

**INSTITUTE OF LEGAL EXECUTIVES**

**APPLICATION TO THE LEGAL SERVICES  
BOARD TO BECOME AN APPROVED  
REGULATOR  
FOR RIGHTS TO CONDUCT LITIGATION  
AND RIGHTS OF AUDIENCE**

**19 JULY 2010**

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## **PART I – THE INSTITUTE OF LEGAL EXECUTIVES AND ILEX PROFESSIONAL STANDARDS LTD**

### **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 to conduct litigation under Part 2 of Schedule 4 Legal Services Act 2007. It also makes an application to grant rights of audience to ILEX members to whom it awards rights to conduct litigation. 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.

### **RIGHTS SOUGHT**

2. The rights sought by ILEX are:

#### **Rights to Conduct Litigation**

##### ***Civil Proceedings***

The Civil Proceedings Litigation Certificate will award the following rights.

- To conduct litigation in civil proceedings.
- To undertake rights of audience in the Judge's room in the High Court and County Court in Civil Proceedings, except family proceedings.

##### ***Family Proceedings***

The Family Proceedings Litigation Certificate will award the following rights.

- To conduct litigation in all family proceedings.
- To appear in family proceedings in the Judge's room in the High Court and County Court.

#### **Rights of Audience**

##### ***Civil Proceedings***

Holders of the Civil Proceedings Litigation Certificate will be able seek a rights of audience certificate awarding the following additional rights of audience.

- to appear in open Court in the County Court in all actions, except family proceedings;
- to appear before magistrates, District Judges (Magistrates' Court) or Justices' Legal Advisers in the Magistrates' Courts in relation to all civil and enforcement matters;
- to appear before any tribunal having jurisdiction in England and Wales, which is listed in Schedule 6 of the Tribunals, Courts and Enforcement Act 2007 where the tribunal rules provide for a non-discretionary right of audience being available to barristers, solicitors and ILEX advocates;

- to appear before Coroners' Courts in respect of all matters determined by those Courts and to exercise rights of audience similar to those exercised by solicitors and barristers.

### ***Family Proceedings***

Holders of the Family Proceedings Litigation Certificate will be able seek a rights of audience certificate awarding the following additional rights of audience.

- to appear in Court (including in open court) in all County Court family proceedings;
  - to appear before Justices or a District Judge (Magistrates Court) in the Family Proceedings Court;
  - to appear before Coroners' Courts in respect of all matters determined by those Courts, and to exercise rights of audience similar to those exercised by solicitors and barristers.
3. ILEX believes that its Application will meet the regulatory objectives set out in the Legal Services Act 2007. ILEX litigators will protect and promote the public and consumer interest; support the rule of law; help to improve access to justice; promote competition in the provision of services; encourage a strong, independent, diverse and effective legal profession; help to increase the public's understanding of a citizen's legal rights and duties; and promote and maintain adherence to the professional principles set out in the Act.
  4. The Application seeks to establish that:
    - a member of ILEX qualified in accordance with the proposed regulations will have the education, training and experience needed to exercise a right to conduct litigation and a right of audience;
    - ILEX has in place suitable regulatory arrangements in respect of members exercising rights to conduct litigation and rights of audience.
  5. The application is divided into five parts:
    - **Part I** – provides information about ILEX and IPS.
    - **Part II** – provides information about ILEX members and their work.
    - **Part III** – sets out arguments to demonstrate compliance with the regulatory objectives and professional principles contained in the Legal Services Act 2007 and the Better Regulation Principles.
    - **Part IV** - explains the litigation and advocacy rights qualification scheme.
    - **Part V** - provides commentary on the regulatory scheme including the Practice Management and Accounts Rules and supporting codes, rules and schemes.
  6. The formal scheme rules, called the Rights to Conduct Litigation and Rights of Audience Certification Rules, are enclosed with this application together with their supporting appendices.

## **INSTITUTE OF LEGAL EXECUTIVES (ILEX)**

### **Constitution**

7. ILEX is the professional body which represents Legal Executives and trainee Legal Executives and enhances their role and standing in the legal profession. It is a company limited by guarantee, not having a capital divided into shares.
8. 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.
9. 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.
10. 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.
11. 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**.
12. 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.
13. 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.
14. 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**

15. 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).
16. 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**.

17. 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**.
18. 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**.
19. 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.
20. 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.
21. 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.
22. The Board has divided its responsibilities into six work streams. The strategy sets out key aims for each of six work stream areas. The work streams are governance and process; education and standards; registration and accreditation; fitness to practise; visibility and image; 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**

23. 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.
24. 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
25. ILEX and IPS believe that these arrangements offer a suitable and proportionate mechanism for dealing with regulatory conflicts.

## **APPROVED REGULATOR ROLE**

26. IPS has scoped out a plan for the implementation of the litigation rights qualification and practice management scheme. A copy of the implementation plan appears at **annex 10**.
27. 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.
28. 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 an additional member of staff will be recruited to undertake the long term administration of the litigation scheme, although they may not need to devote all their time to the scheme if the number of applications is small. As the scheme grows and more applications are received IPS will recruit more staff as required. If IPS receives a large number of applications from the commencement of the scheme it will have the capacity to place an existing member of staff into a full time role dealing with the litigation rights scheme and fill other gaps through additional recruitment.
29. 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. It is envisaged that the scheme will become self-financing, with the income meeting all expenditure including staff costs. The scheme income will enable it to recruit

additional external advisors as necessary. The forecast attributes all the set-up costs to the litigation scheme whereas the committee costs will be shared with other schemes.

30. 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. It is envisaged that such costs will only be necessary for the implementation of the scheme rather than its ongoing administration. The ILEX Chief Executive and President have received and agreed the implementation business plan.

## **PART II – ILEX MEMBERSHIP AND THE WORK OF FELLOWS**

### **MEMBERSHIP**

1. 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 has also been created.
2. In July 2010 there were 21,498 members registered with ILEX. Of those, 7,481 were Fellows and 1,815 had attained the Graduate membership grade.
3. Only Fellows are full corporate members of ILEX and entitled to the benefits and privileges conferred by membership. They are entitled to describe themselves as "Fellows of the Institute of Legal Executives", or "Legal Executives", and to use the designatory letters "F.Inst.L.Ex." To be admitted as a Fellow it is, briefly, necessary to have:
  - passed the ILEX Professional Qualification in Law and Practice, or been exempted from it;
  - completed 5 years employment experience in legal work, including at least 2 consecutive years after completing the ILEX Professional Qualification in Law and Practice;
  - satisfied ILEX as to fitness for admission.
4. Graduate members are those trainees who have completed the ILEX Professional Qualification in Law and Practice, but have not yet complied with the requirements as to legal experience.
5. 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.
6. ILEX members come from diverse backgrounds. Over half of its membership is female and it has a proportion of members from ethnic backgrounds. In particular the flexibility of the earn and learn approach to the ILEX qualification attracts members who may otherwise have not sought to obtain a professional qualification.

## EDUCATION AND TRAINING

7. The ILEX scheme of education and training is set out at **Annex 11**. ILEX introduced a new Level 3 qualification scheme in September 2008 and a new Level 6 qualification in September 2009. These schemes have been accredited by OFQUAL, (formerly the Qualifications and Curriculum Authority), which recognises Level 6 to be of honours degree standard.
8. ILEX was originally established to provide education and training and to act as a professional body for people employed in the offices of solicitors in private practice, or in law departments in local or central government and in commerce or industry where they were supervised by solicitors. Most Fellows still qualify, and are employed, within the solicitors' branch of the profession. However, ILEX's remit, in terms of its education and training programmes is now much wider and trainees may be supervised by other authorised practitioners such as barristers or licensed conveyancers. Through its membership qualification, its Legal Studies Certificate programmes, the distance learning and professional study programmes provided by its subsidiary, ILEX Tutorial College (ITC), ILEX now offers education, training and qualification facilities to all who wish to study, train or qualify in the law of England and Wales. In addition to the 12,000 Students registered with ILEX on its Professional Diploma in Law and Practice and Professional Higher Diploma in Law and Practice programmes, there are 3,500 students currently undertaking the Legal Studies Certificate qualifications. 6,500 customers are currently registered to take courses and receive training with ITC.
9. ILEX is committed to practical legal education and training. Its strict requirements for qualification and high academic standards contribute to the confidence of those employed within the legal profession and enable them to provide employers with well qualified assistance in delivering legal services and in serving the needs of their clients. Fellows of ILEX bring to employers a combination of practical knowledge and experience, coupled with specialist academic legal knowledge. They tend to develop expertise in specific areas of law and practice. The Professional Qualification scheme encourages this focus. The majority of those seeking to qualify with ILEX will study part-time, so that practical experience is combined with the acquisition of relevant legal and procedural knowledge.
10. ILEX plays a unique and important role within the legal profession. It believes that it is vital to the interests of clients and the public at large, that those who deliver legal services are qualified and competent to do so. It combines a professional and regulatory function for solicitors' staff who are neither barristers nor solicitors, but who are nevertheless properly qualified and competent to provide legal advice and services. ILEX Fellows make an important contribution to the delivery of effective legal services to solicitors' clients.

## **CONTINUING PROFESSIONAL DEVELOPMENT (CPD)**

11. ILEX has in place a scheme of Continuing Professional Development for Associate members, Graduate members and Fellows.
12. All ILEX Fellows, except Retired Fellows, are required to undertake 16 hours CPD each calendar year. All Graduate Members of ILEX are required to undertake 12 hours CPD each calendar year and Associate members are required to undertake 8 hours CPD each 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.
13. 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.
14. 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.

## **RECOGNITION OF ILEX QUALIFICATIONS**

15. The Level 3 Professional Diploma in Law and Practice provides a broad introduction to the main areas of law and legal practice encountered in law offices. It now also incorporates legal research and client care units, which develop key skills required by legal practitioners. The standard of assessment at Level 3 equates with GCE 'A' level or NVQ level 3 on the national qualifications framework. The Level 6 law papers are set and examined at honours degree standard. The Level 6 legal practice papers reflect the level of knowledge required on the Solicitors Legal Practice Course, although greater practical expertise is expected to be demonstrated. The Level 6 qualification also includes legal research and client care skills units, aimed at further developing the practical skills required by members in the workplace.
16. Level 6 Law papers are accepted by a number of Universities as credits towards their Law Degrees. ILEX qualifications are also recognised towards qualification as a licensed conveyancer and as a solicitor. Fellows and Graduate members of ILEX who wish to qualify as Solicitors may complete the academic stage of the solicitors training scheme by taking relevant Level 6 subjects. They are required to study for and pass the Legal Practice Course. The Legal Practice Course can be undertaken part time and, as a result, it is possible for ILEX Fellows to qualify as solicitors without any significant disruption in their employment. Fellows of ILEX may be granted exemption from the Law Society's usual requirement for a training contract to be completed. The SRA is piloting a work based learning scheme which may replace the training contract. ILEX is also exploring similar

options and will need to discuss with the SRA whether Fellows' experience will count towards their work based learning requirements.

17. Research undertaken on behalf of ILEX indicates very high levels of support within the legal profession for its scheme of qualification and training. Responses from employers and members indicate that the qualification remains both accessible and relevant to the provision of legal services.

## **THE WORK OF FELLOWS**

18. 78% of Fellows are employed in solicitors' offices in private practice, 14% work in local government and public administration, 6% in commerce and industry and 2% are self-employed. By April 2010 74 members had become managers in Legal Disciplinary Practices regulated by the Solicitors Regulation Authority.

19. Under the general supervision of their solicitor principals, Fellows exercise a wide degree of responsibility for, and control of, the matters entrusted to them. They frequently supervise other staff with whom they work. 23% of Fellows work in civil litigation, 18% in criminal litigation and 9% in family law. A large proportion of Fellows also work in non-contentious areas. In the particular fields of law in which Fellows elect to practise, there are a wide range of activities in which they are trained to be proficient. The extent to which a Fellow is involved individually in these activities will vary, depending on the nature of the employer's practice. In all matters, a Fellow is trained in and has experience of taking comprehensive instructions from clients and using them as the basis for further action or for decisions, in advising the client, or for progressing the matter. Many actions and transactions will progress throughout without the involvement of the Fellow's principal but Fellows will be aware of the importance of seeking advice if it is needed.

20. The Litigation Scheme proposed in this application will provide a natural progression for Fellows to undertake work in independent practice having gained a substantial amount of experience working under supervision. Fellows will have undertaken a substantial range, level and depth of work and gained experience which will enable them to provide independent litigation services.

## **Recognition of Fellows**

21. Fellows are eligible to join some of the specialist panels operated by the Law Society or its specialist groups, including the Personal Injury Panel and the Family Law Panel and many have done so. Fellows, and other suitably experienced ILEX members, are also eligible to join specialist practitioner organisations such as the Association of Personal Injury Lawyers, the Forum of Insurance Lawyers, Resolution and the Society of Trust and Estate Practitioners. Legal Executive Advocates holding the Rights of Audience (Matrimonial Proceedings Certificate) are eligible to join the Children Panel. Membership of most of these panels or organisations will often involve an assessment of the ILEX member's competence and knowledge and may also involve specialist training.

22. Fellows have specific powers under the County Courts Act 1959 to address a County Court, on behalf of their employing solicitor, on an unopposed application for an adjournment and an application for judgment by consent. Where they are employed in a local or other public authority, Fellows will take benefit of the general provisions under the Local Government Act 1972 and section 60 of the County Courts Act 1984 which permit authorised officers to prosecute or defend cases on the authority's behalf in Magistrates Courts or to appear in the County Court in actions to recover council tax arrears or obtain possession of dwellings belonging to the authority. Fellows may also appear in proceedings before Tribunals and in cases proceeding under the small claims jurisdiction of the County Court, where rights of audience are not restricted.
23. Fellows are able to administer Oaths, by virtue of the Legal Services Act 2007.
24. Those Fellows (and other ILEX members) who are engaged in advice on immigration or asylum matters, are permitted to do so by virtue of ILEX's designated qualifying body status under the Legal Services Act 2007.
25. Fellows specialising in employment law within solicitors' practices are able to advise on compromise agreements by which cases involving allegations of discrimination and other employment rights may be settled without recourse to a hearing. Other lawyers who may advise on such agreements are solicitors, barristers and ILEX advocates.
26. ILEX is a specified body for the purpose of regulating claims assessors under the Compensation Act 2006. Those of its Fellows who provide referral services in claims management work are authorised and regulated by ILEX to do so for the purposes of the Compensation Act 2006.
27. ILEX has become a regulatory body for Associate Prosecutors employed by the Crown Prosecution Service. This brings Associate Prosecutors into a scheme of formal regulation. ILEX has agreed a memorandum of understanding with the Crown Prosecution Service to govern the relationship and procedures between the two organisations. It is applying to become an approved regulator to grant rights of audience to Associate Prosecutors, in place of rights currently granted to them by the Director of Public Prosecutions under the Prosecution of Offences Act 1985.

### **Work of Fellows in Civil Litigation**

28. Most experienced Fellows undertake work in solicitors' offices which is indistinguishable from that undertaken by a solicitor. In a typical civil action, a Fellow will interview the client and give preliminary advice.
29. If a decision is made to proceed, then a statement of evidence will be obtained. Either he/she or some other employee acting on the Fellow's instructions will interview witnesses and take proofs of their evidence. It may then be necessary to obtain further instructions from the client before proceeding.

30. If the proposed action involves personal injury, the Fellow will instruct a suitable medical consultant to examine and report. At the same time, any claim for out-of-pocket expenses will be investigated and supporting documentary evidence obtained. The Fellow will have corresponded with the prospective defendant and, thereafter, with either the defendant's insurers or solicitors. There may be an attempt to negotiate a settlement by the Fellow but if, for any reason, proceedings have to be commenced, the Fellow having conduct of the action will issue proceedings.
31. If an Advocate is instructed to settle the Particulars of Claim, the Fellow will provide him/her with the necessary documentation, information and instructions to enable this to be drafted. It will be the responsibility of the Fellow to satisfy himself that the matter has been appropriately pleaded. Once proceedings are commenced, the Fellow will deal with interim applications including attending in chambers and arguing the matter before a Master or District Judge and will exercise those advocacy skills he has acquired during his period of employment and training. The Fellow will prepare the Claimant's action for trial. This may require expert witnesses to be agreed to prepare a report on matters relevant to the action. The rules of the court will be complied with as to the exchange of documents including witness statements and expert's reports. Eventually, the Fellow will draw a brief to the Advocate which will provide copies of all relevant documents, and will set out the facts, the law and relevant cases.
32. At Court the Fellow will instruct the Advocate and make such decisions as to the conduct of the action as would be made by a solicitor. A Fellow acting on behalf of a defendant will be engaged in similar exercises.

### **Work of Fellows in Family Proceedings**

33. In family law cases, a Fellow will, similarly, handle cases from initial interview through to conclusion of any ancillary arrangements, whether as to property or children. They may also be instructed in domestic violence cases. They will be responsible for the preparation of cases which can often involve protracted and ongoing litigation proceedings.
34. Most cases will proceed through chambers hearings, and Fellows will appear in those. Fellows will also apply negotiation and compromise skills in achieving solutions compatible with the aims of divorce and family law and practice. The practical experience of Fellows enables them to support the clients for whom they act in all types of family case, including those where arrangements for children are particularly fiercely contested by clients. They will also typically be familiar with the requirements of committal procedures.
35. Fellows undertaking care proceedings work will be conscious of the particularly sensitive nature of care proceedings. They will be able to ensure that the welfare of the child is paramount in dealing with these cases. Fellows undertaking care proceedings who work in local authorities have a duty to ensure cases are dealt with appropriately, including how they handle child witnesses.



They will participate in child protection conferences and will be a part of any court proceedings that are commenced. They are able to represent the local authority at care proceedings. Such work will involve handling the complex nature of such proceedings, examining in chief and cross-examining witnesses including CAFCASS officers and expert witnesses. Fellows involved in care proceedings will be alert to when another advocate should be instructed to handle the proceedings.

36. The level of work undertaken by Fellows in civil and family proceedings demonstrates the range and depth of work that they are experienced to undertake in these matters. They will often be trusted to undertake this range of work by their employers with minimal supervision and may be the head of the family department in the practice.

### **Advocacy**

37. In contentious matters, a Fellow is concerned with a range of legal work embracing civil and family litigation. Currently, on behalf of a solicitor or other qualified Litigator, a Fellow, in common with other members of solicitors' staff, is able to exercise rights of audience in chambers in the High Court and County Courts by virtue of clause 1(7), schedule 13 Legal Services Act 2007. Although, under the Civil Procedure Rules, most proceedings are now deemed to be held in public, the Rules preserve the right of solicitors' staff to appear in judge in room hearings. ILEX members will have built up considerable experience of undertaking these hearings.

38. In actions proceeding to trial in open court, before tribunals, public enquiries, the County Courts, all divisions of the High Court, and the Court of Appeal, Fellows frequently instruct Advocates, collate relevant documents, evidence and information, and make observations on the facts, law and procedure so as to enable a party's case to be put effectively before the court or tribunal. Fellows also interview and obtain reports from expert witnesses, and prepare certain pleadings, summonses and statements used during the course of the proceedings. A Fellow will conduct the litigation in the name of the employing firm when acting for either the claimant or defendant in proceedings.

39. Legal Executive Advocates who have qualified in civil proceedings will represent clients in open County Court proceedings and before Tribunals. This will involve a range of work in small claims and fast track proceedings and in multi track proceedings heard in the County court. The range of work undertaken in County Court and Tribunal hearings can be complex and may involve examination in chief and cross examination of witnesses which may include expert witnesses. Legal Executive Advocates will also be involved in representing clients in licensing appeals in the Magistrates Courts. They will have built up their competence and experience to handle these hearings.

40. Those Fellows who have qualified as Legal Executive Advocates in family proceedings will represent clients in family proceedings in the County Court and

Family Proceedings Courts. They may be involved in trials and committal proceedings which include the examination of witnesses.

## **REGULATION OF CONDUCT**

41. ILEX has delegated to IPS responsibility for regulating the conduct of its members.
42. ILEX members are required to abide by the Code of Conduct published by IPS and, where they are employed in solicitors' offices, to have regard to the requirements of the Solicitors Code of Conduct. IPS has recently redeveloped the ILEX Code of Conduct, which is included at **annex 12**.
43. Those members of ILEX who have qualified as Legal Executive Advocates are also required to comply with the ILEX Advocacy Code (called the Rights of Audience Conduct Rules) which was approved by the Lord Chancellor in accordance with section 29 and Schedule 4 Courts and Legal Services Act 1990.
44. IPS has recently redeveloped the Investigation, Disciplinary and Appeal Rules (IDAR). The IDAR establish procedures and set up the Professional Conduct Panel and Disciplinary Tribunal to consider complaints and cases of alleged misconduct against ILEX members. They incorporate lay involvement in all stages of decision making and adjudication. The IDAR are included at **annex 13**.
45. The disciplinary powers include the power to exclude persons from membership, seek undertakings or impose conditions upon members, to reprimand or fine them and, where appropriate, to award costs.
46. Between 1968 and 2009, 76 members of ILEX appeared before the Disciplinary Tribunal. ILEX members are subject to the jurisdiction of the Law Society, where they work in solicitors firms. Under section 43 of the Solicitors Act 1974 ILEX members, in common with other employees of solicitors, may be made subject to Orders restricting or controlling their employment within a solicitors firm. The jurisdiction of the Law Society and the Solicitors Disciplinary Tribunal is additional to the jurisdiction of ILEX. In practice, an order made by the Solicitors Disciplinary Tribunal or the Law Society against a member of ILEX is likely to result in a determination by ILEX's Disciplinary Tribunal. Complaints alleging provision of an inadequate professional service to solicitors' clients will usually be dealt with initially through the solicitors' complaints procedures but, again, may result in disciplinary action by IPS. IPS has developed its own scheme for dealing with complaints of inadequate professional services made against independent practitioners authorised by ILEX. Handling of service complaints will pass to the Legal Ombudsman under the Legal Services Act 2007.
47. ILEX has agreed a Memorandum of Understanding with the Legal Ombudsman regarding the underpinning principles of co-operation in complaints handling.

There have been discussions on a similar Memorandum with other legal service regulators.

48. ILEX already has in place a Memorandum of Understanding with the Office of the Immigration Services Commissioner (OISC). The Memorandum of Understanding with the OISC sets out the arrangements for dealing with complaints involving immigration matters concerning ILEX members. A similar Memorandum of Understanding is in place between ILEX and the Crown Prosecution Service concerning Associate Prosecutors registered as members of ILEX.
49. ILEX has been subject to the formal jurisdiction of the Legal Services Ombudsman established under the Courts and Legal Services Act 1990 and 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. There has been no reference to the Ombudsman of any complaint made against an ILEX Advocate. 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 it handles complaints against its members. Any action points identified in the reports were addressed.
50. ILEX has introduced a mechanism to receive feedback from members and complainants about how it handled their case. The feedback mechanism has proved effective in assisting ILEX and IPS to identify and implement changes to its complaints handling procedures.
51. Part of the remit of the Professional Conduct Panel is to consider applications from prospective Students, or members seeking enrolment into the 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. The Professional Conduct Panel 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 Act so far as its Fellows are concerned and may therefore require Fellows, including Legal Executive Advocates, to declare spent convictions, and take action in regard to such declarations.

## **PART III – THE RIGHTS TO CONDUCT LITIGATION AND THE RIGHTS OF AUDIENCE SOUGHT BY ILEX**

### **THE RIGHTS**

1. In this application ILEX seeks rights to conduct litigation and rights of audience for Fellows. The rights sought by ILEX are set out below.

### **Litigation rights**

2. The rights to conduct litigation cover rights in civil and family proceedings. The rights are divided into separate certificates: Civil Proceedings Certificate and Family Proceedings Certificate. Suitably experienced Fellows will initially qualify in one of these areas, which will be the area of law in which they seek to practise as Litigators. They will subsequently be able to obtain an additional Certificate in the other practise area, if they so wish and meet the relevant criteria for the certificate.

### **Rights of audience**

3. The rights of audience sought by ILEX in this application are set out below. ILEX envisages awarding two levels of rights of audience to Civil and Family Litigation Certificate holders. A litigation certificate will include rights of audience in the Judge's room (chambers) hearings. Litigators who wish to have rights of audience in open court in the County, Magistrates and Family Proceedings Courts must undertake an additional qualification in advocacy skills. The rights of audience will be linked to the practice area in which the Litigator seeks litigation rights.

### **Rights to Conduct Litigation Certificate**

#### ***Civil Proceedings***

The Civil Proceedings Litigation Certificate will award the following rights:

- To conduct litigation in civil proceedings.
- To undertake rights of audience in the Judge's room in the High Court and County Court in Civil Proceedings, except family proceedings.

#### ***Family Proceedings***

The Family Proceedings Litigation Certificate will award the following rights:

- To conduct litigation in all family proceedings.
- To appear in family proceedings in the Judge's room in the High Court and County Court.

### **Rights of Audience Certificate**

#### ***Civil Proceedings***

Holders of the Civil Proceedings Litigation Certificate will be able seek a rights of audience certificate awarding the following rights of audience:

- to appear in open Court in the County Court in all actions, except family proceedings;
- to appear before magistrates, District Judges (Magistrates' Court) or Justices' Legal Advisers in the Magistrates' Courts in relation to all civil and enforcement matters;
- to appear before any tribunal having jurisdiction in England and Wales, which is listed in Schedule 6 of the Tribunals, Courts and Enforcement Act 2007, where the tribunal rules provide for a non-discretionary right of audience being available to barristers, solicitors or ILEX advocates;
- to appear before Coroners' Courts in respect of all matters determined by those Courts and to exercise rights of audience similar to those exercised by solicitors and barristers.

### ***Family Proceedings***

Holders of the Family Proceedings Litigation Certificate will be able seek a rights of audience certificate awarding the following rights of audience:

- to appear in Court (including in open court) in all County Court family proceedings;
  - to appear before Justices or a District Judge (Magistrates Court) in the Family Proceedings Court;
  - to appear before Coroners' Courts in respect of all matters determined by those Courts, and to exercise rights of audience similar to those exercised by solicitors and barristers.
4. The Rights to Conduct Litigation have been split into civil and family proceedings. Most ILEX members specialise in practice and will have the specialist skills, knowledge and experience to represent clients in either civil or family litigation proceedings. It will be possible, however, for members to qualify as Litigators in both practice areas where they are practising in both areas of law.
  5. The reference to hearings that take place in a Judge's room includes all hearings that were previously referred to as chambers hearings. It covers those rights of audience available to persons employed to assist in the conduct of litigation by a qualified litigator under clause 1(7), schedule 13 Legal Services Act 2007 to appear and be heard in chambers in the High Court or County Court. These proceedings are now referred to as Judge's room hearings and cover interim matters, directions hearings and case management conferences including hearings taking place by telephone.
  6. ILEX members will have been exercising those rights as employed members throughout their career and will have gained extensive experience of representing clients in such hearings. The award of those same rights with the litigation certificate will enable them to continue to exercise those rights of audience. The inclusion of these rights with the litigation certificate is necessary to ensure that Litigators can offer clients a suitable range of services, without the unnecessary expense of instructing another advocate especially when the Litigator has the skills and ability to represent clients at such proceedings.

