



## **Protocols setting out the working relationships between The Institute of Legal Executives and ILEX Professional Standards Ltd**

### **Introduction**

1. This document provides a framework to enable the Institute of Legal Executives (ILEX) and ILEX Professional Standards Ltd (IPS) (jointly 'the Companies') to fulfil their representative and regulatory functions as defined in the Legal Services Act 2007 (the LSA) and in accordance with the Objects of the companies set out in their respective Memoranda of Association.
2. The aim of the Protocols is to facilitate the companies working together to promote and secure high standards of practise by Legal Executives and other members of ILEX in the public interest and to enhance the recognition and standing of Legal Executives and other ILEX members.
3. ILEX is the governing body for Legal Executives and trainee Legal Executives in England and Wales. It is a company limited by guarantee. Its powers and duties derive from the Memorandum and Articles of Association of the Company. ILEX is an authorised body in relation to rights of audience under the Courts and Legal Services Act 1990, an approved regulator under the Legal Services Act 2007 and a designated professional body under the Immigration and Asylum Act 1999.
4. The Objects of ILEX which are relevant to these protocols are set out in Annex 1.
5. IPS has been established by ILEX to regulate the professional conduct of ILEX members, including disciplinary matters. Its Objects contained in its Memorandum of Association are set out in Annex 2 to these protocols. IPS is a wholly owned subsidiary company of ILEX.

### **The Legal Services Act (LSA)**

6. The LSA requires ILEX as an approved regulator to separate its regulatory and representational functions. ILEX through its Articles has delegated the power to regulate the professional conduct and standards of ILEX members to IPS. The LSA also requires ILEX, and

in consequence IPS, to act in a way which is compatible with the regulatory objectives set out in the LSA and to have regard to the principles of good regulation. The regulatory objectives and professional principles contained in the LSA are set out in Annex 3 to these protocols.

7. Under the LSA, as an approved regulator ILEX must ensure: that its regulatory functions are carried out independently, without being prejudiced by its representative functions; that its regulatory body is free to communicate with the Legal Services Board and other legal services stakeholders; and that resources are made available which are reasonably required to enable regulatory functions to be carried out.

### **The Protocol Principles**

8. The Companies will work together to enhance public respect for and confidence in ILEX members and the work they carry out. Together they will ensure continuing compliance with the requirements of the LSA.
9. Relations and communications between the companies will be based upon mutual respect and openness so far as is consistent with their obligations under the LSA, the general law and the public interest.
10. IPS aspires to regulate effectively and efficiently in accordance with the principles of good regulation, which are proportionality, accountability, consistency, transparency and targeting. ILEX will support and assist IPS in becoming an effective and independent regulator.
11. Each of the Companies will contribute to and support the attainment of objectives set out from time to time in the other's strategy and business plans consistent with the requirements of the LSA. IPS will give due consideration to the aspirations of ILEX and its members as expressed through ILEX Council but this will not be at the detriment of IPS setting its own regulatory strategy and business plan.

**Finance** – *ILEX will make available such resources as are reasonably required and appropriate to enable IPS to carry out its regulatory functions*

12. Each year IPS will prepare a budget for its expenditure in the following year for ILEX to consider in conjunction with its own budget. IPS budget will be based upon the activities and expenditure necessary to carry out its regulatory functions.
13. The Companies will work together to agree a budget which fairly reflects the activities and expenditure which are necessary for IPS to carry out its regulatory functions. Where ILEX cannot agree an IPS budget it will set out its reasons in writing for any variation it proposes. If a revised budget proposed by ILEX is not agreed by IPS, paragraph 31 of these protocols will come into effect

14. ILEX will have regard to a budget agreed with IPS when setting practice, membership and other fees for the following year.
15. IPS will provide information to the ILEX Director of Group Finance to enable proper accounts to be maintained. IPS Board of Directors will receive regular reports on its financial performance. ILEX Council will receive a report on IPS finances at each Council meeting.

