



**RULE CHANGE APPLICATION MADE BY ILEX PROFESSIONAL
STANDARDS LTD TO THE LEGAL SERVICES BOARD
UNDER SCHEDULE 4, PART 3, PARAGRAPH 20(1)
LEGAL SERVICES ACT 2007**

CONTACT DETAILS

Mrs Baljeet Basra
Professional Standards Manager
ILEX Professional Standards Ltd
Kempston Manor
Kempston
Bedford
MK42 7AB

Tel: 01234 845776
07792 774937

Email: bbasra@ilexstandards.org.uk

DETAILS OF PROPOSED APPLICATION

1. This application is submitted by ILEX Professional Standards Ltd (IPS), as the regulatory body for the Institute of Legal Executives (ILEX), an Approved Regulator

under the Legal Services Act. ILEX has approved this application for approval of a revised Code of Conduct applicable to ILEX members.

2. All members of the Institute of Legal Executives (ILEX) are required to comply with a Code of Conduct. The Code of Conduct sets out the standards expected of them.
3. IPS has reviewed and updated the current Code of Conduct. The core principles are stated at a higher level of generality. As a result the revised Code looks quite different, but the principles and guidance are largely unchanged, compared with the existing Code.
4. IPS has consulted on the changes it proposes and has taken into account the views it received in finalising its proposals.

DETAILS OF REGULATORY ARRANGEMENTS

5. All members of ILEX are obliged to comply with a Code of Conduct. A copy of the current Code of Conduct appears at **Annex 1** to this submission. The document is split into a Code of Conduct and Guides to Good Practice. The Code sets out the general principles applicable to ILEX members and the Guides provide guidance to members on key matters of practice.
6. The revised Code of Conduct sets out nine principles of conduct expected of ILEX members. In effect these principles are not different from the current Code. However, they have been expressed differently. The aim being to ensure that they are clear and easily understood by ILEX members, the public and consumers of their services.
7. Each principle is supplemented by guidance which outlines to members what is expected of them. A copy of the revised code appears at **Annex 2**.
8. A comparison of the new draft and current code has shown that there is little substantive difference between the two documents. The comparison table appears at **Annex 3**. The table compares the principles and guidance in the new Code against the content of the principles and guidance in the current code.
9. The comparison table shows that most items appearing in the current code are replicated in the new code. There are a few items appearing in the new code which are not directly stated in the current code, although they can be implied from the overall content of the current code.
10. Principle 4 of the new code requires members to comply with the rules and bye-laws of IPS and ILEX. This is a new requirement which does not appear in the current code. However, the requirement to comply with rules and bye-laws is included in

the declaration that all members are required to sign as part of their applications for membership of ILEX.

Nature and effect of existing arrangement

11. Only Fellows of ILEX are authorised persons for the purposes of the Legal Services Act 2007. The ILEX membership includes other grades of member who have not qualified as Fellows. IPS regulates all grades of ILEX member and the current Code is applicable to all grades of member.

Nature and effect of proposed alteration

12. The position in relation to the application of the proposed new Code is unchanged.

13. The new Code of Conduct will be applicable to all members of ILEX, regardless of the grade in which they are registered. Therefore it includes student members, Fellows, Associate Prosecutors and all other grades of ILEX member.

14. It is intended to apply equally to members, regardless of the types of work they undertake or the mode through which they practise, ie, employed, self-employed or a partner in a practice. However, in some instances there may be other Codes that also apply to members such as the Rights of Audience Conduct Rules applicable to ILEX advocates.

15. The Code is applicable to ILEX members both in the professional work they undertake and in some instances, in their personal conduct.

Reasons for application

16. IPS took the view that the Code should be revised to focus on high level principles, in order to make the Code clearer, more usable and more modern. This application seeks approval of the new Code.

17. The Code informs clients and the public of the standards expected of ILEX members. It also sets out core guidance to ILEX members of the standards expected of them. The core guidance is founded on nine key principles.

18. The introduction to the Code sets out the general overarching principle applying to ILEX members. This is that they must at all times ensure public confidence in them and their profession and must avoid engaging in action unbecoming to ILEX or likely to bring disrepute upon them or ILEX.

19. Where a complaint is made about the conduct of an ILEX member, or an allegation of misconduct, IPS will assess whether the alleged conduct breached the Code of

Conduct. The investigation into the conduct will be carried out in accordance with the procedures set out in the Investigation, Disciplinary and Appeal Rules. The Code of Conduct defines the standards against which members' conduct is judged by the Professional Conduct Panel in deciding whether a complaint or allegation is referred to the Disciplinary Tribunal. Whenever it is necessary to bring a case before the Disciplinary Tribunal, charges will be drafted with reference to the Code of Conduct. The Disciplinary Tribunal will establish whether the charges are proved to the civil standard of proof.

IMPACT UPON REGULATORY OBJECTIVES

20. It is intended that the Code should meet the regulatory objectives, as applicable, and the professional principles set out in the Legal Services Act 2007, to no less an extent than the existing Code of Conduct.

Protecting and promoting public interest

21. The Code sets out standards of conduct that should be observed by all ILEX members. The standards are aimed at ensuring members act to protect and promote the public interest. The revised Code is clearer and will help members to meet their obligations in this respect.

Supporting the constitutional principle of the rule of law

22. The first principle in the Code requires members to uphold the rule of law and impartial administration of justice.

23. The guidance to the principle confirms that ILEX members must recognise that their primary duty is to ensure that they do not mislead the courts. This includes complying with orders of the Courts and not taking action which would place them in contempt of court.

Improving access to justice

24. ILEX members provide another source of legal advice that is available to clients. The existence of an updated Code will ensure that appropriate standards are met by ILEX members when advising or acting on behalf of clients.

Protecting and promoting interests of consumers

25. The Code has been drafted to ensure that considerations of the client and public interest are at the forefront of the work of ILEX members. Members are expected to act in the best interests of their clients.

Promoting competition in the provision of services

26. Although the revisions to the Code will not of themselves promote competition, they help to assure, where IPS members provide or support the provision of legal

services, those services will continue to be provided to a comparable standard to other providers.

Encouraging an independent, strong, diverse and effective legal profession

27. The principles in the Code are intended to support this objective. Under the Code members are expected to ensure that their independence is not compromised. They are also expected to treat everyone equally and fairly.

28. The core principles will also encourage members to be confident and effective in their professional work.

Increasing the public understanding of the citizen's legal rights and duties

29. The revised Code does not directly impact on this objective. However, making it clearer to the public the standards which ILEX members must meet will assure them regarding the quality of the legal advice and services they can expect.

Promoting and maintaining adherence to the professional principles

30. The revised Code continues to embody the professional principles which now appear in the Legal Services Act.

Authorised persons should act with independence and integrity

31. The Code includes the principle that members must ensure their independence is not compromised. They must not act where there is a conflict of interest or a significant risk of a conflict occurring.

32. The Code also includes a principle that members must act with integrity. It reiterates that ILEX members must maintain their integrity and uphold the respect and confidence placed in them and their profession by clients, the courts, the public, colleagues, employers and others.

Authorised persons should maintain proper standards of work

33. The requirement that members must maintain proper standards of work is enshrined in many principles in the Code. These include the principle that members must maintain high standards of conduct, act in the best interests of their clients and act within their competence.

34. These principles, between them, set out the standards expected of ILEX members in their work generally and the specific duties that they owe to clients.

Authorised persons should act in the best interests of their clients

35. The requirement that members must act in the best interests of their clients is set out as a specific principle in the Code. It reminds members that their clients' interests are paramount and work must be undertaken to a proper standard.

36. The Guidance to the Code clarifies to members the specific duties they owe to clients. They must provide clear advice to clients, act on their clients instructions and have in place good client care and communication procedures. Members are reminded that they must keep clients updated on the progress of their cases and keep good records.

Persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice.

37. The Code reminds members of their overriding duty to the court.

38. ILEX members may exercise a right of audience in Judge in Room hearings in the High Court and County Court if they are employed to assist in the conduct of litigation under instructions given by a qualified litigator. Members falling within such employment are required to comply with the Codes and practice rules applicable to their employers. This will include relevant advocacy codes.

39. ILEX is an approved regulator for the purposes of granting rights of audience. Those members who qualify as Legal Executive Advocates are required to comply with the Rights of Audience Conduct Rules which were approved by the Lord Chancellor when ILEX became an approved regulator for advocacy. The Rights of Audience Conduct Rules are not affected by this application.

40. As members exercising rights of audience in open court are authorised persons, ie, Legal Executive Advocates, who are required to comply with another Code it is not necessary to add further provisions into the new Code.

41. The new Code concludes with recognition that members may be subject to additional Codes.

The affairs of clients should be kept confidential

42. The new Code includes a principle that members must respect confidentiality and trust. The guidance to the principle confirms that members must keep the affairs of their clients confidential. They must only disclose information to those entitled to receive it and use it only for the purpose it was intended. The Code recognises that there are instances where disclosure may be required.

43. The Guidance specifically covers safe and secure storage of documents and electronic data.

OBLIGATIONS UNDER S28 LEGAL SERVICES ACT 2007

44. This application is made by ILEX in compliance with the duties imposed by s28 Legal Services Act 2007 on Approved Regulators.

45. In developing the new Code IPS has had regard to the Better Regulation Principles both in the way in which the application has been prepared and in the requirements placed upon members.

46. The new Code is targeted at all ILEX members. ILEX has delegated to IPS responsibility for the regulation of ILEX members, including those that are not authorised persons under the Legal Services Act. IPS has ensured that the standards expected are consistent across all grades of member.

47. IPS has consulted all interested stakeholders for comment and has had regard to the comments. A copy of the consultation that IPS sent appears at **Annex 4**. An IPS working party considered each comment made by the respondents to the consultation.

DESIRED OUTCOME

48. The desired outcome for ILEX is to obtain approval of and implement its new Code. IPS will monitor effectiveness of the new Code and will conduct an annual review.

