

ILEX PROFESSIONAL STANDARDS LTD

CONSULTATION

PROPOSAL TO SEEK RIGHTS TO CONDUCT LITIGATION FOR ILEX MEMBERS AND RIGHTS OF AUDIENCE FOR INDEPENDENT LITIGATOR PRACTITIONERS

INTRODUCTION

ILEX is an approved regulator under the Legal Services Act 2007. In accordance with the requirements of the legislation it has separated out its regulatory and representative functions. The regulatory functions have been delegated to ILEX Professional Standards Ltd (IPS). IPS is the regulatory body for Legal Executives and other grades of member registered with ILEX.

ILEX/IPS is making an application under the Legal Services Act 2007 to become an approved regulator to grant additional rights to its members to undertake reserved legal activities. The application seeks to grant rights to conduct litigation to qualified members. It also includes an application to grant rights of audience to members who qualify as litigators.

IPS and ILEX are consulting on the proposals. This consultation document begins by outlining the nature of the application and summarising of the proposals by which members will qualify as litigators and advocates. It then outlines the conduct and practice rules to which members will be subject.

This Consultation will close on 3 April 2010.

INTRODUCTION

1. ILEX was designated as an authorised body for the purposes of making an application for rights to conduct litigation under the Access to Justice Act 1999. ILEX is also designated as an authorised body for the purposes of granting rights of audience by the Institute of Legal Executives Order 1998 (SI 1998/1077). ILEX remains an authorised body for the purposes of granting rights of audience under the Legal Services Act.
2. ILEX's proposed application under the Legal Services Act seeks authorisation to become an Approved Regulator for the purposes of granting rights to conduct litigation. It also seeks approval of its proposed qualification scheme and conduct rules.

PRESENT POSITION

3. At present ILEX members tend to practice as employees of solicitors firms or in legal departments where there is a supervising solicitor or barrister. ILEX members do not have independent rights to conduct litigation. The application seeks rights to conduct litigation which may be exercised in independent practice.
4. ILEX became an authorised body for the purposes of granting rights of audience to members in 1998. That scheme permitted ILEX to grant rights of audience to employed members in civil and family proceedings. A revised scheme was submitted and approval was granted in 2006. Under that scheme ILEX is able to grant rights of audience to members working in civil, criminal and family proceedings. Since the introduction of the qualification 60 members of ILEX have qualified as Legal Executive Advocates, most of whom qualified in criminal proceedings.

RIGHTS SOUGHT

Rights to Conduct Litigation

5. ILEX seeks rights to conduct litigation in civil and family proceedings. The application proposes that suitably qualified Fellows of ILEX would be authorised to set up independent practices providing services to clients in civil or family proceedings or provide third party services as an employed person. The qualification will enable Fellows of ILEX to issue litigation proceedings in civil or family proceedings and to commence, prosecute and defend such proceedings and to perform ancillary functions in relation to such proceedings. It will also allow members to undertake advocacy in Judge in Room hearings (referred to as Chambers hearings in his application). A member of ILEX who is granted litigation rights will be called a Legal Executive Litigator.

6. The litigation rights ILEX proposes to grant are not limited by reference to the level of court in which proceedings take place or by reference to complexity or value. ILEX believes it is not practicable to do so. However, the associated rights of audience are limited to the Magistrates' and County Courts. Advocacy in open court or in the High Court would require a suitable advocate to be instructed.

7. The following litigation and chambers advocacy rights are sought:

Civil Proceedings:

- To conduct litigation in civil proceedings.
- To exercise rights of audience in the judge's room in the High Court and County Court in civil proceedings except family proceedings.

Family Proceedings:

- To conduct litigation in all family proceedings.
- To exercise rights of audience in family proceedings in the judge's room in the High Court and County Court.

Rights of Audience

8. As part of its application for rights to conduct litigation ILEX seeks rights of audience for Legal Executive Litigators to exercise where they practice independently.

9. Legal Executive Litigators will not be able to exercise any rights of audience if they set up in independent practice. This is because the chambers rights available at present are restricted to members who are employed. The additional advocacy rights that ILEX can award in open court are also limited to those members who are in employment.

10. The advocacy rights sought have been split into two. All members will be expected to qualify and obtain the chambers rights, which they have been exercising as employed members. It is proposed that they be allowed to obtain open court rights upon completion of the full advocacy qualification scheme, if they wish.

11. The rights of audience being sought are:

Judge in Room Rights

12. Chambers rights would be granted with the litigation certificate. They have been specified within the litigation certificate.

Open Court Rights

13. Civil Proceedings

- To appear in open court in the County Court in all actions, except family proceedings;

- To appear before justices or a district judge (Magistrates Court) in the Magistrates Courts in relation to all matters originating by complaint or application, including applications under the licensing, betting and gaming legislation;
- To appear before any tribunal under the supervision of the Council on Tribunals where the tribunal rules provide for a non-discretionary right of audience being available to barristers and solicitors;
- To appear before Coroners Courts in respect of all matters determined by those courts and to exercise rights of audience similar to those exercised by solicitors and barristers.