**Communications** – *Communications between the companies will be based on mutual respect and openness*

16. The Companies will provide information to each other regularly regarding their representational and regulatory work. Each will provide copies of the minutes of their Council or Board meetings to the other. So far as it is practical to do so and is necessary to meet the obligations imposed by the LSA, they will each respond to a reasonable request by the other for information relating to their roles and will do so within 15 working days of a request being received.
17. ILEX will provide support necessary to enable IPS, in carrying out its functions, to communicate with ILEX members, the legal services regulators, consumer groups, legal services employers, relevant parts of the government and civil service and the public. IPS may communicate separately with ILEX members and these stakeholder groups.
18. The Companies will consult with each other whenever either body wishes to review or propose changes to any rules or policies which impact on the leadership, representational or regulatory roles or obligations of the other. Where appropriate they will consult external bodies jointly and will respond jointly to the consultations of external bodies on matters which affect their roles or obligations.
19. Where either of the Companies decides to issue a separate or independent communication on matters likely to affect the other they will inform the other of their intention and reasons for doing so; copy the communication to them; and give a reasonable time for them to comment on the communication.
20. The Companies will share information regarding members including membership records and correspondence where it is necessary to do so to fulfil their respective obligations but only so far as the sharing of information does not contravene any principle or law safeguarding the rights of members or others in relation to data protection or personal privacy.
21. Subject to paragraph 20, the Companies will treat as confidential information each holds about members or others which is not also held by the other, except where it is in the public interest to disclose the information to the other or, in the case of IPS, it is necessary to do so in order to fulfil its obligations under the LSA, its Memorandum and Articles of Association and these protocols, or to meet its general obligations under the law. The public interest will normally be engaged

where the information reveals a serious breach of the law or professional ethics or would assist the investigation of crime or fraud.

22. The ILEX 'Whistle blower' policy applies to the staff of both Companies, ILEX Council members and IPS Board members.

**Accountability – ILEX must ensure its regulatory functions are carried out independently**

23. The Chief Executive of ILEX is accountable to the ILEX Council. ILEX employees whose work relates to the leadership and representative functions of ILEX are accountable to the Chief Executive of ILEX. The Chief Executive of IPS is an employee of ILEX but is accountable to the IPS Board of Directors. ILEX employees whose work relates to the regulatory functions of ILEX are accountable to the Chief Executive of IPS. The Chairman of IPS is accountable to ILEX Council for the performance of IPS.
24. The arrangements for appointing, re-appointing or dismissing the Chairman or members of the IPS Board are set out at Annexe 4 to these Protocols. They take into account the objectives of the LSA regarding the effective and independent regulation of legal services and the requirements of the Internal Governance Rules made by the Legal Services Board, pursuant to the LSA. Remuneration of the Chair and members of the IPS Board will be dealt with in accordance with Annexe 5 to these Protocols.
25. The performance of the IPS Board members and Chief Executive, during their terms of office will be assessed each year by the IPS Board, in accordance with arrangements which the Board will determine. The performance of IPS employees will be assessed in accordance with arrangements which apply to other ILEX employees. The Companies will agree arrangements for the appointment of a new Chief Executive of IPS.

**Education Standards and Fitness to Practise – The companies will work together to promote and secure high standards of practise.**

26. IPS is responsible for checking that arrangements adopted by ILEX and the standards set relating to: qualifications and experience; study and training for ILEX qualifications; and assessment of candidates; are fit for purpose and are capable of securing the minimum standards of competence expected of Fellows, Associates, Graduate Members, Associate Prosecutor Members and other ILEX members.
- 26A IPS is responsible for ensuring Fellows, Graduate Members, Associates and Associate Prosecutors maintain the minimum standards of competence expected of them by means of Continuing Professional Development.
27. IPS is responsible for setting the standards relating to the personal and professional conduct and continuing fitness to practise of Fellows and other ILEX members. IPS will be responsible for ensuring ILEX

members comply with those standards and ILEX will support IPS in doing so.

