

# **INSTITUTE OF LEGAL EXECUTIVES**

**APPLICATION TO THE LEGAL SERVICES  
BOARD TO BECOME AN APPROVED  
REGULATOR  
FOR PROBATE RIGHTS**

**Entity regulation version Feb 2011**

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## PROBATE RIGHTS CERTIFICATION RULES

### 1. Definitions

'**Certificate**' means a Probate Services Certificate

'Employed member' means a member who is not a manager of an entity.

"Entity" means any person or body providing or offering to provide legal services which include any reserved legal activity performed by a Probate Practitioner.

'**ILEX**' means the Institute of Legal Executives

'**Institute**' means ILEX or any other body that becomes responsible for its regulatory functions

'**IPS**' means ILEX Professional Standards Ltd

'**Knowledge and Experience Guidelines**' means the Knowledge and Experience Guidelines set out in **Appendix 1** to these Rules

'Officer' means an employee of IPS whose duties include the assessment of applications made under these rules.

'**Qualifying member**' is a member of ILEX who falls within paragraph 3.3 of these Rules.

'Manager' means a manager as defined in section 207 Legal Service Act 2007.

'Probate practitioner' is a Qualifying member holding a Probate Certificate.

'**Rules**' refers to the current version of ILEX's Certification Rules relating to a Probate Services Certificate

### 2. Purpose of the Rules

- 2.1 These Rules apply to applications made to ILEX for a Certificate and applications made by entities seeking authorisation to provide probate services.

- 2.2 [By these rules](#) ILEX ~~will~~ delegates responsibility for the probate rights scheme to ILEX Professional Standards Ltd.

### 3. Eligibility to apply for a certificate

- 3.1 Applications for a Certificate may be made in accordance with paragraph 3.2 by qualifying members as defined by paragraph 3.3 and by non-qualifying members.
- 3.2 Where a person, who is not a qualifying member, wishes to apply for a Certificate they must also apply at the same time to ILEX for qualifying membership on the form prescribed for this purpose by ILEX. A Certificate will only be granted to a person who has been accepted into qualifying membership by ILEX.
- 3.3 A qualifying member for the purposes of these Rules is a person who is:
- a Fellow or Graduate member of ILEX, or
  - a Probate Associate member of ILEX
  - within any other category of membership, which ILEX may establish from time to time and which ILEX has determined as being appropriate for those applying for a Certificate.
- 3.4 A Probate Associate member is a person who has been accepted by ILEX as meeting the rules relating to this category of member.

### 4. Applications for a Certificate

- 4.1 Applications for a Certificate must be made to [ILEXIPS](#) on the form prescribed by [ILEXIPS](#).
- 4.2 Applicants must provide the following supporting information or statements:
- 4.2.1 where an applicant is unable to give a declaration in relation to the matters mentioned in paragraph 5.2.1 of these Rules, a statement in writing explaining why this is the case.
- 4.2.2 proof of identity and residence in such form as [ILEXIPS](#) may prescribe.
- 4.2.3 in the case of an applicant in independent practice, a bankers' reference in relation to the practice in such form as [ILEXIPS](#) may prescribe.

- 4.2.4 where required to do so by [ILEXIPS](#), an employer's reference in such form as [ILEXIPS](#) may prescribe.
- 4.2.5 a written statement outlining the applicant's qualifications, and their typical workload over the last two years, in accordance with Rule 5.3.1. stating the range of their work and its complexity.
- 4.2.6 in the case of an employed member, written confirmation from their employer of the workload details in accordance with Rule 5.3.2 given by the applicant under paragraph 4.2.5.
- 4.2.7 a portfolio, in the form prescribed by [ILEXIPS](#), in accordance with Rule 5.3.3. of five cases handled by the applicant over the past two years which demonstrates that their knowledge of the law and procedure relating to probate business meet the knowledge and experience guidelines
- 4.2.8 in the case of an applicant who relies on knowledge not gained through examination to meet the knowledge requirements of the Knowledge and Experience Guidelines, evidence of their knowledge of the law and practice relating to probate business in accordance with Rule 5.3.4 provided by completing an assessment form provided by [ILEXIPS](#).
- 4.2.9 if so required by [ILEXIPS](#), such references, other than those referred to in this paragraph, as required under paragraph 5.3.5 necessary to support the applicant's statements relating to their knowledge or experience.
- ~~4.2.10 in the case of applicants in independent practice, a written statement relating to the practice requirements referred to in paragraph 6.2 of these Rules and such evidence to support that statement as may be required by ILEX from time to time.~~
- ~~4.2.11 where required to do so under paragraph 6.5 of these Rules, a transitional practice management undertaking in such form as ILEX may require~~
- ~~4.2.12 where required to do so, a signed right of inspection authority referred in paragraph 12 of these Rules.~~

## 5. The eligibility criteria

- 5.1 Applicants for a Certificate must, at the date that the Certificate is granted:

- be a qualifying member (paragraph 3)
- be in good standing (paragraph 5.2)
- demonstrate that they have an acceptable level of experience of delivering probate services (paragraph 5.3)
- show that they have sufficient knowledge of relevant law and practice (paragraph 5.3)

## 5.2 The applicants' standing

5.2.1 Applicants for a Certificate must sign declarations, in such form as [LEXIPS](#) may require, to ~~show the following effect that is,~~ that:

- they have no criminal convictions and are not subject to criminal investigation, (driving offences not resulting in disqualification from driving are excepted)
- they are not bankrupt or subject to any bankruptcy proceedings nor have they made any composition or arrangement with their creditors or entered into an Individual Voluntary Arrangement
- they have no court judgments recorded against them and are not at the date of application subject to any court proceedings
- they are not nor have they been subject to any disciplinary proceedings by any professional institution of which they are a member or were a member which resulted in their expulsion or any other penalty
- they have not been the been made subject to an Order made under section 43 Solicitors Act 1974

~~5.2.2 in the case of a~~ Applicants for a Certificate who are ~~directors-managers~~ of an company-entity which seeks authorisation to deliver probate services must sign declarations, in such form as IPS may require, that:

- there are no restrictions in law that would prevent them from continuing to act as a director of that companyentity
- where the entity is a company the applicant and the company have met the requirements of the Companies Acts
- the companyentity is not subject to any proceedings which would result in its liquidation or in it being wound up

- the companyentity has no criminal convictions recorded against it and is not subject to criminal investigations
- the companyentity has no court judgments recorded against it and is not at the date of application subject to any court proceedings
- that no other director or senior member of the company or manager in the entity is or has been subject to disciplinary proceedings by a professional institution of which they are a member in relation to the activities of that company.

5.2.23 Applicants who are unable to sign any of the declarations referred to in paragraphs 5.2.1 and 5.2.2 may instead submit in writing information relating to the declarations concerned that they would like IFEXIPS to take into account in considering their application.

5.2.34 Where an applicant submits information relating to a declaration in accordance with paragraph 5.2.23 IFEXIPS will consider whether that information is sufficient to enable that application to proceed. In any case in which IFEXIPS decides to reject that an application cannot proceed the applicant will be informed of the reasons for this decision, in writing and their application rejected.

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5.2.45 IFEXIPS may undertake searches and inquiries in order to establish that the applicant is in good standing:

of its own records

of the Criminal Records Bureau, in the case of an applicant in independent practice, and in such other cases as it considers appropriate

of any professional institution to which the applicant belongs or has belonged

in the case of applicants who are directors of a limited company, of Companies House

of such organisations or sources as it may consider relevant to the application.

5.2.56 If as a result of the any searches and inquiries referred to in paragraph 5.2.45 IFEXIPS has reason to believe that an applicant is not in good standing, then it will reject the application and notify ~~notify~~ the applicant accordingly in writing and their application will be rejected.

5.2.67 Where an application is rejected under paragraphs 5.2.34 or 5.2.56 the applicant may make written representations to IFEXIPS within 14

days of being so informed. The ~~ILEX~~ Admissions and Licensing Committee will consider those representations within 28 days of them being received and notify the applicant of the outcome. The applicant may attend before the Committee to make oral representations.

5.2.78 All applicants will be required to provide proof of their identity and their residence in a form to be determined by ~~ILEX~~ ILEXIPS.

5.2.89 In the case of a self-employed applicant or ~~a manager of an entity or~~ ~~who is director of a company~~ ILEXIPS may require bankers' references in relation to the business or company.

5.2.910 ILEXIPS may in the case of an employed applicant require that applicant to provide a character or employer's reference.

### 5.3 Knowledge and Experience

5.3.1 All applicants for a Certificate must submit with their application a written statement outlining their qualifications, details of their typical workload over the last two years and an indication of the range of that work and its complexity.

5.3.2 Applicants who are employed must also submit written confirmation from their employers of the workload details given under paragraph 5.3.1.

5.3.3 Applicants must submit a portfolio (the experience portfolio) which meets the Portfolio and Development Plan Guidelines in **Appendix 2**, which

- demonstrates experience of probate business as a substantial part of their work in the period immediately prior to their application, and which
- contains details of five cases that they have handled over the past two years which demonstrates practical experience of applying the law and procedure relating to probate business.

5.3.4 Where an applicant relies on knowledge not gained through examination, written evidence of their knowledge of the law and practice relating to probate business must also be provided in accordance with the Portfolio and Development Plan Guidelines in **Appendix 2**.

5.3.5 ILEXIPS may in any case require an applicant to provide written references to support their statements relating to their knowledge or experience.

5.3.6 [HLEXIPS](#) will assess an applicant's experience by reference to the Knowledge and Experience Guidelines at **Appendix 1**. In applying these Guidelines [HLEXIPS](#) will normally expect an applicant to:

- a. have passed examinations which are of a similar standard and content to the probate and succession, probate practice and equity and trusts modules of the [HLEXIPS](#) level 6 exams, or
- b. where an applicant relies on knowledge that has not been gained through a formal examination, they will complete an assessment form which demonstrates their knowledge of relevant law and legal practice to a level comparable to that of a successful candidate at level 6 of the [HLEXIPS](#) Professional Diploma subjects, and
- c. have had experience of delivering probate services as a substantial part of their work in the period immediately prior to their application.

5.3.7 [HLEXIPS](#) may in appropriate cases permit an applicant who has insufficient experience for a Certificate at that time, to follow the developmental route to certification.

5.3.8 If [HLEXIPS](#) decides to permit an applicant to follow a developmental route to certification it will:

- notify the applicant of its reasons for concluding that their experience is insufficient for the grant of a Certificate at this time, and
- invite the applicant to lodge a development plan with [HLEXIPS](#) within a specified period ~~setting out the way they intend to rectify those shortcomings.~~

5.3.9 A development plan lodged with [HLEXIPS](#) in accordance with paragraph 5.3.8 must contain proposals by the applicant which seek to overcome the shortcomings that [HLEXIPS](#) has identified. On receipt of a development plan [HLEXIPS](#) will notify the applicant of the date by which it will indicate ~~to him~~ that their development plan has been accepted or rejected.

5.3.10 In considering the applicant's development plan [HLEXIPS](#) will take into account the extent to which the plan deals with shortcomings which it has identified in the applicant's ability to meet the Knowledge and Experience Guidelines.

5.3.11 Once [ILEXIPS](#) has decided that an applicant's development plan has been accepted, the application may then proceed to be determined.

5.3.12 Where [ILEXIPS](#):

- a. decides that that an applicant's knowledge or experience does not meet the Knowledge and Experience Guidelines or for any other reason finds that an applicant's experience is inadequate, or
- b. rejects a development plan on the basis that it fails to deal adequately with the shortcomings identified by [ILEXIPS](#) in the applicant's ability to meet the Knowledge and Experience Guidelines, then
  - it may request further information from the applicant, or
  - defer the application to enable the applicant to undergo further training or to seek further qualifications or to revise their development plan, or
  - reject the application.

5.3.13 Where [ILEXIPS](#) decides to defer or reject an application, the applicant may make representations in writing to [ILEXIPS](#). Where an applicant makes representations, the Admissions and Licensing will give further consideration to the application and notify the applicant of its decision in writing. The applicant may appear before the committee to make oral representations to it.

## 6. Issue and validity of Certificates

**Comment [b1]:** This was originally rule 9.

6.1 An applicant who is in employment in a legal practice or other organisation, who meets the eligibility criteria and who has met any other conditions imposed by [ILEXIPS](#) will be granted a [Probate Certificate](#).

6.2 An applicant in independent practice at the date of their application who meets the eligibility criteria and who has met any other conditions imposed by [ILEXIPS](#) will be granted a [Probate Certificate](#). ~~The entity will be granted authorisation to practice, if they also~~ if it either:

~~meets the practice management criteria, or~~

~~the probate practitioner have has given a transitional practice management undertaking, and~~

~~the entity has have signed the right of inspection authority referred to paragraph 12.~~

6.3 An applicant who meets the eligibility criteria who has had a development plan approved by [IEXIPS in accordance with paragraph 5.3.8](#) and who meets any other condition imposed by [IEXIPS](#) will be granted a [Probate](#) Certificate valid for one-year subject to such restrictions and conditions as [IEXIPS](#) may impose.

6.4 [IEXIPS](#) may impose conditions or restrictions on any Certificate and where it does so will give reasons in writing for such an imposition.

6.5 Any conditions or restrictions imposed upon Certificates will be published.

## 7. **Change of status**

**Comment [b2]:** This was originally rule 10

~~An employed member who holds a [Probate](#) Certificate may [seek to practice through an entity](#). [apply for a replacement Certificate on the basis that they wish to practice on their own account or provide probate services to clients of their employer](#). [The replacement Certificate will only be granted when: The entity in which they seek to practice will make an application to IPS for authorisation to practice that:](#)~~

~~it is confirmed that they are in good standing~~

~~they have given the practice management undertaking in paragraph 10.2~~

~~they have signed the right of inspection authority referred to paragraph 12, and~~

~~they meet any other condition or requirement imposed by [IEX](#) in accordance with the requirements of paragraph 9.~~

~~10.2 The practice management undertaking in relation to a member applying for a replacement Certificate under paragraph 10.1 is that the member will not commence practice without first putting in place the practice requirements.~~

## 8. **Renewal of Certificates**

**Comment [b3]:** This was originally rule 11

8.1 Certificates granted to employed members, other than those who are asked to submit a development plan in accordance with paragraphs 5.3.8, will not be subject to annual renewal provided that the member concerned continues to be a qualifying member in good standing and to meet any other requirements of [IEXIPS](#) for the time being.

8.2 ~~HEXIPS~~ may at its discretion impose a requirement for employed members to reapply for a Certificate. Qualifying members who are managers of in an entity in independent practice or providing probate services to clients of their employer will be required to renew their certificates annually or at such intervals as ~~HEXIPS~~ may from time to time determine. Their certificates will be renewed provided they remain in good standing and meet any other requirements of IPS for the time being.

~~11.88.3~~ Where a member was granted a Certificate under paragraph ~~96.3~~ that Certificate will only be renewed on three occasions.

~~11.98.4~~ On application for renewal of a Certificate granted under paragraph ~~96.4~~ the member concerned must submit a report in such form as ~~HEXIPS~~ may determine charting their progress against the approved development plan. If ~~HEXIPS~~ is satisfied that the member has made adequate progress then it will renew their Certificate subject to such restrictions and conditions as it may determine and to the requirements of these Rules.

~~11.108.5~~ When it is satisfied that the applicant has satisfactorily fulfilled their development plan ~~HEXIPS~~ will, in the case of an employed applicant, discharge him from the obligation to renew their Certificate annually.

~~11.118.6~~ ~~HEXIPS~~ may impose conditions or restrictions on the renewal of any category of Certificate and where it does so will give reasons in writing for such an imposition.

## 9. ~~Qualifying members in independent practice~~ Authorising entities

~~69.1~~ ~~All A applicant~~ qualifying member may practise in independent practice through an entity in which they will be a manager. A reference to manager includes partners and owners. The entity must seek authorisation to practice from IPS. An entity seeking authorisation from IPS will be required to submit an application form and fee. The application must be accompanied by a financial and business plan, details about the conduct of the managers of the entity, the policies of the practice and such other information as IPS requires. The entity must either satisfy the practice requirements or give a transitional practice management undertaking.

~~69.2~~ In these Rules the term 'practice management requirements' refers to the following arrangements:

- overall practice management arrangements that comply with [HLEXIPS's](#) Practice Management and Accounts Rules for the time being
- accounting arrangements which comply with the Practice Management and Accounts Rules of [HLEXIPS](#) for the time being

For the avoidance of doubt reference to arrangements under the Practice Management and Accounts Rules include:

- professional indemnity insurance which complies with the requirements of [HLEXIPS](#) for the time being
- an anti-discrimination policy which accords with the requirements of [HLEXIPS](#) for the time being

6. a money laundering policy which accords with the requirements of current legislation and any relevant Code of Practice

- a complaints procedure which complies with [HLEXIPS's](#) requirements
- a publicity code which accords with the requirements of [HLEXIPS](#) for the time being
- details of contributions which have been made to [HLEXIPS's](#) Compensation fund for the year in which the application is made.

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~~69.3~~ [Applicants](#) ~~An entity seeking authorisation from IPS~~ must include with their application a written statement that they have put the practice management requirements in place ~~in their practice~~ or, if they ~~qualify~~ [are granted authorisation](#), they may give the transitional practice management undertaking referred to in paragraph ~~69.6~~.

~~69.4~~ The statement referred to in paragraph ~~69.3~~ must be accompanied by such documentary evidence as [HLEXIPS](#) may from time to time require.

~~69.5~~ Where their first application [by an entity seeking authorisation](#) is made within 6 months of the commencement of the certification scheme and ~~a applicant~~ [Probate practitioner already practices through an entity](#) ~~in independent practice who~~ [which](#) does not have the practice management requirements in place, ~~in their its practice, it~~ will be required to give ~~the transitional practice management undertaking referred to in paragraph 6.6a~~ ['transitional practice management undertaking'](#) in the form prescribed by [HLEXIPS](#).

9.6. 6.6—A 'transitional practice management undertaking' is an undertaking that the practice management requirements will be put in place within three months of the undertaking being given.

9.7 An application made by an entity for authorisation will be considered by the IPS Officer against the IPS risk assessment framework. The Officer may request further information, seek advice from the External Advisors and/or refer the application to the Admissions and Licensing Committee. Where the Officer considers that the proposed model contains no risks or the assessment discloses risks which are acceptable he will approve the application made by the entity for authorisation to practice. Where the Officer considers that there are risks which are unacceptable he will reject the application.

9.79.8 Where an application is referred to it by the Officer, the Admissions and Licensing Committee will decide whether or not an application should be approved. In reaching its decision the Committee will consider the risk assessment framework, all the information provided by the entity applicant and may call for further information from any person or source it considers appropriate. The Committee may call the entity applicant for interview. The Committee may approve the application where it considers that there are no risks or the assessment discloses risks which are acceptable. The Committee will reject the application where it considers that there are risks which are unacceptable.

9.9 In making any assessment or decision required by these Rules the Officer and the Admissions and Licensing Committee shall have regard to the Practice Management and Accounts Rules and supporting Codes and Schemes at **Appendices 6 to 10.**

9.10 The Officer will notify an entity in writing of their decision or the decision of the Admissions and Licensing Committee. Where the authorisation has been granted the notification shall include the authorisation. Where the application is unsuccessful the notification shall set out the reasons for the decision and any preconditions to the consideration of any subsequent application for authorisation to practice.

