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PART 1

INTRODUCTION

PART 1 – INTRODUCTION

THE APPLICATION

1. The Chartered Institute of Legal Executives (CILEx) is an approved regulator under the Legal Services Act 2007. In accordance with the Legal Services Act 2007 (the Act) CILEx has separated its regulatory functions from its representative functions. The regulatory functions are carried out by ILEX Professional Standards Ltd (IPS).
2. IPS makes an application to the Legal Services Board for CILEx to be designated by the Lord Chancellor as an Approved Regulator to grant reserved instrument activities and probate activities rights under Part 2 of Schedule 4 of the Act. The Application is made in accordance with rules issued by the Legal Services Board under Part 2 of Schedule 4 of the Act.

RIGHTS SOUGHT

3. CILEx members undertake probate and reserved instrument activity work as part of their daily practice where they practise in these areas. These rights are exercised as employees of authorised persons. IPS makes this application to enable suitably competent practitioners who may or may not be members of CILEx to become authorised persons. The rights sought by IPS are set out below:

Probate activities:

To prepare any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales.

Probate papers mean any papers on which to found or oppose a grant of probate or a grant of letters of administration.

Reserved instrument activities:

To:

- prepare any instrument of transfer or charge for the purposes of the Land Registration Act 2002;
- make an application or lodge a document for registration under that Act;
- prepare any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales.

Instrument includes a contract for the sale or other disposition of land (except a contract to grant a short lease), but does not include a will or other testamentary instrument; an agreement not intended to be executed as a deed, other than a contract that is included by virtue of the preceding provisions; a

letter or power of attorney; or a transfer of stock containing no trust or limitation of the transfer.

4. An applicant will be able to apply for either or both probate activity and reserved instrument rights.
5. The Application establishes that:
 - a person authorised in accordance with the proposed regulations will have the competence, defined as knowledge, skills and experience, to exercise the probate or reserved instrument activity right that they seek
 - IPS, as the regulatory body, has in place suitable regulatory arrangements which take a risk based approach to the authorisation and supervision of entities through which probate or reserved instrument activities are delivered
 - IPS has suitable outcomes focused regulatory arrangements to govern the conduct of authorised persons and entities, and
 - the regulatory arrangements will protect and promote the interests of consumers, including vulnerable consumers, and the public and deliver choice for consumers.
6. The application is divided into the following parts:
 - **Part 1** – the rights sought and an explanation of the authorisation process
 - **Part 2** – information about CILEX and IPS
 - **Part 3** – compliance with the regulatory objectives and professional principles contained in the Act and the Better Regulation Principles
 - **Part 4** - the qualification scheme
 - **Part 5** – entity regulation
 - **Part 6** – outcomes focused regulation, Code of Conduct and Accounts Rules
 - **Part 7** – complaints handling
 - **Part 8** – enforcement arrangements
 - **Part 9** – indemnity arrangements
 - **Part 10** – compensation arrangements
 - **Part 11** - implementation and delivery of the regulatory schemes.
7. The formal regulatory arrangements appear in the separate document enclosed with this application.

Probate activities

8. The probate rights sought mirror the work that CILEx members are already able to exercise, albeit as employees. While the reserved legal activity relates to

probate, practitioners working in this area usually undertake the whole range of services from will drafting to applications for probate and estate administration. Therefore IPS will ensure that any practitioner authorised to undertake probate activities will also be competent to undertake will writing and estate administration, if they propose to undertake this activity.

9. At the point of authorisation a practitioner will be known as an Authorised Person as defined by s.18 of the Act. They are referred to as Probate Practitioners in this application.

Reserved instrument activities

10. The reserved instrument activity rights sought are often referred to as conveyancing rights by the legal profession. They are the same as the work that CILEx members already undertake as employees. While the Act specifies the activities that are reserved legal activities IPS seeks to implement a framework to ensure practitioners are competent to exercise the full range of activities surrounding reserved instrument practice. This approach is appropriate for the purpose of ensuring practitioners, who once authorised to deliver reserved instrument rights are competent to deliver the full range of services and thereby provide the level of assurance to the public that they expect.
11. Practitioners authorised to deliver the reserved instrument rights will become Authorised Persons, as defined by s.18 of the Act. They are referred to as Conveyancing Practitioners in this application.

PRACTICE MODELS

12. IPS proposes to authorise applicants seeking probate activity and reserved instrument activity rights by competence. Applicants who can demonstrate that they have the competencies set by IPS will be able to qualify as Probate Practitioners or Conveyancing Practitioners.
13. An authorised person may carry out the reserved legal activity for which they are authorised either in a practice (referred to as entity in this application) regulated by another approved regulator or by IPS. For the avoidance of doubt this application does not include an application for IPS to become a licensing authority. In this application IPS therefore seeks to regulate non-ABS legal practices only. IPS will make a separate application to become a licensing authority.
14. IPS has developed regulatory arrangements for the authorisation and supervision of entities that seek its regulation. It takes a risk based approach to regulation.

OUTCOMES FOCUSED REGULATION

15. IPS has built upon its firm foundation of taking an outcomes focused approach to the regulation of individuals by extending it to entities. CILEx's Code of Conduct sets out nine Principles, with supporting outcomes, which form the outcomes that IPS' regulated community must deliver to meet the outcomes that consumers expect. The Principles have been updated where necessary, maintaining the existing approach to ensure they encapsulate outcomes expected of entities.
16. The Code underpins IPS' approach to regulation. Where risks are assessed against the Principles and Outcomes in the Code IPS has developed a risk based approach to the authorisation and supervision of entities.

PROTECTION OF CONSUMERS AND THE PUBLIC

17. The protection and promotion of the interests of consumers and the public has been placed at the heart of the regulatory arrangements. This is enshrined in the Code of Conduct and approach to authorisation and supervision of entities which considers risks to the public and consumers.
18. IPS has developed indemnity insurance and compensation arrangements to protect consumers.
19. Where it becomes necessary to take investigative and enforcement action IPS has in place arrangements for the investigation of the conduct of individuals and entities that fall within its regulation and disciplinary sanctions where a finding of misconduct is made.

PART 2

CILEx, IPS &

CILEx MEMBERS

PART 2 – CILEx, IPS and CILEx MEMBERS

CHARTERED INSTITUTE OF LEGAL EXECUTIVES (CILEx)

Constitution

1. The Chartered Institute of Legal Executives (CILEx) is the professional membership association for Chartered Legal Executives and other members registered with it.
2. CILEx is an approved regulator under s.20 of the Legal Services Act (the Act). Schedule 4 of the Act confirms that CILEx is able to award rights to administer Oaths and rights of audience to Chartered Legal Executives. CILEx became an Approved Regulator for awarding rights of audience and rights to conduct litigation to Associate Prosecutor members in May 2011. Under schedule 18 of the Act CILEx is a designated qualifying regulator for authorising members to provide immigration advice and services.
3. Before the implementation of the Act CILEx was a body authorised to grant Rights of Audience to suitably qualified Fellows, under s. 29 of the Courts and Legal Services Act, by virtue of the Institute of Legal Executives Order 1998 (SI 1998/1077), which came into force on 23 April 1998. It also had the power to authorise Fellows to administer Oaths (SI 1995/1676) and was a designated professional body in respect of immigration advice or services under the Immigration and Asylum Act 1999.
4. CILEx is the successor to the Solicitors Managing Clerks Association which was founded in 1892, incorporated in 1928. It adopted the title of Institute of Legal Executives in 1963. It was successful in its application to the Privy Council to become a chartered body and became the Chartered Institute of Legal Executives on 30 January 2012.
5. The Charter Bye-laws of CILEx appear at **annex 1** of this Application. CILEx's objects are to:
 - serve the public interest by promoting and maintaining proper standards of ethical conduct, efficiency and training on the part of Chartered Legal Executives and other members of CILEx
 - provide for the education and training, and develop the proficiency of, Chartered Legal Executives and those who wish to become proficient in the law, including those persons seeking to qualify as Chartered Legal Executives, in all subjects and skills, whether in the law or otherwise
 - enhance and maintain public confidence in the work of Chartered Legal Executives within the administration of justice and the service of clients

- promote, in the public interest, co-operation and mutual assistance amongst persons employed in the legal profession or engaged in legal work.
6. CILEx is governed by its Council, which is responsible for determining its policy. Council comprises Chartered Legal Executives engaged in legal work, who are elected to represent constituencies throughout England and Wales. There are 19 regional seats on Council and 4 seats for Chartered Legal Executives who are co-opted onto the Council. A list of the current Council members appears at **annex 2**. Council meets six times each year. Council members are responsible for ensuring that the affairs of CILEx are conducted diligently, legally and honestly.
 7. The CILEx Council has adopted, and maintains, a strategy and a five year business plan. These documents define the strategic and policy direction that CILEx will follow. It provides a focus to deliver qualifications, education and training and membership services to meet the needs of CILEx members, new members and add value to the sector in which they operate. The obligations to act in the public interest, secure fair access to justice and the legal profession and to uphold the rule of law and the professional principles underpin the plan. The strategy and business plan, which cover the period 2012 to 2017, appear at **annex 3**.
 8. CILEx has in place policies which apply to Council members and employees, designed to ensure compliance with best practice in relation to the ethical management of CILEx including matters such as discrimination and data protection. The policies are the Code of Conduct, Anti-Bribery and Corruption Policy, Whistle Blowers and Equality and Diversity Policy, under which a Group Single Equality and Diversity Scheme and Action Plan is published.
 9. Each year the annual accounts of the CILEx group are subject to independent audit. The CILEx group comprises CILEx, IPS and ILEX Tutorial College. A copy of the 2012 annual report and statement from the auditors appears at **annex 4**.

ILEX PROFESSIONAL STANDARDS LTD

10. The Act makes CILEx the Approved Regulator. In accordance with the provisions of the Act and clause 13 of the Charter Bye-laws CILEx has established a subsidiary company, ILEX Professional Standards Ltd (IPS), to which it has delegated its regulatory functions. The delegation to IPS ensures that CILEx's regulatory functions are carried out independently from its leadership and representative functions. The LSB has assessed that IPS and CILEx consistently meet the annual requirements of its Internal Governance Rules.

11. IPS was incorporated in October 2008. Its Memorandum and Articles of Association appear at **annex 5**. IPS is governed by a Board of Directors comprising four lay members and three Chartered Legal Executives. The Chair of the Board is a lay member. A list of the current Board members appears at **annex 6**.
12. IPS is responsible for the regulation of CILEx members. It develops and promotes standards of conduct and ensures compliance by CILEx members with them. IPS has oversight of the CILEx qualification schemes and is responsible for the continuing professional development scheme and qualifying employment requirements of CILEx members. IPS carries out the investigation of allegations made about the conduct of CILEx members and takes disciplinary action where a matter is found proved.
13. CILEx and IPS have established protocols to facilitate good working relationships between the two companies and to ensure that the requirements of independent regulation of CILEx members are met. The protocols which have been approved by the LSB recognise that each company has its own obligations and priorities and that the best regulatory results for the public and CILEx members will be achieved by collaboration. The protocols are supported by a Service Level Agreement. Copies of the protocols and Service Level Agreement appear at **annex 7**. IPS and CILEx review compliance with the Service Level Agreement every six months and with the protocols annually. IPS and CILEx report on the same to the LSB as part of the Internal Governance Rules requirement.
14. IPS is committed to accountability. It has developed a number of documents setting out how the Board will work and the standards it aims to achieve. The documents are the Code of Conduct for Board members, reserved matters and standing orders. Copies of these documents appear at **annex 8**. IPS also maintains a risk management document, which is reviewed on a quarterly basis both by the IPS Board and IPS staff.
15. IPS reports on its performance to CILEx and the Legal Services Board. It has set out its strategy for the period 2013 to 2018 and has developed an annual business plan against which performance is assessed. A copy of the strategy appears at **annex 9**.
16. The Board regularly monitors compliance with key performance indicators and sets aside time each year to evaluate its own performance and that of IPS. In addition, Board members are appraised annually by the Chair; and the Chair and CEO by 360° appraisal. IPS publishes an annual report. The report for 2011 appears at **annex 10**.
17. The IPS strategy links with the vision statement adopted by the CILEx Group. IPS delivers regulatory arrangements that take a proportionate and risk based

approach which will promote, secure and maintain proper standards of conduct and behaviour among those it regulates in the public interest. Its aim is to protect and promote the interests of consumers, especially vulnerable consumers. IPS is also committed to acting in accordance with the regulatory objectives and professional principles set out in the Act. The strategy commits IPS to:

- act in accordance with the regulatory objectives and the professional principles set down in legislation
- promote the rule of law and the administration of justice
- follow best practice in professional regulation
- manage risk actively, assessing this before proceeding with any new developments
- work closely with the LSB, the Legal Services Consumer Panel, CILEx and other stakeholders
- keep consumers' needs and the public interest at the heart of its' thinking
- engage appropriately with consumers of legal services and assure quality for them
- engage appropriately with its' regulated community, supporting them in meeting their obligations under the legislation
- act proportionately, targeting risk
- maintain clear independence of sectoral interests
- be open and transparent in its communications
- support the diversity of the legal profession and enable social mobility, and
- demonstrate proper governance and value for money.

18. The Board has divided its responsibilities into six work streams to deliver its strategic aims. The work streams are:

- governance and performance
- communication and partnership
- education and standards
- registration and accreditation
- fitness to practise; and
- business development.

19. Each Board member is a portfolio holder responsible for one work stream area, with the Chair focusing on overall strategy, finance and relations with the professional leadership side. At each Board meeting the Board considers reports of progress made in each portfolio area towards the achievement of IPS' strategic aims.

CONFLICT RESOLUTION

20. The protocols and Service Level Agreement set out arrangements for resolving any conflict that may arise between CILEx and IPS. They also set out arrangements for the sharing of information and consultation between IPS and CILEx on proposals.
21. Disputes which may arise between the organisations, whether in relation to the protocols or otherwise will be resolved by discussions involving the Chief Executives of CILEx and IPS, the President of CILEx and the Chair of the IPS Board. In the event of a dispute remaining unresolved under the protocols it will be referred to an independent external facilitator. Nothing in the protocols prevents either organisation from referring a dispute which cannot be settled between them to the Legal Services Board. In that event, as a matter of good practice, at least 5 working days' notice would be given to the other organisation.

CILEx MEMBERSHIP AND THE WORK OF CHARTERED LEGAL EXECUTIVES

MEMBERSHIP

22. CILEx members register in grades of membership appropriate to their level of qualification and experience. The grades are:
 - Student - no relevant qualification
 - Affiliate - holds a relevant full level 2 qualification or level 3 unit from the professional qualification or similar or has three years' legal experience
 - Associate - holds the full level 3 Professional Diploma in law or equivalent, including a qualifying law degree
 - Graduate member - passed the CILEx Professional Qualification in Law and Practice (level 3 and 6), or passed the LPC or BPT but has not yet complied with the requirements as to legal experience known as qualifying employment
 - Chartered Legal Executive (Fellow) – passed the CILEx Professional Qualification in Law and Practice and completed qualifying employment
 - Associate Prosecutor – passed the Associate Prosecutor qualification.
23. There are approximately 20,000 members registered with CILEx of which:
 - 7,600 are Chartered Legal Executives
 - 370 are Associate Prosecutors
 - 2,000 are Graduate members
 - 4,000 are Associate members
 - 4,200 are Affiliate members
 - 1,150 are Student members.

24. Only Chartered Legal Executives are full corporate members of CILEx and entitled to the benefits and privileges conferred by membership. They are entitled to describe themselves as 'Fellows of the Chartered Institute of Legal Executives', or 'Chartered Legal Executives', and to use the designatory letters 'FCILEX'. To be admitted as a Chartered Legal Executive it is necessary to have:
- passed the CILEx Professional Qualification in Law and Practice, or been exempted from it
 - completed 5 years' employment experience in legal work, including at least 2 consecutive years after completing the CILEx Professional Qualification in Law and Practice. IPS has developed a scheme of work based learning whereby applicants will demonstrate that they met outcomes over a 3 year period. A separate application has been made for approval of this scheme. Once approved it will replace the 5 years' employment requirement, and
 - satisfied IPS as to fitness for admission.
25. Currently there are 90 Chartered Legal Executives who have qualified as Legal Executive Advocates authorised to appear in criminal, civil or family proceedings.
26. CILEx has been approved under the Act as the regulator for Associate Prosecutor members employed by the Crown Prosecution Service in May 2011. This brought Associate Prosecutors into a scheme of formal regulation as required by Parliament. There are in the region of 370 members registered in the Associate Prosecutor grade. They are authorised to conduct litigation and exercise rights of audience in criminal proceedings. CILEx and IPS have agreed a Memorandum of Understanding with the Crown Prosecution Service to govern the relationship and procedures between the organisations.
27. CILEx members represent diverse backgrounds. Nearly three quarters of its members are female and it has a representative proportion of members from ethnic backgrounds and social mobility backgrounds. The flexibility of the 'earn and learn' and its open access approach to the CILEx qualification attracts members who might otherwise not have sought to obtain a professional qualification.

RECOGNITION OF CILEx MEMBERS

28. Since the Tribunals Courts and Enforcement Act 2007 Chartered Legal Executives with five years' post-qualification experience are eligible to apply for various judicial appointments.

29. Chartered Legal Executives are Commissioners of Oaths, by virtue of the Legal Services Act 2007.
30. Chartered Legal Executives specialising in employment law within solicitors' practices are able to advise on compromise agreements by which cases involving allegations of discrimination and other employment rights may be settled without recourse to a hearing. Other lawyers who may advise on such agreements are solicitors, barristers and CILEx advocates.
31. CILEx is a specified body for the purpose of regulating claims assessors under the Compensation Act 2006. Those of its Chartered Legal Executives who provide referral services in claims management work are authorised and regulated by CILEx to do so for the purposes of the Compensation Act 2006.
32. Chartered Legal Executives are eligible to join some of the specialist panels operated by the Law Society or its specialist groups, including the Criminal Litigation Accreditation Scheme, Personal Injury Panel and the Family Law Panel and many have done so. Suitably experienced CILEx members are also eligible to join specialist practitioner organisations such as the Association of Personal Injury Lawyers, the Forum of Insurance Lawyers, Resolution and the Society of Trust and Estate Practitioners. Chartered Legal Executive Advocates holding the Rights of Audience (Matrimonial Proceedings) Certificate are eligible to join the Children's Panel. Membership of most of these panels or organisations will often involve an assessment of the CILEx member's competence and knowledge and may also involve specialist training.

EDUCATION AND TRAINING

33. The CILEx Careers and Qualification Guide is at **annex 11**. CILEx introduced a new Level 3 qualification scheme in September 2008 and a new Level 6 qualification in September 2009.
34. CILEx is committed to practical legal education and training. Its strict requirements for qualification and high academic standards contribute to the confidence of the public and consumers in the training of members working within the legal profession. It also enables members to provide legal practices with qualified assistance in delivering legal services and in serving the needs of their clients. Chartered Legal Executives of CILEx bring to employers a combination of practical knowledge and experience, coupled with specialist academic knowledge. They tend to develop expertise in specific areas of law and practice. The Professional Qualification scheme encourages this focus. The majority of those seeking to qualify with CILEx will study part-time, so that practical experience is combined with the acquisition of relevant legal and procedural knowledge.

35. IPS plays an important role within the legal profession ensuring that CILEx members who deliver legal services are qualified and competent to do so. This is vital to the interests of clients and the public at large.

RECOGNITION OF CILEx QUALIFICATIONS

36. The Level 3 Professional Diploma in Law and Practice provides a broad introduction to the main areas of law and legal practice encountered in legal practices. It also incorporates legal research and client care units, which develop knowledge of key professional skills required of legal practitioners. The standard of assessment at Level 3 equates with GCE 'A' level on the national qualifications framework. The Level 6 law papers are set and examined at honours degree standard. The Level 6 legal practice papers reflect the level of knowledge required on the legal practice course (LPC) which prospective solicitors undertake, and indeed greater practical expertise is expected to be demonstrated. The Level 6 qualification also includes legal research and client care skills units, aimed at further developing the knowledge of members in the practical skills they require in the workplace.
37. CILEx Level 6 law papers are accepted by a number of universities as credits towards their law degrees. CILEx qualifications are also recognised towards qualification as a Licensed Conveyancer and as a Solicitor. Chartered Legal Executives and Graduate members of CILEx who wish to qualify as Solicitors may complete the academic stage of the solicitors training scheme by taking relevant Level 6 subjects. They are required to study for and pass the legal practice course. Chartered Legal Executives are usually exempt from the Law Society's normal requirement for a training contract to be completed.
38. Research undertaken on behalf of CILEx by Clariant Research over a number of years indicates very high levels of support within the legal profession for its scheme of qualification and training. Responses from employers and members indicate that the qualification remains both accessible and relevant to the provision of legal services.

PRACTICAL LEGAL TRAINING

39. At present CILEx members must have 5 years' qualifying employment in addition to the academic elements to qualify as Chartered Legal Executives. At least 2 years of this qualifying employment must be completed after members become Graduate members on completion of the examinations.
40. IPS has reviewed the qualifying employment arrangements to develop a measurable and reflective scheme of qualification. It has developed work

based learning outcomes, upon which it has consulted twice, and a new definition of qualifying employment.

41. The work based learning outcomes comprise a set of 27 outcomes which set out key skills requirements that CILEx members must demonstrate during their period of qualifying employment.
42. Qualifying employment has been defined as work that is wholly of a legal nature that involves application of the law or legal practice or procedure in areas such as:
 - taking instructions
 - advising and making recommendations
 - drafting documents
 - undertaking legal research
 - corresponding with the parties to an action or transaction
 - making decisions in a legal matter based on legal principles or rule of law; and
 - representing in negotiations and submissions.
43. The outcomes and scheme procedures have been tested through a pilot. The pilot enabled IPS to finalise the outcomes, scheme documents and procedures. They have been submitted to the LSB for approval. Once approved IPS will introduce a set of outcomes which members must meet in a 3 year period of qualifying employment to qualify as a Fellow of CILEx.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

44. IPS has in place a scheme of Continuing Professional Development for Associate members, Graduate members, Chartered Legal Executives and Associate Prosecutor members. CPD is central to professional practice and important to maintaining competence and developing the ever-changing skills needed by legal practitioners. IPS monitors compliance with the CPD requirements. A failure to comply may lead to disciplinary action by IPS.
45. All practising Chartered Legal Executives and Associate Prosecutor members are required to undertake 16 hours CPD each calendar year. All Graduate members of CILEx are required to undertake 12 hours CPD each calendar year; and Associate members are required to undertake 8 hours CPD each year. Half of the CPD must be relevant to the area of law in which the member practices and the other half may be gained in an area of law or practice relevant to their professional development or which may be outside their specialism.

46. Chartered Legal Executive Advocates are required to undertake 5 hours' advocacy skills training each year which may be part of the 16 hours required for their general Fellowship.
47. IPS is reviewing the Continuing Professional Development (CPD) requirements for CILEx members. It has developed proposals for an outputs based scheme upon which it has recently consulted. The proposal is to move to a reflective scheme whereby members reflect upon and consider the areas in which they need to develop. They will determine how those development needs can be met and thereafter undertake that development activity. Upon completion of the development activity members will complete the reflective circle by considering how well the CPD activity met their development needs. Members will be required to complete 9 reflective entries on their CPD log each year. IPS is testing its CPD proposal through a pilot running between January and March 2013 before it finalises the scheme.

THE WORK OF CILEx MEMBERS

48. 78% of CILEx members are employed in law firms in private practice, 14% work in local government and public administration, 6% in commerce and industry and 2% are self-employed. There are over 200 members who have become managers in entities regulated by the Solicitors Regulation Authority.
49. Under the general supervision of their principals, CILEx members exercise a wide degree of responsibility for, and control of, the matters entrusted to them. Many members will be heads of departments having completed relevant aspects of the CILEx qualification or equivalent. They frequently supervise other staff, including solicitors, with whom they work. 30% of CILEx members work in civil litigation, 10% in criminal litigation and 10% in family law, 21% work in conveyancing and 10% in probate practice.
50. In the particular fields of law in which CILEx members elect to practise, there is a wide range of activities in which they are proficient. The extent to which they are involved individually in these activities will vary, depending on the nature of their employer's practice. In all matters, a CILEx member is trained in, and has experience of, taking comprehensive instructions from clients and using them as the basis for further action or for decisions, in advising the client, or for progressing the matter. Many actions and transactions will progress without the involvement of the member's principal. CILEx members are trained rigorously in understanding the limits of their competence; and will be aware of the importance of seeking guidance if it is needed.
51. The practice rights schemes proposed in this application will provide a natural progression for CILEx members to undertake work in independent practice having gained substantial experience.

Work of CILEx members in probate activities

52. The work undertaken by most experienced CILEx members and other practitioners undertaking probate practice is the same as that undertaken by other practitioners in this field. Consequently, in practice there are many CILEx members and other practitioners who carry out the full range of probate business and will writing services.
53. Research conducted by IFF titled 'Probate and Estate Management Services Survey' demonstrates that most people arrange for their will to be prepared by a law firm and many decide to name partners in those firms as executors. This means that CILEx members and other practitioners in those firms are frequently called upon to obtain grants of probate both for private clients and for partners of their firm. They also carry out will writing and estate administration services in their own practices or in other practices. Other members undertake probate work in trust companies or as employees of financial institutions.
54. CILEx members:
- take and carry out client instructions to write wills
 - provide advice to clients in respect of their estates
 - obtain probate
 - deal with taxation issues
 - call in and distribute assets to administer estates.
55. There are few avenues open to members of the public when problems arise with a will other than to consult a legal practitioner. As a result, practitioners practising in this field:
- take instructions in circumstances where a deceased's will gives rise to problems in relation to the grant of probate
 - advise clients on the way problems should be dealt with
 - oppose a grant of probate or instruct counsel to obtain a grant of probate from the High Court rather than the Probate Registry
 - deal effectively with the practical and legal aspects of the administration of both straightforward and complex estates.
56. Practitioners must therefore not only be familiar with the laws of wills and succession but also must have an excellent working knowledge of the rules relating to contentious and non-contentious probate cases. The wide range of knowledge and experience required by CILEx members who are probate practitioners extends to being familiar with the rules relating to inheritance tax and other taxation issues.
57. As a result of their experience of delivering probate services, CILEx members and other practitioners are well placed to use their expertise as independent

probate practitioners and are likely to be at the forefront of those seeking authorisation from IPS and thus widening consumer accessibility to providers.

Work of CILEx members in reserved instrument activity

58. CILEx members and other practitioners carry out reserved instrument activity work and other aspects of conveyancing practice.
59. CILEx members work in legal practices; in licensed conveyancer practices and have qualified as licensed conveyancers; in local government; or in an in-house department. They carry out the whole range of activity on sale and purchase transactions involving leasehold and freehold property, landlord and tenant matters and both residential and commercial transactions.
60. Within their area of conveyancing practice CILEx members undertake all relevant work including:
 - taking instructions from clients
 - undertaking and analysing relevant searches
 - analysing Title and resolving any issues that arise
 - negotiating, drafting and agreeing contracts involving matters such as transfers, leases, deeds and grants of easements
 - dealing with lenders and the Land Registry
 - carrying out post completion work
 - signing cheques
 - transferring Title.
61. Conveyancing practitioners are familiar with land law, landlord and tenant and conveyancing practice.

REGULATION OF CONDUCT

62. CILEx has delegated to IPS responsibility for regulating the conduct of its members. CILEx members must meet the nine Principles set out in the Code of Conduct published by IPS.
63. IPS investigates allegations concerning the conduct of CILEx members and brings disciplinary proceedings where appropriate. The conduct of CILEx members has been exemplary. Between 1968 and 2012 a referral of misconduct to the Disciplinary Tribunal was required of less than 0.005% members of CILEx.
64. The jurisdiction of the SRA and the Solicitors Disciplinary Tribunal is additional to the jurisdiction of IPS. CILEx members who work in Solicitors Regulation Authority (SRA) regulated practices are subject to the jurisdiction of the SRA.

Under section 43 of the Solicitors Act 1974 CILEx members, in common with other employees, may be made subject to Orders restricting or controlling their employment within law firms. In practice, an order made by the Solicitors Disciplinary Tribunal or the SRA against a member of CILEx is likely to result in a determination by the Disciplinary Tribunal.

65. Similarly the jurisdiction of the Council for Licensed Conveyancers, Financial services Authority and Claims Management Council is additional to the jurisdiction of IPS where CILEx members work in practices subject to regulation by these organisations.
66. Complaints alleging poor service will usually be dealt with initially through in-house complaints procedures. Where they cannot be resolved in-house clients may refer the matter to the Legal Ombudsman where the practice is regulated by an Approved Regulator.
67. CILEx has agreed a Memorandum of Understanding with the Legal Ombudsman regarding the underpinning principles of co-operation in complaints handling. Discussions take place to develop similar Memoranda with other approved regulators. IPS will also seek Memoranda with regulators aimed at sharing information on risk to inform its risk based approach to regulation.
68. CILEx already has in place a Memorandum of Understanding with the Office of the Immigration Services Commissioner (OISC). The Memorandum sets out the arrangements for dealing with complaints involving immigration matters concerning CILEx members. The Memorandum is being reviewed and updated during the early part of 2013.
69. IPS has in place a mechanism to receive feedback from members and complainants about how it handled their case. The feedback mechanism has proved effective in assisting IPS to identify and implement changes to its complaints handling procedures.

CONSUMER ENGAGEMENT

70. IPS has a programme of consumer engagement, as set out in its Consumer Engagement Strategy and Consumer Engagement Action Plan which appears at **annex 12**. The Strategy is an on-going statement of overarching objectives and commitments and the Action Plan sets out IPS' programmed activities.
71. In accordance with the Plan IPS has launched a survey to seek feedback from consumers about services delivered by Chartered Legal Executives. The outcome of feedback will inform IPS' approach to regulation, ensuring that IPS regulated practitioners act in the public and consumer interest.

72. IPS regularly surveys CILEx members to ascertain information on compliance with first tier complaints handling requirements. IPS also regularly engages with self-employed Chartered Legal Executives to ensure compliance with the Legal Ombudsman signposting requirements.
73. IPS has developed an Integrated Action Plan to collate and process information identified through literature reviews and the range of consumer engagement activities both IPS driven and external. This is a valuable management tool for processing information about consumer experiences and expectations in the legal sector.
74. Consumer engagement is a high priority for IPS for which dedicated resources are available. IPS has been working closely with the Legal Services Consumer Panel, the Legal Ombudsman and other regulators on consumer engagement, consumer empowerment and first-tier complaints handling.

PART 3

**THE REGULATORY
OBJECTIVES AND
BETTER REGULATION
PRINCIPLES**

PART 3 - MEETING THE REGULATORY OBJECTIVES AND BETTER REGULATION PRINCIPLES

THE RIGHTS

Probate activities

1. The probate rights sought mirror the work that CILEx members are already able to undertake as employees. The rights are framed with reference to the definition of probate at Clause 6, Schedule 2 of the Legal Services Act. While the reserved legal activity relates to the preparation of probate papers, practitioners working in this area may be undertaking the whole range of services from will drafting to applications for probate and the administration of estate.
2. It is essential for the protection of the public and consumers to ensure that practitioners are competent to deliver the full range of services. IPS will therefore assess the competence of practitioners to deliver not only the reserved activity but also the full range of will writing and probate work.
3. IPS is aware that it will need to make a separate application to become an approved regulator should will writing become a reserved activity.

