

**APPLICATION TO THE LEGAL SERVICES
BOARD TO BECOME AN APPROVED
REGULATOR
FOR PROBATE RIGHTS**

21 July 2010

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PART I – ILEX, IPS AND ILEX MEMBERS

APPLICATION FOR APPROVED BODY STATUS

1. This document is an application made by the Institute of Legal Executives (ILEX) to the Legal Services Board to become an approved regulator under Part 2 of Schedule 4 Legal Services Act 2007 (the 2007 Act) to grant probate rights to ILEX members as set out in s12 Legal Services Act 2007 and defined at clause 6, schedule 2 of the 2007 Act.
2. This Application is made in accordance with guidance issued by the Legal Services Board under Part 2 of Schedule 4 of the 2007 Act. References in this application to ILEX include, where appropriate, references to the regulatory company established by ILEX to carry out regulatory functions, ILEX Professional Standards Ltd.
3. ILEX believes that its application to be an approved regulator in relation to probate services is in compliance with the regulatory objectives and professional principles set out under the Legal Services Act 2007. If granted, this application will ensure that the public will have access to a wider choice of individuals able to provide these services with the confidence that those individuals are properly qualified and effectively regulated.
4. ILEX believes that the strengths of its application for approved body status are in 6 key areas:
 - ILEX is an experienced regulator of legal services. It is an approved regulator under the Legal Services Act 2007 in relation to rights of audience.
 - It plays a central role in legal education and training in England and Wales.
 - It will broaden the scope of providers of probate services who are appropriately regulated by creating a new category of membership, Probate Associate member, which will be open to any eligible person wishing to deliver probate services who is not registered in any other grade of membership of ILEX.
 - It will establish a certification scheme under which it will issue a Probate Services Certificate (Certificate) to enable qualifying members of ILEX who meet its requirements for education, training and experience to carry out probate services.

- ILEX has in place rules of conduct that it is able to enforce against its members and these rules will apply to those authorised to deliver probate services.
 - ILEX will put in place compulsory compensation and indemnity schemes for its members in independent practice, including those holding a Certificate, which will provide added protection for their clients and greater assurance for the public at large.
5. A person is a qualifying member if, at the time of his application for a Certificate, he is:
- a Fellow or Graduate member of ILEX, or
 - a Probate Associate member of ILEX, or
 - within any other category of membership, which ILEX may establish from time to time and which it has determined as being appropriate to those applying for a Certificate.
6. Under the certification scheme proposed by ILEX those applicants who are not qualifying members at the date of their application for a Certificate may apply at the same time for membership. Applicants who are not eligible for any other category of qualifying membership may be accepted as a Probate Associate member. Members in this category must comply with ILEX's eligibility and conduct rules.

INSTITUTE OF LEGAL EXECUTIVES (ILEX)

7. ILEX is the professional body which represents Legal Executives and trainee Legal Executives and enhances their role and standing in the legal profession. It is a company limited by guarantee, not having a capital divided into shares.
8. It was a body authorised to grant Rights of Audience to suitably qualified Fellows, under section 29 of the Courts and Legal Services Act, by virtue of the Institute of Legal Executives Order 1998 (SI 1998/1077), which came into force on 23 April 1998. It is now an approved regulator under the Legal Services Act 2007 for the purposes of awarding rights of audience to ILEX members and the power to administer Oaths and a designated qualifying regulator in respect of immigration advice and services.
9. ILEX is the successor to the Solicitors Managing Clerks Association which was founded in 1892, incorporated in 1928 and adopted its current title of Institute of Legal Executives in 1963. The Memorandum and Articles of Association of ILEX appear at **annex 1** of this Application. ILEX's primary objects are, amongst others, to provide an organisation for those who are registered or studying with

10. ILEX is governed by its Council, which is responsible for determining its policy. Council comprises Fellows engaged in legal work, who are elected to represent constituencies throughout England and Wales. There are 27 constituency places on Council and 6 places for Fellows who are co-opted onto the Council. A list of the current council members appear at **annex 2**. Council currently meets six times each year. Council members are responsible for ensuring that the affairs of ILEX are conducted diligently, legally and honestly.
11. The ILEX Council has adopted, and maintains, a three year Business Plan which defines the strategic and policy direction that the ILEX group will follow. It provides a focus for ILEX staff to enable them to deliver to targets. The current business plan, which covers the period 2010 to 2012, appears at **annex 3**.
12. ILEX's current strategic aims include the following:
- To ensure its professional qualification remains relevant to the needs of law firms, legal departments, employers and clients, and that it is delivered to meet national standards.
 - To develop its role as a natural home for all those seeking education, training or qualification relevant to their role in the legal environment.
 - To make itself more relevant to its members through the services it provides and by seeking new professional opportunities for members.
 - To develop its role in the public interest as an efficient and respected professional association and regulator of legal services.
 - To increase accessibility and diversity amongst the legal profession.
 - To enhance its focus on customer service.
13. ILEX has in place policies, which apply to Council members and employees, designed to ensure compliance with best practice in relation to the ethical management of ILEX including matters such as discrimination, freedom of

information and data protection. The policies include the Code of Conduct, Whistleblowers policy and the Equality and Diversity Policy, under which a Group Single Equality and Diversity Scheme and Action Plan is published.

14. Each year the annual accounts of the ILEX group are subject to an audit. A copy of the 2009 annual report and statement from the auditors appears at **annex 4**.

ILEX PROFESSIONAL STANDARDS LTD

15. ILEX is recognised as an approved regulator under the Legal Services Act 2007 (the LSA). In accordance with the provisions of the LSA ILEX has established a subsidiary company to which it has delegated its regulatory activities to ensure that its regulatory functions are carried out independently from its leadership and representative functions. The subsidiary company is called ILEX Professional Standards Ltd (IPS).
16. ILEX Council has delegated to IPS responsibility for complaints handling, development of the Code of Conduct and oversight of professional standards including its qualification schemes and regulatory structures. IPS is also responsible for the continuing professional development scheme and ILEX's qualifying employment requirements. IPS will regulate in the public interest in accordance with its Memorandum and Articles of Association, which appear at **annex 5**.
17. IPS was incorporated in October 2008. It is governed by a Board of Directors comprising 4 Lay Members and 3 Fellows of ILEX. The Chair of the Board is a Lay Member. A list of the current Board members appears at **annex 6**.
18. Protocols have been agreed between ILEX and IPS to facilitate good working relationships between the two companies and to ensure the requirements of the LSA regarding independent regulation of ILEX members are met. The protocols recognise that each company has its own obligations and priorities and that the best results for the public and ILEX members will be achieved by collaboration. The protocols are supported by a Service Level Agreement. A copy of the protocols and service level agreement appear at **annex 7**.
19. IPS is committed to openness and accountability. It has developed a number of documents setting out how the Board will work and the standards it aims to achieve. The documents are the Code of Conduct for Board members, reserved matters and standing orders. Copies of these documents appear at **annex 8**. IPS also maintains a risk management document, which is reviewed on a regular basis both by the IPS Board and IPS staff.
20. The Board is accountable to ILEX, ILEX members and the Legal Services Board. It has set out its strategy for the next three years and has developed a business plan against which performance can be assessed. A copy of the business plan

which incorporates the strategy appears at **annex 9**. It also evaluates the performance of itself and IPS each year, including appraisal of Board members. During 2010, IPS will publish its first annual report to bring all these matters together.

21. The IPS strategy links with the vision statement adopted by the ILEX Group. IPS is committed to underpinning the rule of law and the administration of justice and to acting in accordance with the regulatory objectives and professional principles set out in the Legal Services Act. The strategy commits IPS to:
- maintain an independent approach in its work
 - develop an understanding of the needs of those to whom ILEX members provide legal services
 - work closely with ILEX to support professional development and sustain good professional practice
 - be a proportionate regulator which targets risk
 - demonstrate good governance and achieve value for money in all it does.
22. The Board has divided its responsibilities into six work streams. The strategy sets out key aims for each of six work stream areas. The work streams are governance and process; education and standards; registration and accreditation; fitness to practise; communication and partnership; and performance and risk. Each member of the board has special responsibility for one of these areas, with the chair focusing on overall strategy, finance and relations with the professional leadership side.

REGULATORY CONFLICT

23. The protocols set out arrangements for resolving any conflict that may arise between ILEX and IPS. They set out arrangements for the sharing of information and consultation.
24. Disputes which arise between the Companies, whether in relation to the protocols or otherwise are resolved by discussions involving the Chief Executives of ILEX and IPS, the President for the time being of ILEX and the Chairman of the IPS Board. Where a dispute is unresolved it may be referred to an independent external facilitator. Nothing in the protocols prevents either company from referring a dispute which cannot be settled between them to the Legal Services Board to be resolved. At least 5 working days notice will be given to the other company if either company intends to refer a dispute to the Legal Services Board
25. ILEX and IPS believe that these arrangements offer a suitable and proportionate mechanism for dealing with regulatory conflicts.