28. ILEX will not seek to challenge decisions properly made by any of the disciplinary or regulatory bodies subject to oversight by IPS in respect of the conduct, competence or fitness to practise of individual ILEX members or the conduct or fitness to provide services of any organisation regulated by ILEX.
29. The Companies will work together to develop arrangements for the regulation of legal disciplinary practices and alternative business structures permitted to provide legal services under the LSA and persons owning or managing them. IPS will be responsible for setting standards of conduct and ensuring owners, managers and employees comply with them.

**Services – ILEX will make resources available to enable regulatory functions to be carried out.**

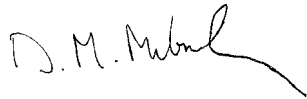
30. The Companies will maintain a service level agreement in respect of the provision to IPS of the finance, membership, awards, information technology, marketing and communications, procurement, facilities, Legal Executive Journal and human resources services which are reasonably required to enable IPS to carry out its regulatory functions.

### **Resolving differences**

31. Disputes which arise between the Companies, whether in relation to these protocols or otherwise will be 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. Nothing in these protocols prevents either company from referring a dispute which cannot be settled between them to the Legal Services Board or if appropriate to an independent mediator to be resolved. As a matter of good practice, five working day's notice should be given to the other company if either company intends to refer a dispute to the Legal Services Board.

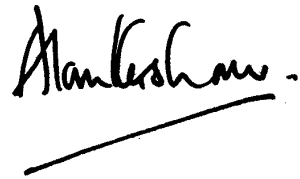
### **Review**

32. These protocols may be reviewed at any time at the request of either ILEX or IPS; and will, in any event, be reviewed annually.



**David McGrady**  
**ILEX President**

**26 March 2011**



**Alan Kershaw**  
**IPS Chair**

**26 March 2011**

**OBJECTS OF ILEX**

The Objects of ILEX set out in its Memorandum of Association are, amongst other things:

1. To provide an organisation for persons who are Fellows of ILEX, are registered with ILEX, provide or are employed in providing legal services of any kind or any services ancillary to legal services or are registered with ILEX for the purpose of studying or becoming qualified in law or other subjects provided by ILEX;
2. To advance and protect the status and interest of Fellows and other members registered with ILEX;
3. To promote professional unity, co-operation and mutual assistance amongst those who are employed in the legal profession or are engaged in legal work;
4. To promote and secure professional standards of conduct amongst Fellows and those who are registered with ILEX and to regulate Fellows and registered persons in the public interest to ensure compliance with those standards;
5. To provide for the education and training of Fellows and persons who wish to become proficient in the law, including those who wish to qualify as Fellows, in all subjects and skills whether in the law or otherwise; and
6. To recognise and promote proficiency in the law and other subjects by awarding diplomas, certificates, prizes, scholarships, bursaries or other awards and to award such qualification as ILEX may from time to time think fit and to carry out assessment and validation and regulation as may be necessary for such purposes.

## **PROTOCOLS**

## **ANNEXE 2**

### **OBJECTS OF IPS**

The Objects of ILEX Professional Standards set out in its Memorandum of Association include the following:

1. To carry out on behalf of ILEX the functions and responsibilities of ILEX as an approved regulator designated as such by the Legal Services Act 2007; and
2. To carry out on behalf of ILEX such functions and responsibilities of ILEX as a regulator of its membership generally as ILEX may from time to time delegate to the Company.

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**REGULATORY OBJECTIVES**

The Regulatory Objectives set out in the Legal Services Act are as follows:

1. protecting and promoting the public interest;
2. supporting the constitutional principle of the rule of law;
3. improving access to justice;
4. protecting and promoting the interests of consumers;
5. promoting competition in the provision of services provided by authorised persons;
6. encouraging an independent, strong, diverse and effective legal profession;
7. increasing public understanding of citizen's legal rights and duties; and
8. promoting and obtaining adherence to the professional principles.

