

**ILEX Professional Standards Ltd**  
**Practice Rights and Qualification Arrangements**  
**Consultation Analysis**

**Q1. IPS seeks rights to conduct litigation split between civil, criminal and family proceedings. Do you have any comments on the rights sought or the proposed split between the rights?**

Yes	No
13	1

<p><b>Yes</b></p> <ul style="list-style-type: none"> <li>As CILEx members usually specialise, this is appropriate.</li> <li>What about members of CILEx who are not Fellows but are authorised and regulated by the Ministry of Justice under the Legal Services Act 2007 to conduct litigation and advocacy in Tribunals. They are litigators.</li> </ul> <p><b>No</b></p> <ul style="list-style-type: none"> <li>Given that this is not required in any other legal profession, I am not sure why this should be a requirement for people, being Fellows, who have had to show greater experience than other lawyers who are able to simply undertake this work straight after qualifying. I also believe this will cost a significant amount to administer, and likely costs to individuals in order to qualify, when as professionals we will always only act within our expertise areas in any event. Failure to do so will only lead to IPS being involved as it would with the SRA/BSB.</li> </ul>
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<p><b>IPS response</b></p> <p>IPS approach to regulation is by competence. While the rights to conduct litigation scheme requires Fellowship of CILEx, IPS will assess the competence of practitioners before granting them authorisation. The approach delivers a key expectation that consumers have of practitioners.</p>
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**Q2. IPS seeks rights of audience for its Litigators. The rights have been split between chambers and open court rights for civil and family proceedings and are open court rights in criminal proceedings.**

**b. Do you agree that the civil and family rights be split between chambers and open court rights? If not, please set out your reasons.**

Yes	No
12	2

<p><b>No</b></p> <ul style="list-style-type: none"> <li>Why should this be necessary for more experienced lawyers?</li> <li>I see no difference in the levels of advocacy and knowledge required whether appearing before a judge in chambers or open court. Competence in advocacy will be judged by the training provider?</li> </ul>
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**IPS response**

IPS developed a proportionate approach to the award of rights of audience, allowing those practitioners who do not seek open court rights to undertake a suitable qualification to assure IPS of their competence to undertake advocacy in chambers hearings.

**Q2.b. Do you agree that Litigators be able to exercise the open court rights that CILEx is already authorised to award? If not, set out your reasons.**

Yes	No
14	

**Yes**

- But also possibly extended rights to bring CILEx in line with solicitors, with an ability to qualify for higher rights in the same fashion.

**IPS response**

IPS does not seek to extend the rights of audience to higher rights in its current application. It would need to carry out separate research and analysis into demand for higher rights.

**Q3. IPS seeks probate practice rights. Do you agree that an application be made for CILEx to become an approved regulator for granting probate rights? Please set out your reasons for your response.**

Yes	No
14	

**Yes**

- Given the qualification to become a Fellow, why should this be exempted?
- CILEx regulation will provide competition for regulation services. CILEx regulated practitioners will provide competition in the legal services market.
- I agree that CILEx should be an approved regulator for this as they are in the same position as the Law Society and they can do it.
- There are anomalies in the current system. Qualified Fellows should have the same rights as solicitors, including the right to practice independently.
- I do not have probate experience but have faith in IPS as regulator and CILEx Fellows to be competent in their specific area of law.
- There are a considerable proportion of CILEx Fellows within this discipline and our organisation therefore represents a share of this practice area.
- This is not an area of law I practice particularly, however I see no reason why competent individuals should not be permitted to carry out probate activities and CILEx as a regulator ought to ensure the quality of services offered to protect both public and the good name of CILEx Fellows.

- CILEx is the professional body that regulates professional experienced practitioners in this field. It is therefore necessary that it has the ability to grant such practitioners the right to practise. It is a complete anomaly that a professional body should be denied such rights, since to do so diminishes the qualifications of the professionals in this field.
- CILEx through IPS is already an Approved Regulator of CILEx members practicing Probate so it is most suitable that CILEx through IPS regulates CILEx Probate Practitioners. Please could we have a capital P for Probate and a capital P for Practitioner? Not probate practitioner. I will be proud to be a CILEx Probate Practitioner if practicing rights are granted and wish to flaunt two capital letter P's!! Conveyancing practitioners will have a Reserved Instrument Activity Certificate with capital letters so we'd like capital letters too please.

**IPS response**

IPS agrees with the support for its application for probate rights and award of rights through a competence based assessment

**Q4. IPS seeks to authorise suitably competent applicants to carry out probate activities. Do you agree with the proposal to regulate by competence? Please set out your reasons for your response**

Yes	No
13	1

**Yes**

- Regulation by competence should be seen as a better guide of suitability than regulation by simple qualification
- Probate work is conducted in many solicitors' offices, by persons who have no formal legal training who are nominally supervised by persons authorised by title but who may have little or no competence. This practice is often facilitated by the signing of documents on behalf of the firm to transfer that nominal authority. Often the authorised person does not practice on a day to day basis in the practice area he supervises. This is and has been throughout my 40 year legal career standard practice. It is not in the public interest, it encourages overcharging, restricts accessibility to legal services and generally brings the profession into disrepute. Probate activities should be carried out by those with competence and who are properly regulated. All documents, HMRC applications etc. should bear the name and qualification of the individual so authorised.
- I am not a Fellow/Chartered Legal Executive yet and I believe that for people in my position we should have the same right, as I have been doing this for over 10 years, so I have a lot of experience in this field.
- This is a 'chicken and egg' situation. One has to practice in order to become competent, outcomes focused regulation may provide the platform by which competence is measured.
- This will provide an equality of access to various stages of qualification, the higher competence does not necessarily come with seniority and should be

regulated by competence levels.

- This is not an area of law I practice particularly, however I see no reason why competent individuals should not be permitted to carry out probate activities and CILEx as a regulator ought to ensure the quality of services offered to protect both public and the good name of CILEx Fellows.
- It is important that the public can have confidence in the quality of legal services to be provided.
- Qualification by experience is very powerful. Qualifying employment has always been a mainstay of CILEx members' progression towards formal qualification with its emphasis on practical experience in a legal office. I have learned much from very competent and highly experienced Probate Clerks and Probate Managers over many of years even though they have no formal legal qualifications. Practical experience honed over many years with real clients is of equal value to examinations so long as CPD is also kept up and competency checked for both formally qualified practitioners and those not formally qualified.
- But it would be wrong to decide that only Fellows can action. Wills and succession, introduction to law and practice, and probate practice should be enough.

#### **No**

- I do believe that CILEx should be able to provide these types of services, as long as they have the knowledge to do so. However, I believe that some of the experience limitations may be detrimental to some applications made, for instance, for those Fellows who may wish to cross qualify due to redundancy or change in circumstances etc. Clearly a Fellow who has suitable experience in the area of law in which they are applying for a certificate should be considered, however, I believe that a large number of people will be put off from applying due to some of the requirements, which they may not necessarily meet but who would be more than capable of carrying out the work. Presumably there will be a fee for applying for these additional rights also – is there a guide to what these might be? As a Fellow who is keen to set up on her own, I find that there are a number of obstacles and not a huge amount of flexibility when it comes to the areas I can work in, despite my varied knowledge and experience... I truly believe they [the rights] could assist a great many people in providing more legal services and to actually use the career they have chosen to study and get experience in, by becoming Fellows. If Fellows can provide legal services through solicitors' firms, why can they not also do so on their own? If they have been accepted as a Fellow they have already shown their competence and experience. They should, therefore, be able to demonstrate their skills for themselves.

#### **IPS response**

IPS agrees with the support for its approach to the award of rights by competence. IPS recognises that applicants will need to have opportunity to develop their knowledge, skills and experience. The Code of Conduct recognises this position. However, independent practice rights will be the reserve of competent practitioners.

**Q5. IPS seeks reserved instrument practice rights. Do you agree that an application be made for CILEx to become an approved regulator for granting reserved instrument rights? Please set out your reasons for your response.**

Yes	No
14	

**Yes**

- Given the qualification to become a Fellow, why should this be exempted?
- CILEx regulation will provide competition for regulation services. CILEx regulated practitioners will provide competition in the legal services market.
- Maybe this could be considered for the probate practice rights as well as it sounds like a good idea and some probate practitioners also do transfers etc.
- Yes, there is no difference between qualified Fellows and solicitors. Granting these rights will iron out the anomalies
- Because CILEx already prepare, through standard of qualification, those who practise in this area – the service provided by CILEx should be wholly in terms of a seamless approach.
- CILEx is the professional body that regulates professional experienced practitioners in this field. It is therefore necessary that it has the ability to grant such practitioners the right to practice. It is a complete anomaly that a professional body should be denied such rights, since to do so diminishes the qualifications of professionals in this field.
- CILEx through IPS is already an Approved Regulator of CILEx members practicing Conveyancing/Land Law so I believe it is most suitable that CILEX through IPS also regulates Conveyancing Practitioners.
- Land registry forms and procedures are very simple these days.

**IPS response**

IPS agrees with the support for its application for reserved instrument practice rights.

**Q6. IPS seeks to authorise suitably competent applicants to carry out reserved instrument activities. Do you agree with the proposal to regulate by competence? Please set out your reasons for your response.**

Yes	No
13	1

**Yes**

- Conveyancing is conducted by many solicitors offices, by persons who have no formal legal training who are nominally supervised by persons authorised by title but who may have little or no competence. This practice is often facilitated by the signing of documents on behalf of the firm to transfer that nominal

authority. Often the authorised person does not practice on a day to day basis in the practice area he supervises. This is and has been throughout my 40 year legal career standard practice. It is not in the public interest, it encourages overcharging, restricts accessibility to legal services and generally brings the profession into disrepute. Reserved instrument activities should be carried out by those with competence and who are properly regulated. All documents, Land registry applications etc. should bear the name and qualification of the individual so authorised. The best protection for the general public is the maintenance of high standards within the profession and the efficacy of regulation. Regulation must be mindful at all stages of planning and implementation the cost of compliance both in terms of expenditure but also in management time. Therefore the scheme should be designed to keep expenditure as low as possible rather than emulating existing regulatory arrangements. Emphasis should be given to delivering the aims of the LSA to encourage competition and to improve access to justice. The objectives of the legislation are more likely to be achieved by encouraging a diverse range of different types of legal entity varying in size, specialisation and ambition and by lowering the costs of legal services. It is therefore vital that at all times (a) no unnecessary or unnecessarily onerous burdens to authorisation and practice are presented and (b) the cost of regulation is designed to be as low as possible.

- As I myself am a self-employed person in this position and it would be an advantage to me and my business.
- Yes, there is no difference between qualified Fellows and solicitors. Granting these rights will iron out the anomalies.
- The period of training for CILEx provides a sound foundation to be able to assess levels of competence.
- This would seem the most fair and rational basis on which to make such decisions.
- It is important that the public can have confidence in the quality of legal services to be provided.
- Yes - the same comments as answer to Question 4 above. There are very many highly competent but non qualified staff dealing with Conveyancing whose wealth of experience is many legal firm's greatest asset even though they have no formal qualification. Their CPD should still be kept up of course and competency checked. I noticed that those with Reserved Instrument Rights will be able to draft a transfer of stock (ie. stocks and shares). This is also part of a Probate Practitioner's work when transferring shares from an Executor to a beneficiary under a Will. Will Probate Practitioners also be authorised to draft transfers of stock related to their work? Wouldn't it be plainer English to call them Conveyancing Practitioners or Land Law Practitioners? Reserved Instrument Activity Certificated CILEx members is such a mouthful. The Council of Licensed Conveyancers does not seem to have suffered overmuch through using the term Conveyancer. Is it a problem to use the term? Won't the general public be helped by that term to understand what the person does? Reserved Instrument sounds more like a rarely played Stradivarius violin! I am happy that Conveyancing Practitioners will not be able to draft a Will-I think that's right

anyway- since Wills are best dealt with by Probate Practitioners or at least those with a good understanding that a Will is a very practical working document which needs to be capable of being applied after the death of the Testator.

**No**

- I do believe that CILEx should be able to provide these types of services, as long as they have the knowledge to do so. However, I believe that some of the experience limitations may be detrimental to some applications made, for instance, for those Fellows who may wish to cross qualify due to redundancy or change in circumstances etc. Clearly a Fellow who has suitable experience in the area of law in which they are applying for a certificate should be considered, however, I believe that a large number of people will be put off from applying due to some of the requirements, which they may not necessarily meet but who would be more than capable of carrying out the work. Presumably there will be a fee for applying for these additional rights also – is there a guide to what these might be? As a Fellow who is keen to set up on her own, I find that there are a number of obstacles and not a huge amount of flexibility when it comes to the areas I can work in, despite my varied knowledge and experience... I truly believe they [the rights] could assist a great many people in providing more legal services and to actually use the career they have chosen to study and get experience in, by becoming Fellows. If Fellows can provide legal services through solicitors' firms, why can they not also do so on their own? If they have been accepted as a Fellow they have already shown their competence and experience. They should, therefore, be able to demonstrate their skills for themselves.

**IPS response**

IPS agrees with the respondents supporting its approach to award of rights based on competence.

While the application for practice rights refers to reserved instrument activities, which is the term set out in the Legal Services Act, IPS will term practitioners as Conveyancing Practitioners, as this is a common term that can be understood by the public.

It will be possible for a practitioner to obtain both probate and reserved instrument rights so that they can deliver both services, as suggested by the respondent. However, the award of probate rights alone will not authorise a practitioner to undertake aspects of reserved instrument practice rights. Such an approach would not support IPS approach to authorisation by competence.

**Q7. IPS seeks to develop competence arrangements for immigration practitioners. Do you agree that an application be made to introduce formal competence arrangements for immigration practitioners? Please set out your reasons for your response.**

Yes	No	Don't know
10	2	2

**Yes**

- This is already a requirement for all other lawyers. However, as a partner in an SRA regulated immigration firm this needs to be considered along with the ability to practice independently. Should independent rights be given then this will be essential, however if not then it is an irrelevance given the SRA IAAS scheme and/or the OISC framework. I also believe that someone be already accredited in a relevant and comparable scheme (OISC or IAAS) then they should not have to requalify under any CILEx scheme as they should be deemed competent. Further consideration also needs to be given the ability to handle the LSC work, will this also apply to CILEx scheme members? If independent practice rights are given, will CILEx members be able to tender for LSC contracts? This is especially relevant for asylum work as this will remain following the LSC reforms in 2013, and thus I believe it is essential that the most experienced and able lawyers, irrelevant of being barristers, solicitors or CILEx are able to help those who need it most.
- Regulation of legal services is complex and no doubt confusing to consumers. The regulation of immigration practitioners is no exception. The consumer should be entitled to expect a minimum standard of competence from any regulated practitioner and the CILEx application will help to bring some clarity and stability to the practice of immigration practitioners.
- If IPS is doing this in other areas then immigration should also be considered.
- It is reasonable to expect that applicants will be able to demonstrate competence before applying for independent practice rights.
- CILEx needs to ensure a monitoring of services in this area is effective and this proposal is the most suitable method.
- However, for many established firms, it would not be appropriate to introduce formal competence arrangements as this would only serve as a disruption to firms which are already monitored and have evidenced their competence. However, it would be appropriate for new immigration practitioners. Perhaps a compromise or transitional arrangement for immigration practitioners with 5-10 years experience in the field may be more appropriate if new regulation is to be brought in.
- Same comments as before on great competence and experience in non qualified people. If Probate and Conveyancing authorisation will be based on competence why not immigration too?

**NO**

- Re q7: that competence testing should be on the basis of the number of complaints received.
- I consider that immigration practitioners acquire sufficient competence in their practice.

**IPS response**

IPS agrees with the majority support for its award of immigration practice rights based on an assessment of competence.

IPS reviewed the OISC and IAS schemes when developing its competence framework. The IPS framework recognises the OISC and IAS scheme where



possible. However, IPS does not agree that a passport arrangement can be sustained as there are differences between the schemes. IPS will put in place transitional arrangements for existing immigration practitioners. During that transitional period providers will undergo the competence assessment to enable them to continue to provide immigration advice and services.

**Q8. IPS has set out knowledge, skills and experience requirements which applicants must meet to obtain practice rights. Do you agree with the criteria? If not, please set out your reasons.**

Yes	No
12	1

**Yes**

- It appears directly comparable to the IAAS/OISC requirements. I do have to question the need for this given the OISC can cover anyone however. Again I reiterate my belief that those people, such as myself, who already hold senior accreditation in this area should not have to requalify in order to continue and there should be a route to automatically transfer for those who through exams/experience etc. can demonstrate their competence.
- The criteria for probate rights and conveyancing rights should include registration as a Chartered Legal Executive – i.e. applicants would need to be Fellows of CILEx. The consultation paper does not recognise 2 elements which are important if the objectives of the LSA, that access to legal services are improved and that competition is enhanced are to be achieved. Firstly that regulation by IPS must not be more onerous than other regulators and preferably less so. Secondly that regulation by IPS must not present such administrative or financial burdens upon an applicant that regulation becomes unnecessarily expensive and wherever possible IPS should adopt payment friendly practices, monthly payments, electronic payments etc.
- Agree with criminal law and broadly with immigration law, although some of the skills for this area of practice seem to overlap with criminal, EU law, legal research and client care. The other aspects seem to be bolt ons from the Level 6 professional higher diploma.
- They look really detailed and comprehensive. I cannot think of anything which should be added or improved. What a labour of love to put all that together.

