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## **ANNUAL REPORT OF THE ADVOCACY RIGHTS COMMITTEE**

### **INTRODUCTION**

The Advocacy Rights Committee (ARC) was set up under the Rights of Audience Rules which came into effect in 2006.

The Committee was responsible for the enrolment of members onto the scheme, renewals of advocacy certificates and accreditation of course providers. The terms of reference of the Committee appear at annex 1.

The Committee comprised 6 Fellows of ILEX and 4 independent members. 5 of the Fellows were members of the ILEX council. 2 of the independent members had knowledge or experience of consumer issues and 2 had knowledge or experience of advocacy services.

The Committee was supported, in its work, by two external advisors. The external advisors are experienced in civil, criminal or family proceedings. They are responsible for marking candidate portfolios, vetting course provider applications, inspection of courses and maintenance of standards. They may attend meetings of the Committee, although they do not participate in decision making.

The Committee finds the advice and input of the external advisors useful in its decision making. It is able to place reliance upon their expert views on the suitability and competence of candidates and course providers.

The Committee has worked well. Committee members and external advisors bring together a good mix of skills which enable decisions to be made in respect of applications. Under the Legal Services Act the Committee was unable to remain in its current format. It was therefore replaced by a new Committee in January 2011.

This report covers the period 1 January 2010 to 31 December 2010.

### **WORK OF THE COMMITTEE**

The Committee was responsible for the whole of the qualification scheme. Its key areas of responsibility included approval of candidate applications, approval of applications to renew advocacy certificates and accreditation of course providers. The Committee was supported by the external advisors in each of these areas.

#### **Candidate applications**

All Graduate Members and Fellows seeking rights of audience must undergo an enrolment process. This is referred to as an application for a Certificate of Eligibility. The application involves a detailed process. Candidates begin by completing a general application which asks for details of their litigation and advocacy experience. They also produce portfolios of 8 cases that they have handled. 5 of these portfolios must cover litigation cases and 3 must cover advocacy cases.

The portfolios are marked by an external adviser to ensure they meet the knowledge and experience guidelines. If they do, the application was referred to the Advocacy Rights Committee for consideration. The Committee may decide whether or not to approve the application. If the Committee approved the application the candidate can proceed to enrol onto the advocacy skills course.

The Committee received a total of 22 applications during 2010.

Of these 14 were approved and applicants were granted certificates of eligibility to proceed onto courses. 1 application was rejected because the candidate was not supervised by a solicitor and therefore did not meet the eligibility criteria. 2 applicants withdrew their applications. 1 application included an application for an exemption to the requirement to have undertaken the relevant exams which was rejected. 4 applications were not in a position to be considered by the Committee.

The most popular area of enrolment has been family proceedings. The Committee granted 10 certificates of eligibility to enrol onto family proceedings courses. 7 of those candidates successfully completed courses and passed assessments and therefore qualified as Legal Executive Advocates. Of the remaining 3 candidates, 2 have enrolled on a course and 1 is yet to enrol onto a course.

The Committee granted 3 certificates of eligibility in criminal proceedings. 1 of those candidates qualified as a Legal Executive Advocate in 2010 and the remaining 2 candidates have enrolled on a course.

The Committee granted 1 certificate of eligibility in civil proceedings. Unfortunately the civil proceedings course has proved unpopular. This is because most practitioners are unlikely to exercise the rights that are granted to them. An advocacy skills course in civil proceedings did not run in 2010. There are now 3 candidates who have been granted a certificate of eligibility since the scheme commenced who have not yet qualified as Legal Executive Advocates. Logistical reasons are hindering the arrangement of a course for them.

### **Advocacy certificate renewals**

Legal Executive Advocates are required to renew certificates in June or December after the expiry of 12 months since the issue of their first certificate. Thereafter they move to 3 yearly renewals.

At the first renewal Legal Executive Advocates must produce portfolios of 3 cases where they have exercised their new rights. The Committee considered and approved 11 applications for renewal of criminal proceedings certificates.

Subsequent certificates are issued by the Office without referral to the Committee provided the advocate has satisfactorily undertaken 5 hours advocacy CPD each year. 14 three yearly applications for renewal were received by the Office.

