

## **ILEX PROFESSIONAL STANDARDS LTD**

### **ANALYSIS OF WORK BASED LEARNING PILOT**

#### **INTRODUCTION**

1. ILEX Professional Standards (IPS) is responsible for setting the standards and application procedure for Graduate members of The Chartered Institute of Legal Executives (CILEx) who seek admission as a Fellow.
2. IPS has been developing a Work Based Learning (WBL) scheme which is intended to replace the existing qualifying employment arrangements. It is considered that revision of the process will create a more robust assessment process for determining and assessing applications for Fellowship and a better understanding of qualifying employment and how applicants demonstrate it.
3. The development work has included 2 consultations and a 6 month pilot of the proposed scheme. IPS has also presented some key issues to an Education Reference Group, held on 28 September 2012. This document explores the operation of the WBL pilot scheme which ran from 1 February 2012 – 31 July 2012. It considers the experiences of the applicants, employers, the Office and the Admissions and Licensing Committee (ALC) in the WBL application process.
4. The pilot was used to test the workability of the learning outcomes in terms of definition and ability to evidence them from workload. The pilot also tested the usefulness of the Work Based Learning handbook and the documentation used to record meeting the outcomes and information for the assessment as to whether an applicant was in qualifying employment. Finally, the pilot was used to determine the effectiveness of the Work Based Learning assessment process in enabling effective assessment for Fellowship. The pilot received 129 applications for Fellowship in total.
5. It identifies issues which have arisen during the course of the operation of the pilot scheme and considers possible solutions and improvements which can be made to the scheme.

## THE QUESTIONNAIRES

### Introduction

5. This section considers the key themes arising from the questionnaires submitted with WBL applications.
6. Each Work Based Learning (WBL) application pack sent out to potential applicants contained 3 questionnaires:
  - An Applicant Questionnaire
  - An Employer Questionnaire
  - An Equality and Diversity Questionnaire
7. The Applicant and Employer Questionnaires contained a series of questions designed to obtain both quantitative and qualitative data about the WBL process. The Equality and Diversity Questionnaire was designed to obtain data against which the WBL process could be assessed to ensure it was not discriminatory.
8. The completion of these forms was voluntary, however IPS received:
  - 130 Applications
  - 129 Applicant Questionnaires
  - 114 Employer Questionnaires
  - 113 Equality and Diversity Questionnaires (of these the ALC has decided 98 applications)

### The Applicant Questionnaire

9. A total of 129 responses were received, however not all applicants answered all questions.
10. Part time applicants did not generally consider that the WBL process disadvantaged them.
11. A number of key themes emerged from the analysis of the data, as follows:

#### **11.1 The Outcomes (explanation and recording)**

A significant minority of the applicants found it difficult to complete the logbook and provide appropriate supporting documentary evidence.

Applicants who worked outside of small and medium sized private practice expressed concern that the process had not been designed with them in mind. These included:

- CPS employees seeking Fellowship (especially for competency 3, 6.3 and 8.1). This is supported by the CPS response to the IPS CPD consultation.
- Applicants working in-house (either in commercial organisations or in local government) where arrangements are less formal.

The pilot identified that the CPS poses a particular challenge relating to evidencing outcome 3 – client relations, as these applicants work on behalf of the Crown and do not have a client. In the same way and for similar reasons 6.3 may be a challenge.

Other applicants found competencies 4 to 8 hard to evidence. (These issues are explored in more detail later in the document)

Many applicants stated that the provision of an example logbook and supporting evidence would be helpful.

### **11.2 The Development Plan**

A significant number of applicants commented that the development plan was unhelpful and that more guidance would be useful as to its purpose. In part this may be owing to the nature of the applications, in that they were prepared retrospectively. Once in formal operation, applicants will be looking forward and therefore the development plan will be more useful.

### **11.3 The Outcomes Checklist Grid**

A minority of applicants found this a difficult form to complete as they had provided more than 1 piece of evidence to support the outcome, or had first achieved it at some point previously, thus the evidence provided did not reflect the applicant having first achieved the outcome.

