



# **MEMORANDUM OF UNDERSTANDING**

**Between**  
**The Crown Prosecution Service**  
**and**  
**The Institute of Legal Executives**

**October 2008**



# **Memorandum of Understanding between the Crown Prosecution Service and the Institute of Legal Executives**

## **Purpose of document**

1. This Memorandum of Understanding between the Crown Prosecution Service (CPS) and the Institute of Legal Executives (ILEX) sets out the arrangements for CPS Associate Prosecutors to become members of ILEX and for the accreditation of the Associate Prosecutor training programme.
2. Nothing contained within this Memorandum of Understanding alters the statutory power of the Director of Public Prosecutions to designate and deploy lay members of staff to perform functions of Crown Prosecutors in accordance with Section 7A of the Prosecution of Offences Act 1985.

## **The Crown Prosecution Service**

3. The CPS was created by the Prosecution of Offences Act 1985 and is the Government Department responsible for determining the charge and prosecuting criminal cases investigated by the police in England and Wales.
4. The head of the Crown Prosecution Service is the Director of Public Prosecutions. The Director is superintended by the Attorney General, who is responsible to Parliament for the Service.
5. The CPS has 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 CPS London covering the operational boundaries of both City of London and Metropolitan

Police Forces. Each Area is headed by a Chief Crown Prosecutor (CCP) who is responsible for prosecutions within the Area.

6. The CPS is the principal prosecuting authority in England and Wales and is responsible for determining the charge in all but minor cases, advising the police during the early stages of an investigation, reviewing cases submitted by the police for prosecution, preparing cases for court and the presenting of those cases at court.

### **The Institute of Legal Executives**

7. 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 the granting of 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.
8. Fellows of ILEX are Commissioners for Oaths and are authorised under the Compensation Act 2006 to provide claims management services.
9. Although ILEX is an authorised body under the Courts and Legal Services Act 1990, it may not currently authorise its members to provide litigation or advocacy services as independent practitioners, other than in relation to immigration and claims management services.

### **Associate Prosecutors - General**

10. Section 7A of the Prosecution of Offences Act 1985 (the Act) allows the Director of Public Prosecutions to 'designate' suitably trained lay

members of staff, known as Associate Prosecutors, to review cases and appear before the magistrates' courts to prosecute a defined range of proceedings.

11. Working under the supervision of experienced Crown Prosecutors, who provide guidance and assistance, Associate Prosecutors divide their time between reviewing and presenting cases at the local magistrates' courts.
12. The role of the Associate Prosecutor is controlled internally by way of Instructions, issued by the Director of Public Prosecution, ensuring that they only conduct cases which they have been trained to do.
13. An Associate Prosecutor must complete 16 hours of continuing professional development (CPD) training per year in order to stay up to date with changes in the law and legal practice.
14. Associate Prosecutors are bound by the Code for Crown Prosecutors and assessed by Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI) against the CPS National Standards of Advocacy.

### **Associate Prosecutor Membership**

15. All Associate Prosecutors shall be subject to regulation by an approved regulator by 1 May 2011 in accordance with the requirement set out at section 7A of the Act, as amended by the Criminal Justice and Immigration Act 2008. From this date, no lay employee of the CPS designated under Section 7A of the Act shall be permitted to exercise the powers granted under the Act without being externally regulated.
16. It is agreed by the CPS and ILEX that until regulation becomes a statutory requirement, a voluntary scheme will exist whereby Associate

Prosecutors may become members of ILEX and shall be regulated by ILEX in accordance with its Code of Conduct and Guides to Good Practice.

17. As Associate Prosecutor members of ILEX, Associate Prosecutors will be subject to ILEX Rules and Regulations governing membership of ILEX. Associate Prosecutor membership of ILEX will not confer any rights of audience or rights to conduct litigation until such time as ILEX is an authorised body or an approved regulator for these purposes in respect of Associate Prosecutors under the Courts and Legal Services Act 1990 or the Legal Services Act 2007.

### **Applying for Membership**

18. A person shall apply to become an Associate Prosecutor member of ILEX on successful completion of the CPS Associate Prosecutor training programme.
19. ILEX shall notify the Associate Prosecutor, CPS Leadership and Learning and the relevant CPS Chief Crown Prosecutor in writing of the outcome of each application for membership within 14 days of the application being received.
20. ILEX will issue an Associate Prosecutor's Certificate to each Associate Prosecutor member to the end of the subscription year.
21. If an application for Associate Prosecutor membership of ILEX is refused, ILEX will notify the Director of Public Prosecutions, the Associate Prosecutor and the relevant Chief Crown Prosecutor in writing as soon as practicable, but no more than 7 days after the decision has been made giving reasons for the decision. No CPS Area will deploy an Associate Prosecutor whose application for membership has been refused.

