

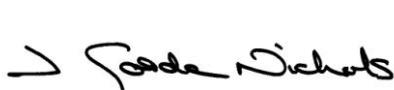
### Regulatory Independence Certification

On behalf of the Institute of Legal Executives, an approved regulator designated under section 20 and Schedule 4 of the Legal Services Act 2007, we jointly certify that we have in place arrangements that comply with the requirements of the Internal Governance Rules 2009 and that in particular:

- (1) observe and respect the principle that structures or people with representative functions must not exert, or be permitted to exert, undue influence or control over the performance of regulatory functions, or anyone discharging those functions;
- (2) ensure that those involved in the exercise of our regulatory functions are, in that capacity, able to make representations to, be consulted by and enter into communications with anyone including but not limited to the Legal Services Board, the Consumer Panel, the OLC and other Approved Regulators;
- (3) ensure that the exercise of our regulatory functions is not prejudiced by our representative functions or interests;
- (4) ensure that the exercise of our regulatory functions is, so far as reasonably practicable, independent of our representative functions;
- (5) ensure that such steps are taken as are reasonably practicable to ensure the provision of such resources as are reasonably required for or in connection with the exercise of our regulatory functions; and
- (6) ensure that those involved in the exercise of our regulatory functions are able to notify the Legal Services Board where they consider that their independence or effectiveness is being prejudiced.

**Signed:**

**The Institute of Legal Executives**



*President – Judith Gordon-Nichols*



*Chief Executive – Diane Burleigh*

and

**Board of ILEX Professional Standards Ltd**



*Chair – Alan Kershaw*



*Chief Executive – Ian Watson*

and

**Principle 1: Governance**

<b>Internal Governance Rule</b>	<b>Relevant arrangements in place</b>	<b>Summary of those arrangements</b>	<b>Summary of practical issues that have arisen over [past year] in respect of these issues</b>
<p><b>A.</b> Each AAR must delegate responsibility for performing all regulatory functions to a body or bodies without any representative functions.</p>	<p>In 2008, ILEX established a new regulatory company, ILEX Professional Standards (IPS), a wholly owned subsidiary. It is part of the ILEX Group but has its own Board of Directors to ensure its independence.</p> <p>The board comprises four independent members, who are not lawyers, and three professional members who are Legal Executives. It is chaired by one of the independent members. Professional members must not be members of ILEX Council or fulfil any representative functions.</p>		
<p><b>B.</b> The regulatory body or, if more than one, each of the regulatory bodies, must be governed by a board or equivalent structure</p>	<p>Appointment of the IPS Chair was by open selection against a job description which focused on the knowledge, skills and competences required to fulfil the functions of a Chair of a regulatory body. Areas in which applicants were required to demonstrate knowledge and experience included regulation, governance, leadership, professional regulation, strategy and change management, external relationships, legal profession, legal services and consumer interests. There was no requirement for any legal qualification to have been obtained. The appointed Chair of IPS does not hold any legal qualification and has not been engaged or worked in the legal profession.</p>		
<p><b>C.</b> In appointing persons to regulatory boards, AARs must ensure that:</p> <ul style="list-style-type: none"> <li>• a majority of members of the regulatory board are lay persons; and</li> <li>• the selection and appointment of a chair is not restricted by virtue of any legal qualification that person may or may not hold, or have held.</li> </ul>	<p>The board is accountable to ILEX, as the approved regulator, and to the Legal Services Board.</p> <p>The IPS board meets about 5 times a year to oversee and direct the work of IPS. It has identified 6 broad areas of activity which are relevant to any modern regulator:</p> <ul style="list-style-type: none"> <li>• Education and standards</li> <li>• Registration and accreditation</li> <li>• Fitness to practise</li> <li>• Governance and process</li> <li>• Visibility and image</li> </ul>		

