

**MINUTES OF THE MEETING OF THE BOARD
OF DIRECTORS OF ILEX PROFESSIONAL STANDARDS LIMITED
HELD ON 13 MAY 2010 AT KEMPSTON MANOR,
KEMPSTON, BEDFORD, MK42 7AB**

Present: Mr. Alan Kershaw (Chair), Mrs. Sandra Barton, Mrs. Thelma Brown, Mr. Faizal Essat, and Mr. Andrew Middleton (for items 6 to 12) and Dr. Nicholas Smedley.

In attendance: Mrs. Baljeet Basra (Professional Standards Manager), Miss. Gemma Burnett (Professional Standards Assistant), Miss. Judith Gordon-Nichols (ILEX President), Mr. Simon Richards (Qualifications Development Manager) (for item 12) and Mr. Ian Watson (Head of Professional Standards).

ITEM 1 APOLOGIES FOR ABSENCE

**Action
points**

1. Apologies were received from Ms. Hilary Daniels who was on holiday.
2. Mr. Kershaw welcomed Miss. Judith Gordon-Nichols who attended the meeting in her capacity as ILEX President.

ITEM 2 DECLARATIONS OF INTEREST

3. There were no declarations of interest.

ITEM 3 MINUTES OF MEETING HELD ON 11 FEBRUARY 2010

4. The Board approved the Minutes of its meeting held on 11 February 2010 as a true record. The minutes would be published on the IPS website and reported to the ILEX Council.

GB/LN

ITEM 4 GOVERNANCE

5. The Board noted the Joint Certification documentation, the LSB's requirements regarding the practising certificate fee and the 3 year summary budget. Board members also noted the report on the arrangements for reviewing the remuneration of the Board members and Chair; and the outcome of the skills audit.

Internal Governance Rules

6. The LSB had acknowledged receipt of ILEX/IPS' Joint Certificate. The LSB required that any area of non-compliance with its Internal Governance Rules would need to be resolved within 6 months. The Board agreed that the only area which could fall foul of independence for the purposes of the rules was the issue of Council members who would, for a limited period now, be serving on the Qualifying Employment and Advocacy Rights Committees. The issue did not prevent the sign-off of the Joint Certificate but would need to be resolved in the context of the Board's work on admissions and licensing.

IW/BB

7. The Board discussed the Service Level Agreement attached to the Joint Certificate, in particular whether a boilerplate non-waiver clause should be included. A boilerplate clause was a typical clause that would be contained in the latter part of a contractual agreement. The purpose of a boilerplate non-waiver clause would be to protect a party who excuses the other party's non-compliance with contract terms, and to prevent the parties course of conduct under the contract from resulting in the loss of enforceability of the actual terms of contract. It was agreed that IPS would confirm whether a non-waiver clause was required in the Service Level Agreement.

GB/IW

Practising certificate fee rules

8. The Board acknowledged that the Practising Certificate Fee Rules required Approved Regulators to submit proposals for annual practice fees to the LSB for approval. They also required regulated members to be consulted on the proposed fees. The Board decided that letters of consultation would be sent to Fellows along with the ILEX Annual Report in June 2010. IW/HS
9. The Board also acknowledged that practising fees would change if and when IPS began regulating ILEX members' litigation or probate practices and, later, alternative business structures. As financial rates would be decided in June/July 2010 for the budget which would be set in November 2010, a paper on the increase in practising fees would be produced and reported to the Board at its next meeting. IW/BB

Remuneration review

10. The Board noted that the Remuneration Committee would meet after the Board meeting.

Skills audit

11. Board members noted the comments made on the skills audit and recognised that marketing was an area of weakness. The Board acknowledged that some skills, like marketing, were not needed all the time but only for specific projects. In those circumstances the Board could rely on the skills of the ILEX/IPS office, supplemented when necessary by services bought in from outside.
12. The Board noted that under the ILEX Equality and Diversity Policy, training needed to be provided to the IPS Board. The Board discussed whether a waiver could be granted to those Board members who had recently undertaken Equality and Diversity training. Board members indicated their availability for Equality and Diversity training. It was decided that training could take place on 25 June 2010, with another training session arranged for those members who were unable to attend that session. IW