**No**

- The requirements for Fellows who qualified some time previously to have to pick up client care and legal research is onerous, surely 5 years in practice is enough?

**IPS response**

IPS agrees with the broad support for its competence frameworks. It has reflected existing frameworks, such as IAS and OISC, wherever it can.

IPS carefully considered whether Fellowship of CILEx should be the starting point for the award of probate and reserved instrument rights. It found that possession of the

skills necessary to practice in these areas did not require the full Fellowship academic qualification. The skills and experience aspects are adequately reflected in the frameworks contextualised to the practice area. The LSB believes it is necessary for immigration practitioners to be Fellows of CILEx under Schedule 18 of the Legal Services Act. IPS has therefore set Fellowship as the starting point for that scheme. IPS recognises that many Fellows will not have completed the client care and legal research units. The frameworks allow these applicants to rely on existing experience and knowledge to demonstrate their competence in these areas.

**Q9. Applicants will be required to demonstrate their knowledge through completing the relevant Level 6 examination or alternative qualification. Do you agree with this proposal? If not, set out your reasons.**

Yes	No
11	3

**Yes**

- Applicants must have knowledge in an area to know what they are doing.
- I think I agree? I took my Fellowship exams many years ago. Do I have to do the Level 6 exam again? Does the 'alternative qualification' mean the competency based testing or does it mean a qualification equivalent to the level 6 qualification. Please advise me so I know what to expect.
- Level 3 and level 6

**No**

- Accreditation should be considered a further qualification, after having completed the academic stages. A newly qualified lawyer is not competent to work unsupervised, irrelevant of the exams passed. It should be based on practical experience or a combination of experience and examinations.
- In my view application process should only be open to Fellows
- Re q9: asking people to undertake qualifications will lead to increased 'suffocation' of the legal profession which is already suffering as a result of the double dip recession.

**IPS response**

IPS notes the responses and the concerns expressed by respondents. The knowledge element is one aspect of the competence framework. It is supplemented by skills and experience elements. The combination of these three aspects will address the concerns expressed.

**Q10. Applicants who do not hold the relevant examination but have experience that has developed their knowledge will be able to make an application based on 5 portfolios of cases which demonstrate their knowledge. Do you agree with this proposal? If not, set out your reasons.**

Yes	No
9	5
<p><b>Yes</b></p> <ul style="list-style-type: none"> <li>• But consideration to the length and time it takes to do these 5 portfolios have to be taken into account as small businesses are limited on resources.</li> <li>• It seems a good idea as any if you are wishing to be authorised in the basis if your practical experience.</li> </ul> <p><b>No</b></p> <ul style="list-style-type: none"> <li>• I don't believe that 5 cases is enough given the breadth of the work. I do not believe that there should be a fixed amount of cases required, but it stipulated that you must show competence on all areas, including advocacy for more senior accreditation, such as level 2 under the SRA IAAS.</li> <li>• Applicants should demonstrate their knowledge, skills and experience of law and practice by examination. This will ensure relevant knowledge and skills of the practitioner, promote consumer confidence and avoid accusations that the IPS practice certification is of a lesser quality than that of alternative regulated individuals. The portfolio route to authorisation undermines the scheme of qualification promoted by CILEx. It is also likely that the consideration of portfolios will increase the expense of the certification process for all applicants. It is unfair that applicants who can demonstrate compliance by examination which can be easily and cheaply verified should be charged the same as an applicant whose portfolio will take many more hours to verify. Client care skills and legal research skills do lend themselves to demonstrating by portfolio.</li> <li>• I don't think you can separate basic knowledge and experience, one must have knowledge before one can gain experience. Completion of the Level 6 qualification in immigration law will demonstrate that applicant has acquired the knowledge, the experience can be gained once the qualification been achieved and can be demonstrated by way of portfolio.</li> <li>• Allowing unqualified lawyers to apply undermines the whole process.</li> <li>• You must have some legal qualifications. To understand the history and reason for current law.</li> </ul> <p><b>IPS response</b></p> <p>IPS carefully reviewed the responses. It is necessary that the portfolio guidelines require knowledge to be demonstrated across the range of the subject area from which an exemption is sought. IPS' existing experience with the rights of audience scheme provides a tested model that demonstrates that the portfolios allow applicants to evidence experience across the range of a practice area.</p>	

**Q11 IPS has developed skills criteria for each practice area. Do you agree that applicants should demonstrate skills through a log of evidence matched against the skills criteria? If not, set out your reasons.**

Yes	No

11	3
<p><b>Yes</b></p> <ul style="list-style-type: none"> <li>• Subject to an exemption for those people who have already demonstrated this through other accreditation schemes.</li> <li>• IPS can also consider visiting members and overseeing them doing these skills as part of the evidence log, but I understand that this may not be possible, depending on IPS resources.</li> <li>• The same comments as question above.</li> </ul> <p><b>No</b></p> <ul style="list-style-type: none"> <li>• Applicants should demonstrate their knowledge, skills and experience of law and practice by examination. This will ensure relevant knowledge and skills of the practitioner, promote consumer confidence and avoid accusations that the IPS practice certification is of a lesser quality than that of alternative regulated individuals. The portfolio route to authorisation undermines the scheme of qualification promoted by CILEx. It is also likely that the consideration of portfolios will increase the expense of the certification process for all applicants. It is unfair that applicants who can demonstrate compliance by examination which can be easily and cheaply verified should be charged the same as an applicant whose portfolio will take many more hours to verify. Client care skills and legal research skills do lend themselves to demonstrating by portfolio.</li> <li>• I agree in principle with a log of evidence to match with skills criteria, but it is a concern that this may be restrictive in terms of the log being limited within a 12 month period. If this is so, those who have been out of practise but maintain CPD will be barred from these rights by virtue of being unable to provide a log of evidence. I am interested to know what will be in place by CILEx to assist with those qualified in litigation (or even probate and conveyancing) who cannot provide a log of evidence during a preceding period (say 12 months).</li> <li>• There should be no evidence log for practitioners who are able to demonstrate long service in their field of practice. Fellows who have been in practice for longer than 20 years should be exempt from providing a recent log of activity. There are many Fellows who have suffered a long break in employment as a result of the financial crisis of 2008/9 and would benefit from the ability to practice on their own account. The ability to demonstrate long service in the relevant field should be sufficient evidence of competence or if there is doubt, it should be re-tested through examination and perhaps interview.</li> </ul>	
<p><b>IPS response</b></p> <p>The skills criteria focus on assessing an applicant's skills to practise. IPS does not agree that skills can be demonstrated to a sufficient standard by examination and neither will it be proportionate to observe a practitioner's skills in the workplace. A practitioner must have up to date skills to practise. While IPS recognises that the recession has affected opportunities it must take account of its obligation to deliver consumer expectations that the practitioners it authorises are competent and possess up to date skills, which they have exercised recently. IPS is reviewing its CPD scheme. CILEx is separately considering how it can assist practitioners in developing their skills when returning to work after a period of absence from the workplace.</p>	

**Q12 Applicants will be required to demonstrate their experience through 3 portfolios of cases they have handled. Do you agree with this proposal? If not, set out your reasons.**

Yes	No
10	4

**Yes**

- BUT this needs to be considered as to how much time this will take as small businesses like myself only have so much resources.
- Portfolios will provide IPS independent assessment of experience.
- Demonstration of practical experience is vital
- I do agree. However, what is in place where a portfolio cannot be provided within a prescribed preceding period.
- But this should not apply to long serving Fellows of the Institute for the reasons mentioned at question 11.

**No**

- I don't believe that 3 cases is enough given the breadth of the work. I do not believe that there should be a fixed amount of cases required, but it stipulated that you must show competence on all areas, including advocacy for more senior accreditation, such as level 2 under the SRA IAAS.
- Should consider other options.
- You may be creating a 'chicken and egg' situation. Lots of your members do not work for a firm of solicitors and have no wish to, but still have knowledge and ability to carry out the role.

**IPS response**

IPS carefully considered the responses. IPS has developed a proportionate approach to the assessment of experience. Its own experience, through the rights of audience scheme identifies that three portfolios are sufficient. The requirement to demonstrate experience is not limited to the context of solicitors practices.

**Q13 Applicants seeking rights of audience will be required to undertake a rights of audience qualification course. Do you agree with this proposal? If not, set out your reasons.**

Yes	No	Not sure
9	2	3

**Yes**

- Depending on the level of rights to be granted. For 'lower' courts, such as Tribunals, I do not believe that this should be required. However, for more senior courts, I believe it should be separated as for solicitors. As such a formal course followed by examinations should be required for the High Court/CA/SC

- Consideration needs to be given to how long the course will take to complete and the cost to do it.
- Rights of audience require specific skills which may not be present in some lawyers who are good at writing a letter but not expressing themselves in open court. A good idea I am sure.

**No**

- This is unduly overbearing and unnecessarily increases the cost of compliance. Practitioners who can demonstrate a substantial number of years of practice, for instance 10 or more should be able to discharge the requirement by submitting a certificate countersigned by a regulated individual who can confirm the information certified. Practitioners between 2 and 10 years experience, can demonstrate experience through a portfolio scheme.
- Re q13: Overregulation of CILEx members will increase stress on them
- Should be experience of [handling] cases as well. This comes across as making money.

**Don't know**

- Ambivalent. I have rights of audience to appear before the Magistrates' Courts would I also have to take a course to appear before the first tier Immigration Tribunal, even though the skills are similar.

**IPS response**

The CILEx qualification does not include training in advocacy skills. The existing rights of audience course has developed the advocacy skills of applicants. IPS therefore decided that the same course should be undertaken by practitioners seeking to exercise advocacy rights as Litigators. IPS also decided that immigration practitioners should have advocacy skills to present before Immigration Tribunals. Its competency framework for immigration reflects that requirement.

**Q14 Do you agree that practitioners should demonstrate competence in practice management? If not, set out your reasons.**

Yes	No
10	4

**Yes**

- Appropriate to the size of the firm.
- I agree with reservations, as traditionally the majority of CILEx Fellows will never get this opportunity. Those that do may be limited, or may not fit the criteria adopted for competence in Practice Management – i.e. what constitutes Practice Management?
- However, I do not agree this must necessarily be done through examination.
- This is necessary to ensure adequate protection of the public. It should be tested through compulsory education and examination, if necessary and especially for practitioners seeking to practice independently.
- Because if you cannot manage your practice you are not going to be much help to members of the public or yourself.

- If they are partners, sure. If they are employees practice management is not a requirement, No!
- It is important that client money is separate from business accounts and that people understand the importance of client confidentiality, attendance notes (wills), probate diaries (probate), what needs to be shredded and what must not be, terms of engagement, PI and insurance, employment law.

**No**

- Again this is not required for any other category of lawyer, so why for CILEx? Members will only be offered partnership if it is determined that they have the skills already in place, and those going into sole practice or with other CILEx members will want to ensure on a self-regulatory basis that they have these skills as it is then their business which depends upon it. This can be managed through standard professional standards monitoring and enforcement. However, as solicitors do study accounts rules as part of the LPC, maybe this should be introduced as a requirement before members can qualify as Fellows to ensure competence.
- This requirement is more onerous than similar requirements as those which apply to individuals, regulated by other regulators. This is unnecessarily expensive and will place IPS regulated individuals at a commercial disadvantage to other regulated individuals. There is a risk that if the requirement for practice are made too onerous that the numbers wishing to adopt regulation by IPS will be limited. Competence in practice management should be demonstrated by a portfolio or by certified attendance at an approved course.
- Those seeking rights are not necessarily going to be managing practices

**IPS response**

Competence to manage a practice is important for its success and the protection of consumers. While the IPS practice management competencies do not require an assessment the risk based approach to regulation will determine whether practices meet practice management competencies and outcomes set out in the Code of Conduct. IPS believes that this delivers a proportionate approach to practice management.

IPS discussed the practice management competencies with insurance providers. Providers express interest in the proposal and indicate that it will have a positive effect on insurance premiums.

**Q15 Do you agree with the proposed practice management criteria? If not, please set out your reasons.**

Yes	No	Don't know
9	4	1

**Yes**

- Appropriate to the size of the firm.
- Again, reservedly. What assistance will be available to help the understanding of practice management and accounts principles?

- All very sensible.
- No**
- Again this is not required for any other category of lawyer, so why for CILEx? Members will only be offered partnership if it is determined that they have the skills already in place, and those going into sole practice or with other CILEx members will want to ensure on a self-regulatory basis that they have these skills as it is then their business which depends upon it. This can be managed through standard professional standards monitoring and enforcement.
  - Element 1 is unnecessary and to the extent that it would be relevant, covers some of the same ground as knowledge, skills and experience of practice areas. Chartered Legal Executives should be exempt from element 2 as they are already bound by and subject to the CILEx practice rules. Elements 3 and 4 are rather old fashioned but suitably modern versions should be capable of being demonstrated by certified attendance at an approved course. The practice management criteria should also include IPR for business owners, business marketing, use of social media and other licensing requirements such as Data Protection, Consumer Credit and FSA Regulation. Again it must be realised that and training or demonstration of competence will add to the expense of regulation and it is important that it does not place an uncompetitive burden on IPS regulated individuals. Consideration should be given to making the mandatory courses for practice management and accounts part of the application package and paid for with the application fee. This will ensure compliance, maintain consistent standards of training and enable economics of scale.
  - I do not agree. I believe experience and good track record are indicative of competence in the field.

**IPS response**

IPS gave detailed consideration to developing criteria that would support its risk based and competence based approach to regulation. For the reasons set out earlier it has decided that the criteria are essential to delivering practitioners with competence to manage a practice.

The criteria have been tiered to accord with the role the practitioner will perform in the management of the practice.

**Q16. Do you agree that practitioners should demonstrate competence in accounts which should be assessed? If not, state what they should do to demonstrate their knowledge of and competence to deal with accounts matters.**

Yes	No	Don't know
11	2	1

**Yes**

- Solicitors have to and this should be the benchmark. Being a partner in a firm, I appreciate how complex the accounts side of matters are and this is essential to



<p>understand for the benefit of managers, the client and to fulfil regulatory duties.</p> <ul style="list-style-type: none"> <li>• But it should be demonstrated by certified attendance at an approved course.</li> <li>• Appropriate to the size of the firm.</li> <li>• However, I do not agree that this must necessarily be done through examination.</li> <li>• Knowledge of accounts is a very basic skill for being a lawyer and running a business especially a business handling client money.</li> <li>• Don't need to go overboard. A fairly simple spread sheet suffices in my practice.</li> </ul> <p><b>No</b></p> <p>Re q16:use of accountants will alleviate pressure on CILEx members</p>
<p><b>IPS response</b></p> <p>IPS agrees with respondents and their support for the accounts course. Competence in accounts is essential for a successful practice that protects client money and manages organisation finances.</p>

<b>Q17.Do you agree with the proposed accounts competencies and the assessment criteria? If not, please set out your reasons.</b>		
Yes	No	Don't know
9	3	2
<p><b>Yes</b></p> <ul style="list-style-type: none"> <li>• But greater emphasis should be placed upon use of personal computers to run the accounts facility</li> <li>• Appropriate to the size of the firm.</li> <li>• Reservedly. What market research has been undertaken to establish CILEx members' accessibility to meeting the competencies? Is there to be a change of syllabus and/or additional modules for accounting and practice management?</li> <li>• Again all seems comprehensive and very sensible.</li> </ul> <p><b>No</b></p> <ul style="list-style-type: none"> <li>• I do not agree. I believe experience and a good track record are indicative of competence in this field.</li> <li>• learning about practice management is positive.</li> </ul>		
<p><b>IPS response</b></p> <p>IPS developed competencies in accounts in conjunction with a practitioner experienced in managing accounts of a legal practice and experienced in developing competencies in these area. The practitioner was able to rely upon their experience in developing a proportionate approach.</p> <p>The competencies have been tiered according to the role practitioners undertake in an authorised entity in connection with financial management of the practice.</p> <p>The proposed approach to entity regulations includes proposals that IPS work with entities to provide tools for management and mitigation of risk.</p>		

**Q18. Do you agree that practice rights Certificates should remain valid indefinitely? If not, state why.**

Yes	No	Don't know
11	1	1
<p><b>Yes</b></p> <ul style="list-style-type: none"> <li>As long as a member demonstrates their CPD/other evidence of continuing development, this should be sufficient to show their continued ability to practice. Should a member not be able to demonstrate this, then certificates may be withdrawn.</li> <li>Subject to annual CPD requirements and the ability to demonstrate competence through outcomes focused regulation.</li> <li>As long as CPD is upgraded to include practice rights and advocacy.</li> <li>Provided the practitioner has not been absent from their field of experience/practice for more than 8 years.</li> <li>So long as there is some system to check if people are keeping up their CPD and knowledge on any updates in Practice Management and Accounts etc.</li> </ul> <p><b>No</b></p> <ul style="list-style-type: none"> <li>Need proof of CPD.</li> </ul> <p><b>Unsure</b></p> <ul style="list-style-type: none"> <li>I think IPS should be able to spot check applicants at any time and the applicant must do training/CPD to keep their certificate valid, otherwise the certificate can be revoked.</li> </ul>		
<p><b>IPS response</b></p> <p>IPS agrees with the respondents that continued practice can only be permitted subject to completion of CPD. IPS has built CPD requirements into its scheme, which include the withdrawal of certificates where a practitioner has failed to meet their CPD requirement.</p>		

**General comments**

- I support the application for rights, but think these should be brought into line with solicitors and barristers for Chartered Legal Executives. Putting restrictions on their area of practice and making them jump through additional hoops before they may do so will not help to change the bigoted and unequal view other have of them. The requirement to provide 2 references in addition to becoming a Fellow will not help – and will solicitors provide such a reference so the applicant can set up in competition? IPS should stand up for equal rights, irrespective of the views of other regulatory bodies. The need to protect the consumer is the same for all lawyers. To this end I do not think the approach is appropriate, especially given in not all reserved activities will the applicant need to be a Fellow – how does this protect the consumer? Unqualified lawyers should have to demonstrate competence but Fellows should not be so burdened. Fellows should be able to judge for themselves what they are competent to do. I don't believe that allowing anyone who ever worked in legal

practice to be able to apply for rights was the intention of the LSA and is likely to increase actions for incompetence, pushing up indemnity insurance. Rights should be for Fellows only and the hoops are drawn too narrowly. It would be easier and less hassle to qualify as a solicitor.

