IPS Board and to Council of its work during the previous year.
- (8) In considering a matter, the Professional Conduct Panel:
 - (a) is not bound by the findings, views or analysis of an investigating practitioner or the Officer;
 - (b) may require or invite and receive further representations from the member;
 - (c) shall take into account any further representations and material adduced by the member.
- (9) A member is obliged to comply with and respond to reasonable enquiries made by the Professional Conduct Panel and failure to do so may be considered professional misconduct for the purposes of disciplinary proceedings against the member.

Interim orders for suspension

31. (1) The Professional Conduct Panel may at any time either on the application of the Officer or of its own motion, consider whether it is necessary for the protection of the public or in the public interest or in the member's own interests, to suspend his or her membership of ILEX pending a hearing before the Disciplinary Tribunal.
- (2) The Officer or the Professional Conduct Panel as the case may be shall give the member no less than 7 days notice of a hearing to consider the imposition or review of an interim order for suspension, unless the Professional Conduct Panel consider that due to the seriousness or urgency of the case a shorter period of notice is appropriate.

- (3) The notice under paragraph (2) shall inform the member of the time, date and place of the hearing, brief details of the matters giving rise to the application for an interim order for suspension and of his or her right to appear before and be heard by the Professional Conduct Panel.
- (4) IPS may, but need not, be represented at the hearing by a Fellow (who may not be a member of the Council, the Professional Conduct Panel, Appeals Panel or Disciplinary Tribunal), or by an authorised person.
- (5) In considering whether to make an interim order for suspension, the Professional Conduct Panel shall determine its own procedure in accordance with these Rules, the guidance published from time to time by IPS and the overriding requirement of fairness.
- (6) The Professional Conduct Panel may order that the member be suspended from membership of the Institute for a maximum period of 18 months which order must be reviewed by the Professional Conduct Panel every 3 months.
- (7) Where the Professional Conduct Panel makes an interim suspension order against an independent practitioner it may also direct IPS to make such arrangements for the orderly transfer of the independent practitioner's client files and monies as are appropriate in the circumstances.

Procedure

32. (1) All decisions of the Panel made at a meeting shall be made by a majority of the panellists present, with no panellist being permitted to abstain from voting.
- (2) The Panel shall give reasons for its decisions and shall advise of the right of an appeal.
- (3) IPS shall within 5 days notify the member and the complainant of the decision of the Professional Conduct Panel.
- (4) All decisions of the Professional Conduct Panel shall take effect after the period for lodging an appeal against its decision has expired, save for a decision to make an interim suspension order under Rule 31 which shall take effect immediately.
- (5) Where the Panel has ordered the Officer to do so, he or she shall cause the findings and orders of a Panel to be published in The Legal Executive Journal and the IPS website as soon as practicable, provided that no appeal has been brought during that time.

SECTION F: PAPER APPLICATIONS

Power to decide certain matters without a meeting

33. (1) Where:
- (a) the Officer, a lay member and a professional member agree that it is appropriate to do so, or
 - (b) a request has been made for a preliminary view under Section C, or
 - (c) a declaration of prior conduct has been made, or
 - (d) in relation to complaints and allegations of professional misconduct, the investigating practitioner or the Officer (as the case may be) has indicated to the Professional Conduct Panel that it is appropriate to decide the matter without a meeting, or
 - (e) the Professional Conduct Panel is required to review an interim suspension order under Rule 31(6) and the member agrees:
the Professional Conduct Panel may decide a matter without a meeting.
- (2) Where in relation to complaints and allegations of professional misconduct, the Professional Conduct Panel has decided that it is appropriate to decide the matter without a meeting, the only powers the Panel may exercise under Rule 26 are those in paragraphs (a) to (h) inclusive.
- (3) Where in relation to a declaration of prior conduct, the Professional Conduct Panel has decided that it is appropriate to decide the matter without a meeting, the only powers the Panel may exercise under Rule 16(1) are those in sub-paragraphs (a), (b), (c), (f), (j) or (i).
- (4) Where in relation to a review of an interim suspension order under Rule 31(6), the Professional Conduct Panel has decided that it is appropriate to decide the matter without a meeting, the Panel may determine either that the order continue or revoke it as appropriate.
- (5) Where:
- (a) the Officer is of the opinion that the evidence available demonstrates a prima facie case that the member has committed professional misconduct; and
 - (b) the member agrees that he or she has committed professional misconduct;
- they may agree a determination by consent.
- (6) The Officer and the member may agree any sanction or combination of sanctions available to the Professional Conduct Panel under Rule 26 or the Disciplinary Tribunal under Rule 46(6), save that the Officer shall not seek costs as part of any determination by consent.
- (7) Failure to comply with the terms of a determination by consent shall constitute professional misconduct.

- (8) It shall be a term of any determination by consent that IPS may at its absolute discretion notify any person or publish the terms of the determination by consent.

Procedure

- 34 (1) Save in the case of a determination by consent under Rule 33(5), where the Professional Conduct Panel resolves to decide a matter without a meeting, it shall instruct the Officer to send all the necessary papers, including a response form, to a quorum of Professional Conduct Panel panellists.
- (2) Within 5 days of receipt of the papers, the Professional Conduct Panel panellists shall inform IPS in writing of their decisions.
- (3) If a majority decision is reached about a case, based on the responses received, the Officer shall make a record of that decision and notify it to the member or applicant within 5 days of receiving the decisions of the Professional Conduct Panel members.
- (4) If no majority decision is reached the matter shall be put to the Professional Conduct Panel again when it next meets.

SECTION G: APPEALS

Appeals

- 35 (1) A member or applicant may appeal against any decision or order of the Professional Conduct Panel other than a decision to refer the matter to the Disciplinary Tribunal
- (2) Where the Officer has exercised his or her power under Rule 23(1) to reject a complaint, or allegation of professional misconduct; the complainant may appeal against that decision.
- (3) An appeal must be made within 15 days of notification of the decision of the Professional Conduct Panel and in accordance with Part IV.

PART III THE DISCIPLINARY TRIBUNAL

SECTION A: GENERAL

Interpretation

36. (1) In this Part, unless the context otherwise requires, the following words and phrases have the meanings assigned to them in this clause:

“**applicant**” means the person acting on behalf of IPS in respect of a matter referred to the Disciplinary Tribunal;

“**Chair**” means the Chair of a Tribunal Panel, being a panellist chosen from amongst those whose names appear on the list maintained by IPS under Rule 2(1)(b);

“**Chief Executive**” means the Chief Executive of ILEX;

“**complainant**” means a person who made a complaint to IPS against a member of the Institute;

“**finalised hearing date**” means either the first hearing date or where the first hearing date is varied by the Panel not more than 14 days before the hearing is due to commence, that varied hearing date;

“**first hearing date**” means the hearing date set under Rule 38(2) or such later date as may be fixed by the Officer;

“**the Officer**” means the officer of IPS serving the Disciplinary Tribunal;

“**the Panel**” means the members of the Disciplinary Tribunal appointed to hear a particular matter;

“**party**” means the applicant and the respondent;

“**penalty and costs hearing**” means a hearing for the purpose of deciding the matters referred to in Rule 46(5)-(7) below;

“**respondent**” means the member against whom a complaint or allegation of professional misconduct is made.

- (2) In this Part any reference to the Professional Conduct Panel having referred a matter to the Disciplinary Tribunal is deemed to include a decision by an Appeals Panel under Part IV to refer a matter to the Disciplinary Tribunal.

Constitution and jurisdiction of the Disciplinary Tribunal

37. (1) The Disciplinary Tribunal has jurisdiction to hear matters referred to it under Part II by the Professional Conduct Panel or by an Appeals Panel under Part IV.
- (2) The Disciplinary Tribunal shall determine its own procedure in accordance with these Rules, the guidance published from time to time by IPS and the overriding requirement of fairness.

SECTION B: PROCEDURE

Commencement

38. (1) Where the Professional Conduct Panel has referred a matter to the Disciplinary Tribunal, the Officer shall, as soon as reasonably practicable:
 - (a) notify the complainant (if any) and the respondent that the Professional Conduct Panel has referred the matter to the Disciplinary Tribunal; and
 - (b) make all necessary arrangements for a hearing by the Disciplinary Tribunal.
- (2) The Officer shall, not later than 3 months after the date upon which the referral is received by the Disciplinary Tribunal from the Professional Conduct Panel or the Appeals Panel fix a date, time and venue for the hearing of the matter by the Disciplinary Tribunal.
- (3) Where the Professional Conduct Panel has referred a matter to the Disciplinary Tribunal, the applicant shall, not less than 30 days before the first hearing date, lodge with the Officer a *Notice of Application to the Disciplinary Tribunal* setting out:
 - (a) the allegations made against the member that are to be heard by the Disciplinary Tribunal,
 - (b) the nature of the evidence that the applicant will present to the Disciplinary Tribunal to prove the allegations, and
 - (c) any other information relevant to the allegations that is in the possession of the applicant,and shall, within the same time, serve a copy on the Respondent.

Selection of Disciplinary Tribunal members to hear a matter

39. (1) Where a matter has been referred to the Disciplinary Tribunal, that matter will be heard by 3 members of the Disciplinary Tribunal, of whom 2 shall be lay members

- and 1 shall be a professional member.
- (2) Upon a matter being referred to the Disciplinary Tribunal, the Officer shall select the members to hear the matter from the list maintained by IPS under Rule 2(1)(b).
 - (3) The members of the Disciplinary Tribunal selected to hear a matter shall constitute the Panel.
 - (4) IPS may appoint an independent authorised person or an officer to advise the Panel in the discharge of its functions.
 - (5) The members of the Panel shall choose one of their number to act as Chair for the purposes of that hearing.
 - (6) Where, during the course of any hearing, a member of the Panel is unable to continue to attend the hearing, the remaining members may with the consent of the parties continue with the hearing.
 - (7) Where, pursuant to paragraph (6), a matter is heard wholly or in part by the remaining two members and they are unable to arrive at a determination, the Application shall be re-heard by a new Panel comprising members of the Disciplinary Tribunal who were not members of the original Panel.

Preliminary meetings of the Panel

40. (1) The Panel may at any time determine any preliminary issues raised by any of the parties including (without limitation):
 - (a) the calling of witnesses;
 - (b) the adjournment of the hearing;
 - (c) directions as to the parties for a hearing;
 - (d) the admission of new evidence;
 - (e) the variation of time limits;
 - (f) the variation or postponing of the first hearing date;
 - (g) evidential and procedural issues;
 - (h) the withdrawal of the referral to the Disciplinary Tribunal.
- (2) The Panel may determine issues under paragraph (1) without a meeting of the Panel but by two or more of the Panel advising the Officer of their decision.
- (3) Where all parties consent, a single Panel member may determine an issue under paragraph (1).

Additional charges

41. (1) Where the Panel is satisfied that it would not occasion unfairness to the respondent and subject to paragraph (2), the Panel may allow an applicant to add allegations to the matter referred to the Disciplinary Tribunal, and those additional allegations shall be treated as if they were included in the original matter referred by the Professional Conduct Panel.

- (2) The Panel shall not allow an applicant to add to the complaints referred to the Disciplinary Tribunal less than 10 days before the commencement of the finalised hearing date.

Service of documents and witness statements

42. (1) Not less than 20 days before the first hearing date, each party will serve on the other copies of any documentary evidence in their possession or power relating to the allegations and any witness statements upon which they intend to rely.
- (2) A party shall be deemed to admit the authenticity of any document disclosed under paragraph (1) above unless he/she serves notice that he/she wishes the document to be proved at the hearing within 5 days of disclosure of the document.
- (3) The general rule is that any fact which needs to be proved at a hearing by the evidence of witnesses is to be proved by evidence given in a witness statement.
- (4) Any party who requires a witness to attend the hearing for the purpose of cross-examination upon the content of a witness statement served in accordance with paragraph (1) above must serve notice to that effect upon the opposing party within 5 days of disclosure of the statement.

Evidence

43. (1) The Panel may control the evidence by giving directions as to:
 - (a) the issues on which it requires evidence;
 - (b) the nature of the evidence which it requires to decide those issues; and
 - (c) the way in which the evidence is to be placed before the Panel.
- (2) Subject to the requirements of a fair hearing, the Panel may:
 - (a) admit evidence whether or not it would be admissible in a Court of Law; and
 - (b) exclude evidence that would otherwise be admissible to ensure fairness between the parties.
- (3) The Panel may limit cross-examination.
- (4) Subject to any other provisions of these rules, the Civil Evidence Act 1968 and the Civil Evidence Act 1995 shall apply in relation to the hearing of a matter as they apply in relation to civil proceedings.
- (5) (a) Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a respondent has been convicted of a criminal offence shall be conclusive evidence of the offence committed.

- (b) Production of a copy of the determination of any Tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction shall be conclusive evidence of the facts found proved in relation to that determination.
- (c) Production of a copy of the judgment of any Civil Court shall be conclusive evidence of the facts found proved in relation to that judgment.

SECTION C: THE HEARING

Documentation

44. (1) The parties shall use all reasonable endeavours to agree an indexed and paginated hearing bundle comprising:
- (a) the allegations;
 - (b) the documents relied upon by the parties;
 - (c) the witness statements; and
 - (d) any relevant notices.
- (2) Not less than 5 days before the finalised hearing date, each party shall prepare and provide the Officer with one copy of an indexed and paginated hearing bundle comprising:
- (a) the allegations;
 - (b) the documents relied upon by the parties;
 - (c) the witness statements; and
 - (d) any relevant notices.

Conduct of hearings and representation

45. (1) All hearings shall be open to the public, save where the Panel considers that the particular circumstances of the case outweigh the public interest in holding the hearing in public.
- (2) The Panel shall give the applicant and the respondent and, at its discretion, any other person, the opportunity of being heard.
- (3) The Panel shall permit the respondent to be represented by a Fellow or authorised person or, with the leave of the Panel, to be represented or assisted by some other person.
- (4) IPS may, but need not, be represented by a Fellow (who may not be a member of the Council, Professional Conduct Panel, Appeals Panel or Disciplinary Tribunal), or by an authorised person.

The decision

46. (1) The burden of proof to prove the facts and misconduct alleged against the respondent shall rest upon the applicant.
- (2) The standard of proof shall be the balance of probabilities.
- (3) A decision as to an allegation may be by a majority of the Panel and no panellist may abstain from voting.
- (4) The Panel may:
- (a) announce its decision at the conclusion of the parties' cases and announce its findings then,
 - (b) announce its decision at the conclusion of the parties' cases and give its findings on a later date, or
 - (c) reserve its decision and findings to a later date,
- but in any case where the decision or findings are not announced at the conclusion of the parties' cases, the Panel shall notify the parties of the decision and of the findings within 10 days of the conclusion of the parties' cases and, where necessary, the notice shall specify a date, not more than 15 days after the date of the notice, for a penalty and costs hearing.
- (5) Where the Panel's decision is that one or more of the allegations against the respondent has been proved:
- (a) the Officer shall inform the Panel of any previous disciplinary proceedings in which any allegation has been proved against the respondent; and
 - (b) the respondent may then make submissions in mitigation and, where appropriate, in respect of costs.
- (6) Where the Panel finds that one or more of the allegations against the respondent has been proved:
- (a) the Panel may:
 - (i) order that the respondent be excluded from being a member of the Institute for such period as it shall decide (which period may be a fixed or an indefinite period) and the Panel may make recommendations or observations with regard to the future reinstatement of the respondent as a member, or
 - (ii) impose conditions on a member in respect of his conduct or in regard to his or her employment that it may think appropriate, or
 - (iii) reprimand a member or warn him or her about his or her future conduct, or
 - (iv) take no further action; and
 - (b) may order the respondent:

- (i) (save where the Panel have ordered that the respondent be excluded from being a member of the Institute) to pay a fine not exceeding an amount determined by IPS from time to time, and
 - (ii) to pay costs to IPS in respect of the proceedings it has brought against him.
- (7) Where the Panel finds that one or more of the allegations against the respondent has not been proved, it may order IPS to pay compensation to him or her.
- (8) Within 15 days of the conclusion of the penalty and costs hearing, the Panel shall notify the parties of its Order and reasons.
- (9) An Order of the Panel shall take effect 15 days after notification under paragraph (4) (or, where a penalty and costs hearing has been convened, after notification under paragraph (8)) unless, before then, written notice of appeal has been given to the Officer.
- (10) Where the Panel makes an Order under paragraph 6(a)(i) or (ii) against a respondent, it may, if it considers it necessary for the protection of the public or in the public interest or in the member's own interests, order that his membership be suspended immediately or made subject to immediate conditions pending the taking effect of the Order under paragraph (9).
- (11) Where the Panel makes an Order under paragraph (6)(a)(i), any membership card and every certificate of designation as a Fellow or other grade and any Practising Certificate then held by the respondent shall cease to be of effect and shall be delivered by him to the Chief Executive to be endorsed as having been cancelled after the appeal period has ended.

Maintenance of documents and publication

- 47. (1) Any books, papers or exhibits produced or used at a hearing and any recording or transcript of the proceedings shall be kept by IPS for a period of at least one year after the making of the Order to which they relate.
- (2) The Officer shall cause all findings and orders of the Disciplinary Tribunal to be recorded against the entry in the register of members for the member concerned for such periods as IPS shall indicate in guidance from time to time.
- (3) The Officer shall give notice of all findings and orders of a Panel to approved regulators and any other regulatory body that the Panel shall deem appropriate.
- (4) Where the Panel has ordered the Officer to do so, he/she shall on the expiry of the appeal period cause the findings and orders of a Panel to be

published in The Legal Executive Journal and the IPS website as soon as practicable, provided that no appeal has been brought during that time.

- (5) The Panel shall consider whether any other person or organisation should be given notice of findings or an order made in respect of a member.
- (6) Where a member against whom an order is made is employed, or is a partner, director, manager or otherwise holds a financial interest in a legal services body or licensed body, the Officer shall notify the member's employer or legal services body or licensed body as appropriate unless the Panel has ordered otherwise.
- (7) Unless the Panel directs that there exist special circumstances which justify its omission from publication, the publication of the findings and order shall include the name of the member concerned.
- (8) The Disciplinary Tribunal shall make an annual report to the IPS Board and to Council of its work during the previous year.

Right of appeal

48. (1) Where the Panel has found that one or more of the allegations against the respondent has been proved, the respondent may appeal to the Appeals Panel against that finding or against the penalty imposed (or both) in accordance with this Rule.
- (2) The respondent must lodge the appeal in the form approved by IPS for that purpose:
 - (a) where he attended or was represented at the hearing at which the Panel announced the penalty, within 15 days of the date of that announcement; or
 - (b) otherwise, subject to Rule 48(4), within 15 days of his being served with the Panel's order.
- (3) The appeal notice must be lodged with IPS at its offices at Kempston Manor, Kempston, Bedford.
- (4) The appeal shall be heard and determined in accordance with Part IV.

PART IV THE APPEALS PANEL

SECTION A: GENERAL

Interpretation

49. In this Part, unless the context otherwise requires, the following words and phrases have the meanings assigned to them in this clause:

“**appellant**” means the person in whose name an appeal is lodged with the Appeals Panel;

“the Disciplinary Tribunal” includes a Panel of the Disciplinary Tribunal that has heard a case under Part III;

“the Officer” has the meaning given to it in Part III;

“the Panel” means the Professional Conduct Panel or the Panel of the Disciplinary Tribunal that dealt with a matter previously as the context requires.

Grounds for appeal

50. (1) The only grounds for an appeal against a decision of a Panel are one or more of the following:
- (a) the decision of the Professional Conduct Panel or Disciplinary Tribunal was wrong in that the Professional Conduct Panel or Disciplinary Tribunal gave insufficient weight to or drew incorrect conclusions from any material before it, which was or should have been material to its determination;
 - (b) the decision was flawed because of a serious procedural or other irregularity in the proceedings before the Professional Conduct Panel or Disciplinary Tribunal;
 - (c) the appellant has acquired new evidence that could not have been submitted to the Professional Conduct Panel or Disciplinary Tribunal and if the evidence had been available, would have been likely to influence its decision;
 - (d) the penalty imposed by the Disciplinary Tribunal under Rule 46(6) was excessive in light of the Disciplinary Tribunal’s decision on the facts or the appellant’s circumstances.
- (2) Unless the appellant is appealing under paragraph (1)(c), the appeal shall not be by way of a rehearing.

Appeals Panel

51. (1) The Appeals Panel shall comprise 2 lay members and 1 professional member from the list maintained by IPS under Rule 2(1)(b) who did not sit on the Panel which previously dealt with the matter.
- (2) An Appeals Panel shall consider and determine any appeal made in accordance with Rules 35 or 48.
- (3) In determining the appeal, the Appeals Panel may admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a Court of Law.
- (4) The Appeals Panel shall determine its own procedure in accordance with these Rules and the overriding requirement of fairness.

- (5) The members of the Appeals Panel shall choose one of their number to act as Chair for the purposes of the appeal.
- (6) The Appeals Panel shall have power to affirm or vary the findings and order of the Panel or Tribunal and to make such ancillary orders, including orders for costs, as seem just and appropriate to it.
- (7) Decisions of the Appeals Panel shall be made by a majority.
- (8) Notice of the findings and decision of the Appeals Panel shall be given within 15 days in writing to the member concerned and shall take effect 20 days after the date on which the findings and order were made.
- (9) Appeals under Rule 35 shall normally be heard in private unless the appellant requests otherwise.
- (10) Appeals under Rule 48 shall normally be heard in public, unless the Appeals Panel consider that the interest of justice require part or all of the appeal to be heard in private.