	<ul style="list-style-type: none"> <li>• Performance and risk.</li> </ul> <p>Each member of the board has special responsibility for one of these areas, with the chair focusing on overall strategy, finance and relations with the professional leadership side.</p> <p>No practical issues have arisen since the formation of IPS in 2008.</p>
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LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
An AAR should take all reasonable steps to agree arrangements made under these Rules with the regulatory body or, as the case may be, the regulatory bodies.	All necessary arrangements have been agreed between ILEX the AAR and ILEX Professional Standards the regulatory board. Protocols (attached) have been formally agreed, which govern the working arrangements and conduct between both parties.
<p>If an AAR wishes otherwise than through its regulatory body/bodies to offer guidance to its members or more widely on regulatory matters, it should:</p> <ul style="list-style-type: none"> <li>• ensure that it does not contradict or add material new requirements to any rules or guidance made by the regulatory body/bodies; and</li> <li>• consult with the regulatory body/bodies when developing that guidance</li> </ul>	<p>Both parties have already commenced a project to develop a Practice Advice and Ethics Helpline service to members. The Protocols set the areas of responsibility and reflect the requirements of the legislation.</p> <p>Any guidance provided by either party takes into account any existing material, to avoid contradiction or the addition of new requirements. Regulatory requirements can be enforced only through IPS and additional or contradictory requirements attempted to be imposed by ILEX would be ineffective.</p> <p>As a matter of best practice, both parties consult one another when developing guidance to ensure consistency and independence. The Chief Executives of both parties meet on a regular basis. The AAR President attends the regulatory board meetings as an observer. The regulatory board Chair attends the AAR Council meetings as an observer. Both the President and the Chair receive copies of the Agenda and supporting Papers and are invited to speak at meetings.</p>

The Principle	Explanation of any other arrangements in place that bear on the principle and in particular how those arrangements comply with the principle
Nothing in an Applicable Approved Regulator's (AAR's) arrangements should impair the independence or effectiveness of the performance of its regulatory functions	Full Service Level Agreements (SLAs) (attached), enabling the regulatory board to operate independently and effectively, were approved by the AAR Council in March 2010 and by The IPS Board in February 2010. The SLAs have been signed by the President of the AAR and the Chair of the regulatory board. The SLAs were drafted in collaboration by both parties.

**Principle 2: Appointments etc**

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Summary of practical issues that have arisen over [past year] in respect of these issues
<p><b>A.</b> All appointments to a regulatory board must be made on the basis of selection on merit following open and fair competition, with no element of election or nomination by any particular sector or interest groups.</p> <p><b>B.</b> The selection of persons so appointed must itself respect the principle of regulatory independence and the principles relating to “appointments etc” set</p>	<p>Please see attached Protocols, Annexes 4 and 5 – Appointment of Chairman and Board Members, Reappointment of Chairman and Board Members, Remuneration of the Board.</p>	<p>For each appointment, the regulatory board creates an Appointments Committee, the membership of which is agreed according to the appointment. Each such Committee has a duty to ensure that appointments are treated fairly and consistently.</p> <p>The Committee has delegated authority from the regulatory board for the entire process, to include job and person specification, running the appointments process and interviewing.</p> <p>The President and Chief Executive of the</p>	<p>No practical issues have arisen since the formation of IPS in 2008.</p>

out in the Schedule.		AAR and the Chair and Chief Executive of the regulatory board meet annually to determine the remuneration of the Chair and regulatory board members. Any disputes will be determined according to paragraph 31 of the Protocols.	
<b>C.</b> Decisions in respect of the remuneration, appraisal, reappointment and discipline of persons appointed to regulatory boards must respect the principle of regulatory independence and the principles relating to “appointments etc” set out in the Schedule.			
<b>D.</b> Except insofar as an AAR would be, or would reasonably be considered likely to be, exposed to any material legal liability (other than to pay wages, salaries etc) as a consequence of the delay required to obtain the concurrence of the Board, no person appointed to a regulatory board must be dismissed except with the concurrence of the Board.	This requirement is not specifically provided for in the appointment contracts of regulatory board members.	Appointments to the Board may be terminated for misconduct relating to breaches of fiduciary duties, dishonesty, insolvency or disqualification from acting as a director. The requirement for notice to be given to the Board is noted and will be observed.	No practical issues have arisen since the formation of IPS in 2008.
<b>E.</b> No person appointed to and serving on a regulatory board must also be responsible for any representative function(s).	See A. above.	No regulatory board member has responsibility for any representative functions. All AAR Council Members have retired from those Working Parties and	The internal working party will conclude its work in relation to the two outstanding Committees by January 2011.