IMPACT UPON OTHER APPROVED REGULATORS

49. When drafting the new Code IPS was alert to the fact that most ILEX members work in legal practices or under the supervision of authorised persons regulated by other approved regulators. With that in mind the Code expresses broad principles of conduct. It reflects standards of conduct expected of legal practitioners. Therefore it is unlikely to have an impact upon other approved regulators. It should not create any conflict between the standards expected of ILEX members and as employees of practitioners or practices regulated by other regulators. The Code specifically provides for cases in which ILEX members are subject to professional obligations imposed by other regulators or employers.

PROPOSED IMPLEMENTATION PLAN

50. It is proposed that IPS will implement the new Code as soon as approval is granted by the Legal Services Board. ILEX has planned a National Conference on 11 March 2010, which is followed by an IPS launch on the same day. If approval is granted by that date the Code will be launched at those events. Otherwise as soon as possible thereafter.

51. IPS recognises the importance of bringing the Code to the attention of all ILEX members, as they will be bound by it. Notices will be given to members through the

Legal Executive Journal, which is sent to all members each month. The Journal will include a copy of the full Code and reference to the IPS website from which download copies will be available.

52. IPS makes a regular contribution to the Legal Executive Journal. This will provide IPS with an opportunity to remind members of the new Code. Notices will also be posted on the IPS website. References on the ILEX website to the Code will also be updated to refer to the new Code. All new members of ILEX receive a copy of the Code of Conduct, as do newly admitted Fellows. This will continue.

CONSULTATION PROCESS

53. IPS consulted upon its draft Code of Conduct. A copy of the consultation issued by IPS appears at **annex 4**. The consultation period closed on 18 December 2009.

54. The consultation was sent to approved regulators, their regulatory bodies and other stakeholders. The consultation was also posted on the IPS website. IPS received five responses to the consultation. The respondents included ILEX.

55. An IPS working party considered each comment made by the respondents to the consultation. The working party determined what view to take in relation to each response and whether any amendments should be made to the Code in response. A document appears at **Annex 5** which sets out each response to each question. It also records the decision made by the working party. The decision appears in bold text.

EXPLANATORY MATERIAL

56. The Code and Guidance is self explanatory.

57. No further explanatory material is required in support of this application.

SUBMISSION

58. The LSB is asked to consider this application.

ANNEXES

1. Current Code of Conduct
2. Draft Code
3. Comparison of current and new code
4. consultation
5. Analysis of consultation responses

ANNEX 1

CURRENT CODE OF CONDUCT

CODE OF CONDUCT AND SUPPORTING GUIDES TO GOOD PRACTICE**INTRODUCTION**

Persons enrolling with The Institute of Legal Executives (ILEX) become bound by its Memorandum and Articles of Association. They must:

- support the aims and objects of ILEX;
- uphold the standards of professional practice prescribed in the Code of Conduct and Guides to Good Conduct; and
- comply with all of ILEX's rules and bye laws .

The Articles of Association provide for Disciplinary Bodies to be established which have power to consider and determine any complaint that a member is guilty of conduct which is unbecoming to the member or to ILEX. The Disciplinary Bodies may decide that such a person should be excluded or suspended from membership or be fined, reprimanded or admonished and may order payments to be made by way of compensation or in respect of the costs of any investigation or disciplinary proceedings.

Notes:

In the Code of Conduct, 'member' includes all grades of membership of ILEX and words importing the masculine gender only shall include the feminine gender.

Where a member is subject to other jurisdictions or legal systems than those of England and Wales he is expected to comply with these professional standards where practicable but will not necessarily be deemed to be in breach if there has been compliance with established local custom and practice which is itself in conflict with these standards. Regard shall be had to the International Code of Ethics for the Legal Profession.

THE CODE OF CONDUCT

1. A member, in his professional life and employment, shall so conduct himself and the matters of which he has conduct, in such a manner:
 - (1) as to avoid any action or situation which may bring disrepute upon the Institute or its members;
 - (2) as to avoid doubt being cast upon his own professional integrity;
 - (3) as will assist the impartial administration of justice;

- (4) as will recognise that the interests of the client are paramount to those of all others; save that at all times and in all matters a member's primary and overriding duty is to the court;

by and shall observe and be bound by this Code of Conduct and the Guides to Good Practice issued from time to time the Institute.

2. A member shall not:

- (1) misuse the trust reposed in him nor reveal confidential information other than to those entitled to receive it;
- (2) for the personal gain of himself or his family take advantage of information gained in the course of his conduct of any matter;
- (3) hold himself out as a Legal Executive nor display the distinguishing letters 'F.Inst.L.Ex.' after his name unless that member is in good standing as a fully paid up Fellow entered in the Register of Members of the Institute;
- (4) directly or indirectly discriminate against any person, nor victimise or harass them on the grounds of their age, gender, disability, race, colour, ethnic or national origin, sexual orientation, marital or family status, religion or belief.

3. A member shall at all times work within the framework of the law and shall use his best endeavours to avoid any breach of the law by his employer or the client.

GUIDES TO GOOD PRACTICE FOR THE LEGAL EXECUTIVE

issued by the Council of The Institute of Legal Executives

Notes:

1. *The Guides to Good Practice amplify the principles of behaviour which should assist the Legal Executive throughout his career. As a statement of principles and objectives they represent the standards observed by experienced Legal Executives in giving good service to clients. All members of ILEX are required to observe and comply with them to the extent that they are relevant to the work the member is undertaking.*
2. *For the purposes of these Guides the expressions:*

'The Legal Executive' includes both male and female and all grades of membership of The Institute; and

'Principal' means any Legal Executive, Solicitor, Barrister, Licensed Conveyancer or other authorised person under whose name the Legal Executive is practising whether that person be the employer or is employed as a Legal Executive, Solicitor, Barrister, Licensed Conveyancer or other authorised person in any office, department, corporation or undertaking.

A. Generally

- (1) The Legal Executive should accept such work as he is competent to handle and will perform such duties without fear or favour but will obtain additional expertise or guidance from appropriately qualified persons where it is necessary to do so.
- (2) The Legal Executive should endeavour to maintain the highest level of legal knowledge within his chosen field and to that end will be aware of changes in the law and legal practice.
- (3) The Legal Executive should consider himself accountable for his own work and ensure that those he supervises are equipped to carry out their duties in a competent manner.
- (4) The Legal Executive should ensure that he and his subordinates are familiar with legislation governing the provision of legal services including (but not limited to) the Legal Services Act 2007, the Courts and Legal Services Act 1990 and the Solicitors Act 1974 and the Solicitors Code of Conduct and Solicitors' Accounts Rules, as from time to time in force, and will comply with those that are relevant to any work in hand.
- (5) On first accepting instructions in any matter the Legal Executive should advise the client of his qualification, whether as a Fellow or other grade of member, and position in relation to the organisation within which he is working. The client should also be made aware of the effects of costs upon any course of action chosen. He must advise on the availability of any right of the client to apply for public funding and on the effect of receipt of such funding on the client or the other party and the effect, if any, of the statutory charge.

B. In relation to his Employment

- (1) The Legal Executive will use his best endeavours to avoid circumstances in which his duties and his private interests conflict or may appear to conflict and will make immediate and full disclosure of any personal interest which may occur to both his Principal and the client.
- (2) The Legal Executive will refrain from acting or advising in any matter where his ability to advise objectively may be impaired.

- (3) The Legal Executive will at all times keep the client promptly and effectively informed of progress and developments in the matter in hand.
- (4) The Legal Executive on becoming aware that any matter is not being conducted with reasonable expedition, whether for want of decision by some party or otherwise will inform both his Principal and the client of the delay as the circumstances dictate.
- (5) The Legal Executive will have regard to the health and safety of his colleagues at work.
- (6) The Legal Executive will always use his best endeavours to ensure the safety and security of deeds, documents and data whether under his personal control or in the care of his Principal.
- (7) The Legal Executive should not withdraw his services from his employer in a manner contrary to the procedure agreed between employers and employees for settling disputes. The withdrawal of services in furtherance of an industrial dispute does not, of itself, constitute unprofessional conduct, nor does litigation relating to the terms of employment of the Legal Executive.

C In relation to other Lawyers, legal advisers or legal assistants, whether in the same employment or with whom the Legal Executive has dealings, the Legal Executive will recognise that each has obligations to his own client and to his employer and will not attempt to injure the reputation or professional standing of another lawyer, legal adviser or legal assistant.

D Licensed Conveyancers.

All members of the Institute (of whatever grade) who are also Licensed Conveyancers and are either practising on their own account or are employed by a Licensed Conveyancer, are required to observe and be bound by both The Code of Conduct and The Supporting Guides to Good Practice subject to the following:

- (1) The Supporting Guide A-4 (1) should be read as including reference to the Licensed Conveyancers' Rules of Conduct, Practice and Discipline.

E Associate Prosecutors

Members who are Case Workers designated as Associate Prosecutors by the Director of Public Prosecutions in accordance with section 7A(1) of the Prosecution of Offences Act 1985 shall observe and are bound by:

- (1) This Code of Conduct and Supporting Guides to Good Practice, except that the Guides to Good Practice numbered A4, A5, B3 and D shall not apply;

- (2) The Director Of Public Prosecutions' General Instructions to Designated Caseworkers; and
- (3) The Statement of Ethical Principles for Crown Prosecution Service Designated Caseworkers

as they are in effect, in each case, from time to time.

Members who are Associate Prosecutors shall be aware of and, so far as they are relevant to their duties as Associate Prosecutors, have regard to the following:

- (1) The Crown Prosecution Service Code of Conduct; and
- (2) The Crown Prosecution Service National Standards of Advocacy

as they are in effect from time to time.

ANNEX 2

NEW CODE OF CONDUCT

About this document

Membership of ILEX carries both privileges and responsibilities. It requires you to:

- develop and use your professional knowledge and skills for the benefit of those who use your professional services
- maintain good professional relationships with others
- act in a way that promotes confidence and trust in the legal professions.

