

**MINUTES OF THE MEETING OF THE BOARD
OF DIRECTORS OF ILEX PROFESSIONAL STANDARDS LIMITED
HELD ON 24 FEBRUARY 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), Ms Alison Hollyer (Head of Awards) (for Item 9), Mr David McGrady (ILEX President), Ms Amanda Pipe (Quality Assurance Manager) (for Item 9) and Mr Ian Watson (CEO).

ITEM 1 APOLOGIES FOR ABSENCE

1. There were no apologies for absence.
2. Mr. Kershaw welcomed Mr David McGrady, attending as ILEX President, to the meeting.

ITEM 2 DECLARATIONS OF INTEREST

3. There were no declarations of interest.

ITEM 3 MINUTES

Minutes of Business Meeting held on 13 December 2010

4. The Board approved the Minutes of its meeting held on 13 December 2010 as a true record for publication on the IPS website and report to the ILEX Council.
5. In September 2010 Members had requested a letter from ILEX indemnifying them from tax and national insurance liability if they were deemed to be employees. The Chair asked for the letter to be provided by 4 March 2011.

GB/LN

IW

Notes of Strategy Meeting held 13 & 14 December 2010

6. The Board approved the Notes of its Strategy Meeting held on 13 and 14 December 2010 as a true record.

ITEM 4 RISK REGISTER AND KEY PERFORMANCE INDICATORS

Risk Register

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

Risk 2 & 7 – funds and resources

8. Risk 2 - the likelihood of the risk that an unexpected call would be made on funds remained high, to reflect IPS' participation in the Solicitors Regulation Authority (SRA) led review of legal education and training.
9. Risk 7, which related to staff resources, remained high. Recent difficulties experienced by the office exposed vulnerabilities. However, it was on track to recover as a new member of staff had been recruited and the recruitment of another member of staff was due to commence.
10. The Board agreed that staff shadowing, as mitigating action, would be added to risk 7. **BB**

Risk 9 – portfolio areas

11. The likelihood of a portfolio area not being filled by a Board member had been reduced to 1 as all the portfolio areas were currently assigned to Board members.

Risk 10 – legal claims

12. The likelihood of a legal claim being made against IPS had been increased. The rating of the risk had been increased from 3 to 6 due to recent developments in a judicial review claim made against IPS. The ILEX member had made an application for leave to appeal to the Court of Appeal against a decision of the High Court. The risk would

remain high until the application was heard.

Risk 21 – complaints rules

13. The likelihood of the complaints rules not being fit for purpose had been increased. The rating of the risk had been increased from 3 to 6 because an order would be made by April 2011 under section 90 Immigration and Asylum Act 1999 whereby IPS would have regulatory remit over staff of immigration advisors regulated by IPS. As a result the Investigation, Disciplinary and Appeals Rules (IDAR) had to be developed to cover complaints and disciplinary action against such employees.

BB/IW

Risk 33 – litigation and probate rights applications

14. The likelihood of the litigation or probate applications being unsuccessful had been increased. The likelihood of the risk had been increased to 2 resulting in an overall rating of 6. It had proved necessary for IPS to redevelop its rules into entity based rules and there was a risk that the new rules would not be approved by the LSB without further work.

15. The Board agreed that a separate risk register would be created to identify the numerous risks related to ABS.

BB/GB

16. A risk relating to the volume of work assigned to the Admissions and Licensing Committee (ALC) would be included in the register. The description of the risk would be agreed after the next ALC meeting.

BB

17. A risk relating to the project on small regulators would be included in 'Generic risks'.

BB

18. Risks associated with the Education and Training Review would be included within the 'Education' risks.

BB

Key Performance Indicators

19. The Board noted the key performance indicators (KPIs) against which performance between January and December 2010 had been assessed.

20. The record of assessment indicated that in December 2010 the Board had conducted its annual review and strategy review and IPS had reviewed its performance.

21. The Board noted complaints handling performance to end of December 2010 and expressed concern that only 56% of cases were being referred to the Professional Conduct Panel within 6 months.

ITEM 5 GOVERNANCE

Finance

22. The Board noted draft financial statements for 1 January to 31 December 2010. There had been no significant variance from the expected pattern of income and expenditure.

