



**MINUTES OF THE MEETING OF THE BOARD
OF DIRECTORS OF ILEX PROFESSIONAL STANDARDS LIMITED
HELD ON 30 SEPTEMBER 2010 AT KEMPSTON MANOR,
KEMPSTON, BEDFORD, MK42 7AB**

Present: Mr. Alan Kershaw (Chair), Mrs. Sandra Barton, 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, attending as ILEX President, to the meeting.

ITEM 2 DECLARATIONS OF INTEREST

3. There were no declarations of interest.

ITEM 3 MINUTES OF MEETING HELD ON 22 JULY 2010

4. The Board approved the Minutes of its meeting held on 22 July 2010 as a true record of the meeting for publication on the IPS website and report to the ILEX Council. Mr Watson informed the Board that the promised undertaking from Dr Smedley was on its way. **GB/LN**
5. The Board discussed the action points from the previous meeting in particular Equality and Diversity training and director training. The Board agreed that the office would contact the ILEX HR Manager to resend details of the online Equality and Diversity training course. The Board also agreed that the office would arrange director training for 2011. **GB**
IW/GB
6. Board Members discussed the decision made in July that the status of Directors would remain as 'self employed' pending further advice. Board Members requested a letter from ILEX indemnifying them from tax and national insurance liability, if they were deemed to be

employees.

IW

ITEM 4 GOVERNANCE

Financial Statement to end of August 2010

7. The Board was provided with Financial Statements showing expenditure to end August 2010. There had been no significant change since the Financial Statement to end June 2010.

Draft Budget 2011

8. The Board considered the draft budget for 2011 and noted that it had been put to the ILEX Council at its meeting on 24 September 2010. Budgets for the licensing and rights schemes applications were included based on preliminary costings.
9. Board members were informed that Investigating & Complaints appeared twice as IPS implements new codes. However, there was no budget shown against the old codes.
10. The budget was approved and would be presented to ILEX Council in November 2010 for approval.
11. The Board discussed staff costs and resources. The office had three relatively new members of staff. The senior staff had to spend time on their development before recruiting new staff. It was recognised another staff member would need to be recruited by 2012 if the litigation and probate applications were approved.
12. Discussions about future staffing led the Board to consider whether IPS should budget on a one year, three years and five years basis. It was agreed that project budgeting must be realistic. The Board wished the idea to be presented to ILEX Council in November 2010. **IW**
13. The Board decided that an outline of factors that would affect the IPS budget in 2012 would be prepared for its strategy meeting in December 2010. The work would be linked to the overall strategy and business plan. **BB**

Internal Governance Rules Report

14. The Board considered the LSB's request for further information relating to the Internal Governance Rules submission; and ILEX/IPS' response providing that information.
15. It was noted that there may need to be some amendments to the wording of the ILEX/IPS protocols and service level agreements relating to the way in which disputes would be handled.

Practice Certificate Rules

16. The Board noted the application made by ILEX to the LSB to approve the funding of regulation through practising certificate fees. The Board received the LSB's response to the submission.

17. ILEX would respond to the issues raised by the LSB.

Amendments to the Board Code of Conduct – Notice of Resignation

18. The Board considered draft amendments to the Board Code of Conduct in relation to conflicts of interest and resignation.

19. The Board discussed how the draft could be amended. It was suggested that within 'Handling conflicts of interest' section the fifth paragraph could read 'I will inform the Chair, as soon as is practicable, if I am considering or actively seeking other work or roles which may either have a perceived potential conflict of interest...'. This would minimise the current subjective element. The Board acknowledged that members could not be restrained from seeking other opportunities.

20. The Board also discussed the words used to differentiate pecuniary from non-pecuniary interests. These would be reviewed. The Board considered the inclusion of an obligation on Members to either return confidential papers to the office or to sign a declaration at their exit interview declaring that they had personally destroyed the documents. It was agreed that there would be a time limit within which papers must be destroyed or returned.

21. A redraft would be agreed by the Board by email. The Code would next be reviewed in 2011.

HD/ALL

Annual Report

22. The Board confirmed approval of the IPS Annual Report.

ITEM 5 RISK REGISTER

23. The Board considered a report providing an updated copy of the risk register. The report outlined the areas where the risk register had been reviewed and updated.

Risk 7 – resources

24. The Board was informed that demands of the LSB and Legal Ombudsman impacted upon other responsibilities within the team. The Board also noted that implementation of new practice rights schemes in 2011, and the licensing and conveyancing applications later, would have an impact on workloads necessitating a further

member of staff.