Reserved instrument activities

4. The reserved instrument activity rights sought are often referred to as conveyancing rights by the legal profession. The Act specifies at Clause 5, Schedule 2 the activities that are reserved legal activities in relation to reserved instrument activity work. The definition is narrow. In practice a practitioner seeking to become an authorised person for reserved instrument activities will already be undertaking the full range of conveyancing work.
5. IPS will implement a framework to ensure practitioners are competent to undertake the full range of activities relating to reserved instrument practice. IPS believes that this approach is necessary to assure the public that a practitioner has a full understanding of the work they are authorised to undertake.

PRACTICE MODELS

6. A person authorised under the proposed practice rights schemes may carry out the reserved legal activity for which they are authorised in a practice (referred to as entity in this application) regulated by either IPS or another approved regulator. IPS has developed risk based regulatory arrangements to authorise

and supervise entities that seek its regulation. The arrangements are explained in Part 5 of this application.

REGULATORY ARRANGEMENTS AND OUTCOMES FOCUSED REGULATION

7. IPS reviewed and updated its regulatory arrangements to govern the conduct of practitioners and entities that it authorises and supervises. It has built upon its existing Principles based approach to regulation. CILEx's Code of Conduct (the Code) sets out nine Principles, with supporting outcomes, which CILEx members must meet. The Principles have been updated to ensure they state unequivocally what is expected of entities if they are to deliver the required consumer outcomes. A mapping exercise was conducted to develop the Principles once IPS had identified the outcomes that consumers expect.
8. The Code encapsulates elements of practice management in a principles based manner. This provides Authorised Bodies with greater flexibility as to how they are organised and provide services. So long as the principles are adhered to and the required outcomes delivered IPS' regulated community will be free to innovate. IPS' regulatory oversight will ensure that the interests of consumers and clients are fully protected and promoted.
9. The Code is supported by Accounts Rules and client protection arrangements which include indemnity insurance and a Compensation Fund. Where it becomes necessary, IPS has in place suitable enforcement powers. These rules are prescriptive as they capture important areas of non-negotiable client protection arrangements.

THE LEGAL SERVICES ACT 2007

The Regulatory Objectives

10. The Legal Services Act 2007 sets out eight objectives, which it is the duty of approved regulators to promote. CILEx is an approved regulator and promotes the objectives in its existing work. IPS' application for probate activity and reserved instrument rights supports the regulatory objectives.
11. This section identifies how the regulatory objectives have been met and how IPS' regulatory arrangements have addressed and removed risks to their delivery.
12. The regulatory objectives and the professional principles permeate CILEx's Code. Where relevant they are reflected in the authorisation and supervision processes for authorised persons and entities.

Protecting and promoting the public interest and the interests of consumers

13. The proposals set out in this application will protect and promote the public and consumer interest for the reasons set out below.

Competence assessment

14. IPS will take a competence based approach to the award of practice rights. The adoption of this approach, as opposed to regulation by title, will broaden the range of suppliers of probate and conveyancing services. Further through the certification scheme it will establish an additional quality threshold for practitioners providing assurance to the public and reassuring consumers that probate and conveyancing services are provided by suitably competent advisors and that practitioners will work within the boundaries of their competence. It will also give added assurance to consumers that their purchase of a relevant service will be handled efficiently and accurately and represents value for money.
15. The competence assessment scheme proposed by IPS presents both an opportunity for practitioners to seek such recognition and for probate and conveyancing services to benefit from a new cadre of practitioners whose skills and knowledge have been assessed against a robust set of criteria by a capable regulatory body. Consumers will be able to seek services from an identifiable group of competent practitioners.
16. IPS will be assessing competence across the whole range of practice in which the applicant seeks to practise as opposed to the narrow regulated aspects of probate and reserved instruments. The interests of clients, consumers and the public are supported by having probate or conveyancing practitioners who are subject to regulation and authorisation in respect of the full range of work they undertake in these practice areas. The viability of any new business will also be enhanced by wider assessment of competence which can be marketed to consumers.
17. Practitioners authorised by IPS will be able use their experience and training to ensure that will drafting is of a good quality. Given the central role played by wills in the probate process this will have a positive impact on all aspects of probate business.
18. IPS expects those it authorises to carry out probate services to be able to deal effectively with sensitive issues such as making a will or dealing with issues surrounding the administration of a relative's estate. Similarly, it expects those authorised to carry out conveyancing services to be able to deal effectively with complex issues such as boundary disputes, defective title and other property disputes. Allowing non-CILEx members to become regulated by IPS and to apply for a Certificate will be beneficial to the public in terms of choice. The

safeguards built into the certification scheme will enhance the proper and effective administration of justice. The existence of a cadre of certified practitioners will provide a reliable, competence based 'quality mark' for the public wishing to access probate services, for other practitioners in the field and for those administering the probate system.

Entity regulation

19. IPS will take a risk based approach to the regulation of entities. Thorough and yet proportionate assessments will be made of the practice arrangements proposed by entities against principles set in the Code. Post authorisation IPS will keep under review, through intelligence gathering and monitoring activity, new and emerging risks to the delivery of outcomes designed to protect the public and consumers. Where significant risks are identified IPS will take targeted and proportionate enforcement action, which could extend as far as intervention and revocation of authorisation to protect consumers and the public.

Consumer outcomes

20. In developing its regulatory arrangements IPS has taken into account the seven outcomes which consumers expect, that the LSB identified in its report 'Developing measures of consumer outcomes for legal services' published in March 2011. This report found that consumers expect:
 - transparency
 - initial communication
 - on-going communication
 - professionalism and integrity
 - timeliness
 - alignment with consumers' best interests; and
 - complaints procedures.
21. These consumer expectations have shaped CILEx's Code and enabled it to require that IPS regulated practitioners and entities deliver the required outcomes. The risk assessment, authorisation and supervision processes will assess compliance with them.
22. IPS' own complaints handling processes, set out in its Investigation, Disciplinary and Appeal Rules (IDAR), provide a robust, user friendly and transparent process for protecting consumers by handling complaints about conduct with recourse to proportionate and adequate penalties.

Consumer feedback

23. IPS has committed to seeking feedback from consumers through its Specialist Lawyers website and its wider consumer engagement action plan which will be used to improve services to consumers and thereby protect and promote their interests. The website will enable IPS to develop an evidence base against

which it will continually assess that its regulatory arrangements adequately protect the interests of consumers.

24. The research report prepared for the Legal Ombudsman and the Legal Services Consumer Panel titled 'Identifying Law Firms Subject to Consumer Complaints to the Legal Ombudsman' found that consumers are often reluctant to complain about the services or products they receive, fearing that the process may be too drawn out, demanding and frustrating. The Specialist Lawyers website provides a neutral and quick process by which consumers can provide feedback without having to engage in a formal complaint process. This will enhance the quality and quantity of information available about consumer experiences and interests to inform IPS' regulatory approach and understanding of risk.

Regulatory arrangements

25. In developing its regulatory arrangements IPS recognised that protecting and promoting the public interest must be placed at the heart. Its Code and supporting regulatory arrangements set out in its Accounts Rules, Qualification Rules, Authorisation Rules and client protection arrangements will achieve this.
26. IPS determined that the public interest is best served by regulation which is focused on the regulatory objectives and thereby contributes to the maintenance of confidence in the legal system. Regulating for outcomes within a principled framework allows IPS to balance competing regulatory objectives in diverse operational scenarios.
27. In the promotion and protection of the public interest, IPS' core principles require that those subject to its regulation uphold the rule of law and the impartial administration of justice. These are fundamental to the protection and promotion of the consumer and public interest.
28. In conjunction with its other core principles set out in the Code, their supporting outcomes and regulatory arrangements taken as a whole, IPS has ensured that it has the necessary tools to support the regulatory objectives.
29. The risk based approach to the authorisation and supervision of entities will enable regular assessments to be made of the risks that entities may pose to the delivery of the regulatory objectives, particularly protection and promotion of the interests of consumers and the public. IPS has developed robust procedures to ensure risks can be identified and thereby the public and consumer interests protected.
30. IPS has set prescriptive Accounts Rules. These are necessary to ensure that client money is suitably protected and accounted for. The annual auditing requirements provide further assurances that practitioners are protecting client money. IPS regulated entities will have the option to place client money with

an escrow service provider. This provides an independent and neutral arrangement to be used to protect client money.

31. IPS has robust client protection arrangements to address negligence, dishonesty or fraud. These include:
 - that all entities have professional indemnity insurance which delivers at least the levels of protection set by IPS
 - the availability of escrow accounting processes
 - the compensation scheme; and
 - disciplinary arrangements.
32. IPS has made arrangements with a leading insurance broker to provide for professional indemnity insurance to be available to IPS practitioners and entities. Minimum terms have been agreed and all qualifying insurers will have to agree to abide by these.
33. CILEx has agreed to set aside reserves to establish a Compensation Fund, which shall be applied to the payment of Discretionary Grants where persons have suffered loss and hardship due to the dishonesty or failure to account by an IPS regulated entity. IPS has also put in place insurance cover to ensure that it can adequately compensate consumers through the Fund.
34. Similarly the complaints handling and disciplinary scheme contains suitable regulatory powers to control the conduct of entities, where necessary to protect the public and consumers, or in the last resort to remove the right to provide services.

Supporting the constitutional principle of the rule of law

35. Principle 1 of the Code of Conduct states that IPS' regulated community must uphold the rule of law and the impartial administration of justice. It is deliberately wide in its terms. The outcomes detailed under this principle are significantly narrower. But this does not detract from the wide general applicability of the principle. In reviewing and updating the Code IPS viewed the first and second regulatory objectives as inextricably bound together. One cannot be achieved without the other. IPS takes the view that the same can be said of the interplay between other regulatory objectives as a result of the significant overlap between them.
36. Through its regulatory arrangements IPS maintains public confidence in the mechanisms which protect the rule of law and protect the belief that balanced rights and responsibilities provide for just outcomes for citizens.
37. IPS will continue to regulate in a manner consistent with the rule of law, and will ensure that its regulation is accessible, intelligible, clear and predictable.

Improving access to justice

38. Access to justice is about achieving a fair or equitable result and addressing injustice. It encompasses recognition that everyone is entitled to the protection of the law. It is about protecting everyone, including the ordinary and vulnerable people and providing them with a route of recourse.
39. The LSB Report 'The legal needs of consumer groups' by Rosaline Sullivan published April 2011 sets out the barriers to obtaining legal advice that groups of consumers face. IPS' proposals will improve service provision and thereby break down barriers. They will expand the market by bringing new specialists into regulated autonomous practice. This will improve access to the profession, increase choice of routes to specialist qualification and remove actual or potential barriers from practitioners developing innovative approaches to the delivery of legal services and thereby increasing access to justice.

Access and diversity

40. IPS' commitment to regulation by competence rather than title will remove actual or potential barriers to access to the profession by persons from diverse and non-traditional backgrounds. Opportunities for increasing social mobility are thereby advanced by the diverse nature of the CILEx membership.
41. The public and consumers hold certain perceptions about the accessibility of legal service providers and this is often another reason why they do not seek assistance. The social and economic backgrounds of CILEx practitioners increase the likely opportunity for consumers to seek assistance from practitioners with similar backgrounds to them. They increase access to diverse legal services providers, bringing legal services providers' diversity closer to the diversity of the population, delivering an outcome set out by the Consumer Panel in its Consumer Impact Report 2011.
42. CILEx is the most accessible route into the legal profession which is truly open to all, whatever their background. The flexibility it offers allows for the widest possible access to qualification as a lawyer. Over 74% CILEx members are female, 85% come from families where neither parent went to university and 12% are from black, Asian and minority ethnic backgrounds.

Access and geographical spread

43. The You Gov survey commissioned by the LSB in 2009 highlighted that 20% of respondents stated that they had not sought advice even though it could have been beneficial. Costs and access to the legal process were cited as key reasons why advice had not been sought. The demographics of the CILEx membership will assist in making available accessible legal services for the reasons set out above. Equally the Legal Services Consumer Panel report published February 2012 on Comparison Websites states that consumers want to use local providers. Access to IPS regulated specialist practitioners will

increase the range of service providers consumers can instruct locally as IPS research shows that most CILEx members would seek to set up in specialist practices which will be well placed to respond to the demands of a changing market.

44. IPS' new arrangements for authorising the delivery of probate or conveyancing services will stimulate the creation of new, different models of delivering specialised services. This will lessen the potential for the dilution of specialist capacity that can take place in general practices. Changing the way that probate or conveyancing services are delivered may concentrate expertise as well as encourage the development of more efficient practices both of which may impact positively on probate or conveyancing practice throughout the whole system.

Access and competence

45. IPS' research demonstrates that many individuals involved in probate or conveyancing business will be attracted to the new competency assessment scheme both as a means of accessing new business opportunities and as a means of securing recognition for their knowledge and experience. This opens up the possibility of attracting more individuals wishing to specialise in probate or conveyancing services, a factor that will not only be to the benefit of the quality of legal services but also help to provide the scope for greater choice for the public. This is particularly so as the application proposes that anyone who has the necessary skills, experience and knowledge should be able to apply for authorisation.
46. In addition to this the scheme aims, through assessing competency, to be sufficiently flexible to enable those currently involved in a discrete area of probate or conveyancing business to identify development areas to enable them to become authorised as competent. To this extent the application seeks to build new capacity within the probate or conveyancing business sector and thereby ensure a healthy market of providers for the future.

Access and fairness and equality

47. Consumers must be afforded access to services in any way that suits them, from a provider that suits them, confident that those providers will meet their requirements in a way acceptable to them. Justice is not served when people cannot enforce their rights. Services must be accessible, affordable and understandable. IPS' regulatory arrangements ensure that those it regulates:
 - treat everyone fairly and without prejudice
 - assist consumers and clients to access justice, and
 - provide each client with equal opportunity to secure a favourable outcome and thereby will improve access to justice.
48. Improving access to justice and the objective of promoting and protecting consumer interests is addressed directly by Principle 6 of the updated Code of

Conduct, together with its associated outcomes. This principle signposts all anti-discrimination legislation. Furthermore the other principles and outcomes in the Code of Conduct support the objective of protecting and promoting the interests of consumers.

49. Existing anti-discrimination legislation seeks to protect people from discrimination. However, it does not deal with intrinsic vulnerability. IPS recognises it has an obligation to ensure that its regulated community appreciates its obligations to all consumers who may seek, but not ultimately use, their services.
50. IPS' regulated community will need to undertake additional work to assist vulnerable consumers and clients to obtain access justice. In this respect, outcome 6.1 places a positive duty upon IPS' regulated community to treat the vulnerable appropriately so as to ensure the same opportunity for the vulnerable individual as is afforded others.
51. IPS has developed its regulatory provisions to be sufficiently broad to facilitate the promotion of diverse methods of delivery of legal services. With this in mind IPS has built mechanisms into its risk framework which automatically take account of the level of work with the vulnerable that an applicant or authorised body engages in.
52. IPS' consumer engagement strategy and the practical measures it has adopted through its Specialist Lawyer website will provide evidence on the extent to which practitioners meet the needs of vulnerable consumers.

Promoting competition in the provision of services provided by authorised persons

53. IPS is confident that authorisation by specialisation promotes competition in the provision of legal services more generally.
54. The proposals in this Application constitute new or better ways of providing services to clients and will provide IPS authorised persons greater flexibility to do so. Organisations, particularly in house departments, will have greater choice in who they may employ to undertake probate or conveyancing work.
55. Protecting and promoting the interests of consumers necessitates the promotion of competition to provide market driven quality. That quality provision must be responsive to consumer choice and therefore competition need not necessarily result in a race to be the lowest cost provider.
56. IPS' focus on specialisation and outcomes focused regulation as the mechanism for providing new and innovative services will encourage legal service providers regulated by IPS to respond to consumer demand, as set out in the LSB

Research Note published in August 2011. Providers will be able to promote themselves to consumers and compete in the provision of services by offering new and innovative services. It will provide the consumer and the client alike with greater information, choice and, ultimately, access to legal services, while promoting and supporting the delivery of legal services in a way that is compatible with the regulatory objectives and IPS' regulatory arrangements.

57. IPS' regulation, in its composition and operation, will be significantly different from regulation in other parts of the sector. The availability of practice rights which are awarded on the basis of assessed competence and which actively promote and protect the consumer and public interest will change the legal services landscape and provide new competitive streams to IPS regulated legal service providers. This is because the market as it stands has developed in a different regulatory framework and over a period of time and when the regulatory objectives did not drive regulation.
58. IPS recognises the need for research to develop continuing comprehensive understanding of the legal services market and its place within it. The practice management competencies require that practitioners must have knowledge of business structures and an awareness of IT, thereby opening up their ability to consider new forms of business structure and new methods of delivery to compete with traditional forms of legal service practice.
59. IPS' consumer feedback programme and Specialist Lawyers website will provide an independent and proactive method by which consumers can provide feedback on the quality of services they receive. These mechanisms will promote the delivery of quality services and competition to deliver quality legal services, as set out by the Legal Services Consumer Panel in its comparison websites report (February 2012). They also enable IPS to gather intelligence to support and drive entities to deliver quality services.
60. The client protection arrangements adopted by IPS will be fair and cost effective for authorised persons and entities, enabling competition; but consumers will also be assured that they will be fully protected by them in the event anything goes wrong with the service provided.

Specialism as a Driver for Competition within the Legal Services Marketplace

61. CILEx members are specialist lawyers. Their expertise lies in the field in which they are qualified and they do not provide legal services in areas where they do not possess sufficient competence or experience. Principle 5 of the Code requires that those regulated by IPS act competently in the best interests of its clients and respect client confidentiality. The outcomes under this principle require that practitioners maintain high levels of competence in their legal work, ensure that their legal knowledge is current and of sufficient depth for their

role, act only on matters that are within their competence and do not act in an area of law where they have insufficient knowledge or experience.

62. The specialist nature of CILEx members' work, and the mechanics of the authorisation process, enables Chartered Legal Executives to deliver the benefits of specialisation. The practice rights schemes expand the availability of specialist advice to the marketplace. Specialist practitioners regulated by IPS will be in competition for clients with other practitioners established in that area.
63. CILEx members are specialists from the outset. They choose to qualify in specific areas of law. This enables them to recognise the boundaries of their competence in a manner that generalist practitioners may not, even those who subsequently develop specialist practice.

Authorisation and supervision arrangements

64. The IPS arrangements for the authorisation and supervision of entities will involve a thorough analysis of risks posed to the delivery of the regulatory objectives, professional principles and other consumer protection arrangements set by IPS, enabling IPS regulated practitioners and entities to compete on a footing equal to those regulated elsewhere. Consumers will be able to seek services from entities regulated by IPS with the assurance that IPS, as the regulator, has undertaken an assessment of risks that the entity may pose and regulates accordingly.

Encouraging an independent, strong, diverse and effective legal profession

65. The process of assessing the competence of practitioners and authorising them in their specialist area will enhance and further promote a competent and effective profession.
66. The introduction of new service providers and entities regulated by IPS will help to encourage a diverse range of legal professionals, suitably qualified and competent; and entities, authorised following a thorough assessment of risk.
67. 'Independent' primarily means 'independent from unwarranted influence'. Clients must be confident that their lawyer will advise them without fear that factors which are immaterial to the client's issue will influence that advice. Similarly, clients must be confident that their lawyer will advise them and act upon their case without being prejudiced by factors or interests other than the overriding professional responsibility to the Court.
68. Those subject to IPS' regulation must ensure that their independence is not compromised and must ensure that none of their own commercial or financial interests or arrangements affect adversely the independence of their advice or their ability to act impartially. This is set out at principle 7 of the Code.

69. A diverse legal profession is one that reflects and is representative of the full spectrum of the population it serves so as to harness the broadest possible range of talent in the meeting of the regulatory objectives. IPS considers that, for public interest reasons, the legal services industry must reflect the population it serves. IPS' entry and authorisation processes support its regulated community in ensuring that it imposes no artificial barriers or discriminatory hurdles to legal careers and entity regulation. This will help to ensure legal service providers reflect the diversity of consumers seeking legal services.
70. An effective legal profession is one that is able to meet the changing needs of consumers and contribute to the delivery of the regulatory objectives. The effectiveness of IPS' regulated community will be regularly assessed through the supervision processes and IPS' consumer feedback initiatives.

Increasing public understanding of the citizen's legal rights and duties

71. It is important that consumers have clarity and transparency about their rights and responsibilities. Empowered consumers making informed choices drive providers to deliver the range of quality, access and value in legal services that citizens should feel confident to demand. The availability of accessible service providers will increase the confidence of consumers to seek legal assistance. IPS therefore places considerable store on delivering this regulatory objective.
72. Consumers are not on the whole frequent consumers of legal services so may not know of their legal rights and duties in all situations. IPS can encourage, with the engagement of its regulated community, a better understanding amongst consumers of legal rights and responsibilities and greater confidence about where to turn to identify them and their application in a particular situation. Consumers can expect to see reliable sources of information and support about IPS regulated service providers who can inform them about their rights and responsibilities, delivered through the IPS Specialist Lawyers website.
73. Equally IPS' regulatory arrangements will ensure that providers are competent to advise citizens of their rights and responsibilities and routes of recourse where required.

Promoting and maintaining adherence to the professional principles

74. The professional principles govern the behaviour of individual authorised persons. They firmly place a responsibility on authorised persons to act in a manner that is consistent with the status of belonging to a profession and are set out in the Code. Whilst the Act focuses on authorised persons, IPS' view is that the whole workforce in entities regulated by IPS must adhere to the professional principles. This is reflected in the IPS Code of Conduct which will apply to all legal service providers in entities authorised by IPS.

75. Authorised persons managing entities regulated by IPS will have to demonstrate that they are competent in practice management and are trained in accounts and therefore equipped with the knowledge and ability to establish mechanisms which will allow adherence to the professional principles.

BETTER REGULATION PRINCIPLES

76. IPS' proposed scheme is consistent with the better regulation principles.

Proportionate

77. The application gives proportionate routes to qualification as probate or conveyancing practitioners. In developing its qualification structure IPS assessed what skills, experience and knowledge probate or conveyancing practitioners would require to practise. These were then developed into a competency framework. IPS' proposed qualification scheme is aimed at ensuring practitioners are competent for the work they will be authorised to undertake and that they will have both a firm foundation and the tools to enable them to develop their expertise further. This approach builds on the existing proportionate approach to qualification set by the CILEx scheme.
78. IPS has also developed a proportionate approach to practice management and accounts and to entity regulation. The practice management and accounts rules represent the standards to be expected of authorised persons. In developing the rules IPS has balanced the risks to clients' interests against the development of a suitable regulatory scheme. The entity authorisation and supervision processes require that a proportionate approach based on risk is taken.
79. The Code of Conduct similarly takes a proportionate approach to regulation. The nine Principles set out the conduct expected of IPS' regulated community, are necessary to deliver the regulatory objectives and were developed to map against outcomes consumers expect. The approach allows entities the flexibility to determine how IPS' regulated community will deliver consumer expectations and the risk based approach to entity regulation assesses risks to the delivery of the principles and outcomes.
80. IPS has prescriptive accounts rules. They represent the standards to be expected of IPS authorised persons and entities to protect client and practice money. The requirement to protect client money necessitates prescriptive rules, which IPS believes is a proportionate approach.
81. In developing its client protection arrangements IPS has ensured that its indemnity insurance and Compensation Fund arrangements are proportionate to the delivery of redress to clients. The open market approach allows

premiums to be set proportionate to the risks posed by entities in respect of their regulatory arrangements and their practice types.

Accountable

82. The Admissions and Licensing Committee, which is responsible for the authorisation of practitioners, will be accountable to the IPS Board. The Committee will have oversight of the administration and application of the competence assessment.
83. The Strategic Risk Committee will be accountable for the risk based approach to regulation and the authorisation of entities by the operational risk group. It will report to the IPS Board.
84. The consumer engagement proposals will enable the production of output reports which assess the delivery of the regulatory arrangements by practitioners. The assessments will feed into the work of the strategic and operational risk groups and will be reported to the IPS Board, which will receive reports of the effectiveness of the arrangements.

Consistent

85. IPS' proposals to assess knowledge and experience through a portfolio approach is consistent with the approach that it has implemented in respect of the rights of audience qualification scheme, for which CILEx is already an approved regulator. The approach has been effective and therefore IPS proposes to follow a similar method for probate practitioners.
86. IPS has also adopted the same conduct, disciplinary and accounts rules for all of its proposed applications to become a regulator of reserved and regulated legal activities. That will ensure there is consistency between the standards that the public and consumers can expect of IPS authorised persons regardless of the reserved legal activity that they undertake.
87. The qualification and entity regulatory schemes are intended to be clear. Decisions made by officers of IPS will be subject to scrutiny by the Admissions and Licensing Committee and the Strategic Risk Committee to ensure they are consistent with the rules and that there is consistency between individual cases. Suitable appeal mechanisms are available in relation to regulatory decisions.
88. IPS has taken a consistent approach to consumer protection. All entities will seek indemnity insurance cover to the same minimum level thereby providing equality of protection. Consumers will equally have access to redress through the Compensation Fund.

Transparent

89. IPS has taken a transparent approach to developing the regulatory arrangements. The public and consumers will be clear about the standards with which IPS' regulated community will comply and the risk and competence based approach to authorisation of entities and practitioners respectively.
90. IPS has consulted key stakeholders on its proposals. The consultations were sent to approved regulators and their respective regulatory bodies, consumer groups and representative bodies. Notifications were sent to CILEx members through the Chartered Legal Executive Journal, IPS website and direct mailings to all members. IPS also held a series of reference group meetings to seek direct feedback on proposals. A copy of the consultation responses, IPS comments upon those responses and summaries of feedback from the reference groups appear at **annexes 25 to 32**.
91. The qualification content and assessment standards are clearly stated in the applications. Consumers and the public will be certain of the standards of competence that IPS authorised persons will deliver. IPS has ensured that there is a suitable level of independent involvement in maintaining those standards.
92. The risk based approach to entity regulation is also set out clearly. All entities will undergo a risk based assessment against the outcomes set out in the IPS Code of Conduct. The Principles and outcomes of the Code underpin all assessments carried out by IPS in the authorisation and where required enforcement action against entities.
93. The outcomes based approach adopted by IPS means there will not be any attempt to adopt rules to cover every possible regulatory issue which may present, allowing for flexibility while ensuring standards are met. Whilst there is no good reason to dispense with prescriptive certainty in areas where consumer and client protection demands it, the content and structure of the Code prioritises outcomes and the furtherance of the regulatory objectives.
94. The minimum terms in the professional indemnity insurance arrangements are transparent. They provide clear statements as to the level of protection that clients will receive.

Targeted

95. IPS has developed a qualification scheme which is targeted at assessing and developing the skills, knowledge and experience required by practitioners to undertake probate and reserved instrument work. The competency framework provides practitioners with the option of developing their practice management

and accounts skills and knowledge before they will be authorised to practise on their own account in an entity regulated by IPS.

96. Similarly the regulatory structure in respect of entities, which is explained at Part 5, has been developed by targeting the risks to the regulatory outcomes that can arise and which require to be addressed. The audit trail to the Code of Conduct in the risk assessment processes will allow regulation and enforcement activities to be targeted to the risks to the delivery of outcomes and will maintain the standards expected of practitioners.
97. The client protection arrangements ensure premiums and cover are determined according to the degree of risk to the regulatory outcomes.

PART 4

**THE PROBATE AND
CONVEYANCING
QUALIFICATION
SCHEMES**

PART 4 - PROBATE AND CONVEYANCING QUALIFICATION SCHEMES**INTRODUCTION**

1. IPS will award probate activity or reserved instrument rights to applicants who demonstrate that they have the competence to undertake these areas of work. Applicants will apply for rights in the practice area in which they seek to practise. They may make an application for probate and reserved instrument activity rights together.
2. IPS' key strategic aims include that all individuals and organisations regulated by IPS are delivering services to the standard the public are entitled to expect, where:
 - education, training and accreditation arrangements ensure that appropriate standards of competence are achieved and maintained
 - all those authorised and regulated by IPS exercise the privileges and responsibilities which are appropriate to their authorisation or accreditation
 - those authorised or regulated by IPS meet the standards of professional conduct and competence that consumers are entitled to expect.
3. The strategic aims also include that IPS will ensure robust processes are in place to maintain a register of members which is responsive, accurate and up to date, allowing enquirers to access the status, rights and fitness to practise history of those listed.
4. The competence based approach delivers these objectives for the benefit of consumers of services delivered by IPS regulated practitioners. Consumers and the public will be assured that practitioners are suitably trained and educated to deliver legal services that they provide.
5. Authorisation by competence will also ensure that practitioners only deliver those services they have been authorised to deliver, thus providing an assurance to consumers that providers will not stray into areas of legal practice in which they are not suitably trained or educated.

CONSUMER BENEFITS OF COMPETENCE BASED APPROACH

6. In determining the approach that it should take to authorisation IPS reviewed research reports into consumer expectations. Research indicates that consumers were found to place importance on providers being established and experienced, with a good reputation for providing services. They assume that legal professionals are competent to provide the services they deliver. IPS'

competence based authorisation approach enables it to provide the foundation for that assurance and belief held by consumers.

7. The Consumer Impact Report 2011 concluded that regulators do not know the technical quality of the work delivered by those they regulate. IPS' approach to authorisation, as set out in this section, provides a mechanism by which technical competence will be assured for the benefit of consumers, thereby ensuring they receive technically correct legal services.
8. The IPS approach to authorisation by specialisation builds upon the specialist nature of CILEx practitioners. Research has shown that one argument for the need for specialists is that it widens the choice for consumers. A number of consumers have been found to prefer a specialist when instructing a lawyer, especially in cases of divorce or separation, where 33% of consumers chose a solicitor because they specialised in the type of advice they were looking for (Unbiased.co.uk). However, while some consumers may prefer to use specialists for certain areas of law their judgement of specialism is not concrete. Most consumers focus on the law firms' marketing materials (Consumer Panel, Vanilla Research 2010). This may result in consumers being over-confident in the ability of providers. The IPS approach overcomes these shortcomings. It makes available to consumers specialist lawyers who have been assessed as being specialist, where marketing materials can truly express to consumers the specialisms of legal practitioners authorised by IPS and the basis upon which the claim to specialism is made.

COMPETENCY FRAMEWORKS

9. IPS has developed competency frameworks for probate and reserved instrument practice. This section describes IPS' approach to the development of the competency frameworks and the approval process that applicants will undergo to be authorised to undertake probate practice or reserved instrument activities.