7. It is expected Fellows seeking a Family Proceedings Certificate will take the additional advocacy qualification, to enable them to appear in the Family Proceedings Court. Civil litigators are less likely to do so, because most of their advocacy takes place in Judge's room in the County and High Court and there is very little open court work now in civil proceedings. The two advocacy qualifications together, either in civil or family proceedings, reflect those rights which may be exercised by newly qualified solicitors and Legal Executive Advocates. They are the rights which ILEX may award under its existing rights of audience qualification scheme.

## **FORMULATION**

8. The civil litigation rights set out above incorporate all civil litigation proceedings that a legal practitioner can engage in. They cover both issuing and defending proceedings in all civil litigation matters, excluding family proceedings. It includes the full range of litigation work including issuing a claim form, filing a defence and acknowledgement of service and engaging with all ancillary matters in civil litigation matters. The rights have not been broken down according to the track to which a case is allocated because it is not possible to identify which track a case would be allocated to when instructions are first taken from a client. It is proposed that ILEX Litigators will be able to conduct litigation proceedings in all cases as they will have the skills and competence to do so. Litigators will be able to formally indicate for the purposes of the court record that they are acting for a client in litigation proceedings. Litigators will be able to claim costs in litigation proceedings when they are acting in independent practice.
9. The family litigation rights awarded under the family proceedings litigation certificate include the right to act for any party in a family law dispute covering the whole range of family law proceedings, such as divorce, domestic violence, ancillary relief and children matters. The award of the certificate will enable Litigators to formally indicate on the court record that they are acting for a client in the proceedings and enable them to claim costs in litigation proceedings. It will also enable them to engage in all matters ancillary to family litigation proceedings.
10. The rights of audience awarded to Litigators with their initial litigation certificate are to appear in Judge's room hearings in the High Court and County Court. These proposals will enable them to undertake preliminary hearings on behalf of clients and continue to offer to clients the advocacy services that they are accustomed and competent to provide.
11. The rights of audience available under the Civil and Family Proceedings rights of audience certificates are set out above. ILEX believes that the descriptions are clear and comprehensive and as a result are unlikely to lead to any inadvertent breach by advocates of the rights of audience granted. It is in the interests of the administration of justice that the rights are stated clearly and simply, as they will assist the courts in exercising their jurisdiction over those who appear before

them. No distinction is drawn, therefore, in respect of civil or family proceedings between District Judges and Circuit Judges in describing the rights, with regard to either jurisdiction or allocation to hear the case. The rights have also been described without reference to specific legislative provisions, so that any legislative change which is not intended to affect the rights of audience which may be exercised by Advocates will not require consequential applications for amendments of the certification rules. ILEX believes, again, that this will facilitate certainty in the application of the rights of audience, as well as being administratively convenient.

## **THE LEGAL SERVICES ACT 2007**

### **The Regulatory Objectives**

12. The Legal Services Act 2007 sets out eight objectives, which it is the duty of approved regulators to promote. ILEX is an approved regulator under the Legal Services Act 2007. ILEX submits that its application for rights of audience and litigation supports the regulatory objectives set out under the Legal Services Act 2007.

13. 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
  - the affairs of clients should be kept confidential.

### **Protecting and promoting the public interest and the interests of consumers**

14. The award of litigation and advocacy rights to ILEX Fellows will help to protect and promote the interests of consumers and the public interest for a number of reasons.

15. Many consumers cannot afford the services of a legal practice. ILEX Litigators in independent practice and those who provide services through organisations other than a solicitors' practice may offer a more cost effective and affordable service to consumers. The availability of these services will further the public interest in ensuring there is adequate access to litigation services for those who require them. ILEX Litigators will be skilled and experienced in dealing with litigation matters and will be able to provide assistance to clients in situations where otherwise they would not have sought assistance.
16. Because of their specialist qualification and the need to create new kinds of practice to compete with existing providers, ILEX Litigators may be able to provide a service where there is no other service available either geographically or in terms of mode of service provision in the practice area in which litigation and advocacy services are provided.
17. The ability to exercise rights of audience will enable ILEX Litigators to provide a full, efficient and cost-effective service to consumers. It is frequently not in the best interest of the client or the court for responsibility for advocacy in the case to have to be transferred to a solicitor or other Advocate. Involving a second fee-earner in a case where it is not required by the nature or complexity of the matter, has a number of disadvantages. The ILEX Litigator will have handled the early stages of the case effectively and they will know the case well and therefore are the best placed person to represent the client at the hearing.
18. Also the client may not understand why two separate lawyers must work on the case, or their different roles. The trust which the client and the Fellow will have established may be undermined by the introduction of a second lawyer. For the courts, there is a danger that a second lawyer does not have the same, detailed grasp of the circumstances underlying the case to be presented and may need to seek confirmation regarding any decisions in the case from the Fellow originally instructed, thus increasing the cost to the client.
19. The schemes proposed in this Application will ensure that ILEX Litigators are competent. This is assured through the proposed enrolment and qualification process. The controls on eligibility ensure that only suitably qualified members will be able to take the litigation skills and advocacy courses. Members will be suitably qualified and trained in litigation and advocacy rights before they are authorised to practice by ILEX. Furthermore, ILEX's practice management, accounts rules and supporting codes and regulations place proportionate and appropriate conduct requirements upon practitioners to ensure there is adequate protection for clients.
20. The monitoring and inspection arrangements that ILEX proposes to introduce through this application for independent practitioners authorised by ILEX will ensure that there are further suitable controls and regulation governing the work of independent practitioners. That will provide ongoing protection for the interests of consumers.



### **Supporting the constitutional principle of the rule of law**

21. The conduct rules applicable to ILEX Fellows ensure that they will act to support the constitutional principle of the rule of law. Under the Code of Conduct all members of ILEX are required to act within the confines of the law.
22. ILEX Fellows will act in accordance with legal provisions in the litigation work that they will undertake. They will already be doing so as employees in litigation practices. They will be subject to sanctions by ILEX if they fail to do so.

### **Improving access to justice**

23. The award of litigation rights to ILEX Fellows will introduce a new litigation service provider to clients therefore extending consumer choice and improving access to justice.
24. Litigation rights will extend the modes of business in which Fellows can practice. ILEX Litigators will be able to work as independent practitioners. For the first time they will be able to provide litigation services directly to clients without being employed and undertaking the work in the name of their employer.
25. Consumers will have access to a wider choice of persons, different routes and different methods through which they can seek assistance with a litigation matter. Consumers may also find that they are able to seek an affordable service from a Litigator in instances where otherwise they are unable to seek recourse to public funding and cannot afford the cost of seeking the assistance of a solicitor.
26. Fellows are already established as competent to handle client cases, with minimal supervision in the areas of civil and family proceedings. Enabling Fellows to provide the same services in independent practice will assist clients in seeking justice. Individuals and small businesses may not pursue disputes because of the fear of the expenses involved. Alternatively they may proceed on their own without legal advice or assistance but with trepidation and will not be able to represent themselves appropriately. Otherwise they may have sought assistance from an unqualified and unregulated person who is unsuitable to provide them with assistance. The availability of ILEX Litigators may encourage these clients to seek appropriate assistance from suitably qualified and regulated practitioners.
27. Often clients may not seek assistance with Small Claims Proceedings. These proceedings can involve complex matters both prior to and during the hearing itself. The hearing can involve legal submissions and the examination of witnesses which a lay person cannot deal with adequately. ILEX Litigators will be skilled and experienced in dealing with these matters and will be able to provide assistance to clients in situations where otherwise they would not have sought assistance. In these cases the preparation and litigation work conducted prior to the hearing will be important. ILEX Litigators will have the knowledge and skills to undertake that work. There will also be instances where the involvement of an ILEX Litigator will enable the dispute to be settled without recourse to a court hearing.

28. The availability of ILEX Litigators may also help to address concerns about the decline in numbers of newly qualified solicitors and barristers specialising in low value areas of work who are able to offer clients a cost effective and affordable service. ILEX Litigators may particularly assist in providing litigation services to legally aided clients when the number of solicitors' practices undertaking legally aided work is declining.

**Promoting competition in the provision of services provided by authorised persons**

29. The proposals in this Application constitute new or better ways of providing services to clients and will provide ILEX members with greater flexibility to do so. In organisations which employ ILEX Litigators to provide litigation services direct to their customers, there will be greater choice in the range of persons able to be employed to undertake litigation and advocacy work.

30. The proposals will enable many organisations to provide litigation services to clients for the first time. At present other legal professionals are not authorised to provide litigation services to customers of their employers. The introduction of ILEX litigators will thereby increase the range of services that organisations can provide. This will increase consumer choice and provide them with access to a new service provider and enable organisations to compete with other practices providing legal services. This business model will need to comply with the licensing regime for licensed bodies in due course. However, there will still need to be practitioners working within those bodies who have rights of audience and proven litigation skills.

31. ILEX litigators who set up in independent practice will be able to compete with other lawyers in providing litigation services. This again will increase consumer choice and competition in the provision of services.

**Encouraging an independent, strong, diverse and effective legal profession**

32. ILEX litigators will be subject to regulation by ILEX Professional Standards Ltd (IPS). As part of the regulatory scheme they will be required to comply with the ILEX Code of Conduct and the Practice Management and Accounts Rules. These Rules are also supported by various Codes, Rules and Schemes.

33. The above rules and codes will require ILEX litigators to act independently and in the interests of their clients, thereby encouraging an independent, diverse, strong and effective legal profession.

34. IPS has a scheme in place to deal with complaints made against ILEX members. The scheme will ensure that misconduct and breaches of the conduct rules are adequately addressed.

35. The introduction of a new service provider will help to encourage a diverse range of legal professionals that will be suitably qualified and competent to exercise the new rights effectively.

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

36. The introduction of a new service provider will provide a new resource for citizens where they can seek advice about their legal rights and duties.

**Promoting and maintaining adherence to the professional principles**

37. ILEX Litigators are required to act in accordance with the ILEX Code of Conduct. They must also observe the ILEX Practice Management and Accounts Rules and supporting codes, rules and schemes. These rules require them to act with independence and integrity. ILEX Litigators must always act in the best interest of their client but they must recognise their overriding duty to the court to act with independence in the interests of justice.

38. Under the Code of Conduct and Practice Management Rules ILEX Litigators owe a duty to keep the affairs of their client confidential. The Code and Rules also require that they maintain proper standards of work and only act in cases within their competence.

**BETTER REGULATION PRINCIPLES**

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

**Proportionate**

40. The application proposes a proportionate route to qualification as a Litigator and advocate. In developing its qualification structure IPS assessed what skills and knowledge a litigator and advocate would require to enable them to practise. It also considered what knowledge and experience ILEX members would possess from having completed the ILEX qualification. This enabled it to determine what further knowledge and skills ILEX members would need to be competent independent litigators. That approach assisted in developing a proportionate qualification and entry scheme.

41. ILEX compared its proposals to the qualification schemes of other approved regulators. ILEX members possess a significant amount of practical experience which, for example, newly qualified solicitors would not have. The practical experience is an invaluable mechanism through which they have built up the skills necessary to undertake litigation work. The practical experience is complemented by knowledge gained of relevant subjects at honours degree standard, whereas additional knowledge gained by newly qualified solicitors, compared to ILEX Fellows, will be in subject areas not directly relevant to civil or family litigation.

42. ILEX's proposed qualification scheme is aimed at ensuring Fellows are competent for the work they will be authorised to undertake and will have the tools to enable them to develop their expertise further. It requires Fellows, who already possess significant skills, knowledge and experience, to undertake a litigation and advocacy skills course whereas barristers qualified as Litigators are not required to undertake any specific qualification course in litigation skills.
43. ILEX has also developed a proportionate approach to practice management and accounts. The practice management and accounts rules represent the standards to be expected of ILEX practitioners in order to balance the risks to clients' interests against the development of a practical regulatory scheme.
44. The inspection and monitoring arrangements proposed will enable ILEX to maintain suitable controls on the practices of ILEX litigators without placing unnecessary burdens upon them. This represents a proportionate approach by which ILEX may protect the interests of the public and consumers.
45. Again in developing its practice management and accounts rules ILEX compared its proposals with the rules of the Solicitors Regulation Authority and Council for Licensed Conveyancers. The comparison activity provided an opportunity for ILEX to ensure that its rules covered essential matters. Any rule deemed to be unnecessary for practice as an ILEX litigator was not included within the ILEX rules.

### **Accountable**

46. 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.
47. ILEX Litigators will also be accountable to ILEX through the annual accountants' reports and returns in respect of their practices. The annual returns will encompass application of the accounts rules. ILEX will also require Litigators to make annual returns in respect of practice management issues, which will include information regarding any complaints made to the practice about poor service or misconduct.
48. The inspection and monitoring arrangements present another mechanism through which the accountability of ILEX litigators and their application of the ILEX rules can be monitored.

### **Consistent**

49. The approach to the qualification scheme is consistent with that proposed by ILEX in respect of the rights of audience qualification scheme, for which ILEX is already an approved regulator. The 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.

50. ILEX has also adopted the same practice management and accounts rules for all of its proposed applications to become a regulator of reserved legal activities. That will ensure there is consistency between the standards that the public and consumers can expect of ILEX practitioners.
51. The qualification scheme and practice management rules are intended to be clear to members. Decisions made by officers of IPS will be subject to scrutiny by the Admissions and Licensing Committee to ensure they are consistent with the rules and in individual cases. Also the qualification and assessments standards are set out clearly and will be monitored by independent assessment and external moderation.

### **Transparent**

52. 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 in the litigation field. Notifications were sent to ILEX members through the Legal Executive Journal and IPS website.
53. IPS received 8 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 14**.
54. The qualification content and assessment standards are clearly stated in the applications. IPS has ensured that there is a suitable level of independent involvement in maintaining those standards. Candidate results will be subject to scrutiny by the IPS Board, providing a further level of scrutiny and assurance of transparency.

### **Targeted**

55. ILEX has developed a qualification scheme which has been targeted at assessing and developing the skills and knowledge required by Litigators to undertake litigation work on their own account. The scheme provides Litigators with the option of developing their practice management and accounts skills and knowledge if they wish to practise on their own account and provide litigation services to clients of their employer. Those litigators who wish to remain as employees will not need those additional skills and will not be required to develop them.
56. Similarly the regulatory structure has been developed by targeting itself at the risks that can arise and which require to be addressed.

## **PART IV – QUALIFICATION SCHEME**

### **INTRODUCTION**

1. The application proposes that there will be an extensive and thorough scheme by which Graduate members and Fellows of ILEX will qualify for litigation rights, rights of audience in Judge’s room hearings and open court rights of audience. The Certification Rules set out in detail the eligibility and qualification criteria which are described below. They are the formal rules governing the qualification process and are supplemented by appendices 1 to 10. ILEX has also developed Practice Management Rules and Accounts Rules, which are supported by Codes and Schemes which ILEX Litigators will comply with when undertaking work in independent practice. They appear at appendices 11 to 17 to the Certification Rules.

### **PROPOSED QUALIFICATION SCHEME**

#### **Application for Certificate of Eligibility**

2. Fellows or Graduate members of ILEX will be able to enrol onto the scheme of qualification leading to the award of rights to conduct litigation and rights to undertake Judge in room advocacy hearings. Either at the same time or subsequently after qualification as a Litigator, Graduate members and Fellows will be able to enrol onto the open court rights of audience scheme. Where a person enrolling onto the litigation scheme is an existing Legal Executive Advocate they need only enrol onto the litigation skills qualification scheme. Upon qualification as a Litigator and advocate they will be able to exercise rights to conduct litigation and the full rights of audience that ILEX is able to award to them.
3. Fellows or Graduate members wishing to qualify as Litigators will need to apply for a Certificate of Eligibility to enrol onto the litigation skills and Judge’s room advocacy qualification scheme. Fellows or Graduate members wishing to seek open court advocacy rights will also need to apply for a Certificate of Eligibility to enrol onto the open court advocacy qualification scheme. Applications will be made to an Admissions and Licensing Committee established under the rules for this purpose, which will delegate responsibility to the IPS Officers. Certificates of Eligibility will be issued to those who can satisfy the following entry requirements:
  - They are Fellows or Graduate members of ILEX and are in good standing.
  - They currently undertake civil or family law work.
  - They have gained an acceptable level of experience of conducting litigation in civil or family law work, including advocacy experience where they seek open court rights, in accordance with the experience guidelines at **Appendix 1** to the Certification Rules.

- They have sufficient knowledge of relevant law and legal practice, in accordance with the Knowledge and Experience Guidelines at **Appendix 1** to the Certification Rules, to undertake the litigation skills course and, where relevant, the open court rights of audience course.
- They are able to provide references from two people who are able to offer an informed opinion as to their ability to meet the knowledge and experience criteria set out in **Appendix 1** to the Certification Rules and their suitability to undertake the litigation skills and, where relevant, the open court rights of audience course.

### **Knowledge and Experience**

4. Graduate members and Fellows enrolling onto the litigation and or open court advocacy scheme will have to produce evidence of their knowledge and experience.
5. The Admissions and Licensing Committee or, in delegated cases, the IPS Officers will assess knowledge and experience by reference to the criteria in the Knowledge and Experience Guidelines set out at **Appendix 1** to the Certification Rules. The guidelines separate out the knowledge and experience required for the litigation and open court advocacy courses. Evidence of relevant legal knowledge will include passes in the ILEX Professional Diploma examinations, or corresponding qualifications. Evidence of experience will be provided by descriptions of typical work load, the types of litigation cases handled and the advocacy undertaken, and a portfolio of cases in which the applicant has been involved during the 2 years prior to the application.
6. Where a Legal Executive Advocate who seeks to enrol onto the rights to conduct litigation qualification scheme has submitted portfolios for a Certificate of Eligibility for the rights of audience scheme within 12 months of the date of their application for a Certificate of Eligibility for rights to conduct litigation, they will not be required to submit further portfolios. The portfolios of cases submitted for the rights of audience scheme will remain current. If the portfolios were submitted to ILEX over 12 months ago then the applicant will be required to submit fresh litigation case portfolios.

### **Litigation Skills Course and Judge's Room Rights of Audience Course**

7. On a Certificate of Eligibility being granted a Fellow or Graduate member will be eligible to undertake a litigation skills course. They will also undertake an advocacy skills course leading to the award of limited rights of audience. The litigation and advocacy skills courses will be offered as two separate courses tailored to the requirements of civil and family practitioners. The topics covered will be Judge's room advocacy skills, client care, ethics, managing litigation work, funding litigation cases and alternative dispute resolution in the context of civil or family litigation proceedings. The Litigation Skills Course Delivery and Outcomes and the Judge's room Rights of Audience Skills Course Delivery and Outcomes are set out at **Appendices 3 and 5** to the Certification Rules. Courses will be delivered by independent providers accredited by the Admissions and Licensing Committee. Course providers will assess candidates, against criteria which

appear at **Appendices 4 and 6**. Assessments will be subject to moderation by External Advisors accountable to the Admissions and Licensing Committee.

### **Certification**

8. Candidates who successfully complete the litigation and Judge's room advocacy skills courses will be able to apply for a Litigation Certificate in civil or family proceedings provided they are a Fellow in good standing. Applications for Certificates will be processed by ILEX officers, who will be able to refer applications to the Admissions and Licensing Committee for consideration, where necessary. The award of a litigation rights certificate will enable a Fellow to conduct litigation and exercise the limited rights of audience set out in **Part III** of this application. These are referred to as Judge's room advocacy rights.

### **Additional rights of audience**

9. Litigators who wish to obtain open court rights of audience set out at **Part III** of this application will need to undertake a further course in advocacy skills. The course will provide further training and assessment in advocacy skills. Courses will be offered in two variants: civil and family proceedings. Litigators will undertake the course relevant to the practice area for the litigation certificate that they hold. Successful completion of the course will lead to the award of a rights of audience certificate. The course will build on the course they have taken to obtain rights of audience in Judge's room proceedings.
10. Advocacy courses and assessments taken as part of the litigation qualification will be same as for the ILEX advocacy qualifications. The Judge's room (chambers) advocacy rights course equate to days 1 and 2 of the advocacy qualification and the additional course to days 3 to 6.

### **Independent practice**

11. Litigators who wish to provide litigation services either in their own practice or litigation services to clients of their employers will need to undertake courses in practice management and accounts. The courses must meet the Course Delivery Outcomes set out at **Appendices 7 and 8** to the Certification Rules. The practice management course will provide training in managing a business, managing finance, managing client relationships and managing others. It will not be formally assessed. The Accounts course will provide training in managing client and office accounts, producing profit and loss accounts and maintaining the business accounts of the practice. The Accounts course will be assessed in accordance with the course assessment criteria set out at **Appendix 9** to the Certification Rules.
12. Upon successful completion of these courses Litigators will be able to make an application for approval to work in independent practice or to provide litigation services to customers of their employers. Applications must include a business plan and details of the practice management, accounting, anti-discrimination, complaints handling, equal opportunities, client care and file handling arrangements to be implemented by the practice, in accordance with **Appendix 10** to the Certification Rules. Upon obtaining authorisation Litigators will provide



details of their indemnity insurance cover and make a contribution to the ILEX Compensation Fund. The application will be made to the Admissions and Licensing Committee, which will delegate to the IPS Officers responsibility for considering such applications.

13. Litigation practices will be subject to monitoring by ILEX through monitoring and inspection visits, complaints handling and the annual reporting requirement. Visits will be made to litigation practices to assess compliance by a Litigator with the practice management and accounts rules. The inspection may involve an assessment of the file handling, client care, office procedures and accounting systems of the practice. Litigators will be expected to comply with any requirements imposed upon them by ILEX arising out of an inspection visit within any timescale set by ILEX.
14. Litigators working in independent practice or providing litigation services to customers of their employers will be required to make an application to ILEX each year for a Practising Certificate authorising them to practice as independent practitioners or to provide litigation services to customers of their employers. As part of this application Litigators will provide confirmation of their Indemnity Insurance and make a contribution to the ILEX Compensation Fund. They will also be required to provide an outline of any complaints made against them.
15. Litigators who are in independent practice or who provide litigation services to clients of their employers will be required to submit annual accountants' reports to ILEX at the end of their financial year. The accountant producing the report will be required to certify whether the Litigator has complied with the ILEX Accounts Rules, thus providing a further assurance to ILEX.

### **Applications for Additional Certificates**

16. Fellows and Graduate members will be able to obtain a Rights to Conduct Litigation and Rights of Audience Certificate in more than one specialist area. They will be required to submit an application for a Certificate of Eligibility to the Admissions and Licensing Committee, which will delegate responsibility for considering such applications to the IPS Officers. The applicant will be required to provide evidence of their knowledge and experience in the area of practice in which they seek additional rights. They may either make the application for a litigation certificate and application for open court rights of audience separately or make both applications at the same time. The Admissions and Licensing Committee or IPS Officers will indicate what, if any, further requirements the applicant will need to comply with, in respect of both eligibility and skills training. The Committee or Officer may determine that it is not necessary for the applicant to complete the whole or any of the litigation and advocacy skills courses, but applicants may be required to complete the assessment part of the litigation and advocacy skills courses in the practice area for which the additional Certificate is sought.

## **Renewal of Certificates and Continuing Professional Development**

17. Litigators will be required to renew their Litigation Certificate on either 1 June or 1 December, whichever is the earlier, after 12 months have elapsed from the date on which their certificates were first granted. They will be required to provide details of the litigation experience they have gained since the Certificate was granted and to submit a portfolio describing the litigation work they have undertaken in 3 cases during that period. Applications will need to be supported by confirmation from the applicant of their experience and that they expect to continue to undertake litigation in the future. Applications will be considered by the Admissions and Licensing Committee, which will delegate responsibility to the IPS Officers.
18. Thereafter, renewal of certificates by Litigators who do not provide litigation services to customers of their employers or operate in independent practice will be on the corresponding date in every third year, when the applicant will be required only to confirm that he is an active Litigator in good standing with ILEX and has completed the necessary CPD.
19. Litigators who also hold a Rights of Audience Certificate will be required to renew their first Certificate on either 1 June or 1 December, whichever is the earlier, after 12 months have elapsed from the date on which their Certificates were first granted. They will be required to provide details of the advocacy experience they have gained since the Certificate was granted to them and will be required to submit portfolios of three cases describing the advocacy they have undertaken in those cases during that period. Applications will need to be supported by confirmation from the applicant that they expect to continue to undertake advocacy in the future. Applications will be considered by the Admissions and Licensing Committee, which will delegate responsibility to the IPS Officers.
20. Thereafter, renewal of advocacy certificates will be on the corresponding date in every third year, when the applicant will be required only to confirm that he is an active advocate in good standing with ILEX and has completed the necessary CPD.
21. Where a Litigator works in independent practice or provides litigation services to customers of their employer they will be required to renew their litigation certificate annually. On annual renewal the Litigator will be required to provide details of their audited or certified annual accounts, confirmation that they have indemnity insurance cover and have made a contribution to the ILEX Compensation Fund. The Litigator will also be required to provide such further information as ILEX may require including an up to date business plan and details of any complaints made against them and their firm.
22. Applications for renewal will be processed by ILEX officers who will be able to refer applications to the Admissions and Licensing Committee, where necessary.
23. Litigators will be required to undertake 3 hours CPD, each calendar year, commencing in the year after they are granted their first certificate. The CPD

must focus on litigation skills and can be part of the 16 hours CPD all Fellows are required to complete.

24. Advocates will be required to undertake 5 hours CPD each calendar year, commencing in the year after they were granted their first certificate. The CPD can be part of the 16 hours required by all Fellows. The 5 hours CPD must focus on advocacy skills training.

## **COMMENTARY ON THE QUALIFICATION SCHEME**

### **Admissions and Licensing Committee and External Advisors**

25. A Committee, referred to in this application as the Admissions and Licensing Committee, will be established. It will be responsible for the litigation and advocacy schemes proposed in this application. The Committee will also be responsible for all applications made by ILEX members for reserved legal activities.
26. 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.
27. The Admissions and Licensing Committee will be responsible for the application of the Rights to Conduct Litigation and Rights of Audience Certification Rules. The Rules have been adopted by the IPS Board and by ILEX Council, as the approved regulator. The Admissions and Licensing Committee will deal with applications for certificates of eligibility; renewal and withdrawal of Litigation and Advocacy Certificates; approval of course providers, where relevant; monitoring and maintenance of standards of assessment; and the general overview of the advocacy and litigation qualification schemes, including making recommendations for changes and developments to the schemes or the Rules. It will be able to delegate to the IPS Officers responsibility for approving applications for certificates of eligibility and renewals of Certificates. The Officers will be able to refer back to the Committee any application 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.
28. 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.

29. The Committee will receive expert advice from External Advisors on issues relating to litigation and advocacy skills, practice management, accounts, course delivery and assessment standards. IPS will appoint External Advisors who have qualifications in law and legal practice and who have experience of one or more of the relevant specialist areas of legal practice, civil and family, and of litigation and advocacy or who have qualifications or experience of practice management or accounts. They will also need to have experience of teaching and assessing litigation, advocacy skills or accounts, as appropriate.
30. ILEX will use the above criteria for the appointment of external advisors. ILEX has experience of recruiting external advisors for its current rights of audience scheme. It produced terms of reference for external advisors, which included person specifications. Applicants were required to outline how they met those criteria. The same approach was adopted for the recruitment of committee members for that scheme. Adverts were placed in appropriate publications inviting applications. Applicants were short listed and interviewed against the criteria. IPS will adopt this same procedure for the recruitment of external advisors and committee members for the litigation rights scheme. To be appointed, external advisors will need to have experience both as academics and as practitioners in the relevant discipline. ILEX has contact with many such professionals through its educational scheme.
31. ILEX believes the arrangements will result in open, objective and consistent treatment of applications for Certificates of Eligibility; will secure the independence of the qualification process; and will ensure that standards of course delivery and assessment are properly and efficiently maintained. Terms of reference for the Admissions and Licensing Committee and the External Advisors are set out in the Certification Rules to this Application.

