



Legal Services Board – decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

ILEX Professional Standards Limited rule change application for approval of alterations to regulatory arrangements: to alter regulatory arrangements for authorising those who provide immigration advice and immigration services

The Legal Services Board (LSB) has granted an application from ILEX Professional Standards Limited (IPS) who sought to make changes to its regulatory arrangements for authorising persons to provide immigration advice and immigration services. The application sought to introduce qualification, indemnification, and compensation arrangements, as well as arrangements for regulating individuals and entities.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (**the LSA 2007**) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Chartered Institute of Legal Executives (CILEx) is an approved regulator and IPS is the regulatory arm to which CILEx has delegated its regulatory functions.
2. Paragraph 25 of Schedule 4 to the LSA 2007 explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. For example, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the LSA 2007, the LSB has made rules² about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the LSA 2007 to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the LSA 2007 requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.
4. Schedule 18 to the LSA 2007 makes provision for approved regulators to become qualifying regulators for the purposes of Part 5 of the Immigration and Asylum Act 1999 (**IAA 1999**). From 1 April 2011, Schedule 18 came into force and as of that date the LSB became responsible for the oversight of approved regulators' regulation and authorisation those who provide immigration advice or immigration services.
5. Paragraph 3 of Schedule 18 to the LSA 2007 sets out how an application to become a qualifying regulator of immigration advice and immigration services must be made. Under rule 4 of the Rules for Rule Change Applications, an alteration to an approved regulator's regulatory arrangements does not have effect unless it is approved by virtue of paragraph 7 of Schedule 18 to the LSA 2007 – that is, approval of proposed regulatory arrangements when granting "qualifying regulator" status for the purposes of Part 5 of the IAA 1999.
6. The chronology for the LSB's handling of this application can be found towards the end of this decision notice.

Background to application

7. CILEx was a 'Designated Professional Body' under the IAA1999 and was previously subject to oversight by the Office of the Immigration Services Commissioner (**OISC**). Furthermore, under paragraph 23(3) of Schedule 18 to the LSA, CILEx (referred to as ILEX in the LSA 2007) may in its role as qualifying regulator only authorise a person to provide immigration advice and immigration services, if that person has in force a certificate issued by CILEx authorising that person to practise as a legal executive.
8. This application relates to all the activities that fall within 'relevant matters' under section 82 of the IAA 1999:
 - Claim for asylum
 - Application for or variation of entry clearance or leave to enter or remain in the United Kingdom (UK)
 - Unlawful entry into the UK
 - Nationality and citizenship under the law of the UK
 - Citizenship of the European Union

² Rules for Rule Change Applications – Version 2 (November 2010)

- Admission to Member States under Community law
 - Residence in a Member State in accordance with rights conferred by or under Community law
 - Removal or deportation from the UK
 - An application for bail under the Immigration Acts or under the Special Immigration Appeals Commission Act 1997
 - An appeal against or an application for judicial review in relation to decisions in connection with any of the above.
9. CILEx and its predecessor ILEX under the provision of the IAA 1999, have therefore been regulating immigration practitioners since 1999. In April 2004, CILEx closed its authorisation for new entrants and limited its regulation to those that were CILEx members prior to April 2001 and had registered as immigration practitioners prior to April 2004. It has not taken on any new immigration practitioner registrants since then and according to its application has (at the time of submission of the application) 26 immigration practitioners. This application seeks to establish a scheme for assessing and accrediting both existing and new immigration practitioners.

Proposed changes

10. The application seeks to add new regulatory arrangements in the form of the Immigration Certification Rules.
11. The existing regulatory arrangements for immigration practitioners are largely focussed on conduct rules and disciplinary arrangements. This application therefore also seeks approval for the following sets of arrangements which allow IPS to authorise entities. These regulatory arrangements are identical to those in the application seeking a recommendation from the LSB to the Lord Chancellor for designation as an approved regulator for probate activities and reserved instrument activities that was submitted at the same time:
- Admission and Licensing Committee Rules;
 - Authorisation Rules;
 - Strategic Risk Committee Rules;
 - CILEx Code of Conduct;
 - Accounts Rules;
 - First Tier Complaints Handling Requirements;
 - Investigation, Disciplinary and Appeal Rules;
 - Professional Indemnity Insurance Rules;
 - IPS Minimum Wording; and
 - Compensation Fund Rules.

The Assessment Process – issuing a warning notice

12. The LSA 2007 provides that, if the LSB is considering whether to refuse an application, it must issue a warning notice to the applicant. Paragraph 22 of Schedule 4 to the LSA 2007, allows the LSB to seek formal advice from such persons it considers appropriate to give the LSB advice regarding whether the application should be granted. In the case of this application, if granted it would result in a significant widening of the regulatory scope of CILEx. Accordingly, the LSB decided to seek the advice of COIC to help in its assessment of the application.
13. The LSB also wanted to be satisfied that CILEx was competent and had sufficient resources to undertake regulation in relation to the alterations to regulatory arrangements being sought.
14. A warning notice was issued on 18 April 2013 after which the LSB asked OISC for advice which was received on 26 July 2013. Representations were made by IPS on 13 August 2013.

Specific issues

15. OISC met with IPS in the course of its consideration of the IPS proposals and in its advice it said it had no objections to the application. However, it made a number of observations which are set out below.