- (LeO) We do not take a firm view on which activities IPS should be able to regulate. However, we would like to emphasise that the standard of work provided by an authorised person and the level of redress available to clients should be consistent across the legal sector. This should be regardless of who the legal practitioner is regulated by.

**IPS response**

IPS notes the comments made by the first respondent. It carefully considered the approach it should take to the award of practice rights. IPS believes the competence based approach is necessary to deliver consumer expectations and also to ensure practitioners are independently assessed as competent before being authorised.

The competence based assessment approach will ensure that IPS regulated practitioners are competent to at least the same standard as other practitioners. IPS has set competence at Level 6, which is honours degree standard.

## Education Reference Group 28 September 2012

### Practice Rights Qualification Frameworks

The Group was provided with an overview of the requirements for each of the frameworks.

Prior to beginning to address the specific issues which were emerging from the open consultation, the Group considered the requirement that members should have 2 years' experience in the relevant area of practice. Some members of the Group expressed the view that this was not enough time to prove competence. They stated that the earliest point at which a solicitor could become an independent practitioner was at the age of 26, whereas under the IPS scheme, applicants may be as young as 23 and this was not considered sufficiently mature to be able to competently run a business alone.

1. Practice Management and Accounts  
The Group made the observation that this was a crucial element of the application for independent rights. They considered the balance between level 1 and level 2 appropriate and did not believe that the level 2 needed any amendment following the change from HoLP and HoFA to 'Compliance Officer'.
2. The advocacy rights should not be split.  
The Group thought the split was useful as many applicants applying for civil and/or family rights may never appear in open court, but would be unable to do the job without rights in chambers.
3. 'Passporting' IAAS/OISC practitioners  
The Group stated that there should be no 'passporting' into the scheme.
4. Fellows qualified for more than 5 years should not be required to undertake legal research and client care  
The Group agreed with this, stating that those who have been practising for longer periods would be competent in these areas and would be demonstrating them through the qualification outcomes.
5. Those with more than 10 years' experience should only have to provide a reference to gain independent rights  
The Group rejected this on the basis that a reference would not objectively or sufficiently demonstrate competence
6. Only Fellows should be able to apply for practice rights  
The Group considered title to be important, it is both a brand and something to lose if they do not comply with regulatory requirements. The investment in the

- qualification provides the applicant with a greater attachment to it and is more likely to assure compliance.
7. The portfolio requirements  
The Group considered these requirements to be appropriate.
  8. Practice Management and Accounts should not be compulsory  
The respondent in the consultation indicated that this may be the case for an in-house lawyer who needs independent rights to conduct litigation, but would not be responsible for the management of the business. There was some sympathy with this, as an alternative it was suggested that the requirement for practice management and accounts could be made at the point of registration of the entity with IPS.
  9. Compulsory CPD requirements  
It was not considered necessary to make additional requirements for members with independent rights as the need to ensure CPD is relevant to own practice would ensure this implicitly. It was considered important that practice management and accounts was a compulsory element for those with independent rights. It was suggested that this could be alternated with the compulsory ethics requirement.
  10. Seeking equality with solicitors and barristers  
This was considered to be taking too big a jump too soon.
  11. General comments
    - Avoid use of jargon and use plain English
    - Do not over-engineer the systems
    - Don't make the system or the guidance over-complicated
    - Bear in mind the cost implications to the member, they should be proportionate

## IPS RISK BASED REGULATION SUMMARY OF CONSULTATION RESPONSES

### Q1. Do you have any comments on the risk framework described at Annex 1 of this consultation?

#### Consultee Responses

- It is accepted that the consultation addresses only certain elements of the regulatory approach so it is difficult to assess whether the proposed measures to assess risks are adequate. The consultation also does not set out the intended benefits to consumers of the proposed extension to practice rights and what IPS sees as the main risks to these benefits being achieved.
- It is difficult to assess the framework as it is silent on what IPS regulated entities will be able to do, in particular whether they will handle client money which has implications for the framework.
- The controls and measures to manage at the authorisation stage are welcome but IPS needs to understand the consumer experience to better inform any risk assessment of both individual entities and the regulatory objectives as a whole, e.g. by LeO complaints data and consumer feedback tools.
- The overall approach to risk assessment is welcome but the risk assessment should also include the scale and severity of impact.
- IPS should be taking into account the needs of vulnerable consumers.
- We appreciate that IPS has invested resources in developing its approach to risk assessment. This is important as regulating entities will break new ground for IPS. This work shows some encouraging signs but we would need to see the whole application for entity regulation to see how the risk framework fits within it to give a more definitive view on the narrow or wider proposals being consulted on.
- We note that the impact x probability = risk formula accords with the approach of other regulators. We would be interested to understand the respective weightings for the different factors and how different impact and risk factors will be assessed. Based on our consideration of these issues we question their appropriateness and reliability as an objective a fair measure of risk. We suggest that a qualitative review and assessment might be better suited.
- We broadly support the IPS focus on the regulatory objectives, particularly the emphasis on the public interest, the interests of consumers, and the broad approach to targeting higher risks and acting proportionately. However, CILEx

members should only undertake new areas of work or functions if IPS has demonstrated that it has the capacity and experience to regulate such activities. Furthermore, proposed practitioners of the new areas of work should be educated and trained at a level comparable to solicitors conducting the same activity, and robust public protection requirements, both financial and otherwise must be put in place.

- IPS principles are similar to those of other regulators but we strongly suggest a principle which covers business management in accordance with sound financial and risk management principles.
- We are in favour of an outcomes based approach but IPS needs a more prescriptive rules based approach in areas such as accounts/client money, professional indemnity insurance (PII) and compensation.
- Terminology comments – use 'business' instead of 'entity' and 'client' instead of 'consumer'.
- Any practitioner should be suitably qualified, e.g. ILEX level 6 in law and practice or equivalent.
- Risk will vary according to practice. There is a lack of training on risk in the CILEx syllabus in areas such as business and financial management. Suggest a training course by a recognised training provider. Training to reduce risk is key.
- Struggle to see what is being proposed. Can at this stage only see extra admin for CILEx members. Can't see what can be gained from introducing complex new requirements as the qualifications and experience gained by CILEx members and Fellows is already well-respected.
- Regulation should support entities that offer legal services in diverse ways, e.g. a self-employed individual based at home without a formal office who delivers services face to face at clients' premises/homes and uses email and telephone for communication instead and writing letters. Many customers prefer this approach, so there are diversity and access to justice benefits.
- In appropriate circumstances IPS should offer assessment by attendance at IPS rather than IPS visiting the business.
- It is essential that IPS is successful in practice rights applications to ensure that those already providing services such as will writing and related services can continue to do so. IPS proposals will ensure that any authorised person will be properly regulated by IPS thereby providing protection for the public and clients.
- The IPS risk framework is the best way forward and it is good that it is not based purely on educational achievement.

- If regulated by IPS this will broaden my role in the legal profession since some of my clients are from abroad. I agree with the IPS proposals in the consultation as long as the risk framework is not cumbersome.
- The risk framework does not define what constitutes a 'risk'.
- The application consideration period of three months for authorisation is too long, but three months for a conditional authorisation would be adequate.
- Happy to work with CILEx to polish up skills as keen to maintain high standards.
- I am not convinced that even with the proposed layers of risk and outcomes based processes that the best interests of consumers will be protected.
- There is currently an oversupply of legally trained people and if existing will writers are to be CILEx trained then this will further dilute current possibilities for those who are seeking trainee employment positions and they many will end up having to train to do something else.
- Unless the regulation is policed properly then I feel it is highly probable confidence and trust in the legal professional will be eroded. Currently there is a perception that solicitors are highly trained professionals but charge too much. I fear in the future professionalism will be eroded as consumers will be unable to judge whether they are getting the right advice or the advice the provider wishes them to take so the provider will make the most money. Based on the regulatory proposals I will not be continuing with my will writing business once regulation is mandatory. I receive full marks and complimentary comments from my clients under the Trading Standards Buy with Confidence scheme. This must be the outcome required by the LSB but I fear overly complex structures will impact on the costs of regulation and lead to fewer and larger entities. More particularly all consumers will see is: regulated by IPS not trained and regulated by CILEx so those who have decided up to now to take the easy option will have been rewarded by their ability to maximize their profit and in my opinion may seek to continue this approach but with legitimacy. I would like to wish you all the best with the work you are doing as I recognize the amount of work involved and your heavy responsibility with regard to the future of CILEx.

**IPS response**

The risk framework consultation preceded all other consultations IPS has made. IPS entity regulation proposals have since been developed further to explain how the framework links with the wider aspects of the IPS approach to entity regulation.

Consumer issues have been addressed separately within the IPS application for entity regulation, along with the further development of the risk framework (e.g. by using



the advanced risk assessment process).

The IPS practice rights applications clarify what entities will be able to do and the authorisation process they will follow. IPS will also be taking forward arrangements which provide IPS Authorised Bodies with the option of holding client money in an escrow account. Use of the escrow account will not be mandatory. However, IPS is working to encourage its Authorised Bodies to hold client money in escrow as this will reduce the risks associated with the administration of client funds.

IPS will develop its focus on the consumer through tools such as a Specialist Lawyers website and Consumer Feedback Programme. IPS has also used existing research on consumer experiences and expectations, and its existing consumer engagement programme in developing its proposals. The measure of 'vulnerability' has also been factored in to the IPS basic risk assessment process.

The IPS basic risk assessment is simply an initial assessment of risk based on information received in respect of an Applicant Body/Authorised Body. The Strategic Risk Committee (SRC) will keep the IPS approach to risk under review.

The IPS risk framework relies on a combination of quantitative and qualitative measures. Qualitative judgements are used when assessing the relative severity, impact, and context of any failure to deliver a particular outcomes or outcomes. IPS staff also have extensive experience in the regulation of individuals and entities providing legal services. This will assist IPS in applying proportionate regulatory decision making.

The IPS approach to the development of its education and training provisions, and in particular to its approach to regulating by competence, will ensure that IPS authorised bodies will only be allowed to provide services in specific reserved/regulated areas of legal practice where they have demonstrated the required competence to do so.

IPS has developed robust and innovative public protection requirements including compulsory open market Professional Indemnity Insurance (PII) for IPS Authorised Bodies, compensation fund arrangements and an optional escrow facility to reduce risks associated with the administration of client funds. Rules accompanying the revised Code of Conduct also include Authorisation Rules, Accounts Rules, Investigation Disciplinary and Appeals Rules (IDAR). IPS is also developing further rules including rules addressing Indemnity Insurance and Compensation Arrangements.

Principles 8 and 9 of the revised Code of Conduct deal with business management and accounts management, and Approved Managers in IPS Authorised Bodies will be required to demonstrate competence in these areas. The IPS competency framework includes competencies in business management including risk, and accounts. IPS risk review visits will also be used to provide Authorised Bodies and those applying to be authorised with guidance and support on risk management and accounts

management.

IPS has engaged positively with the other regulators, and this application proposes developing this approach further by exploring information sharing mechanisms which will ultimately be in the public interest.

IPS uses the term 'entity' as this term is used by the LSB in relation to the description of businesses (i.e. in the legal sector). The word 'consumer' has a wider definition than 'client' and consequently IPS uses both terms where applicable.

IPS will be making basic risk assessments at its own premises based on information provided by the entity. It would not be appropriate for a manager of an entity (whether a self-employed member or otherwise) to visit IPS as this would be impractical. This would also not be an efficient way of assessing business and compliance processes and client files. It should be noted that IPS staff have experience of conducting visits on compliance matters to CILEx members working from home and are aware of the sensitivities of conducting visits of this nature.

The outcomes based rules cover what is expected of individuals and entities regulated by IPS.

IPS has and will continue to review the timescales for authorisation to ensure that applications are processed as quickly as possible. From the review of independent research conducted into its anticipated regulated community, IPS now expects to be able to process fully completed applications for authorisation within one month of receipt. It will retain the option of extending this timescale to three months to cater for any unforeseen exceptional circumstances. It will keep its resources and staffing options under review to ensure that it can meet demand and deliver efficient and effective regulatory services.

IPS recognises the additional burdens that regulation may bring. IPS has developed a proportionate outcomes focused regulatory scheme which balances the burden of regulation with its obligation to protect the public and consumers.

## **Q2. Do you have any comments on the proposed IPS roles, functions and processes shown at Annex 2 of this consultation?**

### **Consultee Responses**

- Broadly in favour of suggested roles and processes but suggest start-ups require a greater degree of scrutiny. 'Dip sampling' more established businesses should be sufficient to cover more established businesses.

**IPS response**

Start-ups may need a greater level of support. IPS regulatory proposals, including the promotion of voluntary risk review visits, describe how IPS proposes to deliver such support. However, as IPS will regulate on a risk basis the level of support provided and regulatory action it will take in any given situation will depend upon a wide range of risk factors which will be assessed using the IPS basic and advanced risk assessment processes.

**Q3. Do you have any comments on the proposed basis of charging which will seek to reward those that best manage risk with lower regulatory costs****Consultee Responses**

- I would advocate 'light touch' regulation proportionate to the degree of risk that is deemed to exist.
- I would also advocate a flat fee to cover regulatory costs or a clearly defined upper limit.
- The charging regime should not price potential providers out of the market. If this happens it will adversely impact on the objects of increasing diversity in the provisions of legal services, promoting competition and improving access to justice. Ability to pay for regulation should also be based on the entity's size and turnover and stage in the business development cycle. A charging regime should be based on escalating regulatory charges from a low base for new businesses and which is based not only on a risk assessment but level of affordability.
- Low regulatory costs as a reward for good risk management will provide an incentive/reward for those who deserve it.
- The concept of lower regulatory costs for good risk management appears reasonable but there is still a potential concern as many will writers for example are on low incomes and if the cost of regulation is too high they won't continue in business.
- There is no indication of the level of charges based on the size of the entities.
- The recession in the UK is a problem as is tougher legislation leading to a drop in immigration work. This situation could be made worse with higher regulatory costs.

**IPS response**

The IPS regulatory charging structure has yet to be agreed.

IPS will put in place a proportionate regulatory fee structure. Its innovative consumer protection and risk management arrangements are focused on introducing proportionate regulation which will be reflected in the costs of regulation.

IPS is considering a number of options including flat fees and fees based on turnover. The size and risk posed by an entity may also be a factor used to determine the appropriate level of fees.

**ILEX Professional Standards Ltd**  
**Meeting of the IPS Reference Group**  
**2<sup>nd</sup> July 2012 at 11.00 am**  
**At the Chartered Institute of Legal Executives**

## **Background**

1. This paper summarises the feedback received from the first meeting of the IPS Reference Group.
2. This meeting covered the IPS consultation on risk based and outcomes focused regulation and introduced other aspects of the IPS approach to entity regulation.
3. This meeting was attended by twelve individuals from a range of backgrounds including self employed members and Fellows currently undertaking non-reserved legal activities, and members and Fellows employed at or partners in other types of legal practice undertaking reserved legal activities. The meeting was also attended by a representative of CILEx and an IPS Lay Board Member/Disciplinary Tribunal Member with experience of sitting on the SDT (Solicitors Disciplinary Tribunal) and the IPS Disciplinary Tribunal.
4. The following paragraphs capture views expressed by those in attendance at this meeting. The views expressed do not correspond with all of the questions asked, but they were captured and recorded nonetheless to ensure that all views could be considered in future decisions made by IPS.
5. The views expressed were considered by the IPS Practice Rights Working Group and have also been considered during the development of the IPS approach to risk based and outcomes focused regulation. IPS will take further action to analyse specific concerns and ideas before implementing its approach to risk based and outcomes focused regulation, as highlighted in the final paragraph of this paper.

