

NRPSI REVIEW  
Post Review Sub-Committee

Communiqué following the Round Table Meeting of PSI Membership Organisations held 1<sup>st</sup> September 2010

Present:

Mr Magdi Abbas,	SOMI
Mr Tony Bell,	Chair CIOL
Mr Geoffrey Buckingham,	APCI
Mr John Hammond,	Chief Executive CIOL
Mr Alan Kershaw,	Independent consultant to NRPSI Review Sub-Committee
Dr Guillermo Makin,	CIOL Council/NRPSI Review sub- committee
Ms Pamela Mayorcas,	ITI
Ms Mirela Minty,	SITA
Ms Amelia Naranjo,	NUPIT
Mr Alan Peacock,	Registrar NRPSI/ CIOL Director of Membership
Mr Alan Thompson,	NRPSI Review sub-committee
Mr Brooke Townsley,	CIOL Council/NRPSI Review Sub- committee
Ms Lalia Pessoa-White,	NRPSI Review sub-committee
Dr Zuzanna Windle,	PIA
Chair:	Mr Brooke Townsley
Minutes:	Mr Alan Peacock

*Please find below a summary report on the round table meeting held on 1<sup>st</sup> September 2010.*

*Preliminary note: the Round Table Meeting held on 1<sup>st</sup> September 2010 was convened primarily for the purpose of presenting to representatives of PSI membership organisations proposals for the new National Register structures developed by the NRPSI Post Review Sub Committee (PRSC). In the weeks between invitations being sent out and the meeting itself, an announcement from the Ministry of Justice (MoJ) on its plans for the future provision of interpreting services in the Criminal Justice System was made. As this was a significant development with important implications for the proposals to be presented, the MoJ announcement was added as a further agenda item.*

After opening formalities and introductions, the objectives of the meeting were summarised by the Chair (see above). Mr Tony Bell then reported on the meeting of the PRSC with the MoJ of 26<sup>th</sup> August 2010. It was reported that the MoJ had set up a Project Board to look at interpreting provision in the Criminal Justice System and the PRSC had had 2 meetings with that Board earlier in the year. A

subsequent scheduled meeting had been cancelled. The 26<sup>th</sup> August meeting had, however, been useful and indications were that MoJ was still open to consultation with PRSC regarding the status of the National Register in its future plans. The MoJ had been asked by PRSC how the private sector suppliers foreseen in their procurement plans would manage regulatory and disciplinary matters and MoJ admitted they had no clear answer to that question. The MoJ asked the PRSC to make a formal written submission in support of the National Register as a regulatory instrument by the end of September 2010.

2. The meeting moved to consideration of the discussion paper circulated in advance of the meeting (see Annex 1). Mr Alan Kershaw presented the paper and responses and comments on the proposals contained in the paper were heard. The meeting found that there was broad agreement on the proposals outlined in the discussion paper and no fundamental disagreement about any particular issue.

3. The proposed timetable for the final stages of implementation of the recommendations in the NRPSI Review and the proposals outlined in the attached discussion paper are shown below.

1 <sup>st</sup> September 2010	PSI membership organisations round table meeting
18 <sup>th</sup> September 2010	Presentation of proposals on the new NRPSI membership and regulatory structure to CIOL Council
18 <sup>th</sup> September - 31 <sup>st</sup> December 2010	Establishment of new NRPSI regulatory and membership structures
1 <sup>st</sup> January 2011	Formal commencement of new NRPSI regulatory and membership structure

4. At its meeting on 18 September the CIOL Council approved the proposals outlined in the discussion paper (Annex 1), and authorised the PRSC to continue work towards the objectives.

John Hammond  
CEO  
Chartered Institute of Linguists

## **NRPSI Review**

### **Round table discussion**

**1 September 2010**

#### **Discussion paper**

*Alan Kershaw, Project Co-ordinator*

#### **Issue**

1. Matters for discussion by professional representative groups, following the deliberations of the Post Review Sub Committee (PRSC), concerning the future regulation and leadership of public service interpreters (PSIs).

#### **Background**

2. A report entitled *The Future of the National Register of Public Service Interpreters* was received by the Council of the Chartered Institute of Linguists (CIOL) on 28 November 2009. The recommendations of the report are summarised in Annex A to this paper.
3. The Council adopted the first three recommendations in the report:
  1. *That the NRPSI only undertakes a regulatory function as prescribed in the White Paper.*
  2. *Consideration should be given to how the PSIs needs for membership functions could be progressed.*
  3. *That the NRPSI should be reconstituted to be INDEPENDENT of the CIOL. When reorganised to undertake a regulator function as prescribed in the White Paper the NRPSI should be constituted as a charity or not-for-profit company.*
4. Since then the Post Review Sub-Committee (PRSC) has met several times to consider the decisions and actions required to implement those recommendations. The current members of the PRSC are Brooke Townsley, Tony Bell, John Hammond, Guillermo Makin, Lalia Pessoa White and Alan Thompson.
5. In June 2010 I was appointed to coordinate the project and help see it through to completion.

6. Discussions within the PRSC have been frank; and its members have worked hard to consider alternative options for the way forward, recognising the realities and challenges of the present situation; the opportunities now available to PSIs within the justice system where the large majority of them do their work; and the need to move on from some previous decisions about the NRPSI which have not all stood the test of time.
7. This paper distils the thinking and the discussions that have taken place so far. It discusses possible ways forward and presents a proposal that is, in the view of the PRSC, at least worth the serious consideration of PSIs and their representative bodies. It is nonetheless written by me, attempting to crystallise – from an independent, untutored and deliberately naïve perspective – the issues that have to be addressed and the decisions that must now be taken.

## Discussion

8. We need to be absolutely clear about what we are trying to achieve; how and when we will achieve this; what are the limits on what we can achieve; and what are the key decisions that need to be made.
9. The PRSC has agreed that the ideal end product would be a reformed NRPSI – a regulatory National Register (NR) - which is:
  - a. governed and managed independently of sectoral interests;
  - b. financially self-sufficient;
  - c. a definitive indicator of current competence among PSIs
  - d. composed solely of practitioners who have demonstrated their competence in the fields the Register indicates for them, ideally carrying protection of title;
  - e. supported by all significant present and future leadership and representative bodies to which PSIs belong, and working in harmony with them;
  - f. appreciated by registrants as acting firmly in their interests by drawing an effective line around competence - generous enough to allow in all who are fit for the job but rigorous enough to exclude those who ought not to hold registration;
  - g. understood by users and other stakeholders both for what it can and for what it cannot do;
  - h. recognised as the definitive indicator of competence among PSIs in sectors covered by a national agreement, so that anyone requiring the services of a PSI will naturally expect to use a registered rather than an unregistered practitioner;
  - i. constructed with sufficient flexibility to encompass other registerable groups within the public service, should the future NR Board so decide;
  - j. a firm and practicable foundation on which the case can be made for a future statutory Register, with the title of PSI protected either *de jure* or *de facto*.

