

ILEX PROFESSIONAL STANDARDS LTD

CONSULTATION

PROPOSAL TO REVISE RIGHTS OF AUDIENCE CERTIFICATION RULES TO ENABLE ADVOCACY RIGHTS COMMITTEE TO DELEGATE DECISION MAKING POWERS

INTRODUCTION

ILEX is an approved regulator under the Legal Services Act 2007. In accordance with the requirements of the legislation it has separated out its regulatory and representative functions. The regulatory functions have been delegated to ILEX Professional Standards Ltd (IPS). IPS is the regulatory body for Legal Executives and other grades of member registered with ILEX.

IPS is making an application under the Legal Services Act 2007 to revise the Rights of Audience Certification Rules to enable the Admissions and Licensing Committee, established under the Rules to delegate decision making to IPS officers in suitable instances.

IPS is consulting on the proposals. This consultation document begins by outlining the nature of the application. It then outlines the instances in which delegated decisions could be made and the criteria against which decisions will be made.

This Consultation will close on 23 December 2010.

INTRODUCTION

1. IPS is establishing an Admissions and Licensing Committee (the Committee). The Committee will replace and undertake the roles of the Advocacy Rights and Qualifying Employment Committees. It was necessary to revise the constitution of the Advocacy Rights and Qualifying Employment Committees to comply with the Internal Governance Rules of the Legal Services Board (LSB). IPS took the decision to create one new Committee which will be in place in January 2011. The terms of reference of the existing committee will transfer to the new Committee.
2. IPS seeks to revise the terms of reference of the Committee, set out in the Rights of Audience Certification Rules, to enable the Committee to delegate decision making in certain instances to the IPS officers.

ADVOCACY RIGHTS COMMITTEE

3. The Advocacy Rights Committee is responsible for the scheme by which ILEX members gain rights of audience. The scheme is set out in the Rights of Audience Certification Rules. The Advocacy Rights Committee considers applications to enrol onto the qualification scheme, to grant and renew advocacy certificates and applications made by course providers to deliver the advocacy qualification courses. The Advocacy Rights Committee is responsible for the oversight of standards of course delivery and assessment.
4. Under the Rights of Audience Certification Rules the IPS Officers may grant advocacy certificates to ILEX members upon successful completion of the advocacy qualification and renew advocacy certificates, which are not the first renewal.
5. The Advocacy Rights Committee is able to and does delegate decision making to IPS officers in individual cases. This occurs where the Advocacy Rights Committee has asked for additional information in respect of an application before it. In such cases it often delegates approval of the application, subject to receipt of that information, to the IPS officer.

DELEGATION

6. IPS proposes that the Admissions and Licensing Committee be able to delegate decision making to the IPS officers in matters affecting the rights of audience qualification. The delegations sought are:
 - Approval of applications for Certificates of Eligibility made by Graduate members and Fellows seeking to enrol onto the rights of audience qualification scheme;
 - Approval of applications to renew first advocacy certificates; and

- Approval of applications made by course providers to deliver the advocacy rights courses.
7. Each area where IPS proposes to introduce a delegated procedure is discussed below.

Questions

- 1. Do you agree that the Committee should be able to delegate decision making to the IPS officers? Please set out any comments you have.**

Applications for certificates of eligibility

8. The rights of audience qualification scheme is only open to Graduate members and Fellows of ILEX, hereinafter referred to as applicants. Applicants must make an application for a Certificate of Eligibility. As part of the application they must outline their litigation and advocacy experience and provide portfolios of 8 cases they have handled to evidence their experience.
9. The portfolios are assessed by external advisors against criteria set out in the Rights of Audience Certification Rules. The external advisors have been appointed on the basis of their academic and legal practice experience. The external advisors advise whether applicants have met the criteria contained in the Rights of Audience Certification Rules.
10. Applications, including the advice of the external advisors, are then referred to the Advocacy Rights Committee. The Advocacy Rights Committee determines whether applicants may be granted Certificates of Eligibility. The Advocacy Rights Committee usually endorses the advice of the external advisor. The same procedure will be followed by the new Admissions and Licensing Committee.
11. IPS proposes that IPS officers should be able to grant Certificates of Eligibility where the External Advisors have advised that an applicant has successfully met the portfolio criteria. Where there is doubt whether an application should be approved the officer will refer the application to the Committee for determination.
12. In determining whether an application can be approved the officer will apply the following criteria, which appear in the Rights of Audience Certification Rules:
- The applicant has passed the Level 6 examinations necessary for the certificate sought. Where the applicant seeks an exemption from the examination requirements the application will be referred to the Committee.