## **Introduction**

6. After initial introductions by all in attendance IPS gave a presentation on the proposed IPS approach to Risk Based and Outcomes Focused Regulation.
7. Each attendee was provided with an information pack which consisted of hard copies of the consultation on Risk Based and Outcomes Focussed Regulation, the IPS Reference Group Agenda, and a copy of the slides from the above mentioned presentation.

8. Attendees were then split into two groups. The groups were asked to give their views on a series of questions. The first three questions were those posed in the IPS Consultation on Risk Based and Outcomes Focused Regulation.
9. The questions and a summary of the views expressed by group members are shown below.

### Questions and Responses

#### 10. **Provide your comments on the Proposed IPS Risk Framework shown at Annex 1 of the Consultation**

"Need to make sure there is a split between investigation and decision making – need a dual track approach. Inspection can be seen as biased if the inspector is also the regulator (decision maker)"

"Don't rely solely on self-assessment as the truth doesn't always come out"

"People using the risk matrix need to be trained well as if things are too complex they can guess which can lead to inconsistency"

"Can sometimes get false indicators from information received leading to scheduling 'waste of time' inspections"

"Risk-based assessment can be time consuming and bureaucratic"

"Other regulators are now taking action against entities instead of individual members who have committed breaches of rules. This is causing immense problems and can seriously affect all those in entities who may not have had any responsibility for breaches committed"

"The Home Office instigated an Inspection function to protect the public interest but such a function comes at a substantial cost. Inspections included thematic inspections, inspections programmed for different times of the year, and complaints-based inspections which were always at some distance behind the curve"

"Back office teams are needed just to manage the data and the extra bureaucratic activity could frighten people away from regulation"

"There should be a nationally based inspectorate function"

"Risks are dependent on the type and complexity of work conducted, value and volume of transactions, and the impact on and risk of loss to clients"

"The LSB wants to address the dabblers"

“Don’t assume that firms want to take client money. People can pay for work when done rather than money be taken on account”

“It is a different type of regulation for firms dealing with large sums of money, like quasi-banks”

“Regulation should be more than light touch”

“Need to consider qualifications in a risk framework including those being trained at the moment”

“The UK Border Agency (UKBA) conducts annual visits to immigration practitioners and assesses those visited as either fully compliant, need guidance, or no intention of complying. Those falling short can have their license suspended unless they purchase a UKBA Action plan for £2,000.00.

“The Home Office dropped risk-based regulation after trying it for 2 – 3 years. They operated a system of intelligence led regulatory activity including a Free-phone Whistleblowers telephone service and conducted inspections based on intelligence received. If IPS considers this you will need to treat the information received with a ‘pinch of salt’”

“Must have a simplified system for sole practitioners for providing data. Future annual requests for data could simply ask if initial data has changed”

“Don’t make data provision requirements on firms too onerous. Need to think about the impact/wellbeing on individuals in sole practice, as such individuals can suffer burn out from having to do everything as well as fee earning and often get involved in dabbling as they can’t afford to pass things on”

“There is the threat of duplication in the information being requested as the same kind of information is also required for indemnity insurance proposal forms. Such duplication should be eliminated”

“Use plain language. The risk framework includes the term ‘Leverage’ and it was unclear as to what this term meant until it was later explained”

“Be careful of providing too much guidance in the same manner as other regulators”

“Indemnity insurers simply look at turnover which on its own can be misleading as you should also look at net income too. Sole traders should not have to pay same premium as a large firm”

“Turnover is more workable in practice”

“70% of appearances at the Solicitors Disciplinary Tribunal (SDT) involve sole practitioners. Sole practitioners have no support structure which is also a factor in why 80% of breaches relate to accounts rules. IPS needs to focus on providing support for accounts rules”

“Escrow could be helpful, particularly in conveyancing, but the burden on the firm should not be prohibitive in terms of cost and practices should benefit from interest received from money on account”

**11. Provide your comments on the proposed IPS Roles, Functions and Processes shown at Annex 2 of the Consultation**

“Every firm should provide accounts produced by a qualified accountant. This is a system that works for other regulators but IPS should not provide a replica of other regulator’s accounts rules, e.g. the SRA”

“Visits to firms can be expensive. Also need to think about regulatory costs including regulation and compensation plus costs of membership and the cost impact on members”

“Regulation based on risk can encourage good practice but it is important to get the practical application of this system right”

“Client satisfaction surveys can be a good thing and the roles and functions within IPS can record the data submitted by firms in this area. Mystery Shopper can also be good but difficult to see how this could work and who would manage it, in an area such as conveyancing for example”

**12. Provide your comments on the proposed basis for charging which will seek to reward those that best manage risk with lower regulatory costs**

“This form of charging could be reasonable. However, when looking at insurance costs in probate for example, accepting flexibility would be good. For example, increased cover may only be needed in one or two cases and this could be dealt with as an add-on in each individual case rather than having a high level of cover not needed for the vast majority of cases “

“There will be costs for IPS in support infrastructure and to support the Centre if taking a harder (more interventionist) approach but not so many if taking a more relaxed approach”

“The overarching consideration in regulation needs to be the public interest and IPS should work with its regulated community to regulate in the public interest”

“There needs to be flexibility in the amount of supervision of firms but you need to think about what proportion of work is being overlooked, e.g. solicitors doing probate work”



“IPS could get a flood of members wanting regulation. The fee to regulate could be varied according to risk but those applying to be regulated by IPS would first want to know the cost of regulation to them and there needs to be a level playing field in the level of regulation provided”

“IPS can’t just accept paperwork to authorise firms. Need at least a photograph to show where these firms are and if they are operating from an office and whether they are meeting advertising requirements relating to the services they offer”

“Initial applicant should be visited. Other regulators will always visit”.

“If firms are required to provide annual returns there will be infrastructure costs for IPS to analyse these returns”

“The UKBA conducts visits to all firms in its regulated community at least once every 4 years including at the outset of when a firm joins. The UKBA has an intelligence system too and there is a clear procedure in the way it expects complaints to be handled and a whistle blowing system, which also takes into account practice abandonment”

“IPS will need to put in a system to ensure that firms are dealing with complaints properly including educating staff and ensuring that customers know how complaints will be handled by information being put in client care letters for example” (IPS has already taken steps in this area)

“IPS needs to be aware of bad customers – e.g. serial complainants”

“IPS will need an intervention function further down the line with someone dealing with the work of an intervened member/firm”

**13. How important do you think it is for IPS to obtain extended Practice Rights for CILEx members in Litigation, Probate and Conveyancing?**

“We need to move with the market so yes we should be applying for Practice Rights”

“Extending Practice Rights is vital for sole practitioners as they are often not practising to full capacity. It is frustrating to only be allowed to take matters so far before passing them on to a solicitor”

“Extending rights important in litigation. People are coming through qualification in litigation and don’t necessarily want to practice in a solicitors firm. It will be more rewarding for them to be able to practice on their own account but they currently can’t compete as there isn’t a level playing field with solicitors. Merging

functions across the professions will help ensure that there is somewhere else to go rather than just staying in a solicitors firm”

**14. What do you see as the benefits to you and CILEx members generally in being able to obtain extended Practice Rights?**

“There are lots of entrepreneurs out there who would use extended practice rights and would draw functions under one umbrella”

“Would need to look at how practice rights can be applied for if not currently practising in the area, e.g. litigation”

“There is a risk factor in trying to keep up with CPD requirements and the cost of meeting these requirements needs to be reasonable. The Home Office has a good system in the tests they provide on their website for immigration practitioners”

“Increased competition is better for the consumer. This will also enhance each organisation if more people are competent to practise in more areas”

“CILEx needs to think about marketing the brand. Legal Executive sounds like Litigation Executive. The profession needs to be recognisable. The qualification process also compares CILEx to Solicitor route but CILEx shouldn't be undersold. Legal Executives will have no problem taking an extra course to get advanced practising certificates”

**15. Do you intend to apply for extended Practice Rights and if so when?**

“Yes, as soon as we are ready”

“Need to be regulated by CLC as waiting for IPS”

“IPS needs more resource, not at end of 2013 as people will jump ship”

“OFR is untested”

“Marketing IPS as a regulator is important”

“There is a market out there that wants to be regulated by IPS which IPS doesn't know about”

**16. Are there any other aspects of the regulation of legal services proposed by IPS, or with legal sector regulation more generally, that are particularly important to you and why, and would you like to spend a little more time on discussing these issues at the next Reference Group meeting?**

“IPS Rules and Code of Conduct need to be co-ordinated and put out there to consultation so we can then meet and discuss before rules put in force and sanctions/conditions on practising also need to be considered”

“Need to consider the issue of Umbrella structures for sole practitioners”

“Sole practitioners more vulnerable to financial intervention. Such practitioners could benefit from a buddy system/network”

“Forensic Investigation of firms should not always be followed by intervention”

“While it would be appropriate for the SRA to continue to regulate magic circle firms there is no reason why IPS could not regulate anyone else”

“IPS should look at a Practice Helpline and Liaison Officers to help members/firms set up and practice”

“Consider some form of Brokerage when people want to sell their firms”

“Does IPS need to follow the SRA on banning referral fees and would a ban work. Should consult on this and if referral fees are to be banned what would be a breach of the law in this area. Firms will need guidance in this area and there is a need for consistency in how the rules are applied”

“Consistency also needed in sanctions and appeals procedures in areas such as Regulatory Settlement Agreements and referrals to IPS equivalent of SDT”

“IPS needs to consider its approach to regulation and ensure that its approach is not severe enough to impact upon the health of members”

**17. What kind of support and guidance would you like from IPS and in what form?**

“IPS is behind other regulators”

“Timetable for Reference Group”

“Supporting members to conduct any reserved legal activity”

“Support opportunity to have higher rights of audience”

“Ethics service (CILEx already provide this)”

“Telephone helpline where members can ask for guidance on compliance and where all those manning the telephone are trained to deliver consistent messages. IPS also needs the infrastructure to support members in this way”

“Assessing against competence is a selling point”

“Immigration advice should be related to competency”

“IPS should not become ‘too big for its boots’. It will continue to need a forum such as this one to help inform future decisions”

**18. Do you think firms regulated by IPS would be interested in working with IPS in demonstrating their client focus, for example, through a website asking clients to provide feedback on the service they have received?**

“Important to get feedback on service”

“A feedback service should not be like Trip Advisor. It will need to be robust and moderated by IPS”

“A lot of people don’t have email so look at other ways of capturing feedback”

“Questionnaires should go out with addressed envelope for clients to send back”

“There may be an issue with some fee earners not handing out/sending questionnaires to clients”

“Mystery shopping could be considered – but it could be expensive”

“Solicitors professions is a mostly affluent white male profession with opportunities for them to become judges. There should be more marketing of CILEx to BME Groups to help such groups compete”

“CILEx courses are regimented and not the same as a degree”

“If going with Escrow need to look at whether Escrow transaction fee can be classed as a disbursement”

“There needs to be an IT Portal to manage an Escrow account”

Summary of discussion points made and introduction to other areas of work

19. In the final session of the meeting IPS presented a summary of the views expressed to the whole group.

20. The group was then provided with a brief summary of the work being undertaken on qualification arrangements for obtaining practice rights, and the revised Continuing Professional Development (CPD) Scheme put forward for CILEx members. The group was also referred to the consultation on this subject that was released shortly before the date of this meeting.

21. Those present were then provided with a brief summary of other areas of work IPS is undertaking including the development of Professional Indemnity Insurance (PII) and Compensation Arrangements and updating IPS Rules.

Follow Up Action

22. IPS circulated these minutes to its IPS Practice Rights Working Group. The minutes of this meeting were also circulated to other CILEx members who expressed an interest in taking part in the IPS Reference Group but could not attend this meeting of the Group.
23. IPS has and will continue to consider these views along with the views expressed in consultations when implementing its approach to risk based and outcomes focused regulation. It will do so by assessing the views expressed and identifying those which can be regarded as concerns and those which contain ideas. The IPS Strategic Risk Committee (SRC) will then decide:
  - i) Which of the concerns contain important messages that should be taken into consideration when training staff on how outcomes based regulation should be applied in practice;
  - ii) Which ideas can be developed and implemented after taking into consideration any potential resource implications.

## THE CODE OF CONDUCT AND ACCOUNTS RULES ANALYSIS OF CONSULTATION RESPONSES

### INTRODUCTION

IPS issued a consultation on its proposals to revise the Code on 27 July 2012. This consultation also re-issued the Accounts Rules, which had previously been consulted upon but had been subjected to minor amendments. This consultation closed on 19 October 2012.

### SUMMARY OF RESPONSES

IPS published the consultation on its website and additionally alerted members and the public to it by publication in the CILEx Journal. The consultation was also sent to over fifty members, consumer bodies and professional bodies and legal service regulators.

Thirteen responses were received. Of those, nine were standard form responses and four were more general responses that answered only those questions that the consultees wished to make comment upon. Ten responses were from CILEx members, one was from the Legal Ombudsman, one was from the Chartered Institute of Patent Attorneys and one was from the Legal Services Consumer Panel. All the non-member responses were general in nature, addressing only specific points.

Of the ten CILEx members who responded, nine answered all questions with the remaining respondent responding only to specific questions. Six of the CILEx members responding advised that they were happy for their responses to be published and four advised that they did not permit publication of their comments or did not permit publication without the opportunity for revision in advance.

The responses received were broadly supportive of the IPS approach to the revision of the Code of Conduct and the Accounts Rules. The content of the publishable responses is provided below.

Standard form responses will be addressed separately from the general responses to provide a full picture of the responses received.

*Standard form responses:*

**Q1. Do you agree that the approach adopted to expanding the application of the Code provides an effective overarching core regulatory framework that sets out the standards of conduct expected of everyone we regulate? If not, please identify any areas where you believe development is required.**

RESPONSES:

All nine respondents who answered this question agreed. None of the respondents provided any further comment.

**IPS COMMENTS Q1**

In the interests of transparency and clarity for consumers, the public and IPS regulated community IPS has ensured that its Code is applicable to all it regulates.

**Q2. Do you agree that the definitions of CILEx Member, CILEx Practitioner and Authorised Body (annex 3) adequately encompass all those subject to regulation by the Code? If not, please identify any area of deficiency in this respect.**

RESPONSES:

All nine respondents who answered this question agreed. None of the respondents provided any further comment.

**IPS COMMENTS Q2**

IPS carefully reviewed the definitions used in the Code and its regulatory arrangements to ensure there is consistency of application.

**Q3. Do you agree that the outcomes under principle 1 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas of deficiency in this respect.**

RESPONSES:

All nine respondents who answered this question agreed. None of the respondents provided any further comment.

**IPS COMMENTS Q3**

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle.

**Q4. Do you have any other comments on the outcomes under the first core principle? If so please provide details.**RESPONSES:

Of the nine respondents, eight made no comment. One CILEx member stated: "Definitions should include entities as well as individuals to save confusion to the public – this may be covered in principle 2."

**IPS COMMENTS Q4**

IPS' regulatory arrangements have been reviewed to ensure consistency of application. Supporting guidance will clarify to whom the Code and other regulatory arrangements apply.

**Q5. Do you agree that the expansion of principle 2, as expressed above, is appropriate and effective? If not, please specify how you would propose we achieve regulatory oversight in this respect.**RESPONSES:

All nine of the respondents agreed with two providing qualification. One qualification was not authorised for publication. The other qualification was from a CILEx member who stated: "Yes, save that quite frequently the public have little or no interest in the minutiae of regulation / codes of conduct. As long as they are satisfied with the job: result, costs etc. that is all that matters to them."

**IPS COMMENTS Q5**

IPS' regulatory arrangements, including its consumer feedback proposals, will enable IPS to assess public satisfaction with its regulatory arrangements and thereby keep them under review. The mechanism will allow for consumers to provide feedback without involving themselves in the minutiae of information. Equally IPS has drawn upon existing research to assess outcomes consumers expect and to reflect them in its regulatory arrangements.



**Q6. Do you agree that the outcomes under principle 2 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

RESPONSES:

A CILEx member stated: "I am not sure I understand the references to outcomes and measurable outcomes, which seems to be so much "business speak". A code of conduct is something which professionals should be familiar with and comply with. How does one measure this? If no complaints are made against an individual then it may be assumed they are conversant and compliant". All other respondents agreed and made no further comment.

**IPS COMMENTS Q6**

The IPS regulatory arrangements from its authorisation and supervision programme to its enforcement programme place the Code of Conduct at the core. The arrangements have been developed to ensure that compliance with the outcomes and principles set out in the Code can be measured.

**Q7. Are there any other aspects of personal conduct that should be included in the *Guidance*? If so, please set out your views**

RESPONSES:

Six of the respondents answered in the negative and made no further comment. Three respondents answered in the affirmative. Of those three only two provided their views. One of the views expressed was not authorised for publication. A CILEx member stated: "Members should act in the best interest of their client at all times."