		<p>Committees which now fall under the remit of the regulatory board, except for the Advocacy Rights Committee and the Qualifying Employment and Waivers Committee. None of the members of these committees, which carry out case-work rather than policy, is a member of the regulatory board. The composition of the Advocacy Rights Committee will change as a result of applications for rights which are to be made shortly to the Board. A working group established by the regulatory board is reviewing the qualifying employment criteria for admission to Fellowship. It will change the composition of the Qualifying Employment and Waivers Committee and members of Council will no longer serve on it. This work will complete by January 2011 latest.</p>	
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LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
<p>If regulatory boards do not lead on managing the appointments process, it should have a very strong involvement at all stages.</p>	<p>The regulatory board leads on managing the appointments process. See Principle 2A above.</p>

<p>Best practice for public appointments should be taken into account. In particular, account should be taken of the Code of the Commissioner of Public Appointments insofar as relevant.</p>	<p>We have taken account of the Code. For regulatory board member appointments, a member independent of IPS and the AAR would be included within the Committee membership, to give legitimacy and to validate the process.</p>
<p>Appointment panels or equivalent should be established following the guidance set out in the Board's letter of 2 December 2008<sup>1</sup>.</p>	<p>With reference to the evidence provided at Principle 2A above, the AAR is confident that the Appointment Committee has and is capable of producing a demonstrably qualified and genuinely independent regulatory organisation.</p>
<p>The chair of the regulatory board (or an alternate) should always form part of that panel, unless the panel is established to select the chair (in which case another member of the regulatory board should participate).</p>	<p>Confirmed. See Principle 2A above.</p>
<p>The appointments process should be conducted with regard to the desirability of securing a diverse board with a broad range of skills. The framework applied at Schedule 1 paragraph 3 of the Act serves as a useful template.</p>	<p>Applications were invited from all sectors of the community. The job specification required knowledge, experience and skills in respect of the functions of a regulatory board operating within the legal services sector. A broad range of relevant skills are held by the board, consistent with Sch 1 of the Act. This has been confirmed by a skills audit of board members.</p>
<ul style="list-style-type: none"> <li>• Remuneration – decisions in respect of regulatory board pay and conditions</li> </ul>	<p>Confirmed. See Principle 2C above.</p>

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<sup>1</sup> See: <http://www.justice.gov.uk/news/docs/legal-services-board-open-letter-021208.pdf>

<p>should be made having regard to best practice and in any event should not be controlled wholly or mainly by persons responsible for representative functions;</p> <ul style="list-style-type: none"> <li>• Appraisals – while persons with representative functions may be consulted about regulatory board members’ appraisal, they should not be involved formally in agreeing the outcome, or future objectives;</li> <li>• Reappointments – decisions should be guided by objective appraisals and the desirability of ensuring a balance between regular turnover <u>and</u> continuity.</li> </ul>	<p>The Chair of the regulatory board completes the appraisal of the regulatory board’s Chief Executive, taking into account views from the regulatory board members and the AAR Chief Executive.</p>
<p>While the LSB accepts that there may be <u>exceptional</u> reasons which justify immediate dismissal without concurrence having first been obtained, it would expect a full explanation if such circumstances were ever to arise. An AAR should accordingly be prepared to justify why it could not comply with the relevant Rule.</p>	<p>Noted and Agreed (see above).</p>
<p>Where an AAR proposes to discipline one</p>	<p>Noted and Agreed.</p>