Internal Governance Rules

23. The Board noted that Internal Governance Rules (IGR) submissions would be made by end of April 2011; and that this year the LSB would wish to ensure that compliance with the IGRs were delivered in practice as well as on paper.
24. The Board was reminded of the LSB's letter in November 2011 which had outlined the issues it felt the ILEX/IPS protocols and service level agreements should address. This related to the way in which dispute resolution and Board member/Chair dismissal procedures were dealt with.

Service Level Agreements (SLA)

25. IPS and ILEX had conducted the first review of the SLA. Adjustments had been made to implement the LSB's requirements set out in its letter of November 2011, in particular to clause 10, to remove apparent codified restrictions on when ILEX or IPS could approach the LSB in time of dispute. The signatories to the agreement had been amended from the President and Chair to the CEOs of ILEX and IPS.
26. The Board approved the redrafted SLA and delegated responsibility for agreeing the final draft to Ms Daniels.

HD

ILEX/IPS Protocols

27. The Board approved the redrafted ILEX/IPS protocols including Annexe 4 on Board member/Chair dismissal procedures.

28. Further amendments were made. Paragraph 3 of Annexe 6 would read 'The IPS Education Portfolio Holder is a member of the Awards Performance and Strategy Committee (APSC)...' The words 'Concerns about the conduct of a Board Member will normally be dealt with informally by the Chairman in the first instance. If the matter is not resolved s(he) will liaise with the Chief Executive to create a Committee with another Board member to agree the action(s) to be taken.' would replace the first and second sentence in paragraph 11 of Annexe 4.
29. The Board delegated responsibility for agreeing the final draft of the protocols to Ms Daniels.

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HD

Appointments Committee

30. The Appointments Committee had met in January 2011 to consider the re-appointment of the Chair, Mr Kershaw. The Committee decided that Mr Kershaw should be re-appointed for a further three years when his current term expired on 1 June 2011.
31. Judith Alderton, the independent member of the Appointments Committee, complimented IPS' appointments process and made some suggestions for improvement. Members commented it would be useful for Ms Alderton to be involved in future appointments of this nature.
32. The Board decided that terms of reappointment and the staggering of appointments of Members would be agreed in May.
33. The Board agreed that Members would make new declarations of interest annually.

HD/IW
ALL

CEO Performance Review

34. The Chair reported to the Board on the CEO's 360 degree review which was undertaken in December 2010/January 2011. The responses were complimentary and had shown improvements in a number of areas compared with the 2009 performance review. There were demonstrable improvements in the CEO's performance since training undertaken during 2010. There remained some areas that needed improvement. The CEO's objectives would be circulated to Members once they were formalised.

IW/AK

ITEM 6 REGISTRATION AND ACCREDITATION

Admissions and Licensing Working Group – Work Based Learning Project

35. The Admissions and Licensing Working Group met on 8 November

36. The Law Society response confirmed their areas of concern. Their primary concern was that the work-based learning project should resemble the criteria of a training contract due to the exemption route by which Fellows could qualify as solicitors. The Board expressed concern that moving to a model closely resembling training contracts would detract from the ILEX brand. Training contract style 'seats' would not appeal to ILEX members or employers as the ILEX route was based on members becoming specialist practitioners.

37. The Board agreed that the Admissions and Licensing Committee should take over development of the work based learning project from the Admissions and Licensing Working Group. Mr Middleton and Mr Kershaw, who were members of the working group, would be unable to contribute directly to decision making once the working group was dissolved. The Board noted that Mr Kershaw would attend meetings of the Committee which dealt with the policy to this project.

AK

38. Mark Reeves and John Wells, who were also members of the Admissions and Licensing Working Group, would not be members of the Admissions and Licensing Committee. They had both brought a wealth of experience to the working group. IPS would write to Mark Reeves and John Wells to thank them for their work.

BB

39. The Board recognised that the Committee could become overwhelmed with casework. The risk would be identified in the risk register.

BB

40. Long term the aim would be that the Committee dealt with policy work and regular casework would be delegated to the Office. The Policy Officer that would be recruited in IPS could add to the work based learning project. The Committee would address issues regarding waivers and ensure that systems for assessing Qualifying Employment were more robust.