**IPS COMMENTS Q7**

IPS agrees that members should act in the best interests of their clients at all times. IPS has an obligation, in the public interest, to consider whether the personal conduct of a member affects their integrity and practice as a member of a regulated profession. It does therefore require members to declare personal conduct. IPS assesses whether personal conduct affects their membership and continuing regulation.

**Q8. Do you have any other comments on the outcomes under the second core principle to the Code? If so please provide details.**

RESPONSES:

A CILEx member stated: “Members should not pass details of their clients onto third parties in favour of a commission fee.” A further respondent answered in the affirmative but made no comment. The remaining respondents answered in the negative.

**IPS COMMENTS Q8**

The Code of Conduct requires that IPS’ regulated community comply with the law. This principle encapsulates the obligation to comply with obligations set out in legislation in relation to referral fees.

**Q9. Do you agree that the outcomes under principle 3 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

RESPONSES:

Eight of the respondents answered this question in the affirmative without further comment. A CILEx member stated: “Again, I am not sure I understand these continued references to outcomes. The term “outcomes focussed” may be confusing. What does all this mean in plain English? Importantly, what is meant by “suspicion”? At the very least this should be qualified as “reasonable suspicion

**IPS COMMENTS Q9**

IPS will issue guidance to explain its use of definitions when it launches the new Code.

**Q10. Do you have any other comments on the outcomes under the third core principle to the Code? If so please provide details.**

RESPONSES:

A CILEx member stated: “Yes, I consider there is some degree of overlap with Principle 2.” Two respondents answered in the affirmative but provided no comments. The remainder of respondents answered in the negative.

**IPS COMMENTS Q10**

IPS has carefully reviewed the principles and outcomes in the Code. It recognises that outcomes 2.2 and 3.1 could overlap. Outcome 2.2 relates to confidence and trust and outcome 3.1 to honesty. Therefore IPS assesses that it is necessary to retain both outcomes to clarify to its regulated community the outcomes that they must deliver.

**Q11. Do you agree that Principle 4 adequately provides for outcomes focused regulation in respect of the area of legal and regulatory compliance and effectively requires co-operation and engagement with oversight bodies?**

RESPONSES:

Eight of the nine respondents answered in the affirmative. A CILEx member did not answer but did provide comment in the following form: "I consider there is a potential conflict here. If one is employed by an entity regulated by another regulator *e.g.* the SRA then one will have to comply with one's employer's processes and procedures first which may affect the speed with which one can respond to the LSO or IPS as one would have to go through the employer's channels."

**IPS COMMENTS Q11**

IPS recognises that the entity based regulatory approach requires members to comply with the regulatory arrangements of the regulator of the entity. The Code confirms that the regulated community must comply with the Code where it applies to them. IPS' regulatory arrangements, in its Authorisation Rules, also address regulatory conflict, clarifying that the arrangements of the entity regulator take precedence. Principle 4 is also drafted broadly and does not require compliance with IPS but with the requirements of applicable regulators.

**Q12. Do you agree that the outcomes under principle 4 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

RESPONSES:

Eight of the nine respondents answered this question in the affirmative. The remaining respondent made no comment.

**IPS COMMENTS Q12**

IPS agrees with the view of the respondents.

**Q13. Do you have any other comments on the outcomes under the fourth core principle to the Code? If so please provide details.**RESPONSES:

Seven of the nine respondents answered in the negative. Of the remaining two responses received, one answered in the affirmative but made no comments. A CILEx member stated: "Complaints investigated by IPS should be done independently and charges can be applied but have to be reasonable, and should only apply if the fault lies with the member."

**IPS COMMENTS Q13**

IPS complaints handling procedures are set out in its Investigation, Disciplinary and Appeal Rules. The Rules set out arrangements for the transparent and fair investigation and determination of complaints. The purpose of the charging arrangement is to bring allegations to an independent decision making body, the Disciplinary Tribunal. IPS cannot prejudge cases to only bring charges where a determination has been made that fault lies with the member. IPS does however have in place an arrangement for the early rejection of unfounded allegations. In the interests of transparency and clarity for consumers, the public and its' regulated community IPS has ensured that its Code is applicable to all it regulates.

**Q14. Do you agree that Principle 5 adequately provides for outcomes-focused regulation in respect of the areas of competence, acting in the best interests of clients and respecting client confidentiality? If not, please identify any areas for improvement in this respect.**RESPONSES:

Eight of the nine respondents answered in the affirmative. The remaining respondent, a CILEx member stated: "No, members should only practice in areas that they have qualifications in."

**IPS COMMENTS Q14**

The IPS approach to regulation supports the view that authorisation will only be

granted where an applicant demonstrates competence in the practice area in which they seek to practise.

**Q15. Do you agree that the outcomes under principle 5 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

RESPONSES:

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle.

**IPS COMMENTS Q15**

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle.

**Q16. Do you have any other comments on the outcomes under the fifth core principle to the Code? If so please provide details.**

RESPONSES:

Six of the respondents answered in the negative. Three respondents answered in the affirmative but of those only two made comments. A CILEx member stated: "Members should not pass clients personal details onto any third parties without consent of client." Another CILEx member stated: "It does not appear that the changes markedly change those obligations already placed upon (and practiced by) practitioners. If there are marked changes to the obligations on practitioners it may be useful for CILEx / IPS to outline to practitioners where there are relevant changes that ought to be made to client care letters etc."

**IPS COMMENTS Q16**

IPS agrees that members should protect client data. The outcomes to principle 5 reflect the client care outcomes that appear in regulatory arrangements of other regulators and of the IPS existing Code. IPS will issue appropriate guidance and bring the Code to the attention of its regulated community when it is launched.

**Q17. Do you agree that principle 6 effectively deals with the issue of**

**access to justice and protection of the vulnerable? If not, please advise of any areas for improvement.**

RESPONSES:

Seven of the nine respondents answered in the affirmative. The remaining two did not answer the question but did make comment. A CILEx member stated: "Members should advise vulnerable clients with care and attention and ensure they are happy with their instructions before proceeding." Another CILEx member stated: "This is confusing as "without prejudice" has a legal meaning and in my opinion should be amended."

**IPS COMMENTS Q17**

IPS agrees that its regulated community should advise vulnerable clients with care and attention and clarify instructions with them. Outcome 5.7 sets this obligation as an outcome.

**Q18. Do you agree that the outcomes under principle 6 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

RESPONSES:

Eight of the nine respondents answered in the affirmative with the remaining respondent not answering this question. No comments were made.

**IPS COMMENTS Q18**

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle.

**Q19. Do you have any other comments on the outcomes under the sixth core principle to the Code? If so please provide details.**

RESPONSES:

Six of the nine respondents answered in the negative and made no comments. Of the remaining three responses two answered in the affirmative but only one of those made a comment. The third made comment but did not answer the questions. A CILEx member stated: "with regards to the issue of equality, I feel the legal

obligation is already covered in principle 4.” Another CILEx member, stated: “Whilst I understand the principle I would ask what we are supposed to do to improve access to justice when Government seems determined to reduce it. There is also potential conflict with employers.”

### **IPS COMMENTS Q19**

IPS has reviewed principle 4 following the comment made above. It believes that principle 6 is necessary to reflect that IPS expects its regulated community to treat everyone fairly. IPS recognises the impact of Government cuts in areas such as legal aid. However, it does not agree that there is a conflict with employers. The obligation at principle 6 relates to the treatment of clients of a regulated person or entity.

**Q20. Do you agree that the outcomes under principle 7 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

#### RESPONSES:

Seven of the nine respondents answered this question in the affirmative and made no comment. One respondent did not answer this question or make comment. A CILEx member stated: “Again, this seems to be stating the obvious. I also have concerns about potential conflict of interest with employers.”

### **IPS COMMENTS Q20**

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle. IPS response above (under question 19) addresses the comments about conflict of interest with employers.

**Q21. Do you have any other comments on the outcomes under the seventh core principle to the Code? If so please provide details.**

#### RESPONSES:

Seven of the nine respondents answered in the negative. One respondent answered in the affirmative but made no comment. A CILEx member, did not answer the question but commented: “Members should ensure conflict of interest does not occur.”

**IPS COMMENTS Q21**

IPS agrees that its regulated community should have in place arrangements for and comply with arrangements for the identification of conflicts of interest. Its risk based approach to regulation will assess compliance with the Code, which includes an obligation to identify and act appropriately where there is a conflict of interest.

**Q22. Do you agree that principle 8 effectively deals with outcomes focused regulation in the area of practice management? If not, please advise of any areas for improvement.**RESPONSES:

Eight of the nine respondents answered in the affirmative and made no comment. A CILEx member did not answer the question but stated: "Again, this is stating the obvious. I have concern re supervision. This would depend upon the employer and some are better than others. This is outside the member's control."

**IPS COMMENTS Q22**

The preamble to the Code clarifies that the regulated community comply with it where it applies to them. IPS recognises that CILEx members working in entities regulated by other regulators will need to comply with the arrangements of those regulators.

**Q23. Do you agree that the outcomes under principle 8 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**RESPONSES:

Eight of the nine respondents answered in the affirmative and made no comment. One respondent did not answer this question and made no comment.

**IPS COMMENTS Q23**

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle.



**Q24. Do you have any other comments on the outcomes under the eighth core principle to the Code? If so please provide details.**RESPONSES:

Six of the respondents answered in the negative and made no comment. One respondent did not answer this question and made no comment. Two of the respondents answered this question in the affirmative but one of those did not then comment. A CILEx member answered in the affirmative and stated: "The person / body regulated should be accountable for the work carried out by the entity and the people employed by the entity."

**IPS COMMENTS Q24**

IPS agrees with the comment. Its entity based approach to regulation will deliver this proposal, targeting regulation at the entity before assessing whether any action is needed at individual level.

**Q25. Do you agree that principle 9 effectively addresses regulation of the financial protection of clients? If not, please identify any areas for improvement.**RESPONSES:

Eight of the nine respondents answered in the affirmative and of those, seven made no comment. The comment made was not agreed for publication. The remaining respondent did not answer the question but stated: "Again, this is stating the obvious".

**IPS COMMENTS Q25**

IPS considered in detail the principle to ensure that it delivers suitable outcomes for the protection of client money. The Accounts Rules provide further clarification of this obligation.

**Q26. Do you agree that the outcomes under principle 9 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**RESPONSES:

Eight of the nine respondents answered in the affirmative and made no comment. One of the respondents neither answered the question nor made comment.

### **IPS COMMENTS Q26**

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle.

### **Q27. Do you have any other comments on the outcomes under the ninth core principle to the Code? If so please provide details.**

#### RESPONSES:

Six of the respondents answered this question in the negative and made no comment. One of the respondents did not answer the question. Two of the respondents answered in the affirmative but of those only one made comment. A CILEx member stated: "IPS have to look at how this will affect a small business implementing new account rules."

### **IPS COMMENTS Q27**

IPS has developed a proportionate approach to regulation. Its proposals for the support of regulated entities and its accounts training course will provide entities with the tools to implement new accounts requirements, which are necessary for the protection of client money.

### **Q28. Do you agree that the proposed structure of our regulatory arrangements constitutes an effective outcomes-focused approach to regulation? If not, please explain why, and provide any suggestions you may have to improve upon our proposals.**

#### RESPONSES:

Seven of the nine respondents answered this question in the affirmative and made no comment. One of the respondents, a CILEx member, did not answer the question but commented: "These proposed further arrangements are just an expansion. For those who already follow the Code they need not be frightened by those changes." One further respondent neither answered the question nor made comment.

### **IPS COMMENTS Q28**

IPS agrees with the response. The Code has been reordered to cover IPS' new regulated community. Additional obligations are introduced only where necessary for the new regulatory arrangements.

**Q29. Do you agree that our proposed amendments to our Code effectively expand its provisions to cover practitioners and authorised bodies in addition to CILEx members? If not, please explain any areas for improvement.**

RESPONSES:

Eight of the nine respondents answered in the affirmative and of those, only one made comment. A CILEx member, stated: "IPS will have to review the Code on a yearly basis as things will change and IPS will have to be able to maintain this." A further respondent did not answer this question.

**IPS COMMENTS 29**

IPS agrees that it will have to keep under review the operation and effectiveness of its Code and regulatory arrangements to ensure that they enable IPS to deliver its obligations under the regulatory objectives. Its committee and Board reporting processes will facilitate these reviews.

**Q30. Do you agree that our Accounts Rules have been redrafted appropriately to cover our new definitions and approach? If not, please provide any areas for improvement.**

RESPONSES:

Seven respondents answered in the affirmative and of those seven one commented. However the comments were not agreed for publication. One respondent did not answer this question or make comment. A CILEx member answered in the negative and stated: "I understand the importance of these rules but for a small business / sole owner the impact this would have on our business would be massive. IPS should consider implementing these rules in 3 or 4 parts (one part at a time) to allow small business time to change to these. It will also have a financial effect on small business as they will have to have the right accountant in place."

**IPS COMMENTS Q30**

IPS does not agree that the Accounts Rules can be implemented on a part by part basis. As set out earlier IPS tools will support small businesses in the

implementation of accounting requirements.

### ***Non Standard Form Responses***

54. One non-standard form response was from a CILEx member. However this response expressly withheld consent as to publication. The response will therefore not be published.
55. IPS received a response from the Legal Ombudsman which addresses a number of consultations in the same document. The Legal Ombudsman provided detailed responses to questions eleven and fourteen of the consultation document. The questions are restated below, together with the Legal Ombudsman's responses.
56. Consultees were asked: "Do you agree that Principle 4 adequately provides for outcomes-focused regulation in respect of the area of legal and regulatory compliance and effectively requires co-operation and engagement with oversight bodies?"
57. The Legal Ombudsman stated: "IPS is proposing that their code of conduct is comprised of a series of principles. The fourth principle is designed to ensure compliance with regulators and the Legal Ombudsman, it states: "you must comply with your legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively." We believe that assistance with regulators and ombudsmen could be stated more firmly so that firms realise that full co-operation is required in our investigations. The SRA provide a little more detail in their handbook: "O(10.6) You co-operate fully with the SRA and the Legal Ombudsman at all times including in relation to any investigation about a claim for redress against you." We would recommend that principle 4 is amended slightly to state: "4.4 Respond openly and promptly to communications and fully co-operate at all times with regulators and ombudsmen."
58. ***IPS response:*** IPS has developed separate guidance on complaints handling which provides further guidance to IPS' regulated community in respect of their obligations to co-operate with the Legal Ombudsman.
59. Consultees were asked: "Do you agree that Principle 5 adequately provides for outcomes-focused regulation in respect of the areas of client care and on-going competency? If not, please identify any areas for improvement in this respect."
60. The Legal Ombudsman has responded in the following terms: "Principle five states that authorised persons "must act competently in the best interests of your clients and respect confidentiality". We suggest that the provisions in

principle five are drafted to include a requirement that information should be provided to consumers about members' complaints policy and consumers' entitlement to complain to the Legal Ombudsman. ILEX members should be required to inform clients of:

- Their entitlement to complain
- Any time limits for lodging complaints
- Details of the complaints procedure, which should include contact information for the Legal Ombudsman.

Providing this information would be consistent with the requirements placed on SRA regulated practitioners. This information should be supplied by the authorised person when they are first instructed – for example, in a client care letter – and also at the conclusion of the authorised person's internal complaints procedure. Insight into consumers' experience of in-house complaints handling can be found in our recent research, published on our website, which was commissioned jointly with the Legal Services Consumer Panel. It showed that consumers are often unaware of their right to complain and how to go about this. Therefore it is important to ensure that the right information is provided to consumers about these processes."

61. ***IPS response:*** IPS has developed separate guidance on complaints handling which provides further guidance to IPS' regulated community in respect of their obligations to co-operate with the Legal Ombudsman. This guidance covers the points raised by the Legal Ombudsman above.
62. The Legal Services Consumer Panel provided a response which dealt with more than one IPS consultation. The Legal Services Consumer Panel did not answer consultation questions directly but made the following observations which directly relate to this consultation process.
63. The Panel stated as follows: "Under the proposals to revise the Code of Conduct, the Panel notes the distinction IPS has drawn between 'clients' and 'consumers'. We support IPS' recognition of the fact that some consumers may seek legal services but have difficulty in accessing them due to particular vulnerabilities. However, we believe IPS should rely on the definition of consumer in the Legal Services Act 2007. This definition is broad and includes those who use, have used, or are contemplating using, legal services. The panel also notes IPS' definition of vulnerability. This should be expanded to take into consideration the British Standard on inclusive service provision (BS 18477), which recognises that vulnerability can be dynamic, changing with time or circumstances, and that consumers may be placed in a position of disadvantage during certain transactions depending on their individual situation. The Panel has previously sent a copy of this standard to IPS."
64. ***IPS response:*** IPS carefully considered and assessed the response by the Consumer Panel however IPS has decided to continue with its proposal

because IPS has had to differentiate between broader consumers and those consumers who are clients of an entity.

