



## **MEMORANDUM OF UNDERSTANDING**

**Between**

**The Crown Prosecution Service,  
The Institute of Legal Executives**

**and**

**ILEX Professional Standards Ltd**

2011

# **Memorandum of Understanding between the Crown Prosecution Service, The Institute of Legal Executives and ILEX Professional Standards Ltd**

## **Purpose of document**

1. This Memorandum of Understanding between the Crown Prosecution Service (CPS), the Institute of Legal Executives (ILEX) and ILEX Professional Standards Ltd (IPS) sets out arrangements for the regulation of Associate Prosecutors.

## **Parties to the Memorandum**

2. The CPS, ILEX and IPS recognise and respect their differing statutory and professional duties, operational priorities, constraints and confidentiality requirements. However, all commit themselves to ensuring professional cooperation and to delivery of a system that facilitates the exchange of information for their mutual benefit and in the wider public interest.

## **The Crown Prosecution Service**

3. The CPS was created by the Prosecution of Offences Act 1985 and is the Government Department responsible for determining the charge and prosecuting criminal cases investigated by the police in England and Wales.
4. The head of the Crown Prosecution Service is the Director of Public Prosecutions. The Director is superintended by the Attorney General, who is responsible to Parliament for the Service.
5. The CPS has 42 geographical Areas in England and Wales, divided into 15 regional groups. These Areas correspond with the boundaries

of 43 police forces in England and Wales with CPS London covering the operational boundaries of both City of London and Metropolitan Police Forces. Each Area is headed by a Chief Crown Prosecutor (CCP) who is responsible for prosecutions within the Area.

6. The CPS is the principal prosecuting authority in England and Wales and is responsible for determining the charge in all but minor cases, advising the police during the early stages of an investigation, reviewing cases submitted by the police for prosecution, preparing cases for court and the presenting of those cases at court.

### **The Institute of Legal Executives**

7. ILEX is the governing body for Legal Executives and trainee Legal Executives in England and Wales. It is a company limited by guarantee. ILEX is an approved regulator under the Legal Services Act 2007 and a qualifying regulator under the Immigration and Asylum Act 1999.

### **ILEX Professional Standards Ltd**

8. ILEX Professional Standards Ltd (IPS) was established by ILEX to regulate the professional conduct of ILEX members in accordance with the Legal Services Act 2007. Its Objects are contained in its Memorandum of Association. IPS is a wholly owned subsidiary company of ILEX. It oversees the education, qualification and practice standards of Legal Executives and other ILEX members and promotes and secures appropriate standards of professional and personal conduct.



## **Associate Prosecutors - General**

9. Section 7A of the Prosecution of Offences Act 1985 (the Act) allows the Director of Public Prosecutions to designate suitably trained lay members of staff, known as Associate Prosecutors, to review cases and appear before the magistrates' courts to prosecute a defined range of proceedings. All Associate Prosecutors so designated are members of ILEX and subject to professional regulation through IPS.
10. Working under the supervision of experienced Crown Prosecutors, who provide guidance and assistance, Associate Prosecutors divide their time between reviewing and presenting cases at the local magistrates' courts.
11. The role of the Associate Prosecutor is controlled internally by way of Instructions, issued by the Director of Public Prosecution, ensuring that they conduct cases only which they have been trained to do.
12. An Associate Prosecutor must complete 16 hours of continuing professional development (CPD) training per year and stay up to date with changes in the law and legal practice.
13. Associate Prosecutors are bound by the Code for Crown Prosecutors and assessed by Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI) against the CPS National Standards of Advocacy.

## **Associate Prosecutor Registration**

14. All Associate Prosecutors will be subject to regulation by ILEX after 1 May 2011 in accordance with the requirement set out at section 7A of the Act, as amended by the Criminal Justice and Immigration Act 2008 and the requirements of the Legal Services Act 2007. From 1 May

2011, no lay employee of the CPS designated under Section 7A of the Act shall be permitted to exercise the powers granted under the Act without being registered by ILEX in the Associate Prosecutor grade.