## **10 Practice and accounts course requirements**

710.1 ~~HEXIPS~~ may require a ~~Qualifying member~~ robate practitioner in independent practice providing probate services through an entity or an employed ~~qualifying member~~ Probate Practitioner intending to enter ~~independent practice in an entity or provide probate services to clients of their employer~~ under paragraph ~~109~~, in which they are or will be a manager, to successfully complete a Practice Management or Accounts

course or both before ~~it~~ ~~considering~~ ~~considers~~ whether to ~~issue a Certificate~~ ~~authorise the entity~~.

~~710.2~~ This requirement may be imposed in the following circumstances:

- if the ~~applicant~~ ~~Probate practitioner~~ has not previously completed a relevant ~~practice management or~~ accounts course successfully
- where ~~IEXIPS~~ is not satisfied that the ~~applicant's~~ current or proposed practice or financial management arrangements ~~of the entity in which the Probate practitioner practises or intends to practise~~ comply with ~~IEXIPS's~~ Practice and Accounts Rules for the time being
- in any other circumstances where ~~IEXIPS~~ believes that it would be beneficial for the ~~applicant's existing or future practice for him~~ ~~Probate practitioner~~ to complete such a course.

~~710.3~~ Where ~~IEXIPS~~ imposes a requirement that the ~~Applicant~~ ~~robate practitioner~~ in an entity seeking authorisation must undertake a Practice Management course or accounts course, subject to the requirement of paragraphs ~~710.6~~ to ~~710.8~~, the ~~Applicant~~ ~~robate practitioner~~ must successfully complete a relevant course within 12 months of the date that the requirement ~~was~~ imposed by ~~IEXIPS~~. Until that requirement is met the application ~~by the entity seeking authorisation from IPS~~ will be deferred.

~~710.4~~ If an ~~Applicant~~ ~~robate practitioner~~ who is subject to a requirement in accordance with paragraph ~~710.1~~ fails to meet that requirement then their application ~~of the entity in which they sought to practise~~ will lapse, unless ~~IEXIPS~~ agrees to extend the 12-month period for compliance.

~~710.5~~ If the ~~applicant~~ ~~Probate practitioner~~ wishes ~~IEXIPS~~ to extend the period for complying with paragraph ~~710.1~~ they must apply in writing to ~~IEXIPS~~ within one month of the period for compliance expiring. ~~IEXIPS~~ will then consider the ~~applicant's~~ ~~Probate practitioner's~~ representations and notify them ~~in~~ ~~applicant practitioner and the entity~~ of its decision in writing prior to the expiry of that period.

~~710.6~~ Before registering for a practice management or accounts course an ~~applicant~~ ~~Probate practitioner~~ subject to a requirement to do so under paragraph ~~710.1~~ must notify ~~IEXIPS~~ in writing of their intention to do so. ~~IEXIPS~~ ~~will then indicate whether the courses concerned meet its requirements in relation to that applicant.~~

~~710.7.~~ The ~~course~~ ~~content~~ of the Practice Management course must comply with ~~IEXIPS's~~ course outcomes ~~as~~ set out in **Appendix 3** and the Accounts course outcomes ~~as~~ set out in **Appendix 4.**

710.8 ILEXIPS will only approve a Practice Management course and accounts course where a written completion Certificate is issued to the candidate.

### **11.11 Compensation Fund**

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811.1 ILEXIPS will not consider any application for ~~a Certificate authorisation to practice~~ from an ~~applicant entity who~~ which is liable to contribute to ILEXIPS's Compensation Fund and ~~who~~ which has failed to make that contribution for the year in which their application is made, or any previous years, until those payments have been made.

11.2 In any case where ~~a member is seeking renewal of their Certificate,~~ ILEX may refuse to grant a renewal if there are any outstanding contributions to ILEXIPS's Compensation Fund ~~IPS may suspend the authorisation of an entity until such time as the contribution has been made.~~

### **12. Annual returns**

12.1 ~~An entity authorised by IPS must make an annual return. An annual return must be accompanied by such fee as may be set by IPS from time to time. With its annual return the entity must~~ These members must on their application for renewal submit annual accounts certified by a qualified accountant together with written proof that they have professional indemnity insurance in place for the coming year and any other documentation required by ILEXIPS's Practice and Accounts Rules for the time being, including an up to date business and financial plan.

12.2 ILEXIPS may undertake a review of the ~~applicant's entity's~~ accounts and insurance arrangements and may undertake a personal interview of the ~~applicant managers of the entity~~ and an inspection of the ~~member's~~ practice under Institute's Practice Management and Accounts Rules for the time being.

12.3 ~~Qualifying members in independent practice or who provide probate services to clients of their employers who were~~ An entity which ~~was~~ required to give the transitional practice management undertaking must, on the first ~~renewal of their Certificate~~ annual return, confirm in writing that all those matters that were the subject of the undertaking have been put in place and confirm that this was done within the three month period. ILEXIPS may where it thinks fit undertake an inspection of the ~~member's practice~~ entity using the right of inspection authority in paragraph 132.

12.4 ~~ILEX will renew the Certificate of a qualifying member in independent practice or providing probate services to clients of their employer where it is~~In considering the information on the annual return IPS must be satisfied ~~that: the~~

- ~~there is at least one Probate practitioner;~~
- ~~the IPS Probate practitioner who is a manager in the entity member remains in good standing~~
- ~~where required to give a transitional practice management undertaking, that undertaking has been honoured~~
- ~~the their~~ accounts and insurance arrangements are in order,
- ~~any revisions it has made to the practice management, accounting, anti-discrimination, complaints handling, equal opportunities, client care and file management procedures of its practice since its authorisation or last return comply with the Practice and Accounts Rules.~~
- ~~the entity has in place indemnity insurance~~
- ~~the entity has made such contribution to the ILEX compensation fund as required by IPS~~

~~Where an employed member who has been granted a replacement Certificate under paragraph 10.1 has given the practice management undertaking in paragraph 10.2 seeks to renew that Certificate on its anniversary, that Certificate will only be renewed if ILEX is:~~

~~☐satisfied that the member concerned has honoured that undertaking, and~~

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~~☐the member remains in good standing, and~~

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~~☐their accounts and insurance arrangements are in order, and~~

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~~satisfied that they have met any other requirements of ILEX under these rules.~~

12.5 ~~The Officer will process annual returns. The information will be assessed against the IPS risk assessment framework. Where the Officer is satisfied that the information complies with the requirements set out at paragraph 12.4 and there are no risks or the risks are acceptable he will notify the entity accordingly. The Officer may seek advice of the external advisor in making the assessment.~~

12.6 ~~Where the Officer has any doubt whether the information meets the requirements of Paragraph 12.4 or assesses that the risks identified by the annual return are unacceptable, the Officer may request further information, arrange an inspection of the entity and/or refer the annual return to the Admissions and Licensing Committee.~~

12.7 ~~Where an annual return is referred to it by the Officer, the Admissions and Licensing Committee shall consider all the information before it and may request additional information from any person or source it~~

considers appropriate, and may require the entity to attend for interview.

12.8 If the Admissions and Licensing Committee is satisfied that the return meets the requirements of Paragraph 12.4 and either there are no risks or the assessment discloses risks that are acceptable it will take no further action or agree a development plan with the entity and/or place conditions upon the entity.

12.812.9 Where the Committee considers that there are risks which are unacceptable or the annual return does not meet the criteria at Paragraph 12.4 it will invite the managers of the entity to remedy any shortcomings in the annual return and may call them to appear before it to address the concerns it has. The Committee will consider the submissions made by the managers of the entity and determine what action to take. The Committee may determine that the conduct of the entity should be investigated and that its authorisation be suspended. In making such decision the Committee must give its reasons and indicate any preconditions to the consideration of any subsequent application by the entity. If it is satisfied that the entity has addressed its concerns, the Admissions and Licensing Committee may take no further action, agree a development plan with the entity and/or place conditions upon it.

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12.912.10 The Officer will notify an entity in writing of the decision of the Admissions and Licensing Committee. Where the authorisation is suspended, the notification shall set out the Committee's reasons and any preconditions to the consideration of any subsequent application.

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### 13 Right of inspection authority

13.1 ~~HLEXIPS~~ will not authorise an entity unless it issue a Certificate to an applicant in independent practice unless the applicant first signs the right of inspection authority referred to in paragraph 13.2.

13.2. The right of inspection authority is an irrevocable written authority given by an ~~applicant for the grant of a Certificate~~ entity to provide ~~HLEXIPS~~, upon production of that authority, with:

- full and unimpeded access to all the ~~entity's Certificate holder's~~ practice papers, accounts, records and files; and
- full co-operation both personally by its managers and by the direction to the ~~Certificate holder's staff~~ entity's employees with the inspection; and

- any information relating to the ~~Certificate holder's entity's~~ practice requested by the person acting on behalf of ILEXIPS; and
- reasonable office facilities for such period as ILEXIPS may require for the purpose of the inspection; and
- copies of any documents which ILEXIPS wish to remove, and at no charge; and
- authority to the ~~Certificate holder's entity's~~ present or previous accountant or any other person to provide information and/or documents to the person acting on behalf of ILEXIPS as they may require.

13.3 ILEXIPS will exercise the authority referred to in paragraph 13.2 in accordance with its Practice and Accounts Rules relating to Certificate holders in independent practice then in force.

#### **13.14 Suspension of Certificates authorisation**

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14.1 ILEXIPS may suspend ~~a Certificate authorisation of an entity~~ where ~~the Certificate holder entity~~ becomes subject to an inspection, an investigation or disciplinary proceedings or under its powers in its Practice and Accounts Rules relating to Certificate holders in independent practice or for any other reasonable cause.

### **15 Continuous professional development**

15.1 All Certificate holders must complete the number of continuous professional development hours relating to probate services that ILEXIPS determines as being relevant to their membership status.

### **16. Admissions and Licensing Committee**

16.1 IPS shall appoint a Committee, called the Admissions and Licensing Committee, which will be responsible for the probate rights scheme. The Committee shall report to the IPS Board.

16.2 The Admissions and Licensing Committee shall:

- Apply and monitor the Probate Rights Certification Rules;
- Assess whether a member meets the requirements to be a probate right certificate practitioner in cases referred to it by the Officer;
- Assess whether a member meets the requirements to renew their probate rights certificate in cases referred to it by the Officer;

- Consider whether or not a member may continue to hold a probate rights Certificate;
  - Consider applications made by ~~probate practitioners to practice independently or provide probate services to clients of their employer referred to it by the Officer~~ entities ~~seeking authorisation to practice referred to it by the Officer~~;
  - Consider whether the authorisation of an entity should be suspended or cancelled;
  - submit an annual report to the IPS Board;
  - Oversee the probate rights scheme;
  - Review the probate rights scheme and make recommendations to IPS for revisions to it;
  - Consider appeals made against decisions made by the Officer in respect of applications;
  - Consider and determine applications for a re-hearing of a decision made by the Committee.
- 16.3 The Committee will delegate to the Officer responsibility for making decisions on applications for certificates, renewal of certificates and authorisation ~~to of~~ entities to practice ~~independently~~.
- 16.4 Wherever the Officer is unable to make a decision or takes the view that the matter requires Committee consideration they may refer the matter to the Admissions and Licensing Committee.
- 16.5 A person or organisation affected by a decision made by the Officer may seek reconsideration of their matter by the Admissions and Licensing Committee.
- 16.6 A person or organisation affected by any decision made by the Admissions and Licensing Committee pursuant to its powers under these Rules may apply for reconsideration of that decision. Such a person must lodge an application for reconsideration at the IPS office within 15 working days of receiving written notification of the Committee's decision. The application must include written reasons why it should be reconsidered. The applicant shall have a right to be heard by the Committee when it reconsiders his application.
- 16.7 Where an application is reconsidered by the Admissions and Licensing Committee it shall have all the powers that were available to it at the

original consideration of the application. Appeals against The decisions of the Admissions and Licensing Committee upon reconsideration shall be final heard by a professional member and two lay members drawn from the panel of lay and professional members appointed to service on IPS' Disciplinary and Appeal bodies.

16.8 The Admissions and Licensing Committee shall report annually to the IPS Board on its work during the preceding calendar year, and make such recommendations as it thinks fit concerning the operation of these Rules and the qualification scheme for probate practitioners.

16.9 The membership of the Admissions and Licensing Committee will comprise:

- ~~Two~~ Fellows of ILEXIPS who shall not be members of ILEXIPS Council;
- ~~Three~~ independent members, at least 1 of whom shall have knowledge or experience of consumer issues.

~~of which a~~ At least one member will be a member of the IPS Board, and independent provided the lay members will be in are in the majority.

16.10 Appointments of committee members shall be made by the IPS Board. Each member will be appointed to the Admissions and Licensing Committee for a period of five years. The IPS Board may reappoint a member for one further term of up to 5 years or make a new appointment. No member may serve more than two consecutive terms as a member of the Admissions and Licensing Committee.

16.11 Where a member fails without good reason to fulfil his duties set out in these Rules the IPS Board may terminate his appointment whether or not he has completed his current term of office.

16.12 At least three members of the Admissions and Licensing Committee must be present at a meeting to constitute a quorum. The external advisors will not form part of the quorum.

16.13 The Admissions and Licensing Committee will appoint one of its members as Chair. The Chair will be appointed for a period of one year. The Chair will be eligible for reappointment, but may not serve as Chair for more than three consecutive years.

16.14 Decisions of the Admissions and Licensing Committee will be reached by a majority vote. In the case of an equality of votes the Chair shall have a casting vote. External advisors may not vote on any matter at a meeting.

16.15 The Admissions and Licensing Committee shall meet at least once each year. Subject to this, where the Committee deems it appropriate it may consider applications and any other matter by way of a postal agenda or telephone conference.

16.16 The external advisors appointed in accordance with these Rules shall be invited to attend all meetings of the Admissions and Licensing Committee. Where necessary the Committee may seek advice on matters under its consideration from other persons or sources.

16.17 ~~The IPS Board~~ shall have the power to pay fees to members of the Admissions and Licensing Committee and shall from time to time, determine the amount and basis of payment of such fees.

### **16.17 External Advisors**

17 IPS shall appoint external advisors to advise the Admissions and Licensing Committee and IPS on issues relating to probate practice and practice management and accounts.

17.1 When making appointments of external advisors in respect of probate IPS shall take into account the following:

- That the person appointed is qualified to practise in the area of specialist work in which they are appointed;
- That the person appointed has experience of teaching and assessment of law and legal practice, including probate, at degree or post graduate level.

17.3 When appointing external advisors in respect of practice management or accounts IPS shall take into account the following:

- That the person appointed has a relevant qualification or experience of practice management or accounts;
- That the person appointed has knowledge and experience of teaching and assessment of practice management skills or accounts.

17.3 The external advisors appointed in respect of probate will provide advice to the Officer and Admissions and Licensing Committee in respect of the following:

- applications for Certificates;
- applications for the renewal of Certificates;
- development plans;
- applications to the Admissions and Licensing Committee for the reconsideration of a decision;

- the structure of the qualification scheme generally, and may make recommendations for revision of the qualification scheme;
- any other matter on which the Admissions and Licensing Committee seeks their advice.

The Admissions and Licensing Committee shall consider any advice given by the external advisors, but shall not be bound by such advice.

17.4 The external advisors appointed in respect of practice management or accounts shall provide advice to the Admissions and Licensing Committee in respect of the following:

- Applications by ~~certificate holders to practice in independent practice or provide services to clients of their employer~~entities seeking authorisation to practice and annual returns made by entities;
- The suitability of practice management and accounts courses;
- Standards of assessment applied by course providers delivering accounts assessments;
- Applications to the Admissions and Licensing Committee for reconsideration of a decision;
- The structure of practice management and accounts courses or the qualification scheme generally, and may make recommendations for the revision of any Course or the qualification scheme;
- any other matter on which the Admissions and Licensing Committee seeks their advice.

The Admissions and Licensing Committee shall consider any advice given by the external advisors, but shall not be bound by such advice.

17.5 The external advisors shall decide whether a portfolio submitted with an application for a Certificate meets the criteria set out in the Knowledge and Experience Guidelines at **Appendix 1** and the Portfolio Guidelines at **Appendix 2**.

17.6 The external advisors may also ~~decide~~advise whether an application submitted by ~~an entity seeking authorisation to practice -Certificate holder to work in independent practice or to provide probate services to clients of their employer~~meets the criteria and whether an annual return shows that an entity continues to meet the criteria.

17.7 The external advisors shall receive notice of meetings of the Admissions and Licensing Committee and may attend such meetings in their advisory capacity.

17.8 The external advisors will be appointed for a period of five years. They may be reappointed for one further period of up to five years. Where an external advisor fails, without good reason, to fulfil any of his duties

set out in these Rules or is guilty of any misconduct in carrying out his duties, IPS may terminate his appointment whether or not he has completed his current term of office.

17.9 IPS shall have the power to pay fees to the external advisors and shall, from time to time, determine the amount and basis of payment of such fees.

## **18. DISCIPLINARY PROCEDURES AND CODE OF CONDUCT**

18.1 Probate practitioners and entities authorised by IPS will be required to abide by the Code of Conduct of ILEX for the time being in force. They will also be bound by the ILEX Practice Management and Accounts Rules.

18.2 Where a complaint is made or an issue is brought to the attention of IPS regarding the conduct of an entity or Probate Practitioner that matter will be dealt with in accordance with IPS' Investigation, Disciplinary and Appeals Rules.

18.3 Where a Finding, Order or Decision is made against an entity or Probate practitioner by a disciplinary tribunal or panel that Finding, Order or Decision will be referred to the Admissions and Licensing Committee. The Admissions and Licensing Committee will decide whether the authorisation of the entity or the Certificate of the Probate practitioner should be cancelled. The Admissions and Licensing Committee must give reasons for its decision.

~~18.1~~18.4 Paragraph 18.3 shall not apply where an Order is made excluding an entity from authorisation by IPS or excluding a Probate practitioner from membership of ILEX. In such a case the Probate practitioner or entity shall no longer be entitled to practice.

18.5 Notwithstanding paragraph 16.7 an appeal against a decision of the Admissions and Licensing Committee that a Probate practitioners Certificate or an entity's authorisation should be cancelled will be considered by a professional member and two lay members drawn from the panel of lay and professional members appointed to serve on IPS' Disciplinary and Appeals bodies.

## APPENDIX 1

### KNOWLEDGE AND EXPERIENCE GUIDELINES

#### PROBATE BUSINESS CERTIFICATE

1. Applicants for a probate business certificate must meet the eligibility criteria. A key part of this process will be establishing that applicants have an acceptable level of experience of delivering probate services and that they have sufficient knowledge of relevant law and practice relating to probate services.
2. This will be done by assessing information provided by an applicant about their knowledge and experience of probate against the Knowledge and Experience Criteria in paragraph 5 and other relevant criteria referred to in these Guidelines.
3. The information that applicants must provide as part their applications for a Certificate is set out in paragraph 5.3 of the Certification Rules and referred to in paragraphs 6.3, 6.5, 7.2 and 7.3 of these Guidelines.
4. In these Guidelines 'probate business' has the same meaning as clause 3, schedule 2 Legal Services Act 2007.

