

Standard bearers

They have overseen the way legal executives practise for the past year, but what does the board of ILEX Professional Standards do? **Neil Rose** reports, while its members explain why they joined

This is not an easy time to be regulating the legal profession. The Solicitors Regulation Authority has come increasingly under fire since it developed an identity separate from the Law Society, and while its legal executive equivalent, ILEX Professional Standards Ltd (IPS), is far from being in the same boat, its time might yet come.

The possibility of regulating alternative business structures and of more legal executives with ever greater rights practising in their own right means that the task of the seven-member board of IPS is to set firm foundations for what could become a far more high-profile role in the future.

In the meantime, the Legal Services Board (LSB) is busy issuing consultations on how it will operate once it assumes its full powers next year. These include what rules it will set down for approved regulators like ILEX to separate out their regulatory and representative work. IPS is a corporate subsidiary of ILEX and

relations between the two are governed by recently agreed protocols (which are available on the ILEX website).

During her recent interview with the Journal, ILEX President Judith Gordon-Nichols said she was 'comfortable with the early steps of IPS'. She explained: 'We took our time in deciding exactly how we were going to split the regulatory function from the representative function and we were absolutely right to do that. I'm happy with the way that IPS is working so far. I'm not saying that I will always be happy with everything they do, but that will be healthy. And when there is such an occasion, we have the protocols in place.'

As reported in recent Journals, another major issue is the contribution ILEX and its members will be required to make to the set-up and running costs of the LSB, the current plans for which drew strong opposition from both ILEX and IPS because they are based simply on headcount rather than risk.

There has been relatively little coverage of IPS's work since its board of directors took on their responsibilities a year ago, and so the Journal recently sat in on one of its regular meetings to see regulation in action, and also quizzed the six ordinary board members about their time so far in the role under the chairmanship of Alan Kershaw.

Independently minded

The meeting itself operates as one would expect, with the seven members discussing high-level issues brought to them by the senior staff of IPS, who were present at and contributed to the debates. The one we observed was the first since Judith Gordon-Nichols became President of ILEX, and so she also attended in an observer capacity.

One of the great advantages of having the lay/independent members of a board such as this is the experience they bring with them of similar situations in other fields. This punctuated the discussions; while creating an independent regulator may



Thelma Brown

Legal executive member

Portfolio: Registration and accreditation

Biography: Qualified as a solicitor but retains her Fellowship. Works as Deputy Clerk to the Justices responsible for the magistrates' courts in East Yorkshire, where, in addition to providing legal advice, training and pastoral care to magistrates, she is involved with a wide range of family and criminal justice stakeholder bodies and committees.

Why did you apply to join the board? Although I was admitted as a solicitor less than a year after I became a Fellow, I have always admired the work that ILEX does. My working life is different to that of most Fellows and I hoped that I could add a different dimension.

How have you found the experience so far? Interesting. It is a very corporate role which provides the opportunity to work with people from different backgrounds to those I encounter in my job.

What opinion have you formed of the legal executive profession? I have always had a very high opinion of legal executives, who seem to me to combine professionalism with a lack of pomposity.

What in your view are the three most pressing issues facing the board? The need to 'add value' to ILEX, rather than just being a statutory requirement; the need to manage the regulatory challenges arising from the expansion of ILEX into new areas; and the need to compete with the other regulators are all significant.

be a new experience for ILEX, it has been done before. In fact, Mr Kershaw did it himself as first chief executive of the Council for the Registration of Forensic Practitioners back in 1999.

In a later discussion, he noted that education is the area where it is hardest initially to establish the splits in responsibility between the two sides – while ILEX remains the awarding body, it is IPS that has responsibility for ensuring that those entering the profession are fit to practise law. He described the creation of ILEX's awards performance and strategy committee – whose meetings IPS board member Andrew Middleton attends – as 'a major step forward' in keeping an eye on this.

Appeal dismissed

The most substantive debate was over the responses received to the IPS consultation on revising the Investigation, Disciplinary and Appeal Rules. Five were received – one from ILEX, one from the Legal Services Ombudsman and three lay members serving on the current investigating committee. Some of the points raised were taken on board, such as over reducing from 18 months to 12 the maximum length of time a member can be suspended pending an investigation; others were not after discussion, such as ILEX's concerns over changing the burden of proof from the criminal to civil standard.

