

CONSUMER ENGAGEMENT STRATEGY

Introduction

1. ILEX Professional Standards is committed to instilling confidence and upholding standards in the regulation of legal executive services. We will do this by maintaining and developing risk based regulation to promote and secure proper standards of conduct and behaviour among those we regulate to ensure that customers receive good service and the rule of law is upheld.
2. Our regulatory activities are driven by our commitment to putting the public interest at the heart of our thinking. We will engage appropriately with consumers so as to ensure that they receive quality legal services through proportionate risk based regulation.
3. Our Consumer Engagement Strategy sets out the principles and objectives that we will follow in this work. The Strategy will be complemented by an Action Plan that will be reviewed annually so as to take account of any changes to our operational remit or the regulatory framework.

Principles of Engagement

4. The Legal Services Act sets out the following objectives:
 - Protecting and promoting the public interest
 - Improving access to justice
 - Protecting and promoting the interests of consumers; and
 - Increasing public understanding of the citizens legal rights and duties

These objectives inform our engagement strategy.

5. In order to be able to regulate effectively we must understand the needs and requirements of consumers of legal services. We will proactively seek out this information to identify their concerns, needs for information and their views on our regulation so that we can respond and regulate accordingly.
6. We will work with the Legal Services Board (LSB) and Legal Services Consumer Panel to make sure that we continue to put the consumer and public interest at the heart of regulation, taking account of their research and work streams so that we can avoid duplication but complement their work where desirable and practicable. We will work with the LSB and other regulators to share best practice and raise consumer confidence and satisfaction in the provision of legal services.
7. Our consumer engagement work will make use of existing channels of communication wherever practicable and aim to encourage a dialogue with consumers and other stakeholders, providing feedback as appropriate. Our consumer engagement programme will seek to achieve the following objectives:

Objectives

1. To engage proactively with consumers of legal services and other stakeholders and use the information gained to inform evidence based policy development.
2. To provide information to help consumers make decisions about legal services, understand the standards they can expect and how to complain if necessary.
3. To consult consumers and other stakeholders about our regulation of legal services and take account of their views in the development our organisation.

CONSUMER ENGAGEMENT ACTION PLAN 2012/2013

ACTION	TIMESCALE	STATUS	OUTCOME	MEASURE	RESPONSIBILITY
<i>What are we going to do?</i>	<i>When will that action take place?</i>	<i>What progress have we made to reach the outcome?</i>	<i>What is the outcome we would like to have?</i>	<i>How will we know when the action is complete?</i>	<i>Who is responsible for ensuring the action takes place?</i>
1. Comply with the LSB's letter of 26 July 2012: - Check performance against action points and identify areas for attention - Incorporate actions in consumer engagement action plan - Report to LSB on how IPS has met the action points	- July 2013 - October 2012 - October 2012 - July 2013	- In progress - Complete - Complete - Interim and detailed letter sent to the LSB in Oct and Dec 2012 respectively	- Meet action points - Demonstrate to the LSB how IPS has met the action points	- IPS has taken the appropriate action to meet the action points - IPS has submitted a detailed report to the LSB on how it has met the action points	GB
2. Review responses to consumer and member satisfaction questionnaires on IPS complaint handling process Complaints and Disciplinary Customer Satisfaction Survey	- On-going - Annual review in December	- In progress - 2012 Annual Review in progress	- Check satisfaction with KPIs - Consumers/members reassured that process is fair, timely, proportionate and transparent	- Identify satisfaction with KPI. - Identify areas for development. - Carry out development	LN

	ACTION	TIMESCALE	STATUS	OUTCOME	MEASURE	RESPONSIBILITY
3.	Survey members against whom service complaint made <i>First Tier Complaints Handling Survey</i>	- On-going - Annual review in July	- 2012/13 survey on-going	-On-going surveys to measure improvement in service -Service failures reduced, leading to better consumer outcomes. -Levels of compliance with first tier complaints handling guidance maintained/improved	-Identify trends in service failures. -Take action to educate members to improve service issues -Identify levels of compliance with guidance on complaints handling	GB
4.	Contact self-employed members to ensure compliance with first tier complaints guidance	-On-going	-Some self-employed members contacted and compliant	-Complaints handling guidance met by all self-employed members.	-Review awareness of first tier complaints guidelines -Assess compliance with guidance -Identify the need for any further work in this field	GB
5.	Review literature on consumer expectations and experiences in legal sector	-On-going	-On-going	-Develop understanding of consumer expectations and issues with the provision of legal services -Regulatory arrangements deliver appropriate	-Results of literature review identified and considered through the integrated action plan -Assess effectiveness of regulatory arrangements	GB

ACTION	TIMESCALE	STATUS	OUTCOME	MEASURE	RESPONSIBILITY
<p>6. Identify approach to gathering information on consumer satisfaction with entities regulated by IPS, once entity regulation in place</p> <p><i>Consumer Feedback Programme</i></p>	<p>-September 2013</p>	<p>-Consumer Feedback Programme identified as one approach to gather information</p>	<p>consumer expectations</p> <p>-Satisfaction monitoring procedures put in place and IPS entities subscribe to approach</p>	<p>-Gauge level of satisfaction with services provided by IPS regulated entities</p> <p>-Regulatory arrangements regularly reviewed to ensure consumer satisfaction delivered</p>	<p>PC/GB</p>
<p>7. Obtain further information about complaints affecting employed Chartered Legal Executives, including reports from the Legal Ombudsman and sharing of data with other regulators</p>	<p>-On-going</p>	<p>-IPS due to write to SRA and CLC</p>	<p>-Better understanding of level of complaints about CILEX members.</p>	<p>-Discussions with other regulators about setting common objectives for consumer feedback and sharing information about complaints</p> <p>-MoUs on information sharing in place</p> <p>-Timetable for regular reporting by the Legal Ombudsman implemented</p>	<p>GB</p>
<p>8. Review approach to collecting first-hand responses from clients and consumers about legal</p>	<p>-On-going</p>	<p>-Survey launched on 29 October 2012.</p>	<p>-Better information about the quality of service provided by employed Chartered Legal</p>	<p>-Identify trends in service failures.</p> <p>-Take action to educate</p>	<p>GB</p>

ACTION	TIMESCALE	STATUS	OUTCOME	MEASURE	RESPONSIBILITY
service provided by Legal Executives <i>Chartered Legal Executive Client Survey</i>		-On-going assessment of responses	Executives and level of compliance with first tier complaints guidance handling	members to improve service issues -Identify levels of compliance with guidance on complaints handling	

GUIDANCE ON THE BASIC RISK ASSESSMENT

Introduction

Basic risk assessments are desk based assessments of information obtained by IPS on Applicant Bodies to support applications for authorisation, and the continuation of authorisation of Authorised Bodies. Such assessments must be carried out as follows:

- 1) At the authorisation stage using information obtained in support of an application for authorisation;
- 2) At the annual return stage;
- 3) Any time after authorisation where intelligence is received from the entity or otherwise to indicate that the risk profile of the entity may have changed. This would include where an application to modify the terms of authorisation has been received or where there has been a change of Approved Manager.

Such assessments are carried out by IPS Relationship Officers. Assessments are checked by the Entity Authorisation & Supervision Manager.

Decisions involving the IPS Strategic Risk Committee (SRC)

If any assessment results in one of the following recommendations:

- reject authorisation application
- revoke authorisation
- reject Approved Manager designation
- withdraw Approved Manager designation.

the assessment and any accompanying documents must be referred by the Entity Authorisation & Supervision Manager to the SRC who will need to approve the decision before the matter is passed to the Investigations Team. However, before the following is considered matters may first be referred to the Investigation Manager to authorise a Forensic Investigations Visit to gather further information if necessary:

If any of the aforementioned decisions are supported by the SRC the matter will be passed to the Entity Authorisation & Supervision Manager to refer to the Investigations Team. The Investigations Team will be responsible for notifying the body/manager of the decision and the right of appeal as they will have oversight of all sanction-based decisions. The Client Protection Manager will be responsible for dealing with any follow up work resulting in revocation of authorisation which may include intervention or the enforcement of a Practice Management Agreement.

If any of the aforementioned decisions are not supported by the SRC, the SRC will advise on an alternative course of action and the matter will be passed back to the Authorisation & Supervision Manager and copied to the Investigation Manager (or vice versa). The team responsible for taking forward the SRC alternative recommendation will depend on the type of action recommended.

Guidance on the Basic Risk Assessment Calculation

The basic risk assessment is measured using the following calculation:

$$\text{IMPACT X PROBABILITY} = \text{RISK}$$

Impact Factors are those that determine the effect an entity may have on the IPS regulated marketplace should its risks crystallise and consumers are not served in accordance with IPS outcomes.

Probability Factors are those that determine how likely it is that those effects will happen – i.e. that the entity cannot service consumers in a way which contributes to the achievement of IPS outcomes.

The following six risk factors will be used to assess the entity's Impact and Probability:

Impact Factors

Impact is a function of the following two factors:

- (i) Environment: a function of the clients the entity works with and the services it delivers to them
- (ii) Size: as entities take on a greater number of clients and cases they can have a much greater impact if risks crystallise.

The above factors are **multiplied together** to reach an 'Impact' rating.

Probability Factors

Probability is a function of the following four risk factors:

- (iii) History: the track record of the entity in terms of its owners and key employees, its history with IPS and with other regulatory bodies, and its history of receiving and managing complaints
- (iv) Leverage: the ratio of fee earners to the number of Approved Managers
- (v) Dependency: the relationship of the entity to its largest clients
- (vi) Systems: relative to the entity's size and complexity.

The aforementioned four risk factors are treated individually and then **added together** to reach a rating for 'Probability'.

In contrast to impact scores, probability scores will have an upper boundary of 100%. Impact scores will have no boundary as it would be too difficult to predict the

size of an entity. For example, an entity may score 100, but a larger entity may subsequently apply for authorisation in future and score higher, which would mean IPS having to re-assess the scores previously given each time a higher risk emerges. A basic risk assessment will be carried out for all entities at the application stage and at least annually thereafter (at the annual return stage).

ENVIRONMENT RATING

The following table provides a basic initial guide purely for illustrative purposes of potential risk ratings for various areas of law, described as 'environment risk'. The IPS Strategic Risk Committee (SRC) under advice from the IPS Operational Risk Group (ORG) will review and supplement the areas of law and accompanying risk ratings to factor in developing/increased or reduced levels of risk occurring in the legal sector.

ENVIRONMENT RATING TABLE

Area of Law	% work by fee income	Environment Rating (from 1 (low) to 5 (high))	Weighting x2 if more than half of any stated area are described as vulnerable clients	Impact Score
Crime – Public		1		
Crime – Private		2		
Litigation – Private and Commercial		3		
Immigration		4		
Conveyancing – Residential and Commercial		5		
Landlord & Tenant		3		
Wills		2		
Probate		5		
Childcare		2		
Personal Injury		4		
Neighbour Disputes		3		
Trusts		5		
Debt		2		
Matrimonial - Public		3		
Matrimonial - Private		4		

The scores for each area of law conducted by an IPS authorised entity will be added together to achieve an overall 'Environment rating' applicable to that entity. The exception will be where an entity conducts both private and publicly funded work (e.g. in crime and/or matrimonial work) in which case the highest score out of the two will be taken (e.g. private work).

Data on the percentage of work by fee income for the last complete professional indemnity year will be collected (e.g. using the percentages entered onto the entity's last professional indemnity application form). This data will not influence the

GUIDANCE ON ADVANCED RISK ASSESSMENT

About the Advanced Risk Assessment

The advanced risk assessment is:

- 1) a visit based process used by Relationship Officers and Forensic Investigators when assessing the findings of a visit to assist in measuring the relative severity of the actual risks/compliance issues that have occurred or are likely to occur at a practice regulated by IPS
- 2) a guide for Relationship Officers when undertaking a basic risk assessment when assessing information provided by the entity, such as in an application for authorisation or in an annual return. Referring to this advanced risk assessment guidance may assist the Relationship Officer to better identify any problems with the information supplied, which could point to potential inadequacies in the entity's systems and procedures for example. It will be a matter for the Officer carrying out the assessment, under the advice of their Manager, to decide on the appropriate course of action. This may include:
 - asking the entity Compliance Manager to provide more information
 - asking the entity Compliance Manager to confirm in writing how the relevant inadequacies/systems/procedures have or will be resolved/improved
 - recommending a visit to test and assess whether IPS outcomes have not or may not be achieved due to potential inadequacies in a range of systems and procedures.

Assessing the potential severity of a particular risk event

The following tables should be used as a guide in carrying out advanced risk assessments to help decide on the best course of action. The IPS Strategic Risk Committee (SRC) under advice from the IPS Operational Risk Group (ORG) will review/amend the risk categories and ratings on an on-going basis to factor in developing/increased or reduced levels of risk in the legal sector.

Using the Tables

First review the failures/potential failures and record the specific failure or failures that attract the highest grade using Table 1. Then use Table 2 to make an assessment of the appropriate course of action based on the severity and extent of all failures found. The highest failure type grade is given precedence. The rating for the appropriate course of action will often match the highest failure type grade as both are indicators to the severity of failure. However, in some cases higher or lower grade actions will better signify an outcomes focused approach, as the effect a particular failure has on a client or clients may differ depending on the actual detail and context of the particular failure, and the nature of any detrimental effect(s), such as losses suffered by clients.

Next Steps

IPS has used its experience to identify a number of failure types in its preliminary assessment of outcome failures. The IPS Strategic Risk Committee (SRC) will carry out an assessment of all proposed failure types and allocate a risk score against each before the Risk Category Grade Table becomes a working document.

Illustrative Example of the Risk Category Grade Table

The example of the Risk Category Grade Table which starts on the following page depicts several failure types and risk scores against each IPS Principle purely for illustrative purposes, as neither the failure type nor the respective score have been assessed by the SRC.

The risk failure type examples shown in Table 1 illustrate that specific failures can attract different risk scores depending on the extent of the failure and/or whether the failure is purely a failure to have a written/effective procedure or whether a failure has actually occurred to the detriment of a client or clients.

It is essential when adopting an outcomes focused approach to assess the context of a particular failure and any resultant detrimental effect(s), such as whether a client or clients have suffered any loss, although detrimental effects can be much wider than this. Therefore, it must be emphasised that the scoring of risk failures is not prescriptive but is merely a helpful guide in making proportionate regulatory decisions.

A material failure to comply with regulations set by organisations/regulators other than IPS (with no impact on clients or some impact on clients) are examples shown against Principle 4 in the following table of risk failure types which have purposely been phrased in broad terms. This is because there are a wide range of regulations (e.g. HMRC/Companies Act regulations) that Authorised Bodies may need to comply with that are outside the scope of the assessment by IPS Relationship Officers. However, if the Relationship Officer finds evidence of a breach of non-IPS regulations the Officer will be expected to consult with their Manager on the appropriate risk failure rating and course of action to take in the specific circumstances.

TABLE 1 - RISK CATEGORY GRADE TABLE

PRINCIPLES AND OUTCOMES	Failure Type	Risk Score
1. Uphold the rule of law and the impartial administration of justice You must:	Misleading the court by presenting a false case or providing false information	7
1.1 Understand and comply with your primary and overriding duty to the court, obey court orders and do nothing which would place you in contempt.	Improper conduct of hearing	4
1.2 Not knowingly allow the court to be misled.		
2. Maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services You must:	Fraud – perpetrator, facilitator or association with organised crime	7
2.1 Advise your client of your professional status and that you are authorised to practise and/or regulated by IPS. Where your practice is regulated by IPS your business communications must confirm that.	Fixed penalty notice	3
2.2 Not engage in any conduct that could undermine or affect adversely the confidence and trust placed in you and your profession by your client, your employer, professional colleagues, the public and others.	Failure to advise client of status or that entity regulated by IPS	4
3 Behave with honesty and integrity You must:		
3.1 Be honest in all your dealings and in all financial matters.	Misappropriation including systematic overcharging	7
3.2 Not intentionally mislead anyone you deal with.	Taking unfair advantage of client	5
3.3 Report to IPS without delay any suspicion that another has breached the Code unless bound by legal professional privilege or client confidentiality.	No named money laundering compliance officer where required	2
3.4 Report to the relevant authority any misconduct of another which falls to be regulated by that authority unless bound by legal professional privilege or client confidentiality.		
3.5 Not hold yourself out as having a qualification or professional status that		

<p>You do not possess.</p> <p>4 Comply with your legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively. You must:</p> <p>4.1 Understand and comply with the law and regulation applicable to you. 4.2 Take all practicable steps to ensure you can demonstrate that you have adhered to the Core Principles and met the associated Outcomes. 4.3 Not place others in breach of any regulatory requirement or rule of professional conduct. 4.4 Respond openly, promptly and co-operatively to communications from your regulators and ombudsmen.</p> <p>5 Act competently in the best interests of your client and respect client confidentiality. You must:</p> <p>5.1 Maintain a high level of competence in your legal work and ensure that your legal knowledge is current and of sufficient depth for your role. 5.2 Identify and address any deficiencies in your knowledge or training, or that of your staff, so as to maintain a level of competence and knowledge appropriate to the work and level of responsibility in which you or your staff are engaged. 5.3 Act only on matters that are within your competence. 5.4 Not act for a client in an area of law where you have insufficient knowledge or experience. 5.5 Act on your client's instructions except when to do so would involve a breach of the law or this Code. 5.6 Not act in a matter where you do not have the right or are not authorised to act. 5.7 Adequately explain and agree with your client the terms upon which your services are to be provided, including the extent of the services, payment and the likely or anticipated cost and timescale for the advice and services to be provided. 5.8 Provide prompt, clear and accurate information and advice to your client, advise them openly and honestly and keep them up to date with information they need about the work you are performing for them within agreed timescales. 5.9 Inform your client fully as to your complaints procedures including their right to refer a complaint to the Legal Ombudsman or IPS where appropriate. 5.10 Not charge a client for the cost of handling a complaint. 5.11 Where your practice is regulated by IPS, include in the terms of business with your client, a statement that IPS is your regulator and may seek access to</p>	<p>Abandonment of Practice</p> <p>Material failure(s) to comply with non IPS regulations – no impact on clients</p> <p>Material failure(s) to comply with non IPS regulations –some impact on clients</p>	<p>7</p> <p>4</p> <p>5</p>
<p>Acting in area of law when not authorised to do so</p> <p>Failure to confirm client instructions promptly and accurately including timescale, advice and services to client (isolated instance)</p> <p>Failure to confirm client instructions promptly and accurately including timescale, advice and services to client (systematic)</p> <p>Failure to include in the terms of business with your client, a statement that IPS is your regulator and may seek access to their papers and that, in these circumstances, you will grant IPS access unless the client objects.</p>	<p>7</p> <p>4</p> <p>5</p> <p>3</p>	

<p>their papers and that, in these circumstances, you will grant IPS access unless the client objects.</p> <p>5.12 Maintain confidentiality in respect of your client's affairs except where to do so would conflict with the law or the Code or where your client explicitly authorises you to disclose confidential information.</p>	
<p>6 Treat everyone fairly and without prejudice You must:</p> <p>6.1 Ensure your business or your role within it, your business model, processes and practices adequately:</p> <ul style="list-style-type: none"> assist consumers and clients to access justice and the full range of legal services; and provide each client with equal opportunity to secure a favourable outcome in their matter, irrespective of their vulnerability or susceptibility to discrimination 	<p>Harassment/victimisation 7</p> <p>Indirect discrimination/failure to make reasonable adjustment for disability 5</p> <p>Failure to have an Equality and Diversity Policy 3</p>
<p>7 Ensure your independence is not compromised. You must:</p> <p>7.1 Not act or continue to act where there is a conflict of interest or a significant risk that a conflict may arise.</p> <p>7.2 Not act or continue to act for a client if you reasonably consider that they are providing instructions under duress or undue influence, except where to withdraw from acting would be detrimental to the client's interests.</p> <p>7.3 Where instructions are provided by a third party, confirm them with your client to ensure they are your client's own instructions.</p> <p>7.4 Ensure that none of your commercial interests or financial arrangements adversely affect the independence of your advice or your ability to act impartially.</p>	<p>Fee earner or firm's interests conflict with clients including breach of anti-bribery regulations 6</p> <p>Acting in a conflict of interest situation (client/client) 5</p> <p>Failure to confirm that instructions provided by a third party are the client's instructions 3</p>
<p>8 Act effectively and in accordance with proper governance and sound financial and risk management principles. You must:</p> <p>8.1 Maintain proper standards of work and keep accurate records. In matters such as communications with clients, professional colleagues and others, your records should be contemporaneous and in any event must be made as soon as practicable thereafter.</p> <p>8.2 Ensure you properly supervise tasks you have asked others to perform on your behalf, recognising that you remain accountable for any such work.</p> <p>8.3 Ensure that anyone you ask to perform work on your behalf is appropriately qualified and authorised to perform it.</p> <p>8.4 Ensure that clients' matters are supervised and regularly checked by those with sufficient competence and experience to assess the quality of the work</p>	<p>Failure to supervise office or staff 5</p> <p>Failure to check that outsourcers/third parties are sufficiently qualified to act 4</p> <p>Failure to maintain file notes 3</p>

VISIT SUMMARY FORM

NAME OF FIRM:

FILE REF:

VISIT DATE:

	PRINCIPLE	RECORD BELOW ANY AREA NOT TESTED	FULL COMPLIANCE	PARTIAL COMPLIANCE Show any failures in bold type (but also record examples of positive findings in normal type)	SYSTEMIC FAILURE (show in bold type)
1	<p>Uphold the rule of law and the impartial administration of justice.</p> <p>1.1 Understand and comply with your primary and overriding duty to the court, obey court orders and do nothing which would place you in contempt.</p> <p>1.2 Not knowingly allow the court to be misled.</p>				
2	<p>Maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services</p> <p>2.1 Advise your client of your professional status and that you are authorised to practise and/or regulated by IPS. Where your practice is regulated by IPS your business communications must confirm that.</p> <p>2.2 Not engage in any conduct that could undermine or affect adversely the confidence and trust placed in you and your profession by your client, your employer, professional colleagues, the public and others.</p>				
3	<p>Behave with honesty and integrity.</p> <p>3.1 Be honest in all your dealings and in all financial matters.</p> <p>3.2 Not intentionally mislead anyone you deal with.</p> <p>3.3 Report to IPS without delay any suspicion that another has breached the Code unless bound by legal professional privilege or client confidentiality.</p> <p>3.4 Report to the relevant authority any misconduct of another which fails to be regulated by that authority unless bound by legal professional privilege or client confidentiality.</p>				

	<p>3.5 Not hold yourself out as having a qualification or professional status that you do not possess.</p> <p>Comply with your legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively</p> <p>4.1 Understand and comply with the law and regulation applicable to you.</p> <p>4.2 Take all practicable steps to ensure you can demonstrate that you have adhered to the Core Principles and met the associated Outcomes.</p> <p>4.3 Not place others in breach of any regulatory requirement or rule of professional conduct.</p> <p>4.4 Respond openly, promptly and co-operatively to communications from your regulators and ombudsmen.</p>			
<p>4</p>	<p>Act competently in the best interests of your client and respect client confidentiality.</p> <p>5.1 Maintain a high level of competence in your legal work and ensure that your legal knowledge is current and of sufficient depth for your role.</p> <p>5.2 Identify and address any deficiencies in your knowledge or training, or that of your staff, so as to maintain a level of competence and knowledge appropriate to the work and level of responsibility in which you or your staff are engaged.</p> <p>5.3 Act only on matters that are within your competence.</p> <p>5.4 Not act for a client in an area of law where you have insufficient knowledge or experience.</p> <p>5.5 Act on your client's instructions except when to do so would involve a breach of the law or this Code.</p> <p>5.6 Not act in a matter where you do not have the right or are not authorised to act.</p> <p>5.7 Adequately explain and agree with your client the terms upon which your services are to be provided, including the extent of the services, payment and the likely or anticipated cost and timescale for the advice and services to be provided.</p> <p>5.8 Provide prompt, clear and accurate information and advice to your client, advise them openly and honestly and keep them up to date with information they need about the work you are performing for them within agreed timescales.</p> <p>5.9 Inform your client fully as to your complaints</p>			

	<p>procedures including their right to refer a complaint to the Legal Ombudsman or IPS where appropriate.</p> <p>5.10 Not charge a client for the cost of handling a complaint.</p> <p>5.11 Where your practice is regulated by IPS, include in the terms of business with your client, a statement that IPS is your regulator and may seek access to their papers and that, in these circumstances, you will grant IPS access unless the client objects.</p> <p>5.12 Maintain confidentiality in respect of your client's affairs except where to do so would conflict with the law or the Code or where your client explicitly authorises you to disclose confidential information.</p>				
<p>6</p>	<p>Treat everyone fairly and without prejudice</p> <p>6.1 Ensure your business or your role within it, your business model, processes and practices adequately:</p> <ul style="list-style-type: none"> • assist consumers and clients to access justice and the full range of legal services; and • provide each client with equal opportunity to secure a favourable outcome in their matter, irrespective of their vulnerability or susceptibility to discrimination. 				
<p>7</p>	<p>Ensure your independence is not compromised</p> <p>7.1 Not act or continue to act where there is a conflict of interest or a significant risk that a conflict may arise.</p> <p>7.2 Not act or continue to act for a client if you reasonably consider that they are providing instructions under duress or undue influence, except where to withdraw from acting would be detrimental to the client's interests.</p> <p>7.3 Where instructions are provided by a third party, confirm them with your client to ensure they are your client's own instructions.</p> <p>7.4 Ensure that none of your commercial interests or financial arrangements adversely affect the independence of your advice or your ability to act impartially.</p>				
<p>8</p>	<p>Act effectively and in accordance with proper governance and sound financial and risk management principles.</p> <p>You must:</p> <p>8.1 Maintain proper standards of work and keep</p>				

	<p>accurate records. In matters such as communications with clients, professional colleagues and others, your records should be contemporaneous and in any event must be made as soon as practicable thereafter.</p> <p>8.2 Ensure that you properly supervise tasks that you have asked others to perform on your behalf, recognising that you remain accountable for any such work.</p> <p>8.3 Ensure that anyone you ask to perform work on your behalf is appropriately qualified and authorised to perform it.</p> <p>8.4 Ensure that clients' matters are supervised and regularly checked by those with sufficient competence and experience to assess the quality of the work and to ensure issues identified are addressed.</p> <p>8.5 Adhere to effective management, oversight and reporting structures.</p> <p>8.6 Comply with effective procedures to ensure compliance with your legal and regulatory obligations.</p>			
<p>9</p>	<p>Protect client money and assets</p> <p>9.1 Identify, assess, manage and promptly address risks to money and assets entrusted to you by clients and others.</p> <p>9.2 Effectively monitor the financial stability of your business or your role within it, so as to protect client money and assets from risks associated with the financial position of your business or the business of your employer.</p>			

BACKGROUND AND SUPPORTING INFORMATIONBackground**RESOURCE ASSESSMENT** (Record time spent for each of the following)Advanced Risk Assessment (Visit and Post Visit)

Any pre-visit work (after Basic Risk Assessment) =

Visit Time =

Travel Time =

Hotel Accommodation Cost =

Advanced Risk Assessment and Visit Report =

Any other contact with firm including correspondence/telephone contact =

IPS BASIC RISK SCORE CALCULATION CARRIED FORWARD FROM BASIC RISK ASSESSMENT FORM =

Environment + Size (= Impact Score) =

History + Leverage + Dependency + Systems (= Probability Score) =

Impact Score x Probability Score =

IPS ADVANCED RISK SCORE CALCULATION

Most serious risk in Risk Category Grade Table Rating =

IPS Response Table Grade =

Action Recommendations =

VISIT PROFILE FORM

PART A: GENERAL DETAILS

Name of Member:	
Membership Number:	
Grade of Membership:	
Address of Member:	
Business address- (if different from above)	
Type of Business	
Additional Information: Include position in business, number of employees	

PART B: VISIT AUTHORISATION CHECK

The following questions must be answered 'Yes' before a visit is authorised:

Is the self-employed member regulated only by IPS (if the OISC or anyone else regulates them then a visit must not be scheduled).	YES/NO
Is the self-employed member owning/operating a business providing legal services (beyond acting purely as a locum and/or employee of a regulated law firm)	YES/NO

PART C: VISIT NOTIFICATION AND CONFIRMATION (Note - Notification must first be authorised)

Visit Type: (e.g. Benchmark Visit):	Proposed Visit Date:	
Date Notification Letter sent:		
Telephone Confirmation received from the member (record details of call for Concept). <u>If no call received within one week of the visit call the firm to confirm.</u>	Visit YES/NO	Confirmed:

<p>If visit no longer going ahead state the reason why here. If purely a re-arranged date enter date in next box</p>	<p>Re-Arranged Visit Date:</p>
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PART D: BUSINESS INFORMATION RISK RATING (BIRR) MEASURES – (PRE-VISIT)

<p>Complaints Record Summary</p>	<p>Waivers</p>
<p>CPD issues</p>	<p>Prior conduct/disciplinary proceedings</p>
<p>Company website? If so check publicity matches with areas of law and record comments here:</p>	<p>Any further information based on contact with IPS or CILEx</p>
<p>Areas of Law conducted</p>	<p>Examinations Passed</p>
<p>Qualified to Undertake all areas of Law? Record comments here:</p>	<p>Specific Areas of Focus on Visit (e.g. practising in areas where not qualified to do so):</p>
<p>INITIAL INFORMATION RISK RATING (Pre-Visit) = High, Medium or Low* *(1 and 2 = Low, 3 or 4 Medium, 5 or 6 = High)</p>	<p>REASONS FOR RATING GIVEN</p>
<p>RATING AUTHORISED BY**</p>	<p>RATING VALIDATED BY***</p>

*High, Medium, Low (BIRR) rating dependant purely on pre-visit information relating to this business. This rating will assist in the final risk rating given to the business based on the overall Risk Framework Criteria

**Rating authorised by = Name of Professional Standards Assistant

***Rating Validated by = Name of Lead Visiting Officer

INFORMATION SUBMISSION REQUIREMENTS

The attached documents detail the information IPS will require entities to provide in support of their application for authorisation. IPS will be working on developing different formats for information submissions which will be produced and tested over the coming months.

