



Mr C Kenny
Chief Executive
Legal Services Board
7th Floor
Victoria House
Southampton Row
London
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BY EMAIL ONLY

Our Ref: DB/hes
27th August 2010

Dear Chris,

Re: Internal Governance Rules (IGR) – Dual self certification – ILEX

Thank you for your letter dated 15th July.

ILEX and IPS now respond to your additional requests for information, against the four areas identified in your letter, as follows:

1. Approaching the LSB (General duty C7 (a))

ILEX and IPS established positive working relations from an early stage, with the mutual intention and understanding to resolve any differences internally, without fettering or restricting the ability of IPS to approach the LSB if it felt their independence or effectiveness is being prejudiced. We were and remain under the clear impression given to us by the LSB that the LSB wanted a mechanism which would retain responsibility for dispute resolution with the parties, to avoid the LSB being troubled by anything other than major, critical differences. We believe we have done this. The Protocol cannot override the parties' statutory rights to approach the LSB.

In the event of a formal dispute, the rationale for the five day's notice is to provide a mechanism of a 'cooling off' period to ensure proper discussions can take place internally, between both parties, without prejudicing each party's statutory rights. IPS does not see this as fettering their access to the LSB. If the LSB maintains the same view, although we consider it unnecessary to do so in the light of statutory rights, for clarity, we have revisited the wording in our Protocols, and provide an alternative:

Remove 10.3 – 6 of the SLA and replace with:

‘any dispute which cannot be resolved will be dealt with in accordance with Para 31 of the Protocols.’

We feel that the SLA provides a good example of why the approach of the protocols is proportionate. As examples, we do not foresee that the LSB will want to adjudicate on the provision of information between ILEX and IPS, the period of notice for malpractice decisions or any of the many other matters of administrative detail included in the SLA.

We confirm that there are no other restrictions on when the LSB may be approached.

2. Accessing resources and dispute resolution (Principle 3 Strategy and Resources)

As the Approved Regulator, ILEX recognises the risk inherent in being the primary funder of our delegated regulatory functions. The relationship and arrangements are not only built on principles of discussion and negotiation between CEO’s and Chairs, but are presented and discussed through ILEX Council and IPS Board meetings. For example, the IPS budget setting process is iterative. Whilst ILEX’s comments are welcomed and taken into account by IPS when setting its budget, IPS reserves the right to disagree with ILEX or discount any comments. Further, as per the Protocols, if ILEX refuses to agree the budget for IPS, it is compelled to provide an explanation to IPS, which can then take steps to resolve the matter in accordance with the Protocol, or if urgent, directly through the LSB . IPS does not see that there is a potential inequality in bargaining power and believes that the planned approach is sensible.

With reference to ‘any variation’ to the IPS proposed budget, this sits under the general principle “ILEX will make available such resources as are reasonably required and appropriate to enable IPS to carry out its regulatory functions”. To clarify the context, the wording we have used provides for a wider range of matters for debate. As previously stated, in practice, ILEX would have to justify its position if IPS perceived its ability to fulfill its functions/obligations was being impaired.

Each company’s directors are bound by fiduciary responsibilities under company law legislation, an additional Code of Conduct, and attend meetings which follow formal agendas, the minutes for which are published in the public domain.

The CEO’s of each company meet on a regular basis. A member from the ILEX Council and IPS Board is present at one another’s meetings.

ILEX’s experience of mediation is that it focuses on the interests of the parties, not just their legal rights alone, and that the process is conciliatory and the outcome consensual, in contrast to the contentious approach in litigation/arbitration. The procedure follows a flexible procedure with a range of outcomes to meet the needs of both parties.

We do not agree that mediation is “time consuming or costly”. Our experience is that it is quick, cost effective and entirely confidential. Whilst we acknowledge there is a potential cost and time delay for using independent mediation, we feel that referral to the LSB should always be an exceptional action, not to be used lightly. For the avoidance of doubt, we reiterate here that the commitment to mediation in the protocols does not and cannot fetter either party from approaching the LSB without delay when any obligation under the Act or the IGR is at risk, or indeed in other circumstances.

3. ILEX Council members on regulatory committees (General duty C6 (a)); and Principle 2 – Appointments, IGR, E

The LSB is aware of the Advocacy Rights and Qualifying Employment Committees, and it has been agreed that their existing composition remain unchanged until 31st December, unless the LSB has agreed an extension beyond this in advance.

4. Committees and Working Groups more generally

IPS currently has the following Committees which report to the IPS Board which makes all decisions, based on Committee recommendations:

- a) Alternative Business Structures: composition 3 Board Members (2 lay, 1 professional); and 1 ILEX Council member - Total 4.
- b) Admissions and Licensing: 3 Board members (2 lay, 1 professional); 1 external professional; and 1 Council member – Total 5.

Additionally, IPS has two Professional Conduct and disciplinary Panels:

- a) Professional Conduct Panel – comprising 3 lay and 3 professional members.
- b) Disciplinary Panel – comprising 5 lay; and 4 professional members.

