

Lord Igor Judge
The Lord Chief Justice
The Royal Courts of Justice
Strand, London
WC2A 2LL

Our ref: DB/PC

17 May 2012

Chartered Legal Executives/Officers of the Court

Thank you very much indeed for giving time to see the President Susan Silver and the Chair of IPS Alan Kershaw recently, to discuss our planned application for Reserved Activity Rights.

I am sure you know how thorough we like to be. In relation to our initial application in these areas, I know that you were concerned that the disciplinary jurisdiction exercised at present by the Courts in respect of solicitors and barristers ought to be extended to include CILEx members, in order to provide the same degree of regulatory and disciplinary oversight of CILEx members in independent practice as litigators or advocates as the Court has over solicitors and barristers. I took away from the meeting the impression that your position on this had relaxed a little, but nonetheless we here at CILEx felt it was appropriate to take some advice on the position.

Whilst I know that our members would be delighted to be 'Officers of the Court', it does seem clear that this is not possible other than by means of legislation. The concept of an Officer of the Court was originally a common law concept, as you know, and was specifically saved by statutory means, but only in respect of solicitors, by the Solicitors Act 1974.

Nonetheless, we believe that the current powers of the Court, whether as inherent powers or powers given by statute will ensure that the Courts are able to exercise similar appropriate oversight of our members as litigators or advocates in independent practice.

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It is my understanding, on advice, that it would be very rare indeed for a Judge to exercise his or her inherent disciplinary powers over solicitors as are preserved by Section 50 of the Solicitors Act 1974. Lord Denning in the case of R and T Thew Limited v Reeves (No.2) (1982) 3 All ER 1086 made it clear that reference should be made to the Law Society for it to invoke the relevant disciplinary processes. Now, of course, it would be a reference to the SRA.

The second part of the inherent jurisdiction is one of compensation i.e. the power to compensate the other party if the solicitor for one side has done something wrong. That jurisdiction is now encapsulated within the statutory wasted costs regime.

The Legal Services Act itself makes it clear in its statement of professional principles that persons who exercise before any Court a right of audience or conducts litigation in relation to proceedings in any Court, by virtue of being authorised persons should comply with their duty to the Court to act with independence in the interests of justice. Section 188 of the Act emphasises the duties of advocates and litigators as including a duty to the Court to act with independence in the interests of justice. That duty and the duty to comply with relevant Conduct Rules override any obligations which an authorised person may have (otherwise than under the Criminal Law) if they are inconsistent with the duties. That obligation to act in the interests of justice is re-enforced by our own Code of Conduct which has as its first principle to 'Uphold the Rule of Law and the impartial administration of justice'. The Code then expands upon the principle as follows; 'However, your primary and overriding duty is to the Courts. You must not knowingly allow the Court to be misled. You must obey Court orders and do nothing which would place you in contempt of Court'.

So while our members would welcome the status of Officers of Court, it would seem that this is not going to be possible except through primary legislation, and we all know how busy Governments are and how difficult they find it to make time for legislation which to them is not mainstream. However, I am confident that the inherent jurisdiction of the Court to control the conduct of those appearing before them, now exercised through reference to the relevant regulatory body and their disciplinary processes, or through the wasted costs jurisdiction, comes as close as we are going to get to the powers of the Courts over Officers of the Court. That, combined with our members' obligations under the Legal Services Act, and under their own Code of Conduct, I hope will address your concern. We believe that, as far as possible, our members in exercising rights to conduct litigation, and advocacy rights, are subject to the same regulatory and disciplinary oversight by the Court as is presently exercised over solicitors (in particular) and barristers.

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If there is some almighty flaw in the argument I have put before you here, I am sure you will let me know.

Yours sincerely

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