APPROVED REGULATOR ROLE

26. IPS has scoped out business plan for the implementation of the probate rights scheme. A copy of the business plan appears at **annex 11**.
27. The plan sets out the activities that will need to be undertaken to implement the qualification scheme and the proposed timescale for each activity. Each activity has been subdivided to show in detail the work that will be involved.
28. Annexed to the implementation plan is a document setting out the resources that IPS will require to implement and administer the scheme. Wherever possible IPS will make use of existing resources and expertise, including staff members who have experience of implementing and administering the present rights of audience scheme. It is envisaged that a member of staff will be recruited to undertake the long term administration of the scheme, although it is likely that they will only need to devote half of their time to this area of work. However, should the scheme receive a large number of applications, to the extent that a staff member is required to devote more time to it, IPS will be able to assign a full time member of staff to it. The new member of staff will develop their capability through mentoring and training that will be provided by current experienced staff members.
29. The implementation plan includes a financial forecast outlining the projected income and costs for running the scheme. They also include costs of recruiting committee members and external advisors which will be one off costs. It is envisaged that IPS will recruit one external advisor because it does not anticipate receiving a large number of applications from members wishing to become probate practitioners. However, if it becomes necessary IPS will be able to recruit additional external advisors. The scheme should be self-financing with its ongoing costs being met by income generated from applications. The income will be able to support the appointment and costs associated with additional staff and external advisors. The forecast attributes all the set-up costs to the litigation scheme whereas the committee costs will be shared with other schemes.
30. Under the protocol between ILEX and IPS, ILEX agrees that it will make available such resources as are reasonably required and are appropriate to enable IPS to carry out its regulatory functions. It is envisaged that such costs will only be necessary for the implementation of the scheme rather than its ongoing administration. The ILEX Chief Executive and President has received and agreed the implementation business plan.

ILEX MEMBERSHIP

Core membership

31. ILEX members register in grades of membership appropriate to their level of qualification and experience. ILEX introduced new membership grades in September 2009. The new grades are Student member; Affiliate (level 2 or level 3 qualification or three years legal experience); Associate (level 3 or qualifying law degree); Graduate member (level 3 and 6 qualification or passed the LPC or BVC); and Fellow. A separate grade of Associate Prosecutor has also been created. It will create a new grade of Probate Associate Member.
32. In April 2010 there were 21,555 members registered with ILEX. Of those, 7,409 were Fellows and 1,815 had attained the Graduate membership grade.
33. Only Fellows are full corporate members of ILEX and entitled to the benefits and privileges conferred by membership. They are entitled to describe themselves as "Fellows of the Institute of Legal Executives", or "Legal Executives", and to use the designatory letters "F.Inst.L.Ex." To be admitted as a Fellow it is, briefly, necessary to have:
- passed the ILEX Professional Qualification in Law and Practice, or been exempted from it;
 - completed 5 years employment experience in legal work, including at least 2 consecutive years after completing the ILEX Professional Qualification in Law and Practice;
 - satisfied ILEX as to fitness for admission.
34. Graduate members are those trainees who have completed the ILEX Professional Qualification in Law and Practice, but have not yet complied with the requirements as to legal experience.
35. ILEX members come from diverse backgrounds. Over half of its membership is female and it has a proportion of members from ethnic backgrounds. In particular the flexibility of the earn and learn approach to the ILEX qualification attracts members who may otherwise have not sought to obtain a professional qualification.

Proposed new category of membership

36. ILEX proposes to create a new category of membership, Probate Associate member. Application for this category of membership will be open and is aimed primarily at those individuals wishing to deliver probate services under ILEX's proposed certification scheme who are not Fellows or Graduate members of ILEX. Probate Associate members will be subject not only to the rules of the certification regime but also to any relevant Institute membership rules for this category, including the Code of Conduct and the complaints handling and disciplinary rules.

ILEX AND EDUCATION AND TRAINING

37. The education and training requirements for those who will be authorised by ILEX to carry out probate services are described in **Part III** (The Certification Scheme) of this application. However, ILEX's professional education and training arrangements for Legal Executives will provide the benchmark against which the eligibility of those applying under the certification scheme will be assessed. In particular, those subjects of the ILEX Level 6 Professional Diploma in Law relevant to probate services will be used as a point of reference for those applicants for certification who have non-ILEX qualifications. It is important, therefore to explain ILEX's scheme of education and training and its role in legal education.
38. The ILEX scheme of education and training is set out at **Annex 11**. ILEX introduced a new Level 3 qualification scheme in September 2008 and a new Level 6 qualification in September 2009. These schemes have been accredited by OFQUAL, (formerly the Qualifications and Curriculum Authority), which recognises Level 6 to be of honours degree standard.
39. ILEX was originally established to provide education and training and to act as a professional body for people employed in the offices of solicitors in private practice, or in law departments in local or central government and in commerce or industry where they were supervised by solicitors. Most Fellows still qualify, and are employed, within the solicitors' branch of the profession. However, ILEX's remit, in terms of its education and training programmes is now much wider and trainees may be supervised by other authorised practitioners such as barristers or licensed conveyancers. Through its membership qualification, its Legal Studies Certificate programmes, the distance learning and professional study programmes provided by its subsidiary, ILEX Tutorial College (ITC), ILEX now offers education, training and qualification facilities to all who wish to study, train or qualify in the law of England and Wales. In addition to the 12,000 Students registered with ILEX on its Professional Diploma in Law and Practice and Professional Higher Diploma in Law and Practice programmes, there are 3,500 students currently undertaking the Legal Studies Certificate qualifications. 6,500 customers are currently registered to take courses and receive training with ITC.
40. ILEX is committed to practical legal education and training. Its strict requirements for qualification and high academic standards contribute to the confidence of those employed within the legal profession and enable them to provide employers with well qualified assistance in delivering legal services and in serving the needs of their clients. Fellows of ILEX bring to employers a combination of practical knowledge and experience, coupled with specialist academic legal knowledge. They tend to develop expertise in specific areas of law and practice. The Professional Qualification scheme encourages this focus. The majority of those seeking to qualify with ILEX will study part-time, so that practical experience is combined with the acquisition of relevant legal and procedural knowledge.

41. ILEX plays a unique and important role within the legal profession. It believes that it is vital to the interests of clients and the public at large, that those who deliver legal services are qualified and competent to do so. It combines a professional and regulatory function for solicitors' staff who are neither barristers nor solicitors, but who are nevertheless properly qualified and competent to provide legal advice and services. ILEX Fellows make an important contribution to the delivery of effective legal services to solicitors' clients. ILEX believes that it is vital to the interests of clients and the public at large, that those who deliver legal services are qualified and competent to do so.
42. ILEX also has wide experience of working with and assessing course providers and will therefore be well placed to assist those applicants for the Certificate who are required by ILEX to attend practice management and/or an accounts course. For example, ILEX has developed course delivery and outcomes criteria to enable practitioners to choose a suitable practice management course.

Recognition of ILEX's Qualifications

43. The Level 3 Professional Diploma in Law and Practice provides a broad introduction to the main areas of law and legal practice encountered in law offices. It now also incorporates legal research and client care units, which develop key skills required by legal practitioners. The standard of assessment at Level 3 equates with GCE 'A' level or NVQ level 3 on the national qualifications framework. The Level 6 law papers are set and examined at honours degree standard. The Level 6 legal practice papers reflect the level of knowledge required on the Solicitors Legal Practice Course, although greater practical expertise is expected to be demonstrated. The Level 6 qualification also includes legal research and client care skills units, aimed at further developing the practical skills required by members in the workplace.
44. Level 6 Law papers are accepted by a number of Universities as credits towards their Law Degrees. ILEX qualifications are also recognised towards qualification as a licensed conveyancer and as a solicitor. Fellows and Graduate members of ILEX who wish to qualify as Solicitors may complete the academic stage of the solicitors training scheme by taking relevant Level 6 subjects. They are required to study for and pass the Legal Practice Course. The Legal Practice Course can be undertaken part time and, as a result, it is possible for ILEX Fellows to qualify as solicitors without any significant disruption in their employment. Fellows of ILEX may be granted exemption from the Law Society's usual requirement for a training contract to be completed. The SRA is piloting a work based learning scheme which may replace the training contract. ILEX is also exploring similar options and will need to discuss with the SRA whether Fellows' experience will count towards their work based learning requirements.
45. Research undertaken on behalf of ILEX indicates very high levels of support within the legal profession for its scheme of qualification and training. Responses from employers and members indicate that the qualification remains both accessible and relevant to the provision of legal services.

THE WORK OF ILEX MEMBERS

46. The extent of the impact of the work of ILEX on the provision of legal services in England and Wales is demonstrated by the work of its Fellows. This work is at the heart of the provision of legal services and extends to all areas of law and practice including the provision of probate services. Fellow's work is therefore enhanced by being governed by ILEX and the active participation of Legal Executives who not only have first hand experience of legal practice but also have a sound legal knowledge gained through ILEX's training and education scheme.
47. This is of particular importance to the regulation of probate services as in operating and managing the proposed certification scheme ILEX will be able to draw on its members' experience and to involve them directly in the certification process and in the regulatory aspects of the scheme.
48. ILEX's records show that 78% of Fellows are employed in solicitors' offices in private practice, 14% work in local government and public administration, 6% in commerce and industry and 2% are self-employed. Fellows, and other suitably experienced members of ILEX, are also eligible to join important specialist practitioner organisations such as the Society of Trust and Estate Practitioners, Resolution, the Association of Personal Injury Lawyers and the Forum of Insurance Lawyers. They are also eligible to join some of the specialist panels operated by the Law Society or its specialist groups, including the Personal Injury Panel and The Family Law Panel and many have done so.
49. Fellows are Commissioners for Oaths, by virtue of by-laws made by ILEX in pursuance of 'The Commissioners for Oaths (Prescribed Bodies) Regulations 1995'. Fellows are also given powers by statutory instrument to sign compromise agreements in employment disputes (Compromise Agreements (Description of Person) Order 2004).

LEGAL EXECUTIVES AND PROBATE BUSINESS

50. Although it will be open to all its members, including Probate Associate members, to seek authorisation to deliver probate services, ILEX anticipates that a substantial number of those doing so will be either Graduate members or Fellows of ILEX. This is because these members already play an important part in delivering these services in solicitors' offices, for institutions such as banks and on their own account.
51. The work undertaken by most experienced Legal Executives is indistinguishable from that undertaken by a solicitor. Consequently, in practice there are many Legal Executives who carry out the full range of probate business. Most people arrange for their wills to be prepared by solicitors' firms and many decide to name partners in those firms as executors. This means that the Legal Executives

in those firms are frequently called upon to obtain grants of probate both for private clients and for partners of their firm.

