

Regulation

Forward and back

Alan Kershaw reflects on the achievements of ILEX Professional Standards in its first year and looks ahead to key tasks, including reviews of CPD, qualifying employment and ABS regulation

Around the time of the Millennium (remember the Millennium?), it was fashionable to quote Winston Churchill or someone, who said, 'The further back you look, the further forward you can see'. Or words to that effect.

ILEX Professional Standards Ltd (IPS) does not have that far back to look, but in our two-day year-end meeting we reflected on progress to date – due in no small measure to the many years of effective ILEX regulation on whose shoulders we stand.

It is always a revealing exercise. Mired as we usually are in present challenges and the everyday frustrations of life, we naturally forget what we have achieved, so a 'before and after' exercise regains perspective and encourages focus on the things we have made happen.

Ahead of the meeting we each completed a 'board evaluation' exercise, scoring activities systematically to give an overall picture of how we see our performance under broad headings: Are we clear about what we are trying to achieve? Do we each know what we are supposed to be doing? Are we living up to the values we set for ourselves? How well do our meetings work? Are we getting the information we need? How do others see us? That kind of thing.

This was orchestrated by my board colleague Hilary Daniels – past president of the Chartered Institute of Public Finance and Accountancy, and our portfolio holder for governance and process. She and board member Faizal Essat, a practising legal executive who holds the portfolio for performance and risk, took us through our evaluation forms in a fascinating exercise, using hexagon-shaped sticky notes. I strongly recommend this. Once the hexagons are stuck on the wall, each noting one key point, they then fit together in groups like honeycombs, highlighting the broad themes and – a useful by-product – easing the task of

Gemma Burnett, the staff member trying to produce an intelligible note!

Clear vision

What did we learn? That we have a clear vision of what we are trying to do. That we all know why we are here and what each of us is for. That our meetings are to the point and get results. That we have a communicative visual identity and matching website. That we have our key documents and processes in place – strategy, business plan, ILEX/IPS protocols, modern fitness to practise procedures, revised Code of Conduct for ILEX members; and, guiding us as a board, standing orders, appraisal and selection processes, a code of conduct, register of interests, risk register, key performance indicators and the like.

I am pleased we have got so far in our first year. But we need to know more about public perceptions of legal executives and the way we regulate them. This is something we will be discussing with the chairwoman of the new consumer panel set up by the Legal Services Board (LSB) – ILEX pays for this through the LSB levy, so we want something to show for our money!

We also need to explore further the range of skills we need, between us, to ensure we do our work with full efficiency; and to improve our sources of financial information to ensure we are providing best value for money in our operations. We are keenly aware that it is your money we're spending – and, while we know ILEX members value the robust regulation the organisation has always provided, we also know the jury is out on how we do the job. It should stay out. We don't mind being watched – actually we rather enjoy it.

A propos, the IPS part of the ILEX website is now live. On it you can find out all about us, with links to the key documents I mentioned above, explanations of what we are trying to achieve and nice pictures of (some of)

us. It also contains the disciplinary history of the small number of members who have fallen short of the standards expected. There is a strict policy about this and the information stays there for the minimum period we consider necessary to protect the public. In due course there will be a direct link from the directory of members to disciplinary records, but this poses some technical challenges, so it is a longer-term ambition.

Websites are living documents, a mix of the permanent and the ephemeral. Fortunately they can usually be updated with a few clicks, so I would encourage you to send feedback at any time. Luane Nisbet (Inisbet@ilexstandards.org.uk) leads on this. My thanks go to her and to Ian Watson, Baljeet Basra, Deborah



McDonald and Nick Smith for the formidable amount of work they all put in to getting the site launched on schedule and looking so good. Thanks also to my estimable board colleague Nick Smedley, whose brief is visibility and image, and whose drive and imagination always keeps us looking upwards.

Sharing responsibilities

Priorities for the coming year? We should soon launch the revised Code of Conduct for ILEX members – firmly principles-based (you are adults and we expect you to act like it), short (the central planks of professional ethics are not all that difficult and could easily be learnt by heart), and jargon-free (everyone should be able to understand the way legal executives should behave).

Alongside that but much more in the background, we will shortly publish our first *Indicative Sanctions Guidance* – a series of guidelines for the professional conduct panel and disciplinary and appeals bodies to help ensure their decisions are consistent, fair and defensible. This is something many modern regulatory bodies have done, and it is regularly commended by

**Clear vision:
the board of IPS
knows what it is
trying to achieve**

judges hearing appeals, who can test particular decisions against expected norms.

For all the work on fitness to practise – the newly-constituted disciplinary bodies and procedure rules, the Code of Conduct and the sanctions guidance – I have to thank my board colleague Sandra Barton, a former ILEX President and a practising legal executive, for her clear guidance and feet-on-the-ground approach. With John Wells, another former President, and Ged Fisher, a lay member of disciplinary tribunals, we had a valuable project team which kept the work on target.

Educating ILEX

The whole subject of professional education can be fraught when an organisation like ILEX decides to separate its regulatory and leadership functions. The organisation, content, delivery and assessment of education programmes are very much leadership functions. The business of ensuring that individuals entering membership, or moving between grades, are and remain at the proper standard is a regulatory function.

We are still working through the practical implications of this – in particular, ensuring that the IPS board has the information it needs to be sure that programmes of legal education, wherever they are delivered, are producing the kind of member that ILEX wants to have and that we can properly hold out to the public as fit for the job today.

Andrew Middleton, a former college principal who leads for us on education and standards, is doing sterling work on this, bringing huge relevant experience to us and to the work of the awards performance and strategy committee. During 2010 Andrew will lead in defining the respective roles of ILEX and IPS as regards education standards, sealing these in a formal protocol.

Triple targets

There are three other things on which we have our eye. The ILEX scheme for continuing professional development (CPD) is generally working well and is, we believe, well accepted. For now we are keeping it ticking over, adjusting as required. Towards the back end of this year we will take a closer look, with some benchmarking to learn from others' experience and see what would

make it more valuable to practitioners and clients.

This needs doing – if only because it has not been done for a while – but we are relaxed about it and will not rush the fences. It is a personal view of mine that CPD arrangements need to be developed slowly over time, if they are to become a natural part of professional life. I don't care what boxes you can tick – I want to be sure that CPD actually improves things.

The second subject is one on which we have already started. The arrangements for qualifying employment, by which members move on to fellowship, are not as consistent or robust as they should be, and we have started a project to put this right. Thelma Brown, a practising legal executive and board member with responsibility for registration and accreditation, is generating ideas on this.

The project team also includes ILEX Council member Mark Reeves, who chairs the advocacy rights committee, and John Wells, who until recently chaired the waivers committee, whose work has demonstrated the need for reform of the rules. We have it in mind to create new governance arrangements bringing all decisions on admission to membership, fellowship and specific practising rights within a single policy and casework structure.

The third subject is now urgent because of the way the law and the Legal Services Board is driving it. This is the matter of alternative business structures which, however uncertain the timing may be, are coming our way sooner or later. We have held back on this while pursuing new independent practising rights for probate and litigation, opening the way for legal executives to run their own firms. Now that that is a realistic prospect, we will address the question of how IPS could regulate firms as well as individuals. The implications are wide and I am far from understanding them fully as yet. With board members in support and ILEX Council member Nick Hanning joining us, we have initiated a serious and urgent study.

We have come far in our first full year, and know more than before about what needs doing. Looking back is fun. But looking forward is the priority. Welcome to the new decade.

Alan Kershaw is the chairman of the board of ILEX Professional Standards