*A well functioning regulatory system*

10. The PRSC has agreed that the following analysis, of how a system of regulation should ideally work, helps to focus attention on the decisions that now had to be taken.
11. Regulation is not something a regulator can 'do' to a profession, unaided. There are several reasons for this, the most important of which is that a regulatory body can, almost by definition, secure only the *threshold* standard of 'safe, competent practice'. For the regulator to try to achieve more – for example, by seeking to police a higher standard such as 'good' or 'excellent' practice – ultimately poses unanswerable questions about whether things which are safe, but less than 'good', are *necessarily* unacceptable.
12. Further, for a regulator to attempt to impose standards – of education, conduct, competence and ethics – without securing the collaboration of the profession is similarly unproductive. Grudging acceptance of requirements defined purely, and without consultation, by a body whose sole focus is the *public* interest will at best result in the lowest common denominator; and could produce a professional mentality akin to that which HR consultants categorise as 'sullen slave'.
13. A well functioning regulatory system is, from start to finish, a partnership. For such a partnership to be well balanced, three essential functions need to be fulfilled:

- a. **Regulation:** focus on protecting the public interest by defining, promoting and securing the standards of professional education, conduct and ethics which characterise practitioners who are safe and competent.

Typical organisations whose functions are *solely* regulatory are the General Medical Council, the Solicitors Regulation Authority (SRA) and the Architects' Registration Board (ARB).

- b. **Representation:** focus on the interests of the profession and its individual members: speaking for them, negotiating their terms, promoting their services and supporting them at times of need, usually including representing them in fitness to practise proceedings brought by a regulator.

Typical organisations whose functions are solely representative are the trades unions and professional associations such as the British Dental Association, UNISON and the Police Federation.

- c. **Leadership:** focus on aspirational work to encourage and promote high standards among professionals for the general benefit, often in the form of a learned society which is the natural place to go for those wishing to hear the definitive voice of the profession.

Typical organisations whose functions focus on professional leadership are the medical royal colleges, the Society of Antiquaries and the Royal Society of Chemistry.

14. Few professional groups are well enough developed or resourced to maintain separate organisations for each of these functions. Often, one or more functions are combined in a single organisation.

15. For example, the Royal College of Veterinary Surgeons functions as both regulator and leadership organisation, representative functions being exercised by the British Veterinary Association.
16. The Royal Institute of British Architects exercises both leadership and representative functions, regulation resting with the ARB.
17. Those two combinations of functions generally present no serious contradictions; but a formal combination of regulatory and representative functions has frequently caused problems because of the inevitable confusion, possibly conflict, between them. Examples are the Royal Pharmaceutical Society, the Law Society before it established the SRA and, in certain respects, the NRPSI as presently constituted. By appearing to ride two incompatible horses, albeit with the best of intentions, such an organisation can end up being trusted by neither professionals nor those who use their services.
18. The lead organisations in accountancy and engineering, on the other hand, have generally been very successful in remaining as unitary bodies, as have the Royal Institution of Chartered Surveyors (RICS) and the Institute of Legal Executives (ILEX). These have taken special steps to ensure their regulatory function is properly independent and free from professional interference. They have generally secured a high degree of public confidence and respect without sacrificing the support of their professional members.
19. The PRSC believes the overriding priority is to ensure that regulatory, leadership and representative functions are clear, distinct and unconfused; and that the organisations exercising those functions work vigorously for harmony in the signals and messages they send out to their professions and the public.

### *Dividing the regulatory and representative functions*

20. The CIOL Council has decided that the NRPSI should be reconstituted so as to be independent of the CIOL itself. The question therefore arises how that independence is to be secured, always accepting that:
  - the eventual solution must command the confidence of the key stakeholders
  - the solution should be a *comprehensive* one, providing for both the regulation and the professional leadership of PSIs.
21. After considering alternative models in considerable detail the PRSC has concluded that the most promising way forward would be for there to be a pair of organisations with a form of linkage that ensured the independence of the regulatory and representative functions.
22. One organisation would be the reconstituted NR, exercising the classic regulatory functions:
  - maintaining and publishing an up-to-date Register of competent practitioners

- setting and securing standards of safe, competent practice required for registration
  - publishing codes of conduct and guidance about professional conduct and ethics
  - dealing with registered practitioners who fall short of the required standards
23. The other organisation would be a professional leadership body, its members ideally comprising all the practitioners registered with the NRPSI. Purely for the sake of the present discussion, let us call this organisation the *Institute of Public Service Interpreters (IPSI)*. It would of course be for the profession itself to decide on a title once it had determined the purpose and functions of a new organisation.
24. The functions of the IPSI would include, for example:
- professional leadership: the natural 'home' for PSIs, expressing their aspirations
  - professional support: guidance, helplines, forging new opportunities
  - professional voice: negotiating terms and conditions, speaking for the profession
  - professional communication: newsletter/journal, website, members' forum
25. All these functions could be performed much more effectively than at present if there were a single, authoritative organisation representing all registered PSIs.

### *Models of independence*

26. The PRSC has discussed different ways of securing a solution along the lines discussed above. The ramifications of these, and their possible practical outworking, are discussed below. The PRSC believes the option outlined here is consistent with the analysis in paragraphs 10-19 of this paper; and with the policy decisions taken by the CIOL Council. A new arrangement whereby the profession can be both regulated and represented within a linked organisational structure would offer significant operational efficiencies.
27. The choice is essentially between two options, along the following broad lines:
- **Model A: Complete independence**, with the NRPSI and IPSI existing as two entirely separate entities each raising their own revenue; building their own reserves; running wholly separate operations; and securing the appointment of their own governing councils and policy committees. Examples from elsewhere would be long-established, and well-resourced, healthcare regulators such as the General Medical Council, the General Dental Council; and the future General Pharmaceutical Council, which is

being created by dividing the Royal Pharmaceutical Society into two separate operations..

- **Model B: Constitutional and operational independence**, created by ring fencing both the regulatory and representative functions within a single organisational structure, in such a way that the governance of the regulator and of professional leadership and representative interests are entirely separate from each other; at the same time, resources and services (eg HR, IT, Finance, facilities) are shared for reasons of cost and efficiency; and the respective positions of each 'side' are protected through agreed protocols.

28. **Model A**, or something based on it, would represent a significant improvement over the present situation and would most closely the intentions of the CIOL Council resolution. The big advantages would be clarity, the removal of conflicts of interest and a clean break with the past. The main drawbacks would be:

- cost: each organisation would have to be fully self-sufficient even if one of them formally bought central services from the other;
- the need to resolve the future placing of grey areas; and
- the loss of the kind of organisational synergies, which are potentially, one of the strongest benefits of a unitary or linked organisation.

29. The biggest problem is that of cost. Model A is perhaps the purist's option; but it is also necessarily the most expensive: the PRSC cannot identify any means of securing funding on anything like the required scale.

30. **Model B** offers a different way forward, one which has begun to work in the RICS, the Association of Chartered Certified Accountants (ACCA) and the Institute of Legal Executives (ILEX). With slight variations, each of these organisations has established a regulatory board, responsible for the regulatory function and operationally independent, within the organisation itself. These boards receive their funding through the organisation, out of a single fee collected from each member, and the governing councils are obliged constitutionally to provide their regulatory sides with adequate funds to carry out their work: essentially, the councils must vote sufficient funds to meet the budgets presented by the regulators, or risk provoking a constitutional crisis with catastrophic public consequences.

31. Such a solution would require the approval of a formal document setting out protocols to govern relations between the organisations. This need not present particular difficulties.