- The applicant's litigation and advocacy/police station experience meets the knowledge and experience criteria set out in the Rights of Audience Certification Rules.
- The case portfolios have all been marked as meeting the knowledge and experience requirements.
- Satisfactory references have been obtained. References will be satisfactory where the two referees can attest to the applicant's knowledge of civil, criminal or family law and practice (whichever is relevant) and their advocacy skills, and who are able to offer an informed opinion as to the applicant's suitability to be granted the rights of audience they wish to be granted in accordance with the competence criteria set out in the Knowledge and Experience Guidelines in the Rights of Audience Certification Rules.

Question

- 2. Do you agree the officers should apply the same criteria as are currently applied by the Advocacy Rights Committee? If you have any comments please set them out.**

Applications for renewal of first advocacy certificate

13. Under the rights of audience scheme Legal Executive Advocates must renew their first advocacy certificate after one year. At the first renewal of certificates applicants are required to provide portfolios of 3 cases where they have exercised their new advocacy rights.
14. As with applications for Certificates of Eligibility, the portfolios are assessed against criteria set out in the Rights of Audience Certification Rules by external advisors. The external advisors advise whether applicants have met the criteria in the Rights of Audience Certification Rules.
15. Applications, including the advice of the external advisors, are then referred to the Advocacy Rights Committee. The Advocacy Rights Committee determines whether the applicant may be granted a renewed advocacy certificate. In practice the Advocacy Rights Committee endorses the advice of the external advisor. From January 2011 referrals will be made to the new Admissions and Licensing Committee.
16. IPS proposes that IPS officers should be able to grant renewed advocacy certificates where the External Advisors have advised that an applicant has successfully met the renewal criteria. Where there is doubt about whether a certificate may be granted the application will be referred to the Committee for determination.

17. The criteria to be applied by the office in determining whether an application can be approved are those set out in the Rights of Audience Certification Rules. They are:
 - The applicant's litigation and advocacy experience meets the knowledge and experience criteria set out in the Rights of Audience Certification Rules.
 - The case portfolios have all been marked as meeting the knowledge and experience criteria for the renewal of certificates. Where the portfolios have not been marked as meeting the criteria they will be referred to the Committee.

Questions

3. **Do you agree the officers should apply the same criteria as are currently applied by the Advocacy Rights Committee? If you have any comments please set them out.**

Applications made by course providers

18. Under the rights of audience scheme applicants must complete an advocacy course in the area of practice in which they seek advocacy rights. Courses are delivered by accredited course providers.
19. Course providers seeking accreditation are required to make an application. In their application they must demonstrate how their proposal will meet the course outcomes and assessment criterion which are set out in the Rights of Audience Certification Rules. The Rights of Audience Certification Rules also include other criteria that course providers must meet. These include details about location, venue, tutors and day programmes.
20. The application as a whole is assessed against the criteria by the external advisors. The external advisors advise whether course providers have met the criteria in the Rights of Audience Certification Rules.
21. Applications, including the assessment of the external advisors, are then referred to the Advocacy Rights Committee. The Advocacy Rights Committee determines whether a course provider may be accredited. In practice the Committee endorses the advice of the external advisor. This role will be carried out by the Admissions and Licensing Committee from January 2011.
22. After achieving accreditation the IPS staff and external advisors inspect course provision. The inspection visits provide an opportunity to ensure that course providers meet the criteria and standards expected of them. The external advisors also moderate assessments undertaken by course providers to ensure that the standards are met and applied consistently. These mechanisms provide assurances about the quality of course provision and standards of assessment.

23. IPS proposes that decisions to grant accreditation to course providers may be made by the IPS officers. Where the Officer has any doubt about an application it will be referred to the Committee.
24. An application can be approved where the external advisor has advised that the application meets the criteria in the Rights of Audience Certification Rules. The criteria where applications can be approved by the IPS staff will be:
- ◆ The external advisor has assessed that the proposed courses will meet the course outcomes and assessment criteria set out in the Rights of Audience Certification Rules.
 - ◆ The course provider has a suitable venue, including teaching and study accommodation and other facilities, for the purposes of delivering the courses;
 - ◆ The proposed resources to support teaching and study, including library and research facilities, are suitable for the purposes of delivering the courses;
 - ◆ The proposed candidate numbers and proposed tutor/candidate ratios are suitable for delivering skills courses and allow candidates sufficient interaction and opportunity to practise advocacy and obtain feedback from tutors;
 - ◆ The teaching and assessment experience of the applicant organisation and of those who are to deliver the courses are suitable for delivering and assessing skills based courses;
 - ◆ The course structure proposed, including teaching/study time, will meet the course outcomes set out in the Rights of Audience Certification Rules;
 - ◆ The proposed course content will meet the course outcomes set out in the Rights of Audience Certification Rules;
 - ◆ The proposed course duration is sufficient to meet the course outcomes set out in the Rights of Audience Certification Rules
 - ◆ The course materials are suitable for the purposes of delivering the course outcomes set out in the Rights of Audience Certification Rules;
 - ◆ There are adequate candidate support and feed-back arrangements in place;
 - ◆ There are arrangements for candidates to make appeals against course assessments;
 - ◆ The arrangements for assessing candidates meet the course assessment criteria set out in the Rights of Audience Certification Rules; and
 - ◆ The health and safety and equal opportunities policies adopted by the applicant organisation meet applicable requirements.