### **Course providers**

Upon obtaining a certificate of eligibility candidates must complete an advocacy skills course. The course is a practical course aimed at developing advocacy skills. The courses are split into civil, criminal and family proceedings, with candidates undertaking the course relevant to the specialist area in which they obtained a certificate of eligibility.

Courses must be provided by accredited course providers. The Rights of Audience Rules set out the requirements that course providers must meet to obtain accreditation. ILEX has developed an accreditation handbook and application form for this purpose.

Kaplan Altior was the first accredited course provider and has been the sole provider of courses to date. It has delivered courses in criminal and family proceedings. It is willing to deliver courses in civil proceedings but had been unable to do so due to limited interested and practical problems.

Kaplan provided a family proceedings course on an in-house basis for a firm of solicitors as the Committee had granted 6 Certificate of Eligibility to employees of the firm. This is the first in-house course that Kaplan had provided.

An inspection of the in-house course was carried out by an external adviser. The inspection highlighted some issues which were of an administrative nature. The reports have been shared with Kaplan.

Three organisations requested and were provided with applications packs in order to make an application to become an accredited provider of the course. No applications have been received to date.

#### **MEETINGS OF THE COMMITTEE**

The Committee met four times in 2010. One of these meetings was face-to-face and three were conducted by telephone conference.

#### **COSTS**

The administration of the qualification scheme has proved to be expensive. From 2010 the majority of meetings have taken place by telephone conference which has reduced some costs.

The following table provides a breakdown of income and outgoings.

<b>Income</b>		
Applications for certificates of eligibility – 22 @110	2420	
Renewal applications 25 @150	3750	-----
		6170
<b>Expenses</b>		
Marking candidate portfolios	3,565	
Considering course provider applications	0	
Committee meetings	3,600.37	
Committee and external advisor expenses	798.54	
Officer expenses	0	-----
		7963.91
		-----
<b>Total loss</b>		<b>1793.91</b>

#### **PUBLICITY**

The Committee is keen to see the scheme publicised widely. Publication work has been undertaken by ILEX and Kaplan through the Legal Executive Journal.

ILEX writes to all newly qualified Graduate Members and Fellows inviting them to qualify as Legal Executive Advocates.

The scheme was promoted at the ILEX graduation ceremony for new Fellows and at the ILEX Conference.

### **ANNUAL REPORT OF THE PROFESSIONAL CONDUCT PANEL AND DISCIPLINARY TRIBUNAL 2010**

#### **PREFACE**

ILEX Professional Standards Limited (IPS) is the regulatory body for members of the Institute of Legal Executives (ILEX) and is responsible for dealing with complaints and allegations of misconduct made against ILEX members.

2010 saw the commencement of the new Professional Conduct, Disciplinary and Appeals Tribunal Panels. These are pools of professional ILEX Fellows and lay members who sit in panels of three, being one professional and two lay members. All panel members have substantial experience in professional conduct and disciplinary regulation.

The introduction of ILEX Fellows as the professional members of the panels means these new panels work independently of both ILEX and IPS. The panels have worked very successfully and the professional panel members, in particular, have settled into their new roles. The wealth of experience that the lay members bring is invaluable.

The Professional Conduct Panel, in particular, has benefitted from these changes. Having a lay majority and a smaller panel results in very focussed decision making.

All new cases in 2010 were considered against new rules which commenced on 4<sup>th</sup> January. May 2010 saw the launch of the new ILEX members Code of Conduct which sets out nine Principles that members must observe.

During 2010 IPS has also introduced sanctions guidance and a publication policy to support panel members. Sanctions guidance ensures consistency in decision making in relation to sanctions. The publication policy sets out clearly what decisions can be published and the period for which they may be published. Panel members now attend annual training days to update their knowledge and to have the opportunity to network with each other.

The panels, their meetings and hearings continue to be administered by IPS.

I take this opportunity to thank all the panel members for their work during 2010.

**SANDRA BARTON  
BOARD MEMBER**

### **INTRODUCTION**

ILEX Professional Standards Ltd (IPS) is responsible for dealing with complaints and allegations of misconduct made against ILEX members. IPS is also responsible for receiving and determining what action to take in relation to prior conduct declarations made by ILEX members and applicants wishing to become members of IPS.