Part 1 depicts information that will be included within application guidance

Part 2 describes the information IPS requires in support of the application for authorisation

Part 3 describes the information to be included within the application for authorisation.

PART 1

**SUPPORTING GUIDANCE ON THE APPLICATION
TO BECOME A BODY AUTHORISED BY ILEX PROFESSIONAL STANDARDS
TO CONDUCT LEGAL SERVICES**

<p><u>General Information</u></p> <p>You should use this form to apply for your business (described in this form as an Applicant Body) to be authorised by ILEX Professional Standards (IPS). Once authorised by IPS Applicant Bodies become known as Authorised Bodies.</p> <p>Please send the completed application form shown at Part 3, plus copies of the items listed at Part 2 on the following page by email to:</p> <p>info@ilexstandards.org.uk or by post to</p> <p>IPS, Kempston Manor, Kempston, Bedford, MK42 7AB</p> <p>Note: You do not need to send the attachments if you request a Voluntary Risk Review visit. See below.</p> <p><u>Voluntary Risk Review Visit</u></p> <p>If you would like to receive support from IPS in developing your application and/or you would like the supporting documentation to this application to be reviewed by an IPS Relationship Officer at your business premises so you do not have to attach it to this application please underline 'YES' to the following question:</p> <p>I would like a Voluntary Risk Review Visit YES/NO</p> <p>The benefits of such a visit will include:</p> <ul style="list-style-type: none"> • assistance with formulating or improving plans and processes to help you meet your responsibilities for monitoring compliance and reducing risk • advice on compliance with IPS Rules and good practice in risk management • information on how your business can become part of the IPS Consumer Feedback Programme hosted on the Specialist Lawyers website www.specialistlawyers.org. • the opportunity to receive an enhanced information entry for your business in the directory of IPS Authorised Bodies on the Specialist Lawyers website at www.specialistlawyers.org. <p><u>Regulatory Fees, Compensation Fund and Escrow</u></p> <p>Regulatory fees and compensation fund contributions are payable to IPS. Details of the IPS fee structure will be provided in an IPS Fees Policy document.</p> <p>IPS Authorised Bodies may benefit from reduced Compensation Fund contributions if they opt to use escrow services for client money. Use of escrow services will avoid the requirement to hold a client account and submit annual Accountants Reports. Further information on the escrow account and the fees associated with its administration can be obtained from IPS.</p>	<p><u>Authorisation Decisions</u></p> <p>Authorisation decisions will be made by IPS in accordance with the requirements stipulated in the IPS Authorisation Rules and in accordance with its risk framework</p> <p><u>Information on Managers</u></p> <p>A Manager means:</p> <ol style="list-style-type: none"> sole practitioner a member of an LLP a director of a company, a partner in a partnership or in relation to any other body, a member of its governing body <p>IPS requires that:</p> <ul style="list-style-type: none"> • all managers of the Applicant Body have responsibility for ensuring that the Applicant Body and its staff comply with the CILEx Code of Conduct, IPS Accounts Rules, Professional Indemnity Insurance Rules and Compensation Fund Rules • the application for authorisation must specify the manager who will be undertaking the role of Compliance Manager • the Compliance Manager is the person who has lead responsibility for compliance and will also be the nominated contact between the Applicant Body (known as the Authorised Body on the basis that authorisation is approved) and IPS • the Compliance Manager is required to ensure compliance with any statutory obligations of the body, its managers, employees or interest holders in relation to the Body's carrying on of authorised activities, and to record any compliance failures and make such records available to IPS upon request • All managers seeking Approved Manager status must be an Authorised Person (i.e. authorised to conduct a reserved or regulated legal activity) and the Applicant Body must have at least one manager authorised to conduct the reserved or regulated legal activity the body is applying to be authorised by IPS to carry out • the Applicant Body must have at least one manager who has attained competencies in practice management and accounts management. Where one manager does not possess competencies in both of these disciplines IPS will accept authorisation applications where one manager possesses the competency in practice management and another manager possesses the competency in accounts management. <p><u>Data Protection</u></p> <p>The Chartered Institute of Legal Executives (CILEx) is a data controller under the terms of the Data Protection Act 1998. IPS is a wholly owned subsidiary of CILEx. The information provided on this form will be processed for the purposes necessary for IPS to carry out its functions and meet its legal obligations. Data may be shared with third parties who deliver a service on behalf of IPS.</p>
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PART 2

**INFORMATION TO SUPPORT AN
APPLICATION FOR AUTHORISATION**

Please include a copy of the following documents with your completed application for authorisation unless you have requested a Voluntary Risk Review Visit. The application form for authorisation is shown at Part 3 of this document.

Note - If any of the items referred to below cannot be provided please contact IPS on 01234 845759 or by email at info@ilexstandards.org.uk as IPS may still be able to consider the application:

1) A current Professional Indemnity Insurance (PII) Certificate if PII has been obtained

IPS requires Applicant Bodies applying to be authorised by IPS to have professional indemnity insurance (PII) cover in place to the value specified in the IPS Professional Indemnity Insurance Rules through a qualifying insurer, or to have applied for such cover.

IPS can provisionally authorise an Applicant Body on the basis that it will obtain the required PII and that it will not practice until such PII is in place.

2) A Business Plan

A written document that describes the business, its objectives, its strategies, the market it is in and its financial forecasts.

3) Policies and Procedures Documentation

Details of any policies and procedures including:

- (a) company structure
- (b) management structure
- (c) supervision arrangements
- (d) accounting policies and procedures
- (e) practice/risk management procedures
- (f) procedure advising staff on client care and complaints handling
- (g) money laundering avoidance and identity check procedures
- (h) a policy on equality and diversity

IPS will accept that smaller businesses including sole practitioners may not have or need specific written policies on all of the above

4) Copies of standard client care letters**5) Copy of complaints handling procedure**

6) Copies of any fee sharing agreements, referral agreements, and outsourcing agreements. These agreements should include those currently in force and those in force within the twelve month period prior to the date of the application

7) If client bank accounts are held, a copy of the client bank reconciliation for the last three complete months prior to the date of this application, (if such reconciliations are maintained)

- 8) **Business accounts for the last 3 complete years** (or such lesser complete years if the business has traded for less than 3 years). If the Business has not traded a forecast is required for (at least) the first year of trading.
- 9) **A copy of each Accountants Report submitted for the last 3 years** (or such lesser complete years if the Business has traded for less than 3 years if previously regulated by another legal services regulator)
- 10) **A copy of a Standard Criminal Records Bureau Check** for each Manager which must have been obtained within three months prior to the date of this application for authorisation and for the purpose of this application

PART 3**APPLICATION TO BE A BODY
AUTHORISED BY ILEX PROFESSIONAL STANDARDS
TO CONDUCT LEGAL SERVICES**

This application is in two parts. Section A relates to information required on the Applicant Body and Section B on the managers of the Applicant Body.

SECTION A - INFORMATION ON THE APPLICANT BODY

- 1) Business Name:

- 2) Business Address (state address of Head Office if more than one office and provide details of any branch offices below):

Branch Offices

- 3) Type of Business:
(e.g. Sole trader, limited company)
- 4) Company Number (if applicable, i.e. limited company):
- 5) Any other trading names used or to be used?
If so please provide details:

- 6) Date company formed or to be formed:

- 7) Reserved or Regulated Legal Activity or Legal Activities carried out (or to be carried out if not yet begun trading)? Reserved activities include Conveyancing, Probate and Litigation. Immigration Advice and Services is a Regulated Activity:

- 8) Please estimate the percentage of gross fee income carried out in the last financial year for each type of legal service undertaken (or to be undertaken if yet to commence trading). If any work area is not listed please add the work area(s) to the bottom of the following tabled list.

Please also put a tick under the heading entitled 'More than 50% Vulnerable Clients' for each legal service undertaken where you would estimate that the majority of clients would meet the following definition of client vulnerability:

"A consumer or client is to be regarded as a vulnerable consumer or vulnerable client if, in obtaining or seeking to obtain legal services, they are at risk of encountering difficulties arising from any specific or general limitations as to their; physical abilities, sensory abilities, cognitive abilities, linguistic abilities, geographic location, economic resources or any combination of these."

Type of Legal Service	% Estimate of Gross Fee Income	More than 50% Vulnerable Clients	Type of Legal Service	% Estimate of Gross Fee Income	More than 50% Vulnerable Clients
Crime			Litigation General		
Personal Injury			Litigation Commercial		
Wills			Children		
Trusts			Disputes		
Probate & Estate Administration			Employment		
Conveyancing - Residential			Immigration		
Conveyancing - Commercial			Consumer problems		
Landlord and tenant			Welfare and benefits		
Family			Business Affairs		
Mediation			Debt collection		

- 9) Please list the name and role, and respective shareholding if applicable, of each director/partner/member (henceforth referred to as 'Manager'). Please also show under the heading 'Authorised Legal Activity' if each manager is an authorised person

and which legal activity or activities that manager is authorised to carry out (i.e. a person authorised to conduct reserved legal activities):

Name of Manager	Role in Company	Shareholding(%)	Authorised Legal Activity

- 10) If the Business is not wholly owned by the manager(s) please describe the nature any external ownership below.

- 11) Has there been any change(s) in the management or ownership of the Business in the two years preceding the date of this application. If so please provide details below:

- 12) If any of the managers have a separate Business, please provide details below:

Name and Address of Business	Business Activity or Activities

Note: You may wish to refer to Rule 11 of the IPS Investigation, Disciplinary and Appeals Rules (IDAR) on ‘prior conduct’ and Rule 5 of the IPS Authorisation Rules on the ‘Fit and Proper Test’ before answering questions 13 and 14 below

- 13) Has the Business applying to be authorised, or any of its managers, or any related Business (i.e. parent/subsidiary), been the subject of an insolvency event? If so please provide details below:

- 14) Has the Business applying to be authorised, or any of its managers, or any related Business (i.e. parent/subsidiary), been the subject of any investigation or disciplinary

action by another regulatory/professional or statutory body? If so please provide details below:

If the Business is undertaking or proposing to undertake conveyancing activities please answer the following question. If not go to question 16.

- 15) Has the Business applying to be authorised or any related Business (i.e. parent/subsidiary) been refused membership of any lenders panels or had its membership of any such panel suspended or terminated? If so please provide details:

- 16) Has the Business applying to be authorised or any related Business (i.e. parent/subsidiary) been regulated by another legal services regulator? If so please provide details. Your response should include whether the authorisation is still in force with the other regulatory body and if not the reasons why:

- 17) Declare any incidents within the last three years in which the Business or any manager within the Business has acted (or not acted) in such a way which required compensation of more than £1,000 by this Business or a regulatory Compensation Fund:

- 18) Does the Business possess any quality standards? Note - This will include the Legal Services Commission Specialist Quality Mark (SQM)
If so provide details below including whether the standard applies to all of the Business or only part of it (i.e. just publicly funded work)

- 19) Please state the reason(s) why your Business is applying to become authorised and regulated by IPS?

- 20) Please list name, status and professional qualification (if qualified) of all members of staff below (excluding the managers detailed in the response to Question 9) or attach a current list of staff which includes this information.

Name	Status	Professional Qualification (e.g. FILEX/Solicitor)	Area of Law Practising

21) If any managers or staff have left the Business within the last 12 months please provide the name and status of the individual below:

Name	Status

22) Has the Business applying to be authorised or any related Business (i.e. parent/subsidiary) ever been refused professional indemnity cover? If so please provide brief details below:

23) Has the Business applying to be authorised or any related Business (i.e. parent/subsidiary) received any professional indemnity insurance (PII) claims (or reported to its insurers any potential claims) in relation to any activity conducted in the course of its operation within the last 5 years up to the date of this application? If so please provide details below including the date of the event causing the claim/potential claim, the date of claim where applicable, area of law, and the amount paid or likely to be paid by the insurance company.

Date of Event	Date of Claim	Area of Law	Amount Paid/to be paid

24) Has the Business applying to be authorised or any related Business (i.e. parent/subsidiary) been the subject of any litigation proceedings within the last 5 years. If so please provide details below:

25) Has the Business applying to be authorised or any related Business (i.e. parent/subsidiary) received any complaints in relation to any activity conducted in the course of its operation within the last 12 months up to the date of this application?

If so please provide details below including the date of the complaint, reason for the complaint (e.g. delay, lack of costs information) area of law, how it was resolved (e.g. if compensation provided state amount) or if not resolved whether resolution remains on-going, and whether the complaint was resolved with the involvement of the Legal Ombudsman (LeO) in which case answer 'YES' or 'NO':

Date of Complaint	Reason(s)	Area of Law	How Resolved (or on-going)	LeO involved?

26) Number of Open Matters on date of application?

27) Number of Closed Matters in the six months prior to the date of application?

28) Does any one client generate more than 15% of fees earned per annum? If so provide details:

29) Are premises owned or leased? If leased please state the length of the lease/commercial arrangement:

- 30) Any work sub-contracted? If so please provide details below:
- 31) State below whether you rely or intend to rely on the Part XX Exemption in the Financial Services and Markets Act 2000 and carry on certain incidental financial services for your clients. Note - Such services may include advising clients in relation to financial services and insurance mediation activities (e.g. arranging for defective title insurance) that are incidental to the work you may carry out in conveyancing, corporate, matrimonial, probate and trust work
- 32) If you do carry out or intend to carry out work of the nature described in question 31 above, is your Business listed in the FSA EPF Register at <http://www.fsa.gov.uk/register?> YES/NO

SYSTEMS AND PROCEDURES

- 33) Does your Business have any documented case management systems or file management/file review procedures in operation? If so, please summarise how the system and/or reviews operate including the frequency of review and the number of files reviewed and who conducts reviews:
- 34) Does your organisation have any diary systems in place? If so how do these systems operate? Please summarise below:
- 35) Please summarise how your Business obtains its work in the space below providing rough estimates: (For example, 60% repeat clients, 20% referral, 20% through internet)
- 36) Is there any factor or factors that differentiate your Business from that of other businesses providing similar services? (For example, delivers most services through a website, has a 24-hour answerphone facility, has an office that is open over weekends)?

37) Please summarise procedures any procedures your Business has in place for identifying and addressing any conflicts of interest:

38) Please summarise any identity check procedures your organisation has in place for the avoidance of money laundering (and mortgage fraud):

39) Are file notes, including notes of telephone calls, made? YES/NO

40) Please summarise arrangements in place for the following:

Record Keeping/File Storage:

Building Security:

IT Security & Back-Up Procedures:

Data Protection Act compliance:

Business Continuity and Succession Planning:

41) Please confirm the name(s) of the manager or member(s) of staff currently employed who have received training in practice management and the qualification/training obtained:

Name	Qualification/Training Obtained

- 42) Please confirm the name(s) of the manager or member(s) of staff currently employed who have received training in accounts and/or legal accounts management and the qualification/training obtained:

Name	Qualification/Training Obtained

- 43) Are Client Feedback Questionnaires used? If so please describe how they are used and the nature of any analysis/learning undertaken from the results of the Feedback

FINANCIAL

- 44) Does your Business deal with client money? YES/NO
- 45) Does your Business maintain a client account or client accounts? YES/NO
- 46) Please state the approximate value of client money dealt with during the past year up to the date of the application:
- 47) Please confirm the names of the signatories on the client account(s) in the space below:
- 48) Please confirm the names of the signatories on the office account(s) in the space below:
- 49) Please state the system in place for maintaining accounting records. If computerised accounts software is used please state the name of the accounts software package:
- 50) Is a separate file maintained for bills? YES/NO

- 51) Are time records maintained? YES/NO
- 52) Please provide the name and address of your Business Accountant/Auditor:
- 53) Are you interested in holding client money in an escrow account authorised by IPS?
YES/NO

Further information on the advantages of using the escrow account and the fees associated with its administration can be obtained from IPS

Declaration and Undertakings

I/we confirm this information is true, accurate and complete, and that all material information has been included.

I/we can confirm that the Applicant Body has the appropriate compliance arrangements in place to meet its regulatory obligations.

I/we understand IPS is entitled to seek verification from any party where necessary and appropriate, including but not limited to clients, staff, government departments, other regulatory bodies, and previous insurers. Unless considered to be inappropriate, IPS will notify the Applicant Body in advance of any such verification approach being undertaken.

I/we agree to notify IPS within 7 days should any of the information in this application change.

I/we understand that any misrepresentation or failure to reveal information or grant any authorisation requested may be deemed to be sufficient cause for the refusal of this application for authorisation.

If this application for authorisation is approved I/we confirm that the Authorised Body will:

- (i) Provide IPS with any information it requires to fulfil its regulatory duties
- (ii) Comply with any monitoring and inspection visits undertaken by IPS
- (iii) Comply with Codes of Conduct and all other IPS/CILEx Rules as applicable

All the Managers must sign the following declaration. The details of each manager must also be confirmed at Part B of the application.

All managers must also sign the attached Practice Management Agreement to confirm shared responsibility for compliance with IPS Client Protection determinations, such as in the event of the Authorised Body ceasing to trade for any reason. (Note: the Practice Management Agreement is yet to be formulated as the content of the agreement will depend on whether IPS has secured intervention rights).

Signed

Print Name

Position in Applicant Body.....

Signed

Print Name

Position in Applicant Body.....

Signed

Print Name

Position in Applicant Body.....

Signed

Print Name

Position in Applicant Body.....

Signed

Print Name

Position in Applicant Body.....

Signed

Print Name

Position in Applicant Body.....

SECTION B - APPLICATION TO BE AN APPROVED MANAGER OF AN IPS

AUTHORISED BODY

The details of all members of the Applicant Body’s management team must be entered on this form. If there are more than four managers copy the following page of the form and use it to enter the details of any further managers. The name of the manager appointed to act as Compliance Manager must be entered below.

Please confirm the name of the manager undertaking the role of Compliance Manager below:

<p>.....</p> <p><i>MANAGER</i></p> <p><i>First name(s).....</i></p> <p><i>Surname.....</i></p> <p><i>Workplace Address.....</i> </p> <p><i>Home Address.....</i> </p> <p><i>Workplace Email Address:</i> </p> <p><i>Date of Birth.....</i></p> <p><i>Job Title:.....</i></p> <p><i>Please state Legal Qualification (e.g. FILEx, Solicitor, Barrister). If non-Fellow CILEx Member please state grade of Membership:</i> </p> <p><i>Please state the *Reserved or *Regulated Legal Activities you are authorised to conduct in the space below (*see Question 7 for more information)</i> </p> <p><i>Name of Professional Body and membership number (if applicable)</i> <i>Confirm whether there are or have been any restrictions placed on your practising certificate/professional membership and declare any issues of prior conduct* in the space below:</i></p>	<p><i>MANAGER</i></p> <p><i>First name(s).....</i></p> <p><i>Surname.....</i></p> <p><i>Workplace Address.....</i> </p> <p><i>Home Address.....</i> </p> <p><i>Workplace Email Address:</i> </p> <p><i>Date of Birth.....</i></p> <p><i>Job Title:.....</i></p> <p><i>Please state Legal Qualification (e.g. FILEx, Solicitor, Barrister). If non-Fellow CILEx Member please state grade of Membership:</i> </p> <p><i>Please state the *Reserved or *Regulated Legal Activities you are authorised to conduct in the space below (*see Question 7 for more information)</i> </p> <p><i>Name of Professional Body and membership number (if applicable)</i> <i>Confirm whether there are or have been any restrictions placed on your practising certificate/professional membership and declare any issues of prior conduct* in the space below:</i></p>
<p>*See IPS Authorisation Rules and IPS Investigation Disciplinary and Appeals Rules (IDAR) for more information on Prior Conduct</p>	

<p>MANAGER</p> <p>First name(s).....</p> <p>Surname.....</p> <p>Workplace Address.....</p> <p>.....</p> <p>Home Address.....</p> <p>.....</p> <p>Workplace Email Address:</p> <p>.....</p> <p>Date of Birth.....</p> <p>Job Title:.....</p> <p>Please state Legal Qualification (e.g. FILEx, Solicitor, Barrister).If non-Fellow CILEx Member please state grade of Membership:</p> <p>.....</p> <p>Please state the *Reserved or *Regulated Legal Activities you are authorised to conduct in the space below (*see Question 7 for more information)</p> <p>.....</p> <p>.....</p> <p>Name of Professional Body and membership number (if applicable)</p> <p>Confirm whether there are or have been any restrictions placed on your practising certificate/professional membership and declare any issues of prior conduct* in the space below:</p>	<p>MANAGER</p> <p>First name(s).....</p> <p>Surname.....</p> <p>Workplace Address.....</p> <p>.....</p> <p>Home Address.....</p> <p>.....</p> <p>Workplace Email Address:</p> <p>.....</p> <p>Date of Birth.....</p> <p>Job Title:.....</p> <p>Please state Legal Qualification (e.g. FILEx, Solicitor, Barrister).If non-Fellow CILEx Member please state grade of Membership:</p> <p>.....</p> <p>Please state the *Reserved or *Regulated Legal Activities you are authorised to conduct in the space below (*see Question 7 for more information)</p> <p>.....</p> <p>.....</p> <p>Name of Professional Body and membership number (if applicable)</p> <p>Confirm whether there are or have been any restrictions placed on your practising certificate/professional membership and declare any issues of prior conduct* in the space below:</p>
<p>*See IPS Authorisation Rules and IPS Investigation Disciplinary and Appeals Rules (IDAR) for more information on Prior Conduct</p>	

BUSINESS & COMPLIANCE REVIEW TEMPLATE

Compliance Review for (firm name):

Compliance Manager (name):

CONTENTS	REVIEW PERIOD	<i>Note: The page numbers shown below refer to the page numbers in the 'stand-alone' version of this document</i>
Introduction	QUARTERLY	Pages 1 to 3
Principles and Outcomes in the CILEx Code of Conduct		Pages 3 to 5
Quarterly Business Review		Page 6 onwards
<u>Risk Register</u>		
- Review Summary Sheets	MONTHLY	Annex 1
- Monthly Checks	MONTHLY	Annex 2
- Quarterly Checks	QUARTERLY	Annex 3
- Annual Responsibilities	QUARTERLY	Annex 4
- Financial Information and/or Management Meeting Minutes	MONTHLY	Inclusion Optional at Annex 5

i. QUARTERLY BUSINESS	Document Completion	1st Review	2nd Review	3rd Review	Document Update
Date:					
Completed by:					
Signed by: (Compliance Manager)					

1. Introduction

This Business & Compliance Review Template and supporting annexes can be used by Authorised Bodes throughout the year to show how risks are assessed and recorded. These documents have the following purposes:

1. To assist with business planning, compliance monitoring, and risk management
2. To provide a format for information that can be copied and attached to the Annual Return that must be submitted to IPS.

Note: Only the final year-end version of this document plus annexes should be attached to the Annual Return submitted to IPS.

The following paragraphs describe the financial information that must be submitted to IPS as part of an Annual Return. Financial information can be labelled as Annex 5 if this document format is used to provide the information IPS requires for its Annual Return.

- the latest set of Business Accounts including (profit and loss, balance sheet and cash flow forecasts)
- Accountants Report (if dealing with client money)
- monthly client account reconciliations (if dealing with client money)

Accounting and financial information (e.g. bank reconciliations and work in progress figures) should be reviewed at least on a monthly basis. Accounts controls must also be in place to ensure any risk failures concerning accounting issues and/or non-compliance with the IPS Accounts Rules are accurately reported to the Compliance Manager so they can be added to a Risk Register Review Summary Sheet (Annex 1) where appropriate.

Periodic financial returns should continue to be dealt with separately by the Finance Department/Cashier, e.g. VAT, Tax, PAYE, National Insurance & Pensions.

Information Submission Options

It is not a requirement to use this particular format in order to submit the required information referred to in point (2) on the previous page. For example, a full business plan and an alternative format of risk register could be provided.

Explanatory Notes

This documentation has been designed to assist firms providing legal services to plan, monitor, and record key aspects of business performance, risk management and compliance with the IPS Rules and specifically the CILEx Code of Conduct. It is not meant to replace any other documents such as an Office Procedures Manual.

The areas of risk quoted in the Annexes to this document are examples which should be supplemented by actual risk areas relevant to the particular legal business subject to this review.

Completion of this material will be most beneficial to firms that hold monthly management meetings, as meetings should be minuted to follow-up on any action points to avoid further/continuing failures to meet CILEx/IPS rules, principles and outcomes that can ultimately lead to enforcement action by IPS. Periodic monitoring and review of this documentation will also demonstrate, both for internal business purposes and to third parties (i.e. IPS), that regular reviews are being carried out to ensure compliance with the principles and in the CILEx Code of Conduct and in particular Principle 8.

Document Completion and Review

When reading this document for the first time it is advisable to complete the Quarterly Business Review (this document) together with the business capability assessments which make up Annexes 2 and 3. Annex 4 can also be partially completed by setting commencement and conclusion timescales relating to specific annual responsibilities.

Recommended review periods for this document and supporting Annexes are shown below. Documents may only need amendment to factor in any changes such as risk failures that have occurred (which should be recorded on the document at Annex 1). Such factors could change potential risk areas and the assessment of capability mentioned in Annexes 2 and 3 for example.

Quarterly Business Review, Quarterly Checks (Annex 3), and Annual Responsibilities (Annex 4)

The Quarterly Business Review (which consists of this document excluding the annexes) should be reviewed on a quarterly basis to ensure that the Business & Compliance Review (this document including the annexes) is able to adapt to changing circumstances within the firm and in the legal sector.

Annex 3 contains areas of compliance that should be reviewed on a quarterly basis. Any action points should ideally listed in the minutes of monthly management meetings with dates for required action. Required actions should be re-visited each subsequent month to ensure that the actions have been completed.

Annex 4 depicts annual responsibilities in the form of a simple table which can be used to chart when each process should start and end, and check when each process has been completed. As some processes may start later in the year and end the following year this document depicts two annual periods to allow for this. It is advisable to review Annex 4 on a quarterly basis to ensure each of the stated annual responsibilities have been actioned within planned timescales.

Review Summary Sheets (Annex 1) and Monthly Reviews (Annex 2)

Annex 1 should be used to record risk failures as and when they occur. Both Annexes 1 and 2 should be reviewed on a monthly basis.

Material failures should be reported to IPS as soon as reasonably practicable, and the Compliance Manager (after obtaining further advice from IPS if required) will have overall responsibility for reporting material failures to IPS.

The completed version of the Review Summary Sheet(s) should be reviewed at the following monthly management meeting to ensure that action has been taken to address any identified failures so that the risk of such failures re-occurring can be reduced.

2. Principles and Outcomes in the CILEx Code of Conduct

Practices authorised by IPS must ensure that all managers and staff adhere the CILEx Code of Conduct, and all other IPS Rules as applicable. Any material or non-material failures to comply with these rules must be recorded in a risk register, and material failures must also be reported to IPS as soon as reasonably practicable. The principles and outcomes in the CILEx Code of Conduct are shown below to assist in determining any failure(s) in meeting the IPS regulatory requirements.

Definitions

In the Code: You and your means a CILEx member, CILEx practitioner or Authorised Body.

1. Uphold the rule of law and the impartial administration of justice.

You must:

- 1.1 Understand and comply with your primary and overriding duty to the court, obey court orders and do nothing which would place you in contempt.
- 1.2 Not knowingly allow the court to be misled.

2. Maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services.

You must:

- 2.1 Advise your client of your professional status and that you are authorised to practise and/or regulated by IPS. Where your practice is regulated by IPS your business communications must confirm that.
- 2.2 Not engage in any conduct that could undermine or affect adversely the confidence and trust placed in you and your profession by your client, your employer, professional colleagues, the public and others.

3 Behave with honesty and integrity.

You must:

- 3.1 Be honest in all your dealings and in all financial matters.
- 3.2 Not intentionally mislead anyone you deal with.
- 3.3 Report to IPS without delay any suspicion that another has breached the Code unless bound by legal professional privilege or client confidentiality.
- 3.4 Report to the relevant authority any misconduct of another which falls to be regulated by that authority unless bound by legal professional privilege or client confidentiality.

- 3.5 Not hold yourself out as having a qualification or professional status that you do not possess.

4 Comply with your legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively.

You must:

- 4.1 Understand and comply with the law and regulation applicable to you.
- 4.2 Take all practicable steps to ensure you can demonstrate that you have adhered to the Core Principles and met the associated Outcomes.
- 4.3 Not place others in breach of any regulatory requirement or rule of professional conduct.
- 4.4 Respond openly, promptly and co-operatively to communications from your regulators and ombudsmen.

5 Act competently in the best interests of your client and respect client confidentiality.

You must:

- 5.1 Maintain a high level of competence in your legal work and ensure that your legal knowledge is current and of sufficient depth for your role.
- 5.2 Identify and address any deficiencies in your knowledge or training, or that of your staff, so as to maintain a level of competence and knowledge appropriate to the work and level of responsibility in which you or your staff are engaged.
- 5.3 Act only on matters that are within your competence.
- 5.4 Not act for a client in an area of law where you have insufficient knowledge or experience.
- 5.5 Act on your client's instructions except when to do so would involve a breach of the law or this Code.
- 5.6 Not act in a matter where you do not have the right or are not authorised to act.
- 5.7 Adequately explain and agree with your client the terms upon which your services are to be provided, including the extent of the services, payment and the likely or anticipated cost, outcome and timescale for the advice and services to be provided.
- 5.8 Provide prompt, clear and accurate information and advice to your client, advise them openly and honestly and keep them up to date with information they need about the work you are performing for them within agreed timescales.
- 5.9 Inform your client fully as to your complaints procedures including their right to refer a complaint to the Legal Ombudsman or IPS where appropriate.
- 5.10 Not charge a client for the cost of handling a complaint.
- 5.11 Where your practice is regulated by IPS, include in the terms of business with your client, a statement that IPS is your regulator and may seek access to their papers and that, in these circumstances, you will grant IPS access unless the client objects.
- 5.12 Maintain confidentiality in respect of your client's affairs except where to do so would conflict with the law or the Code or where your client explicitly authorises you to disclose confidential information.

6 Treat everyone fairly and without prejudice

You must:

- 6.1 Ensure your business or your role within it, your business model, processes and practices adequately:

- assist consumers and clients to access justice and the full range of legal services; and
- provide each client with equal opportunity to secure a favourable outcome in their matter, irrespective of their vulnerability or susceptibility to discrimination.