Admissions and Licensing Committee

41. The Board noted that the LSB had approved IPS' application to revise rules to introduce flexibility to the number of Admissions and Licensing Committee members on 5 January 2011. The Committee comprises two members of the Board and four independent

42. The Admissions and Licensing Committee met on 11 February 2011 for a training and induction day. The first casework meeting would take place on 25 February 2011. The remit of the Committee included policy work as well as waiver applications and rights of audience applications. The Committee would also become responsible for oversight of the Associate Prosecutor scheme; future rights schemes, if those applications were successful; and any future review of CPD.

Applications for New Rights

Associate Prosecutors application

43. The LSB had approved IPS' application for Advocacy and Litigation Rights for Associate Prosecutors on 27 January 2011, subject to the Memorandum of Understanding (MOU) between ILEX and CPS being reviewed to enhance the information sharing provisions and the removal from the application of rights of audience for Associate Prosecutors to appear in summary offences punishable by imprisonment. The Board noted the approval and that the litigation aspects required an affirmative order of Parliament.

44. The MOU between ILEX and CPS had been agreed by the office, with the Chair, prior to submission to the LSB. This was due to a limited deadline for the LSB to get the new MOU to the Ministry of Justice (MOJ). The Board ratified the MOU.

Probate Rights and Civil and Family Litigation

45. The applications for Litigation Rights in respect of Civil and Family proceedings, and for Probate Rights, were working their way through the LSB process. The applications had been put to the mandatory consultees: the Consumer Panel, the Office of Fair Trading and the Lord Chief Justice. Their responses were received on 31 January 2011. The office had made replies to the responses.

46. The Legal Services Act 2007 required the application to take an entity regulation approach rather than regulating individuals, as IPS had originally proposed. It was also required that the application be based on risk-based regulation. IPS had redeveloped its rules to refer to entity regulation; these would be submitted on 24 February 2011. The Board noted that there was a risk that the LSB would view the developments as substantial enough to warrant consultation or a fresh application.

BB

Criminal Litigation Rights

47. In December the Board had agreed to delay the submission of the criminal litigation rights application until the civil/family litigation and probate applications progressed with the LSB.

48. IPS had suggested to the LSB that the criminal litigation rights application be added to the existing family and civil litigation rights applications to assist the LSB. The LSB had not agreed the suggestion.

Conveyancing Rights

49. In December the Board had agreed to delay the submission of the conveyancing rights application until the civil/family litigation and probate applications had progressed with the LSB.

50. The consultation for IPS' conveyancing rights application had closed. IPS had received responses from The Council of Mortgage Lenders, The Society of Scrivener Notaries and the Master of Faculties. IPS was continuing to develop the application.

Alternative Business Structures

51. The ABS Working Party had met on 18 February 2011. Jonathan Bracken of Bircham Dyson Bell had produced further drafts of the complaints and disciplinary rules and code of conduct for ABS and an outline of the application rules.

52. 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 stated that it would require the MOU to reflect legislative constraints under which it was unable to share information with other regulatory bodies. The SRA and FSA were agreeing wording for the MOU. The MOU would be agreed by the ABS Working Party as it would involve only minor amendments.

BB

Immigration Advisors Accreditation

53. Schedule 18 of the Legal Services Act 2007 would be implemented in April 2011. It would transfer the oversight function of the Office of the Immigration Services Commissioner (OISC) to the LSB in respect of Qualifying Regulators.

54. IPS was concerned that under schedule 18 only Fellows would be authorised immigration advisors. It would therefore affect four members of ILEX who were self-employed immigration advisors but were not Fellows. IPS had liaised with the MOJ and received confirmation in writing that its interpretation was that transitional arrangements in the Act would apply to non-Fellows, who were

currently registered immigration advisors, and they would continue to be authorised by IPS. New members seeking regulation by IPS would have to be Fellows.

55. The Board discussed how this would affect IPS' strategy of becoming the regulator for immigration advisors. The ILEX route would be less attractive to potential advisors if an advisor would have to become a Fellow before being authorised to provide immigration advice and services.