Probate practice

10. The competency framework for probate practice is at **Appendix 1**.
11. In developing its approach IPS considered which aspects of practice should form part of the competency framework. The reserved legal activity of probate practice, as defined in the Legal Services Act, is narrow and limited to preparing any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales. IPS believes that practitioners providing probate services should be competent to exercise all key functions associated with probate services. The broader range of competency requirements will assure the public and consumers that practitioners are fully

competent and capable of delivering the full range of the services in the practice area in which they are authorised.

Reserved instrument

12. The competency framework for reserved instrument activities is at **Appendix 2**.
13. In developing its approach IPS considered which aspects of practice should form part of the competency framework. The reserved instrument activity, as defined in the Legal Services Act, is narrow. IPS believes that practitioners providing reserved instrument services should be competent to exercise all key functions associated with conveyancing practice. The broader range of competency requirements will assure the public and consumers that practitioners are fully competent and capable of delivering the full range of the reserved instrument services in the practice area in which they are authorised.

Practice management and accounts

14. An applicant who qualifies as a Probate or Conveyancing Practitioner may practise independently or as an employee of a practice. The entity in which the Probate or Conveyancing Practitioner practices must be authorised and regulated in accordance with s.15 Legal Services Act. IPS will regulate legal practices. Where the practice seeks regulation by IPS the Compliance Managers of that practice must demonstrate that they have the knowledge, skills and experience to manage the practice and the accounts of the practice.
15. Practice and accounts management are key knowledge and skills requirements that Compliance Managers need for the operation of a successful legal practice. They must have knowledge of and be able to carry out effective business planning, marketing, risk management and file and people management to ensure the success of their practice. These skills will also help support IPS' approach to risk based regulation of the authorisation and supervision of practices and ensure practitioners understand and are able to implement good risk management procedures.
16. IPS has developed Accounts Rules. While they follow similar principles to other regulators in the legal sector, of which practitioners will be aware, entities regulated by IPS must have sufficient knowledge and understanding of the IPS Accounts Rules. Therefore Compliance Managers in IPS regulated entities will be required to undertake training and assessment of accounts.
17. The practice management and accounts knowledge requirements have been split between core elements which are necessary for all Compliance Managers and elements which those who carry out the accounts or practice management functions in legal practices must be aware of. This approach will enable

Compliance Managers to demonstrate they have the skills and knowledge necessary to the role they will carry out.

18. The competence and training requirements will demonstrate to the public and consumers that Compliance Managers are able to manage money and practices as well as deliver competent legal services.

QUALIFICATION PROCESS

19. The **Probate Rights Certification Rules** which set out the process for authorisation and award of rights to undertake probate practice appear at **Appendix 1** and the **Reserved Instrument Certification Rules** which set out the process for the authorisation and award of rights to undertake reserved instrument activity appear at **Appendix 2**.

Entry criteria

20. An applicant seeking probate or reserved instrument practice rights may either be a member of CILEx at the date of their application or make an application to register with IPS as a registered person at the same time as they make their application for probate practice rights or reserved instrument practice rights. It will not be necessary for an applicant to register as a CILEx member.
21. An applicant must be of good standing. They will be required to declare past conduct matters. This includes criminal convictions, financial and other relevant court orders and orders made by other regulatory and professional bodies. IPS will consider declarations of conduct under the prior conduct requirements set out in the Investigation, Disciplinary and Appeals Rules. An application will not proceed unless IPS determines that the award of reserved legal activity rights is not affected by the matter of prior conduct or the conduct matter can be managed through the exercise of powers available under the Investigation, Disciplinary and Appeals Rules to protect consumers and the public.

Application process

22. Applicants wishing to make an application for probate practice or reserved instrument rights will complete an application form and provide supporting evidence in the form of portfolios and log books, which are described later. IPS will assess the application and award a probate practice or reserved instrument practice certificate to applicants who:
 - are of good standing
 - have gained an acceptable level of experience, assessed through the competence framework, of undertaking probate or reserved instrument practice

- have sufficient knowledge of law and legal practice relevant to the area in which they seek practice rights, in accordance with the competence framework, and
 - have sufficient skills in the practice area in which they seek rights, in accordance with the competence framework.
23. An applicant who has met the knowledge, skills and experience criteria will be awarded a probate practice or reserved instrument practice certificate, as appropriate. An applicant who has not met the competence criteria may defer their application for a period of up to 6 months while they develop their knowledge, skills or experience. An applicant who is unable to develop their knowledge, skills or experience within 6 months will be required to make a fresh application.
24. A person who meets the probate practice criteria will become known as a Probate Practitioner or, where they seek reserved instrument rights and meet those criteria, a Conveyancing Practitioner. Their certificate will specify the area of practice in which they have gained practice rights so that the public and consumers are fully aware of the rights and the context in which they may be exercised.

The competence criteria

25. All applicants will be required to demonstrate that they meet the knowledge, skills and experience criteria set out in the competence frameworks. The frameworks appear at **Appendices 1 and 2**.
26. The competence frameworks were developed in conjunction with examiners, who are experts in each of the practice areas. The examiners are experienced in both academic tuition and assessment and are practitioners in their specialist areas.
27. The competence criteria set out:
- the level of competency that candidates must demonstrate to be authorised to practise in the area in which they seek rights
 - the elements required to evidence that level of competency
 - the level of competency required in the skills needed to exercise probate and conveyancing practice rights, and
 - the study and experience that will enable an applicant to demonstrate they have attained the required level of competence, knowledge and understanding in the required elements.
28. IPS consulted on its criteria. Most respondents were supportive of the criteria. IPS also ran reference groups to seek direct feedback on the criteria. Again feedback demonstrated support for the approach. An analysis of the

consultation responses and outline of the reference group feedback appears at **annexes 25 and 26**.

Knowledge

29. The knowledge criteria set out in the frameworks require applicants to have completed and passed CILEx Level 6 Professional Higher Diplomas in the law and practice areas in which rights are sought. Level 6 is honours degree standard. IPS decided that knowledge of the subject area to Level 6 standard was necessary to assure the public and consumers that applicants are competent to deliver probate or reserved instrument services.
30. Applicants will also be required to demonstrate that they have knowledge of how to conduct legal research and of client care requirements, which are key service elements that clients seek. In setting this requirement IPS took into account that consumers of legal services highlight good communication and customer service skills as very important when deciding on choice of provider (Delivering measures of consumer outcomes for legal services, published March 2011).
31. Applicants may demonstrate this skills knowledge by having completed the CILEx Level 6 Professional Higher Diplomas in legal research and client care skills. Where an applicant has qualified before these subjects were introduced by CILEx they will be able to rely upon experience which has developed their knowledge of legal research and client care.
32. Applicants who hold qualifications of a standard comparable to the CILEx Level 6 may rely upon those qualifications as evidence of meeting the knowledge criteria. IPS will assess the qualification that an applicant seeks to rely upon to establish whether it meets the knowledge outcomes delivered by the CILEx Level 6 Professional Higher Diploma. In making its assessment IPS will expect the alternative qualification to have covered a comparable range of topics and delivered a comparable level of knowledge as the CILEx Level 6 Professional Higher Diploma subjects. An applicant will be expected to have covered at least 50% of the syllabus for the subject from which they seek an exemption. IPS must be satisfied that the applicant has gained the requisite knowledge through that alternative qualification.
33. Where an applicant does not hold the CILEx Level 6 Professional Higher Diplomas or other qualification relevant to the practice area in which they seek practice rights they may be able to rely upon knowledge and understanding that they have obtained of the subject areas through their work. In these instances, applicants must submit 5 portfolios, which meet the portfolio guidelines, to demonstrate that they have acquired the knowledge to the same depth and range as would otherwise be obtained through completion of the relevant CILEx Level 6 Professional Higher Diploma.

34. Applicants must select 5 cases they have dealt with, in the 2 years preceding the date of their application, to produce the 5 portfolios. In each portfolio, applicants will be required to provide evidence of their knowledge and understanding of the requisite subject areas from which they seek exemption.
35. In each portfolio applicants will be required to outline:
- the facts of the case
 - the law arising in the case and its application to the facts
 - the appropriate procedural and process matters that arose in the case and how they were dealt with
 - the evidential issues that arose in the case and how they were dealt with
 - an outline of any ethical or conduct issues that arose in the case and how they were dealt with
 - any funding issues that arose
 - advice applicants provided to the client
 - an outline of any decisions they had to make, including in respect of strategic matters, in handling the case, and
 - on reflection how they handled the case, identifying whether any training or development needs arose from having dealt with the matter.
36. Applicants must select cases which can demonstrate to sufficient depth the range of knowledge they have developed in the relevant area of law or practice, which they would otherwise have covered through the relevant CILEx Level 6 Professional Higher Diploma subjects. In completing their portfolios and selecting their cases, applicants must have regard to the outcomes for the relevant subjects set out in the competency framework. The outcomes set out the details of the expected knowledge requirements.
37. The 5 portfolios will be assessed by external advisors, who will be practitioners and academics in the relevant subject area. The external advisors must determine whether the portfolios demonstrate that the applicant has acquired sufficient knowledge of the relevant subject area. The external advisors will have regard to the competency criteria when assessing portfolios.

Experience

38. All applicants must demonstrate that they have the required level and range of experience to be granted the practice rights that they seek. In their application applicants must provide an overview of the level and range of work they carry out. They must also demonstrate their experience of the relevant practice area by producing 3 portfolios of cases they have handled.
39. In their portfolios, applicants must:
- outline the matters of law and procedure that arose in the case and how they dealt with them

- outline the evidential issues that arose in the case and how they were dealt with
 - outline any strategic decisions they made on cases and how they provided advice to clients in the matter
 - identify any ethical and funding issues that arose in the case, and
 - reflect upon how they handled the case and identify whether they have any training and development needs in respect of their experience.
40. The portfolios will be marked by external advisors, who will have regard to the experience criteria set out in the **Certification Rules at Appendices 1 and 2**. The external advisors must determine whether the portfolios demonstrate that the applicant has acquired sufficient experience of the relevant practice area.

Skills

41. Applicants must have the skills to provide probate or reserved instrument services as well as the relevant knowledge and experience. IPS has developed skills criteria for these practice areas.
42. Applicants may demonstrate their skills, either by attending a qualification course which provides training on the skills outcomes set out in the competence criteria, or by demonstrating that they already possess these skills through the production of a logbook which demonstrates they meet the skills set out in the competency framework. The logbook approach mirrors the approach that IPS is taking towards the qualifying employment arrangement for applicants seeking to become Chartered Legal Executives.
43. IPS has developed outcomes for each element of the skills criteria. Within each element, the outcomes set out the requirements that applicants must demonstrate. Applicants will be required to complete a log book which requires them to indicate what evidence they relied upon to show that they meet the outcomes and produce a statement describing and reflecting upon how the evidence meets the outcomes. Applicants may rely on one piece of evidence to demonstrate more than one outcome.
44. IPS will consider the logbook and evidence submitted by applicants to assess whether the outcomes have been met. An applicant who meets all the outcomes will be deemed to have met the skills criteria for the probate or reserved instrument practice rights. An applicant who has not met the skills criteria may withdraw their application to develop their skills or undertake relevant training which meets the outcomes set out in the competency framework.

Practice Management and Accounts

45. Upon the award of practice rights an applicant will become an authorised person under the Legal Services Act 2007. Where the authorised person seeks to become a Compliance Manager in an entity the entity must be authorised by IPS or another approved regulator.
46. Authorised persons seeking entity regulation through IPS must demonstrate their competence in practice management and accounts management and administration.
47. IPS has developed qualification criteria, learning outcomes and competency statements for practice management and accounts. They set out the level of competency, knowledge and understanding required to run a business which provides a legal service and to keep the books of accounts specific to a legal entity.
48. The framework sets out the:
 - elements required to evidence competency, knowledge and understanding in practice management and accounts
 - elements required to evidence the required level of competency for skills in these areas, and
 - statement of the study and work based learning experience which applicants will need to demonstrate to evidence that they have attained the required level of competence, knowledge and understanding in the required elements.
49. IPS recognises that authorised persons who are Compliance Managers will be undertaking different roles within legal practices. It has therefore split the practice management and the accounts competencies into four levels. Level 1 is identified as outcomes which all applicants must demonstrate. Level 2A are competencies that Compliance Managers performing a role which requires them to undertake legal practice or financial and administrative aspects of a practice must meet. Level 2B are competencies that a person undertaking management of the legal practice must demonstrate and Level 2C are outcomes that a person undertaking financial and administrative aspects must demonstrate. Through using these four levels, IPS has been able to ensure that the appropriate office holder demonstrates the competency appropriate to the level of the responsibility and activity they will be undertaking.

Practice management

50. The practice management competency framework has been developed to ensure that an applicant who meets the requirement has:
 - an appropriate level of suitability to manage a practice

- an appropriate level of knowledge and appreciation of the key features of financial and non-financial aspects of practice management
 - the ability and skill to advance the organisation through creation of appropriate strategies
 - the ability and skill to manage a client's expectations
 - the ability and skill to read and interpret firms' accounts
 - the ability and skill to perform tasks to evaluate the benefits of IT and the need for good project management, and
 - the ability and experience to understand and deal with professional conduct regulation matters.
51. The framework sets out core elements, supporting outcomes and detailed criteria to each outcome. There are four elements to practice management: being part of a profession; CILEx regulations; management of a legal entity; and business acumen.
52. The first element, being part of a profession, requires candidates to develop their knowledge and understanding of the current legal market and legal entities that may be created; of regulation and supporting rules and law; and application of effective compliance procedures.
53. The second element, CILEx regulations, develops an applicant's knowledge, understanding and application of practice rules. It covers understanding and application of practice management requirements relating to client care, provision of costs information and dealing with governance matters. Applicants will also develop their ability to draft policies appropriate to entities and file management procedures.
54. The third element, management of a legal entity, covers understanding the impact of external influences and internal influences on a business and development of risk management. These aspects of practice management are important to support IPS' risk based approach to the regulation, authorisation and supervision of entities. Training in this area will ensure that Compliance Managers understand risks, how to identify them and are able to put in place appropriate strategies for dealing with risk. This is important to ensure that entities regulated by IPS are able to deliver an appropriate level of service and protection to clients and consumers. Training in this area will also cover contingency planning, people management, project management and information technology. These aspects are all relevant to ensuring that entities are able to not only manage their staff, but also manage projects and develop sufficient understanding of information technology matters to be able to make informed decisions in practice.
55. The fourth element covers strategy, marketing and profitability. These skills are important to ensure the effective management of a practice, promotion of services and identification of areas where profits are being made or not being

made. Financial mismanagement is often the product of poor business management and therefore training in this area is important so that Compliance Managers can recognise and deal with risks at an early stage.

56. The practice management outcomes may be demonstrated through attendance on a course or practical experience. Applicants who rely on practical experience must produce a portfolio of evidence which provides a reflective log of how their evidence meets the required outcomes. An applicant who is assessed as meeting the outcomes will be exempted from undertaking a practice management course. Applicants who have already undertaken a course that meets the outcomes may rely upon that course. In those instances, IPS will assess whether the course met the outcomes set out in the competency framework.

Accounts

57. An applicant who meets the accounts competency requirements will be able to demonstrate that they have:
- an appropriate level of expertise to manage the firm's accounts and finances
 - an appropriate level of knowledge and appreciation of the key features of protecting client's money
 - effective billing and efficient financial management procedures, and
 - appropriate level of knowledge and skills to perform double entry book keeping, raise invoices and undertake bank reconciliations.
58. The accounts competencies are divided into three elements: IPS accounts rules; general bookkeeping; and finance.
59. The first element is the accounts rules. Applicants will be trained on the accounts rules and thereby ensure that they are able to understand and apply these rules in practice. While the accounts rules contain principles which mirror the requirements set out by other approved regulators, IPS took the view that it was appropriate to put in place its own accounts requirements.
60. All IPS Compliance Managers must develop their knowledge and understanding of the accounts rules before the entity may be authorised. The person responsible for financial aspects in the entity will be further required to develop their ability to implement and put in place accounting arrangements and to carry out the technical aspects of accounting activity.
61. The second element focuses upon general bookkeeping. This captures double entry bookkeeping, which is the mechanism used in legal practices, and the ability to understand and interpret financial statements.

62. The third element captures the financial aspects of accounting management. It includes developing knowledge and understanding of Value Added Tax, credit control and debt collection, nominal ledger maintenance, accounts and the creation and interpretation of accounts. These skills are important for practitioners to ensure that they have sufficient competence to be able to understand the financial position of their practice and, more importantly, to manage their client's money and ensure that it is adequately protected through suitable accounting arrangements.
63. The accounts course will conclude with an assessment of accounts. The assessment will focus upon testing the applicant's knowledge and understanding of the accounts outcomes.
64. A Compliance Manager who holds an accounts qualification that delivers the accounts competencies set by IPS awarded by a body belonging to the Consultative Committee of Accountancy Bodies or the Association of Accounting Technicians will be exempted from the IPS accounts course.

Continuing Professional Development

65. It is important that an authorised person remains competent to deliver probate or reserved instrument rights to consumers.
66. IPS is reviewing the Continuing Professional Development (CPD) requirements applicable to CILEx members. IPS' proposal is that all CILEx members will be required to reflect upon their skills, knowledge and experience and to identify areas for development. Members will then undertake training relevant to meet their development areas and produce a reflective log identifying how the training met their intended outcome. All members will be required to make at least 9 reflective statements per annum on their CPD log.
67. Probate and Conveyancing Practitioners will be required to reflect upon their skills and knowledge to meet the CPD scheme. The present CPD requirements are that at least half of their CPD must be in their specialist area of practice. Probate and Conveyancing Practitioners will move to the new CPD requirements once they are in place.

GOVERNANCE OF THE AUTHORISATION SCHEME

68. IPS has a sound governance process for oversight of the authorisation scheme.

Admissions and Licensing Committee and External Advisors

69. The role of the Admissions and Licensing Committee originally set up under the existing Rights of Audience Certification Rules and CILEx Qualifying

Employment bye-laws will be expanded to include responsibility for the reserved legal activity qualification schemes. The Rules of the Committee have been extracted from the Rights of Audience Certification Rules and now appear as separate committee rules at **Appendix 3** to encapsulate the wider remit of this Committee.

70. The Committee carries out functions of a regulatory nature, and reports on its work to the IPS Board. The reporting line ensures that there is a direct line of accountability between the Committee and the IPS Board. The Committee also makes an annual report to the IPS Board of its work.
71. The Admissions and Licensing Committee assesses applications for admission as a Chartered Legal Executive and to enrol onto the Rights of Audience qualification scheme which cannot be dealt with by the office. The Committee comprises lay and professional members. As it expands its role to the new practice rights schemes IPS will ensure that additional meetings take place and additional committee members are recruited to manage the increase in remit.
72. The Committee will be responsible for the application of the qualification rules. It will receive regular reports of qualification applications dealt with by IPS; it will deal with applications for reconsideration of decisions made by IPS; withdrawal of practice rights Certificates; approval of course providers, where relevant; monitoring and maintenance of standards of assessment; and have general overview of the qualification schemes.
73. The Committee comprises Chartered Legal Executives and independent members, with the independent members in the majority. Members of the IPS Board and CILEx Council are not eligible to serve on the Committee. Appointments of committee members are made by the IPS Board.

External advisors

74. IPS will appoint external advisors who will advise it and the Admissions and Licensing Committee on the qualification scheme. The External Advisors will advise on issues relating to the knowledge, skills and experience required for probate or reserved instrument practice rights, practice management, accounts, course delivery and assessment standards. They will also carry out the assessments of portfolios to determine whether an applicant has demonstrated that they meet the criteria set out in the competency frameworks.
75. External Advisors must have qualifications in law and legal practice and experience of one or more of the relevant specialist areas of probate or reserved instrument practice, or qualifications or experience of practice management or accounts. They will also need to have experience of teaching and assessing probate, reserved instrument, practice management or accounts, as appropriate.

76. IPS has experience of recruiting external advisors for its current rights of audience scheme. It produced terms of reference for external advisors, which included person specifications. Applicants were required to outline how they met those criteria. The same approach was adopted for the recruitment of committee members for that scheme. IPS will adopt this same procedure for the recruitment of external advisors for the practice rights schemes and future appointments of Committee members.

77. IPS believes the arrangements will result in open, objective and consistent treatment of applications; will secure the independence of the authorisation and qualification process; and will ensure that standards of course delivery and assessment are properly and efficiently maintained.

PART 5

ENTITY REGULATION

PART 5 - ENTITY REGULATION**INTRODUCTION**

1. This part of the application explains how IPS will regulate entities by applying a risk based and outcomes focused approach to regulation.
2. Section A begins by setting out aspects of the IPS strategy that can be linked to the specific areas of activity shown in Table 1 of the same section.
3. Section B puts the IPS approach to regulation in a wider context. It does this by illustrating how IPS will be applying a risk based approach to regulation using the extensive knowledge and experience its staff possess in the regulation of individuals and entities in the legal sector. This section goes on to show how IPS will continue to develop as a regulator in adapting how its risk framework is applied by factoring in new and emerging risks through the on-going analysis of developments in the market for legal services.
4. Section B also explains how IPS has addressed the issues of governance and capacity and capability to ensure that it can regulate its anticipated regulated community effectively in the public interest and in the interest of the consumer.
5. Section C explains the application, monitoring, and enforcement processes, and how these processes will be applied in a risk based and outcomes focused manner. This section also explains the roles of Approved Manager and Compliance Manager required for IPS authorised entities.
6. Section D describes the risk assessment processes IPS will apply in its risk framework. It provides background information on how these processes have been developed to ensure that IPS can apply risk based and proportionate decision making by focusing on the outcomes it expects its regulated community to achieve.
7. The headings within this section are:

SECTION A – MEETING THE IPS STRATEGY THROUGH THE RISK BASED REGULATION OF ENTITIES

SECTION B – THE WIDER CONTEXT OF THE APPLICATION OF THE IPS APPROACH TO RISK BASED REGULATION

SECTION C – THE FUNCTIONS OF THE IPS APPROACH TO RISK BASED REGULATION

SECTION D – THE IPS RISK FRAMEWORK

SECTION A – MEETING THE IPS STRATEGY THROUGH THE RISK BASED REGULATION OF ENTITIES

8. The IPS risk framework has been developed to meet specific requirements of the IPS strategy which are summarised below.
9. IPS is committed to delivering regulatory arrangements that take a risk based approach which will promote, secure and maintain proper standards of conduct and behaviour amongst those it regulates with the aim of protecting and promoting the interests of consumers and the public. Amongst other things, the strategy commits IPS to:
 - keep the public interest at the heart of its thinking
 - act proportionately, targeting risk
 - support the diversity of the legal profession and encourage social mobility
 - ensure quality for consumers of legal services
 - engage appropriately with consumers of legal services
 - demonstrate proper governance and value for money
 - manage risk actively, assessing this before proceeding with any new developments
 - work closely with the LSB, the Consumer Panel, CILEx and other stakeholders
10. Table 1 which commences on the following page describes how IPS' regulatory activities address the strategic aims specified above. There is naturally some overlap in the measures to be taken to meet each specific aim.

TABLE 1: DELIVERING THE IPS ENTITY REGULATION STRATEGY

RISK FRAMEWORK AND RELATED ACTIVITIES									
	Basic and advanced risk assessments	Consumer Feedback Programme	Specialist Lawyers Website	Explore information sharing mechanisms	Regulation by competence	Entity based rules and outcomes focused Code of Conduct	Risk management and compliance support	Professional indemnity insurance and optional escrow arrangement	
STRATEGY	<p>Regulation by risk mapped against public interest and consumer based outcomes to ensure targeted use of regulatory resources</p>	<p>Engage directly with consumers by analysing all consumer and client feedback received via the Specialist Lawyers Website and ensure headline data contributes to any wider analyses of the market for legal services</p>	<p>Develop the website into a useful source of information on the legal sector in England and Wales</p>	<p>Put the public interest before competition with other regulators by working with regulators to share information and intelligence on emerging risks</p>	<p>Apply competency based assessment to ensure that the public has confidence in all practitioners authorised and regulated by IPS</p>	<p>Apply the principles of the Code consistently through the on-going analysis of how the risk framework is being applied to ensure that the regulated community has confidence in regulatory decision making</p>	<p>Assist regulated entities to produce and implement plans to reduce risk and improve services to the consumer</p>	<p>Continue to work with insurers and third parties on innovative client protection arrangements, designed to reduce risk</p>	

	<p>Act proportionately, targeting risk</p>	<p>Apply risk based and outcomes focused decision making using a broad range of support activities including those mentioned within this Table, and use sanctions only where necessary</p>	<p>Consumer Feedback Programme</p> <p>Analyse consumer feedback to inform the continued development of the risk framework to reflect the issues of most importance to the consumer</p>	<p>Specialist Lawyers Website</p> <p>Focus support activities towards entities that demonstrate a willingness to engage constructively with IPS, (such as through the offer of an enhanced information entry on the website); and target sanctions at those entities that do not</p>	<p>Explore information sharing mechanisms</p> <p>Analyse information collected from IPS regulatory activities and information collected externally (e.g. by the LSB and other regulators) to ensure consistency is applied to regulatory decision making</p>	<p>Regulation by competence</p> <p>Apply proportionate arrangements to assess the on-going competence of practitioners</p> <p>Apply enforcement powers proportionately against those practising outside their specified area of competence</p>	<p>Entity based rules and outcomes focused Code of Conduct</p> <p>Build on the considerable expertise in the regulation of individual CILEX members by using outcomes focused rules to assist in decision making</p>	<p>Risk management and compliance support</p> <p>Understand how Authorised Bodies are assessing risk and educate those who have no experience in identifying and recording risks</p>	<p>Professional indemnity insurance and optional escrow arrangement</p> <p>Target investigative resource based on risk to client funds</p>
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	Basic and advanced risk assessments	Consumer Feedback Programme	Specialist Lawyers Website	Explore information sharing mechanisms	Regulation by competence	Entity based outcomes focused Code of Conduct	Risk management and compliance support	Professional indemnity insurance & optional escrow arrangement
Support the diversity of the legal profession and encourage social mobility	<p>Apply qualitative assessment to ensure that innovative legal services solutions are not automatically regarded as high risk</p> <p>Assess diversity data collected through risk assessments and ensure regulated entities formulate and apply an E & D policy</p>	<p>Collect data on the customer experience including data on diversity and client vulnerability to help address legal services sector data gaps</p> <p>Review whether any positive action can be taken to address findings in the subsequent analysis of such data</p>	<p>Support those entities that demonstrate a positive approach to diversity and consumer focus by giving them the opportunity to promote the services they provide in a way which also illustrates the positive approach taken</p> <p>Highlight the advantages of the approach to specialisation and different methods of attaining competence (e.g. through part time study to those unable to study full time)</p>	<p>Contribute to initiatives aimed at improving the collection of data on diversity in the legal profession. This includes collecting and publishing such information from Authorised Bodies and ensuring that such bodies do the same. IPS has begun this process with CILEX business owners conducting non-reserved activities</p>	<p>Work with CILEX and other stakeholders on diversity initiatives and ensure that prospective entities for IPS regulation understand the IPS focus in demonstrating competence. This will include the competence of business management which encompasses the correct application of an E & D policy</p>	<p>Assess how entities are complying with principle 6 of the Code of Conduct in demonstrating their approach to diversity and how they deliver services to the vulnerable</p>	<p>Advise regulated entities on how they can demonstrate their approach to supporting diversity (e.g. through supporting the development of fair recruitment and promotion to encourage a diverse workforce)</p>	<p>Provide a flexible approach to PII and compensation arrangements suitable to the requirements of each entity.</p> <p>Work with insurers to develop their understanding of diversity in the IPS regulated community to ensure that they pay due regard to diversity but base premiums on a fair analysis of risk</p>

	<p>Ensure quality for consumers of legal services</p>	<p>Basic and advanced risk assessments</p> <p>Ensure that the data obtained from basic and advanced risk assessments is analysed to identify both good and bad practise to promote learning (e.g. through case studies)</p>	<p>Consumer Feedback Programme</p> <p>Analyse consumer feedback data and identify areas of concern taking appropriate action to address such concerns</p>	<p>Specialist Lawyers Website</p> <p>Offer Authorised Bodies that demonstrate good service an expanded information entry on the website showcasing how they meet consumer expectations</p>	<p>Explore information sharing mechanisms</p> <p>Share data with other legal service providers and the LSB on good and poor service in existing and emerging business models. Such data can be used to inform policy makers on any further activity that can be taken to inform and protect consumers</p>	<p>Regulation by competence</p> <p>Monitor the competence of individuals (assessing appropriate CPD and qualification criteria met) in the specialism's which they are authorised to carry out, using proportionate support based and/or *sanction based activity *against those that fail to demonstrate competence</p>	<p>Entity based rules and outcomes focused Code of Conduct</p> <p>Apply rules in a proportionate and outcomes focused manner, and avoid being prescriptive in how legal services should be carried out to facilitate innovation in service delivery</p>	<p>Risk management and compliance support</p> <p>Relationship Officers to work with entity Compliance Managers to assess how entities can develop and improve services to the consumer</p>	<p>Professional indemnity insurance and optional escrow arrangement</p> <p>All entities have the required minimum level of PII and that compensation arrangements are sufficient to ensure consumer protection</p>
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	<p>Engage appropriately with consumers of legal services</p>	<p>Basic and advanced risk assessments</p> <p>Risk assessments identify where entities have demonstrated good risk management and consumer focus</p>	<p>Consumer Feedback Programme</p> <p>Assist consumers to understand the benefits of providing feedback on their experiences in engaging or attempting to engage a legal services provider</p>	<p>Specialist Lawyers Website</p> <p>Provide the consumer with information on the quality of service they should expect from their legal service provider</p>	<p>Explore information sharing mechanisms</p> <p>Share data on consumer feedback with the LSB and other regulators/other stakeholders</p>	<p>Regulation by competence</p> <p>Consumer feedback mechanisms include questions on the consumer understanding of the competence of legal professionals and the quality of service provided</p>	<p>Entity based rules and outcomes focused Code of Conduct</p> <p>Apply the Code of Conduct principles in a flexible manner by focusing on whether outcomes have not been achieved for the consumer, and to what degree, when assessing the appropriate regulatory course of action</p>	<p>Risk management and compliance support</p> <p>Provide regulatory support tools to encourage Authorised Bodies to focus business planning on the needs of the consumer (e.g. by making use of consumer feedback from Specialist Lawyers website)</p>	<p>Professional indemnity insurance and optional escrow arrangement</p> <p>Use relevant rules and guidance to ensure that IPS authorised entities have the appropriate PII cover in place, and that they make this clear to consumers in accordance with the Provision of Services Regulations 2009</p>
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	<p>Basic and advanced risk assessments</p> <p>Periodically review entity regulation governance framework and learn from experience to ensure that each level of governance operates effectively in setting and delivering the IPS strategy</p>	<p>Consumer Feedback Programme</p> <p>Results of consumer feedback inform regulatory decision making (e.g. thematic activity may be necessary in a particular market segment to address concerns raised by consumers)</p>	<p>Specialist Lawyers Website</p> <p>Review and update the website considering different options for efficient and effective data collection methodologies to capture the views of consumers</p>	<p>Explore information sharing mechanisms</p> <p>Work with the LSB and other regulators/other stakeholders to facilitate information sharing mechanisms that correctly capture market trends so that regulatory resources can be directed appropriately thereby delivering better value for money</p>	<p>Regulation by competence</p> <p>Develop internal information sharing processes to enable effective strategic decision making so that the relationship between the assessment of the competence of individuals and entities operates effectively</p>	<p>Entity based rules and outcomes focused Code of Conduct</p> <p>Ensure that strategic decision making informs operational activity and vice versa in the flexible application of the assessment of the IPS principles in the Code of Conduct</p>	<p>Risk management and compliance support</p> <p>Provide support only where necessary so that resources can be targeted more effectively to achieve value for money for consumers through proportionate regulatory activity</p>	<p>Professional indemnity insurance and optional escrow arrangement</p> <p>Educate PII insurers on the IPS risk based regulatory approach and authorised entities' specialist practice which may assist insurers (and ultimately the entities themselves) to deliver more competitively priced services</p>
<p>Demonstrate proper governance and value for money</p>								

	<p>Manage risk actively, assessing this before proceeding with any new developments</p>	<p>Carry out, at Board level, a risk assessment of IPS operational resources before any expansion of regulatory activities are considered</p>	<p>Review methods currently used to collect data on the consumer experience of legal services before prioritising how and what type of data should be collected via this programme</p>	<p>Assess the resources necessary to implement and continually update the website, and only look to increase functionality incrementally once the primary aims of the site have been met</p>	<p>Focus on the effective regulation of IPS' own regulated community first when considering wider regulatory and data collection initiatives and assess any adverse impact such initiatives may have on IPS meeting the regulatory objectives</p>	<p>Periodically review competency assessment frameworks and associated costs to ensure proportionate assessment and long term sustainability of the frameworks</p>	<p>Periodically review how the Code and Rules are being applied in meeting the regulatory objectives and issue guidance only where necessary to avoid constraints/or perception of constraints on how outcomes can be delivered</p>	<p>Promote the Business and Compliance Review Template as an optional template that Compliance Managers at entities can use, and avoid prescription concerning how authorised entities should run their businesses</p>	<p>Apply risk assessment in an outcomes focused manner so that resources are not spent on entities that may already have (and apply in practice) effective risk management processes</p>
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	Basic and advanced risk assessments	Consumer Feedback Programme	Specialist Lawyers Website	Explore information sharing mechanisms	Regulation by competence	Entity based rules and outcomes focused Code of Conduct	Risk management and compliance support	Professional indemnity insurance and optional escrow arrangement
Work closely with the LSB, the Consumer Panel, CILEx and other stakeholders	Share IPS experience of risk conducted through basic and advanced risk assessments through thematic reports to support the development of market understanding	Share output of consumer feedback through annual reporting	Continue to assess how the website can be developed to best capture consumer feedback to improve contribution to information sharing	Approach stakeholders to develop MOU to share information Discuss setting up an arrangement to share experiences on risk in sector to inform regulatory developments	Review and report annually on the effectiveness of regulation by competence approach	Report on effectiveness of the Code of Conduct and other rules including those rules which apply to the regulation of entities (e.g. the IPS Authorisation Rules and the Strategic Risk Committee Rules)	Share with stakeholders feedback received on supportive approach including tools used and their effectiveness in supporting entities	Inform stakeholders that IPS has the necessary PII/compensation procedures in place, and that data is collected to record the extent to which there is a call on such resources Share risk information with insurers to support the delivery of proportionate regulation

SECTION B - THE WIDER CONTEXT OF THE APPLICATION OF THE IPS APPROACH TO RISK BASED REGULATION

Introduction to IPS Governance Arrangements

11. There are three tiers of Governance in the IPS organisational structure that will be in place to meet all the work streams outlined in this part of the application. These are the IPS Risk Unit (IRU), the Operational Risk Group (ORG) and the Strategic Risk Committee (SRC).
12. The IRU performs day to day risk operations including the roles of authorisation, supervision (monitoring), investigation and enforcement.
13. The ORG consists of IPS managers who supervise the work of the IRU. ORG managers carry out decision making in respect of the rating, correction and sanctioning of individual entities.
14. The SRC is the strategic tier concerned with learning and ensuring that risk review operations are aligned with the achievement of the wider outcomes of IPS. This strategic level sets policy to take account of experience, but also the wider environment. The SRC will also consider certain authorisation rejection and revocation decisions made by ORG Managers.
15. Further governance information is provided at Table 2 and the text that follows the table. This is found later in this section.