7 Ensure your independence is not compromised.

You must:

- 7.1 Not act or continue to act where there is a conflict of interest or a significant risk that a conflict may arise.
- 7.2 Not act or continue to act for a client if you reasonably consider that they are providing instructions under duress or undue influence, except where to withdraw from acting would be detrimental to the client's interests.
- 7.3 Where instructions are provided by a third party, confirm them with your client to ensure they are your client's own instructions.
- 7.4 Ensure that none of your commercial interests or financial arrangements adversely affect the independence of your advice or your ability to act impartially.

8 Act effectively and in accordance with proper governance and sound financial and risk management principles.

You must:

- 8.1 Maintain proper standards of work and keep accurate records. In matters such as communications with clients, professional colleagues and others, your records should be contemporaneous and in any event must be made as soon as practicable thereafter.
- 8.2 Ensure that you properly supervise tasks that you have asked others to perform on your behalf, recognising that you remain accountable for any such work.
- 8.3 Ensure that anyone you ask to perform work on your behalf is appropriately qualified and authorised to perform it.
- 8.4 Ensure that clients' matters are supervised and regularly checked by those with sufficient competence and experience to assess the quality of the work and to ensure issues identified are addressed.
- 8.5 Adhere to effective management, oversight and reporting structures.
- 8.6 Comply with effective procedures to ensure compliance with your legal and regulatory obligations.

9 Protect client money and assets.

You must:

- 9.1 Identify, assess, manage and promptly address risks to money and assets entrusted to you by clients and others.
- 9.2 Effectively monitor the financial stability of your business or your role within it, so as to protect client money and assets from risks associated with the financial position of your business or the business of your employer.

QUARTERLY BUSINESS REVIEW

1. Executive Summary

- 1.1 Mission Statement
- 1.2 Objectives
- 1.3 Areas of Work (by percentage value) followed by short summary of reasons/mitigating factors re narrow or wide focus
- 1.4 Key Performance Indicators (Examples below – Substitute the following examples with actual KPI's and record monthly performance against actual KPI's at Annex 3)
 - Financial
 - Ratio of Chargeable to Non-Chargeable Time by Fee Earner
 - Billing per month versus their history, versus firm average
 - Fees paid in month
 - Fees due over 30 days
 - Lock Up (time taken from work done to receipt of payment)
 - Gross Profit Margin (Gross profit % = gross profit ÷ turnover x 100)
 - Break-even = fixed expenses ÷ gross margin
 - Net profit % = net profit ÷ turnover x 100
 - Return on assets = net profit ÷ net assets x 100
 - Overheads as a % of turnover = overheads ÷ turnover x 100
 - Borrowing Ratio (Gearing) = Borrowings ÷ Business Net Worth (1:1 ratio preferable)
 - File Management
 - Number of open files
 - Number of open files over 1 year
 - Number of open files last activity over 30 days
 - Marketing
 - Leads obtained from own activity
 - Total leads handled
 - Conversion rate versus their history versus firm's average
 - Leads from recommendation
 - Client Care
 - Complaints – Internal
 - Complaints – LeO
 - Claims
 - Service concerns for each staff member
 - Client testimonials/Positive Feedback Scores
 - HR
 - Staff Turnover
 - Staff Appraisals Completed
 - Staff Appraisal Ratings

2. Company Summary

- 2.1 Company Ownership
- 2.2 Company Locations

2.3 Company Staff and Key Responsibilities

3. Company Services and Market Analysis (Current)

3.1 Current Operational Infrastructure (Company Type and Services Subcontracted)

3.2 Service Description (by area of Law)

3.3 Summary of Competitors

3.4 Competitive Comparison
(Consider in terms of SWOT Analysis and also think about other external factors in opportunities and threats e.g. PESTLE* Analysis issues (Political, Economic, Sociological, Technological, Legal, Environmental)

Strengths (Internal)

Weaknesses (Internal)

Opportunities (External)

Threats (External)

4. Strategy and Implementation Summary (Way Forward)

4.1 Direction - Consolidation/Growth/Merger/Acquisition or Takeover/Exit?

4.2 Direction – Change in areas of Practice?

4.3 Marketing Strategy

Pricing Strategy

Promotion Strategy

4.4 Sales Forecast

4.5 Budget

4.6 Resources Required

ANNEX 1

REVIEW SUMMARY SHEET

YEAR

MONTH

Note: The Compliance Manager must be advised of any failure which is considered to be material and any such failure must be reported to IPS as soon as reasonably practicable.

Material Failures	Date Reported to IPS	Action taken/to be taken to remedy failure and prevent further failure	Date of Resolution (if Applicable)

Non-Material Failures	Information Source (e.g. file reviews, complaints data, financial records)	Date of Resolution (if Applicable)

ANNEX 2 – Risk Register

MONTHLY CHECKS

Year:

Outcome Area	Potential Risk Areas	Estimated impact on Business 1 to 10 (10 being highest)	Assessment of Capability 1 to 10 (10 being highest)	Assessment (potential examples quoted below) Show negative areas that require action in bold or underline	Reasons quoted	Likelihood of Event 1 to 10 (10 being highest)	Areas to Check
Client Care	<ul style="list-style-type: none"> - not treating clients fairly - failing to inform and update clients - acting in conflict situations - breach of confidentiality 			<ul style="list-style-type: none"> - only qualified fee earners used - client care training provided to most staff - no update in training on conflicts and confidentiality yet provided and some staff still not received client care training 			<ul style="list-style-type: none"> • Complaints data • File reviews (for 'service' issues) • Client feedback forms
Technical Capability	<ul style="list-style-type: none"> - lack of experienced/qualified staff - 'dabbling' in non-mainstream work areas 			<ul style="list-style-type: none"> - Nucleus of experienced partners - increase in staff turnover - inadequate training on mainstream work area 			<ul style="list-style-type: none"> • Claims data • CPD and training records • File reviews (for supervisory & technical issues)
Financial	<ul style="list-style-type: none"> - billing decreases 			<ul style="list-style-type: none"> - effective supervision 			<ul style="list-style-type: none"> • WIP checks

<p>Performance (including IPS Accounts Rules Compliance)</p>	<p>- external market changes</p>		<p>- billing and cost information processes followed - Billings down in Conveyancing Dep't - experienced cashier due to retire and no replacement yet found/trained</p>		<ul style="list-style-type: none"> • Billing targets check • Review costs, including. overheads • KPI checks
<p>Management and staff performance</p>	<p>- complaints from clients - reduction in monthly billings/increasing WIP levels - absences</p>		<p>- experienced staff but diminishing areas of work - increase in staff turnover - partners nearing retirement and no succession plan - no clear lines of responsibility for all areas including IT and management of secretarial staff</p>		<ul style="list-style-type: none"> • File reviews • WIP reports/last activity on files/billings by fee earner • Level of new instructions • Absentee levels • 121 discussions with staff • Note - Update IPS with any records changes

ANNEX 3 – Risk Register

QUARTERLY CHECKS

Year:

Outcome Area	Potential Areas	Risk	Estimated Impact on Business	Assessment of Capability	Assessment Reasons (potential examples quoted below)	Likelihood of Event	Areas to Check
Business Plan and/or Business & Compliance Review (update where necessary)	- Failing to review update = delayed or non-response to opportunities and threats		1 to 10 (10 being highest)	1 to 10 (10 being highest)	- Consistently positive feedback from clients - Fall in new instructions in Probate Department	1 to 10 (10 being highest)	<ul style="list-style-type: none"> Business and legal sector news/developments Marketing and advertising activity analysis Client feedback forms
Relations with Third Parties inc. fee sharing and outsourcing separate business arrangements	- breaches of conduct leading to professional sanction - Third parties acting against IPS principles - Failure to act in clients' best interests through failure to declare business relationships				- Legally permissible referral arrangements not reviewed or obtained for all introducers - Outsourcing Agreements obtained and reviewed		<ul style="list-style-type: none"> File reviews (e.g. no evidence of taking advantage of third parties) CPD and training records File reviews (Supervisory & Technical) Outsourcing Agreements Referral Agreements (ensure legally permissible) Separate business arrangements and statements made in publicity/client care re separate businesses
Security including: • Building Security • IT and Information • Business Continuity	- failure to ensure proper security = theft, breach of confidentiality - computer security and back-ups compromised = above and Data				- reception cover arranged at all times during office opening hours - regular weekly off-site back-ups of data - filing room constantly left		

		<p>unlocked (shared premises) - nobody has overall responsibility for IT security</p>		<p>Protection Act issues - no plans for business continuity = potentially catastrophic effects on the business</p>	<p>Regulatory Training/Updates</p> <ul style="list-style-type: none"> • Money Laundering • Bribery Act • Information Security • Data Protection • Equality & Diversity • Health and Safety • E-Commerce Directive • OFT Guidance • Inland Revenue and HM Customs Procedures • LSC Procedures • Financial Services Regulations • Any other general business & employment regulations (where applicable):
		<p>- ensured all staff have received training appropriate to exposure to each issue - Improved indexing system re wills and deeds storage - All staff not yet received money laundering training update</p>		<p>- potential fine and prison sentence for non-compliance with money laundering regulations - File closure and document destruction procedures not followed - Client valuables e.g. Wills not stored safely</p>	<p>Regulatory Training/Updates</p> <ul style="list-style-type: none"> • Money Laundering • Bribery Act • Information Security • Data Protection • Equality & Diversity • Health and Safety • E-Commerce Directive • OFT Guidance • Inland Revenue and HM Customs Procedures • LSC Procedures • Financial Services Regulations • Any other general business & employment regulations (where applicable):
					<p>File reviews</p> <ul style="list-style-type: none"> • CPD and training Records • Procedural updates received from regulators, government etc.

ANNEX 4 – Risk Register ANNUAL RESPONSIBILITIES PERIOD (e.g. 2014/2015):

ANNUAL RESPONSIBILITIES	TIMETABLE																								ACTIONED Tick and initial when each document obtained or receipt of report verified
	Where there is a 2 stage process put a dash against the month where the process starts (e.g. obtaining professional indemnity insurance quotes should start 3 months before the start of the new indemnity period), then put a cross where the process should be finalised												YEAR 2												
	YEAR 1												YEAR 2												
Further items can be added including other accounting/financial returns	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	
Practising Certificates																									
Accountants Report																									
Professional Indemnity Insurance																									
Other Insurances: List below																									
IPS Annual Return (Timetable to be advised by IPS)																									
Data Protection Act Registration																									

IPS CONSUMER FEEDBACK PROGRAMME AND SPECIALIST LAWYERS WEBSITE

Background

1. This document provides more information on methods IPS will use to support its consumer focused approach. This approach will include a consumer focused website to be constructed at www.specialistlawyers.org, and a programme which aims to contribute towards the development of a greater understanding of how consumers view the services they have obtained or attempted to obtain from legal service providers.

Consumer Feedback Programme

2. The Consumer Feedback Programme will consist of an online client feedback questionnaire for clients of the entities (legal practices) IPS regulates which will be held on a website managed by IPS at www.specialistlawyers.org. The website will also ask non-client consumers to provide their feedback on legal services, and will specifically ask for more information on any difficulties consumers may have had in trying to access legal services and why they may have chosen not to use a particular service.
3. IPS authorised entities will signpost clients to the feedback questionnaire. Such a questionnaire is in effect a client satisfaction questionnaire. While there are many different examples of such questionnaires currently in use by legal practices, this particular questionnaire will be held on the Specialist Lawyers website.
4. Each entity will have access to the feedback questionnaires completed by their clients. IPS will have access to all feedback questionnaires provided by clients of all IPS authorised entities that join the Consumer Feedback Programme. IPS will analyse the feedback such questionnaires provide to identify any trends relating to the quality of service experienced by clients of IPS authorised entities.
5. While it will not be mandatory for IPS authorised entities to join the Consumer Feedback Programme, those that do so will receive an expanded information entry on the Specialist Lawyers website. IPS will reserve the right to remove the information on an entity where the entity itself or any of its Managers are subject to IPS disciplinary measures.
6. IPS authorised entities that join the IPS Consumer Feedback Programme will be required to advise clients in the initial client care letter and closing letter to complete the online questionnaire by first putting in a specific reference number which will denote the entity, followed by their client reference number which will denote the specific client of the entity. The entity must also offer clients the option of completing a paper copy questionnaire as an alternative, as not all clients may be comfortable with completing the online version. The paper copy

questionnaire will contain the IPS address as the return address for the completed questionnaire. IPS will ensure that entities receive a copy of the paper version of each questionnaire submitted to IPS by the entity's own clients.

The client reference number will be the reference number firms already use when communicating with each respective client. The reference numbers will be important as the feedback questionnaires will contain no personal information. It will also be necessary to use a reference number system to reduce the risk of forms not being completed by the client themselves, such as fee earners at a firm seeking to create a misleading impression. IPS will test check a proportion of completed feedback forms by asking to see the file to which the form reference number relates when conducting risk review visits to its authorised entities.

Other Features of the Specialist Lawyers Website

7. The Consumer Feedback Programme will be aligned with the development of more general web content designed to assist the public in developing a better understanding of the various types of legal service.
8. The content of the Specialist Lawyers website will differ from that currently shown on the IPS website at http://www.cilex.org.uk/ips/ips_home.aspx, as the IPS website is focused on the regulatory activities of IPS and as such would be a less likely destination for consumers looking for information and providing feedback on legal services. IPS will also retain existing regulatory related information on its current site which will include a basic contact data on IPS authorised entities.
9. The main features of the Specialist Lawyers website www.specialistlawyers.org will be as follows:
Title: Specialist Lawyers – The guide to Legal Services in England and Wales
 - Consumer-focused content which aims to demystify the complexities of the legal sector in England and Wales using plain language
 - Highlights the different segments of the legal sector including Legal Executives, Solicitors and Barristers
 - Summarises the different types of legal service that can be provided and the basis and range of costs options for each service
 - Summarises the standards of service consumers should expect from legal service providers
 - Hosting site for the Consumer Feedback Programme giving general information on the programme including the online client feedback questionnaire
 - Content Management System where details of those entities regulated by IPS will be added, with those entities joining the Consumer Feedback Programme provided with an expanded information entry

ANALYSIS OF SELECTION OF REGULATORY REPORTS

INTRODUCTION

1. The LSB has commissioned a range of reports that provide useful information on the legal sector in England and Wales.
2. This paper summarises conclusions IPS has drawn from a number of the reports that have influenced its risk based and outcomes focused regulatory approach. The paper does not contain a summary of every report IPS has reviewed, as this would be impractical and would also lead to continued duplication regarding the steps IPS has taken and will be taking in the development of its risk based and outcomes focused regulatory approach.
3. Each analysis refers to specific information included in the respective report followed by information shown in italics summarising how IPS has, is, or proposes to, address the specific point(s) covered in the respective report.
4. An important factor which will limit the range of specific activities IPS will be able to take in the short term, particularly in terms of the data it will be able to contribute towards the understanding of the legal services sector, concerns the anticipated make-up of its community of regulated entities. Independent research conducted in October 2012 has indicated that such entities are expected to predominantly consist of existing CILEx member sole practitioners currently conducting unreserved legal activities and immigration work, and new CILEx member sole practitioners and law firms containing CILEx members in management positions seeking to exercise extended practice rights in conveyancing, probate and litigation work.
5. The research has also indicated that there is a limited appetite from other legal professionals to switch regulator.
6. In summary the IPS approach to risk based regulation will provide IPS with a framework for addressing both technical and non-technical based risks in a targeted outcomes focused and proportionate manner.
7. IPS has also placed its Statistics Function at the heart of its new regulatory structure. An important aspect of this function will be to ensure that any analyses of reports on the legal sector are combined with data collected by IPS as a result of its own regulatory activities in an effort to address some of the data gaps (where possible) the LSB has highlighted within the reports IPS has reviewed. This approach will help ensure IPS can make a contribution to addressing the data gaps on the legal services sector, in conjunction with any similar work undertaken by other regulators, which should lead to a wider understanding of the sector.

8. The following analysis is split into five sections:
- Section 1 provides a summary of how the paper entitled 'Risk Based Regulation' has influenced the IPS regulatory approach
 - Section 2 provides a summary of how the report entitled 'A framework to Monitor the Legal Sector' has influenced the design of the IPS Risk Framework
 - Section 3 provides an analysis of the Research note on the Legal Services Market conducted by the LSB
 - Section 4 reports against the specific outcomes shown in the Final Baseline Report on the Market Impacts of the Legal Services Act 2007
 - Section 5 summarises a number of reports that have influenced how IPS will focus on the consumer in its approach to regulation

ANALYSIS OF REPORTS

SECTION 1 - SUMMARY OF HOW THE PAPER ENTITLED 'RISK BASED REGULATION' HAS INFLUENCED THE IPS REGULATORY APPROACH

Subject of Report

9. The article entitled 'Risk Based Regulation' produced by Professor Julia Black of the London School of Economics and Political Science is the first of a series of articles included in a report entitled 'The Future of Legal Services – Emerging Thinking'. The articles in this report encompass the theme of change in the legal services market in England and Wales and the challenge to deliver effective and affordable legal services to consumers. The other articles included in this report refer to information on specific aspects of the legal sector and anticipated market developments. As these articles were produced before June 2010, any analysis of subjects they cover shown in this paper has been made using more recent sources of information.

Main factors which have influenced the IPS approach

10. The first article on risk based regulation has provided a template for the development of the IPS Risk Framework.
11. The section of the article headed "What are the key elements of risk based frameworks?" states: "There are good reasons to adopt a risk based framework. Regulators usually find that they have more to do, and more issues to respond to, than time or resources allow. In practice, they prioritise their attention on issues and firms which they think deserve the most attention.

These decisions are being made every day, regardless of whether the regulator has formally adopted a 'risk based' approach. The difference for 'risk based' regulators is that these decisions are made at the top of the organisation as a key issue of regulatory strategy, are systematic, and are transparent to all those within the organisation and to the firms that they regulate. Risk based frameworks can thus provide a clear, well-articulated set of priorities which the regulator can also use to explain and defend its strategies against criticisms of either over-intrusion or neglect".

12. *The above mentioned text has had particular influence on how IPS has approached the subject of governance, as IPS has developed a Governance Framework that enables it to deliver against its regulatory strategy. This strategy will promote the use of both qualitative and quantitative measures to enable proportionate risk based and outcomes focused regulatory decision making.*

13. The six core elements described in the paper are:

- Determining risk tolerance
- Common starting point: risks not rules
- Risk = probability x impact
- Assigning scores to firms / activities
- Linking resources to risks
- Responding to risks

14. *IPS has addressed each of the six core elements by:*

- *Determining risk tolerance: Risk tolerance levels will be set by the IPS Strategic Risk Committee using the IPS Basic Risk Assessment scoring system. This system encompasses individual scores that cover a series of risks under the headings of impact and probability as shown in the third of the above mentioned core elements. Scoring will be applied in practice with reference to the extent to which IPS outcomes have been achieved*
- *Common starting point: risks not rules: Risk rather than rules is the starting point to the IPS regulatory approach. The IPS Code of Conduct focuses on the outcomes IPS authorised entities are expected to achieve. These outcomes are aligned with the regulatory objectives, and are sufficiently broad so as not to prescribe how the outcomes should be achieved where such prescription is not necessary*
- *Risk = probability x impact: The IPS Risk Framework contains a Basic Risk Assessment which includes the impact measures of environment and size, and the probability factors of history, leverage, dependency and systems.*
- *Assigning scores to firms/activities: Scoring criteria for each of the above mentioned measures and individual ratings for each type of risk failure that legal sector regulators have encountered (as depicted in IPS*

Advanced Risk Assessment guidance) will be regularly reviewed and updated to factor in new and emerging risks

- *Linking resources to risks: The IPS Risk Framework provides the key rationale for the allocation of IPS resources*
- *Responding to risks: The Basic and Advanced Risk Assessment processes effectively act as guide for IPS staff on the regulatory response that should be considered. The type of response is first considered based on the score arrived at in the Basic Risk Assessment. This is combined with an assessment of the most significant risk failure shown in the Advanced Risk Assessment. Such risk failures have been mapped against the outcomes shown in the CILEx Code of Conduct. This ensures that IPS can respond to risks in a proportionate manner, as regulatory decisions will be based against risk scores and the degree to which outcomes have or have not been achieved. Proportionality will also be achieved due to the extensive experience IPS staff possess in regulating individuals and entities in the legal sector in England and Wales*

15. The article goes on to describe the three main risks of risk based regulation which are stated as 'Model Risk', 'Implementation Risk' and 'Political Risk' (leaving aside legal risk).
16. The article describes Model Risk in the following terms: "The first risk is that the risk based framework may not capture all existing risks or newly emerging risks. Risk based frameworks are meant to look forward, to risks that may occur. In practice, it is hard to move beyond 'point in time' assessments. Further, a key lesson of the financial crisis is that risk based frameworks also can tend to focus on the risks posed by the individual firm and not on systemic risks that may either affect the firm or which may be created by them. Models are rarely right first time, and many regulators find that they have to adapt their frameworks quite extensively over time".
17. "Further, although the terminology of risk is used throughout, in practice, regulators are operating in quite differing conditions of uncertainty. It is only really appropriate to talk in terms of 'risk' assessments where regulators are managing routine risks and where there are high numbers of incidents from which data on their probabilities of occurrence in different situations can be assessed. A good example is health and safety, where there are sufficient numbers of accidents, such as slips, trips and falls, to create patterns of incidents on which regulators can draw. However regulators can be operating in situations of uncertainty, however: there is no backlog of data from which probabilities can be drawn. Here risk assessment should more accurately be described as uncertainty analysis and risk management as uncertainty management. The conflation of risk and uncertainty both in the language of risk based regulation and the assessments can lead to unrealistic expectations of those frameworks by regulators, at least at board level, by politicians and others".

18. *IPS recognises that it will need to continue to adapt its risk framework over time to ensure that the framework remains fit for purpose and that it can be used to capture new and emerging risks. IPS will collect data from its regulated community, and will seek to identify trends as part of the analysis of the data collected which will include trends on risk events. IPS also recognises the importance of exploring the development of information sharing mechanisms with the LSB and other legal regulators to ensure that it and the LSB and other regulators have a shared understanding of the range of risks impacting or predicted to impact on the legal sector at any given time.*
19. The article describes Implementation Risk in the following terms “Introducing a risk based system often requires significant changes to the culture of the regulatory organisation, particularly if it has been used to a ‘compliance-led’ approach to monitoring and enforcement. It often also requires significant changes to systems and processes, particularly if it involves a great deal of subjective assessments as these need to be internally challenged and validated to ensure consistency. Many organisations that have adopted risk based frameworks have found that changing cultures can be a far bigger challenge than they anticipated”.
20. *IPS already has a background in outcomes focused regulation as a regulator of CILEx members as it introduced a principles based and outcomes focused Code subsequent to the enactment of the Legal Services Act. While the first IPS outcomes focused Code of Conduct was not drafted to provide for entity regulation, the new Code of Conduct does so. Furthermore, as a new entity regulator IPS will not have the same cultural issues to overcome as other regulators with a background in the compliance-led approach.*
21. The article describes Political Risk in the following terms: “Risk based regulation requires regulators to take risks. The up-side of risk based regulation is that it requires regulators to focus on what matters. But the flip side is that regulators have to identify which risks or levels of risk they are not prepared to devote the bulk of their resources to preventing”.
22. “In doing so they are bound to make an error. Regulators, and their political supervisors, have choice. Should they err on the side of assuming a firm does pose a risk when it does not (in statistical terms, a Type II error), or err on the side of assuming that a firm does not pose a risk when in fact it does (a Type I error). These choices have always been made implicitly within regulatory bodies. In risk-based systems, they are rendered explicit. The consequences are significant. If regulators err on the side of assuming firms are risky when they are safe, they run the risk of being accused of over-regulation, and of stifling business and innovation. If they err on the side of assuming firms are safe when they are risky, they run the risk of failure. That failure, as the financial crisis demonstrates, can be far reaching”.

23. "In practice, a regulator's risk tolerance is ultimately driven by the political context: what level of risk or failure the regulator is prepared to accept - or at least thinks it can withstand. The higher the political salience of a sector or risk, the less will be the regulators' tolerance of failure in that particular area. The political context is often fickle, however, and issues that were not salient suddenly become so, and vice versa. Regulators can find that it is hard to keep to their risk based frameworks in the face of changing political demands. Risk-based frameworks can provide a framework for the systematic assessment of political choices, but they can never remove them".
24. *IPS recognises that the rigid and prescriptive implementation of its risk framework has dangers, especially if the framework is not continually updated to factor in new and emerging risks. As IPS views its basic and advanced risk assessment processes purely as a guide to help it make risk based and outcomes focused decisions, this will also ensure that risk based decisions focus on the non-achievement of outcomes in terms of extent/severity. IPS will therefore prioritise taking appropriate and proportionate regulatory actions based on the context of any given situation in which IPS outcomes have not been achieved by its Authorised Bodies.*

SECTION 2 - SUMMARY OF HOW THE PAPER ENTITLED 'A FRAMEWORK TO MONITOR THE LEGAL SECTOR' HAS INFLUENCED THE DESIGN OF THE IPS RISK FRAMEWORK

Subject of Report

25. This report produced by Oxera for the LSB details the production of a framework which looks at the legal services market by framing type of client, type of problem and the legal service activity. These three characteristics form the basis of data collection, and market insight which front line regulators were encouraged to consider how the data they collect fits within this framework so that common regulatory risks can be identified and resolved effectively.
26. The analysis of this report focuses on headline aspects of the Oxera Framework which IPS has adopted to assist it in the way it will deliver risk based and outcomes focused regulation.

Main factors which have influenced the IPS approach

27. Section 1.1 of the report summarises the reasons why it is important that the LSB and front line regulators have a well-developed understanding of the legal services market by stating the following:

28. "Where it is difficult to predict the overall impact of regulatory reforms, the LSB needs first to obtain data about the way in which legal services suppliers currently provide legal services, in order to understand how the market changes over time. This is likely to involve significant activity by the LSB, and engagement with industry stakeholders, such as the industry associations, Approved Regulators, the Ministry of Justice (MoJ), as well as directly with legal services suppliers and consumers".
29. "This report presents a framework that can be applied to collect evidence in order to understand how the market is changing and to evaluate the impact of the Legal Services Act 2007 and the LSB. The framework segments the legal services sector into groups of markets that are likely to function in a similar way, identifies indicators of change, and provides practical guidance on how these can be measured using existing data sources and the cost of additional data collection. The framework also provides guidance on how to isolate, as far as possible, changes in the market driven by the LSB's actions from those occurring as a result of unrelated market trends".
30. *IPS has recognised that the collection of data on the legal services market is key to developing a greater understanding of the changes affecting the sector following the implementation of the Legal Services Act. These changes have and will continue to lead to opportunities and threats for existing and new entrants into the market. The changes have and will also likely encourage more existing businesses to consider evolving into new types of businesses (e.g. ABS) to improve their competitiveness. Consequently, IPS recognises that there will be both opportunities and threats to entities applying to be authorised by IPS. A greater understanding of these issues will ensure that IPS is aware of the likely risks that may occur as a consequence.*
31. *IPS and CILEx already collect data on CILEx members. IPS has also built in the collection of data of the nature described in the Oxera Report to its authorisation function and through on-going monitoring/supervision (e.g. through the annual return authorised entities must submit).*
32. *While IPS expects that its regulated community of entities will consist largely of new sole practitioners and businesses managed by CILEx members, (see below*), it also recognises the importance of understanding the commercial viability of such businesses in the ever evolving legal marketplace, and the effects this will have on its assessment of risk throughout the life of such businesses. For example, it will be important for IPS to understand that its regulated community has the ability to keep pace with competitive pressures through the delivery of high quality services which also deliver good value for money. IPS is introducing a Consumer Feedback Programme that will assist in measuring the consumer experience of purchasing legal services, both within its regulated community, and from those consumers that choose not to proceed*

with the purchase of legal services to enable IPS to determine the reasons for this decision.

33. **Note - On the basis that CILEx members secure extended practice rights, independent research conducted by IPS has shown that the IPS community of regulated entities will largely consist of new sole practitioners and businesses made up of CILEx members, and those existing businesses conducting non-reserved legal activities and/or immigration work. The research also showed little appetite amongst existing business in the legal sector to switch regulator.*
34. *IPS expects its anticipated community of regulated entities in the short term to be relatively small in comparison to larger regulators such as the Solicitors Regulation Authority that deal with all types of legal service entities and ABS. Therefore, effective information sharing mechanisms between all approved regulators and the LSB will be necessary to ensure that the LSB and all such regulators have a shared understanding of the market and the existing/new/emerging risks they should consider.*
35. IPS agrees with the LSB that the collection of data should not impose any additional burden on the regulated community unless the data required is absolutely necessary to facilitate the effective performance of its regulatory activities. Nevertheless, section 1.2 of the report covers what and how to measure and states that the framework must be comprehensive, practical and flexible.
36. *IPS data collection methodologies will fulfil the above mentioned guidelines as IPS recognises that it needs to understand its regulated community. It also needs to understand how its regulated community sits within the wider legal services sector in terms of what services are delivered, how they are delivered, who the services are delivered by (i.e. whether fee earners are sufficiently qualified to do so in the relevant defined authorised activity), and where the services are delivered including methods of delivery.*
37. Section 1.3 of the report provides background information which puts the report into context including in terms of what the framework is expected to achieve. This section also summarises market failures in terms of the effects that market inefficiencies can have on the consumer.
38. *IPS recognises the role regulators have to play in improving the level of information on legal services available to the consumer. IPS will be proactively addressing this issue through its Specialist Lawyers website and the Consumer Feedback Programme which will be hosted on the website.*
39. Section 2 of the report looks at market segmentation. The practical approach to segmenting the market looks to differentiating the market by type of consumer, type of consumer problem, and type of legal service activity.