This Code of Conduct has been drawn up by IPS, the regulatory body for ILEX members. It sets out the principles you must follow as an ILEX member. It is our core guidance on the conduct, practice and professional performance expected of you.

The following nine principles are intended to guide and support you in the work you do and the decisions you make. They also inform the general public of the standards of behaviour that can be expected of ILEX members: the public interest must be at the forefront.

You must at all times ensure public confidence in you and your profession. You must also ensure that you avoid engaging in action unbecoming to ILEX or likely to bring disrepute upon you or ILEX.

These are the nine principles. You must:

1. Uphold the rule of law and the impartial administration of justice
2. Maintain high standards of professional and personal conduct
3. Behave with honesty and integrity
4. Comply with the ILEX and IPS rules and bye-laws
5. Act in the best interests of your client
6. Treat everyone equally and fairly
7. Ensure your independence is not compromised
8. Respect confidentiality and trust
9. Act within your competence

These principles, and the supporting explanations below, encapsulate what it means to be a member of ILEX. Making this part of your professional life will help you maintain your professionalism and will underpin public confidence in you and your profession.

Status of the Code of Conduct

You must comply with this Code wherever it applies to you. Your professional and personal conduct will be judged against it, and a breach may lead to action under the Investigation, Disciplinary and Appeal Rules. Compliance with the Code will be taken into account in considering information which raises a question about a member. The supporting explanations are not however exhaustive and are not limited solely to the matters mentioned in the Code.

You must:

1. Uphold the rule of law and the impartial administration of justice

You must uphold the constitutional principle of the rule of law. You must act lawfully and must not knowingly breach the law. You must be familiar with and comply with the law as it applies to you.

You have a duty to uphold the impartial administration of justice. You also have a duty to act in the best interests of your client. However, your primary and overriding duty is to the courts. You must not knowingly allow the court to be misled. You must obey court orders and do nothing which would place you in contempt of court.

2. Maintain high standards of professional and personal conduct

High standards are expected of you in both your professional and personal life. You must not engage in any conduct that could affect or undermine the confidence placed in you and your profession by your client, other members of the legal profession and the public.

Personal conduct that may affect or undermine the confidence placed in you includes criminal convictions, breaches of the law, financial misconduct, dishonesty and any other behaviour deemed by IPS to bring disrepute upon yourself or ILEX.

3. Behave with honesty and integrity

You must be honest in all your dealings. You must maintain your integrity and uphold the respect and confidence placed in you and your profession by your client, the courts, the public, colleagues, employers and others. You must not wilfully mislead your client or anyone else you deal with.

You must deal honestly in financial matters, particularly with regard to transactions affecting office and client accounts and money which belongs to others.

4. Comply with the ILEX and IPS rules and bye-laws

You must comply with all the ILEX and IPS rules and bye-laws which apply to you. These include the Memorandum and Articles of Association, membership and examination bye-laws, rules and regulations, codes of conduct and the complaints handling rules. You must ensure that you are familiar with the rules and bye-laws

relevant to you and keep your knowledge of them up to date. You must also cooperate with ILEX and IPS.

You must not register in a grade of membership to which you do not belong. You must not claim to be a non-practising member when you do not meet the criteria for that grade of membership.

5. Act in the best interests of your client

Except where they conflict with your duty to the court, your client's interests are paramount and you must act in their best interests. The work you undertake for your client must always be to a proper standard.

You must provide clear advice to your client and act on their instructions except when to do so would involve a breach of the law.

You must have in place good client care and communication procedures. You must provide clear and accurate information and advice. You must ensure your client understands your professional status, advise them openly and honestly and keep them up to date with the information they need about their case or transaction. You must inform them fully and honestly about details of costs and complaints procedures.

You must keep contemporaneous records of matters such as communications with clients, professional colleagues and others.

You must maintain proper standards of work and keep accurate records.

6. Treat everyone equally and fairly

You must treat everyone equally and fairly regardless of their age, gender, disability, race, colour, ethnic or national origin, sexual orientation, marital or family status, religion, belief or perceived social status. You owe this duty to clients, colleagues, employers, third parties including the other party in a transaction, and anyone else with whom you may have dealings.

7. Ensure your independence is not compromised

You must ensure that your independence is not compromised and that you remain impartial in all your dealings. Independence may be compromised in a variety of ways, including conflicts with a client, external pressure and financial interest in a

client's matter. Members working in a business structure that includes a range of professions need to be particularly aware of the conflicts that could arise.

You must not act where there is a conflict of interest or a significant risk that a conflict may arise. This can include conflicts between:

- you and a client
- two or more clients for whom you act
- a client and your employer or colleagues
- a client and the commercial, financial or political interests of your employer.

There are some instances where you may act in a situation where a conflict would otherwise arise - for example, where two or more clients agree in writing to your acting for each of them and you can separate the duties you owe to each.

You should act for a client only where you are satisfied that there is no risk that they are providing instructions under duress or undue influence. You must also confirm with your client instructions given by a third party to ensure they are your client's own instructions.

You must ensure that no financial arrangements you have in place can affect the independence of your advice or your ability to act impartially. This includes any introduction and referral arrangements you have in place.

8. Respect confidentiality and trust

You must respect the trust placed in you and your profession by your client, the public, employers and colleagues. You must act with probity, honesty and trustworthiness and must not engage in any conduct that may undermine that confidence or trust.

You must keep the affairs of your client confidential. You may disclose information only to those entitled to receive it or to whom you have been authorised to disclose it. You must use information only for the purpose it was intended.

In certain rare circumstances the law or other provisions may require or authorise you to make disclosures, such as to prevent the commission of a serious criminal offence.

You have a duty to ensure the safety and security of electronic and paper documents in your possession. They must be stored safely and disclosed only to those entitled to receive them.

9. Act within your competence

You must act only on matters that are within your competence. These are cases or transactions where you have the knowledge, skills and experience to undertake the work. If you are not competent to act you must decline to do so.

It is your personal responsibility to keep your professional skills and knowledge up to date by undertaking relevant training and complying with our Continuing Professional Development regulations.

You must not act for a client in an area of law where you have insufficient knowledge or experience. Neither may you act in a matter where you do not have the right to act, for example, where you are not authorised to provide legal services. This does not prevent you from working in a structured environment on aspects of the law where you are developing your knowledge and skills.

You must not hold yourself out as having a qualification that you do not. This includes holding yourself out as a Legal Executive when you have not qualified as a Fellow of ILEX.

You must ensure you properly supervise tasks that you have delegated to others, recognising that you remain accountable for work which you have delegated to someone else.

Other Codes

If you are also regulated by or a member of another professional organisation, as well as IPS, you must also comply with Codes of Conduct, rules and regulations, however described, which apply to you.

Further help and guidance

If you are unsure about how this Code applies to you contact IPS on 01234 845770 or info@ilexstandards.org.uk

ANNEX 3

COMPARISON OF CURRENT AND NEW CODE

ANNEX 3 COMPARISON OF CURRENT AND NEW CODE

The table below compares the provisions contained in the new Code against the current Code. It has summarised the contents of the new Code in the left hand column, including the introduction to the Code, the principles and supporting guidance, the concluding section of the Code. These contents were compared against the principles appearing in the current Code and the supporting Guides to Good Practice.

	NEW CODE	CURRENT CODE
Introduction		
	Ensure public confidence in you and your profession	Principle 1(2) – avoid doubt being cast upon professional integrity Does not cover public confidence directly
	Avoid engaging in action unbecoming to ILEX or likely to bring disrepute upon you or ILEX	Principle 1(1) – disrepute Unbecoming action not covered directly but implied by principle 1
Principles and guidance		
1.	Uphold rule of law and impartial administration of justice Guidance: <ul style="list-style-type: none"> • Uphold constitutional principle of rule of law • Act lawfully • Not knowingly breach the law • Familiar with and comply with law 	Principle 1(4) –recognise interests of the client are paramount to those of all others, save that primary and overriding duty is to the court Principle 3 – work within the framework of the law and use best endeavours to avoid breach of law by employer or client Principle 3 Principle 3 Principle 3 Principle 3

	<ul style="list-style-type: none"> • Uphold impartial administration of justice • Duty to act in best interests of client • Primary and overriding duty to the courts • Not knowingly allow courts to be misled • Obey court orders and do nothing to place you in contempt of court 	<p>Principle 1(3) – assist the impartial administration of justice</p> <p>Principle 1(4)</p> <p>Principle 1(4)</p> <p>Principle 1(4) implies this responsibility</p> <p>Principle 3 implies</p>
2.	<p>Maintain high standards of professional and personal conduct</p> <p>Guidance:</p> <ul style="list-style-type: none"> • Not engage in conduct that could affect or undermine confidence placed in you and your profession by your client, other members of the legal profession and the public • Personal conduct examples given; also includes any other behaviour deemed by IPS to bring disrepute upon yourself or ILEX 	<p>Principle 1 refers to professional life and employment. Personal conduct is a new inclusion. Previously charges at Disciplinary Tribunal hearings relating to personal conduct could not be brought against the Code. In such instances charges were brought by reference to other ILEX rules.</p> <p>Not directly stated but implied by principle 1(1) and (2)</p> <p>Although personal conduct is a new matter the examples used reflect the types of disclosures members are required to make to ILEX /IPS each year. These are called 'prior conduct' declarations. The requirement to make the declarations derives from the IDAR (Investigation, Disciplinary and Appeal Rules)</p>