32. A new arrangement along these lines would see the creation of a new regulator (a reformed NR) and a comprehensive new membership body (IPSI). With clear linkage between the two there would be scope for considerable synergy. Nevertheless it would be better, at this stage, to continue to speak in terms of a pair of organisations. And it would in any case be essential to set the arrangements up in such a way as to ensure the survival of the reformed NR, should IPSI's offer prove unattractive to PSIs.

33. To implement Model B, IPSI could be created simply by all current NRPSI registrants forming the new representative body. They would of course be



able to opt out if they wished; but it is hoped that the generality of registrants would see the value of a single, strong, professionally-led organisation to represent their specific interest.

### *Governance of NRPSI*

34. It is essential to ensure that the business of catching vision for a reformed NR, determining its strategy, managing its risks and holding its executive to account is seen to be in the hands of a governing body in which both the public and the profession can have confidence.
35. The independent review proposed a governing body that could function more as a board than as the profession's representative leaders. This is essential if the reformed NR is to operate without confusion over its purpose and functions.
36. The PRSC agreed the following general propositions to inform later decisions on the selection and composition of the future NR Board:
  - a. The Board should number no less than five and no more than seven.
  - b. It should be composed of both lay and professional members.
  - c. Lay members should be defined as those who neither hold, nor have held, entitlement to registration with NRPSI.
  - d. Professional members must hold current registration with NRPSI throughout their terms of office.
  - e. If the total is an odd number then the lay members should be in the majority. If even, then there should be equal numbers of lay and professional members.
  - f. The Chair should in principle be open to both lay and professional members: a lay Chair would mark a clean break and indicate clearly the focus of the reformed organisation.
  - g. Selection should, as proposed in the independent review, be by open competition and competitive interview against published person specifications and with a rigorous approach to potential conflicts of interest.
  - h. Members should initially be appointed for a term of three years, renewable for a single further term subject to satisfactory performance.
  - i. Using independent selectors, such as an executive search agency or the Appointments Commission, would be disproportionately expensive and might not reflect fully the real needs of the organisation.
  - j. Selection should be in the hands of an interview panel composed of, for example, the CIOL Chair; the leader of one other appropriate professional membership organisation; a senior official; and an independent member acting as Chair.
  - k. The Chair should be selected first; and then form part of the selection panel for the remaining Board members.
  - l. The method used for all appointments should reflect best practice in such selection processes.
  - m. The Board should be subject to a published Code of Conduct and annual appraisal.

### *Leadership and representative organisations*

37. The PRSC has considered carefully who presently leads and represents PSIs. The position is confused. Lord Justice Auld, in his review of the subject area, recommended that there should be a single membership body, merging the functions of the APCI, ITI, trades unions to which PSIs may belong (NUPIT plus a branch of the GMB), Scottish organisations (there are presently at least four) Cymdeithas Cyfieithwyr Cymru; and those aspects of the NRPSI/CIOL which properly belong there. Since that time new organisations have emerged including the SOMI and the Professional Interpreters' Association.
38. In strict terms this belongs outside the scope of the PRSC's present exercise; but it was so intimately bound up with possible solutions to the present problems that we need to reach some understanding of how PSIs are to receive membership services in the future. It is in any case central to effective regulation that registrants are led by a strong membership body, to whom the regulator can speak and which speaks authoritatively with the voice of the profession. The PRSC agrees that Lord Justice Auld's proposal had much to commend it, providing a new membership body could be seen as entirely new, with existing organisations merging their functions over time if that should seem to them appropriate.
39. The scope of the CIOL, ITI and perhaps other organisations goes beyond the interests of PSIs alone. None of the organisations in the field cover all PSIs. Significantly their memberships, taken together, add up to less than half the number of practitioners on the NRPSI. And their memberships may be open to practitioners whose names are not on the NRPSI. Nonetheless the very existence of these various organisations is powerful evidence that PSIs in various places perceive the need to band together to represent and protect their interests: the time is perhaps ripe for that need to be fulfilled in a new and more effective way.
40. There is a view, advanced strongly but not yet formally tested, that a single, new representative body, with membership confined to those holding NRPSI registration, would be welcomed by practitioners. Existing organisations need not merge with it but they could perhaps move closer together as the new organisation established itself. If such an organisation could emerge rapidly, then the creation of a reformed regulator with formal links to the new membership body would be a viable option.

#### *Content of the Register and access to it*

41. No register of competent professionals is of any value unless the information it contains is freely available to all, ideally through an unrestricted website. That does not however mean that all information the regulator holds about an individual should be published in that way. Still less does it mean that access to special – sometimes sensitive – information should be made available to individuals or organisations who are willing to pay for it, especially if that is done without the consent of the practitioners concerned.
42. The PRSC believes the following principles should underpin the publication of information about practitioners registered with the NRPSI:

- a. The main purpose of the Register is to provide, for all users and enquirers, a definitive indicator of practitioners' current competence.
- b. Admission to the Register should focus on practitioners' skills, experience and suitability, not on roles and job titles.
- c. The Register should be freely available to all via a widely publicised website.
- d. The Register should state clearly the requirements every applicant for registration has to fulfil, including CRB and similar checks, eligibility to work in the UK and other information.
- e. Published information should be confined to validated information: a practitioner's name; specialty (eg translator/interpreter/languages); gender; special security clearances; and date of registration.
- f. The published Register should contain no contact details for individuals but should clearly indicate where these, and other information, may be obtained. The assumption is that this would normally be the membership organisation – which demonstrates exactly why a new organisation is needed: more than half of those on the Register do not belong to any such organisation.
- g. Contact details and other information declared by individuals, validated where possible but also unvalidated information such as special interests, should be held by the membership organisation.
- h. Any job matching function presently exercised by the NRPSI should be provided in future by the membership organisation or others.

## *Finance*

43. A regulator must be funded in such a way as to demonstrate clearly its independence from sectoral interests. State funding, or an element of it, acknowledges the strong public interest component in any proper regulatory system and helps avoid the criticism that the register is self-serving for registrants. But it is usually unattractive, for different but related reasons, to both sides. And in any case it is unimaginable in present financial circumstances that Ministers would agree to any injection of funds.
44. The NRPSI, in the future as now, must be self-financing. Its income will come wholly, or at least primarily, from fees paid by registrants. At present these are not especially onerous: in 2010-11, a total of £200 for admission and £130 a year for retention plus £33 for each additional language. But registrants do not readily tolerate the existing fees and could be expected to resist strongly any increases above the projected rate of inflation unless these demonstrably offered significant increases in the benefits of registration.
45. The annual turnover of the NRPSI is of the order of £375-400,000 with an operating profit of some £25,000 in 2008-09. The NRPSI has no significant financial reserves so is not in a strong position to set up separately and function wholly independently as matters stand.
46. The leading reason for this is that subscriber licence fees represent a sizeable proportion of the NRPSI's present income. The NRPSI will not in future have that source of funds available. In return, it will no longer have to provide the job matching service; but it is clear that the residual income will fall a long way short of what is needed to cover all the NRPSI's costs. Other, limited savings can be made by streamlining processes; but as matters stand

the future NRPSI is unlikely to be viable on its own unless registration fees are increased substantially; or unless a different model is built, with closer linkage between the NRPSI and a new, comprehensive membership organisation.