These panels deal with case work in panels of 3 with a lay majority in every case. They do not have a policy making role. Panels dealing with health and capability issues in respect of members are constituted similarly, with members drawn from the Disciplinary Panel.

We now respond to the additional issues contained in the LSB’s initial assessment summary report in the order in which they have been raised, unless included under one of the four headings above:

General duty C7 (c)

You have requested an explanation of paragraph 11 of the ILEX/IPS protocols which state that IPS will give “due weight to the aspirations of ILEX and its members as expressed through the ILEX Council.” In order to be an effective regulator, IPS is clear that it needs to be aware of the views of ILEX members, and the regulatory aspirations of ILEX Council, commensurate with the obligations and objectives under the Legal Services Act 2007 (hereinafter the Act).

For example, IPS has recently submitted applications for additional independent litigation and probate practice rights for ILEX members. IPS can only make these applications with an understanding of ILEX members and their aspirations. ILEX will, in the future, request that IPS apply for additional practice rights on behalf of ILEX members. Both parties remain bound by the regulatory objectives under the Act, and through mutual support, can ensure that both sides fulfil their obligations under the Act.

In its decision making processes, IPS will give due weight to these views and aspirations, but the overriding principle will be one of protecting the public interest, in accordance with IPS' primary strategic aim "to define, promote and secure, in the public interest, proper standards of professional conduct and behaviour among ILEX members".

Principle 2 – Appointments, IGR, C

Remuneration provisions – The Remuneration Committee has held its first meeting to consider payments to the IPS Board members and Chair. It took the following factors into account:

- a) inflation indices (including cost of living) and the general economic position;
- b) time commitment - days worked compared to days contracted;
- c) overall budgets for ILEX and IPS; and
- d) benchmarking of other professional boards and parallel comparators.

Whilst we recognise the risk around remuneration provisions, we have mitigated the risk by adopting the following processes and procedures for Appraisals:

- a) The IPS Chair reviews the performance of individual Board members each year against objectives agreed at the beginning of the year linked to their portfolio responsibilities and the IPS strategy and business plan.
- b) The IPS Board undertakes its own self evaluation, led by the Board member with responsibility for governance. Board members are also subject to a code of conduct which sets standards which can be relevant to performance review – such as attendance at meetings and confidentiality obligations. ILEX plays no part in any of these procedures.
- c) Appraisal of the Chair is carried out by means of a 360 degree review, managed by the Board member with responsibility for governance. Only a minority of the respondents will be the ILEX President/Council member/CEO. The review is based around the requirements for the role of Chair in the job specification.
- d) Arrangements for appointment and reappointment of Board members are set out in Annexe 4 to the protocols. ILEX has no role in relation to these arrangements. An independent external member will be included in any Appointment Committee, but not for reappointment.

- e) Arrangements for the Appointment and re-appointment of the Chair are also set out in Annexe 4. The Appointment Committee for the Chair will be 2 Board members, 1 lay, 1 professional; 1 ILEX Council member; and 1 external independent. Reappointment of the Chair will be dealt with by a similarly constituted Committee and will be decided against criteria which include satisfactory annual appraisal, performance against IPS strategy/business plan, required attendance at meetings, meeting the person specification for the role and compliance with the IPS Board Code of Conduct.

Principle 2 – Appointments, IGR, D

Regulatory board dismissal - Whilst we do not perceive this to be a risk and have confirmed that we will give notice to the Legal Services Board as the IGR require us to do, we can amend our Protocols and Code of Conduct to include concurrence from the Legal Services Board. Concurrence will not be appropriate where a Board member is dismissed by the Chair of IPS.

Principle 4 oversight etc

IPS and ILEX are committed to working in an open and transparent manner. Any information presented to the ILEX Council has previously been discussed at the IPS Board, and agreed that it can be shared. This information will include Minutes of meetings etc. Unless IPS makes specific requests or ILEX offers, for example, additional resources, ILEX has not needed to intervene.

IPS produces an Annual Report to ILEX Council which will be made available generally.

The Chief Executive of IPS presents a regulatory report to ILEX Council at every meeting, which includes financial statements, budget updates and details of any new projects.

We do not agree that ILEX can only call a General Meeting of IPS with the concurrence of the LSB. If both parties agree then is there really a need for LSB concurrence? If ILEX calls a meeting, and IPS is not in concurrence, then IPS can approach the LSB within the 21 day's notice period, to seek the LSB's concurrence.

We are doubtful that it is proper for the normal statutory arrangements for calling General meetings to be made subject to concurrence by the LSB. The risk the LSB raises here is a remote one. The mischief it identifies on the part of ILEX would certainly result in a reference to the LSB by IPS as it would indicate a substantive breakdown in the relationships of IPS and ILEX and would be contrary to the principles of mutual respect so clearly set out at clause 9 of the protocols.

We note that the LSB will consider our additional information at its meeting on 30th September, and we look forward to receiving the outcome of the final assessment and any next steps by October 2010.

Kind regards,

Yours sincerely,

Handwritten signature of Diane Burleigh in black ink.

Diane Burleigh
Chief Executive ILEX

Handwritten signature of Ian Watson in black ink.

Ian Watson
Chief Executive IPS