

**MINUTES OF THE MEETING OF THE BOARD
OF DIRECTORS OF ILEX PROFESSIONAL STANDARDS LIMITED
HELD ON 6 MAY 2011 AT KEMPSTON MANOR,
KEMPSTON, BEDFORD, MK42 7AB**

Present: Mr Alan Kershaw (Chair), Mrs Sandra Barton, Mr Patrick Bligh-Cheesman, Mrs Thelma Brown, Ms Hilary Daniels, Mr Faizal Essat and Mr Andrew Middleton.

In attendance: Mrs Baljeet Basra (Professional Standards Manager), Ms Gemma Burnett (Professional Standards Assistant), Mr David McGrady (ILEX President) and Mr Ian Watson (CEO).

ITEM 1 APOLOGIES FOR ABSENCE

1. There were no apologies for absence.
2. Mr Kershaw welcomed Mr David McGrady to the meeting.

ITEM 2 DECLARATIONS OF INTEREST

3. Mr Essat declared that he was serving his notice at the Leicestershire County Council and had accepted a new position as partner with a former employer, Andersons Solicitors.

ITEM 3 MINUTES

Minutes of Business Meeting held on 24 February 2011

4. The Board approved the Minutes of its Business meeting held on 24 February 2011 as a true record for publication on the IPS website and report to the ILEX Council.
5. Members had been sent a letter from ILEX informing them that if a tax inspector should deem them to be employees of IPS or ILEX, so that a claim against them might follow in respect of tax and national insurance, ILEX would pay or reimburse members the liability.

GB/LN/IW

Minutes of Special Board Meeting held on 9 March 2011

6. The Board approved the Minutes of the Special Board meeting held on 9 March 2011 as a true record for report to the ILEX Council.

GB/LN/IW

Report of General Meeting held on 26 March 2011

7. The Board approved the Report of the General meeting held on 26 March 2011 as a true record for publication on the IPS website and report to the ILEX Council.

GB/LN/IW

ITEM 4 GOVERNANCE

Financial reports

8. The Board noted financial statements for 1 January to 31 March 2011. There had been no significant variance from the expected pattern of income and expenditure.

9. The Board suggested adjustments to the financial statements - that the final column title should read "2011 Remaining Budget" instead of "2010 Remaining Budget" and the last item on the accounts 'Departmental Contribution' should be adjusted so reference was not made to 'departmental'.

IW/KC

10. There would be a number of changes to the financial reports. The titles within the budgets would be reframed to reflect the areas of work being carried out. Generic pools of funds would be allocated to specific areas of work including consumer engagement, JAG and the legal education and training review. IPS accounts would be separated from ILEX accounts in accordance with the advice of the auditors.

IW/KC

11. The Board queried the accounting method used whereby lump sum expenditure was allocated on a monthly basis which could result in the accounts showing expenditure that had not taken place; and questioned whether some more sophisticated phasing could be employed. IPS would contact the ILEX Finance department and enquire about the rationale and value in using the present approach.

IW

12. The advice letter from the auditors relating to the 2010 audit would be shared with all Board Members.

IW

Internal Governance Rules

13. The Board noted the draft regulatory independence certificate and risk assessment submitted to the LSB. The LSB had advised ILEX and IPS that it was inclined to agree with the submission that the processes and arrangements between ILEX and IPS properly mitigated any risks to independence.

14. The Board agreed that the Chair and CEO would agree with ILEX submission of the final draft.

AK/IW

Service level agreements and ILEX/IPS Protocols

15. The Board noted that the revised Service Level Agreements and ILEX/IPS Protocols had been agreed by ILEX Council at the end of March 2011.
16. Some concern was expressed about the way risks and equality and diversity impacts were referred to in the agenda. The Board agreed that relevant risks and equality and diversity impact would be specified at the end of each agenda item.

ALL

IPS Annual Report

17. The Board considered and commented on the draft annual report. It was of the opinion that the report referred appropriately to IPS' successes throughout 2010.
18. The comments made, included that the CEO's report should outline developments within the office, to complement the Chair's foreword which was written from a strategic perspective; and that the 'Rights of Audience' and 'Complaints and Discipline' should be adjusted to sound more positive. It was agreed that the format and presentation of the annual report would be revised.