Question

4. **Do you agree that the IPS officers should be able to approve applications made by course providers seeking accreditation to deliver and assess advocacy courses? If you have any comments please set them out.**

IPS OFFICERS

25. The IPS officers have been responsible for the rights of audience qualification since the commencement of the original scheme in 1999. The officers have built up considerable expertise in assessing course providers and determining whether applicants meet appropriate standards for entry onto the course or continue to practise as advocates.
26. The IPS officers undertake an initial assessment of applicant and course provider applications. Where the officer takes the view that further information is required to support an application that is obtained by them before applications are referred for advice from the external advisors.
27. The officers, responsible for the scheme, also form part of the inspection teams in respect of course providers. They are therefore familiar with the standards of course provision expected of course providers.
28. IPS believes that the experience and expertise that IPS officers have built up of dealing with course providers and applicants provides them with suitable skills and experience to approve course provider applications and ILEX member applications.
29. IPS also proposes to amend the Rights of Audience Certification Rules to enable an applicant or course provider to appeal against a decision of the Officer to the Admissions and Licensing Committee.

Question

- 5. Do you have any comments on the suitability of IPS officers to make delegated decisions? If so, set them out.**

REGULATORY OBJECTIVES

30. IPS believes that its proposal complies with the regulatory objectives set out in the Legal Services Act 2007 for the reasons set out below. In most instances the proposed delegation will have a neutral impact upon the objectives.
 - The public and consumer interests will continue to be protected as the IPS officers will apply the same criteria when approving applications as are presently applied by the committee. Where the IPS officers have any doubt whether an application meets the criteria it will be referred to the Committee for consideration.
 - The objective of supporting the rule of law will continue to be met as only suitably qualified ILEX members will be able to exercise rights of audience;

- Approval of applicants and course providers will continue to improve the provision of access to justice for consumers to the same extent as the present arrangements.
- The delegation will have no impact upon the promotion of competition in the provision of services. Only suitably competent advocates and course providers will be approved.
- There is no impact on the objective of encouraging a strong, independent, diverse and effective legal profession.
- There is no impact on the objective of increasing the public's understanding of a citizens legal rights and duties.
- The delegation will have no impact on the objective of promoting and maintaining adherence to the professional principles.

Question

- 6. Do you have any comments on whether the application will meet the regulatory objectives or professional principles? If so, set them out.**

CONSULTATION QUESTIONS

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

- Q1.** Do you agree that the Committee should be able to delegate decision making to the IPS officers? Please set out any comments you have.
- Q2.** Do you agree the officers should apply the same criteria as are currently applied by the Advocacy Rights Committee? If you have any comments please set them out.
- Q3.** Do you agree the officers should apply the same criteria as are currently applied by the Advocacy Rights Committee? If you have any comments please set them out.
- Q4.** Do you agree that the IPS officers should be able to approve applications made by course providers seeking accreditation to deliver and assess advocacy courses? If you have any comments please set them out.
- Q5.** Do you have any comments on the suitability of IPS officers to make delegated decisions? If so, set them out.
- Q6.** Do you have any comments on whether the application will meet the regulatory objectives or professional principles? If so, set them out.
- Q7.** Do you have any comments on whether the application will meet the regulatory objectives or professional principles? If so, set them out.

HOW TO RESPOND

A response form has been produced for completion. Please send the response form to IPS through one of the following methods:

- Email to bbasra@ilexstandards.org.uk
- By post to ILEX Professional Standards Ltd, Kempston Manor, Kempston, Bedford MK42 7AB
- By DX to ILEX Professional Standards Ltd, DX 124780 Kempston 2

SUBMISSION DEADLINE

The deadline for the submission of responses is 23 December 2010.