Monitoring quality and risk

16. OISC expressed concern as to whether CILEx would be able to effectively monitor the quality of work done, as it appeared from the application it would only be done on the basis of complaint data. IPS said its overall approach to its entire regulated community will be to achieve effective supervision through its ongoing monitoring and annual returns. The approach will include an intelligence gathering function to help IPS identify risk triggers in particular practice areas, including immigration. The approach, it said, goes beyond simply monitoring complaints data.
17. IPS also confirmed that it already has experience of carrying out visits to all its existing immigration advisers as part of its risk assessment framework testing. The risk assessment framework was piloted with IPS firms who offer immigration advice and services. While a small sample of mostly sole traders, it nonetheless enabled testing of the framework. Following the trial, amendments were made and a second pilot is now underway with Chartered Legal Executives who currently operate independently (but who do not deliver reserved legal activities – e.g. employment advisers). The immigration advisor visits were detailed and included assessments on files selected at random, to assess the competence and quality of work provided. Matters of quality were raised with advisors who were also required to address any issues resulting from the inspection.
18. OISC also expressed concern about the challenges of risk assessments based solely on desk-based audits. IPS confirmed that it does not intend to rely solely on desk-based

processes. Where information provided by an entity in the authorisation process requires exploration, a visit will be carried out before the authorisation assessment is complete. IPS also recognises that a new entity may have limited information at the point of authorisation and may, as a result, need supervisory activity, including a visit.

19. The LSB shares the OISC desire that IPS should have its own effective structures and processes in place for supervising entities providing immigration services. Having considered the application and tested via discussions with IPS its approach to risk and supervision, the LSB is content that IPS has the necessary systems and procedures in place to enable effective supervision.

Disclosure and barring

20. IPS confirmed that each manager of an entity will be required to supply a Disclosure and Barring Service (formerly the Criminal Records Bureau) report for authorisation. Concern was expressed by OISC that this would not happen in practice.

Supervision of employees

21. OISC raised an overall concern about how well IPS will be able to monitor the supervision of employees in entities run by Fellows. For example, it believes there is heavy reliance by IPS on self declaration through annual practice returns. IPS made clear that as part of the authorisation process, entities will provide details of their management structure and supervision arrangements. This will include the name, status and professional qualification of the employees and the areas of work they will undertake. This information will be required as part of annual returns to IPS. Triangulation of data with other sources, such as financial information, will help to enable IPS to establish if there are inconsistencies in information provided about employees. The LSB is content that, with this combined approach, IPS has in place an appropriate and proportionate mechanism for monitoring the supervision of employees.

Risk of regulation evasion

22. A related risk raised by OISC in respect of supervision, was that there might be a danger of immigration advisers evading regulation by claiming they are being supervised by solicitors. However, IPS has a system in place, whereby the application form for authorisation is designed to obtain information about management and supervisory structures. IPS has said that it will use this as an evidence base, were an advisor to try and evade regulation. The use of such evidence is already a standard approach by IPS. The LSB considers that while there is opportunity for regulatory evasion, IPS has put in place mechanisms to minimise such a risk.

Regulatory capability and capacity

23. The LSB is satisfied from its assessment that IPS has the necessary capability, capacity and resources to enable it to authorise and regulate those providing immigration advice

and immigration services. As set out in the LSB's decision notice³ of 9 December 2013 in relation to the CILEx designation application, IPS has managed a phased recruitment which has enabled it to bring in people with relevant experience, thus mitigating the risks associated with carrying out a new and expanded scope of activity. This includes its ability to undertake supervision and compliance through its risk based approach. In addition, as mentioned in this notice, IPS has already been regulating a small number of its members who provide immigration advice and immigration services and therefore has been able to scope the resources and capacity for undertaking authorisation and regulation on a larger scale.

LSB Decision

24. The LSB has considered IPS' application against the criteria in paragraph 25(3) of Schedule 4 to the LSA 2007 and is satisfied that there is no reason to refuse the application in respect of the following specific regulatory arrangements:

- The Immigration Certification Rules
- Authorisation Rules with the exception of rule 2(4) which is only approved in part
- Admissions and Licensing Committee Rules
- The Strategic Risk Committee Rules
- CILEx revised Code of Conduct
- Accounts Rules
- First Tier Complaints Handling Requirements
- Investigation, Disciplinary and Appeal Rules
- Professional Indemnity Insurance Rules
- The IPS Minimum Wording

25. Accordingly, the LSB grants the application in so far as it applies to those arrangements.

26. However, it should be noted that the LSB is not in a position at this stage to assess and reach a decision in relation to the following rules:

- Rule 2(4) of the Authorisation Rules in so far as it relates to the Compensation Fund Rules; and
- the Compensation Fund Rules.

27. This is on the basis that an order is required under section 69 of the LSA 2007 to modify the powers of CILEx in order to allow it to make rules relating to the starting up and maintaining of a compensation fund. If the necessary order is made, the LSB will then be able to consider the remaining components of this application. In the LSB's view, if the applicant makes the alterations anticipated with respect to the Compensation Rules, we would envisage these being considered for exemption from approval.

28. Annex 1 to this decision notice contains a link to the rules that the LSB has approved in this notice.

³ The Decision Notice was published on the LSB website and can be found via the following link:
http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/IPSDecisionNotice.pdf

Chronology

- The LSB confirmed receipt of an application from IPS on 25 March 2013.
- On 5 June 2013, the LSB extended the initial decision period to 11 August 2013.
- The LSB issued a warning notice on 18 April 2013; this extended the decision period to 17 April 2014.
- Advice was requested from COIC on 29 May 2013.
- COIC sent its advice to the LSB on 22 July 2013.
- The advice received was sent to IPS on 31 July 2013. IPS made its written representation on 13 August 2013.
- This decision is being issued to the IPS on 19 December 2013 and will be effective from that date.
- This decision notice will be published on our website on 20 December 2013.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
19 December 2013

Annex 1

The regulatory arrangements approved have been published as a separate document on the LSB website alongside this notice at

http://www.legalservicesboard.org.uk/what_we_do/regulation/applications.htm#2013