The professional principles referred to above are:

1. authorised persons should act with independence and integrity;
2. authorised persons should maintain proper standards of work;
3. authorised persons should act in the best interests of their clients;
4. persons who exercise before any court a right of audience or conduct litigation in relation to proceedings in any court by virtue of being authorised persons comply with their duty to the court to act with independence in the interest of justice; and
5. the affairs of clients should be kept confidential.

**APPOINTMENT, REAPPOINTMENT OR DISMISSAL OF CHAIRMAN AND BOARD MEMBERS**

It is important that a protocol is agreed in advance of any potential need for appointment or reappointment. Any agreed process must be seen to be impartial and independent to comply with LSB rules on independent governance. The following is the agreed protocol, which is based on the process used to appoint the first Chairman and Board Members for IPS.

**Appointment of Chairman and Board Members**

1. The IPS Board will create an Appointments Committee. Membership would be agreed for each appointment, so it is not a standing Committee.
2. The Appointments Committee will have delegated authority for the whole process from agreeing an updated information pack including a revised job and person specification, to running the appointment process, including interviewing. Administrative support will be required from the ILEX HR team.
3. For the Chairman's appointment, this Committee will include an ILEX Council representative and two IPS Board members, one independent and one legal, supported by the IPS CEO, although (s)he would not be a formal member of the Committee.
4. For Board member appointments the Committee will include the Chairman and one member of the IPS Board, plus the IPS CEO.
5. For all appointments, a member independent of IPS and ILEX would be included within the Committee membership, to give legitimacy and to validate the process. The process for identifying this individual would be agreed for each appointment.
6. The ad hoc nature of the appointment committees gives a useful degree of flexibility, whilst being sufficiently structured to ensure appointments are treated fairly and consistently.

**Reappointment of Chairman and Board Members**

7. The Chairman and Board members are appointed for 3 years in the first instance and may be reappointed for a second term.
8. It will be for the Chairman and CEO to agree the reappointment of Board members. The annual appraisals will be the basis for reappointments. The following factors will need to be satisfied for reappointment of Board members:

- Willingness to be reappointed
  - Satisfactory annual appraisals
  - Acceptable attendance record
  - Continues to meet the person specification for role
  - Has complied with the Code of Conduct for Board members
9. For discussions regarding the reappointment of the Chairman, an Appointments Committee will be created, constituted as set up in the Chairman's appointments process above, to review a similar list of factors and agree the way forward.

### **Dismissal of a Board Member or Chairman**

10. In exceptional circumstances, it may be necessary to dismiss an individual as either a Board Member or Chairman of IPS. The only reasons for this action would be that the individual has not complied, or no longer complies, with the factors outlined in paragraph 8 above.
11. Concerns about the conduct of a Board Member will normally be dealt with informally by the Chairman in the first instance. If the matter is not resolved s(he) will liaise with the Chief Executive to create a Committee with another Board Member to agree the action(s) to be taken. Once the decision is taken, the Chairman will write to the individual, stating the reasons for the action being taken, and inform the LSB.
12. For discussions regarding the removal of the Chairman, a Committee will be created, constituted as set up in the Chairman's appointments process above, to review compliance against the list of factors and agree the way forward. Before finalising the actions to be taken, the Chief Executive will discuss the issues with the LSB.

*Agreed by IPS Board 24 February 2011  
IPS protocols Ann 4*

**REMUNERATION OF THE BOARD**

1. The President and CEO of ILEX and the Chair and CEO of IPS will meet each year in May or June, as appropriate, to determine the remuneration of the Chair and members of the IPS Board for the following year. The meeting will take place as part of the budget setting processes of the companies. The Chair of IPS will not take part in any discussion or decision regarding his/her remuneration. Factors which are taken into account in setting the remuneration of the Board members will be taken into account in determining the Chair's remuneration.
2. Disputes regarding the remuneration of the Chair or Board members of IPS will be determined in accordance with paragraph 31 of the Protocols.