<p>or more member(s) of a regulatory board, where such discipline is short of dismissal, the Board should be consulted privately in advance of the action being taken, and the AAR should consider any representations the Board may chose to make.</p>	
<p>Where possible, a person appointed should not have been responsible for any representative functions immediately prior to appointment.</p> <p>The longer the gap between holding responsibility for representative functions and taking up regulatory functions, the more likely it is that the principle of regulatory independence will be observed.</p>	<p>One out of the six ordinary regulatory board members sat as an AAR Council Member, three months prior to her appointment to the regulatory board. She was appointed following an open and competitive recruitment process against the criteria set out in the job description.</p> <p>We agree in principle and comment that the AAR's corporate structure provides controls to promote the interest of the regulatory company, not the AAR.</p>
<p>Codes of conduct or equivalent for board members should highlight the importance of observing and respecting the regulatory objectives and the principles of better regulation, rather than operating to represent any one or more sectoral interests.</p> <p>Codes should also highlight the importance of respecting the principle of regulatory independence, as underlined by the provisions of sections 29 and 30 of the Act.</p>	<p>Agreed and confirmed. The importance of observing and respecting regulatory objectives and the principles of better regulation form part of the regulatory board members' obligations as company directors.</p> <p>See IPS Code of Conduct for Board members (attached).</p>

<b>The Principle</b>	<b>Explanation of any other arrangements in place that bare on the principle and in particular how those arrangements comply with the principle</b>
(1) Processes in place for regulatory board members' appointments, reappointments, appraisals and discipline must be demonstrably free of undue influence from persons with representative functions.	Agreed and confirmed. Refer to Principle 2A above. The processes are managed entirely by the regulatory board.
(2) All persons appointed to regulatory boards must respect the duty to comply with the requirements of the Legal Services Act 2007.	Agreed and confirmed. This is stated in board members' job descriptions. The company is established for the purpose of fulfilling the regulatory functions of the AAR in accordance with the Act and members of the board fulfil their obligations as directors by observing the requirements of the Act. This is reinforced by the protocols at paragraph 6.

**Principle 3: Strategy and Resources etc**

<b>Internal Governance Rule</b>	<b>Relevant arrangements in place</b>	<b>Summary of those arrangements</b>	<b>Summary of practical issues that have arisen over [past year] in respect of these issues</b>
<p><b>A.</b> Defining and implementing a strategy should include:</p> <ul style="list-style-type: none"> <li>access to the financial and other resources reasonably required to meet the strategy it has adopted;</li> </ul>	Full Service Level Agreements (SLAs) (attached) enabling the regulatory board to operate independently and effectively were approved by the AAR Council in March 2010 and by The IPS Board in February 2010. The SLAs have been signed by the President of the AAR and the Chair of the regulatory board. The SLAs were drafted in collaboration by both parties.		No practical issues have arisen since the formation of IPS in 2008.

<ul style="list-style-type: none"> <li>• effective control over the management of those resources; and</li> <li>• the freedom to govern all internal processes and procedures.</li> </ul>	<p>The Protocols (attached) make further provision for Services (see 30)</p>	
<p><b>B.</b> The regulatory body (or each of the regulatory bodies) must have the power to do anything within its allocated budget calculated to facilitate, or incidental or conducive to, the carrying out of its functions.</p>		
<p><b>C.</b> Insofar as provision of resources is concerned, arrangements must provide for transparent and fair budget approval mechanisms.</p>	<p>The regulatory board, Chairman and Chief Executive set the budget for the regulatory body. This budget is then presented to the AAR Council for approval, ensuring transparency and fairness.</p> <p>See Protocols (12 – 15).</p>	<p>No practical issues have arisen since the formation of IPS in 2008.</p>
<p><b>D.</b> Insofar as provision of any non-financial resources is concerned (for example, services from a common corporate service provider, or staff), arrangements</p>	<p>Agreed and confirmed. See Clause 10 of the Service Level Agreement.</p>	