### *How a new arrangement might work*

47. The PRSC is conscious that a new arrangement must be put in place rapidly, and with a discernible break from the past. It is fanciful to imagine that a new membership organisation, begun from scratch and with an initial membership list of zero, can rapidly grow into the comprehensive membership organisation, representing all registered PSIs, which is widely acknowledged to be desirable. Nor is it realistic to expect any of the many existing membership organisations, the largest of which do not represent the interests solely of registered PSIs, to transform itself into such a body.
48. The most comprehensive list of PSIs of proven competence is of course the NRPSI itself. Ideally all, or the overwhelming majority of, registered PSIs would be members of the new organisation. Further, an arrangement is needed under which PSIs would be able to see significant benefits in return for the higher fees which are unavoidable if the NRPSI is to lose – as it must – its present income from the sale of licences.
49. Further still, the reformed NR (see paragraph 42 e and f) will need to exclude contact information; and we need an arrangement under which enquirers accessing the Register can readily be directed to such information held by a membership organisation. If there is no comprehensive membership organisation, then transfer to sites offering such information would be patchy and incomplete.
50. The PRSC proposes that, on the date chosen for the new start (ideally 1 January 2011 but a little later if that is necessary in order to get everything right), all current NRPSI registrants will become members of the new membership organisation, IPSI. The linkage between IPSI and the NR will be such that registrants who do not wish to join IPSI will be eligible for a reduced registration fee.
51. Registered PSIs who become IPSI members will have the information summarised in paragraph 42e published in their Register entry. That information will be openly accessible by anyone, free of charge, via the NR website. Information such as that summarised in paragraph 42f will be included in the IPSI website, to which there will be a straightforward link from their Register entry. PSIs who do not become IPSI members will need to inform the NR of a place to which enquirers can be directed in order to find contact details and other information about them.

### *Governance of IPSI*

52. The PRSC has not yet discussed how IPSI might be structured and run. This section of the paper represents my own thinking about how the organisation might be set up and work, at least initially.

53. The presumption has been that, in common with other professional associations of the kind cited above (eg ACCA, RICS, ILEX), the governing board of IPSI would be composed wholly or predominantly of PSIs, elected to their positions by an electorate consisting of the entire IPSI membership.
54. Principles for the governance of the future NRPSI are set out in paragraph 39. Several of these would be inappropriate for a professional leadership body, but I suggest the following might be applicable:
- a. The Board should number no less than five and no more than seven.
  - b. It should be composed of professional members, perhaps with a single lay member, selected by interview, to help broaden the perspective.
  - c. Any lay member should be someone who neither holds, nor has held, entitlement to registration with NRPSI.
  - d. Professional members must hold current registration with NRPSI, and membership of IPSI, throughout their terms of office.
  - e. The Chair, and any other officers, must always be professional members.
  - f. Once it is in place the Board should make recommendations to the membership on the number of officers (eg Deputy Chair, Treasurer) the organisation requires.
  - g. Board members should be elected directly by IPSI members. The Chair could be directly elected by the whole electorate or, perhaps preferably, by the Board at its first meeting.
  - h. Members should initially be elected for a term of three years, and be eligible for election for a single further term. Thereafter they would be ineligible for election until six years had expired.
  - i. The Board should be subject to a published Code of Conduct and annual appraisal.
55. In addition to the Board, IPSI might consider establishing special interest groups; regional or national branches or practice forums; newsletters or journals; email groups; a members' forum on the website; an annual members' (or branch representatives') meeting; and other mechanisms for two-way communication.
56. For the Chairs of the NRPSI and IPSI, mutual observer status on each other's boards might be beneficial, as it is, for example, in ILEX.
57. IPSI might also consider setting up some form of annual stakeholder forum, to which user groups such as the MoJ, courts and police, Bar Council and Law Society, as well as other membership organisations and the NRPSI, could send representatives for discussion of matters of mutual interest.

### *Funding and management of the new organisations*

58. NRPSI's present financial arrangements, and the issues that arise from the present project, are discussed in paragraphs 43-46. Registration fees are collected once a year from each registrant, in the month when the anniversary of their initial registration falls.
59. It would be simplest if, in future, the generality of PSIs continued to pay a single fee covering both IPSI membership and NR registration. This would then be apportioned between IPSI and NR in accordance with protocols

governing the relationship between the two organisations. Those practitioners – all being well, a small minority – who choose not to be members of IPSI would have the option of paying a slightly lower fee in respect of NRPSI registration alone.

60. This means that, from the date that the new organisations come into being, the NR and IPSI will need to know how to apportion income and expenditure between them. This is both for good governance and budgeting; and to ensure an accurate calculation of how much the fee should be reduced for those who choose not to take up the offer of IPSI membership. This is not, in principle, anything more than a technical exercise, as is the business of establishing fair transitional arrangements to ensure that registrants who have already paid their fee for much of the year following the birth of the new organisations receive a proper refund if they do not want to become members of IPSI.
61. It is not possible yet to provide a reliable forecast of the fee which is likely to be required to cover the cost of the reformed NRPSI plus the new IPSI. It will be higher than the present NRPSI membership fees – by definition, because of the removal of licence fees, which have provided a significant proportion of NRPSI's income until now. The PRSC will explore whatever other sources of income may be available, possibly in the form of European Commission grants in the wake of the new Directive.
62. In return, registrants will receive clearly defined registration services from the NR; and IPSI members will receive the kind of membership services which can be provided only by a strong membership body, adequately supported by an office with permanent staff.
63. Similarly, the required organisational structure will need to reflect the principle of ring fencing within the office, as it will at the governance level: the staff must be structured with a clear delineation between regulatory and membership responsibilities.

#### *The relationship between the paired organisations*

64. For two organisations to work in such harmony as is required to achieve the ends for which we are aiming, there needs to be a clear understanding on all sides about their working relationship and procedures. These need to cover governance, finance and the respective responsibilities of each organisation, including grey areas such as education, continuing professional development and other matters where both sides of the house will have particular things to do.
65. The PRSC is aware of this and has noted, as a model, the series of protocols in Annex B, which have been agreed between the two sides of the house within the Institute of Legal Executives. A certain amount of this material is clearly irrelevant to the NRPSI situation; but the documents do provide an illustrative checklist which might be a reasonable starting point from which we might build governance documents for the future NRPSI and IPSI.
66. If the principles of what is outlined here prove acceptable to PSIs, and are endorsed by the CIOL Council, the PRSC can do the detailed work of

preparing detailed proposals for the future governance, funding, structure, management and operations of the future, paired organisations.