One of the issues thrown up came back to the absence of protection for the legal executive title: even if an ILEX Fellow is struck off by IPS, there is nothing to stop him calling himself a legal executive. Title protection is 'absolutely fundamental', said Mr Kershaw. 'It's right legal executives should be enhanced as a regulated profession.'

Later on the agenda was a look at the first draft of the IPS business plan,

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consideration of moves in the wider profession to improve quality assurance for advocates, and a review of the IPS risk register.

Some time was spent on the financial report to the end of May and the 2010 budget, including over board members' expenses in the post-MPs' expenses climate.

Mr Kershaw also called for the 2010 budget to separate out the costs attributable to the LSB levy and those of actually running IPS, lest the former artificially inflate the impression of how much IPS costs. Without this, IPS's budget will look to have increased by 250% next year.

Regime change

But it was discussion of IPS's response to the LSB consultation on how it will set up the alternative business structure regime that really highlights the work that is to come. This radical relaxation of law firm ownership and structure will happen in 2011 and IPS has to chart the course to ensure both ILEX and legal executives can make the most of it.

'When we selected the board, I knew we were bringing together a diverse group of talented, experienced and strong-minded individuals,' Mr Kershaw tells the Journal. 'The way they have taken up their individual portfolios and got to grips with their subjects has been both a huge support and an inspiration to me. And they know how to stand above the detail and take a strategic view – exactly what a governing board should be doing. We have all the basic building blocks in place and have achieved a lot in our first year, and there is more to come.'

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Andrew Middleton

Independent member

Portfolio: Education and standards

Biography: A 36-year career in further education, culminating with 18 years as principal and chief executive of Stamford College in Lincolnshire. Since leaving his full-time post, he has developed a portfolio of complementary part-time roles, mainly in the health and education sectors, all with a quality-improvement theme.

Why did you apply to join the board? To continue my lifelong involvement in vocational education and training and professional standards.

How have you found the experience so far? Very good indeed! The board and executive team have a strong mix of highly experienced and committed professionals who are pursuing excellence in professional regulation with vigour.

What opinion have you formed of the legal executive profession?

My respect for and understanding of the value and effectiveness of legal executives continue to grow. These are exciting times for the third branch of the legal profession.

What in your view are the three most pressing issues facing the board?

- The size of the levy imposed by the Legal Services Board, which is disproportionate to the number of complaints about legal executives and their incomes;
- Enhancing the reputation and respect for legal executives through continuing effective and timely regulation; and
- Ensuring the regulatory framework is appropriate for the extended professional roles open to legal executives.

Any other comments: The board works well as a team, with constructive

challenge resulting in strong consensus and robust decisions.



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Hilary Daniels

Independent member

Portfolio: Governance and process

Biography: A chartered public finance accountant and past president of the Chartered Institute of Public Finance and Accountancy (CIPFA). Was chief executive of West Norfolk Primary Care Trust from its inception in 2000 until its abolition in 2006. She is a member of the Professional Oversight Board,

which oversees and regulates the accountancy and actuarial professions, and is an independent member of the East Northamptonshire Standards Board.

Why did you apply to join the board? Through my experience as a council member and president of the CIPFA, I felt that I fully understood the roles and functions of a professional body and the need to uphold the highest professional standards, thus ensuring public confidence. Also, I felt that I could bring the experience from the Professional Oversight Board and my enthusiasm to help make a success of IPS.

How have you found the experience so far? Fascinating. I have enjoyed learning about how the legal profession works, and there are a number of similarities with my roles on professional standards elsewhere. Board members come from a range of different backgrounds and with very differing skills and knowledge, so we are able to have good discussions and learn from one another.

What opinion have you formed of the legal executive profession?

Enthusiastic, professional, proactive, fundamental are all words that come to mind. It is unfortunate that the title of legal executive is not protected and

that anyone can use it, because Fellows and Members play such an important role within the provision of legal services to the public.

What in your view are the three most pressing issues facing the board? In the early board meetings we spent quite a bit of time ensuring that appropriate processes were in place to allow us to operate efficiently and talking through how we worked effectively with, but independently of, ILEX.

Now that these processes and protocols are in place, we are concentrating on ensuring that legal executives are fit to practise; that is, making sure that the work of legal executives meets proper professional standards, and that robust procedures are in place to deal with those whose conduct does not meet those standards.

Secondly, working with ILEX to ensure that the opportunities from both the new business models and new rights applications are open to ILEX members, with appropriate standards and regulation in place.