ITEM 5 FINANCE REPORT

13. The Board was asked to note the financial report to date. The Board was also asked to consider what action it wished to take in relation to the letter from the auditors, Collett Hulance.
14. Fees paid to Board members were slightly distorted, in this report, because of differences in the timing of specific payments. Further, VAT increases had affected when certain payments were processed.
15. The Board noted that the amount of new activity which would be under way during 2010/11 would make it difficult for IPS to stay within budget. IPS would need to closely monitor the financial budget when considering whether to embark on new activities. The ILEX President and Council had however approved a call on reserves to fund projects which the whole organisation regarded as a high priority.
16. The Board discussed the matters raised in the auditor's letter. The Board was, on balance, of the opinion that it was not necessary that Board members be classed as employees. The IPS Board was advised that the office had received advice on the issue from two lawyers in addition to those who had drafted the contracts for Board members. That advice had been that members could be self-employed. The Board noted from the auditor's letter that, if payments had been made to people who should have been treated as employees, further National Insurance would become payable. It was decided that a risk analysis should be conducted on the issue and,

because more than Board members were affected by the issue, a proposal would be taken to Council.

IW

17. The Board noted the auditor's opinion that to achieve independence a separate bank account in IPS' name should be maintained. IPS did maintain separate accounting records and, given that IPS did not have any significant actual income, it had not been considered a pressing matter. An analysis should be done on whether a separate bank account was required.

IW

18. The Board decided that a letter signed by the Chair would be sent in response to the auditor's letter.

AK/IW

ITEM 6 BUSINESS PLAN

19. The Board received an updated business plan. Decisions made by the Board at its last meeting had been included. New activity arising from recent working party meetings had been added to the plan. The Board was asked to agree the updated business plan subject to any further comments they had.

20. The Board agreed that the development of an appraisal system for Professional Conduct Panel and Disciplinary Tribunal members would be included in the Fitness to Practise section of the business plan.

BB

21. The Board requested clarification as to specifically what had been updated within the business plan. It was agreed that the Board would be provided with a business plan highlighting the changes that had been made.

BB

ITEM 7 RISK REGISTER AND KEY PERFORMANCE INDICATORS

Risk Register

22. The Board received an updated Risk Register. The Board was asked provide comments and to outline any further amendments or revisions.

23. The Board agreed a further amendment to the Risk Register. The total for risk 7, which related to insufficient staffing, would be amended to 9.

BB

Key Performance Indicators

24. The Board received a report providing an outline of performance against the Key Performance Indicators (KPIs). The Board noted the performance of IPS against those indicators to date.

25. The Board agreed that the attendance of Board members at all meetings, not just Board meetings should be monitored. Board members should be expected to attend at least 80% of meetings, in effect allowing members to miss one meeting per year. An assessment of this would take place at Board members' appraisals when it would be assessed whether the Board member had a reasonable reason to miss a meeting. It was decided that KPI 3 would be amended to read 'each Board member to attend meetings'.

BB

ITEM 8 REGISTRATION AND ACCREDITATION

26. The Board received a report outlining the work taking place in relation to developing revised qualifying employment arrangements, reviewing ABS arrangements and the applications for new rights.

Admissions Working Group

27. The Board noted the minutes of the Admissions Working Group meeting held on 25

March 2010. The Group had received and approved a final copy of the work based learning outcomes; the next step would be for the Awards Department to develop a mechanism for recording achievement against the work based learning outcomes.

BB/SR

Alternative Business Structures/Application to become a licensing authority

28. The Board considered the review of the work taking place on ABS arrangements. The Board agreed that ILEX should not just focus on regulating ABS of Legal Executives but should consider regulating all practices of lawyers and non-lawyers. It was acknowledged that, once IPS was approved as an ABS regulator, it would be able, in principle, to regulate a firm composed entirely of solicitors.

29. The Board discussed consolidation of regulation. It was noted that the LSB welcomed IPS offering its regulatory resources to other small regulators such as IPREG, ILCA and ALCD.