GB

Board Reappointments

19. Board members had been notified of the re-appointment process. The Appointments Committee would meet in June 2011 to review the position of current Board members who had expressed an interest in being reappointed for a further term of office. Judith Alderton would be invited to join the Committee as an independent member.
20. Board members who were affected were asked to provide the office with an up-to-date curriculum vitae and a summary of their significant achievements prior to the Committee meeting.
21. The Remuneration Committee was also due to meet in June 2011. Board members were asked to provide the office with time logs for October 2010 to end of May 2011 and any comments they had on the current fee level.

IW

ALL

ALL

ITEM 5 REGULATION PROJECT

22. The Board was updated on IPS' project to work with other regulatory bodies and to consider options for providing regulatory services in respect of practitioners who were not members of ILEX.

23. The Chair had had preliminary discussions with the Chairs of other regulators. The Board noted a summary of the discussions that had taken place. There had been some positive responses and there appeared to be a growing understanding that there were strong arguments for consolidation.
24. Further discussions had taken place with the Chair and CEO of the LSB, who had welcomed consolidation and gave a positive response to the discussions between IPS had initiated.
25. Possible options could include the creation of a new regulator, or at least the development of arrangements for closer collaboration between regulators and possible sub-contracting of services.
26. IPS and ILEX CEOs had met with the Society of Trusts and Estates Practitioners (STEP) to discuss the possibility of IPS regulating those of their members who were not regulated by other professional bodies.
27. Trading Standards Institute and the Department of Business Innovation and Skills were seeking criminal rights of audience for Trading Standards Officers and had been referred to IPS by the LSB. Discussions would take place with them shortly.

ITEM 6 STRATEGY & BUSINESS PLAN

28. The Board noted the finalised IPS strategy and the revised business plan. The business plan took into account the new strategy. The completed activities had been removed.
29. The last action point within key target 1 of the Fitness to practise section would be adjusted to state 'recruitment process to be completed by June 2011'. **BB**
30. Mr Bligh-Cheesman would be listed as a 'Lead/resource' of the second action within key target 2 of the Communication and partnership section of the business plan which related to customer services standards. **BB**
31. The strategy and business plan, subject to adjustments, would be shared with ILEX Council at its July meeting. **IW**

ITEM 7 RISK REGISTER

32. The Board considered the updated risk register and covering report which outlined the areas where it had been reviewed and updated.

Risk 8 – covering senior staff

33. The risk that the roles of senior staff could not be covered in their absence had been added to the risk register. To mitigate the risk, as an interim measure, Board members could provide guidance to the team in respect of their portfolio areas and between them the day to day activities of IPS could be carried out. Staff shadowing, as a mitigating action, had been taking place by way of team members supporting senior staff in each activity they undertook.

Risk 11 – Legal claims

34. The risk of a legal claim being made against IPS remained high, due to recent developments in the judicial review claim made against IPS. Application for leave to appeal to the Court of Appeal, against the decision of the High Court, had been granted. The risk would remain high until the case was fully concluded.

35. It was suggested that IPS should consider 'before the event' insurance in the case.

Risk 14 – smaller regulators project

36. The risk that the LSB project on smaller regulators could lead to IPS' functions being transferred to another regulator had been added to the risk register. The regulation project being undertaken by IPS had been recorded as mitigating action.

Risk 26 – panellist appraisals

37. The risk that the appraisals of panellists serving on the complaints and disciplinary panels could lead to inaccurate subjective assessments of their performance had been added to the register. Criteria were being developed to mitigate the risk.

Rule 33 – Admissions and Licensing Committee

38. The risk that the Committee and staff may become overburdened with casework had been added to the risk register. The risk would be mitigated by continual vetting of applications by IPS staff prior to referral to the Committee, with the aim of reducing the Committee's

workload. That workload would be further reduced in the future by further delegation of decision making powers. An application would be made to the LSB to seek approval of delegation powers after the work based learning project had been completed.

Risk 43 - CPS

39. The risk that the application for litigation rights for Associate Prosecutors would not be approved had been removed from the risk register as the application had been approved. The risk that the CPS would fail to engage with IPS, leaving IPS unable to carry out its regulatory activity, was added to the register in its place. The risk could be rated low as work had commenced with the CPS to ensure relevant functions were carried out. The risk would be kept under review to ensure engagement was sufficient to enable IPS to perform its role.

Risk 51 – education review

40. The risk that IPS may not be able to engage or influence the review had been added to the risk register. Participation in meetings, with careful preparation, would mitigate the risk.

