

Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

Institute of Legal Executives Professional Standards Ltd's application for approval of amendments to its Code of Conduct

Introduction

1. The Legal Services Board ("LSB") is required by Part 3 of Schedule 4 of the Legal Services Act 2007 ("the Act") to review and approve or reject alterations to the Regulatory Arrangements of the Approved Regulators. The Institute of Legal Executives ("ILEX") is an Approved Regulator and whose regulatory functions are carried out through its regulatory arm, ILEX Professional Standards Ltd ("IPS").
2. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change to the Regulatory Arrangements unless we are "...satisfied that..." the approval would fall within one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹). If the LSB is not satisfied that one or more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules about how the application to alter the Regulatory Arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) requires that each proposed alteration has been made or is likely to be made in accordance with the procedures which apply in relation to making of the alteration. This includes the LSB's rules.
4. The LSB will approve Regulatory Arrangements in so far that they appear to achieve their intended outcome and satisfy the sub paragraph 25(3) criteria. Most notably there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles.
5. We received IPS' application for approval of amendments to its Code of Conduct on 26 February 2010. This is the Decision Notice in relation to that application. In the following paragraphs we explain the alterations we were requested to consider, the concerns that we raised in relation to the approval criteria and how these have been resolved in discussion with IPS.

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

Process

6. We have agreed with IPS to conduct a joint “lessons learned” exercise following completion of this application. We will, as a matter of routine, conduct similar exercises following the completion of applications from other ARs and communicate any generic lessons for both ARs and the LSB itself as necessary.
7. The chronology for the handling of this application can be found towards the end of this Decision Notice.

Decision

8. IPS’ application is for approval of alterations to its Code of Conduct (the “Code”), which will replace the current rules-based Code with nine principles of conduct expected of ILEX members.
9. The new Code will apply equally to all ILEX members, regardless of the types of work they undertake or the mode through which they practise.
10. Overall, we are content with IPS’ assessment that the proposed alterations will facilitate and promote the Regulatory Objectives of the Act. The application provides a positive step towards outcomes-based regulation—fitting with the Better Regulation Principles. We are content that the process has been followed adequately and the conclusions that have been reached are rational.
11. We are satisfied that, having considered the application in the context of Schedule 4 sub paragraph 25(3) criteria, we have no grounds for refusing the application made in whole or in part and are therefore granting the application.
12. In addition to approving the application, there are certain areas upon which we wish to comment in this Decision Notice. These are the areas that raised issues in relation to the approval criteria as described in the introduction to this document and therefore further clarification was required.

Future protection

13. A move towards outcomes-based regulation not only requires adopting a principles-based code but also requires the Approved Regulator to have regulatory infrastructure capable of identifying providers who are most at risk of failing to achieve the outcomes and taking strong supervision and/or enforcement action if they fail.
14. IPS advised that it considers that its current regulatory infrastructure and capacity (which relies on complaints being made about ILEX members) to be sufficient to monitor and enforce compliance of the new Code by its members. In addition, IPS considers that given the low levels of failure to observe and maintain standards by members, there is no evidence to suggest that increased monitoring of compliance would be proportionate or necessary.²
15. As IPS has advised that the 7,200 or so ILEX Fellows that undertake reserved legal activities are also subject to further regulation by the Solicitors Regulation Authority or the Council for Licensed Conveyancers we consider the risks associated with IPS not having such regulatory infrastructure, at this time, to be low.³

² IPS, “Further Information”, received 6 April 2010, page 2.

³ IPS advised that as at 1 April 2010, there were 21,555 members of which 7,409 were Fellows. IPS estimates that most of its Fellows would be working in firms or departments regulated by the SRA or

16. It was not evident in its application how IPS intends to apply the new Code going forward in a regulatory environment where there will be entity regulation and where Legal Executives may be able to undertake additional reserved legal activities that would be regulated by another Approved Regulator.
17. IPS has assured us that in submitting any future applications to extend its range of reserved legal activities and possibly to become a Licensing Authority, those applications would include conduct and practice rules applicable to those areas of work and management of legal practices. As part of this, IPS assured us that it will undertake proactive monitoring and inspection of practices to mitigate and address risks associated with providing additional reserved legal activities. The LSB expects that any future applications of this nature will demonstrate how IPS will develop its regulatory infrastructure (including complaint handling procedures) sufficiently to manage the change in its approach to regulation required by such expansion.

Regulatory conflict

18. The new Code will require members, who are also regulated by another organisation, to comply with other codes, rules and regulations which apply to them. Under the current Code, members are also required to comply with other codes.
19. In its consultation process, respondents questioned what would happen where an ILEX/IPS code conflicts with another organisation's code. IPS stated that such regulatory conflicts would be dealt with on a case by case basis.⁴
20. We sought clarification from IPS on this matter, as this approach seemed inconsistent with sections 52 and 54 of the Act, which requires Approved Regulators to take steps to prevent regulatory conflicts in their rules. IPS advised that they considered its new Code to be the primary code for its members and that it may consider agreeing with other relevant regulatory organisations to harmonise their Regulatory Arrangements in the future.
21. For now, this approach from IPS is adequate, as it replicates the same arrangements as the rules-based Code. However, we would expect IPS to fully resolve this matter with the relevant regulatory organisations if it intends to submit further applications to extend its range of reserved legal activities and/or to become a Licensing Authority.

Consultation processes

22. As part of its application, IPS issued a consultation paper to all other Approved Regulators and other stakeholders. IPS also published the consultation paper on its website. However, IPS only received five responses.
23. Because of the small number of responses, we have sought assurances from IPS that it will disseminate the new Code as widely as possible to members and other

the CLC, and that there would only be about 200 Fellows would be working on their own. Of the 200 or so Fellows, approximately 16 of them are immigration advisors who are authorised under the Act to work without supervision by solicitors. The remaining Fellows would be undertaking unreserved legal activities, such as general legal advice and claims handling.

⁴ IPS, "Consultation – Proposals to Revise the Code of Conduct for ILEX Members – Collation of Responses", Annex 5 to the Application, pages 64-65.

relevant stakeholders to ensure that they are aware of and understand the changes that are being introduced.

24. IPS has confirmed that it will disseminate the new Code as widely as possible. As part of this, IPS will provide copies of the new Code by:

- sending it to other regulatory and representative organisations through direct mail or email notification;
- publishing it in the Legal Executive Journal;
- providing a copy to all new members and Fellows;
- bringing attention to it at events, such as graduation ceremonies;
- disseminating the new Code to consumers by enlisting the help of other organisations (such as the Legal Ombudsman's office and consumer associations); and
- providing copies of the new Code to complainants and the members against whom a complaint is made.⁵

25. We expect that for future applications that IPS consider alternative ways of consulting with its stakeholders to ensure that more of its stakeholders inform its policy development. We will discuss this with IPS (as well as other Approved Regulators) as part of the lessons learned process.

Chronology

- The LSB received an application from IPS for approval of amendments to its Code of Conduct on Friday, 26 February 2010.
- The 28-day initial decision period for considering the application ended on Thursday, 25 March 2010.
- On Monday, 23 March 2010, the LSB issued an Extension Notice to extend the initial 28-day decision period until Friday, 7 May 2010.
- This Decision Notice will be issued to ILEX and IPS on Thursday, 6 May 2010.
- This Decision Notice will be published on the LSB's website on 10 May 2010.

⁵ IPS, "Further Information", received 6 April 2010, pages 3-4.

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