14. Family Proceedings

- To appear in court (including open court) in all County Court family proceedings;
- To appear before justices or a district judge (magistrates court) in the Family Proceedings Court;
- To appear before Coroners Courts in respect of all matters determined by those courts, and to exercise rights of audience similar to those exercised by solicitors or barristers.

Reasoning

15. The above summary shows that ILEX has limited its application for rights to conduct litigation to civil and family proceedings at this stage. ILEX decided that it would take an incremental approach to seeking rights to conduct litigation which mirrors the approach it took in respect of rights of audience.
16. The rights to conduct litigation sought for ILEX members mirror the rights that they are already able to exercise, albeit as employees. Many ILEX members will be issuing and responding to proceedings in the natural course of the litigation work that they undertake. They will be experienced and suitably qualified to exercise those rights. The application, if approved, would allow ILEX members to continue to undertake the litigation that they do already, although they would be able to practice independently, if they so wished. There will be some members, given the new practice structures envisaged by the Legal Services Act, who will qualify as litigators although they would not wish to practice independently, but will do so in a partnership with other lawyers, a legal disciplinary partnership or in due course a licensed body.
17. Members will have been undertaking rights of audience in chambers proceedings as part of their employment in most cases without specific advocacy training. This invariably involves case management conferences, telephone conferences and directions appointments. Under this application ILEX Litigators will be trained and assessed in advocacy skills relevant to their specialisation. The advocacy training will be supported by the litigation qualification scheme criteria.

18. The open court advocacy rights sought by ILEX in this application are those it can grant to members qualifying as Legal Executive Advocates. That is to appear in open court in the County and Magistrates Courts in civil or family proceedings. If its application is approved the scheme will allow Litigators to exercise open court advocacy rights as independent practitioners for the first time. The advocacy rights will, however, be limited to the lower courts whereas litigation rights are not limited by reference to the level of court.

Questions

1. **ILEX seeks rights to conduct litigation in civil and family proceedings only. Do you have any comments on the rights sought or the limitations proposed?**
2. **ILEX seeks rights of audience for its Litigators. The rights have been split into two: chambers advocacy and open court advocacy.**
 - a. **Do you have any comments on the chambers advocacy rights sought by ILEX? If so, set them out.**
 - b. **Do you have any comments on the rights of audience sought in open court? If so, set them out.**

REGULATORY OBJECTIVES

19. ILEX believes that its application complies with the regulatory objectives set out in the Legal Services Act 2007. ILEX litigators will:
- protect and promote the public and consumer interest through the practice management and accounts rule requirements;
 - support the rule of law in the work they undertake;
 - help to improve access to justice by making available an alternative form of practitioner to consumers;
 - promote competition in the provision of services through the alternative route to practice they will provide which may make more cost effective models of providing legal services possible;
 - encourage a strong, independent, diverse and effective legal profession under the practice management rules and supporting codes that Litigators must comply with;
 - help to increase the public's understanding of a citizens legal rights and duties through the services they will provide; and
 - promote and maintain adherence to the professional principles through the practice management rules and supporting codes that Litigators must comply with.

20. The application seeks to establish that:

- A member of ILEX qualified in accordance with the proposed regulations would have the education, training and experience needed to exercise rights to conduct litigation and rights of audience.
- ILEX has in place rules of conduct which it is able to enforce against its members. The rules include provisions for the protection of clients' money, acting in clients' interests, supporting the rule of law and only acting where the individual has the appropriate level of skill and competence. These are consistent with the professional principles set out in the Legal Services Act.

Question

3. **Do you have any comments on whether the application will meet the regulatory objectives or professional principles? If so, set them out.**

QUALIFICATION SCHEME

21. The application proposes that there will be an extensive and thorough scheme by which ILEX members qualify to exercise rights to conduct litigation and rights of audience.
22. The qualification scheme will be open to Graduate Members and Fellows of ILEX. Graduate Members will have completed the academic stages of the ILEX qualification scheme which include study both at level 3 (A level standard) and level 6 (Honours Degree standard). Graduate Members are also likely to have gained some practical experience. They will be able to complete the qualification but will not be issued with a Litigation Certificate until they qualify as Fellows. Fellows will have completed the academic qualification and will have at least 5 years legal practice experience. By the very nature of the ILEX qualification most ILEX members will have gained substantial academic and practical experience because they tend to work and study at the same time.
23. All members of ILEX will have to apply for a certificate to complete the qualification scheme. The application will involve the member demonstrating that they have the necessary knowledge and experience to undertake the qualification and to eventually exercise the new rights. The process is referred to as an application for a Certificate of Eligibility.
24. The application will be an application to undertake the litigation and chambers advocacy scheme. Either at the same time or subsequently a member may make an application to undertake the Open Court rights of audience

qualification scheme. Others may choose not to apply for open court advocacy rights.