Representation

52. (1) The Appeals Panel shall give the appellant and the respondent to the appeal and, at its discretion, any other person who appeared before the Panel, the opportunity of being heard.
- (2) The Appeals Panel shall allow the appellant to be represented by a Fellow or authorised person or, with the leave of the Appeals Panel, to be represented or assisted by some other person.
- (3) IPS may, but need not, be represented by a Fellow (who may not be a member of Council, Professional Conduct Panel, Disciplinary Tribunal or Appeals Panel), or by an authorised person.

Maintenance of documents and publication

53. (1) Any books, papers or exhibits produced or used at a hearing and any recording or transcript of the proceedings shall be kept by IPS for a period of at least one year after the making of the order to which they relate.
- (2) The Officer shall give notice of the decision of an Appeals Panel to approved regulators and any other person or organisation that the Appeals Panel shall deem appropriate.
- (3) Where the appeal is not entirely successful and where the Appeals Panel has ordered that he/she do so, the Officer shall cause the decision of an Appeals Panel to be published in The Legal Executive Journal and the IPS website as soon as practicable.
- (4) Where the appellant is employed or is a partner, director, manager or otherwise holds a financial interest in a legal services body or licensed body and the appeal is not entirely successful, the Officer shall notify the member's employer or legal

services body or licensed body as appropriate of the decision and of the Panel's findings and order under Part III, unless an Appeals Panel has ordered otherwise.

- (5) Unless an Appeals Panel directs otherwise, the publication of the decision shall include the name of the member concerned.

PART V OTHER MATTERS

Transitional Provisions

54. (1) These Rules shall come into force on 4 January 2010 (“**the Commencement Date**”).
- (2) Any complaint, or allegation of professional misconduct received by IPS or the Institute prior to the Commencement Date which has not as of that date been referred to the Disciplinary Tribunal, Appeals Committee or Appeals Tribunal in accordance with the Investigation, Disciplinary and Appeals Rules dated June 2002 (“**the old Rules**”) shall be dealt with under these Rules
- (3) Any complaint, or allegation of professional misconduct received by IPS or the Institute prior to the Commencement Date which has as of that date been referred to the Disciplinary Tribunal, Appeals Committee or Appeals Tribunal under the old Rules shall continue to be dealt with in accordance with the provisions of the old Rules, save that:
- (a) any reference to the Investigating Committee under the old Rules shall be read as a reference to the Professional Conduct Panel;
 - (b) any reference to the Appeals Committee or the Appeals Tribunal under the old Rules shall be read as a reference to the Appeals Panel;
 - (c) any reference to the Disciplinary Tribunal under the old Rules shall be read as a reference to the same body constituted under these Rules;
 - (d) any reference to the Institute under the old Rules shall be read as a reference to IPS; and
 - (e) any complaint, allegation or issue of professional misconduct dealt with under the provisions of this paragraph which has not been concluded by 4 January 2011 shall thereafter be dealt with in accordance with these Rules.
- (4) Any complaint, or allegation of professional misconduct received by IPS after the date that these Rules come into force shall be dealt with in accordance with them.

TIME SCALES AND TIME LIMITS

IPS will aim to abide by this schedule of time-scales when considering complaints. Failure to abide by the schedule will not invalidate the complaint, investigation or proceedings. All references to days are to 'working days'. Rule numbers are indicated, where they apply.

GENERAL

Action post	Within 7 days of receipt.
Record file notes.	Immediately after each action is taken.
Produce agendas for Panels.	At least 5 days before date of meeting.
Time allowed to member and complainant for responding to requests for information.	10 days after request.
Follow non-receipt of responses.	12 days after request.
Identify and refer service complaints to OLC.	Within 10 days of receipt

PROFESSIONAL CONDUCT PANEL

RULE NO.	CRITERIA	TIME SCALE
	Acknowledge receipt of correspondence if there will be a delay in replying.	Within 2 days of receipt.
	Respond to initial letter from complainant. Either: (a) request further information / complete complaints form (b) request consent to copy complaint to member (c) inform complainant complaint is being put to member. In each case complainant should be given copy of complaints handling procedure and be informed what powers IPS has available in resolving the issue.	Within 7 days of receipt. Complainant to reply within 10 days of request.
	Respond to additional information received from complainant. Acknowledge receipt of additional information, inform complainant of the next steps and when they are likely to hear from the IPS or request further information.	Within 7 days of receipt.
R. 21	Close case if no further responses received from complainant provided that at least 2 reminders for information have been sent to complainant.	20 days after latest request for information.
R. 21	Copy complaint to member and ask for their response once all the relevant information has been received from	Within 7 days of receipt of all information.

	complainant.	Member to respond within 10 days.
R. 21	Ask member for additional information where necessary, once they have sent in their initial response.	Within 7 days of receipt of response. Member to respond within 10 days.
R. 21	Put matter to Professional Conduct Panel if member does not respond to request for information.	Next meeting or at least 12 days after latest reminder whichever is the later.
R.21	A summary of the case for the Professional Conduct Panel will be prepared and will be sent to the complainant and member for comment.	Member and complainant to provide comments within 10 days.
R.21	Put matter to Professional Conduct Panel.	Next meeting.
R.25	Inform member and complainant of date of meeting Professional Conduct Panel.	10 days before meeting (can be reduced to 5 days before meeting).
R.30(2)	Member or applicant may give written notice that they will attend the hearing of the Professional Conduct Panel.	Within 3 days of receiving notice of the date of the meeting.
R.30(4)	Member or applicant may request an interpreter, reader or signer to attend hearing.	Within 3 days of receiving notice of the date of the meeting.
R.32(3)	Decision of Professional Conduct Panel. Inform complainant and member of outcome.	Within 5 days of decision.
R.34(2)	Panel to respond on Paper Applications.	Within 5 days of receipt of papers
R.34(3)	Decision on Paper Application to be notified member/applicant	Within 5 days of decision.

DISCIPLINARY TRIBUNAL & APPEALS PANEL

Rule No	Action	Time limit in relation to hearing
38(2)	Office to arrange time, date and venue for hearing.	No later than 3 months after referral.
38 (3)	Applicant to lodge Notice of Application with Officer and copy to respondent.	Not less than 30 days before the first hearing date.
41 (2)	Applicant can add to complaints referred to Tribunal.	Up to 10 days before finalised hearing date.

42 (1)	Each party serves on other party copies of documents and any witness statements that they intend to rely upon.	Not less than 20 days before first hearing date.
42 (2)	Notice to other party to prove documents	Within 5 days of disclosure of document.
42 (4)	Notice to other party requiring their witness to attend hearing.	Within 5 days of being served with witness statement.
44 (2)	Each party to provide Officer with copy of their documents for the hearing.	Not less than 5 days before finalised hearing date.
46 (4)	Panel to announce its decision and findings.	At conclusion of hearing or within 10 days of the conclusion.
46 (4)	Penalty and costs hearing.	Not more than 15 days after notice of the findings and decision is given.
46 (8)	Panel to notify the parties of the Order.	Within 15 days of the conclusion of the penalty and costs hearing.
46 (9)	Order takes effect.	15 days after notification unless a notice of appeal is received.
48 (2)	Appeal	Within 15 days of Announcement of decision if the member attended or within 15 days of being served with Order.
51 (8)	Notice of Findings of Appeals Tribunal given to member.	Within 15 days.
51 (8)	Findings and Order of Appeals Tribunal takes effect.	20 days after it was

ANNEX 16

STATEMENT OF ETHICAL PRINCIPLES FOR THE PUBLIC PROSECUTOR

Preface

The Crown Prosecution Service and the Revenue and Customs Prosecutions Office merge in December 2009 to form the principal public prosecution service for England and Wales. That Service is headed by the Director of Public Prosecutions. The Attorney General is accountable to Parliament for the Service.

The Service is a national organisation consisting of a number of Specialist Casework Divisions based in Headquarters, 42 geographical Areas and CPS Direct. The Specialist Casework Divisions deal with the Service's most complex or sensitive cases. Each geographical Area is headed by a Chief Crown Prosecutor and corresponds to a single police force area, with one for London. CPS Direct is the national out-of-hours service that provides charging advice on behalf of the 42 Areas in England and Wales.

In this Statement, the term "prosecutor" is used to describe members of the Service who are designated as Crown Prosecutors; prosecutors who are members of the Revenue and Customs Prosecutions Office; and Associate Prosecutors who are designated under section 7A of the Prosecution of Offences Act 1985 and who exercise their powers in accordance with the current instructions issued by the Director under that section.



Foreword

Public prosecutors and those external advocates briefed by them, uphold the rule of law and deliver justice for and on behalf of their communities. That function is central to the maintenance of a just, democratic and fair society.

The way in which we perform this role is of crucial importance. It has long been recognised that the prosecutor has a special and overriding responsibility to act without fear, favour or prejudice, in the interests of justice and to provide the cornerstone of an open and fair criminal justice system. The criminal justice system continues to evolve. It is now important to refresh and restate the fundamental principles and values which we believe to be constant and which lie at the heart of all our decisions.

This Statement sets out the ethical principles that underpin and guide our work as public prosecutors. It confirms our commitment to internationally agreed standards of probity, fairness, openness and accountability in our dealings with others, whether they are victims, defendants or other criminal justice legal professionals. In abiding unswervingly by the principles set out in this Statement, we shall continue to serve the public and uphold justice in a rapidly changing world.

KEIR STARMER QC
Director of Public Prosecutions
2 November 2009

1 INTRODUCTION

- 1.1 Public prosecutors play a key role in the criminal justice system. By their actions in advising on investigations, deciding on whether prosecutions are to be brought, prosecuting those who are accused of criminal offences and assisting the courts in sentencing, prosecutors uphold the rule of law and deliver justice for and on behalf of their communities.
- 1.2 The manner in which prosecutors discharge their powers and duties directly affects victims, witnesses and defendants as well as society as a whole. The behaviour of prosecutors also affects the ability of others in the criminal justice system – the police and other investigators, the courts and defence practitioners, among others – to fulfil their own responsibilities.
- 1.3 The central role that prosecutors play in the criminal justice process places obligations on them to act at all times in accordance with the highest ethical standards and in the best interests of justice. Except where the contrary is expressly stated in the text, this document lays down the standards of conduct and practice which are expected of every prosecutor who prosecutes on behalf of the public.

2 BASIC OBLIGATIONS

- 2.1 Prosecutors must act in accordance with the law of England and Wales and in a way which is compatible with the Human Rights Act 1998 and, as required by that Act, the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 – referred to more generally as the European Convention on Human Rights. As participants in the court process, prosecutors are subject to the Criminal Procedure Rules currently in force and have a duty to prepare and conduct cases in accordance with the overriding objective of the Rules, namely to

deal with cases justly; and to comply with the Criminal Procedure Rules, practice directions and directions made by the court.

2.2 In addition to their duty to comply with the law and the rules of procedure, prosecutors must, at all times, act in accordance with the Code for Crown Prosecutors (“the Code”) and all departmental policies currently in force. They must have due regard to any guidelines issued by the Attorney General.

2.3 As a member of the Bar, the Law Society or as an Associate Prosecutor member of the Institute of Legal Executives, prosecutors must act in accordance with and uphold the Codes of Conduct and professional and ethical standards set by their professional regulators. Prosecutors are in the same position as other professionals providing legal services. Prosecutors are subject to the same duties to the court and to others with whom they have dealings, and they must uphold the same professional standards of conduct and ethics. Prosecutors who are Civil Servants are obliged to act in accordance with the Civil Service Code and, in particular, the statement of core values set out in it.

3 PROFESSIONAL CONDUCT IN GENERAL

3.1 When acting in the course of their employment or in accordance with their instructions, prosecutors must, at all times, adhere to the highest professional standards. This means that prosecutors must:

- a exercise the highest standards of integrity and care;
- b not conduct the prosecution of a case which is beyond their competence, knowledge or experience;
- c take reasonable steps to maintain and enhance their professional knowledge and skills and keep themselves well-informed and aware of relevant legal developments;
- d strive to be, and to be seen to be, consistent, independent, fair and impartial;

- e preserve professional confidentiality at all times, subject to the requirements of the law;
- f serve and protect the public interest; and
- g respect the right of all people to be held equal before the law - prosecutors must never act in a way that unjustifiably favours or discriminates against particular individuals or interests.

3.2 Prosecutors must perform their duties without fear, favour or prejudice. They must:

- a take decisions based upon an impartial and professional assessment of the available evidence, independently and with objectivity within the framework laid down by the law, the Code, all departmental policies currently in force and all guidance issued by or on behalf of the Attorney General; and
- b take into account all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the defendant.

3.3 Prosecutors must not knowingly participate in, or seek to influence, the making of a prosecution decision in regard to any case where their personal or financial interests or their family, social or other relationships would influence their conduct as a prosecutor. They should not act as a prosecutor or advise in cases in which they, their family or business associates have a personal, private or financial interest or association.

3.4 Prosecutors must not act as an advocate in any case in which their action or decision is the subject matter of litigation, or in which, for any other reason, they are likely to be called as a witness.

3.5 Prosecutorial discretion in deciding whether to initiate or continue a prosecution, in the selection of charges, in the acceptance of pleas and in any other matter, shall be exercised independently and impartially, in accordance with the law, and having due regard to the Code and all departmental policies currently in force. When

making such decisions, prosecutors must not allow themselves to be influenced by individual, sectional or political interests or media pressures.

- 3.6 Public prosecutors who exercise rights of audience in the higher courts are entitled ultimately to consult the Attorney General as guardian of the public interest if they have reason to doubt the propriety of any action or proposed action in a case proceeding in the higher courts for which they have responsibility. If an employed prosecutor considers that they are involved in such a matter, they must first discuss their concerns with their line managers before contacting the Attorney General.
- 3.7 Prosecutors must report to their line manager (or instructing prosecutor, if an external advocate) any improper attempt to influence their decision-making, or where any person does an act with the intention of attempting to pervert the course of justice. Prosecutors should also draw to the attention of their line manager or their instructing prosecutor any potential conflict of interest of which they are aware which could reasonably be perceived as affecting their independent judgment in any case of which they have conduct.

4 PROFESSIONAL CONDUCT IN THE CONTEXT OF CRIMINAL PROCEEDINGS

- 4.1 When exercising a right of audience before any court or conducting litigation in relation to any court proceedings, prosecutors have a duty to the court in question to act with independence in the interests of justice.
- 4.2 Prosecutors must maintain the highest standards of fairness and impartiality at all times. In particular, they must uphold the principle of a defendant's right to a fair trial as enshrined in Article 6 of the European Convention on Human Rights.
- 4.3 In relation to victims and witnesses, prosecutors must fulfil the obligations and responsibilities set out in the Victims' Code of Practice and The Prosecutors' Pledge and any other relevant guidance.

4.4 Prosecutors must discharge their duties to the courts, witnesses, defendants and their legal representatives, the police or other investigative agency, whether nationally or internationally, with respect and courtesy.

4.5 Prosecutors must perform their duties fairly, consistently, effectively and efficiently. Throughout the proceedings, including when giving pre-charge advice to investigators, prosecutors must:

- a remain impartial and objective;
- b when deciding whether to start or continue criminal proceedings, apply the Full Code Test as set out in the Code (except in those circumstances where the Threshold Test may properly be applied). Prosecutors must not start or continue a prosecution unless the requirements of the appropriate Test (whether the Threshold or the Full Code Test) are fully met;
- c in accordance with the law and the requirements of the Code, give due consideration to alternatives to prosecution;
- d subject to the requirements of a fair trial, consider the rights, views, legitimate interests, privacy and concerns of victims and witnesses, when their personal interests are, or might be, affected;
- e seek to ensure that victims and witnesses are informed of their rights, as far as they reasonably can;
- f having due regard to the rights of the defendant, prosecute firmly and fairly and not beyond what is indicated by the evidence;
- g bearing in mind the Court's discretion to exclude improperly obtained evidence, decline to use evidence reasonably believed to have been obtained through unlawful methods which constitute a grave violation of the suspect's or other person's human rights, against anyone other than those who applied such methods;

- h draw to the attention of the appropriate authority any instance where a public official may have committed a criminal offence or acted improperly in the course of a criminal investigation; and
- i render mutual legal assistance to the prosecution services and investigative agencies of other jurisdictions, in accordance with the law and in a spirit of mutual co-operation.

4.6 To ensure the fairness and effectiveness of prosecutions, prosecutors must:

- a endeavour to ensure that all reasonable enquiries are made and the results disclosed in accordance with law, whether that points towards the guilt or the innocence of the defendant;
- b endeavour to ensure that the facts are presented fairly and that all relevant authorities are drawn to the court's attention, whether they are in the favour of the prosecution or defence;
- c endeavour to ensure that evidence which is favourable to the defendant or which undermines the prosecution case is disclosed as soon as reasonably practicable in accordance with the law, the Attorney General's Guidelines on Disclosure and the requirements of a fair trial;
- d assist the court in the administration of justice and not deliberately, knowingly or recklessly mislead the court;
- e endeavour to ensure that the criminal justice process operates as expeditiously as possible, being consistent with the interests of justice; and
- f bring to the attention of the court any matters of law relevant to sentence in accordance with the Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise.

5 PUBLIC PROSECUTORS WHO HOLD JUDICIAL APPOINTMENTS

- 5.1 Public prosecutors who hold a judicial appointment will be subject to the terms and conditions of judicial appointment and to the Codes of Conduct applicable to their branch of the profession.
- 5.2 When employed prosecutors are appointed to judicial office, they carry out the duties and responsibilities of that office in their personal capacity and not as an employee of the Service. Prosecutors holding a judicial appointment are not accountable to the Service for their conduct or their decisions whilst acting in that capacity and the Prosecution Service does not have any part to play in their judicial decisions.

6 FAILURE BY EXTERNAL ADVOCATES TO OBSERVE THE STATEMENT OF ETHICAL PRINCIPLES

- 6.1 Failure by any external advocate instructed by a public prosecutor to adhere to the principles set out in this document may result in the public prosecutor withdrawing current instructions from them and not briefing that advocate again. Where the public prosecutor thinks it appropriate, any breach of this Statement of Ethical Principles by an external advocate will be referred to the appropriate professional regulator for its consideration. (This paragraph should be read in conjunction with paragraph 4.10 of The Farquharson Guidelines: The Role and Responsibilities of the Prosecution Advocate).
- 6.2 Any enquiry by an external advocate in relation to this Statement of Ethical Principles, or any request for further guidance in respect of areas of potential conflict, should be addressed to the public prosecutor from whom the advocate has received instructions.

7 REVIEW OF THIS STATEMENT

7.1 This Statement will be reviewed regularly to ensure that it continues to reflect the appropriate standards that can be expected of all those who practise as public prosecutors.

This Statement of Ethical Principles has been informed by

- Guidelines for the Role of Prosecutors (1990) – adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;
- Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors (1999) - International Association of Prosecutors as recognised and promulgated by the United Nations Commission on Crime Prevention and Criminal Justice in April 2008;
- Council of Europe Recommendation 19 (2000) on the Role of the Public Prosecution in the Criminal Justice System;
- The “Budapest Guidelines” (2005) – adopted by the Conference of Prosecutors General of Europe;
- The Code of Conduct for the Bar of England and Wales (2004);
- The Solicitors’ Code of Conduct (2007);
- The Code of Conduct and Supporting Guides to Good Practice issued by the Institute of Legal Executives (2008);
- The Farquharson Guidelines: The Role and Responsibilities of the Prosecution Advocate (2002);
- The CPS Code of Conduct; and
- The CPS Disciplinary Policy.

ANNEX 17 - CPS NATIONAL STANDARDS OF ADVOCACY

The CPS National Standards of Advocacy appear as a separate PDF document

ANNEX 18 - CPS DISCIPLINARY POLICY

The CPS Disciplinary Policy appears as an attached PDF document

ANNEX 19 CPS RECRUITMENT GUIDANCE

Guidance for Conducting Associate Prosecutor Recruitment CPS National Recruitment Centre

Contents

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Process Overview

Guidance on the Shortlist

Guidance on the Case Study

Guidance on the Interview

Standard Interview Questions

Appendix:

Suggested Questions

Job Description

Person Specification

Shortlist – scoring sheet

Case Study and Interview – scoring sheet

Introduction

The purpose of this document is to provide guidance on the recruitment of Associate Prosecutors.

The standardisation of the recruitment process for this role has been introduced for the following reasons:

- To ensure a consistent, fair and equitable process across the 42 Areas of the Crown Prosecution Service;
- To select an appropriate quality of candidate to undertake the AP qualification programme (Foundation and Advocacy courses); and
- To satisfy requirements for Associate Prosecutor membership of the Institute of Legal Executives and the award of rights of audience and rights to litigate (from 1 May 2011).

In order to achieve this, a number of steps have been taken:

- The Job Description and Person Specification for the role have been standardised;
- A consistent two stage assessment framework has been implemented; and

- National minimum standards have been set.

This document therefore contains information on the different stages of the process. It details what is expected of panel members, and provides guidance on how to complete the assessment documentation and uphold consistent national standards.

Note on the Recruitment Assessment Scale

The CPS uses a 1 -5 scale for assessing candidate performance in recruitment exercises. The ratings and definitions are as follows:

Rating	(1)	(2)	(3)	(4)	(5)
Evidence gathered	No evidence or irrelevant information provided.	Partial evidence with some relevant information.	Relevant information, minimum standards evident across most criteria measured	Minimum standard met, in addition has provided detailed relevant evidence across majority of criteria	Consistently provides detailed relevant evidence across all criteria measured.
Development needed	Needs to develop all areas	Needs to develop most areas	Needs some further development	Needs little further development	Needs no further development

Standardised Assessment Process – Overview

The assessment process consists of two stages:

Stage 1: Application Form Shortlist

Competencies Assessed:

- Leadership
- Communication and Negotiation
- Reasoning and Decision Making
- Specialist Skills, Knowledge and Experience

Standard:

- Minimum standard of 3 across the board
- Merit order to be produced using 1 – 5 ratings. Should candidates tie a decision should be made on highest score in the key competencies: **TBC**
- Candidates to be invited to final assessment at a ratio of 3 to 1

Stage 2: Final Assessment – Case Study Presentation and Interview

Competencies Assessed - Case Study Presentation:

- Communication and Negotiation
- Reasoning and Decision Making
- Specialist Skills, Knowledge and Experience
- Equality and Diversity Awareness and Management

Competencies Assessed - Interview:

- Leadership
- Achieving Results
- Planning and Organising
- Continuous Self Development

Standard:

- Minimum standard of 3 across the board
- Merit order to be produced using 1 – 5 ratings. Should candidates tie a decision should be made on highest score in the key competencies: **TBC**
- Candidates to be offered position in merit order.