must provide for transparent and fair dispute resolution mechanisms.		
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<b>LSB Guidance</b>	<b>Extent to which guidance has been followed, with any reasons for departing from guidance explained</b>	
The Act requires separation of regulatory and representative functions. Absent of corporate management structures that are robustly and demonstrably separated from the control of persons with representative functions, these Rules are likely to require a high degree of delegation to regulatory bodies in respect of the control of strategy and resourcing.	Agreed and confirmed. See Principle 1 A – B above. The regulatory board is independently responsible for setting its Strategy, Business Plan and budget.	
What is or is not a regulatory function is determined in accordance with the Act. Subject to the Act, whether something is 'regulatory' should be for each regulatory body to determine, in close consultation with respective AARs.	<p>Agreed and confirmed. The Protocols (23 – 25) make provision for accountability.</p> <p>Agreed and noted. Refer to Protocols (6 – 7). The key regulatory roles in respect of qualification onto the register of Fellows and the maintenance of professional standards are reserved to the regulatory board under protocols 26 – 28.</p>	
Where members of staff are employed by an AAR to discharge regulatory functions under the delegated remit of a regulatory body, the position of the AAR as legal employer should be recognised in the	Agreed and confirmed. See the Protocols (23).	

<p>arrangements made under these rules. However, in complying with these Rules, those arrangements should make clear how decisions with respect to the management and control of such members of staff are to be exercised.</p> <p>The presumption under such arrangements should be – subject only to being exposed to unreasonable liability (such as in creating a pension scheme) – that an AAR should always agree a reasonable request from its regulatory body. While an AAR has a right of veto, therefore, it also carries a responsibility to justify that decision in light of the principle of regulatory independence. The Board may from time to time issue further illustrative guidance on these issues under Rule 11 of these Rules.</p>	
<p>Each regulatory body should act reasonably when defining and implementing its strategy, and should in particular have regard to the provisions of Section 28 of the Act. It should also have due regard to the position of the AAR and in particular to any responsibilities or liabilities it may have as AAR.</p>	<p>Agreed and noted. Refer to Protocols ( 6 – 7, 10 - 11)*</p>

<p>Each regulatory body should act reasonably when exercising its functions in accordance with this Rule, and should in particular have regard to the provisions of Section 28 of the Act. It should also have due regard to the position of the AAR and in particular to any responsibilities or liabilities it may have as AAR.</p>	<p>Agreed and noted. Refer to Protocols ( 6 – 7, 10 - 11)</p>
<p>The process established by the AAR should provide appropriate checks and balances between it and the regulatory body (or bodies) so as to ensure value for money and observe the wider requirements of the Act, without impairing the independence or effectiveness of the regulatory body (or bodies).</p>	<p>The AAR's finance department produces monthly and yearly financial reports to the AAR and regulatory board in order to assess value for money, in consideration of the wider requirements of the Act. The budget for the regulatory company is reviewed at each regulatory board meeting. Financial reports of the regulatory board are presented to the AAR Council meeting six times per year.</p>
<p>Subject only to the formal budgetary approval process and the operation of its dispute resolution mechanism(s) , an AAR's arrangements should not prevent those performing regulatory functions, where they believe their independence and/or effectiveness is compromised or prejudiced, from obtaining required services otherwise than through the AAR.</p>	<p>Noted and agreed. Refer to Service Level Agreements 4.4.1.</p>
<p>AARs and regulatory bodies should be</p>	<p>Agreed and confirmed. See Service Level Agreement Schedule 6.</p>

<p>particularly careful to ensure that, in respect of public and/or consumer-facing services (including media relations and marketing-type activities), the principle of regulatory independence should be seen to be met, as well as being met.</p>	
<p>When considering whether arrangements meet the required standards, the Board will consider factors such as:</p> <ul style="list-style-type: none"> <li>• evidence that the provision of services to the regulatory body (or bodies) is not subordinate to the provision of services to any other part of the AAR;</li> <li>• provision being made for service level agreements agreed between respective parties; and</li> <li>• transparent, fair and effective dispute resolution mechanisms being in place.</li> </ul>	<p>Noted. Please see Service Level Agreement and Protocols which govern provision of services and dispute resolution mechanisms.</p>

<b>The Principle</b>	<b>Explanation of any other arrangements in place that bare on the principle and in particular how those arrangements comply with the principle</b>
<p>Subject only to the oversight permitted under Part 4 of this Schedule, persons performing regulatory functions must have the freedom to define a strategy for the</p>	<p>Agreed and confirmed. Refer to * above on page 13.</p>

performance of those functions and work to implement that strategy independently of representative control or undue influence.	
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**Principle 4:** Oversight etc

