

IPS RESPONSE TO OFFICE OF FAIR TRADING AND CONSUMER PANEL ADVICE TO LSB ON PRACTICE RIGHTS APPLICATIONS

OFFICE OF FAIR TRADING (OFT) ADVICE

The OFT takes the view that:

... allowing IPS to authorise suitably competent practitioners to deliver probate and reserved instrument services as authorised persons may strengthen competition for these services as currently provided by authorised persons regulated by other approved regulators. Potentially, this could place competitive pressure on the pricing of these services and broaden access to justice.

The OFT advice supports IPS' submissions in Part 3 of the applications and agrees that its proposals meet the regulatory objectives of increasing competition and access to justice. The OFT does not see any grounds for believing the applications will prevent, restrict or distort competition. The regulatory objectives set out under the Legal Services Act 2007 are therefore met in this respect.

LEGAL SERVICES CONSUMER PANEL (LSCP) ADVICE

The LSCP welcomes the aspects of the applications which demonstrate that IPS took into account the views of the LSCP. IPS met with representatives of the Consumer Panel at officer level, at Board level and through its research team. IPS also consulted the Consumer Panel as part of its formal consultation process. IPS received valuable feedback from the Panel representatives and incorporated this into the applications with the objective of enhancing its proposed regulatory arrangements to protect the public and consumers. This enabled IPS to develop and frame the applications in a number of ways, for example:

- Demonstrating the intended benefits to consumers of the extension of rights, linking benefits to outcomes identified in consumer research reports.
- Clear statements in the applications about the activities that regulated entities will be authorised to undertake.
- Enhancing IPS' ability to understand the consumer through schemes such as its current consumer engagement programme, which includes feedback from consumers about CILEx Fellows, and gathering intelligence from published reports into consumer experiences.

- Expanding the IPS programme to understand consumers and consumer expectations by encouraging regulated entities to refer clients to provide feedback on services received on the *Specialist Lawyers* website being developed by IPS.
- Requiring entities to submit returns on complaints about service they handle at first tier. IPS already carries out this activity in respect of CILEX members.
- The further development of IPS' escrow proposal from the client perspective as opposed to the practitioner perspective.

Competence based regulation

The LSCP strongly supports IPS' regulation of the full practice area as opposed to the narrow range of reserved legal activities. IPS took this approach because it regards regulation of the full practice area as essential for the purpose of protecting, and promoting the interests of, consumers and the public.

The LSCP also supports IPS' model of authorisation by competence. IPS already has substantial experience of competence based authorisation and supervision in respect of its rights of audience scheme. In developing its competence model IPS also took into account that competence requires not only direct knowledge of legal practice but also skills in client care and legal research. The IPS competence based model covers knowledge, skills and experience.

IPS' capacity and capability

IPS has carefully considered and planned the resources and skills required to carry out entity regulation in varying risk areas, including conveyancing. The planning is explained in Part 11 of the applications and is supported by detailed business and project plans, which have been shared with the LSB.

In developing its business and project plans IPS has drawn closely on its experience of the work of authorisation, supervision and enforcement in respect of individuals. This is directly transferable to the award of practice rights. IPS recognises it will be regulating new areas in respect of entities. Its planning and project plans set out the thorough preparation IPS is undertaking for entity regulation.

IPS carried out market research into risks and to develop its understanding of entity regulation. The resulting reports led IPS to develop significantly its capability in its new regulatory areas. IPS is commissioning further research into risks and regulatory models which will help to further develop its knowledge and understanding of entities.

IPS' planning, based on the market research, has identified the resources and activities required to encompass the additional responsibilities it seeks. These include additional staff, newly constituted committees, development of processes and documentation, and enhancing the IT infrastructure.

IPS has already reorganised itself into teams which mirror the four areas of regulation expected by the LSB; and has completed the identified recruitment. Each team is headed by a manager supported by skilled and experienced staff as necessary. The IPS Board has also evolved: its portfolio structure has been updated to reflect the four areas of regulation identified by the LSB.