#### Knowledge and Experience Criteria

5. The Knowledge and Experience Criteria are shown in the following tables:

##### A. Wills

Area of law	Knowledge	Experience
<b>Wills:</b> capacity, formalities, privileged wills	Rules relating to creation of a valid will and capacity	Applying rules to a live situation and advising clients on making a will.  Analyse existing wills critically
<b>Wills:</b> principles of construction, legacies and devises	Rules of construction The different types of legacy. Rules relating to lapse, ademption, abatement and forfeiture.	Taking instructions from clients, and drafting a valid will. Arranging for the execution of will in accordance with the rules
<b>Alterations to a will;</b> revocation; incorporation by reference; donatis mortis causa; Republication; revival	Rules relating to pre and post execution alterations and revocation & Law Reform (Succession) Act 1996	Making alterations on instruction advising clients on alterations. Post mortem changes to wills.
<b>Civil Partnerships Act 2004</b>	The Act and probate business	Working with the Act

## B Grant of probate and related issues

Area of law	Knowledge	Experience
Intestacy; rights of spouses & civil partners; issue and others; partial intestacy.	Statutory rules on distribution on intestacy, and special rights of spouses or civil partners.	Advising clients, in particular spouses and civil partners, on the effect of an intestacy. Administering an estate on intestacy.
Devolution of estates: scope of assets included; devolution of assets under a will or intestacy	Rules on the inclusion/exclusion of assets in an estate for distribution purposes.	Advising clients on distribution under a will & or intestacy.
Grants: types of grant & their revocation	Typology of grants and when each is appropriate. Circumstances when a grant may be revoked and the effect of revocation.	Obtaining grants of different types. Advising on effect of obtaining a grant.
Personal Representatives & executors: capacity, numbers, express & implied appointment, Entitlement to grant.	Rules relating to appointment. Non-Contentious Probate Rules Oaths for executors and personal reps.	Applying the Non Contentious Probate Rules. Advising on entitlement. Using the correct form of oath.
Personal Reps - duties and powers; testamentary powers; position of a beneficiary	Trustee Act 1925; Trustee Act 200; Trusts of Land and Appointment of Trustees Act 1996: Statutory duties and wills.	Advising on the powers of personal reps and of the effect of this legislation. Remuneration of personal reps.
Personal Reps - liabilities and protection	Rules governing potential liability of personal reps., and how they may be protected.	Advising personal reps on protection from liability.
Caveats; citations; standing searches and guarantees	Rules determining when these may be used	Experience of applying for these
Inheritance (Provision for Family and Dependents) Act 1975	The provision of the Act as amended and the case law on its application and interpretation.	Advising clients on the effect of this Act.
Solemn Form Procedure	Understand this procedure and Relevant Non-Contentious Probate Rules.	Advising clients of whether this procedure is suitable.
Affidavits of due execution; alteration; date and plight condition	Aware when this is required, contents of the affidavit the identity of the deponents.	Preparing an affidavit in an appropriate form.

## C. Taxation and financial aspects of estate administration

Area of law	Knowledge	Experience
Administration of assets;	Rules relating to the payment of debts in solvent and insolvent estates.	Advising on distribution and winding up of estates. Preparing executors oaths.
Taxation: Inheritance tax; taxation of the death estate; liability and burden; exemptions and relief	The rules relating to the computation of inheritance tax in relation to lifetime gifts and the death estate.	Advising clients on IHT issues & alterations to wills for IHT purposes.
Taxation: capital gains tax:	How to charge lifetime gifts and the death estate.	Advising clients on CGT issues.

<b>Taxation: income tax</b>	The basic charge to income tax in relation to lifetime events and the death estate.	Advising clients on income tax issue.
<b>Revenue and Customs Accounts: IHT 205 &amp; IHT 200</b>	Excepted estate rules and principles underlying the forms..	Completing and filing the forms successfully with Revenue and Customs.

## D. Equity and Trusts

Area of law	Knowledge	Experience
<b>Equitable principles</b>	The way that equity works, its place in the legal system and equitable jurisdiction.	Have had to explain equity, equitable jurisdiction and its context,
<b>Equitable remedies</b>	The main equitable remedies,	In a probate matter, advising clients on one or more of these remedies,
<b>The law of trusts: creation of a valid trust; variation of trusts</b>	Requirements of a valid trust. Types of trust and their distinguishing features. The requirements for variation.	In a probate matter, advising clients on validity of a trust, the different types of trust available to them. Creating trusts. Advising clients on how to vary a trust in a will,
<b>The law of trustees: management of trustees; their powers and appointment</b>	The way that trustees are appointed, their duties and responsibilities. Removal of trustees.	In a probate matter, advising whether a valid trust has been created. Advising trustee clients on their duties and responsibilities under a will
<b>Breach of trust</b>	The rules for administering trusts and remedies for breach of trust, personal and proprietary.	Advising clients on whether in probate matter there has been a breach of trust and on the remedies for such a breach.
<b>Taxation of trusts and settlements</b>	The rules relating to taxation of settlements.	Advising clients on the taxation implications of a settlement under a will.

### Assessing applications against the Knowledge and Experience Guidelines

#### 6. Knowledge of the law relating to probate business

- 6.1 Applicants who have passed the ILEX level 6 examinations in probate and succession (now wills and succession), probate practice and equity and trusts will normally satisfy the Institute's knowledge requirements.
- 6.2 Applicants who rely on ILEX Level 6 qualifications should submit full details of the dates on which the examinations were taken.

- 6.3 Applicants who wish the Institute to accept other qualifications as being of a similar standard and content of the ILEX Level 6 examinations must submit full details of the syllabus of those qualifications, the dates the relevant examinations were taken and such evidence of success in those examinations as the Institute may determine.
- 6.4 Qualifications falling within paragraph 6.3 will be assessed against the Knowledge and Experience Criteria in paragraph 5 using the scoring system in paragraph 6.7.
- 6.5 Those applicants who wish the Institute to accept knowledge gained other than through formal examination will need to submit a completed assessment form provided by the Institute which establishes that their knowledge of the law and practice relating to probate business is equivalent to a successful candidate at the ILEX Level 6 exams referred to in paragraph 6.1.
- 6.6 Assessment forms submitted by applicants under paragraph 6.5 will be evaluated by reference to the Knowledge and Experience Criteria in paragraph 5 using the scoring system referred to in paragraph 6.7.
- 6.7 The information submitted by an applicant under paragraphs 6.3 and 6.5 will be assessed using the Knowledge column of each of the four subject areas in the Knowledge and Experience Criteria. Each of these four areas has been assigned 100 points and applicants will be expected to score as follows:

Subject area	Assigned points	Score required
<b>Wills</b>	100	50
<b>Grant of probate and related issues</b>	100	50
<b>Taxation and financial aspects of estate administration</b>	100	50
<b>Equity and Trusts</b>	100	50
<b>TOTAL</b>	<b>400</b>	<b>200</b>

- 6.8 If applicant's score is below the required level the Institute may:
- request further information
  - defer the application to enable the applicant to undergo further training or to seek further qualifications

- refuse the application
- 6.9 Where the Institute decide to defer or refuse an application, the applicant may make representations in writing to the Institute regarding his knowledge. Where further representation are made by an applicant, the Institute will consider whether in light of those representations the applicant meets the knowledge criteria.
- 6.10 The knowledge threshold has been set at a level to ensure that all Certificate holders can demonstrate knowledge of the law and practice relating to probate business at the same level as successful candidates in the ILEX Level 6 exams referred to in paragraph 6.1.
- 7. Experience of delivering probate services**
- 7.1 All applicants will need to establish that they have had experience of delivering probate services, as a substantial part of their work. Accordingly, each applicant must submit a portfolio (the experience portfolio) in portfolio form in accordance with the **Portfolio Guidelines at Appendix 2** which:
- shows the nature of the work carried out by the applicant,
  - specific cases handled by the applicant in accordance with these Guidelines
- 7.2 In order to assess the nature of the work carried out by the applicant the following information will be required:
- a description of the probate business which the applicant has handled.
  - description of the applicant's typical caseload.
  - the number of chargeable hours spent on probate business in each year.
  - the proportion of time spent on probate business.
  - description of the range and nature of probate business delivered
  - details of any distinctive features of the applicant's work.
  - details of any supervisory arrangements under which the applicant works and/or his supervisory responsibilities.
- 7.3 The experience portfolio must also contain a description of 5 cases that an applicant has handled over the past two years demonstrating his probate business experience.
- 7.4 Applicants will normally be expected to have substantial experience within each of the 4 modules of the Knowledge and Experience Criteria and this will be assessed using the scoring system referred to in paragraph 7.5. The

Institute will normally give preference to experience of probate business within the past two years.

- 7.5 The information submitted by applicants under paragraphs 7.2 and 7.3 will be assessed using the Experience column of each of the four subject areas in the Knowledge and Experience Criteria. Each of these four areas has been assigned 100 points and applicants will be expected to score as follows:

Subject area	Assigned points	Score required
Wills	100	60
Grant of probate and related issues	100	60
Taxation and financial aspects of estate administration	100	40
Equity and Trusts	100	40
<b>TOTAL</b>	<b>400</b>	<b>200</b>

#### 7.6 Analysis, critical judgment and evaluation

As part of the assessment of an applicant's experience of probate business the Institute will be looking for evidence of the following skills. The ability to:

- recognise and rank items and issues in terms of relevance and importance.
- integrate information and materials from a variety of different sources.
- undertake the analysis of factual information in a logical and coherent way.
- make critical assessments of the law relevant to a client's situation.
- present reasoned options to clients.
- undertake independent research in these areas using standard legal information sources.
- reflect on their learning and to make constructive use of feedback.

#### 7.7 Autonomy

Where appropriate, the extent to which an applicant is able to plan, prepare and undertake work without supervision will be taken into account.

#### 7.8 Scope and quality of experience

The scoring system described in paragraph 7.5 is intended to ensure that applicants have experience across the range of areas set out in the knowledge and experience guidelines. It also recognises that from a practical point of view many suitable applicants will not have had experience of all aspects of probate business.

Applicants will be expected to be actively and professionally involved in delivering probate services at the date of their application. Although current experience in all areas set out in the knowledge and experience criteria will be persuasive, due account will be taken of the breadth of an applicant's experience in the two years preceding their application. The certification rules also provide for those applicants who, at date of their application, do not have experience across the full range of the knowledge and experience criteria. These rules provide a gateway for applicants in this category who are felt by the Institute to have the potential to be able to meet the full range of the knowledge and experience criteria.

In addition to this the Institute will normally be looking for evidence that applicants have handled probate business from taking instructions from a client to completion. The quality of applicants will be an important part of the assessment of an applicant's experience and regard will be had to the seriousness and complexity of matters he has handled.

#### **7.9 Career breaks/illness**

The Institute will recognise that applicants may have had a break in their experience owing to factors such as career breaks, job changes, maternity leave, long-term illness or disability. It will not discriminate either directly or indirectly against applicants whose experience has been affected in this way. These applicants will still need to establish an acceptable standard of knowledge and experience and may provide details of experience gained during a different period when they were more actively engaged as probate practitioners.

#### **7.10 Other factors**

There may be other factors that affect the range of experience of an applicant over the past two years, to the extent that an applicant's current experience may not reflect his overall experience of probate business. The Institute, at its discretion, may consider details of more active periods of involvement in probate business from applicants whose experience of probate business in the two years preceding their application discloses a pattern that could be regarded as atypical.

## APPENDIX 2

### PORTFOLIO AND DEVELOPMENT PLAN GUIDELINES

1. These Guidelines apply to portfolios submitted with applications for a Probate Services Certificate (Certificate), assessment forms and to development plans submitted under Rules 5.3.8 and 5.3.9 of the Certification Rules.

#### **Knowledge of the law and procedure relating to Probate Business**

2. Applicants for a Certificate who rely on knowledge that has not been gained through formal examinations to meet the Knowledge and Experience Guidelines are required to submit an assessment form provided by the Institute showing knowledge of the relevant law and legal practice equivalent to that of a successful student in the level 6 ILEX Examinations.
3. The assessment form will seek to ascertain the applicant's knowledge in each sub-division of the four subject areas in the Knowledge and Experience Criteria (the Criteria) in paragraph 5 of the Knowledge and Experience Guidelines. The following information will be required:
  - the knowledge gained (for example, by attending a course or handling a particular matter)
  - how it was gained (for example, what the applicant himself did to gain this knowledge)
  - when it was gained
  - the level of complexity of that knowledge (for example, by reference to a dispute about a procedural rule or point of law).

#### **Experience of Probate Business**

4. Applicants for a Certificate must provide a portfolio (experience portfolio) which:
  - demonstrates experience of probate business as a substantial part of their work in the period immediately prior to their application, and
  - contains details of 5 matters in which they have been involved which demonstrate their practical experience of applying the law and practice relating to probate business

#### **Demonstrating experience of probate business**

5. The experience portfolio must contain the following information:

- a general description of the work carried out by the applicant
- a statement of the number of chargeable hours spent on probate business, this may be calculated on a weekly, monthly or yearly basis
- a statement showing the percentage of the applicant's working times spent on probate business for each of the four subject categories in the Criteria
- an outline of the range and nature of the applicant's typical workload indicating its complexity including a brief summary of any particularly difficult cases handled. If possible, this description should relate to the four subject areas in the Criteria.

#### **Casework experience**

6. The experience portfolio must also contain a description of 5 matters handled by the applicant in the period immediately before his application. The Institute will give greater weight to cases handled by the applicant in the past two years. Wherever possible applicants should relate these cases to the four subject areas in the Criteria.
7. There must be a concise description in the experience portfolio of each matter and the following information must be provided:
  - the law relating to each the case and its application to its facts
  - procedural or process issues
  - any steps taken by the applicant to seek further facts or evidence
  - ethical or conduct issues arising
  - funding issues arising in the case.
  - research undertaken in the case, relating to law or procedure.
  - decision making in the case and any advice taken on issues in the case.
  - any training or development needs identified, arising from the case.

#### **Portfolio presentation**

8. All portfolios must be word processed with numbered paragraphs.
9. Portfolios should not refer to parties in a case by name and should be anonymised e.g. Mrs A.

10. The Institute has prepared portfolio forms but applicants may choose to produce their own portfolios based on these Guidelines.

**Development Plans**

11. Where an applicant proposes to lodge a development plan in accordance with paragraph 5.3.8 and 5.3.9 of the Certification Rules his plan must be in the following format:

Identified shortcoming	Description of proposed remedial action	Actions proposed	Anticipated outcomes	Time for completion
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12. In column 1 the identified shortcoming must be described in the words used by the Institute.
13. In column 2 there must be a general description of the action that the applicant proposes to take. For example, study for an ILEX Level 6 exam, or seek work placement in the probate department of a solicitor’s office.
14. Column 3 should detail the specific actions proposed. For example ‘I intend to register with ILEX for a specific exam’ or ‘I have approached Smith & Brown, solicitors who specialise in Probate Work and they have agreed a work placement and my employers the Credit Bank have agreed to release me for this period’.
15. Column 4 should contain a description of the outcomes anticipated by the applicant. For example, ‘I hope to improve my knowledge of equity and succession by successfully completing the ILEX exam’ or ‘I anticipate that my work placement will give me experience of drafting more complex wills’.
16. Column 5 should contain a realistic date for completion of the proposed remedial action.

**Reports on progress of development plans**

17. Where an applicant who has been granted a Certificate under paragraph 9.3 of the Certification Rules applies for renewal of that Certificate, he must submit a report charting his progress in fulfilling his development plan.
18. This report must contain the following information:
- a description of the action proposed in the development plan
  - a full description of the action taken up to the date of the report
  - an account of the progress towards the anticipated outcomes

- an indication of whether the timescale identified in the development plan will be adhered to
- any proposed variation in the time scale together with details of the reasons why a variation is proposed.

**PRACTICE MANAGEMENT COURSE**  
**DELIVERY AND OUTCOMES**

A Practice Management Course must be effective to develop the practice management skills of ILEX Practitioners in accordance with the outcomes set out below. The teaching should focus on the development of ILEX Practitioners' skills in Practice Management. The course should be provided in small groups to encourage maximum amount of individual participation. It must be supported by course materials which include guidance on preparation work for each session and case studies to be used for teaching during each session.

ILEX Practitioners should also develop their own knowledge of the ILEX Practice Management and Accounts Rules.

**COURSE OUTCOMES FOR THE PRACTICE MANAGEMENT COURSE**

ILEX Practitioners who have attended the Practice Management Course will by the end of the course have attained the following outcomes.

**1. Managing a Legal Services Business**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- How to manage a business. An ILEX Practitioner should develop an awareness of the skills needed to manage his business in terms of work, managing resources and compliance with the practice management and accounts rules.
- The general trends relating to legal practice. A ILEX Practitioner will develop an awareness of the likely changes to the legal profession in the short to medium term, including the size and structure of law firms, the way in which information technology impacts and will impact on the ILEX Practitioner's work, changes to career structures in law firms, new service models and changes to the ways in which clients view legal services.
- Developing and maintaining a client base. An ILEX Practitioner will be able to recognise where his clients will come from, which types of work or advice is required, whether clients will be funded or private paying. An ILEX Practitioner will be able to recognise what volume of work or client base they will need to work cost effectively and also be able to recognise their maximum workload capacity.
- How to build a practice and plan for the future. ILEX Practitioners will be able to plan how a business will expand in terms of areas of work undertaken, increasing the client base, taking on new staff, moving into new forms of practice structures and taking on new partners or directors.

- How to manage change. An ILEX Practitioner will be able to recognise, accept and plan for changes in legal practice and law, sources of work, areas of work, changes in practice structures and new service models.
- Practice structures. An ILEX Practitioner will be able to identify what practice structure will suit him and the reasons why.
- Developing an IT strategy and introducing an IT system and package suitable to a practice.

## **2. Managing Finance**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- Understanding the firm's finances. An ILEX Practitioner will be able to recognise and interpret a basic profit and loss account and balance sheet.
- Managing Cash flow. An ILEX Practitioner will understand the principles of cash flow and how to exercise appropriate cash flow controls.
- Financial control. An ILEX Practitioner will understand the reasons for a business' financial difficulties and the remedies and safeguards which can be put in place to improve a firm's financial situation.

## **3. Managing Client Relationships**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- How to plan the firm's workload, be able to delegate work and allow for contingencies and avoid interruptions to maximise client satisfaction.
- How to regularly review the firm's working practices and allocation of staff resources to provide an effective and efficient service for clients.
- How to ensure work is carried out in a timely manner.
- How to identify methods of communication suitable to the needs of a practice.
- How to communicate effectively with a client, identify what client care information should be provided to clients and be able to keep the client updated on the progress of a case.
- How to establish a client's needs and manage their expectations.
- How to deliver client focussed services and introduce and use quality assurance systems, the use of quality standards and quality benchmarking processes.
- How to develop an internal complaints handling procedure which identifies how complaints will be dealt with and by who.

## **4. Managing Others**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

### **Allocation of Work**

- How to identify the remit of a team and allocate work within the team fairly taking into account the skills, experience and knowledge of the individual.
- How to recognise when to delegate and be able to delegate appropriately.

- How to provide opportunities to the individuals to learn and therefore undertake work in new areas.

#### **Leadership and Staff Development**

- How to build good working relationships with team members.
- How to motivate and encourage staff by keeping employees informed, consulting with them, encouraging contributions and recognising employees' ideas.
- How to monitor staff effort and supervise their work, including coaching/mentoring and appraisal.
- How to develop and maintain awareness of equal opportunities and anti-discrimination legislation.
- How to identify and meet training needs.

#### **5. Quality Assurance and Enhancement**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- The ILEX Indemnity Insurance Rules and be able to comply with them in practice.
- How to identify and manage risks.
- Introducing procedures and arrangements in a practice to prevent mistakes and therefore avoid claims occurring.
- Developing quality standards to minimise the firm's exposure to risk.
- Establishing a system to inform the Partners or Directors of any exposure to risk and be able to manage that exposure.
- The need to communicate the requirements about managing risk to staff.
- The need to keep both their and their employees' knowledge and skills up to date.
- The need to undertake regular reviews of files and working practices to identify the firm's exposure to risk, including the need to train staff on reviewing files.
- Introducing client care and complaint handling procedures in the firm.