		Disrepute is reflected in principle 1(1)
3.	<p>Behave with honesty and integrity</p> <p>Guidance:</p> <ul style="list-style-type: none"> • Uphold respect and confidence placed in you and your profession by your client, the courts, the public, colleagues, employers and others • Not wilfully mislead your client or anyone else you deal with • Deal honestly in financial matters, particularly transactions affecting office and client account and money belonging to others 	<p>Principle 1(2) – avoid doubt being cast upon own professional integrity</p> <p>Implied by principle 1</p> <p>Implied by principle 1</p> <p>Guide A(4) – ensure familiarity with and comply with Solicitors Accounts Rules</p>
4.	<p>Comply with the ILEX and IPS rules and bye-laws</p> <p>Guidance:</p> <ul style="list-style-type: none"> • Includes Memorandum and Articles of Association, membership and examination rules and bye-laws, rules and regulations, codes of conduct and complaints handling rules • Ensure familiar with rules and bye-laws and keep knowledge up to date • Co-operate with ILEX and IPS • Not register in grade of membership to which you do not belong 	<p>Not covered in current Code. However, all members sign a declaration on applications for ILEX membership agreeing to comply with ILEX rules and bye-laws</p> <p>Not covered</p> <p>Not covered</p> <p>Not covered</p> <p>Principle 2(3) a person should not hold out as a Legal Executive or use designatory letters if not registered as a Fellow. New Code extends it to all grades of member</p>

	<ul style="list-style-type: none"> • Not claim to be non-practising when do not meet criteria to be non-practising member 	This is a new development within ILEX membership grades
5.	<p>Act in the best interests of your clients</p> <p>Guidance:</p> <ul style="list-style-type: none"> • Proper standard of work • Provide clear advice to client • Act on client instructions except when it would involve breach of the law • Have in place good client care and communication procedures • Provide clear and accurate information and advice. • Ensure client understands your professional status. • Advise client openly and honestly • Keep client up to date with information • Inform client fully and honestly about details of costs and complaints procedures • Keep contemporaneous notes • Maintain proper standards of work • Keep accurate records 	<p>Implied by Principle 1 and covered in Guide A(5)</p> <p>Implied by principle 1 and guide A(1)</p> <p>Guide A(3) accountable for work</p> <p>Principle 1(4)</p> <p>Guide A(5)</p> <p>Guide A(5)</p> <p>Guide A(5) advise clients of qualification and position.</p> <p>Not directly stated</p> <p>Guide B(3) keep client promptly and effectively informed of progress and developments and B(4) inform client of delay</p> <p>Guide A(5) advise of costs including public funding and effect of statutory charge</p> <p>Not directly stated</p> <p>Guide A(1) competence to handle work</p> <p>Not directly stated</p>

6.	<p>Treat everyone equally and fairly</p> <p>Guidance: Covers age, gender, disability, race, colour, ethnic or national origin, sexual orientation, marital or family status, religion, belief or perceived social status.</p> <p>Duty owed to clients, colleagues, employers, third parties and anyone else with whom you have dealings.</p>	<p>Principle 2(4) – must not directly or indirectly discriminate against any person, nor victimise or harass them</p> <p>Covers the same grounds except perceived social status.</p> <p>Principle 2(4) states duty owed to any person</p>
7.	<p>Ensure your independence is not compromised</p> <p>Guidance:</p> <ul style="list-style-type: none"> • Remain impartial • Independence may be compromised by conflicts. • Not act where there is a conflict or significant risk that conflict may arise between you and client, clients, client and employer, client and commercial or financial or political interests of employer • Can act in some instances where a conflict would arise where you have written consent and can separate duties owed • Not act if instructions given under 	<p>Principle 2(1) not misuse trust reposed in him nor reveal confidential information other than to those entitled to receive it and Principle 2(2) not use information for personal gain</p> <p>Principle 1(3) assist the impartial administration of justice and Guide B(2) refrain from acting or advising where ability to advice objectively may be impaired</p> <p>Guide B(1) avoid conflicts between duties and private interests</p> <p>Guide B(1) and (2) - but does not specifically cover all grounds of conflict set out in guidance to new Code.</p> <p>Not specifically covered</p> <p>Not specifically covered but implied</p>

	<p>duress or undue influence</p> <ul style="list-style-type: none"> • Confirm third party instructions with client • Ensure financial arrangements don't affect independence of advice or ability to act impartially 	<p>by Guide B(2)</p> <p>Not covered</p> <p>Not specifically covered but implied by Guide B(2)</p>
8.	<p>Respect confidentiality and trust</p> <p>Guidance:</p> <ul style="list-style-type: none"> • Respect trust placed in you and your profession by client, public, employers and colleagues • Act with probity, honesty and trustworthiness and not engage in any conduct that may undermine that confidence or trust • Keep affairs of client confidential • Only disclose information to those entitled to receive it or to whom you are authorised to disclose it and only use it for purpose it was intended • In rare circumstances law may authorise you to make a disclosure 	<p>Principle 2(1) not misuse trust reposed in member nor reveal confidential information other than to those entitled to receive it and Principle 2(2) not use information for personal gain</p> <p>Principle 2(1) – not misuse trust (as opposed to respect trust) and Principle 2(2) not use information for personal gain</p> <p>Implied by Principle 2(1) and 2(2)</p> <p>Principle 2(1) not reveal confidential information and Principle 2(2) not use information for personal gain</p> <p>Principle 2(1) and (2) – but does not cover those you are authorised to disclose information to. Implied by reference to those entitled to receive it</p> <p>Not directly covered but implied by reference in Principle 2(1) to those entitled to receive it</p>

	<ul style="list-style-type: none"> • Duty to ensure safety and security of electronic and paper documents. They must be stored safely and disclosed only to those entitled to receive them 	Guide B(6) – use best endeavours to ensure safety and security of deeds, documents and data where under his personal control or in the care of his employer
9.	<p>Act within your competence</p> <p>Guidance:</p> <ul style="list-style-type: none"> • Only act where you have knowledge, skills and experience to undertake the work. Decline to act if not competent. • Keep professional skills up to date by training and complying with CPD guidance. • Not act if have insufficient knowledge or experience. Not act if you don't have right to act. This doesn't prevent work in structured environment where developing knowledge and skills. • Not hold our as having qualification do not, including holding out as a Fellow of ILEX. • Ensure you properly supervise tasks delegated to others. Remain accountable for delegated work. 	<p>Guide A(1) – only accept work competent to handle.</p> <p>Guide A(1)</p> <p>Guide A(2) maintain highest level of legal knowledge and be aware of changes in law and legal practice</p> <p>Guide A(1) includes obtaining expertise and guidance where necessary</p> <p>Principle 2(3) covers holding out as a Fellow or using F.Inst.L.Ex.</p> <p>Guide A(3)- accountable for work and ensure people being supervised are competent to carry out the work</p>
OTHER CODES		
	If you are regulated by or a member of another professional organisation you must also comply with Codes of Conduct, rules and regulations which apply	<p>Guide A(4) be familiar with and comply with Legal Services Act 2007, Courts and Legal Services Act 1990, Solicitors Act 1974 and Solicitors Code of Conduct & Accounts Rules</p> <p>Guide D – Licensed Conveyancers or employees of Licensed Conveyancers</p>

		<p>to read reference to CLC rules of conduct in Guide A(4)</p> <p>Guide E – must comply with CPS Statement of Ethical Principles, Code of Conduct, National Standards of Advocacy and DPP instructions. Guides A(4), A(5), B(3) and D do not apply – new Code has been drafted generically to encapsulate all members, and what is applicable to them, as opposed to having exemption statements</p>
ITEMS IN OLD CODE BUT NOT IN NEW CODE		
	Not necessary to include in a professional code of conduct	Guide B(6) have regard to health and safety of colleagues at work
	Not necessary for this to appear in the Code as it is a matter of employment law. The disciplinary committees can make a determination that a employment dispute does not amount to misconduct.	Guide B(7) withdrawing services from employer. Guide does clarify that employment disputes do not amount to misconduct.

ANNEX 4

CONSULTATION PAPER

ANNEX 4 CONSULTATION PAPER



CONSULTATION

PROPOSALS TO REVISE THE CODE OF CONDUCT

INTRODUCTION

ILEX Professional Standards Ltd (IPS) is the regulatory body for Legal Executives and other grades of members registered with the Institute of Legal Executives (ILEX). ILEX is an approved regulator under the Legal Services Act 2007.

IPS is revising its Code of Conduct for members. The draft revised Code sets out the standards of conduct expected of all grades of ILEX members.

This consultation document begins by outlining the revisions to the Code and summarising the guidance provided under each principle under the Code. IPS seeks views on its proposals.

The consultation will close 18 December 2009

STRUCTURE OF NEW CODE

The revised Code begins with a discussion and summary of the standards expected of ILEX members. It states the general requirement and then sets out nine principles of conduct, each of which is complemented by guidance notes.

Comments are invited on the new Code. The full Code appears at Appendix 1.

This consultation paper begins by addressing the introduction to the Code. It then discusses each of the nine principles and concludes with the position of members who must also comply with Codes issues by other regulators.

INTRODUCTION

1. The Code of Conduct is applicable to all members of ILEX, regardless of the grade in which they are registered. Therefore it includes student members, Fellows, Associate Prosecutors and all other grades of ILEX member. It is intended to apply equally to members, regardless of the types of work they undertake or the mode through which they practise, ie, employed, self-employed or a partner in a practise. However, in some instances there may be other Codes that also apply to members such as the Rights of Audience code applicable to ILEX advocates.
2. The Code informs clients and the public of the standards expected of ILEX members. It also sets out core guidance to ILEX members of the standards expected of them. The core guidance is founded on nine key principles.
3. The introduction to the Code sets out the general overarching principle expected of ILEX members. This is that they must at all times ensure public confidence in them and their profession and must avoid engaging in action unbefitting to ILEX or likely to bring disrepute upon them or ILEX.
4. The Code is applicable to ILEX members both in the professional work they undertake and in some instances, in their personal conduct.
5. It is intended that the Code should meet the regulatory objectives, as applicable, and the professional principles set out in the Legal Services Act 2007. The Code has been drafted to ensure that the client and public interest are at the forefront of the work of ILEX members, thereby meeting the general regulatory objectives where they are not directly expressed in the Code.
6. Where a complaint is made about the conduct of an ILEX member IPS will assess whether the alleged conduct breached the Code of Conduct. The investigation into the conduct will be carried out in accordance with the procedures set out in the

Investigation, Disciplinary and Appeal Rules. The Professional Conduct Panel will consider whether there is a prima facie case to substantiate a complaint against the Code of Conduct. Whenever it is necessary to bring a case before the Disciplinary Tribunal, charges will be drafted with reference to the Code of Conduct. The Disciplinary Tribunal will establish whether the charges are proved using the civil standard of proof.