Guidance on the Shortlist

You will be provided with candidates' supporting statements.

Applicants are required to provide examples addressing criteria under the following competencies:

- Leadership
- Communication and Negotiation
- Reasoning and Decision Making
- Specialist Skills, Knowledge and Experience

You are required to assess the evidence provided and score candidates in each of the above areas.

The minimum standard is a 3 in each competency.

This means that candidates are expected to provide satisfactory evidence for the criteria under each competency.

Candidates achieving this minimum standard, or above, should be placed in order of merit and invited to the final assessment. We recommend inviting 3 candidates for each available role.

Guidance on the Case Study

Candidates will be required to sit a case study, which is provided by the National Recruitment Centre from a library of standard exercises.

The case study will constitute a case file, which the candidate will be asked to present either as a guilty plea or an application for remand custody.

Following their presentation you should question candidates on the case study for a further 10 minutes.

This questioning must include questions on diversity related issues.

Suggested topics/lines of questioning on the presentation are as follows:

- The application of the Code for Crown Prosecutors in making a review decision
- Awareness of CPS policy on victims and witnesses
- The use of special measures
- Understanding of the Associate Prosecutor remit i.e. the Director's Instructions

- Dealing with unrepresented defendants e.g. what would you do differently

Guidance on the Interview

The interview should take the form of a competency based interview.

You are required to ask questions on the following competency areas:

- Leadership
- Achieving Results
- Planning and Organising
- Continuous Self Development

You are asked to select one or two standard opening questions for each competency.

For consistency, all candidates should be asked the same opening questions. However, you should then probe around the candidate's initial answer to elicit a full response.

Suggestions for standard questions are included in the appendix.

**Appendix: Associate Prosecutor
Standard Interview Questions**

Leadership

- *Takes responsibility for actions and decisions; consults appropriately.*
- *Instils confidence and works under own direction; successfully deals with pressures and demands.*

Tell us about a time when have you had to act in the absence of a manager?

- What challenges did this present?
- How did you go about it?
- What were the main demands?
- What did you learn?

When have others looked to you to lead or to take responsibility for a situation?

Give us an example when you have been solely responsible for dealing with a demanding task.

- What was the situation?
- What action did you take?
- Why did you take that action?
- What was the outcome?
- What would have been the potential impact had you not taken action in this situation?

Tell us about a time when have you had to work under your own direction.

- What were you required to do?
- How did you ensure you were working to the highest standard?

Tell us about a time when you have had to work under a high degree of pressure?

Tell us about a demanding situation when you have been required to deliver?

Achieving Results

- *Sets, maintains and achieves high quality standards in all circumstances.*
- *Supports and contributes to the delivery of the organisation's strategic aims and objectives.*

Tell us about a time when you have been required to produce high quality work under difficult circumstances?

Tell us about a deadline or objective that you have achieved.

- How did you plan to achieve this?
- How did you go about achieving the objective/deadline?
- How did you measure your progress?
- What were your desired outcomes?
- How did you measure your success?

How do you think that your current role contributes to the achievement of the strategic aims of the CPS?

- Tell us about a time when your actions have contributed to this aim?

How do you ensure that you understand the strategic aims of your department or the organisation?

- When have you personally contributed towards these?

Tell us about a strategic aim that you are currently working towards?

- What actions have you taken that have supported the delivery of this?

Planning and Organising

- *Prioritises a varying and sometimes demanding workload and manages own time effectively.*
- *Balances conflicting priorities and interests to deliver results.*

When have you had a number of conflicting priorities in your workload?

- How did you go about managing these?
- What action did you take to meet these priorities?
- Did you encounter any problems, if so how did you tackle them?
- What was the outcome?

When have you had to adjust or review your priorities in light of new information or an unexpected demand?

Tell us about a time when you have had a demanding workload to complete.

- o How did you approach this?
- o What did you take in to consideration when approaching your work?
- o How did you ensure that you completed all your tasks?

Tell us about a time when you have had to deal with a large workload that included a wide variety of tasks?

Continuous Self Development

- *Develops role knowledge and expertise through continual professional development.*

Tell us about something that you've learnt within the past year that has allowed you to better perform your role.

Tell us about when you have taken it upon yourself to develop your skills and knowledge.

- o How did you apply this knowledge in your daily job?
- o How has it improved your work?

How do you ensure that you are up to date with the knowledge and skills required to perform your role?

What do you do to ensure that you develop yourself within your role?

What do you think your responsibility is in terms of professional development?

- o Give us an example.

ANNEX 20 ASSOCIATE PROSECUTOR RIGHTS CONSULTATION RESPONSES AND ANALYSIS

ANALYSIS OF RESPONSES TO CONSULTATION ON PROPOSAL TO SEEK RIGHTS OF AUDIENCE AND RIGHTS TO CONDUCT LITIGATION FOR ASSOCIATE PROSECUTOR MEMBERS OF ILEX

Introduction

ILEX Professional Standards Ltd (IPS) issued a consultation on its proposal to seek Rights of Audience and Rights to Conduct Litigation for those members registered with ILEX in the Associate Prosecutor grade. Associate Prosecutor members of ILEX are employees of the Crown Prosecution Service (CPS) employed as Associate Prosecutors.

The consultation was issued on 17 February 2010 and the consultation period closed on 6 April 2010. However, where consultees asked for an extension it was granted to them.

The consultation paper was posted on the ILEX Professional Standards Ltd web site and a notice was placed in the Legal Executive Journal, which is sent to all members of ILEX, advising them of the consultation.

The consultation form was also posted directly to interested stakeholders. These included approved regulators and their associated regulatory bodies, consumer interest groups, voluntary membership groups and the Office of the Legal Services Ombudsman.

Responses

Responses were received from two regulatory bodies, 5 representative bodies and 2 independent bodies. Each of the responses has been analysed individually below.

The application had previously been submitted to the Ministry of Justice (MOJ). The MOJ staff analysed the application. Their feedback was picked up by other respondents and has therefore not been addressed separately.

A list of the consultees and respondents appear at the end of this document.

Analysis of Consultation Responses

1. Solicitors Regulation Authority (SRA)

The SRA responded to each question in turn. This analysis focuses on responses where it made a substantive comment. On the whole the SRA did not have any comments of

the nature of the rights being sought but were concerned that any new rights be introduced in a way that supported the delivery of high quality legal services to consumers. The SRA took the view that the CPS selection process for Associate Prosecutors was sensible and agreed that it should require candidates to demonstrate knowledge of competence in both the theory and the practical application of Associate Prosecutor (AP) duties.

The SRA agreed it was appropriate for the trial preparation course to be delivered and completed by face to face provision and that the assessment criteria were broad enough to assess competence in core aspects of trial preparation work. On the whole it took the view that ILEX was right to structure the Level 1 qualification in a way that focussed upon ensuring each individual had the requisite knowledge of the standard and quality of service they must provide and was equipped with the capability to achieve that standard through their advocacy work.

The SRA took the view that the mentoring scheme provided a useful resource for Level 2 APs. It commented that it will be important to have full buy in and commitment from the mentors being shadowed. IPS agrees that the CPS will need to ensure that mentors agree to providing appropriate mentoring to Level 2 APs. The CPS has trialled the Level 2 qualification course, which already requires the buy in of mentors. There have been no reported incidents of lack of co-operation by mentors.

The SRA had no other comments on the qualification course or assessment criteria. It noted the commitment of External Advisors appointed by IPS to inspect and moderate course provision and course material. The SRA took the approach that this was a sensible proposition.

The SRA agreed with the proposal that APs undertake 16 hours CPD and commented that this was consistent with the practice for legal professionals working in other jurisdictions. It commented that IPS could include a requirement that APs may be additionally required to attend other specific courses. IPS is aware of the issue and a disciplinary panel does have the power to direct that an AP undertake specific training. This mirrors the approach in respect of other members of ILEX. The CPS agreed that IPS should recommence courses to address conduct issues.

The SRA agreed with the proposals whereby the CPS would refer conduct matters to IPS as appropriate.

2. Bar Standards Board (BSB)

The BSB was supportive of IPS in seeking to put in place requirements for the qualification and competence of APs. It stated that care should be taken to ensure that IPS assures itself that the standards are met at all levels and that the qualification and roles are appropriately calibrated with existing qualifications and roles. IPS recognises

the importance of undertaking monitoring and inspection to ensure that standards are being met. In developing its qualification scheme IPS considered what skills an AP would require to undertake their functions.

The BSB was broadly supportive of the proposal that IPS would investigate the conduct of Associate Prosecutors and that the CPS would refer conduct matters to IPS.

The BSB commented that the standards set by IPS for APs would eventually need to be consistent with Advocacy standards being developed as part of the Quality Assurance of Advocates scheme. IPS is participating in the development work on that scheme and is aware that eventual standards will need to be consistent.

3. Legal Services Ombudsman (LSO)

The LSO had no specific comments to make other than to say that the consultation was a comprehensive document.

4. HMCPSI

HMCPSI made a general response which was informed by their recent experience of inspecting the CPS. In particular it had carried out a comprehensive review of the quality of CPS Advocacy and case presentation between 2008 and 2009. On the whole it found that its review confirmed many of the findings of the earlier area effectiveness and overall performance assessment reports.

HMCPSI raised its concern about disclosure decisions. It noted that the CPS' handling of unused material remained an aspect of concern which continued to raise issues of performance. It recommended that it should be specifically addressed by training, mentoring and quality assurance of decisions. The CPS and IPS are aware of the concern and the trial preparation course which will be completed by an AP1 covers the ability to identify unused material, state the test for disclosure and deal with ongoing disclosure issues. IPS takes the view that disclosure is appropriately covered within the course. Furthermore it is one of the criteria upon which candidates will be tested during the assessment of the trial preparation course.

IPS recognises the comment made by HMCPSI that a right of audience is being sought to enable AP2 to prosecute all proceedings involving adult and youth offenders except trials in either way offences. The position at present is that the rights of APs to prosecute trials is restricted through statute to summary-only non-imprisonable offences (section 7A of the Prosecution of Offences Act 1985). IPS has developed suitable course outcomes and assessment criteria to ensure that APs will be competent to undertake advocacy falling within their remit.

HMCPST commented that during their review of advocacy and case presentation the inspectors found the quality of presentation by APs to be generally good in the context of the work they undertake. It found that nearly 70% were assessed as fully competent or above which compared favourably against assessments of Crown Prosecutors and CPS Agents. It also added that APs were held in high regard within the CPS and by external stakeholders. It added that the results emphasised the importance of ensuring that only candidates with the right qualities were selected. HMCPST issued a word of caution that care must be taken to ensure that the scheme does not result in APs being deployed in cases beyond their competence. IPS recognises the importance of ensuring APs only work within their competence. It is a requirement of the ILEX Code of Conduct that a member declines to act in a case which is beyond their competence.

HMCPST commented that there was praise for the original foundation course undertaken by APs. It commented that it was highly regarded by candidates, trainers and externals. However, HMCPST found that APs were less complementary about the training for extended powers granted in July 2008. The CPS has now incorporated the July 2008 extended powers training into the AP foundation course placing greater emphasis on practical exercises. IPS recognised the importance of ensuring that training was suitable to ensure that candidates are competent to undertake advocacy. It has significantly developed the course outcomes to ensure that they will provide suitable competency for APs.

HMCPST commented that the quality assurance arrangements needed to be strengthened for newly designated APs. The CPS recognises the issue and has implemented quality assurance arrangements for all advocates presenting cases on its behalf through the Advocacy Quality Management Scheme and through CPS Core Quality Standards monitoring.

HMCPST also commented on the importance of ensuring that APs have easy access to CPS lawyers when they are in court and that they should not be pressurised into acting outside the scope of their responsibilities. IPS recognises the issues and will stress to APs that they must only act within their competence and within the scope of the rights afforded to them.

5. Bar Council

The Bar Council provided responses to each of the questions. They have been analysed below.

- **Q1** – The Bar Council commented that the rights would be exercised by people with no legal qualification or minimum academic, professional or vocational qualification or training. ILEX responds that the training proposed for APs in the ILEX Application will be sufficient to demonstrate competence. An AP should not

be required to have a minimum academic requirement if they are able to demonstrate competence to undertake the work through other means.

- The Bar Council commented that defendants were entitled to have their cases prosecuted by properly qualified prosecutors. ILEX recognises the issue and has ensured that its proposed qualification scheme will provide sufficient training and develop sufficient knowledge to enable APs to undertake the work that falls within their remit.
- The Bar Council also commented upon the status of APs and the salary to be paid to them. ILEX submits that status and salary should not be an issue provided that the rights are exercised by suitably trained and competent people.
- **Q2** – The Bar Council commented that there was no indication about how long an AP needed to prosecute at Level 1 before moving to Level 2 and how they would be monitored on the job. ILEX submits that the length of time served at AP1 grade is not a suitable criteria to determine whether a person should be moved on to the AP2 grade. Admission as an AP2 should be based upon competence and experience which will be assessed through the selection criteria and training and assessment scheme. The monitoring of AP1 performance will be carried out by the CPS through its usual appraisal and monitoring processes which include reviews through HMCSI Area and thematic inspections, the introduction of the CPS Advocacy Quality Monitoring Scheme and CPS Core Quality Standards monitoring.
- **Q3** – The Bar Council commented that it was unclear about the comment that APs will be suitably qualified because there was no formal academic training or legal qualification that was required of them. ILEX responds that suitably qualified means qualified in accordance with the criteria for selection and assessment of APs in accordance with the proposal set out in its application. Most of the proposed training courses conclude with an assessment which provides an assurance that an AP is suitably qualified to exercise the rights that will be granted to them.
- The Bar Council commented that the legal knowledge of candidates will not be separately assessed and therefore it was difficult to compare entry onto the AP1 course with other associated study and training. ILEX responds that other training courses, for example, law degrees, do not assess knowledge of law prior to commencement of the qualification process. Similarly APs' legal knowledge, although not formally assessed, will be developed after the selection process rather than being a prerequisite to selection. However, it should be noted that some knowledge will be shown by applicants as part of the case study presentation they are required to undertake during the selection process.

- **Q4** – The Bar Council commented that the selection criteria did not address the decisions APs would make as to charge, evidence and discontinuance. ILEX responds that the training courses themselves will develop candidates ability to understand evidence and legal issues rather than this being a pre requisite to selection.
- The Bar Council compared the proposals for APs against ILEX’s proposed application for litigation and advocacy rights for ILEX members. Under the ILEX members qualification scheme an applicant is required to have studied relevant ILEX subjects. However, it should be noted that as an applicant has shown knowledge as a pre-requisite on the ILEX litigation scheme they are not required to study those elements as part of the qualification scheme. Under the proposal for APs, as APs are not required to show legal knowledge as a pre requisite, they will study relevant aspects during the qualification scheme.
- **Q5** – The Bar Council commented that candidates will be unable to meet some of the entry criteria such as making decisions independently, having a demonstrable knowledge of criminal law and its application and skills in identifying evidential issues and omissions in drafting and communicating. It should be noted that these are skills that an AP would have developed while undertaking a caseworker role at the CPS. Where an applicant is unable to demonstrate these skills they will not be selected for AP training.
- **Q6** – The Bar Council commented that APs will be observing cases prior to commencement of the qualification course and they were concerned that they observed the correct approach. ILEX responds that the observation process is intended to provide a context for the AP training. APs will learn the correct procedure during their qualification courses and will be able to identify through that approach if a person were not following the correct procedure.
- **Q7** – The Bar Council commented that the consultation provided the course objectives for the foundation course but did not provide the course material. Under the proposals ILEX would receive course materials from the CPS as part of the accreditation process. It will rigorously assess the course materials to ensure that they will be sufficient to meet the course outcomes. This is the same approach as ILEX follows in respect of existing rights of audience qualification. The thoroughness of the accreditation process has ensured that candidates receive appropriate course material and suitable training. Feedback from candidates on those courses has been very positive in that respect.
- The Bar Council also commented that the foundation course covered important topics upon which candidates were not tested. ILEX submits that the foundation course does include an informal test which is used by the CPS to identify areas of

development. Furthermore, knowledge that candidates will gain from the foundation course will be formally tested in the context of the practical skills.

- **Q8** – The Bar Council commented that the contents of the trial preparation course were reasonable.
- **Q9** – The Bar Council commented that the trial preparation assessment framework did not provide an outline of the standards to be expected or comparison against the LPC or BVC. ILEX responds it has defined standards in the assessment material, however, the statements have now been developed further. ILEX adds that the assessment criteria are developed to ensure that a candidate is competent to undertake the specific activities that they will be authorised to undertake alone. The LPC and BVC are aimed at providing wider training to enable a solicitor or barrister to undertake a range of work. Therefore given the limited rights awarded to APs it is not possible to develop similar comparators.
- The Bar Council commented that it was unclear whether or not candidate assessments would be undertaken by an independent assessor. The advocacy assessments will be undertaken by an independent assessment organisation and the other assessments will be undertaken by the CPS. In both instances ILEX will monitor standards of assessments through its inspection visits and by moderation meetings taking place with external advisors.
- **Q10** – The Bar Council found that the contents of the advocacy skills course were reasonable.
- **Q11** – The Bar Council commented that while the course objectives and assessment framework for advocacy skills courses were laudable there was no information as to who would conduct the assessment, whether there will be ongoing monitoring of candidates following course completion or how the standards compared with trainee solicitors and pupil barristers. In response to these queries the assessment will be carried out by an independent assessment organisation or by the CPS and ILEX will monitor standards of assessment through its inspection visits and moderation meetings. The CPS will monitor candidates following completion of the courses through its usual appraisal and supervision processes. The CPS has introduced an Advocacy Quality Management Strategy that assesses the quality of advocates in court and a Core Quality Standard monitoring scheme whereby CPS Unit Heads dip sample case files each month to consider whether the prosecutor has complied with CPS Core Quality Standards. The Unit Head will consider thirty-four standards relating to the preparation and presentation of the case. Furthermore CPS Areas are subject to inspections by HMCPSI. These arrangements far exceed the monitoring of

other advocates. As mentioned earlier the CPS training cannot be compared with LPC and BVC courses due to the different levels of qualification.

- **Q12** – The Bar Council commented that the youth course was reasonable but it did not refer to an understanding of statutory sentencing provision and issues arising where the youth appears with an adult offender. ILEX has revisited the course outcome and notes that the issues relating to a youth appearing with an adult co-defendant are covered in the course objectives for the youth court. Issues relating to sentencing and youths are covered during the foundation course. However, we have now also added them into the Youth Course.
- **Q13** – The Bar Council commented that no information was provided about the youth court assessment, in particular whether candidates would have prior notice of the exercise. Candidates will be given sufficient time to prepare the case correctly. It is likely that they will either receive the exercise for the skills assessment the night before the assessment is due to take place or on the day of the assessment. ILEX submits that this is a reasonable approach and would reflect practice whereby an AP would be given the cases before they were due to appear in court, and therefore be allowed sufficient time to prepare for cases.
- **Q14** – Overall the Bar Council commented that there was no provision within the AP1 assessment structure or content for consideration of case law and that it lacked academic rigor, independent source and legal reasoning based on case law. ILEX submits that the courses cover case law to the extent necessary for APs. Core legal training will be provided during the foundation course which then forms the basis of the subsequent skills courses and assessments. However, case law training has been specifically added to course outcomes to provide clarity in response to this point.
- The Bar Council also commented that no information was provided as to the qualification training period, contact time between mentor and trainee or structure to that contact. The total time taken to qualify as an AP1 will be in the region of 12 weeks of which 8 weeks will involve observations and contact with the mentor, with the remaining time taken by courses. The total time taken to qualify as an AP2 will be in the region of 10 weeks of which 8 weeks will involve observations and contact with the mentor. The observation grids now clarify the purpose of observations.
- **Q15** – The Bar Council raised its concern that an AP may observe another AP undertaking bail hearings. It commented that there was nothing in place to ensure that the trainee observed a suitably qualified, experienced and competent person. ILEX responds that the person being observed will have been assessed by the CPS as being qualified and competent to exercise the rights that the

trainee AP is observing. Therefore they may be the most suitable person to be observed.