56. It was noted that IPS would need to develop an accreditation scheme for new immigration advisors by April 2011. IPS would need to consider whether it continued to provide limited authorisation to those members who were registered with it before April 2001 or would offer authorisation to new applicants.

BB/IW

JAG - Quality Assurance of Advocacy

57. The Board was updated on progress on the development of the advocacy quality scheme by the Joint Advocacy Group (JAG). JAG had published its response to the consultation issued last autumn. The scheme would remain under the management of the JAG regulators.

58. An advisory group had been established under the chairmanship of Thomas LJ and would be responsible for providing feedback on Quality Assurance of Advocacy (QAA) as the proposals developed. The group would act as an advocate when the scheme was launched.

59. Detailed work on the scheme was under way and JAG planned to have a finalised scheme by mid to end July 2011 and to start implementation in the autumn.

60. The LSB had appointed a research organisation, Human Assets, to advise it on assessment arrangements.

ITEM 7 COMMUNICATIONS AND PARTNERSHIPS

61. The Board noted a meeting which had taken place between Mrs Basra, Mr Watson, Ms McDonald and Mr Bligh-Cheesman on 6 January to discuss Mr Bligh-Cheesman's role in relation to consumer engagement.

62. Mr Bligh-Cheesman would bring to the Board in May 2011 a draft strategy and action plan. The draft strategy would be shared with Ms McDonald.

PBC

63. In the first instance Mr Bligh-Cheesman would look at complaints handling, researching the experiences of parties to the complaint. Then he would research consumers of services provided by legal executives. Mr Bligh-Cheesman would engage in informal discussions with and write directly to legal executive partners to obtain their assistance with this work.
64. The LSB had produced a draft paper on consumer engagement. IPS was reassured by the paper that it was working along the same lines as the LSB. The Board agreed that IPS would continue its research on consumer and stakeholder engagement without waiting for the LSB to publish its paper.

ITEM 8 FITNESS TO PRACTISE

Meeting with Legal Ombudsman

65. The Board noted that Mr Watson and Mrs Basra had attended a meeting with the Legal Ombudsman on 13 January 2011. The Ombudsman had received mixed responses to the consultation on publication of decisions. The Ombudsman would analyse these and produce a new consultation with firmer conclusions later in the year.
66. The Office of Legal Services Ombudsman (OLSO), which deals with complaints about the complaints handling performance of the regulators, would close on 1 April 2011. The outstanding work of the OLSO would be managed by a temporary OLSO, based at the Legal Ombudsman's office, with the aim that cases would be concluded by December 2011. It was noted that regulators would have to pay a case fee to the Ombudsman for such work. It was unlikely that any of IPS' cases would fall into this category.

Investigating and Disciplinary Annual Report

67. The Board was provided with a draft report of the Professional Conduct Panel, Disciplinary Tribunal and Appeals Panel. The report covered the investigating and disciplinary work undertaken by those bodies during 2010.
68. The Board approved the Investigating and Disciplinary Annual Report and made the following comments:
- The first sentence of paragraph 3 of the Introduction should be amended. The LSB was not the driving force for IPS to revise IDAR.
 - The new constitution of the Panels and Tribunals should be moved into the Introduction.
 - The words 'what action to take against them' should be amended.

- In the table on the second page 'Rejected' decisions needed to be defined. 'No prima facie case' was suggested as an alternative.
- 'Rejected out of time' should be amended to 'out of time'.
- The second table needed amending, the title 'Area of law' was not reflective of what was listed and should be amended to 'Area of law/misconduct activity'.
- 'ILEX misconduct' within the second table needed to be more explicit.
- 'ILEX matters' within the third table needed to be more explicit.
- The seventh paragraph on page 5 should be amended. 'This allows the Officer to respond to declarations' could replace 'This allows the Officer to approve declarations'.
- A preface, thanking members and panellists, could be included.

BB
SB

Panellist Training and Appraisals

69. A training event for members of the Disciplinary Tribunal (DT) and Professional Conduct Panel (PCP) had taken place on 10 February 2011. Members were provided with an outline of the intended appraisal mechanism for panel members.