Factors influencing Risk Based Decisions

16. The SRC is responsible for setting and reviewing the IPS risk management strategy which will encompass addressing both external (market) factors and internal (IPS organisation) factors. Its terms of reference appear at **Appendix 5**.

External Factors

17. The use of the Oxera framework, coupled with the extensive experience IPS staff have in the regulation of individuals and entities providing legal services, are important factors for IPS in understanding risk in the legal sector, and how such risks may change in the future based on developments in the specific segments of the market combined with wider economic factors.
18. IPS acknowledges that the collection and analysis of data to inform its own activity and that of other stakeholders including the LSB is vital in continuing to maintain a well-developed understanding of market factors. A well-developed understanding of the market is also essential to ensure an equally well-developed understanding of risk. IPS will apply the on-going development of

this understanding in practice through the continual re-alignment of the levels of risk shown in the basic and advanced risk assessment processes at **annexes 13 and 14** of this application. This is necessary as the IPS risk framework must be updated to reflect new and emerging risks that may materialise due to the continuing evolution of the legal services market.

19. Regulators are able to regulate effectively in a risk based and outcomes focused way if they understand the risks that are inherent within their regulated communities. IPS will collect and analyse data from its regulatory activities, and combine it with an analysis of wider data sources, such as reports commissioned by the LSB and Consumer Panel.
20. IPS is actively exploring ways of working with other regulators and the LSB, such as through a Regulatory Forum or Risk Management Group which will assist in continuing to maintain its understanding of developing risks within each segment of the legal sector.
21. IPS already has a broad understanding of risk in the legal sector. An example of this understanding is shown in the table denoting risk failure types at **annex 14**. This table depicts examples from a substantial number of risk failure types one may expect to encounter from time to time in the regulation of legal services. The SRC will consider all risk failure types and agree scores against each risk failure. This will assist IPS staff to determine the relative severity of each type of risk thereby ensuring proportionate and consistent regulatory responses can be made where such risks are encountered in practice.

Internal Factors

22. Internal factors in the context of the IPS risk management strategy will focus on how IPS will apply its knowledge of the external marketplace to ensure the effective and proportionate regulation of its own regulated community. IPS will also collect and analyse the data from its regulated community, anonymised to meet data protection requirements, to contribute to the data collected on the wider external market with a view to addressing, where it can, the legal sector data gaps highlighted by the LSB within reports summarised at **annex 20**.
23. IPS will be looking to:
 - apply proportionate monitoring (supervision) and investigation capability to better understand and evaluate high risk cases, to more accurately measure probability and also to understand underlying causes
 - require corrective action on underlying causes and enforce with the ultimate sanction of revocation of authorisation
 - ensure regular review of cases to monitor entities and specifically those exhibiting increasing risk probability or impact.

24. As each entity is risk assessed, scores will be used to identify the appropriate regulatory response. The SRC will set the risk management strategy by:
- defining the threshold Impact and Probability scores for low, medium and high risk
 - determining the monitoring (supervision), sampling and enforcement regimes for low, medium and high risk categories.
25. The SRC will set thresholds for medium probability and high probability, and then for medium impact and high impact. Together, these will generate nine separate entity categories, into which all entities will be categorised according to their scores. See the following diagram for the way these thresholds create the nine categories. The top right box represents the highest risk – high impact, high probability.

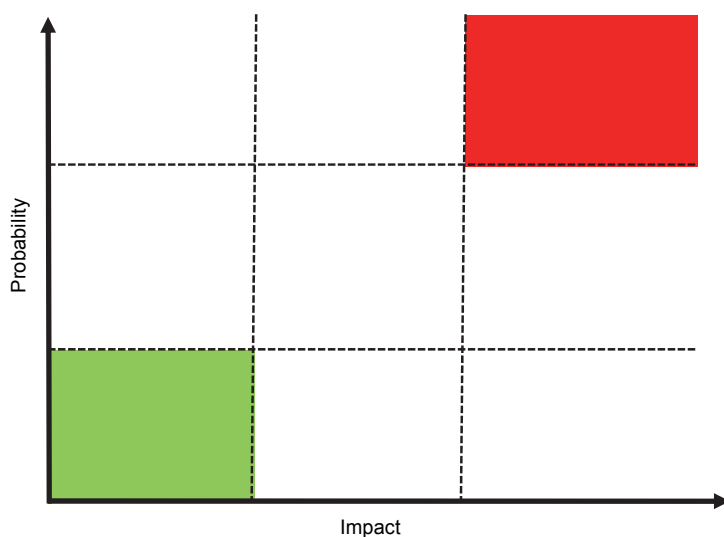


Diagram: Probability Impact Grid

26. For each of these nine categories the SRC will assist in setting guidelines for the most appropriate regulatory response under the functions of authorisation, supervision (monitoring) and enforcement. Such guidelines are likely to change on an on-going basis as a result of the number and type of authorisation applications IPS receives and the assessment of market risk.

Managing risk categories using the Probability Impact Grid

27. For each of the nine categories the guidelines will set out:
- aims: what IPS is trying to achieve with this category, whether (as with those in the bottom left, low impact, low probability) to sustain them or (for those in top right) to quickly move them into lower risk

- sampling: this may range from a minimum of an annual return, to spot checks in certain thematic areas, desk based reviews, all the way to risk review visits
 - timescale: the period over which mandated surveillance is expected to take place. For those in the top right it is likely that the risk review visit will take place as a matter of urgency with a view to reducing the entity's risk rating.
28. The SRC will continually keep under review and amend the risk rating thresholds for each category. Reviews will encompass both environmental ratings and risk failure type ratings. These ratings are explained and illustrated in the relevant tables shown within **annexes 13 and 14**. Reviews will be a standing item on the SRC Agenda so that ratings can be amended more frequently addressing any specific market risks that may affect the IPS regulated community between set quarterly review periods. This will also better aid consistency in decision making.
29. IPS will establish framework scoring examples by developing models of different types of businesses, including best and worst case scenarios. Such examples will be useful tools in the continued training and development of IPS staff.

Statistical Analysis and the Use of the Oxera Framework

30. IPS will continually monitor developments in the legal sector through collecting information from its own regulated community. It will analyse this information together with information from the wider legal services sector.
31. IPS will use the Oxera framework to assist in analysing by market segment/legal specialism through looking specifically at:
- which lawyers provide the service
 - what are the entry requirements
 - which consumers use the service
 - the extent the service is 'clustered' with other problems
 - detailed analysis of LeO complaints data
32. IPS will also explore ways of working with other regulators to enhance its knowledge of emerging trends in specific segments of the market for legal services, and in particular for legal services aligned with its practice rights applications (i.e. conveyancing, probate and litigation). This will assist IPS by ensuring that it has a mechanism in place for building on its expertise as a regulator of individual CILEx members practising in these areas currently under the supervision of Authorised Persons.
33. The risk failure types (to be added to the examples shown) in the Risk Category Grade table within **annex 14** will not be categorised by market segment, as

they will apply in the most part to all legal businesses. There may be some exceptions. For example, the failure to inform a lender of a material fact would be specific to a property transaction.

34. The possible risk of such failures occurring may change depending on a number of factors. Taking conveyancing as an example, the following list, which is not exhaustive, provides examples of factors that may influence specific risks IPS could encounter in regulated entities:

- market conditions (the wider economy and changes in the housing market)
- government policy (e.g. temporary stamp duty concessions, or house building initiatives aimed at stimulating the market for first time buyers)
- changes in lending practises
- changes in the Council of Mortgage Lenders' (CML) Rules and restrictions on entry to Lenders Panels
- legal policy, for example lower tariffs for 'white collar' crime coupled with a continuation of difficult market conditions could see more instances of money laundering and/or mortgage fraud
- increase in competition, e.g. when more lawyers are able to practise independently, through the emergence of new ABS business models etc
- market consolidation as increased competition forces established providers to merge or close
- mergers as a result of market consolidation leading to short term upheavals as merged legal practices try to adapt to each other's respective cultural and operational methods
- new online business models as existing and new providers look to obtain competitive advantage through lower costs
- the prevalence of more 'factory' type operations where higher numbers of unqualified staff are recruited to undertake process driven tasks (which may lead to higher leverage ratings with a higher ratio of unqualified staff to qualified managers)
- established players may look to other market segments as pressure in conveyancing becomes greater, which could lead to a range of other opportunities and risks depending on the capabilities of the established organisation and in particular the level of competence in the new areas in which it wishes to practise
- a higher prevalence of online transactions may materialise if the first time buyer market is stimulated as first time buyers may be more likely to routinely use new technology for financial transactions
- consumers could change purchasing habits if for example, negative publicity surrounding a particular service delivery method occurred, such as a large legal services provider failing to properly risk assess online security considerations leading to the theft of personal data
- new players entering the market once market restrictions are removed, such as CILEx members wishing to set up their own conveyancing practice

- LeO complaints data may uncover trends in complaints, relating to costs information for example, as certain practices seek an unfair competitive advantage by providing misleading costs information, (i.e. low headline rate with a number of hidden costs falsely described as disbursements)
 - new practices setting up without implementing proper processes, such as file closure procedures leading to some fee earners failing to register properties which in turn could lead to an increase in complaints and claims in this respect.
35. The factors highlighted above will be supplemented and amended on an on-going basis by the SRC on the advice of the Operational Risk Group (ORG), based on the data collected as a result of the regulatory activities carried out by IPS and data obtained on the wider market for legal services, such as that provided in reports commissioned by the LSB. The segmentation approach of the Oxera framework also points itself towards authorisation by competence, which is a primary factor in the IPS approach to risk based regulation.

Thematic Issues – Fee Sharing and Referral Arrangements

36. As an established regulator of individuals providing legal services IPS understands how the market for legal services is continuing to change in view of the impact of a variety of factors. Examples of the factors impacting on the development of particular sectors of the market for legal services are shown in the analyses of legal sector reports covered within this application at **annex 20**.
37. A significant change which will impact on particular segments of the market for legal services is programmed to take place in 2013. In April 2013 a ban on certain referral fees will be implemented by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Provisions in part two of LASPO make it a regulatory offence to pay or receive referral fees in personal injury cases.
38. IPS will not publish specific rules relating to referrals of business beyond those already present in the CILEx Code of Conduct, and more specifically Principle 1 which confirms the requirement that those regulated by IPS uphold the rule of law. IPS will also refer to general provisions in the Code of Conduct on the subject of client transparency, independence, and confidentiality which are key issues which can culminate in such arrangements in some cases being contrary to clients' best interests. IPS will also be able to use the new Code of Conduct when assessing risks inherent in fee sharing and referral arrangements of the nature that can be found in the LSB's discussion document on this subject dated September 2010.

Thematic Issues – Financial Services

39. IPS has engaged with the Financial Services Authority (FSA) and HM Treasury on the possibility of becoming a Designated Professional Body (DPB), which is a professional body designated by the Treasury under section 326 of the Financial Services and Markets Act 2000 (Designation of Professional Bodies) for the purposes of Part XX of the Act (Provision of Financial Services by Members of the Professions).
40. Regardless of whether IPS becomes a DPB it will ensure that it applies the provisions of the FSMA where applicable to its regulated community. An example of such a provision can be found in Section 327(3) of the FSMA which states that all commission or pecuniary benefit belongs to the client.
41. The FSA (or one of the FSA successor bodies, namely the Prudential Regulation Authority or the Financial Conduct Authority) is expected to assume responsibility for consumer credit from April 2014, which means a number of firms will be likely to join the aforementioned Part XX regime. IPS will therefore assess the implications for any entities applying to be authorised by IPS who propose to conduct consumer credit activities.

Governance

42. IPS recognises the importance of proper governance to ensure that it can meet the regulatory objectives. A summary of roles and responsibilities can be found in the table on the following page.

TABLE 2: GOVERNANCE – ROLES AND RESPONSIBILITIES

Governance body	Reports to	Information required	Role and Composition	Responsibilities
Strategic Risk Committee (SRC)	IPS Board	<p>LSB and other policy developments</p> <p>Strategic Risk Committee Rules</p> <p>Market research (IPS, LSB Consumer Panel)</p> <p>Scoring analysis from on-going risk assessments</p> <p>Operational Risk Group reports</p> <p>Case files relating to rejection or withdrawal decisions</p>	<p>Defines the risk management strategy and the risk framework used to implement it</p> <p>Non-executive members only including at least one CILEx member out of a total of three to six members. IPS senior officer reporting for Operational Risk Group (ORG)</p>	<p>Defines risk framework and formulates its supporting policies</p> <p>Defines risk management strategy, sets scoring thresholds and determines response to different categories of risk</p> <p>Continuous review of risk operations to improve framework and strategy</p> <p>Reviews entity authorisation rejection or revocation decisions and Approved Manager designation rejection or withdrawal decisions</p>
Operational Risk Group (ORG)	SRC	<p>SRC decisions</p> <p>Case files</p> <p>Appeal case files</p> <p>Risk framework application documentation</p>	<p>Supervises implementation of the risk management strategy by ensuring the robust deployment of the risk framework</p> <p>Management level</p>	<p>Reviews individual cases to quality assure work of IPS Relationship Officers/Investigation Officers</p> <p>Makes decisions regarding the application of sanctions and corrective action enforcements</p> <p>Makes decisions regarding the outcomes of applications for authorisation/Approved Manager</p> <p>Monitors application of risk framework</p>
IPS Risk Unit (IRU)	ORG	<p>Information obtained from entities including authorisation applications and annual returns</p> <p>Risk framework application documentation</p>	<p>Uses the risk framework to assess entities and make recommendations on applications, monitoring and enforcement</p> <p>Risk management staff</p>	<p>Manage entities' cases</p> <p>Conduct risk reviews</p> <p>Prepare analyses for ORG and SRC</p> <p>Advise ORG on identified risks</p>

43. The risk framework depends on independent governance to ensure that those responsible for conducting risk assessments and applying prioritisation decisions are accountable. For this reason decisions about the use of regulation, and especially its associated sanctions, need to have some independent oversight.

Separating strategic and operational review roles

44. With the need for feedback and review there are two tiers of governance above the IPS Risk Unit (IRU). The first tier will be operational, namely the Operational Risk Group (ORG), which supervises the work of the IRU and provides a decision making mechanism for the important choices regarding the rating, correction and sanctioning of individual entities. The ORG will also continue to monitor wider risk issues impacting on the legal sector, in addition to the data collected through IPS' own regulatory activities to ensure fair and proportionate regulatory decisions are made.
45. The second upper tier is strategic, known as the Strategic Risk Committee (SRC), and is concerned with learning and ensuring that risk review operations are aligned with the achievement of wider outcomes. This strategic level sets policy to take account of experience, but also the wider environment. The application of the Oxera framework will be an important factor in providing the relevant market and risk information to assist strategic decision making.
46. The SRC will also consider and review decisions made by ORG Managers to reject an application for authorisation, revoke authorisation, reject an application to be an Approved Manager, or remove Approved Manager designation from an individual.
47. If the SRC approves any such decision the matter will be referred to the IPS Investigation Team to refer to the appropriate panel constituted under the IPS Investigation, Disciplinary and Appeals Rules (IDAR). The individual or entity to which the decision relates will have the right of appeal. Appeals will be conducted through the existing independent appeals processes operated by IPS as constituted under IDAR.
48. If the SRC does not approve the decision the reasons for this will be confirmed to the ORG Manager who recommended the decision. The SRC will also advise on an alternative form of action to apply, which may include further investigation.
49. Further information on the roles and responsibilities that make up the IPS governance structure is set out below:

The role of the IPS Risk Unit (IRU)

50. The IRU performs day to day risk operations including the roles of authorisation, supervision (monitoring), investigation and enforcement. This will encompass conducting basic risk assessments and advanced risk assessments (risk review visits) on entities and preparing analyses for the ORG and SRC functions.

The role of the Operation Risk Group (ORG)

51. The ORG will be responsible for the day to day application of the IPS strategy. The ORG will also be responsible for ensuring that the IPS risk framework continues to operate effectively in terms of its consistency and ability to adapt to external market developments such as emerging markets, new legislation, and new types of business structures.
52. ORG Managers will review individual cases to quality assure the work of IRU staff and make decisions regarding the application of sanctions and corrective action enforcements.

The role of the Strategic Risk Committee (SRC)

53. The SRC will keep under review and redefine the IPS risk strategy as necessary using the information it receives from the ORG and report to the IPS Board. The structure and responsibilities of the SRC are set out in the Strategic Risk Committee Rules at **Appendix 5** of this application.
54. The SRC will consider risk framework application data and assess scoring thresholds to determine the focus for IPS entity regulation. It will also continually review risk operations to improve the risk framework and how it is applied.
55. As stated earlier, the SRC will also consider and review decisions made by the ORG to reject an application for authorisation; revoke authorisation; reject an application to be an Approved Manager; or remove Approved Manager designation from an individual. This will assist in ensuring that such decisions are proportionate and are being correctly and consistently applied.

Moving to Entity Regulation

56. The move to entity regulation by IPS follows naturally as CILEx members seek to extend the range of their activities. IPS has a record of regulating CILEx members and will be the natural choice for new CILEx member sole practitioners and specialist legal practices managed by CILEx members.

Meeting the Regulatory Objectives

57. IPS has sought the views of the LSB and the Consumer Panel and analysed the extensive research commissioned by the LSB into the legal sector to inform its understanding of the key issues it needs to address when regulating legal service entities.
58. The regulatory objectives are of overarching importance to this and are at the heart of the IPS approach to risk based regulation. The IPS strategy, elements

of which are set out in Section A of this part of the application, reflects how IPS can support the achievement of the regulatory objectives that it can influence directly through its own regulatory activities. The following paragraphs explain how IPS will achieve this.

59. IPS has developed an outcomes focused approach to regulation. This approach focuses on working constructively with those entities it regulates to ensure that they deliver the best outcomes for their clients.
60. Regulated entities are required to co-operate with IPS. Those that do not are likely to face sanction. The level of sanction will be dependent on the extent of the failure to meet the principles and outcomes expected. Principles and outcomes are shown in the Code of Conduct.
61. The outcomes focused approach to regulation developed by IPS is ultimately in the public interest as it provides a balanced approach to regulation by delivering value for money support to those entities that engage constructively with IPS. IPS will also focus investigation and enforcement resources in a proportionate manner against those who do not engage constructively and/or fail to deliver the outcomes expected of them.

Value for Money Regulation

62. IPS will ensure that its regulatory pricing structure is competitive with other regulators without compromising regulatory rigour. Its regulatory budget will enable it to deploy resources, such as supervision, investigation and enforcement required to protect the public.
63. Equally, IPS will not penalise entities it seeks to regulate through a fee structure which is uncompetitive to those, as indicated by research, it is best placed to regulate, e.g. CILEx member sole practitioners and specialist legal practices. It will also seek to encourage proportionality and reduce duplication when requesting information from an entity as to do otherwise may increase costs. IPS is aware that the costs of regulation to an entity form part of the costs of doing business, which ultimately impact on the prices charged to the consumer.
64. It is therefore important that the IPS regulatory fee structure is sufficient to recoup the costs of regulation, and that entities regulated by IPS are rewarded where possible through potentially lower costs if they are effective in managing risk and in providing a good service to consumers. The IPS Board will be responsible for setting the regulatory fee structure. The fee structure may be based on a combination of flat fees and fees based on turnover in line with other Approved Regulators.
65. The IPS approach to regulation will also seek to add value to each IPS regulated entity by assessing its risk management capability and advising where

improvements should be made (where improvement is necessary). The capability will initially be assessed through the entity authorisation process, which requires that at least one Approved Manager has the required competence in business management and accounts. Entity Compliance Managers will be supported by IPS Relationship Officers. Support provided will include advice on business and compliance planning, and risk management. Such support will be provided by telephone, correspondence, or by risk review visit, as mentioned below.

66. Risk review visits will assist IPS in its risk assessment of entities as such visits will be used to check the accuracy of information provided by the entity, such as whether systems and procedures described in its authorisation application or annual return as being in place to mitigate risk are actually being applied in practice. IPS will also use these visits to provide its Authorised Bodies, and specifically the Compliance Manager of the body, with further support on business and compliance planning as mentioned above, which will include practice management, risk management and accounts.
67. The effectiveness of entities in managing risk can also be measured in a number of other ways, from those entities taking part in the IPS Consumer Feedback Programme, to the data provided by all entities at authorisation and annual return stages.

Applying learning on risk as part of a risk based regulatory approach

68. IPS has developed a risk framework which is underpinned by the Oxera framework. This will assist in ensuring that IPS regulates in a proportionate manner by understanding the risks faced by consumers in each segment of the legal sector, and where legal entities are failing to adequately address identified risks. IPS will also continue to develop its understanding of the ever evolving legal sector in England and Wales by working closely with the LSB and Consumer Panel to understand emerging risks.
69. IPS will work with the entities it regulates, primarily through entity Compliance Managers, to educate them in taking responsibility for their risk management processes. This will include ensuring that risk events are recorded, and that accurate data is supplied to IPS which demonstrates how the entity is applying learning from its risk management processes to deliver better services for consumers.

IPS regulation – focus on the consumer

70. IPS will look to incentivise entities by offering entities applying for authorisation, and as part of the annual return submission process, the opportunity to request a voluntary risk review visit and take part in the IPS Consumer Feedback Programme.

71. The primary focus of the voluntary risk review visit will be to assist the entity to develop a business and compliance review, or examine whether any existing business plan and compliance processes it has should be improved to address any actual risks identified from the risk review visit.
72. IPS will host its Consumer Feedback Programme on the Specialist Lawyers website which will be located at www.specialistlawyers.org. The website will also provide useful easy to understand information for the consumer on the legal services market and what consumers should expect in terms of the level of service and cost to resolve any particular legal issue they may have.
73. The website will provide more detailed information on those entities taking part in the Consumer Feedback Programme, and ensure that consumers are aware that legal practices taking part in the programme value learning from the customer experience so that they can continue to provide high standards of service. If the data collected through this programme indicates that an entity is falling short of the high standards expected of it, IPS will reserve the right to remove the entity from the programme and take appropriate regulatory action.
74. The Consumer Feedback Programme will primarily allow entities to share data with IPS on the customer experience. The programme will also allow for the collection of data direct from consumers who, for whatever reason, have chosen not to use a particular provider of legal services.
75. There will be safeguards in place for data protection arrangements and data collection methodology to ensure that data collected is as accurate as it can be. **Annex 19** provides more information on the Consumer Feedback Programme and Specialist Lawyers Website.

Regulation in the public interest

76. IPS will work with the LSB and Consumer Panel to regulate in the public interest. A key element in this approach will be to share anonymised data collected on risk and the consumer experience with the LSB, Consumer Panel and other regulators.
77. IPS is exploring risk information sharing mechanisms with other regulators. A Risk Management Group may be one possible way of improving information sharing. The purpose of such a Group would be to share headline data on emerging risks so that each regulator will be able to re-focus their resources where necessary to address the risks which impact on the entities they authorise.
78. This exercise will be particularly helpful to IPS and other regulators using the Oxera framework. This is because the data collected can then be applied using the framework so that a more holistic picture of emerging risks and how they

impact on particular segments of the legal services market can be better understood.

79. Data sharing and joint working will enable all regulators to prioritise regulatory activities in the public interest.

Capacity and Capability and Minimising Risk - Introduction

80. IPS' capacity and capability is covered in the following paragraphs and in more detail in **Part 11** of this application. This following paragraphs look at capacity and capability in terms of minimising risk and planning for contingencies.

Capacity and Capability – IPS regulatory experience

81. IPS has a proven track record in the regulation of individual CILEx members. IPS also has the capacity and skills in the regulation of legal services including legal service entities proportionate to its current and anticipated regulatory community over the short term. The vast majority of IPS staff also have experience of conducting customer facing legal regulatory work, which involves the application of one or more of the skills of data analysis, investigations, and decision making.
82. IPS staff with a background in regulation also have significant experience in conducting risk based compliance visits to legal service entities. While this experience will be helpful in the regulation of entities by IPS, it should be noted that undertaking visits to all the prospective IPS regulated community would not be necessary. This is because the correct operation of the risk framework will ensure that visits are usually made to regulated entities where such a visit has been assessed as necessary, or has been requested by the entity. The exception will be where IPS conducts random visits in order to support the effective application of the risk framework. IPS may also deem it necessary to conduct a forensic investigation to entities where higher risks have (or are likely to have) crystallised in the short term.
83. Applying effective risk management processes from the point of authorisation will also reduce the likelihood of high risk entities being accepted into the IPS regulated community where such entities cannot demonstrate that they have adequate risk management processes in place.

Capacity and Capability – Assessment of Independent Research

84. IPS commissioned independent research to obtain data to assess the action it needs to take to ensure that it has sufficient resources in place to meet the requirements of entity regulation. The research consisted of two online surveys launched between September and October 2012.

85. The first survey was a survey of the CILEx membership. The membership was asked to provide their views on whether they would apply for practice rights in conveyancing, probate or litigation, and whether and when they would practise independently on the basis that they obtained those rights.
86. The first survey was sent to approximately 17,000 CILEx members. IPS expected that members more likely to respond would be those members who were interested in extending practice rights. 860 members responded, which represents approximately 5% of the CILEx membership. This was particularly encouraging and showed that there was a strong appetite amongst CILEx members to apply for practice rights and to use those rights in independent practice. The analysis of the survey results is covered in **Part 11** of this application.
87. The second survey, which consisted of a survey of non-members, was sent to 7,761 legal businesses. 107 responses were recorded. While the majority of those who responded stated they were dissatisfied with their current regulator less than a quarter of those who responded stated they would consider switching regulator.
88. In the short term IPS expects to continue testing its risk based model amongst a small regulated community. It will then consider whether to market its regulatory offering more widely. The number of entities applying to be authorised by IPS is also likely to increase over time as more Graduate members of CILEx qualify to practise independently in their chosen specialism and start a business. This will also increase competition in the legal services market which will ultimately be good for the consumer.

Capacity and Capability - Training and Development

89. IPS is, in formal terms, a subsidiary company of the Chartered Institute of Legal Executives (CILEx). CILEx has achieved Investors in People (IIP) standard. As such, IPS has developed the skills and experience of its staff. IPS also understands that entity regulation requires additional skills.
90. As part of its recruitment policy IPS has recruited staff with expertise in risk based and outcomes focused entity regulation. This expertise includes the capability to provide continuing professional development (CPD) accredited training (authorised by a large approved legal service entity regulator) to law firms on the subject of outcomes focused regulation and risk management. IPS also has staff that are qualified Lexcel Consultants (Lexcel is the Law Society Quality Standard).
91. IPS is undertaking a skills audit of its staff to identify any further skills gaps for those staff required to undertake duties necessary for the risk based and outcomes focused regulation of entities providing legal services.