*Agreed by ILEX/IPS march 2010  
IPS protocols ann 5*

**EDUCATION**

**General**

1. This Annexe to the ILEX/IPS Protocols sets out the methods by which ILEX and IPS will meet the requirements of paragraph 26 of the Protocols relating to education matters. IPS's role, set out in Paragraph 26, is to ensure that the arrangements adopted by ILEX in respect of qualifications and experience are capable of securing the minimum standards of competence expected of Fellows and other ILEX members. The role of ILEX is to decide the qualification standards and to manage the delivery of the qualifications and assessment of experience and the quality assurance arrangements for them.

**Reporting arrangements for qualifications**

2. To enable IPS to carry out its role, ILEX will provide sufficient information to demonstrate that the qualification arrangements establish and maintain the stated standards. Each year, ILEX will supply to IPS a range of information that enables it to review ILEX's work and performance both strategically and operationally. The following documents will be supplied at the following specified times:

**a. Assessment session information**

- i. **Qualification performance data** – after each assessment session (ie, after Jan and June sessions), ILEX will produce a report which it will share with IPS in relation to key assessment session metrics.

This report will be delivered by a senior member of the Awards team to the IPS board at a mutually agreed time.

The report will consist of the following data:

- Candidate entries
- Candidates sitting examinations or submitting assessments
- Grade boundaries for examined units
- Candidate performance including pass rates for each unit and feedback from assessors
- Statistics for qualification completion
- Centre performance including centre pass rates
- Data on results enquiries and appeals
- Data on applications for and approvals of reasonable adjustments and special considerations
- Stakeholder feedback and complaints
- Summary of any malpractice allegations (student and centre)
- Awards department performance against key performance indicators and targets

- ii. **Minutes of the Awards Performance and Strategy Committee (APSC)** – ILEX will share these minutes with IPS after each APSC meeting, and at the same time as the performance data.

**b. Annual information**

- i. Executive Summary for the ILEX Self-Assessment Report, feedback from Ofqual re ILEX's self-assessment return, annual self-assessment action plan, annual development plan, summary of Awards Malpractice Committee and Awards Appeal Committee outcomes and (from 2011) a report on centre risk management – at a mutually agreed time, in the first quarter of each year, ILEX will share the above documents with IPS as a part of an annual round of reporting. These reports will be delivered by a senior member of the Awards team.
3. The IPS Education Portfolio Holder is a member of the Awards Performance and Strategy Committee (APSC). The IPS Education Portfolio Holder will take responsibility for the main reporting between APSC and IPS outside of the above mentioned formal reporting, and will report to IPS on those specific issues covered by APSC which have an interest for IPS.

**Qualification development**

4. Where ILEX develops new qualifications it wishes to award, whether in relation to rights to undertake regulated legal activities or otherwise, it will be required to consult and seek IPS approval in relation to whether the arrangements for qualification are capable of securing the minimum standards of competence expected of ILEX members holding that qualification.
5. IPS will be responsible for developing qualification arrangements supporting applications by ILEX to become an Approved Regulator in relation to activities regulated under the Legal Services Act. IPS will consult with ILEX in relation to the development of any such arrangements. ILEX and IPS will agree which of them should be responsible for managing the qualification arrangements.

**Experience**

6. IPS and ILEX will work together to determine what experience ILEX members should have to be admitted as Fellows of ILEX or to be enrolled in any other membership grade for which evidence of experience is required.
7. IPS will be responsible for determining what experience is required by ILEX members to become authorised practitioners. ILEX will support the development of experience requirements and be responsible for the arrangements by which ILEX members are able to demonstrate whether they meet the experience criteria set by IPS.