## **Membership Fees**

22. The CPS will pay ILEX the membership fee of each new Associate Prosecutor member. Membership fees will be agreed between the CPS and ILEX annually.
23. On receipt of a new application for Associate Prosecutor membership of ILEX, ILEX shall invoice the CPS Area the cost of membership to the end of the subscription year, unless otherwise agreed.
24. Where an Associate Prosecutor is already a Student, Member or Fellow of ILEX, the CPS will meet the cost of Associate Prosecutor membership and the individual Associate Prosecutor will be responsible for the payment of the balance of the Student, Member or Fellow member fee.

## **Renewal of Membership**

25. No later than 1 November of each year, subscription renewal forms will be sent by ILEX to each Associate Prosecutor to complete. Each renewal form must be countersigned by the relevant Chief Crown Prosecutor and returned to ILEX within the agreed timescale.
26. ILEX will invoice the CPS the subscription fees payable for each completed renewal form received.
27. ILEX will issue an Associate Prosecutor's Certificate to each Associate Prosecutor in respect of the new subscription year.
28. The CPS is under no obligation to pay subscription fees for CPS employees who are not employed as Associate Prosecutors or who are no longer performing the Associate Prosecutor role.

29. Where an Associate Prosecutor is already a Student, Member or Fellow of ILEX, paragraph 24 above will apply.

### **Cessation of Membership**

30. An Associate Prosecutor who ceases to act or be deployed as an Associate Prosecutor may continue in membership with ILEX until the end of the subscription year. If such a person ceases to work as an Associate Prosecutor and the subscriptions are not paid by the CPS they may continue in membership of ILEX as a Student or in any other grade subject to meeting the requirements of membership for that grade and provided their subscriptions are up to date.
31. An Associate Prosecutor who resigns from membership of ILEX will cease to be eligible to be deployed as an Associate Prosecutor and may not resume acting as an Associate Prosecutor until he has been reinstated as an Associate Prosecutor member of ILEX.

### **Accreditation of the CPS Associate Prosecutor training programme**

32. ILEX, or persons appointed by ILEX, will periodically review the CPS Associate Prosecutor training programme in order to accredit it. The criteria and process for accreditation shall be agreed by the CPS and ILEX.
33. The CPS will consult with ILEX on any proposed changes to the Associate Prosecutor training programme or development of new training modules for Associate Prosecutors.

### **ILEX Conduct Rules**

34. All Associate Prosecutor members of ILEX will be bound by and adhere to the ILEX Code of Conduct and Guides to Good Practice.

35. ILEX Rules governing professional conduct and discipline are made pursuant to its Memorandum and Articles of Association and are set out in the Investigation, Disciplinary and Appeals Rules (IDAR). The IDAR establish an Investigating Committee to consider declarations of prior conduct made by members and prospective members, complaints against members, potential breaches of ILEX Rules and possible misconduct by members.
36. Where the Investigating Committee decides any complaint or allegation of misconduct is sufficiently serious, it may refer it to the ILEX Disciplinary Tribunal. Where the Investigating Committee decides that a complaint or allegation is proved but is not sufficiently serious to require referral to the Disciplinary Tribunal it may impose conditions on a member in respect to their conduct or in regard to their employment; admonish, reprimand or warn the member; or decide to take no further action. In cases brought before the Disciplinary Tribunal, the Tribunal has power to exclude a person from membership or to admonish or reprimand him or her and, in addition, may fine a member and/or make an order for costs or compensation against the member.
37. Appeals against decisions of the ILEX Investigating Committee or the ILEX Disciplinary Tribunal will be dealt with in accordance with the IDAR.

### **Complaints made to ILEX about an Associate Prosecutor**

38. The CPS acknowledges that ILEX may wish to investigate complaints against Associate Prosecutors in respect of an alleged breach of the duties and obligations set out in the ILEX Code of Conduct and Guides to Good Practice. ILEX will deal with conduct matters in accordance with the IDAR.



39. It is agreed that ILEX will inform the CPS of complaints received against Associate Prosecutor members so that the CPS can decide whether to initiate an investigation. ILEX will provide the CPS with:
- The name of the Associate Prosecutor concerned;
  - The date the complaint was received by ILEX;
  - The details of the complaint;
  - The proposed timetable for investigation of the complaint; and
  - The current status of the investigation.
40. Where the investigator appointed by ILEX to investigate the complaint requires clarification of CPS policy or procedure, the investigator shall contact the relevant Chief Crown Prosecutor in writing.
41. ILEX will notify the Director of Public Prosecutions and the relevant Chief Crown Prosecutor of the outcome of the ILEX investigation within 7 days of the decision being made.