### **The Qualification Process**

32. There are seven elements to the litigation qualification:
- Eligibility application based on existing knowledge and experience of litigation and advocacy
  - Litigation skills course
  - Advocacy course covering advocacy in Judge's room hearing
  - Advocacy course covering advocacy in open court hearings
  - Practice management course
  - Accounts course
  - Post qualification portfolios submitted at the end of the first year's practice.
33. The qualification process has placed its focus on the development of litigation, advocacy and practice management skills which are essential to aspiring litigators and advocates. The qualification is divided into two parts. At the first stage Graduate members and Fellows will complete the litigation skills course leading to the award of litigation rights and Judge's room advocacy rights. They will also be able to undertake an advocacy course leading to the award of extended rights of audience. In practice Litigators are likely to practice on a self-employed basis or they may provide litigation services to clients of their employers. Therefore, at

the second stage Litigators who wish to practice independently or outside a solicitor's practice will complete a course in practice management and accounts. They may then seek approval from the Admissions and Licensing Committee to practice independently or to provide litigation services to customers of their employers.

34. The qualification process will, ILEX believes, make the prospect of qualifying attractive to Graduate members and Fellows. The scheme proposed will have a defined time span for completion. ILEX believes the litigation skills course could, properly, be offered as a short course. Litigators will undertake the chambers rights of audience course as a 2 day course leading to Judge's room advocacy rights and a further 4 day course leading to full advocacy rights. Litigators will be able to undertake practice management courses through commercial course providers and the accounts course through accredited course providers whenever they wish to do so. The accounts course could be delivered by distance learning or by face to face tuition. These courses could be taken consecutively or with gaps in between, depending upon what model suits the Litigator. There are advantages to both models. Consecutive courses enable candidates to remain focused and dedicated, but do not give much time for preparation or reflection between each course. A series of courses with gaps in between gives better opportunities for preparation and development, but candidates can lose focus, and they take longer to complete. ILEX does not propose to prescribe one model or the other.

### **Certificate of eligibility**

35. Litigators will demonstrate their knowledge of evidence and procedure in order for a Certificate of Eligibility to take a litigation course to be granted. However, relevant evidence and procedural issues will also be taught and assessed on the litigation and advocacy skills course. ILEX believes that these issues will be tested practically and to an appropriate depth in the context of the exercise of litigation and advocacy skills.

### **Knowledge and Experience Guidelines**

36. The Knowledge and Experience Guidelines are set out in **Appendix 1** to the Certification Rules. The guidelines will assist Graduate members and Fellows to make an application for a Certificate of Eligibility and will be applied by the Admissions and Licensing Committee to applications for Certificates of Eligibility.
37. The Guidelines include specific criteria which the Admissions and Licensing Committee will expect applicants to comply with. The criteria will enable a realistic and valid assessment to be made of applicants' knowledge and experience. They have been split between litigation and advocacy applications.
38. A person wishing to be granted a Certificate of Eligibility in respect of either Rights to Conduct Litigation or Rights of Audience in Civil Proceedings must have passed the ILEX Level 6 examinations in contract, tort and civil litigation. A person wishing to be granted a Certificate of Eligibility in respect of either Rights to Conduct Litigation or Rights of Audience in Family Proceedings Certificate must

have passed the ILEX Level 6 examinations in family law and family practice. An exemption on the basis of experience will be available for those who have knowledge which has been acquired through alternative examinations to those offered by ILEX or which is evidenced in other ways than by formal examination but by reference to the knowledge and experience guidelines.

39. Applicants will need to demonstrate to the satisfaction of the Admissions and Licensing Committee that an alternative qualification relied upon substantially covered the topics set out in the competence criteria at **Appendix 1**, to the same depth, and that it was assessed at a comparable standard. Where a candidate relies on knowledge which has not been gained through a formal examination the candidate will be expected to provide a portfolio of evidence of his knowledge of the law and legal practice, mapped against the competence criteria. Coverage of a comparable range of topics and evidence of a comparable level of knowledge as would be required of a successful candidate in the relevant ILEX Professional Higher Diploma subjects will be required. An applicant will be expected to have covered at least 50% of the syllabus for the subject from which he seeks an exemption. The Admissions and Licensing Committee will need to be satisfied that the applicant has the requisite knowledge and may refuse to accept an application and require the applicant to undertake further study and obtain acceptable qualifications.
40. Evidence of experience will be provided by means of a description of the work currently and previously undertaken in accordance with criteria set out in the Knowledge and Experience Guidelines at **Appendix 1** to the Certification Rules. Evidence will need to be given of litigation and advocacy experience depending on the Certificate sought. Where applicants' recent experience has been atypical, they will be able to make representations regarding the reasons for that.
41. Applicants will also be required to provide evidence of their litigation experience and knowledge in the form of a portfolio of a number of cases completed during the preceding 24 months. The portfolio will need to include details of 5 cases demonstrating legal and procedural knowledge in the applicant's specialist area. Applicants will need to provide details of 3 cases in which they have undertaken or observed advocacy where they seek open court rights of audience. Guidelines for preparation of Portfolios are set out in **Appendix 2** to the Certification Rules. The guidelines separate applications for litigation certificates from applications for advocacy certificates.
42. Portfolios will be assessed by an External Advisor. If the advisor decides the portfolios are satisfactory, they will go forward to the Admissions and Licensing Committee with the application for a Certificate of Eligibility. If the advisor decides the portfolios are unsatisfactory the applicant will be advised accordingly and given reasons. The applicant may then resubmit or withdraw the application or proceed with the application to the Committee. If the applicant proceeds with his application, they will be able to make representations to the Committee why it should accept the portfolios. ILEX's experience with the rights of audience scheme has shown that the portfolio approach has proved to be a valuable tool

in identifying whether an applicant has sufficient knowledge and experience to enrol onto the scheme. Course providers, who deliver the advocacy course, have commented favourably on the quality of the students who came onto the courses.

43. Two references will also be required to be supplied. Referees will be asked to comment on the ability of the applicant in relation to the knowledge and experience guidelines. The nominated referees will normally be expected to be members of the judiciary, Justices Clerks, solicitors or barristers able to comment on the applicant's legal knowledge and experience.

### **The Litigation and Chambers Advocacy Skills Course**

44. The litigation skills courses for each type of proceedings will be the equivalent of up to 6 days tuition. The courses will cover the key skills required by a Litigator. This includes client care, funding, conduct and ethics, managing litigation work and settlement skills. The courses will incorporate formal assessment of litigation skills (normally on the final day).
45. The chambers advocacy skills course for each type of proceedings will be a two day course. The course will cover both the teaching and assessment of advocacy skills including case analysis and skeleton arguments. Candidates will be formally assessed by means of applications based on case studies.
46. The content of the course and the associated assessment criteria are defined in the Litigation and Advocacy Skills Course Delivery and Outcomes and Assessment Criteria which are set out at **Appendices 3 to 6** respectively to the Certification Rules. Case studies will focus on mainstream aspects of legal work within the two specialisms. Graduate members and Fellows will, in the course of their work and their study for ILEX examinations, have acquired specialist legal and procedural knowledge, as demonstrated through their application for a Certificate of Eligibility. Therefore the law and procedure in the course will be what is necessary and relevant to develop candidates' skills. The law of evidence and ethics will be taught and assessed on the course. Ethics and professional conduct issues will be assessed in the context of the case studies.
47. Assessment materials produced by course providers will be subject to scrutiny by External Advisors appointed by ILEX to ensure they are consistent with the assessment criteria set out in **Appendices 4 and 6** to the Certification Rules. In submitting an application for accreditation a course provider will demonstrate how its course materials and teaching methods will be effective in ensuring candidates achieve the Litigation and Advocacy Skills Course Delivery and Outcomes set by ILEX which appear at **Appendices 3 and 5**. The External Advisors will also be responsible for inspection of courses and moderation of standards of assessment applied by the course provider. There will be at least one inspection of each course each year.
48. Course providers will be responsible for assessing candidates against the assessment criteria but assessment standards will be moderated by External

Advisors by reviewing candidates' assessments. The assessments which are reviewed will cover a representative range of achievement. External Advisors will be required to have regard to the Accreditation Criteria and the Litigation and Advocacy Skills Course Delivery and Outcomes at **Appendices 3 and 5** and the Assessment Criteria at **Appendices 4 and 6** to the Certification Rules when undertaking inspections and carrying out moderations.

49. The assessment criteria and standards are provided in **Appendices 4 and 6** to the Certification Rules. Candidates will be required to achieve 50% in each of the formal assessments to achieve competency. The criteria indicate grounds on which a candidate may be deemed not to be competent despite achieving the pass mark.
50. The structure has been developed by ILEX in consultation with examiners, course providers and external consultants. Between them the examiners and course providers have experience of skills training, advocacy and litigation practice and training and judicial roles. The Course Delivery Outcomes and Assessment Criteria were approved by the ILEX litigation rights working party which comprises council members who are legal practitioners. ILEX is confident that the course will significantly enhance the litigation and advocacy skills of newly qualified Legal Executive Litigators on Certification.
51. In developing the course outcomes and assessment criteria the examiners, course providers and external consultants identified what skills and knowledge a litigator would require in practice to undertake litigation and advocacy work. They also identified the skills and knowledge that ILEX members would have already gained through practice and completion of the ILEX professional qualification. This approach enabled them to identify the course outcomes for the qualification courses. The content of those course outcomes will be tested through the assessment criteria.
52. The drafts of the litigation course outcomes were considered by a number of external advisors and academics as well as the working party members. Each person agreed with their content and approach. The course outcomes and assessment criteria for the advocacy course are the same as those already approved by the Lord Chancellor as part of the Rights of Audience scheme.
53. There may be instances where an applicant has completed and passed a qualification which included the teaching and assessment of litigation and advocacy. Where an applicant has undertaken a course which covered at least 50% of the Course Delivery Outcomes at **Appendices 3 and 5** and successfully passed an assessment the Admissions and Licensing Committee may exercise its discretion to exempt an applicant from completing the litigation skills and advocacy courses. The exemption may, for example, apply to ILEX members who have completed a Legal Practice Course.



### **Additional advocacy skills course**

54. Litigators will be awarded limited advocacy rights with their initial litigation certificate. These will be limited to appearing in Judge's room hearings in the County Court and High Court. Litigators may also make an application for further rights of audience.
55. Holders of the Civil Proceedings Certificate may seek rights to appear in open County Court, before the Magistrates in respect of their civil jurisdiction, before Tribunals and in Coroners proceedings. These are the same rights of audience that are available under the existing ILEX rights of audience scheme.
56. Holders of the Family Proceedings Certificate may seek rights of audience to appear in all family proceedings in open County Court, the Family Proceedings Court and in Coroners proceedings. These are the same rights of audience that are available under the existing ILEX rights of audience scheme.
57. Litigators will have already undertaken a 2 day course in advocacy skills to obtain a Litigation Certificate. That course will have provided substantial training and assessment in chambers advocacy. Litigators who seek to exercise the additional rights of audience summarised above will be able to complete a further 4 day course in advocacy skills to gain those rights. The course will meet the Course Delivery Outcomes and Assessment Criteria set out at **appendices 5 and 6** to the Certification Rules. These are the same course delivery outcomes and assessment criteria as the existing rights of audience course except that they have been split between chambers rights and open court rights of audience.
58. Litigators may alternatively opt to seek full rights of audience from the outset when they apply for a Certificate of Eligibility for litigation rights. They will undertake the full 6 day advocacy skills training either before or after the litigation skills course.
59. The courses will cover the key skills required by an advocate to exercise open court advocacy rights in the lower courts. This includes trial advocacy, handling evidential issues and settlement skills. The courses will incorporate formal assessment of advocacy skills by means of applications based on case studies. Ethics and professional conduct may be assessed within the case study scenarios.
60. The content of the course and the associated assessment criteria are defined in the Advocacy Skills Course Delivery Outcomes and Assessment Criteria which are set out at **Appendices 5 and 6** respectively to the Certification Rules. Case studies will focus on mainstream aspects of legal work within the two specialisms. Graduate members and Fellows will, in the course of their work and their study for ILEX examinations, have acquired specialist legal and procedural knowledge, as demonstrated through their application for a Certificate of Eligibility. Therefore the law and procedure in the course will be what is necessary and relevant to develop candidates' skills. The law of evidence and ethics will be taught and assessed on the course. Ethics and professional conduct issues may be positively assessed in the context of the case studies.

61. Assessment materials produced by course providers will be subject to scrutiny by External Advisors appointed by ILEX to ensure they are consistent with the assessment criteria set out in **Appendix 6** to the Certification Rules. In submitting an application for accreditation a course provider will have to demonstrate how its course materials and teaching methods will be effective in ensuring candidates achieve the intended Advocacy Skills Course Delivery Outcomes set by ILEX which appear at **Appendix 5**. The External Advisors will also be responsible for inspection of courses and moderation of standards of assessment applied by the course provider. There should be at least one inspection of each course each year.
62. Course providers will be responsible for assessing candidates but assessment standards will be moderated by External Advisors by reviewing recordings of candidates' performances. The performances which are reviewed will cover a representative range of achievement. External Advisors will be required to have regard to the Accreditation Criteria and the Advocacy Skills Course Delivery Outcomes at **Appendix 5** and the Assessment Criteria at **Appendix 6** to the Certification Rules when undertaking inspections and carrying out moderations.
63. The assessment criteria and standards are provided in **Appendix 6** to the Certification Rules. Candidates will be required to achieve 50% in each of the formal assessments to achieve competency. The criteria indicate grounds on which a candidate may be deemed not to be competent despite achieving the pass mark.
64. The structure has been developed by ILEX in consultation with examiners, course providers and external consultants. Between them the Examiners and course providers have experience of skills training, advocacy and litigation practice and training and judicial roles. The Course Delivery Outcomes and Assessment Criteria were approved by the ILEX litigation rights working party which comprises council members who are legal practitioners including Legal Executive Advocates. ILEX is confident that the course will significantly enhance the quality of the advocacy skills of newly qualified Legal Executive Litigators on Certification. The content of the course outcomes and assessment criteria are the same as those already approved by the Lord Chancellor and considered by the Legal Services Consultative Panel as part of ILEX's application for rights of audience. They are presented differently to reflect that a litigator may opt either to take the full qualification or to seek rights in judge's room hearings.
65. There may be instances where an applicant has completed and passed a qualification which included the teaching and assessment of advocacy skills. Where an applicant has undertaken a course which covered at least 50% of the Course Delivery Outcomes at **Appendix 5** and successfully passed an assessment the Admissions and Licensing Committee may exercise its discretion to exempt an applicant from completing the advocacy course. The exemption may, for example, apply to ILEX members who have completed a Legal Practice Course or Bar Vocational Course.

## **Practice Management and Accounts Courses**

66. ILEX has developed its own practice management and accounts rules and supporting Codes, client protection fund, poor service scheme and indemnity insurance rules that will apply to self-employed Litigators and to those Litigators who provide litigation services to clients of their employer. Litigators will be provided with a copy of these rules and must ensure that they are familiar with their content. In addition ILEX will require Litigators to undertake relevant courses before setting up their own practices.
67. Litigators will be able to identify course(s) in practice management which meet the Course Delivery Outcomes, which are set out at **Appendix 7** to the Certification Rules. Courses offered by commercial course providers should meet the course delivery and outcomes. ILEX has identified that the Management Stage 1 course offered by commercial course providers will be suitable. This is a course that newly qualified solicitors may undertake within the first three years of qualification. Completion of the course equips solicitors with skills to enable them to run their own practices. The same course will provide ILEX members with sufficient skills to run litigation practices.
68. ILEX will also require Litigators to undertake a course in accounts. It will accredit course providers to deliver an accounts course which meets the Course Delivery and Outcomes at **Appendix 8** to the Certification Rules. The course will equip Litigators with sufficient skills to enable them to understand and manage an accounting system. Courses will cover office and client account principles and business accounting modules. Courses will be based on the ILEX accounts rules. The accounts course may be suitable for delivery by distance learning or face to face contact. The course will be assessed by a written examination. The pass mark will be 50%. The assessment criteria appear at **Appendix 9**. ILEX takes the view that learning and assessment in accounts is important to ensure that Litigators have suitable training to help them to protect client funds by implementing appropriate financial management mechanisms.
69. There may be instances where a Litigator has completed and passed a qualification which included the teaching, and where relevant the assessment, of practice management or accounts. Where an applicant has undertaken a course which covered at least 50% of the Course Delivery Outcomes at **Appendices 7 and 8** and successfully passed an assessment in accounts the Admissions and Licensing Committee may exercise its discretion to exempt an applicant from completing practice management and or accounts courses.
70. The approach taken in respect of practice management and accounts is different to that in respect of litigation and advocacy courses. ILEX has taken the approach of identifying the outcomes of practice management courses usually undertaken by solicitors within their first three years of qualification. ILEX developed its practice management course outcomes from the material used on those courses. It took the view that it should adopt the same approach as for trainee solicitors, which appears to work well for them. ILEX considered the

approach taken by the Council for Licensed Conveyancers, where licensed conveyancers attend a short session on practice management. It discounted that approach in favour of a course that must meet specific outcomes.

71. The content of the accounts course was developed by identifying what aspects of the ILEX accounts rules should be taught to members. Accounts is an important area and one in which members will not have previously received training. Therefore these course outcomes are substantive. They mirror the approach taken in respect of solicitors' accounts training on the LPC, except that they focus on the ILEX accounts rules, which are not in themselves much different to the Solicitors Accounts Rules.

### **Assessment of Litigation Skills Post-Qualification**

72. ILEX recognises the value of assessing the litigation, advocacy and practice management skills of newly qualified advocates in addition to the practical safeguards already in place. Those safeguards include:

- ◆ Their prior experience in their specialist field will be assessed before they are permitted to embark on advocacy and litigation training;
- ◆ The training and, where relevant, assessment incorporated in the litigation, advocacy, practice management and accounts skills courses will have established that they are competent Litigators and advocates, and competent to administer accounting procedures and to manage a practice;
- ◆ ILEX's general Code of Conduct, Practice Management and Accounts Rules and the Rights of Audience Conduct Rules require them to undertake only such work as is within their competence; and
- ◆ The Practice Management and Accounts Rules will place safeguards to ensure Litigators manage their practice and work in a manner to protect clients' interests.

73. The skills of newly qualified litigators and advocates will be assessed by requiring them to complete portfolios of 3 cases in which they undertook litigation and portfolios of 3 cases in which they undertook advocacy. Portfolios will be submitted at the first renewal of the Certificates and will follow the format prescribed at **Appendix 2** to the Certification Rules. Where possible the cases reported will include ones in which the Litigator has undertaken litigation work since qualification and, where the litigator has held the full advocacy certificate, ones in which the advocate exercised their extended rights of audience.

74. ILEX recognises that a Litigator may not have issued any litigation proceedings within his first year of practice, particularly when the general aim is to settle cases without resorting to lengthy and protracted proceedings. Where a Litigator is unable to produce 3 litigation portfolios IPS may postpone the requirement for a period of 12 months.

75. ILEX also recognises that in the case of civil proceedings, where open court advocacy is rare, it might not always be possible to produce 3 advocacy portfolios concerning open court advocacy within the first year of qualification. Requiring Litigators to produce reports of 3 cases in which they have exercised their new rights of audience may impose improper pressures on applicants. They may feel obliged to take a case to a hearing, when the interests of the client or the administration of justice require earlier settlement to be considered, or another advocate to be instructed. Therefore the Rules allow details to be provided of cases which were settled through other means than litigation proceedings or by exercise of the new rights, and one of the reported cases may be of observed advocacy. Whatever the nature of the case, the criteria for reporting and reflection on the case will be the same.
76. When completing the application for first renewal Litigators will be required to provide general information regarding their litigation work and advocacy experience post-qualification including such matters as case-load; the proportion of time spent on cases in their specialist area; number of advocacy appearances and the general nature of cases in which they have acted as a Litigator and as advocate (including such matters as whether their cases are typically contested or uncontested, whether they involve mediation, arbitration or negotiation and the courts in which they were heard).
77. The cases reported in the portfolios will need to comply with the Guidelines in **Appendix 2** to the Certification Rules. The Admissions and Licensing Committee will require the case descriptions to show that the Skills Course Outcomes and Assessment Criteria, set out at **Appendices 3 to 6**, have been applied. The production of portfolios will allow a Litigator to reflect on the learning outcomes from cases. Portfolios will not be required on subsequent renewals of the litigation and advocacy Certificates.
78. Portfolios will be assessed by the External Advisors, prior to referral to the Admissions and Licensing Committee or, in delegated cases, the Officers. Where the External Advisor recommends that the portfolios are not acceptable for any reason, the reasons will be notified to the Litigator, who will have the opportunity to make representations to the Admissions and Licensing Committee when it considers his application for renewal.
79. It is submitted the post-qualification portfolio and subsequent monitoring procedures will be an effective and proportionate means of assessing the development of a Litigator's skills and, with the other safeguards referred to above, will ensure the quality of litigation and advocacy services provided to clients. It will also provide useful feed-back on the effectiveness of the litigation and advocacy qualification schemes. ILEX submits in support of these proposals that these arrangements for assessing standards of litigation and advocacy post-qualification are proportionate and practical.

## **Practice structures**

80. Litigators may practise through a variety of means under the Certification Rules. They may be:

- employed in a legal practice regulated by an approved regulator
- a manager in a Legal Disciplinary Practice
- an employed person providing litigation services to clients of their employer
- practise independently, including in partnership with ILEX practitioners, authorised persons and or non-authorised persons.

81. A litigator who provides services independently or services to clients of their employers will need to seek approval from IPS to do so. The approval mechanisms have been outlined earlier.

82. Litigators may practice independently as sole practitioners, in partnership or through a corporate structure. The rules do not preclude practice in mixed practices, including partners or managers who are not authorised legal practitioners. However, such practices will soon need to be reformed into licensed practices. Accordingly, under the Legal Services Act, it is unlikely that IPS would approve an ILEX litigator setting up or joining such a practice as an owner until it becomes a Licensing Authority. Until that time the body will need to be licensed by another licensing authority. IPS will continue to regulate the Litigator as a member of ILEX.

83. ILEX is not in a position to regulate Legal Disciplinary Practices because it has not developed its entity regulation rules at this stage. Therefore such entities may be formed by Litigators, other authorised persons and non-authorised persons, but the entities will be regulated by other approved regulators. The Litigator will continue to be individually regulated by ILEX through IPS, although the practice will comply with the requirements of the approved regulator rather than the ILEX rules. ILEX has built suitable arrangements into its Practice Management and Accounts Rules to grant waivers to Litigators from compliance with its rules in such instances.

## **Monitoring of Litigation Practices**

84. Litigators who are self-employed will be required to submit annual accounting reports to ILEX which will enable both ILEX and the Litigator to assess the controls being exercised and the financial stability of the practice on a regular basis. Litigators will also undertake annual reviews of their exposure to risk as part of their application to renew their firm's indemnity insurance policy.

85. ILEX will delegate to IPS responsibility to monitor and inspect practices to protect clients and the public from risk. Monitoring and inspection visits may be made with or without notice. They will enable IPS to look into the practice and file management being undertaken by a Litigator to ensure that the procedures comply with the rules. Where there are shortfalls IPS may work with the practitioner, undertaking regular monitoring, to address those issues. Where serious mismanagement has been identified IPS may need to intervene into or

close a practice. IPS will need to develop the resources to monitor and inspect but has gained experience of undertaking these activities in respect of immigration practitioners registered with it. IPS has undertaken inspection visits to assess the practice management, client care and accounts procedures adopted by immigration practitioners. Where necessary it worked with immigration advisors to improve practices adopted by their firms.

86. The proposed rules give IPS the power to intervene into and, where necessary, close a Litigator's practice. Intervention proceedings will be undertaken where serious mismanagement or incompetence has been identified. IPS recognises the need for urgency in dealing with the work of an intervened practice. In these circumstances IPS may nominate an authorised practitioner to take over the files and client funds held by the Litigator. The clients will be notified of an intervention at the earliest possible opportunity and their files and monies will be distributed in accordance with their instructions. Again IPS has gained experience of monitoring closure of immigration practices following findings made by its Disciplinary Tribunal.

### **Course Providers**

87. The arrangements under the rights of audience scheme under which ILEX accredits course providers and the provider delivers the course and assesses competence have proved effective and will continue for course providers who provide the litigation, advocacy skills and accounts courses. ILEX will retain ultimate responsibility for maintaining standards through the reporting and monitoring procedures established under the Rules. This responsibility will be delegated by ILEX to IPS.

88. Course providers offering the litigation skills, advocacy skills and accounts courses will be accredited by the Admissions and Licensing Committee against criteria set out in the Certification Rules. The criteria include: location; suitability of premises; teaching resources and support; teaching and assessment experience; library and other resources; course content; candidate contact and support mechanisms. ILEX will produce an accreditation handbook which will set out the accreditation procedure to reflect the Certification Rules.

89. External Advisors and Officers of ILEX will carry out inspection visits of courses 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 days when assessment of candidates is being carried out.

90. The Committee will receive annual reports from course providers themselves on how the course has progressed during the preceding 12 months and on candidates' performance. The External Advisors will moderate assessment materials prepared by course providers and will review samples of candidates' performances on the course in order to monitor assessment standards applied by the course provider.

### **Practice Management Course Providers**

91. The position will be different for courses on practice management to that outlined above. ILEX has developed Course Delivery Outcomes criteria which appear at **Appendix 7** to the Certification Rules. ILEX believes that there are sufficient courses commercially available which will meet the Course Delivery Outcomes criteria so that ILEX does not need to accredit specific courses.

### **Eligibility of Graduate members**

92. The Application proposes that Graduate members of ILEX should be allowed to undertake the Litigation and Advocacy Skills Courses. Graduate members will have passed the ILEX Professional examinations, but they are then required to have gained 5 years experience of legal work in a solicitors' firm or office, including 2 consecutive years in the Graduate membership grade before admission as a Fellow. The 2 year period is intended to give Graduate members the opportunity to develop their legal experience and skills, utilising the knowledge gained during their examination studies.

93. Typically, by the time they complete their examinations, Graduate members will have at least 4 years experience and often much more. ILEX believes some Graduate members will have sufficient practical experience and the necessary academic background to cope with the Litigation and Advocacy Skills Courses and, where that is the case, they should be allowed the opportunity to complete those courses during the Graduate membership stage.

94. Graduate members will be required to apply for a Certificate of Eligibility in the same way as a Fellow, and the same criteria will apply. Some Graduate members will fall short of the experience requirements, but will have the benefit of guidance from the Admissions and Licensing Committee on how they can comply with the criteria and the opportunity during the Graduate membership period to do so.

95. ILEX believes that Graduate members who specialise in litigation will regard the skills course as a natural extension to their formal examinations, and a logical part of developing the legal skills they need to become Fellows. A Graduate member who completes the Litigation and Advocacy Skills courses will be able to apply to be granted his Litigation Rights and Advocacy Certificate upon admission as a Fellow. In the meantime, the litigation and advocacy training will enhance his skills in exercising his general litigation and advocacy rights.

