

IPS response to the LSB consultation on amendments to IGRs relating to the processes for appointing and reappointing regulatory board members and their chairs.

Introduction

1. This response represents the joint views of The Chartered Institute of Legal Executives (CILEx), an Approved Regulator under the Legal Services Act 2007 (the 2007 Act), and ILEX Professional Standards Limited (IPS), the regulatory body for 22,000 members of CILEx. The consultation was separately considered by CILEx and IPS. The outcomes of those respective considerations were exchanged and with no significant difference of opinion between the two organisations, a joint response is tendered. For the purposes of this response, 'we' is used to mean both CILEx and IPS unless the context indicates otherwise.
2. We have considered the proposals and set out a detailed response below. In principle we support the proposal that appointments to the Boards of regulatory bodies should be made independently from the Approved Regulators. Our arrangements already ensure that, but we are reviewing them to make the separation of functions more transparent. However, we are not convinced that further prescription by the LSB is necessary. For example, the IGRs already provide a mechanism for the LSB to address and enforce any failure by Approved Regulators to allow the regulatory bodies to act independently when making appointments. The further prescription discussed in this paper is not outcomes focussed and seems inconsistent with the good regulation principles of proportionality and effective targeting. Our overall view is that effective policing of the LSB Chief Executive's letter of December 2008 would have achieved the desired results, and would still do so. In view of this, together with the proposed provisions of the consultation, we are not entirely convinced that it is necessary for the LSB to approve the appointments and reappointments arrangements as conforming with the IGRs.

Do you agree that the current IGRs allowing professional bodies to design and manage the appointments and reappointments process for regulatory board members and their chairs presents a potential risk to regulatory independence? Please set out your reasons.

3. The development and implementation of effective internal governance rules needs to be seen by both representative-controlled approved regulators and by their regulatory arms, as an opportunity for greater transparency and to mitigate against any potential risk to regulatory independence. If properly formulated and used, the rules will enable the representative and regulatory functions to resolve outstanding constitutional matters constructively, without constant recourse to

the LSB. It is in the interests of everyone, including consumers and the legal profession, that boundaries are clear and differing responsibilities clearly understood.

4. The current IGRs allow for professional bodies to plan and manage the appointments and reappointments process for regulatory board members and their chairs. This process has always worked well for IPS. The initial appointment process for the chair of IPS was managed by CILEx in 2008, in order to set the organisation up. The initial appointments of the IPS board and the chair were based on merit and appointing the most suitable candidates for the roles.
5. Subsequent reappointments of IPS board members and the chair have been led by IPS (with input from CILEx when IPS chair was reappointed). Appointment panels have included a member independent of both IPS and CILEx. The relationship governed by the IGRs and the protocols between IPS/CILEx have worked well for the appointment of ordinary board members and we see the value of extending the model to the appointment of the Chair. The protocol agreed between CILEx and IPS provides an appropriate level of independence with no regulatory risk. Insofar as risks (real or perceived) have been identified by the LSB to the independence of regulatory bodies by their AARs, it has been within the LSB's remit to challenge them and seek compliance with the principle set out in the LSA. This would also be proportionate and consistent with risk based consultation.

Do you agree that all, or some, of the provisions set out in the bullet points in the consultation (see below) would help to safeguard the independence of regulation from the interests of professional bodies and the regulated professions? Please set out the reasons for your viewpoint.

- *regulatory bodies to be responsible for designing the competency requirements for its board members and its chair*
- *regulatory bodies to be responsible for designing and managing the appointments and reappointments process for its board members and its chair*
- *appointments and reappointments arrangements must be approved by the LSB as conforming with the IGRs*
- *the process and decisions on appointments and reappointments of regulatory chairs to be delegated to an independent appointment panel*

6. Placing responsibility on the regulatory bodies to design the competency framework for its board and chair will enable the regulatory bodies to lead on the appointments and reappointments process. This should also mitigate against any actual or perceived risk to regulatory independence. In effect, this is a reversal of the current position, and as the consultation indicates it is essential that regulatory bodies strongly involve the parent AAR at all the stages – fully consulting it on the key aspects of the appointments and reappointments process, especially with the appointment of the Chair. To this end, AARs could reasonably expect to be consulted in respect of matters such as the job description, time commitment, person specification and salary. A proper audit trail of the discussion should be maintained. Therefore the appointment and reappointment of the Board and chair will be a joint process between the AAR and the regulator, as it is at present.
7. IPS and CILEx have had no issues with the current arrangements in the schedules to the IGRs. The protocol which governs the relationship between both CILEx and IPS, allows IPS more authority when it comes to selecting its board members and chair. When IPS selects its board members or reappoints them, the appointments committee consists of IPS Board members only. When the chair is appointed or reappointed the appointments committee comprises of two IPS board members (one lay and one professional member), one CILEx Council representative and is supported by IPS Chief Executive. However we believe the model for appointing and reappointing IPS board members should be extended to the chair. Thus with the proposed changes CILEx would no longer be on the appointments committee for the appointment or reappointment of IPS' chair.
8. The requirement to gain prior approval from the LSB for all appointments and reappointments arrangements is disproportionate when an adequate mechanism already exists for securing the desired outcome.
9. The proposal for delegation of the process and decision to an independent panel on appointment and reappointment of the chair needs to be clarified by the LSB. Does the independent panel consist of IPS Board members or will this panel be formed by individuals who have no prior relationship with IPS and CILEx? If this panel is completely independent of IPS and CILEx this may create some difficulties. Firstly the independent panel will not have a full and clear understanding of the regulatory board's work and therefore may not be able to make the most suitable appointment. Secondly the regulatory board and the AAR may feel excluded from the process and any valuable insight and expertise they may have had, will be lost in the process. Rather than have the independent panel control and lead the process it is better to have the regulatory bodies make appropriate arrangements whilst keeping AAR informed.

10. Whatever the constitution of the appointing regulatory committee, the appointment arrangements should be such as to ensure that regulatory Boards reflect appropriate levels of diversity.

Do you think that we need to go further and specify how the membership of appointment panels should be composed?

11. No. We believe this would be too intrusive and disproportionate. There have been no issues to date with the composition of IPS panels. Therefore this should continue with no intervention from the LSB.

Are there any other safeguards that should be put in place?

12. No. The current powers of the LSB should be used where necessary.

How do the above provisions compare to current practice?

13. The provisions suggested by the LSB are similar to those already set out in the CILEx/IPS protocols. Therefore the changes would have minimal impact on IPS and CILEx.

Is there any specific circumstance where one or more of the proposed changes would cause particular issues in terms of proportionality and/or workability?

14. The proposed changes to the schedule of the IGRs may not be proportional in terms of cost, as there is no pressing need for the changes. Costs incurred as a result of the amendments to the IGRs would be passed onto regulated practitioners (this will add to the regulatory burden) and in turn would be footed by consumers.

15. In terms of the workability of the changes, we believe that there would in practice be no issues for CILEx and IPS.

Do you agree with the proposed implementation plan? Please provide reasons.

16. We have no issues with the current implementation plan. IPS is in the privileged position of already having a lay chair and a lay majority on our board, therefore the proposed implementation would have limited impact on us.

Are you aware of any specific practical issues that this implementation plan may cause for particular regulators in the context of currently scheduled appointments/ reappointments?

17. IPS will need to appoint two new board members for September 2014 and a new chair in June 2015. Therefore the process of appointment of the board members and chair will commence very shortly. It is important for us as an organisation to be informed of any changes as soon as possible so we can be sure we remain compliant with the formal requirements.

CILEx/IPS