Thirdly, ensuring that the role of IPS as a regulator is recognised by the Legal Services Board and the other legal regulators.

Faizal Essat

Legal executive member

Portfolio: Performance and risk

Biography: A Fellow and ILEX advocate specialising in personal injury litigation and commercial dispute resolution at Andersons Solicitors in Nottingham. Has extensive experience working with faith and community groups in Leicester and has served on the ILEX branches in Leicester and Nottingham.

Why did you apply to join the board? I have strong feelings about getting validation of legal executives as 'proper' lawyers and I feel the recent changes are a great opportunity for us to establish ourselves as independent and self-reliant professionals in our own right.

How have you found the experience so far? It's been a very steep learning curve – the Legal Services Act, how it works and how to satisfy others that we can regulate our members is new ground for me. I have learned a lot from others at IPS.

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What opinion have you formed of the legal executive profession?

We still have a lot of work to do – we need to establish our presence to legal consumers and try to win hearts and minds. If we do this, we can be a real commercial force in the legal market place and compete with others.

What in your view are the three most pressing issues facing the board?

1. Completing the first year with all the targets met.
2. Succeeding in our quest to ensure that we do not end up paying for the regulatory cost disproportionately.
3. Positively influencing alternative business structures and increasing our regulated members.

Any other comments: We need more engagement with our members so that they fully understand what is happening to the legal environment – I have found some to be in a state of ignorant bliss!

Sandra Barton

Legal executive member

Portfolio: Fitness to practise

Biography: Legal services manager for a property service company. Was until recently a member of ILEX Council and served as President in 2004/5. Has also served on the ILEX investigating and disciplinary bodies.

Why did you apply to join the board? I had come to the end of my term as a Council member and felt that my experiences of being a Council member, past President and having chaired the legal services working party, taking ILEX through the reforms to date, would be useful to the new company.

How have you found the experience so far? It is very different from being a Council member. It is a small board of a new company, which means the board members are having to get to know one another and set the stage for the future regulation of ILEX. Every board member has to participate, as you all have your individual portfolios and cannot think someone else will do the work. As a Council member, work could be spread amongst more people. The mix of lay and ILEX Fellows is good. The lay members bring expertise that the ILEX



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members are unlikely to have. I am learning a lot from all the board members.

What opinion have you formed of the legal executive profession?

My judgment of legal executives is somewhat coloured. Legal executives provide an important contribution to the profession and legal services. They have come from very different and varied backgrounds to most lawyers, which often makes them very grounded and able to understand clients' problems and feelings. Legal executives work at different levels so can fit well into the business structures and can take what they want from the profession and what suits them. If you want to be a partner, you can now but equally if you do not want such responsibility, you can provide a valuable contribution at a lower level.

What in your view are the three most pressing issues facing the board?

The review of the disciplinary rules and process, which is well under way. Ensuring we are involved with the Legal Services Board and not overlooked by them as they concentrate on solicitors and barristers. Ensuring the company fulfils its functions, giving financial and professional value to the membership.

Nick Smedley

Independent member

Portfolio: Visibility and image

Biography: Currently a consultant whose clients include central government departments, the Law Society (for whom earlier this year he completed a review of regulation for the corporate legal profession), the bar and the Prince of Wales' Charities. Was a senior official of the Ministry of Justice until May 2008 and served as director of research at the Prince's Charities.

Why did you apply to join the board? I have a long professional association with the legal world, through my work in the Ministry of Justice and more recently as an independent consultant. Regulation is a very topical subject these days, and I hoped that my government experience would enable me to contribute to the establishment of the new arrangements.

How have you found the experience so far? The board has been a great experience so far. The

membership has been very carefully put together to achieve an excellent balance of interests and experiences. Each member has a portfolio area of specialism, reflecting that individual's particular niche expertise. Mine is communications and visibility, reflecting my wide networks across the legal profession and government, as well as my work developing a website for HRH the Prince of Wales' Charities.

What opinion have you formed of the legal executive profession?

I have known and worked with the legal executive profession for many years. I find legal executives a highly motivated and aspirational group of people, on whose shoulders much of the work of the legal world rests!

What in your view are the three most pressing issues facing the board?

I think the board might want to concentrate in the next year on preparing for the world of alternative business structures; developing a more assertive profile with the Legal Services Board, government and other stakeholders; and creating a regulatory

relationship with the profession which achieves the right balance between standards and professionalism on the one hand, and freedom to operate effectively on the other.