Complaints, allegations of misconduct and prior conduct declarations are investigated and dealt with in accordance with the rules set out under the Investigation, Disciplinary and Appeal Rules (IDAR).

All members of ILEX are governed by a Code of Conduct. In addition members must observe relevant codes applicable to their employers, if they work as employees. The conduct of members is measured against the Code.

This report covers the work of the three bodies set up under the IDAR, the Professional Conduct Panel, Disciplinary Tribunal and Appeals Panel, during the 2010 calendar year.

### **PROFESSIONAL CONDUCT PANEL**

The Panel is responsible for considering complaints or allegations of misconduct made against ILEX members and prior conduct declarations made by members of ILEX and by applicants seeking to join ILEX.

Where a complaint or allegation of misconduct is made against an ILEX member the Panel is responsible for determining whether a prima facie case has been made out to substantiate the allegation and, if it has, what action to take. Where a prior conduct declaration is made the Panel determines whether or not to allow that person to join membership of ILEX or if they are currently registered it determines what action to take.

The IDAR sets out the powers available to the Panel. They distinguish between complaints and prior conduct declarations.

### **Complaints and Allegations of Misconduct**

The Professional Conduct Panel received and considered a total of 41 cases where complaints or allegations of misconduct had been made against ILEX members. The cases were referred to the Panel after full investigation.

The following analysis was carried out of the 41 cases that were considered by the Panel.

The Panel referred 20 cases to the Disciplinary Tribunal during 2010. Referrals to the Disciplinary Tribunal were made where the Panel had found that there was a prima facie case to substantiate the allegations made against the member and they were of a serious nature. 14 of these cases were for examination misconduct.

In 8 cases the Panel found that there was a prima facie case to substantiate the allegations and that its own disciplinary powers were sufficient to deal with the matter. Of these 8 cases, 4 members were reprimanded, 1 received a reprimand and was required to give an undertaking, and 1 received a reprimand with a condition imposed on their membership. In 2 cases the Panel decided to accept the member's response to the complaint and take no further action.

In 12 cases the Panel found that there was no prima facie case to substantiate the allegations made against the member. One case was deferred.

Of the 41 complaints considered, 9 were made by clients, 2 by employers/former employers and 8 by third parties. The remainder were made by IPS either as a result of alleged examination misconduct, or due to adverse information received, or due to the member's failure to engage with IPS's enquiries.

#### *Year on year comparison of decisions*

The following table sets out the powers available to the Panel and, in percentage terms, how they were applied.

<b>Decision</b>	<b>2010 %</b>	<b>2009 %</b>	<b>2008 %</b>	<b>2007 %</b>	<b>2006 %</b>	<b>2005 %</b>
No case to answer	29	33	23	31	18	37
Warned	0	11	0	19	21	10
Admonished	-	6	15	5	11	0
Reprimanded	15	11	8	14	24	24
Condition	2	0	0	11	0	0
Undertaking	2	0	0	0	0	5
Referred to Tribunal	49	22	42	19	26	24
Awaiting information	2	0	0	0	0	0
Member's response accepted	5	6	4	0	0	0
Complaint out of time	0	11	8	0	0	0

#### *Areas of law in which complaints arose*

The following table analyses the areas of law in which complaints arose. This shows a sharp decrease in the number of conveyancing complaints, which may be linked to the downturn in the property market. There has been a marked increase in complaints made by employers/former employers and these complaints have centred on financial irregularities and allegations of approaching clients without authority, which may also be a result of the economic downturn. There has also been an increase in the number of examination misconduct cases considered, which in part is linked to changes in the ILEX assessment and scrutiny methods.

## *Issues arising in complaints*

The Panel found that there were some recurring themes in the complaints that it considered. An analysis has been undertaken and appears in the table below.

In some cases there was more than one head of complaint or more than one issue raised. Each of these has been counted individually. It should be noted that not all of the allegations were found proved by the Panel.