## **The Employer Questionnaire**

12. A total of 114 responses were received, however not all applicants answered all questions.

13. A number of key themes emerged from the analysis of the data, as follows.

### **13.1 The Outcomes (recording and evidencing)**

As with the applicants, many employers wanted examples of a completed logbook and supporting evidence which they thought would make the process more straightforward and easier to understand. In addition it was suggested that introducing a logbook in a new format which provided more space and guidance as to expectation would be helpful.

A number of outcomes were identified as hard to evidence, most frequently outcome 5. Other outcomes found hard to evidence were 4, 6, 7 and 8. These reflect the outcomes identified as challenging by the applicants.

Employers of those who worked outside of small and medium sized private practice expressed concern that the process had not been designed with them in mind. This includes the following employers:

- CPS
- In-house (commercial and local government)
- Large legal practices

Issues raised included the difficulty in evidencing e.g. anti-discrimination practice in large commercial organisations, problems evidencing client care in large firms and the CPS and evidencing evaluation of risks, costs and benefits to the business in a Local Authority.

## **The Equality and Diversity Questionnaire**

14. A total of 113 applicants completed the Equality and Diversity Questionnaire and of these 98 have had their application heard by the ALC to date. Of these 98 applicants, 26 applications were refused.

15. 19% of the applications refused were from male applicants, this figure is similar to the overall applications received of which 21% were from male applicants.

16. However, applicants from Black and Asian backgrounds were disproportionately refused according to the statistics. With 100% of Black applicants being refused and 75% of Asian applicants being refused. None of those applicants from Mixed or Other backgrounds were refused under the WBL application process.

17. None of the applicants declared a disability and thus the process was not tested against this protected characteristic.

### **Summary of findings (considered in detail in subsequent sections of the report)**

18. Both applicants and employers considered that the outcomes guidance would benefit from clearer explanation supported with examples which have been accepted as good evidence by the ALC.
19. Both applicants and employers found the logbook confusing and some suggested that this should be reworked to provide a separate log for each outcome.
20. There was concern that the outcomes favoured applicants who worked in support and fee earner roles within small and medium sized private practice and that applicants working in the following types of legal workplace would find the process more difficult:
  - The Crown Prosecution Service
  - In-house commercial firms
  - In-house for local government
  - Large private law firms
21. More guidance should be provided on how to complete the development plan and the outcomes checklist grid.
22. The process does not appear to favour male or female applicants and there is no available data on how disabled applicants would engage with the process. Part time applicants did not consider the WBL process to disadvantage them. However, although statistically from a small sample, the process appears to disadvantage applicants from Black and Asian backgrounds. This may be owing to the types of legal workplace in which these applicants work.

## **THE LEARNING OUTCOMES**

### **Introduction**

23. This section considers the data from the questionnaires received from applicants together with data from the Office.

## **Data from the Office**

24. Applications received by IPS were subject to initial review and where required, the Office requested further information from the applicant.
25. The Office has made the following observations about meeting the outcomes:

### **Learning Outcomes 1-3 generally:**

26. The application process was most straightforward for applicants who worked in private practice, as the outcomes and guidance best suited the client/representative approach. Applicants working for the CPS and in-house applicants (including those working for Local Authorities) found these outcomes more challenging as the identification of the client/service user was more difficult. Applicants tended to use a proxy for the client in this situation, although this was not always a good substitute for achievement.

### **Learning outcomes 1 and 2**

27. All applicants found these relatively straightforward to evidence, provided they had read the outcome and guidance correctly.
28. These minor issues can be rectified with more clarity in the explanations in the handbook.

### **IPS Response**

29. IPS noted that these outcomes were found to be the most straightforward outcomes to meet and that minor amendments to the guidance would rectify any issues identified as problematic by the applicants, such as ensuring that the examples of research undertaken was legal research.

### **Learning outcome 3**

3.1: Identify a client/service user's position and 3.2: Take accurate instructions

30. The CPS applicants struggled to provide evidence which demonstrated that they had identified and understood a client/service user's position, as they work from witness statements and other evidence such as CCTV recordings presented by the police/investigator rather than interviewing a new client/service user. With regard to taking instructions, the CPS generally make

the decision about the charges and as a result this can also be more difficult to evidence. The Reference Group also made comments on this point.