52. There are few other avenues open to members of the public when problems arise with a will other than to consult a firm of solicitors. As a result, Legal Executives practising in this field must be able to take instructions in circumstances where a deceased's will gives rise to problems in relation to the grant of probate and to advise clients on the way those problems should be dealt with. Dealing with those problems may involve opposing a grant of probate or asking the High Court to grant probate rather than the Probate Registry. These practitioners must also be able to deal effectively with the practical and legal aspects of the administration of both straightforward and complex estates.
53. Legal Executives must therefore not only be familiar with the laws of wills and succession but also must have an excellent working knowledge of the rules relating to contentious and non-contentious probate cases. The wide range of knowledge and experience required by Legal Executives who are probate practitioners extends to being familiar with the rules relating to inheritance tax and other taxation issues.
54. As a result of their experience of delivering probate services Legal Executives are well placed to use their expertise as independent probate practitioners and are most likely to be in the forefront of those seeking authorisation from ILEX and thus widening the market of providers.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

55. All ILEX Fellows, except Retired Fellows, are required to undertake 16 hours CPD each calendar year. All Graduate members of ILEX are required to undertake 12 hours CPD each calendar year and Associate members are required to undertake 8 hours CPD each year. Half of the CPD must be relevant to the area of law in which the member practices and the other half may be gained in an area of law or practice relevant to their professional development or which may be outside of their specialism.
56. CPD is important to maintaining competence and to developing the ever-changing skills needed by legal practitioners. ILEX monitors compliance with CPD requirements. A failure to comply is classed as a disciplinary offence.
57. Qualifying members who are authorised under the proposed certification scheme to deliver probate services and who are not Fellows or Graduate members of ILEX will be required to carry out 16 hours CPD. This must include 8 hours relevant to probate services and the remaining 8 hours may be gained by professional development outside this area.

58. ILEX has put a strong emphasis on CPD and believes that it is important to maintaining competence and to adapting skills to changes in the legal environment. It expects that placing a requirement on probate services practitioners who are authorised under the certification scheme to undertake CPD will ensure that knowledge and skills relevant to that area of practice will be maintained and improved.
59. Compliance with the CPD requirements is and will be monitored by ILEX. It should be noted that since the CPD requirements were introduced in 1999, in excess of 97% of Fellows have complied.

ILEX AND THE REGULATION OF CONDUCT

60. ILEX has a long history of regulation both in relation to its own members and, more recently, in administering special regulatory regimes, such as those relating to immigration advisors who are members of ILEX (Immigration and Asylum Act 1999), in relation to those of its members who have been granted rights of audience and those who are claims assessors (Compensation Act 2006)). It also regulates Legal Executives in their role as Commissioners for Oaths and those providing advice on compromise agreements. ILEX has entered an agreement with the Crown Prosecution Service to regulate through membership, those designated as Associate Prosecutors by the Director of Public Prosecutions under the Prosecution of Offences Act 1985, as amended by the Criminal Justice and Immigration Act 2008.
61. ILEX has delegated to IPS responsibility for regulating the conduct of its members. IPS has put in place appropriate arrangements.
62. All ILEX members are required to abide by the Code of Conduct published by IPS and, where they are employed in solicitors' offices, to have regard to the requirements of the Solicitors Practice Rules. IPS has recently redeveloped the Code of Conduct. The Code of Conduct and the Investigation, Disciplinary and Appeals Rules are included at **Annexes 12 and 13** of this Application.
63. IPS has also recently redeveloped the Investigation, Disciplinary and Appeal Rules (IDAR). The IDAR establish procedures through which it considers complaints or misconduct allegations made about the conduct of ILEX members. The IDAR set up the Professional Conduct Panel and Disciplinary Tribunal to consider complaints and cases of alleged misconduct against ILEX members. They incorporate lay involvement in all stages of decision making and adjudication.
64. The disciplinary powers include the power to exclude persons from membership, seek undertakings or impose conditions upon members, to reprimand or fine them and, where appropriate, to award costs.

65. Between 1968 and 2009, 76 members of ILEX appeared before the Disciplinary Tribunal. ILEX members are subject to the jurisdiction of the Law Society, where they work in solicitors firms. Under section 43 of the Solicitors Act 1974 ILEX members, in common with other employees of solicitors, may be made subject to Orders restricting or controlling their employment within a solicitors firm. The jurisdiction of the Law Society and the Solicitors Disciplinary Tribunal is additional to the jurisdiction of ILEX. In practice, an order made by the Solicitors Disciplinary Tribunal or the Law Society against a member of ILEX is likely to result in a determination by ILEX's Disciplinary Tribunal.
66. Complaints alleging provision of an inadequate professional service to solicitors' clients will usually be dealt with initially through the solicitors' complaints procedures but, again, may result in disciplinary action by IPS. IPS has developed its own scheme for dealing with complaints of inadequate professional services made against independent practitioners authorised by ILEX. This role will pass to the Legal Ombudsman under the Legal Services Act 2007.
67. ILEX and IPS will develop memoranda of agreement with the Legal Ombudsman and Authorised Regulators to set out arrangements for dealing with complaints and regulatory conflict. ILEX already has in place a Memorandum of Understanding with the Office of the Immigration Services Commissioner (OISC). The Memorandum of Understanding with the OISC sets out the arrangements for dealing with complaints involving immigration matters concerning ILEX members. A similar Memorandum of Understanding is in place between ILEX and the Crown Prosecution Service concerning Associate Prosecutors registered as members of ILEX.
68. Although ILEX is not generally subject to the formal jurisdiction of the Legal Services Ombudsman, it has benefited from constructive engagement with her Office. The Ombudsman has formal jurisdiction over complaints handling by ILEX in respect of its Legal Executive Advocates. There has been no reference to the Ombudsman of any complaint made against an ILEX Advocate. Since ILEX became authorised to grant advocacy rights, the Ombudsman's Office has carried out two informal inspections of ILEX's case handling arrangements. Both reports commented favourably on the way in which it handles complaints against its members. Any action points identified in the reports were addressed.
69. IPS has introduced a mechanism to receive feedback from members and complainants about how it handled their case. The feedback mechanism has proved effective in assisting IPS to identify and implement changes to its complaints handling procedures.
70. Part of the remit of IPS is to consider applications from prospective Students, or members seeking enrolment into the membership or Fellowship grades, where the applicant has made a declaration of prior conduct, including any convictions. All members of ILEX are required to make declarations of 'prior conduct' at the time they renew their annual subscription. IPS determines what further action, if any, should be taken in relation to applications or declarations. Declarations of

previous convictions are for the most part subject to the provisions of the Rehabilitation of Offenders Act 1974. However, ILEX is an exempt body under the provisions of the Act so far as its Fellows are concerned and may therefore require Fellows, including Legal Executive Advocates, to declare spent convictions, and take action in regard to such declarations.

Regulation and probate services

71. Qualifying members who are Fellows or Graduate members of ILEX who apply to deliver probate services will continue to be bound by its Code of Conduct and to be subject to its disciplinary procedures. Those who become Probate Associate members will also be required to comply with the Code of Conduct insofar as it is relevant to this category of membership. They will be subject to ILEX's disciplinary procedures should they be in breach of the Code or any conditions imposed under the proposed certification scheme.

PROTECTION OF CLIENTS AND THE PUBLIC

72. In addition to the safeguards provided by ILEX's regulatory regime for its members, it has developed Practice Management and Accounts and Indemnity Insurance Rules that are intended to apply to those of its members who provide probate services on their own account. The Rules are set out in **Appendices 6 and 9** to the Certification Rules and will apply to all categories of member. ILEX has also developed a scheme for dealing with complaints of poor service and a number of practice management codes of practice.

Client Protection Scheme

73. ILEX has developed its own client protection scheme. This is a scheme whereby clients who suffer loss as a result of the dishonesty or failure to account by a certificate holder will be able to seek redress from a compensation fund to be set up by ILEX, which will be administered by IPS. ILEX takes the view that it is important to provide some redress for clients who have no other mechanisms available to them. The scheme rules appear at **Appendix 10** to the Certification Rules.

74. The client protection fund is a new fund that will be set up by ILEX. All certificate holders will be required to contribute to the fund. In addition ILEX will designate some of its reserves for the purposes of setting up the fund. ILEX takes the view that this is necessary to establish the fund in the first instance. The rules of the scheme contain provisions about how ILEX can develop the fund such as through investments and borrowing.

75. The fund will be a discretionary fund of last resort. ILEX will expect clients to have exhausted other forms of redress before making a claim on the compensation fund.

76. The Rules set out the procedure that will be followed where a claim is made to the ILEX compensation fund. The onus will rest with the client to provide information in support of his claim and to show the loss suffered. The client will subrogate to IPS his rights to make a claim against the certificate holder and will be required to assist IPS in making or supporting that claim. In assessing the level of payments to be made IPS will take into account various factors such as whether the client contributed to their loss, the client failed to act with integrity or failed to co-operate.
77. IPS will set the maximum level of payment it can make from the fund. The level of payment will be reviewed by IPS on a regular basis. In setting the level of maximum payment IPS will take into account market forces and the level of payments the fund can sustain. The inspection and monitoring processes proposed by ILEX will help to reduce the risk and act as a mechanism for assessing where potential risks may lie.
78. Where a client is suffering severe hardship ILEX has reserved the power to make an interim grant. This will be important for providing assistance to vulnerable clients.