70. Panel members welcomed the process but raised concerns that the information held in relation to appraisals could be requested by the parties to a hearing. IPS would need to research whether it could be required to release the data. The Board agreed that IPS would need to get advice but meanwhile would produce a policy on how the self-assessment appraisal forms would be used. The policy would stipulate that the forms were confidential and would be kept for a specified period. The policy would be developed before the forms were issued. The Chair would approve the policy.

HD/SB/AK

71. Panel members recommended that Equality and Diversity information be included in the self-assessment forms. PCP members expressed that they would like feedback on decisions after meetings. DT members would like some form of liaison between PCP and DT in order to gain an understanding why particular cases had been referred to DT.

BB

Section 90 Immigration and Asylum Act 1999

72. The Section 90 order would be made in April 2011. By then, IPS would need to have a regulatory scheme in place to regulate employees of immigration advisors registered with ILEX.

73. IPS would need to ensure that the Code of Conduct and Investigation, Disciplinary and Appeal Rules (IDAR) could be applied to employees of advisors. IDAR would need to be developed as certain aspects would not be appropriate for employees of

immigration advisors.

BB/IW

ITEM 9 EDUCATION

Awards reports

74. The Board welcomed Alison Hollyer and Amanda Pipe to the meeting and considered an updated overview of malpractice cases from June 2010, a draft executive summary of the Awards Department Self-assessment report for 2010 and an action plan for the first quarter of 2011.

75. In January 2011 the Awards department had produced 12 risk registers, one of which was a centre risk register. Staff in the Awards department had been trained and were implementing the new registers. An interim report on the first 6 months of using the risk registers would be produced and was expected to be presented to the Board at its July meeting.

AP

76. The Board was informed that there were no centre visits planned as yet. Once centre risk assessments had been conducted, the Awards department would assess areas of concern and plan centre visits accordingly. Compliance with invigilation rules and regulations would form part of centre risk assessments.

77. The Board questioned whether any work had been carried out around cancelling centre accreditation. It was explained that accreditation would not be cancelled in the first instance, as centres would initially be provided with support. Performance officers would be appointed to help centres. Inspection visits would be conducted and action plans put in place before cancellation was considered.

78. The Awards Malpractice Committee had raised concerns that students accused of exam misconduct were being penalised twice, firstly by the Awards Malpractice Committee and secondly by IPS. They were also concerned that Level 3 students were more seriously affected than Level 6 students as Level 6 students could carry on with their studies without being in membership. It was noted that IPS was obliged to pursue misconduct investigations against members of ILEX accused of exam misconduct in order to consider whether the individual was fit to continue as a member. The availability of non-member diploma assessments arose from the Awards regulations.

Education and training review

79. The Board was updated on the review of legal education and training initiated by the Legal Services Board and being undertaken by the

SRA, BSB and IPS.

80. An invitation to tender document was issued in January 2011 and 16 organisations had submitted expressions of interest by 7 February 2011. Organisations would have over a month to tender and a shortlist of applicants would be interviewed on 15 April 2011. Mr Watson would be involved in the short-listing and evaluation process and Mr Middleton would be involved in the interview process.

IW/AM

81. Mr Middleton was the IPS representative on the Education and Training Reference Group. The selection process for a Chairman of the Reference Group was yet to be established. The appointment needed to be at a senior level and there were concerns that an open appointment process would not attract a suitably eminent person.

ITEM 10 BUSINESS PLAN AND STRATEGY 2011

Meeting Schedule 2011

82. The Board noted the meeting schedule for 2011 meetings of the Board which listed the issues that would be discussed at meetings.

83. IPS' annual report would be approved at its May meeting this year. The Board agreed that its approval of annual accounts should be agreed at a meeting early in the year. Meetings in 2012 would be scheduled taking account of the Board's approval of the annual report.

GB

84. The Board agreed that a Special Board meeting would be arranged for 9 March 2011 to agree the Financial Statement to the end of 2010 and a letter of representation. Members present at the meeting on 9 March 2011 would need to agree the financial statement and the ordinary resolution appointing the auditors and making provision for their remuneration.

ALL

Business Plan 2011

85. The Board noted the updated business plan. Activity that was complete had been removed and the business plan addressed work that needed to be undertaken in 2011.