25. The Board agreed that this risk must be monitored. An additional staff member would be budgeted for in the 2012 budgets. **BB**

Risk 9 – judicial review / legal claims

26. The Board noted that the effectiveness rating of 'Legal Claims' had been increased from low to medium in light of the ongoing case listed for a High Court hearing in November 2010.
27. The office was taking appropriate advice and Counsel was confident he could defend the matter. The Board showed concern at the risk that a finding by the court in the member's favour could call into question all decisions made by the Appeal Tribunal and Disciplinary Tribunal constituted under the rules which were in force between June 2002 and 4 January 2010. It was noted that such a finding would not place a requirement on IPS to call in decisions made prior to 4 January 2010. However, when any such finding became public knowledge IPS could be faced with applications to re-hear a large number of cases. The risk would be kept under review. **BB**

Risk 10 – release of confidential information

28. The risk had been increased to reflect the fact that two prosecution cases, included as part of the application for litigation and advocacy rights for CPS Associate Prosecutors, had been actual cases. The LSB had asked for an outline of the policies and procedures IPS had in place to prevent such disclosure.

Risk 24 – service complaints

29. A new risk was added to the risk register relating to service complaints cases not being concluded by 6 April 2011 and being referred to the Legal Services Ombudsman (OLSO) at a charge.
30. The Board was informed that there were only three or four cases that related to the service provided by a Fellow and which would be within OLSO's remit if not concluded. The office was confident that the cases would be concluded before April 2011.

Risk 31 – litigation and probate applications

31. The effectiveness rating had been increased to medium to identify that the area required regular attention, in particular in relation to publicity about the proposals contained in the probate applications. There was a risk that the publicity could have an impact on the application for probate rights.
32. The LSB could require further information to assure them of IPS'

competence and procedures to regulate independent practitioners and practices. There was a risk that the LSB would be unsatisfied with IPS' further responses and the application would be unsuccessful. The rating for the likelihood of the risk remained low, but required regular monitoring.

33. The LSB had indicated that IPS could be suffering from being the first Approved Regulator to seek designation to award additional reserved legal activities to members under the Legal Services Act 2007.

34. Ms. Daniels asked for an outline of the probate rights application. She was due to meet Diane Hayter on other matters and may have an opportunity to mention IPS proposals.

BB

Risk 38 – centre risk assessment

35. A risk had been added after the July 2010 Board meeting to include a risk relating to centres delivering the ILEX qualifications. The Awards team were developing centre risk assessment procedures. IPS needed to ensure that the procedures were sufficiently robust to address the matter.

36. The Board also agreed that the risk of the absence of a portfolio holder (Communications and Partnerships) would be included in 'Generic risks'.

BB

37. The Board acknowledged that it would be reviewing its strategy and business plan in December 2010. The Chair suggested an ILEX/IPS joint strategy session in the future. The idea would need to be agreed with Council; and Mr McGrady agreed to raise it with them.

IW

38. Board Members were reminded to keep alert to issues that could affect the risk register in their respective portfolios; and to notify Mr Essat of these as a matter of routine. Board Members would be sent the risk register electronically.

**ALL
BB**

ITEM 6 REGISTRATION AND ACCREDITATION

39. The Board received a report on the progress of work to develop revised qualifying employment arrangements; the applications for new rights and Alternative Business Structures; other applications to be made to the LSB which affected the admissions of members into Fellowship; new practice rights; and the JAG consultation on quality assurance of criminal advocacy.

Admissions and Licensing Working Party – Work Based Learning Project

40. The Board noted the minutes of the Admissions and Licensing Working Party meeting on 22 July 2010. The working party would review responses to the present consultation at its next meeting.

Application for New Rights

41. The Board was informed that the applications for Litigation Rights in respect of Civil and Family proceedings and for Probate Rights had been submitted to the LSB and accepted with effect from 7 September 2010. IPS had received a request for further information about its capability to regulate practices. The LSB's judgement of this would have a considerable impact upon the applications. IPS would be responding to the LSB.

IW/BB

42. Submission of the application for Advocacy and Litigation Rights for Associate Prosecutor members of ILEX had been made and accepted by the LSB with effect from 21 July 2010. The Conveyancing project had been outsourced and a consultation on the application would be published within the next two weeks.

43. The consultation on Criminal Litigation Rights would close in October 2010 and the responses would be analysed. Arguments in support of the application were currently being written up.

Alternative Business Structures

44. The ABS Working Party had met on 10 September 2010. Jonathan Bracken of Bircham Dyson Bell would be producing draft documents for consideration at the next meeting of the working party.

45. The Board approved the working party's proposal not to replace Dr Smedley, a former member of the working party.

46. The office were attending SRA meetings focused on developing a Memorandum of Understanding (MOU) dealing with regulatory conflict. The SRA aimed to produce a finalised MOU by December 2010.

47. The Board agreed that the ABS Working Party would review drafts of the MOU with a view to a finalised MOU being available for the Board by December 2010. This would give the Board the opportunity to approve the MOU at its next Board meeting. The Chair would attend the sign off ceremony.