Indemnity Insurance

79. ILEX has developed a scheme of indemnity insurance. All certificate holders will be required to obtain cover under the ILEX indemnity insurance scheme unless they are an employed certificate holder. Employed certificate holders will need to ensure that they are covered by a scheme of indemnity insurance held by their employer. If they are not they must obtain cover under the ILEX scheme. Details of the scheme are shown at **Appendix 9** to the Certification Rules.
80. ILEX has investigated whether to opt for an open market or master policy scheme. In developing its indemnity insurance rules ILEX sought advice from three individual brokers at different periods of time. The advice received from all of the brokers has been that subject to prevailing conditions, a master policy scheme will best serve the interests of certificate holders and their clients. They took the view that the scheme would provide a better level of premium for members.
81. However, recent advice, which was sought in April and May 2010, advised that ILEX members may have to seek insurance on the open market if there were an insufficient number of practitioners to make a master policy scheme viable at the outset. The broker discussed the ILEX scheme with a large insurance provider. The broker is assured by the training and regulatory structure proposed by ILEX and takes the view that it will assist in negotiations with insurance providers, particularly in terms of the level of risk posed by probate practitioners and the level of premium. The broker will assist ILEX in continuing discussions with insurance providers to enable it to identify when to move from an open market scheme to a master policy set up. Therefore practitioners will be able to obtain their own policy of insurance which meets minimum terms and conditions. Practitioners may then transfer to the Master Policy once it is in place.

82. Once it is able to do so ILEX will obtain a master policy of indemnity insurance under which certificate holders will be able to obtain cover. The collective purchase power may assist in obtaining an acceptable level of premium for practitioners.
83. ILEX believes that it is important for the protection of clients' interests to have a professional indemnity insurance scheme in place. ILEX will not issue a Certificate until it is satisfied that the member has obtained Indemnity Insurance cover. A certificate holder may not practice while they are uninsured.
84. Certificate holders will obtain insurance for a mandatory level to be set by ILEX from time to time. Certificate holders will be able to obtain cover for a higher level if they wish. The scheme will provide clients with a scheme of redress for any civil liability incurred in connection with the certificate holder's practice. The minimum level of cover will be proportionate to the risk posed by certificate holders' practices. It is recognised that certificate holders may pose a higher risk than other practitioners as they may hold large amounts of client money when administering an estate. The IPS Board will be responsible for assessing risk and setting minimum levels of cover. In assessing risk it might seek expert advice from insurance brokers, insurance providers and benchmark against levels set by other regulatory bodies.
85. Certificate holders will also be required to have run off cover for a period of 6 years. This will ensure that there is ongoing cover for a reasonable period of time after they cease to practice.

Poor Service Scheme

86. ILEX expects all practitioners who deliver probate services on their own account to establish an effective and speedy complaints procedure. Its Poor Service Scheme (see **Appendix 11**) enables clients to claim redress if they receive a service which falls below the standards that may be reasonably expected of an ILEX certificate holder. Under the Legal Services Act 2007 responsibility for complaints about the service received from a certificate holder will pass to the Legal Ombudsman. The Legal Ombudsman will become a single point of entry and will deal with service complaints. The ILEX poor service scheme is included for completeness, however, it is likely the Legal Ombudsman scheme will be operational before these probate rights rules come into effect. Certificate holders will be required to inform clients of the availability of the Legal Ombudsman service and how complaints may be made to it.

Practice management

87. ILEX will require those who deliver probate services on their own account to adopt procedures that comply with following codes and arrangements and to apply them when running their businesses. These are:
- Money laundering legislation and any relevant Codes of Practice

- ILEX's Equality and Diversity Code (see **Appendix 7** to the Certification Rules)
- ILEX's Publicity Code designed to control the design and dissemination of publicity material by certificate holders (see **Appendix 8** to the Certification Rules)
- practice and accounts procedures which comply with the rules of ILEX for the time being

Practice Management Rules

88. The Practice Management and Accounts Rules (**Appendix 6** Certification Rules) will ensure that certificate holders provide an acceptable standard of client care to all their clients. The Rules require that certificate holders act with integrity and that, subject to their duties to the Court, they ensure that the interests of the client are paramount.

89. In particular the rules relating to client care will ensure that clients are given clear written details of their instructions, the extent of the retainer, the likely costs the client will incur, the details about the fee earner handling the case and how to make a complaint about the service or conduct of the certificate holder and/or his practice. The practice management rules require that probate practitioners must have in place arrangements to deal with complaints in house at the first instance. They also require that probate practitioners communicate details of their complaints handling procedures to clients.

90. The Rules deal with issues of client confidentiality and conflict of interest and certificate holders will be required to act independently and in the interests of their clients.

91. Fee sharing and referral arrangements will be permitted provided open and honest disclosure of those arrangements is made to clients.

92. The Rules also seek to ensure that the certificate holder retains overall personal responsibility for his practice and that only suitably qualified practitioners are permitted to supervise a certificate holder's office.

Accounts Rules

93. These Rules (see **Appendix 6** to the Certification Rules) apply to certificate holders in independent practice.

94. Under these Rules client and office monies must be separated and there must be a clear audit trail of transactions for each client. Certificate holders must maintain proper accounting systems, a client ledger for each client, and clear and unequivocal financial records.

95. Certificate holders will also be required to maintain accurate records and up to date financial records and to regularly review the financial basis of each matter

on which they are instructed. The Rules also outline when a payment of interest on a client account should be made.

96. An annual accountant's report from a suitably qualified accountant approved by ILEX must be obtained by the certificate holder and presented in a format determined by ILEX. The accountant will be required to carry out various test procedures laid down in Rules and to report any concerns about the financial management by the practice to ILEX. A copy of the report must be presented to ILEX and ILEX may opt to monitor or inspect the practice should the report identify any shortcomings.
97. ILEX will develop guidance notes to assist practitioners in complying with these Rules.

Supporting Codes and Rules

98. The Practice Management and Accounts Rules are also supported by Equality and Diversity (**Appendix 7** to the Certification Rules) and Publicity Codes (**Appendix 8** to the Certification Rules).
99. The Equality and Diversity Code ensures that certificate holders do not engage in anti-discriminatory practices in their dealings with clients and other parties. Each practice must have an equality and diversity policy or adopt ILEX's policy. The policy is important for the protection of the public interest and will ensure that there is equality of treatment. ILEX will view a failure to comply with the code as a matter of misconduct.
100. The Publicity Code is designed to ensure that there is clarity in any material published by a certificate holder. The Code requires clients to be provided with clear information about the name and address of the certificate holder's practice, the status of the person dealing with their matter and an indication that ILEX is the regulatory body for the practice. The Code also requires that any advertising undertaken by the certificate holder is unambiguous and truthful.

Entity regulation

101. The rules outlined above are set as general principles that ILEX probate practitioners will need to meet. They focus upon individual regulation.
102. ILEX has not developed entity based rules at present. It is working on an application to become a licensing body. As part of that application it will convert its current rules into entity based rules. At that point it will make an application to the LSB to require probate practices to be subject to entity based rules.

Disciplinary proceedings

103. A breach of the Codes and Rules will be investigated in accordance with the Investigation, Disciplinary and Appeal Rules (IDAR). The requirement to comply with the Practice Management and Accounts Rules is in addition to the ILEX general Code of Conduct and Guide to Good Practice. Any complaint regarding the conduct of a certificate holder, either under the Code or the Rules, will be

dealt with through the normal disciplinary procedures. Those procedures are set out at **Annex 13**. Any decision against a certificate holder, made under the Investigation and Disciplinary Rules, other than a decision to exclude from membership, will result in consideration being given by ILEX as to whether the certificate holder remains a fit and proper person to hold Certificate.

104. A certificate holder who ceases to be a member of ILEX, whether for disciplinary reasons or otherwise, will automatically cease to be eligible to exercise probate rights.

REGULATORY CONFLICT

105. At this stage ILEX seeks to regulate practices of ILEX members only. It does not seek to regulate mixed practices of lawyers or of lawyers and non-lawyers. It will seek to regulate such practices as part of its licensing application.

106. IPS is participating in discussions with other approved regulators to develop a memorandum of understanding addressing regulatory conflict that will arise in respect of licensing.

107. IPS will commence discussions with approved regulators in respect of regulatory conflict that might arise in the regulation of ILEX probate practitioners. It has identified that such conflict may arise where a probate practitioner practices in a structure that is regulated by a regulator other than IPS. Discussions will take place while the application is under consideration by the LSB. At present IPS manages regulatory conflict that arises in respect of regulation of its members case by case. ILEX members holding a dual qualification (solicitor or licensed conveyancer) or working under the supervision of a solicitor are subject to regulation by the SRA and CLC as well as IPS. Case by case arrangements have worked well.

PART II – THE PROBATE SERVICE RIGHTS, REGULATORY OBJECTIVES AND BETTER REGULATION PRINCIPLES

PROBATE SERVICES RIGHTS

1. The authorisation being sought by ILEX is to be an approved body in respect of probate services under the Legal Services Act. This means that its qualifying members will be exempt from the prohibition in s14 Legal Services Act 2007 and will be entitled in accordance with s13 Legal Services Act 2007, to take instructions for reward to draw or to prepare papers on which to found or oppose a grant of probate or a grant of letters of administration,.
2. If it is granted approved body status ILEX will also be able to authorise qualifying members to undertake the administration of estates of deceased persons and therefore this will become a regulated activity.
3. ILEX, has assumed that the exemption will permit its qualifying members to do the following:
 - having taken instructions, to draw up or prepare papers on which to found the grant of probate in common or solemn form or in respect of the grant of letters of administration, for which a charge may be made;
 - having taken instructions, to draw up or prepare papers on which to oppose the grant of probate in either form or in respect of the grant of letters of administration, for which a charge may be made.

ILEX has assumed it will be able to authorise its members to take all the steps necessary to administer the estate of a deceased person from the grant of probate until the final distribution or its winding up, for reward.