#### **Complaints made to the CPS about an Associate Prosecutor**

42. A complaint made to the CPS about an Associate Prosecutor, or an Associate Prosecutor whose conduct appears to fall short of the expected standards, will be dealt with in accordance with the CPS Disciplinary Policy.
43. Where a complaint is made against an Associate Prosecutor, the relevant Chief Crown Prosecutor, or other nominated person, will decide whether to notify ILEX of the complaint.
44. In determining whether to notify ILEX of the complaint or conduct issue, the relevant Chief Crown Prosecutors will take into consideration the seriousness of the matter, the particular facts and the duties and

obligations of the Associate Prosecutor set out in the ILEX Code of Conduct and Guides to Good Practice.

45. Where the Chief Crown Prosecutor notifies ILEX of a complaint or conduct issue, the CPS will provide ILEX with:
  - The name of the Associate Prosecutor concerned;
  - The date the complaint was received by the CPS;
  - The details of the complaint;
  - The proposed timetable for investigation of the complaint; and
  - The current status of the investigation.
  
46. The CPS will notify ILEX of the outcome of the CPS investigation where ILEX has previously been informed of the complaint or conduct issue. The CPS will provide ILEX with:
  - a summary of the allegations and whether each allegation was proved; and
  - action taken by the CPS to deal with the matter if proved e.g. verbal warning, written warning, dismissal.
  
47. Where ILEX require further information on the allegation or the outcome of the CPS investigation, they will write to the relevant Chief Crown Prosecutor. Where agreement cannot be reached between the CPS and ILEX on the information to be provided by the CPS to ILEX in respect of internal disciplinary proceedings the matter will be escalated to the Chief Executive of the CPS and the Head of Regulation of ILEX Professional Standards.
  
48. Where ILEX investigates a complaint or conduct issue referred to it by the CPS, or the CPS investigates a case referred to it by ILEX, the investigating body shall provide regular updates on the case at intervals of no more than 28 days.

## **Order of Investigation**

49. Under normal circumstances, the CPS will investigate all complaints and conduct issues before ILEX. However, this may be reviewed on a case by case basis. Where agreement cannot be reached between the CPS and ILEX on the order in which the investigation should take place the matter will be escalated to the Chief Executive of the CPS and the Head of Regulation of ILEX Professional Standards.
50. Where a Chief Crown Prosecutor has been advised that a decision has been made by ILEX to refer a complaint against an Associate Prosecutor to the ILEX Disciplinary Tribunal, the Chief Crown Prosecutor may make representations that the complaint should be dealt with by means of disciplinary procedures within the CPS before the complaint is considered by ILEX Disciplinary Tribunal. Any decision regarding a stay of proceedings by the Disciplinary Tribunal will be determined by reference to the ILEX Disciplinary Rules and the public interest.

## **Exchange of Information**

51. ILEX will inform the CPS of the following when reasonably requested but primarily on a bi-annual basis:
- The number of Associate Prosecutor members of ILEX;
  - The number of Associate Prosecutor members also registered as Students, Members and Fellows of ILEX;
  - The number of complaints received directly by ILEX regarding Associate Prosecutor members;
  - The outcome of the complaints;
  - The time taken to conclude complaints received directly by ILEX;
  - The time taken to conclude complaints referred to ILEX by the CPS; and

- Details of any measures taken arising from feedback from complainants or others involved in the complaints and disciplinary process.
52. The CPS will notify ILEX of the following:
- CPD hours of Associate Prosecutors (on request)
53. Requests by ILEX for the disclosure of information relating to a current or completed prosecution, or information that is of a sensitive or personal nature or marked as Restricted or with a higher protective classification, will be referred to the relevant Chief Crown Prosecutor in writing to be dealt with in accordance with CPS policy.

### **Liaison Meeting**

54. The CPS and ILEX will meet to discuss issues arising out of Associate Prosecutor membership every six months.

### **Review**

55. This Memorandum of Understanding will be the subject to review 12 months from the date on which it is executed, or earlier if requested by either party.
56. This document can only be subject to change with the agreement of both the CPS and ILEX.

### **Parties of the Memorandum**

57. The CPS and ILEX recognise and respect their differing statutory and professional duties, operational priorities, constraints and confidentiality requirements. However, both commit themselves to ensuring

professional cooperation and to delivery of a system that facilitates the exchange of information for their mutual benefit and in the wider public interest.

58. The parties to this memorandum are:

**SIGNED** by ]  
duly authorised for and on behalf ]  
of the Crown Prosecution Service ]

**The Director of Public  
Prosecutions**

Date: 30 October 2008

**SIGNED** by ]  
duly authorised for and on behalf ]  
of the Institute of Legal Executives ]

**The President of the Institute of  
Legal Executives**

Date: 30 October 2008