Q 1 Do you have any comments on the introductory statements to the Code of Conduct? If yes, please set them out.

PRINCIPLE 1 - Uphold the rule of law and the impartial administration of justice

7. All ILEX members must ensure that they uphold the constitutional principle of the rule of law. This principle is enshrined in the Legal Services Act 2007.
8. ILEX members must ensure that they comply with the law and do not knowingly take any action which would breach the law, both professionally and in their private life.
9. The guidance adds that ILEX members must recognise that their primary duty is to ensure that they do not mislead the courts. This includes complying with orders of the Courts and not taking action which would place them in contempt of court.

Q 2 Should the Code of Conduct begin by saying that members must uphold the rule of law? If not, state why.

Q 3 Do you have any comments on the guidance to the first principle to the Code of Conduct? If yes, please set them out.

PRINCIPLE 2 - Maintain high standards of professional and personal conduct

10. The Code requires that members must act appropriately both in their professional and personal life. They should ensure their actions do not undermine the confidence placed in them and the legal profession by the public, clients and other professionals.
11. The guidance to the Code provides some examples of personal conduct which would amount to a breach of the Code. IPS would not expect all personal issues to fall within the ambit of the Code. The types of personal conduct that might be a matter for IPS will include criminal convictions, financial misconduct and dishonesty. Views

are sought as to whether any other aspects of personal conduct should be included in the guidance notes.

Q 4 Should this principle be included in the Code of Conduct?

Q 5 Do you think there are there any other aspects of personal conduct that should be included in the guidance notes? If so, set out your views.

Q 6 Do you have any comments on the guidance to the second principle to the Code of Conduct?

PRINCIPLE 3 – Behave with honesty and integrity

12. The third principle requires that members behave with honesty and integrity. The principle confirms the requirements that members must uphold the respect and confidence placed in them. It reflects one of the professional principles set out in the Legal Services Act.

13. The principle encapsulates the general requirement to provide clear and accurate information and advice. It also incorporates the principle that members must maintain accurate records and deal honestly in financial matters. This includes keeping clear accounting information. It is important to include such matters within the Code to protect money belonging to another person and to protect the interests of clients by ensuring that full records are kept and they are advised properly.

Q 7 Does the draft express clearly the principle that members must behave with honesty and integrity? If not, state why.

Q 8 Do you have any comments on the matters incorporated within the guidance notes? If so, state what they are.

PRINCIPLE 4 - Comply with the ILEX and IPS rules and bye-laws

14. ILEX members are required to comply with the ILEX and IPS rules and bye-laws applicable to them. This principle reflects the declaration signed by ILEX members on applications to register with, or to upgrade their membership of ILEX.

15. The guidance notes provide examples of rules and bye-laws that members must comply with.

Q 9 Do you agree that the requirement that members comply with the ILEX and IPS rules and bye-laws should be included in the Code? If not, state why.

Q 10 Do you have any comments on the guidance notes to this principle?

PRINCIPLE 5 - Act in the best interests of your clients

16.The principle reflects the general position that a member must act in the best interests of their client except that their overriding duty rests with the courts. It reflects one of the regulatory objectives and a professional principle set out in the Legal Services Act.

17.The principle sets out the basic client care requirements expected of all ILEX members. ILEX members are required to provide client care information to clients which includes details about their status and costs involved. ILEX members have a duty to keep costs information under review and keep the file under regular review to ensure that timely action is taken in the matter and keep clients updated on progress.

Q 11 Do you agree that the Code should include the principle that members must act in the best interests of their client subject to their overriding duty to the courts? If not, state why.

Q 12 Do you have any comments on the guidance notes to this principle?

PRINCIPLE 6- Treat everyone equally and fairly

18.ILEX members are required to treat everyone equally. This principle incorporates the position of the general law against discrimination. It extends beyond the law to include discrimination on other grounds such as perceived social status.

19.The guidance sets out the range of persons to whom the duty is owed.

Q 13 Do you agree that the requirement that members treat everyone equally and fairly is expressed clearly in the draft? If not, state why.

Q 14 Do you agree that all the grounds of discrimination should appear in the guidance? If not, state why.

Q 15 Do you have any other comments on the guidance notes to this principle?

PRINCIPLE 7 – Ensure your independence is not compromised

20. Clients have a right to expect that the advice they receive is impartial and free from any pressure. Therefore this principle requires that members remain impartial and do not allow their independence to be compromised. This principle incorporates a regulatory objective and professional principle of the Legal Services Act.
21. Independence can be compromised in a number of ways. The Code provides some examples which include acting where there is a conflict of interest, where instructions have been given under duress or undue influence or by a third party. The guidance notes also incorporate instances where there may be financial or other pressures. Financial pressure may include introduction and referral arrangements.
22. ILEX members also need to be aware of the sources of pressure. Pressure may be exerted by other clients, employers or external parties such as referrers.

Q 16 Do you agree that the Code should include the principle that members must ensure their independence is not compromised? If not, state why.

Q 17 Do you have any comments on the guidance notes to this principle?

PRINCIPLE 8 - Respect confidentiality and trust

23. A substantial amount of trust is placed in ILEX members by clients, the public, employers and other legal professionals. Due to the nature of transactions that ILEX members are involved in they receive confidential information. Members must respect the confidentiality of the information divulged to them and only disclose it to the right person. This principle reflects one of the professional principles in the Legal Services Act.
24. The rule recognises that there may be instances where confidential material has to be disclosed. For example, information may be disclosed to the police to prevent a crime or under the Money Laundering regulations to prevent and detect money laundering offences. In those instances a member should not be held out to be in breach of the Code.

25. Under the principle members are also obliged to keep documents safely. Where members are employed ultimate responsibility for the safe keeping of documents rests with their employers. Therefore the guidance to the Code has been framed so that members must see to the safe storage rather than set up safe storage systems, which may be outside their remit.

Q 18 Do you agree that the Code should include a rule that members must respect confidentiality and trust? If not, state why.

Q 19 Do you have any comments on the guidance notes to this principle?

PRINCIPLE 9 - Act within your competence

26. Under this principle a member may act only in a matter if they have the competence to do so. Competence covers knowledge, skills and experience. However, the guidance does recognise that a member might be developing their competence under supervision. In such instances they are able to act provided there are proper arrangements for supervision and training in place to help the member to develop their competence and ensure the quality of the service.

27. The principle also confirms that ILEX members have a duty to keep their skills and knowledge up to date through training and CPD courses. Not all grades of member are required to undertake CPD. However, a member who is obliged to undertake CPD but fails to do so will be held to be in breach of this principle to the Code.

28. The guidance to the principle confirms that a member should not act for a client in a matter where they have no right to act. This is intended to cover instances where a member is not authorised to provide legal services, such as reserved activities. ILEX members may undertake most reserved work if they work under the supervision of an authorised person. However, they would not be able to undertake this work in independent practice unless ILEX is authorised to grant such a right and has granted that right to the member.

29. The guidance incorporates the principle that members must not hold themselves out as having a qualification they do not. This is intended to cover ILEX members holding out that they are a Fellow of ILEX or using the title Legal Executive when they are not registered as a Fellow of ILEX. The title Legal Executive may be used only by Fellows of ILEX. The guidance is also intended to reflect the legal position that a person may not hold themselves out to be a solicitor unless they have qualified as a solicitor and are on the Roll of Solicitors.

30. The principle also confirms that responsibility for work that a member has delegated to another rests with the ILEX member who delegated that work. The member must ensure that they properly supervise such work.

Q 20 Do you agree that the draft expresses clearly the principle that members must only act within their competence? If not, state why.

Q 21 Do you agree that the guidance notes state sufficiently clearly that a member should act only in a matter where they have the right to do so? If not, state why.

Q 22 Do you agree that the guidance states sufficiently clearly that a member must not hold themselves out as having a qualification that they do not? If not, state why.

Q 23 Do you agree that the guidance should incorporate the principle that a member remains accountable for work they have delegated? If not, state why.

Q 24 Do you have any comments on the guidance notes to this principle?

OTHER CODES

31. The final section of the Code recognises that ILEX members may also be regulated by another organisation. For example, members may work in a practice that is regulated by another body. In those situations ILEX members must also comply with the Codes and Rules applicable to their practice.

32. The ILEX membership includes Associate Prosecutors, who are employees of the CPS. Associate Prosecutors must comply with the CPS Codes and rules applicable to them. These include the instructions issued by the Director of Public Prosecutions, CPS Code of Ethical Principles, National Standards of Advocacy and Code of Conduct.

33. The statement is also intended to cover instances where an ILEX member may be a member of another organisation, which is not an approved regulator. This might include specialist panel membership such as Resolution and APIL, who have their own Codes. These are voluntary membership bodies. However, in some instances employing firms might require ILEX members to be members of these bodies.

Q 25 Do you agree that the Code should recognise that ILEX members may be regulated by other organisations and should also comply with those codes and regulations? If not, state why.

Q 26 Do you agree that the Code should cover instances where an ILEX member is obliged to comply with a Code of a voluntary membership body? If not, state why

Q 27 Do you agree that the Code should recognise that Associate Prosecutors will be required to comply with the CPS Codes? If not, state why.

Q 28 Please provide any other comments you have on this section of the Code.

General questions

We also have some general questions which are listed below.

Q 29 Please provide any comments you have generally on the nine principles.

Q 30 Should there be anything else that should be included as a principle to the Code.