Probate Services Certificate

4. This Certificate will, when granted by ILEX, firstly, exempt qualifying members from s14 Legal Services Act 2007 and enable them to take instructions for reward to draw or prepare any papers on which to found or oppose a grant of probate or a grant of letters of administration. Secondly, the Certificate will enable qualifying members to undertake the administration of the estate of a deceased person.
5. Qualifying probate practitioners will be issued with a single Certificate that will enable them to provide probate services.

LEGAL SERVICES ACT – REGULATORY OBJECTIVES AND PROFESSIONAL PRINCIPLES

6. This Application will support the regulatory objectives and professional principles as set out in s1 Legal Services Act 2007.

The Regulatory Objectives

7. The Legal Services Act 2007 sets out eight objectives to be pursued by those engaged in the regulation of legal services. ILEX is an approved regulator under the Legal Services Act 2007. ILEX submits that its application for probate rights supports the regulatory objectives set out under the Legal Services Act 2007.

8. The regulatory objectives are:

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving access to justice;
- Protecting and promoting the interests of consumers;
- Promoting competition in the provision of services provided by authorised persons;
- Encouraging an independent, strong, diverse and effective legal profession;
- Increasing public understanding of the citizen's legal rights and duties;
- Promoting and maintaining adherence to the professional principles which are that:
 - authorised persons should act with independence and integrity;
 - authorised persons should maintain proper standards of work;
 - authorised persons should act in the best interests of their clients;
 - persons who exercise a right of audience or conduct litigation should comply with their duty to the court to act with independence in the interests of justice; and
 - that the affairs of clients should be kept confidential.

Protecting and promoting the public interest and the interests of consumers

9. The award of probate rights to ILEX members will help to protect and promote the interests of consumers and the public interest for a number of reasons.

10. ILEX believes that its proposals in this application will not only broaden the range of suppliers of probate services but will through the certification scheme establish an additional quality threshold for practitioners and therefore provide protection to the public and consumers that probate services are provided by suitably competent advisors. Most practitioners have few opportunities for the formal recognition of their skills and knowledge in their post-qualification career. The certification scheme proposed by ILEX presents both an opportunity for them to seek such recognition and for probate services to benefit from a new cadre of practitioners whose skills and knowledge have been assessed against a robust set of criteria by a reputable professional body.

11. Over time certification will be demanded not only where individuals are self-employed but also where they are working within institutions involved in probate business, such as banks or other similar organisations. In other words it is expected that certification will become an added assurance of competence over and above the individual's professional training and experience, thus providing a mechanism for the protection of consumer interests.
12. This assurance will be complemented by a comprehensive system of regulation administered by an organisation with a proven track record of improving and enforcing professional standards.
13. The monitoring and inspection arrangements that ILEX proposes to introduce through this application for independent practitioners authorised by ILEX will ensure that there are suitable controls and regulation governing the work of independent practitioners. That will provide ongoing protection for the interests of consumers.
14. The viability of any new business could be enhanced by the provision of will making services, which although unregulated, would be a natural extension of the provision of regulated probate services. The linking of these two services would have the added advantage of having at the heart of the business certified probate practitioners who are subject to regulation. As far as will writing is concerned these practitioners will be able use their experience and training to ensure that will drafting was of a good quality. Given the central role played by wills in probate process this will have a positive impact on all aspects of probate business.
15. Against this background ILEX wishes to establish a regime in which the individuals it authorises to carry out probate services share the same reputation as Legal Executives as being competent to handle the technical and legal aspects of probate business. In particular it wishes to ensure from the point of view of the public, in relation to the provision of probate services, that there is no discernible difference between the quality of service provided by any category of qualifying member holding the Certificate.
16. This means that ILEX expects those that it authorises to carry out probate services to be able to deal effectively with sensitive issues such as making a will or dealing with issues surrounding the administration of a relative's estate to the same high standard as its Legal Executive members. Whilst it believes that allowing non-Legal Executives to become members and to apply for a Certificate will be beneficial to the public in terms of choice, ILEX considers that the safeguards built into the certification scheme will enable these benefits to be realised without impinging on the proper and effective administration of justice. It also considers that the existence of a cadre of certified practitioners will provide a comprehensible and dedicated 'quality mark' for the public wishing to access probate services, for other practitioners in the field and for those administering the probate system.

Supporting the constitutional principle rule of law

17. The conduct rules applicable to ILEX members ensure that they will act to support the constitutional principle of the rule of law. Under the Code of Conduct all members of ILEX are required to act within the confines of the law.
18. ILEX probate practitioners will act in accordance with legal provisions in the probate work that they will undertake.

Improving access to justice

19. The scheme will create an opportunity for practitioners to establish new businesses and therefore increase the range of choice for the public and offer a more cost effective and affordable service to consumers compared with that provided by other advisors. The availability of these services will further the public interest in ensuring there is adequate access to probate services for those who require it. This is important in a context in which there is a shortage of probate practitioners with relatively few newly qualified solicitors choosing to study or specialise in probate services.
20. In other instances it will make available a service where there is no other service available geographically or which provides the full range of probate services and which is appropriately regulated.
21. As well as creating the opportunity for the creation of new freestanding businesses, ILEX's proposal also creates the opportunity for firms of solicitors engaged in probate business to consider new business models. For example, larger firms may consider consolidating their probate service provision within new business units dedicated to probate business under the supervision of a practitioner certified under ILEX's scheme. In addition, solicitors' firms may consider using the new style probate practices discussed above as agents or contractors to provide probate services.
22. The range of choice will also be enhanced by the prospect of non-legal institutions or companies being able to employ certified practitioners to head up probate business units within their organisations and to offer services to the organisation's clients as part of their employment. As an alternative such institutions or companies could contract out probate business to a firm run by a certified probate practitioner. This, in addition to other business models that may emerge from the changes to the regulatory arrangements for probate services, is likely to improve the accessibility by the public to good quality professional services.
23. It is also important to view this application in the context of the emergence of the business models under the Legal Services Act 2007. These business models enable the formation of new businesses by Legal Executives and authorised persons and business that can involve non-lawyers. Therefore there will be the development of a new type of probate practice that brings together probate practitioners from different backgrounds or disciplines. Any such consolidation that results from this will further enhance choice.

24. ILEX anticipates that its new arrangements for authorising the delivery of probate services will stimulate the creation of new, more specialised models of delivering probate services and considers that this may lessen the potential for the dilution of specialist capacity that can take place in general practices. Changing the way that probate services are delivered may concentrate expertise as well as encourage the development of more efficient practices both of which may impact positively on probate practice throughout the whole system.
25. ILEX believes many individuals involved in probate business will be attracted to the new certification scheme both as a means of accessing new business opportunities but also as a means of securing recognition for their knowledge and experience. This opens up the possibility of attracting more individuals wishing to specialise in probate services, a factor that will not only be to the benefit of the quality of legal services but also help to provide the scope for greater choice for the public.
26. This is particularly so as the application proposes that all qualifying members should be able to apply for the Certificate provided they have the necessary experience and knowledge. The fact that the Certificate is a passport to establishing a probate practice will not only increase the demand for the Certificate but will also create the potential for dealing with the current shortage of practitioners by encouraging more to specialise in probate work.
27. In addition to this, the scheme aims, through the development plan route, to be sufficiently flexible to encourage those currently involved in a discrete area of probate business to gain sufficient experience for a full certificate. To this extent the application seeks to build new capacity within the probate business sector and thereby ensure a healthy market of providers for the future.
28. Although Legal Executives working in solicitors' firms are at the heart of probate practice ILEX acknowledges that its certification scheme is likely to attract applicants working in other environments and possibly in other disciplines.

Promoting competition in the provision of services provided by authorised persons

29. The proposals in this Application constitute new or better ways of providing services to clients and will provide ILEX members with greater flexibility to do so. In organisations which employ ILEX probate practitioners to provide legal services to their clients, there will be greater choice in the range of persons able to be employed to provide will writing services and probate work.
30. The proposals will enable many organisations to provide probate services to clients for the first time. At present other legal professionals are not authorised to provide services to clients of their employer. The introduction of ILEX probate practitioners will thereby increase the range of services that organisations can provide. This will increase consumer choice and provide them with access to a

new service provider and enable organisations to compete with other practices providing legal services.

31. ILEX probate practitioners who set up in independence practice will be able to compete with other lawyers in providing probate services. This again will increase consumer choice and competition in the provision of services.
32. As choice is widened competition will be increased creating an environment in which the price of services may be moderated. It may also lead to greater flexibility in the way that probate services are provided and by whom. Importantly, however, under the regime proposed by ILEX, its certification procedures will help ensure that competition does not impact on the quality of provision. Consequently, any new business models that emerge from its proposals will be underpinned not only by the certification procedures but also by a comprehensive set of conduct, practice and accounts rules.

Encouraging an independent, strong, diverse and effective legal profession

33. ILEX probate practitioners will be subject to regulation by ILEX Professional Standards Ltd (IPS). As part of the regulatory scheme they will be required to comply with the ILEX Code of Conduct and the Practice Management and Accounts Rules. These Rules are also supported by various Codes, Rules and Schemes.
34. The above rules and codes will require ILEX probate practitioners to act independently and in the interests of their clients, thereby encouraging an independent, diverse, strong and effective legal profession.
35. IPS has a scheme in place to deal with complaints made against ILEX members. The scheme will ensure that misconduct and breaches of the conduct rules are adequately addressed.
36. The introduction of a new service provider will help to encourage a diverse range of legal professionals that will be suitably trained to exercise the new rights effectively.

Increasing public understanding of the citizen's legal rights and duties

37. The introduction of a new service provider will provide a new resource for citizens where they can seek advice about their legal rights and duties. ILEX probate practices will make available to citizens forums through which advice and assistance can be sought.

Promoting and maintaining adherence to the professional principles

38. ILEX probate practitioners are required to act in accordance with the ILEX Code of Conduct. They must also observe the ILEX Practice Management and Accounts Rules and supporting codes, rules and scheme. These rules require them to act with independence and integrity. ILEX probate practitioners must always act in the best interest of their client but they must recognise their overriding duty to the court to act with independence in the interests of justice.