31. In-house teams tended to use other departments as their service user to overcome the problem.

### **IPS Response**

32. IPS determined that this problem could be overcome by clarifying what is meant by a 'service user'. In the case of the CPS, it was considered important to afford this term the widest possible definition to include the courts, the police, victims, defendants etc. In the case of applicants who work in-house, it was decided that clarification should be included in the guidance that the 'service user' in this instance would be the department instructing the legal department to act on their behalf.
33. IPS has noted that large organisations such as the CPS operate a business model which may mean that applicants may work in a compartmentalised way. However it is considered that working with a wide definition of 'service user', the applicant ought to be able to demonstrate that they can meet outcome 3, 3 times without difficulty.

### 3.4: Evaluation of risks/costs/benefits to client

34. Some applicants were confused by this question, often providing similar evidence as they did for 5.2 (risks/costs/benefits to the business). Where this was an issue, it was usually because the applicant had considered the likely success of a case in conditional fee agreement cases, rather than consideration of options open to the client in proceeding with the matter. However, in situations where the applicant works in house 3.4 and 5.2 are the same.

### **IPS Response**

35. IPS considered the difficulty in evidencing outcomes 3.4 (identification of risks, costs and benefits of alternative courses of action to the client) and 5.2 (identification of risks, costs and benefits of alternative courses of action to the business) in situations where the applicant worked in-house, as this could be seen as a duplication of evidence. IPS determined that there was a distinction between these outcomes: outcome 3.4 relates to practical assessment of risks, costs and benefits to the client and outcome 5.2 relates to the operation of the business more generally. IPS has decided therefore that this problem could be overcome with increased guidance provided to the applicant.

### 3.6: Managing client/service user expectations

36. Where there were issues with this outcome, it was usually because the applicant had taken steps to progress matters quickly for the client, rather than providing situations where the client wanted a result which was not possible.

#### **IPS Response**

37. In relation to outcome 3.6 (managing client expectations), IPS decided that progressing matters expeditiously should not include progressing matters quickly. Greater guidance will be provided to applicants to ensure that they understand that the purpose of the outcome is to demonstrate the best management of a case to ensure there are no unnecessary delays rather than as quickly as possible. The outcome also includes the wider issue of dealing with and managing client expectations in relation to the length of time which a matter should take.

### **Learning outcomes 4-8 generally**

38. Many of the applicants found these outcomes more difficult to evidence, partly because of the guidance and partly because some of the outcomes are difficult to evidence as they are being asked to prove a negative. As a result many applicants provided personal statements to satisfy all of these outcomes. These were sometimes supplied countersigned by the supervisor. The ALC took a dim view of applications which were made up of a large number of personal statements as they did not demonstrate the learning/achievements of the outcomes in actual matters handled by applicants and therefore the portfolio did not provide corroborating evidence.

### **Learning outcome 4: management of workload**

39. Applicants tended to provide personal statements to address this outcome as a first option, but when asked were generally able to provide evidence of practice which supported the outcomes.
40. This problem can be solved through increased guidance in the handbook.

#### **IPS Response**

41. IPS decided that enhanced guidance should be provided to applicants to ensure that they understood what they were expected to demonstrate for outcome 4 (management of workload).

## **Learning outcome 5: business awareness**

42. The applicants would often provide business plans etc. to meet this outcome, which demonstrated 'how to' rather than actual evidence of their practical application of the knowledge, demonstrating knowledge of the employer's aim rather than the applicant's application of that knowledge.
43. Applicants from large organisations got lost in the corporate structure and did not have the same understanding of the issues affecting the business as they would if they worked in a smaller organisation. The overall title of the outcome refers to 'awareness', which would indicate that demonstration that they have access to the business plan etc. together with an explanation as to how they fit into the business would be enough to satisfy this outcome. The Education Reference Group made suggestions relating to this point.

### **IPS Response**

44. IPS agreed that demonstration of outcome 5 (business awareness) could be evidenced through the demonstration of awareness of the issues affecting the business rather than requiring applicants to demonstrate active involvement in the decision making process affecting the business. The applicants could also demonstrate their part in the business by recognising their impact on the work of the business based on the information to which they have access.

## **Learning Outcome 6**

Learning outcomes 6.1 and 6.2

45. Applicants found evidencing 6.1 and 6.2 challenging, possibly because they could not understand what the outcomes required of them. This was often because they had not read the outcome in the context of 'professional conduct'.