15. Associate Prosecutors will be subject to ILEX and IPS Rules and Regulations governing registration with ILEX. ILEX will advise the CPS in the event that ILEX membership is removed from any Associate Prosecutor for whatever reason.
16. The CPS will facilitate inspections and reviews of Associate Prosecutors which IPS need to undertake to regulate Associate Prosecutors effectively.
17. Registration and membership arrangements are set out in Annex A

#### **Review of the CPS Associate Prosecutor training programme**

18. The training scheme for Associate Prosecutors will remain consistent with the course outcomes and assessment criteria set out in the Associate Prosecutor Rights of Audience and Litigation Certification Rules. IPS, or persons appointed by IPS, will periodically review the CPS Associate Prosecutor training programme and assessment material for the purpose of ensuring it does meet the criteria in the Associate Prosecutor Rights of Audience and Litigation Certification rules.
19. The CPS will notify IPS of any proposals to change the Associate Prosecutor training programme or to develop new training modules for Associate Prosecutors. IPS will review such material to determine whether the changes are consistent with the criteria set out in the Associate Prosecutor Rights of Audience and Litigation Certification Rules.

## **ILEX Conduct Rules**

20. All persons registered as Associate Prosecutors with ILEX will be bound by and adhere to the ILEX Code of Conduct and supporting guides.
21. Rules governing professional conduct and discipline are set out in the IPS Investigation, Disciplinary and Appeals Rules (IDAR). The IDAR establish a Professional Conduct Panel to consider declarations of prior conduct made by members and prospective members, complaints against members, potential breaches of ILEX Rules and possible misconduct by members.
22. Where the Professional Conduct Panel decides any complaint or allegation of misconduct is sufficiently serious, it may refer it to the ILEX Disciplinary Tribunal. Where the Professional Conduct Panel decides that a complaint or allegation is proved but is not sufficiently serious to require referral to the Disciplinary Tribunal it may impose conditions on a member in respect of their conduct or in regard to their employment; seek undertakings from a member as to their future conduct, reprimand or warn the member; or decide to take no further action. In cases brought before the Disciplinary Tribunal, the Tribunal has power to exclude a person from membership or to warn or reprimand them, impose conditions on a member in respect of their conduct or in regard to their employment and, in addition, may fine a member and/or make an order for costs against them.
23. Appeals against decisions of the Professional Conduct Panel or the ILEX Disciplinary Tribunal will be dealt with in accordance with the IDAR.

## **Complaints made to IPS about an Associate Prosecutor**

24. The CPS acknowledges that IPS has the power to investigate complaints made against Associate Prosecutors in respect of an alleged breach of the duties and obligations set out in the ILEX Code of Conduct and supporting guides. IPS will deal with conduct matters in accordance with the IDAR.
25. IPS will inform the CPS of complaints received against Associate Prosecutors. IPS will provide the CPS with:
  - The name of the Associate Prosecutor concerned;
  - The date the complaint was received by IPS;
  - The details of the complaint;
  - The proposed timetable for investigation of the complaint; and
  - The current status of the investigation.
26. Where the investigator appointed by IPS to investigate the complaint requires clarification of CPS policy or procedure, the investigator shall contact the relevant Chief Crown Prosecutor in writing.
27. IPS will notify the Director of Public Prosecutions and the relevant Chief Crown Prosecutor of the outcome of the IPS investigation within 7 days of the decision being made.

## **Complaints made to the CPS about an Associate Prosecutor**

28. A complaint made to the CPS about an Associate Prosecutor, or an Associate Prosecutor whose conduct appears to fall short of the expected standards, will be dealt with in accordance with the CPS Disciplinary Policy.

29. Where a complaint is made against an Associate Prosecutor, the relevant Chief Crown Prosecutor, or other nominated person, will notify IPS of the complaint if it relates to the duties and obligations of the Associate Prosecutor under the ILEX Code of Conduct and supporting guides.
30. Where the Chief Crown Prosecutor notifies IPS of a complaint or conduct issue, the CPS will provide IPS with:
- The name of the Associate Prosecutor concerned;
  - The date the complaint was received by the CPS;
  - The details of the complaint;
  - The proposed timetable for investigation of the complaint; and
  - The current status of the investigation.
31. The CPS will notify IPS of the outcome of the CPS investigation where IPS has previously been informed of the complaint or conduct issue. The CPS will provide IPS with:
- a summary of the allegations and whether each allegation was proved; and
  - action taken by the CPS to deal with the matter if proved e.g. verbal warning, written warning, dismissal.
32. Where IPS requires further information on the allegation or the outcome of the CPS investigation, they will write to the relevant Chief Crown Prosecutor. Where agreement cannot be reached between the CPS and IPS on the information to be provided by the CPS to IPS in respect of internal disciplinary proceedings the matter will be escalated to the Chief Executive of the CPS and the Chief Executive of IPS.