## ACCOUNTS COURSE DELIVERY AND OUTCOMES

An Accounts Course must be effective to develop the accounts skills and knowledge of ILEX Practitioners in accordance with the outcomes set out below. The teaching should focus on the development of knowledge and application of Accounts. The course may be provided by face to face tuition or it may alternatively be provided by distance learning. The course must be supported by course materials which include guidance on preparation work and relevant case studies to be used for teaching during each session.

ILEX Practitioners should develop their own knowledge of the ILEX Practice Management and Accounts Rules.

### ACCOUNTS

ILEX Practitioners who have attended the accounts course will by the end of the course have attained the following outcomes:

#### 1. General

Upon completion of the course, ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- The ILEX Accounts Rules and their powers to secure compliance with those rules.
- The general principles of double entry book keeping, and how to implement them in practice.

#### 2. Client Account

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- The requirements to maintain separate office and client ledgers and bank accounts.
- The types of accounts which can be operated, i.e., designated and general accounts and be able to decide which account would be appropriate to the client's case.
- How to identify what constitutes client money and what can be paid into the client account.
- How to identify what constitutes a disbursement, when it becomes due and how it should be paid.
- What withdrawals can be made from client account, the method of withdrawing, what action should be taken before a withdrawal is made and who has authority to make a withdrawal.
- The need to record all client transactions in a separate ledger for each matter.
- The need to record transfers from client to office account and vice versa, and the principles of transferring money from client to office account and vice versa and the need to record transfers for each matter for each client.

### **3. Office Account**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- What constitutes an office account.
- What payments can be made into an office account and how and when they should be made.
- The need to record transfers from office to client account and vice versa, and the principles of transferring money from office to client account and vice versa.
- The requirement to record all transactions relating to office money having reference to a client.

### **4. Costs**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- When to send a bill of costs to a client and when to send interim bills to clients.
- The format and content of a bill of costs.
- How to identify whether a payment of costs constitutes client or office money.
- How to deal with mixed payments and be able to identify the options available for processing mixed payments.
- The treatment of VAT on costs and the VAT element of disbursements.
- The need to record abatements of costs and bad debts.

### **5. Interest**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- The ILEX Rules on identifying whether interest is payable on clients' money.
- How to calculate the amount of interest due on a client account and the funding of interest payments.

### **6. Accounting Records**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- Identifying how accounting records must be kept, the format they should take and be able to decide whether they should be manual, computerised or both.
- What transactions should be recorded and how to record the transactions.
- How to operate a system of double entry book keeping.
- Modern accounting procedures and identifying whether they would suit the practice.
- Reconciliation of accounts, be able to identify how reconciliations should be done, when they should be done, how to check entries and make adjustments.
- What documents must be retained and for how long.

## **7. Accountant's Reports**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- Identifying the need for an accountant's report.
- Identifying when an accountant's report must be produced and submitted to ILEX.
- How to select and instruct an accountant, be able to send out a letter of instruction, and ensure that the accountant is aware of the ILEX Accounts Rules.
- Format of the accountant's report.
- The duties owed by the accountant.

## **8. Business Accounting**

Upon completion of the course ILEX Practitioners should be able to demonstrate knowledge and understanding of:

- The need for business accounts, the principles of book keeping, the terms used in accounts and basic accounting concepts and their use.
- The process involved in recording transactions and how accounting data is used to prepare a trial balance.
- The need to make provision for depreciation and other year-end adjustments.
- The nature of shareholder funds and the need to account for taxation and the circumstances in which consolidated final accounts are needed.
- Partnerships and company accounting procedures.
- The need to audit final accounts.
- How to produce balance sheets, profit and loss accounts, be able to read and understand them, and identify future business needs and trends and structure the practice accordingly.
- Knowledge of VAT and how it applies to the practice
- Managing the finance of the firm, identifying sources and availability of finance.
- How to control finances and costs, keeping records of expenditure, identify and implement improvements.
- The benefits of a credit control policy for the firm and how to implement such a policy for the firm and methods for recovery of money owed to the firm.
- Management working capital.
- How to produce cash flow statements for the firm which check actual income against expenditure and against the budget and appropriate ways to report upon any variations.
- How budgets may be produced that are realistic and economical and allow for contingencies, working within the constraints of a budget.
- Methods of monitoring receipts and payments and managing cash balances.
- Time recording systems relevant to lawyers firms.

**ASSESSMENT CRITERIA AND FRAMEWORK DOCUMENT FOR ACCOUNTS**

A candidate’s knowledge and understanding of Elements 1-7 below shall normally be assessed by written examination which will include assessment of the candidate’s ability to:

- a) recognise and record receipts into and payments from office and client accounts;
- b) analyse and interpret relevant ledger entries;
- c) prepare a simple financial statement for a client on completion of a matter;
- d) answer questions on the application of the ILEX Accounts rules in practice;

A candidate’s knowledge and understanding of Element 8 shall normally be assessed by written examination which will include assessment of the candidate’s ability to:

- a) understand the construction of a simple profit and loss account and balance sheet;
- b) analyse and interpret information contained in a simple profit and loss account and balance sheet;
- c) answer questions on the practical aspects of business accounting as applied to the activities of the firm;

In order to pass the formal assessments for Accounts a candidate must demonstrate:

- a clear understanding of the ILEX Accounts rules, which should be gained in the context of systems and procedures to which they will be exposed in practice, as well as
- a clear understanding of the basic principles of business accounting and an awareness of the need to interpret business accounts to ensure clients are appropriately advised.

In particular, a candidate should be able to demonstrate knowledge and understanding of the following;

***Element 1 General***

- The ILEX Accounts Rules and the powers of ILEX Practitioners to secure compliance with those rules.
- The general principles of double entry book keeping, and how to implement them in practice.

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***Element 2 Client Account***

- The requirements to maintain separate office and client ledgers and bank accounts.

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- The types of accounts which can be operated, i.e., designated and general accounts and be able to decide which account would be appropriate to the client's case.
- How to identify what constitutes client money and what can be paid into the client account.
- How to identify what constitutes a disbursement, when it becomes due and how it should be paid.
- What withdrawals can be made from client account, the method of withdrawing, what action should be taken before a withdrawal is made and who has authority to make a withdrawal.
- The need to record all client transactions in a separate ledger for each client.
- The need to record transfers from client to office and vice versa, and the principles of transferring money from client to office account and vice versa, and the need to record transfers between clients.

### ***Element 3 Office Account***

- What constitutes an office account.
- What payments can be made into an office account and how and when they should be made.
- The need to record transfers from office to client account and vice versa, and the principles of transferring money from office to client account and vice versa.
- The requirement to record all transactions relating to office money having reference to a client.

### ***Element 4 Costs***

- When to send a bill of costs to a client and when to send interim bills to clients.
- The format and content of a bill of costs.
- How to identify whether a payment of costs constitutes client or office money.
- How to deal with mixed payments and be able to identify the options available for processing mixed payments.
- The treatment of VAT on costs and the VAT element of disbursements.
- The need to record abatements of costs and bad debts.

### ***Element 5 Interest***

- The ILEX Rules on identifying whether interest is payable on clients' money.
- How to calculate the amount of interest due on a client account and the funding of interest payments.

### ***Element 6 Accounting Records***

- How accounting records must be kept, the format they should take and decide whether they should be manual, computerised or both.
- What transactions should be recorded and how to record the transactions.
- How to operate a system of double entry book keeping.
- Modern accounting procedures and identifying whether they would suit the practice.
- Reconciliation of accounts, and be able to identify how reconciliations should be done, when they should be done, how to check entries and make adjustments.

- What documents must be retained and for how long.

***Element 7 Accountant's Reports***

- Why an accountant's report is needed.
- When an accountant's report must be produced and submitted to ILEX.
- How to select and instruct an accountant, be able to send out a letter of instruction, and ensure that the accountant is aware of the ILEX Accounts Rules.
- Format of the accountant's report.
- The duties owed by the accountant.

***Element 8 Business Accounting***

- The need for business accounts, the principles of book keeping, the terms used in accounts and basic accounting concepts and their use.
- The process involved in recording transactions and how accounting data is used to prepare a trial balance.
- The need to make provision for depreciation and other year-end adjustments.
- The nature of shareholder funds and the need to account for taxation and the circumstances in which consolidated final accounts are needed.
- Partnerships and company accounting procedures.
- The need to audit final accounts.
- How to produce balance sheets and profit and loss accounts, and how to read and understand them, and identify future business needs and trends and structure the practice accordingly.
- VAT and how it applies to the practice
- The management of the firm's finance, identifying sources and availability of finance.
- How to control finances and costs, keep records of expenditure, and how to identify and implement improvements.
- How to introduce a credit control policy for the firm and identify a mechanism to recover money owed to the firm.
- How to manage working capital.
- How to produce cash flow statements for the firm which check actual income against expenditure and against the budget and be able to report upon any variations.
- How to produce budgets that are realistic and economical and allow for contingencies, working within the constraints of a budget.
- How to monitor receipts and payments and manage cash balances.
- How to produce a time recording system for the firm.

## APPENDIX 6

### THE ILEX ~~PRACTITIONERS PRACTICE AND ACCOUNTS~~ RULES

#### 1. Authority, Commencement and Interpretation

1.1 ILEX has delegated to IPS responsibility for these rules.

1.2 These Rules are binding upon ILEX Practitioners and entities regulated/authorised by IPS following from undertakings provided by each of them to ~~ILEX-IPS~~ in the form required by these Rules and are enforceable by ~~ILEX-IPS~~ against any ILEX Practitioner or entity regulated/authorised by IPS, both as rules of conduct and as contractually binding obligations.

1.3 These Rules may be changed from time to time by resolution of the IPS Board subject to such statutory approval as may be required and are binding upon ILEX Practitioners and entities regulated/authorised by IPS as varied. A breach of these Rules may result in civil proceedings through the courts or disciplinary proceedings.

#### 1.4 Definitions:

- Account Period – means the period referred to in Rule 20.2
- Appealable Decisions – means a decision of ILEX hereunder which may be appealed in accordance with the Appeals Procedure set out in Schedule 2.
- Approved Practitioner – means a Fellow, a solicitor, a licensed conveyancer, a chartered patent attorney, a trade mark attorney, a law costs draftsman or a barrister approved for the purpose of Rule 7.
- Authorised Person – means a person authorised under the Legal Services Act 2007
- Certification Rules – means the Certification Rules for ILEX Practitioners
- Client Account – means an account at a bank or building society in England and Wales in the name of the ILEX Practitioner or their firm and which includes in its title the words "Client Account". A Client Account may be an account pooling funds from more than one client or an account designated for a particular purpose.
- Client Money – means money beneficially owned by anyone other than the ILEX Practitioner or their firm.
- Code – means the ILEX Code of Conduct.
- Compensation Scheme – means the scheme referred to in Rule 32.
- Continuing Professional Development – means those matters required by ILEX's Continuing Professional Development Guidelines.
- Council – means the Council of ILEX.
- Designated Client Account – means a deposit or share account for money relating to a single client and which includes in its title 'client account'.
- Employed ILEX Practitioners – means an ILEX Practitioner who does not act for or provide any services for the benefit of any client other than their employer.

• Entity means any person or body providing or offering to provide legal services which include any reserved legal activity performed by an ILEX Practitioner.

- Fellow – means a Fellow of ILEX.
- Firm – means a practice offering legal services
- Guidance Note – means written guidance published by ILEX or IPS from time to time and describing itself as a Guidance Note for the purpose of these rules.
- ILEX – means the Institute of Legal Executives
- ILEX Practitioner – means a Fellow authorised by ILEX rules to undertake reserved legal activities
- ILEX Practitioners Certificate – means a certificate authorising a Legal Executive to undertake reserved legal activities.
- IPS – means ILEX Professional Standards Ltd.
- Office Account – means an account at a bank or building society in England and Wales in the name of the ILEX Practitioner or their firm and which includes in its title the words "Office Account".
- Office Money – means money beneficially owned by the ILEX Practitioner or their firm.
- Poor Service Scheme – means the scheme referred to in Rule 31.
- Practice Company - means a company or limited partnership permitted by Rule 7.2.
- Publicity Code – means the Code referred to in Rule 5.6.1
- Professional Indemnity Insurance– means the insurance required by the ILEX Practitioners Indemnity Insurance Scheme.
- Professional Indemnity Insurance Code – means the code issued by ILEX as varied from time to time.
- Referrer - means a person who in the course of their business regularly recommends clients to providers of legal services and has some commercial or financial interest in the affairs of those clients to which the services relate.
- Required Accounts Records – means the accounts records required by these rules and any Accounts Guidance issued by ILEX.
- Rights of Audience Conduct Rules – means the rules referred to in Rule 5.5.
- Solicitors Accounts Rules – means the Accounts Rules applicable to Solicitors.
- Self-employed ILEX Practitioner – means ILEX Practitioners practising on their own account.
- Supervised ILEX Practitioners – means ILEX Practitioners employed by a firm of solicitors or another approved practitioner.

1.5 An ILEX Practitioner and entity regulated authorised by IPS must maintain a high level of knowledge and understanding of these rules and any formal guidance issued by ILEX from time to time.

1.6 These rules place obligations on ILEX practitioners and entities regulated authorised by IPS. In these rules references to 'you' includes

[ILEX practitioners, entities regulated/authorised by IPS and the managers and employers of such entities. References to managers include partners in a partnership model and owners of an entity.](#)

## I. **THE PRACTICE RULES**

### 2. **The Principal Duties**

[An ILEX Practitioner/You](#) must:

- 2.1.1 act at all times with complete integrity;
- 2.1.2 act in the best interests of [their/your](#) client and maintain proper standards of work;
- 2.1.3 support the rule of law and the fair and efficient administration of justice and discharge a duty of good faith to the Court;
- 2.1.4 maintain confidentiality in relation to [their/your](#) clients' affairs;
- 2.1.5 not treat any person less favourably because of that person's age, disability, race, colour, ethnic or national origin, gender, sexual orientation, religion or belief, marital or family status, or nationality;
- 2.1.6 not bring discredit on [themselves-yourself](#) or ILEX;
- 2.1.7 act in [their/your](#) professional dealings with fairness and courtesy;
- 2.1.8 maintain professional independence and avoid conflicts of interest;
- 2.1.9 observe the Code and other rules applying to Fellows and members of ILEX generally. Where the Code is in conflict with these rules, these rules shall take precedence.

### 3. **Client Care**

#### 3.1 Basis of retainer

[An ILEX Practitioner/You](#) must adequately explain and agree with [their/your](#) client the basis upon which [their/your](#) services are to be provided including (but not limited to) the extent of the services, the basis of the [ILEX Practitioner's/your](#) remuneration and the likely total cost of the matter to the client.

#### 3.2 Required information

[An ILEX Practitioner/You](#) must confirm to [their/your](#) client in writing as soon as practicable:

- 3.2.1 the basis of ~~their~~your retainer including confirmation of how ~~the ILEX Practitioner's~~your remuneration is to be calculated and the breakdown of the likely total cost of the matter to ~~the~~your client including any likely payments to third parties;
  - 3.2.2 the extent and likely duration of the work to be undertaken;
  - 3.2.3 ~~the ILEX Practitioner's~~your complaints procedure and that in the event they cannot be satisfactorily concluded the complainant can refer the matter to the Legal Ombudsman;
  - 3.2.4 the identity of the individuals with whom ~~the~~your client is intended to deal and their respective roles and status;
  - 3.2.5 the basis upon which any payment on account of costs or disbursements may be withdrawn from Client Account;
  - 3.2.6 ~~their~~your status ~~as and that an ILEX Practitioner~~you are authorised to practise as such by ILEX in accordance with these rules and the effect and implication of the requirements of paragraph 3.3.3 hereof;
  - 3.2.7 the period within which any account rendered to ~~the~~your client must be paid and the consequences of non-payment in accordance with the terms of engagement including (if applicable) any right to suspend services, any lien and the right to recover sums by action;
  - 3.2.8 the circumstances in which any sum may be payable by a client who is publicly funded or who has entered a conditional fee agreement;
  - 3.2.9 information concerning referral arrangements as required by paragraph ~~5.4.3;4.4;~~
- and thereafter confirm any material change as soon as possible.

### 3.3 Required terms

The terms of ~~the ILEX Practitioner's~~your retainer with ~~the~~your client must include:

#### 3.3.1 An agreement that:

- In any Court proceedings relating to ~~the ILEX Practitioner's~~your costs (~~the ILEX Practitioner~~you having given ~~the~~your client notice of ~~their~~your intention to sue) ~~the ILEX Practitioner~~you and ~~the~~your client are bound to consent to an order in those proceedings for the detailed

assessment of those costs by the Court if in the same circumstances the assessment of a solicitor's bill would be ordered; and

- In the event of a dispute concerning ~~the ILEX Practitioner's~~your costs (where no Court proceedings have been commenced) ~~the ILEX Practitioner~~you and ~~the your~~ client will refer the matter to ILEX for adjudication and they will be bound by the decision of ILEX. ILEX may nominate an arbitrator to adjudicate the dispute on its behalf. The decision of the adjudicator may also include a determination as to which party is to pay the costs of the adjudicator.

3.3.2 a requirement for specific agreement by ~~the your~~ client to any sharing by ~~the ILEX Practitioner~~you of fees paid by ~~the your~~ client to ~~the ILEX Practitioner~~you with any third party;

3.3.3 the irrevocable agreement of ~~the your~~ client to ~~the ILEX Practitioner's~~your compliance with these rules and for IPS to exercise its Regulatory Powers set out in Part III hereof notwithstanding any rights of confidentiality or privilege belonging to that client.

#### 3.4 Forbidden terms

~~An ILEX Practitioner~~You may not attempt to exclude liability to ~~their~~your client but may limit liability for professional negligence provided that such limit is evidenced in writing and is not below the minimum level of Professional Indemnity Insurance required by ILEX.

#### 3.5 Risks

~~An ILEX Practitioner~~You must ensure that ~~their~~your client is fully informed at all relevant times of all material risks to such client arising from the matter in which ~~the ILEX Practitioner is~~you are instructed including (but not limited to) the risk of liability to any other party's costs, the application of a statutory charge over recoveries in publicly funded matters and the risk that a client's own costs may not be recovered. ~~An ILEX Practitioner~~You must advise ~~their~~your client as to any possible mitigation of those risks including but not limited to insurance.

#### 3.6 Objectives

~~An ILEX Practitioner~~You must ensure that at appropriate points ~~the your~~ client is advised of reasonable and obtainable objectives in relation to the instructions they give to ~~the ILEX Practitioner~~you. The advice should be given in writing where practicable.

#### 3.7 Estimates of time and cost

3.7.1 ~~An ILEX Practitioner~~You must during the course of acting provide regular and timely advice as to progress and confirm in writing the cost expected of all further stages until the conclusion of the matter.

3.7.2 ~~An ILEX Practitioner~~You must provide regular and timely indications in writing to ~~their~~your client of the costs incurred to date.

### 3.8 Ability to fund

~~An ILEX Practitioner~~You must discuss with ~~their~~your client ~~the client's~~their ability to meet the costs to be incurred in the matter and must advise ~~their~~your client as to the possible availability of any other source of funding including (without limit) public funding, insurance, contingency fees or conditional fees.

### 3.9 Expedition

~~An ILEX Practitioner~~You must use ~~their~~your best endeavours to progress each client's matter with reasonable expedition.