40. *IPS will gather information from its regulated community, directly from clients of its regulated community, and from consumers of legal services generally, through its authorisation and supervision functions, Consumer Feedback Programme, and Specialist Lawyers website. The information gathered will allow IPS to analyse data in accordance with the Oxera framework, and in some cases add additional information such as determining the extent to which services meet the needs of vulnerable consumers. IPS will also collect data on each area of law conducted by regulated entities both at the authorisation stage and at the annual return stage by using categories shown in the Oxera report.*
41. Section 3 of the report identifies relevant characteristics and aspects (indicators) of the markets that should be monitored.
42. *IPS data collection mechanisms combined with effective data sharing mechanisms between the LSB and all approved regulators as mentioned previously, will assist in providing a broad picture of market indicators, particularly as the IPS regulated community is predicted to be relatively small and specialised, at least in the early stages of IPS entity regulation. The IPS consumer focused approach will also assist in obtaining an understanding of the market as obtaining data directly from consumers instead of solely relying on data obtained from its regulated community will provide a valuable insight on whether market outcomes mentioned in Section 3 of this report are being sufficiently addressed.*
43. Section 4 of the report focuses on data collection and interpretation. This section also provides guidance on data sources and forms, data collection tools and techniques, and data validation methods.
44. *IPS has already employed data collection methodologies shown in Section 4 of the report. It has done so, both in its existing role as the regulator of CILEx members, and in obtaining the views of CILEx members, other legal professionals and other stakeholders with interests in the legal service market, as part of the work undertaken in developing its application to be a legal services entity regulator.*
45. *IPS will also develop its Statistics function to ensure that data obtained from CILEx members, IPS authorised entities, clients of its authorised entities and the consumer through the Consumer Feedback Programme, is collected and analysed on an on-going basis and shared in accordance with any data sharing mechanisms agreed between approved regulators and the LSB. It will also refer to the tables at the end of the Oxera report where applicable when developing data analyses.*

46. *IPS will continue to interpret the data collected, and review/supplement its assessment on market risks by updating the guidance on its basic and advanced risk assessment processes. This will ensure that these processes continue to remain fit for purpose so that IPS can correctly identify and prioritise risks and the regulatory action to address such risks in each area of law it authorises its regulated community of entities to carry out.*
47. *Many forms of risk will naturally apply to all types of legal businesses. This is why IPS has decided to group risk failure types according to the achievement of IPS outcomes, rather than, for example, grouping the failures by area of law. This method also allows IPS to clearly differentiate the risks that have led to the failure of authorised entities to achieve IPS outcomes, which in turn supports the IPS risk based and outcomes focused regulatory approach.*

SECTION 3 - RESEARCH NOTE - THE LEGAL SERVICES MARKET - AUGUST 2011

Subject of Report

48. This report by the Legal Services Board (LSB) provides an overview of the legal services market in England and Wales describing key components of the market and identifying key trends likely to shape the way legal services are delivered.

Main factors which have influenced the IPS approach

49. The report has influenced the IPS regulatory approach in a number of ways.
50. Paragraphs 37 and 38 of this report state: "In general, the rationale of legal services regulation is to satisfy broader public policy objectives such as economic concerns of efficiency and equity as well as issues about quality, protection against conflicting interests, and fairness. Self regulation has tended to focus on standards and reputation partly as a response to problems concerning imperfect or 'asymmetrical' information".
51. "The problem of asymmetrical information arises in the transaction between a client and a supplier of legal services where there is a concern that the client, as a non-specialist does not, or cannot, have access to all relevant information. The client is at a disadvantage in knowing where to access specific legal services, and how to assess the quality of service provided. This problem is present in all professional markets but the imbalance of knowledge and power that exists between lawyers and consumers is especially acute. This imbalance is worsened when one considers that 'day to day' legal services are often purchased by consumers at a time of distress, or who are vulnerable, and such

purchases tend to occur infrequently. Infrequent purchases can impair the ability of consumers to assess the quality of services".

52. *IPS has recognised the imbalance of knowledge and power that exists between lawyers and the consumer. It will seek to address this imbalance by providing information to consumers via its Specialist Lawyers website on the range of legal services lawyers provide and the type of service consumers should expect together with broad information and examples on different cost options for different services.*
53. *The Consumer Feedback Programme hosted on the Specialist Lawyers website will further assist in addressing the aforementioned imbalance, as IPS regulated entities that engage constructively with IPS via this programme will be able to showcase how they meet the needs of their clients.*
54. This report goes on to summarise regulatory reform arrangements including how allowing ABS is one part of major regulatory reform which aims to put consumers at the centre of legal services by offering more choice and eliminating unnecessary restrictive barriers.
55. *The IPS applications for enhanced practice rights for CILEx members and entity regulation will, in the same way as ABS, have the effect of contributing to the removal of restrictive barriers by allowing lawyers who are specialists in their field the opportunity to practise independently in the same way as other lawyers. This will provide consumers with more choice.*
56. Paragraphs 46 and 47 state: "In line with better regulation principles, this 'outcomes focused regulation' (OFR) offers a systematic evidence-based means of targeting resources at issues or firms that are assessed as high risk. The LSB's view is that OFR encompasses not only the guidance in the code and handbook, but that a proper focus on risks to outcomes when supervising firms and individuals is central to the role of ARs".
57. "It is intended that outcomes focused regulation:
 - Supports and encourages the delivery of high quality legal services
 - Focuses on the important regulatory outcomes that must be achieved while giving firms more flexibility in how they achieve agreed outcomes
 - Deals with emerging risk(s) proactively"
58. *IPS has developed an outcomes focused regulatory regime which addresses each of the bullet points at paragraph 47 of the report mentioned above.*
59. The report goes on to explore legal market liberalisation in other jurisdictions around the world and then focuses on examining the legal services market in England and Wales, and provides a view on both the demand and supply sides of the legal services market.

60. *While the demand side of the market covers the broad range of consumers including corporate, third sector, and legal aid, independent research conducted by IPS in October 2012 has indicated that the IPS regulated community will be predominantly made up of practices most likely to provide services for private consumers in the areas of wills, probate and estate administration, conveyancing, immigration advice and services and litigation. Independent research conducted by IPS to gain an understanding of its potential regulated community beyond CILEx members has also indicated that there is less of an appetite for switching regulator. Therefore, IPS will expect to focus on how it can meet the requirements of a relatively small regulated community operating in specific segments of the market.*
61. Paragraph 116 of the report states: "In a *YouGov* survey commissioned by the LSB in 2009, 20% of respondents said that they had not sought advice even though it could have been beneficial. The most common reason by far was cost with 54% of respondents agreeing that legal advice was "too expensive". The next most popular answer was "because I didn't know enough about how the process works" (20%). Research into Litigants in Person conducted in 2005 found that the second most common reason given for acting in person during legal proceedings was an inability to afford representation. There was a strong consensus that few individuals would chose to be unrepresented. The main reason suggested for acting in person in both family and civil cases was the cost of legal representation, coupled with ineligibility for legal aid".
62. *The perception of cost of legal services which inhibits take up of such services, particularly amongst the group of people whose annual income falls between £15,000 and £24,000, is shown in chart 10 of the report. This demonstrates that there is a need for a consumer focused website that can provide more information on the level of service consumers should expect to receive from legal service providers, with examples of a range of service and cost options for specific legal problems. IPS will use its Specialist Lawyers website to address this issue. This will be supplemented by the IPS Consumer Feedback Programme which will provide IPS authorised entities with the opportunity to illustrate to consumers how they provide services that meet consumer expectations in terms of quality and cost. The website will also provide all consumers with the opportunity to provide feedback on legal services.*
63. Paragraph 180 of the report provides an introduction to the section of the report which covers the anticipated effects ABS are likely to have on the supply of legal services by stating that "The entry of market consolidators in the supply of legal services in England and Wales is probably one of the more important emerging trends in the market. The term 'market consolidator' can mean large retail firms (both within and outside the legal services industry) and also large corporate firms which use economies of scale and scope to offer low cost legal services, often 'bundled' with other related products such as financial services.

Market consolidators can also be active in acquiring smaller firms and increasing their investment portfolio". The report also goes on to examine the not for profit sector which is largely influenced by the availability of government funding.

64. *Market liberalisation and the introduction of ABS could see an expansion of service providers providing services in new and innovative ways that may gain market share at the expense of existing providers that fail to adapt by providing better levels of service and value for money that consumers will expect. While enhanced practice rights for CILEx members will see new CILEx members entering the market, IPS will be aware that the chances of success for such businesses could be lessened if the new entrants fail to provide a level of innovation and service which consumers will come to expect. Such expectations may be delivered by larger providers that invest in systems that standardise repeated processes which lead to a cheaper service at a predictable level of quality. Therefore, IPS would expect its regulated community to recognise the threat to market share such providers represent.*
65. *The IPS risk based approach to regulation will include a review of business plans of those bodies applying to IPS to be authorised. If business plans fail to provide information on issues such as how the business can obtain or maintain market share, or information on main competitors in the areas of law the entity is conducting or proposes to conduct, (which will likely include ABS), this will have an impact on the entity risk assessment conducted by IPS. Where such information identifies any training needs in the area of business management or accounts management IPS will assess whether a condition of authorisation should, for example, include a condition that the entity Compliance Manager undertakes such training.*
66. The report goes on to explore the factors that may influence the take up of ABS, and looks at how the approach regulators take could have an impact on the market as stated in paragraphs 212 and 214 of the report as follows: "The external regulatory environment such as the cost and burden of regulatory compliance, real or perceived, will affect take up rates of ABS. If the ABS regulatory regime is too costly for firms – whether through direct costs such as licensing fees or indirect costs such as time taken to comply with Las' rules – then take up of ABS may suffer as a result and firms may opt to remain traditional law firms. This poses a risk that lifting restrictions on ownership may not necessarily have any real impact on the level of competition and choice for consumers. A lot of this will come down to individual LAs and how they approach regulation of legal services".
67. "Internal factors such as the regulatory environment and implementation of outcome focused regulation (OFR) and emphasis on a risk-based approach to firms will impact on overall take up".

68. *This IPS application for entity regulation does not cover the regulation of ABS. It is also likely that the type of entities applying to be authorised by IPS will be CILEx members looking to start their own business or CILEx members looking to enter into partnerships with other CILEx members and/or other lawyers. In the latter case such businesses may include ABS, in which case they would apply to be licensed by a Licensing Authority for ABS. While greater competition will be delivered by CILEx members who decide to practise independently, such individuals will most likely (at least initially) practise outside the ABS model (i.e. as a practice delivering solely legal services). However, this will still have the effect of increasing competition, which will ultimately provide more choice for the consumer.*
69. *If the ABS licensing model operated by existing LA's is seen to be too expensive and onerous this could inhibit the take up of ABS. While it is outside the scope of this application for IPS to address this issue, the IPS outcomes focused and risk based approach to regulation will increase regulatory choice for legal businesses that decide not to adopt the ABS model.*
70. The report then goes on to examine the behaviour of law firms and the effects of the liberalisation of the legal market quoting the example of the Australia legal services market. While the report validates the view that the take up of ABS is expected to be low amongst smaller firms, there are areas in which smaller firms will be able to compete effectively with larger firms that may have converted to ABS as evidenced by the paragraph 235 of the report which states "As the intensity of competition increases, cost savings gained from outsourcing repetitive and routine legal work (e.g. document production, IT and finance work) are likely to become more of a driving force in law firms' changing strategies".
71. The report also examines consumer behaviour and the likely benefits to consumers such as increased competition that may result in lower costs and increased access to justice. It examines the benefits of narrowing the 'information deficit' of consumers by increasing consumer understanding and confidence which can change consumer behaviour when making purchases.
72. *Initial and on-going risk assessment is key to the IPS risk based and outcomes focused regulatory model. Outsourcing services, as mentioned in paragraph 235 of the report, is built in to the IPS risk assessment as entities. IPS will not look to inhibit business models that include outsourcing arrangements. However, IPS will expect its authorised entities to have proper systems and procedures in place to ensure that outsourcing arrangements do not inhibit the entity's ability to comply with IPS rules and the Code of Conduct.*
73. *IPS proposes to use its Specialist Lawyers website as a way of remedying the 'consumer information deficit' so that consumers are better informed of the choices that are available to them when purchasing legal services. The IPS*

authorised entities involved in the IPS Consumer Feedback Programme will benefit from this approach in the way that they evidence how they are learning from the consumer experience to provide standards of service at a cost consumers would expect. This will improve access to justice as consumers will be better informed on the cost of legal services. This will in turn likely result in more consumers deciding to access legal services who may not have done so previously on the basis that the costs of the services they propose to purchase may not be as high as they may have initially perceived.

74. The report then looks at the composition of the legal services market through its focus on Barrister and Solicitors. Paragraphs 254 and 255 state “In the traditional structure of the market competition exists but only at the level of these ‘brands’ (i.e. between solicitors and between barristers). This occurs under conditions of restriction in terms of entry and movement within the market, and means that competition may be lessened because it would exist only among firms who are similar in terms of business model. However, the lessening of some restrictions such as allowing qualified solicitor advocates to represent clients as an advocate in the higher courts in England and Wales has helped increase competition between Solicitors and Barristers for certain forms for litigation”.
75. “Restricted competition at this level may also reduce the incentive to innovate or offer different services in which to satisfy consumer preference. Overall, the performance of firms may not be as dynamic in a market where such restrictions still apply. If regulators change to allow more vertically integrated firms this may change the behaviour of all market participants”.
76. *IPS will seek to explain the structure of the market to consumers using its Specialist Lawyers website, and will ensure that its explanation of the market shows that legal services are delivered by other legal professionals as well as Barristers and Solicitors, such as Chartered Legal Executives. IPS will also not seek to inhibit the way its Authorised Bodies are structured, although it will make clear that it will not accept ABS (unless it subsequently becomes a licensing authority for ABS). Therefore, if IPS receives an application for authorisation from an entity whose management team is made up of different legal professionals, it will treat such an application in the same way as it will treat an application from CILEx members by applying its risk based regulatory model.*
77. Paragraph 256 of the report summarises the overall factors to monitor as:
 - Increased competitive market for legal services in England and Wales
 - Increased quality of services provided
 - Increase in choice of legal services
 - Greater innovation and alternative service delivery

- Greater scope for commoditisation of legal products and investment in achieving economies of scale and scope
- Greater capital investment
- More confident consumers with better information leading to them making better choices with lower transactions costs
- New approaches to the management of law firms
- Exit by small firms that are unable to adapt to competition and/or some market consolidation
- Falling unit cost of legal service products
- Increased product differentiation allowing greater scope to compete for niche providers and across specific product ranges

78. *The bullet points at paragraph 256 of the report shown above summarise some key effects of market liberalisation. As the collection of market data will be central to the information IPS will use in the on-going development and application of its regulatory strategy, IPS would expect to contribute data to the LSB that may influence the understanding of the actual impact of the stated key effects.*
79. The report then goes on to cover ABS and diversity and looks at how LA's will be collecting data to improve their understanding of diversity in their regulated communities by adopting an outcomes focused approach to regulation. It then goes on to look at consumers and diversity and examines the possible effects market liberalisation and ABS could have on diversity and the vulnerable consumer.
80. Paragraph 274 of the report highlights a particular negative effect market liberalisation and the introduction of ABS could have on the vulnerable consumer "The introduction of ABS and how well the needs of diverse consumers are met has received little attention to date. It is foreseeable that the possible exit of small inefficient firms from the market place may result in a negative impact on vulnerable clients whom they serve in terms of access to a preferred type of legal services provider. It is not clear from the evidence at hand that this impact may be attributed to the introduction of ABS".
81. Paragraph 283 goes on to say "Increasing diversity and social mobility at all levels of the legal services workforce is a priority area for the LSB. Progress at the more senior levels of the profession in particular has been disappointing and much of the focus has been on gender and ethnicity rather than social background or the other protected characteristics under the Equality Act 2010. The LSB considers that there is a distinct regulatory contribution to be made to achieving further progress. In July 2011 the LSB published its decision document setting out its expectation that approved regulators will:
- Gather a more comprehensive evidence base about the diversity characteristics of the legal workforce by ensuring that every individual is

given an opportunity to self-classify against a broader range of characteristics (including age, gender, disability, ethnic group, religion or belief, sexual orientation, socio-economic background and caring responsibilities)

- Ensure the transparency of diversity data, including published summary data about some characteristics (age, gender, disability, ethnic group socio-economic background and caring responsibilities) at the level of individual regulated entities (where approved regulators regulate entities)
- Collate diversity data to give an aggregate view of the diversity make-up of each branch of the profession
- Ensure the data identifies seniority where appropriate, so that it can be used to track progress in relation to retention and progression and
- Evaluate the effectiveness and impact of existing diversity initiatives"

82. *IPS will be happy to contribute to any assessment of data sharing mechanisms that can enable the LSB and other regulators to share generalised data to ensure that the wider understanding of the market is as comprehensive as it can be without imposing additional unnecessary burdens on the regulated community to supply data.*
83. *IPS recognises the contribution it must make as a regulator to the collection of diversity data specified in paragraph 283 of the report. The outcomes focused approach followed by IPS will encompass the collection of data that will provide a guide to how its regulated community services the needs of vulnerable clients. Such data will be collected from entities as part of the authorisation application process, annual return process, and combined with existing methods such as the data CILEx members already provide as part of their requirements of membership. Data will also be collected via the IPS Specialist Lawyers website and Consumer Feedback Programme. All these methods will allow IPS to make a valid contribution to the wider understanding of diversity in the legal service market.*
84. *IPS has defined client vulnerability and will seek to collect data from its regulated community on the extent of the vulnerable client base for each legal discipline in which an IPS authorised entity operates. The collection of such data will be limited to a basic assessment on whether the number of vulnerable clients for each legal discipline exceeds the number of clients assessed as not meeting the definition of client vulnerability, to minimise any increased burden as regards the collection of data. It will nevertheless help IPS promote the issue of client vulnerability and work with its regulated community in improving services for vulnerable clients if gaps are identified in the way such services are currently provided.*
85. *Paragraph 274 of the report illustrates a negative effect market liberalisation and the introduction of ABS may have on diversity and the vulnerable client with the likely exit from the market of small inefficient firms. IPS realises that*

*its regulated community will at least initially largely consist of CILEx sole practitioners and firms managed by CILEx members. Such firms require the tools to succeed. IPS will aim to support these firms through the education and guidance it can provide in business and compliance planning (e.g. by using its Business & Compliance Review Template shown at **annex 18**) and education in practice management and accounts management. Therefore, the risk based and supportive approach IPS will take as a regulator will ensure that possible negative impacts on diversity due to the exit of small inefficient firms from the marketplace is offset by the introduction of small firms in which IPS will foster a constructive and progressive relationship. This approach will also encompass ensuring that such firms have effective systems and procedures in place to reduce risk so that the entities IPS regulates are capable of competing more effectively in the marketplace.*

SECTION 4 - MARKET IMPACTS OF THE LEGAL SERVICES ACT 2007 - BASELINE REPORT (FINAL) 2012

Subject of Report

86. This report draws on the findings of the LSB's 2012 Legal Services Benchmarking consumer research, and the forthcoming 2012 Survey of Solicitors Firms, jointly commissioned with the Law Society and Ministry of Justice. Charts, tables and the associated narrative have also been updated to reflect data collected since the interim report published earlier in 2012.
87. This final baseline report is in effect a summary of market changes leading up to the implementation of the ABS regime. It sets out a specific set of indicators that the LSB and the regulatory community can use to track how the market changes over time, against the outcomes envisaged by the regulatory objectives in the LSA.

Main factors in the report and how they have influenced the IPS regulatory approach

88. IPS first reviewed the Interim Baseline Report produced by the LSB in April 2012. This final report includes the findings of new research and other sources of data to add new indicators across the range of outcomes also referred to in the interim report.
89. Paragraph 1.11 of this final report re-affirms the LSB's desire to avoid imposing any additional data collection burden on the sector, except in situations where transparency of information is a key part of achieving the regulatory objectives. An example of this is in the publication of diversity data to encourage greater diversity among the sector. That means relying on a combination of published

data and research to establish what the changes in the market have been, but with some gaps in knowledge remaining.

90. The conclusions the LSB makes against each of the following outcomes are followed by a summary shown in italics of the action IPS has, is currently, or proposes to take in future to contribute towards each respective desired outcome.

Stakeholder A. The profession

Outcome 1. Diversity of the legal profession shows greater similarity to the client population.

Conclusion

No change from the findings of the interim report in that available data shows entry levels matching the diversity of the population, but limitations on career progression for those from Black and Minority Ethnic (BME) groups. The LSB concludes that there has been limited progress towards this outcome, prior to the impact of the LSA.

IPS and CILEx maintain data on the diversity of the CILEx membership.

The IPS Consumer Feedback Programme will contain a feedback questionnaire which will include questions on diversity.

IPS will seek to collect diversity data on clients and the workforce of the entities it authorises. It will examine the most appropriate ways of obtaining such data which will include its entity authorisation application and annual return processes, and the Specialist Lawyers website where consumers will also be asked to provide diversity data when they provide feedback to the site.

Outcome 2. Quality of legal services is improved overall compared to 2009.

Conclusion

"In the absence of other measures of quality we rely on two proxy indicators – reported levels of satisfaction and levels of complaints. While consumers continue to report high levels of satisfaction with legal services provided, and records show falling levels of complaints for barristers, legal executives, and licensed conveyancers - suggesting improved levels of service quality – where we have richer data the picture is mixed. Considered as a whole this suggests the seriousness of service failures appears to be increasing. This points to falling levels of service quality. From a wider perspective, the rising complaint numbers against a background of falling demand over 2006/07-2008 also points

to falling levels of service quality. The impact of changes to complaints procedures or wider changes in consumer propensity to complain is unknown. A lower number of complaints received by Legal Ombudsman could be as a result of providers handling complaints better, but other research suggests consumers are not being told about the complaints procedures in a large proportion of incidences. How this changes over time will play a key part in understanding longer term trends in complaints. While recognising the limitations of these measures in the absence of any other measures it is difficult to conclude with any confidence that the quality of legal services improved over the 2008/09-2011/12 period”.

Very few complaints are received against CILEx members as a proportion of the complaints received against members of the legal profession as a whole, as evidenced in data collected by the Legal Ombudsman and IPS itself. CILEx members with extended practice rights who begin to practise independently may also be less likely to receive complaints on the quality of work they undertake. This is because IPS will only authorise them to practise in areas where they possess the required legal specialism and have demonstrated the required competence in that specialism.

IPS will not presume that the positive complaints record against CILEx members will continue. For example, IPS recognises that CILEx members practising independently are likely to require support in areas such as risk management, practice management and accounts management. IPS will provide such support in addition to guidance in areas such as complaints avoidance and handling through a combination of education and proactive and supportive supervision.

The IPS Consumer Feedback Programme will also be used to provide data that will contribute towards the measurement of quality of legal services.

IPS has and will continue to obtain data on complaints received against CILEx members, and from clients of CILEx Fellows via signposting to the IPS website. This programme will be extended to IPS authorised entities where IPS will be obtaining information on complaints against entities as part of its authorisation and on-going supervision processes (i.e. through the annual return). IPS will also collect data on consumer and client feedback on IPS authorised entities in future via the IPS Consumer Feedback Programme hosted on the Specialist Lawyers website.

Outcome 3. The profession, judiciary and public maintain confidence in the independence and reputation of the legal sector.

Conclusion

“For confidence in the independence of the legal sector, we have very limited

direct measures. Levels of trust in the profession, the judiciary, and the court system, show a mixed picture prior to the LSA reforms. These show trust in the judiciary falling slightly over time but remaining high. We conclude that available sources of information point to no major changes in the perception of independence of regulation at this stage”.

IPS will monitor feedback received from clients and consumers via the IPS Consumer Feedback Programme and Specialist Lawyers website to determine whether there are any indications of lack of trust. This issue can at least partially be addressed by asking consumers through the aforementioned Consumer Feedback Programme the reasons why they have decided not to purchase legal services to resolve any legal issue they may have.

Outcome 4. Education and training of the legal workforce supports the delivery of high quality legal services.

“The link between education and high quality legal services in the absence of measures of actual quality is difficult to establish at this point in time. In the absence of major changes, we await with great interest, the findings of the Legal Education and Training Review, and how the regulators take forward any recommendations”.

CILEx members currently receive a high standard of legal education and they choose to specialise in areas where they are expected to continue to maintain such standards. Such education will be enhanced through the further development of competency frameworks in areas such as practice management and accounts. This is also supplemented by other forms of generic learning in areas such as client care and complaints avoidance and handling.

IPS will also collect data on quality through its Consumer Feedback Programme which will provide information on whether further learning needs exist. Such learning needs could be ascertained, for example, where an Authorised Body's Manager may be failing to effectively deal with complaints due to the number of complaints being received by the Legal Ombudsman/IPS.

Stakeholder B. The consumer

Outcome 5. A higher proportion of the public are able to access justice.

“The 2012 Legal Services Benchmarking consumer survey found that only 44% of legal problems experienced by individual consumers resulted in people seeking advice, and only 20% of these problems resulted in a demand for legal services from a reserved legal service provider”.

"The 2012 Legal Services Benchmarking Survey shows that face-to-face is still a key component in the delivery of legal services – both at first contact and as the main method of communication. Justiciable areas tend to have a higher level of face-to-face contact than transactional, with only 23% of consumers reporting face-to-face as their main communication method for conveyancing problems compared to 62% of consumers with a relationship breakdown problem".

"Perceptions of legal services as costly persist. Combined with a reduction in consumer wealth driven by CPI inflation, these perceptions could be driving lower levels of service affordability. Further the 2012 Survey of Solicitors Firms found that 28% of firms reporting a decrease in turnover over the past three years had responded by increasing fee levels. Based on this we conclude that levels of access to legal services has at best remained constant over the 2006/07-2010/11 period".

IPS will analyse the information obtained from clients and consumers through its Consumer Feedback Programme to assess whether there are any trends to support the above mentioned views.

IPS will provide, through its Specialist Lawyers website, information on costs (including likely cost ranges) and service levels consumers should expect to receive from providers of legal services.

Complaints data received from CILEx members and IPS authorised entities will be analysed for trends on issues such as costs. IPS will also use its risk framework to identify any such issues, and provide appropriate support/guidance or take appropriate disciplinary measures dependent on the extent to which IPS authorised entities are failing to meet the outcomes expected of them.

Outcome 6. Consumers have confidence in the regulation of legal services.

"In terms of developing a better understanding of consumer confidence, there has been a significant amount of work in the past three years. We rely largely on the findings of the LSCP Consumer Impact Reports (CIR) in 2011 and 2012. For consumer confidence in regulation, a growing proportion of consumers are aware of Legal Ombudsman, but only half feel confident that their rights will be protected in the event of any issues. Without a historical context, we conclude that there is a significant amount of improvement required in relation to consumer confidence in regulation, and the regulators will need to take the lead over the coming years. Engagement with consumers is important if they are to have a level of confidence in regulation, but only the SRA has undertaken any consumer research in 2012".

Through the collection of data directly from consumers and clients of IPS authorised entities IPS will be able to contribute towards the data collected on consumer confidence in the regulation of legal services.

IPS will ensure that confidence in it as an outcomes focused regulator is underpinned by the proportionate application of its risk framework.

IPS will ensure that its authorised entities have appropriate professional indemnity insurance. IPS will also make provision to ensure that it has adequate compensation arrangements in place.

Outcome 7. Consumers have confidence in the legal profession.

"For consumer confidence in the trustworthiness of the legal sector we recognise that this is linked to wider public confidence in the legal sector, which we believe has remained largely constant".

Through continuing to employ and implementing further measures to collect data directly from consumers and clients as previously explained, IPS will seek to measure consumer confidence in the profession through the analysis of data collected.

Outcome 8. Consumers are confident and empowered in their dealings with legal services.

"Confidence in dealing with legal services is believed to be partly driven by frequency of use of legal services, with large corporate consumers being highly empowered and not subject to the same information asymmetries as individual consumers. Generally, individual private consumers of legal services appear to show low levels of empowerment, and there is no evidence that this has improved over the 2006/07-2011/12 period".

IPS will address the issue of low levels of empowerment amongst private consumers through promotion of its Specialist Lawyers website and Consumer Feedback Programme. The use of these methods of information dissemination and collection will allow IPS to measure the correlation between the service standards consumers expect to receive against what they actually receive if they have used a legal services provider.

Stakeholder C. The public

Outcome 9. Wide confidence in the law and the legal profession.

"The public's confidence in the law and standards of the sector is linked to both consumers' and the judiciary's views on legal service providers. It is our view

that the public's confidence in the sector is enhanced by growing awareness of consumer complaints mechanisms. This is potentially constrained by legal service providers not making consumers aware of complaints procedures, though it remains too early to assess this. The concern is that confidence in ethics is undermined by approved regulators who do not separate their representative functions from their regulatory functions [in accordance with the LSB's Internal Governance Rules (IGRs)] as highlighted by the LSCP. We conclude that confidence in the law and ethics of the profession seems to have remained unchanged over the 2008/09-2011/12 period".

IPS is the independent regulatory body of CILEx and has a service level agreement in place which sets out the nature of the independent and co-operative relationship with CILEx.

Both IPS and CILEx have their own mechanisms for dealing with complaints made against them.

IPS and CILEx will be able to monitor whether any allegations of a lack of independence were ever received through the aforementioned complaints mechanisms

Outcome 10. An efficient legal system delivering quality legal services at a reasonable cost.

"In terms of the efficiency of the legal system, stakeholder feedback on the interim report challenged the efficacy of the proposed indicators, but did not propose any alternatives. Therefore we continue to utilise these proxy indicators based on publicly available information. One indicator of the perception of efficiency is the international demand for legal services provided by organisations based in the UK. The 2005/06-2008/09 period is characterised by growing levels of legal services exports suggesting increased international demand for UK legal services. We use this measure in the absence of quality and price information. Juxtaposed with recent data from Her Majesty's Courts and Tribunal Service (HMCTS) showing a drop in length of court cases, this suggests to us that the 2006/07-2010/11 period is characterised by improvements in efficiency, but increases in prices".

The IPS risk framework combined with its rules and outcomes focused regulatory approach does not seek to prescribe how legal services should be delivered. This approach will encourage new and flexible ways in which legal services can be delivered and entities that deliver such services are more likely to prosper where they can provide the kind of service innovation consumers value.

IPS will ensure that those entities that engage constructively with it via the Consumer Feedback Programme will have the opportunity to highlight such

innovations in an expanded entry for their business on the Specialist Lawyers website.