## **Updates**

33. Where IPS investigates a complaint or conduct issue referred to it by the CPS, or the CPS investigates a case referred to it by IPS, the investigating body shall provide regular updates on the case at intervals of no more than 28 days.

## **Order of Investigation**

34. Under normal circumstances IPS will investigate all conduct complaints made to it before the CPS and the CPS will investigate all complaints and conduct issues raised with it before IPS and complaints will not be pursued by IPS and CPS in parallel. However, this may be reviewed on a case by case basis. Where agreement cannot be reached between the CPS and IPS on the order in which the investigation should take place the matter will be escalated to the Chief Executive of the CPS and the Chief Executive of IPS.

## **Exchange of Information**

35. It is agreed that such management information relating to Associate Prosecutors as is necessary to facilitate their effective regulation by IPS shall be shared between IPS, ILEX and CPS.
36. Full details of the information to be shared and exchanged are set out in Annex B.

## **Liaison Meeting**

37. The CPS, IPS and ILEX will meet usually every six months to discuss the issues covered by this Memorandum of Understanding including, but not limited to:

- Complaints or disciplinary action taken against Associate Prosecutors.
- The Associate Prosecutor training scheme.
- Registration, certification and information exchange procedures.
- Any other information required by IPS to carry out its regulatory functions.

**Review**

38. This Memorandum of Understanding will be subject to review 12 months from the date on which it is executed, or earlier if requested by either party.
39. This document can only be subject to change with the agreement of the CPS, ILEX and IPS.

**Signatories:**

40. The signatories to this memorandum are:

**SIGNED** by ]  
 duly authorised for and on behalf ]  
 of the Crown Prosecution Service ]

**The Director of Public  
 Prosecutions**

Date:



**SIGNED** by ]  
duly authorised for and on behalf ]  
of the Institute of Legal Executives ]

**The President of the Institute of  
Legal Executives**

Date:

**SIGNED** by ]  
duly authorised for and on behalf ]  
of ILEX Professional Standards Ltd ]

**The Chairman of the Board of  
ILEX Professional Standards Ltd**

Date:

## Registration with ILEX

### Applying for Registration

1. A person shall apply to become registered as an Associate Prosecutor with ILEX on successful completion of the CPS Associate Prosecutor training programme. Each form for registration must be countersigned by the relevant Chief Crown Prosecutor and returned to ILEX within the agreed timescale.
2. ILEX shall notify the Associate Prosecutor and the CPS in writing of the outcome of each application for registration within 14 days of the application being received.
3. ILEX will issue an Associate Prosecutor's Certificate to each Associate Prosecutor member to the end of the certification year.
4. If an application for registration as an Associate Prosecutor with ILEX is refused, ILEX will notify the Director of Public Prosecutions, the applicant and the relevant Chief Crown Prosecutor in writing as soon as practicable, but no more than 7 days after the decision has been made, giving reasons for the decision. No CPS Area will deploy a person as an Associate Prosecutor whose application for registration as an Associate Prosecutor has been refused.

### Practice Fees

5. The CPS will pay ILEX the Practice Certificate fee of each new Associate Prosecutor member. Practice Certificate fees will be agreed between the CPS and ILEX annually.

6. On receipt of a new application for registration as an Associate Prosecutor with ILEX, ILEX shall invoice the CPS Area the cost of the practice certificate fee to the end of the certification year, unless otherwise agreed.
7. Where an Associate Prosecutor is already registered in a grade of membership with ILEX, the CPS will meet the cost of Associate Prosecutor registration and the individual Associate Prosecutor will be responsible for the payment of the balance of the membership fee in respect of the other grade of membership. At the time of this Memorandum of Understanding the grades of membership are Fellow, Graduate, Associate, Affiliate and Student member.