39. Under the Code of Conduct and Practice Management Rules ILEX probate practitioners owe a duty to keep the affairs of their client confidential. The Code and Rules also require that they maintain proper standards of work and only act in cases within their competence.

BETTER REGULATION PRINCIPLES

40. ILEX submits that its proposed scheme meets the better regulation principles.

Proportionate

41. The application proposes a proportionate route to qualification as a probate practitioner. In developing its qualification structure IPS assessed what skills and knowledge a probate practitioner would require to practise. It also considered what knowledge and experience ILEX members already possess from completing the ILEX qualification. This enabled it to determine that practitioners possessed sufficient skills to qualify through a proportionate entry scheme which robustly assesses their existing skills and knowledge.

42. ILEX compared its proposals to qualification schemes available through other approved regulators. ILEX members possess a significant amount of practical experience which, for example, newly qualified solicitors would not. The practical experience is an invaluable mechanism through which they have built up the skills necessary to undertake probate work. The practical experience is complemented by knowledge gained of relevant subjects at honours degree standard, whereas additional knowledge gained by newly qualified solicitors, compared to ILEX Fellows, will be in subject areas not directly relevant to probate practice.

43. ILEX also compared its proposals to the probate qualification introduced by the Council for Licensed Conveyancers (CLC). The CLC qualification requires practitioners to study a foundation course in law of succession and a final course in probate practice and to have gained 2 years experience of undertaking probate work. It is unclear whether the CLC qualification is set at the same standard as Level 6, which is proposed by ILEX. Furthermore, although ILEX has not specified the number of years experience a candidate will have it is expected that they will have substantial experience to meet the knowledge and experience requirements.

44. ILEX has also developed a proportionate approach to practice management and accounts. The practice management and accounts rules represent the standards to be expected of ILEX practitioners. In developing the rules ILEX has balanced the risks to clients' interests against the development of a suitable regulatory scheme.

45. Furthermore the inspection and monitoring arrangements will enable ILEX to maintain suitable controls on the practices of ILEX probate practitioners without placing unnecessary burdens upon them. This represents a suitable approach by which ILEX may protect the interests of the public and consumers.
46. Again in developing its practice management and accounts rules ILEX compared its proposals against the rules laid down by the Solicitors Regulation Authority and Council for Licensed Conveyancers. The comparison activity provided an opportunity for ILEX to ensure that its rules covered essential matters. Any rule not included within the ILEX rules was deemed to be unnecessary for practice as an ILEX probate practitioner.

Accountable

47. The proposed scheme includes suitable accountability arrangements. ILEX will be accountable through its Admissions and Licensing Committee for the administration and application of the scheme rules. The Committee will be responsible for producing an annual report of its work to the IPS Board.
48. ILEX probate practitioners will also be accountable to ILEX through the annual accountants' reports and returns in respect of their practices. The annual returns will encompass application of the accounts rules. ILEX will also require probate practitioners to make annual returns in respect of practice management issues, which will include an outline of any complaints made to the practice.
49. The inspection and monitoring arrangements present another mechanism through which the accountability of ILEX probate practitioners and their application of the ILEX rules can be monitored.

Consistent

50. The approach to the qualification scheme is consistent with the ILEX qualifications. ILEX has determined that the ILEX qualifications provide sufficient knowledge to enable a practitioner to undertake probate work.
51. ILEX's proposals to assess knowledge and experience through a portfolio approach is consistent with the approach that it has implemented in respect of the rights of audience qualification scheme, for which ILEX is already an approved regulator. The approach has been effective and therefore ILEX proposes to follow the same method for probate practitioners.
52. ILEX has also adopted the same practice management and accounts rules for all of its proposed applications to become a regulator of reserved legal activities. That will ensure there is consistency between the standards that the public and consumers can expect of ILEX members regardless of the reserved legal activity that they undertake.

Transparent

53. ILEX has taken a transparent approach to developing the qualification and regulatory scheme. IPS has consulted key stakeholders on its proposed scheme.

The consultation was sent to approved regulators and their respective regulatory bodies, consumer groups and representative bodies in the probate practice field. Notifications were sent to ILEX members through the Legal Executive Journal and IPS websites.

54. ILEX received 7 responses to its consultation. ILEX analysed the consultation responses to determine whether any amendments were required to its proposals. Some amendments were made in response to feedback received from consultees. A copy of the consultation paper, responses and analysis appears at **annex 14**.

Targeted

55. ILEX has developed a qualification scheme which has been targeted at assessing and developing the skills and knowledge required by probate practitioners to undertake probate work on their own account. The scheme provides probate practitioners with the option of developing their practice management and accounts skills and knowledge if they wish to practise on their own account and provide probate services to clients of their employers. Those probate practitioners who wish to remain as employees of legal practices will not need those additional skills and will not be required to develop them.
56. Similarly the regulatory structure has been developed by targeting itself at the risks that can arise and which require to be addressed.

PART III – CERTIFICATION SCHEME

INTRODUCTION

1. The certification scheme is summarised below. The **Certification Rules** set out in detail the eligibility and knowledge and experience requirements.
2. Applicants for a Certificate will, at the date that the Certificate is granted, need to:
 - be a qualifying member
 - be in good standing
 - demonstrate that they have an acceptable level of experience of delivering probate services
 - show that they have sufficient knowledge of relevant law and practice
3. Applicants in independent practice will be required to meet the practice management criteria.

PROPOSED CERTIFICATION SCHEME

Application for the Probate Services Certificate

4. All applicants wishing to undertake probate business will need to apply to ILEX for a Certificate. Those applicants who are not qualifying members at the date of their application will also need to apply for qualifying membership in the manner prescribed by ILEX. A Certificate will only be granted to a person who has been accepted into qualifying membership by ILEX.
5. All applicants will need to meet the eligibility criteria and those applicants who are in independent practice or provide probate services to clients of their employer will also need to meet the practice management criteria. Those applicants who meet the criteria relevant to their application will be granted a Certificate.

Qualifying Members and those applying for qualifying membership

6. A person is a qualifying member for the purpose of this scheme if he is:
 - a Fellow or Graduate member of ILEX, or
 - a Probate Associate member of ILEX, or

- within any other category of membership, which ILEX may establish from time to time, and which ILEX has determined as being appropriate to those applying for a Certificate

7. A Probate Associate member is a person who has been accepted by ILEX as meeting the rules relating to this category of member.

Meeting the eligibility criteria – all applicants

8. All applicants will be required to meet the eligibility criteria, that is they must:

- be persons in good standing.
- have gained an acceptable level of experience in carrying out probate business, in accordance with the Knowledge and Experience Guidelines at **Appendix 1** of the Certification Rules.
- have sufficient knowledge of relevant law and legal practice to undertake probate business, in accordance with the Knowledge and Experience Guidelines at **Appendix 1** of the Certification Rules.

Criterion 1 – is the applicant in good standing?

9. All applicants will need to establish that that they are in good standing and will be required to make the following declarations, that they:

- have no criminal convictions and are not subject to criminal investigation, (driving offences not resulting in disqualification from driving are excepted)
- are not bankrupt or subject to any bankruptcy proceedings nor have they made any composition with their creditors
- have no court judgments recorded against them and are not at the date of application subject to any court proceedings
- are not nor have they been subject to any disciplinary proceedings by any professional body of which they are a member or were a member which resulted in their expulsion or any other penalty
- have not been made subject to an Order made under section 43 Solicitors Act 1974
- are (in appropriate cases) directors of a company which delivers probate services and,
 - there are no restrictions in law that would prevent them from continuing to act as a director of that company

- the applicant and the company have met the requirements of the Companies Acts
- the company is not subject to any proceedings which would result in its liquidation or in it being wound up
- the company has no criminal convictions recorded against it and is not subject to criminal investigations
- the company has no court judgments recorded against it and is not at the date of application subject to any court proceedings
- that no other director or senior member of the company is or has been subject to disciplinary proceedings by a professional institution of which they are a member in relation to the activities of that company.

10. Applicants who are unable to give a declaration in relation to any of the matters mentioned in paragraph 9, may instead provide information relating to that matter. In such cases, ILEX will then consider, in the light of this information, whether it is willing to consider the application further. If it is not, applicants will be informed accordingly together with the reasons for the decision and their application rejected. Applicants will be given a right to be reheard by the Admissions and Licensing Committee.

11. All applicants will be required to provide proof of their identity and residence in such form as ILEX may from time to time determine. In addition, where an applicant is self-employed or is a director of a company, bankers' references may be required in relation to the business or company. ILEX reserves the right to require an applicant to provide an employer's reference.

12. ILEX may in the case of applicants in independent practice, make checks on an applicant's standing from its own records, the Criminal Records Bureau and any professional body of which the applicant is or has been a member and reserves the right to do so in the case of employed applicants. In the case of applicants who are directors of a company ILEX will make the appropriate checks at Companies House. It also reserves the right to make such additional checks as it thinks fit.

Criterion 2 –Does the applicant meet the probate practice knowledge and experience guidelines?

13. As part of the certification process ILEX will undertake an assessment of a member's probate services knowledge and experience using the Knowledge and Experience Guidelines set out in **Appendix 1** of the Certification Rules.

14. Applicants will be required to submit details of their qualifications and a description of their typical workload including the type, range and complexity of the business that they have handled over the last two years. Where a member is

employed they will be asked to obtain verification of this from their employer. ILEX may appoint an assessor to evaluate an applicant's knowledge and experience.