Outcome 11. Wide confidence in the standards and ethics of the legal profession

“With regard to ethics of the legal profession, in the absence of any data we have no evidence of any change in the level of ethical concerns over the 2006/07-2011/12 period. As the framework for measuring ethics in the legal profession, commissioned by the LSB and developed by Professor Moorhead, is taken forward by the regulatory community, future evaluations will be able to use these indicators to undertake a proper evaluation on any change in ethics. This remains a complete unknown for the sector as a whole”.

IPS will be able to extrapolate data on standards and ethics as a consequence of the level of data it will collect on its authorised entities.

Stakeholder D. The market

Outcome 12. The market for legal services is more competitive.

“Competition in markets is challenging to measure. What we see in the legal services market is a large growth in the supply of authorised persons as a whole, and relatively small changes in business structures in the 2006/07-2010/11 run up to ABS implementation. This is coupled with the few available price measures – relating mainly to business-to-business legal services – growing slightly faster than inflation. Indicators – largely relating to private consumers – show falling levels of activity that might translate into demand for legal services. Early findings from the 2012 Survey of Solicitors Firms show that turnover over the last three years had remained the same for 27% of respondents, increased for 42% and decreased for 32%. There is no published information for other authorised persons”.

Market conditions are such that delivering value for money and improving levels of service to the consumer are likely to be a necessity for those entities that wish to prosper in the legal services sector. The IPS approach to regulation will focus on the extent to which consumer outcomes in general have been or are likely to be achieved when making risk based regulatory decisions.

IPS will monitor how its authorised entities are delivering services in a number of ways including through desk based risk reviews, visit based risk reviews, and through analysis of other data received on authorised entities and its managers via day to day relationship management and intelligence functions. The application of the IPS risk framework will also ensure that regulatory decisions

are in proportion to the extent to which outcomes have been or are likely to be delivered.

Outcome 13. More consumers are able to get legal services at an affordable cost.

"As noted above perceptions of unaffordability remain, but a simple measure shows the proportion of private consumers considering the services they received were value for money increasing from 46% to 58% between 2009 and 2012".

There is a desire amongst CILEx members to practise independently once they have the practice rights that enable them to do so. This will increase competition, but a corresponding increase in fee levels may be less likely to materialise as new smaller businesses will often look to compete on price against larger established competitors. As studies such as the 2012 Survey of Solicitors Firms conducted by the Law Society show, repeat clients are the main source of work for solicitors firms. Therefore, in order to benefit from this major source of work, new business run by CILEx members will be more likely to use competitive pricing to gain market share. Such businesses are also likely to have lower overheads than larger businesses which would provide them with a greater opportunity to compete on price should they choose to do so. It is also less likely that clients would return to the same legal service provider if they were not persuaded that the level of service was at least as attractive in terms of quality and cost as the service they experienced previously.

Outcome 14. There is a greater plurality of, and innovation in, legal services offered.

"Evidence of out-sourcing or in-sourcing both overseas and to UK regions and nations demonstrates increasing competitive pressures in some areas of the market. Benchmarking research shows 87% of solicitor firms outsourced one or more activities. The largest areas were IT support (44%), accounts and finance (35%). However, only 13% made use of Legal Process Outsourcing (LPO)".

"The majority of the market (by number of firms) serving individual consumers are under pressure from exogenous factors (such as government spending cuts impacting on client wealth), but there is limited evidence of an active competitive response. For example early findings from the 2012 Survey of Solicitor Firms report that 28% of firms experiencing a decrease in turnover over the past three years had responded by increasing fee levels".

A major effect of extending practice rights for CILEx members will be increased competition as more CILEx members take the opportunity to practise independently. The formation of such new businesses may provide service and cost benefits to the consumer as such businesses would otherwise be unlikely

to survive in a competitive market. (See also the text in italics under outcome 13 above).

The IPS Risk Framework will be used to assess how IPS Applicant Bodies/Authorised Bodies propose to deliver, or are delivering legal services including in the area of outsourcing.

Stakeholder E. The investor

Outcome 15. A legal market which is attractive to all sources of finance including external investors.

Outcome 16. Proportionate regulation allowing an in-flow of capital.

Outcome 17. Risk based supervision of legal practitioners.

The following paragraphs contain a summary of Outcomes 15 – 17 shown in the report.

“For the investor, it remains too early to tell what the impacts of the LSA have been. In the run up to the introduction of ABS, business finance has been largely limited to bank or partner finance. In the 2012 Survey of Solicitors Firms, 21% of respondents reported problems concerning finance (16% in the case of availability of finance and 10% in the case of obtaining investment)”.

“In the run up to ABS implementation in 2011, investor organisations had been having discussions with law firms, according to trade media, and at least one guide on how to float a law firm has been published by an accountancy firm. As of June 2012 the SRA had received 74 applications and granted five ABS licences. At the end of August 2012 there were 32 organisations listed on the licensed bodies register, through three of these licences relate to one organisation. The CLC regulates seven ABS firms providing probate and conveyancing reserved legal activities. Among these firms there is a range of new investment, including private equity firms, stock market floatation, foreign stock market ownership, and expansion of consumer and retail brands. The SRA report that the personal injury market remains a particularly popular area for investment”.

“These are initial figures and only time will tell if it is sustainable rather than just a demonstration of initial enthusiasm”.

Wider analyses of the legal sector will provide information in respect of ABS that will provide useful information on market developments. However, IPS will not be collecting such data through its authorisation and supervision processes

as these processes relate to the authorisation of legal entities and not the licensing of ABS.

Other key paragraphs of the LSB report

Paragraph 2.8 states:

"It is worth reiterating that much of our approach here is determined by the considerable lack of data in this sector. While much feedback considered better ways of analysing the market without the data necessary to make these approaches viable, or a significantly increased amount of research, these ideas are aspirational in nature and not practical in application. Not one of the regulated community has reliable publicly available time series information on the price of legal services, the clients groups served by those they regulate, or the quality of legal services provided, to highlight a few examples".

Paragraph 7 of this report highlights the level of importance IPS will attach to the collection and dissemination of data through its statistics function. IPS will work with the LSB and other regulators in ensuring that the data it collects on its regulated community addresses data gaps and contributes to the development of a wider knowledge base on the market for legal services in England and Wales.

IPS will use its Specialist Lawyers website to provide the consumer with more information on the price of legal services, the clients groups served by IPS regulated entities, and more information on those entities that have engaged with IPS through better evidencing the quality of service they can provide as a result of taking part in the IPS Consumer Feedback Programme.

SECTION 5 –REPORTS THAT HAVE INFLUENCED HOW IPS WILL FOCUS ON THE CONSUMER IN ITS APPROACH TO REGULATION

COMPARISON WEBSITES – LEGAL SERVICES COMSUMER PANEL – FEBRUARY 2012

Subject of Report

91. This report examines comparison websites as a form of "choice tool" for helping consumers to purchase legal services. The second half of the report considers the standards which should underpin comparison websites.

Main factors which have influenced the IPS approach to regulation

92. The statements made at paragraphs 2.3 and 2.4 of this report summarise the issues that have influenced IPS to develop a greater focus on the consumer in its approach to regulation:

93. "This report examines the role of comparison websites as a 'choice tool' to empower consumers. The Department for Business, Innovation and Skills (BIS) wishes active consumers to drive competition in order to power economic growth. It considers that online tools such as consumer feedback and comparison sites can help consumers to make decisions that lead to better outcomes for them, whilst also putting pressure on providers to improve their product and service offerings and efficiency".
94. "There is debate about the extent to which comparison websites benefit consumers and would be a desirable feature in the legal services market. The Panel sees the potential benefits in terms of increasing competition, enhancing transparency and informing and educating consumers, but we also acknowledge risks in relation to providers gaming the sites and loss of privacy. Comparison sites also challenge providers' traditional business models whilst inherent features of legal services mean they are not a straightforward fit".

How the report has influenced the IPS regulatory approach

95. *IPS has considered the benefits and drawbacks of comparison websites. It has concluded that its Specialist Lawyers website and Consumer Feedback Programme is the best way IPS can enhance transparency and educate and inform consumers without incurring the attendant risks mentioned above.*
96. *In summary the Specialist Lawyers website will:*
- *include consumer focused content which aims to demystify the complexities of the legal sector in England and Wales using plain language*
 - *highlight the different segments of the legal sector including Legal Executives, Solicitors and Barristers*
 - *summarise the different types of legal service that can be provided and the basis and range of costs options for each service*
 - *summarise the standards of service consumers should expect from legal service providers*
 - *host the IPS Consumer Feedback Programme*
97. *The IPS solution to enhancing transparency and educating and informing consumers will not have all the attributes of a comparison website. However, IPS will nevertheless seek to follow as far as practicable the set of standards the Legal Services Consumer Panel considers should underpin such websites when constructing its Specialist Lawyers website by:*
- *ensuring that the site meets standard website accessibility guidelines*
 - *making available an offline contact point*
 - *providing clear and simple information to help consumers understand legal services offered*
 - *making information clear and easy to understand throughout the website explaining any technical terms*

- *ensuring that the website remains under the control of IPS and will therefore be independent of legal services providers*
- *ensuring that the website includes easily accessible, clear information, and that it shows that the site has been produced and funded by IPS. It will also confirm that any statements made by those legal service providers featured on the site that have engaged with IPS via its Consumer Feedback Programme have been made by the respective provider and not by IPS*
- *not allowing any commercial influence on the presentation of information. IPS will only allow each featured legal services provider to provide information on the services that provider offers, as mentioned above. It will also ensure that any provider found to have flouted its policy on the presentation of factual information by presenting misleading or false information will face appropriate regulatory action*
- *including contact details for all IPS regulated entities. The site will allow expanded entries for those providers that engage constructively with IPS through its Consumer Feedback Programme. The site will also make this clear to consumers*
- *ensuring that consumers are educated on price considerations, and are advised to report any issues regarding a lack of transparency concerning the price of legal services they have or are considering purchasing. Consumers will also be educated on price information that they should expect to receive, including that the price quoted should reflect the total cost of the work including all mandatory fees and charges. They will also be advised to ensure that providers are clear on excluded costs and the basis for charging, e.g. a fixed fee or hourly rate*
- *ensuring that information is kept up-to-date and regularly reviewed for accuracy*
- *confirming that marketing statements made in respect of any providers shown on the site will not be made by IPS. Any statements made by those legal service providers that have engaged with the IPS Consumer Feedback Programme must be factually correct, up-to-date and avoid misleading or exaggerated claims. Providers will be reminded by IPS of the consequences of any failure to comply in this respect, which will include deletion of content on the site relating to the offending provider. IPS will also be likely undertake further regulatory action against such providers*
- *ensuring that the site has a privacy policy*
- *ensuring that personal information is collected only where necessary and that it remains confidential within IPS*
- *ensuring that personal information is not passed to third parties*
- *ensuring that consumers do not receive marketing communications, (therefore an opt out will not be necessary in this respect)*
- *providing a link to the IPS Complaints Procedure and information on complaints handling standards legal services providers must meet*

ANALYSIS OF THE REPORT ENTITLED "THE LEGAL NEEDS OF CONSUMER GROUPS"
- APRIL 2011

Subject of Report

98. This report produced by the LSB primarily addresses the regulatory objectives of improving access to justice and increasing the public understanding of the citizen's legal rights and duties.

Main factors which have influenced the IPS approach

99. Paragraph 50 of this report states:
100. "Future schemes to improve access to justice may include an awareness raising campaign targeting at a disadvantage groups. Service providers, organisations and agencies should focus upon training on an on-going basis that addresses the needs of at a disadvantage groups, focusing on the need to be sensitive to socio-demographic status; identifying how support can be tailored to the individual. The impact of such schemes would be of interest to the Legal Services Board".

How the report has influenced the IPS regulatory approach

101. *IPS has begun to or will begin to address issues this report has raised in the following ways:*
- *promoting the IPS definition of vulnerability with its regulated community to ensure that the regulated community provides data that can assist IPS to understand in broad terms whether entities have met or need to do more to meet the needs of vulnerable clients and consumers*
 - *development of a website that aims to demystify the legal services sector by explaining in simple terms the services consumers should expect to receive when purchasing legal services*
 - *collecting feedback direct from clients and consumers on how their legal needs have been or have not been met, e.g. via the Consumer Feedback Programme and Specialist Lawyers website*

ANALYSIS OF THE REPORT ENTITLED "DEVELOPING MEASURES OF CONSUMER OUTCOMES FOR LEGAL SERVICES" – MARCH 2011

Subject of Report

102. The LSB commissioned Opinion Leader to produce a report completed in March 2011 which sets out to understand what consumers want protected when they seek legal advice. The report primarily addresses the regulatory objectives of protecting and promoting the public interest and protecting and promoting the interests of consumers.

103. The report focuses on seven outcomes consumers expect consisting of: transparency, initial communication, on-going communication, professionalism and integrity, timeliness, alignment with consumers' best interests and complaints.

Main factors which have influenced the IPS approach to regulation

104. IPS considers a key statement can be found in the introduction:
105. "This report provides a valuable insight into consumers perceptions of what they believe the legal profession should deliver. For approved regulators the outcomes provide a useful tool to support the development of their regulations. For us (the LSB), the challenge is to hold these consumer outcomes up as equal in importance alongside the broader public and professional interests, to ensure that we promote proportionate and effective regulation."

How the report has influenced the IPS regulatory approach

106. *IPS has begun to or will begin to address the issues this report has raised in the following ways:*
- *the seven consumer outcomes have provided the basis for the development of the new outcomes focused CILEx Code of Conduct*
 - *IPS will regulate in a proportionate manner by assessing the extent to which these outcomes have/have not been achieved by the entities within its regulated community through desk based and visit based risk assessment processes*
 - *IPS will promote the achievement of these consumer outcomes via its consumer focused Specialist Lawyers website and through on-going guidance and support it will provide to its regulated community*
 - *IPS has and will continue to provide CILEx members and its wider regulated community with advice on action necessary to comply with Legal Ombudsman guidance on first tier complaints handling*

UNDERSTANDING CONSUMER NEEDS FROM LEGAL INFORMATION SOURCES – JUNE 2012

Subject of Report

107. The LSB commissioned Vanilla Research to produce a report, completed in June 2012, in support of furthering consumers' access to justice.
108. The LSB commissioned this research as it wished to explore with consumers whether and how they would like the Internet to provide them with greater support to help their engagement with legal services. In particular the LSB was keen to understand whether the existing evidence base could be put to better use in helping consumers identify the legal problems they face. The report

provides a useful commentary on the potential benefits of the Internet to support consumers.

Main factors which have influenced the IPS approach to regulation

109. IPS considers the key statement is on page 5 of this report:
110. "Consumers jump at the thought of a website for legal information The concept presented of a website that could help provide consumers with legal information, support and advice was warmly received. They felt it could offer:
- a reliable, independent and trustworthy one-stop shop for legal information
 - a basic level of information, on which consumers could make more confident
 - decisions and have more informed conversations (with solicitors for instance)
 - information about more sensitive issues such as family law and divorce, which consumers could access without needing to discuss them in person
 - help with the perennial problem of how to choose a good solicitor
 - the chance to save money, by not approaching solicitors unnecessarily"

How the report has influenced the IPS regulatory approach

111. *IPS will develop a website for the legal services sector entitled "Specialist Lawyers – The guide to legal services in England and Wales". Further information on the website can be found within the previously mentioned analysis of Comparison Websites.*

ANALYSIS OF THE REPORT ENTITLED "QUALITY IN OTHER REGULATED PROFESSIONS" - LSB - NOVEMBER 2011

Subject of Report

112. Following the Legal Services Consumer Panel's report on consumers' perceptions and understanding of quality, the Legal Services Board (LSB) undertook a literature review of quality in other professions. This was essentially a lessons-learned exercise, assessing quality assurance methods and measures of quality utilised by regulators and professional bodies. The LSB also aimed to identify current levels of quality, where possible, to consider the impact these quality assurance methods were having.
113. The LSB decided to look at the following professions: healthcare; architects; accountants and general financial services.

Main factors which have influenced the IPS approach to regulation

114. The report provides an interesting comparison of the different approaches to quality assurance. However, it also concludes that there are a number of different regulatory approaches adopted where some regulators rely heavily on quantitative data to assess quality, for example the FSA who look at financial and other returns of firms; while other regulators rely more on qualitative data.
115. The report concludes by stating that it is difficult to say which approach is the best, as some professions' work is easier to assess. However, most regulators use a combination of both qualitative and quantitative approaches.

How the report has influenced the IPS regulatory approach

116. *IPS has begun to or will begin to address the issues this report has raised in the following ways:*
- *through the development of a risk based and outcomes focused risk framework to include both quantitative and qualitative measures*
 - *by ensuring that its approach to risk based regulation incorporates a range of incentives and sanctions which aim to encourage compliant outcomes focused behaviour and deter behaviour which is contrary to the achievement of the required outcomes*
 - *by reviewing good practice featured in the report considering how specific elements of the different regulatory approaches can be applied to the IPS IPS risk based and outcomes focused approach*

LEGAL SERVICES BENCHMARKING REPORT – JUNE 2012

Subject of Report

117. This report sets out the results of research conducted to explore how individual consumers identified and responded to their legal problems.

Main factors which have influenced the IPS approach to regulation

118. The report highlights a range of areas illustrating where the public understanding of legal services may be at its lowest.
119. The report also provides additional information concerning the experiences consumers faced in the areas of probate, conveyancing and divorce which are aligned with the practice rights CILEx members will be seeking.

How the report has influenced the IPS regulatory approach

120. *IPS has begun to or will begin to address issues this report has raised in the following ways:*

- *The report will be assessed during the development of the Specialist Lawyers website to understand specific areas of legal services which appear to indicate a lower level of public understanding. IPS will seek to promote the website with consumers and will also seek to improve levels of understanding of legal services in the identified areas by providing more information that consumers of legal services want before they make purchasing decisions*
- *Information obtained from the Consumer Feedback Programme will contribute to the data collected on the consumer understanding of legal services*

THE USE OF PROBATE AND ESTATE ADMINISTRATION SERVICES – JANUARY 2012

Subject of Report

121. The report looks at why some people use paid for probate and estate management services and others do not. It highlights the circumstances in which services are used, who is most likely to use them and the experience that they have. It also discusses the experience of 'do it yourself' probate administrators and the challenges they face in dealing with the estate.

Main factors which have influenced the IPS approach to regulation

122. Staff employed by IPS possess a well-developed understanding of the risks faced by consumers of probate and estate management services through the background they have in the regulation of individuals and entities providing such services.
123. The major risks in probate and estate management services are often more generic in nature as they apply to any type of legal business that deals with client funds. The risks in probate and estate management along with conveyancing services present the highest risk in this respect in view of the value of the assets administered. However, the information this report provides will assist IPS in developing the consumer understanding of probate services, which, aligned with the identification of the aforementioned generic risks, will be factored into the IPS risk framework in a number of ways as summarised in the following paragraphs.

How the report has influenced the IPS regulatory approach

124. *IPS has begun to or will begin to address the issues this report has raised in the following ways:*
- *The findings of the report will be factored into how information on probate and estate administration services is presented on the Specialist Lawyers website. This will ensure that consumers better understand the options open to them on how such services can be delivered, the*

potential cost of such services, and the levels of service they should expect to receive

- *The Consumer Feedback Programme will collect data on the consumer and client experience. It will be possible to segment such data by area of law. Therefore IPS will be able to collect data that will assist in informing if the issues this report has identified have been addressed and to what extent*



Market Analysis Report

ILEX Professional Standards

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1 | Summary

IPS commissioned CFE at the end of 2011 to help research and develop a Risk Framework to aid in the design of a regulatory capability that could support its application for extended Practice Rights for CILEx members. This is the Research Report from that work.

Context

- > ILEX Professional Standards (IPS) is the professional regulatory body for the Chartered Institute of Legal Executives (CILEx). IPS has an excellent reputation for its role in education, qualification and professional supervision for Chartered Legal Executives and CILEx members.
- > Changes in the legal services sector – driven primarily by wider economic, social and technological factors, with the addition of regulatory change brought by the Legal Services Act 2007 – open the market but also put the pressure on for CILEx members to gain greater opportunity through the extension of Practice Rights.
- > IPS submitted an application to the Legal Services Board in 2011 for the extension of Practice Rights for Litigation, Probate and Conveyancing, but it was advised to make further developments before it would be successful. In particular, the Legal Services Board advised that, in keeping with the 2007 Act, IPS must develop its capability to regulate legal services entities rather than individual professionals.
- > Members agree that IPS must be able to serve as an entity regulator – to supervise them in independent practice – if the extended Practice Rights are to be fully meaningful. CILEx members already work at senior level in Litigation, Probate and Conveyancing roles – but they remain dependent upon other professionals to be the authorised person and supervise their work. Until they can practice independently, they are always in a weaker negotiating position.

Key messages: demand for regulation

- > CILEx members want to see IPS develop as a robust regulator, and although they do care about the financial cost and regulatory burden – this is secondary to IPS not being seen as a poor quality alternative. CILEx members impressed us with their attitude to regulation – that it should be decisive and gather the information necessary, but on the basis that it avoids becoming overly cumbersome and intrusive.
- > CILEx members are not likely to move in significant numbers into independent practice. First, their background and personal circumstances make them less likely to consider setting up alone. Second, IPS's supervision needs to be credible before many will consider starting up. Third, they consider that there are only limited market opportunities at present. But all members want the option, as it supports the Practice Rights.
- > IPS's good reputation and the wish to see greater competition creates some goodwill in moving to become an entity regulator, including with the Legal Services Board. But its very limited involvement in entity regulation in the past means that it has a lot to demonstrate to be successful and credible. Legal profession politics also means that it has to prove itself to be the equal of other Approved Regulators.

Key messages: risk

- > The most cited source of risk is in the handling of client money, because the magnitude of its impact. Following this, concerns with quality of advice were also raised – individually typically less important, but far more frequent and so still a source of real concern.
- > Size and complexity were seen as important variables, but so too is the history of the firm and its key personnel. This track record element was seen as especially important, especially for a new firm that IPS is authorising for its supervision.
- > Reflecting new business models and increasingly varied market demand, questions of leverage and vulnerability were also raised. CILEx members want to be sure that firms match their business with the necessary professional staffing capability and are wary of claims to be able to do the same job through technology or procedure.

Market positioning

- > Given the uncertainty over the volume and timing of CILEx members' demand for regulation, sustainability suggests IPS will need to be proactive in pursuing new market segments. IPS will need a positive proposition of support and services alongside robust assurance to clients, but it also needs to target market segments with the greatest potential.
- > For reasons of professional politics, Solicitors' firms are unlikely to move; but Conveyancers and other specialists are far more likely to do so. If that positive proposition can be developed, and matched with a pricing model which discriminates in favour of lower-risk firms with long track records, then IPS will become an attractive option for legal entities seeking regulation.
- > There is potentially substantial demand from Special Bodies and Alternative Business Structures emerging over the next few years, fields where all regulators are new. If IPS can succeed in extending Practice Rights and move quickly to gain Licensing Authority, it will start in these markets on a much more equal footing – and with much less preconception about how those firms should operate.
- > To support its market positioning, IPS *must* create credibility as a regulator – and that means especially being prepared to act decisively in early cases of misbehaving firms. Being willing to follow through on sanctions is essential if IPS is to communicate to the wider range of legal services entities that it is a trustworthy, competent regulator.

Recommendations

- > IPS needs to conduct a targeted research programme to gather quantified data on the likelihood and likely timing of Chartered Legal Executives' and other CILEx members' ambitions to move into independent practice. Aside from questions over its regulatory capability, the LSB were not confident that IPS had matched capability to a robust assessment of the demand it would face – and it could therefore be overwhelmed.
- > IPS pilots and implements a Risk Framework which assesses firms' Size and Environment, and their History, Leverage, Vulnerability and Systems. The Risk Framework needs to be implemented through processes to cover Applications for supervision, ongoing Monitoring and Enforcement where necessary.
- > IPS should develop its work in professional development and in arranging professional indemnity insurance to complement its core regulatory business – to provide additional revenue streams but also to ensure a full service offer to legal service entities seeking its supervision.

2 | Introduction

CFE were commissioned by ILEX Professional Standards at the end of 2011 to research entity-level risks and the role for regulation in the Chartered Legal Executives and CILEx member environment. This report sets out our key findings on risk, regulation and the best options for IPS to respond.

The report forms one output among three to help ILEX Professional Standards (IPS) advance its wider programme in preparation of applications for extended Practice Rights for CILEx members. Alongside this research report, we have also contributed to IPS' development of a Risk Framework, which is now ready for piloting, and the development of a pilot questionnaire for use in collecting information from participating legal services providers during that Risk Framework piloting exercise, which IPS plans to progress imminently.

Background

CFE were commissioned in late 2011 to conduct a research and development programme in support of IPS' Practice Rights extension applications. IPS' initial applications were withdrawn during 2011 under advice from the Legal Services Board (LSB) to enable IPS to revisit them, to ensure they took an outcomes focused approach to regulation (rather than prescriptive) and that regulatory effort would be prioritised through a risk-based approach, with the burden falling on those entities most likely to have a significant negative impact on consumers.

Alongside other activities then, IPS commissioned CFE to research and contribute to the development of a Risk Framework which could, in operation, satisfy the LSB that it has an approach and capability able to perform as an Approved Regulator. IPS' intention is to submit revised applications for Practice Rights extension during the autumn of 2012 – timely delivery of the Risk Framework research and development programme allows further time for integration with other development work, as well as pilot deployment and revision, and final implementation through the drafting of outcomes-focused rules.

Methods

The research aspects of the work were driven as a mixed-methods exercise. A member survey had been initiated by IPS before commissioning, the outcomes of which are explored in Chapter 4. Directly within the programme, we:

- > Conducted a literature review, focused on available literature on (1) the emerging legal services regulatory environment and (2) the legal services market and currently evolving business models.
- > Conducted stakeholder consultations with the Legal Services Board, the LSB Consumer Panel, the Legal Ombudsman, and an Insurance Broker.
- > Conducted depth interviews with Chartered Legal Executives and CILEx members from a variety of practitioner backgrounds, numbering twenty in all.

Research work was practically-oriented as the main concern for IPS has been the development of a Risk Framework ready for piloting; further findings are useful as rationale for that purpose, and to inform IPS's thinking, but the main purpose (which we think has been achieved) is to derive a sufficient evidence base to allow for the design of a robust and fit-for-purpose Risk Framework.

This Report

This Report documents that wider learning and background. Feedback from the range of different sources offers some important insights for IPS as it goes about preparing its Practice Rights extension applications, but also considers its long-term positioning in a very rapidly evolving legal services regulatory marketplace. After this introduction, we explain the background in greater depth before going on to consider what Chartered Legal Executives and CILEx members have indicated about their future intentions – as well as what we understand about their expectations for regulation, and what IPS needs to consider in terms of IPS’s developing the necessary capability.

We have two concluding chapters. The first treats directly the issue of IPS’s market positioning and considers what drivers are at play when members choose their regulator. There then follows a more general set of Conclusions and Recommendations for IPS to consider.

3 | Context

IPS' need for a Risk Framework follows its own ambitions for CILEx members amidst a rapidly changing legal services environment. These changes go far beyond the immediate practical requirement and will shape the way legal services are delivered across the board.

The future market for legal services

Legal services represent a fast-growing sector of the economy, and one of critical importance – not just for its international status, but also because of its connections with so many other areas of commercial and domestic life. Increasing reliance on legal support in conducting business transactions as well as in getting personal changes right makes for a growing demand. But that growth often moves the market away from the traditional generalist model of legal service, favouring those at the high end of the market delivering highly complex and expensive advice as well as those able to deliver competitive, efficient and timely transactional support. The basis of payment changes to fit different relationships, and the increasing need for legal support means that alternative provision – e.g. through charitable bodies – also becomes a vital part of the mix.

At the same time, trends in supply make for a very different relationship between legal professionals and the consumers they serve. Technology allows for some legal processes to become partially automated and proceduralised; increasingly, technology allows for information and advice to be automatically adapted to individuals' reported circumstances. Outsourcing of some aspects of legal work allows for professionals to focus on the more substantive questions, but also allows them to lever their time to cover more and more consumers' needs.

These wider economic, social and technological changes provide the backdrop, although the Legal Services Act 2007 adds a substantial shift in the regulatory environment – designed with the intention of adapting regulation to such a different legal services market. The Act's changes are designed to make legal supply more open, more competitive but also better supervised. Its most important change is to move the focus of regulation away from individual professionals, regulated by their separate professional bodies, and onto the legal services entities that they and others work for.

This change to entity regulation is made all the more important because of the liberalisation on the types of entities which can offer legal services to the general public – where before only professional partnerships were permissible, the Act allows for Multi-Disciplinary Partnerships (MDPs – mixing solicitors, barristers, legal executives, etc.), Alternative Business Structures (ABSs – able to take different corporate forms and operate with non-legal direction) and Special Bodies (charitable and other public interest organisations).

The Act seeks to regulate these more varied entities with competition in supervision, as well. The Act recognised seven Approved Regulators (ARs), including CILEx (which delegates its regulatory responsibility to IPS), with the ability to compete in regulating professionals under the LSB's overall supervision. ARs are expected to combine their regulation of professional conduct with the ability to supervise the entities that their professional members may create to deliver their services. If those entities are to include

ABSs, then the AR must achieve Licensing Authority (LA), an additional power so far granted by the LSB to only two bodies (the SRA and CLC).

IPS's plans and recent experience

Outside of ABSs – a new area, and one which IPS does not yet have Licensing Authority to cover – the demands from professional members for entity regulation will depend upon the legal services that they individually can offer. At the moment, CILEx members, can only practice legal services independently in certain fields and in some of the largest practice areas, although they have a high profile in the activities they undertake, they depend on other legal professionals to assure their work.

It's for that reason that IPS seeks to extend Practice Rights, to gain the right for Chartered Legal Executives and CILEx members to practice Litigation, Conveyancing and Probate. But the same background means that only very few CILEx members currently operate independently – all as sole trader entities – in the few regulated practice areas in which they have full Practice Rights. For those reasons – that there are very few cases, all operating as sole traders - IPS has had little cause to develop the capability to supervise them as entities.

The LSB's view is that the extension of Practice Rights, if granted, will significantly expand the potential demand for entity regulation because, as CILEx members will be able to practice their work independently, many will seek to do so or at least keep the option under active consideration. Our own discussions with Chartered Fellows and CILEx members (discussed later) support this view, although with some important qualifiers about how much potential demand will translate into actual demand.

