

# **ANNEX 3**

## **CONSULTATION RESPONSES**

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### CONSULTATION QUESTIONS

- Q1.** IPS seeks to enable Legal Executive Advocates to become managers in legal practices. Provide your comments on the proposals.

**Provide comments below**

**LEGAL EXECUTIVE ADVOCATE 1**

We fully support the IPS proposal seeking to alter the Rights of Audience Certification Rules to enable Legal Executive Advocates who become managers in a legal practice to continue to exercise their rights of audience.

It is nonsensical that Fellows of Ilex can become Partners within a solicitors practice without it affecting their professional status and Ilex Advocates (whom outrank Fellows) if doing so effectively diminish their own qualification by losing advocacy rights if they made Partners.

Ilex advocates have the same rights of audience as Solicitors in the courts for which their certificate is valid. They conduct the same work in court in exercising these rights. Yet, as the law stands, a Solicitor can become a Partner/manager without it affecting their rights of audience, whilst an Ilex Advocate, it seems, cannot.

We do not consider that the current position supports the intention of the Legal Services Act 2007.

The most useful a lawyer can be to their client is in the representation of them in court. If a client instructs a senior manager within a firm, they expect them to be able to subsequently be able represent their interests at court. Solicitor Partners can still practice advocacy in the court without their manager status affecting their rights of audience.

It further goes without saying that managers within firms should also be able to qualify as legal executive advocates. Ilex advocates are senior lawyers and managers are senior members of staff. The two go hand in hand.

**LEGAL EXECUTIVE ADVOCATE 2**

When I first saw this proposal I was surprised that this was an issue. Litigation rights accorded to ILEX put ILEX lawyers on a par with

solicitors, *in their chosen fields* and as such there should be no bar to advocates holding managerial positions. If they are not so allowed then this discriminatory and is an anomaly that needs to be corrected as soon as possible.

### **LEGAL EXECUTIVE ADVOCATE 3**

As one of the longer qualified Advocates I have seen ILEX grow and mature to the extent that a number of Legal Executives have been appointed as managers both in the private and public sectors. It follows that those Advocates who have been appointed managers should be able to keep their professional qualifications for which they have studied and by which they are respected and valued.

Our workplace is more flexible than when the Rules were drafted. For example, I may well find myself employed as a principal lawyer or manager with a joint venture company or similar within the next 12 months. The Rules need amendment to reflect the growth of its Advocate Fellows and the professional of which we are a part.

### **LEGAL EXECUTIVE ADVOCATE 4**

The strict definition of a 'lawyer' must relate to any person providing legal advice and services including representation before any court or other dispute resolution venues such as a Tribunal, without any impediment whatsoever. The fact that an ILEX Advocates lose the right of audience upon becoming a partner or manager as defined is absurd. Either we are qualified or we are not. This current practice in any event discriminates against ILEX Advocates in isolation. We obtain the qualification in order we can offer our skills to lay clients. To take it away risks making the qualification of no value at all.

### **LEGAL EXECUTIVE ADVOCATE 5**

Absolutely essential that this application is sought as a matter of urgency. At present Legal Executive Advocates are prevented from progressing in practices. It is fundamentally wrong that being an advocate is actually a hindrance when it comes to becoming a partner in a firm.

### **LEGAL EXECUTIVE ADVOCATE 6**

This seems a sensible proposal – it does not seem appropriate for this not to be altered. Legal Executive Advocates should be able to become a manager and still continue to exercise rights of audience.

As a manager a Legal Executive Advocate would still be expected to fee earn for the company.

If a manager could not exercise rights of audience they may lose children

panel membership, for example if they are a family Legal Executive Advocate.

**LEGAL EXECUTIVE ADVOCATE 7**

I fully support the proposal and very much hope that there will be no delay in the implementation.

**LEGAL EXECUTIVE ADVOCATE 8**

It is suffice for me to say it is a no brainer in that it makes sense for an ILEX Advocate to be able to practice in accordance with the Advocacy Certificate, even if he/she has the benefit or advantage of being a member partner or Manager. The current rules seem wholly unfair and unjust and in certain circumstances may in fact deter an ILEX Advocate to seek partnership or progress their career in that way.

**LEGAL EXECUTIVE ADVOCATE 9**

As a Manager Advocate I have a vested interest so predictably whole heartedly support the proposed amendment.

It is patently a nonsense that as an employee I was authorised to be an Advocate but on what amounts to a promotion to a position of greater responsibility I can no longer do so.

I endorse the view that this does not accord with the intention of the relevant legislative provisions.

**LEGAL EXECUTIVE ADVOCATE 10**

In my opinion there is no reason why Legal Exec Advocates should not become managers as their Legal Exec colleagues can without the additional qualification. The purpose of our applying for increased rights of audience was to enable us to represent our clients in all court hearings. It is illogical for us to be granted less rights than our colleagues without the advocacy qualification and there are of course Legal Execs undertaking advocacy in courts in any event (e.g. county court hearings) where the advocacy qualification is not required. The whole purpose of undertaking the additional qualification was to advance my career yet advocates are then penalised in another way. All advocates should, in my opinion, be aware of their limitations and seek guidance, support and assistance from senior colleagues irrespective of their status in the company. I am happy to expand upon my response in more detail should ILEX require.

**LEGAL EXECUTIVE ADVOCATE 11**

I believe it is vital that Legal Executive Advocates are allowed to become

managers in legal practices. Many legal executives have the necessary skills and experience to undertake such a role and it is only fair that this is recognised.

The role of a Legal Executive is increasingly acknowledged as at least equal to the work of a solicitor.