96. Graduate members may also complete the Practice Management and Accounts courses before they become Fellows. However, they will not be able to seek authorisation from ILEX to practice in independent practice until they have qualified as a Fellow of ILEX. ILEX envisages that Graduate members who undertake these courses during the period of their membership are likely to be those Graduate members who have substantial practical experience.



**Review of the scheme**

97. ILEX will review the progress of this scheme at least every three years. As part of the review ILEX will consider the effectiveness of the training and qualification scheme to deliver Legal Executive Litigators and Advocates. The review will take into account feedback on the effectiveness of the scheme received from candidates, course providers, external advisors and the Admissions and Licensing Committee.

## **PART V – PRACTICE MANAGEMENT AND ACCOUNTS RULES**

1. ILEX envisages that most Litigators will work self-employed in their own practices. ILEX has developed practice management and accounts rules and supporting codes and schemes to facilitate this. These rules will also apply to Litigators who provide litigation services to clients of their employer.
2. Litigators who provide litigation services as employees of solicitors' practices will comply with the Solicitors' Code of Conduct. The ILEX practice management and accounts rules stipulate which rules are applicable to Litigators who fall into this category of practice.
3. Litigators who practice in an entity regulated by an approved regulator other than ILEX will need to comply with the rules of that regulator. The ILEX practice management and accounts rules again stipulate which rules are applicable in such instances. Where a conflict arises it will be possible for a ILEX litigator to seek a waiver from ILEX from compliance with the rules.
4. All Litigators will continue to be bound to comply with the ILEX Code of Conduct.
5. The Rules make reference to ILEX Practitioners. ILEX Litigators will fall within the category of ILEX Practitioners.

### **Practice Management Rules**

6. The Practice Management Rules set out the general duties and standards of conduct expected of Litigators. The Rules will ensure that Litigators provide an acceptable standard of care to all their clients. They require that Litigators act professionally, with integrity and ensure that the interests of their clients are paramount except for their duty to the court. The standards of conduct expected of ILEX Litigators are comparable to those posed upon solicitors.
7. The client care provisions in the practice management rules will ensure that clients are provided with clear details about the instructions they have given to the Litigator, the extent of the retainer, the likely costs the client will incur, and the details about the fee earner handling the case.
8. The client care letter will also stipulate how a complaint could be made about the service the client received or about the conduct of the ILEX Litigator, including details of the Legal Ombudsman scheme. The practice management rules require that Litigators must have in place arrangements to deal with complaints in house at the first instance. They also require that Litigators communicate details of their complaints handling procedures to clients.
9. The provision of full and detailed information will help to avoid and resolve disputes about the extent of the retainer or the level of costs payable by a client.

These are common areas in which disputes arise. A clear and detailed client care letter can become a source of reference in such instances.

10. A Litigator will be expected to keep clients regularly updated on costs matters. This is often one of the most important issues for clients. The updates will enable clients to regularly assess the financial impact that the litigation proceedings will have upon them and to determine whether they can continue to fund the litigation proceedings.
11. In the event of a dispute about costs the parties will be able to refer the matter to the courts for detailed assessment where litigation proceedings had been issued. ILEX will develop an adjudicatory process to determine disputes about costs in instances where court proceedings had not been issued.
12. The practice management rules will provide assurances to clients that they can instruct Litigators with confidence that Litigators will not breach their confidence or act in a conflict of interest situation. Litigators will be required to act with independence in the interests of their client. The rules on conflict are wide reaching and capture a range of conflicts.
13. The Rules will enable fee sharing and referral arrangements to take place provided open and honest disclosure is made to clients about the arrangements. The provisions will enhance the transparency in the relationship between Litigators and clients.
14. The rules contain provisions relating to the supervision of the Litigator's practice to ensure that the Litigator retains overall personal responsibility for his practice. Practitioners who supervise the office of a Litigator must be competent.

### **Supporting Codes and Rules**

15. The Practice Management Rules are also supported by the Rights of Audience Conduct Rules and Anti-Discrimination and Publicity Codes.
16. The Rights of Audience Conduct Rules govern the conduct of Litigators when exercising rights of audience. They will apply to any advocacy undertaken by Litigators, including Judge's room and open court advocacy. The Rules recognise the Litigator's overriding duty to the court. Litigators will be required to assess if they are the most suitable advocate to represent a client. The Rules set out the duties owed by Litigators when representing clients and presenting cases.
17. The anti-discrimination code will ensure that a Litigator does not engage in anti-discriminatory practices in the course of their practice. A practice must have an anti-discrimination policy to which it must adhere. A Litigator may either develop his own policy or adopt the ILEX policy. The policy is important for the protection of the public interest and will ensure that there is equality of treatment. ILEX will treat a failure to comply with the code as a matter of misconduct.

18. The publicity code will ensure that any material published by a Litigator's practice is clear. The Code requires that clients are provided with information about the name and address of a Litigator's practice, the status of the person dealing with their matter and information that IPS is the regulatory body of the Litigator. This will ensure that a client is clear about who is dealing with their matter and how they are regulated. The Code also ensures that any advertising undertaken by a Litigator's practice provides clear and truthful information about the practice and the services provided.

### **Accounts Rules**

19. ILEX has developed its own accounts rules that will apply to Litigators providing litigation services in independent practice or providing litigation services to clients of their employers. Litigators practising in these modes of business will have completed a course in accounts which covers the ILEX Accounts Rules.
20. The Rules will ensure that Litigators keep client and office monies separated and that there is a clear audit trail of transactions that are undertaken on behalf of each client. Litigators will be expected to maintain a client ledger for each client which will ensure that clear and unequivocal financial records are held for each client. The records will provide a clear reference point for the Litigator.
21. The rules also contain provisions about how and by whom money can be withdrawn from client account and when interest should be paid on money held in a client account.
22. Litigators will be required to carry out regular reconciliations so that they can maintain accurate records and undertake a regular review of the financial status of each matter on which they are instructed.
23. Litigators will be expected to obtain annual accountants reports from an authorised Accountant, in a format set by IPS. The reports will ensure that an independent assessment is carried out of compliance by the Litigator with the ILEX Accounts Rules. The accountant will be required to carry out various test procedures that are set out in the ILEX Rules. The Litigator must provide a copy of the report to IPS. Where the report raises a concern IPS will be able to monitor or inspect the practice to assess and address those matters as necessary.
24. The accountant will be under a duty to report directly to IPS any concerns that he has when he undertakes his audit of the practice. This again will enable IPS to take action in the interests of protecting clients' monies.
25. IPS will develop guidance notes to assist practitioners in complying with these rules.

## **Entity regulation**

26. The rules outlined above are set as general principles that ILEX litigators will need to meet. They focus upon individual regulation.
27. ILEX has not developed entity based rules at present. It is working on an application to become a licensing body. As part of that application it will convert its current rules into entity based rules. At that point it will make an application to the LSB to require litigator practices to be subject to entity based rules.

## **SCHEMES OF CLIENT REDRESS**

28. ILEX has developed a number of schemes through which clients will be able to seek redress. They are the poor service scheme, indemnity insurance scheme, client protection scheme and the ILEX complaints handling and disciplinary procedures.

### **Poor Service Scheme**

29. The Poor Service Scheme enables clients to claim redress if they receive a service which falls below the standards that may be reasonably expected of an ILEX Litigator. Under the Legal Services Act 2007 responsibility for complaints about the service received from a Litigator will pass to the Legal Ombudsman. The Legal Ombudsman will become a single point of entry and will deal with service complaints. The ILEX poor service scheme is included for completeness, however, it is likely the Legal Ombudsman scheme will be operational before these litigation rules come into effect. Litigators will be required to inform clients of the availability of the Legal Ombudsman service and how complaints may be made to it.

### **Indemnity Insurance Rules**

30. ILEX has developed a scheme of indemnity insurance. All Litigators will be required to obtain cover under the ILEX indemnity insurance scheme unless they are an employed Litigator. Employed Litigators will need to ensure that they are covered by a scheme of indemnity insurance held by their employer. If they are not they must obtain cover under the ILEX scheme.
31. ILEX has investigated whether to opt for an open market or master policy scheme. It has received advice from insurance brokers that subject to prevailing conditions, a master policy scheme will best serve the interests of litigators and their clients. However, initially it might not be possible to obtain a master policy due to the small number of practitioners. Therefore it will be possible for practitioners to obtain cover on the open market. They may transfer to the master policy scheme once it is in place.
32. Once it is possible to do so, ILEX will obtain a master policy of indemnity insurance under which Litigators will be able to obtain cover. The collective

purchase power may assist in obtaining an acceptable level of premium for practitioners.

33. ILEX believes that it is important for the protection of clients' interests to have a professional indemnity insurance scheme in place. ILEX will not issue a Litigators Certificate to a Litigator until it is satisfied that the Litigator has obtained Indemnity Insurance cover. A Litigator may not practice while they are uninsured.
34. Litigators will obtain insurance for a mandatory level to be set by ILEX from time to time. Litigators will be able to obtain cover for a higher level if they wish. The scheme will provide clients with a scheme of redress for any civil liability incurred in connection with the Litigator's practice. The minimum level of cover will be proportionate to the risk posed by Litigators' practices. The risks are comparatively low because Litigators do not typically hold large amounts of client money. The IPS Board will be responsible for assessing risk and setting minimum levels of cover. In assessing risk it might seek expert advice from insurance brokers, insurance providers and benchmark against levels set by other regulatory bodies.
35. Litigators will also be required to have run off cover for a period of 6 years. This will ensure that there is ongoing cover for a reasonable period of time for Litigators after they cease to practice.
36. In developing its indemnity insurance rules ILEX sought advice from three individual brokers at different periods of time. Each broker advised that the master policy scheme would be the most suitable for ILEX practitioners. They took the view that the scheme would provide a better level of premium for members.
37. However, recent advice, which was sought in April and May 2010, advised that ILEX members may have to seek insurance on the open market if there were an insufficient number of practitioners to make a master policy scheme viable. The broker discussed the ILEX scheme with a large insurance provider. The broker is assured by the training and regulatory structure proposed by ILEX and takes the view that it will assist in negotiations with insurance providers, particularly in terms of the level of risk posed by Litigators and the level of premium. The broker will assist ILEX in continuing discussions with insurance providers to enable it to identify when to move from an open market scheme to a master policy set up.

### **Client Protection Scheme**

38. ILEX has developed its own client protection scheme. This is a scheme whereby clients who suffer loss as a result of the dishonesty or failure to account by a Litigator will be able to seek redress from a compensation fund to be set up by ILEX, which will be administered by IPS. ILEX takes the view that it is important to provide some redress for clients who have no other mechanisms available to them.

39. The client protection fund is a new fund that will be set up by ILEX. All Litigators will be required to contribute to the fund. In addition ILEX will designate some of its reserves for the purposes of setting up the fund. ILEX takes the view that this is necessary to establish the fund in the first instance. The rules of the scheme contain provisions about how ILEX can develop the fund such as through investments and borrowing.
40. The fund will be a discretionary fund of last resort. ILEX will expect clients to have exhausted other forms of redress before making a claim on the compensation fund.
41. The Rules set out the procedure that will be followed where a claim is made to the ILEX compensation fund. The onus will rest with the client to provide information in support of his claim and to show the loss suffered. The client will subrogate to IPS his rights to make a claim against the Litigator and will be required to assist IPS in making or supporting that claim. In assessing the level of payments to be made IPS will take into account various factors such as whether the client contributed to their loss, the client failed to act with integrity or failed to co-operate.
42. IPS will set the maximum level of payment it can make from the fund. The level of payment will be reviewed by IPS on a regular basis. In setting the level of maximum payment IPS will take into account market forces and the level of payments the fund can sustain. The inspection and monitoring processes proposed by ILEX will help to reduce the risk and act as a mechanism for assessing where potential risks may lie.
43. Where a client is suffering severe hardship ILEX has reserved the power to make an interim grant. This will be important for providing assistance to vulnerable clients.

### **Disciplinary Proceedings**

44. The requirement to comply with the Practice Management and Accounts Rules is in addition to the ILEX general Code of Conduct and Guide to Good Practice. Any complaint regarding the conduct of a Legal Executive Litigator, under either the Code or the Rules, will be dealt with through the normal disciplinary procedures. Those procedures are set out at **Annex 13** of this Application. Any decision against a Litigator, made under the Investigation and Disciplinary Rules, other than a decision to exclude from membership, will be referred to the Admissions and Licensing Committee.
45. Where the conduct of a Litigator is referred to it, the Admissions and Licensing Committee will determine whether the Litigator remains a fit and proper person to continue holding a Litigation Rights Certificate, and where relevant, a Rights of Audience Certificate.

46. A Legal Executive Litigator who ceases to be a Fellow of ILEX, whether for disciplinary reasons or otherwise, will automatically cease to be eligible to exercise any rights to conduct litigation or rights of audience under the Certification Rules.

## **REGULATORY CONFLICT**

47. At this stage ILEX seeks to regulate practices of ILEX members only. It does not seek to regulate mixed practices of lawyers or of lawyers and non-lawyers. It will seek to regulate such practices as part of its licensing application.
48. IPS is participating in discussions with other approved regulators to develop a memorandum of understanding addressing regulatory conflict that will arise in respect of licensing.
49. IPS will commence discussions with approved regulators in respect of regulatory conflict that might arise in the regulation of ILEX litigators. It has identified that such conflict may arise where a litigator practices in a structure that is regulated by a regulator other than IPS. Discussions will take place while the application is under consideration by the LSB. At present IPS manages regulatory conflict that arises in respect of regulation of its members case by case. ILEX members holding a dual qualification (solicitor or licensed conveyancer) or working under the supervision of a solicitor are subject to regulation by the SRA and CLC as well as IPS. Case by case arrangements have worked well.



# **APPLICATION ANNEXES**

**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**

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

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**MEMORANDUM OF ASSOCIATION**

**of**

**THE INSTITUTE OF LEGAL EXECUTIVES**

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- 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**

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

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**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**

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

Keith M. Barrett, F.Inst.L.Ex.  
Gillian Birchnall (Miss), F.Inst.L.Ex.  
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) F.Inst.L.Ex.  
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](http://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
<b>Income:</b>												
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
<b>Expenses 1 - By Type</b>												
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
<b>Expenses 2 - By Department</b>												
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
<b>Net Group Expenses</b>	<b>1589</b>	<b>1877</b>	<b>2997</b>	<b>6463</b>	<b>1971</b>	<b>2000</b>	<b>3106</b>	<b>7078</b>	<b>2152</b>	<b>2060</b>	<b>3220</b>	<b>7431</b>
<b>Group Income</b>	<b>1558</b>	<b>763</b>	<b>3955</b>	<b>6276</b>	<b>1713</b>	<b>986</b>	<b>4284</b>	<b>6983</b>	<b>1781</b>	<b>1015</b>	<b>4547</b>	<b>7343</b>
<b>Net Surplus/(Deficit)</b>	<b>-31</b>	<b>-1114</b>	<b>958</b>	<b>-187</b>	<b>-259</b>	<b>-1014</b>	<b>1178</b>	<b>-95</b>	<b>-371</b>	<b>-1044</b>	<b>1327</b>	<b>-88</b>

## **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**

1. The name of the Company is "**ILEX Professional Standards Limited**"
2. The registered office of the Company will be situate in England.
3. The objects of the Company will be:
  - 3.1.1 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
  - 3.1.2 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;
- 3.2 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).
4. 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:
  - 4.1 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;
  - 4.2 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;
  - 4.3 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;

- 4.4 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;
- 4.5 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;
- 4.6 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;
- 4.7 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;
- 4.8 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;
- 4.9 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;
- 4.10 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;

- 4.11 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;
- 4.12 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;
- 4.13 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;
- 4.14 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;
- 4.15 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;
- 4.16 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;
- 4.17 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;
- 4.18 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;
- 4.19 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;
- 4.20 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;

- 4.21 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;
- 4.22 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;
- 4.23 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;
- 4.24 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;
- 4.25 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.

5. The liability of the members is limited.
6. 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

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:

" <b>the 1985 Act</b> "	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;
" <b>the 2006 Act</b> "	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;
" <b>these Articles</b> "	means these Articles of Association in their present form or as from time to time altered;
" <b>Director</b> "	means a director of the Company;
" <b>the Board</b> " or " <b>the Directors</b> "	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**

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**

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**

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**

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

- Car Drivers Policy

**Charge:**

- As per 2010 Financial Budget

**SLA Manager:**

- HR Manager for ILEX Group

**SCHEDULE 2**

**FINANCE**

**Service Specification**

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

## SCHEDULE 3

### INFORMATION TECHNOLOGY

#### Service Specification

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

## SCHEDULE 4

### PROCUREMENT

#### Service Specification

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

## SCHEDULE 5

### FACILITIES

#### Service Specification

<b>Service:</b> <ol style="list-style-type: none"><li>1. Accommodation</li><li>2. Post room and DX mail services</li><li>3. Telecoms</li><li>4. Reception</li><li>5. Utilities</li><li>6. Cleaning</li><li>7. Gardening</li><li>8. Car Parking</li></ol>	<b>Service Level/Timeframe:</b> <ol style="list-style-type: none"><li>1. 4 managed and fully furnished offices on a daily basis, use of meeting rooms as required.</li><li>2. Daily collection and delivery service to include postage costs allocated to IPS code.</li><li>3. 5 Siemens Dect cordless telephones, 1 fax machine, 2 mobile phones, 1 photocopier. Telecoms support available via Facilities and IT department.</li><li>4. Daily service for staff, visitors, IPS Board members, to include call diverting from switchboard, message handling.</li><li>5. Electricity, gas, water, daily use of kitchen facilities, fire safety equipment, first aid</li><li>6. Cleaning – daily service provided by third party.</li><li>7. Gardening – ad hoc services provided by third party to ILEX Group.</li><li>8. Cars/Car Parking – One company vehicle, daily parking for IPS Staff, ad hoc parking for IPS visitors.</li></ol>
<b>Methods and Procedures:</b> <ul style="list-style-type: none"><li>• The above services are made available to IPS and supported by ILEX Facilities.</li><li>• IPS to give reasonable notice of meeting requirements.</li><li>• Post, DX mail and reception services provided by ILEX staff and managed by the Office Manager.</li><li>• Utilities, cleaning and gardening services provided by third parties.</li><li>• Mobile phone contracts to be managed by IPS.</li><li>• Photocopier provided as a shared facility for unlimited use.</li><li>• Maintenance of car park provided by ILEX staff.</li></ul>	
<b>Charge:</b> <ul style="list-style-type: none"><li>• As per 2010 Financial Budget</li></ul>	
<b>SLA Manager(s):</b> <ul style="list-style-type: none"><li>• Director of Group Purchasing</li><li>• Office Manager</li></ul>	



## SCHEDULE 6

### MARKETING AND COMMUNICATIONS

#### Service Specification

<b>Service:</b> <ol style="list-style-type: none"><li>1. IPS Website</li><li>2. Content Management System and hosting</li><li>3. Code of Conduct brochure and IPS Banner</li><li>4. Administration of Oaths leaflet</li><li>5. IPS Launch Event and PR coverage</li><li>6. Annual Report</li><li>7. IPS Brochure</li><li>8. Publicity and public relations</li></ol>	<b>Service Level/Timeframe:</b> <ol style="list-style-type: none"><li>1. Support on an ad hoc basis</li><li>2. On ad hoc basis with training for relevant IPS staff, supported by Marketing &amp; Communications and IT Departments</li><li>3. Design, print and distribute by Spring 2010, supported by Marketing &amp; Communications and Journal Departments</li><li>4. As required</li><li>5. Scheduled for March 2010, supported by Marketing &amp; Communications Department and external PR Agency</li><li>6. Annual</li><li>7. Annual</li><li>8. Advise and action as required</li></ol>
<b>Methods and Procedures:</b> <ul style="list-style-type: none"><li>• Timing and resource input by Marketing and Communications department to be decided when required.</li><li>• Marketing and Communications department to support the IPS website in liaison with IPS.</li><li>• IPS to manage content in liaison with Marketing and Communications department.</li><li>• IPS to give Marketing and Communications department reasonable notice in relation to publicity and press releases.</li><li>• ILEX to advise IPS on how to deal with press and stakeholders.</li></ul>	
<b>Charge:</b> <ul style="list-style-type: none"><li>• As per 2010 Financial Budget</li></ul>	
<b>SLA Manager:</b> <ul style="list-style-type: none"><li>• Head of Communications and Marketing</li></ul>	

## SCHEDULE 7

### LEGAL EXECUTIVE JOURNAL

#### Service Specification

<b>Service:</b>  1. Use of Legal Executive Journal publication  2. Editorial support  3. Direct mailings to members and other stakeholders	<b>Service Level/Timeframe:</b>  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.
<b>Methods and Procedures:</b> <ul style="list-style-type: none"><li>• The above services are made available to IPS and supported by Journal department.</li><li>• Journal department to liaise with IPS in order to provide the services above.</li><li>• IPS to meet publication deadlines and to produce material for publication.</li><li>• IPS to keep the Legal Executive Journal Editor informed.</li></ul>	
<b>Charge:</b> <ul style="list-style-type: none"><li>• As per 2010 Financial Budget</li></ul>	
<b>SLA Manager:</b> <ul style="list-style-type: none"><li>• Journal Business Manager</li></ul>	

**SCHEDULE 8**

**MEMBERSHIP**

**Service Specification**

<p><b>Service:</b></p> <ol style="list-style-type: none"> <li>1. Collect and record information regarding declarations of Prior Conduct and or contacts concerning complaints and allegations.</li> <li>2. Refer applications where declarations are made or information where allegations are made to IPS.</li> <li>3. Record on the database when any matter is declared or disclosed and the date when referred to IPS.</li> <li>4. Check disciplinary records of applicants for Fellowship.</li> <li>5. Maintain accurate membership records.</li> <li>6. Provide information to IPS about members or other contacts and make checks to database and paper records.</li> <li>7. Provide statistics for membership, including equality and diversity information.</li> <li>8. Maintain records of qualifying employment waiver applications, decisions and reasons.</li> <li>9. Maintain records of CPD on membership database.</li> <li>10. Provide the number and grades of members who have not complied with the requirement to record relevant CPD.</li> <li>11. Provide resources (people/admin) to secure CPD compliance by members.</li> <li>12. Provide details to IPS of members who have not complied or have not made arrangements to comply with CPD requirements.</li> </ol>	<p><b>Service Level/Timeframe:</b></p> <ol style="list-style-type: none"> <li>1. Within 1 working day of receipt</li> <li>2. Within 2 working days of receipt</li> <li>3. Within 1 working day of receipt</li> <li>4. Every application when received</li> <li>5. Ongoing</li> <li>6. Within 5 working days</li> <li>7. Monthly</li> <li>8. Ongoing</li> <li>9. Ongoing</li> <li>10. Annual, by end of February</li> <li>11. By end of May</li> <li>12. By mid-June</li> </ol>
<p><b>Methods and Procedures:</b></p> <ul style="list-style-type: none"> <li>• The above services are provided to IPS and supported by Membership department.</li> <li>• Membership department to liaise with IPS in order to provide the services above.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>	
<p><b>Policy Application (Policies that apply to both ILEX and IPS):</b></p>	

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

## SCHEDULE 9

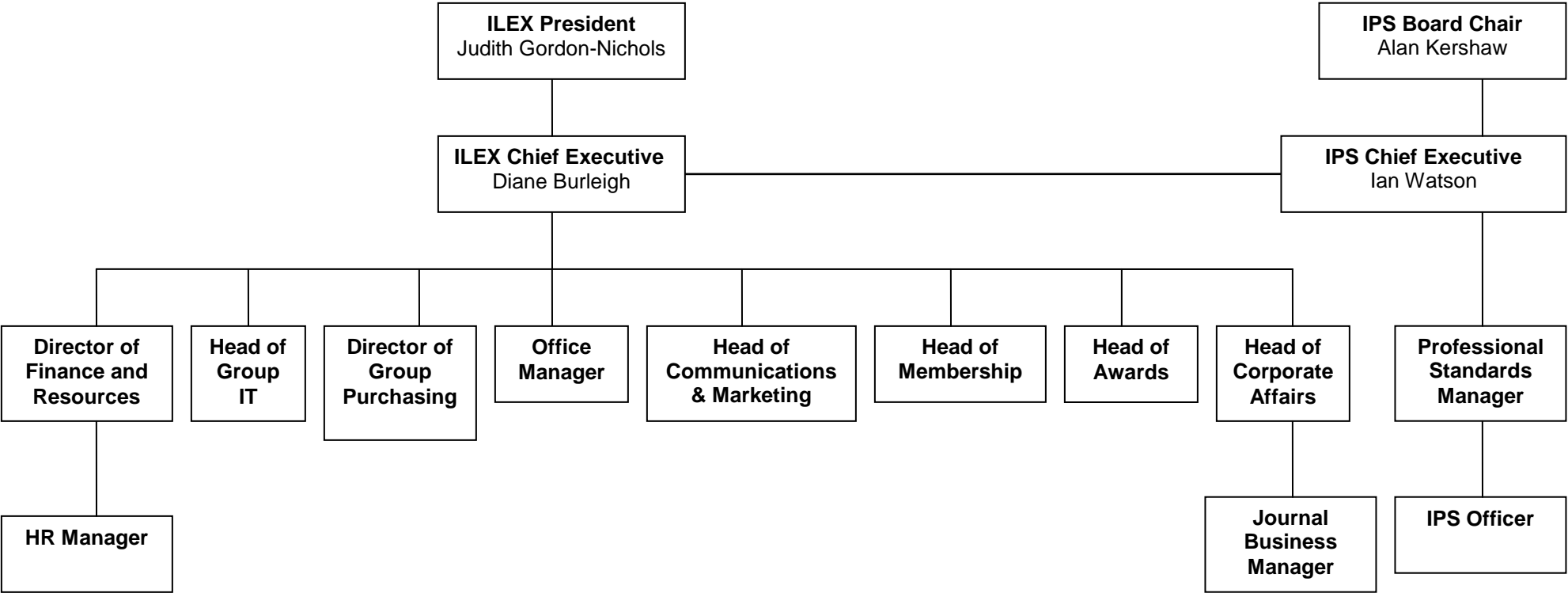
### AWARDS

#### Service Specification

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

<ul style="list-style-type: none"><li>• Centre malpractice policy and procedures</li><li>• Instructions to examination centres and invigilators</li></ul>
<b>Charge:</b> <ul style="list-style-type: none"><li>• As per 2010 Financial Budget</li></ul>
<b>SLA Manager:</b> <ul style="list-style-type: none"><li>• Head of Awards</li></ul>

**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

<b>1. Strategy and Finance</b>	
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
<b>2. Regulations and control, etc</b>	
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.
<b>3. Appointments</b>	
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
<b>4. Contracts and Transactions</b>	
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.
<b>5. Regulatory Matters</b>	
5.1	Referral of matters or issues to the LSB
5.2	Decisions on what matters should be reserved to the Board
<b>6. Disclosure</b>	
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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/Awar ds 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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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.

<b>ACTION</b>	<b>DATE</b>	<b>LEAD/ RESOURCE</b>	<b>UPDATED PROGRESS</b>
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

## **VISIBILITY AND IMAGE**

- 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
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.

**Key Target 2:** 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

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	

**Key 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      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. The plan also covers implementation of the practice management arrangements. 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 consider candidate and course provider applications referred to it by an IPS Officer. It will also receive and consider various reports including 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 perform other roles in addition to those assigned to it under this scheme. Therefore the Committee is likely to have been recruited prior to the commencement of this scheme.

- 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 four external advisors covering advocacy, litigation, practice management and accounts. 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.