86. The business plan would be reviewed and redrafted after the meeting, to take account of the new strategic aims of IPS and any new workstreams that may be identified by the Board when it concluded its strategy review.

BB

Review of Board member portfolio areas

87. The Board considered proposed revisions to portfolio areas. The redrafted portfolio areas attempted to balance responsibilities within the portfolios.

88. The following revisions were made:

- The CPD responsibility had been moved from the Registration and Accreditation to the Fitness to Practise portfolio.
- The immigration advisors scheme would be moved from the Registration and Accreditation to the Fitness to Practise portfolio.
- The registration responsibilities in relation to fitness to enter registers had been included in both the Fitness to Practise portfolio and Registration and Accreditation.
- The Registration and Accreditation portfolio had been extended to include quality assurance of advocacy.
- The licensing application had been included in the Fitness to Practise, Governance and Consumer Engagement portfolios.
- The Education portfolio had been extended to include participation in the review of legal education.
- The Communication and Partnerships portfolio was rewritten to cover Stakeholder Engagement, which would include consumer engagement.

Strategy Review

89. The Board considered a draft strategy for 2011 to 2014 and agreed the following adjustments:

- The Statement of Intent would be amended to read 'We will maintain and develop risk based regulation to promote and secure proper standards of conduct and behaviour...'
- The fifth overriding principle would be amended to read 'Act in accordance with the statutory objectives and regulatory principles set down in legislation.'
- The second bullet point in paragraph 3 of the Key Aims would be amended to read 'appropriate regulatory frameworks are put in place to support applications for new rights for ILEX members and Fellows.'
- Key Objectives would be replaced with Key Developments.
- Within the Key Objectives, 'Work-based learning project' would be replaced with 'To complete the review of work-based learning and have proposals in place for consultation and submission to the LSB.'
- Within the Key Objectives, 'Joint Advocacy Group' would be replaced with 'To make a full contribution to the Joint Advocacy Group to meet the objectives set by the LSB.'
- Within the Key Objectives, 'Education and training review' would be replaced with 'To participate in the SRA led education and training review, ensuring consideration of ILEX/IPS provisions.'
- Within the Key Objectives, 'Additional rights applications' would

- Within the Key Objectives 'Strategy development to meet the statement of intent' would be removed. **HD**

90. The Board agreed that wording to describe measurable outcomes of the following key objectives, would be provided to Ms Daniels by email:

- Continuing Professional Development
- Alternative Business Structures
- Immigration Scheme

SB/IW/BB

91. The strategy would be shared, as 'work in progress', with ILEX Council at its strategy meeting in March 2011. **AK**

Regulation project

92. The Board discussed the project to consolidate legal regulation as a major aspect of the strategy review. In discussion the Board also considered the small regulators initiative launched by the LSB and considered a paper which outlined the risks and benefits of the initiative.

93. Dr Nick Smedley, who was preparing a report for the LSB on the smaller regulators, had indicated that there were three broad models that would be addressed in his report:

- Allowing smaller regulators to continue independently, without decreasing the burden of LSB requirements.
- Encouraging sharing of regulatory activities amongst smaller regulators.
- Developing an overarching regulator for the smaller regulators along the lines of the Health Professions Council.

94. The Board favoured the third option and recognised that IPS and the Council for Licensed Conveyancers (CLC) were significant in the development, as they were the two most established 'smaller' regulators. Arrangements were being made for an informal discussion with the Chair and CEO of the CLC.

AK/IW

95. If the third option were followed, membership/representative bodies would continue their functions but would delegate regulatory functions to the overarching regulator.

96. The Board agreed that exploratory work would be undertaken to consider whether IPS could be in a position to develop into an overarching regulator.

IW/BB

97. The Chair reported on his meeting with John Wotton, Vice President of the Law Society, in which they had discussed the training contract

exemption, ILEX's Royal Charter application and IPS' ABS application.

ITEM 11 DATE OF NEXT MEETING - 6 MAY 2011

98. The next meeting was scheduled for 6 May 2011 and would commence at 9:30am.

ITEM 12 REPORTS AND INFORMATION ITEMS

99. Board Members were provided with a JAG progress report and schedules of current and closed consultations.

**ALAN KERSHAW
CHAIRMAN**