The opportunity to allow a Legal Executive to apply their experience and management skills would be greatly received and allow your members to progress their careers even further.

#### **LEGAL EXECUTIVE ADVOCATE 12**

I am a Fellow of ILEX with advocate rights in criminal proceedings and I would think it unfair that in the event I would ever be considered as a potential Partner at a firm of solicitors, that being the one I am currently employed, or in the future, that a simple ruling would not permit that position to be a reality. Criminal solicitors are permitted to be Partners of course, and we do exactly the same job.

#### **LEGAL EXECUTIVE ADVOCATE 13**

I fully support the proposals. Most Legal Executive Advocates undertake the same work as solicitors to the same high standards. We frequently work in firms where we train and/or supervise solicitors. There is no justifiable reason why we should not be able to be Legal Executive Advocates and Managers in legal practice.

#### **LEGAL EXECUTIVE ADVOCATE 14**

Given that Fellows of ILEX can qualify as Advocates and judges, and can become partners, members or directors in legal practices, it must be an anomaly that they can only be one or the other.

These are very experienced individuals who have earned the right to be an advocate or manager through qualification and indeed merit.

To entrust Fellows with one but not the other cannot have been the intention of the Legal Services Act 2007. It is illogical.

I fully support the proposed amendments.

#### **LEGAL EXECUTIVE ADVOCATE 15**

I think this makes absolute sense and the current position is absurd and cannot have been intended.

#### **LEGAL EXECUTIVE ADVOCATE 16**

There are no grounds for preventing ILEX advocates from becoming managers. Equality of treatment with solicitor advocates who become senior partners, or barristers who become heads of chambers, should be granted.

There are no reasons for discriminating against Legal Executive

advocates. Solicitors and Barristers are mentored and monitored by their peers. LEAs will be similarly treated by their equals and juniors, in management roles.

- Q2.** Do you have any comments on whether the proposed amendment will affect the regulatory objectives or professional principles? If so, set them out.

**Provide comments below**

**LEGAL EXECUTIVE ADVOCATE 2**

The 'Regulatory Objectives', as set out by IPS are self explanatory, and the proposal is proportionate.

**LEGAL EXECUTIVE ADVOCATE 3**

I do not see how the proposed amendment should affect either. It simply reflects the change in the litigation side of the profession over the last 10 years.

**LEGAL EXECUTIVE ADVOCATE 10**

I cannot see that the proposed amendment will have any detrimental effect on the objectives or principles. Please see above for my comments

**LEGAL EXECUTIVE ADVOCATE 12**

There would be no affect.

**LEGAL EXECUTIVE ADVOCATE 14**

I believe that in fact the regulatory objectives of the Legal Services Act 2007 will be met by adopting the proposed amendments.

The professional principles will remain entirely unaffected. Such principles are given high regard by all members and are maintained by our regulatory body the ILEX Professional Standards Ltd.

**LEGAL EXECUTIVE ADVOCATE 14**

I believe that in fact the regulatory objectives of the Legal Services Act 2007 will be met by adopting the proposed amendments.

The professional principles will remain entirely unaffected. Such principles are given high regard by all members and are maintained by our regulatory body the ILEX Professional Standards Ltd.

**LEGAL EXECUTIVE ADVOCATE 16**

The proposal will not affect the regulatory objectives or professional principles.



**ILEX PROFESSIONAL STANDARDS LTD'S CONSULTATION PAPER ON  
THE PROPOSAL TO ALTER AUDIENCE CERTIFICATION RULES TO  
ENABLE ILEX ADVOCATES TO BECOME MANAGERS IN LEGAL  
PRACTICES**

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**RESPONSE OF THE BAR COUNCIL**

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1. This is the Bar Council's response to the consultation paper ("the Paper") of ILEX Professional Standards Ltd. in relation to the proposal to alter audience certification rules to enable ILEX Advocates to become managers in legal practices ("the Proposal").
2. The Bar Council objects to the Proposal. Although the Paper contends that the current position "*does not support the intention of the Legal Services Act 2007*" the Bar Council considers that this is incorrect.
3. As matters currently stand, and as set out at paragraph 4 of the Paper, ILEX members must be employed by one of the following – (1) a firm of solicitors, (2) an organisation in which they work under the supervision of a solicitor, a barrister or authorised litigator; or (3) an authorised litigator. The essence of each of these 3 models is that the ILEX Advocate operates under the management and supervision of an authorised and experienced individual with appropriate qualifications.
4. The Proposal appears to set out a fundamentally different model whereby ILEX Advocates need not be managed and supervised in such a way in that the ILEX Advocate himself (or another ILEX Advocate) may be the managers or partners of the organisation.

5. Whilst it is correct that ILEX members may now become partners, members or directors in legal practices, the Bar Council does not consider that it is a necessary or logical consequence of this that an ILEX member should be both “manager” and advocate. This would, in certain circumstances, lead to the removal of a layer of supervision which has hitherto been considered appropriate, and has been mandated, for ILEX Advocates. There are clear and sensible regulatory reasons why ILEX Advocates, in exercising important Rights of Audience, should be subject to appropriate management and supervision.
6. The Bar Council believes that, before any proposal of the type set out in the Paper could be properly considered, it would be necessary carefully to evaluate the implications in the regulatory context and upon public and consumer interests of potentially removing the managerial and supervisory structures to which ILEX Advocates are currently subject.
7. However, this issue is neither considered nor even identified in the Paper.
8. In the circumstances, the Bar Council objects to the Proposal and, for the reason set out above, considers that it potentially has serious implications for regulatory objectives and professional principles, particularly those relating to the protection of consumers and the proper administration of justice.

13 October 2010