IPS has considered what contingency action to take should the litigation scheme be highly successful to the point that the four proposed external advisors could not cope with the number of applications.

At the first stage applicants for litigation rights have to enrol onto the scheme. At that point IPS requires external advisors to mark litigation and advocacy portfolios. IPS already has external advisors in place for its rights of audience scheme. Those externals have the capacity to assist with the litigation scheme, as their existing workloads are small. In addition IPS may be able to appoint externals from the pool of applicants it would have received when it made the initial appointments.

IPS would have some lead in time to appoint additional externals for accounts and practice management. Applicants will be completing the litigation and advocacy courses while that recruitment will take place, therefore allowing IPS some time to make the appointments. IPS would re-run the recruitment process or appoint additional external advisors from the pool of original applicants.

The timetable below scopes out how long the recruitment process will take. A separate training session (which will be of one day) will be run for any additional externals that may be appointed.

• 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. Candidate applications

IPS will need to develop a variety of application forms. They include applications for certificates of eligibility, applications for litigation and advocacy certificates, first renewals of certificates, subsequent renewals of certificates and applications to practice independently.

Applications for certificates of eligibility are the most urgent. The other applications can be developed after the commencement of the scheme. It should be noted that much of this development work has already been completed by IPS in respect of its current rights of audience scheme. That work can be adapted for this scheme.

- Certificates of eligibility
 

Application forms and portfolio forms	1 week
Candidate guidance notes	1 week
	-----
Total	2 weeks

(adapting existing forms and guidance notes)
  
- Applications for litigation and advocacy certificates
 

Application form	1 week
	-----
Total	1 week

(adapting existing forms – can be developed after commencement)
  
- First renewals of certificates
 

Application forms and portfolio forms	1 week
Candidate guidance notes	1 week
	-----
Total	2 weeks

(adapting existing forms and guidance notes– can be developed after commencement)
  
- Subsequent renewals of certificates
 

Application form	1 week
	-----
Total	1 week

(adapting existing forms – can be developed after commencement)
  
- Applications to practice independently
 

Application forms	1 week
Candidate guidance notes	2 week
	-----
Total	3 weeks

(new development - can be developed after commencement)

#### 4. Course provider accreditation

Course providers who provide the litigation skills, advocacy skills and accounts courses will need to be accredited. IPS has already developed an accreditation form and accreditation handbook that is used for the accreditation of courses providers wishing to provide the current rights of audience qualification scheme. Those forms will be adapted for this scheme.

Course providers will be willing to provide enough courses to meet demand, due to their commercial nature. IPS may accredit more than one course provider thereby increasing competition, which may have a positive impact on cost, and increasing the number of available courses.

- Application

Develop accreditation forms	1 week
Develop accreditation handbook	2 weeks
	-----
Total	3 weeks

(adapting existing forms and handbook)
  
- Process applications

Receive and undertake initial assessment in office	1 week
External advisor assessment	3 weeks
Copy advisor comments to applicant	1 week
Applicant response	2 weeks
Refer to committee (if necessary)	2 weeks
Committee decision (if necessary)	2 weeks
	-----
Total	7/11 weeks

(depending on whether committee referral needed)

#### 5. Practice management

Litigators who wish to practice independently or provide third party services will need to seek authorisation to do so. They will make an application which complies with the independent practice criteria. This work can be undertaken during and after commencement of the scheme as candidates will need to undertake the qualification courses before they reach this stage.

- Application

Develop application forms	2 weeks
Develop guidance notes	3 weeks
	-----
Total	5 weeks

(adapting existing forms and handbook)

- Process applications
  - Receive and undertake initial assessment in office 1 week
  - External advisor assessment 3 weeks
  - Copy advisor comments to applicant 1 week
  - Applicant response 2 weeks
  - Refer to committee (if required) 2 weeks
  - Committee decision (if required) 2 weeks
  - 
  - Total 7/11 weeks

(depending on whether committee referral needed)
  
- Post application
  - Inspection forms and procedures 4 weeks
  - Monitoring forms and procedures 4 weeks
  - Accountants report form, test procedures 6 weeks
  - 
  - Total 14 weeks

The external advisors will undertake inspection and monitoring visits of practices. The cost of such visits will be met by the application fee. Should IPS receive a large number of applications from members seeking to undertake independent practice IPS will recruit additional external advisors.

## 6. Professional Indemnity Insurance

Litigators who practise independently will need to ensure that they are covered by a scheme of professional indemnity insurance. There may be instances where Litigators employed by organisations and providing third party services may need cover, if they are not provided cover by their employer.

IPS has commenced negotiation with insurance brokers and is raising awareness of its proposals. It is intended that this will help to ensure smooth introduction of an insurance scheme. The discussions have led to a broker sharing the IPS indemnity scheme rules with a large insurance provider. The provider has confirmed that the rules are workable. (IPS has spoken to three brokers over a number of years, who all agreed with the approach in the rules)

Negotiation with brokers	6 weeks
Set up of scheme	6 weeks

Liaison with insurers re scheme procedures etc	6 weeks
	-----
Total	18 weeks

## 7. Compensation fund

IPS will need to set up a compensation fund to protect the clients of Litigators who practise independently or provide third party services. The work may involve setting up an account, putting ILEX funds designated for a compensation fund into the account, assessing levels of contributions and subsequent administration of the scheme. It will also involve appointing a Board of Trustees.

Set up account	3 weeks
Designate and transfer ILEX contribution into fund	3 weeks
Scoping out level of member contributions	4 weeks
Setting up administrative arrangements	12 weeks
	-----
Total	22 weeks

## 8. Marketing of scheme

IPS recognises the importance of marketing the scheme to ILEX members to attract them to qualify. It is envisaged that ILEX and IPS will need to provide guidance to ILEX members on various matters relating to the scheme, such as qualification structure, setting up a practice etc. Marketing material will also need to target potential course providers.

Develop marketing literature (leaflets, info packs)	4 weeks
Place adverts (ILEX Journal, website)	2 weeks
Develop guidance (FAQ, case studies, model applications)	4 weeks
	-----
Total	10 weeks

## **RESOURCES AND CAPABILITY**

This document sets out ILEX's proposals by which it will resource the 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.

Recruitment and realignment of responsibilities has commenced at IPS to ensure that the professional standards manager and professional standards assistant will be able to work on implementation of the litigation scheme. ILEX has also agreed that IPS will recruit an additional staff member to meet any shortfalls in capacity.

### **2. Candidate applications**

- Development work – professional standards manager and professional standards assistant.
- Processing of applications – professional standards assistant and one new employee (professional standards officer)
- External advisors provide technical support and have experience to vet portfolios.

The professional standards manager and professional standards assistant have experience of developing and updating forms used for the rights of audience scheme. The professional standards assistant presently processes applications for rights of audience.

### **3. Course provider accreditation**

- Development work – professional standards manager and professional standards assistant.

- Processing of applications – professional standards assistant and one new employee (professional standards officer)
- External advisors provide technical support and have experience to vet applications and undertake inspection visits.

The professional standards manager has experience of developing the forms and accreditation handbook used for the rights of audience scheme.

#### **4. Practice management**

- Development of application forms and guidance notes – new employee and professional standards manager
- External advisor to provide technical support
- Inspection and monitoring of practices, including enforcement powers – professional standards manager and external experts will begin the process. Employee to be recruited in future depending upon business need.

The professional standards manager has been involved in developing rules for practice management and has experience of inspecting and monitoring immigration practices. IPS has also made use of an external advisor on an ad hoc basis to inspect immigration practices on its behalf. This work has produced inspection forms and procedures which can be adapted and developed further.

The external advisor used for inspection of immigration practices continues to provide services to IPS, as required. They would be able to assist with the implementation work and may become an external advisor for the scheme. Other service providers, who have experience of undertaking inspection and monitoring work for other organisations have also expressed an interest in this scheme. IPS will be working on the skills and criteria required for the external advisor for practice management and accounts.

#### **5. Professional Indemnity Insurance**

- Negotiate with brokers – professional standards manager and new employee.

The professional standards manager has been involved in current negotiations with brokers. The brokers will provide the expertise to negotiate with insurance providers. As mentioned earlier the brokers have spoken to an insurance provider, who has agreed that the proposed rules are workable.

## **6. Compensation fund**

- Set up fund – group accountant.
- Designate resources – group accountant.
- Determine level of contributions – group accountant with support from IPS staff.
- Administration of scheme – new employee

## **7. Marketing of scheme**

- Development of materials – professional standards assistant and communications department (both have existing experience)
- Publication of materials – communications department

## FINANCIAL RESOURCES

Compensation fund – ILEX reserves  
Member contributions

### Costs

External advisors - £500 annual retainer  
£60 marking portfolios  
£45 marking renewal portfolios  
£350 marking course accreditation applications  
£350 course inspections

Admissions & Licensing Committee - £500 retainer  
£350 per meeting  
£175 – telephone meetings

Independent practice -	external advisor input-	£100
	Office time	£50
	Inspection/monitoring	£350
	Follow up work	£200

### Income

Course provider accreditation - £2000 per course  
Course provider inspection - £700 per course

Applications –	certificate of eligibility	£250
	Litigation/advocacy certificate	£100
	Independent practice	£1000
	First renewal of certificates	£250
	Subsequent renewals	£100 (if employed) £1000 (if independent)



## COSTS

	10 applications & 1 course application for each course (3 courses- litigation, advocacy & accounts)	20 applications & 1 course application for each course (3 courses- litigation, advocacy & accounts)	50 applications & 1 course application for each course (3 courses- litigation, advocacy & accounts)	100 applications & 2 course applications for each course (6 courses- litigation, advocacy & accounts)
<b>External advisors</b>				
Retainers (4 advisors for 10,20 & 50 applications and 8 advisors for 100 applications) £500	2000	2000	2000	4000
marking portfolios - £60	600	1200	3000	6000
marking course accreditation applications - £350	1050	1050	1050	2100
Course inspections- £350	1050	1050	1050	2100
<b>total</b>	<b>4,700</b>	<b>5,300</b>	<b>7,100</b>	<b>14,200</b>
<b>Admissions &amp; Licensing Committee (2 meetings at 10, 20 &amp; 50 applications, 3 meetings at 100 applications)</b>				
Retainers (5 members) £500	2500	2500	2500	2500
Meeting- £350 (board member not paid)	1400	1400	1400	1400
telephone meetings- £175	700	700	700	1400
<b>Total</b>	<b>4,600</b>	<b>4,600</b>	<b>4,600</b>	<b>5,300</b>
<b>Independent practice</b>				
external advisor input- £100	1000	2000	5000	10000
Office time - £50	500	1000	2500	5000
Inspection/monitoring - £350	3500	7000	17500	35000
Follow up work -£200	2000	4000	10000	20000
<b>Total</b>	<b>7,000</b>	<b>14,000</b>	<b>35,000</b>	<b>70,000</b>
<b>Appointments (year one only)</b>				
Recruitment for Committee & advisors – adverts	2000	2000	2000	2000

Interviewing	500	500	500	500
Training	4000	4000	4000	4000
Staff member costs	11000	11000	16,500	22,000
<b>total</b>	17,500	17,500	23,000	28,500
<b>Total costs</b>	33,800	41,400	69,700	118,000

## INCOME

	10 applications & 1 course application for each course (total 3 courses)	20 applications & 1 course application for each course (total 3 courses)	50 applications & 1 course application for each course (3 courses- litigation, advocacy & accounts)	100 applications & 2 course applications for each course (6 courses- litigation, advocacy & accounts)
<b>Course providers – based on one application per course</b>				
Course provider accreditation -£2000 per course	6000	6000	6000	12000
Course provider inspection -£700 per course	2100	2100	2100	4200
<b>Total</b>	8,100	8,100	8,100	16,200
<b>Applications</b>				
certificate of eligibility- £250	2500	5000	12,500	25000
Litigation/advocacy certificate- £100	1000	2000	5000	10000
Independent application - £1000	10000	20000	50000	100000
First renewal of certificates -£250	Yr 2	Yr 2	Yr 2	Yr 2
Subsequent renewals- £100 (if employed) or £1000 (if independent)	Yr 2	Yr 2	Yr 2	Yr 2
<b>Total</b>	13500	27000	67,500	135,000

<b>Total income</b>	21,600	35,100	75,600	151,200
<b>OVERALL INCOME / LOSS AT END OF YEAR ONE</b>	<b>Loss 12,200</b>	<b>Loss 6,300</b>	<b>5,900</b>	<b>33,200</b>

**Note –** The loss mainly arises from year one appointments costs, which will be recouped over a period of time. The Committee will also be responsible for the other rights schemes (advocacy and qualifying employment). Therefore committee costs will be shared between all those schemes. They are all attributed to the litigation scheme in the above illustration.

### LITIGATION RIGHTS PROJECT IMPLEMENTATION CHART

Activity	Week number																				
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
<b>Committee</b>																					
Advert develop	X																				
Place advert		X																			
Applications			X	X	X																
Short listing						X	X														
interviews								X	X	X											
appointment											X										
Develop training											X	X									
Agree dates														X	X						
Training session																X	X				
<b>Ext advisors</b>																					
Advert develop	X																				
Place advert		X																			
Applications			X	X	X																
Short listing						X															
interviews							X	X	X												
appointment										X											
Develop training											X	X									
Agree dates														X	X						
Training session																X	X				
<b>Application frms development</b>																					
cert elig form	X																				

Guidance notes		X																			
Certificate forms			X																		
First renewal form				X																	
First renew guide					X																
Next renew form						X															
Indep pract form							X														
Indep pract guide								X	X												
<b>Course provider accreditation</b>																					
Form develop	X																				
Develop handbook		X	X																		
Receive application				X	X	X															
Ext.adv. assess							X	X	X												
Copy comments										X											
Applicant response											X	X									
Refer committee													X	X							
Committee decide															X	X					
<b>Practice mgmt development</b>																					
Inspection proc.	X	X	X	X																	
Monitoring forms					X	X	X	X													
Accountant forms										X	X	X	X	X	X						
<b>PII</b>																					
Negotiate brokers	X	X	X	X	X	X															
Set up scheme							X	X	X	X	X	X									

Insurers liaison														X	X	X	X	X	X										
<b>Comp. fund</b>																													
Set up account	X	X	X																										
Designate funds				X	X	X																							
Scoping contrib.							X	X	X	X																			
Admin set up											X	X	X	X	X	X	X	X	X	X	X	X	X						
<b>marketing</b>																													
Literature develop	X	X	X	X																									
advertise					X	X																							
More development							X	X	X	X	Marketing activities will be ongoing																		

## **ANNEX 11 SUMMARY OF ILEX EDUCATION SCHEME**

### **ILEX Professional Qualification in Law**

The ILEX Professional Qualification in Law is split into two parts, Level 3 Professional Diploma in Law (PDL) and Level 6 Professional Higher Diploma in Law (PHDL).

### **ILEX LEVEL 3 QUALIFICATION**

#### **Introduction**

The Level 3 Certificate in Law and Practice and the Level 3 Professional Diploma in Law and Practice replace ILEX's existing Level 3 qualification: ILEX Level 3 Professional Diploma in Law (Exam Route and Mixed Assessment Route). They represent ILEX's new flexible, unitised pathways into the study of the Law and Legal Practice. Each qualification is accredited by the Qualifications and Curriculum Authority (QCA) to the Qualifications and Credit Framework (QCF).

The ILEX Level 3 Professional Diploma in Law and Practice (2008) is ILEX's new Level 3 Professional qualification. Students wishing to proceed to Fellowship of ILEX must achieve the ILEX Level 3 Professional Diploma in Law and Practice (2008) before moving to the Professional Higher qualification at Level 6.

#### **ILEX Level 3 Certificate in Law and Practice**

The ILEX Level 3 Certificate in Law and Practice (2008) comprises a flexible introduction to a specific area of Law and Legal Practice. It also requires that students understand the kinds of professional legal skills necessary to begin to research the Law and work with clients.

The ILEX Level 3 Certificate in Law and Practice (2008) is the first step on the road to Fellowship of ILEX. Students who clearly know that they want to be a Legal Executive, and have their sights set on the ILEX Level 3 Professional Diploma in Law and Practice (2008), can complete the Level 3 Certificate en route to completing the Level 3 Diploma.

The achievements gained towards the Level 3 Certificate can be used towards the achievement of the ILEX Level 3 Professional Diploma in Law and Practice (2008). The ILEX Level 3 Certificate in Law and Practice (2008) is a way of rewarding ongoing achievement on the road to the larger, broader qualification.

#### **ILEX Level 3 Professional Diploma in Law and Practice**

The ILEX Level 3 Professional Diploma in Law and Practice (2008) is ILEX's first stage of Professional training. It is designed for students who want to progress to Level 6 Professional Higher qualifications and who want to ultimately become Legal Executives and, hence, Fellows of ILEX.

The qualification offers students a broad-based and yet flexible introduction to the Law and Legal Practice, and helps to develop a range of professional skills necessary for effective working in the practical legal environment. The qualification prepares students for further development in knowledge, understanding and skills at Level 6.

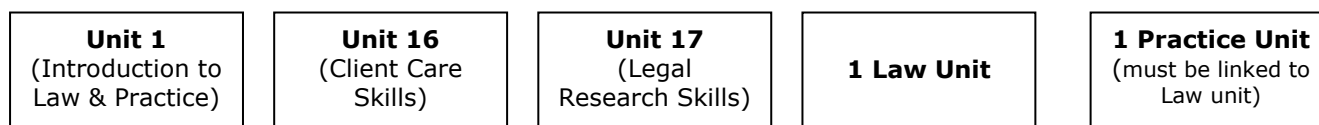
## Qualification Structure

The following table shows the new Level 3 suite of qualification units:

Unit	Title	Type of unit
Unit 1	Introduction to Law and Practice	Foundation Law unit: mandatory to all qualifications
Unit 2	Contract Law	Law
Unit 3	Criminal Law	Law
Unit 4	Land Law	Law
Unit 5	Law of Tort	Law
Unit 6	Employment Law	Law
Unit 7	Family Law	Law
Unit 8	Law of Wills and Succession	Law
Unit 9	Civil Litigation	Practice
Unit 10	Conveyancing	Practice
Unit 11	Criminal Litigation	Practice
Unit 12	The Practice of Family Law	Practice
Unit 13	The Practice of Employment Law	Practice
Unit 14	Probate Practice	Practice
Unit 15	The Practice of Law for the Elderly Client	Practice
Unit 16	Client Care Skills	Professional Skills: mandatory to all qualifications
Unit 17	Legal Research Skills	Professional Skills: mandatory to all qualifications

### The structure of the ILEX Level 3 Certificate in Law and Practice (2008)

The units are the building blocks towards the qualification. To achieve the ILEX Level 3 Certificate in Law and Practice (2008), students must achieve the following combination of five units:



No Practice unit can be counted as achievement towards a qualification without the linked Law unit being taken also.\*

\* Where a student simply wants to take a single unit not as a part of an overall qualification, then this is permitted. ILEX will certificate students for each unit they achieve.

Therefore, students taking the following Practice units towards a qualification must also take the Law units identified in Table 1:

**Table 1**

You must do the following Law unit ...	... if you intend to do this Practice unit ...
Unit 2 Contract Law OR Unit 5 Law of Tort	Unit 9 Civil Litigation
Unit 4 Land Law	Unit 10 Conveyancing
Unit 3 Criminal Law	Unit 11 Criminal Litigation
Unit 7 Family Law	Unit 12 The Practice of Family Law
Unit 6 Employment Law	Unit 13 The Practice of Employment Law



Unit 8 Law of Wills and Succession	Unit 14 Probate Practice
Unit 8 Law of Wills and Succession	Unit 15 The Practice of Law for the Elderly Client

To show the legal area in which the Certificate was achieved, ILEX has also decided to endorse each ILEX Level 3 Certificate in Law and Practice (2008) in the following way:

**Table 2**

<b>Endorsed qualification title</b>	<b>Required combination of Law and Practice units</b>
ILEX Level 3 Certificate in Law and Practice <b>(Conveyancing)</b>	Unit 4 Land Law + Unit 10 Conveyancing
ILEX Level 3 Certificate in Law and Practice <b>(Civil Litigation)</b>	Unit 2 Contract Law + Unit 9 Civil Litigation <b>OR</b> Unit 5 Law of Tort + Unit 9 Civil Litigation
ILEX Level 3 Certificate in Law and Practice <b>(Criminal Litigation)</b>	Unit 3 Criminal Law + Unit 11 Criminal Litigation
ILEX Level 3 Certificate in Law and Practice <b>(Family Practice)</b>	Unit 7 Family Law + Unit 12 The Practice of Family Law
ILEX Level 3 Certificate in Law and Practice <b>(Employment Practice)</b>	Unit 6 Employment Law + 13 The Practice of Employment Law
ILEX Level 3 Certificate in Law and Practice <b>(Probate Practice)</b>	Unit 8 Law of Wills and Succession + Unit 14 Probate Practice
ILEX Level 3 Certificate in Law and Practice <b>(Elderly Client Practice)</b>	Unit 8 Law of Wills and Succession + Unit 15 The Practice of Law for the Elderly Client

### **The structure of the ILEX Level 3 Professional Diploma in Law and Practice (2008)**

Students must take a total of 10 units to complete the ILEX Level 3 Professional Diploma in Law and Practice (2008). However, many students will have completed the ILEX Level 3 Certificate in Law and Practice (2008) en route to the Diploma and, therefore, will have already taken 5 units, so will only have a further 5 units to take.

To achieve the ILEX Level 3 Professional Diploma in Law and Practice (2008) students must ensure that their choice of units follows the qualification rules.

### **ILEX Level 3 Professional Diploma in Law and Practice (2008) - Qualification Rules**

- Students must take the 7 mandatory units marked in the table below.
- Students must then take 3 other units of which 2 units at least must be Practice units
- The third unit can be either an additional Law unit or another Practice unit
- Again, no Practice unit can be counted as achievement towards a qualification without the underpinning Law unit being taken also.\* See Table 1 above for details of which Practice units are linked to which Law units.
- Students who have completed the Certificate should refer to the key points in the table below for further clarification of these rules.

\* Where a student simply wants to take a single unit not as a part of an overall qualification, then this is permitted. ILEX will certificate students for each unit they achieve.

Unit	Title	Qualification Rules	Key Points for students who have completed the Level 3 Certificate
Unit 1	Introduction to Law and Practice	<b>Mandatory unit</b>	Students who have completed the Certificate will have already taken Unit 1 and so will <b>not</b> have to take it again.
Unit 2	Contract Law	<b>Mandatory unit</b>	Students may have taken 1 of these units on the Certificate. If so, they can use this towards the Diploma and will <b>not</b> have to retake it on the Diploma.
Unit 3	Criminal Law	<b>Mandatory unit</b>	
Unit 4	Land Law	<b>Mandatory unit</b>	
Unit 5	Law of Tort	<b>Mandatory unit</b>	
Unit 6	Employment Law	Additional Law units	
Unit 7	Family Law		
Unit 8	Law of Wills and Succession		
Unit 9	Civil Litigation	<b>A minimum of 2 practice units</b> must be taken. Students must take only those Practice units for which they have already taken Law units.	Students who have completed the Certificate will have already taken one of these units. The unit achieved on the Certificate can be used towards the Diploma.
Unit 10	Conveyancing		
Unit 11	Criminal Litigation		
Unit 12	The Practice of Family Law		
Unit 13	The Practice of Employment Law		
Unit 14	Probate Practice		
Unit 15	The Practice of Law for the Elderly Client		
Unit 16	Client Care Skills	<b>Mandatory unit</b>	Students who have completed the Certificate will have already taken Unit 16 and so will <b>not</b> have to take it again.
Unit 17	Legal Research Skills	<b>Mandatory unit</b>	Students who have completed the Certificate will have already taken Unit 17 and so will <b>not</b> have to take it again.

## UNIT CONTENT AND ASSESSMENT

**Unit 1 Introduction to Law and Practice** is a broad introduction to the English legal context. Covering generic topics such as the sources of and structure of the English legal system, it is an important underpinning foundation to the study of all specific areas of Law that make up the qualification. For this reason, Unit 1 is mandatory and is assessed through a 1 hour multiple choice test. Results for this unit are graded Pass, Merit and Distinction.

**The mandatory Law units (units 2, 3, 4 and 5)** are core introductions to the main legal subjects. They are the linchpin of the Level 3 Professional Diploma and vital to ensuring that all potential ILEX Fellows have a sound basis in the essentials of Law. These units are assessed by a 1 ½ hour examination. Results for these units are graded Pass, Merit and Distinction.

**The additional Law units (units 6, 7 and 8)** are popular and accessible Level 3 areas of Law in which ILEX Level 3 students often require a solid introduction. Whilst not core to the Level 3 Professional Diploma, these units offer students the ability to build their knowledge and understanding in what are mainstream areas from an early stage. These units are assessed by a 1 ½ hour examination. Results for these units are graded Pass, Merit and Distinction.

**The Practice units (units 9, 10, 11, 12, 13, 14 and 15)** build on the foundations of the Law units and address the key aspects of successful Legal Practice in each of the designated areas. To ensure greater realism, each of the Practice units is assessed by a 1 ½ hour examination based on a case study which is released to students approximately 6 weeks in advance of the examination. Results for these units are graded Pass, Merit and Distinction.

**The Professional Skills units (units 16 and 17)** offer students the opportunity to demonstrate proficiency and understanding in key transferable skills within a legal context. Employers constantly prioritise the development of skills among legal employees, and ILEX has responded to this by developing these two mandatory skills-based units in the following key areas of Legal Practice: the ability to research the Law reliably and accurately, and the ability to development relationships with clients seeking legal assistance. Because these units are skills-based, they are assessed by ILEX-written, college-delivered materials, marked by tutors and quality assured by ILEX. Results for these units are graded Pass, Fail only.

Candidates receive full qualification certificates for both the ILEX Level 3 Certificate in Law and Practice (2008) and the ILEX Level 3 Professional Diploma in Law and Practice (2008) once they have achieved the required combination of units. The overall qualifications are not graded.

## ILEX LEVEL 6 QUALIFICATION

### Introduction

The ILEX Level 6 Diploma in Legal Practice and ILEX Level 6 Professional Higher Diploma in Law and Legal Practice, accredited by the Qualifications and Curriculum Authority (available from September 2009), replace ILEX's existing Level 6 qualifications: ILEX Level 6 Single Subject Diploma in Law and ILEX Level 6 Professional Higher Diploma in Law. They represent ILEX's new flexible, unitised pathways towards achievement of ILEX membership. Each qualification is accredited by the Qualifications and Curriculum Authority (QCA) to the Qualifications and Credit Framework (QCF).

The ILEX Level 6 Professional Higher Diploma in Law and Practice is ILEX's new Level 6 Membership qualification. Students wishing to work towards Fellowship of ILEX must achieve the ILEX Level 6 Professional Higher Diploma in Law and Practice.

### ILEX Level 6 Single Subject Certificate

The ILEX Level 6 Single Subject Certificate enables students to achieve recognition for the study of a discrete area of Law, Legal Practice or Legal Skill. A valuable achievement in its own right, the Level 6 Single Subject Certificate can be used to build achievement towards the ILEX Level 6 Professional Higher Diploma in Law and Practice.

### ILEX Level 6 Professional Higher Diploma in Law and Practice

The ILEX Level 6 Professional Higher Diploma in Law and Practice is ILEX's second stage of Professional training (after ILEX Level 3 Professional Diploma in Law and Practice). It is designed for students who want to progress to ILEX Membership and who want to ultimately become Fellows of ILEX.

