

Keeping it professional



Alan Kershaw, the first chairman of ILEX Professional Standards, tells **Neil Rose** why legal executives should welcome robust regulation – and why they may need competence checking

It is fair to say that Alan Kershaw knows a bit about regulating professions. The new chairman of ILEX Professional Standards Ltd (IPS) has been involved in regulatory work at something like ten different organisations (see biography), and unsurprisingly describes himself as ‘passionate about professional standards’.

It is not his first involvement in the legal profession – he is a founder member of the board of the Solicitors Regulation Authority – nor his first involvement with ILEX, having spent six years as a member of the investigating committee. This experience has encouraged him. ‘What’s impressed me there is the thoroughness of the investigations and how few of them there are,’ he says. ‘It is always a great testament to a regulatory body because it means you are getting the education and standards right.’

Sound model

IPS is the ring-fenced ILEX subsidiary which will be responsible for regulating the profession, a role that will become more complex as ILEX works towards being in a position to regulate legal disciplinary practices (LDPs) and alternative business structures (ABSs) under the Legal Services Act 2007. On Mr Kershaw’s priority list is appointing a board – made up of three professional and three lay members – so that it is up and running by the end of October; finalising all aspects of the separation between regulation and representation (such as council members not being on regulatory committees); putting a committee structure in place; and ensuring regulation is properly resourced.

‘ILEX has thought very long and hard about the settlement they want to make here,’ he says. The model is

‘sound’, he reckons, and ‘it seems to me there’s a great will to make it work’.

The debate over whether representation and regulation should be carried out in totally separate bodies or as ILEX, or the Law Society or Bar Council, have done it, misses the fundamental point, Mr Kershaw believes. He says there are few situations where the public and professional interests do not collide. ‘Anything in regulation... only works fully effectively if those bodies are working in harmony and clear partnership. Regulation is not something that a regulatory body can just come and do to a profession.’

Code breaker

This will soon become apparent as the ILEX Code of Conduct needs revision in light of the new associate prosecutors who are joining the Institute’s ranks. ‘That seems to be an ideal opportunity for ILEX Professional Standards to get to grips with what we really want to say to the profession and the outside world about the standards every legal executive should be committed to,’ he says. ‘It would be extraordinary if we did that without

discussing the matter with the ILEX council.’

LDPs – with legal executives becoming partners – are also on the horizon, a process that has not surprised Mr Kershaw, who highlights a ‘natural shaking down in the mix of skills of each professional group’, such as nurses and pharmacists now prescribing medicines. ‘We’re seeing new roles for legal executives and a very exciting time of opportunity for them to show themselves as the real specialists in some areas of law. The natural next step for that is into LDPs and ultimately ABSs, and there’s every reason why legal executives should be at the heart of that.’

Looking further ahead to ABSs, when firms will be able to choose which body that want to regulate them, he says he will want IPS ‘to create a model for regulation that will be attractive to go on someone’s notepad “Regulated by ILEX”’.

Do something extraordinary

So, what does the man who will be telling legal executives what they can and cannot do make of the profession? ‘What I find impressive is how [ILEX] gives every encouragement and every opportunity to ordinary people to do something extraordinary and to take the opportunities available to them in life and make the best they can of their abilities,’ he replies.

‘I find that very attractive. I don’t find that legal executives are the types that tend to have airs and graces. They are reliable professionals who specialise in their area of law and I see no reason why a legal executive who specialises in one area of law shouldn’t be 100% as competent as a solicitor practising in that area. It’s only that their work is more restricted... I find them easy to deal with, approachable and plain



speaking. The council members I have worked with here are extraordinarily committed to maintaining standards within their profession for the public interest.’

Mr Kershaw returns more than once to the idea that legal executives should embrace the idea of regulation – despite the cost – as the ultimate credibility provider. ‘To be seen to be effectively regulated is heavily in the interests of any professional group. It’s not just about the public interest; it’s about promoting what is good about your profession, about defining good practice and putting a boundary around it so people can see what they’re getting. So, in some ways, good regulation is as good as promotional opportunity as legal executives will have.’

The gentle touch

The new IPS chairman also commits to light-touch regulation, and is not hung up on the distinction between that and proportionate regulation, as was David Edmonds, new chairman of the Legal Services Board, when interviewed by the Journal last month.

‘You need to focus where the risks are,’ says Mr Kershaw. ‘[It is] proportionate in the sense that you need to keep perspective about it and

not simply have a zero-tolerance model where people get struck off for the slightest peccadillo. But where something goes wrong, people are encouraged to confront that and learn from it, because that’s what continuing professional development (CPD) is all about.

‘You can go to as many lectures as you like, read as many journals as you like and go online to do education and training – all these are good activities in themselves but they’re no real substitute for reflecting on what’s good in your practice and what doesn’t go so well and learning from that. And if that sometimes comes from a complaint, if the end result is that you work better, then everyone gains.’

A question of competence

Mr Kershaw makes it clear that CPD is never an end in itself. ‘What actually matters is that you can demonstrate continuing improvement throughout your career. Some kind of focus on assessed training and periodic demonstration that you’ve maintained your competence and stayed up to date and done everything else you should as a practitioner is desirable.’

So, does that mean some form of competence checking or reaccriditation? Unsurprisingly,

Mr Kershaw treads carefully at this point but it is clearly in his thoughts. ‘What I want is that the public or anyone who wants to know about the credentials of a legal executive can look at the membership roll and understand that we mean that person they see listed is fit to do the job today.

‘There is a general move across the professions to find effective ways that showing that, when someone is on a register, they are certified as fit to the job today – not when they qualified – and that is the important principle so far as I am concerned. If that can be achieved by CPD pure and simple, then I’m perfectly happy. My preliminary view is that professionals welcome the opportunity to demonstrate their competence from time to time anyway.’

This discussion may still be some time away – and Mr Kershaw makes it clear that it will be one the whole profession will be invited to join – but the fact it will happen arguably highlights the changes that will come about from having a dedicated regulator of legal executives. It is no coincidence that competence checking is now on the horizon for solicitors too now that they have such a regulator.

‘Good regulation is regulation which helps practitioners get better – or at least stay good,’ says Mr Kershaw. It is also something that will become a lot more visible as ILEX Professional Standards makes its mark.

Biography

Alan Kershaw, who is 56, has 25 years’ experience working in professional regulation. He graduated in classics in 1974 before joining the Civil Service, working at the Department of Environment. In 1983 he joined the General Medical Council, where he spent 16 years, latterly as director of education and standards. He was also involved in setting up the General Osteopathic Council, for which he was one of its first lay members. In 1999, he became the first chief executive of the Council for the Registration of Forensic Practitioners, a post he held for eight years.

He is currently a member of the Council of the Royal Pharmaceutical Society, the Nursing and Midwifery Council and the Association of Chartered Certified Accountants’ regulatory board. He has worked with the UK Voluntary Register of Public Health Specialists and with the City & Guilds Institute.

He was appointed a member of the ILEX investigating committee in 2002. He was a member of the transitional regulatory board at the Royal Institution of Chartered Surveyors, with which he continues to do regulatory work. Since 2005 he has served on the board of the Solicitors Regulatory Authority, a post he will now relinquish.

Kershaw: legal executives do not have airs and graces