Many of the forms and procedures have been developed, as have procedures for the appointment of panellists and trustees. Other implementation work, as identified in the plan, e.g., IT development, is being completed.

IPS is confident that it will have the infrastructure in place, at the point of designation, to meet its obligations as a regulator for new practice areas and, in the case of litigation and immigration, extension of the authorisation power it already exercises in this area.

Consumer engagement

The LSCP welcomed IPS' strategy and action plan for engaging consumers. IPS recognises the need to invest and to develop resources in this area. It has a Board member with direct responsibility for consumer engagement and has recruited one member of staff to take direct responsibility for consumer engagement policy and another who will carry out consumer engagement and intelligence gathering activities. IPS undertook this recruitment recognising that dedicated resources are necessary to meet its consumer engagement objectives. Its investment will include the cost and work in developing the feedback website; participation at meetings of the Regulators' Forum and undertaking activities identified at Forum meetings; feedback surveys; and literature reviews.

The LSCP recognise the innovative idea of IPS' consumer feedback website, *Specialist Lawyers*. They questioned IPS' decision to pursue an initiative separate to the *Legal Voices* website. There are two key reasons for this. First, IPS developed its proposals before the *Legal Voices* proposal was made by the SRA and took the view that it was necessary to get ahead with action to serve the consumer perspective. At present there is nothing else available to achieve this. Second, *Legal Voices* is proposed now to launch in the Autumn, under the new name *Legal Choices*; but current discussions indicate it will not deliver the full functionality that IPS proposes for *Specialist Lawyers*. This includes the feedback ability for consumers and a link in for firms to learn from direct feedback. IPS recognises the risk that this could lead to fragmented consumer information. To that end the *Specialist Lawyers* website will build upon general consumer information to provide functionalities that a central website will not provide. IPS will explore how *Specialist Lawyers* could feed into a central portal of consumer information provision.

IPS will expect entities which it regulates to engage in the feedback programme: they will learn from feedback, with the intention of having positive impacts on their risk ratings. There will be incentives, as explained at Part 5 of the applications, to encourage entities to participate in the feedback programme.

Consumer vulnerability

The LSCP welcomed IPS' approach to consumer vulnerability and acknowledged that its Code of Conduct has been strengthened with respect to vulnerable clients. IPS has not adopted the British Standard but was strongly influenced by it. Work it undertook in this area led IPS to opt for a broad principle in its Code of Conduct supported by its own definition, encapsulating key but broad elements of consumer vulnerability, which extends beyond client vulnerability. Thus the outcomes for Principle 6 are to assist consumers and clients to access justice and the full range of legal services; and to provide each client with equal opportunity to secure a favourable outcome in their matter irrespective of their vulnerability or susceptibility to discrimination. This approach supports the principles based approach to regulation and addresses the contextual influences giving rise to vulnerability referred to by the LSCP.

Code of Conduct

The LSCP recognised the approach that IPS took to developing its Code, beginning with consumer outcomes and translating them into broad principles.

The Code sets out key principles that IPS' regulated community must meet. It is underpinned by a Consumer Outcomes document, which sets out the overarching outcomes to which the LSCP refers. IPS developed the Consumer Outcomes to identify to consumers what its regulation will deliver to them.

IPS will bring the Consumer Outcomes to the attention of its regulated community and to consumers through its publications and the *Specialist Lawyers* website. It will require its regulated community to act in accordance with the Code of Conduct to deliver the consumer outcomes.

The LSCP commented that IPS could introduce a single overarching principle, such as to 'provide a good standard of service' or to 'treat clients fairly'. Principles 5 and 6 deliver these broad statements. Principle 5 requires IPS' regulated community to *act competently in the best interests of your client and respect client confidentiality* and Principle 6 places a broad obligation on IPS' regulated community to *treat everyone fairly and without prejudice*. While these principles are supported by a series of outcomes, as stated by the LSCP, the overarching principles address those broad statements referred to by the LSCP.