15. As general guidance applicants will be expected to meet the following criteria:
 - a. to have passed examinations which are of a similar standard and content to the probate and succession, probate practice and equity and trusts modules of the ILEX level 6 Higher Professional Diploma and to have knowledge and experience of probate services which meet the Knowledge and Experience Guidelines in **Appendix 1** of the Certification Rules, demonstrated by evidence in the form of a portfolio of five cases, or
 - b. to have had experience of delivering probate services as a substantial part of their work prior to their application, and to have knowledge and experience of probate services which meet the Knowledge and Experience Guidelines in **Appendix 1** of the Certification Rules, demonstrated by evidence in the form of a portfolio of five cases
16. ILEX is mindful that there may be applicants who, though otherwise eligible for a Certificate, have yet to gain sufficient experience to meet the Knowledge and Experience Guidelines in **Appendix 1** of the Certification Rules. Consequently in applying the criteria in paragraph 15 ILEX will consider an applicant's potential for undertaking a broader range of probate services than they carry out at the date of their application.
17. If in its opinion these circumstances arise ILEX will consider whether a developmental route to full certification is appropriate and may invite the applicant concerned to submit a development plan that indicates the way that they intend to make good the identified shortcomings. If ILEX decides that a developmental route is appropriate it will indicate to the applicant in which respects they do not meet the Knowledge and Experience Guidelines.
18. The applicant concerned will then be invited to lodge a development plan with ILEX setting out the way that they intend to make good the identified shortcomings. The applicant's proposals may take the form of work experience or further training or educational courses or events.
19. If ILEX is satisfied that the completion of the applicant's development plan will enable them to comply with the Knowledge and Experience Guidelines, it may decide to issue a Certificate valid for one year and make that Certificate subject to conditions or restrictions. These conditions or restrictions may limit the range of probate services that the applicant may provide until he qualifies for a full Certificate. ILEX believes that such conditions and restrictions will protect the public in areas where a practitioner needs to develop, while allowing them to provide the aspects of probate service for which they have been assessed as competent.

20. Any applicants who are granted Certificates under paragraph 19 will be required to renew their Certificates on an annual basis and to submit a progress report on their development plan together with their application for renewal. Failure to make adequate progress could result in ILEX refusing to renew a Certificate. In any event a Certificate issued in these circumstances will only be renewed on three occasions. The annual renewal and progress reports will enable ILEX to monitor the progress of a practitioner towards addressing areas identified in their development plan. It will also allow ILEX to assess the restrictions and conditions in place against a practitioner.

Knowledge and Experience Guidelines

21. The Knowledge and Experience Guidelines are set out in **Appendix 1** of the Certification Rules. The guidelines are intended to assist applicants for the Certificate and will be taken into account by ILEX when considering applications.

22. Careful attention will be paid to the range and complexity of an applicant's experience of providing probate services and they will be expected to have experience within the last two years of the key elements of these services and to be able demonstrate a realistic expectation of handling those elements of probate business in the future.

23. Knowledge acquired through examinations other than those offered by ILEX or which is evidenced in other ways than by formal examination will be assessed carefully but will only be accepted where it is demonstrably of a similar standard and encompasses subject matter similar to that covered by the relevant ILEX Level 6 Examinations.

24. Where a candidate relies on knowledge that has not been gained through a formal examination, the candidate will be expected, in addition to other requirements, to complete a questionnaire designed to map their knowledge of relevant law and legal practice. Coverage of a comparable range of topics will be required and evidence of a comparable level of knowledge as would be required of a successful candidate at Level 6 of the ILEX Higher Professional Diploma.

25. ILEX will need to be satisfied that the applicant has the requisite knowledge and may require the applicant to undertake further study and obtain acceptable qualifications and if it does so may reject or defer their application.

26. All applicants will be required to provide with their application:

- a description of their past and present work using the Knowledge and Experience Guidelines
- a portfolio of 5 cases completed during the preceding 2 years that demonstrates legal and procedural knowledge of probate business

- where required to do so in the circumstances described in paragraph 24, a completed questionnaire relating to their knowledge of the law and practice relevant to probate services.

27. Guidelines for preparation of portfolios are set out in **Appendix 2** to the Certification Rules. If ILEX decides that the portfolio is unsatisfactory the applicant will be advised accordingly and given reasons. The applicant may then resubmit or withdraw the application or proceed with the application. If he proceeds with his application, he will be able to make representations to ILEX as to why it should accept the portfolio. ILEX's experience of the rights of audience scheme has shown that the portfolios are an extremely useful tool in assessing whether a member meets required levels of competence. Under that scheme where the portfolios identify that a member has not met the required standard they are provided with guidance as to areas which they need to address. The development route proposed for the probate scheme will allow practitioners to address areas of development.

28. Where an applicant is employed, ILEX may require the details of experience to be confirmed by the applicant's current employer. Two references may also be required. Referees will be asked to comment on the ability of the applicant in relation to the knowledge and experience guidelines. The nominated referees will normally be from those with experience of probate business who are able to comment on the applicant's legal knowledge and experience.

29. Where an applicant is in independent practice he may be required to provide at least two suitably qualified referees in good standing who have knowledge of the applicant's experience.

QUALIFYING MEMBERS IN INDEPENDENT PRACTICE

Practice structures

30. Qualifying members may practise through a variety of means under the Certification Rules. They may be:

- employed in a legal practice regulated by an approved regulator
- a manager in a Legal Disciplinary Practice
- an employed person providing probate services to clients of their employer
- practise independently, including in partnership with ILEX practitioners, authorised persons and or non-authorised persons.

31. A qualifying member who provides services independently or services to clients of their employers will need to seek approval from IPS to do so.

32. Qualifying members may practice independently as sole practitioners, in partnership or through a corporate structure. The rules do not preclude practice in mixed practices, including partners or managers who are not authorised legal practitioners. However, such practices will soon need to be reformed into

licensed practices. Accordingly, under the Legal Services Act, it is unlikely that IPS would approve an ILEX qualifying member setting up or joining such a practice as an owner until it becomes a Licensing Authority. Until that time the body will need to be licensed by another licensing authority. IPS will continue to regulate the Qualifying member as a member of ILEX.

33. ILEX is not in a position to regulate Legal Disciplinary Practices because it has not developed its entity regulation rules at this stage. Therefore such entities may be formed by Qualifying members, other authorised persons and non-authorised persons, but the entities will be regulated by other approved regulators. The Qualifying member will continue to be individually regulated by ILEX through IPS, although the practice will comply with the requirements of the approved regulator rather than the ILEX rules. ILEX has built suitable arrangements into its Practice Management and Accounts Rules to grant waivers to Qualifying members from compliance with its rules in such instances.

The practice management criteria and the practice management undertaking

34. Qualifying members in independent practice and those who provide probate services to clients of their employer, who meet the eligibility criteria will, subject to the transitional arrangements described in paragraphs 35 and 36, also need to meet the practice management criteria. Qualifying members in independent practice and those who provide probate services to clients of their employer will therefore be required to include a statement in their application that they have:

- established a complaints procedure which complies with ILEX's requirements
- established office and client accounts which comply with the rules of ILEX for the time being
- professional indemnity insurance in place which complies with the requirements of ILEX for the time being
- an anti-discrimination policy in place which accords with the requirements of ILEX for the time being
- a money laundering policy in place which accords with the requirements of current legislation
- a publicity code in place which accords with the requirements of ILEX for the time being
- made a contribution to ILEX's Compensation fund for the year in which the application is made

Qualifying members in independent practice will also be required to provide evidence that these arrangements are in place. These arrangements are referred to as 'the practice management requirements'.

Members in independent practice at the commencement of the certification scheme

35. Where his first application is made within six months of the commencement of the certification scheme, an applicant in independent practice, who does not have the practice management requirements in place will be required to give the transitional practice management undertaking referred to in paragraph 36.

Transitional practice management undertaking

36. This undertaking will be that the practice management requirements referred to in paragraph 34 will be put in place within three months of the undertaking being given. Future renewal of the Certificate will depend on this undertaking having been honoured.

Practice Management and Accounts

37. ILEX may, at its discretion, in the case of a qualifying member in independent practice or in relation to a qualifying member who is seeking a replacement Certificate to enter independent practice or provide probate services to clients of their employer under paragraph 47 before it considers whether to issue a Certificate, also require an applicant to:

- establish that they are capable of making financial arrangements which comply with ILEX's Accounts Rules for the time being, and
- successfully complete a Practice Management course within 12 months of an application

and, in doing so, may require an applicant to submit a business and/or a financial plan.

38. Where it is the opinion of ILEX that a qualifying member has not demonstrated that they are capable of making financial arrangements that comply with ILEX's Accounts Rules for the time being, it may require an applicant to undertake an Accounts course accredited by ILEX. If the requirement is not met within 12 months of the qualifying member's application then ILEX will consider any representations made by the member to extend this period. If this period is not extended by ILEX then the application will lapse.

39. Where a qualifying member is required to undertake a Practice Management course in accordance with paragraph 37, their application, whether for a full or replacement Certificate, will be deferred until this requirement is met. If the requirement is not met within 12 months of the qualifying member's application then ILEX will consider any representations made by the member to extend this period. If this period is not extended by ILEX then the application will lapse.

40. If a qualifying member, who is required to do so, completes a Practice Management or an Accounts Course or both, on that member providing written proof that they did so successfully, ILEX will continue to consider their application.

41. Whilst, in the case of a Practice Management course it will be for the qualifying members concerned to identify a suitable course containing the elements referred to in paragraph 42, they will be required to consult with ILEX before registering on the course that they have chosen. ILEX will then indicate whether, in its view, completion of the chosen course will meet its requirements in relation to the member concerned. However, only courses that provide a certificate of completion will be approved.

42. Practice management courses must contain the following elements:

- managing a legal business
- managing finance
- managing client relationships
- managing others

and meet the requirements of **Appendix 3** of the Certification Rules, Practice Management Course Delivery and Outcomes.