30. The Board noted the minutes of the ABS Working Party meeting held on 8 April 2010. In light of the 2010 General Election the Board agreed that, if the ABS programme slowed down, IPS would still press ahead with its rights and licensing authority applications. Board members would be kept informed on ABS issues.

ALL

31. The Board approved the terms of reference of the ABS Working Party and endorsed its decision to recommend to the ILEX Council that an application should be made by IPS for ILEX, as the approved regulator, to become a licensing authority. The Board approved a report conveying the ABS Working Party's recommendation. This would be presented to ILEX Council on 14 May 2010.

IW/BB

Applications for new rights

32. The Board was informed of the progress of work in relation to the applications for new rights. The Board was informed that IPS was working on five rights applications:

- Civil and Family Litigation
- Probate
- Associate Prosecutors
- Conveyancing
- Criminal Litigation

33. The first three applications would be completed by June 2010. Consultations on these had been completed and analyses of the responses were taking place. Overall the LSB was expected to take approximately 6 months to process the application and the Lord Chancellor about a further 90 days to grant approval.

34. The Board acknowledged that the LSB asked that IPS make an oral presentation of the proposals in the applications to them and to answer questions. This approach was taken because these were the first applications the LSB would receive for reserved legal activities and the meeting would allow an opportunity for the LSB to fully understand their content.

IW/BB

35. The Board discussed the Associate Prosecutors' rights application and noted that the independent Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) was supportive of the application. It expressed concern about how Crown Prosecutors made decisions as to which level of Associate Prosecutor handled a particular case (AP1 or AP2). The Board was of the opinion that an extra check should be in place to ensure that cases were not allocated merely on the level of offence/length of imprisonment, but also on the actual complexity of the case itself.

36. The ABS Working Party had recommended that IPS make applications for conveyancing and criminal litigation rights. The conveyancing and criminal litigation

applications would mirror the applications for probate and civil and family litigation respectively. The Board endorsed that recommendation and approved a report for presentation to ILEX Council on 14 May 2010.

IW/BB

ITEM 9 QUALITY ASSURANCE OF ADVOCATES

37. The Board received a report providing an update on the work of the Joint Advocacy Group (JAG). The Board was asked to approve a draft memorandum of understanding (MOU) between IPS, the Solicitors Regulation Authority and the Bar Standards Board.

38. The Board were advised that the office was likely to need to commission someone with a background in advocacy, on a consultancy basis, to manage the work in this area. JAG meetings took place every fortnight and the work was rapidly increasing.

39. The Board approved the MOU and decided that the first round table meeting of the Group would be attended on 21 June 2010.

IW

ITEM 10 FITNESS TO PRACTISE

40. The Board noted updates in relation to the Code of Conduct and order under s.90 Immigration and Asylum Act 1999. The Board was also invited to approve indicative sanctions guidance and to review and comment on the complaints handling annual report.

Code of Conduct

41. The Board were advised that the LSB had approved IPS' application to amend its Code of Conduct. The new Code of Conduct came into force as of 6 May 2010.

42. The Board was advised that the LSB and IPS would conduct a joint 'lessons learned' exercise following the completion of the application. The 'lessons learned' report would be presented to the Board at its next meeting.

BB

43. The Board considered the LSB Final Decision Notice and noted the warning that a move towards outcomes-based regulation not only required adopting a principles-based code but also required the Approved Regulator to have regulatory infrastructure in place to supervise, monitor and enforce compliance.

44. The Board agreed that the new Code of Conduct would be publicised to all existing members. The new Code would be promulgated in the July edition of the Journal. Other ways of publicising the new code would be explored.

BB/AK

Sanctions Guidance

45. The Sanctions Guidance was commended as well balanced, well worded and consistent with Magistrates' sentencing guidelines.

46. The Board approved the Sanctions Guidance which would be applied by the office and disciplinary bodies in reaching decisions on sanctions. The Guidance would be published on the website.