### 3.10 Communication

~~An ILEX Practitioner~~You must maintain appropriate communication as to the progress of the matter with ~~their~~your client.

### 3.11 Billing requirements

~~An ILEX Practitioner~~You must render bills for professional services promptly in accordance with the terms of ~~their~~your retainer and each such bill must include sufficient information for ~~the~~your client to be able to appreciate the nature and extent of the work done. All bills and intimations of costs must distinguish between fees, disbursements not yet paid at the time of the bill or intimation and paid disbursements.

### 3.12 Contingency fees

~~An ILEX Practitioner~~You may only act in proceedings under a contingency or conditional fee to the extent permitted by law.

### 3.13 Counsel and experts

~~An ILEX Practitioner~~You must advise ~~their~~your client as to the appropriate use of Counsel, experts, enquiry agents and other third parties so as to ensure that ~~their~~your client is aware of when and the extent to which ~~their~~your use is appropriate and the likely cost.

### 3.14 Availability

~~An ILEX Practitioner~~You must ensure that arrangements are in place to ensure:

- 3.14.1 that clients by whom ~~they~~you are retained can obtain information and advice as and when it is reasonably required;
- and

3.14.2 that third parties wishing to communicate with ~~the ILEX Practitioner~~you concerning any client's matter are reasonably able to do so.

### 3.15 Complaints procedure

~~An ILEX Practitioner~~You must operate documented procedures which demonstrate a commitment to the resolution of client complaints in a speedy and satisfactory way. ~~An ILEX Practitioner~~You must use ~~their~~your best endeavours to resolve client complaints speedily and to the satisfaction of ~~the~~your client. The complaints procedure must ensure that:

3.15.1 complaints are handled fairly and efficiently; and

3.15.2 an initial response is made to any written complaint as soon as reasonably practicable and in any event within twenty-one days; and

3.15.3 all clients are aware of how and to whom to complain; and

3.15.4 details of how a complaint may be made are given to clients in writing; and

3.15.5 in the event the complaint cannot be satisfactorily concluded the client can refer the matter to the Legal Ombudsman

~~An ILEX Practitioner~~You must not charge a client for the cost of handling a complaint.

## **4. Professional Duty to the Client**

### 4.1 Conflicts of interest

4.1.1 ~~An ILEX Practitioner~~You must not act (or continue to act) for a client or clients whose interests conflict with:

- any other person for whom ~~the ILEX Practitioner is~~you are acting; or
- the interests of ~~the ILEX Practitioner~~yourself, any member of ~~the ILEX Practitioner's~~your family, any employee, ~~or manager or partner~~ of ~~the ILEX Practitioner's~~your practice or any person with whom ~~the ILEX Practitioner has~~you have a material business relationship; or
- ~~any~~your former client ~~of the ILEX Practitioner~~ where ~~the ILEX Practitioner is~~you are in possession of relevant confidential information and the instructions would include acting against that former client;

- ~~the ILEX Practitioner's~~your responsibilities in any other capacity;  
or where there is a substantial risk of such a conflict.

4.1.2 If ~~an ILEX Practitioner~~you acts for more than one client in a matter during the course of which a conflict of interest arises ~~the ILEX Practitioner~~you may continue to act for a client (or clients whose interests do not conflict) provided that to do so would not be inconsistent with ~~the ILEX Practitioner's~~your duty of confidence and ~~they~~you obtain the written consent of both clients to continue to act.

#### 4.2 Confidentiality

~~An ILEX Practitioner~~You must keep confidential any information about ~~their~~your client's, or former client's, affairs as well as information which ~~the ILEX Practitioner has~~you have in ~~their~~your possession as a result of acting in a capacity other than as an ILEX Practitioner ~~or entity regulated~~authorised by IPS except where that duty is overridden by law, these rules or modified by ~~the~~your client's informed consent.

#### 4.3 Withdrawal

4.3.1 ~~An ILEX Practitioner~~You, having accepted instructions to act, may only withdraw from acting for good and substantial reasons communicated on reasonable notice to ~~their~~your client.

4.3.2 ~~An ILEX Practitioner~~You may not, whilst continuing to be retained by a client, cause any prejudice to that client by delaying that client's matter in circumstances in which ~~the ILEX Practitioner~~you would be entitled to withdraw but ~~has~~have not done so.

#### 4.4 Referral arrangements

4.4.1 ~~An ILEX Practitioner~~You must prior to accepting instructions fully disclose in writing to ~~their~~your proposed client any financial arrangement with any third party by which that client has been referred or recommended to ~~the ILEX Practitioner~~you.

4.4.2 ~~An ILEX Practitioner~~You must fully disclose to ~~their~~your client in writing prior to any referral of or recommendation to that client any commission financial or other benefit which ~~the ILEX Practitioner~~you expects to receive as a result from any third party.

- 4.4.3 [An ILEX PractitionerYou](#) must disclose and explain to [the-your](#) client any conditions or limitations resulting from [theiryour](#) relationship with a third party which affect the steps [they-you](#) can take on [theiryour](#) client's behalf.
- 4.4.4 [An ILEX PractitionerYou](#) must not enter any arrangement with a Referrer nor deal with any client referred to [the-ILEX Practitioneryou](#) by a Referrer unless [the-ILEX Practitioneryou](#) can demonstrate to ILEX that any arrangement and any dealings do not interfere with [yourthe](#) integrity [of the-ILEX Practitioner](#) and [theiryour](#) duties to [theiryour](#) client.
- 4.4.5 [An ILEX PractitionerYou](#) may only enter into an arrangement with a referrer who is authorised to act as a claims manager under the Compensation Act 2006.

#### 4.5 Declining to act

- 4.5.1 [An ILEX PractitionerYou](#) may decide not to take on any new matter for any reason other than a reason contrary to these rules or law.
- 4.5.2 [An ILEX PractitionerYou](#) must decline to take on a new matter if [they-you](#) are likely to have insufficient experience, time or resources to deal with that matter in the manner the client might reasonably expect.
- 4.5.3 [An ILEX PractitionerYou](#) must decline to accept instructions if to comply would involve [the-ILEX Practitioneryou](#) in any impropriety.

#### 4.6 Receiving instructions

- 4.6.1 [An ILEX PractitionerYou](#) must take reasonable steps to ensure that a person giving instructions has sufficient capacity and authority to do so.
- 4.6.2 [An ILEX PractitionerYou](#) must ensure that a client has sufficient opportunity to give instructions without the involvement of a third party and to be confident that those instructions represent the client's wishes in the matter.

#### 4.7 Borrowing from client

[An ILEX PractitionerYou](#) must not accept any loan from any person who is or has been a client within the previous three years or any family member of such

a client unless that client is a corporation for which lending is a substantial element of its business.

#### 4.8 Accepting gifts from clients

If a client proposes to make a lifetime gift or gift on death to, or for the benefit of ~~an ILEX Practitioner~~you, any employee or manager of ~~their~~your firm or a member of ~~the ILEX Practitioner's~~your family or ~~their~~your employee's family and the gift is of a significant amount ~~the ILEX Practitioner~~you must advise the client to take independent advice unless the client is a member of the beneficiary's family. If the client refuses, ~~the ILEX Practitioner~~you must stop acting for the client in relation to the gift.

### **5. The ILEX Practitioner's Other Duties**

#### 5.1 The Court

5.1.1 ~~An ILEX Practitioner~~You must not intentionally mislead the Court.

5.1.2 ~~An ILEX Practitioner~~You must comply with any proper order of the Court and any undertaking ~~they~~you have given to any Court.

5.1.3 ~~An ILEX Practitioner~~You must not engage in or assist in conduct which is prejudicial to the administration of justice.

#### 5.2 Undertakings

~~An ILEX Practitioner~~You must honour undertakings. An undertaking is a promise made by ~~an ILEX Practitioner~~you or a ~~member~~manager or employee of ~~their~~your firm in the course of legal practice to someone who reasonably relies upon it.

#### 5.3 Disbursements

~~An ILEX Practitioner~~You must pay any disbursement incurred by ~~them~~you promptly upon payment becoming due whether or not ~~the ILEX Practitioner~~you ~~has~~have received funds from ~~their~~your client.

#### 5.4 Fees of lawyers of other jurisdictions

~~Where y~~~~An ILEX Practitioner~~ou ~~who~~instructs a lawyer of another jurisdiction you must pay the lawyer's proper fees unless ~~they~~you have expressly disclaimed that responsibility at the outset or at a later date expressly disclaimed responsibility for any fees incurred after that date.

#### 5.5 Advocates

An ILEX Practitioner who is an Authorised Advocate must comply with ILEX's Rights of Audience Conduct Rules.

## 5.6 Publicity

5.6.1 ~~An ILEX Practitioner~~You must comply with ILEX's Publicity Code.

5.6.2 ~~An ILEX Practitioner~~Your's stationery and business communications must bear the words "regulated by ILEX Professional Standards Ltd".

## 5.7 Equality and Diversity Code

~~An ILEX Practitioner~~You must comply with ILEX's Equality and Diversity Code.

## 5.8 Reporting Misconduct

~~An ILEX Practitioner~~You must report in writing any suspicion that another ILEX Practitioner, ~~entity regulated~~authorised by IPS or a ~~manager or employee~~member of their such entity staff has been guilty of a serious breach of these rules to ILEX without delay.

## 5.9 Rules of other bodies

~~An ILEX Practitioner~~If you are who is employed you must not by ~~their~~your own acts or omissions place ~~their~~your employer in breach of any regulatory requirement or rule of professional conduct applicable to ~~their~~your employer.

## 5.10 Contacting the opposing party

Other than in exceptional circumstances, where the other party in a matter is represented by an authorised practitioner, ~~an ILEX Practitioner~~you must only communicate with the other party in a matter through that party's retained authorised practitioner.

## 5.11 Appearing as a witness

~~An ILEX Practitioner~~You should not act in litigation if it is expected that ~~they~~you or anyone within ~~their~~your firm will be called as a witness unless there is no material risk to ~~their~~your independence, the interests of ~~their~~your client or the fair and efficient administration of justice.

## 5.12 Payments to witnesses

~~An ILEX Practitioner~~You must not make, or offer to make payments to a witness dependent upon the nature of the evidence given or upon the outcome of the case.

## **6. The ILEX Practitioner's Practice**

### 6.1 Qualification to practise

~~An ILEX Practitioner~~You must ensure that ~~their~~your services as such are offered or advertised and/or instructions accepted and/or services provided only whilst:

6.1.1 ~~the ILEX Practitioner has~~you have an appropriate ILEX Practitioners Certificate or Certificate authorising the entity; and

6.1.2 ~~the ILEX Practitioner is~~you are complying with any condition or limit contained in their~~your~~ ILEX Practitioners Certificate; and

6.1.3 ~~the ILEX Practitioner is~~you are covered by Professional Indemnity Insurance in accordance with the Professional Indemnity Insurance Scheme; and

6.1.4 ~~the ILEX Practitioner has~~you have the necessary experience and expertise competently to provide the services offered and/or provided.

#### 6.2 Investment business

~~An ILEX Practitioner~~You must not conduct any activity which is regulated by the Financial Services and Markets Act 2000 unless authorised to do so by the appropriate authority.

#### 6.3 Money Laundering

~~An ILEX Practitioner~~You must comply with the Money Laundering legislation in force from time to time.

#### 6.4 Supervision and risk management

6.4.1 ~~An ILEX Practitioner~~You must ensure that ~~their~~your practice is properly supervised by either ~~themselves~~ ~~yourself~~ ~~an ILEX Practitioner~~ or you have in place suitable arrangements for supervision.

6.4.2 ~~An ILEX Practitioner~~You must operate effective systems to ensure that so far as possible all individuals working within ~~the ILEX Practitioner's~~your practice fully comply with applicable legal and regulatory obligations.

6.4.3 ~~An ILEX Practitioner~~You must not operate a practice which ~~they~~ you know to be insolvent.

#### 6.5 Separate business

~~An ILEX Practitioner~~You must not participate in any business which is not in the usual course of your practice ~~as an ILEX Practitioner~~ unless:

6.5.1 that business is operated so as to ensure that no-one dealing with that business could reasonably believe that it was part of ~~the ILEX Practitioner's~~your practice regulated by IPS ; and

6.5.2 any client aware of the existence of such a business has been informed in writing by ~~the ILEX Practitioner~~you that it does not form part of ~~the ILEX Practitioner's~~your practice regulated by ILEX.

#### 6.6 Principal place of business

~~An ILEX Practitioner~~You must only practice from a place of business in England and Wales unless expressly authorised by ILEX to practice elsewhere.

#### 6.7 Branch Offices

6.7.1 ~~An ILEX Practitioner~~You may operate one or more offices within England and Wales provided that ~~the ILEX Practitioner has~~you have made arrangements for supervision which comply with paragraph 6.4 hereof.

6.7.2 ~~An ILEX Practitioner~~You may retain the Accounting Records required by Rule 17 hereof either together at ~~their~~your principal place of business for all offices or at each office in respect of the records for that office.

#### 6.8 Membership of ILEX Authorisation

~~An ILEX Practitioner~~You's Certificate terminates immediately upon ~~that ILEX Practitioner~~you ceasing to be a member of ILEX or the entity ceasing to be regulated~~authorised by IPS~~ for any reason.

### **7. Permitted Practice Structures**

#### 7.1 Principal or partner ILEX Practitioners

An ILEX Practitioner may practice:

- as a sole principal;
- in partnership with one or more ILEX Practitioners;
- in partnership with authorised persons;
- in partnership with authorised persons and or non-authorised persons where the practice is authorised-licensed by an approved regulator under the Legal Services Act;
- in a limited liability partnership with one or more ILEX Practitioners which is registered in England and Wales;
- in a limited liability partnership with authorised persons which is registered in England and Wales;
- in a limited liability partnership with authorised persons and or non-authorised persons licensed under the Legal Services Act 2007,

provided ~~they are specifically authorised to do so by their ILEX Practitioners Certificate~~ the entity in which they practice is authorised by IPS or by another approved regulator.

#### 7.2 Corporate practice ("Corporate ILEX Practitioners")

An ILEX Practitioner may practice through:

- a company which is wholly owned and controlled by ILEX Practitioners and registered in England and Wales,
- a company whose managers are authorised persons and registered in England and Wales;
- a company whose ~~owners or~~ managers include authorised persons and non-authorised persons which is authorised/licensed by an approved regulator under the Legal Services Act 2007,

provided the entity in which they practice is authorised by IPS or by another approved regulator~~they are specifically authorised to do so by their ILEX Practitioners Certificate.~~

#### 7.3 Legal practices ("Supervised ILEX Practitioners")

An ILEX Practitioner may be employed by or be a manager in any legal practice regulated by an approved regulator under the Legal Services Act 2007.

#### 7.4 Employment ("Employed ILEX Practitioners")

An ILEX Practitioner may be employed other than in a legal practice regulated by an approved regulator under the Legal Services Act 2007 but may not provide services to persons other than their employer unless their employer is authorised to do so by an approved regulator~~unless specifically authorised to do so by their ILEX Practitioners Certificate.~~ ~~Practitioners authorised to provide legal services to customers of their employer will be called Employed ILEX Practitioners authorised to provide legal services to customers of their employer.~~

#### 7.5 Other practice structures

ILEX Practitioners must not practice other than as expressly permitted by rule 7 or by express prior written consent of ILEX/IPS.

### 8. Principal or Partner ILEX Practitioners

An ILEX Practitioner who is the sole principal or ~~is held out as a partner/manager or member~~ of a practice is personally responsible for the compliance with these rules by every individual working within that practice, except where the practice is regulated by another approved regulator. In those circumstances they may in the event of any conflict between these rules and the rules of the approved regulator apply in writing to ILEX/IPS for an appropriate waiver and if granted shall be relieved from compliance with these rules to the extent of the waiver given.

### 9. Corporate ILEX Practitioners

9.1 The ILEX Practitioner or ILEX Practitioners who together wholly own and control a Practice Company are each personally responsible for the conduct of the practice to the same extent as if the practice had been

conducted directly by him or her or them as principal or partner ILEX Practitioners.

- 9.2 ILEX Practitioners operating through a Practice Company must procure that it complies with these rules to the same extent as if it was an ILEX Practitioner operating as a sole principal.
- 9.3 ILEX may only authorise ~~an ILEX Practitioner to practice through a~~ Practice Company if that company has provided a binding undertaking to ILEX to comply with these rules and submit to ILEX's Regulatory Powers to the same extent as if it were itself an ILEX Practitioner unless the Practice Company is regulated by another approved regulator.
- 9.4 Where an ILEX Practitioner practices in a company whose owners or managers include authorised persons and non-authorised persons, which is authorised by an approved regulator under the Legal Services Act 2007, they may in the event of any conflict between these rules and the rules of the approved regulator apply in writing to ILEX for an appropriate waiver and if granted shall be relieved from compliance with these rules to the extent of the waiver given.

## **10. Supervised ILEX Practitioners**

An ILEX Practitioner employed by or a manager in any legal practice regulated by an approved regulator other than IPS under the Legal Services Act 2007:

- 10.1 must comply with rule 2 of these rules and the rules of conduct of the approved regulator but whilst the ILEX Practitioner is so employed Parts I and II of these rules shall not apply and only rules 27, 29.1, 29.3, 29.4, 32, 33 and 34 of Part III shall apply;
- 10.2 may in the event of any conflict between those rules apply in writing to ILEX for an appropriate waiver and if granted shall be relieved from compliance with these rules to the extent of the waiver given;
- 10.3 must upon first becoming aware of any breach of these rules or the rules of conduct of the approved regulator in relation to any client with whom or matter with which the ILEX Practitioner has had any personal dealings report such breaches to ILEX and appropriate approved regulators in writing.

## **11. Employed ILEX Practitioners**

- 11.1 An Employed ILEX Practitioner who does not act for or provide any services for the benefit of any client other than their employer is required to comply with these rules including but not limited to the Principal Duties but is not required to comply with:
- 11.1.1 any of the rules in either section 3 "Client Care" or section 4 "Professional Duty to the Client";
- 11.1.2 rules 5.4 and 5.6.

11.2 An Employed ILEX Practitioner may be authorised by ILEX to provide services to clients, other than that ILEX Practitioner's employer, by endorsement upon the ILEX Practitioners Certificate.

**11.3** ~~Authorisation under paragraph 11.2 may only be given if the ILEX Practitioner satisfies ILEX that the documented arrangements by which the services are to be provided ensure that:~~

~~11.3.1 the ILEX Practitioner is and will remain able to fully comply with all of these rules; and~~

~~15.1.1 11.3.2 clients for whom the ILEX Practitioner acts will be in no worse position in any respect than if the ILEX Practitioner had been acting as a sole principal; and~~

~~15.1.2 15.1.1 11.3.3 ILEX is and will remain able to exercise the regulatory powers in these rules in relation to any matter or client (other than the employer) to no less an extent in any respect than if the ILEX Practitioner had been a sole principal.~~

15.2 11.4 An Employed ILEX Practitioner who receives or holds clients' money (including that of their employer) must comply with the Accounts Rules.

## II. **THE ACCOUNTS RULES**

### **12 Client Money**

12.1 ~~An ILEX Practitioner~~You must as soon as is practicable pay Client Money received into ~~their~~your Client Account and only into that account unless:

12.1.1 the client gives written instructions for the cheque or cash to be held as such for the client's own convenience; or

12.1.2 the money received represents unpaid professional disbursements included in a payment of costs which may be paid into Office Account provided they are then paid within two working days.

12.2 ~~An ILEX Practitioner~~You must use each client's money for that client's matter only.