92. IPS will implement a training programme to address any skills gaps among its existing staff to ensure that they can undertake entity risk review duties. This process will begin when the application for entity regulation is being considered.
93. Training will be provided to IPS staff and panel members prior to the referral of any decisions impacting on the authorisation and supervision of entities by IPS.
94. Training provided to staff, existing panel members, and new panel members will also include:
 - a summary of decision making responsibilities impacting on the regulation of individuals and entities and key learning points arising from this work
 - an explanation of the Rules including the new Code of Conduct, Authorisation Rules and IDAR
 - a summary of powers of the panels and the new tiers of governance within IPS including the Operational Risk Group and Strategic Risk Committee.

Capacity and Capability – Contingency Planning

95. IPS has considered the volume of resources it requires and has put in place contingency arrangements should demand exceed expectations.
96. Subsequent to these applications being successful IPS will expect its primary business to consist of CILEx members running legal entities providing reserved legal activities. IPS will also expect new legal practices with CILEx members in the management team to actively consider CILEx as a regulator.
97. As IPS will have continued to test its risk framework and conduct risk review training while the applications for extended practice rights and entity regulation are being considered, this will put IPS in a strong position to regulate entities at the earliest opportunity on the basis that these applications are approved.
98. IPS recognises that it will need to consider recruiting further relationship management resource over time, e.g. if large practices apply to become regulated by IPS. IPS has built into its plans the recruitment of additional staff while its applications for practice rights and entity regulation are considered.
99. IPS has sufficient resources in place in the short term to meet relationship management responsibilities, but would look to expand resources incrementally should more entities apply to become authorised by IPS.
100. Should there be a large unexpected increase in the number of entities applying to be authorised by IPS, contrary to aforementioned research findings, IPS may recruit either permanent staff with relevant experience in legal services regulation, or offer a retainer contract to legal compliance service providers to

provide risk review or forensic investigation services as and when required. IPS has already established relationships with large professional support services providers and risk management service providers that can offer such services if required. The contract/retainer option mentioned above has been programmed by IPS to operate in a similar way to that used by the Legal Services Commission (LSC) in the provision of Specialist Quality Mark (SQM) assessment services.

101. Should outsourcing services be required the relevant IPS team manager will ensure that outsourcers conform to expected standards of service. Contracts for services will be agreed with respective outsourcers and will include provisions relating to service levels.
102. In addition to the staff IPS proposes to recruit in the short term, existing staff within IPS already have, or will receive, training in accounting principles and investigative techniques. It is therefore unlikely that IPS would need to appoint contracted staff. It is also likely that any entities IPS regulates, at least in the short term, will primarily be made up of specialist firms managed by CILEx members or CILEx member sole practitioners. Therefore, there will be less of a likelihood that IPS will encounter new and complex legal structures as part of its regulated community, especially as the regulation of such structures (which will primarily consist of ABS) are not part of the IPS regulatory remit covered within this application. As such the need for specialist external forensic investigation assistance would be reduced.
103. Outsourcing arrangements as regards entity supervision and investigation duties are purely contingency arrangements that IPS will only need to put into effect should demand for entity regulation exceed anticipated levels. It is also important to note that such external resources will focus purely on investigations and risk review, and that regulatory/enforcement decisions made on information collected by outsourcers will always be taken by IPS. IPS envisages that it will have sufficient resources internally to perform the functions of risk review and investigation where anticipated demand does not exceed expectations. Outsourcing if required is also anticipated to be a short term measure while IPS recruits additional in-house resources.

Capacity and Capability – IT Systems

104. IT systems used by IPS are a shared service between CILEx and IPS. The current IT system and associated internal support structures are sufficient to meet the needs of IPS in the short term for both individual and entity regulation requirements. CILEx is already assessing requirements for a new IT system to ensure that IT requirements and associated system support arrangements are in place over the medium and long term for the CILEx Group.

105. CILEx and IPS understand the importance of ensuring that the new IT system meets the requirements of both organisations. Consequently both CILEx and IPS staff are involved in an IT Project Group. The Group's remit includes ensuring that the design, functionality and capacity of the new IT system will be fit for purpose, both existing and future. The timing of the project also allows IPS to fine tune its needs so that they can be better specified for system changes.
106. The main interface for the consumer will be the Specialist Lawyers website. This will also contain details of IPS Authorised Bodies and will provide an enhanced information entry for those bodies that engage constructively with IPS through its Consumer Feedback Programme. Further information on the Specialist Lawyers website and Consumer Feedback Programme are shown later in this application.
107. IPS will continue to maintain its existing website, as this website will contain information on IPS as a regulator and its relationship with CILEx. The website will continue to explain the responsibilities IPS has in the regulation of all CILEx members, whether or not they are employed in an IPS Authorised Body.
108. The IPS regulated community, which currently consists solely of individual CILEx members, can use the myCILEx system to input data required for CILEx membership records. IPS will be exploring how the system can be enhanced so that it can be used by Compliance Managers at Authorised Bodies as an efficient way of updating information on their organisation.
109. IPS will be assessing ways in which applications for authorisation and Approved Manager (including Compliance Manager) status can be put online together with the attachments required before such determinations can be made. IPS will initially put in place a downloadable application form but will also explore the development of an online form.
110. IPS does not support a staged application process as this could become over complex from the point of view of both the Applicant Body and IPS. IPS will however offer Applicant Bodies different methods of applying for authorisation. These will include:
- the option of sending hard copies of the required information to IPS by post or
 - the option of requesting a voluntary risk review visit which will allow the IPS Relationship Officer to assess the detailed information required on-site at the Applicant Body's premises. IPS will assess ways in which the level of detail necessary in the online application can be reduced on the basis that a visit will be taking place to obtain more detailed information.

SECTION C - THE FUNCTIONS OF THE IPS APPROACH TO RISK BASED REGULATION

Introduction to the IPS Entity Regulation Functions

111. As an experienced regulator of individual CILEx members IPS currently undertakes all of the activities which relate to authorisation, supervision and enforcement. IPS will build on its experience as a regulator of individual CILEx members by supplementing its existing functions in the areas of policy, guidance, investigation, enforcement, and data collection/dissemination to encompass the requirements of entity regulation.
112. How IPS structures itself to deliver against its strategy is less important than the actual effective and efficient delivery of its strategy. However, key considerations in the formulation of the new IPS structure relate to co-operative working and reducing the number of hand-offs between different operational units. This can be illustrated specifically in the Entity Authorisation/Supervision Team as supervision follows authorisation and both involve the analysis of data provided by, and obtained in relation to, a specific entity and its managers. These activities are therefore closely linked risk operations which is why they are carried out by the same personnel.
113. There are clear demarcation lines between staff responsible for authorisation/supervision and those responsible for investigation and enforcement. There is also a level of structural separation between the IPS individual and entity regulation functions.
114. IPS views the latter level of structural separation as necessary because the function of regulating individuals in different grades of CILEx membership are quite different in some respects to the functions involved in entity regulation.
115. Notwithstanding the structural separation between individual and entity regulation, the level of co-ordination between staff and management within each regulatory area is closely linked. An example of such a link concerns the Investigations Team, which will have responsibility for investigation and enforcement activities in respect of both individuals and entities.
116. The Head of Operations and Head of Business Development will also have cross functional links to the Practitioner Authorisation/Supervision Manager and Client Protection Manager to ensure that workloads which impact on both individual and entity teams are managed appropriately to reflect specific circumstances.
117. Particular circumstances where effective cross functional links will be necessary will include where authorisation, supervision and enforcement decisions are made against individual CILEx members who are also managers in IPS Authorised Bodies or Applicant Bodies. Such cross functional links in the case

of each individual entity will be highlighted upon receipt of an application for entity regulation, and will continue to be considered during on-going supervision to ensure that:

- data is shared where necessary
- there is no duplication of activity
- decision making is proportionate to the circumstances of each particular matter.

118. IPS is employed in a programme of process mapping which includes mapping the processes of authorisation, supervision, and enforcement, together with the assessment of cross functional links and workload allocations mentioned above.
119. IPS will continue to develop its operational procedures for entity regulation while the practice rights applications are being processed. This is necessary as further testing of the risk based regulatory model will be required to inform the degree to which such procedures need to be specified in writing. This is also important as the level of procedural detail should not be over restrictive so as to prevent the correct and proportionate application of outcomes focused decision making and efficient resource management.
120. The process of authorisation and supervision is described in more detail in the following paragraphs. The description of these processes is followed by a description of the enforcement process.

Authorisation – The Purpose of Authorisation

121. The authorisation process is a key component in delivering the IPS entity regulation strategy as it is the gateway to entity regulation. The purpose of the authorisation function is to ensure that entities applying to be authorised by IPS are capable of delivering the outcomes consumers of legal services would expect of them. These outcomes are reflected in the CILEx Code of Conduct. The application of the authorisation process is also supported by the IPS Authorisation Rules.

Authorisation – Commencing the Application of the Risk Framework

122. The application of the risk framework begins at the authorisation stage, as it is at this stage where IPS conducts the assessment of whether the entity has the structure, processes and procedures necessary to deliver adequately the aforementioned outcomes and to meet the wider regulatory objectives. This assessment is aligned with the assessment of the managers of the entity, as each manager must be assessed as a fit and proper person to be involved in the management of an entity authorised by IPS. The entity will be required to provide an application and supporting documentation evidencing its capabilities.

123. Once authorised, entities and the individuals employed by them will be expected to abide by and adhere to the CILEx Code of Conduct and any associated rules (including the IPS Authorisation Rules) developed by IPS, and will also be required to submit to on-going supervision.
124. IPS will authorise only those applying to it for authorisation (known as Applicant Bodies) who have a registered business address in England and/or Wales, as it regulates legal activities under the jurisdiction of England and Wales. However, if the entity also has a base overseas, or has its main base of operations overseas, IPS will need to examine the risks of authorisation and on-going supervision more carefully. IPS will also need to consider risk factors where an entity outsources a significant proportion of its work.

Authorisation by Competence

125. It is important to note that IPS will authorise entities based on competence to carry out an activity. Therefore, entities will need to have demonstrated in their application that they have individuals capable of carrying out, and supervising the carrying out of, that activity. Consequently, IPS will authorise an entity to undertake reserved or regulated legal activities only where it has a manager capable of undertaking such an activity (i.e. an Authorised Person) and that manager also has competencies in the areas of business management and accounts. Note - If there is more than one manager then IPS can authorise an entity if one manager has the required competence in business management and another has the required competence in accounts.
126. The capabilities, fitness and propriety of individual managers will also be assessed, and verified externally. Each individual manager will be required to obtain and provide IPS with a CRB check as part of the entity authorisation application.
127. IPS will also conduct checks of records held by CILEx, if the manager is a CILEx member, or with other bodies where applicable, (e.g. with other regulators of legal services if the individual has been or is subject to oversight by such regulators as an individual, or has been part of the management structure of an entity previously regulated by another Approved Regulator).
128. It is important for IPS to ensure that the risks posed by an entity are understood at the outset so that it can assess the risks the entity may pose to the delivery of the regulatory objectives. Entities that present risks that are unacceptable will be unlikely to receive authorisation by IPS unless they can demonstrate how they can successfully address such risks.

Authorisation – Promoting Positive Engagement

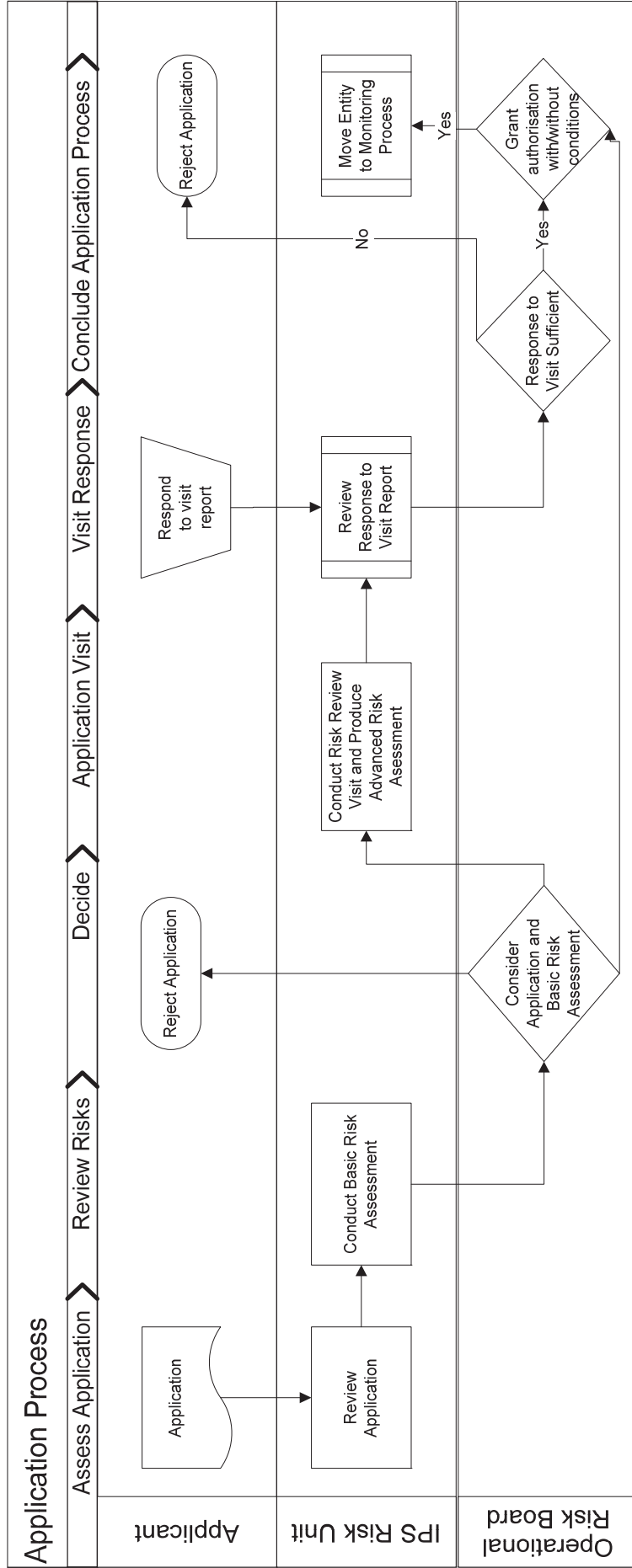
129. IPS will seek to establish a positive and constructive relationship with every entity it authorises. Each entity will have an IPS Relationship Officer as their primary point of contact.
130. IPS will also encourage entities to request voluntary risk review visits at the authorisation stage. Such visits will reinforce the positive approach to regulation, and will primarily be used to provide advice and guidance to entities applying to be authorised by IPS, or newly authorised entities.
131. Such visits will also be used to assist each entity, and more specifically the entity Compliance Manager, in producing or refining its risk management and compliance processes, and advising the entity on the benefits of actively encouraging consumers and clients to take part in the IPS Consumer Feedback Programme. The risk review visit will also be used to advise the entity Compliance Manager on how the entity can benefit from promoting its activities through the IPS Specialist Lawyers website.
132. Each entity applying to be authorised by IPS will be expected to demonstrate positive engagement at the outset in its relationship with IPS. It will be expected to do so by providing full and complete information to IPS on the risks it poses and how it intends to manage such risks. The entity Compliance Manager will also be provided with information on the IPS Consumer Feedback Programme which is a further way entities can demonstrate positive engagement with IPS and with consumers/clients.
133. Where there has been any failure by the entity to prevent a particular risk or risks from materialising in practice, the entity will be expected to share this information with IPS. Where there has been a material failure(s) the Compliance Manager will be required to contact the IPS Relationship Officer with details as soon as reasonably practicable. The entity will be expected to record non-material failures along with material failures in a risk register.
134. Entities will also be reminded of the penalties for failing to engage constructively with IPS. These penalties in the form of sanctions are described in the Enforcement Process summarised later in this section.

Authorisation – Information Submission Requirements

135. Applicant Bodies must complete the IPS authorisation application. The information and guidance that IPS intends to include within its authorisation application documentation is contained within **annex 17**.

Authorisation Application Process

136. The diagram of the following page illustrates the application process:



Authorisation Application Process - Use of Risk Assessments

137. The application process shown in the diagram on the previous page includes both quantitative and qualitative decision making at every stage.
138. It is particularly important to note that numerical indicators used in both the basic risk assessment process at **annex 13**, and the advanced risk assessment process shown at **annex 14**, are used purely as a guide in the assessment of risk to aid decision making.

Authorisation Application Process - Allocation and Basic Risk Assessment

139. Each application for authorisation will be allocated upon receipt to a Relationship Officer. Each Relationship Officer will act as the contact point for all IPS dealings with a particular Applicant Body throughout the authorisation process and once that body becomes an Authorised Body (if its application is accepted).
140. The Relationship Officer will assess the application using the basic risk assessment process. If there are any gaps in the information supplied by the Applicant Body the Relationship Officer will work with the Body to address such gaps.

Authorisation Application Process - Decision Making

141. The Relationship Officer will then make one of the following recommendations to the Authorisation & Supervision Manager:
- authorise the Applicant Body without an application visit (risk review visit)
 - recommend a risk review visit
 - reject authorisation.
142. The Authorisation & Supervision Manager may also recommend contacting the designated Compliance Manager at the Applicant Body to obtain further information.
143. The application for authorisation will only be rejected at this stage if the application reveals serious risks to the public interest and/or if there is some other fundamental reason why the application does not meet the requirements of authorisation. An example of this could be where the entity only has one manager and that manager has not passed the criteria for assessment as a fit and proper person, as described in the IPS Authorisation Rules.
144. The Strategic Risk Committee (SRC) will set the risk ratings on the basic and advanced risk assessments which will assist the Relationship Officer and the

Authorisation & Supervision Manager to determine what action to take when assessing the application for authorisation.

145. Key determinants of risk can be summarised using the terms 'Impact' and 'Probability'. The information shown in the basic risk assessment process at **annex 13** provides more detail on how the measures of Impact and Probability will be applied.
146. The Authorisation & Supervision Manager may not necessarily agree with the assessment made by the Relationship Officer, but will show grounds when signing off the basic risk assessment as to why the recommended course of action has not been accepted.
147. If the Applicant Body has demonstrated through its application that it has effective risk management procedures in place, and if the probability and impact of any potential risks are deemed low enough to grant authorisation without an advanced risk assessment (risk review visit), the Relationship Officer may make a recommendation to the Authorisation & Supervision Manager that authorisation should be granted.
148. A recommendation to grant authorisation can still be made if the basic risk assessment shows that there are certain requirements the Applicant Body must address. The Applicant Body will then be advised that authorisation has been granted provided that the specified requirements are met. Examples of such requirements may include improvements that need to be made to standard client care documentation or certain risk management procedures.
149. The Applicant Body will be required to confirm how each of the specified requirements, such as those mentioned above, have been or will be met and may be advised to supply any supporting evidence. This will influence the next basic risk assessment that will take place at the annual return stage, unless there is any reason to conduct a further basic risk assessment sooner. This can occur when IPS is made aware of a material risk event at the entity, either by the entity itself or a third party.
150. If it subsequently comes to the attention of IPS that specified requirements have not been met, such as through the receipt of complaints, or from a risk review visit, IPS may consider revoking authorisation.

Authorisation - Voluntary Risk Review Visits

151. An Applicant Body may request a risk review visit as part of the application process, although all authorised entities can request a voluntary risk review visit at any time. IPS is not required to accept all visit requests.

152. Voluntary risk review visits provide an opportunity for the Applicant Body to demonstrate constructive engagement with IPS and for IPS to assist the Applicant Body in developing its risk management procedures, by for example encouraging the use of a Business & Compliance Review Template such as that shown at **annex 18** and referred to below.

Voluntary Risk Review Visits – Providing Support in Risk Management and Compliance

153. IPS will use the Business & Compliance Review Template shown at **annex 18**. The template consists of a document entitled 'Business & Compliance Review' which contains headings that can be used to summarise a Business Plan which the entity is advised to review on a quarterly basis. This document is supported by annexes which can be used to record risks, and identify risk management and compliance actions that should be taken on a monthly, quarterly, and annual basis to support the effective management of risk. This template can also be used by the Applicant Body once it is authorised as a tool for gathering information required by IPS as part of the annual return the entity will be required to submit.

Voluntary Risk Review Visits – Enhanced Visibility on the Specialist Lawyers website

154. Each entity authorised by IPS will be listed on the IPS Specialist Lawyers website, as the website will include a record of all IPS Authorised Bodies. This website is entitled 'Specialist Lawyers' as IPS regulates by competence and specialism.
155. All IPS Authorised Bodies and those applying for authorisation will also be encouraged to take part in the IPS Consumer Feedback Programme. Those that do so will be able to benefit from an expanded information entry on the Specialist Lawyers website. This website will also be used to host the IPS Consumer Feedback Programme.
156. The expanded entry will allow the entity to market its services. IPS will reserve the right to withdraw the entry should it receive any information, including consumer feedback, to indicate that the entity is failing to meet the standards expected of it. A summary of the IPS Consumer Feedback Programme and Specialist Lawyers Website is shown at **annex 19**.

Risk Review Visits – General Information

157. Regardless of whether an entity has requested a risk review visit, IPS may schedule a risk review visit to the entity at the application stage. A visit may take place where IPS deems that insufficient information has been provided to

make a proper assessment of the application, or insufficient evidence has been provided to show that the entity can manage risk effectively.

158. The purpose of the risk review visit at the application stage will therefore be to test the risk management systems the Applicant Body has in place, and specify where improvements are necessary.
159. If the Applicant Body is a new business that has yet to commence trading, the purpose of the visit will be to assist the Compliance Manager at the Applicant Body in producing or amending existing business and compliance planning documentation where necessary. The visit may take less time to complete in such circumstances, although the content, duration, and format of a visit will depend on a number of factors including the size of the entity and issues to be explored.
160. A risk review visit will usually include opening and closing meetings with the entity Compliance Manager and an examination of the information provided in support of the application to assess actual risks and how they impact on compliance with IPS' regulatory arrangements.
161. Assessment of actual risks can include a review of matter files and a review of accounting procedures to assess compliance with the Code of Conduct and Accounts Rules. A key aim of the visit will be to provide guidance to the Compliance Manager on any work needed to construct or improve the Applicant Body's/Authorised Body's business, risk management and compliance plans.
162. Following the visit the Relationship Officer will provide the entity Compliance Manager with a report summarising the findings of the visit. The report will specify any actions which the entity must comply with for authorisation to be granted, or for authorisation to continue if the entity has already been authorised.
163. The entity Compliance Manager will be required to respond to the Relationship Officer by specifying the action the entity will take to address each of the requirements in the visit report. The Compliance Manager may also be required to provide a copy of a finalised Business & Compliance Review document as part of the response to the visit report. This will be most likely where the findings of the visit show that effective systems and procedures are either not in place or, if they are in place, they have been found not to operate as effectively as they should (e.g. in instances where the entity is not a new business).
164. When a satisfactory response to the report has been received the Relationship Officer will recommend authorisation, or confirm that authorisation will continue where the Body is already authorised. If the response to the visit report is not sufficient the Relationship Officer can recommend that the application for

authorisation is rejected, or revoked if the entity is already authorised. The entity will have the right to appeal such a decision.

Application Assessment Period

165. IPS aims to determine an application for authorisation within one month from the date of receipt of a full and complete application. The application assessment period can be extended, but such an extension would not usually exceed three months from the date of the original application. Entities considering applying to be authorised by IPS will be encouraged to engage with IPS as soon as possible. This will allow IPS to plan its resources adequately to assist in processing authorisation applications quickly and ideally well within the period of one month.
166. The application assessment period will not commence until all the information requested by IPS has been received. If the information is not received within three months of the original application then the application will be deemed to have lapsed and a fresh application will be required.
167. If IPS decides that a risk review visit is necessary as part of the application process, or the entity has requested a risk review visit and this has been agreed, the visit will be scheduled to take place as soon as possible. IPS may grant authorisation prior to the visit taking place, but would seek to conduct a visit before authorisation if the basic risk assessment indicates that there are particular risks that can only be properly assessed by conducting a visit.
168. If the Applicant Body has more than one location, IPS will normally visit the main office in England or Wales from which the body conducts or seeks to conduct legal services. However, specific details of the risk review visit will be agreed with each Applicant Body on a case by case basis, and will include an assessment of risk posed by additional offices which could also be influenced by whether any of the offices are based overseas.

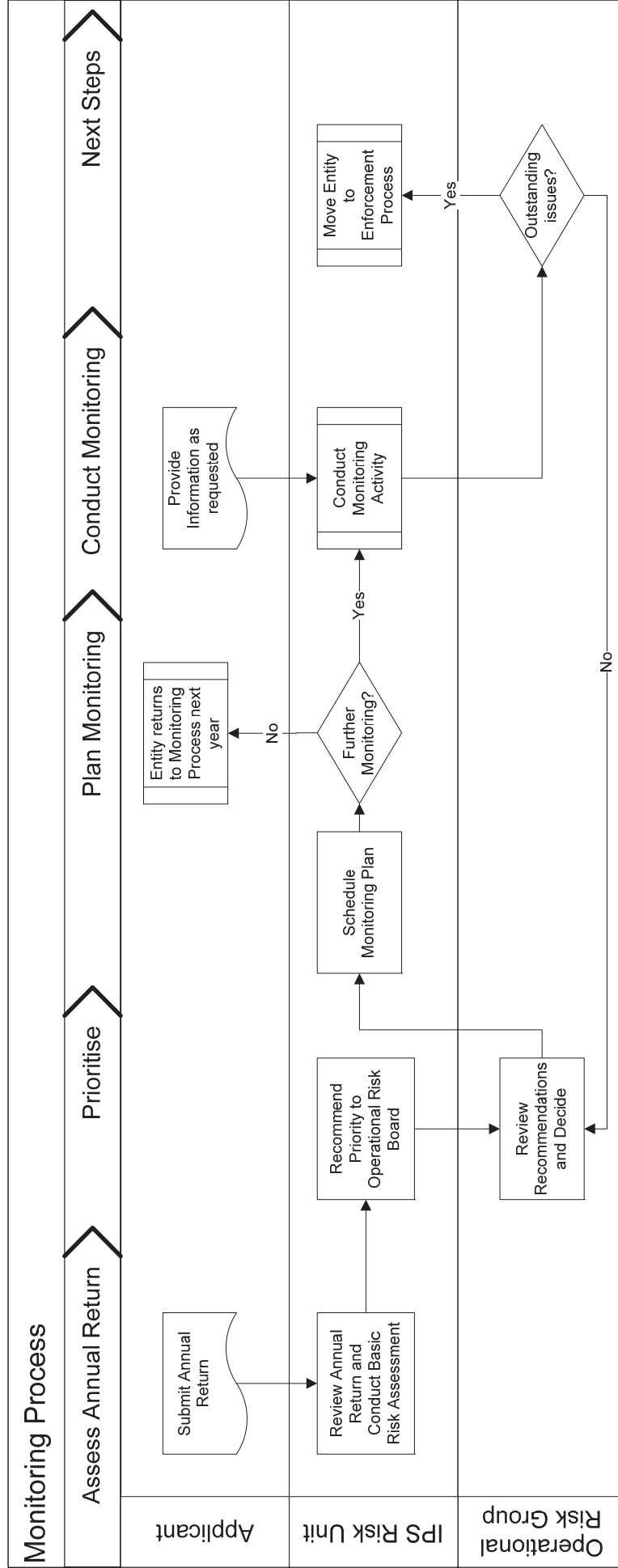
Authorisation - Appeals Processes

169. Appeals can be made by an entity in respect of the rejection of its application for authorisation, and by an individual manager where IPS has rejected that manager's application to be an Approved Manager.
170. Appeals can be made by Authorised Bodies where IPS has assessed that there are sufficient grounds to revoke the body's authorisation. IPS can withdraw the designation of Approved Manager from an individual where it deems that the individual no longer meets the criteria of a fit and proper person. An appeal can therefore be made by an Approved Manager against the withdrawal of Approved Manager designation.

171. The aforementioned appeals processes are specified within the IPS Authorisation Rules and the Investigation, Disciplinary and Appeals Rules (IDAR). Appeals will be considered by the Appeals Panel set up under IDAR.

Supervision (Monitoring)

172. The diagram on the following page explains the monitoring process. IPS uses the term 'monitoring' to describe how it supervises the entities it proposes to regulate. The text following the diagram provides more information on the monitoring process.



173. Once an entity has been authorised it is described using the term 'Authorised Body' and it will fall within the IPS monitoring process.
174. The diagram on the previous page details the monitoring process from the annual return stage, although monitoring will begin as soon as the authorisation process has ended.

Supervision (Monitoring) Responsibilities and Preventing Regulatory Capture

175. The primary responsibility for the day to day monitoring of IPS Authorised Bodies rests with Relationship Officers in the Entity Authorisation/Supervision Team.
176. IPS' assessment is that Relationship Officers will each be able to manage on average a portfolio of 50 Authorised Bodies, depending on the workload involved with those bodies. This ratio will be reviewed at least monthly as part of IPS' business capacity reviews and workload monitoring. Workloads are also factored into staff appraisal review processes.
177. It is important to recognise that 50 authorised bodies per Relationship Officer is purely a guide, as the basic risk assessment conducted for each new application could result in a range of recommendations that will impact on the level of supervisory resource required per Authorised Body. Therefore, Relationship Officers with a higher number of high risk Authorised Bodies may have a lower portfolio than Relationship Officers with more lower risk Authorised Bodies. The Entity Authorisation & Supervision Manager will be responsible for ensuring that Relationship Officers have sufficient and balanced workloads.
178. Each Relationship Officer will be expected to maintain positive relations with the Authorised Bodies in their portfolio, and more specifically with the Compliance Manager of the entity. An important aspect of the Relationship Officer's role will be in the area of education, as part of their remit will be to assist Compliance Managers in understanding their risk management responsibilities and ensuring that risk management procedures are and continue to be effective.
179. IPS is aware of the issue of regulatory capture, which is a risk that could potentially occur as a result of a Relationship Officer becoming too close to one or more Authorised Bodies in their portfolio, which could affect their objectivity in the regulatory decision making process. IPS has considered ways in which these risks can be minimised. The following measures will be put in place and reviewed annually to assess their effectiveness.
180. Managers will allocate Authorised Bodies at random to Relationship Officers. An alphabetical system of allocation was initially considered but allocating

Authorised Body applications to Relationship Officers in turn was viewed as the better option for workload management. The allocation of work will be reviewed by the Authorisation & Supervision Manager at least on a monthly basis, and work will be re-allocated where necessary if a Relationship Officer's workload becomes too high, which could be as a consequence of having a greater proportion of higher risk firms in their portfolio.