- **Q16** – The Bar Council commented that the criteria for the bail course was reasonable and fair.
- **Q17** – The Bar Council commented that no information was provided as to who would carry out the assessment for the bail courses or whether candidates will have prior notice of the practical exercises. The CPS will assess the bail course. The assessments will be subject to moderation and inspection by ILEX. The candidates will have sufficient time to prepare for the assessments. They are likely to receive the assessment on the day of the assessment to reflect what would happen in practice in bail cases.
- **Q18** – The Bar Council commented that the jump between AP1 and AP2 was not reflected in the selection process. They stated that there was no minimum qualification or experience required of candidates. In particular they commented that the practical exercises did not give any indication as to a candidate's ability to understand the law or make decisions based on evidence and admissibility. ILEX submits that appropriate training of the law will be provided during the AP2 foundation course. The course outcomes have been amended to clarify that they include law, procedure and case law.
- **Q19** – The Bar Council commented that the AP2 mentor must be qualified, experienced and be a competent prosecutor. ILEX responds that a person prosecuting on behalf of the CPS will be competent and suitably experienced.
- **Q20** – The Bar Council commented that the Level 2 foundation course outcomes were laudable. However, it added that there was no assessment regime to ensure that a candidate had the core knowledge and skill relating to fundamental legal issues and principles. ILEX responds that core knowledge will be assessed in the content of the advocacy skills assessments. In particular during the opening speech candidates will be required to identify relevant legal, factual and evidential issues.
- **Q21** – The Bar Council found that the course outcomes for the advocacy skills course were fair and reasonable.
- **Q22** – In respect of the advocacy course assessment criteria the Bar Council commented that there was no information as to what was satisfactory or good compared with other assessment of academic and vocational training. ILEX responds that the assessment of good and satisfactory has been set out in the introduction to the AP2 assessment criteria. A candidate who is assessed as good will be one who significantly exceeds the standard. A candidate assessed

as satisfactory will be someone who meets the standard. The assessments statements have, however, been clarified.

- **Q23** – The Bar Council commented that the flaw with the qualification lay with the issue that APs could qualify without meeting basic academic levels. ILEX responds that although an AP is not required to have pre-existing academic qualification they will be academically trained to the level and extent required to exercise the rights of APs.
- **Q24** – The Bar Council commented that no information was provided about the external organisations who will carry out the assessment of candidates. ILEX has not provided details of external assessors by name because they will be accredited by the CPS against criteria to undertake the assessment. ILEX will receive details of the assessors as part of the application by the CPS for accreditation to run the qualification courses. At that stage ILEX will be able to determine the suitability of the assessor.
- **Q25** – The Bar Council commented that it was unclear who would assess applications for accreditation. They added that IPS was not independent given that ILEX was promoting the scheme for its members. ILEX responds that IPS, in conjunction with its Admissions and Licensing Committee and external advisors will carry out the assessment of course provision and materials produced by the CPS. IPS is the independent regulatory body for ILEX members. Furthermore the external advisors will be independent of ILEX and IPS.
- **Q26** – The Bar Council commented that the CPD requirement was appropriate but was concerned that only 8 hours CPD needed to be undertaken in criminal practice. ILEX responds that this approach is reasonable and mirrors the approach taken in respect of all ILEX members.
- **Q27** – The Bar Council took the view that it was right that APs are bound by the same standard of conduct as other prosecutors.
- **Q28** – The Bar Council commented that it was unclear whether IPS would share with the CPS any information about complaints made to it. ILEX has a Memorandum of Understanding in place with the CPS which covers the requirement that complaints information received at IPS will be shared with the CPS.
- **Q29** – The Bar Council agreed that the CPS should be obliged to refer conduct matters to ILEX.

6. Young Barristers Committee (YBC)

The YBC endorsed the response of the Bar Council. It added that prosecutors who have no formal legal qualification or training would be able to present cases. The YBC expressed its concern that they cannot guarantee the same service to the public as a legally qualified barrister or solicitor. It raised its concern that the extension of AP1 powers was another step towards de-lawyering the magistrates and youth courts. ILEX responds that the proposals in its application represent a suitable and proportionate route to qualification as an AP addressing the skills and knowledge necessary to undertake that work.

The YBC argued that the public interest needed to be considered when extending the review powers to APs. Parliament has already identified that APs can exercise review powers. Although the review powers contained in the ILEX Application are wider than APs currently exercise ILEX will ensure that APs are suitably competent to exercise those powers. The YBC commented that the AP powers were being extended to enable costs to be cut. ILEX submits that the extension is suitable and proportionate and will ensure that a suitably qualified person exercises the right.

The YBC commented that consideration had not been given to cases which are unsuitable for APs to deal with. ILEX submits that the Code of Conduct requires APs to only undertake cases that they are competent to undertake. Where an AP encounters a case which they feel is beyond their competence they will be required to stop dealing with it.

The remainder of the comments made by the YBC had been addressed in the response to the Bar Council.

7. Criminal Bar Association (CBA)

The CBA stated it did not support ILEX's proposals. It commented that the majority of the work in the magistrates and youth courts would be carried out by those without formal legal qualifications. ILEX has addressed this point in respect to the Bar Council response. It submits that suitable competence will be assured through the knowledge and skills training provided to APs.

The CBA stated that there was insufficient information regarding the training and supervision of APs. ILEX responds that the course outcomes have been set out in the Application and consultation and have been commented upon by other respondents.

The CBA added that it was concerned there will be an increased risk of miscarriages of justice and a loss of confidence in the effective and fair prosecution of cases. Without further information ILEX is unable to provide any response to this comment.

- **Q1** – The CBA makes responses previously made by the YBC and the Bar Council. ILEX responds that APs will be suitably qualified and trained to exercise the rights appropriate to their remit. Where a case is complex and an AP finds that they do not have the competence to undertake it they will be required through the ILEX Code of Conduct to decline from dealing with it.
- **Q2** – An AP1 will not be entitled to move to an AP2 grade on the basis of a number of years served at AP1 grade but upon an assessment of competence to move onto that grade where a vacancy has arisen.
- **Q3** – The selection process for APs will not involve an assessment of their knowledge of the law because that knowledge will be developed in the context of the courses that AP1s and AP2s will undertake.
- **Q4** – The CBA takes the view that the person specification criteria are fair and reasonable for AP selection processes. However, they added that it did not include the quality required to act as a lawyer and advocate making sound judgments based on a sound understanding of law and procedure. Again ILEX submits that appropriate knowledge of law and procedure will be developed through the subsequent training courses.
- **Q5** – The CBA commented that it was unclear how knowledge and experience can be shown at the AP1 selection process when a person did not have a legal qualification. The CBA submitted that the criteria were not realistic. The CPS has been assessing existing APs against the criteria, who have been able to evidence their achievement against the criteria. Therefore the criteria are realistic and have been shown to be achievable.
- **Q6** – The CBA expressed its concern that there was no requirement for the AP mentor to be a fully qualified lawyer. ILEX submits that the mentor should be the most suitable person to undertake that role. A requirement to be a fully qualified lawyer may be unsuitable, particularly in the context of the rights that an AP is required to observe.
- **Q7** – The CBA commented that the foundation course content was not provided. ILEX will assess the content of courses as part of its accreditation process. A copy of the index to the manual appears in the application.
- The CBA also commented that the knowledge gained on the foundation course will not be tested. The knowledge will however be tested in the context of the practical skills assessment which takes place during the AP1 assessments. There will also be an informal test on the foundation course which will be used to identify areas of development.

- **Q9** – The CBA found that the course objectives for the trial preparation course were reasonable. It made the same comments about the assessment framework that had been made by the Bar Council and addressed earlier.
- **Q11** – The CBA commented that the aims and objectives of the advocacy skills course were reasonable. It also made the same comments about the assessment which had been made by other respondents.
- **Q13** – The CBA found that the aims and objectives of the youth court were reasonable. It made the same comment made by other respondents as well.
- **Q14** – These comments have been made earlier.
- **Q17** – The comments about the bail course assessments had been made by earlier respondents and had been addressed previously.
- **Q18** – The CBA stated that there was no criteria as to how an AP1 became experienced to move onto the AP2 stage. ILEX submits that applicants for AP2 will be assessed against the selection criteria which set out the requirements that a person should be able to meet to move on to that stage as a vacancy arises. The CBA also commented that the presentation stage for AP2 required only a remand application and opposing a bail application. It commented that this will not provide an indication of the applicant’s ability to prosecute cases properly. ILEX submits that the presentation stage is intended to be used to select candidates. The formal assessment of their ability to exercise the AP2 rights will be carried out during the course of the subsequent training and assessment, most importantly the advocacy skills course. If a candidate is assessed as not competent during the advocacy skills course assessment they will not qualify as an AP2.
- **Q19** – This comment had been made by previous respondents.
- **Q20** – This comment had been made by previous respondents.
- **Q22** – This comment had been made by previous respondents.
- **Q23** – The CBA was concerned that a person without a formal legal qualification will be able to deal with the same issues of law, evidence and procedure as those conducted in the Crown Court. ILEX submits again that an AP will be assessed as competent to undertake those activities before they are authorised to do so.
- **Q25** – This comment had been made by previous respondents.
- **Q26** – This comment had been made by previous respondents.

- **Q29** – This comment had been made by previous respondents.

8. FDA

The FDA is the union for senior managers and professionals in public service.

The FDA was opposed to the proposals.

- **Q1**- The FDA submitted that the proposals undermine the concept of quality justice by removing qualified solicitors and barristers from representing the Crown. ILEX submits that the aim is not to remove solicitors and barristers unnecessarily but to ensure that the most appropriate person exercises the rights.

The FDA submitted that the proposals undermine the value of the role of qualified employers within the CPS. However, it has not provided any further information in relation to this submission.

The FDA made the same comments about the skills not being commensurate with the academic and vocational skills of barristers, solicitors or ILEX Fellows. ILEX submits that the skills of APs will be suitably developed to enable them to exercise the rights that they are being granted.

The FDA added that the rights exceeded rights granted to Crown Prosecutors and came close to rights granted to senior Crown Prosecutors and Crown Advocates. APs have the statutory powers of Crown Prosecutors in a defined range of proceedings. AP powers do not therefore exceed the powers of a Crown Prosecutor. Internal CPS policy guidance limits the powers of a Crown Prosecutor depending on experience.

The FDA made the same comment about the de-lawyering of courts as made by other respondents.

- **Q2** – The FDA opposed some of the rights on the basis that they were presently reserved to senior Crown Prosecutors and Crown Advocates. They opposed on the basis that the new rights would be exercised by people with no minimum recognised qualification, experience or practice. ILEX submits that APs will exercise rights for which they will have been suitably trained and for which they will have been assessed as being suitably competent.
- **Q3** – The FDA raised its concern that IPS would not be scrutinising the recruiting of APs, which will be based upon completion of a form and a limited interview. IPS responds that the AP selection process is comprehensive and fully compliant with Civil Service guidelines. CPS recruitment processes are also subject to audit and

review. In addition to this IPS will have an oversight role whereby the CPS will need to satisfy IPS that the criteria for the selection of candidates is adhered to. It should be noted that the selection will also involve a role play exercise rather than just an interview as suggested by the FDA.

- **Q4** – The FDA was concerned that the CPS would be able to change the selection criteria without notifying IPS. The CPS will need to work within the ambit of the criteria included in this application. It is aware that any revisions would require consideration by IPS, who would need to seek LSB approval, if necessary.
- **Q5** – The FDA was concerned that the selection process was likely to favour someone who could perform on the day over someone who may possess relevant skills. ILEX submits that it should be noted that in addition to the selection process candidates will proceed onto the courses which will require assessment as well providing a number of opportunities to ensure the competence of candidates.
- **Q6** – The FDA was concerned that insufficient detail had been provided about the content, length, depth of study or assessment for the pre-course work. The FDA commented that similar amounts of time were required by solicitors and barristers as part of their CPD requirements. ILEX submits that this pre-course work is required to be undertaken by candidates before commencing the qualification process. They too will be required to undertake CPD subsequent to designation as an AP.
- **Q7** – The FDA took the view that a 5 day Foundation course was insufficient to equip someone to undertake criminal litigation work, where they had no prior academic or vocational training. ILEX responds that it should be noted that the Foundation course is one of many courses to be undertaken by APs as part of the qualification process. The course focuses on what is necessary to qualify and exercise the rights of an AP.
- **Q8** – The FDA submitted that as APs have no formal legal qualifications or training an internal CPS assessment may be inadequate. ILEX submits that again the internal assessment is focused upon what is necessary to exercise the rights of an AP whereas a solicitor or barrister would have been trained in a range of activity including contentious and non-contentious work, a large amount of which would be unnecessary to exercise the role of an AP.
- Course criteria and assessments – the FDA responded to questions on the course criteria and assessments that there was insufficient information provided. ILEX is concerned about the comments as the consultation paper included the course outcomes and assessments criteria. Other respondents have commented on those documents.

- **Q12** – The FDA was opposed to allowing APs to undertake uncontested youth bail applications. They compared the position to Crown Prosecutors and senior Crown Prosecutors who are required to undertake a 2 day youth specialist course and 9 hours CPD before being authorised to present uncontested youth bail applications. However, the CPS is unaware of the 2 day course or CPD requirements for Crown Prosecutors mentioned by the FDA. The CPS has a number of obligations in relation to the considerations that apply in the prosecution of youth offenders. The deployment of APs in youth courts will fully comply with those obligations and it will ensure that APs are fully trained to act competently.
- **Q18** – The same comments have been made in relation to AP2 selection as AP1at Q5
- **Q19** – The FDA took the view that the mentoring arrangements for AP2 were less than the existing provisions for APs. ILEX disagrees with this view. The mentoring arrangements are sufficient and will be supported by training and assessment.
- **Q24** – The FDA was concerned that there was insufficient external scrutiny and undertakings from the CPS about the consistency of its training. ILEX submits that the CPS will be required to make an application to IPS for approval of its qualification course and assessment material. IPS will scrutinise the materials to ensure it meets required outcomes and there will be inspection and monitoring visits undertaken by IPS and its external advisers to ensure that standards of delivery are being met. It is submitted that this represents a suitable and proportionate mechanism to ensure that standards are being met.
- **Q26** – The FDA responded that there was nothing upon which APs would build their CPD knowledge and an alternative might be completion of portfolios for submission to an accredited mentor or completion of refresher courses. ILEX submits that the CPD courses will build upon the existing knowledge that APs will have developed. APs will identify appropriate activities with their managers. They may involve participation in formal courses, self-study, writing presentations and job shadowing.
- **Q27** – The FDA were concerned that the disciplinary sanctions of IPS were insufficient because there was no provision to strike off an AP. All members of ILEX, including APs, are subject to the Investigation, Disciplinary and Appeal Rules of IPS. Under these rules the Disciplinary Tribunal can make an Order to exclude a person from membership of ILEX. An exclusion order made against an AP would have the affect of preventing them from exercising the powers of an AP.

9. Justices Clerks Society (JCS)

The JCS submitted a letter to IPS. Although its letter was headed Advocacy and Litigation Rights for APs it commented upon ILEX's other consultations seeking litigation rights for ILEX members.

10. The Law Society

The Law Society submitted a letter in response to the consultation.

The Law Society was pleased to see that APs will be subject to external regulation. It was content with the regulatory system, including the Code of Code for APs.

The Law Society commented that the post qualification supervision arrangements include that the supervising Crown Prosecutor be available to be contacted at all times in the course of the Court session. CPS guidance to Chief Crown Prosecutors on deployment and supervision of APs states that a suitably experienced Crown Prosecutor must always be available to provide guidance and assistance while the AP is at court in case the need arises. The Crown Prosecutor should either be present at court or readily contactable by telephone.

The Law Society also raised its concerns that a person could qualify as an AP2 without any academic or legal qualification. This comment has been made by previous respondents as well. ILEX submits that the APs will be suitably trained and qualified to exercise the rights that all within their remit.

ANNEX 1

LIST OF RESPONDENTS

Solicitors Regulation Authority

Bar Standards Board

Legal Services Ombudsman

HMCPST

Bar Council

Young Barristers Committee

Criminal Bar Association

FDA

Justices Clerks Society

Law Society

LIST OF ORGANISATIONS TO WHOM CONSULTATIONS WERE SENT BUT DID NOT RESPOND

Council for Licensed Conveyancers

Association of Law Costs Draftsman

Intellectual Property Regulation Board

Chartered Institute of Patent Agents

Institute of Trade Mark Attorneys

Which?

Magistrates Association

NACAB

ILEX Professional Standards consultation: “Proposal to seek rights of audience and rights to conduct litigation for associate prosecutor members of ILEX”

Response from the Solicitors Regulation Authority

Introduction

1. The Solicitors Regulation Authority (SRA) is the independent regulatory arm of the Law Society for England and Wales. We regulate individual solicitors, certain other lawyers and non lawyers with whom they practise, solicitors’ firms and their staff.
2. We welcome the opportunity to take part in this consultation, and have set out some comments below.

SRA comments

Q1. ILEX seeks rights to conduct litigation and rights of audience for Associate Prosecutor Members. Do you have any comments on the rights sought? If so, please set them out.

3. We do not have any comments on the nature of the rights being sought for ILEX’s Associate Prosecutor members; we are however concerned that any new rights afforded to Approved Regulators are introduced in such a way that supports the delivery of high quality legal services to consumers, and in a way that continues to promote strong and effective consumer protection.

Q2. ILEX proposes that the rights will be awarded through two Certificates: Level 1 and Level 2. Do you have comments on the proposed split between the two Certificates? If so, please set them out.

4. We do not have any comments on the proposed split.

Q3. Do you have any comments on the CPS selection process? If so, please set them out.

5. The selection process, as described at pages 7 and 8 of the consultation paper, seems sensible.

Q4. Do you have any comments on the proposed competencies for the Associate Prosecutor selection process? If so, please set them out.

6. We do not have any comments on the competencies set out in Appendix 1.

Q5. Do you have any comments on the selection process for Associate Prosecutors at Level 1? If so, please set them out.

7. We agree that the Level 1 selection process should require applicants to demonstrate knowledge of competence in both the theory and the practical application of Associate Prosecutor duties.

Q6. Do you have any comments on the pre-course work required to be completed by Associate Prosecutors? If so, please set them out.

8. We do not have any specific comments on this.

Q7. Do you have any comments on the contents of the Foundation course? If so, please set them out.

9. We do not have any specific comments on the Foundation course contents or objectives.

Q8. Do you have comments on the contents of the Trial Preparation course? If so, please set them out.

10. We agree it is appropriate for the Trial Preparation course to be delivered and completed face-to-face, as this will help to demonstrate to participants the reality of legal services provision and in turn the level of competence and knowledge required on their part.

Q9. Do you have comments on the assessment criteria for the Trial Preparation course? If so, please set them out.

11. The assessment criteria seem broad enough to assess competence in the core aspects of trial preparation work.

Q10. Do you have comments on the course criteria for the Advocacy Skills course? If so, please set them out.

12. We do not have any specific comments on the Advocacy Skills course criteria.

Q11. Do you have comments on the assessment criteria for the Advocacy Skills course? If so, please set them out.

13. We do not have any specific comments on the Advocacy Skills course assessment criteria.

Q12. Do you have comments on the course criteria for the Youth course? If so, please set them out.

14. We do not have any specific comments on the course criteria.

Q13. Do you have comments on the assessment criteria for the Youth court? If so, please set them out.

15. We do not have any specific comments on the assessment criteria.

Q14. Do you have any comments on the structure or content of the Level 1 qualification? If so, please set them out.

16. We agree that ILEX / IPS are right to structure the Level 1 qualification in such a way that it focuses on ensuring each qualified individual has the requisite knowledge of the

standard and quality of service they must provide, and is equipped with the capability to achieve that standard through their advocacy work.

Q15. Do you have any comments on the observation grid for bail hearings? If so, please set them out.

17. We have no comments on the bail hearings observation grid.

Q16. Do you have any comments on the criteria for the Bail courses? If so, please set them out.

18. We have no comments on the proposed bail courses criteria.

Q17. Do you have any comments on the assessment criteria for the Bail courses? If so, please set them out.

19. We have no comments on the proposed bail courses criteria.

Q18. Do you have any comments on the selection process for Level 2 Associate Prosecutors? If so, please set them out.

20. We agree that the format of the Level 2 selection process could in essence mirror the Level 1 selection process.

Q19. Do you have any comments on the observation and mentoring arrangements for Level 2 Associate Prosecutors? If so, please set them out.

21. The mentoring scheme described in the consultation paper should be a useful resource for Level 2 applicants, although it will be important to have full buy-in and commitment from the mentors themselves to be shadowed.

Q20. Do you have any comments on the course outcomes for the Level 2 Foundation course? If so, please set them out.

22. We agree that it is right for the course outcomes described in Appendix 6 of the consultation paper to focus on requiring Associate Prosecutors to become entirely comfortable and knowledgeable about the professional standards expected of them.

Q21. Do you have any comments on the course outcomes for the Advocacy Skills course? If so, please set them out.

23. The course outcomes focus on the different stages involved in trials, and as such should require participants to demonstrate clearly their competence and capability in managing and concluding a trial on behalf of their client.

Q22. Do you have any comments on the assessment criteria for the Advocacy Skills course? If so, please set them out.

24. We have no specific comments on the assessment criteria.

Q23. Do you have any comments on the content or structure of the Level 2 qualification? If so, please set them out.

25. We have no comments on this.

Q24. Do you have any comments on the process by which IPS will accredit the CPS to deliver courses? If so, please set them out.

26. We have no specific comments on the proposed accreditation role for IPS.

Q25. Do you have any comments on the oversight and monitoring role to be undertaken by IPS to ensure standards of course delivery and assessment are maintained? If so, please set them out.

27. We note the commitment in the consultation paper for external advisors to be appointed by IPS to inspect and moderate course providers and their materials, and we agree that this is a sensible proposition.

Q26. Do you have any comments on the number of hours CPD Associate Prosecutors are required to undertake? If so, please set them out.

28. We agree that the proposed 16 CPD hours for Associate Prosecutors is consistent with practice for legal professionals working in other jurisdictions. The final version of this requirement could include a reference to the fact that IPS may additionally require individual Prosecutors to attend other specific courses as required (for example, following a moderation or complaint that had flagged up a particular training need.)

Q27. Do you have any comments on the standards of conduct that IPS expects Associate Prosecutors to observe? If so, please set them out.