ITEM 8 REGISTRATION AND ACCREDITATION

Admissions and Licensing Committee – Work Based Learning Project

41. The Admissions and Licensing Committee met on 25 February 2011 and 29 March 2011 and had considered casework in relation to qualifying employment matters. The meetings involved, amongst other things, deciding whether a person's employment was qualifying employment and determining whether a person's employment experience was sufficient to grant them a waiver from the qualifying employment regulations.

42. The Committee had started to consider the work based learning project at the meeting on 29 March 2011. The Committee had reviewed the project work undertaken by the Admissions and Licensing Working Group and the subsequent consultation responses. The Committee had agreed a robust definition of 'Qualifying Employment' but further work was needed to refine the work based learning outcomes and produce supporting guidance notes. The Committee had taken the view that assessment by way of a log book was suitable. Work was under way to revise the draft log book which, the Committee agreed, required considerable refinement.

Application to LSB for delegated decision making

43. The Board noted that the LSB had approved IPS' application to revise the Rights of Audience Certification Rules so that Officers could now approve applications to enrol onto the qualification scheme, renew advocacy certificates and approve applications made by course providers to deliver qualification courses. As a result the Admissions and Licensing Committee would not need to engage in decisions in respect of routine advocacy matters.

44. The office had made use of the delegated powers and had set up arrangements by which the exercise of the powers were reported to the Committee.

Advocacy Rights Committee

45. The Board noted that final report of the Advocacy Rights Committee, covering the calendar year 2010; and that it would be presented as an annex to the IPS annual report.

Applications for new rights

Associate Prosecutors application

46. The application to become an Approved Regulator for the purposes of granting rights to conduct litigation and rights of audience to Associate Prosecutor members had successfully completed the approval process. Parliament had agreed with the LSB that ILEX's application should be approved; and members of both Houses of Parliament had made favourable comments about ILEX and its members during the debates. The Board was pleased with the success of the application and the support received from Baroness Hayter in the House of Lords.

47. The office had commenced work to ensure that the proposals contained within its application for the regulation of Associate Prosecutors were put into place. Meetings had taken place with appropriate CPS staff to that effect. The Admissions and Licensing Committee would become responsible for oversight of the Associate Prosecutor training scheme.

Probate Rights and Civil and Family Litigation Rights

48. The applications for Litigation Rights in respect of Civil and Family proceedings, and for Probate Rights, were working their way through the LSB process. IPS had responded to the comments made by the mandatory consultees. IPS had also submitted additional information

requested by the LSB regarding entity based regulation and arrangements for risk assessing practices.

49. The LSB intended to submit the applications to its Board at the end of May 2011. IPS had not received any indication that the applications would be approved. If they were, the litigation applications would take immediate effect because ILEX had become an Approved Regulator for awarding litigation rights in the context of the Associate Prosecutors application. At that point IPS would seek to submit its Criminal Litigation application. If the Probate Rights application were approved by the LSB the Lord Chancellor would need to approve the recommendation, with an Order made in Parliament to complete the process.
50. The Board noted a chart which provided a timeline in respect of the rights applications.

Alternative Business Structures

51. The ABS Working Group had met on 18 February 2011 and 4 April 2011. The working group had made considerable progress in developing the licensing application. The working group was close to finalising the adapted version of the existing Code of Conduct and had considered a number of drafts of the complaints and disciplinary rules, both of which would be applicable to every person and body that IPS regulated. The first draft of the licensing rules had been considered by the working group.
52. The working group had reviewed the project plan. It was on schedule to complete the development work by summer 2011, with the view to issuing a consultation on its proposals by late summer 2011.
53. The framework Memorandum of Understanding (MOU), which was being agreed between approved regulators and other regulatory bodies, had previously been approved by the IPS Board. Since then, the Financial Services Authority (FSA) had sought a late amendment which had delayed its finalisation. The Board agreed that the ABS Working Group would agree the final draft.
54. The Board noted that there was doubt over whether ABS would start on 6 October 2011, and that there could be a delay for approximately a month.
55. The Board agreed that IPS should pursue dialogue with prospective ABS applicants and enquire about the type of licensing regime they would welcome.