### *Incentives for registration*

67. That regulation brings benefits to a professional group is incontestable. But not every practitioner readily sees the case for registering if they do not absolutely have to. Making NRPSI registration a statutory requirement, reinforced if possible by statutory protection of title, is a long term aim for which the recent EU Directive (see below) may provide a useful driver. Until then, NRPSI must pull every lever to encourage registration; and there are some significant levers to pull.
68. The National Agreement has until now been the most important of these. Bolstered by the EU Directive, it had the potential substantially to reduce the options for users to seek interpretation services from unregistered practitioners. The Agreement has however never been rigorously policed and enforced, with users required to justify every use of an unregistered practitioner and lawyers rarely, if ever, challenging the quality of the interpretation services being delivered. Although there may sometimes have been good reasons for this, often there were not.
69. The MoJ have recently reviewed their approach to public service interpretation and have indicated Ministers' intention to move away from the National Agreement in favour of a framework contract which users (the courts and police) will be expected to follow when contracting for interpreting services. The PRSC is in discussion with them about this.
70. Undoubtedly one of the driving forces for the change is the cost of accessing information about qualified interpreters; and a move to make access to such information free is a significant point in favour of the reformed NR. Our aim is to secure the centrality of the NR in any future contractual arrangements, pointing out the fact that in future the NR will be exercising purely regulatory functions so that proper standards are effectively policed. We hope, as a minimum, to ensure that contracts placed for interpreting services will require all PSIs provided under the contract to hold NR registration, except in rare cases where the Register includes no one who can provide the exact service required.

### *Related factors*

#### *The multiplicity of stakeholders*

71. Any professional regulator inevitably has a disparate range of stakeholders, which can be as narrow as one individual registrant and as broad as society as a whole. To please them all simultaneously is a high ambition and a tall order; but the PRSC is satisfied that it is possible to secure buy in to the essentials of a scheme; and to manage it to the general benefit of the key interested groups.
72. An important point to get across, particularly to registrants, is that strong and consistent regulation is at least as much – and probably more – in their

interests than in the interests of the public whom it is the prime responsibility of the regulator to protect. This is not just because the fact of registration gives access to work, at least in certain protected fields; but because a register doing its job must effectively define competence and draw a boundary around it, indicating a group of professionals who have demonstrated their fitness for practise and have signed up to standards of competence and conduct against which they are prepared to be judged.

73. It is encouraging that this point of view appears to be generally accepted among PSIs.
74. Stakeholder groups who must be satisfied that the system of regulation is working in their interests include, in particular:
- a. Ministers and Parliament.
  - b. The judiciary and the courts.
  - c. The police.
  - d. The Probation Service.
  - e. Prosecuting authorities.
  - f. Equivalent bodies in Scotland and Northern Ireland.
  - g. Defence lawyers and their clients.
  - h. Suspects, accused people, victims and witnesses.
  - i. Registrants, prospective registrants and existing membership organisations.
  - j. Organisations representing PSIs.
75. One of those groups – the police – poses the particular challenge that it is not in any sense homogenous. It is, at most a loose confederation of stakeholders over which no one has general control. In the final analysis, no one can override the traditional autonomy of a chief constable in operational, and least of all in financial, matters.
76. It is evident that police forces differ significantly in their use of the NRPSI and their appreciation either of its purpose or of the potential consequences of not using it. Nonetheless there appear to be a significant number of forces which are making use of the Register in all, or most, cases. That can be regarded as a good achievement.
77. The approval of the EU Directive provides an important opportunity to increase the pressure on forces, perhaps supported by the judiciary and court officers, to use only PSIs of proven competence. Further work with ACPO/ACPOS is clearly essential; though it is regrettably common for individual forces not to comply with guidance issued by these leadership bodies.

### *European Commission*

78. On 10 June 2010 the European Parliament approved a Directive enshrining the right to interpretation or translation of individuals subject to criminal proceedings. Deriving from article 6 (the right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Directive makes a number of provisions, at least three of which are of fundamental importance to the present project.



79. First, the Directive places importance on interpretation and translation being of sufficient **quality** to ensure a fair trial, with the suspected or accused person having a right to complain if quality is deficient.
80. Secondly, Member states will be required to 'endeavour to establish' a **register or registers** of independent, 'appropriately qualified' translators.
81. Thirdly, **access** to such registers is to be allowed not only to prosecuting authorities but also to legal counsel and all relevant authorities.
82. Member states have three years in which to implement the Directive, although the precise date and terms of its coming into force are at present unclear.
83. This potentially gives significant impetus to the NRPSI. It poses serious challenges however: the Register must be fit for purpose in providing not only clear and definitive information about registrants; but also sufficiently broad in its coverage to ensure the identification of sufficient available PSIs to fulfil demand in all but the most exceptional circumstances. Access to registered information must also be free to all. And the judicial and other authorities in the UK must have full confidence in the Register as the primary means of assuring the quality – and where appropriate the redress – which the Directive requires.

### *Agencies*

84. The practice from the inception of the NRPSI in 1994 up to the present has been that access licences have been granted both to the public services themselves and to intermediary agencies with whom the public services contract for the supply of interpreters.
85. Difficulties that arose in the past caused changes in licensing procedures. However, some of the agencies which offer to identify interpreters and translators for clients are alleged to provide access to practitioners whose standards are lower than those of a registered PSI, thus diminishing the value of the professional service provided by PSIs, and confidence in PSIs as a whole.
86. The existence of agencies, and their activities, should in principle pose no more difficulties for the NRPSI, as regulator, than do the many agencies which specialise in introducing other professionals – doctors, nurses, accountants and many others – to prospective employers. This is to be expected in a healthy economy; can work well where agencies introduce clients only to practitioners of proven competence (eg, those regulated through a national register); and cannot in any case be prohibited in a free society.
87. Under the proposal outlined here the NR, being purely regulatory in function, would not grant agencies privileged access to detailed information from the Register which is not freely available to others: there should be no commercial relationship between the regulator and any organisation of this kind.

88. Though outside the strict remit of the present discussion, it seems fair to assume that the NR would seek, in appropriate ways, to secure:
- a. the agreement of agencies to provide work only for registered practitioners, except in the rare cases where the Register includes no one competent to undertake a particular job;
  - b. the agreement of key user groups, including the police, judiciary and court and prosecuting authorities, to contract for services only with agencies which subscribe formally to the agreement mooted in a above;
  - c. the agreement of fellow regulators – in this context, the Bar Standards Board and Solicitors Regulation Authority – to put pressure on their registrants, especially defence lawyers, to use only such agencies.

### *Timetable*

89. The PRSC have endorsed the target of having the planned new structure up and running on, or shortly after, **1 January 2011**.
90. The key CIOL Council meeting for signing off the complete scheme is on **27 November 2010**.
91. The previous Council meeting, at which it will be necessary to agree a clear 'road map' for the future, allowing governance documents to be drafted and recruitment undertaken, is on **18 September 2010**.
92. The PRSC hopes to agree a coherent set of proposals on **2 September 2010**.

### *Issues for the future*

93. The PRSC agreed that the scope of the present project is to secure a new system to replace the existing one *as it stands*. The independent review, and subsequent discussions, have identified the need for review of several aspects of the present arrangements and for work on developing the scheme to enable the NRPSI to realise its maximum potential. These include the following matters, which the new NRPSI should consider once it is established.
- a. Review of Code of Conduct for registrants.
  - b. Review of fitness to practise procedures.
  - c. Review of arrangements for continuing professional development and revalidation of registration.
  - d. Establishment of stakeholder consultative groups.
  - e. Development of a formal function in relation to educational standards and the accreditation of qualifications.
  - f. Review and, if appropriate, realignment of the requirements for entry to the Register, including the development of 'output' as well as 'input' measures as indicators of competence; and review of alternative entry routes such as the 'Met test'.

- g. Consideration of introducing new categories of registration, differentiating between levels of achievement.
- h. Exploration of scope for new national agreements to govern the use of registered PSIs in other areas of the public service, such as the health sector.
- i. Action towards making registration of PSIs a statutory requirement.
- j. Consideration of whether to seek charitable status.