SB/HD/AK

AK

Rule changes regarding advocacy rights and qualifying employment committees.

48. The Board was reminded that under the Legal Services Act 2007 Approved Regulators were required to separate their regulatory from their representative functions by October 2010. The Admissions and Licensing Working Party had previously identified that the functions of the Advocacy Rights Committee and Qualifying Employment Committee should be transferred to a new Admissions and Licensing

Committee. Applications submitted to the LSB seeking approval to rule changes had been approved on 26 August 2010.

49. An application had been made to the LSB seeking approval of IPS' proposal that decisions could be made by the office under delegation from the new committee. The application had been made under the expedited procedure. However, the LSB had taken the view that such a change was of a level of significance that required full consideration; and therefore a consultation would have to be prepared on the proposal. The Board noted the position.

Passporting Associates to Fellowship

50. ILEX had proposed that members who registered as Associates prior to 1983 should be upgraded to Fellows if they had the evidence to support such an application.
51. An application form had been drafted and sent to Associates taking part in a pilot exercise. The Board was provided with a copy of the guidance notes that were sent with the application form.
52. The Board considered the impact of the proposals upon admission to Fellowship, at which point a member became an authorised person under the Legal Services Act. The Board noted that the risk to the public was limited as Associates were already members of ILEX and subject to the ILEX Code of Conduct.
53. The scheme would apply exclusively to those members who had registered as Associates prior to 1983. The Associates would be invited to apply for Fellowship, would be required to pay an application fee and would benefit from the opportunity of having access to partnerships and judicial appointments. The scheme was intended also to reward their commitment to ILEX.
54. Board Members took the view that the process must be robust and proportionate. The Board agreed that Associates' lack of a level 6 qualification was an important factor that needed to be balanced against the extensive experience they had gained in practice since 1983.
55. The scheme would be the responsibility of the Admissions and Licensing Working Party, in the first instance, and would be considered by them at their next meeting on 8 November 2010. Thereafter it would require approval by the LSB, for which an application would have to be made.

Continuing Professional Development

56. The Board received a report proposing some changes to the 2010 regulations. The changes were necessary to keep the regulations up-

to-date for 2011 and to improve regulation and the way in which it was managed in the future.

57. The Board agreed that the following changes would be made to the 2010 CPD regulations:

- the details about the type of activity which may constitute CPD would be moved into guidance;
- the current arrangements by which members can request extensions of 6 months in which to complete their CPD would be discontinued;
- the rules should provide for discretion to be exercised by the office to accept applications made before the end of 2011 for extensions of time to complete CPD.

58. The Board decided that it would not embark on a full review of CPD until at least the second quarter of 2011, at which point it would be made clear within the regulations that members were required to achieve CPD regardless of the field in which they worked. This would illustrate that members who worked in voluntary roles or in non-legal fields were also required to achieve CPD. The review would include defining the purpose of CPD and establishing principles to govern our approach to it. **IW**

59. A full review of CPD would require LSB approval and due to the time taken by the LSB to approve applications it was estimated that a review in 2011 could probably not be implemented before 2013. The Board hoped that the short term changes that would be made to the 2010 CPD regulations would be approved by the LSB expeditiously.

JAG Advocacy Quality Assurance Consultation

60. Board Members were provided with a copy of the joint consultation between IPS, the BSB and the SRA regarding the development of a scheme of quality assurance for advocacy in criminal proceedings. The Board also noted correspondence from the LSB in which the LSB identified some of the issues which affected the scheme and expressed particular concern about its proposed management structure.

ITEM 7 COMMUNICATIONS AND PARTNERSHIP

61. The Board received a report bringing to their attention correspondence in relation to joint working with the ALCD and IPReg and a report of a workshop on consumer engagement organised by the Legal Services Consumer Panel.

62. The Board discussed the possibility of IPS working jointly with ALCD in relation to conduct and disciplinary matters. The Board was informed that progress may be made in this area as the new CEO of ALCD had approached IPS to discuss regulatory issues. The Board

agreed that the character and ethos of IPS should not change as a result of taking on regulatory work for other smaller regulators.

63. The Board was asked to consider the report of the consumer engagement workshop. It decided that consumer engagement was an area that could be taken on by the new Board Member if that was an area of their expertise. The Board recognised that IPS needed to do more to engage with consumers; and would discuss this further at the strategy meeting in December.

ALL

ITEM 8 FITNESS TO PRACTISE

64. The Board considered a report dealing with proposals for appraisal of Conduct and Disciplinary Panel members; guidance to members, under the IPS Code of Conduct on complaints handling, required by the LSB; actions undertaken by IPS in relation to the requirements regarding first-tier complaints handling in law firms; and a proposed MOU with the Legal Ombudsman.