IPS' initial applications were withdrawn during 2011 under advice from the Legal Services Board (LSB) to enable IPS to revisit them, to ensure they took an outcomes focused (rather than prescriptive) approach to regulation and that regulatory effort would be prioritised through a risk-based approach, with the burden falling on those entities most likely to have a significant negative impact on consumers. IPS' intention is to submit revised applications to the LSB for Practice Rights extension during the autumn of 2012.

The need for IPS to develop as an entity regulator

Following consultation for this work, our view is that IPS needs to demonstrate the capability – operationally as well as technically – to regulate entities on an outcome-focused, risk-based model if any extension to Practice Rights is to be granted.

Within the confines of the Better Regulation principles (proportionality, consistency, accountability, transparency and targeting) and the need for an outcomes and risk focus, IPS's approach needs to align with evidence-based market analysis and IPS's own ambitions within that. The key concern for IPS is to demonstrate it has a robust understanding of market demand and that the regulatory framework it proposes will be capable of meeting that demand.

The research process highlighted a high level of goodwill towards IPS's becoming an entity-level regulator. IPS has developed a good reputation within the wider legal services community because of its professional development work and its proven commitment to consumer protection. Its members attract relatively few complaints (although this may be obscured by only very few having practice leadership roles) and they are seen to be responsive at providing information and support when requested.

Yet, while there is goodwill, there is also a concern that IPS has to realise some substantial changes if it is to become an entity-level regulator. IPS needs not only to

develop the technical capability of regulating, but also the ability to operate on a scale which will meet CILEx members' demands. At present, IPS has a narrow regulatory role which it performs well; it needs to ensure that a sudden broadening of that role does not overwhelm its capacity to respond.

At the same time, as many of our depth interviews with Chartered Legal Executives and CILEx members highlighted, becoming an entity regulator is essential for IPS's future as an Approved Regulator. The rapid evolution of the legal services market creates many new, substantial opportunities. But IPS needs to be able to provide regulatory supervision to Chartered Legal Executives and CILEx members if they are to be able to take full advantage – if it doesn't, then increasingly they may see their future with other ARs.

This includes their professional future. For some members, the CILEx route has great potential now, given the combination of increasing demand but constraints on new entrants pursuing the solicitor route – even more given the changes in financing for the Higher Education system. But to capitalise on that potential, Chartered Legal Executives and other CILEx members must finally achieve parity with solicitor status in terms of Practice Rights – a Chartered Legal Executive must be able to practice independently.

For the CILEx members we interviewed, it is only through such a change that Chartered Legal Executives and CILEx members can also begin to make progress towards parity of esteem within the legal profession. That background of being dependent upon solicitors even where CILEx members have far greater expertise is seen as the main obstacle to changing the perception of CILEx members as 'second-class citizens' within the legal services workforce. It is for the same reason that, beyond Practice Rights, Chartered Legal Executives and CILEx members need to be able to see IPS as a potential entity regulator – while they are too often viewed as 'poor relations' of solicitors, the prospect of supervision by the Solicitors' Regulation Authority is not appealing.

How much is the demand for regulation?

This is the critical question in the discussion with LSB during and since 2011's Practice Rights applications. There is no doubt on the LSB's central contention about the need for entity-level regulation – if Chartered Legal Executives and CILEx members have substantially extended Practice Rights, then their *potential* interest in practicing independently will increase. If it didn't, then it is unclear why they need Practice Rights anyway.

IPS's view is that initial demand for regulation will not be that great – that ILEX fellows and members were not waiting to practice independently in very large numbers. Our own view, set out in the following chapters, is that IPS's view is likely to be correct but can be better quantified – the evidence gathered here goes some way towards that goal. At the same time though, all estimates of the impact of extended Practice Rights are limited by their hypothetical nature.

IPS's requirement for a Risk Framework

In developing the capability to be an entity regulator in support of its applications for extended Practice Rights, IPS must demonstrate how it will employ an outcomes-focused, risk-based approach to regulation. In particular, it must show that it will be *outcomes-focused* in creating the incentives which will drive firms to achieve consumers' objectives without unnecessarily impeding their freedom to innovate. It must show that it uses intelligence on risk to profile the regulated community and prioritise firms. It must show that it will combine supervision of professionals with entities to best police risk. And

finally, it must show that it has a compliance and enforcement model that deters and punishes appropriately.¹

The Risk Framework is an essential instrument in that wider approach. It gathers and organises information on how firms operate to help prioritise monitoring and surveillance activities, to ensure that deterrent and punishment actions are targeted where they will have the strongest and most positive impact. The Risk Framework needs to not only achieve that level of provision, but be able to operate in a scalable and cost-effective way – in particular, it must match the weight placed upon it for decision-making with similarly strong evidence; it must adapt to different verification models for different circumstances.

¹ Taken from Developing Regulatory Standards, summary of responses to the consultation on developing regulatory standards and decision document. LSB

4 | IPS members' businesses

In this section, we combine the outcomes from IPS's own survey of members conducted in November 2011, with qualitative feedback from our depth interviews to better understand CILEx members' and Chartered Legal Executive's aspirations for greater Practice Rights and regulation.

Background: Survey responses

The IPS Strategy Survey 2011 was conducted online, with an invitation sent to all CILEx members with listed e-mail addresses. 706 members responded, sufficient for a 4% margin of error at 95% confidence, assuming a representative response. The respondents were characterised by typically:

- > Having more than 6 years' experience of membership (58%).
- > Being Chartered Legal Executives (55%).
- > Being employed in full-time roles (74%), with 8% (57 respondents) claiming self-employment.
- > Characterising their roles as fee-earning (67%).
- > Working in a wide variety of specialisms but the most prolific were conveyancing (27%), general civil litigation (19%), family law (18%), personal injury (16%), probate (15%) and wills (14%).
- > Working in a solicitors' firm (64%, with a mix of partner numbers); 10% worked in a local authority and 6% with a commercial company.

Extended practice rights

Extending Practice Rights is a key concern for Chartered Legal Executives and CILEx members – 94% characterise it as an 'important' or 'very important' function for CILEx, rating it more highly than its work in promoting the Chartered Legal Executive profession to the public.

It's an important point to bear in mind – and one that carries through to how Chartered Legal Executives and CILEx members plan to use the rights – that this is important as an option rather than something that will definitely be employed.

Choice is a critical concern in how Chartered Legal Executives and CILEx members view Practice Rights extensions – they want the option but not necessarily to use it, or to use it immediately. Figure 1 below highlights one aspect of this – that although overall there is an appetite for extension, individual members are interested in specific Practice Rights, likely relevant to their particular career aims; asking them about which rights they would apply for (Figure 2) emphasises the point, with no one area attracting more than 50% of members.

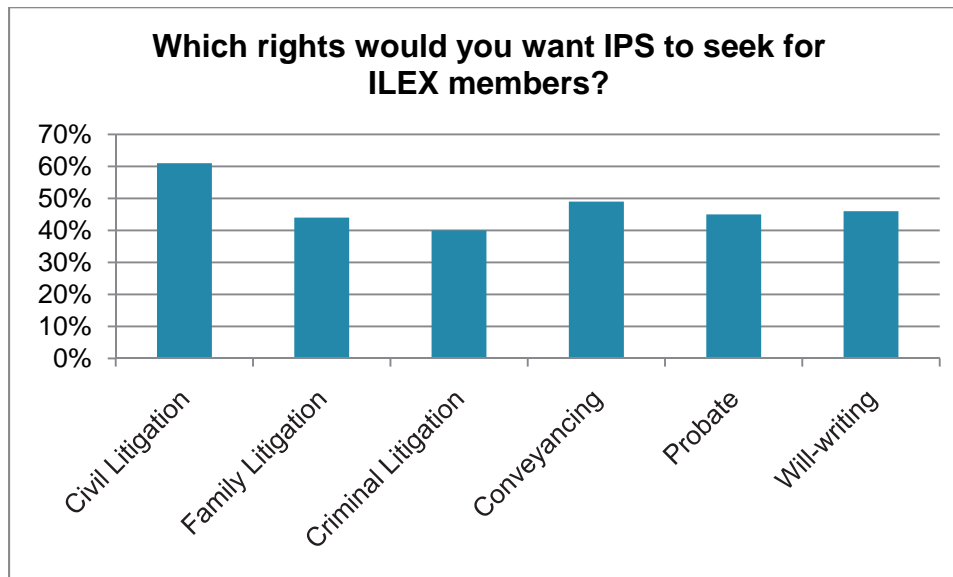


Figure 1: Which rights would you want IPS to seek for CILEx members? (n = 583)

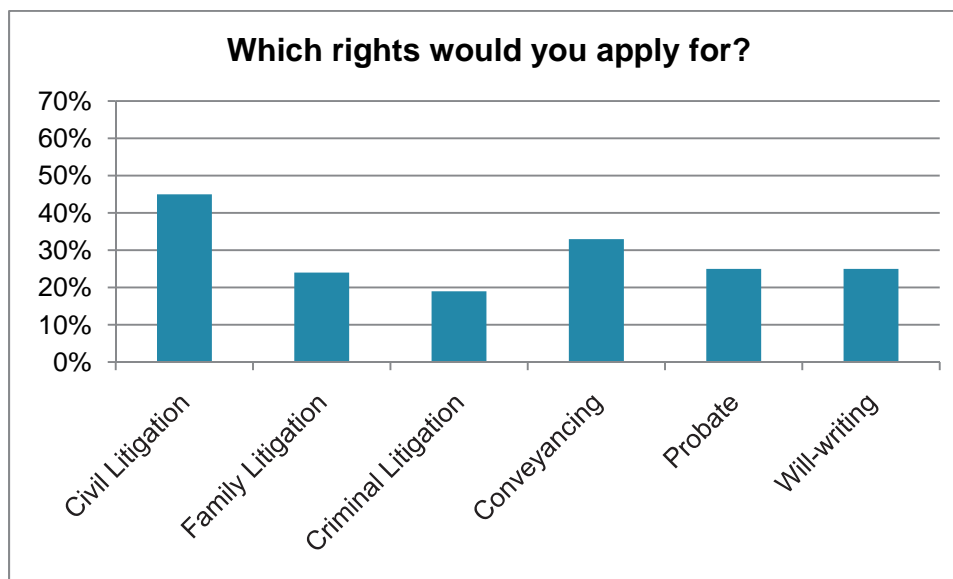


Figure 2: Which rights would you apply for? (n = 582)

In our depth interviews, each of the Chartered Legal Executives and CILEx members we spoke to are only likely to seek to use extended Practice Rights in one or two particular fields. This was explicitly tied to the view that CILEx members are specialised by the nature of their route into the legal services profession. The key point emphasised repeatedly though was choice – that Practice Rights being extended would free Legal Executives from having to work with Solicitors.

Solicitors know full well that CILEx members need them to practice, if they want to offer regulated services to clients (which, by their restricted nature, tend to be the most valuable services). One Chartered Legal Executive pointed out that in a professional partnership of five Chartered Legal Executives and a single Solicitor, the Solicitor would have sufficient leverage over the other partners to keep their name above the door but do very little of the work, and still take a share of the profits – because they are dependent upon his signing authority as a legal professional.

Members said that:

- > The ability to practice independently, without having to train as a Solicitor, would attract more people to the Legal Executive profession.
- > Extension is essential for CILEx's and IPS's development as organisations – improving public reputations for them and the Chartered Legal Executive profession, and giving CILEx members an equal claim to professional standing alongside Solicitors.
- > Eventually, seeing CILEx members practising independently on a more frequent basis, would help to establish that professional standing still further.
- > Gives CILEx members the option of setting up their own practice whereas, at the moment, they can generate significant profits for others but cannot take their work independent.

That last point was particularly important, and is a good insight into the drivers for future regulatory demand. Few of the members we spoke to in depth seemed to be determined to rapidly move into independent practice (either alone or in partnership), but for all of them, having the option to do so was a significant step forward. For those achieving senior fee-earning status within Solicitors' firms (in some cases, partners), there remains at present a concern over dependence on Solicitors in handling reserved activities.

Removing that dependence – having the option of going it alone – would vastly improve their leverage in partnership negotiations. It would also help to reduce the frustrations felt by many CILEx members of spending so long in developing their professional knowledge, skills and practical experience to see inexperienced and newly qualified solicitors rapidly progress past them.

The IPS Strategy Survey (question 19) does ask if members would wish to exercise extended Practice Rights independently, and some 43% respond that they would. We would caution against this response however, as the question does not specify what 'exercising those rights independently' would entail – and respondents may have interpreted it to mean exercising those rights independently *within their current employment context*. Greater autonomy over your work is not the same thing as establishing an independent practice – and certainly has far more limited regulatory implications.

CILEx members' ambitions

Most of the members we spoke to took the view that few CILEx members would actively seek independent practice. A major cause of this was simply the make-up of CILEx's membership as a group – the sense that it is largely made up of people who have been driven by employment motivations rather than wishing to strike out on their own.

With many CILEx members having become so through an employment route, often some years into their career and therefore often combining employment with personal commitments, their circumstances do not suggest an immediate ambition. Several members suggested that, once Practice Rights were extended, the big change in independent practice would come when school leavers and those at the start of their careers begin to select the CILEx route as their vehicle for a legal career – it is such a conscious choice which will draw in more of those more likely to want to take risks in developing a business.

Until that time, demand to practice independently will be more tied to very specific circumstances for individual members. For that reason, the unanimous consensus from the qualitative work was that it would take some years for a significant number of

independent CILEx practices to become established. Practice Rights extensions are important to open up that potential, but it will take time for the effect to be felt.

With regard to the specific environments Chartered Legal Executives and CILEx members work in, we found that:

- > Extension makes little practical difference to *local authority lawyers* – it is unlikely to change the ways they work, as many of the rights of audience involved in their work derive from their official status. Chartered Legal Executive local authority lawyers already appear regularly in Magistrates Courts and County Courts.
- > For *commercial in-house legal teams*, there are differing effects depending on individual specialisms. For example, one team we spoke to deals with property matters and typically didn't need Solicitor sign-off at present; a Claims and Litigation team would change – and would mean that they could operate differently, relying less on instructed Counsel.
- > To those CILEx members operating in *solicitors' firms*, although they would gain slightly greater autonomy, Solicitors' supervision is often in practice limited, so the difference would be less. That said, all CILEx members in Solicitors' firms said that Practice Rights extensions would make it possible to recruit more CILEx members to work with them, which would in time be an important driver for changing perceptions of their capability.
- > For *special bodies*, the extensions were referred to as “*no big deal*”, except insofar as they allow a relatively small number of employed Solicitors to be replaced over time with CILEx members.

In terms of different professional specialisms:

- > For those working in *probate* there would be a dramatic difference, allowing CILEx members to independently extract or execute Oaths and provide the full service to clients. At present, CILEx members have to work in a team with others able to perform those tasks, or else to arrange a subcontract referral for the reserved activity aspects of the work.
- > Further on *probate*, one Chartered Legal Executive reported to us that they had felt compelled to pursue CLC recognition in order to gain the necessary independence to practice – they did not want to wait any further. For them, this was a second-best choice – they preferred to remain with IPS as becoming a Licensed Conveyancer involves a high cost in terms of Professional Indemnity insurance and higher excess levels.
- > For those working in *advocacy*, the earlier extensions of Practice Rights mean that there is only limited expected change in working, especially as those participating in the depth exercise typically held extended rights of audience.
- > For those working in *civil litigation*, they would be able to ‘go on the record’ and provide a full client service – one example was for cost lawyers, in simply being able to complete the necessary documentation for insurance companies, rather than having to contract with a Solicitor for those aspects of the work.

CILEx members' expectations

While many of those we spoke to said that they didn't expect a rush of CILEx members seeking to practice independently, reasons did vary in emphases. While most did point to the composition of CILEx and their circumstances, many noted the economic climate as an additional inhibiting factor.

A couple of members we interviewed thought that there would be higher initial demand than would follow for some years thereafter, until the transition completes. They saw an

initial spike as the opportunity to practice independently was opened up, but that the experience of those CILEx members would discourage others from doing so. Such a situation was perceived to be what had happened with the CLC – a rush to set up independently, followed by a wave of failures or absorption into Solicitors' firms.

More specific drivers for Chartered Legal Executives and CILEx members making decisions to set up (or not) in independent practice include:

- > Gaining finance – the personal circumstances, employment histories and financial backgrounds of most CILEx members do not allow them the financial backing to establish a new practice with confidence.
- > Those in the best position to consider setting up on their own often have the most to lose – those with extensive contacts networks or a high professional reputation are those earning good salaries in Solicitors' firms or other roles. On the other hand, where they are creating significant profits for their firms they may feel they do not get an equitable share.
- > For the reason cited earlier, a big driver for change will be an increasing number of younger people with less to lose, and being more consciously in pursuit of a legal career – many Chartered Legal Executives and CILEx members have very different backgrounds, with more at stake in pursuing a new business venture.
- > For many Chartered Legal Executives and CILEx members, setting up in partnership *with solicitors* is a far more attractive option, and an established path. On the other hand, simply extending Practice Rights will not change Solicitors' perceptions of CILEx members and those perceptions remain the largest block to CILEx members accessing that opportunity. One member said *“it would be preferential for CILEx members to become partners in established Solicitor firms than take on all the risk themselves.”*

On that second point, we spoke to several members who are senior fee-earners and partners and had little or no intention of setting up in independent practice even if Practice Rights are extended. Their financial position and professional reputation is much better in a Solicitors' practice than going it alone. One Partner said *“taking the step from being a salaried employee to becoming a Partner was a huge decision, considering the risk to income and liability that you become a part of; being married with two children it would be difficult to set up own business.”*

Opportunities for independent practice

When discussing the potential for independent practice, most Chartered Legal Executives and CILEx members were clear that partnership would be preferable to becoming a sole trader, and also that they would be wary of moving into direct competition with Solicitors' firms. In large part this is more a comment on the consolidation that has been going on amongst generalist legal services entities over recent years, rather than a comment on CILEx members' ability to compete. Typically, and sensibly, Chartered Legal Executives and CILEx members see that any aspirations they have to compete require them to develop a unique proposition and niche.

For many, specialism was particularly important, and reflects the career path of most CILEx members. A few members suggested that specialism would explicitly limit what services they would offer, and who they would form a partnership with – if they didn't have an in-depth knowledge of a practice area, they would not only not offer it, but they would avoid seeking to form a partnership with a specialist in that field, as it raises the risks involved in the venture. Many of those looking forward to the potential for CILEx member-driven practices suggested that it would be likely to see firms with two or three partners, to provide a range of specialist knowledge and to diversify away the risk of losing to the competition.

One potential strength for CILEx members seeking to develop independent practice is their lack of preconceptions about fellow professionals. Generally, Solicitors are seen as preferring to partner with Solicitors, and accept CILEx members as peers only when they have very clearly established their reputation. By contrast, CILEx members are open to partnering with Solicitors, Barristers, or other CILEx members driven by their expertise and commercial capability.

Particular opportunities for CILEx members were cited as being:

- > For those in *commercial in-house practice*, having a much more equal footing if the parent company sought to outsource its legal services in future. While many would prefer to remain in salaried employment, CILEx members said they would at least welcome the ability to pursue the option.
- > For many, not just as leverage but also as a means of earning a living, the right to practice independently offered a much more secure footing for their career. If their current employer made them redundant in future, it would allow them the option of independent practice.
- > *Probate* was mentioned most regularly as the area where CILEx members could develop a low-cost alternative to an area currently dominated by Solicitors' practices. Much like the change which has already occurred in conveyancing, probate was seen as an area delivered at present on a high-cost model which isn't seen by many as necessary to deliver the service effectively.

No members saw a significant market in advocacy for CILEx members – both because of their own typical specialisms and that it is a well-served function. While many see Conveyancing as a natural fit for many CILEx members, the state of the property market made it unlikely to be fertile terrain for independent practice for some years to come.

What are the obstacles for CILEx members?

In keeping with the general concern that most CILEx members are not in a position to finance and manage the risk involved in setting up in independent practice, several of those members we interviewed gave some more specifics. For example, for those working in civil litigation, they would have to establish bank terms sufficient to provide coverage for growing costs, because of the lag between taking on a case and receiving payment on it.

The ability to lead and run an independent practice was also regularly mentioned as an important question. In the IPS Strategy Survey, respondents expressed a perception that they would typically require training in a number of areas (Figure 3). While finance and accounts was most routinely cited – and viewed as essential for depth interviewees – there is also a high level of mention for business development and general management. This again chimes with our depth interviewees – often CILEx members do not have a leading role in the commercial side of Solicitors' practices and so have little practical experience to bring to these parts of an independent practice manager's role.



Figure 3: What training do you need to undertake to be an effective manager of a legal practice? (n=576)

Other factors mentioned including:

- > *Geography*, in terms of operating in small localised environments where the market demand is well served and there is only limited demand for technically specialised services. This point suggests that those in areas with deep market (e.g. London or Birmingham) would have a much more attractive market to serve.
- > *Insurance and Compensation Fund contributions* represent a high fixed cost to be covered before any new independent practice can begin to cover its own operating costs. This additional layer of fixed cost increases the risks inherent in start-up.
- > As noted above, CILEx -driven independent practices would often be entering marketplaces without a track record and *competing against established firms* with decades of background and networks in their local market.
- > *Access to institutional mechanisms* including the resolution of Legal Aid arrangements, or access to membership in insurance company (for litigation) and mortgage lender (for conveyancing) panels. This extended not only to the role of track record in gaining access, but the need for IPS and CILEx members to establish credibility to be recognised.

Additionally, and linked to questions of insurance and Compensation Fund payments, there is the question of regulatory burden – which we shall cover further in the next chapter.

5 | Legal Executives' need for regulation

As well as their own ambitions for independent practice, we discussed with CILEx members and fellows their views of regulation – what they would want and expect from IPS and how they viewed other regulators as a comparator.

The regulatory marketplace

The starting point for many members was an observation that the SRA's near-monopoly on entity-level regulation reinforces the professional leverage Solicitors have within the workplace. While the Legal Services Act promises greater choice, including regulatory competition, the facts on the ground are that Solicitors dominate the supply of legal services and their regulator dominates the regulation of legal services entities.

At the same time, there is scepticism about the ability of IPS to challenge this monopoly – those who believe it can make a difference typically expect it to take place only over many years, and some are sceptical that it can be achieved at all. Unanimously, members and fellows stated that IPS could not succeed in challenging SRA's dominance if it was seen to be an easy, light-touch regulator – it cannot compete from the low ground, it has to establish its credibility and take on the SRA as an equal.

Just as unanimously, the need for regulation – and for the burdens it can carry – was universally accepted. As long as regulatory requirements are clearly explained and the rationale backs the steps taken, they are acceptable to CILEx members.

Perceptions of IPS

Most members have a very high opinion of CILEx's and IPS' work in education and professional regulation. But they said IPS needed to have a much higher profile, and would need to invest substantially in building capacity and capability, to operate as an entity regulator.

Many members were concerned about the risks to IPS through this process:

- > That if IPS' regulation is seen as anything other than tough and rigorous, it would not only compromise the regulatory business but reflect on the professional standing of CILEx members. Outright regulatory failures would be catastrophic in this regard.
- > That there's a large gap to bridge as a small regulator – once IPS is supervising entities, a risk in a major firm in its regulated community could be too large to manage, and derail its wider activities.
- > That it will be the work of a decade to create the necessary reputation for robust, credible regulation and from there to grow a critical mass of regulated practices. During that time, IPS may struggle to finance its regulatory operations, as it would be investing in demonstrating credibility over a very long period.

On the latter point, the opportunity to collaborate with other smaller Approved Regulators was seen to be an important option in short-circuiting the growth process. However, it's also worth mentioning that a more comprehensive regulatory offer, successfully implemented and demonstrated in practice, would allow several members

we spoke to dispense with other memberships they had taken up – something they were more than willing to do.

Most important in considering the path for IPS to become established as a credible regulatory alternative is that the organisation has most to prove with CILEx's own members if they are to take the risk of establishing themselves in independent practice. There is a real paradox here: on the one hand, it is because CILEx members will want the opportunity to practice independently that IPS must become an entity regulator; but because IPS is a new regulator, CILEx members will be highly sensitive to its credibility in supervising their work.

The 'poor relation' perception among Solicitors doesn't help here. CILEx members are particularly concerned that if they practice independently but are then regulated by IPS – a new and untested regulator – they will be at risk of depiction as second-class Solicitors regulated by a second-class supervisory body. To be successful *both* in extending Practice Rights *and* creating a successful and sustainable IPS regulatory capability, IPS needs to move very quickly to establish its credibility as a regulator.

Opportunities in the regulatory environment

For the same reasons, CILEx members believe that Solicitors' practices would, for the foreseeable future, be highly unlikely to consider moving their supervision to IPS, even where they have CILEx member partners.

Although there is much public discussion about the potential for ABSs to revolutionise the provision of legal services – employing wholly new business models and liberating new forms of capital – many Chartered Legal Executives and CILEx members we spoke took a cooler view of those prospects, viewing ABSs as emerging over some years to come.

However, members saw the relatively new territory as offering an important opportunity for IPS if it can move quickly to create the capability to act as an entity regulator. Because the SRA or CLC are not yet well established as regulators in this new territory, IPS can more quickly establish itself as at least an equal rival to them.

With Special Bodies – non-profit and other public bodies – some of the members we spoke to thought that the high numbers of CILEx members within their workforce may give IPS an additional advantage in developing a niche regulatory offer.

By contrast though, members also noted that the roles of CILEx members in either Solicitors' practices or in large companies seeking to become ABSs meant that they would likely have little impact on decisions made regarding the choice of regulator.

Expectations from regulation

Most of all, members' first response was that they expected IPS to be a robust and rigorous regulator, prepared to sanction those representing risks to consumers. Although (see next section) there are concerns over cost, all members were very clear that cost was a secondary consideration in choosing a regulator: IPS has no future as a low-cost but poor-quality regulator. Although many see public perception as potentially neutral with regard to regulators, any association between a regulator and negative consumer outcomes would be toxic. IPS starts with a blank slate and therefore needs to establish credibility to assure professionals that that will not occur.

In terms of positive support from IPS as a regulator, members said they wanted:

- > *Support* – be it through online forums, telephone helplines or other routes, access to positive advice on how to proceed. There was also a role for training and potentially

qualifications to develop skills in running a business. Many of those who had set up a practice spoke of the value of guidance and support, even just a checklist, to help, which was available from other professional bodies but not from IPS.

- > *Access to Professional Indemnity insurance* is particularly important. Already, members report joining other bodies to get access to PII cover as well support when PI situations occur.
- > *Sharing best practice* is another aspect of what they would like to see from an entity regulator – whether through publications or events, learning from peers and sharing problems, especially as the regulatory framework is subject to change.
- > *Group discount deals* were reported as fringe benefits they would expect to be brokered by a regulator – examples aside from PII cover were access to Westlaw and LexisNexis. These could contribute to raising technical knowledge, and therefore lowering regulatory risk. (One interviewee pointed out a 10-fee earner subscription to LexisNexis cost £77,000).
- > *Raising the profile of IPS regulated firms* – especially with extended Practice Rights, helping people to understand that a CILEx-run practice can fulfil their needs and that it is not inferior to a Solicitors' practice was seen as essential.

6 | Risks and expectations for regulation

In considering how IPS should develop as a regulator – and particularly in developing its Risk Framework for piloting – we spent a lot of time working with members to understand the risks inherent in their work. We set out some of the high profile concerns here – and the full range in the Risk Framework.

Risks

Profiling risk: size, complexity and history

Members said that it was important to bear in mind that no form of regulation can avoid the fact that negligence, malpractice and dishonesty are always likely to be a potential problem, because any law firm depends upon the character and diligence of its professionals. No regulatory approach can be robust to the wilful misbehaviour of those it supervisors.

On the other hand, many of those we interviewed placed a heavy emphasis on the specialist, experienced nature of CILEx members as an additional assurance against these underlying risks. Their experience suggested that many risks were posed in current legal services entities where Solicitors ‘dabble’ in practice areas where they have little practical knowledge and experience – the Solicitors’ general presumption of competence is a significant source of risk which is likely to be absent from CILEx practices.

At the same time, with CILEx members as much as any legal professional, there are factors which differentiate practices’ risk profiles. Larger firms will have more clients and/or handle more highly valued transactions – so when things go wrong, they can impact upon more lives and more businesses.

Just as important as raw size, however, is the complexity involved in the transaction and the risks it carries. For example, Probate or Conveyancing involve decisions of major consequence and the handling of significant sums of money – if it goes wrong, there are high stakes involved – whereas criminal and civil litigation are typically more predictable. Equally, the types of clients served matter – immigration services often involve people who do not speak English well or at all; civil litigants include some highly vulnerable people. The more that clients are vulnerable, the more there is an onus on legal professionals to work hard to safeguard their interests – and the greater the potential for things to go wrong.

Beyond these surface characteristics, the only way that matters of pure character can be evaluated is through the history of a practice and those running it. All members placed great store by ensuring that only ‘fit and proper’ persons are allowed to own and manage firms, and by keeping track of their history of conduct and service to ensure that those who have crossed the line are kept under surveillance.

Financial risk

Across the piece, there was an expressed concern that any situation where professionals have to handle client money, then it created risks of substantial impact. Although thankfully rare, the impact of such cases – on the reputation of legal services generally, and on the effected consumers themselves – can be profound and should be a source of concern for any regulator.

As well as procedural financial controls (bank signatory requirements on client accounts, independent auditing of accounts, etc.), there was a particular concern that those leading IPS practices should be competent to understand finances. This applied not only to the handling of client money, but also in being sure that they were competent to sustainably manage their own finances – particularly as many cases of mishandling client money often start when circumstances mean a practice ‘dips in’ to client money because of their own financial problems.

For consistency, and to build on established practice, most members said that it should be a requirement for all CILEx members establishing themselves as partners (or owners or senior managers) in an entity to have passed a qualification covering the SRA accounts rules. IPS could develop training to cover this requirement, and it could also accept equivalent qualifications from elsewhere.