181. Relationship Officers will be required to accept the allocation of each particular application unless there are any issues which may present a conflict of interest. An example of such an issue would be where the Officer has been previously employed by the entity in question.
182. The Authorisation & Supervision Manager will always review and authorise any decision for regulatory action made by the Relationship Officer. This will include a review of the file containing the evidence which has resulted in the recommendation made by the Officer. Such reviews are necessary to ensure consistency in decision making and reduce the risk of bias in favour of entities.
183. IPS will develop a programme of random risk review visits each year to check that the basic risk assessment process is continuing to operate effectively. Senior staff within IPS will select the Authorised Bodies to be visited, which will consist of a proportion of each Relationship Officer's portfolio. Where possible visits will be conducted by a Relationship Officer different from the one responsible for supervising the entity. However, in certain instances using the entity Relationship Officer may be more advantageous as that Officer may have knowledge and information on the entity that will prove particularly helpful when conducting the risk review visit.
184. When a Manager decides that an investigation is required at an Authorised Body, which could be a course of action the Relationship Officer has recommended or the Manager decides is necessary without the recommendation of the Relationship Officer, the investigation will be carried out by a Forensic Investigator, or another Relationship Officer depending on the nature and severity of the issues requiring investigation.
185. There will also be oversight by the Strategic Risk Committee to enable consistency and scrutiny of decision making.

Entity Supervision (Monitoring) Responsibilities in Year 1

186. The monitoring process shown in the application provides the annual return as an example of a trigger which will impact on the level of monitoring of each Authorised Body that will take place. The monitoring process does however commence as soon as an application for authorisation has been approved.

187. It is also important to note that the basic risk assessment conducted at the application stage will inform the Relationship Officer as to the likely level of monitoring that should take place in Year 1. This could range from no further action to dealing with compliance issues via correspondence or conducting a risk review visit.
188. IPS also recognises that the majority of its prospective regulated community may consist of new sole practitioners or new specialist firms managed by CILEX members. Risk review visits will be promoted by IPS to such new firms, as IPS views improving the education of, and building constructive relationships with, new Authorised Bodies as vital in ensuring that Approved Managers can effectively manage risk within their own organisations. This will in turn reduce the risk of IPS deploying further regulatory resources against those bodies should they fail in their efforts to manage risk effectively.
189. Notwithstanding the above, further information could be received by IPS after authorisation, whether or not a risk review visit has been carried out, that may impact on the level of any further monitoring carried out in Year 1. This includes information provided to IPS either by the Authorised Body itself or via third parties such as the Legal Ombudsman on specific individuals or entities in the IPS regulated community.
190. Gathering intelligence on the legal sector is also central to the IPS approach to risk based regulation. IPS will build on its existing expertise and experience in the regulation of individual CILEx members by developing its approach to intelligence gathering.
191. The Head of Business Development* will have ultimate responsibility for the preparation of statistics based on data collected and will therefore also be responsible for the collation and dissemination of intelligence information received. Such intelligence could be received as a result of consumer engagement activity as well as from day to day regulatory activities including authorisation and supervision of individuals and entities. Statistics produced from intelligence gathered will be central to the information analysed by the Strategic Risk Committee when reviewing and supplementing risk ratings for risk failure types and when assessing environment ratings in the basic and advanced risk assessments. (*This role and other roles which form part of the new IPS organisational structure are set out in more detail at **Part 11** of this application).
192. The Intelligence Function will also consist of a contact email address and telephone number where any notification or reports of malpractice by IPS Authorised Bodies, Approved Managers or CILEx members can be received. Individuals or organisations providing intelligence will also be able to supply such intelligence on a confidential basis.

193. In addition to receiving intelligence and sharing intelligence with sources such as the Police, LeO, other regulators and the LSB, the Intelligence Function will also be pro-active in gathering intelligence by analysing legal sector news sources throughout England and Wales. This will largely consist of the interrogation of web based legal sector news sources, but will also consist of more general news sites including local evening newspaper sites.
194. The Head of Business Development will work with the Head of Operations and the Chief Executive Officer to ensure that any other intelligence gathered, such as through the analysis of legal sector reports commissioned by the LSB, is built into the intelligence gathering function. This will ensure that IPS has a broad understanding of the major risks impacting on the legal sector on an on-going basis as information received at all levels within IPS will be included within the intelligence analysed.
195. If the intelligence indicates malpractice on the part of any individual or entity, whether regulated by IPS or otherwise, it will be passed to the relevant individuals/bodies within or outside IPS depending on its nature. The intelligence will first be assessed in terms of risk and will be forwarded to the relevant individual/body within a set timescale dependent on the level of risk. The SRC will decide on appropriate timescales for data sharing relevant to the level of risk.
196. IPS has also proposed methods of sharing intelligence with the LSB, other Approved Regulators and other stakeholders as previously mentioned in this part of the application.
197. Data collected by IPS will directly influence the level and nature of any supervisory activity regarding a CILEx member, IPS Authorised Body and managers and staff of such bodies.
198. Each Authorised Body will have a Monitoring Plan which will set the recommended timing for the next contact. This may be linked to the Body's risk profile, coincide with a regulatory change, such as the ban on referral fees in personal injury work, will writing and estate administration becoming a reserved legal activity, or be linked to checking whether a particular compliance action has been carried out.
199. Random risk review visits will be undertaken from time to time to test the basic risk assessment process, and the accuracy of the information provided by IPS Authorised Bodies who may not have previously received such a visit.
200. This monitoring process showing the annual return stage first is detailed in the following paragraphs.

Entity Supervision (Monitoring) Responsibilities - Annual Return

201. Notwithstanding the possibility that monitoring activity may occur before the first annual return, as mentioned previously, the first key stage of the monitoring process will usually be the annual return stage.
202. The annual return will consist of an updated version of the information originally requested from the Authorised Body to support its application for authorisation. This information will include:
- an updated Business Plan or Business & Compliance Review document if such documentation has been updated
 - a completed risk register which should detail any risks that have occurred within the preceding twelve months (if the risk register does not form part of the above)
 - updated annual accounts information
 - details of any changes in systems and procedures
 - a complaints record showing information on any complaints received in the last twelve months and how they have been addressed
 - an Accountants Report if the Authorised Body deals with client money, or a statement from the Body's Accountant confirming that no client money has been held during the period to which the annual return relates.
203. The annual return would need to be submitted to IPS within three months of the period to which the return relates.

Prioritisation

204. The Relationship Officer will assess the information received and ask for further information from the Authorised Body, if necessary. The Relationship Officer will then compare the results of the current basic risk assessment to previous risk assessment information. If there has been a change in the Authorised Body's risk profile the Relationship Officer will draft a monitoring plan which recommends an appropriate course of action. Such action may include recommending a risk review or forensic investigation visit depending on the results of the current basic risk assessment, although further decision options are also shown below under the next heading.
205. The Authorisation & Supervision Manager will review the plan, and will put a revised plan in place if the plan recommended by the Relationship Officer is not accepted, confirming reasons why the recommended plan has been rejected.

Monitoring Plan Decision Options

206. The Relationship Officer will recommend the appropriate course of action based on the risk assessment made. The type of recommendation will vary and include the following:

- no further monitoring activity
- schedule risk review visit
- recommend a forensic investigation visit
- refer to Investigations Team.

Factors that influence Monitoring Plan decisions

207. This section outlines the factors that will be taken into account when deciding what action to take on monitoring plans.

208. *No further monitoring activity:* The information received by the Authorised Body is complete and there has been no significant change to its risk profile. Some compliance requirements may have been identified and the Body will receive notification of these with confirmation that authorisation by IPS will continue. While the requirements are not of sufficient concern to warrant further monitoring activity beyond a review at the next annual return, the Authorised Body must specify the action it has taken to address any stated compliance requirements in its next annual return.

209. *Schedule a risk review visit:* This course of action could be recommended where the Authorised Body's risk profile has changed to a higher risk. However, an assessment should first be made regarding whether a visit is necessary to determine whether the Authorised Body can effectively manage the increased risk, or whether further information can be obtained from the Body without a visit.

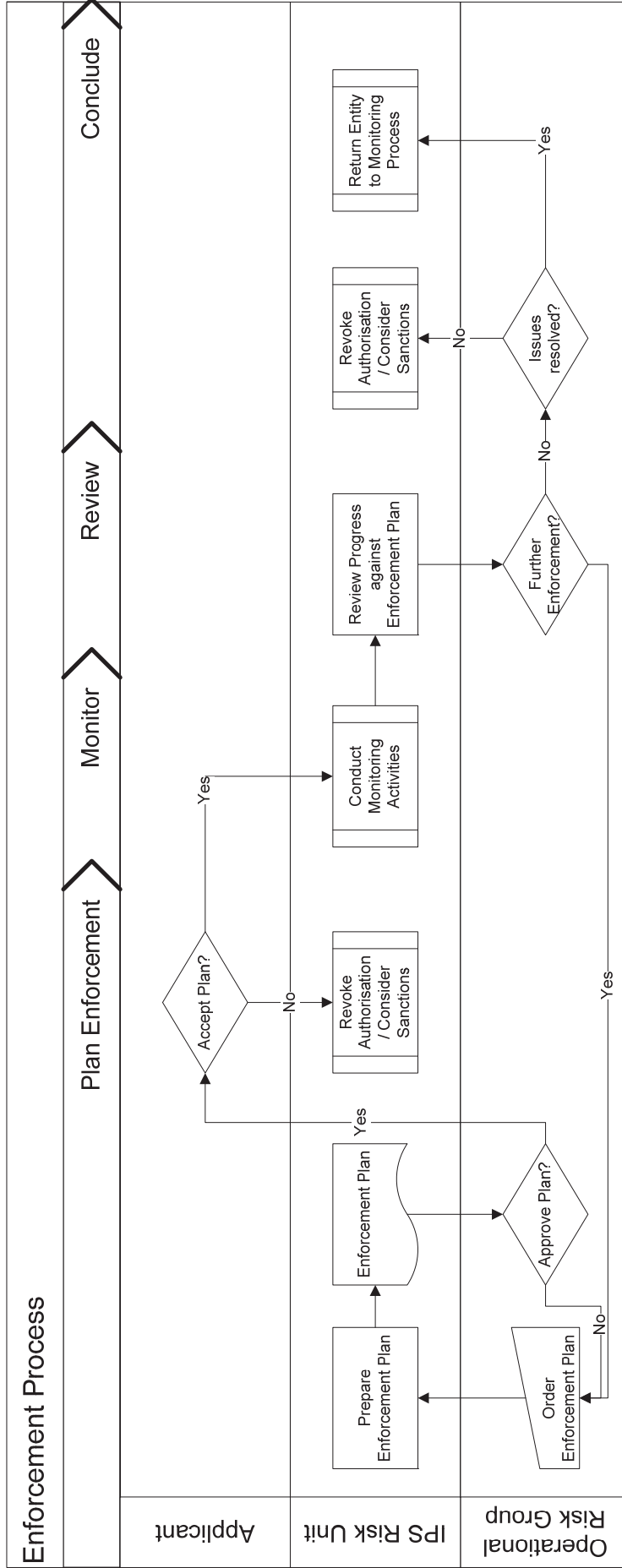
210. *Recommend a forensic investigation visit:* A forensic investigation could be scheduled, with or without obtaining further information from the Authorised Body, where there are concerns that it may pose a substantially increased level of risk. Such a risk or risks may be suspected or may have materialised in practice. An example of this would be where reports have been received from clients unable to contact any staff of the Authorised Body. If IPS was also unable to contact the Authorised Body an urgent forensic investigation visit would be scheduled to investigate the possible abandonment of the practice.

211. *Refer to Investigations Team:* This action can be considered with or without a forensic investigation visit, although it would usually occur where a forensic visit has revealed serious risks that have or are likely to materialise in the short term. However, as a guide, any issue culminating in a rating of either 6 or 7 in the Risk Category Grade Table in the IPS advanced risk assessment shown at

annex 14 is likely to result in the recommendation of regulatory action. The regulatory outcome may include possible enforcement action which could include any of the actions summarised within the following pages.

Enforcement

212. The diagram on the following page explains the enforcement process. The text following the diagram provides more information.



213. IPS will consider the appropriate level of enforcement action necessary to discipline, or remove an entity from its regulated community in appropriate circumstances. Such circumstances will usually be where there are risks of such severity to the public interest/interest of consumers that cannot be managed or mitigated without IPS taking such action.
214. Enforcement action can also be taken where lower level risks repeatedly occur and/or an entity has failed to co-operate with IPS by remedying such risks. Failure to co-operate with IPS could also take other forms including the delay or failure to submit a completed annual return.
215. The Client Protection Manager will usually recommend enforcement action if the findings of a forensic investigation visit conclude that a referral to the Investigations Team would be appropriate.
216. There may be certain circumstances however where the Authorisation & Supervision Manager could recommend enforcement action as a result of a standard risk review visit. This could occur where the Authorisation & Supervision Manager assesses that sufficient information has already been obtained and a forensic investigation would not be necessary.
217. The following sanctions are available to IPS.
- Warning
 - Reprimand
 - Conditions
 - Undertakings
 - Fine
 - Withdrawal/Rejection of Approved Manager designation (Individual)
 - Exclusion from Membership and/or Authorisation

Investigations Procedure

218. Where a referral to the Investigations Team has been made, the Investigations Manager will review the recommendation for enforcement action and request any further information from the source of the referral (i.e. the Authorisation & Supervision Manager or the Client Protection Manager) if required. A member of the Investigations Team will then prepare the case for referral to the relevant disciplinary panel constituted under the IDAR. The relevant panel will then decide whether sanctions are appropriate and the type of sanction required based on the evidence presented.
219. After decisions are made under IDAR the Relationship Officer will continue to monitor the entity unless the decision was to revoke authorisation. They will also monitor compliance with any sanction imposed under the disciplinary procedures. This process of monitoring compliance with sanctions is referred to in terms of monitoring the enforcement plan in the preceding diagram.

220. IPS' disciplinary procedures are set out in the IDAR. It is a matter for the disciplinary panels to decide on the most appropriate sanction depending on the severity of the matter. Panels currently use sanctions guidance produced by IPS to assist in the regulation of individual CILEx members. This guidance will be updated to encompass the new entity regulation remit.

Consent Agreement

221. A Consent Agreement is a mechanism for disposing of the case where an Authorised Body or Approved Manager admits allegations and agrees to the disposal of the case by consent.

222. A Consent Agreement may be appropriate in many circumstances including when dealing with material compliance failures where the Authorised Body or Approved Manager accept misconduct and are agreeable to the imposition of an agreed solution.

Prepare and Monitor Enforcement Plan

223. The enforcement plan is a plan of action agreed between the Relationship Officer and the Authorisation & Supervision Manager to monitor whether sanctions or a consent agreement have been adhered to.

224. If the Authorised Body complies with the sanctions imposed on it the matter will be returned to monitoring, unless the sanction is revocation of authorisation in which case monitoring will no longer apply. If the Authorised Body fails to comply further action will be considered. This can include further sanctions including revocation of authorisation.

Practice Management Agreement and Intervention

225. The SRC will be required to approve any recommendations regarding the withdrawal/rejection of Approved Manager designation or rejection/revocation of authorisation decisions before such recommendations are referred to the Investigations Team for enforcement action to be taken.

226. Revocation of authorisation will have the effect of ending the authorisation of an entity. The entity's managers will be liable to comply with any client protection directions made by IPS such as the Practice Management Agreement. Such an agreement will encompass taking any action necessary to deal with client files and any client money. Entity managers will be required to sign a contract upon authorisation that commits them to comply with IPS client protection requirements. The Practice Management Agreement will give IPS civil powers to enable it to manage the closure of a regulated entity. While such an agreement may be appropriate to use in certain circumstances, IPS is also seeking intervention rights, as intervention is a statutory power and will be a more effective client protection measure. The prospective subject of any intervention also has the right of appeal.

227. Intervention rights (or enforcement of the Practice Management Agreement) will have the effect of freezing an IPS Authorised Body's bank accounts, and dealing with client files in such a way that they are either returned to the clients or forwarded to another legal representative to be dealt with.
228. The steps of intervening into an Authorised Body will not be taken lightly and will ultimately be taken where IPS considers that it is necessary to protect the interests of clients and to ensure that client monies are not misapplied.
229. As part of the intervention IPS will take possession of the practice documents (which will include client files) prior to distribution. This will be done through the instruction of an intervention agent.
230. Before exercising powers of intervention IPS will consider the grounds for doing so and whether it is necessary for the protection of the public. Possible grounds for intervention include:
- suspicion of dishonesty on the part of the managers within the entity or of an employee or personal representatives of a deceased manager
 - the entity has failed to comply with the IPS Accounts Rules, CILEx Code of Conduct or IPS Professional Indemnity Insurance Rules
 - the manager of the entity has been adjudged bankrupt or made an arrangement with creditors
 - the manager of the entity has been committed to prison
 - being a sole practitioner the manager is incapacitated by illness or accident to such an extent that they cannot attend their practice
 - the manager lacks the capacity (within the meaning of the Mental Health Act 2007) to act
 - the manager of the entity has been struck off or suspended from practice
 - there has been an abandonment of practice.
231. Decisions to intervene will be made by the panels set up under IDAR. The panels may need to meet at short notice in order to ensure that clients' interests are protected. IPS will ensure panel structures provide for such an eventuality.
232. Once the decision to intervene has been made, the bank accounts of the entity will be frozen. Intervening agents will explain to the Authorised Body that the files, documents and monies of the Body have been vested in IPS. The intervening agent will take control of the Body's papers prior to taking clients instructions as to how they are to be dealt with and arrange for transfer of the bank accounts to the control of IPS.
233. Neither the intervening agent nor IPS will take on the running of any of the client matters. Agents will focus their activities on matters which are urgent and are likely to require immediate attention.

234. The money that is frozen by IPS will be held in trust and the IPS Compensation Fund will be notified of any shortfall in the client account.
235. Claims arising from clients of the entity will be dealt with via the Compensation Fund. Once a reconciliation exercise has been completed by the intervening agent of all money held by the entity the Compensation Fund can apply to transfer any money held on trust by IPS relating to the Authorised Body and belonging to clients where a grant from the Compensation Fund has been made.
236. IPS powers to hold an Authorised Body's money on trust will be derived through the intervention powers granted to it.
237. A tender will be offered for two experienced firms of intervention agents to be kept on a retainer and used where necessary. Two agents will be necessary in the event of one of the agents not having the capability to put intervention resource in place as required in a particular scenario, at very short notice for example. Such agents will be used to dealing with hostile intervention scenarios and would also be accompanied on interventions by IPS staff responsible for contract management of the agent. Each agent will go through a thorough and rigorous due diligence exercise.

Management and Compliance Roles in IPS Authorised Entities

238. The application entities will need to make to become authorised by IPS will include an application for authorisation of applicants to the role of Approved Manager. Once approved a manager will become an 'Approved Manager'. An Approved Manager must be an Authorised Person in that the individual must be sufficiently qualified to carry out one or more reserved or regulated legal activity/activities.
239. The entity must include at least one Approved Manager and the entity must have an Approved Manager(s) who has attained competencies in practice management and accounts. While the designated Compliance Manager referred to in the following paragraphs will usually have attained these competencies, IPS will accept applications from entities where one manager possesses the relevant practice management competency and another manager possesses the relevant competency in accounts. The designated Compliance Manager is likely to be the manager possessing the competency in practice management, although IPS will not specify which individual in an entity's management team must be designated in the role of Compliance Manager.
240. As IPS regulates by competence, it will authorise a body to undertake a specific reserved or regulated legal activity only if the entity has a manager who is competent to carry out the specified activity and is an Authorised Person (i.e. authorised to carry out the specified reserved or regulated legal activity).

241. IPS may reject an application for designation of Approved Manager. Approved Manager designation may also be withdrawn from an individual. Approved Manager designation may be rejected or withdrawn only if IPS deems that an individual does not meet the criteria of a 'fit and proper person' as described in the IPS Authorisation Rules.
242. The application process for authorisation will also require Applicant Bodies to nominate one of the managers seeking to become an Approved Manager to the role of Compliance Manager.
243. The Compliance Manager, as well as being an Approved Manager for IPS regulated entities, must be a manager authorised to conduct a reserved or regulated legal activity.
244. The Compliance Manager will be able to delegate day to day compliance duties to a non-manager or third party compliance specialist who may be better qualified to undertake such a specific day to day compliance role. The Compliance Manager will however retain ultimate lead responsibility for the Authorised Body's compliance with the CILEx Code of Conduct and IPS rules including the Accounts Rules.
245. The Compliance Manager must take all reasonable steps to ensure compliance with the terms and conditions of the entity's authorisation and IPS regulatory requirements. The Compliance Manager will also be responsible for any obligations imposed under the Accounts Rules. While the Compliance Manager has lead responsibility for compliance, all managers have compliance responsibilities, and specifically with Principles 8 and 9 of the Code of Conduct which relate to business and financial management.
246. The Compliance Manager has responsibility for recording compliance failures in a risk register.
247. If the compliance failure is 'material' then this failure must be reported to IPS as soon as reasonably practicable.
248. In considering whether a failure is 'material' the Compliance Manager will need to take account of various factors, such as the detriment or risk of detriment to clients, the extent of any risk of loss of confidence in the Authorised Body or in the provision of legal services, the scale of the issue, and the overall impact on the Body, its clients, and third parties.
249. IPS will work with Compliance Managers from the authorisation application stage to help them develop or improve risk management plans for the entity and thereby deliver adequate protection for consumers. IPS has produced a Business & Compliance Review Template to assist Compliance Managers in reviewing risk management and compliance processes. This template is shown at **annex 18**.

250. The Compliance Manager will be responsible for notifying IPS of any changes that may affect the entity's authorisation before any change occurs, in a specified period to be determined by IPS. If the change was one that was not anticipated then the Compliance Manager will be expected to inform IPS of the change as soon as reasonably practicable. IPS will then consider any impact the change may have on the entity's authorisation.

SECTION D - THE IPS RISK FRAMEWORK

251. The risk framework has been developed through research and analysis conducted independently on behalf of IPS in early 2012 which can be found at **annex 21**. The framework reflects a substantial programme of research, drawing on primary and secondary sources, to understand the likely emergent operating models for legal services entities which IPS may regulate.
252. The framework informed by the research findings mentioned above has been adapted by IPS to form its basic risk assessment of entities.
253. The basic risk assessment is used to conduct desk based research and analysis of information provided by the entity and/or information which has been obtained by IPS on the entity. Such information could have been gained as a result of regulatory history, either with IPS or third parties including other regulators and prosecuting authorities.
254. The research also led to the development of an investigative questionnaire tool. The content of the questionnaire was reviewed, and supplemented by the application of the extensive experience IPS staff have in conducting monitoring visits to firms of solicitors in England and Wales. The questionnaire now forms part of the Authorised Body application documentation shown within **annex 17**.
255. The risk framework was designed so that it can be continually tested and improved upon so that it remains relevant to emerging developments and risks in the legal sector, and any revisions in detail can be made without compromising the overall framework. The framework focuses on key risk issues with minimal reliance on assumptions about legal service entities' particular size, structure or purpose.
256. The risk framework supports outcomes focused regulation as it allows IPS to regulate a range of legal services entities without prescribing how they practise law.
257. The framework looks at the risks as they occur within the specific entity and the strategies it employs to manage and mitigate them. By taking a holistic, integrated view of risk and its management, the risk framework discourages non-compliant behaviour and encourages mindfulness about the entity's business and the risks it creates, and encourages good regulatory practise.
258. The different attributes of the risk framework are explained below.

Outcomes Focused

259. In keeping with the preferred approach of the LSB, the risk framework is designed to maximise the achievement of outcomes, rather than to force the adoption of particular working practices or operating models. It avoids the use

of prescriptive, tick list assessments in favour of assessing how well entities are able to contribute to (or not diminish) the achievement of outcomes.

260. IPS will work with the entities it authorises to achieve the outcomes it has identified as beneficial to legal services consumers.
261. The IPS outcomes are stated under each of the nine principles in the CILEx Code of Conduct. IPS has also developed measures and indicators designed to assess the probability and impact of the risk factors that will affect the achievement of IPS outcomes. IPS will use this mechanism during its regulatory processes to assess risks posed by entities from the point at which they seek authorisation.
262. The IPS advanced risk assessment process contains a table of information (the Risk Category Grade Table) which maps all the IPS outcomes stated in the Code of Conduct with broad classifications of specific failures that could potentially occur at an entity providing legal services. This table, shown at **annex 14**, is not designed to be applied in a prescriptive way, as this would be inflexible and contrary to an outcomes focused approach. A flexible approach to the assessment process allows a wide array of supporting factors to be taken into consideration that could either increase or reduce the actual level of risk posed by an entity.

Risk Based

263. The IPS risk based regulatory regime will support the regulatory objectives including protecting the public interest and the interests of consumers, whilst enabling IPS to take a proportionate approach to regulation. In so doing IPS will be able to target its regulatory resources more effectively at those entities that present higher risks, and thereby ensure that protection of consumers and the public lies at the heart of IPS activity.
264. IPS will help/support/assist entities to minimise the extent to which risk factors impede the achievement of outcomes, and will use proportionate disciplinary and enforcement processes against those entities that do not engage constructively with IPS to achieve the outcomes.

Objective and Verifiable

265. IPS will be a cost effective proportionate regulator. This will be especially important as entities can choose where to be regulated. It is also important that regulation is rigorous and credible if IPS is to develop a sustainable regulatory business. Therefore the risk framework is designed to rely wherever possible on simply collected but reliable and verifiable data through various sources to inform key decisions.

Open and Adaptive

266. Reflecting partly the needs of an outcomes focused and risk based approach, but also the fact that the IPS move to become an entity regulator will create a new market which is difficult to anticipate, the risk framework has been designed to maximise feedback and ensure that IPS and the entities it regulates can learn from and adapt to experience.
267. The risk framework reflects the IPS position as a prospective new entity regulator in a particular market niche. IPS will need to develop a critical mass of supervised entities, which may take some time to achieve. The risk framework can be deployed economically by a relatively small team with a relatively small number of supervised entities, but can then be used as a framework able to cover many more supervised entities in future.
268. The open and adaptive approach will also allow the framework to be readily adapted to new business models. The framework will be applied in a way which uses every opportunity for IPS to provide constructive feedback to entities on how they can better manage risk from the application stage and through each stage of the monitoring process after the entity is authorised.
269. Relationship management is key to this open and adaptive approach. Each entity will be allocated a Relationship Officer as soon as the application for authorisation is received. The Relationship Officer will be the primary point of contact in advising the entity Compliance Manager on risk management and compliance issues.
270. Relationship Officers will each have their own portfolio of Authorised Bodies and will be the first point of contact for the Authorised Body's Compliance Manager. The Compliance Manager at the Authorised Body will be able to contact the Relationship Officer, by telephone, email or letter to discuss and seek guidance on compliance and risk management issues.
271. It is a matter for the IPS Strategic Risk Committee (SRC) under advice from the Operational Risk Group (ORG) how IPS targets its regulatory resources to reduce risk and improve consumer outcomes in the particular niches of the legal services market it regulates.

Risk Factors, Risk Measures and Indicators used in the IPS Risk Framework

272. IPS recognises that risk factors can change, for example, due to new technology, economic and other environmental changes. The Oxera framework will continue to be useful in assisting IPS to understand the wider developing risks affecting the legal sector in England and Wales by area of law and practice model. This understanding will be enhanced if regulators work together with the LSB in contributing to collection of data on the risks posed by their respective regulated communities. The data gathered in furtherance of

this understanding will provide an important enabler in the continued development of the IPS environment ratings shown in the Environment Rating Table at **annex 13**.

273. The aim of the risk framework is to ensure that IPS can assess whether the entities it regulates will meet the specified outcomes in its Code of Conduct. The outcomes have also been framed in such a way to ensure the IPS regulated community clearly understands that stated outcomes stem from the professional principles to which they must adhere. The factors which may affect the achievement of the outcomes are assessed through measures and indicators used in:
- the Basic Risk Assessment (Desk Based)
 - the Advanced Risk Assessment (Visit Based)
274. This combination of desk based and visit based assessments ensures that IPS can effectively measure and assess the broad range of risks posed by each entity it regulates. Risk assessments will be conducted against all the services provided by the legal service entity encompassing reserved, regulated, and non-reserved activities.
275. IPS will not conduct visits to entities unless the basic risk assessment concludes that a visit is necessary. However, random visits will be carried out to ensure Authorised Bodies understand that the information they present to IPS on how their systems and procedures operate may be checked. Random visits will also be helpful in testing the accuracy of desk based assessments.
276. IPS will therefore authorise some entities without a risk review visit. The ratings guidance supplied in the advanced risk assessment process will still be referred to in such circumstances, as the guidance provides useful information on whether any information gaps would best be met by a visit, or whether the Relationship Officer reviewing the application can deal with any information gaps by telephone or correspondence.
277. Other factors that may determine whether a visit or any other type of regulatory action/sanction may be appropriate will include the basic risk assessment thresholds set by the SRC, and the level of co-operation IPS receives from the entity in dealing with any information gaps. This supports a risk based and outcomes focused ethos as Relationship Officers can take a more holistic approach when recommending any appropriate courses of action.

Introduction to IPS Entity Risk Assessment Processes

278. Risk factors are used to assess the probability and impact that IPS outcomes will not be achieved by a particular entity and, in aggregate, by the community of regulated entities.

279. It must be stressed that IPS will be using both quantitative and qualitative measures and that numerical ratings shown in risk assessment processes are used purely as a guide to risk based decision making.
280. The risk framework assesses the impact and probability of risks at initial application, the annual return stage, and where monitoring of the entity has identified a potential change in its risk profile, such as where it has notified IPS that it is to take over another legal business for example.
281. The advanced risk assessment process is used as part of the visit process as it is more geared to the measurement of actual capability. This contrasts with information sent to IPS by an entity to explain how systems and procedures should operate, as such information will not show if, or how effectively, such systems and procedures operate in practice.
282. Reference to the advanced risk assessment guidance can also be useful when conducting basic risk assessments, particularly the references to specific risk failure types. At the authorisation application stage for example, impact and probability scores in a basic risk assessment could fall below the threshold where a risk review visit would be triggered. However, the application could lack detail or information provided could contradict other information. In these circumstances the Relationship Officer may recommend a risk review visit to test the information provided.
283. Impact scoring and basic probability scoring will be conducted for all entities through the basic risk assessment process. Scoring and assessment take place across the whole entity, including regulated and non-regulated activities.
284. Each entity will be required to explain its business and its constituent practice areas to allow IPS to understand the aspects of the practice which will need to be assessed.
285. Impact scores are a multiplicative function, the product of measures for environment and size. Impact scores are an index, with no upper boundary as the size of an entity is potentially unlimited and could be compounded by the complexity and risk inherent in its environment. For that reason, the scoring model needs to allow every entity to be assessed on its own terms and take account of its relative impact. This information is particularly important in helping IPS to develop its risk management strategy across the community of regulated entities.
286. Probability scores are an additive function consisting of the aggregate of measures for history, leverage, dependency and systems, which may balance one another out.
287. Probability scores are a ratio, with an upper bound equivalent to 100%. In practice, every entity will exist in the middle ground between 0% (no risk) and 100% (certain risk).

288. Probability scores are more directly critical. As entities move closer to 100% they not only increase in priority for attention, but can immediately become a concern. For that reason, in probability scoring we allow for problems to immediately escalate an entity to become a priority, e.g. if an entity suddenly has no Approved Managers competent to perform in a practice area.
289. The basic and advanced risk assessment processes are explained in more detail below.