65. IPS received a consultation response from the Chartered Institute of Patent Attorneys. This did not address any specific element of the consultation and made no observations save to seek an assurance that the Code of Conduct would require “legal executives to act only in areas where they are qualified and competent to do so”.
66. ***IPS response:*** IPS has ensured that its Code adequately reflects this obligation.

### COMPLAINTS AND DISCIPLINARY ARRANGEMENTS CONSULTATION ANALYSIS

**Q1. Do you agree that IDAR should be extended to apply CILEx Practitioners and entities, including relevant officers, regulated by IPS? If not, state why.**

Yes	No
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4	
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**Yes**

- Can see no reason why not in theory, but professional input and experience required.

**IPS response**

IPS has sought professional legal advice in framing the IDAR and its application to entities.

**Q2. Do you agree that the requirement to make declarations of prior conduct should be extended to CILEx practitioners, compliance officers and owners and managers of entities seeking regulation by IPS? If not, state why.**

Yes	No
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4	
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**Yes**

- But panel members must remain independent so a fair conclusion can be made.
- Can see no reason why not in theory, but is this the same client group?

**IPS response**

IPS has and will continue to ensure its governance arrangements provide for independent panellists who reach decisions using the sanctions guidance

**Q3. Do you agree that we should require the new range of declarations set out at Rule 11 to be made? If not, state why.**

Yes	No
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4	
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**Yes**

- But how will retrospection apply? Will members be required to comply with the new declaration and be given a period of, say, 12 months as an

amnesty so to do?
<p><b>IPS response</b></p> <p>All existing CILEx members make annual prior conduct declarations. The new range of declarations will only need to be made once the new IDAR are in force.</p>

<b>Q4. Do you agree that IPS staff may give guidance about the view that IPS would take on a prior conduct matter? If not, state why.</b>	
Yes	No
4	
<p><b>Yes</b></p> <ul style="list-style-type: none"> <li>• But they must be independent from other staff members if they are also involved – matters should be kept confidential to IPS and their staff.</li> </ul>	
<p><b>IPS response</b></p> <p>IPS has in place mechanisms for the security of information, which is only available to IPS officers. The decision making role on prior conduct matters will rest with an officer suitably able to make such decisions. The new structure puts in place arrangements for the separation of roles.</p>	

<b>Q5. Do you agree with our proposals on the role of complainants? If not, state why.</b>	
Yes	No
4	
<p><b>Yes</b></p> <ul style="list-style-type: none"> <li>• But IPS have to note that there is such a thing as a bad client and must take the members comments into the investigation.</li> </ul>	
<p><b>IPS response</b></p> <p>The investigation process allows opportunity for members to respond to complaints and it allows for early rejection of complaints where there is no evidence to support the allegations made.</p>	

<b>Q6. Do you agree that the investigating officer should be able to make decisions without the endorsement of Professional Conduct Panel members but that they continue to be reported to the Panel? If not, state why.</b>
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Yes	No
2	2
<p><b>No</b></p> <ul style="list-style-type: none"> <li>• The rule of Natural Justice must be in operation. Equity regards as done that which ought to be done.</li> <li>• But the process could be simplified whereby a single member of PCP franks a recommendation without producing a detailed report which I, at least, currently prepare. In my experience a read through is generally sufficient to support a recommendation, or otherwise. This would not preclude a fuller report if required, but would probably be quicker.</li> </ul>	
<p><b>IPS response</b></p> <p>IPS has given careful consideration to this proposal. It had also considered the approach taken by other bodies to decision making. The officer decisions will be subject to internal scrutiny as well as Panel scrutiny and may only be made where set criteria are met. Furthermore IPS has built a route of reconsideration by the Panel which will be available to complainants.</p>	

<p><b>Q7. Do you agree that complainants should be able to ask the Professional Conduct Panel to review a decision made by the investigating officer? If not, state why.</b></p>	
Yes	No
4	
<p><b>Yes</b></p> <ul style="list-style-type: none"> <li>• Unless my response above precludes the need.</li> </ul>	
<p><b>IPS response</b></p> <p>IPS believes that the review process is necessary for providing a route of redress to complainants.</p>	

<p><b>Q8. Do you agree that the investigating officer should be able to refer the matters direct to the Disciplinary Tribunal in the two instances set out in the IDAR? If not, state why.</b></p>	
Yes	No
2	2
<p><b>Yes</b></p> <ul style="list-style-type: none"> <li>• For serious matters</li> </ul> <p><b>No</b></p> <ul style="list-style-type: none"> <li>• This must be a set of rules upon which the investigating officer assess</li> </ul>	

the information they have. Such rules must be drafted by ILEX Professional Standards.

- The endorsement of two PCP members should be retained because it may be necessary to consider the imposition of an interim Suspension Order. Which body would frank, or otherwise, Determinations by Consent?

**IPS response**  
 IPS has an obligation to protect the public and consumers. Its sanctions guidance set out factors to be considered when deciding whether to refer a matter to the Disciplinary Tribunal. This power is already available under IDAR except that at present the Officer must exercise it in conjunction with two panellists. IPS has found that the process does not deliver timely consumer protection. IPS has taken into account that the officer referral will still allow the parties to the case to make representations before the Tribunal, in reaching its decision to continue with its proposal.

**Q9. Do you agree that the Panel should only be able to dispose of cases where misconduct is accepted? If not, state why.**

Yes	No
2	2

**Yes**

- But who will deal with cases when misconduct is not accepted.

**No**

- See Q6 and if the misconduct charges has been proved by a Panel.
- This will lead to a number of relatively 'minor' cases going to DT at additional cost. If adopted the question of whether misconduct is accepted will need to be put specifically. Currently case papers are vague in this regard and respondents often hedge their bets. It seems to me that PCP currently deals with (90%?) of the cases before it in a timely and efficient manner. More cases going to DT can only increase costs of external lawyers unless it is the intention to process these in house. If that is the intention then I consider it dangerous to have no independent body reviewing cases prior to DT. Pressure can, and with the best will in the world will be, or perceived to be applied, and this runs counter to my many years of experience in such matters.

**IPS response**  
 IPS has carefully considered this proposal. The PCP process is a procedure for determining cases on the basis of the papers before the Panel. It does not involve formal charges and evidence. IPS believes that in the interests of justice determinations should be made after the parties have had opportunity to put their positions formally to a Panel.

IPS recognises its obligation to keep costs proportionate. Where possible IPS is making use of in-house advocacy resources. Its new organisation structure will allow more resources for in-house advocacy to become available than it currently has.

**Q10. Do you agree that notices can be served by first class post and by electronic means? If not, state why.**

Yes	No
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**Yes**

- As per the CPR Rules
- First class post is better, emails can be opened by staff so may not be the best way in my view.

**IPS response**  
 IPS carefully reviewed the position and the CPR. It has amended IDAR to allow for service by first class post.

**Q11. Do you agree that it should be possible for the parties to be represented by anyone unless the Panel find there are good and sufficient reasons to refuse to hear a person? If not, state why.**

Yes	No
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**Yes**

- See Q6. This is no good or sufficient reason as to why any party cannot be represented, or why such representation should be refused.

**IPS response**  
 In the interests of fairness IPS has amended IDAR to allow the parties to be represented by any party unless there is good reason to refuse to hear a person.

**Q12. Do you agree that we should extend the period for making appeals to 42 days? If not, state why.**

Yes	No
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3	1
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**Yes**

<ul style="list-style-type: none"> <li>• Yes as extra time could be needed.</li> </ul> <p><b>No</b></p> <ul style="list-style-type: none"> <li>• Whilst some extension may be necessary/desirable based on your experience, I consider 42 days to be excessive.</li> </ul>
<p><b>IPS response</b></p> <p>IPS carefully considered the time frame for making appeals. It has extended it to 42 days in the interests of fairness to the parties, to allow them sufficient opportunity to put forward evidence in support of an appeal.</p>

Q13.Do you agree that the grounds of appeal be simplified to requiring the appellant to set out a statement of the grounds of their appeal? If not, state why.	
Yes	No
4	
<p><b>Yes</b></p> <ul style="list-style-type: none"> <li>• But I would add 'detailed' before statement.</li> </ul>	
<p><b>IPS response</b></p> <p>IPS has revised its appeal rules to accord with best practice on appeal grounds.</p>	

Q14.Do you agree that IPS should be able to appeal in the circumstances set out in the rules? If not, state why.	
Yes	No
4	
No comments	
<p><b>IPS response</b></p> <p>IPS has carefully considered whether it should have a right of appeal. The rules allow appeals to be made in circumstances where the interests of justice and protection of the public require it.</p>	

Q15.Do you agree that there should be a separate panel for each body and that each body should have a separate independent clerk? If not, state why.	
Yes	No
4	1

**Yes**

- People have to know/have experience in the matter/area they are dealing with.
- Probably – if you consider three panels and three clerks to be necessary.

**No**

I have no problem with the PCP being separate : there appears to be plenty of business for them in addition to the work on disciplinary and appeals. As to the notion of separating appeals and disciplinary I would oppose this. There are a number of grounds.

a)there would be a real risk of appeal panel members hearing no cases in a year, if my understanding of present workload is correct. While some members are engaged in other regulatory work, it seems to me that this cannot substitute for regular experience and teamwork with colleagues. At present I am in a period of 6 months plus when not engaged in hearings – this would clearly be exacerbated by this proposal.

b) at present the combined panel can hear a disciplinary case and an appeal on the same day , expediting hearings and reducing cost.

c)there would appear in any case to be an unnecessary cost in establishing two panels.

d)I am unpersuaded that the argument for clarity of independence is other than specious .... we already ensure that members who have dealt with cases at first instance do not hear the appeals.

**IPS response**

IPS believes that in the interests of good governance each panel should be served by separate panellists.

IPS moved to a pool of panellists hearing Tribunal and Appeal cases for the reasons mentioned by the respondent. However, it has carried out a governance review which led to the proposal to separate out panellists serving each panel.

**Q16. Do you agree that the powers are sufficient and appropriate? If not, state why.**

Yes	No
3	1

**No**

- The powers in total may well be, only experience will tell, there will always need to be changes based on situations that arise, but the allocation between PCP and DT is unbalanced. Failure to declare prior conduct at the earliest opportunity should be subject to a fixed fine (say £250), failure to pay within 28 days being a disciplinary offence. Appeals to PCP.

**IPS response**

IPS has researched the powers and sanctions available to it. It has in place sanctions guidance which guides panellists in determining sanction. The Board portfolio report on fitness to practise allows for reporting on the effectiveness of the sanctions and use of the powers. This enables regular reviews to take place.

IPS has not opted for fixed penalties as suggested by the respondent. It considers each case based on its facts and by using the sanctions guidance.

**Q17. Do you agree IPS must be able to exercise the powers against entities, their owners, managers, compliance officers and CILEx practitioners? If not, state why.**

Yes	No
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**Yes**

- This is wider than Q1 I think. Should the terminology be consistent? In theory I support this as answer 1.

**IPS response**  
 IPS will take an entity based approach to the regulation of entities that it authorises. However, there will be circumstances where action is needed against office holders.  
 The rules have been updated to ensure there is consistency of terminology.

**Q18. Do you agree that IPS should have powers to intervene into entities? If not, state why.**

Yes	No
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**Yes**

- As above as long as the practicalities are addressed appropriately.

**IPS response**  
 IPS has undertaken detailed research into the powers of intervention. IPS is not a statutory body with intervention powers. The IDAR put in place a practice management arrangement which allows for the orderly management of client money and files where an entity's authorisation is revoked. IPS is seeking a s69 Order for intervention powers.

**Q19. Do you agree that our general approach to intervention is appropriate? If not, state why.**

Yes	No
4	
<b>Yes</b> <ul style="list-style-type: none"><li>• This is the curate's egg – good in parts – but which raises concerns about the desirability of the reduced role envisaged for PCP for which there is no supporting justification. Evidence required!!</li></ul>	
<b>IPS response</b> <p>The responses set out above explain the reason for the revised role for the PCP.</p>	

## PROFESSIONAL INDEMNITY INSURANCE ANALYSIS OF CONSULTATION RESPONSES

### INTRODUCTION

IPS issued a consultation on its proposal for Professional Indemnity Insurance and Compensation Arrangements on 27 July 2012. The consultation closed on 19 October 2012.

### SUMMARY OF RESPONSES

IPS published the consultation on its website in addition to alerting members and the public to it through the CILEx Journal. The consultations were also sent directly to CILEx members and organisations, including consumer bodies, regulatory and representative bodies.

The consultation received thirteen responses, ten of which were from CILEx members with the remaining responses from a regulator (in confidence), the Legal Ombudsman and the Legal Services Consumer Panel.

The responses were broadly supportive to the IPS approach to Professional Indemnity Insurance and Compensation Arrangements. The individual responses are attached with commentary by IPS.

#### **Q1. Do you have any comments that you would like us to take into consideration when drafting our minimum terms and conditions and minimum terms of cover?**

##### RESPONSES:

##### Self-employed CILEx Member

'Whichever insurance is used the minimum terms must protect both clients and applicants'

##### Self-employed CILEx Member

'IPS should have regard to extending competition by facilitating the widest choice of legal services providers. IPS should proactively promote the development of micro and small business entities. £2 million is too high for small and micro entities. Even in residential conveyancing, transactions over £500,000 are rare. Small and micro entities would be paying for insurance cover they would never take up. The comment that lower premiums will be paid by lower risk entities is not relevant to the issue of the level of cover to be provided.'



Self-employed CILEx Member

'I still believe that £2million is very high. The future for immigration is very bleak with spiralling costs and a reduction in work we run the risk of being overcome by overheads with all of these proposals'.

Self-employed CILEx Member

'I currently have cover to £1million, as a new service provider, assessed on basis of not providing reserved activities. £2million minimum seems to me to be relevant for those practising reserved activities. Perhaps a two-stage would assist in the first instance'.

Self-employed CILEx Member

'Given the diversity of the practices that are likely to come into being I am inclined towards the open market insurance option as this is the only option that will provide a bespoke policy'.

**IPS COMMENTS Q1**

IPS carefully considered the open market and master policy schemes. A proportion of the responses to the consultations supported an open market approach. The research IPS commissioned through its brokers to analyse the most suitable arrangements of PII also favoured the risk based approach to regulation that the open market offered. IPS considers that the open market will remain the most competitive and fairest option for entities, whilst at the same time providing the client protection that is needed. IPS considers that a master policy may prove too restrictive as entities will be required to subscribe to an insurance policy that is not bespoke to their needs.

IPS is alert to concerns that the value of work that entities do will be low. It is also the experience of IPS from having regulated CILEx members and having visited immigration practices, that current members do not do high value work. Having discussed this matter in detail with insurance companies IPS has found that having different minimum levels of cover for different areas of law would not only complicate and hinder matters but may also increase administrative costs, resulting in increased premiums. Insurers advise that the premium payable by each entity will be adjusted according to the area of law the entity specialises in and the overall risks of the entity, and not the level of cover to which they subscribe. Therefore if an entity only does low risk/value work this will be taken into account when determining their premiums.

Self-employed CILEx Member

'Re your point 8 - I am just very uncertain how the level of risk will be calculated in these completely new business models. Is it possible for insurers to look at solicitors' records but since a CILEx individual or entity is likely to be a specialist in a particular area and their risk profile must be different to a solicitor who can do any sort of work but may not specialise in that area of

work'.

#### Regulator

'The minimum terms and conditions must ensure that clients of regulated firms have adequate financial protection. We suggest that the key minimum terms and conditions should include:

- Cover for all civil liability arising from private legal practice, with only limited permitted exclusions.
- The "insured" should include the "entity" (and any prior practice) together with any current or former principal, employee or consultant.
- Cover should extend to the practice as a whole including any body corporate.
- Cover should extend to all activities permitted to an IPS regulated entity.
- Cover should be arranged on an "any one claim basis" with a minimum sum insured of at least £2 million any one claim.
- The minimum sum insured should be exclusive of defence costs which should be covered in addition without financial limit.
- The level of the excess should be limited or else insurers should be required to pay the excess where there is failure to pay by an entity with rights of reimbursement against the entity.
- In order to secure client financial protection, qualifying insurers should be prohibited from avoiding or repudiating the insurance on any grounds whatsoever including non-disclosure, misrepresentation and failure to pay premium (although they may be given rights of reimbursement against each insured)'.

#### **IPS COMMENTS Q1**

IPS has considered these comments and worked with its broker and a leading insurer to develop Minimum Wording that each Qualifying Insurer must agree to as part of the IPS Qualifying Insurers Agreement. The Minimum Wording deals with all of the points raised above.