This need to ensure sustainable financial management of the firm was viewed as particularly important given the increasingly diverse nature of firms’ business. As firms become increasingly specialised, and legal transactions can become more complex, some practices may become highly dependent upon particular high-value clients or cases. For example, in civil litigation, the presence of contingent fees (including cases pursued internationally) can mean pursuing a case over an extended period with a risk over payment – that can make a practice highly vulnerable, and its other clients may be adversely effected by risks pursued by the firm’s managers.

Quality of advice risk

Poor advice was considered to be a much more common source of risk, albeit one of much less significant individual impact. However, the ‘small but common’ nature of poor advice makes it just as damaging in terms of the reputation of legal services.

On advice quality, members felt that IPS had a very solid foundation, because of its excellent work in education and professional qualification. On top of that, the IPS approach – that CILEx members are typically specialist, and the emphasis on practical experience and continuing professional development – is viewed as a very good framework to promote knowledge and competence, and therefore minimise the risk of poor advice. Particular observations include:

- > While *continuing professional development* is often viewed as important here, some concerns were raised about expecting too much from it. Attempts to strengthen it would however be highly controversial – especially given the liberal regime offered to Solicitors, the suggestion that CILEx members should be subject to testing to ensure their development is highly contentious.
- > There is a need to ensure that *the work is performed by those competent to do it*. Reflecting their own typical background, many members were highly concerned about both excessive use of unqualified administrative staff in conducting substantive legal work, but also the use of inexperienced, non-specialists in delivering work.
- > On *experience*, if CILEx members are to potentially own and lead practices, there is a wish to see a stronger regulation of how 5 years’ qualifying employment to become a Chartered Legal Executive is actually used. In addressing this issue, IPS are currently working towards implementing a work-based learning system. Experience with Solicitors is that qualifying employment periods can often be spent doing insubstantial work, adding little to their preparedness for practice leadership at any level.

A particularly pressing concern across the advice quality issue – and one exacerbated by growth in outsourcing and the use of technology – is the delegation of tasks to those unable to bring trained, experienced judgement to their work. Such leverage can occur in a variety of settings, e.g. a claims firm which generalises all clients’ circumstances into simple rules of thumb for resolving cases (i.e. settling at £5,000 is always good – we were

told of one such case which, once it was picked up by a Legal Executive specialist in civil litigation, now seems likely to be settled at £200,000). Another example is a Special Body where a legal team advises front-of-house advisory staff on legal issues, and is dependent upon their unqualified judgement in applying it to beneficiaries' particular cases. Procedure and technology can cut costs and make services more accessible – but it can never be a perfect substitute to the application of legal talent to understanding and advising upon a client's particular circumstances. Getting the balance wrong can become a major source of risk.

Service and operational risk

Poor client care can be another source of highly probable, but lower impact risk – its cumulative effect can again be highly damaging. In the best case, some of those we spoke to put great store in mitigating service risks through the implementation of quality assurance frameworks with independent certification, such as Lexcel (one member suggested IPS could design its own). Efforts to seek feedback from consumers, and to take action as a result of that feedback is another valuable source which was mentioned frequently.

But in terms of specific service risks and their avoidance, they included the management of client relationships in order to minimise risks including:

- > *Poor communication* – and especially of mistakes regarding expectations here. At one level, easily solved with steps such as Client Care letters, but several members indicated that there is a danger of being fooled into procedures seeming to resolve such problems, which still depend on professional behaviour in following through.
- > *Unresponsive service* – where cases get left at the bottom of the pile, because they are 'too hard' or considered of little value. While sometimes delays are reasonable, if they are driven by the firm's prioritisation then clients need to be handled with care.
- > *Management of information* – ensuring that clients' information is handled sensitively and securely, and that they are not asked for the same information or the same action more than once.
- > *Managing firm contingencies* – especially to safeguard clients from firm problems, for example, the absence or departure of professionals or wider risks affecting the business.

There is an uncertain dividing line between service and operational matters. Especially when it becomes an issue of responsiveness, information management or handling contingencies, effective systems can make the difference between delivering and not delivering for clients. All members we interviewed were insistent that a well managed legal practice should, for example, immediately be able to track its progress across all its files – including the number they had open, and the amounts receivable on them. Client information should be secure but accessible. Caseloads should be reviewed systematically to ensure no cases are falling through the gaps.

Which firms pose most risk?

Members we interviewed made a series of observations about potential markers which could indicate firms most likely to present risks:

- > *Extremely small firms* can bring risks – sole traders are more likely to lack procedures (or follow them in practice), and there is no assurance from internal quality assurance or supervision.
- > *Extremely large firms* can be unpredictable simply because of their sheer size – and afford more space for the wilfully dishonest to hide their actions. In terms of larger firms, members said that the range and types of work mattered more than the

number of professionals – a 25-partner Conveyancing-only firm would be a bigger risk than a 100-partner Litigation-only firm, while a 15-partner firm covering Conveyancing and Probate could be a higher risk than either. Understanding the different Practice Areas a firm has is essential.

- > *New firms* often are no greater risk, although the lack of a track record means that there is simply less information to go on. Some trust is important - one member pointed out “*CILEx members have been working in private practice for many years – giving an extension in practice rights provides the opportunity to set up in their own practice... Why would that mean they instantly become dodgy?*”
- > *New firms with newly qualified staff* are far more important to track, because they don't have the professional track record to rely on in reviewing their risk profile.
- > *Special Bodies* carry risks where they take on a generalist role – typically they have only a vague distinction between legal advice and the wider help that they offer to those they seek to help.
- > *Alternative Business Structures* – including those already existing such as claims firms – are new models which seek to deliver higher value or lower cost, and so their different business models are likely to push the boundaries.

Application and authorisation

For all members, the key test for the long-term success of IPS as an entity regulator is in establishing a robust gateway to authorise firms to enter its supervision. Some members perceived that this had been a failing in CLC's entry into entity level regulation, with the result of several claims having to be settled.

For IPS as a new regulator, most members were adamant that a series of perceived regulatory failures early on would be catastrophic for an attempt to develop a credible reputation. Members were clear that authorisation had to start with establishing the ‘fit and proper’ credentials of those seeking to establish an independent practice. This would involve background checks, but also references from previous employers and/or clients.

Individual authorisation

The best safeguard for authorising the right individuals is seen to be to rely on CILEx's established professional qualifications. However, several members stated a wish to see a strengthening of the requirements to become a Chartered Legal Executive. At the moment, the qualifying employment takes place with only limited checks on its content – some degree of monitoring was seen as essential. While nobody asserted a FILEX qualification should be necessary to be an owner or manager of a firm, there was some suggestion that a degree of qualifying employment should be essential.

The question raised generally was whether additional qualification should be required for those seeking to practice independently – covering wider practice management questions. There was some resistance in some quarters to the idea of further qualification, although some acceptance that there was a wide variety of readiness. Two members suggested that any very long (twenty years) serving Chartered Legal Executives should have the right without further examinations, but all others would have to sit examinations – the counter-argument made by some was that the content of experience matters more than its duration.

Entity authorisation

Most members thought entity authorisation would have to take place through a visit process. It was not thought credible to simply accept a written application as proof of the capability of an entire organisation. All members thought that a visit would be

necessary to allow comprehensive investigation and compilation of evidence to allow a considered view on the firm's readiness.

Areas considered necessary to check were:

- > Full personal background on the firm's owners and leading employees, and details of all of its trading offices.
- > Where CILEx members are leading personnel, some assurance that they have the necessary understanding of practice leadership and especially accounts.
- > On partners' understanding of accounts, there was some consensus that a qualification requirement should be expected.
- > In multi-partner firms, the qualification requirements may be more stringent for the CILEx member appointed as the person responsible for finance and administration.
- > In keeping with those requirements, a business plan with supporting financial information – on financing the firm and its cash flow requirements for at least the first two years, including any bank terms or supplier credit arrangements would be necessary.
- > Where the business plan suggests a role for referral agreements, their financial implications should be transparent and fully analysed, including any impact on cash flow.
- > Complaints and customer service procedures should be established, alongside Client Care letters and Terms of Business.
- > Information storage, security and retrieval systems should be established.

Ongoing supervision

Ongoing supervision was accepted as essential, but it is here that concerns over bureaucracy became more pronounced. However, as previously noted, all members were far more concerned with IPS being a rigorous and robust regulator, and so their concern was less about lowering the information requirement than it was in being sure that all requirements were purposeful and clearly articulated. While some were concerned about the rationale for requirements in terms of minimising the compliance cost, others were more concerned about IPS not being excessively intrusive (although some took the view that no firm should have anything to hide). Monitoring mustn't become an activity pursued for its own sake – it is a tool to ensure that IPS and firms' consumers can be assured that they aren't creating excessive risks.

All members agreed that firms should be responsible for alerting IPS to any material change in their circumstances, as well as filing some kind of Annual Return. There was a request that information required in an Annual Return should be a form similar to that used by insurers, funding bodies and other regulators. Compliance costs escalate rapidly where the same information is required in different formats. As part of their insistence on robust rationale for information requirements, all members insisted that information submitted must be reviewed and checked.

Financial monitoring

All members expect IPS to monitor financial information – although there is some disagreement over the depth to which IPS should request their submission. A few members were concerned about excessive intrusion here – that declaring money in all accounts, details of overdraft facilities and the value of work in progress is not a legitimate interest for a regulator. At the very least they would require strong protections on the use of that information if they were to provide it. Most members took the view that a full set of audited accounts would be expected – and those dealing with

Legal Aid said that the Legal Services Commission required similar such sign-off requirements.

Those members handling client money accepted the need for some independent monitoring to safeguard one of the highest-impact sources of risk.

Financial information is seen as being particularly important in comparison with the levels of fee earning and qualified staff within the firm. Measuring the revenue generated by the number of qualified professionals – especially where benchmarks can be established – can be a simple check on the leverage involved in a firm's operating model.

Volume monitoring

Most members agreed that some sense of the volume of work they did would help to give IPS valuable intelligence on the profile of firms. Several members said that insurers ask for such information, and for firms with reasonably capable case management systems should find it simple to provide when required. While specific case data should not normally be a matter for IPS as a regulator, understanding the pattern of a firm's trade is a legitimate concern.

Here, as with financial information, most members said they would prefer it if the information could be submitted electronically. The sort of information they could provide could cover the number of clients or cases, and in the latter case, the number of cases open at the time of submission, as well as the numbers of cases opened and closed in the last period.

Linking volume with financial information was also not typically thought to be a problem. Reflecting concerns over vulnerability to key clients and cases, many of the larger firms already require reporting on large value cases to ensure attendant risks are properly managed. For that reason, when asked about the ability of counting the numbers of high-revenue cases or clients, no member said it would pose a particular problem to supply the information.

A small number indicated that they would need to understand the purpose of IPS having that information on high-value cases or clients. Concerns typically related to the next step – would the reporting of such cases lead to IPS requesting substantive data on who the clients were and what the work involved. Providing that IPS makes its case that the information helps to highlight revenue vulnerability and that there is no intention to delve into case information, the privacy concerns seem to be manageable.

Monitoring processes

When asked about surveillance activities that IPS might undertake to deliver on its promise to clients, members reiterated their concern that IPS needed to be rigorous above all. For that reason, most members stated that they would be happy to receive an annual visit – for reasons explored in the conclusion, this is unlikely to be the right way forward, but the feedback highlights the degree of openness to rigorous surveillance. Where we discussed with them the cost limitations which may prevent all firms receiving an annual visit, most saw it as essential that some visit took place over a certain number of years.

Regardless of where visits are used, several members do view them as being an essential part of the mix for delivering the regulatory role. For them, submission of information depends upon a high level of trust in firms – which may not always be wise, and so having the opportunity to investigate and verify is essential. Some members understood that, in a risk-based model, it seems better to focus investigative time where it seemed likely to minimise potential problems.

Some members suggested that monitoring should be more intense after firms have recently been authorised by IPS for its supervision – until they have demonstrated their capability and earned the necessary trust, they should not be given full autonomy.

One member said that some spot check mechanism – perhaps a visit, or else file reviews or other mechanisms should be available. Their concern from experience was that regulatory visits are rare, and that there should be some mechanism for IPS to investigate where it has cause for concern – be it a complaint or other indication. Another member said that complaints can often be a poor indication, because of their variable nature (e.g. awkward consumers) and many of the most risky firms may also be better at covering over their problems.

Observations from members' experiences (and our own researches) with other regulatory arrangements include:

- > SRA follow an approach modelled on that used by the Financial Services Authority, where large firms (which therefore have a high potential impact) have dedicated Relationship Managers and other firms are subject to a sample-based approach, with additional activity managed through Thematic Reviews.
- > One member stated that the Legal Services Commission undertakes mini-audits once every six months (it used to be annual), with the frequency designed to ensure a high level of responsiveness and receptivity.
- > One member suggested that its membership body aims to visit 5% of firms each year, and focuses on those that have had complaints raised about them. The membership body asks firms to include feedback forms with every will they write – although compliance is unclear. Feedback is returned to the membership body and firms do not directly see consumers' feedback (although they do get referrals – part of the form offers for the membership body to inform firms who they are recommended to contact). Negative feedback triggers a visit activity.

Risk management information

All members said they would be happy to provide information in a written submission, and back these where requested with documents such as an Office Manual or individual policies and procedures. In most cases, there are already regulatory requirements which require them to have such information in place, and no member viewed them as being particularly confidential to the firm.

Most members also thought that organisational structure and workforce information – e.g. qualifications, work history – would be important for IPS to gather, as would complaints records – how many, in what practice areas, and when resolved. All members agreed that in using this information, IPS would have to demonstrate a willingness to review available information but also to act on it – imposing meaningful sanctions where justified. Until it is seen to have teeth, IPS will struggle to establish full credibility with the LSB, consumers and with firms themselves.

Those teeth should be significant powers to punish and also to deter. They should include the power to levy fines, place practice restrictions on the firm, suspend licences, and ultimately remove licences.

7 | Positioning IPS as a regulator

Understanding the market's likely demand and the different drivers behind is important for IPS.

Overview of the case for IPS becoming an entity regulator

There is no lack of support for IPS to become a regulator, both from within CILEx membership and other stakeholders. Partly this is a desire to see competition for the SRA, provided by a regulator whose remit extends beyond that of the CLC, the only current alternative to the SRA. While the SRA is a near-monopoly and is likely to remain so for some time with Solicitors' firms, there are still opportunities for IPS.

Further, members are aware that in the changing legal services landscape there is a need for their professional body to increase the profile of CILEx and its members, who in their view are just as capable as Solicitors of serving clients' interests. Indeed, because CILEx members tend to specialise, the risk of their dabbling, as some Solicitors do, is seen as reduced, thus reducing the risk of poor advice.

Increasing profile is perceived as necessary, alongside extended Practice Rights, if the gains made by CILEx members in recent years towards parity with Solicitors in delivering legal services are not to slide backwards. Members see extending Practice Rights as a minimum requirement to keep moving forward and enable members to practice in full competition with other professionals. IPS becoming an entity regulator is regarded as a key part of the promise of extended Practice Rights – without an entity regulator, CILEx members will not be able to practice independently, and so their Practice Rights will not give them the full opportunities they expect.

If IPS does not become a regulator, CILEx members, whether seeking to practice alone or with other members, will be forced to be regulated by another AR; in this situation there is evidence they will over time begin to think carefully about whether or not to retain their membership (and its associated costs) and that their decision could see CILEx's membership base atrophy. In the current economic climate, practitioners do not want to duplicate costs and *"CILEx need to do it sooner rather than later as some CILEx members might not be able to wait any longer"* (Chartered Legal Executive sole practitioner).

What makes lawyers choose a regulator?

Again as overview, we have a variety of responses which drive CILEx's members in making decisions over their choice of regulator:

- > *Costs* – while most members saw this as secondary, all were clear that cost was a negative driver and even if IPS offered a robust regulatory service, its cost level could not be competitive. For Special Bodies, costs are a pressing issue because of financial constraints.
- > *Reputation* is though important for all, and especially a pressing consideration in selecting IPS. Solicitors' firms will be likely to look with scepticism on IPS regulation at first, and only over time will IPS begin to break through such perceptions.

- > *Service* – regulation is often seen as a negative relationship, but most members stated that they want to see IPS as a positive agent within the legal services environment. Service is important in moving beyond a heavy-handed interventionist approach and onto a more collaborative, but robust, approach that helps those firms acting in the sector’s best interests to succeed.
- > *Enforcement* – to reinforce what reputation it can create, IPS needs to demonstrate that it will enforce its will as a regulator. Once credibility is established, consumers will be indifferent between IPS and the SRA as different forms of regulation – but gaining credibility is essential.
- > *Access to PI insurance* would be an incentive to choose IPS for a few members. Some would buy if more expensive than other policies, just to buy from IPS; a couple of others suggested they’d only buy if it was competitive.
- > *Loyalty* of CILEx members goes a long way in some situations, but some say IPS shouldn’t assume all CILEx members will choose them because of their affiliations. One member said, *“the fact that two Partners have an attachment to CILEx wouldn’t mean we’d automatically choose IPS to regulate us.”*
- > *Disruption* – for those firms already regulated by SRA or CLC, the prospect of disrupting their business and potentially rattling key consumers is an important consideration. For example, conveyancing panels, Building Societies and Banks might be interested in who firms are regulated by and sometimes seem to look for any reason to remove firms from panels, so would be a consideration when choosing regulator. They have to report any change in the firm to lenders straight away – so a lot will depend on whether the lenders will accept CILEx regulated firms – CILEx will have to approach them and protect the interests of their members.
- > *Empathy and understanding do matter* – a few members mentioned that IPS will need practising CILEx members on their Board, which can be used as a selling point – *“we know what you do and we have CILEx Fellows on our Board”*.

To sum up, IPS will be more likely to succeed if it can be an efficient, helpful regulator and one which is robust at handling those firms which do not follow the rules.

The regulatory market: IPS’s opportunities

IPS’s challenge is to design a regulatory capability that it can sustain. There are two aspects to this challenge. First, the regulatory capability has to offer benefits in excess of the costs that it can recover to the firms that choose IPS’ supervision. In the long run there *are* economies of scale in regulatory operations – but to harness those, IPS needs to be assured that the necessary scale of demand will arrive. Second, it needs to harvest market opportunities that will contribute to that demand.

8 | Conclusions and Recommendations

Here we set out our observations from the research, our recommendations for the development and implementation of the Risk Framework, and our recommendations on advancing the wider programme for IPS.

Developing the application for Practice Rights

A key finding from our work, and one that is beyond our scope here to directly resolve, is that the LSB are looking for more robust market intelligence on the volume and timing of future demand for regulation from IPS members. While the IPS Strategy Survey (initiated before CFE began work) asks some important and valuable questions, they are more general in nature than a specific market study on members' plans and ambitions.

Therefore, **our first recommendation is that IPS set a research plan to be conducted over the next three months, to ensure that it has the evidential backing for its proposal.** Our interpretation on the basis of the available evidence is that IPS's hypothesis – that demand will be limited for some time – is probably likely to be correct. Most of those members we spoke to who are positioned best to consider setting up in independent practice showed limited immediate interest in doing so – they valued the option, and thought it would greatly enhance their negotiating position within firms, but few were waiting to leave current employment and start up a new firm.

The LSB require robust evidence if it is to back the hypothesis – and this can potentially be gathered in a cost-effective and timely way. We would recommend that IPS implement an on-line survey – perhaps with incentives to encourage a higher response rate – which directly covers:

- > Understanding of what Practice Rights extension means
- > Evaluation of employment and independent practice options
- > Evaluation of the likelihood (not a simple categorised choice) of seeking independent practice
- > Evaluation of the likely timing of seeking independent practice if it is an ambition

Along with some additional questions which can be asked about motivations, these questions should provide the dataset to offer the LSB a sound business case to support a reasonably scaled regulatory capability. Further extensions to the work could focus upon market areas which sit on the fringes of IPS's immediate community – those specialising in conveyancing or will-writing, for example – and could be more qualitative, consultative exercises.

Developing the Risk Framework: concepts

We present **our recommendations on the Risk Framework alongside this report**. But here we explain its conceptual underpinnings.

In keeping with standard practice on risk analysis, the Risk Framework differentiates between Impact and Probability. Impact allows us to prioritise firms in terms of their potential effect on consumers were things to go wrong. Probability allows us to prioritise in terms of their likeliness of going wrong.

Within Impact, we think two factors need to be measured:

- > *Environment*: purely a function of a firm's selection of markets and customers across different Practice Area, IPS must be able to differentiate the work of different types of practice according to their inherent risks. We recommend here that the governance arrangements set a standard tariff for all firms, using the market segmentation categories described in the recent OXERA report for the LSB.
- > *Size*: the raw size of a firm makes a significant difference. The simplest measure of firm size is revenue, as it combines the number of clients with the value of their relationships. It may also be worth checking for indications of particularly outsized transaction values.

Within Probability, there are four factors which seem to make the most difference to the likelihood of something going wrong with either the firm or its practice of law.

- > *History*: all members we spoke to considered the background of the firm and its leading people to be a critical distinguishing factor, and one that they would rely heavily on in deciding how to prioritise surveillance capability between firms. We include here recent history – in terms of regulatory engagement and complaints records.
- > *Leverage*: most members were concerned about the relationship between the number of qualified professionals and the volume of work they supervised. This concern ranged from simple overtrading, to the need for assurance that new business models drawing on outsourcing and technology to allow for extended leverage are still able to properly serve clients.
- > *Vulnerability*: the increasing variety of clients and their requirements, as well as the different ways in which law (especially litigation) is practiced, mean that law firms can legitimately become riskier business ventures than was the case some years ago. While there is nothing inherently wrong with taking on these risks, they need to be acknowledged and managed to protect the wider range of clients.
- > *Systems*: the more predictable side of risk management is the question over the firm's operational systems – whether it can manage money, business process and information to ensure that clients are responded to and cases do not fall between the cracks.

Developing the Risk Framework: process

Again, we **present our recommendations on a set of Risk Framework processes alongside this report**. Here we just draw out some of the key themes.

The processes have a common sense basis. At the operational level, IPS will need to *assess* and *prioritise* firms – derive scores across the entire regulated community, and use this to decide on where firms should be handled in a Risk Management Strategy. At a relationship level, risk assessment takes place during an initial *application* to enter IPS’s supervision, through ongoing *monitoring* – which may involve enhanced measures for higher priority firms – but also through *enforcement*, where particular issues represent intolerable sources of risk to consumers and the wider legal services environment.

In implementing these processes, we would offer the following observations to IPS:

- > *Visits are essential part of application and authorisation*: we understand from our discussions with IPS that the LSB have indicated a preference to minimise visit activity, even during application and authorisation. On the basis of members’ feedback in this work, but also on the basis of our professional experience in managing assessment schemes, we would strongly recommend that a visit takes place with all firms applying for IPS’s supervision. We find it difficult to see how the necessary degree of verification could take place without visiting the offices of a firm.
- > *Visits should be part of the monitoring mix*: there is no disagreement from members that visits are an essential monitoring tool, and indeed most saw it as perfectly reasonable to receive an annual visit from IPS if it were supervising them. However, visits are expensive to conduct and quality assure – and so we would recommend (and have proposed in the Risk Framework) that they are only used with prioritised firms.
- > *Governance is critical*: an outcomes-focused regulatory model means that there is only limited work which can be done ‘up-front’ – the regulatory process is designed to allow for learning, but that learning must be reviewed and actioned, and that is where governance comes in. We have proposed in the Risk Framework that strategic governance (focused on learning, to adapt the Risk Framework and set key benchmarks) is distinguished from operational governance (focused on case review and quality assurance).
- > *Enforcement matters*: not just in legal services entity regulation but in a wide variety of settings, the credibility question does not rest on IPS’s ability to spot problems, but to confidently take action on them. Where it sets enforcement conditions, IPS must be ready and willing to apply sanctions if they are not met. There will be some resistance, as the firm in question will likely represent a lot of clients – but IPS needs to bear in mind the much larger number of firms which will be deterred if IPS is seen to be a soft regulator, lacking credibility.

We know that IPS is planning to begin piloting the Risk Framework very soon after the submission of this report – and this will be a critical time. We have provided a pilot questionnaire to help with this process, but – linking back to the learning-driven nature of an outcomes-focused model – it is only through working with live organisations in a regulatory format that IPS will begin to develop the substantive knowledge on which it can begin to assess distinctions between firms.

Bibliography

Sources used in the development of this work...

Operational sources

The best sources of understanding on other Approved Regulators' regulatory and risk frameworks are their recent applications made to the Legal Services Board, which are as a consequence made public. We found especially useful:

- > The SRA regulation to become a Licensing Authority ([link](#))
- > The CLC regulation to become a Licensing Authority ([link](#))

We did not comment actively on either of these models within the report, but we did use them as comparators.

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OFR – CONSIDERATIONS IN RULEBOOK REVISION

Introduction

1. In considering the reformulations of its OFR approach, IPS chose the Code of Conduct (the Code) as the core regulatory document within the package. Formulating the package around one core document was assessed as the most appropriate mechanism by which to fully integrate the regulatory objectives and the professional principles as they apply to all those subject to regulation upon a successful application determination. Additional regulatory provisions are therefore capable of being viewed in the context of the overarching principles and outcomes detailed in the Code. Tethering all regulatory actions and qualitative decisions to the provisions of the Code provides for the utmost transparency in respect of IPS' regulatory arrangements.

Considerations in Revision

2. The Legislative and Regulatory Reform Act 2006 and the Statutory Code of Practice for Regulators demanded that regulation be 'targeted' as well as transparent, accountable, proportionate and consistent.
3. The Legal Services Act 2007 (the Act) expands upon these requirements. It specifies the purpose of regulation in the legal services marketplace. S.1 of the Act details regulatory objectives. These are as follows:
 - protecting and promoting the public interest
 - supporting the constitutional principle of the rule of law
 - improving access to justice
 - protecting and promoting the interests of consumers
 - promoting competition in the provision of services provided by authorised persons
 - encouraging an independent, strong, diverse and effective legal profession
 - increasing public understanding of the citizen's legal rights and duties and
 - promoting and maintaining adherence to the professional principles.
4. The professional principles are defined as, that:
 - authorised persons should act with independence and integrity
 - authorised persons should maintain proper standards of work
 - authorised persons should act in the best interests of their clients
 - persons who exercise before any court a right of audience or conduct litigation in relation to any proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
 - the affairs of clients should be kept confidential.

5. S.28 of the Act states that approved regulators must act in a way that is compatible with the regulatory objectives and that they must have regard to the principles under which their activities should be:
 - transparent
 - accountable
 - proportionate
 - consistent, and
 - targeted only at cases in which action is needed.
6. It is from the last of these principles of better regulation, that regulatory activities should be 'targeted only at cases in which action is needed', that the requirement for regulation to be 'outcomes focused' and 'risk based' can be derived.
7. On its most basic construction, the Act seeks to provide legislatively for evidenced based best practice in the making of regulatory decisions. Not to focus upon outcome (or departure from required outcome) precludes justification of corrective regulatory action. Failure to focus on the risk attendant to whether an outcome is met will prevent justification of such regulatory action as being 'needed' in any particular case.
8. IPS recognises the fundamental importance of being able to evidence the exercise of its discretion in the regulatory decision making process by reference to proportionate, accountable, consistent and transparent processes and factors of consideration.
9. Being both outcomes focused in approach and making regulatory decisions that are based upon a risk analysis allows IPS to make essentially qualitative rather than substantially quantitative judgements as to the action that should be taken in any particular regulatory area.
10. If decisions in the regulatory arena were to be taken on the basis of outcome alone then there would be nothing to preclude the application of rigid, detailed rules prescribing those outcomes. If decisions were to be taken purely on the basis of assessed risk then a danger would be presented in that such decision making may ultimately end up as a process of box ticking, without any qualitative evaluation of the need of the action. What is required therefore, is both a reasoned approach that is transparent and accountable, and an approach that is justifiable by reference to proportionality and consistency - something that is significantly different from a value judgement or the individual subjective exercise of discretion.
11. Being focused upon outcomes and making decisions based upon risk requires proportionality. There is general acceptance that regulation should be

“proportionate and pragmatic not dogmatic and ideological¹”. This is where the IPS arrangements sit.

12. Proportionality is not a factor that naturally appears in the ‘hard edge’ or rigid application of detailed and comprehensive rules. This provides the rationale for more purposive rule making. But proportionality requires the ability to be independently assessed as having been exercised. And it is the evidencing of the exercise of proportionality and the justification for the regulatory exercise of discretion, that the Act seeks to legislate for; that happy medium between light touch and heavy hand. The Act seeks to legislate for the middle ground of regulation, to legislate for the balance point between the interests of the public, the consumer and the client on the one hand and the interests of the rule of law and the professional practise of it on the other.
13. IPS recognises that “regulation is inherently a balancing act, and that there are some decisions that cannot be reduced to equations²”. It is in the exercise of discretion that the interplay between being outcomes focused and risk based is most clearly manifested within regulation. It is in the exercise of discretion that the balance between the light touch and the heavy hand is discerned. IPS is acutely aware of the balance required in this respect.
14. The more precise the rules the more complex they become. The more complex rules become – the more specific their application – the more gaps are created and, by extension, the greater number of detailed rules that are required to cover every conceived eventuality and guard against creative compliance.
15. The more principled the rules the easier they are to apply. However, though more principled rules may be easier to apply, there may be less certainty as to how they will apply in a given situation. In application therefore, principles should effectively form the backstop to either outcomes or more detailed rules and act as a guide to interpretation in particular instances.
16. Under the Act, IPS understands that its fundamental role is to balance competing interests in the construction, interpretation and application of rules. But in evidencing the matters to which IPS has had regard in formulating its decisions, in providing the basis for the exercise of discretion in any particular case, in effectively evidencing operational OFR, IPS must be able to point to the framework of considerations that have shaped its decision-making. IPS has therefore adopted an approach that facilitates discernment of the appropriate point of balance by reference to a core document and a risk framework³ within its regulatory package. The Code has therefore been conceived as a document

¹ Moorhead, R (2011) *Why there might be a market for lemons: Some thoughts on competition, quality and regulation in legal services markets* in *Understanding the Economic Rationale for Legal Services Regulation – A Collection of Essays*, Legal Services Board, London.