## *Timescales*

An analysis was undertaken of the time taken to consider complaints. The table below sets out the time taken to deal with complaints measured from receipt of the complaint at IPS to determination of the case by the Panel.

The cases which took a long time to complete involved complex and in depth investigations into allegations made against members. Some required information to be obtained from third parties. They involved delays caused by members and complainants in making responses to IPS.

Timescale	Number of cases					
	2010	2009	2008	2007	2006	2005
0 – 3 months	19 (46%)	4 (22%)	9 (35%)	7 (24%)	2 (7%)	3 (17%)
4 – 6 months	5 (58%)	7 (61%)	5 (54%)	8 (52%)	11 (43%)	12 (83%)
7 – 9 months	9 (80%)	3 (78%)	3 (65%)	10 (86%)	12 (83%)	3 (100%)
10 – 12 months	4 (90%)	2 (89%)	6 (89%)	0	4 (97%)	0
Over 12 months	4 (100%)		3 (100%)	4 (100%)	1 (100%)	0

## *Equality and diversity*

An analysis has been undertaken to assess the ethnic minorities of members by reference to the findings made by the PCP. Due to the small number of cases involved the data does not lend itself to meaningful comparison. The table below sets out the results of the analysis. It has not been possible to compare any other aspects of equality and diversity.

	Referred to Tribunal	Own powers used	Finding made but no order made	No finding	TOTAL
White British	7	5	2	8	22
Black/Black British/ Black Caribbean	1	0	0	0	1
Asian	12	1	0	5	18
<b>TOTAL</b>	20	6	2	13	41



### **Delegated Decisions**

Some of the decisions of the Panel can be exercised by two Panel members and an Officer of IPS under a delegated procedure. The decisions that can be made under this procedure include rejecting complaints which are made out of time and rejecting complaints where there is no misconduct. This power was exercised in 6 cases in 2010. In 3 cases the complaint was rejected because the individual subject of it was not a member of ILEX; 1 complaint was rejected as being out of time; and 2 complaints were rejected as no misconduct was disclosed.

The Officer can also agree determinations with a member by consent without recourse to the Panel. This power was not exercised during 2010.

The new IDAR saw the introduction of a new power to suspend a practitioner from practice while disciplinary tribunal proceedings are ongoing. This power was not exercised during 2010.

Any decisions made by the delegated procedure or by determination by consent are reported by the Officer to the next panel meeting.

### **Declarations of Prior Conduct**

The Professional Conduct Panel has responsibility for making decisions on declarations of prior conduct. Prior conduct declarations must be made by existing members and by applicants wishing to join ILEX. Declarations must be made on applications for enrolment or reinstatement as a member of ILEX, applications to upgrade membership of ILEX, applications for higher rights of audience and on the annual subscription return. Applicants must declare if they have any of the following:

- County Court Judgments;
  - bankruptcy orders or Individual Voluntary Arrangements;
  - criminal convictions and cautions;
  - an order made under Section 43 of the Solicitors Act 1974; and
- an order made against them by another professional body.

Where a declaration is made the Professional Conduct Panel is asked to decide whether or not to allow a person into membership of ILEX or, in the case of existing members, what action to take against them. The powers available to PCP are set out under the IDAR.

The PCP has delegated to the Officer the power to deal with specified matters under a procedure known as the expedited procedure. This allows the Officer to determine no action need be taken in respect of declarations relating to certain driving offences, spent convictions, outstanding judgments and bankruptcy orders or IVAs. All expedited decisions are reported to the PCP.

In 2010, IPS received a total of 166 declarations of prior conduct of which 122 were dealt with under the expedited process and 44 were considered by the PCP.

*Expedited cases*

The table below breaks down the cases which were considered under the expedited process.

Nature of matter	Number of cases per year					
	2010	2009	2008	2007	2006	2005
County Court Judgments	8	14	26	22	23	19
Bankruptcy order or arrangement with creditors*	63	9	12	6	12	8
Convictions or cautions	51	33	23	29	21	32
Other	0	1	9	1	2	16
<b>TOTAL</b>	<b>122</b>	<b>57</b>	<b>70</b>	<b>58</b>	<b>58</b>	<b>75</b>

*\*Prior to 2010, only discharged bankruptcy orders or completed arrangements with creditors could be dealt with under the expedited procedure.*

Of the declarations considered under the expedited procedure 85 involved declarations made by applicants for membership or reinstatement of membership of ILEX, 5 by Fellows of ILEX, 10 by Graduate Members of ILEX, 20 by other members of ILEX, 1 by an applicant for higher rights of audience and 1 by an applicant to the graduate entry diploma scheme.