## **NRPSI Independent Review**

### **Summary of recommendations**

1. That the NRPSI only undertakes a regulatory function as prescribed in the White Paper.
2. Consideration should be given to how the PSIs' needs for membership functions could be progressed.
3. That the NRPSI should be reconstituted to be INDEPENDENT of the CIOL. When reorganised to undertake a regulator function as prescribed in the White Paper the NRPSI should be constituted as a charity or not for profit company.
4. The governing body of NRPSI should consist of professional and lay members, with a majority of lay members.
5. The size of the NRPSI governing body council should be of a consistent and minimal size that enables it to function more effectively as a board.
6. The NRPSI governing body should be constituted to ensure that professionals do not form a majority.
7. Past professionals should be excluded as lay members of the NRPSI governing body.
8. All NRPSI governing body members should be appointed independently either by the Appointments Commission against clearly specified criteria and competencies OR if the Appointments Commission is not found to be appropriate for non statutory appointments then the function should be demonstrably independent and transparent using mirror processes and criteria.
9. Registrants should continue to be charged a listing fee sufficient to cover the costs of running the regulator service but excluding any work matching service.
10. The NRPSI regulator should make more complete details [see development chapter] of registrants available to the public services and particularly the criminal justice system [CJS] to enable 'work matching'.
11. Work matching should be free to the public services, charities, public bodies and anyone who does not profit directly from the use of the registrant [i.e. sub contractors].

12. On an interim basis until NRPSI achieves statutory regulator status companies that 'work match' using the NRPSI database for commercial purposes i.e. sub contractors, intermediaries or agencies should continue to pay an access fee.
13. In future we recommend a fee be levied for EACH 'work match'. It should be the aim that ALL access fees taken together meet the cost of the work matching service.
14. Any future membership organisation must rely on membership subscriptions.
15. External marketing of the PSI role should be clearly identified as the responsibility of any future membership organisation
16. Any future regulator should seek to establish consultation groups with stakeholders in order that proper weight can be given to their needs and opinions.
17. A future regulator should also endeavour to promote awareness of its regulatory function to stakeholders.
18. Consultation groups' terms of reference should be clear so as not to confuse consultation with democracy or governance.
19. Any future regulator should retain ownership of, and responsibility for, setting the educational outcomes of any qualifying examinations.
20. Any future regulator should retain responsibility for agreeing the assessment and evidencing criteria for any qualifying exams.
21. Any future regulator should be responsible for ensuring that standards are maintained and establish effective moderation / inspection procedures at a national and local level.
22. The regulator's role is to make it clear to those that use the NRPSI service which training and what qualifications lead to accreditation.
23. Any future regulator should examine the 'Met test', and consider if, as an unaccredited test, its equivalence as a pathway to the National Register is appropriate.
24. Any future regulator should consider if it is appropriate to introduce, or recognise, other levels of accredited qualifications, which could be appropriate to specifically identified roles.
25. Any future regulator should consider the appropriateness of continuing the practice whereby graduates in specific fields are allowed to operate across the whole spectrum.

26. Any future regulator should apply fitness to practise criteria when appropriate.
27. Any future regulator should conduct random quality checks on PSIs.
28. Any future regulator should review discipline procedures.
29. Any future regulator should ensure a rigorous enforcement of standards.
30. Ownership of the National Register of Public Service Interpreters and any database that contains that register must solely rest with the non-statutory regulator.
31. The independence of the regulator must be maintained in determining what will and what will not be included on the register and any database.
32. Other than for verification purposes registrants should be able to hide their details from all or some categories of users [online tick boxes].
33. In consultation with current stakeholders the regulator should establish a secure web based service whereby as a minimum: -
  - Basic verification of qualification should be available FREE to all on demand.
  - Details of registrants should be available free to all REGISTERED users.
  - Registration for users should be online.
  - Registration should be free to anyone not directly profiting from using the services of the list member.
  - For organisations that profit from the services of the list member a fee should be charged per interrogation of the system.
  - Registrants are responsible for real time updating. • Search facilities include postcode of registrant.



## **Protocols setting out the working relationships between The Institute of Legal Executives and ILEX Professional Standards Ltd**

### **Introduction**

1. This document provides a framework to enable the Institute of Legal Executives (ILEX) and ILEX Professional Standards Ltd (IPS) (jointly 'the Companies') to fulfil their representative and regulatory functions as defined in the Legal Services Act 2007 (the LSA) and in accordance with the Objects of the companies set out in their respective Memoranda of Association.
2. The aim of the Protocols is to facilitate the companies working together to promote and secure high standards of practise by Legal Executives and other members of ILEX in the public interest and to enhance the recognition and standing of Legal Executives and other ILEX members.
3. ILEX is the governing body for Legal Executives and trainee Legal Executives in England and Wales. It is a company limited by guarantee. Its powers and duties derive from the Memorandum and Articles of Association of the Company. ILEX is an authorised body in relation to rights of audience under the Courts and Legal Services Act 1990, an approved regulator under the Legal Services Act 2007 and a designated professional body under the Immigration and Asylum Act 1999.
4. The Objects of ILEX which are relevant to these protocols are set out in Annex 1.
5. IPS has been established by ILEX to regulate the professional conduct of ILEX members, including disciplinary matters. Its Objects contained in its Memorandum of Association are set out in Annex 2 to these protocols. IPS is a wholly owned subsidiary company of ILEX.

### **The Legal Services Act (LSA)**

6. The LSA requires ILEX as an approved regulator to separate its regulatory and representational functions. ILEX through its Articles has delegated the power to regulate the professional conduct and standards of ILEX members to IPS. The LSA also requires ILEX, and

in consequence IPS, to act in a way which is compatible with the regulatory objectives set out in the LSA and to have regard to the principles of good regulation. The regulatory objectives and professional principles contained in the LSA are set out in Annex 3 to these protocols.

7. Under the LSA, as an approved regulator ILEX must ensure: that its regulatory functions are carried out independently, without being prejudiced by its representative functions; that its regulatory body is free to communicate with the Legal Services Board and other legal services stakeholders; and that resources are made available which are reasonably required to enable regulatory functions to be carried out.

### **The Protocol Principles**

8. The Companies will work together to enhance public respect for and confidence in ILEX members and the work they carry out. Together they will ensure continuing compliance with the requirements of the LSA.
9. Relations and communications between the companies will be based upon mutual respect and openness so far as is consistent with their obligations under the LSA, the general law and the public interest.
10. IPS aspires to regulate effectively and efficiently in accordance with the principles of good regulation, which are proportionality, accountability, consistency, transparency and targeting. ILEX will support and assist IPS in becoming an effective and independent regulator of ILEX Fellows and other ILEX members.
11. Each of the Companies will contribute to and support the attainment of objectives set out from time to time in the other's strategy and business plans consistent with the requirements of the LSA. IPS will give due weight to the aspirations of ILEX and its members as expressed through ILEX Council.

**Finance** – *ILEX will make available such resources as are reasonably required and appropriate to enable IPS to carry out its regulatory functions*

12. Each year IPS will prepare a budget for its expenditure in the following year for ILEX to consider in conjunction with its own budget. IPS budget will be based upon the activities and expenditure necessary to carry out its regulatory functions.