25. A Certificate of Eligibility will be granted to members who are able to show:
 - They are Fellows or Graduate Members of ILEX in good standing.
 - They currently undertake civil or family law work.
 - They have gained an acceptable level of experience of conducting litigation in civil or family law work, including where relevant, advocacy experience, in accordance with the experience guidelines.
 - They have sufficient knowledge of law and legal practice, in accordance with the knowledge and experience guidelines, to undertake the litigation and advocacy courses.
 - They are able to provide details of two referees who can comment on their litigation knowledge and experience.
26. IPS has developed knowledge and experience guidelines which appear at **Appendix 1**. The guidelines set out the criteria that an ILEX member must meet for their application to be successful.
27. In terms of knowledge the guidelines set out that a member must have studied for and passed Level 6 examinations in subjects relevant to the area of law in which they seek litigation rights. A person seeking rights in civil litigation must have passed the Level 6 Contract, Tort and Civil Litigation examinations and a member seeking litigation rights in family proceedings must have passed the Level 6 Family Law and Family Practice examinations.
28. The guidelines also set out the minimum experience requirements that a member must meet. Members will be asked to provide outlines of the nature and range of work they undertake, details of their typical caseload, the amount of time they spend on that work and any supervisory arrangements under which they work.
29. The knowledge and experience guidelines include specific criteria that members must comply with. The criteria will enable a realistic and valid assessment to be made of their knowledge and experience. IPS will need to be satisfied that the ILEX member has the requisite knowledge to undertake the course and ultimately to exercise the litigation and, if applicable, advocacy rights. Where necessary an ILEX member may be directed to undertake further study and obtain a qualification before being granted a Certificate of Eligibility.
30. All members will be asked to produce portfolios of 5 litigation cases they have handled to demonstrate their litigation experience. They will also be required to produce 3 portfolios of cases where they have undertaken rights of audience in judge in room hearings to demonstrate their advocacy experience. IPS has developed portfolio guidelines which appear at **Appendix 2**. These set out criteria that members must meet.

31. In producing their portfolios members must outline the law, procedural issues, process issues, evidential and ethical issues that arise in cases. Members will be asked to reflect upon how they handled the cases.
32. The portfolios will be assessed by external advisors who will be practitioners and academics holding suitable qualifications and experienced in civil litigation or family practice. The external advisors will report whether in their view the ILEX member meets the knowledge and experience requirements and therefore whether they can be assessed as competent to undertake the course.
33. Two references will also be required. The referees will be asked to comment on the ability of the applicant to ultimately exercise the litigation rights. They will also be asked to comment upon the member's legal knowledge and experience.

Questions

- 4. ILEX has set out minimum entry requirements which members must meet to apply for the litigation and advocacy qualification courses. Do you have any comments on the knowledge and experience guidelines which appear at Appendix 1? If so, set them out.**
- 5. Members will be required to demonstrate their experience through portfolios of cases they have handled. Do you have any comments on the portfolio guidelines which appear at Appendix 2? If so, set them out.**
- 6. ILEX proposes that Fellows and Graduate Members should be able to enrol onto the qualification scheme. Do you have any comments on who should be allowed to undertake the litigation and advocacy qualification? If so, set them out.**
- 7. Set out any other comments you have on the entry requirements proposed by IPS.**

LITIGATION SKILLS COURSE

34. Where a member has been granted a Certificate of Eligibility they will be able to undertake the litigation skills course. Litigation skills courses will be split into civil and family proceedings to enable members to undertake the course relevant to their specialism.
35. The litigation skills course will provide training on the key skills required by a Litigator. These will include client care, ethics, managing litigation work, funding litigation cases and exploring alternative dispute resolution procedures.