Financial protection

The LSCP was pleased to see that IPS has set out detailed arrangements for client protection which offer comprehensive cover for key risks. IPS carried out a review of redress when setting its compensation fund cap at £500,000 for any one claim.

The review of compensation payments made to consumers by other regulators, as set out in the LSCP report on Financial Protection Arrangements, shows details of compensation payments made in 2012. From this data IPS has identified that

average payments made by the SRA were £14,000; the Bar Mutual Fund made 32 payments over £50,000 and 7 payments over £250,000; and the CLC payments ranged between £30,000 and £40,000. Some of these figures are averages and in those cases the range will include higher payments. The CLC, which primarily regulates entities undertaking high risk conveyancing, did not make any payment higher than £40,000 in 2012. This supports IPS' view that a client will not have lost the full equity of a property but only part of it and therefore the cap will be sufficient. IPS takes the view therefore that its cap enables it to deliver redress to consumers and takes an appropriate risk based approach.

In developing its arrangements IPS has balanced its obligation to deliver consumer protection and redress with keeping contributions to the fund at a level which is proportionate and affordable. This is important as ultimately practitioners will pass costs to the consumer. On this basis IPS takes the view that its cap of £500,000 remains proportionate and would provide adequate redress.

The Compensation Fund will be managed by Trustees who will produce an annual report, as is IPS' regular practice with each decision making body. The reporting will include an annual opportunity to review the suitability of the cap based on that year's experience of claims. IPS will expect the Trustees to undertake such reviews systematically and with rigour.

General

The LSCP concludes its advice with a number of issues which, it states, deserve closer attention across regulator regimes as a whole. IPS deals with each in turn below, although the comments are intended for regulators broadly and some do not relate specifically to the present applications.

The LSCP comments on the absence of research to test consumer experience of accessing schemes. It is presumed the reference is to consumer redress schemes. At present IPS is not an entity regulator and therefore unable to carry out such research. IPS' enforcement function includes a regular feedback survey sent to complainants and members alike so that IPS can use comments and responses to learn and to improve its procedures. IPS will adopt a similar user feedback approach for its client redress schemes.

The LSCP comments on the different caps for redress dependent on regulator. Comments on the compensation fund cap are set out above. IPS' cap on indemnity insurance is the same as those of the CLC and the SRA for sole practitioners.

The LSCP raises the issue of lack of published performance data. IPS' practice is to produce an annual report on each of its activity areas which includes measurement against key performance indicators. It will, as a matter of usual business, extend this reporting to its new areas of work. Key performance indicators for the new areas of work have been set and are in the applications.

A comment was made by the LSCP about lack of information sharing between different regulators. IPS proposed to the LSCP that a Regulators' Forum be set up, which the LSCP supported. The purpose of this Forum is to facilitate data sharing. A first meeting of the Forum took place on 24 May 2013 and it has already demonstrated its usefulness for sharing data and intelligence. Furthermore, IPS has in place MOUs to provide for data sharing. It proposes to develop similar memoranda with regulators where there is not one in place currently.

The LSCP comments that regimes are based on title rather than activity or risk. IPS' proposal is to award conveyancing and probate practice rights by activity and to regulate entities by risk. The LSCP, in its response, has placed on record its support for the proposed authorisation by competence model.

The LSCP raises the discretionary nature of compensation funds and lack of information on how claims are assessed. While discretion is exercised in such cases it will be exercised in the case of IPS by independent Trustees. Guidance will be developed so that the Trustees will deliver consistency in decision making. This will be complemented by a handbook and procedure manual to provide transparency for claimants.

The LSCP also raises concern about a lack of risk based contributions from practitioners for compensation funds. IPS will be seeking contributions from entities. It is developing a risk based approach to calculation of contributions, which it will refine over time as its data on risks develops.

**BB/IPS Resp
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