#### Legal Ombudsman

'Research commissioned by us and published in November 2011 found that many consumers find accessing redress in legal services confusing as, depending on business model, some consumers have access to redress through

our scheme while others do not. We would not like to see further gaps in access to redress appearing; for example, some regulators adopt less comprehensive requirements for minimum terms and conditions for indemnity insurance than others. It should not matter who a firm is regulated by, consumers should be able to access the same remedy if there is poor service. In the interests of consistency, we would suggest mirroring the provisions made in the Solicitors Regulation Authority's (SRA) minimum terms and conditions of insurance. We would not wish to see a situation where CILEX chartered legal executives working within solicitors firms and CILEX members working in independent firms have differing levels of cover. One shortcoming in the SRA scheme is the lack of cover where the Ombudsman directs a refund of fees and the firm has ceased trading. The SRA does not require refunds of fees to be covered in these circumstances. While we appreciate the commercial reasons for not covering refunds of fees where the firm is still trading, it seems that the insured losses in respect of Ombudsman's awards against closed firms is likely to be small and quantifiable. We would therefore propose a clause which deals specifically with refunds in these circumstances'.

**IPS COMMENTS Q1**

IPS has considered the above comments and understands these concerns. IPS has drafted Minimum Wording, Professional Indemnity Rules and is in the process of drafting a Qualifying Insurer Agreement to safeguard against the above. In relation to complaints and the refund of fees, IPS explored the position but advice indicates such matters will be too onerous to insure against.

**Q2. Have we effectively dealt with run off cover? If not, why not.**

RESPONSES:

8 out of 13 responses indicated 'yes' and 3 indicated 'no' and 2 gave 'no indication'.

Self-employed CILEx Member

'Run off cover is important but I think personally that this should be included within the premiums of the policy from the outset, and after so many years you automatically get this.'

Self-employed CILEx Member

'Yes but greater certainty would be provided if all regulated entities were required to have a master policy providing standard run off cover. Administration by the regulator would be simplified by a master policy scheme which would keep basic regulation costs low'.

**IPS COMMENTS Q2**

IPS will periodically re-visit its approach to run-off cover to establish whether minimum wording as suggested can be adopted.

Self-employed CILEx Member

'I could not see any reference to a minimum period for run-off cover'.

CILEx Member Ltd Company owner manager

'I consider that a minimum period of six years after an entity ceased to practice is excessive. 3 years may be adequate'.

Regulator

'It is not possible to regulate firms to buy run-off cover after they cease, and the only way to effectively achieve this is to impose the obligation on the insurers, whether under a Master Policy or a Qualifying Insurer's Agreement in respect of freedom of choice. In paragraph 10 of the consultation document IPS proposes that "...where entities decide to cease practising they will have to take run off cover for a minimum of six years." Placing the obligation on the entities to take out 6 years run off cover runs the risk that the market will not be prepared to provide such cover particularly to firms that have a claims history. This, in turn, will put claimants at risk of having valid claims firms not satisfied'.

Self-employed CILEx Member

'Law Society guidance last year suggested that the period of limitation of liability in Probate matters may be at least 12 years or possibly 13 years on basis that the right to claim may arise at the end of the Executor's year 1 year from the date of death. However all usual run off periods are 6 years so this may be an academic point. Run off cover is essential.'

Legal Ombudsman

'Yes, however there are issues around ensuring that run-off cover is in place when a firm ceases trading. Not all cessations are done in an orderly fashion with planning and structured decision making. We would like to know how this would be dealt with. See below question 3 and our suggestions'.

NOTE: IPS has set out its response to the above as part of its response to Q3. Below

**Q3. What are your views on how we can ensure that entities regulated by IPS will take run-off cover on the Open Market when they cease practising?**

Self-employed CILEx Member

'It is not clear to me how IPS can ensure this save for requesting sight of

indemnity policy on an annual basis. If IPS are regulating a number of entities this could become onerous: time consuming and costly. A Master Policy might be the better option'.

Self-employed CILEx Member

'I would suggest the IPS begin relationships with insurers on the open market to encourage them to include this as a standard for ILEX regulated bodies'.

CILEx Member Ltd Company owner manager

'To make run-off cover compulsory'.

Regulator

'It is the regulators view that the key to ensuring that entities regulated by IPS will have run off cover on the Open Market when they cease practising is to place an obligation on qualifying insurers to provide such cover. This can be achieved by making it a term of the qualifying insurer's agreement referred to in paragraph 20'.

CILEx Member Ltd Company owner manager

'IPS could ensure that they sign some form of contract to safeguard IPS interest'.

Self-employed CILEx Member

'This needs to be built into the guidance on practice management and terms drafted upon overall regulation of entities'.

Self-employed CILEx Member

'Make sure they have to provide evidence of their PII insurance confirming run off cover within a certain period of their practising certificate being renewed. Get them to sign to say they have cover in place and ask them for evidence of their cover to be sent, say within 3 months of the start of the policy period'.

Self-employed CILEx Member

'This is always going to be a difficult task particularly during uncertain economic times. Would it be possible for entities to have a subordinated loan account into which appropriate funds were lodged whilst the company was running and which would remain in place once they ceases practising to provide for run-off cover?'

Legal Ombudsman

'Our experience shows us that there are a small number of firms which cease trading in a disorganised manner, such as when the practice is abandoned or faces compulsory insolvency. In these circumstances, there is significant scope for consumer detriment if run-off insurance is not in place. Since a firm which has ceased trading will usually be beyond the scope of disciplinary action, and since those responsible for it may well be exiting the market in any event, it is

difficult to see how disciplinary rules can effectively require firms to take out run-off cover. Given the above, it is our view that measures will need to be taken to ensure that run-off cover is automatically provided by indemnity insurers in the event that a firm ceases trading. For that reason, we would suggest that a "fall-back" Master Policy be put in place to cover such scenarios.'

### **IPS COMMENTS Q2 & Q3**

IPS is aware of the difference in views expressed by respondents and the balance it needs to achieve when considering the length of run-off cover that entities must subscribe to. IPS decided that in the interest of consumers a policy of six years run-off cover must be adopted to achieve parity of consumer protection with other approved regulators. This obligation will be placed upon entities through the Professional Indemnity Rules. In addition the run-off premium has been set at 2.25 times the amount of an entity's last annual PII, which is lower than other regulators, and entities will not have to pay an excess on claims during the run-off period. Insurers were unable to provide automatic run-off cover except where an entity pays the run-off premium. Entities should be able to obtain finance to help breakdown the costs of run-off cover. Insurers have also agreed to provide an Extended Indemnity Period of insurance, which comprises a 30 day Extended Indemnity Period where an entity can continue to practise and an additional 60 days in which the entity will have to close their practice and take run-off cover.

IPS will protect clients where an entity has not obtained run-off cover. Clients will be protected as claims arising where there is no cover will be dealt with through the IPS Compensation Fund.

### RESPONSES:

#### Self-employed CILEx Member

'Build it into the premiums so for example – if you hold PII for 10 years, you are automatically covered by the run off you will need'.

#### Self-employed CILEx Member

'IPS should provide a master policy with minimum standards of cover. Regulated entities would be able to add to basic cover by topping up the policy on the open market. A master policy arrangement would help to foster small and micro entities. The advantages of a mater policy are – The pooling of risk to minimise premiums, Reduced administration for regulated entities and for the regulator. An entity wishing to withdraw from the master policy entirely could only do so if they are able to demonstrate cover at least as good as the master policy and pay an additional administration fee to the regulator. Too much emphasis has been placed on the perceived wishes of larger entities to achieve cost effective insurance rates whereas the focus should be on providing a means of access to basic indemnity insurance for IPS regulated entities as whole and smaller entities in particular. The underlying purpose of

the LSA is to widen access to justice and to foster competition in legal services. The objectives of the legislation are more likely to be achieved by encouraging a diverse range of different types of regulated entities varying size, specialisation and ambition. Insufficient weight has been given to the benefits of the pooling of risk and economies of scale offered by a master policy'.

### IPS COMMENTS Q3

IPS has carefully considered these comments and will periodically re-visit these points. Having carefully explored the options IPS is of the view that open market insurance is the most suitable provision and does not consider that the open market advantages larger practices more than smaller practices.

**Q4. It is our preferred option that entities regulated by IPS will have to obtain PII on the Open Market. Do you think we have adequately addressed the issue of the Open Market? If not, please identify areas that we need to consider further.**

#### RESPONSES:

9 out of 13 responses indicated 'yes' and 3 indicated 'no'.

#### Self-employed CILEx Member

'IPS should outline recommendable companies still to applicants. Companies are only good if they are prepared to do what they say if the worst was to happen'.

### IPS COMMENTS Q4

IPS is unable to recommend one insurer over the other. However, insurance will have to be obtained through a Qualifying Insurer who has agreed to the IPS Qualifying Insurers Agreement. Details of such insurers will be provided to entities.

#### Self-employed CILEx Member

'No, IPS should offer a master policy but allow entities to obtain their own top up cover.'

#### Self-employed CILEx Member

'I do not agree that the Open Market is necessarily the better option. There have been problems for law firms with the Open Market since the Law Society discontinued its Master Policy. If IPS were regulating entities with no former track record insurance on the Open Market could prove prohibitively expensive: thus a Mater Policy might be the better option. It would enable IPS to be confident that the level of cover was adequate and appropriate and would probably be more cost effective.'

Self-employed CILEx Member

'I agree that the open market is preferable, however, the IPS should review this stand point periodically. If they feel entities are struggling to find the appropriate cover it may be in the best interest of all concerned to provide a master policy option.'

Regulator

'Mandating that IPS regulated entities must obtain PII from a qualifying insurer presupposes that there will be a market willing to write the cover. We would suggest that IPS need to take steps to minimise the risk that the market will not be interested in providing such cover. For example appointing insurance advisors to help with negotiations with insurers with a view to getting a handful of insurers signed up and committed to the terms of the Qualifying Insurer's Agreement and the minimum terms and conditions. One of the advantages of a Master Policy is that it would address the problem.'

Self-employed CILEx Member

'I suggest that you make an easy to understand premium calculation one of the conditions to be a qualified insurer. Personally I feel that basing the premium on net available income is a fairer way of doing it. My business expenses sometimes total 50% of my turnover so basing premium on turnover does not reflect affordability for the individual or entity.'

**IPS COMMENTS Q4**

Initial indications from the IPS broker suggest that there is a variety of insurers who are interested in insuring IPS regulated entities. Insurers seem particularly interested in the IPS competence and relationship management to risk based regulation. IPS will therefore be mandating that regulated entities must obtain PII from a qualifying insurer, who in turn must agree to the IPS Qualifying Insurers Agreement. IPS has taken all of the above issues into consideration before pursuing the open market approach. IPS has drafted its rules to help facilitate this approach and protect consumer interests.

**Q5. Do you think our proposals for PII will provide sufficient client protection? If not please tell us why not.**

RESPONSES:

7 out of 12 responses indicated 'yes' and 5 gave 'no indication'.

Self-employed CILEx Member

'Client protection is important but companies/applicants should also be protected, especially in probate matters as we live in a contentious world.'



Self-employed CILEx Member

'No. Greater protection will be provided by a master policy. Some small entities might have a problem meeting minimum excesses amounts. Consideration should be given to providing additional excess cover for small entities or such excesses should be underwritten by the regulator or CILEx.'

Self-employed CILEx Member

'I am not sure that it will: as indicated above I do not consider the Open Market is necessarily the better option.'

Self-employed CILEx Member

'As long as run-off cover is obtainable.'

CILEx Member Ltd Company owner manager

'Yes, but the requirement for additional insurance cover should be reconsidered.'

Regulator

'It is difficult to say without seeing the precise terms and conditions of the cover which insurers will be required to provide. We believe it is reasonable to assume that if insurers regard the IPS regulatory regime as satisfactory then, given the activities are those which insurers are accustomed to covering at the present time, there should at least be some market and on broad terms, absence some of the unique features mentioned in answer to question 1. We believe that if the points made in answer to questions 1 to 4 are addressed then there is no reason why the IPS proposals cannot be modified so as to provide sufficient client protection.'

Self-employed CILEx Member

'It seems to me they do provide sufficient client protection as they will be similar to what solicitors have had for many years. If we are not covered as well as solicitors for PII they will still be able to gain an economic advantage over CILEx practitioners by saying that only their work is best insured. The idea is we will be on a level playing field with solicitors so we must have at least the same level of PII cover both to protect the public and for this reason also.'

Legal Ombudsman

'We cannot say at this stage. It is important that the minimum terms and conditions cover as much of each order for redress the Legal Ombudsman makes, as is commercially possible, and we highlight the issues of refunds of fees involving closed firms in that regard. There is also, as we have pointed out above, a potential issue with the run-off cover in circumstances where firms close in a disorganised manner.'

**IPS COMMENTS Q5**

IPS took all of the above issues into consideration before pursuing an open market approach. The rules IPS has drafted facilitate this approach and help protect consumer interests. Insurers have been advised about the competency and risk based approach to regulation that IPS is taking. They are also fully aware of IPS' core obligation of consumer protection. A variety of insurers have confirmed that they are prepared to insure IPS regulated entities and to adopt the Minimum Wording prescribed by IPS, which shows their satisfaction in the IPS regulatory regime.

**Q6. Do you have any other comments on the PII proposals? If so, please state what they are.**

RESPONSES:

Self-employed CILEx Member

'Premiums need to be reasonable for sole practitioners and small firms.'

**IPS COMMENTS Q6**

IPS has been working (and will continue to work) with insurance companies to help entities obtain the most competitive premiums. Insurers have been advised about the competency and risk based approach to regulation that IPS is taking they have also been made fully aware of IPS' core obligation of consumer protection. A variety of insurers have confirmed that they are prepared to insure IPS regulated entities.

Self-employed CILEx Member

'Entities should be required to give full details of PII in all engagement letters, including policy number, level of cover, excess, name and address of insurer and significant limitations.'

**IPS COMMENTS Q6**

The requirement to provide insurer details is contained in the IPS Professional Indemnity Rules. IPS will also require entities to follow regulation 8(1)(n) of the Provision of Services Regulations 2009, which prescribes similar requirements.

Self-employed CILEx Member

'I consider that a Master Policy would be the better option at least for the first (5 or 10) years when IPS are regulating entities. Some of these entities will be new and entity regulation will be new for IPS. Thus a Master Policy would ensure that there was appropriate indemnity cover for all entities in order to protect the client (consumer). This could be review after an initial period.'

**IPS COMMENTS Q6**

IPS believes that the open market will provide the best possible protection for consumers. This decision has been made following research and advice into the options. However, IPS will periodically review its approach to PII and make any adaptations where necessary.

Regulator

'We believe IPS need to consider what will happen if an entity is unable to obtain PII on renewal? How will clients be protected in the event that they have claims against an entity that is practising without PII?'

**IPS COMMENTS Q6**

IPS has considered this possibility and has included a provision within the Minimum Wording and Qualifying Insurance Agreement for insurers to provide an Extended Indemnity Period of insurance, which comprises a 30 day Extended Indemnity Period where an entity can continue to practise and to obtain qualifying insurance. After this time the entity will enter a cessation period of 60 days in which they will be unable to accept new instructions and will only be allowed to perform work in connection with existing instructions. It is envisaged that in total the 90 day period will provide IPS enough time to investigate why the entity has not renewed their insurance policy. Any claims arising where an entity has ceased practising but has failed to secure run off cover will be considered under the IPS Compensation Fund.

CILEx Member Ltd Company owner manager

'I already have PII in place and the amount covers the low risk cases from my firm proposes, as the PII already ask a series of questions before they provide cover.'

**IPS COMMENTS Q6**

IPS envisages that obtaining PII on the open market in the future will involve a similar process to that mentioned above.

## COMPENSATION ARRANGEMENT CONSULTATION

### Please Note: IPS RESPONSE

Many responses to each of these questions overlap. IPS has provided overall comments at the end of this document. In providing its comments IPS has taken into consideration all of the responses made to this consultation.

#### Q7. Out of escrow, Compensation Fund and Insurance policy, what is your preferred option and why?

##### RESPONSES:

##### Self-employed CILEx Member

'escrow would be too expensive for small businesses to use. Insurance policy seems to be my preferred option as it seems a more reasonable way to deal with things however it does depend on premium amounts. The compensation fund could end up where the honest people that do pay into it will end up funding the dishonest people.'