29. We have no comments on the approach described on pages 17 and 18 of the consultation paper.

Q28. Do you have any comments on the arrangements by which IPS will investigate the conduct of Associate Prosecutors? If so, please set them out.

30. The approach set out in the consultation paper seems appropriate.

Q29. Do you agree that CPS should be expected to refer any conduct matters to IPS as appropriate? If not, please state why.

31. Yes. This two-way information exchange is essential to support IPS in delivering effective consumer-focused regulation, and in ensuring standards of practice remain sufficiently high within the court service and within the wider legal services framework.

BAR STANDARDS BOARD

ILEX Professional Standards – Proposal to seek rights of audience and rights to conduct litigation for associate prosecutor members of ILEX Bar Standards Board response to consultation

The Bar Standards Board (BSB) welcomes the opportunity to respond to the consultation issued by ILEX Professional Standards (IPS) regarding its proposal to seek rights of audience and rights to conduct litigation for associate prosecutor members of ILEX.

The BSB has several general comments to make.

Education and Training

The BSB is supportive of IPS seeking to put in place requirements regarding qualifications and competencies for this extension in practice for ILEX members. Care should be taken to ensure that the IPS assures itself that standards are met at all levels while undertaking this work and that all qualifications and roles should be appropriately calibrated with existing qualifications and roles.

Complaints and Discipline

The BSB is broadly supportive of the proposal that IPS will investigate the conduct of Associate Prosecutors. It strongly supports the expectation that the CPS should refer any conduct matters to the IPS and that any exclusion from membership of ILEX should result in the Associate Prosecutor losing their rights to conduct litigation or exercise rights of audience.

QAA scheme

The BSB has an interest in use of CPS Advocacy Standards and linkage to the joint work being undertaken by regulators on the QAA scheme. There is a considerable amount of work being undertaken at present on advocacy standards by the Joint Advocacy Group. Any standards set by IPS for associate prosecutor members must, in the BSB's view, be consistent with the final advocacy standards being developed across all regulators.

Bar Standards Board
1 April 2010



**PROPOSAL TO SEEK RIGHTS OF AUDIENCE AND
RIGHTS TO CONDUCT LITIGATION FOR
ASSOCIATE PROSECUTOR MEMBERS OF ILEX**

CONSULTATION RESPONSE FORM

ABOUT YOU

Please provide the following information about you. Where you are responding on behalf of an organisation please provide a contact name and telephone number.

Your name: Stephen Wooler

Name of organisation: HMcpsi

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Post code: SW1H 9HP

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If you are responding on behalf of an organisation outline the type of organisation for which you provide a response (eg representative body, regulatory body etc)

Inspectorate

Do you consent to IPS publishing your response
.....**Yes / No**

Thank you for forwarding details of the consultation in respect of your proposal to become a regulator for rights of audience and litigation rights for CPS associate prosecutors.

As you will appreciate, our role as the Inspectorate of the CPS is to report upon its performance in a number of respects. These include presentation of cases in courts and deployment of advocates including associate prosecutors. HMcpSI has not been directly involved in development of the policy to introduce associate prosecutors within the CPS or in developing their rights of audience or to conduct litigation. As such our response is in more general terms and is informed by our recent experience of inspecting the CPS. The proposals very much reflect the existing situation with regard to training and we are mindful that the CPS itself will retain primary responsibility for the selection and training of future APs.

We have commented in full area inspection reports, overall performance assessments and in the recent London Borough assessments about the quality of advocacy including case presentation by APs and their deployment in court including support arrangements. Towards the end of 2008 and the beginning of 2009, HMcpSI carried out a comprehensive review of the quality of CPS advocacy and case presentation. The report was published in July 2009.

The methodology included observation in courts in each of eight CPS areas selected according to various criteria which included size of caseload and relative numbers of the different advocates. The review confirmed many of the findings of earlier area effectiveness and overall performance assessment reports.

Because our comments are in general terms, we set them out here rather than in response to individual questions, although part of our response is in direct reference to question 1, as indicated.

Extension of litigation rights - Q 1

The principal considerations must be the skill and ability of individual APs to undertake the level of advocacy and litigation in question. This is dependent to a large extent on the efficacy and robustness of the selection, application and training process- something which applies equally to solicitors and barristers. In respect of the specific litigation rights, these are generally part of the normal preparation and review functions inherent in casework and will develop in individuals as they gain greater advocacy experience.

A particular area of risk is in respect of disclosure decisions. These are usually taken by lawyers but the law requires that they be kept under review including by the trial advocate. Although there have been recent improvements overall in the CPS handling of unused material, it remains an aspect of casework which continues to raise issues of performance. It needs to be specifically addressed by training, mentoring and quality assurance of decisions generally and it will be important that associate prosecutors have the necessary

understanding and skills to recognise when a change of circumstances in the course of a trial requires additional disclosure.

The consultation document, at paragraph 20, indicates that advocacy rights under a level 2 certificate include prosecuting "all proceedings against all adult and youth offenders, including bail applications and applications in relation to bail, where the CPS is the prosecuting authority **except trials in either-way offences**". This appears to conflict with a statement made by Mike Kennedy, CPS Chief Operating Officer, in a letter sent in response to an article in the Law Society's Gazette that "APs do not have the statutory power to prosecute trials in **imprisonable offences** and the CPS has no plans to seek such powers from Parliament". Restricting advocacy rights to the former category of cases does not exclude completely the latter. We think there is a need for clarity.

Quality of case presentation

During the thematic review of advocacy and case presentation, inspectors found the quality of presentation by APs to be generally good in the context of the work then undertaken. Our review pre-dates the most recent extension of AP rights. Nearly 70% of those observed were assessed as fully competent and above. This compared favourably with assessments of Crown Prosecutors and CPS agents (usually junior barristers) in the same exercise. APs are held in high regard within CPS itself and external stakeholders are very positive in their assessments regarding them as generally competent to excellent.

These results are encouraging but emphasise the importance of the selection criteria and application process in ensuring that only those candidates with the right qualities are proposed. There may be sound business reasons for deploying APs within the extended rights they can now enjoy but care must be taken that it does not result in individuals being pressured into putting themselves forward to handle cases beyond their experience. That was a significant issue in relation to the development of crown advocacy.

Deployment of APs

There remain some wide variations in areas from 11% deployment of APs in court to 35.7%. There are also variations in AP court loads from 20 cases to between 40-50 (usually London courts). Nevertheless, the CPS has worked well so far with the local courts to facilitate deployment of APs so that their usage is maximised. This will be a crucial factor in the success of the usage of the extended rights although the Summary Trials Pathfinder Project report has been positive on this aspect. We are not however in a position to comment on the validity of its findings.

Training

There is praise for the original foundation course for DCWs which was identified as a strength. It was highly regarded by candidates for designation, trainers and externals.

During the thematic review, APs were less complimentary about the training for extended powers granted July 2008. The course was considered to be too theory based with not enough emphasis on practical aspects. At the same time, national training was being piloted in pathfinder areas for APs wishing to undertake trials. The Pathfinder project report was more positive about the training and we understand that there have been some changes to take account of concerns of APs. These include a greater focus on practical exercises and witness examination techniques.

Post qualification competence

There is no national system for quality assuring advocacy at any level. This has been the subject of comment in area inspection reports as well as the advocacy report. There are mentoring arrangements for newly designated APs. In our view these do need to be strengthened. Most areas have only informal arrangements whereby lawyer managers observe advocates, including APs, for appraisal purposes and actively seek feedback from magistrates and DJs.

The arrangements for supervising APs set out in paragraph 90 of the consultation document do not go into detail but effective monitoring requires a consistent and regular approach which also ensures that proper and immediate feedback is provided.

The process of supervision also requires appropriate arrangements to support APs in court. It is important to ensure that they have easy access to a CPS lawyer to assist with unforeseen and difficult legal questions without unnecessary disruption to the court. Arrangements should also ensure that they are not pressured into acting outside the scope of their responsibilities. Although APs have generally expressed satisfaction with local arrangements in this respect, there are some instances when it has been difficult to seek assistance promptly.

Conclusion

We have not gone into detail about the proposals as already indicated. The arrangements for selection, training, assessment, course accreditation and conduct of APs are comprehensive and have been developed, tested and revised where necessary as part of the Pathfinder project. This will no doubt be a continuing process and one to which HMcpso will contribute, as appropriate.



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**CONSULTATION RESPONSE FORM
ABOUT YOU**

Please provide the following information about you. Where you are responding on behalf of an organisation please provide a contact name and telephone number.

Your name:

Name of organisation: *The Bar Council*

**Address: *The General Council of the Bar,
289-293 High Holborn, London.***

Post code: *WC1V 7HZ*

Telephone no. *020 7242 0082*

**Email JBye@BarCouncil.org.uk (Jan Bye
Head of Professional Affairs, Bar Council)**

If you are responding on behalf of an organisation outline the type of organisation for which you provide a response (eg representative body, regulatory body etc)

Representative body

Do you consent to IPS publishing your response
.....**Yes / No**

CONSULTATION QUESTIONS

Q1. ILEX seeks rights to conduct litigation and rights of audience for Associate Prosecutor Members. Do you have any comments on the rights sought? If so, please set them out.

Yes / No

Provide comments below

The rights sought are significant. Not only do they include rights to review cases including charging decisions and discontinuance, but also include rights relating to the actual court based prosecution of cases. A level 2 Associate Prosecutor will be permitted to appear before the Magistrates' Court to prosecute all proceedings against all adult and youth offenders including bail applications where the CPS is the prosecuting authority except trials in either-way offences. The fundamental issue is that these rights will be exercised by people with no legal qualification and indeed with no minimum academic or other professional or vocational qualification or training.

The fact that the proposals will affect proceedings in the Magistrates' Court rather than in the Crown Court is irrelevant. The same laws as to admissibility as to evidence apply in the Magistrates' Court as they do in the Crown Court. The fact that sentence is necessarily restricted in the Magistrates' Court should not overshadow the fundamental principle that both the public and a defendant are entitled to have cases prosecuted by properly qualified prosecutors.

The importance of the rights to be exercised by an Associate Prosecutor are not reflected in:

- a. the status of the position (the position is akin to Community Support Officers who are civilian patrol staff introduced as a cheaper alternative to real police officers)***
- b. the salary to be paid (compared to qualified lawyers)***

The effect will be to undermine public confidence in the prosecution of cases.

- Q2.** ILEX proposes that the rights will be awarded through two Certificates: Level 1 and Level 2. Do you have comments on the proposed split between the two Certificates? If so, please set them out.

Yes / No

Provide comments below

There is a considerable jump between the rights enjoyed by a level 1 Associate Prosecutor and those to be undertaken by a level 2 prosecutor. No indications are given as to:

- a. Approximately how long an Associate Prosecutor would be expected to prosecute at level 1 before they were considered to have had sufficient experience in order to move on to level 2.***
- b. How, once certified at level 1, the Associate Prosecutor will be monitored 'on the job' so that the move to level 2 would, initially at least, involve more than mere self-promotion.***

- Q3.** Do you have any comments on the CPS selection process? If so, please set them out.

Yes / No

Provide comments below

It is stated that the CPS will select staff to train as Associate Prosecutors "in accordance with the rules set out in the application". The IPS application seeks to establish that "an associate prosecutor will be suitably qualified in accordance with the proposed regulations regarding education, training and experience to exercise the rights to conduct litigation and rights of audience". It has already been established that there is no minimum academic requirement or formal legal qualification or training. It is therefore unclear what is meant by an associate prosecutor being "suitably qualified" in this context.

Selection will be by way of candidates already within the CPS being selected to train as associate prosecutors depending on business needs. It is said that the applicants will undergo a "rigorous selection process" involving completion of an application form; case study presentation and interview. At no stage is the candidate separately assessed as to their legal knowledge on fundamental issues of criminal offences, procedure, evidence and sentence. On the information provided it is impossible to compare entry onto the level 1 course with that associated with other legal study and training. As such it is impossible to draw a meaningful comparison with the selection process.

- Q4.** Do you have any comments on the proposed competencies for the Associate Prosecutor selection process? If so, please set them out.

Yes / No

Provide comments below

The 'person specification' criteria refers to fair and reasonable criteria in assessing a person's suitability generally. However the criteria falls short in assessing the specific qualities of a lawyer and advocate. An associate prosecutor is going to be required to make decisions as to charge, evidence, discontinuance etc. Of fundamental importance is the ability to understand evidence and legal issues associated with an offence and to exercise independent judgement based on sound understanding of case law and established legal principles. The assessment procedure does not properly reflect the importance of these core matters.

We note that the qualification scheme for litigators wishing to practise in civil and family work is considerably more robust than it is for those wishing to operate as Associate Prosecutors. It is not apparent why there should be a defined academic (to the standard of A level and Honours Degree) and a practical requirement

(at least 5 years experience) for members wishing to undertake civil and family work but no similar requirements for those intending to prosecute criminal matters.

Q5. Do you have any comments on the selection process for Associate Prosecutors at Level 1? If so, please set them out.

Yes / No

Provide comments below

The position of associate prosecutor is founded on the basis that a person with no legal qualification or training or any previous court advocacy can apply for the position and that appropriate training will be provided during the qualification stage. However the criteria as set out at appendix 1 suggests that the candidate will have had an opportunity to "make decisions independently" and has a "demonstrable working knowledge of criminal law and its application" as well as "well developed skills in identifying evidential issues and omissions and in drafting and communicating". It is submitted that the candidate to whom the role of associate prosecutor may appeal (for example case workers and other administrative support staff) will not ordinarily meet the criteria as set out. Either this means that very few people will meet the selection criteria or the criteria has been drafted in such a way so as to give an unrealistic indication as to the calibre of candidate the selection process is designed to promote.

- Q6.** Do you have any comments on the pre-course work required to be completed by Associate Prosecutors? If so, please set them out.

Yes / No

Provide comments below

It is stated that each trainee will be appointed a mentor whom the trainee will observe at court. It is noted with concern that this may well be an Associate Prosecutor rather than a fully qualified lawyer.

It is noted that trainees are required to observe different hearings prior to the commencement of the course. If part of the reasoning behind this is to show the trainee the correct approach in court then details need to be provided as to how the provider will ensure that what the trainee sees meets the appropriate standard or is otherwise directed as to why a particular approach is not appropriate.

- Q7.** Do you have any comments on the contents of the Foundation course? If so, please set them out.

Yes / No

Provide comments below

The Consultation Paper simply provides details of the Foundation Course objectives. It does not, for example set out the material to be used in order to test a candidate's ability to meet the objectives or indeed provide any other assessment details. Indeed from the information at Appendix 4 it would seem that there is to be no assessment in respect of those matters covered in the Foundation Course. The Foundation Course covers very important topics such as, professional conduct & ethics; evidence; law relating to offences and procedure. It is therefore of some concern that a candidate's ability is not, it would seem, to be tested on these core topics

with the same rigour as would be expected of a law student, trainee solicitor or barrister undertaking comparable academic or vocational assessment.

- Q8.** Do you have comments on the contents of the Trial Preparation course? If so, please set them out.

Yes / No

Provide comments below

The contents of the Trial Preparation course are reasonable.

- Q9.** Do you have any comments on the assessment criteria for the Trial Preparation course? If so, please set them out.

Yes / No

Provide comments below

Although the Consultation Paper provides a template assessment grid and to this extent provides the assessment framework, it does not in fact give any meaningful insight into the standards to be expected. For example, is a candidate who achieves a 'competent' on a comparable footing with a trainee solicitor or barrister achieving a similar result in the LPC or BVC?

Without more meaningful comparable information by which to assess the criteria there is no way of measuring a candidate's competency against that, for example, of a candidate undertaking a law degree or diploma, a candidate on the CPE course or otherwise engaged in vocational training through either the LPC or BVC.

It is all very well setting out the course objectives, but the issue is the level of competency a candidate would be expected to reach in order to pass the course and how this level compares with that of the level of assessment under other academic and vocational training.

The consultation paper does not suggest that either the 'training' or more importantly, the assessment would be conducted by an independent assessor such as a judge,

senior practitioner or advocacy trainer.

Q10. Do you have any comments on the course criteria for the Advocacy Skills course? If so, please set them out.

Yes / No

Provide comments below

The contents of the Advocacy Skills course are reasonable.

Q11. Do you have any comments on the assessment criteria for the Advocacy Skills course? If so, please set them out.

Yes / No

Provide comments below

Whilst the course objectives are laudable and the assessment framework appropriate, there is no information as to:

- a. Who will conduct the assessment day process (will this be an internal representative of the CPS or an external independent examiner)***
- b. Will there be any ongoing monitoring of the candidate following completion of the course in the same way that counsel is or can be monitored for the purpose of moving up the grading scale. If so by whom (CPS, judiciary, peers?)***
- c. How the expected standard compares with that expected of trainee solicitors or pupil barristers as set down by the LPC and BVC providers and, in the case of pupil barristers, the compulsory advocacy course run by the Inns of Court.***

Q12. Do you have any comments on the course criteria for the Youth course? If so, please set them out.

Yes / No

Provide comments below

The contents of the Youth course are reasonable. However they do not specifically refer to

- a. An understanding of the actual statutory sentencing provisions.***
- b. Issues arising when a youth appears with an adult offender***

Q13. Do you have any comments on the assessment criteria for the Youth Court? If so, please set them out.

Yes / No

Provide comments below

The concern is as to the assessment criteria. The assessment is to be based on a practical assessment exercise. No detail is given as to whether the candidate will have prior notice of the exercise, if so then the exercise can have only limited insight into a candidate's core knowledge of the law and procedure. There does not appear to be any other assessment to test a candidate's core knowledge as to law and procedure.

Q14. Do you have any comments on the structure or content of the Level 1 qualification? If so, please set them out.

Yes / No

Provide comments below

The fundamental concern is that the structure and content is not based on core legal learning. For example, there is no provision within the assessment structure or content for consideration of case law either in respect of specific offences, sentence or procedure. This it is submitted, is a fundamental weakness of the qualification. In short it lacks academic rigor, independent thought and legal reasoning based on case law.

No information is provided as to the qualification/training period; the contact time between mentor and trainee or the structure to that contact etc.

Q15. Do you have any comments on the observation grid for bail hearings? If so, please set them out.

Yes / No

Provide comments below

Whilst it is always of some use to observe someone else in action it is of concern that the person to be observed may themselves be an Associate Prosecutor. There appears to be a lack of structures in place to ensure that anyone a trainee observes is suitably qualified, experienced and competent.

Q16. Do you have any comments on the criteria for the Bail courses?
If so, please set them out.

Yes / No

Provide comments below

The criteria is reasonable and fair.

Q17. Do you have any comments on the assessment criteria for the Bail courses? If so, please set them out.

Yes / No

Provide comments below

No information is provided as to who will carry out the assessment of competence or whether the candidate will have prior notice of the practical exercises. This is important because it raises the issue of how the candidate's core knowledge is assessed.

Q18. Do you have any comments on the selection process for Level 2 Associate Prosecutors? If so, please set them out.

Yes / No

Provide comments below

The jump in rights and responsibilities between a level 1 and level 2 associate prosecutor is not reflected in the selection process. There is no minimum qualification or experience required and the practical exercises (a remand application and opposition to a bail application) are limited. Whilst they may give some indication as to a candidate's ability to identify the relevant factors and as to their presentational skills they do not give any indication as to a candidate's ability to understand the law or make decisions based on evidence and admissibility which are fundamental to prosecuting cases properly.

Q19. Do you have any comments on the observation and mentoring arrangements for Level 2 Associate Prosecutors? If so, please set them out.

Yes / No

Provide comments below

It is said that an Associate Prosecutor will be assigned to a mentor who will 'usually' be an experienced Crown Prosecutor. It is submitted that anyone acting in a mentoring capacity to a trainee must be a qualified, experienced and competent prosecutor.

Q20. Do you have any comments on the course outcomes for the Level 2 Foundation course? If so, please set them out.

Yes / No

Provide comments below

The course outcomes for the level 2 Foundation course is laudable. However there does not appear to be a specific assessment regime to ensure that a candidate has the core knowledge and skills relating to fundamental legal issues and principles. The absence of such assessment at the foundation stage is concerning, particularly when a candidate will commence the level 2 qualification by self-study, e-learning modules.

Q21. Do you have any comments on the course outcomes for the Advocacy Skills course? If so, please set them out.

Yes / No

Provide comments below

The course outcome and content is fair and reasonable

Q22. Do you have any comments on the assessment criteria for the Advocacy Skills course? If so, please set them out.

Yes / No

Provide comments below

It is all very well saying that in order for a candidate to be declared 'ready' to prosecute a trial a candidate must be assessed as 'good' or 'satisfactory' in each of the 4 core areas. However there is no information as to what 'satisfactory' or 'good' means as compared with other forms of assessment in comparable academic and vocational training. It is essential that the standard expected is comparable with standards expected of junior solicitors and barristers.

Q23. Do you have any comments on the content or structure of the Level 2 qualification? If so, please set them out.

Yes / No

Provide comments below

A level 2 Associate Prosecutor will be permitted to conduct trials in the Magistrates' Court. The fact that it is a trial in the Magistrates' Court rather than in the Crown court is irrelevant. The same issues as to evidence, procedure and law generally arise in the Magistrates' Court as in the Crown Court and require prosecutors who are equally qualified and equipped to deal with such issues. The fundamental flaw with this qualification is that candidates will qualify as Associate Prosecutors without meeting any basic academic level, without ever having studied law either at an academic or vocational level.

Q24. Do you have comments on the process by which IPS will accredit the CPS to deliver courses? If so, please set them out.

Yes / No

Provide comments below

It is said that the CPS appoints external organisations to conduct assessment of candidates. No details of who these external organisations are have been provided.

Q25. Do you have any comments on the oversight and monitoring role to be undertaken by IPS to ensure standards of course delivery and assessment are maintained? If so, please set them out.