IW/BB

JAG – Quality Assurance of Advocacy

56. The Board was updated on the progress of the advocacy quality scheme by the Joint Advocacy Group (JAG). The project was working towards the following aims:
- a defined scheme by July 2011;
 - approval of rule changes in the Autumn by the LSB;
 - training of judges from November 2011 to January 2012; and
 - go-live for judicial evaluation at levels 2, 3 and 4 by March 2012.
57. JAG would be meeting with the CPS to discuss the process for ascribing cases to levels.
58. At level 1, which affected ILEX criminal advocates, it appeared settled that re-accreditation would primarily be by assessed CPD. This approach would limit new costs. However, it would enable infrequent advocates to continue practising in some circumstances. JAG had been looking at methods by which to mitigate the risk that posed.
59. The QAA Advisory Group had made substantial progress. Mrs Brown reported on the work of the QAA Advisory Group which advises JAG. Work was underway in the costs for advocates and regulators.
60. The judiciary appeared to understand and support the scheme. However, there still was the risk that judges would not formally approve it. The judicial evaluation of advocates at levels 3 and 4 would be road tested in Courts in Canterbury and Durham in June 2011.
61. Thelma Brown had been complimented on her contributions to the group, by Lord Justice Thomas.

ITEM 9 IMMIGRATION ADVISORS ACCREDITATION

Immigration advisors

62. Schedule 18 of the Legal Services Act 2007 came into force on 1 April 2011. As a result the LSB had become the oversight regulator in respect of IPS' functions relating to the regulation of immigration advisors. The LSB had adapted its existing rules to incorporate approval of rules relating to immigration matters being submitted by Approved Regulators.
63. IPS needed to develop an accreditation scheme for the immigration advisors registered with ILEX. It was intended that the rules and procedures developed for the practice rights applications would be

used to accredit immigration practices.

64. The Board agreed the proposed project to develop accreditation arrangements for advisors and noted a project plan which outlined the work required. The project would be managed by the ABS Working Group and the admission process would be governed by the Admissions and Licensing Committee. IPS would consult on the accreditation arrangements that were developed.

65. IPS had registered its interest in the thematic review of immigration regulatory matters that would be undertaken by the LSB. The timeframe for the review was currently unknown.

Immigration advisor employees and section 90 Order

66. The Section 90 Order, which would grant regulatory powers to IPS over employees of immigration advisors registered with ILEX, had not completed the Home Office approval process. The Order had been drafted, but it was unclear why approval had not been granted. The timeframe within which the issues would be resolved was unknown.

67. The Order would be laid before Parliament for approval. It would be some time before the Order was approved.

68. The Board noted that only a few practices would be affected by the Order, but recognised that it would address a potential risk.

ITEM 10 COMMUNICATION AND PARTNERSHIP

Consumer Engagement

69. The Board was provided with a report outlining a programme of engagement with consumers and other stakeholders. The Board also considered a draft Consumer Engagement Strategy and an action plan for 2011.

70. The Board approved the Strategy and action plan. The Strategy set out IPS' objectives in engaging with consumers and other stakeholders; provided a framework for an ongoing programme of consumer engagement; and publicised IPS' commitment to putting the consumer and public interest at the heart of good regulation. The action plan set out three main action points. The first action, the review of the process for assessing consumer and member satisfaction with IPS complaint handling process, was under way.

71. It was proposed that IPS should, wherever practicable, make use of any pre-existing processes for communication so as to reduce costs and 'questionnaire fatigue' amongst participants. ILEX ran a survey

of its members every two years. Questions would be provided to ILEX and the survey would be finalised within the coming months.

72. The Board agreed that the Legal Services Consumer Panel would be informed of IPS' plans in relation to consumer engagement. A letter would be written to Baroness Hayter, sharing IPS' Consumer Engagement Strategy and action plan and asking for their comments.

IW/PBC

73. Mr Bligh-Cheesman and the CEO had met with the Legal Ombudsman (LeO) to discuss compliance with first tier complaints guidelines. It was intended to discuss a memorandum of understanding with the SRA which would provide a mechanism for the SRA to provide IPS with information on Legal Executives working in SRA regulated firms.

ITEM 11 FITNESS TO PRACTISE

Appraisals

74. Panel members serving on the disciplinary and professional conduct panels had provided feedback on a draft self-appraisal form which would be part of the appraisal mechanism for panel members.

75. Criteria had been developed for the last question on the self-appraisal form with the aim of avoiding subjective assessments being made by panellists which did not accurately reflect their performance. The assessment grades had also been redeveloped.