### **IPS Response**

46. IPS agreed that increased guidance should be provided to applicants regarding the evidence required to support outcomes 6.1 (applying rules of professional conduct) and 6.2 (providing appropriate information to the client).

Learning outcome 6.3

47. Almost all applicants found satisfaction of this outcome difficult. They often provided training in equality and diversity as a proxy for demonstrating their meeting this outcome in the context of their work. Others provided personal

statements stating their compliance (which may or may not have been countersigned by the supervisor).

### **IPS Response**

48. IPS considered the difficulty in providing evidence in support of outcome 6.3 (avoid discrimination and promote equality and diversity). It was recognised that applicants were required to prove a negative and that it was difficult to demonstrate avoiding discrimination in practice. IPS considered it would be appropriate to remove this requirement.
49. IPS recognised that there were situations in the workplace where applicants may not encounter individuals from diverse backgrounds, such as those working in-house for a corporate organisation. It was accepted therefore that there would be situations where evidence of the completion of Equality and Diversity training, which could include participation in a webinar as was suggested by the Education Reference Group, would be acceptable to satisfy this outcome.

### **Learning outcome 7: self-awareness and development**

50. These outcomes were frequently demonstrated by way of personal statement, Evidence provided for 7.1 included the supervisor's assessment of skills and knowledge rather than the applicant's own assessment. There was also some misunderstanding of outcome 7.2, with applicants making general statements rather than providing a situation which evidenced their recognition of their limitations.

### **IPS Response**

51. Discussion about learning outcome 7.1 (evaluate professional skills and legal knowledge) determined that improved guidance to the applicant should be provided and that this would remedy the confusion demonstrated through the operation of the pilot.
52. IPS considered outcome 7.2 (understand limitations of professional skills and legal knowledge) and recognised that in some situations, the applicant may rarely encounter work which is considered outside their area of competence. It was suggested that improved guidance and acceptance of a personal statement as satisfaction of this outcome would resolve the difficulty.

## **Learning outcome 8: working with others**

53. Evidence provided for 8.1, would sometimes be a single letter to a 3<sup>rd</sup> party rather than demonstrate the existence of a relationship.

### **IPS Response**

54. IPS decided that improved guidance provided to applicants would solve the problem of not evidencing a 2 way relationship, which was identified in relation to outcome 8.1 (establish effective working relationships with others).
55. Outcome 8.2 has proved more problematic. Disclosure of documents is not generally considered appropriate evidence of this outcome, and the Office has requested evidence of e.g. respect for data protection.

### **IPS Response**

56. IPS considered whether outcome 8.2 (provide appropriate information to others) should include formal disclosure of documents in the course of a legal matter. It was recognised that sometimes this was nothing more than following a legal rule and in this situation this should not be included as appropriate evidence. However, in situations where the applicant had exercised judgement in the process and explained this in their logbook, this should be included. The guidance should be amended to reflect this.
57. It was noted generally that applicants should concentrate on the reflective element of their logbook entries when providing evidence in support of achieving the outcomes.

## **Meeting the Outcomes**

58. A concern raised by both applicants and employers (and separately by the CPS in its response to the CPD consultation) is that many of the outcomes are best able to be evidenced by those applicants working in small and medium sized private practices, where they undertake fee earning or support work.
59. Linked to this issue is the refusal of applications from applicants with a Black or Asian ethnic background as they are likely to work in practice areas where it may be more difficult to meet the outcomes.
60. These issues were discussed at an Education Reference Group held on 28 September 2012.

## Education Reference Group

### Equality and Diversity

61. The statistics relating to the relative success of applicants from different ethnic backgrounds was considered by the Group. They considered that the process was not discriminatory in its application as many of the applicants were rejected on the grounds that they had insufficient qualifying employment and that if they had applied after serving the necessary time, they were likely to be admitted as Fellows.

### The guidance for the outcomes generally

62. The guidance relating to satisfaction of the outcomes was considered appropriate, however it was considered beneficial to provide a number of completed portfolios in a variety of areas to show applicants what will be expected. This was considered the best approach to introducing a new scheme which was reflective in nature and therefore new to many members of CILEx.