Q 31 Provide any other comments you have

CODE OF CONDUCT**About this document**

Membership of ILEX carries both privileges and responsibilities. It requires you to:

- develop and use your professional knowledge and skills for the benefit of clients, that is those who use your professional services
- maintain good professional relationships with others
- act in a way that promotes confidence and trust in the legal professions.

This Code of Conduct sets out the principles you must follow as an ILEX member. It is our core guidance on the conduct, practice and professional performance expected of you.

The following nine principles are intended to guide and support you in the work you do and the decisions you make. They also inform the general public of the standards of behaviour that can be expected of ILEX members: the public interest must be at the forefront.

You must at all times ensure public confidence in you and your profession. You must also ensure that you avoid engaging in action unbecoming to ILEX or likely to bring disrepute upon you or ILEX.

These are the nine principles. You must:

10. Uphold the rule of law and the impartial administration of justice
11. Maintain high standards of professional and personal conduct
12. Behave with honesty and integrity
13. Comply with the ILEX and IPS rules and bye-laws
14. Act in the best interests of your client
15. Treat everyone equally and fairly
16. Ensure your independence is not compromised
17. Respect confidentiality and trust
18. Act within your competence

These principles, and the supporting explanations below, encapsulate what it means to be a member of ILEX. Making this part of your professional life will help you maintain your professionalism and will underpin public confidence in you and your profession.

Status of the Code of Conduct

You must comply with this Code. As an ILEX member your professional and personal conduct will be judged against it, and a breach may lead to action under the Investigation, Disciplinary and Appeal Rules. We will take account of the Code in considering information which raises a question about a member. The supporting

explanations are not however exhaustive and we are not limited solely to the matters mentioned in the Code.

You must:

1. Uphold the rule of law and the impartial administration of justice

You must uphold the constitutional principle of the rule of law. You must ensure that you act lawfully and do not knowingly breach the law. You must be familiar with and comply with the law as it applies to you.

You have a duty to uphold the impartial administration of justice. You also have a duty to act in the best interests of your client. However, your primary and overriding duty is to the courts. You must not knowingly mislead the court. You must obey court orders and ensure your actions do not constitute a contempt of court.

2. Maintain high standards of professional and personal conduct

High standards are expected of you in both your professional and personal life. You must not engage in any conduct that could affect or undermine the confidence placed in you and your profession by your clients, other members of the legal profession and the public.

Personal conduct that may affect or undermine the confidence placed in you includes criminal convictions, breaches of the law, financial misconduct, dishonesty and any other behaviour deemed by IPS to bring disrepute upon yourself or ILEX.

3. Behave with honesty and integrity

You must be honest in all your dealings. You must maintain your integrity and uphold the respect and confidence placed in you and your profession by clients, the courts, the public, colleagues, employers and others. You must not wilfully mislead clients or anyone else you deal with.

You must provide clear and accurate information and advice. You must keep contemporaneous records of matters such as communications with clients, professional colleagues and others. You must deal honestly in financial matters, particularly with regard to transactions affecting office and client accounts and money held on behalf of others.

4. Comply with the ILEX and IPS rules and bye-laws

You must comply with all the ILEX and IPS rules and bye-laws which apply to you. These include the Memorandum and Articles of Association, membership and examination bye-laws, rules and regulations and the complaints handling rules. You must ensure that you are familiar with the rules and bye-laws relevant to you and keep your knowledge of them up to date.

5. Act in the best interests of your client

Except where they conflict with your duty to the court, your client's interests are paramount and you must act in their best interests. The work you undertake for clients must always be to a proper standard.

You must provide clear advice to your clients and act on their instructions except when to do so would involve a breach of the law.

You must have in place good client care and communication procedures. You must ensure your client understands your professional status, advise them openly and honestly, provide them with the information they need about their case or transaction. You must inform them fully and honestly about details of costs and complaints procedures.

You must keep your clients updated on progress in their case regularly. You must diarise action to be taken and keep time limits under review.

You must maintain proper standards of work and keep accurate records.

6. Treat everyone equally and fairly

You must treat everyone equally regardless of their age, gender, disability, race, colour, ethnic or national origin, sexual orientation, marital or family status, religion, belief or perceived social status. You owe this duty to clients, colleagues, employers, third parties including the other party in a transaction, and anyone else with whom you may have dealings.

7. Ensure your independence is not compromised

You must ensure that your independence is not compromised and that you remain impartial in all your dealings. Independence may be compromised in a variety of ways, including conflicts with clients, external pressure and financial interest in a

client's matter. Members working in a practice that includes a range of professions need to be particularly aware of the potential conflicts that could arise.

You must not act where there is a conflict of interest or a significant risk that a conflict may arise. This can include conflicts between:

- you and a client
- two or more clients for whom you act
- a client and your employer or colleagues.

There are some instances where you may act in a situation where a conflict would otherwise arise - for example, where two or more clients agree in writing to your acting for each of them and you can separate the duties you owe to each.

You should act for a client only where you are satisfied that there is no risk that they are providing instructions under duress or undue influence. You must also confirm with your client instructions given by a third party to ensure they are your client's own instructions.

You must ensure that no financial arrangements you have in place can affect the independence of your advice or your ability to act impartially. This includes any introduction and referral arrangements you have in place.

8. Respect confidentiality and trust

You must respect the trust placed in you and your profession by your clients, the public, employers and colleagues. You must act with probity, honesty and trustworthiness and must not engage in any conduct that may undermine that confidence or trust.

You must keep the affairs of your clients confidential. You may disclose information only to those entitled to receive it or to whom you have been authorised to disclose it. You must use information only for the purpose it was intended.

In certain rare circumstances the law or other provisions may require or authorise you to make disclosures, such as to prevent the commission of a criminal offence.

You have a duty to ensure the safety and security of electronic and paper documents in your possession. You must see to it that they are stored safely and ensure they are disclosed only to those entitled to receive them.

9. Act within your competence

You must act only on matters that are within your competence. These are cases or transactions where you have the knowledge, skills and experience to undertake the work. If you are not competent to act you must decline to do so.

You must keep your professional skills and knowledge up to date by undertaking relevant training and complying with our Continuing Professional Development regulations.

You must not act for a client in an area of law where you have insufficient knowledge or experience. Neither may you act in a matter where you do not have the right to act, for example, where you are not authorised to provide legal services. This does not prevent you from working in a structured environment on aspects of the law where you are developing your knowledge and skills.

You must not hold yourself out as having a qualification that you do not. This includes holding yourself out as a Legal Executive when you have not qualified as a Fellow of ILEX.

You must ensure you properly supervise tasks that you have delegated to others, recognising that you remain accountable for work which you have delegated to someone else.

Other Codes

If you are also regulated by or a member of another organisation, as well as IPS, you must also comply with Codes of Conduct, rules and regulations, however described, which apply to you.

CONSULTATION QUESTIONS

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

- Q 1** Do you have any comments on the introductory statements to the Code of Conduct? If yes, please set them out.
- Q 2** Should the Code of Conduct begin by saying that members must uphold the rule of law? If not, state why.
- Q 3** Do you have any comments on the guidance to the first principle to the Code of Conduct? If yes, please set them out.
- Q 4** Should this principle be included in the Code of Conduct?
- Q 5** Do you think there are there any other aspects of personal conduct that should be included in the guidance notes? If so, set out your views.
- Q 6** Do you have any comments on the guidance to the second principle to the Code of Conduct?
- Q 7** Does the draft express clearly the principle that members must behave with honesty and integrity? If not, state why.
- Q 8** Do you have any comments on the matters incorporated within the guidance notes? If so, state what they are.
- Q 9** Do you agree that the requirement that members comply with the ILEX and IPS rules and bye-laws should be included in the Code? If not, state why.
- Q 10** Do you have any comments on the guidance notes to this principle?
- Q 11** Do you agree that the Code should include the principle that members must act in the best interests of their client subject to their overriding duty to the courts? If not, state why.
- Q 12** Do you have any comments on the guidance notes to this principle?
- Q 13** Do you agree that the requirement that members treat everyone equally and fairly is expressed clearly in the draft? If not, state why.

- Q 14** Do you agree that all the grounds of discrimination should appear in the guidance? If not, state why.
- Q 15** Do you have any other comments on the guidance notes to this principle?
- Q 16** Do you agree that the Code should include the principle that members must ensure their independence is not compromised? If not, state why.
- Q 17** Do you have any comments on the guidance notes to this principle?
- Q 18** Do you agree that the Code should include a rule that members must respect confidentiality and trust? If not, state why.
- Q 19** Do you have any comments on the guidance notes to this principle?
- Q 20** Do you agree that the draft expresses clearly the principle that members must only act within their competence? If not, state why.
- Q 21** Do you agree that the guidance notes state sufficiently clearly that a member should act only in a matter where they have the right to do so? If not, state why.
- Q 22** Do you agree that the guidance state sufficiently clearly that a member must not hold themselves out as having a qualification that they do not? If not, state why.
- Q 23** Do you agree that the guidance should incorporate the principle that a member remains accountable for work they have delegated? If not, state why.
- Q 24** Do you have any comments on the guidance notes to this principle?
- Q 25** Do you agree that the Code should recognise that ILEX members may be regulated by other organisations and should also comply with those codes and regulations? If not, state why.
- Q 26** Do you agree that the Code should cover instances where an ILEX member is obliged to comply with a Code of a voluntary membership body? If not, state why
- Q 27** Do you agree that the Code should recognise that Associate Prosecutors will be required to comply with the CPS Codes? If not, state why.
- Q 28** Please provide any other comments you have on this section of the Code.
- Q 29** Please provide any comments you have generally on the nine principles.

Q 30 Should there be anything else that should be included as a principle to the Code.

Q 31 Provide any other comments you have

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 18 December 2009.