12.3 Subject to rule 13.9 ~~an ILEX Practitioner~~you may only withdraw money from Client Account upon the instructions of the client to whom the money belongs.

- 12.4 ~~An ILEX Practitioner~~You may withhold money from client account on the written authorisation of ILEX. ILEX may impose a condition that ~~the ILEX Practitioner~~you pay the money to a charity which gives an indemnity against any subsequent legitimate claim for the sum received.
- 12.5 ~~An ILEX Practitioner~~You may transfer a client's money from Client Account to Office Account to settle that client's liability for costs incurred or disbursements paid by ~~the ILEX Practitioner~~you in accordance with the terms of ~~the ILEX Practitioner's~~your retainer and following the rendering of the relative account and a written intimation to that client that the funds are to be transferred.
- 12.6 Nothing in these Rules deprives ~~an ILEX Practitioner~~you of any recourse or right, whether by way of lieu, set off, counter claim or otherwise, against money standing to the credit of a client account.
- 12.7 Regular payments from the Legal Services Commission must be paid into ~~the ILEX Practitioner's~~your office account. ~~An ILEX Practitioner~~You must within 28 days of submitting a report to the Legal Services Commission, notifying completion of the matter, either pay any unpaid professional disbursements or transfer into a client account that sum equivalent to the amount of unpaid professional disbursements relating to that matter. Where the Legal Services Commission permits ~~an ILEX Practitioner~~you to submit regular reports at various stages during a matter the provisions relating to unpaid professional disbursements apply to any such disbursements included in each report. Regular payments can be either standard monthly payments paid by the Commission under civil legal aid contracting arrangements or any other payments received from the Commission under an arrangement for payments on a regular basis.

- 12.8 ~~An ILEX Practitioner~~You must maintain accurate and up to date accounts in accordance with these rules and any guidance issued by ILEX from time to time.
- 12.9 ~~An ILEX Practitioner~~You must retain ~~their~~your ability to repay client money immediately unless the client agrees otherwise in writing.
- 12.10 Notwithstanding any provision herein to the contrary in relation to matters which are publicly funded:
- 12.10.1 Payments received from the Legal Services Commission may be paid into Office Account with the written consent of the Commission provided that any payment in respect of unpaid disbursements must within 14 days of receipt either be applied to pay those disbursements or transferred to Client Account unless the payments are regular payments in which case Rule 12.7 applies.
- 12.10.2 Payments received from any other party must be paid into Client Account and recorded in a ledger which notes any interest the Legal Services Commission has in such receipt.
- 12.10.3 ~~An ILEX Practitioner~~You may transfer any funds held on Client Account to which ~~they~~you are entitled after delivering to the Commission a report comprising an up to date and comprehensive cash account in relation to the matter in question and an intimation of ~~the ILEX Practitioner's~~your intention to effect a transfer to Office Account indicating the amount of the proposed transfer.
- 12.10.4 ~~An ILEX Practitioner~~You must comply with ~~their~~your obligations to the Legal Services Commission including but not limited to any obligation to preserve the Commission's statutory charge.

### 13. Client Account

- 13.1. ~~An ILEX Practitioner~~You must not pay any of ~~their~~your own money into Client Account except either when under a duty to do so imposed by these rules or any nominal sum required to open or maintain the account or where a payment is made under rule 13.2.
- 13.2 ~~An ILEX Practitioner~~You may pay into client account an advance from ~~the ILEX Practitioner~~you to fund a payment on behalf of a client or controlled

trust. The money becomes client money or controlled trust money. Rule 16 (interest) will not apply to that money.

- | 13.3 ~~An ILEX Practitioner~~You must not allow any client to overdraw their cleared funds held on Client Account.
- | 13.4 ~~An ILEX Practitioner~~You must not effect any payments or receipts through Client Account unless those payments and receipts are incidental to the provision of substantive legal services by ~~the ILEX Practitioner~~you to a client.
- | 13.5 ~~An ILEX Practitioner~~You may transfer client money between Client Accounts.
- | 13.6 ~~An ILEX Practitioner~~You may withdraw money from Client Account to reverse a payment into Client Account made in error.
- | 13.7 ~~An ILEX Practitioner~~You must make good any deficiency in Client Account, immediately that it becomes known, from ~~their~~your own funds through Office Account.
- | 13.8 ~~An ILEX Practitioner~~You must pay a receipt of mixed client money and other funds into Client Account and within 14 days transfer the amount of other funds to Office Account without an intimation of transfer otherwise required under 12.5.
- | 13.9 ~~An ILEX Practitioner~~You may only transfer amounts from a ledger in the name of one client to a ledger in the name of another client with the prior written authority of both clients and provided that it would have been permissible to withdraw that sum from the account in accordance with these rules and it would have been permissible to pay that sum into the account under these rules.
- | 13.10 ~~An ILEX Practitioner~~You may hold funds jointly with the Client, another ILEX Practitioner, ~~or solicitor's practice entity~~ or a third party when instructed in writing by ~~their~~your client to do so provided that:
  - 13.10.1 the funds are held on a joint account designated as to beneficiary and purpose; and
  - | 13.10.2 ~~the ILEX Practitioner~~you maintains available together for inspection by ILEX the client's written authority for every payment made from the joint account upon ~~the ILEX Practitioner's~~your signature and duplicate original bank statements for the joint account; and
  - 13.10.3 compliance with these requirements is confirmed in the Accountants report required by paragraph 20 of these Rules.

13.11 ILEX may by written consent relieve ~~an ILEX Practitioner~~you of ~~their~~your duty to comply with these rules in whole or part in relation to a specific client's funds where ILEX considers it appropriate in the circumstances to do so and ILEX is satisfied that adequate other arrangements exist to safeguard that client's interests.

#### **14 Method and authority for withdrawals from client account**

14.1 A withdrawal from a client account may be made only on specific authority in respect of that withdrawal which has been signed by at least one of the following:-

- an ILEX Practitioner
- a Fellow of ILEX who is employed by ~~an ILEX Practitioner~~you
- ~~an authorised practitioner of at least three years good standing who is employed by an ILEX Practitioner~~you or in practice with ~~an ILEX Practitioner~~you
- ~~the managers of the practice.~~

14.2 A signed authority shall not be required for the transfer of money from one client account to another client account at the same bank or building society except where either is a separate designated account.

14.3 A withdrawal from a client account in favour of ~~an ILEX Practitioner or the practice~~must be made either by way of a cheque to ~~the ILEX Practitioner or their practice~~you or by way of a transfer to ~~their~~your office account. The withdrawal in favour of ~~an ILEX Practitioner or their practice~~must not be made in cash.

#### **15. Office Account**

15.1 ~~An ILEX Practitioner~~You must effect all payments and receipts of ~~the ILEX Practitioner's~~your own money in connection with ~~their~~your practice through an Office Account.

15.2 ~~An ILEX Practitioner~~You must maintain as part of ~~their~~your Required Accounts Records accurate and up to date records of payments from and receipts into Office Account.

#### **16. Interest on Client Account**

16.1 ~~An ILEX Practitioner~~You must place client money on deposit so as to earn interest unless it would be unreasonable or inappropriate to do so.

16.2 ~~An ILEX Practitioner~~You must account to each client for the proper proportion of any interest earned on that client's money (or which ought to have been earned) except to the extent that:

- 16.2.1 the amount due does not exceed such amount as ILEX may from time to time stipulate in a Guidance Note; or
- 16.2.2 the interest is in respect of client money held on account of costs or disbursements;
- 16.2.3 the interest is in respect of money held for the Legal Services Commission.

16.3 ~~An ILEX Practitioner~~You may not exclude ~~their~~your obligations to pay interest in accordance with these rules by contract with ~~their~~your client.

16.4 ~~If yAn ILEX Practitionerou who~~ holds money as a stakeholder ~~you~~ must pay interest to the recipient of the stake.

16.5 ~~An ILEX Practitioner's~~Your client may, without prejudice to any other remedy, apply to ILEX for a Certificate as to whether or not interest, or a sum in lieu of interest, should have been paid, and, if so, the amount. If ILEX certifies that interest, or a sum in lieu of interest, should have been paid, ~~the ILEX Practitioner~~you must pay the certified sum.

## 17. Accounting Records

17.1 ~~An ILEX Practitioner~~You must operate proper accounting systems and controls resulting in the maintenance of complete and accurate accounting records sufficient to demonstrate the entitlements to all Client Money held by ~~the ILEX Practitioner~~you and document every payment or receipt effected in the course of ~~the ILEX Practitioner's~~your practice.

17.2 In particular (but without limit) ~~an ILEX Practitioner~~you must have available together for inspection by ILEX the following:

17.2.1 a record for every payment from Client Account;

17.2.2 written vouchers describing and authorising every Client Account and Office Account transaction;

17.2.3 an up to date ledger for each matter for each client showing all Office Account and Client Account transactions for that matter and the balance of client money held in relation to that matter for that client;

17.2.4 Client Account and Office Account cash books showing every transaction on those accounts;

17.2.5 all Client Account and Office Account bank statements and passbooks;

17.2.6 all Client Account and Office Account chequebooks and paying in books with all counterfoils properly completed;

17.2.7 documentary reconciliations of Client Account;

17.2.8 all written authorities obtained for inter-client ledger transfers required by rule 13.9;

17.2.9 all bills and written intimations of costs sent by [the ILEX Practitioner](#) you;

17.2.10 a list of all joint accounts with the records required by paragraph 13.10.

17.3 [An ILEX Practitioner](#) You may maintain Accounting Records in either or both written and computer form but insofar as records are maintained on computer [an ILEX Practitioner](#) you must:

17.3.1 electronically "back up" all information held on computer at the end of business each week and store the most recent copy away from [the ILEX Practitioner's](#) your premises whenever the office is closed;

17.3.2 use a system which is capable of providing printed copies of ledgers and other information held immediately upon it being required.

17.4 [An ILEX Practitioner](#) You must take every necessary step to ensure that all Accounting Records are kept safe and in good order.

## **18. Reconciliation of Client Account**

[An ILEX Practitioner](#) You must, at least once every five weeks:

18.1 compare the balance on the Client Account cashbook with the balance shown on the statements and passbooks (after allowing for all unrepresented items) of all Client Accounts; and

18.2 as at the same date prepare a listing of balances shown by the client ledgers of the liabilities to clients, and compare the total of those balances with the Client Account cashbook; and

18.3 prepare a reconciliation statement that explains the cause of the difference if any; and

18.4 take appropriate action promptly to correct any differences in order to balance the reconciliation statement.

## 19. Retention of Records

- 19.1 ~~An ILEX Practitioner~~You must retain for a period of at least six years from the date of the last entry those materials referred to in rule 17.2 and all other records (whether held electronically or otherwise) pertaining to transactions on each Client Account, whether held as a general Client Account or a separate designated Client Account.
- 19.2 ~~An ILEX Practitioner~~You must retain paid cheques and other authorities for withdrawals from Client Account for a period of at least two years but these may remain in the physical possession of a bank or building society held on ~~the ILEX Practitioner's~~your behalf.

## 20. Accountants Report

- 20.1 ~~An ILEX Practitioner~~You must deliver an Accountants Report from a Reporting Accountant to ILEX ~~prior to the renewal~~as part of ~~their~~your annual return~~ILEX Practitioners Certificate~~.
- 20.2 The Accountants Report must cover a period of no more than twelve months contiguous with the period of the last previous Accountants Report delivered by ~~the ILEX Practitioner~~you or, if there is no previous Accountants Report, beginning upon the date upon which ~~the ILEX Practitioner~~you first held Client Money.
- 20.3 If ~~an ILEX Practitioner~~you ~~has~~have not held Client Money during the whole of a period for which an Accountants Report would otherwise be required ~~they~~you may in relation to that reporting period provide to ILEX in place of an Accountants Report a certificate (in such form as ILEX may stipulate in a Guidance Note) to that effect and such certificate shall be deemed to be an Accountants Report for the purpose of rule 20.1.
- 20.4 ~~An ILEX Practitioner's~~Your Accountants Report must relate to ~~the ILEX Practitioner's~~your most recently concluded period of account and the end of that period must not be more than three months prior to the ~~renewal~~date of ~~the ILEX Practitioners Certificate~~your annual return.
- 20.5 ~~An ILEX Practitioner~~You must deliver an Accountants Report to ILEX for the period up to and including the date upon which for any reason ~~they~~you ceased to hold Client Money.

## 21. Test Procedures

- 21.1 The reporting accountant must examine the accounting records selected by them and make the following checks and tests:-
- 21.1.1 confirm that the accounting system in ~~the ILEX Practitioner's~~your practice complies with the requirements for accounting records in these rules and that

- an appropriate client ledger is kept for each client
  - the client ledger shows details of all money received, held or paid on account for each client
  - the transactions relating to client money are accurately recorded;
- 21.1.2 make test checks of postings to the client ledger accounts from records of receipts and payments of client money;
- 21.1.3 compare a sample of payments into and from the client account as shown in the bank or building society statements or passbooks with [the ILEX Practitioner's your](#) records of receipts and payments of client money;
- 21.1.4 test check the system for recording costs and making transfers of costs from the client accounts;
- 21.1.5 examine a selection of documents to confirm that the documentary evidence of the financial transactions comply with these rules and that the entries relating to those transactions comply with these rules;
- 21.1.6 select details of the balances on client ledgers for at least two dates and
- compare the total shown by the client ledger accounts of liabilities to the clients with the cash account balance, and
  - reconcile that cash account balance with the balances held as client monies;
- 21.1.7 confirm that reconciliation statements have been kept in accordance with these rules;
- 21.1.8 check the client ledger accounts to see whether any payments have been made from the client account in excess of money held on behalf of that client;
- 21.1.9 check the office ledgers, office cash accounts and the bank statements for any office account to see whether any client money has been improperly paid into an office account, or if it has been improperly paid into office account and has been kept there in breach of the rules;
- 21.1.10 check the records for any client money held outside of a client account to ascertain what transactions have been effected in respect of their money and to confirm that the client has given the appropriate instructions in accordance with these rules;

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- 21.1.11 test check the client ledgers to ensure these rules have been complied with in respect of maintaining records;
- 21.1.12 check that statements and passbooks are being kept in accordance with these rules and cross check transactions with client files where appropriate;
- 21.1.13 check that interest earned on designated client accounts and accounts opened on clients instructions are credited in accordance with these rules; and
- 21.1.14 ask for any information or explanations from [the ILEX Practitioner](#) which is required as a result of these tests and checks.

21.2 The Reporting Accountant must examine [the ILEX Practitioner's](#) accounting records, files and other documents at [the ILEX Practitioner's](#) office.

21.3 The Reporting Accountant must request and [the ILEX Practitioner](#) must provide details of all accounts kept or operated by [the ILEX Practitioner](#) in connection with [their](#) practice at any time during the accounting period to which the report relates.

21.4 The Reporting Accountant must note in the accountants report any substantial departures from the ILEX rules discovered by him whilst carrying out work in preparation of the report.

## 22. Matters outside the accountant's remit

The Reporting Accountant is not required to:-

22.1 Extend their enquiries beyond the information contained in the documents produced, supplementary information and explanations given by [the ILEX Practitioner](#);

22.2 enquire into stocks, shares, securities or documents of title held by [the ILEX Practitioner](#) on behalf of [their](#) clients;

22.3 consider whether accounting records have been properly written up at a time that does not fall within the period of time to which their report relates;

22.4 check compliance with the provisions relating to payments of sums in lieu of interest.

## 23. Reporting Accountant

23.1 A person is eligible to be a Reporting Accountant for the purpose of these rules if they are an accountant who is:

- 23.1.1 a member of an accountancy body incorporated by Royal Charter or the Association of Authorised Public Accountants;
- 23.1.2 a person who is a registered auditor within the terms of Section 35(1)(a) of the Companies Act 1989 or the employee, director or partner of a firm or company which is so registered unless they are disqualified by the provisions of 23.2; or
- 23.1.3 is eligible within guidelines which may be published by ILEX from time to time but not otherwise.

23.2 A person may not be a Reporting Accountant if:

- 23.3.1 they have at any time within the previous five years been a partner, owner, manager, shareholder, member, employee or officer in the practice to which the report relates; or
- 23.3.2 they are the parent, spouse, sibling or child of the ILEX Practitioner, manager or employee of the practice; or
- 23.3.3 they have been disqualified from acting as such by ILEX by written notice given after such person has had a fair opportunity to make representations that such notice should not be given.

23.3 An ILEX PractitionerYou must include the following provisions in the terms upon which the Reporting Accountant is to act:

- 23.3.1 The Reporting Accountant undertakes to deliver the required Accountants Report which will have been prepared for submission to ILEX who may rely upon it in renewing the ILEX Practitioners Certificateassessing your annual return; and
- 23.3.2 The Reporting Accountant may immediately report in writing to ILEX any suspicion of dishonesty or any serious breach of these rules coming to their attention or any other matter which might constitute circumstances representing a material risk to client funds;
- 23.3.3. The Reporting Accountant warrants that they are eligible to act as such under these rules and under those of their own professional body;
- 23.3.4 The ILEX PractitionerYou consents to the disclosure of confidential information by the Reporting Accountant to ILEX if required by ILEX for any purpose under these rules;

23.3.5 The Reporting Accountant is instructed to notify ILEX in writing immediately of the termination of their retainer as Reporting Accountant indicating any matter which could have given rise to a notification under rule 23.3.2.

23.3.6 If a Reporting Accountant is unable for any reason to provide an Accountants Report to ILEX at the time and in the form required by these rules they are instructed to immediately notify ILEX in writing with a full and appropriate explanation.

#### **24. Content of Accountants Report**

24.1 The Accountants Report shall be in such form as may be stipulated by ILEX from time to time but must include statements that:

24.1.1 ~~the ILEX Practitioner's~~your accounting systems and records comply with rule 17 hereof;

24.1.2 reconciliations have been carried out in accordance with rule 18 hereof;

24.1.3 sufficient tests and checks have been carried out to properly express the opinion that as at the end of the relevant financial period the amounts due to clients balance the funds in client account;

24.1.4 on the basis of a reasonable number of checked balances, interest has been paid to clients in accordance with these rules;

24.1.5 the test procedures set out in the current ILEX's Guidance Note to Reporting Accounts have been applied; and

24.1.6 ~~the ILEX Practitioner has~~you have (or if it is the case ~~has~~have not) declined to produce any document or disclose any information requested by the Reporting Accountant whether on grounds of confidentiality, privilege or otherwise.

#### **25. Statutory Rules or Regulations**

25.1 ~~If y~~An ILEX Practitioner~~ou, who~~ in the course of practice, ~~acts~~ as a liquidator, a trustee in bankruptcy, a Court of Protection receiver or a trustee of an occupational pension scheme you must comply with the appropriate statutory rules and regulations and will not be in breach of these rules to the extent that any action or omission is required by applicable statutory rules and regulations.

25.2 ~~An ILEX Practitioner~~You must obtain the authorisation of ILEX before accepting any appointment referred to in paragraph 25.1 and must comply

with any conditions referable thereto which are attached to ~~the ILEX Practitioners Certificate~~ your authorisation by ILEX.

## **26. Accounts Rules Waivers**

~~If you do not hold client funds~~ ILEX may grant ~~any ILEX Practitioner who does not hold client funds~~ you a written waiver from compliance with these Accounts Rules whilst ~~they~~ you continue not to do so.

### **III. Regulatory Powers of ILEX**

## **27. ILEX Practitioners Certificates Authorisation**

### **27.1 Approval**

~~A member of ILEX~~ You may only engage in activities, for which the authorisation of ILEX is required as an approved regulator for the purposes of the Legal Services Act 2007, if, and, to the extent that ~~they~~ you hold a current ~~ILEX Practitioners Certificate~~ authorisation from ILEX.