² Black, J (2011) *Calibrating Regulation* in LSB *op. cit.*

³ The risk framework is detailed in part V of this application.

that should not only detail in its content the principles and outcomes to be adhered to and met, but should also provide, in its structure and by its positioning, the mechanisms whereby the content of the regulatory provisions in their totality are to be operationally applied. By formulating its regulatory arrangements in specific areas in terms of prescriptive provisions overarched by principles and outcomes, by providing guidance, by authorising and regulating by reference to risk and by tiering its provisions, IPS assesses that it has both correctly discerned and accurately applied that balance.

17. Most regulators “supplement principles with guidance or more detailed rules. Such a strategy is supported in academic literature which has explored the issue of rules and their interpretation. The presence of such fundamental trade-offs in using rules means that the optimal strategy is to have a tiered rule structure, with principles supported in particular instances by detailed rules or guidance.”⁴ This is the IPS approach. At the highest level there are principles, under which are outcomes. These must be adhered to and met. IPS also has detailed rules and guidance that supplement the principles and outcomes. The rules and guidance are framed in such a way so as to adequately expand upon the principles and outcomes and provide transparency as to approach dependent upon the narrowness of the prescription required by the IPS regulatory package.
18. By its content, construction and positioning then, the Code is required to prevent ‘hard edge’ interpretation of the remainder of the provisions, either by the regulated or IPS as the regulator. “Regulatory practices can be quite divorced from the nature of the rules being implemented. Operational PBR⁵ can be achieved through the flexible implementation and enforcement of a highly detailed set of rules. Conversely, rule book PBR may in practice end up as no better than detailed box ticking if the principles are given particularly ‘hard edges’ in the way they are interpreted by regulators and courts, or are coupled with a highly deterrence-based and unpredictable enforcement regime which prompts very conservative behaviour by firms.”⁶ IPS has formulated its rulebook in an outcomes focused manner that intrinsically prevents its rigid interpretation by virtue of its construction.
19. IPS recognises that those who are subjected to rules require a certain level of confidence in the manner in which those rules will be applied by the regulator, lest they be ‘very conservative’ in their behaviour. The challenge is to ensure that there is shared understanding of the applicability of regulatory provisions between the regulator and the regulated or, to phrase it another way, some

⁴ Black, J (2011) *OFR: the historical context*. In: Hopper, A. and Treverton-Jones, T., (eds.) *Outcomes-focused regulation*. The Law Society, London.

⁵ Principles Based Regulation (PBR). In *OFR: the historical context (ibid.)* Black, J identifies that “for many regulators PBR and OFR go together and, rhetoric aside, can be largely interchangeable”. In the context of this application, IPS views PBR and OFR as functionally indistinguishable. PBR can therefore effectively be read as OFR.

⁶ Black, J (2011) *The Law Society, Op. Cit.* @ 2.3.3

understanding of how broadly principled rules will be applied to the detailed facts of a given situation.

20. IPS recognise that the Code will have four potential audiences:
 - The public
 - Authorised Bodies, CILEx Practitioners, Approved Managers and applicants for such designations
 - the CILEx membership, and
 - Other regulators.
21. In drafting the Code, the IPS approach has been to produce a document that can be understood by all as being applicable to everyone subject to IPS regulation. For the purposes of this application IPS must focus upon the approach to be adopted in respect of both those authorised persons and regulated persons engaged in reserved legal activities and regulated activities respectively. However, in accordance with the provisions of s.28(1) of the Act, IPS is aware of the requirement for its exercise of regulatory functions to also comply with the provisions of the Act when dealing with those who are neither authorised persons or regulated persons. IPS has remained cognisant of this requirement throughout reformulation of its regulatory arrangements.
22. For the authorised person and the entity and the regulated individual and their practice, the question will be how they are to gain sufficient confidence as to the level of rigidity in the edges of IPS rule application. The scope of circumstances subject to regulatory oversight is simply too broad to couch any action based upon outcomes and risk as absolutely certain in the vast majority of cases. But an appropriate level of confidence can be provided in a number of ways dependent upon the level of confidence required and the audience for what is, effectively, regulatory reassurance.
23. Relationship management, regulatory and enforcement arrangements and where necessary detailed rules and guidance guard against unpredictability of approach to, and application of, the IPS provisions. IPS submits that building confidence engenders trust. But trust is a two way process and those subject to IPS regulation must be aware that IPS do not expect the role of the regulated in building regulatory trust to be passive. This approach permits necessary prescription to remain within the regulatory package in areas where consumer protection concerns demand greater transparency from the regulatory package than can be achieved through relationship management or shared understandings alone. At the same time, where confidence can be achieved by effective relationship management and shared understanding, this is also permitted.
24. In the exercise of the CILEx regulatory function, IPS does not see its primarily role as punishment of regulatory failures (although clearly IPS is prepared to do

so where required). Punitive action is time consuming, costly and reputationally negative for the profession, the professional and the regulator. IPS' view is that it is preferable to ensure compliance than to punish non-compliance. This position is loosely analogous to the argument that prevention is better than cure. But IPS appreciates that punishing non-compliance isn't a cure, it only briefly masks the symptoms of the prevailing condition. IPS both envisages and is committed to regulating a healthy post-application regulatory environment.

25. The Act does not state the form required of approved regulators' regulatory arrangements. IPS has been free to develop its provisions without the strictures of what has historically been done in the regulation of the practice of the legal profession. IPS has not formally regulated practices and practice management before and so it is free to take a fresh approach. This fresh approach is centred around building a relationship with those seeking the grant of rights or authorisation so as to engender regulatory trust through a shared understanding of the regulatory provisions as they apply to each Applicant Body. The road map for this relationship building process will be the Code.
26. Those who seek the grant of autonomous practice rights from IPS, and those who wish to have their entity authorised and regulated by IPS, will be required to undergo the authorisation process⁷.
27. Essentially, the authorisation process will be the commencement of a relationship management process between the applicant and IPS. This process will last for the lifetime of the relationship. Throughout that process IPS will agree with the applicant the systems, processes, procedures and rules that the applicant will institute and/or apply in ensuring that they are able to comply with IPS' regulatory provisions.
28. IPS acknowledges that the regulatory approach and philosophy has, to a certain extent, been set by legislation. The implementation of that approach is a matter of regulatory choice for IPS in consultation with the LSB as the oversight regulator. By extension, applicants for authorisation by IPS will be in a similar position. Their approach will be framed by IPS' regulatory arrangements. How they choose to implement that approach will be largely down to them, in consultation with IPS as their approved regulator.
29. What this means for those IPS seeks to regulate and their business will depend upon the personal, professional and business plans and ambitions of those applicants. What the IPS approach means for applicants' relationship with IPS is that applicants will be able to have a conversation with IPS as their prospective regulator and, as a result of that conversation, arrive at an agreed way forward where both they and IPS can achieve their aims and objectives.

⁷ Detailed within Part V of this application.

30. By being focused upon the outcomes and principles in the Code and by making qualitative decisions by reference to the IPS risk framework, IPS can be satisfied that entity A is able to have a different set of arrangements from entity B whilst both firms can fulfil their regulatory obligations. This is important to facilitate professional diversity, allow for new business models, enhance the scope for competition in the provision of legal services and meet both the regulatory objectives and the professional principles.
31. IPS recognise that being focused upon outcomes ultimately means that so long as the regulatory objectives and the professional principles are being met and adhered to, there is to be no regulatory or legislative bar to innovation. IPS has structured its regulatory arrangements so as to facilitate deliverability in this respect.
32. Operational considerations will remain a factor however. There must be scope for negotiations and accommodations with applicants along the route to authorisation and beyond. Without this there would be little scope to build an effective relationship due to insufficient latent latitude. IPS will employ risk based decision making processes and the Code to inform and guide their approach to these negotiations and accommodations. Without reference to a core document such as the Code and such processes of qualitative risk based decision making, IPS would be unable to provide reasoned justification for its decisions and may experience difficulties in evidencing both consistency of approach and that its operational practise is truly outcomes focused.
33. IPS envisages building a shared understanding of its provisions as they apply to the applicant business. By doing so IPS is confident of building a relationship with that applicant where both parties can build and expand upon a position of regulatory trust. It is this regulatory trust that IPS submits will give those applicants it works with (and potentially ultimately authorise) the confidence in IPS' approach that they require. The operational application of IPS regulatory arrangements will reinforce this confidence.
34. The Code is central to the IPS OFR package. It is the core regulatory document which both permits and necessitates that the remainder of the IPS rules, irrespective of their level of prescription, are operationally applied in an outcomes focused manner. Having considered and addressed risk during the formulation of the rules, the remaining operational risk based element of the IPS regulatory function is provided for in the Authorisation Rules⁸ and the IPS regulatory and enforcement strategies and policies. This is to be delivered in operation by qualitative decision making made with reference to the IPS Risk Framework⁹.

⁸ Detailed discussion of these rules is contained in part V of this application.

⁹ The IPS Risk Framework is detailed in part V of this application.

35. IPS has tethered all its regulatory enforcement actions to the provisions of the Code¹⁰. In doing so IPS ensures that all sanctions are referenced to failures to adhere to principles or meet outcomes. IPS' principles and outcomes have been drafted so as to ensure compliance with the regulatory objectives.¹¹ In so doing IPS meet the legislative requirements in terms of the regulatory objectives, the professional principles and s.28 of the Act. The Code therefore functions as the prism through which the remainder of the IPS arrangements must be viewed.

Content of the Code

36. IPS has taken a conscious decision not to regulate conduct that is already adequately dealt with elsewhere. Re-regulating for conduct or practice that is already effectively regulated for elsewhere has no utility. To that end the Code makes no specific provision against discrimination on grounds of race, age or sexual orientation for example. Similarly, money laundering is not specifically addressed within the Code. Additionally, no reference will be found to, for example, matters addressed by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). There is therefore no mention of referral fee prohibitions despite that subject's current prominence in the legal press. These are all examples of matters that are dealt with at statute. In an outcomes focused landscape, IPS simply requires compliance with that which already addresses such conduct. IPS has sought to simplify both the content and the structure of its principles and outcomes.
37. Many of the regulatory rules, which flow from the Code, remain more narrowly prescriptive in their construction. This is not contradictory to being outcomes focused in approach. IPS assesses that a level of narrow prescription is necessary both to allow transparency for the public and the regulated and to adequately protect both the consumer and the client. Even within an outcomes focused regulatory provision, IPS assesses that it must be absolutely clear about what must or must not be done. In some areas this requires detailed prescription. In other areas less so. The broad and purposive form of the Code's principles and outcomes adequately contextualises the more narrowly prescriptive elements of the package.
38. IPS will provide guidance in certain areas. The guidance will provide additional detail as to the approach adopted by IPS and clarify interpretations on an on-going and reflexive basis. Where IPS requires a principle to be adhered to or an outcome to be met it makes this plain. Where IPS expects prescriptive rules

¹⁰ Misconduct is defined within the Investigation Disciplinary and Appeal Rules at r.1(2) as being any breach of the CILEx Code of Conduct. The Code can be found within the appendixes of this application. The Investigation, Disciplinary and Appeals Rules are also located within the appendixes.

¹¹ Detailed explanation as to how the Code meets the regulatory objectives is contained in part VI of this application. The Code can be found within the appendixes to this application.

to be followed it makes this clear. Where IPS provides guidance, it will do so to advise, educate and provide transparency as to the approach adopted.

39. Subsequent to revision, the Code remains both principles based and outcomes focused. By the tiering of its provisions, IPS permits and encourages its regulated community to develop innovative approaches to the provision of legal services. Entity A really can have different arrangements from entity B, as long as the principles are adhered to, the outcomes met and the rules followed. IPS allows those it regulates to determine their own route to the regulatory destination. The IPS arrangements leave no doubt as to that destination and, as such, are compliant with the obligation under s.28(2) of the Act.

Regulatory Conflict

40. IPS understands that it is not obliged to have due regard to an identical agenda to those of other approved regulators, or indeed the LSB. However, whilst understanding its freedom to develop the approach it considers most appropriate to meeting its unique challenges, IPS remain fully aware of the need to retain a level of parity in regulatory arrangements across regulators. Having carefully considered the provisions of other regulators in the sector, IPS assesses that the requisite level of parity has been achieved.

General Structural Considerations

41. IPS has reformed its regulatory package into a structure that:
 - delivers the regulatory objectives and the professional principles detailed in the Act
 - is clear, concise and comprehensive
 - retains the best elements of its existing membership regulation
 - covers all those individuals and entities that IPS now seek to regulate
 - covers legal practice and practice management
 - avoids regulatory duplication of matters already addressed by law
 - addresses the education and training and professional development requirements of all those IPS regulate
 - provides for regulatory decisions to be based upon risk
 - permits management of its regulatory operation in accordance with good corporate and regulatory governance, and
 - provides for clear separation of the regulatory functions from the representative functions.
42. The Act does not impose any hierarchy upon the regulatory objectives. The significant overlap and interplay between objectives would make this unworkable. The same is true of the IPS regulatory principles. IPS has therefore viewed both the regulatory objectives and its regulatory arrangements as separate collective wholes. By doing so, IPS has ensured that

the requirements of the regulatory objectives and professional principles are effectively translated and fully met by its regulatory package.

43. IPS is confident that its regulatory package is compatible with the eight regulatory objectives and has been framed in terms that are most appropriate for meeting them in the exercise of its regulatory functions. By building on the solid foundation of the pre-existing Code and by adopting the above approach, IPS has constructed a regulatory framework that will serve it well in the regulation of its envisaged new regulated community.

Considerations in Approach Development

44. In developing the approach to its revised regulatory structure and Code, IPS has had regard to academic papers and publications from diverse sources.
45. The IPS approach has been influenced principally by the requirements of the Act itself. However, many of the published works of Professor Julia Black of the London School of Economics and Political Science were of great assistance. The collection of essays *Understanding the Economic Rationale for Legal Services Regulation* published by the LSB in March 2011 proved highly informative.
46. IPS has not sought to revise its arrangements from a completely blank page, realising that “all public regulation must be assessed in the structural context of the market itself – with existing rules, professional associations, traditions etc.”¹² and that, in many if not all respects, “actual regulatory intervention [will be] limited to cases where the cost of intervention is weighed against the benefits intervention would be likely to achieve”¹³. In revision and reformulation of the regulatory package, IPS has not lost sight of the necessity for the arrangements to perform in practise so as to deliver the regulatory objectives going forward.
47. Professional legal regulation is structurally separated from the wider economy. Roy¹⁴ rightly highlights that “many of the behaviours and rules about what it means to be a lawyer come from professional bodies sitting outside of the public sector. In recent years, the formal regulation of lawyers has been delegated from these professional bodies, but the informal rules and behaviour that govern much of the *de-facto* regulation of legal services remains with professional bodies. These customs, educational standards, behaviours etc. have grown up over hundreds of years and are as ingrained in what it means to practise law as any formal regulation and so are just as important when considering to change formal regulation.” This consideration is of course highly relevant to IPS in the revision of its regulatory arrangements. The challenge is

¹² Roy, A - discussion of Decker & Yarrow report in *Understanding the economic rationale for legal services regulation – A collection of Essays* (2011) Legal Services Board, London.

¹³ *Ibid.* p.7

¹⁴ *Ibid.* p.9

to remain cognisant of the historical and retain the validity of the representative, whilst being an effective regulator of the professionals and entities that IPS seeks to include in its regulated community. IPS clearly needs to achieve this without blurring the clear line required between the representative and regulatory functions. In the case of IPS this presents unique challenges.

48. While risks have clearly been raised in the role of the professions as regulators, the generally espoused assessment of this risk – “that the rules the profession creates to regulate its members will act as unwarranted barriers to entry and will generally be in the interests of the profession rather than the consumer”¹⁵ - are, it is submitted, effectively mitigated in the case of CILEx and IPS by reference to the history of CILEx, the composition of its members and the position within the professional landscape that those members have historically occupied. The fact that this application seeks to provide autonomy of practice rights for CILEx members and that IPS propose to authorise in some areas by competence rather than by title, reinforces that the entire ethos of CILEx and IPS sets IPS apart from those performing the regulatory functions of other approved regulators. Such risks cannot therefore implicitly be ascribed as attendant to IPS regulation. CILEx seeks to break down unwarranted barriers to entry to the legal profession. In and of itself the IPS application - and the rationale for making it - advances that aim.
49. Fellows of CILEx have long been able to carry out reserved legal activities under the supervision of an Authorised Person. The argument that regulation by professional bodies risks both the creating or perpetuation of barriers to professional entry and consumer interests being subjugated to the interests of the profession has never really applied to CILEx in its regulatory role. Those IPS currently regulates do not have the right to practise autonomously in reserved legal activities. This application seeks to rectify the situation where an individual, who is perfectly competent to perform a reserved legal activity, can only do so if employed and supervised by an Authorised Person. As Black¹⁶ observes, “the list of [reserved activities] is a result of deals done and concessions made long ago; it has little or no substantive set of rationales underlying it.” Given a successful determination of this application, IPS’ regulation by principle, outcome, risk and competence will directly address this irrationality.
50. In revising the regulatory arrangements, IPS’ approach has been to embrace where CILEx has historically been, where they are within the post 2007 Act regulatory landscape and where CILEx members currently sit within the profession. From this starting point IPS has structured a regulatory package to

¹⁵ *Calibrating Regulation*. Black, J in (2011) Legal Services Board *op. cit.*

¹⁶ *Ibid.* referencing Legal Services Institute, *The Regulation of Legal Services: Reserved Legal Activities – History and Rationale, a Strategic Discussion Paper* (Legal Services Institute) London.

provide for effective regulation for all those it seeks to regulate, as the object of greater practice rights for those who are competent to have them is advanced.

Representative / Regulatory Separation

51. It is a paradox that, in seeking to advance the interests of members of CILEx in the terms of this application; in essentially exercising a representative function, IPS necessarily advances the rights of consumers; a regulatory function. By the very nature of its application IPS advance the statutory regulatory objectives, specifically in respect of protecting and promoting the interests of consumers, promoting competition in the provision of services by authorised persons and encouraging an independent, strong, diverse and effective legal profession. Social mobility is also advanced. Whilst IPS fully subscribe to the demarcation between the representative and regulatory functions, it is submitted that, in the context of this application, the two functions are not mutually exclusive but whilst remaining distinct, are interdependent.
52. The paradoxical nature of the IPS application has presented certain challenges in approach. IPS accepts that what it seeks will involve a significant shift in the regulatory perspective and the manner in which it operates. IPS is also aware of a more general shift in attitudes required to facilitate its aim. Public education will assist with the necessary attitudinal adjustment.
53. IPS has adopted a considered approach to the implementation of outcomes focused regulation. Aware of the interplay and overlap between elements of outcome focused, risk based and principles based regulatory philosophies, IPS is confident that its approach will deliver the statutory regulatory objectives and the professional principles upon a successful application determination.

CONSUMER OUTCOMES

The following is a statement of consumer outcomes that are delivered by the Principles and regulatory outcomes set out in the Code of Conduct. The principles and regulatory outcomes are, of necessity wider in their effect as they need to cover all of the professional principles and statutory objectives which extend beyond consumer outcomes.

Consumers, the public, clients, employers and professional colleagues can:

1. Trust those regulated by CILEx/IPS to act lawfully, be honest in their dealings with them, respect the courts and subordinate their own interests to those of the courts and clients;
2. Be assured those regulated by CILEx/IPS are competent to provide the services and/or undertake the work they are authorised or permitted to provide or undertake at the time they provide them or undertake it;
3. Be confident that CILEx/IPS sets appropriate standards for practitioners and ensures those standards are maintained;
4. Be confident that their money will be safe with a person regulated by CILEx/IPS and that the practitioner will be accountable to them for that money, where relevant;
5. Be confident that those regulated by CILEx/IPS will take necessary steps to bring misconduct by others to their attention or the attention of appropriate persons;
6. Be sure that those regulated by CILEx/IPS will deal promptly and fairly with concerns or complaints about their services or conduct and will co-operate with regulators and Ombudsmen to resolve those concerns or complaints quickly;
7. Be confident that those regulated by CILEx/IPS will give due regard to conflicts of interest and to the need to maintain client confidentiality and to maintain the security of information and data;
8. Be sure that those regulated by CILEx/IPS will explain clearly the services they provide, the possible outcomes, costs and timescales relevant to the matter in hand, will act on client instructions and will keep clients and professional colleagues informed of progress and developments in an action or transaction, including changes in likely outcomes, costs and timescales;
9. Be sure that those regulated by CILEx/IPS will treat them fairly and without prejudice;

10. Be confident that entities regulated by CILEx/IPS are properly organised and managed and are financially sound and that work undertaken by individuals and entities is organised and managed appropriately to secure the best possible outcomes for clients and in the interest of justice.

REGULATORY OUTCOMES

PRINCIPLE	REGULATORY OUTCOME	OUTCOMES EXPRESSED AS PURPOSEFUL RULES
<p>You must:</p> <p>1. Uphold the rule of law and the impartial administration of justice.</p>	<p>The primary and overriding duty to the court is understood and complied with. Court orders are obeyed.</p> <p>The Court is not treated with contempt.</p> <p>The Court is not knowingly misled by providers of legal services.</p>	<p>You must:</p> <p>1.1 Understand and comply with your primary and overriding duty to the court, obey court orders and do nothing which would place you in contempt.</p> <p>1.2 Not knowingly allow the court to be misled.</p>
<p>2. Maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services.</p>	<p>Clients have confidence in the professional standards of those who provide them with legal services.</p> <p>Clients are confident that those who provide them with legal services are qualified to do so.</p> <p>Clients are confident that those who provide them with legal services are authorised to do so.</p> <p>Clients are confident that those who provide them with legal services are appropriately regulated.</p> <p>The regulator's details may readily be</p>	<p>2.1 Advise your client of your professional status and that you are authorised to practise and/or regulated by IPS. Where your practice is regulated by IPS your business communications must confirm that.</p> <p>2.2 Not engage in any conduct that could undermine or affect adversely the confidence and trust placed in you and your profession by your client, your employer, professional colleagues, the public and others.</p>

	<p>seen on the business communications of regulated practices.</p> <p>The confidence and trust of clients, employers, professional colleagues, the public, and others in those who provide legal services, are not undermined or adversely affected by anything those providers do.</p>	
<p>3. Behave with honesty and integrity.</p>	<p>All dealings and financial matters are conducted honestly.</p> <p>No-one is misled by a provider of legal services.</p> <p>Wherever permissible, suspicions as to breaches of any professional code of conduct are reported to the relevant regulator.</p> <p>Those who provide legal services do not hold themselves out as possessing qualifications or a professional status that they not possess.</p>	<p>3.1 Be honest in all your dealings and in all financial matters.</p> <p>3.2 Not intentionally mislead anyone you deal with.</p> <p>3.3 Report to IPS without delay any suspicion that another has breached the Code unless bound by legal professional privilege or client confidentiality.</p> <p>3.4 Report to the relevant authority any misconduct of another which falls to be regulated by that authority unless bound by legal professional privilege or client confidentiality.</p> <p>3.5 Not hold yourself out as having a qualification or professional status that you do not possess.</p>

<p>4. Comply with your legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively.</p>	<p>The law is understood and complied with.</p> <p>Providers of legal services can evidence that they have complied with their legal and regulatory obligations and duties.</p> <p>Providers of legal services do nothing that places another in breach of any regulatory requirement or professional rule that applies to that other.</p> <p>Communications from regulators and ombudsmen are responded to openly, promptly and co-operatively.</p>	<p>4.1 Understand and comply with the law and regulation applicable to you.</p> <p>4.2 Take all practicable steps to ensure you can demonstrate that you have adhered to the Core Principles and met the associated Outcomes.</p> <p>4.3 Not place others in breach of any regulatory requirement or rule of professional conduct.</p> <p>4.4 Respond openly, promptly and co-operatively to communications from your regulators and ombudsmen.</p>
<p>5. Act competently in the best interests of your client and respect client confidentiality.</p>	<p>Clients and the courts receive good quality legal services provided by practitioners whose legal knowledge is current and of sufficient depth for their role and the level of responsibility attached to it, and who systematically identify and address deficiencies in their knowledge, skills and behaviours.</p> <p>Clients are represented only by those who are sufficiently competent and sufficiently knowledgeable and experienced in the relevant area of law.</p> <p>Clients' instructions are acted upon</p>	<p>5.1 Maintain a high level of competence in your legal work and ensure that your legal knowledge is current and of sufficient depth for your role.</p> <p>5.2 Identify and address any deficiencies in your knowledge or training, or that of your staff, so as to maintain a level of competence and knowledge appropriate to the work and level of responsibility in which you or your staff are engaged.</p> <p>5.3 Act only on matters that are within your competence.</p>

	<p>unless this would result in a breach of law or regulation.</p> <p>Clients are represented only by those who have the right or are authorised to do so.</p> <p>Clients fully understand the terms of service, extent of services, the payment process, the likely or anticipated cost, the likely or anticipated outcome and the timescale relating to the provision of services.</p> <p>Clients are openly and honestly advised.</p> <p>Clients receive prompt, clear and accurate information and advice within reasonable timescales.</p> <p>Clients are kept up to date about the work being conducted on their behalf within agreed timescales.</p> <p>Clients are fully informed about the complaints procedures of those who act for them and their right to refer their complaint to the Legal Ombudsman or the regulator as appropriate.</p> <p>There is no cost to a client in making a</p>	<p>5.4 Not act for a client in an area of law where you have insufficient knowledge or experience.</p> <p>5.5 Act on your client's instructions except when to do so would involve a breach of the law or this Code.</p> <p>5.6 Not act in a matter where you do not have the right or are not authorised to act.</p> <p>5.7 Adequately explain and agree with your client the terms upon which your services are to be provided, including the extent of the services, payment and the likely or anticipated cost, outcome and timescale for the advice and services to be provided.</p> <p>5.8 Provide prompt, clear and accurate information and advice to your client, advise them openly and honestly and keep them up to date with information they need about the work you are performing for them within agreed timescales.</p> <p>5.9 Inform your client fully as to your complaints procedures including their right to refer a complaint to the Legal Ombudsman or IPS where appropriate.</p> <p>5.10 Not charge a client for the cost of handling a</p>
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	<p>complaint.</p> <p>Clients are aware that the regulator may seek access to their papers for regulatory reasons.</p> <p>Clients are advised that the regulator will be given access to their papers, where appropriate, unless they object.</p> <p>Clients' affairs will be kept confidential unless disclosure is explicitly authorised by the client or required by law or regulation.</p>	<p>complaint.</p> <p>5.11 Where your practice is regulated by IPS, include in the terms of business with your client, a statement that IPS is your regulator and may seek access to their papers and that, in these circumstances, you will grant IPS access unless the client objects.</p> <p>5.12 Maintain confidentiality in respect of your client's affairs except where to do so would conflict with the law or the Code or where your client explicitly authorises you to disclose confidential information.</p>
<p>6. Treat everyone fairly and without prejudice.</p>	<p>Consumers and clients all have equal assistance to access justice and the full range of legal services.</p> <p>Each client is provided with an equal opportunity to secure a favourable outcome in their matter, irrespective of their vulnerability or susceptibility to discrimination.</p> <p>Nothing about the business of providing legal services prevents everyone being treated fairly and without prejudice.</p>	<p>6.1 Ensure your business or your role within it, your business model, processes and practices adequately:</p> <ul style="list-style-type: none"> • assist consumers and clients to access justice and the full range of legal services; and • provide each client with equal opportunity to secure a favourable outcome in their matter, irrespective of their vulnerability or susceptibility to discrimination.

<p>7. Ensure your independence is not compromised.</p>	<p>Clients are provided with independent and impartial advice.</p> <p>Clients are not represented by those with a conflict of interest or where there is a significant risk that such a conflict may arise.</p> <p>Clients are not represented by those who reasonably consider that the client is providing instructions under duress or undue influence, except where it would be to the client's detriment to withdraw from acting.</p> <p>Clients' confirmation is always sought when instructions are given by third parties.</p>	<p>7.1 Not act or continue to act where there is a conflict of interest or a significant risk that a conflict may arise.</p> <p>7.2 Not act or continue to act for a client if you reasonably consider that they are providing instructions under duress or undue influence, except where to withdraw from acting would be detrimental to the client's interests.</p> <p>7.3 Where instructions are provided by a third party, confirm them with your client to ensure they are your client's own instructions.</p> <p>7.4 Ensure that none of your commercial interests or financial arrangements adversely affect the independence of your advice or your ability to act impartially.</p>
<p>8. Act effectively and in accordance with proper governance and sound financial and risk management principles.</p>	<p>Proper standards of work are maintained, with tasks delegated only to those properly qualified and authorised to perform them.</p> <p>Those delegating tasks continue to own and accept responsibility for them.</p> <p>Records can be shown to be accurate and, wherever reasonably practicable, contemporaneous.</p>	<p>8.1 Maintain proper standards of work and keep accurate records. In matters such as communications with clients, professional colleagues and others, your records should be contemporaneous and in any event must be made as soon as practicable thereafter.</p> <p>8.2 Ensure that you properly supervise tasks that you have asked others to perform on your behalf, recognising that you remain accountable for any such work.</p>

	<p>Quality of work on clients' matters is maintained by proper supervision and regular checking by those with sufficient competence and experience to assess quality and ensure that identified issues are appropriately addressed.</p> <p>Effective management, oversight and reporting structures are adhered to.</p> <p>Effective procedures to ensure legal and regulatory compliance are compiled with.</p>	<p>8.3 Ensure that anyone you ask to perform work on your behalf is appropriately qualified and authorised to perform it.</p> <p>8.4 Ensure that clients' matters are supervised and regularly checked by those with sufficient competence and experience to assess the quality of the work and to ensure issues identified are addressed.</p> <p>8.5 Adhere to effective management, oversight and reporting structures.</p> <p>8.6 Comply with effective procedures to ensure compliance with your legal and regulatory obligations.</p>
<p>9. Protect client money and assets.</p>	<p>Client money and assets entrusted to those who provide legal services are protected from risks of every kind, including those associated with the financial position or stability of the business of such a provider.</p>	<p>9.1 Identify, assess, manage and promptly address risks to money and assets entrusted to you by clients and others.</p> <p>9.2 Effectively monitor the financial stability of your business or your role within it, so as to protect client money and assets from risks associated with the financial position of your business or the business of your employer.</p>