Appraisal of conduct and disciplinary panel members

65. The Board acknowledged that in the past there had been no formal appraisal of the Investigating and Disciplinary Panel members. IPS needed assurance that the Fellows and lay members who were appointed had and were exercising the necessary practical skills.
66. The Board was presented with four options of appraisal schemes to consider: self assessment, 360 degree reviews, Chair reports and observation.
67. The Board indicated that it did not want a system of appraisals taking place after each meeting as such a system was not good for relationships amongst panel members. The Board agreed that the panellists should complete a self assessment appraisal at the end of 2010.
68. The Board agreed that, during 2011 and again in 2012, all panellists would be observed at least once. The aim of the observations would be to see how the panellists contribute and work as a team.
69. The Board agreed that the format of the self assessment appraisal form, the observation form and criteria would be agreed by the Chair and Fitness to Practise portfolio holder. The Chair and portfolio holder would also carry out the observations. Once the arrangements had been agreed, all panellists would be informed of the process, before any formal observations took place.
70. The Board agreed that the LSB should be informed of the work being carried out in this area; and that members should be informed by way of an article in the Legal Executive Journal that panel members were

SB/AK

IW/BB

suitably trained and their performance was regularly assessed.

71. The Board decided that a joint one day training event for all panel members would take place in the spring of each year and that the training event would be scheduled at the same time as meeting and hearing dates for the year were set. The training event would be arranged by the office. **BB/LN**

Code of Conduct Guidance on Complaints Handling

72. IPS needed to meet the LSB requirements of issuing guidance to ILEX members on the information their clients must receive about internal complaints handling procedures and the rights they had to make a complaint to the Legal Ombudsman. The Board considered draft guidance which would be provided to the LSB and considered by them under an expedited process.

73. IPS would choose the most efficient and effective way to comply with the LSB requirements. The Board was not happy with a guidance document on complaints handling that affected the presentation of the current Code of Conduct and guidance. The Board was also conscious that the guidance given to ILEX members could put members in conflict with their employers.

74. The Board approved the guidance subject to comments on content and language. The guidance would support the current guidance to principle 5 in the Code of Conduct and would be posted on the IPS website and brought to the attention of members through the Legal Executive Journal. **IW/BB/LN**

First Tier Complaints Handling

75. The Board noted the work that IPS had been doing to meet the requirements set by the LSB under section 112(2) of the Legal Services Act, which imposed obligations on Approved Regulators to ensure that authorised practitioners had complaints handling arrangements in place.

76. The Board was informed of the work that remained to be done to comply with the LSB's requirements. IPS would send information to ILEX members on first-tier complaints handling requirements and monitor compliance with it. The office would be required to monitor queries from ILEX members when the information and guidance on complaints handling was published. **BB
LN/DB/GB**

Memorandum of Understanding with the Legal Ombudsman

77. The Board was provided with a final version of the Memorandum of Understanding (MOU) between IPS and LeO. The Board noted that the Legal Ombudsman (LeO) was committed to using integrated IT

systems; and that the development of ILEX's membership system to meet LeO's aspirations probably could not be met until at least the second quarter of 2011.

78. The Board approved the final version of the MOU. The Board specified that IPS would comply strictly with its data protection requirements. Furthermore ILEX members should be kept aware of what ILEX/IPS was doing with their data.

ITEM 9 EDUCATION

79. The Board considered a report prepared by the Awards department providing an update on the issues presented to them at the previous meeting on 22 July 2010.

80. There would be a review of the June 2010 assessment session on 28 September 2010 and a report following the format of the January 2010 report would be presented at the next IPS Board meeting. Furthermore, allegations of malpractice for the June 2010 Level 3 and Level 6 assessment sessions were being investigated.

81. The Board was informed that a project plan had been implemented and a revision of the Centre Accreditation Handbook 2010-11 completed. Furthermore the risk based standards for all accredited centres, including a risk register, was being finalised.

82. The Board was informed that October 2010 was an optimistic date for the new risk based monitoring of centres to be implemented. The monitoring realistically could be implemented in January 2011. Board members were asked to indicate their interest in attending inspection visits by email. **ALL**

83. The Board was informed of the position regarding Kenyan centres. No Kenyan centres were at present accredited by ILEX as none had been accredited by the Kenyan government.

ITEM 10 DATE OF NEXT MEETING - 13 & 14 DECEMBER 2010

84. The Board agreed that the meeting in December 2010 review the IPS strategy, business plan, work streams and look into future activities.

85. Board members were asked to provide ideas on the content of the meeting by 12 November 2010. **ALL**

ITEM 11 REPORTS AND INFORMATION ITEMS

86. Board members were provided with a schedule of current consultations and printed copies of LSB consultations; and were asked to provide their comments by email by the date specified in the schedule. **ALL**

**ALAN KERSHAW
CHAIRMAN**