LN

Section 90 Immigration and Asylum Act 1999

47. The Board acknowledged the volume of work that would be required to implement the section 90 order. The Board agreed that any areas of uncertainty within the revised draft order would need to be resolved. IPS would liaise with the Home Office to agree the revised order. The office would confirm whether the order would be passed by negative resolution.

IW

Complaints Handling Annual Report

48. The Board noted the annual report covering the complaints and disciplinary work during 2009. The Board was advised that complaint case turnaround figures were still affected by activities in 2009 when the office, due to lack of staff, had struggled with the caseload.

49. The Board was updated on the Chair's observation of a recent Disciplinary Tribunal hearing. The Board was informed that the Disciplinary Tribunal was well conducted and very formal. Alan Kershaw had noticed that there were no pre-drafted determinations for the Tribunal to read out. The Board agreed that determination templates for the Disciplinary Tribunal (DT) and Professional Conduct Panel (PCP) would be produced by the office. The templates would provide a checklist of statements that would be made when the determination of a DT or PCP case was given.

BB

50. IPS would devise a mechanism for monitoring firms' complaints handling procedures. IPS would need to consider in detail the LSB's work in this area. In particular IPS would consider the LSB's work on its definition of 'complaints' and would present the findings to the Board at its next meeting.

IW

ITEM 11 VISIBILITY AND IMAGE

51. The Board received a report providing an update on the IPS Launch and development of its corporate image. The Board commended the substantial volume of work undertaken by Luane Nisbet ahead of the IPS Launch to develop corporate documents. The Board also noted that the IPS website was fully operational and was being updated on a regular basis.

52. The Board expressed its wish to receive a report on IPS website usage. Deborah McDonald would be asked to report on IPS website usage - a record of the number of 'hits' the website had received would be useful.

BB

53. The Board agreed that the IPS Launch was a highly successful event and that it would like a repeat event in the future. The Board agreed that, if the rights applications were successful an event marking the occasion would be organised. That event would possibly take place in 2012 and could involve IPS riding on the back of ILEX's Business Reception.

ALL

54. The Board agreed that this portfolio area would be renamed 'Communications and Partnership'. The portfolio name would be amended where necessary, including on the IPS website, within the business plan and the ABS Working Party's terms of reference.

BB/LN

ITEM 12 EDUCATION

55. The Board received a report providing an appendix to the ILEX/IPS protocols, dealing with education matters; service level standards relating to the work of the ILEX Awards Department; and a draft statement of education matters reserved to the IPS Board. The Board was asked to consider and approve the documents.

56. The Board was advised that the aim was for reporting lines to be clear, open and methodical. The documents provided a basis for continuing as opposed to ad hoc reporting.

57. Plans for the first formal review of the risks of centres were underway. The Awards Department would be devising centre performance standards based on ILEX's understanding of centre risks. A risk register for each centre would also be produced. The Awards department would start formally reviewing centres from

September 2010 and would be able to report to the Board in May 2011.

58. The Awards Performance and Strategy Committee (APSC) and IPS would review the statement of education matters reserved to the IPS Board after 12 months, in May 2011. A self-analysis of reserved matters would be undertaken by the Board in December of each year. **IW/BB**

59. The Board agreed the revised service level standards relating to the work of the ILEX Awards Department. The revised standards, on approval by ILEX Council, would be included in the Service Level Agreement document which would be re-circulated and sent to the LSB. **IW/GB**

60. The Board agreed the revised Education section of the document specifying matters to be reserved to the Board. A preparatory paper for information purposes had been included in the ILEX Council Agenda for its meeting being held on 14 May 2010.

61. The Board agreed the appendix to the ILEX/IPS protocols, subject to amendment of point 4 within the appendix to remove the words 'it is expected that'. The revised appendix, on approval by ILEX Council, would be re-circulated, sent to the LSB and posted on the IPS website. **IW/LN**

ITEM 13 DATE OF NEXT MEETING

62. The next meeting was scheduled for 22 July 2010 and would commence at 9:30am.

63. Dates of Board meetings in 2011 would be agreed at the meeting on 22 July 2010. **ALL**

**ALAN KERSHAW
CHAIRMAN**