### The issues of different workplaces and achievement of the outcomes

63. The Group had a lengthy discussion on this matter. It was acknowledged that there are some workplaces which are not well suited to achievement of the outcomes. The CPS, in-house commercial firms and local authorities were identified as such workplaces.
64. It was recognised that some members involved in work of a legal nature may be undertaking very narrow process work, which would be defined as legal but would not provide the breadth of experience which should be associated with Fellowship. Working solely on repossessions and enfranchisement were given as examples of this. The Group came to no firm conclusions as to how these narrow areas of work should be treated under the WBL.

### IPS Response

65. The Education Reference Group had considered the ability of applicants to be able to demonstrate different outcomes where they work at the CPS, in-house or undertake process work for large organisations. IPS noted the comments made, however they considered that flexible application of the outcomes together with improved guidance provided to applicants would be sufficient to address this matter. On the matter of process work, IPS noted that the applicant is also required to satisfy the 'qualifying employment' element of the application process for Fellowship and this would address the situation where

applicants who could meet the outcomes, but were not working on sufficiently complex work from being granted admission.

66. IPS also considered the position of individuals applying for Fellowship where they have progressed in their career beyond undertaking day to day legal work. A number of suggestions were considered, including the possibility that such individuals should apply for a management qualification, or undertake more junior work to enable them to meet the outcomes. Neither of these was considered an appropriate solution in these cases and it was recognised that the Admissions and Licensing Committee may need to retain discretion in respect of such individuals. This was particularly true as some Graduate members may be encouraged to apply for Fellowship once it is possible to obtain independent practice rights as a Fellow.
67. The Education Reference Group made a recommendation that a degree of complexity of work should be part of the assessment process for Fellowship. The Reference Group suggested that within the 3 examples requested, at least one example should demonstrate complex legal work to ensure that the applicant has reached a minimum standard. It was also acknowledged that this would be hard to achieve in large firms where work is sub-divided and thus such applicants may not be able to provide a range. It was suggested that applicants in such circumstances should discuss the matter with their supervisor in order to access a sufficient breadth of knowledge or could seek alternative employment to enable them to access this experience (it was recognised that the current climate did not make moving jobs an easy matter).

### **IPS Response**

68. IPS rejected the suggestion of the Reference Group that at least one of the outcomes should reflect participation in more complex legal work. The combination of the learning outcomes and qualifying employment was considered sufficient to demonstrate that the applicant is working at a level appropriate to obtain Fellowship.

### Competencies 3, 5, 6 and 8

69. The discussion then focused particularly on the outcomes which have been identified through the questionnaires as being hard to achieve in some workplaces. Discussion centred particularly around competencies 3 and 5.
70. Discussion around competency 3 was focused on the CPS, who have identified both in the WBL pilot and the CPD consultation that this is of no relevance to these members as they do not have a client.

71. Discussion around competency 5 was focused on large organisations more generally and the lack of access to business planning and assessment of risk, costs and benefits in the context of the business. This competency was considered a necessary part of gaining independent practice rights (however, these may be picked up in the Practice Management and Accounts competency frameworks required for independent rights and as such providing these do map across this may not be an issue).
72. One solution offered by the Group was the identification of 'core' and 'optional' competencies. It was suggested that core competencies should include 1, 2, 4 and 6.
73. A second solution was to produce an algorithm which creates paths to Fellowship on the basis of place of work. So for example applicants from the CPS would be able to provide evidence only of the competencies they would be able to demonstrate through their work.
74. A solution in relation to outcome 6.3 was the development of a webinar with a series of questions to answer which would enable applicants to demonstrate meeting the outcome.

### **IPS Response**

75. IPS rejected the suggestions of the Reference Group in relation to the use of core and optional competencies and the use of an algorithm to determine Fellowship to ensure that all Fellows meet a consistent standard. It has been agreed however to accept one piece of evidence in relation to meeting some of the outcomes as follows:

<b>Outcome</b>	<b>Number of pieces of evidence required</b>
1.1 – apply the law to a matter	3
1.2 – apply legal procedure to a matter	3
1.3 – identify and deal with issues arising	3
1.4 – undertake legal research	3
2.1 – communicate legal issues using appropriate methods	3
2.2 – use suitable language in communication	3
2.3 – address all issues in communication	3
2.4 - seek appropriate information through communication	3