13. The Companies will work together to agree a budget which fairly reflects the activities and expenditure which are necessary for IPS to carry out its regulatory functions. Where ILEX cannot agree an IPS budget it will set out its reasons in writing for any variation it proposes. If a revised budget proposed by ILEX is not agreed by IPS, paragraph 31 of these protocols will come into effect
14. ILEX will have regard to a budget agreed with IPS when setting practice, membership and other fees for the following year.
15. IPS will provide information to the ILEX Group Finance Director to enable proper accounts to be maintained. IPS Board of Directors will receive regular reports on its financial performance. ILEX Council will receive a report on IPS finances at each Council meeting.

**Communications** – *Communications between the companies will be based on mutual respect and openness*

16. The Companies will provide information to each other regularly regarding their representational and regulatory work. Each will provide copies of the minutes of their Council or Board meetings to the other. So far as it is practical to do so and is necessary to meet the obligations imposed by the LSA, they will each respond to a reasonable request by the other for information relating to their roles and will do so within 15 working days of a request being received.
17. ILEX will provide support necessary to enable IPS, in carrying out its functions, to communicate with ILEX members, the legal services regulators, consumer groups, legal services employers, relevant parts of the government and civil service and the public. IPS may communicate separately with ILEX members and these stakeholder groups.
18. The Companies will consult with each other whenever either body wishes to review or propose changes to any rules or policies which impact on the leadership, representational or regulatory roles or obligations of the other. Where appropriate they will consult external bodies jointly and will respond jointly to the consultations of external bodies on matters which affect their roles or obligations.
19. Where either of the Companies decides to issue a separate or independent communication on matters likely to affect the other they will inform the other of their intention and reasons for doing so; copy the communication to them; and give a reasonable time for them to comment on the communication.
20. The Companies will share information regarding members including membership records and correspondence where it is necessary to do so to fulfil their respective obligations but only so far as the sharing of

information does not contravene any principle or law safeguarding the rights of members or others in relation to data protection or personal privacy.

21. Subject to paragraph 20, the Companies will treat as confidential information each holds about members or others which is not also held by the other, except where it is in the public interest to disclose the information to the other or, in the case of IPS, it is necessary to do so in order to fulfil its obligations under the LSA, its Memorandum and Articles of Association and these protocols, or to meet its general obligations under the law. The public interest will normally be engaged where the information reveals a serious breach of the law or professional ethics or would assist the investigation of crime or fraud.
22. The ILEX 'Whistle blower' policy applies to the staff of both Companies, ILEX Council members and IPS Board members.

**Accountability** – *ILEX must ensure its regulatory functions are carried out independently*

23. The Chief Executive of ILEX is accountable to the ILEX Council. ILEX employees whose work relates to the leadership and representative functions of ILEX are accountable to the Chief Executive of ILEX. The Chief Executive of IPS is an employee of ILEX but is accountable to the IPS Board of Directors. ILEX employees whose work relates to the regulatory functions of ILEX are accountable to the Chief Executive of IPS. The Chairman of IPS is accountable to ILEX Council for the performance of IPS.
24. The arrangements for appointing or re-appointing a Chairman or members of the IPS Board are set out at Annexe 4 to these Protocols. They take into account the objectives of the LSA regarding the effective and independent regulation of legal services and the requirements of the Internal Governance Rules made by the Legal Services Board, pursuant to the LSA. Remuneration of the Chair and members of the IPS Board will be dealt with in accordance with Annexe 5 to these Protocols.
25. The performance of the IPS Board members and Chief Executive, during their terms of office will be assessed each year by the IPS Board, in accordance with arrangements which the Board will determine. The performance of IPS employees will be assessed in accordance with arrangements which apply to other ILEX employees. The Companies will agree arrangements for the appointment of a new Chief Executive of IPS.

**Education Standards and Fitness to Practise** – *The companies will work together to promote and secure high standards of practise.*

26. IPS is responsible for checking that arrangements adopted by ILEX and the standards set relating to: qualifications and experience; study and training for ILEX qualifications; assessment of candidates; and continuing

professional development are fit for purpose and are capable of securing the minimum standards of competence expected of Fellows, Associates, Graduate Members, Associate Prosecutor Members and other ILEX members.

27. IPS is responsible for setting the standards relating to the personal and professional conduct and continuing fitness to practise of Fellows and other ILEX members. IPS will be responsible for ensuring ILEX members comply with those standards and ILEX will support IPS in doing so.
28. ILEX will not seek to challenge decisions properly made by any of the disciplinary or regulatory bodies subject to oversight by IPS in respect of the conduct, competence or fitness to practise of individual ILEX members.
29. The Companies will work together to develop arrangements for the regulation of legal disciplinary practices and alternative business structures permitted to provide legal services under the LSA and persons owning or managing them. IPS will be responsible for setting standards of conduct and ensuring owners, managers and employees comply with them.

**Services** – *ILEX will make resources available to enable regulatory functions to be carried out.*

30. The Companies will agree a service level agreement in respect of the provision to IPS of the finance, membership records, information technology, communications, post and telephony and human resources services which are reasonably required to enable IPS to carry out its regulatory functions.

### **Resolving differences**

31. Disputes which arise between the Companies, whether in relation to these protocols or otherwise will be resolved by discussions involving the Chief Executives of ILEX and IPS, the President for the time being of ILEX and the Chairman of the IPS Board. Nothing in these protocols prevents either company from referring a dispute which cannot be settled between them to the Legal Services Board or if appropriate to an independent mediator to be resolved. At least 5 working days notice will be given to the other company if either company intends to refer a dispute to the Legal Services Board.

### **Review**

32. These protocols may be reviewed at any time at the request of either ILEX or IPS; and will, in any event, be reviewed formally after one year and, thereafter, at intervals to be agreed between the two companies.

**Mark Bishop**  
**ILEX President**  
**25 February 2009**

**Alan Kershaw**  
**IPS Chair**  
**25 February 2009**

*Protocols v.2 Amended 23/01/10*

**OBJECTS OF ILEX**

The Objects of ILEX set out in its Memorandum of Association are, amongst other things:

1. To provide an organisation for persons who are Fellows of ILEX, are registered with ILEX, provide or are employed in providing legal services of any kind or any services ancillary to legal services or are registered with ILEX for the purpose of studying or becoming qualified in law or other subjects provided by ILEX;
2. To advance and protect the status and interest of Fellows and other members registered with ILEX;
3. To promote professional unity, co-operation and mutual assistance amongst those who are employed in the legal profession or are engaged in legal work;
4. To promote and secure professional standards of conduct amongst Fellows and those who are registered with ILEX and to regulate Fellows and registered persons in the public interest to ensure compliance with those standards;
5. To provide for the education and training of Fellows and persons who wish to become proficient in the law, including those who wish to qualify as Fellows, in all subjects and skills whether in the law or otherwise; and
6. To recognise and promote proficiency in the law and other subjects by awarding diplomas, certificates, prizes, scholarships, bursaries or other awards and to award such qualification as ILEX may from time to time think fit and to carry out assessment and validation and regulation as may be necessary for such purposes.