The Basic Risk Assessment

290. The basic risk assessment is a desk based assessment of the information received on each entity by IPS. Information received by IPS when the entity applies for authorisation will include details of its structure, processes and procedures, including how it will manage risk, and the activities it seeks to undertake. The information will be supplemented with additional applications for the approval of individual managers including the designated Compliance Manager.
291. All the information supplied by the entity will be cross referenced with other information held about the entity. This will include information which could have been gathered from other sources, e.g. other regulators or from CRB checks supplied by those seeking to become Approved Managers. The information gathered will be combined with further factors, including the IPS assessment of the external environment in which the firm operates.
292. When an entity is authorised, the entity's Compliance Manager will be responsible for submitting annual returns. The Compliance Manager will also have on-going obligations throughout the year such as advising IPS when any material risks have occurred or are expected to do so, which will include any significant changes to the structure of the entity.
293. IPS Relationship Officers will conduct a basic risk assessment of all entities both at the application stage and at least annually thereafter. The basic risk assessment will inform IPS of whether an advanced risk assessment (visit) is needed after the initial application stage. This could occur for example if IPS receives intelligence either from the entity itself or from a third party which significantly affects the entity's risk profile.
294. Where there is a significant change in the risk profile, or intelligence indicates a potential change, the Relationship Officer will undertake a further basic risk assessment having first contacted the entity, if necessary, to gather further information. The Relationship Officer will then need to decide whether the risk level has changed to a degree significant enough to recommend further action.
295. Risk factors are divided into two broad categories, 'Impact' and 'Probability'. These factors are multiplied together to determine the level of risk.

Impact x Probability = Risk

296. Impact Factors determine the effect an entity may have on the IPS regulated marketplace should its risks crystallise and IPS outcomes for consumers are not served.
297. Probability Factors determine how likely it is that those effects will happen, i.e. that the entity cannot serve consumers in a way which contributes to the achievement of IPS outcomes.
298. The six risk factors that the framework uses to assess a legal service entity's impact and probability are:

Impact

- Environment
- Size

Probability

- History
- Leverage
- Dependency
- Systems

Environment

299. 'Environment' is a function of the clients the entity works with and the services it delivers to them. Environment is a residual risk factor which must be used in assessing the likely impact an entity may have. For example, one entity may only deal with informed, non-vulnerable clients in generic transactions where only limited interests are at stake, while another may only deal with highly complex transactions for highly vulnerable clients with a lot to lose. More sensitive, more complex caseloads mean potentially much greater impact if an entity runs into trouble.
300. Where an entity deals with publicly and privately funded work in a specific area of law only the higher rating will be used for that area of law. If an entity undertakes a number of different areas of law the ratings for each area are added together. The rating for each specific area of law would also be doubled if the majority of clients serviced in that area of law were classed as vulnerable clients, as described in the following paragraph. IPS would therefore be more able to differentiate those entities dealing with a broad spread of legal work and a large base of vulnerable clients. Such entities could also present a higher risk if they were not adequately resourced to effectively deal with a broad range of legal areas in a way which best meets the needs of vulnerable clients.
301. The environment rating is determined through the authorisation application and annual return, which requires the entity to identify the different practice areas

it has, and the types of clients to which it delivers services in each legal practice area. The latter question will focus on vulnerable clients. The question will be accompanied by a description defining client vulnerability to assist the entity in assessing the proportion of vulnerable clients which it services. The definition and related approach is illustrated below.

302. A consumer or client is considered by IPS to have some form of vulnerability if they meet the following definition: “a consumer or client is to be regarded as vulnerable if, in obtaining or seeking to obtain legal services, they are at risk of encountering difficulties arising from any specific or general limitations as to their physical abilities, sensory abilities, cognitive abilities, linguistic abilities, geographic location, economic resources or any combination of these”.
303. The entity is required to assess whether more than 50% of its clients in each practice area it undertakes meet the definition of client vulnerability. For any practice area which meets this definition the environmental rating for that practice area will be doubled to ensure that client vulnerability is assessed as an important differentiating factor in the overall basic risk assessment rating score. If an entity undertakes publicly funded work, such work would also fall within the definition of client vulnerability. The doubling of each risk rating score by area of work denoting client vulnerability will not necessarily prompt further scrutiny/action by IPS if the entity has demonstrated within the information it provides how it services the requirements of vulnerable clients.
304. IPS has tested the basic risk assessment process when conducting benchmark regulatory visits to immigration practitioners. It has used a rating for immigration work (clients eligible for public funding) of 4 out of 5 as opposed to a rating of 2 out of 5 given for private immigration work (e.g. work permit applications). It should be noted that the higher rating is applied to ‘eligibility’ for public funding and not whether the actual retainer was carried out on a private or publicly funded basis. All such rating scores will be reviewed by the SRC along with all other ratings used within the risk framework. Ratings for review include environment ratings and ratings on specific failure types, examples of which are shown in the explanation of the advanced risk assessment process at **annexes 13 and 14**.
305. The environment ratings will also be reviewed periodically using the Oxa framework through interpretation of available research and feedback on the relative risks of different market segments.
306. When authorising environment ratings for specific areas of law the SRC will have regard to the risks inherent in the practice area, related to the interests at stake, the involvement of client money, the sensitivity of information, the complexity of advice, the typical duration of transactions and the typical transaction values involved.
307. The specific market segments denoted by the Environment Rating Table within **annex 13** will be supplemented and amended over time on the advice of the

SRC. The ratings will be supplemented in line with the wider range of market segments mentioned within the Oxera framework. The Oxera framework includes tables which present categorisations of legal services by type using several different data sources including data obtained from CILEx and the Law Society.

308. The main difficulty with using narrow market segment descriptors is that law firms often adopt their own categories when describing the work they do. Factors that can influence this may be historical, (e.g. the categories used by partners at other firms they may have worked in the past), categories adopted by indemnity insurance providers, or categories programmed within legal accounts and case management software.
309. The Environment Rating Table within the basic risk assessment process shown within **annex 13** gives examples of how numerical ratings can be applied to different areas of law, and as such does not include all of the categories mentioned below.
310. IPS intends to collect data from regulated entities using the categories mentioned below. While some of the more specialised categories may not be specified on the application for authorisation and the annual return, entities will be expected to provide details of all areas of activity including areas of law falling outside of the main areas of legal practice categorised in IPS authorisation applications and annual returns.
- Crime—prosecution
 - Crime—defence
 - Injury-prosecution
 - Injury-defence
 - Wills
 - Trusts
 - Probate
 - Conveyancing- Residential
 - Conveyancing – Commercial
 - Landlord and tenant
 - Environmental Law
 - Advocacy
 - Fraud
 - Family
 - Mediation
 - Pension Law
 - Liquor Licensing/Gaming
 - Litigation General
 - Litigation Commercial
 - Charity Law
 - Children
 - Disputes
 - Employment

- Immigration
- Consumer problems
- Welfare and benefits
- Community care Education Benefits (including housing benefits)
- Mental health
- Human rights Actions against the police Discrimination (excluding employment)
- Intellectual property rights
- Patents Trademarks Copyright Confidentiality
- IT
- Taxation
- Business Affairs
- Insolvency and Bankruptcy
- Maritime/Shipping
- Professional Negligence
- Financial and Investment Services
- Civil Liberties/Human Rights
- Corporate Finance
- Education Law
- Planning Law
- Media/Entertainment Law
- Debt management (debtor) Debt collection
- Other public and administrative law
- International Law
- Libel and Defamation

Size

311. As entities take on a greater number of clients and cases, they can have a much greater impact if risks crystallise. Size effects can be described as 'direct', where more clients are damaged and potentially clients have transactions with more at stake. Size effects can also be described as 'indirect', where greater size results in greater complexity which may lead to matters taking longer to resolve.

Impact = Environment x Size

312. These two risk factors have a multiplicative relationship in that the assessment of each factor is multiplied with the other, because a larger entity working in a high risk environment is of much greater concern than a larger entity in a low risk environment.

History

313. This is the track record of the entity in terms of its owners and key employees, its history with IPS and with other regulatory bodies and its history of receiving and managing complaints. Any of these areas can give cause for concern that the entity might not be properly managed or its services not competently

provided/delivered. Such concerns can be taken as a sign of greater probability that the entity will be a risk to the achievement of IPS outcomes.

Leverage

314. This is the ratio of fee earners to the number of Approved Managers. Leverage is a reasonable strategy to lower costs. However, as leverage increases, it increases the probability that legal work will not be carried out properly as fee earners could be managing higher workloads without proper supervision.

Dependency

315. This is the relationship of the entity to its largest clients. An entity's business may become over-dependent upon key clients or types of work. As such dependency increases, it increases the probability of risks to financial sustainability and independence and integrity in advising other clients, directly because of conflicting interest, or indirectly because of neglecting work of lower value to the firm. If a business loses its largest clients the business could face a higher risk of financial instability.

Systems

316. Systems should operate effectively and be relative to the entity's size and complexity. Its systems should provide mechanisms to ensure that client money, client information and advice are delivered consistently to high standards of quality, efficiency and timeliness, and that operations and services can be effectively managed. Inadequate or non-existent systems heighten the risk that client or operational requirements will go unfulfilled, increasing the probability that something will go wrong.
317. Systems can be categorised as financial systems, management systems, and information systems within the systems risk assessment. Each system is scored individually then divided by three to achieve an overall rating for systems.

Probability = History + Leverage + Dependency + Systems

318. The four risk factors of history, leverage, dependency and systems have an additive relationship. This means each factor is assessed individually and then the assessments are added together. This is done because to some extent, high ratings in one risk factor may balance off against low ratings elsewhere. For example, an entity with high leverage is of much less concern if it has an exemplary history, low vulnerability and robust systems.

The Advanced Risk Assessment

319. The advanced risk assessment process is described at **annex 14**. The process has been adapted from a similar risk assessment process applied in practice over several years by a large Approved Regulator. This process is used to

categorise the severity of individual risks at an entity so that the highest category of risk found can be used as the basis for determining the most appropriate course of regulatory action. IPS has also adapted this process by cross referencing risk failure types to the principles and outcomes shown in the IPS Code of Conduct.

320. It should be noted that IPS staff have a number of years of experience in applying the above mentioned forerunner to the IPS advanced risk assessment process in practice. However, this earlier version was used as the sole basis to determine risk. IPS has determined that the earlier risk assessment process used in isolation is not sufficient to form the basis of a risk framework. The new version is more suited to the review of whether an entity has complied with IPS outcomes in practice. Such a review can be carried out more effectively following a visit to an entity. This is because the process records actual risk events, as well as whether any systems and procedures are deficient.
321. The IPS risk based approach to regulation uses the advanced risk assessment process together with the basic risk assessment process. The advanced risk assessment process is more geared towards identifying the level of severity of particular types of risk and the type of action IPS may need to take to address such risks.
322. It is important to note the limitations in the advanced risk assessment process, in that any grade attached to a risk failure type can only be used as a guide to the relevant severity of a specific type of risk. As such it is not appropriate for risk failure types and grades to be seen in isolation as they can be taken out of context. Therefore, this type of assessment should be combined with an assessment of the context of the particular failure, as the context is likely to influence the relative impact the specific failure has or may have on the client.
323. The advanced risk assessment documentation shown at **annex 14** can also be used as a guide by IPS staff when assessing information provided by an entity, such as at the authorisation application and annual return stages. Using the documentation at the annual return stage may be particularly useful when assessing risk events recorded in a risk register.
324. IPS staff conducting risk assessments will also be trained to identify where information provided by an entity may not have been correctly completed. For example, there may be inconsistencies in the information provided that could point to the failure of the entity to inform IPS of material risk events. A risk review or forensic investigation visit recommendation may be the likely consequence depending on the nature of any such inconsistencies.

Comparing the Assessments

325. If a risk review visit is undertaken the advanced risk assessment compiled by the officer conducting the visit will show whether the basic risk assessment

score is an accurate representation of the actual risk posed by the entity. The comparison of basic and advanced risk assessments from all entities visited will also provide useful data on the accuracy and continuing relevance on risk assessment scoring to the Strategic Risk Committee (SRC).

326. The advanced risk assessment visit process will test the information provided for the basic risk assessment through a combination of interviews with senior staff at the entity, reviews of systems and procedures, reviews of files and complaints, and a review of accounting information.

Development and Testing of the Risk Framework

327. The success of this risk framework depends upon it being supported by an extensive review capability, to consider its results, learn from them and direct its further evolution.
328. Initial development and testing of the risk framework took place in early 2012 by conducting benchmark visits to a number of CILEx member self-employed immigration practitioners. In addition to testing the risk framework the visit process was designed to benchmark levels of compliance with the existing Code of Conduct and to test the immigration competency scheme.
329. The benchmark visit process began by profiling a selection of immigration practitioners to be visited using the Visit Profile Form shown at **annex 16**. This form collected information currently held on each practitioner to determine their suitability for a visit. Once selected for a benchmark visit the respective practitioner was sent a letter showing the date of the visit together with an explanation of the format and purpose of the visit. Practitioners were advised to contact IPS to confirm the suitability of the visit date. The letter was also followed up by IPS visiting officers contacting each of the respective practitioners by telephone prior to each visit taking place to verify attendance and clarify whether any further explanation was needed concerning the visit process.
330. Each visit was scheduled to last one day and consisted of an opening meeting, review of systems and procedures, matter files, and accounting information followed a closing meeting. Data collected was then entered onto the Visit Summary Form shown at **annex 15**. The information collected was also applied to the basic risk assessment and advanced risk assessment processes shown at **annexes 13 and 14** respectively. Each practitioner was subsequently sent a report of the visit and was advised to confirm in writing how they had met (or would be meeting) the specified compliance requirements summarised in the report. Each practitioner subsequently provided the requisite confirmations.
331. The basic and advanced risk assessment processes were found to have operated effectively in that the basic risk assessment scores correctly graded the relevant levels of risk presented by each of the practitioners. The outcome

of the advanced risk assessment scoring process also correctly identified the highest level of risk which was then matched with the appropriate monitoring activity.

332. IPS will continue to develop its risk framework by testing it with CILEx self-employed members, and other legal businesses that have requested a visit from IPS to assist in the framework's continuing development.

Regulatory Conflict

333. While some businesses are made up of individuals regulated by different organisations depending on the individual's qualifications and professional body membership, the consumer must be made aware of the regulator of the business, as it is important for any consumer to know that the professional service provider they use is regulated by an approved regulator.
334. Both the consumer and each individual employed within an entity providing legal services must understand which rules govern the entity. This is especially important as some professional organisations and their regulatory arms may have different regulatory arrangements.
335. The issue of regulatory conflict is addressed by Rule 8 of the IPS Authorisation Rules. Rule 8(1) states "if a conflict arises between a requirement imposed on an Authorised Body or on an employee or Manager of the body by IPS as the regulator of that body, and on an individual Manager or employee of that body by another approved regulator, then the requirement imposed by IPS prevails over the requirement imposed by the other approved regulator".
336. Rule 8(2) states "If a conflict arises between a requirement imposed on a non-IPS authorised body or on an employee or Manager of that body by another approved regulator as the regulator of that body and on an individual Manager or employee of that firm by IPS, then the requirement imposed by the other approved regulator prevails over the requirement imposed by IPS".
337. The aforementioned rules are necessary to ensure that the rules of the regulator of the entity are given precedence where the rules to which an individual employed by the entity may conflict.
338. IPS is also aware that other regulatory requirements may potentially impact on members of its regulated community. Such requirements may include matters that fall under the remit of the FSA regarding financial services related work or HMRC in relation to trust and company services providers for example. IPS will ensure that any approach it follows in relation to such matters does not conflict with the regulatory requirements imposed by such government departments/agencies. IPS will also rely on the principles contained in the Framework Memorandum of Understanding (MOU) to which IPS and a number of other regulators are signatories.

339. The proposal made in this application to co-operate with other regulators of legal entities and prospective regulators of legal entities will assist in ensuring that IPS and other regulators work together so that regulation is conducted in the public interest.

PART 6

OUTCOMES FOCUSED

REGULATION

PART 6 - OUTCOMES FOCUSED REGULATION

Introduction

1. This part of the application describes the approach that IPS takes to outcomes focused regulation (OFR). Central to the approach adopted was the decision to frame the regulatory package around a core document. For IPS this core document is the Code of Conduct (the Code) which appears at **Appendix 6** to this application. The bulk of this part of the application therefore looks at the Code and how this has been redrafted to facilitate operational OFR going forward. A more detailed exploration of considerations in the formulation of the IPS approach to OFR is contained in **annex 22** to this application.

Outcomes focused regulation

2. OFR is a framework of regulation that focuses on outcomes that the regulated community must meet - without specifying in terms of narrowly prescriptive rules how they must meet them. This gives essential flexibility for services to be delivered in different ways and to develop without constant amendment by the regulator. It places responsibility for achieving the outcomes on the service provider and ensures regulatory action focuses on significant risks to the outcomes rather than breaches of particular narrow rules.
3. In giving regulatory effect to the outcomes that are to be met, IPS started with a set of consumer outcomes. These consumer outcomes are at **annex 23**. However, it must be appreciated that translating consumer outcomes into a clear regulatory package requires restatement of those outcomes in terms that are both transparent, understandable, relevant and measurable not simply for the consumer, but also for those who are subject to regulation together with those who are regulating and those who have oversight of that regulatory process.
4. IPS undertook a process of transposition and distillation of the consumer outcomes. This resulted in the consumer outcomes being reframed into a set of regulatory outcomes. Those regulatory outcomes are detailed both within the table referenced at **annex 24** and the further explanations of the principles of the Code given below.
5. Once the regulatory outcomes were established, IPS chose to express those outcomes as broad Principles within the Code. The rationale for this was to ensure transparency within the regulated community as to the minimum they must do to achieve the outcomes. IPS assessed that this was the most appropriate method by which to ensure transparency within the regulatory package. Therefore, whilst the regulatory outcomes are expressed as outcomes in the IPS Code, IPS accept that these remain rules – albeit rules that are sufficiently broad so as to truly give effect to the outcomes required. A table detailing the transposition between Principles, Regulatory Outcomes

and the Outcomes - as they are expressed - within the Code is contained in **annex 24** to this application.

6. IPS has built its regulatory arrangements around the Code of Conduct. This was already principles based and outcomes focused but applied only to individual members of CILEx. It has therefore been revised to meet the challenge of regulating entities and individuals exercising autonomous practice rights in addition to the CILEx membership. The Code will therefore continue to apply to all CILEx members, not only those regulated under the practice rights schemes.
7. The principles in the Code are supported by outcomes. Clear requirements are also imported by additional rules within the regulatory package (such as the Accounts Rules) and by agreement during the authorisation process. IPS currently has only one area of guidance under the Code. This relates to the handling of first tier complaints. IPS expects all future guidance under the Code to be solely for the purposes of providing additional clarification in respect of the outcomes. In line with best practice in relation to guidance, IPS expects that its guidance will be responsive and remain under continual review so as to reflect the needs of the regulated community. As such IPS does not propose to issue further guidance to the Code at this juncture, but instead to await experiential feedback from its regulated community as to the need for, and scope of, any such guidance.
8. IPS submits that the Code, in retaining principles as the basis for its regulatory structure, does not preclude its regulatory package from being focused upon outcomes. As has been recognised academically, "OFR can be a natural concomitant to PBR. Principles express the purpose of the rule, and either in themselves express the outcomes to be achieved or can easily relate to particular types of outcomes. For many regulators, PBR and OFR go together and, rhetoric aside, can be largely interchangeable."¹ IPS views PBR and OFR as functionally indistinguishable in operation. Retaining the existing structure of principles, supported by outcomes – albeit expressed as broad and purposive rules – within the Code permits a commonality of structure between the existing Code and the new Code and assimilates the new provisions required for the regulation of entities and those with autonomous practice rights in a structure already familiar to those IPS currently regulates. In this section therefore, where IPS refers to OFR, it accepts that PBR is retained within its package. As detailed however, the IPS position is that the two positions are, for IPS, functionally indistinguishable in operation.
9. IPS has separately defined 'consumer' and 'client' within its regulatory package. Whilst this may at first appear to limit the scope of their regulation, this is not the case. The split in definition is assessed as most appropriate for communicating in a transparent manner the scope of the IPS regulatory

¹ Black, J (2011) *OFR: the historical context*. In: Hopper, A. and Treverton-Jones, T., (eds.) *Outcomes-focused regulation*. The Law Society, London.

provisions to those it regulates in certain areas. This does not mean that IPS does not appreciate that a 'client' remains a 'consumer' of legal services. As such outcomes that reference 'clients' but not 'consumers' ultimately remain consumer outcomes. However, a 'consumer' does not automatically become a 'client'. As such, IPS assesses that it is important to be totally transparent when requiring its regulated community to have regard to the interests of those who are not – and may never become – their clients.

10. IPS has developed its organisational structure to support OFR and the regulation of all entities and individuals that fall within IPS' future regulated community. Part 5 of this application provides more information on governance and how the IPS approach to OFR and risk based regulation will be applied.
11. The Legislative and Regulatory Reform Act 2006 and the Statutory Code of Practice for Regulators demanded that regulation be 'targeted' as well as transparent, accountable, proportionate and consistent. The Legal Services Act 2007 (the Act) adopts these requirements. It specifies the purpose of regulation in the legal services marketplace by reference to the regulatory objectives and professional principles.
12. The principle that regulatory activities should be 'targeted only at cases in which action is needed', and the requirement for regulation to be 'outcomes focused' and 'risk based' is derived from s.28 of the Act.
13. IPS' regulatory arrangements recognise the need to balance competing interests in the construction, interpretation and application of rules. IPS recognises the appropriate point of balance by reference to the Code of Conduct, the core document within its regulatory package. The Code not only contains the principles and outcomes to be adhered to and met, but provides in its structure and by its positioning, the mechanisms whereby the content of the provisions in their totality are to be operationally applied.
14. Arguments favouring expression of outcomes in language that makes those outcomes discernible as an end result of an undefined process, rather than expression of those outcomes as clear and unequivocal requirements are – for the purposes of actually performing the regulatory function – wholly semantic. By formulating its regulatory arrangements in specific areas in terms of prescriptive provisions overarched by principles and outcomes – albeit expressed as broad and purposive rules - by authorising and regulating by reference to risk and by tiering its provisions, IPS has correctly discerned and appropriately applied the necessary balance between competing interests in the construction, interpretation and application of its regulatory package.

The Code as Core Regulatory Document

15. For IPS, the Code will have four potential audiences:

- the public
 - Authorised bodies, CILEx Practitioners, Approved Managers and applicants for such designations
 - the CILEx membership, and
 - other regulators
16. The existing Code was already both principles based and outcome focused. The Code had been well received and worked well in practice, and it was logical to place the revised version at the heart of OFR. However, the existing Code was not drafted to provide for entity regulation or to accommodate the regulation of individuals in the management of their practice (for example sole practitioners) or in the autonomous exercise of practice rights within an entity regulated by another approved regulator. It has been possible to develop the existing Code to deal with the new regulatory arrangements which are needed.

Structural Approach

17. The approach has been to amend the Code in such a way so as to allow it to overarch all IPS regulatory arrangements. In doing so IPS has adopted a tiered approach to its regulatory requirements. The Code provides the written basis for what will become the operational approach. It is the core regulatory document that both permits and necessitates that the remainder of the IPS rules are, irrespective of their level of prescription, operationally applied in an outcomes focused manner.
18. Having considered and addressed risk during the formulation of the rules, the remaining risk based element of the IPS' regulatory function is provided for in the Authorisation Rules and the IPS regulatory arrangements and delivered in operation by qualitative decision making in accordance with the IPS Risk Framework.
19. Regulatory enforcement actions are linked to the provisions of the Code. This ensures that all sanctions are referenced to failures to adhere to principles or meet outcomes. IPS' principles and outcomes have been drafted to ensure compliance with the regulatory objectives.

General Structural Considerations

20. IPS has reformed its regulatory arrangements into a structure that:
- delivers the regulatory objectives and the professional principles detailed in the Act
 - is clear, concise and comprehensive
 - retains the best elements of its existing membership regulation
 - covers all those individuals and entities that IPS now seeks to regulate
 - covers legal practice and practice management
 - avoids regulatory duplication of matters already addressed by law

- addresses the education and training and professional development requirements of all those IPS regulates
- provides for regulatory decisions to be based upon risk
- permits management of its regulatory operation in accordance with good corporate and regulatory governance, and
- provides for clear separation of the regulatory functions from representative functions.

21. The Act does not impose any hierarchy upon the regulatory objectives. The significant overlap and interplay between objectives would make this unworkable. The same is true of the IPS' regulatory principles. IPS has therefore viewed both the regulatory objectives and its regulatory arrangements as separate collective wholes. The interplay between them is explained further below². IPS has thereby ensured that the requirements of the regulatory objectives and professional principles are effectively translated and fully met by its regulatory arrangements.
22. The IPS regulatory package is compatible with the eight regulatory objectives and has been framed in terms that IPS assesses are most appropriate for meeting them in the exercise of its regulatory functions. By building on the solid foundation of the pre-existing Code and by adopting the above approach, IPS has constructed a regulatory framework that will serve it well in the regulation of its envisaged new regulated community.

Considerations in Approach Development

23. In developing the approach to its revised regulatory structure and Code, IPS has had regard to academic papers and publications from diverse sources. **Annex 22** to this application further discusses the considerations in the IPS developmental approach, both in respect of OFR generally and the Code specifically.

REVISION OF REGULATORY ELEMENTS

Rights of Audience Conduct Rules

24. CILEx advocates have previously been required to comply with the Rights of Audience Conduct Rules. These were issued for the purpose of maintaining the proper and efficient administration of justice and set out the standards to be observed by CILEx members when exercising advocacy rights. They reflected the approach to regulation commonly adopted at the time the rights of audience applications were approved. However, in practice they largely provided specific relevant examples of principles set out in the Code of Conduct.

² See para. 30 onwards

25. In the formulation of the new Code of Conduct, IPS has sought to include all the necessary elements of the Rights of Audience Conduct Rules within the body of the Code. Upon a successful determination of this application the Rights of Audience Conduct Rules will therefore be withdrawn.
26. It must be appreciated that in moving these safeguards from a set of prescriptive rules to a more purposive, principles based and outcomes focused document, not every existing provision will be capable of being cross referenced directly. In many cases there will be no direct correlation between the existing Rights of Audience Conduct Rules and the Code.
27. Some provisions of the existing Rights of Audience Conduct Rules specifically deal with circumstances in which the CILEx advocate was to seek the advice or guidance of their employer or supervising authorised person. The revised Code of Conduct will cover both those who are supervised and those in independent practice as litigators.
28. In expanding the scope of the new Code for this application, IPS has been able to ameliorate its provisions by assimilation of the necessary elements of the Rights of Audience Conduct Rules. The revised Code therefore contains all IPS conduct arrangements.

Practice Rules

29. The new Code also addresses, in a broad and purposive manner, practice rules. IPS accepts that the Code does not address every detailed area of practice. IPS does not believe that this is either necessary or indeed desirable in an outcomes focused regulatory package. A significant part of the practice arrangements in relation to any Applicant Body will be determined by a process of negotiation between the applicant and IPS during the process of relationship management and the building of regulatory trust. As such, there can be no comprehensive set of practice rules that will apply to all those IPS regulates. To form such a set of rules would preclude the flexibility that IPS has built into the authorisation process. Such rules would not allow entity A to have a genuinely different set of arrangements from entity B. IPS needs to allow its authorised entities to be able to innovate should they choose to. This means letting those firms be responsible for their business model and their method of practice. To restrict the potential practice arrangements of its applicant firms would lead to IPS being unable to truly promote competition in the provision of legal services and therefore fail to deliver that regulatory objective. IPS' effective regulatory oversight will ensure Authorised Bodies' practice arrangements effectively protect and promote the interests of consumers and clients.

The Code of Conduct

30. The statutory regulatory objectives and the professional principles permeate the Code. The principles and outcomes have been drafted to affect that

purpose. In this section IPS references how the Code in its content, construction and application, addresses the regulatory objectives. By adopting this approach, IPS will make clear how the regulatory objectives have been met and how IPS has addressed risks to their delivery.

Principle 1

31. The first core principle remains unchanged from that detailed in the existing Code. The outcomes that now appear under this principle are restatements of matters addressed in the current guidance to the existing Code. As such the content has not materially changed from that which has served IPS well in the regulation of individuals.
32. Principle one requires that the IPS regulated community must uphold the rule of law and the impartial administration of justice. Under this principle there are four regulatory outcomes that the regulated community must meet. These translate to two outcomes when they are expressed as broad and purposive rules within the Code.
33. Under principle one the four outcomes that must be met are:
 - The primary and overriding duty to the court is understood and complied with.
 - Court orders are obeyed.
 - The Court is not treated with contempt.
 - The Court is not knowingly misled by providers of legal services.
34. Translating these outcomes to the Code as broad and purposive rules provides two outcomes under the Code. Those subject to IPS' regulation must:
 - understand and comply with their primary and overriding duty to the court, obey court orders and do nothing which would place them in contempt, and
 - not knowingly allow the court to be misled.
35. Together, this principle and these outcomes meet the regulatory objectives in the following ways.
36. The first regulatory objective is met in that the above provisions protect and promote the public interest in the impartial administration of justice. Although IPS imposes no hierarchy upon its principles, it is no accident that the first principle of the Code is explicit as to the obligation to uphold the rule of law.

37. This fulfils IPS' statutory obligations under the second regulatory objective, and the public and the consumer interest are also served by explicitly referencing the rule of law. The fourth regulatory objective is therefore also met. This provision of the Code also meets the eighth regulatory objective in that it seeks to promote and maintain adherence to the fourth professional principle: that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice.
38. The IPS provisions are broader in their application than the regulatory objectives however. IPS obligates all those subject to its regulation to have regard to an ultimate duty to the court.
39. IPS takes a wide view of the role of authorised persons and a wide view of its regulatory obligations. In many instances authorised persons will be overseeing and supervising the work of others, either by virtue of having delegated tasks to them specifically or because they review their files or by virtue of a general supervisory function at section or departmental level. Many of those regulated by IPS legislatively owe no direct duty to the court such as some student members of CILEx. However, the Code continues to make clear that those subject to it are to comply with its provisions as they apply to them.
40. In an outcomes focused regulatory landscape, IPS assesses that as individuals move into positions where the obligations upon them change, where those individuals increase in qualification and where their roles diversify, they will be held to the standards expected of them having regard to that development. S.28(1) states that in discharging its regulatory functions (whether in connection with a reserved legal activity or otherwise) an approved regulator must comply with the requirements of the remainder of the section. The remainder of s.28 requires that IPS, in carrying out the functions of CILEx as the approved regulator, must, as far as is reasonably practicable, act in a way which is compatible with the regulatory objectives and which IPS considers most appropriate for the purpose of meeting those objectives.
41. Taken as a whole, the inclusion of the words "whether in connection with a reserved legal activity or otherwise" in s.28 of the Act obliges IPS to take a wide view of the role of the Authorised Persons and others it regulates. IPS will therefore continue to apply its regulatory provisions to all those it regulates, not simply those engaged in reserved legal activities, to the extent that the provisions are applicable to them. IPS states in the Code that those subject to it must comply with its provisions whenever they apply to them. As outcome 4.1 of the Code states, those subject to IPS regulation must understand and comply with the law and regulation applicable to them.