<b>Internal Governance Rule</b>	<b>Relevant arrangements in place</b>	<b>Summary of those arrangements</b>	<b>Summary of practical issues that have arisen over [past year] in respect of these issues</b>
<b>A.</b> Arrangements in place must be transparent and proportionate.		Agreed and confirmed. Refer to Protocols.	No practical issues have arisen since the formation of IPS in 2008.
<b>B.</b> Arrangements in place must prohibit intervention, or the making of directions, in respect of the management or performance of regulatory functions unless with the concurrence of the Board.		The regulatory board is responsible for setting the strategy, deciding the business plan and managing the performance of the regulatory company, through the Chief Executive of the regulatory company. The regulatory company is a wholly owned subsidiary. Under the Articles of Association, the AAR is entitled, as a shareholder, to call a General Meeting if it wishes to call the directors of the regulatory company into account.	

<b>LSB Guidance</b>	<b>Extent to which guidance has been followed, with any reasons for departing from guidance explained</b>
In making its arrangements, an AAR should balance its ultimate responsibility for the discharge of regulatory functions with its	Agreed. See Principle 1 response above.

responsibilities to ensure separation of regulatory and representative functions.	
In considering proportionality, AARs should consider the risk of Board intervention. Note the Board's policy statement on compliance and enforcement powers, and in particular the Board's intention to use its most interventionist powers only when other measures (including informal measures) have failed.	Noted.  Noted.
In determining whether to give concurrence, the Board will consider the extent to which the process leading to the proposed intervention or directions complies with the principle of regulatory independence.	Noted.
<b>The Principle</b>	<b>Explanation of any other arrangements in place that bare on the principle and in particular how those arrangements comply with the principle</b>
Oversight and monitoring by the AAR (which is ultimately responsible and accountable for the discharge of its regulatory functions) of persons performing its regulatory functions must not impair the independence or effectiveness of the performance of those functions.	Noted and confirmed. Refer to Articles of Association and Protocols.

## General Evaluation

### The Approved Regulator

ILEX is proud of the way in which it has implemented the requirements of the Legal Services Act. ILEX had spent considerable time planning for implementation, and was therefore thoughtful in how it approached all issues relating in particular to the guarantee of independence for those to whom it has delegated its regulatory responsibilities. The establishment of IPS as a company, rather than as an internal board or committee, clearly demonstrates that commitment; the obligations of the directors go beyond contract to include company law obligations to act in the best interests of the company. The use of protocols and service level agreements and the dispute resolution mechanisms included in these documents should enable IPS to be both independent and cost effective in its work. This focus on independence and transparency will also, we believe, lead to greater consumer confidence in the Legal Executive Lawyer and profession.

We have been mindful throughout, and it has made our work easier, of the positive views of members of ILEX on the benefits of good regulation in enhancing professionalism.

There remain only minor issues to be resolved before ILEX is in a position to fully comply with LSB rules. We have deliberately not rushed these issues simply to meet LSB imposed timelines, as we believe it is more important to get issues right than to get them only half right but “on time”.

### The Regulatory Body

ILEX's approach to separating its regulatory and leadership functions has proved itself during the last year. Making clear separations in the roles of IPS and ILEX whilst working together and keeping communications open has enabled the two companies to meet the requirements of the legislation and the internal governance rules. The regulatory board has had no difficulty in acting independently and setting its own regulatory agenda, or in having regard to the strategy of ILEX. Where new resources have been needed they have been made available and ILEX has shown an appropriate regard for its obligations in respect of regulatory matters. ILEX Council members have had no difficulty in implementing distinct separation of roles, so that only in residual elements of casework are any of them now involved in regulatory matters. IPS has been able to push ahead with renewing the code of conduct and complaints and disciplinary rules to the mutual benefit of the public and ILEX members. Establishing a separate identity for IPS has helped raise the profile of ILEX members by giving assurance to the public about members' skills and fitness to practise. The structure of regulation of legal executives has provided a sound basis to take forward the development of the role of legal executives and of ILEX in the delivery of legal services.