36. ILEX members will be assessed to ensure that they are competent at the conclusion of the course. IPS has developed assessment criteria and a framework for the assessment of the litigation skills course which appears at **Appendix 4**. The criteria also describe the methods by which assessment may take place.
37. As well as completing the litigation skills course all prospective litigators will need to complete an advocacy skills course leading to the judge in room advocacy rights, unless they are Legal Executive Advocates. The course will cover the same ground as the first 2 days of the advocacy skills course that ILEX advocates have to take. It provides training and assessment to enable members to undertake advocacy skills in judge in room hearings.
38. The course delivery criteria for the chambers advocacy course appear at **Appendix 5** and the course assessment criteria for the chambers advocacy course appear at **Appendix 6**.
39. Litigators who wish to obtain rights of audience in Open Court in the County Court and / or Magistrates' Court (Family Proceedings Court) will need to undertake an additional course in advocacy skills, unless they are Legal Executive Advocates. The course will provide Litigators with the skills they will need to undertake Open Court advocacy, which will include handling trials. The additional advocacy course may be undertaken either at the same time as the litigation skills and chambers advocacy qualification or at any time thereafter. The course outcomes and assessment criteria for the advocacy course also appear within **Appendices 5 and 6**. It is likely that applicants for a family proceeding certificate will find the open court advocacy course valuable, but civil practitioners may not, because so little civil work involves open court advocacy.
40. ILEX members who have already qualified as Legal Executive Advocates will not be required to complete the advocacy skills courses. This is because they will have been trained to the same standard as part of their advocacy qualification.
41. Independent course providers will provide the courses and assessments, having sought accreditation from IPS to deliver the courses. In applications for accreditation course providers will demonstrate how their material and teaching methods will meet the course outcomes and assessment criteria. Assessment materials produced by course providers will be subject to scrutiny by IPS. IPS, along with expert assessors, will inspect courses and moderate standards of assessment.

42. In accrediting course providers IPS will have regard to criteria which will include location, suitability of premises, teaching resources and support, teaching and assessment experience, library and other resources, course content and candidate support mechanisms.
43. Upon successful completion of the litigation skills and chambers advocacy course and passing the assessments a member may apply for a Litigation Certificate in the area of law in which they have completed the qualification.
44. Upon completion of and passing the Open Court advocacy course a Legal Executive Litigator will be able to apply for the Advocacy Certificate.
45. A Fellow holding a Litigation Certificate will be known as a Legal Executive Litigator. A Legal Executive Litigator holding the Advocacy Certificate will be known as a Legal Executive Litigator and Advocate.

Questions

8. **Do you have any comments on the Litigation Skills Course criteria? If so, state what they are.**
9. **Do you have any comments on the Advocacy Skills Course criteria? If so, state what they are.**
10. **Do you have any comments on the Litigation Skills course assessment criteria? If so, state what they are.**
11. **Do you agree that a member of ILEX should complete the Litigation and Advocacy Skills Courses described in this consultation? If not, state what courses of qualification a member should complete.**
12. **Do you agree that the courses should be assessed? If not, state why.**
13. **Do you have any comments on the Advocacy Skills course assessment criteria? If so, set them out.**
14. **Are there any gaps in the litigation qualification arrangements? If so, please outline what they are.**

INDEPENDENT PRACTICE

46. After qualification a Legal Executive Litigator may apply to IPS for authorisation to provide litigation services in independent practice or third party services. Litigators who wish to provide litigation services independently or third party

litigation services as an employed person will need to undertake courses in practice management and accounts.

47. IPS recognises the public interest in ensuring ILEX Litigators are equipped to manage a practice and run the financial aspects of the business.
48. IPS proposes that the practice management course must provide a Litigator training in managing a business, managing finance, managing client relationships and managing others. IPS has developed course delivery and outcome criteria for the practice management course which appear at **Appendix 7**. These mirror the criteria for courses undertaken by solicitors on practice management within the first three years of their qualification. It is not proposed formally to assess the practice management course because completion of a course will be sufficient to assure IPS of the competence of the Litigator to manage a practice.
49. IPS also expects Litigators to undertake training in accounts. An IPS accredited accounts course must cover managing client and office accounts, producing profit and loss accounts and maintaining the business accounts of the practice. This course will provide Litigators with essential skills that are required to ensure financial information is recorded correctly and that client money is protected by use of client accounts.
50. IPS has developed outcomes for the accounts course which appear at **Appendix 8**. Litigators will be required to undertake an assessment in accounts so that their competence to handle financial issues is formally assured. Proposed assessment criteria for accounts appear at **Appendix 9**.

Questions

15. **Do you agree that Litigators should undertake a course in practice management? If not, set out your reasons.**
16. **Do you have any comments on the proposed practice management course criteria? If so, set them out.**
17. **Do you agree that Litigators should undertake a course in accounts which should be assessed? If not, state what they should do to show their knowledge of and competence to deal with accounts matters.**
18. **Do you have any comments on the proposed contents of the accounts course and the assessment criteria? If so, state what they are.**

APPLICATION TO PRACTICE INDEPENDENTLY

51. Litigators will make an application to IPS seeking approval to work in independent practice or to provide third party services as an employed person. Until a Litigator is approved by IPS to practice independently or to provide third party services as an employed person they are unable to practice as a Litigator through any of those modes of practice.
52. Litigators seeking authorisation to practice independently will be required to submit information to IPS about their proposed practice. The information will include a business plan, details of the practice management, details of the accounting and financial arrangements of the practice, complaints handling policies of the practice, equal opportunities policies, and client care and file handling arrangements to be introduced in the practice. IPS has developed criteria that an application for independent practice must meet, which appear at **Appendix 10**.
53. The practice management criteria will be used as a method by which IPS will assess applications to ensure that a practice will be able to meet minimum standards required by IPS. These arrangements have been developed to ensure that adequate protection is provided to consumers and clients of services provided by Litigators authorised by IPS.
54. Upon obtaining authorisation to work in independent practice Litigators will be expected to contribute to the ILEX Compensation Fund and provide details of their indemnity insurance cover. These are discussed later in this consultation.