43. An accounts course, which an applicant is required to take, must contain the following elements:

- the client account
- the office account
- costs
- interest
- accounting records
- accountant's reports
- business accounting

and meet the requirements of **Appendix 4** of the Certification Rules, Accounts Course Delivery and Outcomes.

44. In developing course outcomes ILEX has taken the approach of identifying the outcomes of practice management courses usually undertaken by solicitors within their first three years of qualification. ILEX developed its practice management

course outcomes from the material used on those courses. It took the view that it should adopt the same approach as trainee solicitors, which appears to work well for them. ILEX considered the approach taken by the Council for Licensed Conveyancers, where licensed conveyancers attend a short session on practice management. It discounted that approach in favour of a course that must meet specific outcomes.

45. The content of the accounts course was developed by identifying what aspects of the ILEX accounts rules should be taught to members. The outcomes are similar to those on the solicitors' accounts training on the LPC, except that they focus on the ILEX accounts rules, which are not in themselves much different to the Solicitors Accounts Rules.

Compensation fund

46. ILEX will not consider any application for a Certificate from an applicant who, being liable to do so, has not contributed to ILEX's Compensation Scheme for the year in which their application is made or has failed to contribute to the Scheme in previous years being liable to do so.

CERTIFICATION

47. A qualifying member who is in employment in a solicitor's firm or other organisation and who meets the eligibility criteria and who has met any other conditions imposed by ILEX will be granted a Certificate.

48. Qualifying members who, are in independent practice or provide probate services to clients of their employer, at the date of application meet the eligibility criteria will be granted a Certificate, if in addition they either:

- meet the practice management criteria, or
- have given the transitional practice management undertaking,

and, in either case have signed the right of inspection authority referred to paragraph 60.

Change of status –replacement certificates

49. An employed member who holds a Certificate may apply for a replacement Certificate on the basis that he wishes to practice on his own account or provide probate services to clients of their employer. The replacement Certificate will only be granted if:

- the member gives the practice management undertaking in paragraph 48,
- signs the right of inspection authority referred to in paragraph 60, and

- meets any other requirement imposed by ILEX including a requirement to undertake the courses referred to in paragraph 37.

50. The practice management undertaking in relation to a member applying for a replacement Certificate under paragraph 47 is not to commence business without first putting the practice management requirements in place.

Validity and renewal of Certificates

51. Certificates granted to employed members, other than those who are asked to submit a development plan in accordance with paragraphs 20 to 24, will not be subject to renewal provided they continue to be qualifying members in good standing and meet any other requirement of ILEX for the time being. ILEX may at its discretion impose a requirement for any employed members to reapply for a Certificate.

52. Applicants who have been asked to submit a development plan in accordance with paragraphs 20 and 24 will be required to renew their Certificates each year and to submit a progress report on their development together with their application for renewal. Certificates granted to applicants who have been asked to submit a development plan will only be renewed on three occasions. On receiving an application for renewal ILEX will consider the applicant's progress. If progress is satisfactory then the applicant's Certificate will be renewed subject to such restrictions and conditions as ILEX thinks fit.

53. When it is satisfied that the applicant has satisfactorily fulfilled his development plan ILEX will, in the case of an employed applicant, discharge them from the obligation to renew their Certificate annually.

54. Certificates granted to qualifying members in independent practice and those who provide probate services to clients of their employer will be subject to annual renewal on the anniversary of the Certificate or, on such date as may be indicated by ILEX, and annually thereafter.

55. Qualifying members in independent practice and those who provide probate services to clients of their employer will be required to submit their annual accounts certified by a qualified accountant, together with written proof that they have professional indemnity insurance in place for the coming year. ILEX may undertake a personal interview of the applicant and may undertake an inspection of the member's practice.

56. Once ILEX is satisfied that the accounts and indemnity insurance arrangements of a qualifying member in practice are in order and that they are in good standing it will renew their Certificate. Where a member in independent practice or who provides probate services to clients of their employer was required to give a practice management undertaking, ILEX will renew their Certificate where it is satisfied that the undertaking has been fulfilled and that the member is in good standing.

57. Where an employed member who has been granted a replacement certificate on the basis that they are going into independent practice or going to provide probate services to clients of their employer seeks to renew that certificate on its anniversary, that certificate will only be renewed if ILEX is satisfied that the member concerned has honoured that undertaking, the member remains in good standing, and their accounts and insurance arrangements are in order.
58. ILEX may impose conditions or restrictions on the renewal of any category of certificate and where it does so will give reasons in writing for such an imposition. ILEX reserves the right to undertake an inspection of a practice before renewing the Certificate of a certificate holder in independent practice or who provides probate services to clients of their employer.
59. Qualifying members in independent practice and those who provide probate services to clients of their employer who were required to give the transitional practice management undertaking will, be required to confirm in writing that the practice requirements were put in place before the expiry of three months from the date their certificate was granted. Where such confirmation has not been received by ILEX at the expiry of seven working days from the date of the three month period, then ILEX may suspend the certificate of the member concerned and take such other action as it thinks fit. In any event, the certificate of a member who has not given such confirmation will not be renewed.
60. In any case where a member is seeking renewal of their certificate, ILEX may refuse to grant a renewal if any contribution to ILEX's Compensation Fund is outstanding.

Right of inspection authority

61. ILEX will not issue a Certificate to an applicant in independent practice or renew a certificate held by such member unless the applicant first signs the right of inspection authority referred to in paragraph 60.
62. The right of inspection authority is an irrevocable written authority given by an applicant for the grant or renewal of a Certificate to provide ILEX, upon production of that authority, with:
- full and unimpeded access to all the Certificate holder's practice papers, accounts, records and files; and
 - full cooperation, both personally and by direction to the Certificate holder's staff, with the inspection; and
 - any information relating to the Certificate holder's practice requested by ILEX; and
 - reasonable office facilities for such period as ILEX may require; and

- copies of any documents which ILEX wishes to remove, and at no charge; and
- authority to the Certificate holder's present or previous accountant or any other person to provide information and/or documents to ILEX as they may require.

63. ILEX will exercise the authority referred to in paragraph 56 in accordance with its Practice Management and Accounts Rules relating to Certificate holders in independent practice then in force.

Suspension of Certificates

64. ILEX may suspend a Certificate where a Certificate holder becomes subject to an inspection, an investigation or disciplinary proceedings or under the powers available in its Practice Management and Accounts Rules relating to Certificate holders in independent practice and those who provide probate services to clients of their employer or for any other reasonable cause.

ADMINISTERING THE CERTIFICATION SCHEME

65. ILEX will be responsible for all aspects of the certification scheme, including making recommendations for changes and developments of the scheme or the Rules. This responsibility has been delegated to IPS, which is responsible for the certification process.

66. IPS shall set up a Committee, which will be called an Admissions and Licensing Committee, which will be responsible for the probate rights scheme. The Committee shall report to the IPS Board. Wherever possible the IPS Officer will consider and determine applications under delegated authority from the Committee.

67. External assessors may be appointed to assist with any aspect of the administration of the certification process.

Admissions and Licensing Committee and External Advisors

68. The Admissions and Licensing Committee shall:

- Apply and monitor the Probate Rights Certification Rules;
- Assess whether a member meets the requirements to be a probate right certificate in cases referred to it by the Officer;
- Assess whether a member meets the requirements to renew their probate rights certificate in cases referred to it by the Officer;
- Consider whether or not a member may continue to hold a probate rights Certificate;

- Consider applications made by probate practitioners to practice independently or provide probate services to clients of their employer referred to it by the Officer;
- submit an annual report to the IPS Board;
- Oversee the probate right scheme;
- Review the probate rights scheme and make recommendations to IPS for revisions to it;
- Consider appeals made against decisions made by the Officer in respect of applications;
- Consider and determine applications for a re-hearing of a decision made by the Committee.

69. The Committee will delegate to the Officer responsibility for making decisions on applications for certificates, renewal of certificates and authorisation to practice independently. Wherever the Officer is unable to make a decision or takes the view that the matter requires Committee consideration they may refer the matter to the Admissions and Licensing Committee.

70. A person affected by a decision made by the Officer may seek reconsideration of their matter by the Admissions and Licensing Committee. The decision of the Admissions and Licensing Committee upon reconsideration shall be final.

71. The membership of the Admissions and Licensing Committee will include:

- Two Fellows of ILEX who shall not be members of ILEX Council;
- Three independent members, at least 1 of whom shall have knowledge or experience of the provision of consumer issues;

of which at least one member will be a member of the IPS Board.

72. Appointments of committee members shall be made by the IPS Board for a period of five years each. They may be reappointed for one further term.

73. ILEX shall appoint external advisors who will be responsible for assessing candidate portfolios. In appointing external advisors it will ensure they have knowledge and experience of probate practice and assessment thereof. ILEX has experience of recruiting external advisors for its current rights of audience scheme. It produced terms of reference for external advisors, which included person specifications. Applicants were required to outline how they met those criteria. The same approach was adopted for the recruitment of committee members for that scheme. Adverts were placed in appropriate publications inviting applications. Applicants were short listed and interviewed against the criteria. IPS will adopt this same procedure for the recruitment of external advisors and committee members for the probate rights scheme. To be

appointed, External Advisors will need to have experience both as academics and as practitioners in the relevant discipline. ILEX has contact with many such professionals through its educational scheme.

CONTINUING PROFESSIONAL DEVELOPMENT

74. Certificate holders who are Probate Associate members will be required to complete 16 hours CPD of which at least 8 hours is concerned with probate services and the remaining 8 hours may be concerned with other professional development.

75. All certificate holders will be required to submit an annual return to ILEX showing their CPD activities for the year.

REVIEW OF THE SCHEME

76. ILEX will review the progress of this scheme at least every three years. As part of the review it will take into account feedback on the effectiveness of the scheme received from applicants, course providers, external advisors and IPS clients.