



INTERNAL GOVERNANCE AND PRACTISING FEE RULES

**A RESPONSE BY THE INSTITUTE OF LEGAL EXECUTIVES
AND ILEX PROFESSIONAL STANDARDS LIMITED**

**CONSULTATION BY THE LEGAL SERVICES BOARD
ON PROPOSED RULES TO BE MADE UNDER
SECTIONS 30 AND 51 OF THE LEGAL SERVICES ACT 2007**

DATED : 30 OCTOBER 2009

Introduction

1. The Response represents the joint views of the Institute of Legal Executives (ILEX) an Approved Regulator under the Legal Services Act 2007 (the Act), and its regulatory arm ILEX Professional Standards Limited (IPS). There was no difference of significance between the two organisations and in their comments in the consultation, and so a joint Response is tendered.

The Legal Services Board's General Approach

2. ILEX and IPS support the general approach which the LSB proposes to adopt. The separation out of mandatory principles, rules where necessary to ensure compliance with principles; and illustrative guidance to support the rules seems a sensible approach and one that endeavours to support the Approved Regulators in their responsibilities for day to day regulation. This approach should promote the flexibility and scope for innovation in the way in which individual Regulators tackle their responsibilities that we deem important and consistent with the principles of regulation.

Definitions

3. ILEX and IPS are agreed that the composition of the IPS Board with its "lay" majority, led by a "lay" Chair is the right approach for us and one that we are robust in celebrating. We do not assume it is the right approach for all other organisations.

4. So we remain concerned that the LSB has continued with its proposal that there be a "lay" majority on regulatory Boards in every case. This does not enable there to be appropriate flexibility in cases where in the future this might prove inappropriate.

5. Nonetheless we are pleased to note that the LSB now agrees that there should be no restrictions on the background of the person being selected to Chair Regulatory Boards with the principle of appointment on merit being paramount.

6. We also welcome the change in approach to the appointment process for Regulatory Boards. Whilst ILEX and IPS are satisfied with the approach we are taking, which leaves the process for Board appointments in the control of the Chair of IPS, we are pleased that we have this choice and that the process is not obligatory.

Provision of Shared Services

7. We are pleased that the LSB proposes to afford greater flexibility to Approved Regulators in the provision of shared services than was their original approach.

8. The ILEX and IPS approach to the management of resources and to shared services is to ensure that, within a single budget setting and

management process, the regulatory component of each activity, at every stage and across departmental budgets is clearly recognised. We are entering a series of service level agreements governing the operational infrastructure and relationships across the two organisations. As set out in our earlier Response, should negotiations prove difficult, or indeed break down, then ILEX and IPS would propose to use the services of a facilitator or mediator to move matters forward.

Practising Fee Rules : The Permitted Purposes

9. We agree with the approach to the LSB in extending the permitted purposes to cover individuals who fall outside the definition in Section 51(8) of the Act. We are slightly puzzled however by the new definition. "Holding themselves out as" an applicable person may in some circumstances be a criminal offence. Within ILEX, it is unclear whether the phrase "Wishing to become such person" would extend to our 22,000 members, or only to those who indicate in some other way that they wish to become an applicable person i.e. a Legal Executive.

Internal Governance Rules

10. We are pleased to note that the concept of dual certification of compliance with the internal governance rules remains. We will be working closely together to meet the LSB timetable to self-certify by 30 April 2010. However, we raise the issue here, as we have raised it elsewhere, that the demands of the LSB in terms of recent consultations has detracted significantly from our ability to progress work of this nature and the April time limit will become another regulatory burden for us.

Practising Fee Rules

11. We support the approach of the LSB in this area. We look forward to working with the LSB to ensure that appropriate arrangements are put in place in good time for next year's applications.

The Draft Rules

Principle 2 : Appointments

12. We are pleased to note that under the guidance, it is possible for a person to be appointed to the regulatory Board who has previously had responsibility for representative functions.

13. We believe that it is important that the Regulatory Board itself should have prime responsibility for appraisal of Regulatory Board members. The Approved Regulator has, of course, an interest in the reappointment of Board members, as it has in their initial appointment. The guidance uses the phrase "Within its agreed budget when addressing the issue of Board remuneration". Given the LSB's approach to the initial appointment of Board members which

may now involve considerable participation by the Approved Regulator, it would be hard for matters thereafter to be placed in the hands solely of the Regulatory Board.

Principle 3 : Strategy and Resources

14. ILEX has already ensured that line management responsibility for staff performing regulatory functions is to the IPS's senior officer. The IPS senior officer is directly accountable to the Chairman and members of the IPS Board. We again point out that all staff whether ILEX or IPS are employed by the Approved Regulator. Staff have comprehensive and transparent Terms and Conditions of employment which have been the subject of consultation amongst all staff. We have common employment policies for all staff. Staff have access to an ILEX pension plan and other benefits schemes such as private medical cover.

15. Our approach to individual appointments means that when recruiting to a post, the requirements of that post in terms of job content and personal qualities are fully set out, and salary levels are benchmarked before advertising a vacancy. Salary levels for a particular post would therefore take into account the market rate for that post generally; the market rate for this particular geographic area; the general market conditions i.e. whether there is a scarcity or over abundance of individuals potentially seeking employment in that post, and so on. We would expect this general approach to be taken in relation to appointments to a regulatory post.

PRACTISING FEE RULES

The Permitted Purposes

16. We note that the LSB has not addressed an issue raised in our initial Response, which is whether funds to develop of new practice rights, enabling members to become relevant authorised persons of reserved legal activities, can be raised through mandatory practising fees.

The Approval Mechanism

17. Rule D7 would indicate that an Approved Regulator need not charge a practising fee as a part of its regulatory arrangements. The assumption therefore must be that the Board will not need to approve that particular arrangement, nor will have power to enquire into how the regulatory arrangements are being financed.

18. In Rule D9(C), we hope that the Board will give guidance on the kind of criteria which the Board will be considering, so as to support its commitment to transparency.

19. A combined Rules 10 and 11(b) appear to require the Approved Regulator to demonstrate in its budget how non-practising fee income will be applied to permitted purposes. We assume that this is in response to the point made by

the LSPI in its evidence to the LSB in response to the original consultation on Independence and Governance.

20. Our understanding is that The College of Law and LSPI raised this issue so as to protect students from bearing the brunt of any attempt by the Law Society/SRA to keep practising fees for solicitors low by charging student members a disproportionately high fee, which would not come under scrutiny otherwise by the LSB.

21. In the case of ILEX, we raise significant income through our activities as an Awarding Body and other commercial activities. We would be concerned if the LSB expects to pore over our commercial activity and income and potentially prevent us from using this income to relieve Legal Executives from the financial burden of regulation.