Questions

19. **Should an ILEX Litigator be required to seek authorisation from IPS before they are authorised to practice independently or to provide third party services. If not, state why.**
20. **Do you have any comments on the information that IPS will require from Litigators seeking authorisation to practice independently or to provide third party services. If so, set them out.**

RENEWAL OF CERTIFICATES AND CPD

55. All Litigators will be required to renew their Litigation Certificate within 12 to 18 months after its original issue.
56. In an application to renew a Litigator will be expected to provide portfolios of 3 cases where they have undertaken litigation since the grant of their original

57. Litigators who also hold the full advocacy rights will be required to produce portfolios of 3 cases where they have undertaken open court advocacy in order to renew their Certificate. These are also assessed by external advisors following the same process as applications for Certificates of Eligibility.
58. ILEX recognises that it might not be possible for Litigators to produce 3 advocacy and litigation portfolios within their first year of. Where that is the case the Rules will allow IPS to extend the requirements for a further period of 12 months.
59. After the first renewal Litigators will renew Certificates annually if they practice independently or provide third party services. As part of this they will provide details of their audited or certified annual accounts, confirmation that they have indemnity insurance cover and be required to make a contribution to the compensation fund.
60. Litigators who do not practice independently or provide third party services will be able to renew their certificate every 3 years when they will be required to confirm that they are in good standing and have met the CPD requirements.
61. All Litigators will be required to undertake 3 hours CPD focussing upon litigation skills. Litigators holding an Advocacy Certificate will also be required to undertake 5 hours CPD focussing on advocacy skills.

Questions

- 21. Do you agree that Litigation Certificates should be renewed? If not, state why.**
- 22. Do you agree that the first renewal should require Litigators to produce portfolios of litigation cases they have handled? If not, state why and describe any alternative arrangements you would recommend for the first renewals.**
- 23. Do you agree the arrangements for subsequent renewals? If not, state why.**
- 24. Do you have any other comments on the conditions for renewals of Litigation Certificates? If so, set them out.**
- 25. Do you agree that Advocacy Certificates should be renewed? If not, state why.**
- 26. Do you agree that the first renewal should require Litigators who are Advocates to produce portfolios of advocacy cases**

they have handled? If not, state why and describe any alternative you would recommend for first renewals.

- 27. Do you agree the arrangements for subsequent renewals? If not, outline what should be required.**
- 28. Do you have any other comments on the conditions for renewals of Advocacy Certificates? If so, set them out.**

PRACTICE STRUCTURES

62. Litigators will be able to practice through a variety of means. They may be employed in a legal practice regulated by an approved regulator, a manager in a legal disciplinary practice, an employed person providing third party services or practise independently.
63. As this stage IPS envisages ILEX litigators practising independently may practice as a sole principle, in partnership with one or more ILEX practitioners or approved practitioners, or in a mixed partnership. They may also practice through a limited company, a limited liability partnership with non-ILEX partners, or a limited partnership wholly owned and controlled by ILEX practitioners. Alternatively an ILEX practitioner may be employed by or be a manager in a legal practice.
64. IPS is not in a position to regulate Legal Disciplinary Partnerships. However, ILEX Litigators may be able to practice as Litigators in LDPs regulated by other regulatory bodies.

Question

- 29. Do you have any comments on the practice structures through which litigators may practice? If so, set them out.**

PRACTICE MANAGEMENT AND ACCOUNTS RULES

65. ILEX has developed *Practice Management and Accounts Rules* and supporting codes and schemes for those of its members who wish to practice independently or to provide litigation services to third party as employed people. These appear at **Appendix 11**. The Rules have been written by reference to ILEX practitioners. An ILEX Litigator would fall within the definition of ILEX practitioner.
66. Litigators who work in solicitors practices will comply with some parts of the practice management code and the Solicitors Code of Conduct. The ILEX

Practice Management Code stipulates which parts of its code are applicable to employed members.