76. The Board approved the form and decided that further amendments could be agreed between the office, the fitness to practise portfolio holder and Chair. Panellists would be advised of the Board's approval.

BB/SB/AK

77. The panellists had asked IPS to consider whether appraisals could be disclosed to anyone who requests them. The Joint Advocacy Group (JAG) had been considering a similar issue and had recently obtained opinion from counsel on disclosure of judicial assessments of advocates. Counsel was of the opinion that the judicial assessment would have to be disclosed, including to parties seeking to use them in the context of an appeal. The Board accepted that disclosure to appellants was likely to be necessary; and agreed proposals for managed disclosure.

78. The Board approved a draft appraisal policy, subject to paragraph 11 being adjusted to indicate that the CEO of IPS, as opposed to an IPS staff member, would be responsible for considering applications for disclosure of an appraisal.

BB

Adjournment policy

79. A revised draft of the adjournment policy was approved subject to further adjustments made by the Board. The policy would be used by panel members when considering applications to adjourn hearings.

80. The Board suggested the following adjustments:

- Within paragraph 2 the words 'not normally be' should be replaced with 'only be'.
- Within paragraph 2 the word 'strong' should be replaced with 'good'. It was suggested that the Civil Procedure Rules should be drawn on for wording in relation to case management
- Paragraph 8 would instead read 'If the Panel grants your request, the case will be adjourned to another date which will be set by the Panel or by IPS. If the Panel refuses your request, the case will proceed on that day in your absence.'
- The policy should specify that it was applicable to applications made before the hearing date and that the Panel would not meet to consider the adjournment.
- The policy should specify that the party had one opportunity to adjourn a hearing and that a party could appeal a decision regarding adjournment.

BB

Reasoned determinations

81. The Board approved a draft of the reasoned determinations template which would be used by panel members for the purpose of delivering determinations at hearings. The template had recently been tested by the Chair of the Professional Conduct Panel at a meeting and appeared to work well.

IDAR Review

82. The office had carried out an informal review of the Investigation, Disciplinary and Appeal Rules (IDAR) which highlighted areas where the rules required development. Some arose from changes in the law that had occurred since the rules were adopted and others from experience that had been gained through application of the rules to cases.

83. The Board considered the amendments that could be made, either as part of the rules required to regulate employees of immigration advisors or as part of the licensing rules. It agreed that the work would be delegated to the ABS Working Group.

Annual Report

84. The Board approved the annual report of the disciplinary panels which had been amended to reflect decisions made by the Board at its last meeting. The revised report included equality and diversity statistics and a foreword by Sandra Barton as the Fitness to Practise portfolio holder.

ITEM 12 EDUCATION

Planning and strategy document

85. The Board considered the Awards Education Team's planning and strategy 2009-11.

86. Board members queried the last activity on page 3 and the first activity on page 27 of the strategy document, which related to the Awards department devising a centre risk monitoring model in November 2009. The Board had the impression that a model had not yet been developed and that the Awards Education team were due to provide the Board with a model in July 2011. The Board requested clarification as to what the Awards Education team had devised and what they would be providing the Board in July 2011.

BB/IW/AM

87. The Board also queried items on pages 22 and 33 of the strategy document. Concerns had been raised about the balance of the relationship between IPS and the Awards Education team. The Board requested clarification be obtained as to what those statements meant.

BB/IW/AM

Education and Training Review

88. IPS continued to engage with the SRA-led Education and Training Review. The organisations bidding for the research work had been interviewed on 15 April 2011. Andrew Middleton had represented IPS on the interview panel.

89. There would be joint Chairs of the Review Reference Group: Sir Mark Potter and Dame Janet Gaymer. The membership of the reference group was likely to be broad. It was expected that IPS, ILEX and ITC would be represented.

ITEM 13 DATE OF NEXT MEETING – 22 JULY 2011

90. The next meeting was scheduled for 22 July 2011 and would

commence at 9:30am.

91. Deadline for papers – 7 July 2011

ITEM 14 REPORTS AND INFORMATION ITEMS

92. Board Members noted the minutes of the Admissions and Licensing Committee meeting held on 25 February and 29 March 2011, minutes of the ABS Working Group meeting held on 18 February 2011, and schedules of current and closed consultations.

93. Board members also received the LSB's consultation titled 'Developing regulatory standards'. Board members were asked to provide the office with their comments on the consultation by 24 June 2011.

**ALAN KERSHAW
CHAIRMAN**