2.5 – represent client through effective use of communication	3
3.1 – identify and understand client’s position	3
3.2 – take accurate instructions	3
3.3 – provide clear legal advice	3
3.4 – evaluate risks, costs and benefits	3
3.5 – take action to deal with instructions	3
3.6 – manage client’s expectations	3
4.1 – plan your workload	1
4.2 – progress matters expeditiously	3
4.3 – maintain files and records	1
5.1 – demonstrate understanding of business environment	1
5.2 – evaluate risks, costs and benefits to business	1
6.1 – apply rules of professional conduct	3
6.2 – provide appropriate information to clients	3
6.3 – avoid discrimination and promote equality and diversity	1
7.1 – evaluate professional skills and knowledge	1
7.2 – understand limits of professional skills and knowledge	1
8.1 – establish working relationships with others	3
8.2 – provide information to others	3

The reason for these changes is that demonstration of the outcome more than once would not enhance demonstration of competence.

## **QUALIFYING EMPLOYMENT**

76. This section considers the other central requirement for obtaining Fellowship of CILEx; qualifying employment.

77. The definition of qualifying employment is as follows:

To be in qualifying employment you must be employed by either:

- a solicitor or a firm of solicitors in private practice;
- a Licensed Conveyancer or a firm of Licensed Conveyancers; or
- by any firm, corporation, undertaking, department or office where the employment is subject to supervision by a Fellow, Solicitor, Barrister or

Licensed Conveyancer employed in duties of a legal nature by that firm, corporation, undertaking, department or office; **and**

in each case, you must undertake work that is ***wholly of a legal nature*** for at least 20 hours per week.

You will be regarded as being employed if:

- you are employed under a contract of service and are engaged on your employer's business for specified hours; or
- you are a partner in any firm or are an owner of any company; or
- at the discretion of IPS, you are employed under a contract for services, whether you work as an independent contractor or provide services through an intervening agent.

Work that is ***wholly of a legal nature*** is defined as work where you undertake an activity that involves the application of the law or legal practice or procedure in areas such as:

- taking instructions;
- advising and making recommendations;
- drafting documents;
- undertaking legal research;
- corresponding with the parties to an action or transaction;
- making decisions in a legal matter based on legal principles or rule of law;
- representing in negotiations and submissions.

Applicants must have at least 5 years in qualifying employment, at least 2 year of which having been served as a Graduate member.

78. The first paragraph of this definition stipulates that the applicant must be supervised by a legally qualified person. At present, there is a discretion to accept applications certified by a non-legally qualified person.
79. In the second paragraph of the definition, a discretion is retained to accept applications from those working under a contract for services rather than working under a contract of employment.
80. Once the WBL scheme is adopted as the process for assessment of applications for Fellowship, it is intended that the 'waiver' procedure for applicants, by which applicants who have the required number of years qualifying

employment but not served in the Graduate grade, will be removed and replaced with a requirement that all applicants must have 3 years qualifying employment, of which 1 year must be served in the Graduate grade.

81. Thus, under the current arrangements for the new scheme, it is proposed to retain some elements of the waiver and remove others.
82. There are currently 3 ways in which applicants may seek a waiver. These are:
  - The removal of the waiver of the requirement to serve a minimum period in the Graduate grade – previous decisions of the Committee indicate that this should be removed
  - The removal of the discretion for the application to be signed by a professional, not legally qualified.
  - The discretion currently retained to accept applications from applicants who are employed through a contract for services.

For the last 2 bullet points, the use of the Alternative Business Structure as a model for delivery of legal services means that these may become more common on applications for Fellowship.

### **IPS Response**

83. IPS maintains that the requirement for 1 year to be served after the applicant had achieved Graduate membership could no longer be waived. This is because it is important for applicants to demonstrate application of skills post-completion of the academic elements of the qualification.
84. However, the discretion to accept applications signed by a professional not legally qualified and one who is employed under a contract for services should be retained.
85. IPS also considers that it would be important to have discretion to accept applications from candidates who had progressed in their career to a point where they are working at a level which may limit their ability to demonstrate the outcomes in the way that a more junior applicant would be able to demonstrate them.
86. IPS also considered it essential that the definition of qualifying employment was sufficiently wide to include non-traditional legal practice, the numbers of which are likely to increase in the future.