67. The ***ILEX Practice Management and Accounts Rules*** have been developed to ensure Litigators protect the interest of their clients and maintain consumer confidence in them.
68. The Practice Management Rules set out the general duties and standards of conduct expected of Litigators. They require that Litigators act professionally, with integrity and ensure that the interest of their clients are paramount except their duty not to mislead the court. They reflect and build on the general ILEX Code of Conduct.
69. The client care provisions within the code ensure that clients are provided with clear details about the instructions they have given to a Litigator, extent of the retainer, costs and details of the fee earner handling their case. Clear client care letters will help to avoid future disputes. Litigators will be required under the Rules to keep clients regularly updated on case progress and on costs. They are also required to give details of their in-house complaints handling scheme.
70. In the event that a dispute arises about costs the Litigator or their client will be able to refer the matter to the courts for detailed assessment where litigation proceedings have commenced. IPS will develop an adjudicatory process to determine disputes about costs where litigation proceedings have not been issued.
71. The Rules include the requirement that Litigators must act with independence in the interest of their client and not act where there could be a conflict of interest.
72. The Rules will enable fee sharing and referral arrangements to take place provided there has been an honest and open disclosure to clients about the process. IPS has taken the view that a transparent referral arrangements should be permitted.
73. The Rules also contain provisions relating to the supervision of a Litigator's practice. A Litigator will remain personally responsible for their practice.

Questions

30. **Do you have any comments on the Practice Management Rules?**
31. **Are there any items included within the Practice Management Rules which you think should not be included? If so, state what they are and the reasons why they should not be included.**

- 32. Are there any matters that should be included in the Practice Management Rules which are not there at present? If so, state what they are and why they should be included in the Rules.**

SUPPORTING CODES AND RULES

74. The Practice Management Rules are supported by the Rights of Audience Rules and the Anti-discrimination and Publicity Codes.
75. The Anti-discrimination and Publicity Codes appear at **Appendices 12 and 13** and the Rights of Audience Rules appear at **Appendix 17**.
76. The Anti-discrimination Code is referred to as the ILEX Equality and Diversity Code. Its aim is to ensure that a Litigator does not engage in anti-discriminatory practices. All Litigators will be required to have in place their own anti-discrimination policy for their practice. They will have the choice of either developing their own policy or adopting the ILEX policy. Failure to comply with the policy will be a matter of misconduct.
77. The Publicity Code has been developed to ensure that there is clarity in any material published by a Litigator's practice. The code requires that clients are provided with information about a practice and the person dealing with their matter. It also requires that any advertising undertaken by a practice is clear and accurate. Again a failure to comply with the policy will be treated as a misconduct matter.
78. The Rights of Audience Conduct Rules govern the conduct of Litigators exercising rights of audience. They will apply to any advocacy undertaken by Litigators, including Chambers and Open Court hearings. The Rules recognise that a Litigator's overriding duty is to the court. They set out the duties owed by Litigators when representing clients and presenting cases.
79. The Rights of Audience Conduct Rules are the same as the Rights of Audience Conduct Rules applicable to Legal Executive Advocates who qualify under the existing ILEX Advocacy Qualification Scheme.

Questions

- 33. Do you have any comments on the ILEX Equality and Diversity Code? If so, please state what they are.**
- 34. Do you have any comments on the ILEX Publicity Code? If so, please state what they are.**

- 35. Do you have any comments on the ILEX Rights of Audience Code? If so, please state what they are.**

ACCOUNTS RULES

80. IPS has developed Accounts Rules that will apply to Litigators providing litigation services independently or services to third parties. Litigators practicing through these structures will have already completed a course in accounts which will include training on the ILEX Account Rules.
81. The IPS Rules have been modelled on the approaches taken to accounts by other regulatory bodies. They will require that Litigators keep client and office money separated and that there is a clear audit trail of transactions. Litigators will be expected to maintain a client ledger for each client.
82. The Rules contain provisions about how and by whom money can be withdrawn from a client account and when interest should be paid on money held in a client account.
83. Litigators will be expected to obtain annual accountants reports. IPS will develop the format for an accountants report. The reports will ensure that an independent assessment is carried out of compliance by the Litigator with the IPS Accounts Rules. The reporting accountant will be required to carry out various test procedures and provide a copy of the report to ILEX. The reporting accountant will be under a duty to report any concerns they have during the course of their audit of the practice. This will provide IPS with an opportunity to take action against any litigator who may not be properly protecting client money.

Question

- 36. Do you have any comments on the Accounts Rules? If so, state what they are.**
- 37. Are there any matters included within the Account Rules that should not be included? If so, state what they are and why they should not be included.**
- 38. Are there any matters which should appear in the Accounts Rules that do not appear at present? If so, state what they are.**

Schemes of Client Redress

84. IPS has developed a number of schemes through which clients will be able to seek redress. They are the poor service scheme, indemnity insurance scheme, client protection scheme and the IPS complaints handling and disciplinary procedures.

Poor Service Scheme

85. A copy of the IPS Poor Service Scheme appears at **Appendix 14**. The scheme will be used where an allegation is made by a client that the service they received from an ILEX Litigator fell below reasonably expected standards.
86. Under the Legal Services Act 2007 responsibility for service complaints will pass to the Office of Legal Complaint (OLC) by the end of 2010. The IPS Poor Service Scheme will only need to be used if a service matter arose in respect of an ILEX Litigator prior to the transfer.