The qualification offers students an opportunity to specialise in a Legal Practice area, whilst at the same time demonstrating knowledge and understanding of an underpinning series of Law subjects and Legal Skills. The qualification aims to create the complete Legal Executive, both academically competent in respect of their chosen legal area, and also suitably professional to be easily employable in a fast-evolving legal workplace. The qualification prepares students for further professional development above and beyond Level 6.

### ILEX Level 6 Diploma in Legal Practice

The ILEX Level 6 Diploma in Legal Practice is a new qualification and is designed solely to accredit legal practice knowledge and understanding. It is aimed at those individuals (such as law graduates) with significant and broad experience of the law who need a qualification specifically in relation to Legal Practice.

For law graduates (with a qualifying law degree) wishing to claim exemptions against ILEX Law units, achievement of the Level 6 Diploma in Legal Practice will offer candidates a route into full membership of the Institute of Legal Executives (ILEX).

## QUALIFICATION STRUCTURE

The following table shows the new Level 6 suite of qualification units:

Unit	Title	Type of unit
Unit 1	Company and Partnership Law	Law
Unit 2	Contract Law	Law
Unit 3	Criminal Law	Law
Unit 4	Employment Law	Law
Unit 5	Equity and Trusts	Law
Unit 6	European Union Law	Law
Unit 7	Family Law	Law
Unit 8	Immigration Law	Law
Unit 9	Land Law	Law
Unit 10	Landlord and Tenant Law	Law
Unit 11	Planning Law	Law
Unit 12	Public Law	Law
Unit 13	Law of Tort	Law
Unit 14	Law of Wills and Succession	Law
Unit 15	Civil Litigation	Practice
Unit 16	The Practice of Company and Partnership Law	Practice
Unit 17	Conveyancing	Practice
Unit 18	Criminal Litigation	Practice
Unit 19	The Practice of Employment Law	Practice
Unit 20	The Practice of Family Law	Practice
Unit 21	Probate Practice	Practice
Unit 22	Client Care Skills	Professional Skills
Unit 23	Legal Research Skills	Professional Skills

### The Structure of the ILEX Level 6 Single Subject Certificate

To achieve a Level 6 Single Subject Certificate in a specific area of Law or Legal Practice, students must achieve 1 unit from units 1 – 21 above. A student achieving a **single** Law or Legal Practice unit will achieve an ILEX Level 6 Single Subject Certificate for that area of Law or Legal Practice.

For students looking to receive recognition specifically for Legal Skills development, they can achieve the ILEX Level 6 Legal Skills Certificate by taking **both** units 22 and 23.

### The Structure of the ILEX Level 6 Professional Higher Diploma in Law and Practice

To achieve the ILEX Level 6 Professional Higher Diploma in Law and Practice, students must achieve 1 Level 6 Legal Practice unit, 3 Level 6 Law units and both Professional Skills units.

1 Law unit must be in an area of Law which underpins the Practice area taken. The following table identifies the relevant areas of Law which “link” with each relevant Practice unit.

You must do the following Law unit ...	... if you intend to do this Practice unit ...
Unit 1 Company and Partnership Law	Unit 16 The Practice of Company and Partnership Law
Unit 2 Contract Law <b>or</b> Unit 13 Law of Tort	Unit 15 Civil Litigation
Unit 3 Criminal Law	Unit 18 Criminal Litigation
Unit 4 Employment Law	Unit 19 The Practice of Employment Law
Unit 7 Family Law	Unit 20 The Practice of Family Law

Unit 9 Land Law	Unit 17 Conveyancing
Unit 14 Law of Wills and Succession	Unit 21 Probate Practice

Students achieving the required combination of units will be awarded the ILEX Level 6 Professional Higher Diploma in Law and Practice.

### **The Structure of the ILEX Level 6 Diploma in Legal Practice**

To achieve the ILEX Level 6 Diploma in Legal Practice, students must achieve 2 Level 6 Practice units plus the Level 6 Client Care Skills unit.

For law graduates (with a qualifying law degree) seeking to use their Level 6 Diploma in Legal Practice to gain access to membership of ILEX, it is a requirement that at least one of the Practice units attempted is in an area of law that the candidate can demonstrate was a constituent part of their Law degree.

## **UNIT CONTENT AND ASSESSMENT**

### **Units 1 – 14 (the Level 6 Law units)**

Each of the units covers a mainstream area of Law at honours degree level. Each unit covers all the main theoretical issues and topics relevant to the study of Law at this level and requires that students apply their understanding to a practical set of circumstances. Each unit is designed to both move the student on from study undertaken at Level 3 and be also a stand alone unit containing all the necessary pre-requisite knowledge and understanding for those just beginning study at Level 6. Assessment is by a conventional 3 hour examination taken in either January or June of each year. Results are graded: Fail, Pass, Merit and Distinction.

### **Units 15 – 21 (the Level 6 Legal Practice units)**

Each of the units covers a mainstream area of Legal Practice at honours degree level. Each unit requires that students understand the way in which the Law is applied in the real world and the practical issues that are associated with this. The emphasis here is on requiring the student to demonstrate their ability to advise the client. Again, each unit is designed to both move the student on from study undertaken at Level 3 and be also a stand alone unit containing all the necessary pre-requisite knowledge and understanding for those just beginning study at Level 6.

Assessment is by a 3 hour examination taken in either January or June in response to a realistic case study scenario dispatched to candidates approximately 6 weeks in advance of the assessment. Results are graded: Fail, Pass, Merit and Distinction.

### **Units 22 and 23 (the Professional Skills units)**

These two units cover the main legal skills required by Legal Executives to become employable, adaptable legal professionals. The main skills covered across the units are: legal writing, interviewing and negotiation skills, legal ethics and practical legal research. The emphasis is on placing the student in realistic situations where they are expected to demonstrate their knowledge and skill in a way that most appropriately addresses the requirements of a situation.

Assessment is by ILEX-set tasks, administered and assessed by the centre, and quality-assured by ILEX. Results are graded Pass, Fail only.

Candidates receive full qualification certificates for the ILEX Level 6 Single Subject Certificate, the ILEX Level 6 Professional Higher Diploma in Law and Practice, and the ILEX Level 6 Diploma in

Legal Practice once they have achieved the required combination of units. The overall qualifications are not graded.

## **ANNEX 12 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](mailto:info@ilexstandards.org.uk)

# ANNEX 13 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**

<b>RULE NO.</b>	<b>CRITERIA</b>	<b>TIME SCALE</b>
	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 complainant.	Within 7 days of receipt of all information. 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

<b>Rule No</b>	<b>Action</b>	<b>Time limit in relation to hearing</b>
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 made.

## **ANNEX 14 LITIGATION RIGHTS CONSULTATION RESPONSES AND ANALYSIS**

### **ANALYSIS OF RESPONSES TO CONSULTATION ON PROPOSAL TO SEEK RIGHTS TO CONDUCT LITIGATION AND RIGHTS OF AUDIENCE FOR INDEPENDENT LITIGATOR PRACTITIONERS**

#### **INTRODUCTION**

ILEX Professional Standards Ltd (IPS) issued a consultation on its proposal to seek Rights to Conduct Litigation and Rights of Audience for Litigators.

The consultation was issued on 16 February 2010 and the consultation period closed on 3 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 members of the proposed 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 of which one indicated that they would not be submitting a response. Responses were received from 6 representative organisations which included approved regulators and organisations set up to represent specific groups.

A response was received from one consumer body which indicated that it was not in a position to comment due to other priorities.

A list of the consultees appears at the end of this document.

ILEX had originally submitted its application to the Ministry of Justice (MOJ) under the Courts and Legal Services Act 1990. The MOJ staff had analysed the application. The issues raised by the MOJ have been addressed by the other respondents.

## **ANALYSIS OF CONSULTATION RESPONSES**

Each response to the consultation has been outlined below and includes the reply of ILEX to the issues raised by the respondent.

### **1. THE LAW SOCIETY**

The Law Society sent a letter and also completed the consultation response form. The letter dealt with all three consultations that IPS had issued. This analysis focuses upon the litigation rights response set out in the letter, under the heading regulation of independent practitioners and practice models.

The Law Society expressed concern about the different challenges that IPS would face in regulating Fellows who are able to practise independently. It made the comment that IPS had no experience of regulating independent practitioners and provided no information on how it proposed to gain the necessary expertise.

#### **Regulating practices**

IPS recognises the challenges that it will face in regulating independent practitioners. It has a small number of independent practitioners that it authorises to provide immigration advice and services, in accordance with the Immigration and Asylum Act 1999. Some of those immigration advisers practice on their own account. ILEX also has a small number of members who practice on their own account undertaking work that does not fall within a reserved legal activity. IPS has developed procedures that it has used when inspecting the practices of such independent practitioners. It would propose to build upon that development work in respect of independent litigation practices. It will develop its resources to do so and ILEX, as the approved regulator, is aware of the issues and is committed to making such resources available to IPS. IPS has developed an **implementation business plan** which explains its experience and how it will implement the scheme.

#### **Supervision and enforcement**

The Law Society made the comment that the consultation provided minimal information on proposed systems for supervision of independent practitioners

and on enforcement policies. IPS proposes in its application that a member seeking authorisation to practice independently will be required to provide information that meets the independent practice criteria, as set out in its application. IPS will receive and consider that information, ensuring wherever possible that it meets the criteria set out in its Practice Management and Accounts Rules and supporting documents. This is similar to the approach that IPS has developed in respect of immigration practitioners whereby in conjunction with inspections it assesses documents produced by firms, such as client care letters, to ensure that they meet required standards. In terms of enforcement it is proposed that an applicant who fails to meet required standards to practise independently will not be issued with a litigation certificate authorising them to practice independently. Where an enforcement issues arises in relation to an existing practitioner appropriate action will be taken through the Investigation, Disciplinary and Appeal Rules (IDAR). The IDAR include the power to suspend a person from practice in serious cases. Where a member is suspended from practice or permanently excluded from membership of ILEX, IPS will monitor to ensure appropriate arrangements are put in place for the management and transfer of client cases and client money. IPS has experience of undertaking such activity in relation to immigration advisors. The LSA makes it a criminal offence to practise whilst not authorised to do so.

### **Multi-disciplinary practices**

The consultation response of the Law Society raises concerns about whether ILEX practitioners could form partnerships with non-lawyers or companies which are owned by non-lawyers. The Law Society indicated further proposals were needed on how IPS will assess the fitness of the non-lawyers to own or manage a firm providing legal services. The Practice Management Rules, as set out in the application, include that an ILEX practitioner may form a partnership or work in a corporate structure with lawyers (who are not ILEX practitioners) and non lawyers. However, under the Rules those structures must be approved in accordance with the Legal Services Act 2007. At this stage IPS is not a licensing authority or a regulator of Legal Disciplinary Partnerships. Therefore although an ILEX litigator could form a partnership or work within a company which includes other lawyers and non-lawyers, that organisation would need to be regulated by another approved regulator. IPS has built appropriate waiver provisions into its Practice Management Rules to provide for the waiver of ILEX litigators from compliance with the ILEX Practice Management Rules where they conflict with Rules of their body if it is licensed by another approved regulator. The Rules would enable IELX Litigators to practise independently or jointly with other ILEX Litigators, Fellows or Probate Practitioners.

### **Services to clients of employer**

The Law Society raised concern about the provision of litigation services by ILEX litigators to clients or customers of non-lawyer employers. IPS believes that the conflict and confidentiality rules set out in its Practice Management Rules are sufficient to protect the position of clients of such employers. Employers providing legal services in this way will need to be licensed bodies.

### **Questionnaire responses**

The Law Society responded to each question in the consultation questionnaire. The following provides a response to each question.

- Q1 – The Law Society stated that in the public interest an ILEX member exercising Litigation and Advocacy Rights should demonstrate and meet the same high standards as solicitors. The ILEX scheme for qualification has been developed carefully, taking into account the essential skills, knowledge and experience that a person would require to exercise litigation rights. ILEX then mapped the skills and knowledge a person would obtain upon completing the ILEX qualification and thereby identified what additional skills would be required. As part of its mapping exercise ILEX considered the LPC course outcomes and the PSC course outcomes. ILEX believes ILEX litigators would be competent to provide litigation services and not be less able to do so than newly qualified solicitors. In particular ILEX litigators would possess practical skills and experience that a newly qualified solicitor will not.
- Q2 – The same comments were made in relation to rights of audience by the Law Society. Again ILEX had identified the skills that a member would need to develop to undertake advocacy. These skills build upon the existing experience and skills they would have developed when undertaking Chambers Advocacy. The rights of audience course proposed in the application for Litigators is the same course as the existing ILEX advocacy course.
- Q5 – The Law Society raised a concern that conduct and ethical matters should be assessed by a case study rather than multiple choice questions. The Course assessment criteria allow these matters to be tested both by multiple choice or case study questions. It is also a pervasive topic that may appear within the other assessments. ILEX submits that this approach is more appropriate whereby conduct and ethical matters can be included within other assessments. That allows a suitable test as to whether a candidate can identify conduct and ethical matters outside the formal conduct and ethical assessment.

An issue was also raised that the course outcomes referred to what a litigator should be able to do without specifying that the person would not be a

litigator until after qualification. ILEX does not agree that the amendment as suggested by the Law Society is necessary. The statements in the course outcomes are preceded with the words "on completion of the course" to identify that this is what a person would be able to do upon completion of the course, when practising as a litigator.

- Q10 – The Law Society recommended that CRB checks be undertaken. IPS has considered the position and it already requires members to make a number of disclosures, including criminal convictions, and now also cautions. An ILEX member is required to make that disclosure on an annual basis, as part of the annual subscription return and on each application for membership or upgrade of membership. IPS believes that this approach is sufficient to identify whether members have criminal convictions and to take appropriate action.
- Q11 – The Law Society suggested that the portfolio should require candidates to provide examples of all the issues appearing in the ILEX guidelines, including conduct and ethical matters. IPS believes that this would may prevent a person from qualifying as a litigator on the basis that they have never had a case where they have encountered a conduct or ethical matter. IPS' experience of portfolios submitted under the rights of audience qualification scheme has been that the portfolio case descriptors are sufficient to identify whether a candidate had encountered a conduct or ethical matter which they have not identified. Where that has been the case IPS has taken appropriate action to bring the matter to the candidate's attention and require them to outline what action they took in response to it.

Furthermore IPS has gained considerable experience of assessing portfolios, through its rights of audience scheme, and therefore has developed sufficient skills and expertise in this area and of using this type of assessment.

- Q10 – The Law Society raised the concern that a Graduate Member could complete the course and then there could be a significant gap in time before they qualify as a Fellow and exercise the litigation rights. However, the reality of the situation is that a Graduate Member will be exercising litigation rights, in their employment and in the name of their employer while they wait to qualify as a Legal Executive Litigator upon achieving Fellowship status.
- Q15 and Q17 – The Law Society raised the issue about the length of practice management and accounts courses. ILEX had identified that the same course undertaken by newly qualified solicitors would be sufficient in respect of practice management training. The course outcomes are similar to those achieved through completion of the management course stage one. ILEX



submits that a course which meets those outcomes is sufficient, without it making specific reference to the number of hours a course should entail. A similar view is taken in respect of the accounts course. Here the course outcomes will require a significant amount of study and training.

- Q19 – The Law Society raised the issue about IPS’s lack of experience in assessing applications to practise independently. As mentioned earlier IPS has gained experience of assessing practice management procedures adopted by immigration advisers who practice independently. This will form the basis of the development work that IPS will undertake. IPS will assess information provided by applicants to practice independently to ensure it meets the requirements set out in its practice management and accounts rules and supporting rules and codes. It will have external advisors who will be able to provide an expert analysis to assist it in making its decision.
- Q20 – IPS recognises the issues that it will need to consider where a practitioner is refused an endorsement to act independently. IPS has encountered situations with immigration advisors which have resulted in the closure of practices, following disciplinary proceedings. In those instances it has monitored the closure of the firm and importantly the transfer of client matters including client account money. It would intend to develop those procedures further in respect of litigation practices. Its business implementation plan assesses the resource issues this raises.
- Q21 – IPS recognises the importance of seeking evidence, outside of the portfolio, of a litigators experience as part of their application to renew their certificate. The Rules require that applicants for renewals of certificates will provide supporting information about the range and depth of the work they undertake so that a full assessment can be made as to whether their certificates should be renewed.
- Q22 – IPS recognises that action will need to be taken where there is an issue identified through the annual accountant’s report that independent litigators will need to submit. IPS will assess the information and determine what action to take. This could include an inspection visit or monitoring arrangement over the practice. Powers are provided in the Rules to take action.

Although employed litigators will only renew their certificate every three years they will be required to make an annual CPD return.

- Q28 – The Law Society had raised the issue about ILEX members forming partnership with non-lawyers or with other lawyers. Although it will be

possible for ILEX members to form partnerships or enter into corporate structures with non-lawyers and other lawyers it will only be in instances where the entity is regulated by an approved regulator under the Legal Services Act. IPS recognises it is not in a position to regulate entities at this stage. Therefore it would envisage that such entities will be regulated by other approved regulators, with IPS retaining regulation of the individual litigator. IPS would regulate entities formed of ILEX members alone or ILEX litigators alone.

IPS recognises the potential conflict and confidentiality issues that will arise in respect of members who provide services to clients or customers of their employer, where the employer is a non-lawyer. The Practice Management Rules include that members should not reveal confidential information or act in a conflict of interest. Those outcomes based rules should be sufficient to cover this instance. IPS will then issue supporting guidance, as necessary, in respect of litigators providing services to clients or customers of their employer.

- Q29 – The Law Society made a number of suggestions to the Practice Management Rules.

ILEX has decided not to include within Rule 3.1 that the litigator should inform the client of their responsibilities and of their own responsibilities. ILEX has taken the view that such information can be included in supporting guidance.

The Law Society recommended that Rule 3.2 should include information about liability for costs. This has already been covered at Rule 3.5.

ILEX envisages supporting guidance to provide more detail about contingency fee arrangements.

The Law Society states that the section on confidentiality is unclear but has not outlined in what respect it is unclear.

ILEX would envisage providing more guidance on supervision arrangements in guidance notes rather than within the ambit of its outcomes focussed rules.

- Q30 – The Practice Management Rules generally require litigators to agree client instructions. Detailed guidance can be issued outside of the formal rule relating to checking instructions given by more than one client.

- Q33 – ILEX thanks the Law Society for noticing an error, which has been amended in the Publicity Code.
- Q35 – ILEX has carefully considered the Law Society recommendation that the accounts rules should state that litigators should ensure that client account money is placed in an account that pays a fair interest rate. ILEX considers that the introduction of the additional phrase into its accounts rules is unnecessary. Litigators are required to pay interest on client money under the accounts rules. The introduction of the requirement to pay fair interest rates is likely to lead to unnecessary disputes about whether or not a fair rate was obtained. ILEX does not believe there is any detriment to clients in not adding this requirement.
- Q40 – The Law Society queried whether clients likely to suffer a loss should be able to apply to the client protection scheme. ILEX takes the view that a client should not be able to apply to the compensation fund unless they have actually suffered a loss.

Although there are no provisions on undertakings within the client protection scheme ILEX would take action against a member who failed to comply with an undertaking through its disciplinary procedures.

ILEX recognises the importance of managing the client protection fund and providing a mechanism that provides transparency and full accountability. ILEX will develop its capacity to do so and has produced an implementation plan addressing those matters. ILEX will publish an annual report which will address the accounts functions relating to the client protection scheme.

- Q42 – ILEX recognises the additional development work it will need to undertake in respect of inspecting and intervening in practices. It will build upon its existing experience. The Law Society commented upon intervening into mixed practices. Where a practice is regulated by another approved regulator ILEX would not have the authority to intervene into that practice. In such instances appropriate action would be taken against the individual litigator regulated by ILEX and the approved regulator would take action against the entity. The Practice Management and Accounts Rules have been developed to require that litigators inform clients of their right to make a complaint to the Legal Ombudsman.

## 2. THE BAR COUNCIL

The following response is made to the comments made by The Bar Council in its consultation response.

- Q2 – Under the ILEX Code of Conduct and Rights of Audience Conduct Rules an ILEX litigator would need to ensure that they are competent to undertake advocacy in cases. Therefore if they were presented with a novel or complex area of law a member would seek assistance, advice and support as necessary if it were outside of their area of competence. It should be recognised that the eligibility certificate procedures will require ILEX members to provide portfolios showing their knowledge, skills and experience in undertaking advocacy, which is then built upon during the advocacy skills courses, before a member is authorised to undertake advocacy.
- Q3 – ILEX has not identified which external institution will be responsible for undertaking assessments. This is because the course provider, who will also be responsible for assessing candidates, will need to seek authorisation from IPS to do so. Until the scheme is approved by the LSB IPS would not be in a position to identify and accredit course providers.

ILEX had compared its course outcome and assessments with similar courses to assist it in identifying what was appropriate for its assessment procedures.

- Q4 – ILEX notes the comments of the Bar Council in respect of the content and standard of advocacy skills training compared to the BVC. It should be borne in mind that the advocacy skills course outcomes, assessment criteria and entry requirements are the same as those that were approved by the Lord Chancellor under the Courts and Legal Services Act 1990.
- Q5 – The comments made here have been addressed earlier.
- Q11 – ILEX recognises the comments made by the Bar Council about verifying information provided by candidates in their portfolios. Although verification is not sought it would be difficult for candidates to answer the questions that are asked on the portfolio forms without reference to an actual case.
- Q13 – ILEX has addressed the regulatory objectives and professional principles in more detail in its application.
- Q25 – ILEX recognises the comments made by the Bar Council about whether a portfolio would be a sufficient mechanism to assess a candidates'

competence. ILEX has developed experience of assessing portfolios as part of its existing rights of audience scheme. It has found that they provide an invaluable mechanism for assessing the competence of Advocates. Where appropriate it has been able to identify where candidates are required to undertake further training or gain further experience before being authorised to undertake the advocacy skills course. A similar approach would be taken in respect of any candidate whose renewal portfolios identified gaps in their skills or knowledge.

Currently there are no developed schemes for live assessment of advocates carrying out civil or family work. Development work is under way in respect of criminal advocacy by the Joint Advocacy Group, of which ILEX is a member. ILEX members are already required to provide at least one judicial reference in support of their application. This approach has worked well in respect of Legal Executive Advocates and therefore ILEX intends upon adopting the same approach in respect of litigators authorised to undertake advocacy.

- Q28 – ILEX is not in a position to regulate Legal Disciplinary Partnerships at this stage. However, as part of a separate exercise ILEX is positioning itself to become a licensing authority. It will address those matters as part of that application rather than in its application for Litigation and Advocacy Rights.

### **3. THE LONDON SOLICITORS LITIGATION ASSOCIATION (LSLA)**

The LSLA had insufficient time to consult its members and therefore provided a short response. It raised concern about litigation rights being extended to any level of court or complexity or value of litigation. It was recommended that safeguards be adopted to protect the public and consumers from assumptions that ILEX litigators were suitably qualified and experienced notwithstanding the complexity, scale or value of a case.

ILEX has addressed this issue earlier in this analysis. It would expect members to only act in matters where they are competent to do so in accordance with the ILEX Code of Conduct. At the point of taking instructions a Litigator does not know the full value of case or the level of court a case would be heard in. The limitations the LSLA propose are therefore impractical. It would be inappropriate and unsuitable, in the interests of the public, for a litigator to stop acting for a client part way through a transaction on the basis that it reached a certain level of court or value, even though the litigator remains competent to act for a client.

#### **4. YOUNG BARRISTERS COMMITTEE (YBC)**

The YBC endorsed the response submitted by the Bar Council and made some general comments. It took the view that it was not in the public interest for ILEX members to provide services without supervision. The YBC commented that consumers should be able to make an informed choice about whether or not to have a representative who is legally qualified. ILEX responds that its members do obtain a legal qualification, in relevant subjects, to 'A' Level and Honours Degree standard. In addition ILEX members will have a minimum of 5 years practical skills and experience upon qualification, which newly qualified solicitors and barristers will not have.

ILEX does not agree with the view of the YBC that categories where an ILEX member should not act should be set out. ILEX members will have shown that they have experience through the portfolio and enrolment process and will build upon their substantial existing skills before being authorised to practice. ILEX takes the view that it would be unsuitable and impractical to set out categories where its members could not act. That would compromise client interests where a member would have to stop acting for a client in a transaction if the case fell within an exempt category during the course of their acting, especially as they cannot determine that at the point of taking instructions.

#### **5. JUSTICES' CLERKS SOCIETY (JCS)**

The JCS provided a letter of response to the consultation. The JCS supported the ILEX proposals. They recognised the competence of Legal Executives and in some instances compared to that of Barristers.

The JCS suggested that the formulation for advocacy in Magistrates Courts was out of date. ILEX has carefully considered the alternative formulation suggested by the JCS and has amended the formulation in its application. ILEX thanks the JCS for the suggestion.

#### **6. FORUM OF INSURANCE LAWYERS (FOIL)**

FOIL provided a short note responding to the consultation indicating that it did not intend to respond in detail. It stated that it was essential that a level playing field existed for all providers. ILEX responds that it compared the standards to those applicable to solicitors when developing its Practice Management and Accounts Rules to ensure that there was consistency between the standards that the public can expect.

## **7. SOLICITORS REGULATION AUTHORITY (SRA)**

The SRA responded to each question:

- Q3 – The SRA indicated that it would be essential for ILEX and IPS to undertake consumer education initiatives to ensure that consumers knew what the term ILEX litigator meant. ILEX recognises the importance of educating consumers about its members and will address this as part of its marketing initiative in respect of the qualification scheme.
- Q6, 7 & 11 – ILEX is involved in the joint advocacy group and recognises that the work of that group may have an eventual impact upon the advocacy scheme. That work is unlikely to be concluded before its application and therefore amendments will be made subsequently as part of the JAG work.
- Q30 – ILEX noted the comments made by the SRA about requiring ILEX practitioners to report the conduct of solicitors to the SRA. It has made an appropriate amendment to its Practice Management Rules requiring reports to be made to appropriate approved regulators. ILEX also thanks the SRA for noticing the inconsistency within the Practice Management Rules to practitioners being referred to as “him” and “them”. ILEX has checked the Rules and ensured that there is now a consistent approach.
- Q33 – ILEX notes the comment made by the SRA in relation to a reference to firms in its Equality and Diversity Code. Having checked the matter it notes that the opening paragraph to the code clarifies that the firm refers to ILEX practitioners and their staff.

ILEX has also considered the comment made in relation to paragraph 7 of the code. At present ILEX would need to take action against the individual and therefore it takes the view that the paragraph will have to remain in its current form until it develops entity based regulation.

ILEX will develop guidance to members on equality issues outside of its main Equality and Diversity Code.

- Q34 – ILEX thanks the SRA for noting the error in its publicity code and has made the amendment.
- Q36 – The role of IPS as the regulatory body is set out in the Litigation Certification Rules.

- Q41 – ILEX recognises its role in ensuring that clients are not faced with additional hurdles when making claims against its compensation fund. IPS will ensure that it complies with its obligations to protect the interests of public and consumers and will develop a proportionate approach to application procedures.

## **8. BAR STANDARDS BOARD (BSB)**

The BSB responded to state it would not be submitting a response to this consultation.

## **9. WHICH?**

Which? discussed the consultation internally and unfortunately had to decide that due to prioritisation of work it was not in a position to make a comment to the consultation.