### **27.2 Certification Rules**

An ~~ILEX Practitioner's Certificate~~ authorisation may only be issued to ~~a member of ILEX~~ ~~when~~ you if you meets the requirements for Certification set out in appropriate Certification Rules.

### **27.3 Conditional Certificates**

27.3.1 ILEX may by written notice to ~~the ILEX Practitioner~~ you attach conditions to any ~~ILEX Practitioners Certificate~~ authorisation upon issue, renewal or at any other time as it considers necessary or expedient taking into account ~~the holder's~~ your experience, past conduct, proposed arrangements for practice or any matter relevant to the protection of the public or ILEX.

27.3.2 ILEX may vary or remove any condition it has attached at any time.

## **28. Inspections**

### **28.1 ILEX's right of inspection**

~~An ILEX Practitioner~~ You must provide ILEX or any person authorised to act on behalf of ILEX upon production of written authority with:

28.1.1 full and unimpeded access to all of ~~the ILEX Practitioner's~~ your practice papers, accounts records and client files; and

28.1.2 full co-operation both personally and by direction to ~~the ILEX Practitioner's~~ your staff with the inspection process; and

- 28.1.3 any information relating to ~~the ILEX Practitioner's~~your practice requested by such person; and
- 28.1.4 reasonable office facilities for such period as is required; and
- 28.1.5 copies of any document requested for removal without charge and forthwith; and
- 28.1.6 authority to ~~the ILEX Practitioner's~~your present or previous Reporting Accountant(s), banker(s) or any other person to provide such information and/or documents to the authorised person and/or ILEX as he, she or it may require.

**28.2 Occasion of inspection**

ILEX shall not be required to have or disclose a reason to inspect nor to give prior notice of any proposed inspection

**29. Suspension of ~~ILEX Practitioner's Certificate~~Authorisation**

29.1 ILEX may by written notice suspend ~~an ILEX Practitioner's~~your certificate authorisation where such suspension is required to protect the public if:

- 29.1.1 there is reason to suspect dishonesty on the part of the ILEX Practitioner or ~~their staff~~a manager or employee of a practice or an Approved Practitioner in connection with the ~~ILEX Practitioner's~~practice; or
- 29.1.2 ~~the ILEX Practitioner is~~you are in serious or persistent breach of these rules; or
- 29.1.3 bankruptcy or insolvency proceedings are issued against the ~~ILEX Practitioner or the ILEX Practitioner~~you or you enters into an ~~individual Voluntary~~Arrangement ~~with creditors~~; or
- 29.1.4 the ILEX Practitioner ~~or manager~~ has been committed to prison or convicted of an offence of dishonesty; or
- 29.1.5 the ILEX Practitioner ~~or managers are~~is physically or mentally incapacitated to such extent as to be unable to attend to their practice; or
- 29.1.6 ~~the ILEX Practitioner has~~you have practised ~~as an ILEX Practitioner~~ at any time without ~~an ILEX Practitioner's Certificate~~authorisation or in breach of any condition thereon; or
- 29.1.7 ~~the ILEX Practitioner has~~you have ceased to properly supervise ~~their~~your practice.

29.2 Upon suspension of ~~an ILEX Practitioners Certificate~~ your authorisation or the termination of ~~the ILEX Practitioner's Certificate~~ your authorisation for any other reason:

29.2.1 ILEX shall be entitled through its authorised agent to possession of all documents in the possession of ~~the ILEX Practitioner~~ you or their staff in connection with ~~their~~ your practice and ~~the ILEX Practitioner~~ you shall procure delivery of such documents forthwith and following receipt of such documents ILEX shall be entitled to distribute them in accordance with the directions of each of the clients to whom they relate or to any other person entitled to possession of them.

29.2.2 ILEX shall be entitled to receive all Client Monies held by or on behalf of ~~the ILEX Practitioner~~ you in connection with ~~their~~ your practice and ~~the ILEX Practitioner~~ you shall give all necessary instructions and authority for the payment of such monies as ILEX shall direct and such monies will upon receipt by ILEX or its authorised agent be held by ILEX upon trust for those beneficially entitled to them.

29.2.3 ~~An ILEX Practitioner~~ You must co-operate with ILEX in protecting the interests of ~~the ILEX Practitioner's~~ your clients including (but not limited to) providing immediately upon request:

- written authority for the redirection of post, telephone, faxes or emails as ILEX may direct;
- full information relating to the operation of ~~the ILEX Practitioner's~~ your practice;
- a written instruction to all ~~the ILEX Practitioner's~~ staff managers and employees to co-operate with ILEX in relation to the steps arising under these rules from the suspension;
- a list of all matters requiring urgent attention.

29.2.4 ILEX's powers in rule 29.2 shall not apply to an Employed ILEX Practitioner to the extent that papers and monies are the property of their employer.

29.2.5 ILEX's powers in 29.2 shall apply to a Practice Company if any of the matters set out in rule 29.1 apply to that Practice Company or any Corporate ILEX Practitioner practising through

it. However, they shall not apply if the Practice Company is regulated by another approved regulator.

29.2.6 ILEX's powers in rule 29.2 shall not apply to a Supervised ILEX Practitioner or an ILEX Practitioner in partnership with an authorised person and or non-authorised person which is regulated by another approved regulator.

29.3 If ~~an ILEX Practitioner~~you disputes ILEX's entitlement to suspend ~~their certificate the ILEX Practitioner~~your authorisation you may seek the order of an appropriate court to restrain such suspension and if such an application is made ILEX will consent to such reasonable directions or arrangements as will produce the most urgent hearing in relation to the suspension as is practical.

29.4 ILEX may apply to an appropriate court either with or without notice to ~~the ILEX Practitioner~~you for orders enforcing its rights under these rules.

### **30. Client Files and Original Documents**

30.1 ~~An ILEX Practitioner~~You must deliver any client file or original document within ~~their~~your possession to ILEX's authorised agent immediately upon ILEX requiring ~~them~~you to do so by written notice if ILEX requires possession either:

30.1.1 to assist in any investigation by ILEX; or

30.1.2 to deliver that file or original document to the person entitled to it following a failure on the part of ~~the ILEX Practitioner~~you to do so.

30.2 ILEX will afford ~~the ILEX Practitioner~~you an opportunity to copy any such file or original document or will provide ~~the ILEX Practitioner~~you with copies within a reasonable time at the ~~ILEX Practitioner's~~your expense.

30.3 ILEX may use any document obtained under paragraphs 28.1, 29.2 or 30 in any proceedings including disciplinary proceedings but:

30.3.1 shall not (except under the direction of a court) use it to the disadvantage of any client entitled to legal professional privilege in respect of it;

30.3.2 shall preserve client confidentiality except to the extent that it reasonably considers disclosure of confidential information to an appropriate authority is required in the public interest or any disclosure is made with the express or implied consent of the relevant client or disclosure is required by law.

- 30.4 Any failure by ~~the ILEX Practitioner~~you to have included the term required by 3.3 hereof which results in any impediment to the exercise of ILEX's powers under Part III of these rules will amount to a serious breach of these rules.

### 31. Poor Service Scheme

~~An ILEX Practitioner~~You must comply with the obligations imposed upon ~~ILEX Practitioners~~you by the Legal Ombudsman as varied from time to time.

### 32. Compensation Scheme

32.1 ILEX will operate a discretionary scheme to compensate clients who lose money by reason of a deficiency in ~~an ILEX Practitioner's~~your Client Account.

32.2 ~~An ILEX Practitioner~~You shall indemnify ILEX in respect of any payment made or costs incurred by the operation of such scheme in relation to ~~their~~your client account.

32.3 ~~An ILEX Practitioner~~You must comply with any requirements imposed upon ~~them~~you by the rules of such scheme as varied from time to time.

### 33. Cost of Regulatory Action

33.1 ~~An ILEX Practitioner~~You must indemnify ILEX for any cost incurred by it (including, without limit, costs fairly attributable to the use of ILEX's staff or spent upon the services of others) in investigation, the taking of any action under these rules or in any proceedings.

33.2 ~~An ILEX Practitioner~~You will not be liable to indemnify under paragraph 33.1:

33.2.1 in respect of the costs of investigation if such investigation does not either result from or discover or confirm any breach of these rules by ~~the ILEX Practitioner~~you; or

33.2.2 in respect of the costs of any other action if such action did not result from either a breach of these rules by ~~the ILEX Practitioner~~you or a reasonable suspicion of such a breach on the part of ILEX; or

33.2.3 in respect of the costs of any proceedings to the extent of an order of the court to the contrary.

### 34. Waivers

34.1 ILEX may grant ~~an ILEX Practitioner~~you a written waiver relieving ~~them~~you of a duty to comply with such part of these ~~ILEX Practitioners Practice and Accounts~~ Rules as ILEX considers just and proper in the circumstances.

34.2 ~~An ILEX Practitioner who~~If you practices in partnership or in a corporate practice regulated by an approved regulator, other than ILEX, you may apply to ILEX for a waiver of all or part of these Rules if ~~they~~you are complying

with the practice rules of another approved regulator, which are comparable to the standards required in these rules.

## ILEX EQUALITY AND DIVERSITY CODE

This Code places obligations on ILEX practitioners and entities authorised by IPS. In this Code references to 'you' includes ILEX practitioners, entities authorised by IPS and the managers and employers of such entities. References to managers include partners in a partnership model and owners of an entity.

1. ~~An ILEX Practitioner~~You must not in the course of ~~their~~your professional dealings unlawfully 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, nationality, sexual orientation, marital or family status, religion or belief ("unlawful discrimination") . ~~An ILEX Practitioner~~You must also comply with all equality and diversity legislation in force from time to time.
2. Professional dealings will include all dealings by ~~the ILEX Practitioner~~you in the course of ~~their~~your work or business including, but not limited to, dealings with clients, employees, colleagues, other lawyers and those involved in the administration of justice. They will include dealings with opponents to ~~the ILEX Practitioner's~~your clients in litigation proceedings.
3. All ~~ILEX Practitioners~~practices ~~which are not regulated by other approved regulators~~authorised by ILEX must:
  - (a) either adopt the ILEX equality and diversity policy or have in place their own policy for avoiding discrimination and promoting equal opportunities. Such a policy should include those principles set out in the ILEX equality and diversity policy as a minimum standard; and
  - (b) comply with the applicable policy.
4. An ILEX Practitioner who is employed must comply with the equality and diversity policy of their employer.
5. A finding against ~~an ILEX Practitioner~~you by a competent court or tribunal of unlawful discrimination will be treated as evidence of a breach of this Code and as conduct bringing discredit upon ~~the ILEX Practitioner~~you and ILEX.

## ILEX EQUALITY AND DIVERSITY POLICY

1. This firm is committed to eliminating discrimination and to providing equal opportunities. All members of the firm including all staff will comply with this policy.
2. This firm will comply with the ILEX equality and diversity code and with anti-discrimination legislation in force from time to time.

3. This firm will also comply with Codes of Practice, issued from time to time by the Commission for Equality and Human Rights and any such other bodies set up by legislation from time to time, in so far as they apply to this firm.
4. All clients, employees, ~~colleagues, partners, managers,~~ job applicants, counsel, experts and third parties will be treated equally without unlawful discrimination.
5. This firm will not behave in any of the following ways:
  - Direct discrimination – where a person is treated less favourably than another person because of unlawful discrimination.
  - Indirect discrimination – where a requirement or condition which cannot be justified is applied equally to all groups but has a disproportionately adverse effect on one particular group.
  - Victimisation – where a person is treated less favourably than others because he or she has brought proceedings against the firm or its employees under anti-discriminatory legislation or made allegations of discrimination against the firm or its employees.
  - Harassment – where a person behaves in a way that violates another person’s dignity, creates a humiliating, intimidating or hostile environment or causes distress. It includes physical, verbal and non-verbal actions.

#### **Employees**

6. This firm will ensure that there are equal opportunities for all partners, ~~managers,~~ employees or applicants for employment with the firm including but not limited to recruitment, appointment, terms and conditions of appointment, opportunities for promotion, training, facilities and benefits.
7. Allegations of discrimination made against employees, ~~managers~~ or partners of the firm or the firm will be investigated under the firm’s grievance procedures. Where a partner, ~~manager~~ or employee of the firm is found not to have complied with this policy disciplinary action will be taken against them.

#### **Clients**

8. Although this firm is free to decide whether or not to accept instructions, it will not refuse instructions on the basis of unlawful discrimination.

#### **Instructing Counsel or experts**

9. This firm will avoid refusing to brief Counsel or an expert on discriminatory grounds.
10. This firm will comply with a request from a client to brief a particular counsel or to instruct a particular expert subject to their suitability to deal with the matter. However, where a client’s instructions to brief counsel or instruct an expert are

based unfairly or unreasonably on discriminatory grounds the firm will cease to act for the client unless the instructions are revised.

11. This firm will comply with legislation in force from time to time relating to discrimination when instructing counsel or experts.

**All dealings**

12. This firm will keep appropriate data to enable it to monitor the effectiveness of this policy. A senior member of the firm will be appointed to monitor the policy and compliance with it by the firm.

## ILEX PUBLICITY CODE

1. This Code places obligations on ILEX practitioners and entities authorised by IPS. In this Code references to 'you' includes ILEX practitioners, entities authorised by IPS and the managers and employers of such entities. References to managers include partners in a partnership model and owners of an entity.
2. For the purposes of this code 'publicity' means all means of communication (including electronic transmissions) used by ~~an ILEX Practitioner~~you as a means of advertising or promoting ~~his~~your business.
3. Publicity must not be misleading, inaccurate or disreputable.
4. Publicity must always comply with the law.
5. ~~An ILEX Practitioner~~You may delegate responsibility for the form or content of publicity to any other person but ~~the ILEX Practitioner~~the managers shall remain accountable for compliance with this Code.

### Name of the firm

6. ~~An ILEX Practitioner~~You may practise using any practice name provided it is not unlawful, misleading or disreputable.

### Firm's communications

7. Any ~~firm entity authorised by IPS~~ which includes an ILEX Practitioner as principal, partner, member, manager or owner ~~which is not regulated by another approved regulator~~—must comply with this paragraph. All written or electronic communications must include the following information:
  - 67.1 all information required by law; and
  - 67.2 where any names of individuals are required by law to be shown (or are shown), the status and relevant regulator of each individual;
  - 67.3 the contact address and telephone number of the firm;
  - 67.4 a statement that the ILEX Practitioners within the practice and the ~~firm~~entity is regulated by ILEX Professional Standards Ltd;
  - 67.5 information clearly identifying whether any named individual is a partner, member, manager or owner (as appropriate) or not.
8. An ILEX Practitioner who is named in any written or electronic communication must ensure that their status as an ILEX Practitioner and the fact that they are regulated by IPS is also shown, where appropriate.

### **Holding out**

9. An ~~ILEX Practitioner~~ entity authorised by IPS must not hold a person out (or permit any ~~member, manager or employee~~ of their firm to be held out):

~~89.1~~ as a Legal Executive nor display the letters F.Inst.L.Ex. after their name unless that person is in good standing as a fully paid up Fellow entered in the Register of members of ILEX;

~~89.2~~ as an ILEX Practitioner unless that person is in good standing as a fully paid up member who has qualified as ~~an~~ ILEX Practitioner through ILEX and, where relevant, has a current ~~rights to conduct litigation~~ certificate ~~authorising them to undertake a reserved legal activity~~.

### **Advertising**

10. ~~An ILEX Practitioner~~ You must comply with any applicable general advertising codes of practice in force from time to time including, but not limited to, all applicable generally recognised Codes of Advertising and Sales Promotion.

11. ~~An ILEX Practitioner~~ You must not make or cause to be made unsolicited visits or telephone calls to members of the public. For the purposes of this rule, 'member of the public' does not include current or former clients, commercial organisations, professional contacts or public bodies.

12. Advertising material must state where it is the case, that the ~~firm practice~~ is a firm ~~of ILEX Practitioners~~ regulated by ILEX Professional Standards Ltd.

13. Advertising material which makes reference to the fees charged must fairly convey the total cost, including VAT and disbursements, and the services included. References to contingency fees or fee comparisons are not permitted.

14. Advertising material should not state that ~~an ILEX Practitioner~~ you acts for a particular client without that client's express prior consent.

15. Advertising by leafleting or mailshots is permissible provided it is lawful, clear, concise and accurate and not otherwise in breach of this Code.

16. Advertising must not be offensive or be likely to cause distress or offence to any recipient.

### **Breach of the Code**

17. IPS may by written notice require ~~the ILEX Practitioner~~ you to cease any publicity with immediate effect which IPS in its discretion considers to be damaging to the reputation of ILEX ~~Practitioners~~ (whether or not such material is in breach of this Code) or in breach of this Code and thereupon ~~the ILEX Practitioner~~ you shall comply with such notice. In the event that ~~an ILEX Practitioner~~ ~~does~~ you do not comply, IPS shall be entitled to bring proceedings to enforce this obligation and shall if successful be entitled to costs on an indemnity basis.

18. A breach of the Code may also lead to an investigation of the ILEX Practitioner's conduct by IPS.

## ILEX PRACTITIONERS' INDEMNITY INSURANCE SCHEME

### 1. Introduction

~~ILEX Practitioners eEntities authorised by IPS~~ have both a professional duty and a contractual obligation to maintain professional indemnity insurance in accordance with this scheme. ~~ILEX Practitioners or eEntities authorised by IPS~~ may obtain indemnity insurance through their own ~~scheme arrangements~~ or the IPS Master Policy scheme, once it is established.

### 2. Own Indemnity Insurance Scheme

Where an ~~ILEX Practitioner entity authorised by IPS~~ obtains indemnity insurance cover through ~~their-its~~ own scheme ~~they-it~~ must ensure that it meets minimum terms and conditions. The minimum terms and conditions will be the same as those set out at Annex 1 in respect of the Master Policy scheme, except any references to the Master Policy scheme. An ~~ILEX Practitioner entity authorised by IPS~~ may arrange for cover additional to the minimum terms and conditions.

### 3. The Master Policy

a. The Master Policy provides cover for ~~all ILEX Practitioners' practices~~ ~~the entity~~ for the mandatory limit set by ~~the IPS Board~~ from time to time for each claim. ~~ILEX Practitioners~~ ~~An entity authorised by IPS~~ may arrange for additional cover through a facility operated by ~~the~~ Master Policy Brokers appointed by IPS.

b. The Master Policy covers any civil liability incurred in connection with the ~~ILEX Practitioners practice in the~~ normal course of ~~such practice of the entity authorised by IPS~~. It includes cover for the dishonest acts of ~~partners owners managers~~ or employees but does not indemnify a ~~person who n entity which~~ is themselves dishonest or condones dishonesty. The Master Policy is subject to an excess or deductible.

~~1.1c.~~ The detailed terms of the Master Policy as agreed by IPS from time to time are published by IPS and available online, and appear at Annex 1.

### 4. ILEX ~~Practitioners Practice~~ Certificate

IPS will only ~~issue an ILEX Practitioners certificate to an ILEX Practitioner or~~ ~~authorise an entity~~ upon receipt of an application in the required form accompanied by:

a. Evidence that a certificate of insurance has been issued to the practice ~~in which the ILEX Practitioner is a principal~~ in the terms of the Master Policy and that cover has been continuously in place since the last renewal or issue of the ~~ILEX Practitioners certificate~~ ~~entity's~~ ~~authorisation~~ or evidence that a certificate of insurance will be issued

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to the ~~ILEX Practitioner entity~~ upon issue of a first ~~ILEX Practitioner Certificate~~ authorisation by IPS; or

- b. Evidence that the ~~ILEX Practitioner entity~~ has been exempted from that requirement on the basis of the application of equivalent cover by other means, including ~~their~~ its own scheme of indemnity insurance.