### **Renewal of Certification**

8. No later than 30 November of each year, practice certificate fee renewal forms will be sent by ILEX to each Associate Prosecutor to complete.
9. ILEX will invoice the CPS the practice certificate fees payable for each completed renewal form received.
10. ILEX will issue an Associate Prosecutor's Certificate to each Associate Prosecutor in respect of the new practice year.
11. The CPS is under no obligation to pay practice fees for CPS employees who are not employed as Associate Prosecutors or who are no longer performing the Associate Prosecutor role.
12. Where an Associate Prosecutor is already registered in a grade of membership with ILEX, paragraph 7 above will apply.

## Cessation of Registration

13. An Associate Prosecutor who ceases to act or be deployed as an Associate Prosecutor may continue in membership with ILEX until the end of the subscription year. If such a person ceases to work as an Associate Prosecutor and the practice fees are not paid by the CPS they may continue in membership of ILEX in any other grade subject to meeting the requirements for that grade and provided their membership or practice certificate fees are up to date.
14. An Associate Prosecutor who resigns from membership of ILEX will cease to be eligible to be deployed as an Associate Prosecutor and may not resume acting as an Associate Prosecutor until he has been reinstated as an Associate Prosecutor member of ILEX.

## Exchange of information

1. To facilitate the effective regulation of Associate Prosecutors and the review of the training of Associate Prosecutors the CPS will provide to IPS by way of a periodic report (initially annually):

- a brief summary of each required training course
- the level of candidate performance on the required training course
- the results of any training assessments where applicable
- any recommendations for alteration to the course structure or materials and any developments since the last periodic report
- a summary of the advocacy quality assessments and other quality assurance reports, including the HMCPSI reports, conducted in relation to Associate Prosecutors
- the instructions to Associate Prosecutors issued under S.7A Prosecution of Offences Act 1985 and the guidance issued by the DPP to Chief Crown Prosecutors on the deployment of Associate Prosecutors
- Details of the CPS staff disciplinary procedure currently in force.
- Details of Continuing Professional Development undertaken by Associate Prosecutors.
- Any other information required by IPS to carry out its regulatory function.

2. To facilitate the review of the course materials and assessment criteria and inspection of courses required for the training of Associate Prosecutors the CPS will provide to IPS:

- details of the training that is required to be completed by Associate Prosecutors including the training materials, the candidate selection process and any assessment criteria applied.
  - a selection of recorded assessments.
3. The CPS will notify IPS of any proposal to change the qualification scheme, the rights to be exercised by Associate Prosecutors or instructions to Associate Prosecutors under s7A Prosecution of Offences Act, as amended, and guidance of the Director of Public Prosecutions in accordance with paragraph 17 of this Memorandum.
4. ILEX and IPS will inform the CPS of the following when reasonably requested but primarily on an annual basis:
- The number of Associate Prosecutor members of ILEX;
  - The number of Associate Prosecutor members also registered in other grades of membership of ILEX;
  - The number of complaints received directly by IPS regarding Associate Prosecutor members;
  - The outcomes of the complaints;
  - The time taken to conclude complaints received directly by IPS;
  - The time taken to conclude complaints referred to IPS by the CPS; and
  - Details of any measures taken or actions required arising from the complaints and disciplinary process.
5. The CPS will inform IPS of the following when reasonably requested but primarily on an annual basis:
- The number of complaints received by the CPS regarding Associate Prosecutors;
  - The outcomes of the complaints;
  - The time taken to conclude complaints investigated by the CPS;

- The time taken to conclude complaints referred to the CPS by IPS;  
and
  - Details of any measures taken or actions required arising from the complaints and disciplinary process.
6. IPS will inform the CPS of any alteration it proposes in the rules relating to the Associate Prosecutors' training scheme or registration arrangements for Associate Prosecutors.
7. Requests by IPS for the disclosure of information relating to a current or completed prosecution, or information that is of a sensitive or personal nature or marked as Restricted or with a higher protective classification, will be referred to the relevant Chief Crown Prosecutor in writing to be dealt with in accordance with CPS policy.