Indemnity Insurance Rules

87. IPS has developed a scheme of indemnity insurance. A copy of the Indemnity Insurance Rules appear at **Appendix 16**. All Litigators will be required to obtain cover under the IPS Indemnity Insurance Scheme unless they are employed Litigators. Employed Litigators will need to ensure that they are instead covered by their employers' indemnity insurance scheme or alternatively obtain their own independent cover.
88. The existence of professional indemnity insurance will provide a route of redress to clients for any civil liability incurred in connection with the Litigators practice. Litigators will also be required to obtain run-off cover for a period of 6 years.
89. IPS investigated whether to opt for an open market or master policy insurance scheme. IPS has opted for a master policy scheme whereby it will obtain a master policy of indemnity insurance through which individual Litigators will obtain cover. The research showed that this was the most feasible option for its members.
90. IPS believes it is important to protect clients interests by having a professional indemnity insurance scheme in place. IPS will not issue a Litigation Certificate to a Litigator until they have satisfied IPS that they have obtained cover. A Litigator will therefore be unable to practice without indemnity insurance cover.
91. Litigators will be required to obtain cover for at least the minimum levels to be set by IPS from time to time. They can obtain a higher level of cover if they so wish.

Question

39. **Do you have any comments on the ILEX Practitioners Indemnity Insurance Scheme? If so, please state what they are.**

Client Protection Scheme

92. IPS has developed its own client protection scheme whereby clients who suffer loss as a result of the dishonesty or failure to account by a Litigator will be able to seek redress from a compensation fund to be set up by IPS. The existence of a compensation fund will be important to protect clients who have no other route of redress available to them.
93. The Client Protection Fund will be a new fund to be set up by IPS to which all Litigators will be expected to contribute. In addition ILEX will designate some of its reserves to help set up the fund in the first instance. The scheme rules will enable IPS to invest and borrow for the purposes of developing the fund. The Scheme Rules appear at **Appendix 15**.
94. The fund will be a discretionary fund of last resort and IPS will expect clients to have exhausted all other forms of redress before making a claim against it. IPS will set the maximum payment it can make from the fund, which will be reviewed on a regular basis.
95. The rules set out the procedure that will be followed where a claim is made to the compensation fund. The onus will rest with a client to provide information in support of their claim and to show the loss they have suffered. A client will subrogate to IPS their right to make a claim against a Litigator and will be required to support IPS in making any such claim.
96. In assessing what level of payment to make to a client, who has suffered loss, IPS will take into account various factors such as whether the client contributed to their loss, failed to act with integrity or failed to co-operate with IPS.
97. Where a client is suffering severe hardship IPS has a reserved power to make an interim grant. This will be important for providing assistance to vulnerable clients.

Questions

40. **Do you have any comments on the arrangements proposed for the IPS Client Protection Scheme? If so, state what they are.**

- 41. Will the arrangements safeguard clients in the event of their suffering loss as a result of a Litigator's misconduct? If not, what changes would you recommend.**

DISCIPLINARY PROCEEDINGS

98. The requirement to comply with the Practice Management and Accounts Rules is in addition to the requirement to comply with the ILEX general Code of Conduct and Guide to Good Practice.
99. Any complaint regarding the conduct of a Legal Executive Litigator will be dealt with through the normal disciplinary procedures. The disciplinary procedures are set out in the Investigation, Disciplinary and Appeal Rules, recently redeveloped by IPS, which were the subject of an earlier consultation.
100. IPS will also set up a Committee which will determine whether a Litigator remains a fit and proper person to continue holding a Litigation or Advocacy Certificate, following an investigation into their conduct. The Committee will have the remit to withdraw a Litigation or Advocacy Certificate.

Questions

- 42. Do you have any comments on the proposal that complaints and allegations about the conduct of Litigators will be investigated in accordance with the normal IPS procedures?**

CONSULTATION QUESTIONS

The questions are listed below. Please provide your responses on the attached response form providing reasons for your answers.