## **CONCLUSION**

A copy of the full consultation responses is attached to this report along with the original consultation paper.

**BB/Consultation**  
**7/5/10**



## **LIST OF RESPONDENTS**

Responses were received from the following:

Solicitors Regulation Authority  
BSB – Unable to make a response  
Which? – Unable to make a response  
The Law Society  
The Bar Council  
London Solicitors Litigation Association  
Young Barristers Committee  
Justices Clerks Society  
Forum of Insurance Lawyers

## **LIST OF BODIES WHO RECEIVED CONSULTATION BUT MADE NO RESPONSE**

Association of Law Costs Draftsmen  
APIL  
Chartered Institute of Patent Agents  
Council for Licensed Conveyancers  
Institute of Trade Mark Attorneys  
Intellectual Property Regulation Board  
National Association of Citizens Advice Bureaux  
Office of the Legal Services Ombudsman  
Resolution

## **THE LAW SOCIETY RESPONSE**

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.

### **Transitional arrangements for probate practitioners**

IPS proposes to accept applications to carry out probate activities from those who have no formal training in law, provided they complete a form which shows evidence of knowledge of the law and practice relating to probate business. The Law Society does not see how IPS can assess a practitioner's competence and knowledge solely from a form and believe such a system would be open to abuse. In order to ensure that a practitioner has the relevant knowledge and skills they should complete the relevant ILEX modules or an equivalent course.

Where a candidate does not meet the knowledge and experience requirements, we do not believe that they should be issued with a certificate until they can demonstrate that they meet the required standards. To certify practitioners who are not deemed fully qualified to practise will put clients at risk of receiving poor quality work and may serve to undermine the reputation of ILEX practitioners as a whole.

We believe that all those wishing to become regulated independent practitioners should undertake the practice management and accounts courses. While we accept that some practitioners will have experience of running an unregulated business providing Will writing and estate administration services we do not believe this provides all the necessary experience to provide regulated services. It is essential to ensure that practitioners are aware of their obligations and duties in relation to client funds and assets. We consider that undertaking these courses is critical to ensuring that independent practitioners understand and comply with the regulatory requirements.

We are also concerned about the transitional arrangements suggested by IPS. Where a business does not meet the requirements set out by IPS we do not believe it should be permitted to offer services until it does so. To regulate a business that does not meet the requirements will give clients false comfort about the quality of that business. A more sensible approach may be for IPS to reconsider their decision when the business is able to submit further evidence of their compliance with the requirements, not grant a certificate within 3 months.

### **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.

### **Regulation of independent practitioners**

IPS proposes to allow ILEX members to practise independently rather than as employed members. This will change the role of IPS and of ILEX members significantly. While IPS has put forward a framework for assessing an ILEX Fellow's ability to practise independently we believe that regulating independent practice will present very different

challenges from regulating employed, supervised individuals. We therefore have some concerns about the regulation of independent practitioners.

IPS has no experience of regulating independent practitioners. Given this lack of experience, we are concerned that the consultation provides no information on how IPS proposes to gain the necessary expertise to regulate independent practices credibly and competently in the public interest. We would hope that IPS will provide further information on this issue.

The consultation document provides minimal information on the proposed systems for supervision of independent practitioners and on enforcement polices. No information has been provided on how IPS will assess the information provided by those wishing to practise independently, the processes for supervising independent practitioners or the mechanisms of enforcement where there are breaches in compliance. We believe that further consideration will need to be given to these issues before IPS can begin to regulate independent practice.

### **Practice models**

IPS has put forward proposals for several different models of practice for independent practitioners. We believe that these models require further clarification. In particular, we are unclear as to whether independent practitioners could form partnerships with non-lawyers or companies which are owned by non-lawyers. If this is the case, then further proposals are needed on how IPS will assess the fitness of these non-lawyers to own or manage a firm providing legal services. Furthermore, the proposed regulatory system is based on individual regulation rather than entity based, which will mean that non-lawyers working within the business will be completely unregulated. We believe that this will have serious implications for client protection.

IPS also proposes that employed practitioners may be authorised to provide services to third parties and be regulated in a similar manner to independent practitioners. This seems to be a most unusual arrangement and we are unclear as to how this will be regulated. We believe that this needs greater clarification in the rules as to the circumstances in which this authorisation will be granted. Otherwise there is a significant danger of conflicts arising.

Given IPS's lack of experience in this area we believe that, subject to our concerns over regulation being satisfied, the business structures which independent practitioners can practise in should initially be limited to those involving other approved persons. If this is not the case then IPS should put forward proposals on the systems it intends to put in place for:-

- assessing the fitness of non-lawyers to own or manage a firm providing legal services,
- regulating businesses in which such persons have an interest and

- protecting clients.

We have provided some other comments on the annexes to the consultations on gaining probate, litigation and rights of audience for ILEX members in the response forms which are attached.

Yours sincerely

**Mark Stobbs**  
**Director of Policy**

## CONSULTATION QUESTIONS

- Q1.** ILEX seeks rights to conduct litigation in civil and family proceedings only. Do you have any comments on the rights sought or the limitations proposed?

### **Provide comments below**

The Law Society believes that protecting the public interest should be paramount when considering any regulatory change. The conduct of litigation is a reserved activity and should be undertaken by a professional who is capable of carrying out this work in the best interests of the client. Given the complex nature of this work any person undertaking this work should be appropriately qualified and have a comprehensive knowledge of the relevant areas of law. We consider that before ILEX members are granted the rights to conduct litigation or rights of audience that they should be able to demonstrate that they meet the same high standards as solicitors.

- Q2.** ILEX seeks rights of audience for its Litigators. The rights have been split into two: chambers advocacy and open court advocacy.
- a. Do you have any comments on the chambers advocacy rights sought by ILEX? If so, set them out.

### **Provide comments below**

We believe that those gaining the right to undertake this activity should be appropriately trained to the same high standard as solicitors and regulated accordingly, as noted in the introduction above.

- b. Do you have any comments on the rights of audience sought in open court? If so, set them out.

### **Provide comments below**

We believe that those gaining the right to undertake this activity should be appropriately trained to the same high standard as solicitors and regulated accordingly, as noted in the introduction above.

We do have some concerns about IPS's experience in regulating advocates. We understand that there are only around 60 ILEX members who have qualified as advocates and many of those are involved in criminal law. This means that IPS has limited experience of regulating members advocating in family and civil cases. We believe that any application should provide detail on how the IPS will gain experience in regulating in these areas.

- Q3.** Do you have any comments on the Litigation Skills Course criteria? If so, state what they are.

**Provide comments below**

- Q4.** Do you have any comments on the Advocacy Skills Course criteria? If so, state what they are.

**Provide comments below**

- Q5.** Do you have any comments on the Litigation Skills course assessment criteria? If so, state what they are.

**Provide comments below**

We have some minor comments on the assessment criteria which are set out below -

The section on 'understanding Conduct and Ethical obligations' may best be assessed by case study rather than by multiple choice questions.

Many of the requirements are phrased as a litigator 'should be able to...', we consider that it should be made clear that litigators 'will need to demonstrate the ability...' before qualifying.

Clarity should also be provided on what amounts to gross professional misconduct.



- Q6.** Do you agree that a member of ILEX should complete the Litigation and Advocacy Skills Courses described in this consultation? If not, state what courses of qualification a member should complete.

**Provide comments below**

No comment

- Q7.** Do you agree that the courses should be assessed? If not, state why.

**Provide comments below**

We agree that the course should be assessed

- Q8.** Do you have any comments on the Advocacy Skills course assessment criteria? If so, set them out.

**Provide comments below**

See comments for Q5

- Q9.** Are there any gaps in the litigation qualification arrangements? If so, please outline what they are.

**Provide comments below**

No comments

- Q10.** ILEX has set out minimum entry requirements which members must meet to apply for the litigation and advocacy qualification courses. Do you have

any comments on the knowledge and experience guidelines which appear at Appendix 1? If so, set them out.

**Provide comments below**

The Law Society believes that as part of the criteria for 'good standing' applicants should be subject to a Criminal Records Bureau (CRB) check.

**Q11.** Members will be required to demonstrate their experience through portfolios of cases they have handled. Do you have any comments on the portfolio guidelines which appear at Appendix 2? If so, set them out.

**Provide comments below**

In general the requirements for the portfolios are satisfactory. We believe that it should be made clear in the guidelines that portfolios must contain enough information on all areas to allow the assessor to form a judgement. For instance, if in each case the portfolios submitted state that no ethical issues have arisen then the assessor would not have enough evidence to form a full opinion of the competence of a candidate. It should therefore be made clear to candidates that they need to include examples covering the full range of information.

We have some concerns regarding the assessment of these portfolios. As noted above, the IPS has limited experience in regulating this area. We believe further consideration needs to be given to how the portfolios will be assessed and the expertise required.

**Q12.** ILEX proposes that Fellows and Graduate Members should be able to enrol onto the qualification scheme. Do you have any comments on who should be allowed to undertake the litigation and advocacy qualification? If so, set them out.

**Provide comments below**

We agree that both Fellows and Graduate Members should be able to enrol on the scheme. However, we are concerned that there could be a significant gap in the time between a graduate member completing the course and being able to gain the certificate. There may need to be a requirement to ensure they have

continued to carry out relevant work or perhaps a requirement to undergo refresher training if the gap has been substantial.

- Q13.** Set out any other comments you have on the entry requirements proposed by IPS. Do you have any comments on whether the application will meet the regulatory objectives or professional principles? If so, set them out.

**Provide comments below**

No comments

- Q14.** Do you agree that Litigators should undertake a course in practice management? If not, set out your reasons.

**Provide comments below**

We agree that, if ILEX litigators are to practise independently, they will need to undergo some training and show their fitness to manage a business. We would also expect them to demonstrate that they are experienced in the work they plan to provide independently.

- Q15.** Do you have any comments on the proposed practice management course criteria? If so, set them out.

**Provide comments below**

The course content appears to be satisfactory however, without clarity on how long this course will be or how detailed it will be it is difficult to make a judgement.

- Q16.** Do you agree that Litigators should undertake a course in accounts which should be assessed? If not, state what they should do to show their knowledge of and competence to deal with accounts matters.

**Provide comments below**

We agree that litigators practising independently will need to be trained in how to manage accounts.

- Q17.** Do you have any comments on the proposed contents of the accounts course and the assessment criteria? If so, state what they are.

**Provide comments below**

The course content appears to be satisfactory however, without clarity on how long this course will be or how detailed it will be it is difficult to make a judgement.

- Q18.** Should an ILEX Litigator be required to seek authorisation from IPS before they are authorised to practice independently or to provide third party services. If not, state why.

**Provide comments below**

IPS proposes to require ILEX litigators to be approved by it, to practise independently. This is equivalent to the requirement for solicitors' firms and sole practitioners to apply for recognition before practising. Thus we support this proposal.

- Q19.** Do you have any comments on the information that IPS will require from Litigators seeking authorisation to practice independently or to provide third party services. If so, set them out.

**Provide comments below**

There is limited information about how IPS will assess this information and the criteria it will use to assess eligibility. Given IPS's lack of experience in this area of regulation we believe further consideration needs to be given to how they will analyse and assess the data provided and what further expertise they may need in order to do so effectively.

**Q20.** Do you agree that Litigation Certificates should be renewed? If not, state why.

**Provide comments below**

We agree that certificates should be renewed as this allows IPS to check whether requirements, such as undertaking CPD, are met and take action if not.

Further consideration will need to be given to how a refusal to renew an endorsement to act independently would be dealt with by the IPS, as this may result in a practice closing down. The IPS will need to consider further how it will ensure that clients are protected in this situation.

**Q21.** Do you agree that the first renewal should require Litigators to produce portfolios of litigation cases they have handled? If not, state why and describe any alternative arrangements you would recommend for the first renewals.

**Provide comments below**

We agree that providing portfolios of litigation cases handled would provide a mechanism for IPS to ensure that litigators are continuing to gain experience and are meeting the standards required by IPS in their initial year of practise. We understand that some litigators may not be able to provide a portfolio of three cases in their first year of practice and thus should be given an extension. However, before granting the exemption, IPS may wish to seek other evidence of whether they are continuing to gain experience in the relevant area of practice.

Please see out comments under Q11 concerning the assessment of these portfolios.

**Q22.** Do you agree the arrangements for subsequent renewals? If not, state why.

**Provide comments below**

We agree that those practitioners who are approved to practise independently should be required to renew their certificates on an annual basis and as part of this process submit their annual accounts and confirmation of their indemnity insurance. Further consideration will need to be given to how IPS will assess the accounts and what action they might take where they note that there is an

issue.

We are unclear as to why employed litigators will only have to renew their certificate every three years, if the purpose of renewal is to ensure they meet CPD requirements, as these requirements are annual. We believe that they should provide updates on how they have met the CPD requirements annually along with confirming that they remain in 'good standing'.

**Q23.** Do you have any other comments on the conditions for renewals of Litigation Certificates? If so, set them out.

**Provide comments below**

No comments

**Q24.** Do you agree that Advocacy Certificates should be renewed? If not, state why.

**Provide comments below**

We agree that advocacy certificates should be renewed

**Q25.** Do you agree that the first renewal should require Litigators who are Advocates to produce portfolios of advocacy cases they have handled? If not, state why and describe any alternative you would recommend for first renewals.

**Provide comments below**

We agree, see comments under Q21.

**Q26.** Do you agree the arrangements for subsequent renewals? If not, outline what should be required.

**Provide comments below**

See answer to Q22

**Q27.** Do you have any other comments on the conditions for renewals of Advocacy Certificates? If so, set them out.

**Provide comments below**

No comments

**Q28.** Do you have any comments on the practice structures through which litigators may practice? If so, set them out.

Yes / No

**Provide comments below**

As we noted in our introduction, we are concerned that ILEX practitioners would be allowed to set up businesses with individuals who are neither approved practitioners nor ILEX practitioners. There appears to be no provision made within the regulatory system for ensuring partners who are not approved practitioners are suitable persons to have an interest in a firm. Similarly, there seems to be no restriction on who might own the limited company through which an ILEX practitioner practises. We do not believe that these types of structures should be available to ILEX practitioners until appropriate safeguards have been put in place to ensure owners and managers who are not approved practitioners are suitable to be involved in a firm providing legal services and that these firms can be regulated appropriately. Given that IPS is wholly inexperienced in regulating independent practitioners we believe that, in the initial stages at least, managers of practices should be ILEX practitioners or other approved persons.

We also believe that there needs to be further consideration as to the rules governing the situations when an employed ILEX litigator may provide services to third parties. We are unclear as to whether becoming an employed ILEX practitioner, authorised to provide third party services, will allow an individual to provide services to anyone or whether a further authorisation is required for each third party. We are concerned that unless there are stringent rules around this type of arrangement, particularly regarding confidentiality and conflicts of interest, clients may be disadvantaged. While it is clear that there are circumstances where employed lawyers can act for third parties without detriment to the public interest, we believe that the rules should set out more clearly what those circumstances are and the criteria that IPS will use when authorising individuals to do so.

**Q29.** Do you have any comments on the Practice Management Rules?

**Provide comments below**

As noted above we have concerns about the types of business structures ILEX members would be able to practice in.

It is the Law Society's position that the payment of referral fees to non-lawyers impinges on a lawyer's independence and therefore disadvantages any client. We therefore take the view that referral fees should not be allowed by the practice management rules.

We also have a few minor suggestions –

- In 3.1 you may wish to include informing the client of their responsibilities and those of the ILEX practitioner
- Required information in 3.2 should include information about liability for costs.
- The rules provide limited information about which contingency fee arrangements are permitted and what information should be given to clients.
- The section on confidentiality is unclear and should be clarified.
- There is limited information on the responsibilities of ILEX practitioners for supervising staff. IPS may wish to expand this section or produce further guidance.

**Q30.** Are there any items included within the Practice Management Rules which you think should not be included? If so, state what they are and the reasons why they should not be included.

**Provide comments below**

The Law Society believes that there should be a provision in the Code that requires a practitioner to check that instructions given on behalf of a client, or by only one client on behalf of others in a joint matter, reflect the will of all clients before proceeding.

**Q31.** Are there any matters that should be included in the Practice Management Rules which are not there at present? If so, state what they are and why they should be included in the Rules.



**Provide comments below**

See comments under Q29

- Q32.** Do you have any comments on the ILEX Equality and Diversity Code? If so, please state what they are.

**Provide comments below**

No Comments

- Q33.** Do you have any comments on the ILEX Publicity Code? If so, please state what they are.

**Provide comments below**

Paragraph 13 of the Code reads that “*Advertising material should state that an ILEX Practitioner acts for a particular client without that client’s express prior consent.*” However, we are unclear as to whether this part of the Code should instead read that “*Advertising material should NOT state than an ILEX Practitioner acts for a particular client without that client’s express prior consent.*”

- Q34.** Do you have any comments on the ILEX Rights of Audience Code? If so, please state what they are.

**Provide comments below**

- Q35.** Do you have any comments on the Accounts Rules? If so, state what they are.

**Provide comments below**

We have some minor comments on the account rules. We believe the Code should state that a practitioner should seek to ensure that interest paid should reflect a fair interest rate. There should also be a requirement to return any client money not required to the client promptly. Clients should be made aware of any client money still held at the end of a matter.

**Q36.** Are there any matters included within the Account Rules that should not be included? If so, state what they are and why they should not be included.

**Provide comments below**

No comments

**Q37.** Are there any matters which should appear in the Accounts Rules that do not appear at present? If so, state what they are.

**Provide comments below**

No comments

**Q38.** Do you have any comments on the Accounts Rules? If so, state what they are.

**Provide comments below**

No comment

**Q39.** Do you have any comments on the ILEX Practitioners Indemnity Insurance Scheme? If so, please state what they are.

**Provide comments below**

The Law Society strongly supports the rule that no Certificate should be issued until an applicant has obtained appropriate insurance cover. There should be no exceptions to this rule.

**Q40.** Do you have any comments on the arrangements proposed for the IPS Client Protection Scheme? If so, state what they are.

**Provide comments below**

We believe that in general the scheme is suitable. We would query whether clients who are likely to suffer a loss, as well as those that have, should be able to apply to the fund. We also note that there are no provisions on undertakings and it is unclear whether any grant can be made where loss occurs due to the failure to comply with an undertaking.

It is important that the Client Protection Fund is carefully managed in such a way to ensure that there is full accountability for all contributions made into it by ILEX's regulated community, and to be certain that there is clarity and transparency regarding the way in which the regulatory functions associated with the Fund are resourced.

**Q41.** Will the arrangements safeguard clients in the event of their suffering loss as a result of a Litigator's misconduct? If not, what changes would you recommend?

**Provide comments below**

No comments

**Q42.** Do you have any comments on the proposal that complaints and allegations about the conduct of Litigators will be investigated in accordance with the normal IPS procedures?

**Provide comments below**

We agree that, in general, complaints and allegations about ILEX litigators can be investigated in accordance with IPS procedures. However, there are particular issues that will arise when dealing with practitioners who work independently. IPS would have limited experience in considering allegations relating to a firm, as a whole, or indeed client money. IPS would need to consider how it will gain the expertise required to consider these types of allegations.

ILEX would have the power to inspect practitioners and would need to consider how it would target these inspections, how frequent these inspections would be and the inspection methodology that would be used. It might be difficult in the early stages of licensing to target inspections based on risk, so more inspections may need to be carried out at this stage.

ILEX would also have the power to intervene in a practice and would need to

consider the systems and processes it would need to put in place in order to exercise these powers. It may be particularly difficult to intervene where the practitioner is employed or works within a business carrying out multiple different activities. We believe that if such a practitioner was ever to be intervened in then it may prove impossible to separate out the practitioner's work from the work of the business and even perhaps to identify client money. Hence we do not believe this is a suitable practice structure.

We note that there is no requirement for practitioners to inform clients that they can take a complaint to IPS (or the OLC in future) if they are not satisfied with the handling of the complaint. The IPS should consider adding this requirement to its practice management rules.

Please send the response form to IPS through one of the following methods:

- Email to [bbsra@ilexstandards.org.uk](mailto: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**



## **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. 0207 242 0082**

**Email [JBye@BarCouncil.org.uk](mailto:JBye@BarCouncil.org.uk)**

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

Do you consent to IPS publishing your response

.....**Yes / No** .....

### CONSULTATION QUESTIONS

- Q1.** ILEX seeks rights to conduct litigation in civil and family proceedings only. Do you have any comments on the rights sought or the limitations proposed?

Yes / No

#### Provide comments below

*The Bar Council recognises the value at present of ILEX members practising as employees of solicitors firms or in legal departments where there is a supervising solicitor or barrister. The proposal for members to be authorised to deliver a similar service in independent practices represents a significant departure from the current arrangements. The concerns of the Bar Council can be summarised as follows:-*

- a. The fact that the member will not be supervised in any capacity by a legally qualified practitioner.*
- b. Whether the qualification process is sufficiently robust to ensure that members are competent to deal with the proposed matters in an unsupervised context.*
- c. The extent to which a client be advised as to the limitations of the practitioner.*
- d. The extent of any real benefit to consumers and clients.*

**Q2.** ILEX seeks rights of audience for its Litigators. The rights have been split into two: chambers advocacy and open court advocacy.

- c. Do you have any comments on the chambers advocacy rights sought by ILEX? If so, set them out.

Yes / No

**Provide comments below**

*The Bar Council acknowledges that members have conducted proceedings in Chambers for some time (incl. case management conferences, telephone conferences and directions appointments). The Bar Council also recognises that under the current system, many members undertake this work without specific advocacy training. Therefore the proposals to ensure that members conducting this sort of work are trained in advocacy is welcomed. However the Bar Council would also invite consideration to be given as to the types of cases where it would not be appropriate for a member to undertake the hearing (eg. Case involves novel or complex area of law).*

- d. Do you have any comments on the rights of audience sought in open court? If so, set them out.

Yes / No

**Provide comments below**

*It is noted that unlike the litigation rights, the advocacy rights are to be limited to the lower courts. The Bar Council takes the view that cases heard in the lower courts are no less important (either to the parties concerned or in terms of issues raised)*

***than those heard in the higher courts. Accordingly it is our view that anyone conducting advocacy rights is properly qualified and trained with appropriate support and supervision if necessary. Whilst we recognise the demands of the qualification scheme and note how these requirements contrast sharply with those required for Associate Prosecutors, our view is that the criteria for anyone wishing to exercise rights of audience needs to be more sophisticated than that currently proposed. It should for example, reflect the following:***

- Whether the hearing will involve substantive issues***
- Whether the hearing involves complex or novel issues of law***
- Whether the case is factually complicated***
- Whether the ILEX member has had any experience in employed practice of the issues***

**Q3.** Do you have any comments on the Litigation Skills Course criteria? If so, state what they are.

Yes / No

**Provide comments below**

***The component parts of the Litigation Skills Course are sufficiently detailed. However whilst the criteria for assessment is set out (appendix 4) the Bar Council is concerned that the following is not apparent:-***

- a. Who or which external institution will be responsible for the assessment?***
- b. How the assessment compares with other established academic or vocational assessments (eg. LPC and BVC)?***

**Q4.** Do you have any comments on the Advocacy Skills Course criteria? If so, state what they are.

Yes / No



**Provide comments below**

***Whilst the advocacy skills course is sufficiently detailed, there is no way of assessing the content and standard to be expected by reference to other established forms of advocacy training. For example, by the standards a pupil barrister is required to meet before being certified by their Inn that they are competent to exercise rights of audience. The concern of the Bar Council is to ensure that whoever is exercising rights of audience does so at a similarly high level.***

- Q5.** Do you have any comments on the Litigation Skills course assessment criteria? If so, state what they are.

Yes / No

**Provide comments below**

***The Bar Council repeats the concern that it is not apparent how the standard to be expected compares to that which is expected of a trainee solicitor or barrister.***

- Q6.** Do you agree that a member of ILEX should complete the Litigation and Advocacy Skills Courses described in this consultation? If not, state what courses of qualification a member should complete.

Yes / No

**Provide comments below**

**Agree.**

- Q7.** Do you agree that the courses should be assessed? If not, state why.

Yes / No

**Provide comments below**

***The courses should be assessed in a way which permits comparison with other established comparable courses (eg. LPC***

***and BVC).***

- Q8.** Do you have any comments on the Advocacy Skills course assessment criteria? If so, set them out.

Yes / No

**Provide comments below**

***See response to Q9. The main concern is ensuring that the assessment criteria is comparable with other forms of advocacy assessment.***

- Q9.** Are there any gaps in the litigation qualification arrangements? If so, please outline what they are.

Yes / No

**Provide comments below**

***None identified.***

- Q10.** ILEX has set out minimum entry requirements which members must meet to apply for the litigation and advocacy qualification courses. Do you have any comments on the knowledge and experience guidelines which appear at Appendix 1? If so, set them out.

Yes / No

**Provide comments below**

***The minimum requirements which members must meet to apply for the litigation and advocacy qualification courses are satisfactory.***

- Q11.** Members will be required to demonstrate their experience through portfolios of cases they have handled. Do you have any comments on the portfolio guidelines which appear at Appendix 2? If so, set them out.

Yes / No

**Provide comments below**

***The portfolio in principle is recognised as a useful way of gauging a candidate's experience. However this is subject to the information being susceptible to verification from a source other than the candidate. The Bar Council therefore takes the view that it is important for details to be provided as to how the information provided by the candidate will be verified and assessed by the Litigation and Advocacy Rights Committee?***

- Q12.** ILEX proposes that Fellows and Graduate Members should be able to enrol onto the qualification scheme. Do you have any comments on who should be allowed to undertake the litigation and advocacy qualification? If so, set them out.

Yes / No

**Provide comments below**

***The Bar Council endorses the minimum requirements for those wishing to enrol onto the qualification scheme and as such agree that it is appropriate that only fellows and graduate members should be able to enrol.***

- Q13.** Set out any other comments you have on the entry requirements proposed by IPS. Do you have any comments on whether the application will meet the regulatory objectives or professional principles? If so, set them out.

Yes / No

**Provide comments below**

***The regulatory objectives and professional principles are noted. In particular, the merit of improving access to justice is acknowledged. Whilst the Bar Council supports competition in the provision of services it is important to recognise that competition can in some circumstances, weaken regulation which in turn actually puts consumer protection at risk. The***

***concern of the Bar Council is that the regulatory body may not have the expertise and experience to effectively regulate the functions the proposals will give to the members.***

***Notwithstanding the very extensive content of the consultation paper, there is little reference as to how such an expansion of members' rights will benefit consumers and clients.***

**Q14.** Do you agree that Litigators should undertake a course in practice management? If not, set out your reasons.

Yes / No

**Provide comments below**

***Yes. It is clearly in the interests of the individual, clients and the LSC that a litigator is competent and equipped to deal with practice management.***

**Q15.** Do you have any comments on the proposed practice management course criteria? If so, set them out.

Yes / No

**Provide comments below**

***No comments.***

**Q16.** Do you agree that Litigators should undertake a course in accounts which should be assessed? If not, state what they should do to show their knowledge of and competence to deal with accounts matters.

Yes / No

**Provide comments below**

***Yes. It is clearly in the interests of the individual, clients and the***

***LSC that a litigator is competent and equipped to deal with accounts.***

**Q17.** Do you have any comments on the proposed contents of the accounts course and the assessment criteria? If so, state what they are.

Yes / No

**Provide comments below**

***No comments.***

**Q18.** Should an ILEX Litigator be required to seek authorisation from IPS before they are authorised to practice independently or to provide third party services. If not, state why.