4. **Insurance Certificate**

It is ~~the an entity's~~ responsibility ~~of each ILEX Practitioner~~ to arrange for ~~his~~ its inclusion within ~~their~~ its own policy of insurance or, in the case of the Master Policy, by application and payment to the IPS Brokers.

5. **Uninsured Practise**

5.1 An ILEX Practitioner must not practise whilst uninsured. IPS may take steps by court proceedings or otherwise to restrain an ~~ILEX Practitioner entity~~ from practising whilst uninsured.

5.2 The conduct of an ~~ILEX Practitioner who entity which~~ practises without a policy of indemnity insurance in place will be investigated under the ILEX Investigation, Disciplinary and Appeals Rules.

5.3 The conduct of an ~~ILEX Practitioner who entity which~~ makes dishonest or fraudulent declarations when submitting an application for insurance cover will be investigated under the ILEX Investigation, Disciplinary and Appeals Rules.

5.4 IPS may include within the minimum terms and conditions of Master Policy such cover to protect the public against unsatisfied claims against uninsured ~~ILEX Practitioners~~ IPS authorised entities as it shall think appropriate. IPS shall be entitled to recover against any ~~ILEX Practitioner entity~~ to whom that cover has applied for any period (whether or not a claim has been made) such contributions to the cost of the Master Policy to IPS as IPS shall direct by written notice or notices. Such contributions shall be recoverable as debts of the ~~ILEX Practitioner entity~~.

6. **Run-off Cover**

An ~~ILEX Practitioner who entity authorised by IPS which~~ ceases to practise must provide IPS with a certificate of "run-off" cover provided by their own policy of insurance or on the terms of the Master Policy for a minimum of 6 years from the date of cessation.

7. **Evidence of Cover**

An ~~ILEX Practitioner entity authorised by IPS~~ must disclose the identity of their insurer to any client upon written request.

8. **Compliance with Policy Terms**

| An ~~ILEX Practitioner~~[entity authorised by IPS](#) must comply fully with the terms of their own policy of insurance or the Master Policy including (without limit) as to changes in circumstances and requirements for notification.

9. **Exchange of Information**

IPS shall be entitled to:

- | 9.1 require ~~ILEX Practitioner~~[an entity authorised by it](#) to produce any information it might require concerning a claim;
- 9.2 exchange information concerning a claim with Insurers and Brokers;
- 9.3 receive evidence from Insurers when any insurance is voided;
- | 9.4 disclose to Insurers any information concerning the conduct of an ~~ILEX Practitioner or his practice~~[entity authorised by it](#) which may affect the insurance policy.

## **Annex 1 THE CURRENT MASTER POLICY TERMS AND SPECIMEN CERTIFICATE OF INSURANCE**

1. IPS will take out a Master Policy with an insurance company. The policy may be arranged through an Insurance Broker.
2. The insurance company will be known as the Authorised Insurer.
3. The policy will indemnify the ~~ILEX Practitioner and their practice~~entity authorised by IPS against civil liability and defence costs arising from the provision of legal services except any sums that ~~they have~~it has recovered from the other party to the proceedings.
4. The policy will cover claims made during the period of the policy and claims made during the period of the policy relating to events that occurred within the previous 6 years.
5. The policy will cover the acts or omissions of the current and former ILEX Practitioners, ~~partners, co-members or co-directors~~managers and employees of the practice or, in the case of run-off cover, the preceding practice.
6. The minimum level of cover will be set from time to time by the IPS Board.
7. Where separate claims are made arising from the same or related acts or omissions they can be aggregated and regarded as one claim.
8. There will be no limit on defence costs.
9. The level of excess that an ~~ILEX Practitioner~~entity regulated by IPS is liable to pay will be set at £2,500, however, ~~a ILEX Practitioner~~the entity may vary the level of excess. There will be no excess for defence costs.
10. A policy of indemnity insurance may only be cancelled where the practice is merged with a successor practice which has obtained cover for the new entity.
11. The insurance must not exclude or limit the liability of the Insurer in cases of negligence or breach of duty by the insured except to the extent that any civil liability or defence costs arise from the following matters:
  - Any liability of the insured for causing or contributing to death or bodily injury (but it must cover psychological injury or emotional distress arising from the negligence or breach of duty);
  - Any liability of the insured for causing or contributing to damage, destruction or loss of any property (other than property in the care custody or control of

the firm and used in connection with it) except that the insurance must cover such liability which arises from the negligence or breach of duty;

- Partnership disputes or any disputes between the principals of the insured;
- Employment breaches or disputes;
- Any debts or liabilities, whether trading or personal, that the insured incurs;
- Any fines or penalties howsoever caused.
- The insurer need not cover or assume any liabilities incurred through the fraud or dishonesty of the insured where the insured admits or is found guilty by a court or other judicial body of fraud or dishonesty.

**THE ILEX CLIENT PROTECTION SCHEME****1. Introduction**

This Scheme has been established for the benefit of the clients of ILEX Practitioners [and entities authorised by IPS](#) who suffer loss as a result of an ILEX Practitioner's [or IPS authorised entity's](#) dishonesty or failure to account. It is established by contract between IPS and each authorised ILEX Practitioner [or entity](#). Under the Scheme IPS may make grants to clients from a Protection Fund but is not legally obliged to do so. This document sets out how money is raised for the Protection Fund and the policies IPS intends to apply in deciding in its discretion whether or not to make a grant from the Protection Fund.

**2. The Establishment and Maintenance of the Protection Fund**

- 2.1 IPS shall establish and maintain a fund called the Protection Fund of such amount as it shall consider appropriate.
- 2.2 Each ILEX Practitioner [and entity authorised by IPS](#) shall make such contribution to the Protection Fund at such time as IPS (acting through the IPS Board) shall decide and such contribution shall be due to IPS as a debt upon written notification of the amount due.
- 2.3 IPS shall hold such part of the Protection Fund as is not immediately required to make payments on interest bearing deposit or in other appropriate investments and shall accrue all income to the Protection Fund.
- 2.4 IPS shall hold the Protection Fund pursuant to its obligations hereunder but shall not do so as trustee.

For the purpose of this Scheme an ILEX Practitioner is a person authorised to practise as such by IPS [and an entity is an entity authorised by IPS](#) in accordance with any ILEX practitioner rules.

**3. Payments from the Protection Fund**

IPS shall be entitled in its discretion to make payments from the Protection Fund for any of the following purposes:

- 3.1 the making of grants or payments to clients of ILEX Practitioners [or entities authorised by IPS](#) who have suffered loss as a result of a ILEX Practitioner's [or IPS authorised entity's](#) dishonesty or failure to account;
- 3.2 to meet the costs of operating the Fund;
- 3.3 to refund contributions;
- 3.4 to pay premiums in relation to any insurance effected for the purpose of the Scheme;

- 1.5 to repay any loan or liability incurred for the purposes of the Scheme;
- 1.6 to make any other payment which in the reasonable opinion of IPS is desirable to further the purposes of the Scheme.

#### **4. Accounts**

IPS shall annually publish a report on the operation of the Scheme and Accounts for the Protection Fund.

#### **5. Borrowing and Late Payments**

5.1 For the avoidance of doubt IPS shall be entitled to borrow for the purposes of the Scheme and deposit the Protection Fund or charge any assets comprised within it as security for any loan or facility taken for the purposes of the Scheme.

5.2 Any sum due from an ILEX Practitioner [or IPS authorised entity](#) to IPS shall carry interest from seven days after due date at a rate to be decided from time to time.

#### **6. Policies**

6.1 IPS adopts the Scheme Policy set out at Annex 1 hereof for the operation of the Scheme but may in its discretion modify that Policy from time to time provided that any modification is published prior to taking effect.

6.2 IPS will exercise discretion in relation to any application under the Scheme and will not be bound by the Scheme Policy in any case it considers exceptional.

#### **7. Application Procedures**

IPS adopts the Application Procedure set out at Annex 2 hereof but may in its discretion modify that procedure from time to time provided that any modification is published prior to taking effect.

#### **8. ILEX Practitioner's [or entity's](#) Indemnity**

8.1 Any ILEX Practitioner [or entity authorised by IPS](#) in respect of whom a grant is made shall indemnify IPS to the extent of any sums paid from the Protection Fund.

8.2 Any ILEX Practitioner [or entity authorised by IPS](#) who is in default of any obligation to pay client funds or whose client account is probably deficient shall upon written notice given by IPS lodge with IPS such sum as IPS may by that notice require as security against any future liability under 8.1 above.

8.3 Any ILEX Practitioner [or entity authorised by IPS](#) who fails to lodge or pay any sum required under this clause shall not deal with or dispose of any asset or make any payment except insofar as the ILEX Practitioner's [or entity's](#) personal net assets substantially exceed the amount required by notice under paragraph 8.2.

## **Annex 1 SCHEME POLICIES**

### **A. BASIC PRINCIPLES**

#### **1. Composition of Fund**

The fund shall comprise of:

- Contributions made to the fund by ILEX members, ILEX Practitioners [and entities authorised by IPS](#);
- Such of ILEX's reserves as ILEX shall make available for the compensation fund from time to time;
- Interest received on the fund;
- Money borrowed for the benefit of the fund;
- Money recovered by IPS as a result of payments it had made out of the fund;
- Any other money deemed by IPS to form part of the fund.

#### **2. A Limited Fund**

The Protection Fund does not have unlimited resources and therefore its application must be the subject of priorities. Its object is to replace funds misappropriated from [the client of an ILEX Practitioner or IPS](#) authorised [entity client account](#) where no other possibility of recovery exists.

#### **3. A Discretionary Fund**

Applicants have no right to a grant but seek a favourable exercise of IPS' discretion to make a payment in appropriate cases.

#### **4. Applications**

It is for an applicant to provide IPS with all of the evidence necessary for a grant to be considered.

### **B. FACTORS IN THE EXERCISE OF DISCRETION**

#### **5. Applicants who will generally not receive a grant**

Applicants who:

- 5.1 have not acted throughout with integrity; or
- 5.2 have contributed to their loss by their conduct or carelessness; or
- 5.3 have applied on the basis of a failure to account but have not suffered significant hardship as a result of that failure; or
- 5.4 have failed to co-operate with an investigation or enquiry conducted by IPS or any other authority;

will generally not receive a grant or may receive a reduced grant.

#### **6. Applications which will generally not be successful**

Applications which:

- [1.21.1](#) do not contain all necessary facts and documentary evidence; or
  - [1.31.2](#) are not made as a last resort; or
  - [1.41.3](#) are not made promptly and in any event within six months of loss;
- will generally not be successful.

## **7. Losses which will generally not be the subject of a grant**

The following losses would not generally lead to the making of a grant:

- 7.1 losses other than those arising from the dishonest misappropriation of, or failure to account for, funds on client account; or
- 7.2 lost interest agreed to be paid; or
- 7.3 lost profits or consequential expenses; or
- 7.4 losses arising from professional negligence; or
- 7.5 losses arising from poor service; or
- 7.6 losses arising outside of the normal course of an ILEX Practitioner's [or IPS authorised entity's](#) practice.

## **8. Supplementary grants**

When a grant is made a supplementary grant may also be made as a contribution to:

- 8.1 the loss of deposit interest from the date of loss until the date of grant; and/or
- 8.2 any legal costs reasonably incurred in making the application for a grant.

## **9. Maximum grants and interim grants**

- 9.1 IPS will publish from time to time the maximum amount that may be awarded as a grant from the Protection Fund.
- 9.2 In cases of exceptional urgency and severe hardship IPS may make interim grants of a proportion of the amount expected to be paid upon completion of any application and such interim grants may be subject to such conditions as IPS shall consider appropriate including (without limit) repayment.

## **10 Subrogated rights**

As a condition of the making of any grant applicants will be required to execute such documents as are required by IPS for it:

- 10.1 to be subrogated to any rights and remedies of the applicant in relation to the act or default in respect of which a grant is to be made and to permit IPS (subject to a sufficient indemnity against costs) to sue in the applicant's name for the benefit of the Protection Fund to the extent of the grant, interest and costs; and/or
- 10.2 to receive the benefit of any such right or remedy as referred to in 9.1 and to the same extent by way of assignment or otherwise.

## **11 Further conditions of any grant**

As further conditions of any grant IPS may require an applicant:

- 11.1 to undertake to co-operate with any enquiry by IPS or any other authority or person into the conduct of any person;
- 11.2 to provide evidence and/or assistance in relation to any proceedings.

## **12 General issues**

- 12.1 A grant may be made in respect of a person who was previously an authorised ILEX Practitioner [or previously an entity which was previously](#)

| [authorised by IPS](#) and continues to hold themselves out as such to an applicant who reasonably believes that they continue to be an authorised ILEX Practitioner [or entity authorised by IPS](#).

- 12.2 Applications under the Scheme must be made in the form required by IPS as modified from time to time.
- 12.3 A failure to respond promptly and adequately to queries in relation to an application raised by IPS may result in the application being rejected.
- 12.4 An applicant may only make a further application for a grant in respect of the same loss if they are able to provide significant new evidence which was not previously available to them.
- 12.5 The amount of any grant will be reduced to take into account any costs which an applicant might reasonably have been expected to incur but for the circumstances leading to the application.

## **Annex 2 APPLICATION PROCEDURE**

### **1. Procedural Requirements**

- a. Applications shall be made in writing in the required form with accompanying documentary evidence to IPS;
- b. IPS will give written notice of any application to the Scheme to the relevant ILEX Practitioner or IPS authorised entity or ~~his—their~~ representative before any grant is made;
- c. IPS will provide written notice of its decision in relation to any application with brief reasons to the applicant and the relevant ILEX Practitioner or IPS authorised entity.

## POOR SERVICE SCHEME

**Comment [H4]:** Not amended. Service complaints now dealt with by LEO.

1. These rules deal with how a complaint made by a client against an ILEX Practitioner that the service the client received was inadequate should be dealt with. Poor service means a professional service which in the circumstances falls below that which might reasonably be expected of an ILEX Practitioner. This Scheme creates obligations upon ILEX Practitioners which are legally enforceable agreements between ILEX Practitioners and IPS. It is not restricted to matters which could form the basis of a claim for negligence.

### ***Duties of the ILEX Practitioner***

2. An ILEX Practitioner should ensure that they comply with rule 3.15 of the ILEX Practice Management Rules. The rule requires that an ILEX Practitioner must operate documented procedures which demonstrate a commitment to the resolution of client complaints in a speedy and satisfactory way.
3. Where a client has a complaint that they have received an inadequate professional service from an ILEX Practitioner or their practice they should initially refer the complaint to the ILEX Practitioner. The ILEX Practitioner is obliged to investigate the complaint in accordance with rule 3.15 of the ILEX Practice Management Rules.

### ***Referral to ILEX***

4. Where a client is dissatisfied by the ILEX Practitioner's handling of their complaint or the outcome of the complaint they may refer the complaint to IPS. A client must have exhausted the firm's procedure before their complaint about poor service will be considered by IPS, unless they can show good reason why the complaint should not be referred to the ILEX Practitioner in the first instance.
5. Complaints about poor service should be referred to IPS within 6 months of the ILEX Practitioner concluding their attempt to resolve the complaint under their complaints handling procedures (or if, exceptionally, that procedure does not apply, within 6 months of the cause for complaint). IPS may exercise discretion to accept complaints after this time limit has expired.
6. When the Office of Legal Complaints (OLC) is established, complaints regarding poor service which the ILEX Practitioner has been unable to resolve with the client, will be referred to the OLC.

### ***Settlement of the Complaint by Negotiation***

7. Upon receipt of the complaint IPS will, at the first instance, try to resolve the dispute between the client and ILEX Practitioner by negotiation unless it is inappropriate to do so. The negotiator may be a member of IPS staff who negotiates with the parties with the aim of settling the dispute.

8. The negotiation will commence within 14 days of IPS receiving the complaint.
9. Where an attempt to settle the complaint by negotiation fails or is not appropriate the complaint will be referred for investigation.

***Investigation by IPS***

10. Where it has not been possible to resolve the dispute through negotiation or IPS believes it is inappropriate IPS will deal with the complaint in accordance with the procedure set out in its Investigation, Disciplinary and Appeals Rules (IDAR).
11. Where IPS decides that the client should first make use of any other procedure it may suspend its own investigation into the complaint while the client exhausts that other form of redress.
12. IPS or its nominee shall have the power to require by written notice that the ILEX Practitioner produce to IPS or the nominee the client file (and any related accounting or other records) to assist in the investigation of the complaint. The ILEX Practitioner should retain a copy of the file before submitting the original.
13. An ILEX Practitioner against whom an investigation is being conducted is obliged to deal promptly with correspondence sent to them during the course of the investigation. Where an ILEX Practitioner fails to reply promptly or at all or does not co-operate with the investigation IPS will consider whether that conduct amounts to misconduct. If IPS decides that it does amount to misconduct it will decide what, if any, action to take in accordance with the powers available to it under the IDAR.

***Powers of IPS***

14. Where IPS decides that an ILEX Practitioner has provided poor service it may in addition to any other powers and options available to it under the Investigation, Disciplinary and Appeals Rules direct that the ILEX Practitioner:
  - Correct the error which led to the complaint at their own cost.
  - Undertake any action that IPS requires in the client's interest at the ILEX Practitioner's own cost.
  - Waive all or part of the fees and/or disbursements otherwise chargeable to the client.
  - Pay compensation to the client (or any other person intended to benefit from the ILEX Practitioner's services) up to a maximum limit set by the IPS Board from time to time.
  - Take any other remedial action that IPS may consider appropriate.
  - Pay IPS a sum in respect of the cost of dealing with the complaint.
15. IPS may direct the ILEX Practitioner to pay interest on any payment due to the client.
16. IPS may direct the ILEX Practitioner to deliver the client's monies and files held by or on behalf of the ILEX Practitioner to IPS or the client.

17. An ILEX Practitioner is contractually bound by IPS to comply with any direction made by IPS and may, in addition to any other consequence, be the subject of court proceedings by way of enforcement.

18. In addition to any other remedy a failure by an ILEX Practitioner to comply with a decision of IPS may result in the complaint being referred to the IPS Disciplinary Tribunal.

### ***Compensation***

19. An order of compensation may include recompense for:

- Financial loss
  - Distress and inconvenience
- Directly caused to the client by the ILEX Practitioner's poor service.

20. In deciding the level of compensation to be paid IPS will take into account any action the ILEX Practitioner has taken to deal with the complaint including any remedial action that has been taken.

21. IPS may conclude a complaint on the basis that no further action is required if it considers that the ILEX Practitioner has dealt with the complaint appropriately and, if applicable, made a reasonable offer of compensation.

22. On section 114 of the Legal Services Act 2007 coming into force, powers to order redress in relation to complaints of poor service will lie with the Office of Legal Complaints.

### ***Obstruction of complaints and investigation***

23. It is unprofessional conduct for an ILEX Practitioner to seek to prevent a client from reporting the ILEX Practitioner's conduct or making a complaint.

24. It will not be unprofessional conduct for an ILEX Practitioner to propose an agreement in full and final settlement, provided that the client understands that while it does not prevent a complaint being made, IPS will take the agreement into account in its investigation.

### ***Modification or termination***

25. IPS may terminate this Scheme at any time and may from time to time modify its provisions as it thinks appropriate.