*Prior conduct cases considered by the Panel*

The following table breaks down the prior conduct cases considered by the Panel.

Nature of matter	Number of cases per year					
	2010	2009	2008	2007	2006	2005
County Court Judgments	0	0	0	0	1	0
Bankruptcy order or arrangement with creditors*	1	29	13	9	12	9
Convictions or cautions theft/dishonesty	16	18	23	16	15	9
Other convictions or cautions	25	0	7	4	5	18
Orders made by other professional bodies	2	4	1	6	4	3
<b>TOTAL</b>	<b>44</b>	<b>51</b>	<b>44</b>	<b>35</b>	<b>37</b>	<b>39</b>

*\*Prior to 2010, only discharged bankruptcy orders or completed arrangements with creditors could be dealt with under the expedited procedure.*

The Panel approved 33 declarations, referred 1 case to the Disciplinary Tribunal, imposed conditions in 1 case, warned the member in 1 case, rejected 1 application for student membership, requested more information in 5 cases and deferred a decision in 2 cases.

Of the declarations considered by the Panel 26 were made by applicants wishing to enrol or

## DISCIPLINARY TRIBUNAL

The Disciplinary Tribunal is responsible for considering cases referred to it by the Professional Conduct Panel or, in the case of appeals, by the Appeals Panel. The Tribunal sits as a panel of 3 members of which 2 are lay and 1 is a Fellow who is not a member of ILEX Council or the IPS Board.

During 2010 the Disciplinary Tribunal heard charges brought against 9 members of ILEX. 2 cases resulted from declarations of prior conduct, 4 were examination misconduct cases, and 3 followed complaints being made by clients or third parties.

The Disciplinary Tribunal found the charges proved against 8 members. As a result, 6 members were excluded for periods ranging from 3 months to 3 years. 1 member was fined and 1 member was warned. All 8 members against whom the charges were found proven were ordered to make a contribution to costs, ranging from £660 to the maximum allowed under the IDAR of £3,000.

8 of the cases were heard by the Disciplinary Tribunal within 6 months of referral. The ninth case was heard within 9 months of referral.

Timescale	Number of cases					
	2010	2009	2008	2007	2006	2005
0 – 3 months	0	0	2	1	6	1
4 – 6 months	8	4	1	3	1	1
7 – 9 months	1	6	1	0	0	1
10 – 12 months	0	0	1	0	0	0
Over 12 months	0	0	3	0	0	0

### *Equality and diversity*

An analysis has been undertaken to assess the ethnic minorities of members by reference to the cases considered by the DT. Due to the small number of cases involved the data does not lend itself to meaningful comparison. The table below sets out the results of the analysis. It has not been possible to compare any other aspects of equality and diversity.

	Exclusion	Warn	No finding	TOTAL
White British	5	1	0	6
Black/Black British/ Black Caribbean	0	0	1	1
Asian	2	0	0	2
<b>TOTAL</b>	7	1	1	9

### **APPEALS PANEL**

The IDAR set up the Appeal Panel which is responsible for considering appeals made against decisions of the Professional Conduct Panel and Disciplinary Tribunal. Its remit also includes considering appeals against decisions made under the delegated procedure. The Appeal Panel sits as a Panel of three with two lay members and one Fellow who is independent of the IPS Board and ILEX Council.

Appeals must be made to the Panel under the grounds set out in the IDAR. The Panel has the power to confirm or vary a decision of the original Panel or order that Panel to reconsider a case. In determining what action to take the Panel has available to it all the powers available to the original decision making body.

The Appeals Panel considered 4 appeals during 2010.