##### Self-employed CILEx Member

'Client Protection is inextricably linked with the conduct by regulated entities of transactions involving client money. Regulated entities should be free to choose the means of conducting financial transactions on behalf of clients that suit them and their clients and the transactions they carry out and that consequently the IPS response to client protection safeguards should be flexible enough to reflect the different approaches that may be adopted. Regulated entities may choose a number of different options:

- Not to conduct any transactions involving client money
- To operate a full client bank account
- To employ an escrow agent for transactions involving client money

Moreover Regulated entities might wish to join together to share services that provide Client Protection. Available services should include escrow services. An escrow service offers:

- Reduced administration
- Reduced compliance overhead
- Better risk management
- Greater credibility

An escrow service could offer commercial advantages to IPS regulated individuals through reduced overheads, increased credibility with commercial lenders and a lower risk profile of the business and therefore cheaper insurance premiums. Entities who may specialise in litigation or whose turnover is small may have little or no need to regularly hold any transfer client funds and may well prefer an escrow account where the cost per transaction

might be payable by the client in any event or where it would be offset against lower overheads if not. Escrow services are commonly used in other jurisdictions and are increasingly familiar to the general public through their use in online auction sites. The cost of escrow service quoted seems unreasonably high. Escrow services are available to retail customers from £3.00 per transaction. It is likely that transaction fees to properly regulated commercial client, would reduce substantially and the cost of operating an escrow service may be significantly less for smaller entity than the cost of employing a cashier. An escrow service would offer a smaller entity a reduced compliance overhead, with, in effect, compliance with Client Account Rules outsourced to the escrow service. Escrow service would have to be approved by IPS, and now must be regulated as Payment Service by the FSA. Similar benefits to an escrow service would be afforded by two or more regulated firms joining together to share Client Account facilities. For instance Firm A might be regulated by the SRA and might offer Client Account Facilities on an agency basis to Firm B, regulated by IPS. The sharing of resources would be efficient and would support the maintenance of high standards. IPS should offer the choice to regulated entities to provide their own client account facilities provided that the regulated firms can demonstrate satisfactory compliance with Accounts standards. IPS should consider the cost of maintenance, in addition, a master client protection insurance policy which should reflect the individual risk of each regulated entity taking into account the option for the conduct of transactions involving client money that the entity adopts.'

Self-employed CILEx Member

'Insurance. It will reduce financial risk to IPS/CILEx, ensure fair premiums to entities based on risk and protect the client (consumer).'

Self-employed CILEx Member

'Although it is dependent on likely premiums/contributions. I would suggest a compensation fund would be preferable as a Fund could be built over time which could conceivably limit cost to entities in the longer term.'

CILEx Member Ltd Company owner manager

'Insurance policy, if it is considered that PII is not sufficient.'

Regulator

'It is difficult to imagine that the profession would have sufficient financial resources to establish a Compensation Fund without recourse to whole or partial insurance. We are advised that commercial coverage is available for the risks associated with misappropriation of client funds. The escrow account idea undoubtedly reduces some of the risks but other exposures to client funds remain which would still require the purchase of some insurance protection.'

CILEx Member Ltd Company owner manager

'Insurance policy very straight to the point everybody knows what has to be

paid out in terms of dishonesty/failure to account.'

Self-employed CILEx Member

'Insurance most efficient means of meeting short and long term cover. Fairer assessment of means for smaller i.e. sole practitioners and none client fund holders. Opposite to escrow – too costly. Compensation Fund – undesirable and ultimately costly.'

Self-employed CILEx Member

'I am keen on escrow if the cost can be brought to an affordable level, £12 per transaction is not affordable. I did say at Reference Group on 05.10.12 that perhaps you should tell those you are consulting that the cost is coming down as it may affect their responses. £4 or so is much better but probably still not low enough. If we can convince the escrow agent that there will be plenty of transactions perhaps they will bring the cost down further. Alternatively I am in favour of an additional Insurance Policy if Escrow cannot be afforded. I wonder if escrow is a bit of overkill. Most lawyers are honest and would probably not need quite that level of client protection.'

Self-employed CILEx Member

'Insurance policy – in those circumstances it would not be necessary to incur significant fees per transaction (with escrow) and nor does a fund need building up which would be difficult to achieve in the early stages and could lead to economic hardship for new entities.'

Legal Ombudsman

'Escrow would be the preferred option because it removes the firm from the handling of client money, and therefore significantly reduces the risk of improper deductions from client funds. This would also mitigate the issue with refunds of fees identified in question one above.'

**Q8. It is our view that an Insurance policy provides the most suitable mechanism for compensating clients. Do you think that an Insurance policy would adequately protect clients' interests in the event of dishonesty and/or failure to account? If not, please identify areas that we need to consider further.**

RESPONSES:

9 out of 13 responses indicated 'yes' and 3 indicated 'no indication'.

Self-employed CILEx Member

'IPS should provide both a compensation fund and insurance policy. A one off levy on CILEx should be made to endow the compensation fund in its first year.'

Regulated individuals should pay a levy each year to the fund. Some mechanism to positively reward regulated entities with a good claims record such as a modest rebate scheme in the absence of any complaint (whether or not involving any financial claim) should be adopted to reinforce best practice. An insurance policy should be taken out the cost of which would be met by a levy on the Practice Fee. The insured sum should be for the minimum level of cover thought appropriate less the value standing to the credit of the compensation fund. Over time the payments into the compensation fund would hopefully drive down the insurance premium. In the early years the insurance element of the fund may dominate but over the years a good record will increase the compensation fund and reduce the need for insurance and the consequent cost to IPS regulated individuals.'

Self-employed CILEx Member

'Provided the terms and conditions are properly negotiated and agreed. However, what would happen if an insurer were able to refuse indemnity e.g. for material non-disclosure? Would there need to be a compensation fund to provide compensation in the event of an insurer refusing to indemnify?'

Self-employed CILEx Member

'An insurance policy may well cover the needs of the client however it may not be the most economically efficient way for entities to provide security for them'.

Self-employed CILEx Member

'Insurance should provide sufficient client protection so long as insurance company itself is secure. Will it be OK for me to stay with Hiscox if they are qualifying insurers and provide minimum terms which I hope they already do?'

Legal Ombudsman

'An insurance policy would probably be better than a Compensation Fund, given the funding issues and the uncertainty around the potential value of claims. If CILEX is successful in its bid, it is likely that the number of independent legal executive run firms will increase. It is difficult to anticipate how the market will work in terms of scale, how it will fit in with existing legal services providers and what work independent firms will carry out. In view of these issues, it is not easy to see how in practical terms an effective compensation fund could operate. An insurance policy, at least initially, would seem like a better option as it would be better able to deal with uncertainty and the risks associated with uncertainty. However, this is not to say that this should not be reviewed in the future once there is more certainty regarding the market Chartered Legal Executives are working within. It may well be that in the medium to long term a compensation fund would be appropriate.'

**Q9. Do you think our proposals provide sufficient Client Protection? If not, please state why not.**Self-employed CILEx Member

'Yes – you have done very well here to provide sufficient client protection.'

Self-employed CILEx Member

'Greater emphasis should be given to delivering the aims of the LSA to encourage competition and to improve access to justice. The latter will be achieved by lowering the cost of legal services. It is therefore vital that at all times, the cost of regulation is a central factor in the design of the Client Protection scheme.'

Self-employed CILEx Member

'Yes, provided the situation I have flagged up at 8 is clarified [*Question 8 - Provided the terms and conditions are properly negotiated and agreed. However, what would happen if an insurer were able to refuse indemnity e.g. for material non-disclosure? Would there need to be a compensation fund to provide compensation in the event of an insurer refusing to indemnify?*]

Regulator

'It is difficult to comment at this stage but we believe your proposals are capable of providing sufficient compensation arrangements to protect clients in the event of dishonesty or failure to account by entities you regulate.'

Self-employed CILEx Member

'I think they do provide very good protection. Please remember that some practitioners such as myself do not hold Client funds. I arrange for the Executor to open an Executors' account with a High Street bank of their choice and while I advise on which cheques should be drawn and give directions as to transfers to be made I do not have ultimate control over the account the Executor does. I am not a signatory on the account for example. Please advise whether it will be OK for me to continue with this arrangement for Probate matters. Also I think we should have succession arrangements in place in case of death of our permanent mental incapacity or in case of a temporary health or other difficulty we have agreed with another suitably qualified member that they will handle our matters to completion to the satisfaction of the client.'



**Q10. Do you have any other comments on our Client Protection Scheme?  
If so, please state what they are.**

Self-employed CILEx Member

'The best protection for the general public is the maintenance of high standards within the profession and the efficacy of regulation. Regulation must bear in mind at all stages of planning and implementation the cost of compliance both in terms of expenditure but also in management time. Therefore the scheme should be designed to keep expenditure as low as possible rather than emulating existing regulatory arrangements.'

Self-employed CILEx Member

'I consider a Master Policy might be better option for an initial period. I also have concerns on potential refusal of indemnity for e.g. material non-disclosure and where that would leave the client (consumer) IPS/CILEx.'

Self-employed CILEx Member

'I would be opposed to an Escrow agent as this appears to involve an inordinate level of upheaval for entities in rearranging their financial models.'

Self-employed CILEx Member

'Re your point on insurance rules, do also make sure that the complaining client must also act truthfully, honestly and with integrity when making a claim since there are some clients who like nothing better than to take advantage of an insurance policy for financial gain.'

Legal Services Consumer Panel

'IPS has considered various options for client protection, including an Escrow, a compensation fund and an insurance policy. However, assessment of the advantages and disadvantages of these options seems to have been carried out from the perspective of providers not consumers. For example, the fact that entities would face an added layer of control on the transfer of funds from an Escrow is listed as a disadvantage yet the Panel considers this would be a positive advantage for consumers. The Panel believes the option of an Escrow rather than an insurance policy may be optimal for consumers.'

We note that the Escrow costs are estimated at £12 per transaction and that these charges could be unsustainable. However, it is difficult to make a definitive comparison on this as there is no other information on the likely costs of each option. Furthermore, we note the costs of the preferred option (insurance policy) have not yet been worked out which somewhat undermines the argument put forward for favouring this alternative.'

**IPS COMMENTS**

IPS has considered the comments carefully. IPS is alert to the comment made by

the Consumer Panel on escrow and the difficulties in comparing and considering the transaction fee of £12 in isolation. IPS has continued to discuss escrows with the agent they are working with, further negotiating a reduction in the transaction fee. Having considered the comments above IPS wants to provide a flexible mechanism of client protection that will take into account the needs of clients and entities. The regulatory arrangements that IPS is adopting will therefore allow entities the option of putting in place an escrow arrangement.

IPS considers that there will always remain the need for a Compensation Fund for the purposes of making grants to persons who have suffered loss by reason of the dishonesty of an IPS regulated entity and making grants to applicants who have suffered hardship as a consequence of a failure by an IPS regulated entity to account for money. Grants will be made at the discretion of IPS and the fund will be maintained through entity contributions

Whilst the fund is being built and to help protect consumers IPS has been working with an insurance company who has agreed to provide insurance that will cover claims made on the Compensation Fund. The premiums for this insurance will be broken down into the IPS regulatory costs/Compensation Fund contributions.

IPS wants to give the entities that it regulates the choice of utilising the escrow.

By providing the above options IPS is of the view that entities will be able to adopt procedures that are most suitable to their needs, whilst at the same time not compromising client protection, which is of paramount importance to IPS.

**ILEX Professional Standards Ltd  
Meeting of the IPS Reference Group  
5th October 2012 at 10.30 am  
At the Chartered Institute of Legal Executives**

Background & Introduction

1. This paper summarises the feedback received from the IPS Reference Group held on 5<sup>th</sup> October 2012.
2. This meeting covered the IPS Professional Indemnity Insurance (PII), Compensation Arrangements, Outcomes Focussed Regulation and the role of the Code of Conduct.
3. This meeting was attended by six individuals from a range of backgrounds including self employed members and Fellows currently undertaking non-reserved legal activities, and members and Fellows employed at or partners in other types of legal practice undertaking reserved legal activities. The meeting was also attended by a representative of CILEx and an IPS Lay Board Member/Disciplinary Tribunal Member with experience of sitting on the SDT (Solicitors Disciplinary Tribunal) and the IPS Disciplinary Tribunal, representing consumer interests.
4. Each attendee was provided with an information pack which consisted of copies of the consultation on PII, Compensation Arrangements, Outcome Focussed Regulation and the role of the Code of Conduct. A copy of the presentation slides on PII and Compensation Arrangements were provided together with the IPS Reference Group Agenda.
5. Attendees were asked to give their views on the presentations. The following paragraphs capture views expressed by those in attendance at this meeting. The views expressed do not correspond with all of the questions asked, but they were captured and recorded nonetheless to ensure that all views could be considered in future decisions made by IPS.
6. The reference group did not express many comments in respect of Outcomes Focussed Regulation and the role of the Code of Conduct. Views were mainly expressed in relation to the IPS proposals for PII and Compensation Arrangements, which IPS considered as follows.

**Professional Indemnity Insurance (PII)**

*Options of PII*

7. The two options of compulsory insurance under a master policy and open market were discussed.

8. The reference group advised that the main advantage of a master policy related to guarantee of cover for all entities and the provision of automatic run off cover. Otherwise the reference group was supportive of obtaining PII on the open market and this was the preferred option.

*Run off cover*

9. On the point of run off cover on the open market there was a mixed reaction, some group members were of the view that this should be at a compulsory limit of approximately 3 years and others thought that this needed to be longer, for example probate run off may need to be as long as 13 years. It was accepted that 6 years run off was more or less the accepted minimum and that this was a good place to start.
10. The reference group appreciated that getting entities to take run off cover on the open market may prove difficult and that IPS had to take a robust approach in respect of this.
11. The reference group was aware that insurers for the SRA provide automatic run off to firms where the firm is unable to pay the premium. The reference group recognised that it would not be possible for IPS to obtain such favourable terms on behalf of IPS regulated entities.
12. The reference group suggested obtaining a secondary insurance or bond to cover run off cover. IPS is open to pursue these suggestions however it has been advised by its broker that there are difficulties in obtaining such policies.
13. The reference group advised that smaller entities would have the most difficulty in paying the run off premium and steps need to be taken by IPS to assist them.

*Minimum level of cover*

14. The reference group was supportive that there should be one universal minimum level of cover under the PII. They were supportive that this should be set at £2million.

*Qualifying Insurers Agreement (QIA) and Minimum Wording*

15. IPS advised that insurance on the open market would mean insurers agreeing to the IPS QIA and IPS Minimum Wording. The reference group was supportive of this and advised that the more insurers that agree to become Qualifying Insurers the more competitive the IPS open market would be.

## **Compensation arrangements (escrow)**

*Escrow fee*

16. The reference group made positive comments in respect of the work done on escrows. Members of the reference group were pleased that the escrow fee had come down from £12.75 although they still considered that it was high.

17. Other suggestions included only utilising escrows for high value transactions and the smaller transactions running through an entity's client account or a transaction fee of 2% of the transaction with a cap.
18. Overall the reference group was positive about escrows and they appreciated that savings could be made by entities including savings on bookkeepers and accounts staff. The reference group could also see the savings that would be made in respect of reducing fee earning time spent on dealing with accounts and reconciliations.

*Escrow & regulatory costs*

19. The reference group wanted the option of utilising an escrow rather than it being compulsory. They suggested that IPS should adopt lower regulatory costs for entities that opt to use the escrow in an attempt to incentivise them.
20. It was the view of the reference group that PII premiums would not reduce for entities that utilise the escrow as PII dealt specifically with civil claims, which would still remain risky for insurers. IPS confirmed this view from their discussions with insurers.

*Client protection & the escrow agent*

21. IPS confirmed that the escrow would be audited on a yearly basis. The reference group felt that this gave some protection however they expressed concerns about the risk of dishonesty or failure to account by the escrow agent. The reference group was informed that IPS was in the process of reviewing the escrow agent's client protection arrangements and insurance for the escrow account.
22. The reference group queried whether the escrow agent was aware of the demand that is likely to be placed on the escrow and whether they could deal with high volumes of transactions at certain busy periods of the week (for example Friday conveyancing transactions). IPS advised that they had received these reassurances from the escrow agent.
23. The reference group suggested that the escrow agent must be subject to accounts rules. IPS accepted these comments and confirmed that the escrow agent has been made aware of this and was prepared to meet the obligations set by IPS.
24. The reference group had concerns that the escrow would not eliminate entities from acting dishonestly or from failing to account to clients. IPS confirmed that they were alert to this problem and envisaged that a Compensation Fund would be needed in addition to escrow services.

### **Compensation arrangements (Compensation Fund and Insurance)**

25. IPS outlined its plans for a Compensation Fund backed with insurance. The reference group referred to this insurance as 'stop loss insurance' where IPS can cover the smaller claims on the Compensation Fund and the larger claims can be met by the insurance.
26. The reference group agreed with the 'stop loss insurance' approach and confirmed that it was important to have in place.
27. The maximum payment out of the Compensation Fund was discussed although no real recommendation was made the reference group advised that other regulators have a maximum limit of £2million. IPS agreed to keep this under review but it was envisaged that there would have to be a cap on the Compensation Fund grants in the region of £500,000 per claim. The reference group did not express any concerns in respect of this.
28. The reference group advised that IPS needed to consider how the premium and contributions for the Compensation Fund would be divided between the entities. IPS confirmed that the main risk posed by entities relates to the number of fee earners and the area of work that they are specialising in. Again IPS confirmed that they would keep this under review.
29. The reference group highlighted that sole practitioners are also considered high risk in terms of compensation arrangements. IPS confirmed that they were alert to this fact.
30. The reference group was supportive of a Compensation Fund, they also appreciated that because potential claims on the Fund are currently unknown, it was important to obtain insurance so that all claims can be met and to safeguard against the IPS reserve from being depleted.

### **Conclusion**

31. The views of the reference group and the comments from the consultations have been very helpful with informing the views of IPS on client protection. IPS shared these views with their broker, insurance company and escrow agent. IPS thanks everyone who has participated in the reference groups and contributed their views.