ANNEX 5

ANALYSIS OF CONSULTATION RESPONSES



**CONSULTATION - PROPOSALS TO REVISE THE
CODE OF CONDUCT FOR ILEX MEMBERS
COLLATION OF RESPONSES**

Responses to the consultation were received from:

- ILEX Council (ILEX)
- Office of Legal Services Ombudsman (OLSO)
- Two lay members serving the Investigating Committee (Lay)
- One of the newly appointed professional members (Prof)
- Crown Prosecution Service (CPS)

The responses to each question have been collated below. Each respondent has been referred to using the reference in brackets above. The notes in bold set out decisions that the IPS working party made after considering each consultation response.

CONSULTATION QUESTIONS

- Q 1** Do you have any comments on the introductory statements to the Code of Conduct? If yes, please set them out.

Provide comments below

ILEX –Although this is a Code of Conduct and therefore indicates that the Code is about ethical matters, there is a considerable amount that relates to practice. This, of course, is made plain in the second paragraph of the introduction. As will be seen from other comments, it may be that some of the issues of practice that are heightened in the Code are too detailed.

As the introduction not only makes it plain, (as it should) that individuals must comply with the Code, it also indicates that explanations are not exhaustive. It would be useful if IPS and ILEX

could have discussions as to how we are to provide an advisory service to members that will give them confidence in the absence (in our view quite correct absence) of lengthy supporting explanations. Reference should also be made to all new membership grades that may be introduced from time to time.

The practice elements of the guidance notes were reorganised by the WP (Working party) where appropriate.

The ILEX and IPS staff are in discussions about developing a advisory service for members.

WP determined that no revision was required to make reference to all grades of ILEX members as the current reference to ILEX members without reference to any particular grade was sufficient.

OLSO – no comments

Prof – Yes. It is important that there should be openness and transparency. Would it be of benefit to mention that members may also be subject to eg the Solicitors Act 1974, the Legal Services Act 2007 and rules of the CLC rather than other Codes.

The closing section of the Code, Other Codes, was sufficient to cover this point without making reference to specific codes, the titles of which could change .

CPS – no

Q 2 Should the Code of Conduct begin by saying that members must uphold the rule of law? If not, state why.

Provide comments below

ILEX –Yes. Upholding the Rule of Law is key to the position in society as lawyer/trainee lawyer/legal professional. It is what the work of all lawyers is about.

OLSO – yes

Prof - yes

CPS - yes

Q 3 Do you have any comments on the guidance to the first principle to the Code of Conduct? If yes, please set them out.

Provide comments below

ILEX –The balance of the duty to the Court and duty to client is often difficult to understand and sometimes, in practice, very difficult to judge, and opaque. This is a very complex area that lawyers often get wrong. Thought needs to be given as to how either general or individual tailored advice or guidance can be given to members without extending the guidance within the Code and making it long and unwieldy.

WP decided that the guidance to be given to members through the advisory service would address this point rather than the Code.

OLSO – no comments

Lay – is the Legal Services Act 2007 comprehensive for the purposes of the Code. To be on the safe side I would have added 'and other enactments' but this may not be necessary. How would this apply to oversees members?

Not necessary to make any amendments. Code is sufficient to cover oversees members without making any specific reference.

Prof – Principle 1(9) would this be better stated that members must recognise that their primary duty is to the courts and not their client. That they must not mislead the courts and further must comply with all orders of the court and not do anything which would place them in contempt of court.

Wording revised. However, it expressed clearly that a duty was owed to clients whereas the above suggestion would not.

CPS – yes. We suggest that the ILEX code adopts the same wording as the Code for Solicitors which was recently amended to include the phrase 'or knowingly allow the court to be misled' in the equivalent principle here.

WP decided not to make this amendment as the current draft was fine.

Q 4 Should the first principle be included in the Code of Conduct?

Provide comments below

ILEX – Yes. Again, it goes to the heart of being a professional.

OLSO - yes

Prof – Yes. It is very important that members are reminded of their absolute duty.

CPS - yes

Q 5 Do you think there are there any other aspects of personal conduct that should be included in the guidance notes? If so, set out your views.

Provide comments below

ILEX - This again is an area where an advisory service would be helpful to members.

Not necessary to address this as part of Code itself

OLSO - no

Lay – should there be a specific requirement to declare prior conduct at the earliest opportunity and that failure to do so may amount to misconduct.

The code includes the requirement to comply with ILEX by-laws which would incorporate the Investigation, Disciplinary and Appeal Rules (IDAR). The IDAR states that prior conduct should be declared at the earliest opportunity.

Prof – yes. In relation to the examples of personal misconduct, this may be further swept up by referring to any misconduct which may in the absolute discretion of IPS, be deemed to be a breach of the Code. I would not be inclined to include the sentence 'IPS would not expect all personal issues to fall within the ambit of the Code'. As this could lead to challenges unless my suggested wording is adopted.

The respondent had commented on words used in the

consultation discussion document rather than the Code. No other amendment required.

CPS – this is not a matter on which the CPS would wish to comment.

Q 6 Do you have any comments on the guidance to the second principle to the Code of Conduct?

Provide comments below

ILEX –In line two of the first paragraph I would suggest that the word 'adversely' should be placed before the word 'affect'.

Inclusion of this word was not necessary.

OLSO – no comments

Lay – might be worth mentioning bankruptcies and IVAs

Guidance notes refer to financial misconduct. That captures the key part of financial orders that could impact upon membership.

CPS - no

Q 7 Does the draft express clearly the principle that members must behave with honesty and integrity? If not, state why.

Provide comments below

OLSO - yes

Lay – clear, accurate and *timely*

Added 'timely' to guidance notes

Prof - yes

CPS – yes

Q 8 Do you have any comments on the matters incorporated within the guidance notes? If so, state what they are.

Provide comments below

ILEX – I am a little concerned about the use of the term 'wilfully' in line three of paragraph one. Does this mean that knowingly, or carelessly? Wilfully suggests a certain amount of maliciousness and/bad intent; I would like to see adverbs that suggests knowledge, carelessness, and with good as well as bad intent. However, upon discussion council members recognised that wilfully means knowingly and was preferable to recklessly.

The money laundering regulations include a good definition of wilfully. The second paragraph is a practice matter. This seems to me to go beyond ethical practice, save in relation to the last sentence in relation to financial matters. Nor does it necessarily have anything to do with honesty and integrity.

On balance it appears use of 'wilfully' is the right approach. Second paragraph of the guidance should be retained. In practice it is a common area where members have not met acceptable standards. However, the guidance will be incorporated within the guidance to principle 5.

OLSO – no comments

Prof- I would question whether the requirement to keep clear accounting records should be expressed as applying only to principals as it would be for the firm's principals to comply with, eg, the Solicitors Account Rules; the CLCs rules and not a fee earner in a solicitor's practice. I agree that proper file records should be kept including financial information but the reason is expressed in the code as to protect money. This as said is the responsibility of the principal(s) of the firm.

Rephrased wording on last sentence to guidance for principle 3 and changed to refer to money held on behalf of others.

CPS - no

Q 9 Do you agree that the requirement that members comply with the ILEX and IPS rules and bye-laws should be included in the Code? If not, state why.

Provide comments below

ILEX - Yes. The rules/byelaws form part of our contract with members. It is through that contract that we are able to regulate those members. The drawing of attention to this obligation is important.

OLSO - yes

Prof - yes

CPS – yes. It seems to us to be a matter of professional competence that one complies with the rules of the profession; this requirement needs to be included within the rules of conduct themselves.

Q 10 Do you have any comments on the guidance notes to this principle?

Provide comments below

ILEX – no, except that they should include a reference to future rights that might be granted to members.

Dont need a specific reference to future rights as they would be the same as any other ILEX rules. However, add in other Codes as members with additional rights are subject to additional Codes.

OLSO – no comments

Prof – I think that rather than referring to examples of rules etc, the code should include a link to where the rules and bye laws may be found on the web site.

The references to the rules are meant to be non-exclusive. The links to the rules etc would be picked up on the ILEX and IPS websites, as appropriate. However, the Code itself doesn't need to include the links.

CPS – no

Q 11 Do you agree that the Code should include the principle that members must act in the best interests of their client subject to their overriding duty to the courts? If not, state why.

Provide comments below

OLSO - yes

Lay – this is the only one which is not identical with the nine principles on page 11, using clients rather than client. For consistency one style or the other should be adopted. Also add 'and timely' to the end of the guidance notes.

In the guidance notes there is a requirement to diarise action to be taken but not, as far as I can see, a requirement to maintain and retain attendance notes, record of telephone calls, etc., the lack of such records is often an issue in disciplinary cases, of course. Again final paragraph, perhaps a reference to capacity.

Corrected the references to clients/clients to bring consistency.

Added in 'and timely'

The guidance to principle 3 includes keeping contemporaneous notes, which was intended to incorporate attendance notes.

Not reason why reference to capacity was needed.

Prof - yes

CPS – yes. Associate Prosecutors have no direct clients. For this reason, the current ILEX Code exempts Associate Prosecutors from certain requirements, including those of client liaison. We suggest that a similar approach should be adopted in the revised Code.

Addressed this later on.

Q 12 Do you have any comments on the guidance notes to this principle?

Provide comments below

ILEX - Again, we will need to be clear as to how we give advice on the difficult areas of conflict of duty to the court and client's interest.

The guidance notes also slip too far into practice. For example, 'You must keep your clients updated on progress and must diarise action to be taken and keep time limits under review', whilst absolutely excellent good practice, sits uneasily within an ethical code. There are, no doubt, many other omissions that lead to claims of negligence and are poor practice, and not all of these can be listed. It is appreciated that these particular areas perhaps cause the most

difficulty for our members but would appear to be too much practice orientated for inclusion.

Council also discussed that members who are employed would need to comply with the rules of their employers, and therefore would have no control over client care procedures. It was recognised that the disciplinary panels would recognise that position.

Guidance notes were revised and amalgamated within other guidance transferred to this principle of the Code.