## **PROTOCOLS**

## **ANNEXE 2**

### **OBJECTS OF IPS**

The Objects of ILEX Professional Standards set out in its Memorandum of Association include the following:

1. To carry out on behalf of ILEX the functions and responsibilities of ILEX as an approved regulator designated as such by the Legal Services Act 2007; and
2. To carry out on behalf of ILEX such functions and responsibilities of ILEX as a regulator of its membership generally as ILEX may from time to time delegate to the Company.

*IPS protocols ann 2*

## PROTOCOLS

## ANNEXE 3

1. The Statutory Objectives set out in the Legal Services Act are as follows:
  1. protecting and promoting the public interest;
  2. supporting the constitutional principle of the rule of law;
  3. improving access to justice;
  4. protecting and promoting the interests of consumers;
  5. promoting competition in the provision of services provided by authorised persons;
  6. encouraging an independent, strong, diverse and effective legal profession;
  7. increasing public understanding of citizen's legal rights and duties; and
  8. promoting and obtaining adherence to the professional principles.
  
2. The professional principles referred to above are:
  1. authorised persons should act with independence and integrity;
  2. authorised persons should maintain proper standards of work;
  3. authorised persons should act in the best interests of their clients;
  4. persons who exercise before any court a right of audience or conduct litigation in relation to proceedings in any court by virtue of being authorised persons comply with their duty to the court to act with independence in the interest of justice; and
  5. the affairs of clients should be kept confidential.

*IPS protocols ann3*

## **Appointment of Chairman and Board Members**

1. The IPS Board will create an Appointments Committee. Membership will be agreed for each appointment, so it is not a standing Committee.
2. The Appointments Committee will have delegated authority for the whole process from agreeing an updated information pack including a revised job and person specification, to running the appointment process, including interviewing. Administrative support will be required from the ILEX HR team.
3. For the Chairman's appointment, this Committee will include an ILEX Council representative and two IPS Board members, one independent and one legal, supported by the IPS CEO, although (s)he would not be a formal member of the Committee.
4. For Board member appointments the Committee will include the Chairman and one member of the IPS Board, plus the IPS CEO.
5. For all appointments, a member independent of IPS and ILEX would be included within the Committee membership, to give legitimacy and to validate the process. The process for identifying this individual would be agreed for each appointment.
6. The ad hoc nature of the appointment committees gives a useful degree of flexibility, whilst being sufficiently structured to ensure appointments are treated fairly and consistently.

## **Reappointment of Chairman and Board Members**

7. It will be for the Chairman and CEO to agree the reappointment of Board members. The annual appraisals will be the basis for reappointments. The following factors will need to be satisfied for reappointment of Board members:
  - Willingness to be reappointed
  - Satisfactory annual appraisals
  - Acceptable attendance record
  - Continues to meet the person specification for role
  - Has complied with the Code of Conduct for Board members



8. For discussions regarding the reappointment of the Chairman, an Appointments Committee will be created, constituted as set up in the Chairman's appointments process above, to review a similar list of factors and agree the way forward.

*Agreed by IPS Board June 2009*

*IPS protocols Ann 4*

**PROTOCOLS**

**ANNEXE 5**

**REMUNERATION OF THE BOARD**

The President and CEO of ILEX and the Chair and CEO of IPS will meet each year in May or June, as appropriate, to determine the remuneration of the Chair and members of the IPS Board for the following year. The meeting will take place as part of the budget setting processes of the companies. The Chair of IPS will not take part in any discussion or decision regarding his/her remuneration. Factors which are taken into account in setting the remuneration of the Board members will be taken into account in determining the Chair's remuneration.

Disputes regarding the remuneration of the Chair or Board members of IPS will be determined in accordance with paragraph 31 of the Protocols.

*Agreed by ILEX/IPS march 2010*

*IPS protocols ann 5*

## **ILEX/IPS PROTOCOLS: Education**

### **General**

1. This Appendix to the ILEX/IPS Protocols sets out the methods by which ILEX and IPS will meet the requirements of paragraph 26 of the Protocols relating to education matters. IPS's role, set out in Paragraph 26, is to ensure that the arrangements adopted by ILEX in respect of qualifications and experience are capable of securing the minimum standards of competence expected of Fellows and other ILEX members. The role of ILEX is to decide the qualification standards and to manage the delivery of the qualifications and assessment of experience and the quality assurance arrangements for them.

### **Reporting arrangements for qualifications**

2. To enable IPS to carry out its role, ILEX will provide sufficient information to demonstrate that the qualification arrangements establish and maintain the stated standards. Each year, ILEX will supply to IPS a range of information that enables it to review ILEX's work and performance both strategically and operationally.

The following documents will be supplied at the following specified times:

#### **a) Assessment session information**

**Qualification performance data** – after each assessment session (ie, after Jan and June sessions), ILEX will produce a report which it will share with IPS in relation to key assessment session metrics.

This report will be delivered by a senior member of the Awards team to the IPS board at a mutually agreed time.

The report will consist of the following data:

- Candidate entries
- Candidates sitting examinations or submitting assessments
- Grade boundaries for examined units
- Candidate performance including pass rates for each unit and feedback from assessors
- Statistics for qualification completion
- Centre performance including centre pass rates
- Data on results enquiries and appeals
- Data on applications for and approvals of reasonable adjustments and special considerations
- Stakeholder feedback and complaints

- Summary of any malpractice allegations (student and centre)
- Awards department performance against key performance indicators and targets.

**Minutes of the Awards Performance and Strategy Committee (APSC)** – ILEX will share these minutes with IPS after each APSC meeting, and at the same time as the performance data.

## **b) Annual information**

**Executive Summary for the ILEX Self-Assessment Report, feedback from Ofqual re ILEX's self-assessment return, annual self-assessment action plan, annual development plan, summary of Awards Malpractice Committee and Awards Appeal Committee outcomes and (from 2011) a report on centre risk management** – at a mutually agreed time, in the first quarter of each year, ILEX will share the above documents with IPS as a part of an annual round of reporting. These reports will be delivered by a senior member of the Awards team.

3. The Education Portfolio Holder has been appointed as a member of the Awards Performance and Strategy Committee (APSC). The Education Portfolio Holder will take responsibility for the main reporting between APSC and IPS outside of the above mentioned formal reporting, and will report to IPS on those specific issues covered by APSC which have an interest for IPS.

## **Qualification development**

4. Where ILEX develops new qualifications it wishes to award, whether in relation to rights to undertake regulated legal activities or otherwise, it will be required to consult and seek IPS approval in relation to whether the arrangements for qualification are capable of securing the minimum standards of competence expected of ILEX members holding that qualification.
5. IPS will be responsible for developing qualification arrangements supporting applications by ILEX to become an Approved Regulator in relation to activities regulated under the Legal Services Act. IPS will consult with ILEX in relation to the development of any such arrangements. ILEX and IPS will agree which of them should be responsible for managing the qualification arrangements.

## **Experience**

6. IPS and ILEX will work together to determine what experience ILEX members should have to be admitted as Fellows of ILEX or to be enrolled in any other membership grade for which evidence of experience is required.

7. IPS will be responsible for determining what experience is required by ILEX members to become authorised practitioners. ILEX will support the development of experience requirements and be responsible for the arrangements by which ILEX members are able to demonstrate whether they meet the experience criteria set by IPS.

*Ed protocol v3b*