Yes / No

**Provide comments below**

***Yes a Litigator should be required to seek authorisation from IPS in order that IPS has an accurate record of individuals undertaking independent / unsupervised work and to ensure they meet the standards set out.***

**Q19.** Do you have any comments on the information that IPS will require from Litigators seeking authorisation to practice independently or to provide third party services. If so, set them out.

Yes / No

**Provide comments below**

***No comments.***

**Q20.** Do you agree that Litigation Certificates should be renewed? If not, state why.

Yes / No

**Provide comments below**

***Agree.***

**Q21.** Do you agree that the first renewal should require Litigators to produce portfolios of litigation cases they have handled? If not, state why and describe any alternative arrangements you would recommend for the first renewals.

Yes / No

**Provide comments below**

***The requirement that portfolios should be produced recording litigation cases a new litigator has handled is supported. However this must be subject to independent verification that the information is accurate and reliable.***

**Q22.** Do you agree the arrangements for subsequent renewals? If not, state why.

Yes / No

**Provide comments below**

***Agree.***

**Q23.** Do you have any other comments on the conditions for renewals of Litigation Certificates? If so, set them out.

Yes / No

**Provide comments below**

***No comments.***

**Q24.** Do you agree that Advocacy Certificates should be renewed? If not, state why.

Yes / No

**Provide comments below**

***Agree.***

**Q25.** Do you agree that the first renewal should require Litigators who are Advocates to produce portfolios of advocacy cases they have handled? If not, state why and describe any alternative you would recommend for first renewals.

Yes / No

**Provide comments below**

***Agreed in principle but it is not clear how a collection of 'advocacy cases' could properly indicate an individuals' ability in advocacy. Whilst the portfolio may properly provide details as to the sorts of case and the type of submissions made it will not assist as to competency.***

***The Bar Council would invite the IPS to consider imposing a process of monitoring in conjunction with the judiciary and other members of the legal profession so that a candidate provides details of judges they have been in front of or opponents they have been against for the purposes of establishing whether a member is competent. This would be akin to, for example, barristers seeking to increase their grading for the purposes of prosecuting cases whereby they are assessed on performance during a particular case.***

**Q26.** Do you agree the arrangements for subsequent renewals? If not, outline what should be required.

Yes / No

**Provide comments below**

**Agree subject to views expressed at Q26.**

- Q27.** Do you have any other comments on the conditions for renewals of Advocacy Certificates? If so, set them out.

Yes / No

**Provide comments below**

***No. See views expressed at Q26.***

- Q28.** Do you have any comments on the practice structures through which litigators may practice? If so, set them out.

Yes / No

**Provide comments below**

***It seems to the Bar Council that if ILEX Litigators may be able to practise as litigators in Legal Disciplinary Partnerships (LPD's) then the IPS must be in a position to regulate such activity rather than leave this to other regulatory bodies.***

- Q29.** Do you have any comments on the Practice Management Rules?

Yes / No

**Provide comments below**

***No comments.***



**Q30.** Are there any items included within the Practice Management Rules which you think should not be included? If so, state what they are and the reasons why they should not be included.

Yes / No

**Provide comments below**

***No comments***

**Q31.** Are there any matters that should be included in the Practice Management Rules which are not there at present? If so, state what they are and why they should be included in the Rules.

Yes / No

**Provide comments below**

***No comments***

**Q32.** Do you have any comments on the ILEX Equality and Diversity Code? If so, please state what they are.

Yes / No

**Provide comments below**

***No comments.***

**Q33.** Do you have any comments on the ILEX Publicity Code? If so, please state what they are.

Yes / No

**Provide comments below**

***No comments.***

**Q34.** Do you have any comments on the ILEX Rights of Audience Code? If so, please state what they are.

Yes / No

**Provide comments below**

***No comments.***

**Q35.** Do you have any comments on the Accounts Rules? If so, state what they are.

Yes / No

**Provide comments below**

***No comments.***

**Q36.** Are there any matters included within the Account Rules that should not be included? If so, state what they are and why they should not be included.

Yes / No

**Provide comments below**

***No comments.***

**Q37.** Are there any matters which should appear in the Accounts Rules that do not appear at present? If so, state what they are.

Yes / No

**Provide comments below**

***No comments.***

**Q38.** Do you have any comments on the Accounts Rules? If so, state what they are.

Yes / No

**Provide comments below**

*No comments.*

**Q39.** Do you have any comments on the ILEX Practitioners Indemnity Insurance Scheme? If so, please state what they are.

Yes / No

**Provide comments below**

*No comments.*

**Q40.** Do you have any comments on the arrangements proposed for the IPS Client Protection Scheme? If so, state what they are.

Yes / No

**Provide comments below**

*No comments.*

**Q41.** Will the arrangements safeguard clients in the event of their suffering loss as a result of a Litigator's misconduct? If not, what changes would you recommend?

Yes / No

**Provide comments below**

***No comments***

**Q42.** Do you have any comments on the proposal that complaints and allegations about the conduct of Litigators will be investigated in accordance with the normal IPS procedures?

Yes / No

**Provide comments below**

***No comments***

Please send the response form to IPS through one of the following methods:

- Email to [bbsra@ilexstandards.org.uk](mailto: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**

**RESPONSE OF THE LONDON SOLICITORS LITIGATION ASSOCIATION TO THE CONSULTATION ON  
THE PROPOSAL TO SEEK RIGHTS TO CONDUCT LITIGATION FOR ILEX MEMBERS  
AND RIGHTS OF AUDIENCE FOR INDEPENDENT LITIGATOR PRACTITIONERS**

**INTRODUCTION**

- (1) The London Solicitors Litigation Association ("LSLA") was formed in 1952 and represents the interests of a wide range of civil litigators in London. It has some 1,000 members throughout London among all the major litigation practices, ranging from sole practitioners to major international firms.
- (2) Members of the LSLA Committee sit or have recently sat on the Civil Justice Council, the Civil Procedure Rules Committee, the Law Society Council, the Law Society Civil Litigation Committee, the Commercial Court Users Committee, the Commercial Court Long Trials Working Party, the TCC Users Committee, the Chancery Users Committee and the Supreme Court Costs Group, to name but a few. Representatives from the City of London Law Society and the City of Westminster and Holborn Law Society also sit on the LSLA Committee. As a consequence, the LSLA has become the first port of call for consultation on issues affecting civil and commercial litigation in London, and it has on many occasions been at the forefront of the process of change.
- (3) As an organisation that represents litigation solicitors across London practising in different areas of the law and for different sides of any claim, the LSLA reflects the views of a broad church but not surprisingly this also gives rise to differences of opinion that we have tried to reflect in our submissions.

**RESPONSE**

- (4) The LSLA considers that insufficient time has been given for effective consultation of its members to be carried out. We consider that the issues raised in the proposals are sufficiently important and wide ranging to justify full consultation. We therefore regret our inability to obtain the input from our members that we believe is appropriate.
- (5) In those circumstances the LSLA neither supports nor objects to the thrust of the proposals. We do however draw attention to the following:

The proposed additional rights to conduct litigation and to have rights of audience should without question benefit from the safeguards identified in the consultation paper.

There is a distinction between rights to conduct litigation and rights of audience. We note that the limitation on rights of audience - to County Court (save for family proceedings) and before Justices or a District Judge - are not applied to the rights to conduct litigation

However, we have some concerns about the right to conduct litigation being extended to any level of Court or complexity or value of litigation. We consider that if the proposals as a whole are to be implemented, further safeguards should be adopted to protect the public and consumers at large from assumptions that they may reasonably make that a legal executive litigator is appropriately qualified and experienced to conduct any type of litigation notwithstanding its complexity, scale or value. This may be particularly relevant in circumstances where businesses and individuals with complex disputes may misunderstand the benefits to be obtained by instructing a legal executive litigator with a lower cost base and thus a lower charging structure.

Save in those respects, we do not consider it appropriate to comment further.



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## YOUNG BARRISTERS' COMMITTEE

### PROPOSAL TO SEEK RIGHTS TO CONDUCT LITIGATION FOR ILEX MEMBERS AND RIGHTS OF AUDIENCE FOR INDEPENDENT LITIGATOR PRACTITIONERS

#### 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 to Conduct Litigation for ILEX members and Rights of Audience for Independent Litigator Practitioners* ("the IPS paper").

##### **YBC response**

3. The YBC wholly endorses the response submitted by the Bar Council. The YBC 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.

4. In short, the YBC is not persuaded that it is in the public interest for ILEX members to provide legal services without supervision from a legally qualified practitioner. The concerns of the committee are summarised below.

5. The YBC concurs with the concern of the Bar Council that the case for granting ILEX members rights to conduct litigation is not wholly made out. While the YBC welcomes competition, it has difficulty in seeing any real benefit to the consumer arising from these proposals. The YBC is concerned by the fact that the members will not be supervised in any capacity by a legally qualified practitioner and notes that in both family and civil litigation consumers will not always be sophisticated users of legal services. It is imperative that a consumer is able to make an informed choice about whether or not to have a representative who is legally qualified. It is worth recognising that cases tried in the lower courts can have devastating and lasting consequences for either party.

6. If ILEX members are to be granted rights of audience, the YBC wholly supports the suggestion that it would be appropriate to set out categories of cases where it would not be in the public interest for a party to be represented by an ILEX member. The YBC would only suggest that in addition to cases which involve novel or complex areas of law, other criteria might also include: contested trials; care proceedings; claims above a certain value. The YBC also suggests whether it might be of value to require that an ILEX member have a certain number of years experience in employed practice, under



supervision of a legally qualified practitioner, before they are permitted to practice independently.

7. Furthermore, it is important for consumers that the training received by ILEX members is comparable to that of barristers and solicitors. They must be protected, particularly those who are not sophisticated users of legal services, and the Legal Services Board should not entertain any proposal which permits lower quality representation or rights of audience being gained through training which is less rigorous than that provided to solicitors and barristers. In the view of the YBC, cases which are heard in the lower courts are no less serious, and can be no less complicated, than matters heard in higher courts. It is therefore imperative that all advocates obtain comparable training.

**Young Barristers' Committee**

**March 2010**

## **JUSTICES CLERKS SOCIETY**

Our ref: SB/RH 92.09

24<sup>th</sup> 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 17<sup>th</sup> 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



A Response by the Forum of Insurance  
Lawyers to the IPS Consultation on Rights to  
Conduct Litigation and Rights of Audience.

February 2010



**FOIL** (The Forum of Insurance Lawyers) exists to provide a forum for communication and the exchange of information between lawyers acting predominantly or exclusively for insurance clients (except legal expenses insurers) within firms of solicitors, as barristers, or as in-house lawyers for insurers or self-insurers. FOIL is an active lobbying organisation on matters concerning insurance litigation.

**FOIL** has over 3000 members. It is the only organisation which represents solicitors who act for defendants in civil proceedings.

This response has been drafted following consultation with the membership.

Any enquiries in respect of this response should be addressed initially to:

Shirley Denyer  
Director of Information

[shirley.denyer@foil.org.uk](mailto:shirley.denyer@foil.org.uk)

Sinclair House  
2D Park Avenue  
Eccleston Park  
Prescot  
Merseyside  
L34 2QZ

**A Response by the Forum of Insurance Lawyers to the IPS  
Consultation on Rights to Conduct Litigation and Rights of  
Audience.**

FOIL members have read with interest the consultation paper published by ILEX Professional Standards Ltd.

FOIL does not intend to respond in detail to the issues raised but wishes to record its view that with regard to the provision of litigation services it is essential that a level playing field exists for all providers. It is vital that if ILEX members are to practice independently the rules must require them to adhere to the same professional standards and practice management standards as solicitors, and have in place the same measures to protect clients.

**ILEX Professional Standards consultation: “Proposal to seek rights to conduct litigation for ILEX members and rights of audience for independent litigator practitioners’**

**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 in civil and family proceedings only. Do you have any comments on the rights sought or the limitations proposed?**

3. We agree with ILEX / IPS’s decision to “...take an incremental approach to seeking rights to conduct litigation...” (page 5 of the consultation paper), as a means of ensuring that the role of ILEX litigators is properly managed and carefully introduced.

**Q2. ILEX seeks rights of audience for its Litigators. The rights have been split into two: chambers advocacy and open court advocacy.**

- a. **Do you have any comments on the chambers advocacy rights sought by ILEX? If so, set them out.**
- b. **Do you have any comments on the rights of audience sought in open court? If so, set them out.**
4. We have no comment on the nature of the rights being sought but would emphasise the importance of any changes of this type being introduced carefully and in such a way that the consumer experience is not adversely impacted; both in terms of quality of service and representation, and in terms of the protections that must exist toward the funds and the best interests of all those using legal services.

**Q3. Do you have any comments on whether the application will meet the regulatory objectives or professional principles? If so, set them out.**

5. Consistency with the Legal Services Act’s regulatory objectives must of course be integral to the application, and the summary on page 6 of the consultation paper, as to how it is intended the existence of ILEX litigators will help meet

these objectives, is useful. This section mentions the role to be played by ILEX litigators in protecting and promoting the consumer interest, and helping to increase public understanding of legal rights, and as part of this we believe it will be essential for ILEX and IPS to undertake consumer education initiatives to ensure there is clarity for consumers in understanding what is meant by the term 'ILEX litigator', and the role that they play in the legal services landscape.

**Q4. ILEX has set out minimum entry requirements which members must meet to apply for the litigation and advocacy qualification courses. Do you have any comments on the knowledge and experience guidelines which appear at Appendix 1? If so, set them out.**

6. The guidelines that appear in Appendix 1 seem broad enough in scope to allow ILEX's Litigation and Advocacy Rights Committee to form an opinion as to the eligibility and suitability of individual applicants. The guidelines may be shaped further following the outcomes of the joint consultation on Advocacy Standards being run by IPS, the Bar Standards Board and the SRA.

**Q5. Members will be required to demonstrate their experience through portfolios of cases they have handled. Do you have any comments on the portfolio guidelines which appear at Appendix 2? If so, set them out.**

7. The portfolio guidelines may also be shaped further following the outcomes of the joint consultation referred to above, particularly those portfolio aspects relating to advocacy experience that may need to be set against any common advocacy standards agreed as a result of the consultation exercise.

**Q6. ILEX proposes that Fellows and Graduate Members should be able to enrol onto the qualification scheme. Do you have any comments on who should be allowed to undertake the litigation and advocacy qualification? If so, set them out.**

8. We do not have any comment on the career stage at which applicants may seek to enrol onto the qualification scheme. The existence of the certificate of eligibility stage should help in entitling only those applicants with sufficient competence and knowledge to enrol onto the qualification scheme.

**Q7. Set out any other comments you have on the entry requirements proposed by IPS.**

9. We have no further comments on the proposed entry requirements.

**Q8. Do you have any comments on the Litigation Skills Course criteria? If so, state what they are.**

10. We have no specific comments to make on the proposed criteria.

**Q9. Do you have any comments on the Advocacy Skills Course criteria? If so, state what they are.**



11. The course criteria may usefully be developed further following the outcomes of the joint consultation on Advocacy Standards being run by IPS, the Bar Standards Board and the SRA

**Q10. Do you have any comments on the Litigation Skills Course assessment criteria? If so, state what they are.**

12. We have no specific comments to make on the proposed assessment criteria for litigation skills.

**Q11. Do you agree that a member of ILEX should complete the Litigation and Advocacy Skills Courses described in this consultation? If not, state what courses of qualification a member should complete.**

13. Completion of courses along the lines of those proposed in the consultation paper should form part of the qualification route for those seeking to become ILEX Litigators.

**Q12. Do you agree that the courses should be assessed? If not, state why.**

14. If ILEX and IPS decide to introduce the courses proposed, we believe the courses should include assessment as a means of ensuring that those seeking to become ILEX Litigators can practically demonstrate the required levels of competence and knowledge.

**Q13. Do you have any comments on the Advocacy Skills course assessment criteria? If so, set them out.**

15. We do not have any additional comments.

**Q14. Are there any gaps in the litigation qualification arrangements? If so, please outline what they are.**

16. We have no further comments.

**Q15. Do you agree that Litigators should undertake a course in practice management?**

17. Yes - we agree this must be a required element of the authorisation process for ILEX litigators seeking to provide independent or third party litigation services.

**Q16. Do you have any comments on the proposed practice management course criteria? If so, set them out.**

18. We have no comments on the proposed criteria.

**Q17. Do you agree that Litigators should undertake a course in accounts which should be assessed? If not, state what they should do to show their knowledge of and competence to deal with accounts matters.**

19. We agree that ILEX Litigators seeking to provide independent or third party services should be required to demonstrate competence and proficiency in managing financial information and accounts. It is vital that client funds are managed transparently and safeguarded through client accounts, and this must be a primary focus of the assessment process.

**Q18. Do you have any comments on the proposed contents of the accounts course and the assessment criteria? If so, state what they are.**

20. We have no comments on the contents or the proposed criteria.

**Q19. Should an ILEX Litigator be required to seek authorisation from IPS before they are authorised to practice independently or to provide third party services. If not, state why.**

21. It will be important for ILEX / IPS to have confidence that ILEX litigators are sufficiently capable and competent to provide services to third parties or set up their own practice, and the authorisation process described in Appendix 10 may provide a suitable way of achieving this.

**Q20. Do you have any comments on the information that IPS will require from Litigators seeking authorisation to practice independently or to provide third party services. If so, set them out.**

22. We have no comments on this.

**Q21. Do you agree that Litigation Certificates should be renewed? If not, state why.**

23. It will be important that ILEX litigators are required to renew their Litigation Certificate, following the original issue. This presents an opportunity for ILEX / IPS to fully appraise the suitability and competence of the Litigator to that line of work, at a relatively early stage of each ILEX Litigator's career in that field. Further training needs and support for particular litigators may be identified at this early stage that otherwise may be left unaddressed, to the potential detriment of consumers in the longer term.

**Q22. Do you agree that the first renewal should require Litigators to produce portfolios of litigation cases they have handled? If not, state why and describe any alternative arrangements you would recommend for the first renewals.**

24. ILEX and IPS should use the first renewal period as a means of re-assessing the suitability and competence of an ILEX litigator; it may be that portfolios will provide suitable evidence to support this process.

**Q23. Do you agree the arrangements for subsequent renewals? If not, state why.**

25. We have no comments on the frequency or proposed circumstances of subsequent renewals.

**Q24. Do you have any other comments on the conditions for renewals of Litigation Certificates? If so, set them out.**

26. We have no further comments.

**Q25. Do you agree that Advocacy Certificates should be renewed? If not, state why.**

27. We have no further comments on the proposed approach set out in the consultation paper for Advocacy Certificates.

**Q26. Do you agree that the first renewal should require Litigators who are Advocates to produce portfolios of advocacy cases they have handled? If not, state why and describe any alternative you would recommend for first renewals.**

28. If ILEX / IPS decide that portfolios will need to be produced as part of the renewals process for ILEX litigators, it seems sensible for those who are advocates to produce evidence of their competence and suitability to practice advocacy as part of their portfolio presentation.

**Q27. Do you agree the arrangements for subsequent renewals? If not, state why.**

29. We have no further comments.

**Q28. Do you have any other comments on the conditions for renewals of Advocacy Certificates? If so, set them out.**

30. We have no further comments.

**Q29. Do you have any comments on the practice structures through which litigators may practice? If so, set them out.**

31. We have no comments on the potential practice structures for ILEX litigators.

**Q30. Do you have any comments on the Practice Management Rules?**

32. We agree with high level principles underpinning ILEX's Practice Management and Accounts Rules, as set out on page 16 of the consultation paper – that is, *"...to ensure Litigators protect the interest of their clients and maintain consumer confidence in them."*
33. Section 10 (page 144) of the Appendices to the consultation paper confirms that in some cases ILEX practitioners will be subject to complying both with ILEX's Practice Management Rules and with the rules applying to solicitors, including the Solicitors Code of Conduct, in the event that the practitioner is employed by a solicitor. Paragraph 10.3 of this section creates the requirement for ILEX

practitioners to inform ILEX in writing if they become aware “...of any breach of these rules or the rules relating to the conduct of solicitors in relation to any client with whom or matter with which the ILEX Practitioner has had any personal dealings...” We agree that this communication is essential; however we are concerned at the potential this rule may create for matters which are actually properly solicitor misconduct matters, or that may provide indication of potential solicitor misconduct, to be reported and managed outside of the regulatory framework for solicitors. In practice, effective information sharing between IPS and the SRA will mitigate this risk – however it would be helpful for this part of the Practice Management Rules to make clear that ILEX practitioners who are bound by both the rules for legal executives and those for solicitors are required to report any breaches relating to the solicitors rules to the SRA.

34. On a smaller point, the principal duties set out on page 129 of the Appendices document refer to ILEX Practitioners as ‘him or her’, yet at paragraph 21.6 the duty is to “...not bring discredit on himself or ILEX”. For consistency this should read “...not bring discredit on him or herself...”, although there are then references elsewhere in the Practice Rules (throughout paragraph 3.2 on page 130 for example) that refer intermittently to both ‘he’ and ‘he and she’. Again, for consistency purposes and to avoid any uncertainty, we recommend that common language is used throughout the Rules, when the final version is prepared.

**Q31. Are there any items included within the Practice Management Rules which you think should not be included? If so, state what they are and the reasons why they should not be included.**

35. We have no comments.

**Q32. Are there any matters that should be included in the Practice Management Rules which are not there at present? If so, state what they are and why they should be included in the Rules.**

36. We have no comments.

**Q33. Do you have any comments on the ILEX Equality and Diversity Code? If so, please state what they are.**

37. A small point at paragraph 5 of the Code is the reference that “...this firm will not behave in any of the following ways.” We believe this would have greater impact if made clearer that it is specifically ILEX practitioners and their staff (ie the members of the firm) that will not behave in the different ways listed, as opposed to simply stating that the firm itself will not behave in those ways.
38. Paragraph 7 of the Equality and Diversity Code refers to disciplinary action being taken against partners or employees that do not comply with their firm’s anti-discrimination policy. This paragraph could also refer to the fact that IPS may take regulatory action against the firm or a particular practitioner where serious non-compliance occurred.

39. In the main consultation paper, at paragraph 76, we note that while the Code is titled the ILEX Equality and Diversity Code, it is intended to just focus on anti-discrimination. While the Code may be an important tool for ensuring ILEX practitioners meet their equality duties, we are not clear as to the extent to which it guides practitioners in achieving diversity within their firm or practice. The consultation paper itself states that the aim of the Code is “...to ensure that a *Litigator does not engage in anti-discriminatory practices*”, but being respectful and accountable toward the diversity of employees and clients is of course a far broader remit than acting fairly and treating everyone equally. There may be some scope to highlight within the Code that ILEX litigators and their firms will be responsive and respectful to the diversity of all those they come into contact with.

**Q34. Do you have any comments on the ILEX Publicity Code? If so, please state what they are.**

40. The Publicity Code proposed at Appendix 13 seems broad enough to cover the various circumstances under which ILEX practitioners advertise or otherwise promote their services. The regulatory approach used by IPS in monitoring compliance with the Code should focus on the intended outcomes of adherence to the Code, as set out in the first few paragraphs of the Code – namely, ensuring that publicity carried out by ILEX practitioners “...*must not be misleading, inaccurate or disreputable*” and “...*must comply with the law*”.
41. Paragraph 13 of the Code reads that “*Advertising material should state that an ILEX Practitioner acts for a particular client without that client’s express prior consent.*” However, we are unclear as to whether this part of the Code should instead read that “*Advertising material should NOT state than an ILEX Practitioner acts for a particular client without that client’s express prior consent.*”

**Q35. Do you have any comments on the ILEX Rights of Audience Code? If so, please state what they are.**

42. We have no specific comments on ILEX’s Rights of Audience Code.

**Q36. Do you have any comments on the Accounts Rules? If so, state what they are.**

43. We agree with the underpinning purpose of the Accounts Rules set out in the consultation paper – that is, to “...*require that Litigators keep client and office money separated and that there is a clear audit trail of transactions.*”
44. Different parts of the Accounts Rules describe the discretion that can be exercised by ILEX in, for example, waiving compliance with the Rules in certain circumstances. Whilst it is correct for the Rules to refer to ILEX in its context as the approved regulator, it would be helpful for the final version of the Rules to make greater reference to the specific role of IPS as the regulatory division of ILEX in overseeing compliance.

**Q37. Are there any matters included within the Accounts Rules that should not be**

**included? If so, state what they are and why they should not be included.**

45. We have no specific comments.

**Q38. Are there any matters which should appear in the Accounts Rules that do not appear at present? If so, state what they are.**

46. We have no specific comments.

**Q39. Do you have any comments on the ILEX Practitioners Indemnity Insurance Scheme? If so, please state what they are.**

47. Indemnity insurance is integral toward effective client protection, and we agree ILEX litigators must not be authorised to practice unless IPS is fully satisfied that suitable indemnity insurance cover is in place. The proposed master policy scheme should be helpful to IPS in ensuring that this is the case for individual ILEX litigators choosing to insure themselves via this policy.

**Q40. Do you have any comments on the arrangements proposed for the IPS Client Protection Scheme? If so, state what they are.**

48. The safeguarding of client interests and client funds is integral to effective consumer protection within the legal services sector, and we agree with the broad approach set out in Appendix 15 of the consultation paper. The Client Protection Fund in particular must be carefully managed in such a way to ensure there is full accountability for all contributions made into it by ILEX's regulated community, and to be certain that there is clarity and transparency regarding the way in which the regulatory functions associated with the Fund are resourced.

**Q41. Will the arrangements safeguard clients in the event of their suffering loss as a result of a Litigator's misconduct? If not, what changes would you recommend.**

49. We note the statement at paragraph 95 of the consultation paper that "*...the onus will rest with a client to provide information in support of their claim and to show the loss they have suffered.*" While we agree that the Fund must be protected from false or over-inflated claims on it, it is important that a suitable balance is struck to avoid the claims process becoming simply another hurdle to try and overcome for clients that may already have suffered experienced significant genuine loss and hardship, both financially and emotionally, due to the misconduct of a litigator. We agree that ILEX and IPS are right to flag up the importance of being able to make interim grants in cases of severe hardship, and as a means of supporting vulnerable clients.

**Q42. Do you have any comments on the proposal that complaints and allegations about the conduct of Litigators will be investigated in accordance with the normal IPS procedures?**

50. It seems sensible for IPS to approach all disciplinary proceedings using a common and transparent framework, and as such we agree that complaints

relating to the conduct of ILEX litigators should be handled in accordance with IPS's normal procedures.

## **BAR STANDARDS BOEAD**

Dear Sir/Madam,

Thank you for sending the ILEX consultation document Proposal to seek rights to conduct litigation for ILEX members and rights of audience for independent litigator practitioners to the Bar Standards Board.

The BSB will not be submitting a response to this consultation.

Regards,

Gill

Gill Pennock  
PA to Mandie Lavin - Director, Bar Standards Board



## **RESPONSE OF WHICH?**

Dear Mrs Basra, thank you for your letters of 16th February and for forwarding to us copies of the consultation documentation. I have discussed the content of the consultations with our Campaigns and Policy departments and would advise that due to necessary internal prioritisation we are not in a position to comment. We would of course like to be able to respond to all issues referred to us but in practice we don't have the necessary resource to devote to ensure that these consultations receive the consideration that they warrant.

In closing we would again thank you providing Which? with the opportunity to respond.

Yours sincerely

Peter McCarthy

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