- Q1.** ILEX seeks rights to conduct litigation in civil and family proceedings only. Do you have any comments on the rights sought or the limitations proposed?
- Q2.** ILEX seeks rights of audience for its Litigators. The rights have been split into two: chambers advocacy and open court advocacy.
- a. Do you have any comments on the chambers advocacy rights sought by ILEX? If so, set them out.
 - b. Do you have any comments on the rights of audience sought in open court? If so, set them out.
- Q3.** Do you have any comments on the Litigation Skills Course criteria? If so, state what they are.
- Q4.** Do you have any comments on the Advocacy Skills Course criteria? If so, state what they are.
- Q5.** Do you have any comments on the Litigation Skills course assessment criteria? If so, state what they are.
- Q6.** Do you agree that a member of ILEX should complete the Litigation and Advocacy Skills Courses described in this consultation? If not, state what courses of qualification a member should complete.
- Q7.** Do you agree that the courses should be assessed? If not, state why.
- Q8.** Do you have any comments on the Advocacy Skills course assessment criteria? If so, set them out.
- Q9.** Are there any gaps in the litigation qualification arrangements? If so, please outline what they are.
- Q10.** ILEX has set out minimum entry requirements which members must meet to apply for the litigation and advocacy qualification courses. Do you have any comments on the knowledge and experience guidelines which appear at Appendix 1? If so, set them out.
- Q11.** Members will be required to demonstrate their experience through portfolios of cases they have handled. Do you have any comments on the portfolio guidelines which appear at Appendix 2? If so, set them out.

- Q12.** ILEX proposes that Fellows and Graduate Members should be able to enrol onto the qualification scheme. Do you have any comments on who should be allowed to undertake the litigation and advocacy qualification? If so, set them out.
- Q13.** Set out any other comments you have on the entry requirements proposed by IPS. Do you have any comments on whether the application will meet the regulatory objectives or professional principles? If so, set them out.
- Q14.** Do you agree that Litigators should undertake a course in practice management? If not, set out your reasons.
- Q15.** Do you have any comments on the proposed practice management course criteria? If so, set them out.
- Q16.** Do you agree that Litigators should undertake a course in accounts which should be assessed? If not, state what they should do to show their knowledge of and competence to deal with accounts matters.
- Q17.** Do you have any comments on the proposed contents of the accounts course and the assessment criteria? If so, state what they are.
- Q18.** Should an ILEX Litigator be required to seek authorisation from IPS before they are authorised to practice independently or to provide third party services. If not, state why.
- Q19.** Do you have any comments on the information that IPS will require from Litigators seeking authorisation to practice independently or to provide third party services. If so, set them out.
- Q20.** Do you agree that Litigation Certificates should be renewed? If not, state why.
- Q21.** Do you agree that the first renewal should require Litigators to produce portfolios of litigation cases they have handled? If not, state why and describe any alternative arrangements you would recommend for the first renewals.
- Q22.** Do you agree the arrangements for subsequent renewals? If not, state why.
- Q23.** Do you have any other comments on the conditions for renewals of Litigation Certificates? If so, set them out.
- Q24.** Do you agree that Advocacy Certificates should be renewed? If not, state why.

- Q25.** Do you agree that the first renewal should require Litigators who are Advocates to produce portfolios of advocacy cases they have handled? If not, state why and describe any alternative you would recommend for first renewals.
- Q26.** Do you agree the arrangements for subsequent renewals? If not, outline what should be required.
- Q27.** Do you have any other comments on the conditions for renewals of Advocacy Certificates? If so, set them out.
- Q28.** Do you have any comments on the practice structures through which litigators may practice? If so, set them out.
- Q29.** Do you have any comments on the Practice Management Rules?
- Q30.** Are there any items included within the Practice Management Rules which you think should not be included? If so, state what they are and the reasons why they should not be included.
- Q31.** Are there any matters that should be included in the Practice Management Rules which are not there at present? If so, state what they are and why they should be included in the Rules.
- Q32.** Do you have any comments on the ILEX Equality and Diversity Code? If so, please state what they are.
- Q33.** Do you have any comments on the ILEX Publicity Code? If so, please state what they are.
- Q34.** Do you have any comments on the ILEX Rights of Audience Code? If so, please state what they are.
- Q35.** Do you have any comments on the Accounts Rules? If so, state what they are.
- Q36.** Are there any matters included within the Account Rules that should not be included? If so, state what they are and why they should not be included.
- Q37.** Are there any matters which should appear in the Accounts Rules that do not appear at present? If so, state what they are.
- Q38.** Do you have any comments on the Accounts Rules? If so, state what they are.
- Q39.** Do you have any comments on the ILEX Practitioners Indemnity Insurance Scheme? If so, please state what they are.

Q40. Do you have any comments on the arrangements proposed for the IPS Client Protection Scheme? If so, state what they are.

Q41. Will the arrangements safeguard clients in the event of their suffering loss as a result of a Litigator's misconduct? If not, what changes would you recommend?

Q42. Do you have any comments on the proposal that complaints and allegations about the conduct of Litigators will be investigated in accordance with the normal IPS procedures?

HOW TO RESPOND

A response form has been produced for completion. Please send the response form to IPS through one of the following methods:

- Email to bbsra@ilexstandards.org.uk
- By post to ILEX Professional Standards Ltd, Kempston Manor, Kempston, Bedford MK42 7AB
- By DX to ILEX Professional Standards Ltd, DX 124780 Kempston 2

SUBMISSION DEADLINE

The deadline for the submission of responses is 3 April 2010