The Panel considered two appeals brought by complainants, both being third party complainants. In the first case the Panel found that the appellant's grounds of appeal were not made out and dismissed the appeal. The second case was an appeal by a complainant against a delegated decision of the Officer to reject a complaint. The Panel found that the appellant's grounds of appeal were not made out and dismissed the appeal.

The Panel considered two appeals by members of ILEX. The first was an appeal against a sanction imposed by the Professional Conduct Panel. This appeal was successful and the sanction was overturned. The Panel also considered an appeal by a member of ILEX against a decision of the Disciplinary Tribunal. In this case, the Panel found that the appellant's grounds of appeal were not made out and dismissed the appeal and the appellant was ordered to pay costs.

## CONSULTATION RESPONSES 2010

CLOSED				
Response Deadline	Body	Title	Response by	Date of Response
23/12/2010	BSB	Regulating Entities	IPS	23/12/2010
23/12/2010	LeO	Publishing our decisions	ILEX/IPS	20/12/2010
22/12/2010	LSB	Referral fees, referral arrangements and fee sharing	IPS	20/12/2010
20/12/2010	LSB	s70 of LSA 07 on proposals to modify the functions of two approved regulators	IPS	17/12/2010
17/12/2010	CLC	Outcomes-Focused Regulation - Revised CLC Rules & Guidance Notes	No response	Not Applicable
17/12/2010	CLC	Outcomes-Focused Regulation - Draft CLC Licensed Body Framework	No response	Not Applicable
17/12/2010	CLC	Outcomes-Focused Regulation - Draft CLC Regulatory Enforcement Approach	No response	Not Applicable
17/12/2010	CLC	Outcomes-Focused Regulation - Proposed application to regulate Licensed Conveyancers in the exercise of rights of audience and the conduct of litigation	IPS	17/12/2010
29/10/2010	LSB	Approving Rule Changes and Issuing Directions: Solicitors Disciplinary Tribunal	No response	Not Applicable
31/10/2010	CLC	Outcomes-Focused Regulation - Draft CLC Code of Conduct	No response	Not Applicable
8/11/2010	LSB	Draft Statement of Policy under s50 of LSA 07 on the use of s69 powers	No response	Not Applicable
12/11/2010	LSB	Alternative Business Structures: appeal arrangements	IPS	10/11/2010
29/09/2010	LSB	The Levy: funding legal services oversight regulation	ILEX	29/09/2010
16/08/2010	LSB	Welsh Language Scheme	No response	Not Applicable
20/08/2010	SRA	The architecture of change: The SRA's new Handbook	IPS/ILEX	20/08/2010
27/07/2010	SRA	Outcomes-focused regulation	IPS/ILEX	29/07/2010
21/04/2010	MOJ	Disclosure of Information by the OLC and LSB	No response	Not Applicable
16/04/2010	SRA	Moving toward a fairer fee policy: transitional arrangements	No response	Not Applicable
31/03/2010	CLC	Rights of Audience and the Conduct of Litigation Application	ILEX	31/03/2010
22/03/2010	SRA	Advocacy Standards	ILEX	29/03/2010
06/03/2010	SRA	Achieving the right outcomes	No response	Not Applicable
05/03/2010	LSB	Draft LSB Business Plan 2010-11	No response	Not Applicable
10/03/2010	LSB	Draft Equality Scheme	ILEX	10/03/2010
19/02/2010	LSB	Alternative business structures: approaches to licensing	IPS/ILEX	19/02/2010
12/02/2010	LSB	Compliance and Enforcement - Statement of Policy	IPS/ILEX	12/02/2010
12/02/2010	LSB	Designating Approved Regulators as Licensing Authorities	IPS/ILEX	12/02/2010
12/02/2010	SRA	Conflict and Confidentiality: Second consultation	No response	Not Applicable
12/02/2010	SRA	Assigned Risks Pool Review	IPS/ILEX	12/02/2010
12/02/2010	SRA	Indemnity Insurance Rules: Successor practice definition	No response	Not Applicable
22/01/2010	SRA	Moving toward a fairer fee policy: Second consultation	ILEX	22/01/2010
21/01/2010	MOJ	Lord Chancellor Warrant Regulations	IPS/ILEX	21/01/2010