Yes / No

Provide comments below

The IPS will accredit the CPS if the relevant criteria for the accreditation of course providers for advocacy and other ILEX course is met. The criteria is said to include location; suitability of premises, teaching resources and support, teaching and assessment experience, course content and candidate contact and support mechanism.

It is not clear who will conduct the assessment for the purposes of accreditation. The IPS are not independent given that ILEX are promoting the scheme for their members and the CPS cannot properly assess its own performance.

Q26. Do you have any comments on the number of hours CPD Associate Prosecutors are required to undertake? If so, please set them out.

Yes / No

Provide comments below

The CPD requirement of 16 hours is appropriate. However the requirement that only 8 hours must be in criminal practice is not appropriate. Practitioners at the Bar for example must undertake 12 hours in an area in which they practise.

Q27. Do you have any comments on the standards of conduct that IPS expects Associate Prosecutors to observe? If so, please set them out.

Yes / No

Provide comments below

It is right that associate prosecutors are bound by the same standards of conduct as any other prosecutor.

Q28. Do you have any comments on the arrangements by which IPS will investigate the conduct of Associate Prosecutors? If so, please set them out.

Yes / No

Provide comments below

Although it is made clear that the outcome of any complaint made to the CPS about an associate prosecutor is reported to the IPS, it is not made clear whether the same applies if the complaint is made only to the IPS. In particular whether, the IPS would be obliged to disclose that information to the CPS where the individual was not excluded from membership of the ILEX.

Q29. Do you agree that the CPS should be expected to refer any conduct matters to IPS as appropriate? If not, please state why.

Yes / ~~No~~

Provide comments below

The CPS should be obliged to refer any conduct matters, irrespective of how it decides to deal with them to the body representing associate prosecutors.

How to respond

Please send the response form to IPS through one of the following methods:

- Email to bbsra@ilexstandards.org.uk
- By post to ILEX Professional Standards Ltd, Kempston Manor, Kempston, Bedford MK42 7AB
- By DX to ILEX Professional Standards Ltd, DX 124780 Kempston 2

Submission deadline

The deadline for the submission of responses is **3 April 2010**



YOUNG BARRISTERS' COMMITTEE

**PROPOSAL TO SEEK RIGHTS OF AUDIENCE AND
RIGHTS TO CONDUCT LITIGATION FOR
ASSOCIATE PROSECUTOR MEMBERS OF ILEX**

ILEX PROFESSIONAL STANDARDS LTD CONSULTATION PAPER

RESPONSE OF THE YOUNG BARRISTERS' COMMITTEE

Introduction

1. The Young Barristers' Committee ("the YBC") is one of the Bar Council's main representative committees and it represents barristers who are under 10 years' call. Led by a Chairman and a Vice-Chairman, it comprises elected members of the Bar Council (employed and self-employed barristers) under 7 years' call, as well as barristers who are co-opted to ensure representation from different areas of practice and from all Circuits. Its membership is therefore diverse and representative.
2. This is the response of the YBC to the consultation paper issued by ILEX Professional Standards ("IPS") entitled *Proposal to seek Rights of Audience and Rights to Conduct Litigation for Associate Prosecutor members of ILEX* ("the IPS paper").

About the IPS consultation

3. ILEX is making an application under the Legal Services Act 2007 to become an approved regulator in respect of advocacy and litigation undertaken by those of its members who are registered as 'Associate Prosecutors' within the Crown Prosecution Service. The application seeks approval to grant rights to conduct litigation and rights of audience.
4. Currently, Level 2 Associate Prosecutors can conduct all proceedings in the Magistrates' Court and the Youth Court save for trials in triable either-way matters and offences punishable with a term of imprisonment¹⁰.
5. The rights which are sought are split into two levels: Level 1 and Level 2. Level 1 rights of audience will permit a 'New Associate Prosecutor' to appear in the Magistrates' Court (including Youth Courts) to prosecute all hearings except: trials; Newton Hearings; Special Reasons hearings; Contested Preventative Civil Orders; and Contested Binding Over Proceedings.
6. Level 2 rights of audience will permit the Associate Prosecutor to appear in the Magistrates' Courts (including Youth Courts) to prosecute all proceedings where the CPS is the prosecuting authority except trials in either-way matters.
7. Holders of Level 1 and Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings will be awarded the following litigation rights:

¹⁰ Associate Prosecutors – Directors Instructions. See http://www.cps.gov.uk/legal/a_to_c/associate_prosecutors_directors_instructions/

a. The right to exercise the powers of a Crown Prosecutor to conduct a case outside court, namely:

- i. Review of a prosecution case by applying the Code for Crown Prosecutors; and
- ii. Other casework functions necessary to progress prosecution cases that fall within an Associate Prosecutor's statutory remit.

That is:

- To decide appropriate bail conditions and objections to bail in Magistrates' Court and Youth Court proceedings;
- To decide whether to discontinue a case;
- To make disclosure decisions;
- To decide witnesses to give live evidence, to serve under section 9 of the Criminal Justice Act 1967 and to tender to the defence;
- To amend a charge or summons, prefer a new charge or drop a charge;
- To decide whether to apply, vary or discharge a civil preventative order.

Concerns of the YBC

8. The YBC wholly endorses the response of the Bar Council to the IPS paper. It does not therefore seek to repeat the points already made therein, nor to respond to the individual questions posed in the consultation paper, but it sets out below some general comments on the IPS proposals.

9. The YBC's concerns emanate from the fact that the result of the consultation will be to invest a considerable degree of responsibility and power in prosecutors who have no formal legal qualification or training. They therefore cannot guarantee the same degree of service to the public as a legally qualified barrister or solicitor.

10. The YBC cannot accept that these measures can therefore be in the public interest. This consultation is part of an 'incremental policy' adopted by both ILEX and the CPS. Initially designated caseworkers were principally office based. Their role was extended by the Criminal Justice and Immigration Act 2008 to permit them to conduct simple guilty pleas and trials for non-imprisonable offences. They have since become known as 'Associate Prosecutors' and under these proposals will be able to conduct all summary trials save for either-way matters – this will include cases where the defendant is at risk of an imprisonable offence. The YBC is therefore extremely concerned that this is another step towards the 'de-lawyering' of the Magistrates' and Youth Courts.

Significant Rights

11. The rights invested in Crown Prosecutors, both in terms of reviewing cases and advocacy, are important ones. Extending such rights, which have hitherto been entrusted to Crown Advocates, to persons with no legal qualification is not a step which should be taken lightly. The YBC argues that before these rights are extended to such persons, persuasive arguments will

need to be made as to why such a step would be in the public interest. In the view of the YBC no such arguments have been put forward.

12. The YBC also agrees with the views of the Bar Council in that not only are the rights themselves significant, but they are also a significant amplification of the rights conferred to Associate Prosecutors. The YBC considers that no evidence has been pointed to which demonstrates that such a step is necessary. Were the Director of Public Prosecutions to extend these rights to Associate Prosecutors, the conclusion which must be drawn is that he has done so in order to cut costs. While the YBC recognises that all public services are under financial pressure, the increased risk to the public of miscarriages of justice would far outweigh the benefit of these measures.

Significant Cases

13. The YBC also wholly agrees with the Bar Council in that the fact that such decisions are currently to be limited to the Magistrates' and Youth Court is irrelevant. Cases heard in the Magistrates' Court can result in prison sentences of up to six months, a conviction in a Magistrates' Court can result in the loss of one's good character and employment. This can have devastating and long-lasting consequences for the defendant and his/her family. Cases heard in the Youth Court can include extremely serious allegations that would otherwise be heard in the Crown Court but for the age of the defendant. The notion that it is acceptable for such cases to be prosecuted and/or reviewed by a non-lawyer because they are less important is wholly erroneous.

Training and Supervision

14. So far as appropriate training is concerned, the YBC is of the view that it is of critical importance that those who prosecute cases in *any* court have an appropriate legal qualification and/or training which is comparable to that of barristers and solicitors. Not only does this provide a measure of guarantee for the public but it also ensures that competition is on a level playing field.

15. The YBC is of the view that the training proposed by the consultation paper is insufficiently detailed to allow a comparison to be made between that training and either a legal qualification or the Bar Professional Training Course or the Legal Practice Course. For example, at page 7 of the IPS paper, it describes the CPS 'Person Specification for an Associate Prosecutor' to select suitable candidates. Applicants are marked using a scale of 1 to 5, with 1 being 'requirements not met' and 5 being 'requirements consistently met'. We are told that applicants are expected to achieve at least a score of 3 against each competency. Not only does the IPS paper not set out the definition of the remaining numbers on the scale (2,3 and 4) but it appears that someone will be deemed a suitable candidate if they obtain a score of something considerably less than 'requirements consistently met' against each competency. The YBC is concerned about the stringency of the selection process.

16. Furthermore, at no stage is reference made to the requirement to have even a basic level of legal knowledge. If the individual is to be required to make decisions regarding charge, that will require an assessment of the law and

rules of evidence. The YBC endorses all the points made in this regard by the Bar Council.

17. The YBC is concerned that no proposals are put forward for identifying categories of cases in which conduct of the case or trial by an Associate Prosecutor would not be appropriate. While not wishing to undermine anything said above about the unsuitability of Associate Prosecutors to undertake contested hearings, in particular where the liberty of the defendant is at risk, in the view of the YBC at the very least consideration should be given as to whether or not Associate Prosecutors should prosecute trials which involve a) child or vulnerable witnesses; b) cases where abuse of process is alleged; c) cases involving a vulnerable defendant or a defendant with mental health difficulties; d) cases involving challenging issues of law or fact.

18. The YBC is also concerned at an apparent lack of proposed supervision. In these days where legal aid is increasingly limited and more and more defendants represent themselves – particularly in the Magistrates' Court where charges might be perceived as less serious - there is a real possibility that an Associate Prosecutor may prosecute a case defended by a litigant in person. Therefore, no lawyers would be involved in the preparation of a case, in pre-trial negotiations or oral and written representations and the only lawyer who ever deals with the case is a court clerk – whose functions are to advise the lay Magistrates or the District Judge and not to advise either party. Even this might disappear if pilots to replace legally qualified clerks with unqualified note takers are rolled out. This cannot be in the public interest. The net effect will be an increase in the risk of miscarriages of justice – either

in the acquittal of the guilty or the conviction of the innocent – and subsequently a loss in confidence in the effective and fair prosecution of cases.

Young Barristers' Committee

March 2010



THE CRIMINAL BAR ASSOCIATION
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Introduction

1. The Criminal Bar Association represents over 3,800 barristers specialising in criminal law. We welcome the opportunity to respond to the ILEX Professional Standards ("IPS") consultation paper "Proposal to seek rights of audience and rights to conduct litigation for Associate Prosecutor members of ILEX" (the "Consultation Paper").

The ILEX application

2. ILEX is making an application under the Legal Services Act 2007 to become an approved regulator in respect of advocacy and litigation undertaken by those of its members who are registered as Associate Prosecutors ("APs") within the Crown Prosecution Service ("CPS"). The application seeks approval to grant rights to conduct litigation and rights of audience.

3. Currently, Level 2 Associate Prosecutors can conduct all proceedings in the Magistrates' Court and the Youth Court save for trials in triable either way matters and offences punishable with a term of imprisonment¹.

4. The rights which are sought are split into two levels: Level 1 and Level 2. Level 1 rights of audience will permit a 'New Associate

¹ Associate Prosecutors – Directors Instructions. See http://www.cps.gov.uk/legal/a_to_c/associate_prosecutors_directors_instructions/

Prosecutor' to appear in the Magistrates' Court (including Youth Courts) to prosecute all hearings except: trials; Newton Hearings; Special Reasons hearings; Contested Preventative Civil Orders; and Contested Binding Over Proceedings.

5. Level 2 rights of audience will permit the Associate Prosecutor to appear in the Magistrates' Courts (including Youth Courts) to prosecute all proceedings where the CPS is the prosecuting authority except trials in either-way matters.

6. Holders of Level 1 and Level 2 Rights of audience and Litigation Certificate in Criminal Proceedings will be awarded the following litigation rights:

a. The right to exercise the powers of a Crown Prosecutor to conduct a case outside court, namely:

- i. Review of a prosecution case by applying the Code for Crown Prosecutors; and
- ii. Other casework functions necessary to progress prosecution cases that fall within an Associate Prosecutor's statutory remit. That is:
 - To decide appropriate bail conditions and objections to bail in Magistrates' Court and Youth Court proceedings;
 - To decide whether to discontinue a case;
 - To make disclosure decisions;
 - To decide witnesses to give live evidence, to serve under section 9 of the Criminal Justice Act 1967 and to tender to the defence;
 - To amend a charge or summons, prefer a new charge or drop a charge;

- To decide whether to apply, vary or discharge a civil preventative order.

The CBA response

7. For the reasons set out below we do not support the proposal. In our view, such rights are fundamental and must not be extended without good and sufficient cause. The Consultation Paper does not make out such a cause; indeed it is silent on the need for the step it proposes to take.

8. When the role of a designated caseworker was extended by the Criminal Justice and Immigration Act 2008, it was limited to conducting simple guilty pleas and non-imprisonable offences. The proposals extend the role far beyond that which this piece of legislation envisaged. We are concerned that the majority of the work carried out in the Magistrates' and Youth Courts will now be conducted by those without formal legal qualifications or minimum academic or other professional or vocational qualification or training.

9. There is insufficient information within the Consultation Paper in some fundamental respects, namely training and supervision of APs. In one of the most essential areas (the Foundation course) there is no assessment at all. This course covers areas of law and procedure which are of paramount importance for all those prosecuting trials, particularly those without a formal legal qualification. In some aspects of the training the Consultation Paper does not set out the standards which are to be met. Without making an assessment it will not be possible to ascertain the applicants capability and competence; without knowledge of the standards required it is not possible to make a comparison with the

standards required of a trainee solicitor or pupil. It is submitted the proposals must be capable of such comparison.

10. We are concerned that the proposals will lead to an increase in the risk of miscarriages of justice and an overall loss of confidence in the effective and fair prosecution of cases.

Our answers to the questions Question 1: ILEX seeks rights to conduct litigation and rights of audience for Associate Prosecutor Members. Do you have any comments on the rights sought?

The rights sought are significant and include not only the rights to review cases, making charging decisions and decision to offer no evidence, but also rights to prosecute trials. A considerable degree of responsibility therefore will be placed in the hands of prosecutors with no formal legal qualification or training. In the circumstances, there can be no guarantee of the quality of service provided by legally qualified barristers or solicitors.

Under the proposals, APs will be able to conduct all summary trials in Magistrates' Courts and Youth Courts save for either way matters. Magistrates' Courts and Youth Courts can deal with some extremely serious cases. A conviction in the Magistrates' Court can result in a prison sentence of up to 6 months and the loss of ones good character, employment and reputation. Youth Courts can hear matters which, but for the age of the defendant, could be heard in the Crown Court. It is not correct to say the steps proposed are acceptable because they are confined to less important cases. It matters not that the proposals are restricted to proceedings in the Magistrates' Court rather than the Crown Court. The same laws apply, many of which are highly complex. The fundamental issue is that these cases will be conducted by people with no legal

qualification or minimum academic or other professional or vocational qualification or training.

The proposals do not consider how cases might be identified as being appropriate for prosecution by an AP. For instance, is it envisaged that APs will prosecute *all* trials of summary matters regardless of their complexity? Will APs be permitted to conduct trials in which the witnesses and/or defendants are young and/or vulnerable? Will APs be permitted to conduct cases in which issues of law (abuse of process, for instance) arise? Will the AP be permitted to conduct bail applications in any case regardless of the seriousness of it? Upon what basis will such decisions be made?

Question 2: ILEX proposes that the rights will be awarded through two certificates: Level 1 and Level 2. Do you have comments on the proposed split between the two certificates?

The Consultation Paper does not set out what is required of a Level 1 AP in order to achieve Level 2, save to say "*Experienced Level 1 APs will be eligible to apply to complete a higher qualification programme leading to the award of Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings*". It is not clear what is meant by 'experienced'. How long is it envisaged the AP should prosecute at Level 1 before becoming sufficiently experienced to apply for Level 2? Is there a minimum requirement? How is the Level 1 AP monitored conducting cases in order to establish suitability to make the application for Level 2?

Question 3: Do you have any comments on the CPS selection process?

The Consultation Paper states the IPS seeks to ensure that APs will be "*suitably qualified*". Given there no minimum academic

requirement or formal legal qualification it is unclear what is meant by this. The paper does not expand on this further. It does say that the selection process will be "*rigorous*" and will involve an application form, case study presentation and interview. It does not include an assessment of legal knowledge, evidence and procedure. It is not therefore possible to assess how the process compares with other legal study and training.

We note that the CPS will select staff to train as APs according to '*business needs*'. It is not clear what such business needs might be. In fact, nowhere in the Consultation Paper is there an explanation as to the need to take this step. We submit there should be persuasive arguments made that this step is required and is in the public interest. We have seen none.

Question 4: Do you have any comments on the proposed competencies for the Associate Prosecutor selection process?

The '*person specification*' criteria appear to be fair and reasonable but do not include the qualities required to act as a lawyer and advocate, making sound legal judgements based on a sound understanding of law and procedure.

Question 5: Do you have any comments on the selection process for Associate Prosecutors at Level 1?

We note the requirement that a Level 1 AP must have "*experience of casework within the criminal justice system/lay presentation*", "*a demonstrable working knowledge of criminal law and its application, magistrates' court practice and procedure and the criminal justice system*" and "*well developed skills in identifying evidential issues and omissions and in drafting and communication*". Given there is no requirement of a formal legal qualification or minimum academic

or other professional or vocational qualification or training, it is difficult to envisage how the experience and knowledge identified above might be gained and therefore causes concern about how the criteria might be met. It is submitted that the criteria are not realistic.

Question 6: Do you have any comments on the pre-course work required to be completed by Associate Prosecutors?

The Consultation Paper indicates that a trainee AP will be allocated a mentor but does not set out the criteria required to qualify as a mentor save to say it will be "*an experienced Associate Prosecutor or a Crown Prosecutor*". It is of concern that there is no requirement for the mentor to be a fully qualified lawyer.

Trainees will be required to observe various court hearings but the Consultation Paper does not specify whether the person being observed will be a qualified lawyer or another AP nor how to ensure that the appropriate standards are met by that person.

Question 7: Do you have any comments on the contents of the Foundation Course?

The Consultation Paper contains only the course outcomes and objectives and not the course content and therefore it is not possible to comment. It is worth noting that the course envisages covering important areas (such as evidence and the law in relation to criminal offences which will be prosecuted) which do not appear to be subject of an assessment. It is of considerable concern that the ability to satisfy the objectives in such fundamental areas will not be tested.

Question 8: Do you have comments on the contents of the Trial Preparation course?

Question 9: Do you have any comments on the assessment criteria for the Trial Preparation course?

The aims and objectives of the course appear reasonable.

The assessment grid provides an assessment framework but goes no further and does not provide details of what is to be expected in order to achieve '*competent*' or '*good*'. It is not therefore possible to compare the assessment criteria with that required of a trainee solicitor or pupil.

It is of concern that there is no detail about who will be responsible for the assessment.

Question 10: Do you comments on the course criteria for the Advocacy Skills course? Question 11: Do you have any comments on the assessment criteria for the Advocacy Skills course?

The aims and objectives of the course appear reasonable.

The assessment criteria seem reasonable and appropriate. Again, it is worth noting that there is no detail about who shall carry out the assessment and how the standards compare to that required of a trainee solicitor or pupil.

Question 12: Do you have any comments on the course criteria for the Youth course? Question 13: Do you have any comments on the assessment criteria for the Youth Court?

The aims and objectives of the course appear reasonable, although there is no reference to youth sentencing provisions nor the situation where a youth appears with an adult.

In relation to the assessment criteria, the Consultation Paper does not contain important details such as whether the assessment is to be a practical exercise. The criteria include "*relevant legal and policy principles*" but do not contain knowledge of the law and procedure.

Question 14: Do you have any comments on the structure or content of the Level 1 qualification?

In addition to the above comments, we observe that there is no time frame for the qualification/training period; there is no detail as to the contact between trainee and mentor, nor the structure to that contact.

Question 15: Do you have any comments on the observation grid for bail hearings? Question 16: Do you have any comments on the criteria for the Bail courses? Question 17: Do you have any comments on the assessment criteria for the Bail courses?

There is no detail about who the trainee will observe and whether that person shall be a fully qualified lawyer or another AP and what steps will be taken to ensure that person is suitably qualified and experienced.

The criteria for the Bail courses seem reasonable and fair.

Again, there is no detail in relation to who will carry out the assessment.

Question 18: Do you have any comments on the selection process for Level 2 Associate Prosecutors?

The Consultation Paper states "*experienced Level 1 Associate Prosecutors will be able to progress to become Level 2 Associate Prosecutors, as opportunities arise*". It does not set out what criteria is to be met in order to become "*experienced*". There is no minimum qualification or experience, and the presentation stage involves only a remand application and opposing a bail application. This, it is said, is designed to "*test the advocacy skills, judgement and analytical skills of applicants*". It is of concern that the presentation stage is limited and in our submission will not be able to provide an indication of the applicant's ability to prosecute cases properly.

Question 19: Do you have any comments on the observation and mentoring arrangements for Level 2 Associate Prosecutors?

The Consultation Paper states the mentor will "*usually be an experienced Crown Prosecutor*". There is no detail as to how it will be ensured that the mentor is suitably qualified and experienced, which in our experience they must be.

Question 20: Do you have any comments on the course outcomes for the Level 2 Foundation course?