OLSO – no comments

Prof – for the sake of clarity, it may be of benefit to refer to the duties under the Solicitors Code of Practice in relation to client care to which the member may be subject.

The reference to other codes at the conclusion of the code covers this without naming each Code.

CPS – no

Q 13 Do you agree that the requirement that members treat everyone equally and fairly is expressed clearly in the draft? If not, state why.

Provide comments below

OLSO - yes

Prof - yes

CPS - yes

Q 14 Do you agree that all the grounds of discrimination should appear in the guidance? If not, state why.

Provide comments below

OLSO - yes

Lay – I suspect that cases involving a lack of capacity may become more prevalent in the future, so I wondered whether there should be a reference to lack of capacity here.

Lack of capacity would be captured within disability. It is likely that someone lacking capacity may require a higher level of treatment rather than equal treatment.

Prof – Yes. This will need to be updated if the Bill currently going through the House of Commons is made law.

CPS – yes

Q 15 Do you have any other comments on the guidance notes to this principle?

Provide comments below

ILEX - It is important that the Code of Conduct underlines the commitment of lawyers to equality of treatment. That being the case it is important that all grounds of discrimination should appear in the guidance including that of social status. The principle is to treat everyone equally and fairly. The 'fairly' is not reflected in the guidance. The guidance as expressed could enable a member to treat anyone equally unfairly. Perhaps a little thought as to what is meant by 'fairly' could be added to the guidance or be eliminated from the principle.

Included reference to fairly in the guidance.

OLSO – no comments

CPS – yes. We think it would be better if the last line of principle 6 were amended to read 'with whom you may have *professional dealings*'.

Decision made not to restrict to professional dealings alone. It would allow a member to participate in discriminatory practices outside of their working environment whereas that would be inappropriate.

Q 16 Do you agree that the Code should include the principle that members must ensure their independence is not compromised? If not, state why.

Provide comments below

OLSO - yes

Prof - yes

CPS - yes

Q 17 Do you have any comments on the guidance notes to this principle?

Provide comments below

ILEX -It is essential that Code should include the principle that members must ensure their independence is not compromised. The emphasis in the guidance is on conflicts of interest, between two or more clients of the firm or business. Independence may be compromised by the type of targets set by the employer; or by the manner in which the employer or employing business requires the lawyer to do that business. It is a concern that is raised in connection with ABSs, so perhaps some guidance to address ABS developments, or at least to acknowledge them, would be appropriate.

Council also discussed whether more detailed guidance on conflicts should developed into a separate guidance note. They also suggested that a significant risk of conflict should be replaced with potential risk.

Further guidance on conflicts could form part of the advisory service work outside of the Code. Added in conflicts between a client and the commercial, financial or political interests of employer.

Retain reference to significant risk as everything could be a potential risk.

OLSO – no comments

Lay – I think the phrase 'members must see to the safe storage rather than' is a little clumsy and somewhat imprecise. How would / could it be applied in practice?

Wording amended in guidance note.

Prof – perhaps a reference to the Solicitors Code of Practice? Include a reference to the requirement for members to declare an interest for a potential conflict of interest which may lead to an actual conflict? Ties in with principle 7.

The Principle itself covers risk of conflict, which could be a potential conflict which may lead to an actual conflict. No need to include Solicitors Code as it is referred to in concluding paragraph.

CPS - no

Q 18 Do you agree that the Code should include a rule that members must respect confidentiality and trust? If not, state why.

Provide comments below

OLSO - yes

Prof - yes

CPS – yes

Q 19 Do you have any comments on the guidance notes to this principle?

Provide comments below

ILEX - Again it is an essential matter of ethics that members must respect confidentiality and the trust that is placed in them.

I note that in the first paragraph within the guidance there is an overlap with Principle 3 and Principle 2.

It is recommended that the guidance make it clear that lawyers may only breach confidence in relation to the commission of a serious criminal offence. There is no legal basis for disclosure to prevent crime, save for terrorism and money laundering (or other specific legislative matters). This means that lawyers have no legal justification for making disclosures to prevent the commission of a criminal offence unless that offence is of a serious nature, for example, serious physical harm, murder, child abuse including taking children out of the jurisdiction unlawfully. It is important that members are not misled by the general nature of the wording currently employed. Possibly revise the wording to state that members should not make a disclosure unless required by law.

Although there may be overlap with some of the other principles it is important to state that members must respect confidentiality and trust.

Amendment made to refer to serious criminal offence.

OLSO – no comments

Prof – perhaps include a reference to compliance with the Data Protection Act / Freedom of Information Act.
The general guidance is sufficient.

CPS – no

Q 20 Do you agree that the draft expresses clearly the principle that members must only act within their competence? If not, state why.

Provide comments below

OLSO - yes

Prof - yes

CPS - yes

Q 21 Do you agree that the guidance notes state sufficiently clearly that a member should act only in a matter where they have the right to do so? If not, state why.

Provide comments below

ILEX – should state that only act where you have competence to do so.
The guidance was intended to cover situations where members are developing competence. The ILEX suggestion would prevent that.

OLSO - yes

Prof - yes

CPS – yes

Q22 Do you agree that the guidance state sufficiently clearly that a member must not hold themselves out as having a qualification that they do not? If not, state why.

Provide comments below

OLSO - yes

Prof - yes

CPS - yes

Q 23 Do you agree that the guidance should incorporate the principle that a member remains accountable for work they have delegated? If not, state why.

Provide comments below

OLSO - yes

Prof – Yes, but only in circumstances where that member is qualified to undertake the work. If not, the member should not delegate the work but pass it to a principal within the practice or other suitably qualified person.

The guidance was intended to cover members developing competence in a structured environment, rather than delegating their work. The suggestion would prevent that.

CPS - yes

Q 24 Do you have any comments on the guidance notes to this principle?

Provide comments below

ILEX - Paragraph three of the guidance may need some revision. Members may not understand the phrase 'where you are not authorised to provide legal services' relates to authorisation to undertake reserved legal activities. The final sentence also is not clear; what is a structured environment?

A more detailed explanation can be provided in other documents outside of this code and guidance.

OLSO – no comments

Prof - no

CPS - no

- Q 25** Do you agree that the Code should recognise that ILEX members may be regulated by other organisations and should also comply with those codes and regulations? If not, state why.

Provide comments below

ILEX – should the Code stipulate which Code takes priority whether the IPS code conflicts with other codes.

It might be appropriate to deal with priorities on a case by case basis. Closing note added to the Code with details of where members can seek further guidance and help.

OLSO - yes

Prof - yes

CPS - yes

- Q 26** Do you agree that the Code should cover instances where an ILEX member is obliged to comply with a Code of a voluntary membership body? If not, state why.

Provide comments below

OLSO - yes

Prof – yes. Members should be subject to all codes / regulations as appropriate to their work

CPS - yes

Make reference to codes of professional organisations in section headed other codes.

- Q 27** Do you agree that the Code should recognise that Associate Prosecutors will be required to comply with the CPS Codes? If not, state why.

Provide comments below

OLSO - yes

Prof - yes

CPS – yes. The current Code of Conduct is supported by the Guides to Good Practice, section E of which specifically requires Associate Prosecutors to comply with the Director’s Instructions, the Statement of Ethical Principles for DCWs (now replaced by the Statement of Ethical Principles for the Public Prosecutor) and the National Standards of Advocacy. We think that it would be helpful if the revised code also included specific reference to these particular other codes in some form, in order to avoid any uncertainty among Associate Prosecutor members.

After detailed and careful consideration it was determined that the section headed other codes was sufficient to cover the position that Associate Prosecutors may need to comply with CPS codes as well. The current Code excludes Associate Prosecutors from complying with parts of the guidance which reflect duties owed to clients. This is because their client is their employer. It was recognised the same would apply to other members of ILEX employed by organisations as opposed to those who work in private practice. The introductory section of the Code headed ‘status of the Code of Conduct’ was amended to state ‘you must comply with this code wherever it applies to you in your professional life’.

Q 28 Please provide any other comments you have on this section of the Code.

Provide comments below

ILEX - As drafted the statement may be too straightforward. Of course ILEX members must comply with the Codes and Rules applicable to the practice within which they are working, but where the Codes conflict, whose should prevail? This has been a long running matter for ILEX members who are subject to the Law Society’s Code of Conduct (through our own Code) but who are employed in Licensed Conveyancing firms. The Codes conflict and the issues for our members have never been satisfactorily reconciled.
If an ILEX member voluntarily joins a membership association, as a

member of ILEX, a lawyer or trainee lawyer, this should be made clear to the member that they should comply with the Code of the membership association which they have joined provided it does not in any way conflict with our Code. If it does, the member should cease membership of that voluntary membership association.

It is absolutely right that the Code should recognise that Associate Prosecutors will be required to comply with the CPS Codes. As the direct regulator by statute of Associate Prosecutors, it should be the case that the ILEX Code and the CPS Codes never conflict.

See response at Q27. Conflicts would be dealt with on a case by case basis.

OLSO – no comments

CPS – as above

Q 29 Please provide any comments you have generally on the nine principles.

Provide comments below

OLSO – no comments

Prof – principles based regulation is certainly the way forward. I think the stated principles provide valuable guidance to what is required of members. Many are common sense, ethics based with our profession should aspire to.

CPS – see covering letter

Q 30 Should there be anything else that should be included as a principle to the Code.

Provide comments below

OLSO – no comments

CPS – no suggestion

Q 31 Provide any other comments you have

Provide comments below

OLSO – no comments

Lay – is there, or should there be, an obligation on members to respond to the Institute's requests / demands / requirements in a full, timely and appropriate manner in the Code of Conduct. It seems to me it is, or should be, a principle.

Added in this responsibility into the guidance to principle 4

CPS – see covering letter attached to this document. The current guide to good practice contains a specific section for Associate Prosecutors. It states that Associate Prosecutors must comply with internal CPS instructions. The CPS would welcome specific guidance in the new code.

Discussed at Q27