The aims and objectives seem reasonable and fair. It is of concern, however, that there is no assessment in relation to this aspect of the training. The Foundation Course is designed to deal with some fundamental aspects of evidence and procedure. It is not possible to properly prosecute a case without proper knowledge and understanding of these complex areas. Assessment in this respect is of paramount importance, especially given the other aspect of the training is E-learning.

Question 21: Do you have any comments on the course outcomes for the Advocacy Skills course? Question 22: Do you have any comments on the assessment criteria for the Advocacy Skills course?

Preparing and presenting a mock trial to an independent assessor is a good means of assessing advocacy skills and is to be encouraged. The concern in respect of the assessment is the lack of information as to the "*standard required*". The Consultation does not specify what this means and therefore it is not possible to compare this to the standard required of a trainee solicitor or pupil. The standards must be comparable.

Question 23: Do you have any comments on the content or structure of the Level 2 qualification?

In addition to comments above, we are concerned that a Level 2 AP will be able to conduct trials which deal with the same issues of law, evidence and procedure as those conducted in the Crown Court without a formal legal qualification, and in some respects without an assessment of basic legal knowledge. To say the proposals are acceptable because they are confined to less important cases is wrong and misleading.

Question 24: Do you have any comments on the process by which IPS will accredit the CPS to deliver courses?

No.

Question 25: Do you have any comments on the oversight and monitoring role to be undertaken by IPS to ensure standards of course delivery and assessment are maintained?

The only comment we make is that IPS is not independent given that ILEX is proposing the scheme for its members.

Question 26: Do you have any comments on the number of hours CPD Associate Prosecutors are required to undertake?

Members of the Bar must undertake 42 hours CPD in their first three years practice as New Practitioners and 12 hours annually as an Established Practitioner thereafter. All hours must be undertaken in the area in which they practice. We see no reason for APs to have to complete only half their CPD hours in criminal practice, procedure, knowledge or advocacy skills training.

Question 27: Do you have any comments on the standards of conduct that IPS expects Associate Prosecutors to observe?

It is right that APs are bound by the same standards of conduct as other prosecutors.

Question 28: Do you have any comments on the arrangements by which IPS will investigate the conduct of Associate Prosecutors? Question 29: Do you agree that the CPS should be expected to refer any conduct matters to IPS as appropriate?

It is not clear whether IPS is under an obligation to report to the CPS a complaint made only to IPS. It is only right that the CPS is obliged to refer conduct matters to IPS.

Paul Mendelle Q.C.
Christopher Kinch
Q.C. Lesley Bates 2nd
April 2010

Response to the proposal to seek rights of audience and rights to conduct litigation for Associate Prosecutor members of ILEX

On behalf of the FDA Crown Prosecution Service Section

prepared by the Professional Issues Sub-Committee

April

Introduction

The FDA is fundamentally opposed to any further extension of rights for Associate Prosecutors. As a matter of general principle the proposals significantly undermine the concept of quality justice by the removal of qualified solicitors and barristers representing the Crown. The proposals undermine the value of the role of qualified lawyers both within the Crown Prosecution Service and employed by the defence by reducing the required quality of defence representation.

The nature and complexity of the rights proposed requires skills commensurate with the academic and vocational skills of practising barristers and solicitors. The proposed extended rights are not commensurate with the role of Associate Prosecutor for which there is no minimum academic qualification required. In addition, the proposed rights are not in parity with the requirements placed on those already holding ILEX qualifications or ILEX Fellows.

The proposals are diametrically opposed to the objectives required of a regulator pursuant to the **Legal Services Act 2007**, particularly the objectives of, *Supporting the Rule of Law*; and *Protecting and promoting the interests of consumers¹ and the public interest*.

Issue is also taken with the suggestion that victims and witnesses within the criminal justice system are consumers as they do not choose to become part of the criminal Justice System. Consequently they should be considered as a distinct vulnerable class deserving the highest quality of care.

The rights proposed to be granted Associate Prosecutors under this proposal exceed the rights granted to Crown Prosecutors and come close to the full range of functions undertaken by Senior Crown Prosecutors and Crown Advocates. The proposals will have a detrimental effect on the confidence of the public in the criminal justice system as frequently in cases dealt with by Associate Prosecutors the only practising solicitor or barrister will be the defence advocate.

This disparity will disadvantage victims and undermine one of the basic tenets of the adversarial justice system: the “parity of arms” between the defence and prosecution in contested criminal matters. A victim or witness in a criminal trial conducted by an Associate Prosecutor will not even be made aware that the prosecutor is not a practising solicitor or barrister and even were they to know, unlike the defendant, they could not seek alternative representation.

Answers to Specific Consultation questions

Q1. ILEX seeks rights to conduct litigation and rights of audience for Associate Prosecutor Members. Do you have any comments on the rights sought? If so, please set them out.

As mentioned in the introductory comments above the FDA would stress the concerns about the extension of rights proposed:

1. The proposals significantly undermine the concept of quality justice by the removal of qualified solicitors and barristers representing the Crown;
2. The proposals undermine the value of the role of qualified lawyers both within the Crown Prosecution Service and employed by the defence;
3. The rights proposed require skills commensurate with the academic and vocational skills of practising barristers and solicitors;
4. The extended rights are not commensurate with those for which there is no minimum academic qualification;
5. The proposed rights are not in parity with the requirements placed on those already holding ILEX qualifications or ILEX Fellows;
6. The rights proposed exceed the rights granted to Crown Prosecutors and come close to the full range of functions undertaken by Senior Crown Prosecutors and Crown Advocates;
7. The proposals will have a detrimental effect on the confidence of the public in the criminal justice system as frequently in cases dealt with by Associate Prosecutors the only fully qualified lawyer will be the defence advocate.

Q2. ILEX proposes that the rights will be awarded through two Certificates: Level 1 and Level 2. Do you have comments on the proposed split between the two Certificates? If so, please set them out.

The FDA opposes the extension of rights at level two and opposes the extended scope of the level one rights as envisaged by the proposals:

1. New rights are sought to be included at level one such as the power to discontinue proceedings without the authority of an Senior Crown Prosecutor;

2. New rights to conduct reviews on summary only cases with rights comparable to those of Senior Crown Prosecutors;
3. The power to deal with bail applications for all those appearing before the Magistrates and Youth Court;
4. Rights to appear in the Crown Court in respect of bail applications;
5. The power to deal with issues relating to disclosure under the provisions of the **Criminal Procedure and Investigation Act 1996**;
6. The power to add, amend or alter charges without the authority of an Senior Crown Prosecutor; and
7. The lack of a caveat as to the nature, complexity or sensitivity of the cases involved and their suitability for an Associate Prosecutor.

The rights above are presently reserved to Senior Crown Prosecutors and Crown Advocates and the extension of such powers to those who have no minimum standard of recognised qualification, experience or practise is not appropriate.

Q3. Do you have any comments on the CPS selection process? If so, please set them out.

Concerns are expressed by the FDA that the IPS will not be scrutinising the recruitment of the Associate Prosecutors who they will then regulate. Since there is, in effect, no minimum standard for applicants the selection for the post of Associate Prosecutor will be an exercise based solely on the completion of a form and the performance in a limited interview.

Q4. Do you have any comments on the proposed competencies for the Associate Prosecutor selection process? If so, please set them out.

The competency framework is a subjective set of criteria applied by the Crown Prosecution Service and subject to change without notice to the IPS. The competencies are sufficiently wide and lacking in detail and appear to have little bearing on the actual conduct of criminal advocacy or litigation. It is noted that there is no equivalency between external applicants for the post of Associate Prosecutors who must hold a recognised professional or academic legal qualification and those already working for the Crown Prosecution Service.

Q5. Do you have any comments on the selection process for Associate Prosecutors at Level 1? If so, please set them out.

The selection process appears to have little of the rigour required for posts in which the conduct of criminal litigation is expected. The process, without considerable external scrutiny, is likely to favour those who can perform on the day over those who may possess the skills required to undertake the role.

Q6. Do you have any comments on the pre-course work required to be completed by Associate Prosecutors? If so, please set them out.

Insufficient detail provided as to content, length, depth of study or assessment as to competency. The estimate of 20 hours for reading the manual (no details as to content) does not give any indication how that estimate is arrived at. It should be noted that qualified solicitors and barristers are required to undertake similar amounts of time to simply maintain their practising rights through the Continuing Professional Development process. This is on top of the time they have already spent in academic and vocational study.

Q7. Do you have any comments on the contents of the Foundation course? If so, please set them out.

A 5 day course to equip someone to undertake criminal litigation, where no prior academic or vocational is required is insufficient. It should be noted that all practising solicitors and barristers joining the Crown Prosecution Service are required to undertake a comparable induction course. The suggestion that some additional days training is sufficient to raise the knowledge and skills of unqualified staff is a matter of serious concern. Without further details of the course topic the required pre-reading and depth and scope of the course it is difficult to assess its value.

Q8. Do you have comments on the contents of the Trial Preparation course? If so, please set them out.

Whilst there is insufficient detail to assess the value of the contents of the trial preparation course the FDA would make the following comments. Prosecutors who are practising solicitors and barristers complete various advocacy training courses in addition to their academic and vocational legal training. The lawyers have already completed university or ILEX exams and the exams of the Legal Practice Course therefore an internal CPS assessment is adequate for them. The position for Associate Prosecutors is wholly different as many will not have had the legal training to competently fulfil their professional obligations to the required standard.

Q9. Do you have any comments on the assessment criteria for the Trial Preparation course? If so, please set them out.

There is insufficient detail to assess the value of the assessment criteria and how they are to be defined and applied.

Q10. Do you have any comments on the course criteria for the Advocacy Skills course? If so, please set them out.

There is insufficient detail to assess the value of the assessment criteria and how they are to be defined and applied.

Q11. Do you have any comments on the assessment criteria for the Advocacy Skills course? If so, please set them out.

There is insufficient detail to assess the value of the assessment criteria and how they are to be defined and applied.

Q12. Do you have any comments on the course criteria for the Youth course? If so, please set them out.

The limited current proposals by the CPS to extend Associate Powers to do uncontested youth bail applications are currently being opposed by the FDA due to competency issues. The complexities of the Youth Court system do not easily fit with the role of the Associate Prosecutor. The present system prevents even Crown Prosecutor and Senior Crown Prosecutors from conducting youth work without first undertaking a Youth Specialist course lasting two days and providing 9 hours of CPD. There appears little parity between the rigorous training required for practising solicitors and barristers and the Associate Prosecutor youth course suggested here.

Q13. Do you have any comments on the assessment criteria for the Youth Court? If so, please set them out.

There is insufficient detail to assess the value of the assessment criteria and how they are to be defined and applied.

Q14. Do you have any comments on the structure or content of the Level 1 qualification? If so, please set them out.

There is insufficient detail to assess the value of the structure and content.

Q15. Do you have any comments on the observation grid for bail hearings? If so, please set them out.

No comment beyond the concerns already raised in the previous responses

Q16. Do you have any comments on the criteria for the Bail courses? If so, please set them out.

There is insufficient detail to assess the value of the structure and content.

Q17. Do you have any comments on the assessment criteria for the Bail courses? If so, please set them out.

There is insufficient detail to assess the value of the assessment criteria and how they are to be defined and applied.

Q18. Do you have any comments on the selection process for Level 2 Associate Prosecutors? If so, please set them out.

The selection process appears to have little of the rigour required for posts in which the conduct of criminal litigation is expected. The process, without considerable external scrutiny, is likely to favour those who can perform on the day over those who may possess the skills required to undertake the role.

Q19. Do you have any comments on the observation and mentoring arrangements for Level 2 Associate Prosecutors? If so, please set them out.

The mentoring requirements are less than the existing provisions for adequate supervision of Associate Prosecutors under the current level of powers. The FDA would have to conclude that the arrangements are inadequate and a formal structure of supervision, assessment and mentoring be put in place.

Q20. Do you have any comments on the course outcomes for the Level 2 Foundation course? If so, please set them out.

No comment beyond the concerns already raised in the previous responses.

Q21. Do you have any comments on the course outcomes for the Advocacy Skills course? If so, please set them out.

No comment beyond the concerns already raised in the previous responses.

Q22. Do you have any comments on the assessment criteria for the Advocacy Skills course? If so, please set them out.

There is insufficient detail to assess the value of the assessment criteria and how they are to be defined and applied.

Q23. Do you have any comments on the content or structure of the Level 2 qualification? If so, please set them out.

There is insufficient detail to assess the value of the structure and content.

Q24. Do you have comments on the process by which IPS will accredit the CPS to deliver courses? If so, please set them out.

Subject to the general concerns already raised, specific concerns are expressed about the wide and ill defined assessment criteria. For even a very limited extension of rights the FDA would expect considerable external scrutiny and undertakings from the Crown Prosecution Service about the consistency of the training.

Q25. Do you have any comments on the oversight and monitoring role to be undertaken by IPS to ensure standards of course delivery and assessment are maintained? If so, please set them out.

Please see the response to 24 above.

Q26. Do you have any comments on the number of hours CPD Associate Prosecutors are required to undertake? If so, please set them out.

The system of CPD hours are predicated on a level of knowledge gained through academic and vocational training. The requirements of ILEX members and Fellows similarly seek to build on the recognised professional qualifications held. There is no comparable requirement for Associate Prosecutors and as such there is in essence nothing to build the knowledge upon. The requirement to attend a course and receive the relevant hours seems wholly inadequate. Perhaps the completion of a portfolio for submission to an accredited mentor or the completion of an annual refresher course is more appropriate.

Q27. Do you have any comments on the standards of conduct that IPS expects Associate Prosecutors to observe? If so, please set them out.

The sanction for any breach is unlikely to have an effect on an Associate Prosecutors as there are no provisions for striking off or similar. There appears to be no process for the removal of designation from an Associate Prosecutors and thus it is difficult to see what action IPS would take. The most likely sanction would be performance or discipline proceedings against the Associate Prosecutors as an employee of the Crown Prosecution Service and thus IPS would have little real role in the maintenance of standards.

Q28. Do you have any comments on the arrangements by which IPS will investigate the conduct of Associate Prosecutors? If so, please set them out.

Please see 27 above, it is unlikely that conduct will come to the attention of IPS in any event.

Q29. Do you agree that the CPS should be expected to refer any conduct matters to IPS as appropriate? If not, please state why.

Please see 27 above. The Crown Prosecution Service would deal with any matter internally prior to referring the matter to IPS and as such the actual regulatory role appears limited.

Conclusion

These proposals represent an exponential increase of powers of Associate Prosecutors which were never envisaged within the **Prosecution of Offences Act 1985** or under the recent extension of the **Criminal Justice and Immigration Act 2008**. This is particularly true in the realm of bail applications and committals where the increase of powers of Associate Prosecutors has already fundamentally undermined the value of the role of practising solicitor and barrister prosecutors within the Criminal Justice System. The caveats originally placed on the use of essentially unqualified lay prosecutors have been eroded and the Magistrates Court is increasingly becoming devoid of practising solicitor and barrister prosecutors. The move towards further rights for Associate Prosecutors is contrary to the increasing complexity of the criminal law and further shifts the balance away from victims and witnesses towards defendants, by virtue of their qualified lawyer representation.

Associate Prosecutors, due their lack of knowledge, both of their limitations and legal knowledge can make errors of which they are unaware. The rights were extended in spite of opposition from the FDA, the Law Society and the Bar Council not for self interest, but to preserve the parity of arms required under an adversarial criminal justice system. If a government wish to change the overarching system of law to codify existing statute and ensure that a trial is an inquisition conducted by a legally qualified investigating judge there could be a place for such lay presenters in the lower court, however until that time the role of the Associate Prosecutors must remain limited and properly supervised.

Thus the FDA explicitly opposes the extension proposed within this consultation, regardless of the limited safeguards, regulation and training schemes proposed.

Andrew P. Morgan
FDA CPS Section Deputy National Convenor
Chairman, FDA CPS Section Professional Issues Sub-Committee
Tuesday, 06 April 2010

JUSTICES CLERKS SOCIETY

Our ref: SB/RH 92.09

24th March 2010

Mrs Baljeet Basra
ILEX Professional Standards Manager
Kempston Manor
Kempston
Bedford
MK42 7AB

BY E-MAIL

Dear Mrs Baljeet

PROPOSAL TO SEEK ADVOCACY AND LITIGATION RIGHTS FOR ILEX ASSOCIATE PROSECUTOR MEMBERS

I refer to your letter of the 17th February and am grateful for the opportunity to comment on the proposal to seek advocacy and litigation right for ILEX associate prosecutor members. I hope you will forgive me if I offer the response of the Society other than by way of the response form.

The Society is satisfied that it could safely support the proposal and would offer only a few suggestions and comments. As the Society sees it ILEX litigators would have to be qualified as a LEx with qualifications that aren't much different from a barrister, and then must do two additional stages, one as a litigator and a further one as an advocate. They would then receive a certificate of eligibility. The standards of advocacy are also the subject of a consultation, but the point is that they are common standards with the Law Society and the Bar, so there should be no difference in the standard aspired to.

The proposal on advocacy is that they can do civil and family work in the Magistrates' and County Court. LExes, with leave, do some advocacy in Family Proceedings Courts already and legal advisers and magistrates have no problem with that; they are competent and generally on top of the work – in some cases more so than barristers for obvious reasons, as they've usually had conduct of the case throughout.

.....

The Society would suggest that the formulation for cases in the Magistrates' Court is rather out of date. It should be:

To appear before justices or a district judge (Magistrates' Court) in the Magistrates' Courts in relation to all matters originating by complaint or application, including applications under the licensing, betting and gaming legislation;

Since this means civil proceedings in the Magistrates' Court, the Society believes it would be better to say so, rather than tie eligibility to a specific process (which could be changed, like charge and requisition). The Society sees no objection to their dealing with fines enforcement, though that might go further than they want to go. If it's agreed that it's appropriate for them to do advocacy at all, I think a better formulation would be:

To appear before magistrates, District Judges (Magistrates' Court) or Justices' Legal Advisers in the Magistrates' Courts in relation to all civil [and enforcement] matters.

Taking out the square brackets would remove fines enforcement – maintenance enforcement proceedings are civil in any event

Likewise, in the next section, (Advocacy in the Family Court), Justices' Legal Adviser ought to be added to the list of judiciary, as the most likely place for a LEx to appear is in a directions court.

Much of the consultation is taken up with how LExes will qualify, and that reads very like any other professional qualification. It follows the pattern with the other profession, of requiring individual elements to be separately certificated, so that a LEx has to be certified as both a litigator and an advocate before they could practice in a court.

I trust that these comments are of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sid Brighton', written over a horizontal line.

Sid Brighton
Chief Executive

LAW SOCIETY – EXTRACTS OF RESPONSE (includes full comments in relation to associate prosecutors)

Mrs B Basra
ILEX Professional Standards Ltd
Kempston Manor
Kempston
Bedford
MK42 7AB

21 April 2010

Dear Mrs Basra

Re: consultations on gaining probate, litigation and rights of audience for ILEX members and rights of audience for associate prosecutors

The Law Society welcomes the opportunity to comment on ILEX Professional Standard's (IPS) proposal to seek rights to carry out probate activities, conduct litigation and rights of audience for ILEX members. IPS has put forward a set of proposals on the training, qualification and regulation of members who wish to gain these new rights. I am grateful to you for agreeing to extend the deadline for response.

The Legal Services Act 2007 enables existing approved regulators to apply to the Legal Services Board to extend the range of reserved activities which they may authorise persons to carry out. The Legal Services Board will consult with prescribed bodies on an application before scrutinising it and making a recommendation to the Lord Chancellor, who will decide the fate of the application. The Legal Services Board must consider the application against various criteria laid out in the Act.

The Law Society believes that protecting the public interest should be paramount when considering any regulatory change. We consider that ILEX members should only be granted the rights to carry out the proposed activities if they are able to demonstrate that they meet the same high standards as solicitors. Solicitors' training

means that they gain a broad knowledge of law and are able to apply this knowledge in a multitude of different areas. We would be concerned if other legal professionals seeking to compete with solicitors did not acquire this same broad knowledge. The professionalism and integrity of the solicitors' profession is of the utmost importance to clients and we would hope to see any competitors match these standards. We would also expect those entering the market to be subject to a similarly robust and credible system of regulation as solicitors.

Rights of audience for associate prosecutors

The Criminal Justice and Immigration Act 2008 originally proposed that Associate Prosecutors would be unregulated and simply subject to the employee/employer relationship within the CPS. Following negotiations and lobbying by TLS, the legislation provides that Associate Prosecutors must be regulated by an external regulator, and the CPS were given until 2011 for Associate Prosecutors to become members of ILEX. The Law Society was accordingly pleased that this group of paralegals will be subject to regulation by an external (to the CPS) regulator.

The consultation paper proposes there will be two levels of Associate Prosecutor qualification. Level 1 will be such that Associate Prosecutor will perform the level of work which they perform now, which includes prosecution of all cases in the magistrates' court, including trials of non-imprisonable offences. Level 2 will enable them to prosecute every case except trials of 'either way' offences - more serious cases that can be tried in the Magistrates' Court or the Crown Court. The consultation paper also allows that Level 2 Associate Prosecutors could conduct Youth Court advocacy.

The consultation paper outlines the regulatory system, including the Code of Conduct which is based on, and is therefore essentially the same as that for solicitors, as well as the CPD requirements. The Law Society is generally content with these arrangements.

We note that the Post Qualification Competence requirements include monitoring by the supervising Crown Prosecutor, and the provision of instructions and general supervisory functions by the supervising Crown Prosecutor. In view of the way that criminal cases can produce unanticipated issues in the course of a hearing, the fast-paced nature of magistrates' courts lists, and the often very serious nature of the decisions being made - for both the alleged victim and the defendant - it is submitted that the reference to supervision should specifically refer to the need for the supervising Crown Prosecutor to be available to be contacted at all times in the course of the court session. The practice of a supervising Crown Prosecutor prosecuting in his or her own court whilst supervising the work of Associate Prosecutors elsewhere in the courthouse is unsatisfactory and causes disruption to the court list.

In addition, the Law Society has concerns about the entry qualifications. In relation to Level 2, the entry qualification does not require the candidate to have any academic or legal qualification whatsoever, and nor do they have to be an existing member of the CPS workforce. Apparently someone without any academic or legal qualification at all could qualify as a Level 2 Associate Prosecutor. The Law Society submits that in order to become a level 2 Associate Prosecutor, the minimum requirement must be that they have completed the 'ILEX part 2 criminal law and practice' paper, or the Legal Professional Course or equivalent Bar qualification, or have a law degree. We consider that this is particularly important because many of these offences are serious and legal issues are likely to arise where it will be essential that the Associate Prosecutor should be able to recognise them as such and seek appropriate advice. We believe that a basic knowledge of the law is crucial for this.

REMAINDER OF LETTER NOT COPIED HERE – RELATED TO OTHER CONSULTATIONS ISSUED BY IPS

Yours sincerely

Mark Stobbs
Director of Policy

ANNEX 22

ASSOCIATE PROSECUTOR LEVEL 1 PRECOURSE MANUAL OUTLINE

Chapter 1	The Role of the Associate Prosecutor.
Chapter 2	File Review and the Decision to Prosecute.
Chapter 3	Practice and Procedure.
Chapter 4	Bail Act.
Chapter 5	Sentencing.
Chapter 6	Definitions of Racial and Religious Offending and Other Hate Crimes.
Chapter 7	Offences Against the Person.
Chapter 8	Public Order and Related Offences.
Chapter 9	Protection from Harassment.
Chapter 10	Criminal Damage.
Chapter 11	Football Offences.
Chapter 12	Public Justice Offences.
Chapter 13	Offensive Weapons and Firearms.
Chapter 14	Drugs Offences.
Chapter 15	Road Traffic Offences.
Chapter 16	Excess Alcohol Offences.
Chapter 17	Offences of Dishonesty.
Chapter 18	Sexual Offences and Prostitution.
Chapter 19	Dangerous Dogs.
Chapter 20	Youths.
Chapter 21	Miscellaneous Offences.

ANNEX 23 ASSOCIATE PROSECUTOR LEVEL 1 FOUNDATION COURSE OUTLINE

AIM OF COURSE

The aim of this course is to provide candidates with the legal and procedural knowledge in relation to the prosecution of cases within their criteria in the Magistrates Court

COURSE OBJECTIVES

The course objectives are that by the end of the course candidates will have developed:-

- Knowledge and understanding of their duties and responsibilities as a court advocate including the relevant rules of professional conduct and ethics.
- Knowledge and understanding of the extent of their powers and responsibilities as an Associate Prosecutor.
- Knowledge and understanding of the different sources of evidence; admitting exhibits into evidence, preparing admissions of fact; bad character evidence and the principles of competence and compellability.
- Knowledge and understanding of the law in relation to offences that they are likely to prosecute in the Magistrates Court, including Criminal Damage, Dishonesty offences, Harassment, Hate Crimes, Offences Against the Person, Public Order, Road Traffic and Sexual Offences.
- Knowledge and understanding of the procedure for dealing with all non-contested cases within their powers in the Magistrates' Court including Prior to Plea, After Plea, Committals, Sendings, Preventative Civil Orders, Sentencing and Youths..

Associate Prosecutor Foundation Course

DAY ONE

10.45	Registration.
11.00-11.30	Welcome, Introductions and Domestics.
11.30-12.30	The role of the AP and Their Remit.
12.30- 13.15	Lunch.
13.15- 14.45	File Review and the Decision to Prosecute. The Evidential Test.
14.45-15.30	The Public Interest Test.
15.30-15.45	Tea and Coffee Break.
15.45-17.00	Misuse of Drugs.

DAY TWO

9.00-10.15	The Law and Policy in Relation to Hate Crimes.
10.15-10.45	Offences against Public Order.
10.45-11.00	Tea and Coffee Break.
11.00- 12.30	Offences against Public Order continued.
12.30-13.00	Lunch.
13.00-14.30	Offences Against the Person
14.30- 15.00	Protection from Harassment
15.00-15.15	Tea or Coffee Break

15.15-16.15 Criminal Damage

DAY THREE

9.00- 9.30 Road Traffic Definitions

9.30- 10.45 NIPs, Dangerous and Careless Driving, and FTS & FTR.

10.45- 11.00 Tea or Coffee Break

11.00-11.45 Disqualified Driving

11:45- 13.00 Excess Alcohol

13.00- 13.45 Lunch

13.45- 15.00 Exceptional Hardship& Driving Licence Restoration

15:00-15:15 Coffee and Tea Break

15:15- 16:00 Speeding and S 172 Cases.

16:00- 16:30 Construction and Use and Document Offences.

DAY FOUR

9:00- 9:45 Sexual Offences

9:45- 11:00 Dishonesty Offences

11:00-11:15 Coffee and Tea Break

11:15- 12:45 Practice and Procedure Part 1. Prior to Plea

12:45-13:30	Lunch
13:30-14:30	Practice and Procedure Part 2. After Plea
14:30-15:15	Practice and Procedure Part 3: Committals.
15:15-15:30	Coffee and Tea Break.
15:30- 16:15	Practice and Procedure Part 4: Sendings.
16:15-16:45	Practice and Procedure Part 5: Case Studies

DAY FIVE

9:00-10:00	Sentencing
10:00-11:00	Preventative Civil Orders
11:00-11:15	Coffee and Tea Break
11:15- 12:45	Youths
12:45-13:30	Lunch
13:30-14:30	Multiple Choice Quiz
14:30-15:30	Delegate Presentations
15:30-16:00	Final Session

ANNEX 24 ASSOCIATE PROSECUTOR LEVEL 1 TRIAL PREPARATION COURSE OUTLINE

TRAINING PROGRAMME OUTLINE

The purpose of this training is to give delegates the skills and knowledge that would be required to undertake summary trial preparation and all the decisions attached thereto, as well as extended review decisions, such as the amendment and alteration of charges and the discontinuance of proceedings.

AIMS OF COURSE

- To provide delegates with the practical knowledge and skills required to conduct summary trial preparation in relation to cases within criteria set by the Director.
- To provide delegates with the practical skills and knowledge to review and assess charges and summonses and to decide upon and draft amendments thereto.

To provide delegates with the practical knowledge and skills required to enable them to review charges and take decisions as to discontinuance within any strictures imposed upon that decision making process, drafting the appropriate documents

COURSE OBJECTIVES

By the end of the course, delegates will have developed knowledge and understanding to carry out the following:

1. Check the full file / trial pack for completeness chase any outstanding evidence and flag up potential issues for resolution.
2. Deal with relevant evidential issues, such as which witnesses should be called to give oral evidence, which should be served S9 and which should be tendered and evidence which can be adduced by way of a S10 Admission, and drafting such admissions.
3. Decide upon the correctness of existing charges and decide whether there should be amendments, replacements or discontinuance.
4. Decide the appropriateness of pleas and bases of plea.
5. Decide whether Civil Preventative Orders should be applied for or varied if in existence.

6. Determine the requirement for a notice to introduce hearsay evidence, and draft the notice.
7. Determine the requirement for a notice to adduce bad character evidence, and draft the notice.
8. Determine the requirement for an application for special measures, and draft the application.
9. Identify unused material, state the test for disclosure and deal with ongoing disclosure issues.

COURSE OUTLINE

Session 1 Introductions and Domesticity.

Session 2 Case Review. This session will cover a revisiting of the review process, to include consideration as to the appropriateness of any charges. It will also cover the appropriateness of existing charges and the selection of alternatives or amendments where appropriate. Where charges are no longer appropriate the session will cover discontinuance.

It will consider the decision as to venue and how appropriate representations can be formulated.

Session 3 Case Analysis and witness selection. This session will cover case analysis, identification of whether witnesses should be called, served or tendered, formal admissions and other general evidential matters. An analysis of the evidence will also lead to a decision as to what pleas are appropriate, and so this will be covered in this session as well.

Session 4 Hearsay Evidence. This session will cover the legal framework for the admissibility of hearsay evidence, and the service of the notice to introduce such evidence. It will cover drafting a notice to adduce such evidence based on a case study.

Session 5 Bad Character Evidence. This session will cover the legal framework for the admissibility of bad character evidence (in particular s.101 (1) (d) CJA 2003), and the service of the notice to adduce such evidence. It will also cover the drafting a notice to adduce such evidence based on a case study.

Session 5 Unused Material. This session will cover the law in relation the disclosure of unused material, the AGs Guidelines and CPS Policy. It

will; also cover decision making in relation to disclosure issues. Learning will be reinforced with the completion of the appropriate forms based upon a case study.

Session 6 Special Measures. The session will cover the legal framework for special measures, and identifying vulnerable or intimidated witnesses. The session will also cover the completion of an application in relation to applications utilising a case study.

Session 7 This session will cover the decision as to whether to apply for a Civil Preventative Order in appropriate cases. It will also cover considerations as to what evidence would be required and how an existing order can be varied and in what circumstances.

Session 8 Knowledge Quiz. The knowledge acquired by delegates will be checked with the use of a Multiple Choice Quiz

Session 9 Assessment Case Study. Evaluation of the learning and skills acquired will be conducted a case study encompassing the skills and knowledge covered on the course. It will be marked by the tutors, with written feedback being provided.

Session 8 Final Session.

There will also be a series of handouts for delegates covering the subject areas of the course.

ASSESSMENT

Assessment for this course will be by delegates carrying out practical exercises at the conclusion of each session. Additionally, as included in the draft outline above there will be two assessment exercises, which will be marked by the tutors. This will ensure that the learning is embedded.

ANNEX 25

ASSOCIATE PROSECUTOR LEVEL 1 ADVOCACY COURSE OUTLINE

DAY ONE

10.00-10.15	Welcome and Domestics
10.15-11.0	Introductions and Hopes and Concerns.
11.00-11.15	Coffee/Tea Break.
11.15-12.30	The Skills of the Job
12.30-13.15	Lunch.
13.15-14.30	Delegate Presentations.
14.30-15.45	Review and Endorsements
15.71-16.0	Coffee/Tea Break
16.00-17.00	Plea Before Venue and Mode of Trial

DAY TWO

9.15-10.45	Delegate Presentations.
10.45-11.0	Coffee/Tea Break.
11.00-12.0	The Defendant Does Not Attend
12.00-12.30	Delegate Preparation
12.30-13.15	Lunch.
13.15-15.15	Delegate Presentations
15.15-15.30	Coffee/Tea Break
15.30-16.30	Tales of the Unexpected (and how to deal with them)

DAY THREE

9.15-11.15	Delegate Presentations
11.15-11.30	Coffee/Tea Break
11.30-12.30	Motoring Cases

12.30-13.15	Lunch
13.15-15.30	Traffic Court
15.30-15.45	Coffee/Tea Break
15.45-16.30	Sentencing Outline

DAY FOUR

9.15-11.45	Mock Assessments (With break part way through)
11.45-12.30	Final Session
12.30	Lunch

Afternoon free for preparation for final day

DAY FIVE

9.00	Assessments
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ANNEX 26 ASSOCIATE PROSECUTOR LEVEL 1 YOUTH COURSE OUTLINE

AIMS

The aims of the course are:

- To provide an overview of the law and policy considerations for dealing with Youth Offenders appearing in the Magistrates Court and to explain the key differences between the youth justice system and the adult criminal justice system.
- To provide an overview of the venue provisions as they apply to Youth Offenders.
- To give delegates the skills and knowledge required to prosecute cases in the youth court.

OBJECTIVES

By the end of the course, candidates will have the knowledge and understanding to be able to:-

- State the major factors to be taken into account when dealing with a Youth Offender appearing in the Magistrates Court.
- Examine a file involving Youth Offenders, taking into account existing legal and policy principles.
- Identify cases in which the statutory diversion scheme and other diversionary options should be considered and apply the appropriate disposal.
- Prepare and present a venue argument, dealing with grave crimes, dangerousness and adult co defendants.
- Prepare and present cases for sentence.
- Describe the significance of age at every stage of a prosecution.

COURSE OUTLINE

Session 1 Introductions and Domesticity.

Session 2 Background to Youth Law and Policy. This session will include an outline of the essential differences between the decision making process in Adult and Youth Courts. It will also cover law and policy in relation to diverting youths from the CJS and the public interest decision to prosecute. These areas must be covered in order to put the remainder of the course in context.

- Session 3** Youth Court and its Constitution. This session will cover the law policy and practice in relation to Youth Courts and their constitution, and those aspects of practice and procedure that are different from Adult Courts, such as publicity, and those entitled to be in court.
- Session 4** The Age of The Youth. This session will cover the significance of the age of the youth at various stages of the proceedings, including plea and determination of venue.
- Session 5** Venue. This session will cover the law and practice in relation to venue, including grave crimes arguments and dangerousness.
- Session 6** Sentencing This session will cover the law practice and policy in relation to the sentencing of youths.
- Session 7** Multiple Choice Quiz.
- Session 8** Assessment Exercise. This will take the form of delegates making an application to the court and receiving both oral and written feedback from the tutors.

ASSESSMENT

Assessment will be conducted throughout the training with exercises to check learning at the conclusion of each session. At the conclusion of the course there will be a Multiple Choice Quiz to act as a knowledge check, together with an assessment exercise during which the delegates will present an application to the assessor sitting as a District Judge. The delegates will receive written and oral feedback.

ANNEX 27 ASSOCIATE PROSECUTOR LEVEL 1 BAIL COURSE OUTLINE

AIM OF COURSE

To familiarise all Associate Prosecutors with the legislation and procedures necessary to deal with all types of bail and custody hearings in the Magistrates Court and Crown Court in a fair and effective manner.

COURSE OBJECTIVES

By the end of the course Associate Prosecutors will be equipped with knowledge and understanding to enable them to: -

- Identify the major elements of the Bail Act 1976 and other legislation relevant to bail hearings.
- Decide upon and present objections to bail in a fair, clear and structured manner in relation to all types of offences.
- Deal with defence arguments in relation to bail.
- Deal with breach of bail hearings.
- Deal with appeals against the grant of bail.
- Identify the appropriate Custody Time Limits (CTL) in a given case, and know the correct procedure for recording CTLs on the CPS case file.
- Conduct applications to extend CTLs
- Conduct Bail Hearing in the Crown Court in chambers.

COURSE OUTLINE

Session 1 Introductions and Domesticity.

Session 2 An APs Powers in Relation to Bail Hearings. The purpose of this session is to outline to delegates the extent of their powers in relation to bail as set out in the Directors Instructions relevant at the time.

Session 3 The Law in Relation to Bail. This session covers the legislation relevant to remand hearings.

- Session 4** Custody Time Limits. This session will cover the law and CPS procedures in relation to CTLs including the law and procedure in relation to extensions.
- Session 5** Preparing the Bail Application. This session covers the way in which an AP will convert the information in the file into a properly structured application for a remand. It will cover the identification of appropriate exceptions to the right to bail, and how to justify these with appropriate grounds with reference to the information available to the AP anticipating and taking into account the arguments likely to be raised by the defence advocate.
- Session 6** Preparation and Presentation of Remand Applications. Delegates will be given case studies to prepare for hearing and will then present them in a court setting. After this they will receive written and oral feedback from the tutor.
- Session 7** Bail in Serious Cases. This session covers the law pertaining to the offences specified in section 25(2) of the Criminal Justice and Public Order Act 1994 (as amended) as well as practical advice as to how to deal with cases of this nature. It also deals with the law and practice involved in Bail Appeals.
- Session 8** Breach of Bail and Conditions of Bail. This session covers the law and practice for hearings of this nature including the questioning skills required for a Breach of Bail Hearing.
- Session 9** Crown Court Bail Applications. This session covers the law and procedure involved in Judge in Chambers Hearings for bail in the Crown Court. It will also cover such matters as the appropriate etiquette and modes of address.
- Session 10** Preparation and Presentation of Remand Applications. Delegates will be given case studies to prepare for hearing and will then present them in a court setting. After this they will receive written and oral feedback from the tutor. They will be assessed by the tutor as to whether they are ready to undertake these hearings in court.
- Session 11** Outstanding Questions and Course Close

ASSESSMENT

As indicated in the course programme above assessment will be carried out by the course tutors. They will observe and assess the delegate carrying out a remand application and also a breach of bail hearing.

ANNEX 28 ASSOCIATE PROSECUTOR LEVEL 1 YOUTH BAIL COURSE OUTLINE

AIMS:

To prepare and present applications for bail and in relation to bail involving youth defendants within the parameters of both the Directors Instructions and Guidance.

OBJECTIVES:

At the end of the session delegates should have developed knowledge and understanding to be able to:

- Describe the extent of their powers in relation to youth remands and bail.
- Describe how they will receive instructions in relation to such applications.
- Describe at least three additional safeguards that apply to those under 17 who are detained by the police.
- Describe the different remand provisions for youths aged 10/11, 12-16 and 17.
- Advise the court on the criteria for making a security requirement when remanding a vulnerable boy aged 15.
- Describe the alternative bail options that a court must consider before making a remand with a security requirement.

COURSE OUTLINE

In order to adequately equip APs with the knowledge and skills required to effectively deal with any extension the course would need to be of One Day's duration. I have not included timings of each session at this stage as it will depend on the exact extent of any extension to their powers. I have included brief outlines of what each session would need to cover to give some idea of course content

Session 1. Introductions and Domesticity.

Session 2. Knowledge Check. Enquire as to the delegates' experience and knowledge in relation to bail.

Session 3. An APs powers in relation to youth remand and bail. This will need to set out what the extension to their powers is and how it will be exercised and

supervised. It will need to cover such areas as instructions from a lawyer, limits to their powers, and points of contact and assistance.

Session 4. Outline and reminder of the law in relation to bail as covered in the Bail Act. This is required to ensure that all APs are up to date with the law, and procedure. The grounds for withholding bail are the same as with adults,.

Session 5. The law in relation to the withholding of bail and the granting of conditional bail for youths. There is an a session included in the Youth Training for lawyers that can be used here. It runs for one hour on that course, and includes a very useful PowerPoint and Handout. I would intend to expand that session by including some worked examples of cases. This session would need to run for two hours.

Session 6. Preparation for Remand Applications.

Session 7 Delegate Remand Applications and Feedback. The delegates are to present remand cases in relation to youth offenders. They are to receive both written and oral feedback from their tutor.

Session 8. Preparation for Second Remand Applications.

Session 9. Second Remand Applications and Feedback. The purpose of there being a second exercise is to enable delegates to embed their learning from the first exercise and put it into practice in the second. This will ensure a more effective learning transfer.

ANNEX 30

ASSOCIATE PROSECUTOR LEVEL 2 FOUNDATION COURSE OUTLINE

DAY ONE

10.30	Registration
11.00-11.15	Welcome and Domestics
11.15-12.15	Introductions & Concerns
12.15- 1.15	Lunch
1.15- 2.45	Professional Duties & Responsibilities
2.45- 3.00	Coffee
3.00- 4- 45	The Course of the Trial

DAY TWO

9.15- 10- 45	Evidence: the Basics
10.45- 11.00	Coffee
11.00- 12.30	Hearsay Evidence
12.30- 13.30	Lunch
13.30- 15.00	Identification Evidence
15.00- 15.15	Coffee
15.15- 16.30	Bad Character Evidence

DAY THREE

9.15- 10.45	Unused Material
10.45- 11.00	Coffee
11.00- 12.30	What Do I Need To Prove And How Do I Prove It?
12.30- 13.30	Lunch
13.30- 15:00	Offences and Defences

15.00- 15.15	Coffee
15:15- 16.30	Procedural Matters and Problems

DAY FOUR

9.15- 10.30	Witness Care and Potential Witness Problems.
10.30- 10.45	Coffee
10.45- 12.15	Advocate's Repair Kit
12.15- 13.15	Lunch
13.15- 15.45	Questioning Techniques
15.45- 16.00	Coffee
16.00- 16.30	Post Trial

DAY FIVE

9.15- 10.30	Case Preparation Exercise
10.30- 10.45	Coffee
10.45- 11.45	Multiple Choice Test
11.30- 12.30	Tutor Presentation and Discussion
12.30- 13.00	Final Questions and Course Close

ANNEX 31

ASSOCIATE PROSECUTOR LEVEL 2 ADVOCACY COURSE OUTLINE

DAY ONE

10.30	Registration
11.00-11.15	Welcome and Domestics
11.15- 12.30	Introductions and Outline
12.30- 13.30	Lunch
13.30- 15.00	Case Preparation and Analysis
15.00- 15.15	Coffee
15.15- 16.30	At Court Prior to Trial

DAY TWO

9.15- 10.30	General Advocacy and Questioning Techniques
10.30- 10.45	Coffee
10.45- 12.15	Practical Trial Issues
12.15- 13.15	Lunch
13.15- 15.00	Opening The Trial
15.00- 15.15	Coffee
15.15- 17.00	Examination in Chief

DAY THREE

9.15- 10.45	Cross Examination
10.45- 11.00	Coffee
11.00- 12.30	Re-examination, Recalling and Rebuttal
12.30- 13.30	Lunch
13.30- 15.00	Submissions and Other Defence Interventions
15.00-15.15	Coffee

15.15- 16.00 Final Remarks

DAY FOUR

9.00- 13.00 Mock Trials

13.00- 14.00 Lunch

14.00- 14.45 Feedback from Mock Trials and Instructions for the Assessment

17.00- 17.30 Meeting With Supervising Lawyer

DAY FIVE

9.00 Assessments