Principle 2

42. The second core principle requires those regulated by IPS to maintain high standards of professional and personal conduct and justify public trust in them, their profession and the provision of legal services. There are six regulatory outcomes under this principle. These are:
- Clients have confidence in the professional standards of those who provide them with legal services.
 - Clients are confident that those who provide them with legal services are qualified to do so.
 - Clients are confident that those who provide them with legal services are authorised to do so.
 - Clients are confident that those who provide them with legal services are appropriately regulated.
 - The regulator's details may readily be seen on the business communications of regulated practices.
 - The confidence and trust of clients, employers, professional colleagues, the public and others in those who provide legal services, are not undermined or adversely affected by anything those providers do.
43. Translating these outcomes to the Code as broad and purposive rules provides two outcomes under the Code. Those subject to IPS' regulation must:
- advise their clients of their professional status and that they are authorised to practise and/or regulated by IPS. Where their practice is regulated by IPS their business communications must confirm that, and
 - not to engage in any conduct that could undermine or affect adversely the confidence and trust placed in them and their profession by their client, their employer, professional colleagues, the public and others.
44. Principle two of the current Code has been significantly amended by addition in this Code. The addition relates to the requirement to justify public trust in them, their profession and the provision of legal services.
45. Clients need to know whom they are dealing with and what their professional status is. Where someone who is personally and professionally subject to the Code is employed in a practice that is regulated by another approved regulator, it is inappropriate for the business communications of that entity to specify the individual's professional regulation separately from the regulation of that practice. IPS believes that consumers and clients may find this confusing. In addition, IPS has no authority to prescribe, to a practice that it does not

regulate, what should be included in that practice's business communications. Therefore outcome 2.1 in the Code is limited to those that IPS does regulate. However, where IPS regulates an entity, it believes that it is important that the public should be aware of its regulation so that consumers and clients have a clear route to IPS as the regulator.

46. It is fundamental that those who represent the interests of a client can be trusted to provide an honest, competent, diligent, reliable and professional service. At all times those who are subject to the Code must, through their personal and professional conduct, continue to justify the trust that the public places in them to perform to the standards the Code demands.
47. IPS does not expect all personal issues to fall within the ambit of the Code. The types of personal conduct that might be a matter for IPS will include criminal convictions, financial misconduct, bankruptcy and dishonesty.
48. Further regulatory arrangements under the Code make provisions compelling disclosure of prior conduct that could undermine or affect adversely the confidence and trust placed in those IPS regulates.
49. This principle and these outcomes - and by extension those outcomes expressed as broad and purposive rules within the Code - meet the first and the fourth regulatory objectives in that they protect and promote the public interest and the interests of consumers.
50. This principle and these outcomes will enable IPS to tackle conduct and service issues.

Principle 3

51. Principle three simply states that those IPS regulates are to behave with honesty and integrity. There are four regulatory outcomes under this principle. They are:
 - All dealings and financial matters are conducted honestly.
 - No-one is misled by a provider of legal services.
 - Wherever permissible, suspicions as to breaches of any professional code of conduct are reported to the relevant regulator.
 - Those who provide legal services do not hold themselves out as possessing qualifications or a professional status that they not possess.
52. Translating these regulatory outcomes into broad and purposive rules - to give effect to the outcomes under this principle in the Code - require that the IPS regulated community must:

- be honest in all their dealings and in all financial matters
 - not intentionally mislead anyone they deal with
 - report to IPS without delay any suspicion that another has breached the Code unless bound by legal professional privilege or client confidentiality
 - report to the relevant authority any misconduct of another which falls to be regulated by that authority unless bound by legal professional privilege or client confidentiality, and
 - not hold themselves out as having a qualification or professional status that they do not possess.
53. This principle remains unchanged from the existing code. Outcomes 3.1 and 3.2 were expressed as guidance in the existing Code.
54. Those subject to the Code must report to IPS any suspicion that another has breached the Code unless they are bound by legal professional privilege or client confidentiality. This places an obligation on the regulated community to inform IPS of conduct which they suspect breaches the Code.
55. Those subject to the Code must also report to the relevant authority any misconduct of another, which falls to be regulated by that authority, unless bound by legal professional privilege or client confidentiality. This places an obligation upon, for example, a CILEx member to report the misconduct of, for example, a Chartered Legal Executive who is a partner in a practice that is regulated by, for example, the Solicitors Regulation Authority (SRA) to the SRA. This will not apply if the information is about a client whom they represent in a professional capacity.
56. Members of the regulated community must not hold themselves out as having a qualification or professional status that they do not possess. It would therefore be a breach of the Code for members of CILEx to represent themselves as Chartered Legal Executives when they have not been admitted to CILEx in the grade of Fellow. Similarly, although a Chartered Legal Executive Advocate may perform the functions of a Duty Solicitor, they must not hold themselves out to be a Solicitor, even where the role they are performing is titled in those terms.
57. Principle three and its associated outcomes clearly addresses the first and the fourth regulatory objectives in that honesty and integrity within the IPS regulated community is fundamental to the interests of the public and consumers.
58. The third principle also advances the fifth regulatory objective in that outcome 3.5 obligates those IPS regulates not to hold themselves out as having a qualification or professional status that they do not possess. This provision assists with promoting competition in the provision of services by authorised persons as IPS regulates against its regulated community holding themselves out as being in a position to provide services that they are not qualified to provide. This outcome links to the provisions of principle five in this respect.

59. Honesty and integrity are fundamental to the provision of any consumer service, especially the provision of legal services. Explicitly regulating for honesty and integrity advances the sixth regulatory objective in that it encourages a strong and effective legal profession. Specifically outcome 3.3 requires that those IPS regulates report to IPS without delay any suspicion that another has breached the Code, unless they are bound by legal professional privilege or client confidentiality.
60. Additionally, outcome 3.4 requires that members of the IPS regulated community report to the relevant authority any misconduct of another which falls to be regulated by that authority, unless bound by legal professional privilege or client confidentiality. Taken together, principle three and the outcomes thereunder encourage an independent, strong, diverse and effective legal profession by providing a regulatory framework obliging those who perceive wrongdoing to act on their integrity and have that wrongdoing addressed by the relevant regulator, whether that be IPS or another regulator.
61. The third principle clearly meets the terms of the eighth regulatory objective in that it advances the first and third professional principles.

Principle 4

62. The fourth core principle requires those regulated by IPS to comply with their legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively. Under this principle there are four regulatory outcomes. These are:
- The law is understood and complied with.
 - Providers of legal services can evidence that they have complied with their legal and regulatory obligations and duties.
 - Providers of legal services do nothing that places another in breach of any regulatory requirement or professional rule that applies to that other.
 - Communications from regulators and ombudsmen are responded to openly, promptly and co-operatively.
63. Following transposition into broad and purposive rules, these outcomes expressed in the Code stipulate that the IPS regulated community must:
- understand and comply with the law and regulation applicable to them
 - take all practicable steps to ensure they can demonstrate that they have adhered to the core principles and met the associated outcomes
 - not place others in breach of any regulatory requirement or rule of professional conduct, and

- respond openly, promptly and co-operatively to communications from their regulators and ombudsmen.
64. This principle encompasses the existing principle four but broadens that requirement. Under the new Code, this principle has been expanded to require compliance with the law and regulation and to specify the manner in which regulators and ombudsmen will be dealt with.
 65. Those IPS regulates must ensure that they understand and comply with all their legal and regulatory obligations.
 66. In an outcomes focused regulatory landscape IPS must be satisfied that those subject to its regulation are complying with their obligations. It expects those it regulates to ensure they can demonstrate that they have adhered to the principles and met the associated outcomes required by the Code.
 67. In an increasingly diverse legal services market it is important that those IPS regulates do not place others in breach of any regulatory requirement or rule of professional conduct, whether by act or omission. Many of those IPS regulates will also be the subject of other regulatory provisions and rules of professional conduct that govern their professional behaviour. For example, the CILEx membership includes Associate Prosecutors, who are employees of the Crown Prosecution Service (CPS). Associate Prosecutors must of course comply with the CPS Codes and rules applicable to them. Similarly family practitioners who are members of Resolution will be compliant with the Resolution Code; and those working in trusts and estates who are members of the Society of Trust and Estate Practitioners (STEP) will be subject to the STEP Code.
 68. IPS requires those it regulates to respond openly, promptly and co-operatively to communications from regulators and ombudsmen. This is so that regulatory matters and consumer and client concerns or complaints can be dealt with effectively and within reasonable timescales. Consumers and clients are entitled to have complaints addressed in a timely manner.
 69. This principle, together with the outcomes detailed thereunder meet the first, second and fourth regulatory objectives in that it protects the interests of the public and consumers and supports the constitutional principle of the rule of law. In addition, outcome 4.3 also complies with IPS' obligations under the sixth regulatory objective in that it encourages an independent, strong, diverse and effective legal profession by regulating for professional awareness of the professional obligations of others.

Principle 5

70. The fifth core principle is the most expansive in terms of the outcomes expected to be met. It requires the IPS regulated community to act competently in the best interests of their clients and to respect client

confidentiality. It is an amalgam of principles nine and five of the existing Code with elements of the existing principle eight.

71. There are thirteen regulatory outcomes under this principle, which essentially deal with issues of competence, client care and confidentiality. They are:

- Clients and the courts receive good quality legal services provided by practitioners whose legal knowledge is current and of sufficient depth for their role and the level of responsibility attached to it, and who systematically identify and address deficiencies in their knowledge, skills and behaviours.
- Clients are represented only by those who are sufficiently competent and sufficiently knowledgeable and experienced in the relevant area of law.
- Clients' instructions are acted upon unless this would result in a breach of law or regulation.
- Clients are represented only by those who have the right or are authorised to do so.
- Clients fully understand the terms of service, extent of services, the payment process, the likely or anticipated cost, the likely or anticipated outcome and the timescale relating to the provision of services.
- Clients are openly and honestly advised.
- Clients receive prompt, clear and accurate information and advice within reasonable timescales.
- Clients are kept up to date about the work being conducted on their behalf within agreed timescales.
- Clients are fully informed about the complaints procedures of those who act for them and their right to refer their complaint to the Legal Ombudsman or the regulator as appropriate.
- There is no cost to a client in making a complaint.
- Clients are aware that the regulator may seek access to their papers for regulatory reasons.
- Clients are advised that the regulator will be given access to their papers, where appropriate, unless they object.
- Clients' affairs will be kept confidential unless disclosure is explicitly authorised by the client or required by law or regulation.

72. These outcomes, when expressed as broad and purposive rules within the Code state – in twelve expressions of those outcomes - that those regulated by IPS must:

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

73. This principle reflects the general position that those subject to IPS' regulation must act competently in the best interests of their client, except that their overriding duty rests with the courts.
74. Outcomes under this principle require the regulated community to maintain a high level of competence in their legal work and to ensure that their legal knowledge is current and sufficiently detailed for their role. They must identify and address any deficiencies in their knowledge or training, or that of their staff, so as to maintain a level of competence and knowledge appropriate to the work and level of responsibility in which they or their staff are engaged.
75. Under these outcomes, those regulated by IPS may act in a matter only if they have the competence to do so. Competence covers knowledge, skills and experience. However, in guidance IPS will recognise that an individual might be developing their competence under supervision. In such instances they are able to act provided there are proper arrangements for supervision and training in place to help them to develop their competence while ensuring the quality of the service.
76. Those subject to the Code must act upon their client's instructions except when to do so would conflict with the law or the Code, and must not act in a matter where they do not have the right or are not authorised to act.
77. Those IPS regulates must explain and agree client care information with clients. This explanation and agreement must cover the terms upon which services are to be provided, the extent of the services, payment, and the likely or anticipated costs, outcome and timescales for the advice and services to be provided. The information referred to in the outcomes is regarded as the absolute minimum. Guidance will expand upon the information that IPS expects to see evidenced in satisfying it that the principle has been adhered to and that the outcomes have been met in respect of, for example client care documentation. Again, whilst IPS is acutely aware of the need for transparency, much of the detail of client care information is envisaged to be agreed through the relationship management process so as to be clear that there is a shared understanding of the IPS regulatory arrangements.
78. Those subject to the Code have a duty to provide prompt, clear and accurate information and advice to their clients, advise them openly and honestly and keep them up to date with information they need about the work that is being conducted for them within agreed timescales.
79. Where there is a complaint as to the conduct of a member of the IPS regulated community, these will normally be dealt with by IPS. However, there may be occasions where the conduct of an individual IPS regulates may more appropriately be dealt with by the regulator with oversight of the practice in which that individual is employed. The handling of complaints about the service received is dependent upon the status of the individual or body complained about. Those IPS regulates must inform their client fully as to their

complaints procedure including the client's right to refer a complaint about the service provided to the Legal Ombudsman (LeO) or IPS as appropriate. Whilst a complaint that has not been satisfactorily concluded at first tier in respect of the service provided by a CILEx Practitioner will be dealt with by LeO, IPS is clearly conscious that a section of the regulated community are not authorised persons under the Act, nor are they working within an entity that falls within LeO's jurisdiction. Accordingly, service complaints in respect of those in this section of the community which have not been satisfactorily addressed at first tier will be dealt with directly by IPS.³

80. Those IPS regulates must not charge a client for the cost of handling a complaint.
81. Where IPS regulates an entity, it is important that, where a regulatory question arises, IPS should be able to obtain access to the relevant client file. Outcome 5.11 therefore requires those regulated by IPS to include in their terms of business with their client a statement that IPS may exercise its regulatory powers in relation to the client's matter and that it may seek access to the client's papers for that purpose. IPS requires those it regulates to inform their client that they will grant IPS access to the client file unless the client objects. Guidance will specify the means by which IPS shall deal with client objections.
82. Those who are subject to the Code must maintain confidentiality in respect of their client's affairs except where to do so would conflict with the law or the Code, or where their client explicitly authorises them to disclose confidential information.
83. A substantial amount of trust is placed in providers of legal services by clients, the public, employers and other legal professionals. Due to the nature of the work that the envisaged IPS regulated community are involved in, they receive confidential information. Those IPS regulates must respect the confidentiality of the information divulged to them and disclose it only as appropriate.
84. This principle reflects the fifth professional principle in the Act by reference to outcome 5.12. This outcome also recognises that there may be instances where confidential material has to be disclosed. For example, information may be disclosed under the Money Laundering Regulations to prevent or detect money laundering offences. In those instances a member of the IPS regulated community should not be considered to be in breach of the Code.
85. This principle, when taken together with its associated outcomes meets the regulatory objectives in the following ways.
86. It is clearly in the best interests of the public and consumers that clients of legal service providers be dealt with appropriately, by competent individuals

³ For further discussion in respect of the IPS approach to First Tier Complaints handling **see part 7**

who will deal with their issue on a confidential basis. In this respect the first and fourth regulatory objectives are met.

87. Outcome 5.8 furthers the regulatory objective of improving access to justice by mandating that those IPS regulates provide clear and accurate advice in a timely manner to their clients. In this respect the third regulatory objective is met.
88. Outcomes 5.3, 5.4 and 5.6 advance the fifth regulatory objective of promoting competition in the provision of services by authorised persons by regulating against the provision of those services by those who are not competent, authorised or sufficiently knowledgeable or experienced to do so.
89. Outcomes 5.1 and 5.2 when taken together advance the sixth regulatory objective in that regulating for the on-going professional competence, not only of authorised persons but also of their staff, encourages an independent, strong, diverse and effective legal profession.
90. Outcomes 5.7, 5.8 and 5.9 when taken together meet the seventh regulatory objective as, by regulating for effective information provision to clients IPS further increases understanding by the public of the citizen’s legal rights and duties.
91. Throughout the outcomes under this principle, IPS promotes and maintains adherence to the first, second, third and fifth professional principles. Outcome 5.12 directly addresses the fifth professional principle. The eighth regulatory objective is therefore advanced.

Principle 6

92. Principle six of the Code deals directly with access to justice. This principle has three regulatory outcomes under it. These effectively expand upon the principle itself. This core principle states that those who are subject to IPS regulation must treat everyone fairly and without prejudice. The regulatory outcomes are as follows:
 - Consumers and clients all have equal assistance to access justice and the full range of legal services.
 - Each client is provided with an equal opportunity to secure a favourable outcome in their matter, irrespective of their vulnerability or susceptibility to discrimination.
 - Nothing about the business of providing legal services prevents everyone being treated fairly and without prejudice.
93. When translated into broad and purposive rules in the Code these outcomes detail that the IPS regulated community must:

- ensure that their business or their role within it, their business model, processes and practices adequately
 - assist consumers and clients to access justice and the full range of legal services; and
 - provide each client with equal opportunity to secure a favourable outcome in their matter, irrespective of their vulnerability or susceptibility to discrimination.

94. IPS has provided definitions for the terms 'client', 'consumer' and have also defined what it means when it refers to those who are 'vulnerable'.

95. IPS defines a consumer as one who seeks but has not yet entered into an agreement for the provision of legal services.

96. A client is defined as one who has entered into an agreement for the provision of legal services with a provider of those services.

97. IPS defines 'vulnerable' and by extension 'vulnerability' in the following terms:

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

98. IPS assesses that defining vulnerability in the above terms allows it to work from a definition that covers those who are intrinsically vulnerable, without reference to any individual or collective characteristic that may render them susceptible to discrimination. IPS has done this to remain outcomes focused in its approach to the regulatory package. As detailed elsewhere in this application, there is no utility in regulating for the already regulated for in other ways. There is a wealth of anti-discrimination legislation in existence and IPS does not need to address the same subject matter as is dealt with therein separately within its regulatory provisions.

99. Principle six in the Code therefore addresses the regulatory objectives and the third professional principle.

Principle 7

100. The seventh core principle obligates the IPS regulated community to ensure that their independence is not compromised. There are four outcomes listed under this principle. These are:

- Clients are provided with independent and impartial advice.

- Clients are not represented by those with a conflict of interest or where there is a significant risk that such a conflict may arise.
- Clients are not represented by those who reasonably consider that the client is providing instructions under duress or undue influence, except where it would be to the client's detriment to withdraw from acting.
- Clients' confirmation is always sought when instructions are given by third parties.

101. Those subject to IPS regulation - in accordance with these outcomes when transposed into broad and purposive rules - must:

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

102. Outcome 7.1 directly addresses a prohibition from acting where there is a conflict of interest or a significant risk that one may arise. A conflict of interest is simply a set of circumstances that creates a risk that professional judgement or actions regarding a primary interest will be unduly influenced by a secondary interest. Those subject to IPS regulation will be well equipped to perceive whether there is a significant risk of a conflict of interest arising in any given set of circumstances. IPS does not therefore define what a conflict of interest is within the Code but may do so within guidance to the Code in the terms given in the second sentence of this paragraph.

103. Outcomes 7.2 and 7.3 prohibit the IPS regulated community from acting where they reasonably consider an external undue influence to be exerting itself upon the client in such a way as to adversely impact upon the client's ability to provide instructions which truly reflect the client's position.

104. Outcome 7.4 is an amplification and clarification of outcome 7.1 in that it addresses a specific form of conflict of interest that may arise in the provision of professional legal services within a changing legal services marketplace.

105. Together with the supporting outcomes, this principle meets the regulatory objectives and the professional principles in the following ways.

106. The first regulatory objective is met in that regulating against those regulated by IPS acting where there is the potential for corruption both protects and promotes the interests of the public. Similarly the fourth regulatory objective is met in that the interests of consumers are met.
107. The sixth regulatory objective is met by the provisions of principle seven and its associated outcomes in that IPS assesses that regulation in these terms can only serve to encourage an independent, strong, diverse and effective legal profession.
108. The eighth regulatory objective is met as the first, third and fourth professional principles are advanced by the provisions of principle seven and the outcomes thereunder.

Principle 8

109. Principle eight deals with the elements of practice management that IPS assesses as being non-negotiable. This principle states that those subject to IPS regulation are to act effectively and in accordance with proper governance and sound financial and risk management principles. Under this principle there are six regulatory outcomes. These are:
- Proper standards of work are maintained, with tasks delegated only to those properly qualified and authorised to perform them.
 - Those delegating tasks continue to own and accept responsibility for them.
 - Records can be shown to be accurate and, wherever reasonably practicable, contemporaneous.
 - Quality of work on clients' matters is maintained by proper supervision and regular checking by those with sufficient competence and experience to assess quality and ensure that identified issues are appropriately addressed.
 - Effective management, oversight and reporting structures are adhered to.
 - Effective procedures to ensure legal and regulatory compliance are complied with.
110. When expressed as broad and purposive rules in the Code, these outcomes state that the IPS regulated community must:
- maintain proper standards of work and keep accurate records. In matters such as communications with clients, professional colleagues and others, their records should be contemporaneous and in any event must be made as soon as practicable thereafter

- ensure that they properly supervise tasks that they have asked others to perform on their behalf, recognising that they remain accountable for any such work
- ensure that anyone they ask to perform work on their behalf is appropriately qualified and authorised to perform it
- ensure that clients' matters are supervised and regularly checked by those with sufficient competence and experience to assess the quality of the work and to ensure issues identified are addressed
- adhere to effective management, oversight and reporting structures, and
- comply with effective procedures to ensure compliance with their legal and regulatory obligations.

111. Outcome 8.1 obligates those IPS regulates to maintain proper standards of work and keep accurate and timely records. There is little virtue in being the most principled and legally and regulatory compliant practitioner if the work output is substandard. IPS assesses that it is important to mandate that those it regulates remain effective in their role subsequent to the authorisation process and therefore, this obligation to perform effectively and to a proper standard is on-going.

112. Where other regulators import into their regulatory arrangements with those they regulate a requirement for their regulated to ensure regulator access to the files of agents instructed by their regulated, IPS takes a more targeted approach. Outcomes 8.2, 8.3 and 8.4 when taken together require those subject to IPS regulation to retain responsibility for any outsourced, agented or subcontracted work, to ensure the work is conducted by those appropriately qualified and to ensure effective supervision. IPS will hold its regulated community directly liable for the work they ask others to perform on their behalf.

113. In outcome 8.5 IPS requires entities it regulates to adhere to effective management, oversight and reporting structures. IPS expects to see these structures evidenced at application so it can ensure that, prior to authorisation, those structures are in fact suitable and effective. Outcome 8.6 is framed in similar terms.

114. Principle eight and its associated outcomes address the regulatory objectives and the professional principles in the following ways.

115. The first regulatory objective is met in that the public interest is both promoted and protected.

116. The third regulatory objective is met in that, by regulating in this manner, IPS ensures that access to justice is improved. Justice is not served if those a

client instructs are simply not effective and do not maintain proper standards of work. The risks in this respect are obvious.

117. The fourth regulatory objective is met in that regulating in these terms protects and promotes the interests of consumers.
118. The sixth regulatory objective is addressed as these provisions encourage an independent, strong, diverse and effective legal profession.
119. Meeting the first, second and third professional principles in the above manner evidences that IPS has addressed the eighth regulatory objective in respect of this principle and its associated outcomes.

Principle 9

120. The ninth and final core principle states that those subject to IPS regulation must protect client money and assets. Under this principle there is one outcome to be met by the IPS regulated community. This is:
 - Client money and assets entrusted to those who provide legal services are protected from risks of every kind, including those associated with the financial position or stability of the business of such a provider.
121. When transposed and expressed as broad and purposive rules in the Code these outcomes state that those subject to IPS regulation must:
 - identify, assess, manage and promptly address risks to money and assets entrusted to them by clients and others, and
 - effectively monitor the financial stability of their business or their role within it, so as to protect client money and assets from risks associated with the financial position of their business or the business of their employer.
122. Client money and other assets must be protected. Principle nine, in conjunction with the outcomes thereunder advances the first, fourth, sixth and eighth regulatory objectives and the first and third professional principles. This principle protects and promotes the interests of the public and consumers. This level of protection encourages an independent, strong, diverse and effective legal profession and promotes the maintenance of the professional principles that authorised persons should act with integrity and independence and act in the best interests of their clients.
123. IPS has developed more detailed consumer protection rules under this principle. These deal with professional indemnity and compensation arrangements, accounting rules and agreements as to minimum terms with qualifying insurers.

The Accounts Rules

124. IPS has developed Accounts Rules that will apply to all those practising autonomously, which are at **Appendix 7**. At least one of the Approved Managers in an IPS authorised entity will have completed a course in accounts which covers the Accounts Rules. IPS takes the view that it is justified in prescribing the arrangement for managing client and office money because of the significant risks which arise if the necessary controls are not clearly in place.
125. These rules will ensure that Authorised Bodies keep client and office monies separated and that there is a clear audit trail of transactions that are undertaken on behalf of each client. Authorised Bodies will be expected to maintain a ledger for each client, which will ensure that clear and unequivocal financial records are held for each client. The records will provide a clear reference point for the Authorised Body.
126. The rules also contain provisions about how and by whom money can be withdrawn from client account and when interest should be paid on money held in a client account.
127. Authorised Bodies will be required to carry out regular reconciliations so that they can maintain accurate records and undertake a regular review of the financial status of each matter on which they are instructed.
128. Authorised Bodies will be expected to obtain annual Accountant's Reports from a Reporting Accountant. The reports will ensure that an independent assessment is carried out of compliance by the Authorised Body with the IPS Accounts Rules. The Reporting Accountant will be required to carry out various test procedures that are set out in the Accounts Rules. The Authorised Body must provide a copy of the report to IPS. Where the report raises a concern IPS will be able to monitor or inspect the entity to assess and address those matters as necessary.
129. The Reporting Accountant will be under a duty to report directly to IPS any concerns that they have when they undertake the audit of the entity. This again will enable IPS to take action in the interests of protecting clients' monies.

Summary

130. IPS has formulated its approach to OFR utilising the Code of Conduct as a core regulatory document. The Code both contains and gives effect to the broad and purposive principles and outcomes which must be adhered to and met and, by its structure, positioning and location within the regulatory arrangements, ensures that the remainder of the regulatory arrangements are, in operation, applied in an outcomes focused manner. The principles and outcomes as expressed in the Code cover all potential misconduct and effectively translate

the regulatory objectives, professional principles and IPS' required regulatory outcomes into IPS regulation. By adopting this approach IPS is well placed to meet the challenges of regulating those with autonomous practice rights and entities going forward.

EQUALITY AND DIVERSITY

131. As part of its regulatory arrangements IPS has a clear framework for equality and diversity. IPS recognises its duty under the Legal Services Act 2007 (the Act) to "encourage a strong, independent, diverse and effective legal professions" and the Equality Act 2012 to advance equality of opportunity between different groups.
132. IPS is committed to promoting equality and diversity within the legal profession. The legal profession and the wider legal services workforce should reflect the society it serves. The proposed regulatory arrangements include mechanisms for identifying and breaking down barriers to entry and progression. This is demonstrated principally by the qualification regulations which promote authorisation by competence.
133. The proposed regulatory arrangements comply with the LSB's guidance to approved regulators issued under section 162 of the Act, on gathering an evidence base about diversity across the legal workforce and promoting transparency at entity level. This section demonstrates how IPS will:
- gather a more comprehensive evidence base about the diversity characteristics of the legal workforce;
 - ensure transparency of diversity data;
 - collate diversity data to give an aggregate view of the diversity make-up of each branch of the profession;
 - ensure data identifies seniority where appropriate; and
 - evaluate the effectiveness and impact of existing diversity initiatives.

Comprehensive evidence base

134. CILEx currently collects equality and diversity data in a number of ways. CILEx carries out a Membership Omnibus survey. The survey is sent to all members of CILEx and includes questions on diversity and social mobility. Equality and diversity data is also collected through CILEx's online membership information system, MyCILEx. MyCILEx is accessible to all members, at any time, and provides secure access to members to access services and personal details. Each member can provide diversity information such as ethnicity, sex, age and disability, and it is a mandatory requirement for new members to record information in these fields during membership registration. Both the Omnibus survey and MyCILEx have been revised to include additional fields as identified by the Model Questionnaire which formed part of the LSB's section 162 guidance.

135. In addition to the current data collection exercises, IPS and CILEx have developed a questionnaire which will enable staff in IPS regulated entities to self-classify in relation to their diversity characteristics. The questionnaire is largely based on the Model Questionnaire produced by the LSB. Staff of IPS regulated entities will be required to complete the questionnaire during the authorisation process and thereafter, annually, as part of the annual return process. Entities providing non-reserved legal activities will also be required to engage in this data collection exercise annually. Entities of all sizes will be required to collect equality and diversity data. Sole practitioners will be exempt from this requirement as data on sole practitioners will be collected through the mechanisms described in the previous paragraph.
136. IPS monitors data on all eight relevant protected characteristics⁴ plus socio-economic status. The data collected from entities will be used as a basis for investigating potentially discriminatory effects, and identifying and addressing barriers that exist in relation to individuals with one or more of the protected characteristics.

Transparency of diversity data

137. IPS recognises the benefits of transparency of diversity data at entity level. Transparency is potentially a powerful tool to make individual businesses accountable for identifying and breaking down barriers to retention and progression for diverse groups. Entities of all sizes will be required to collect equality and diversity data. However, requirements to publish data will differ depending on the size of the entity. IPS recognises concerns that the publication of workforce data could lead to an individual being identified, especially when data is aggregated from relatively small data sets, for example, where there are a small number of employees in an organisation, or there are few individuals in a particular category. In response to this risk, data aggregated from a small data set will not be published and only entities with 10 or more employees will be required to publish diversity data. Furthermore entities will not be required to publish data on sexual orientation, religion or belief and gender reassignment initially.

Aggregate view of workforce

138. Entity level data will be collated by IPS and published, to illustrate the diversity make-up of the profession. Collation of this data will enable IPS to identify barriers to entry and progression and ultimately to ensure that the legal workforce is open to the widest possible pool of talent. Publication of this data will encourage entities regulated by IPS to consider action to encourage greater diversity within their workforce.

⁴ Section 149(7) of the Equality Act 2010 – age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation.

139. The entry and authorisation processes will likely lead to positive data being collected from entities. The entry and authorisation processes ensure that there are no artificial barriers or discriminatory hurdles to entering the legal profession. Transparency of diversity data, in particular identifying seniority where appropriate will, encourage progression in the legal profession and thereby ensure that legal service providers reflect the diversity of consumers seeking legal services.

Effectiveness of diversity initiatives

140. CILEx and IPS periodically assess the effectiveness of diversity initiatives. IPS will do the same for diversity initiatives regarding entities. IPS has adopted the Model Questionnaire developed by the LSB, which, if adopted by other approved regulators, will ensure a more systematic approach to diversity data collection. IPS will continue to seek a joined up approach with other approved regulators so that best practice can be shared more effectively and to ensure consistency of data collection and transparency across the legal workforce.

141. In the spirit of outcomes focused regulation IPS has not been prescriptive about publication. IPS will take a proportionate approach when requiring entities to publish diversity data as it recognises that smaller firms may not have mechanisms, especially at early stages, to publish the data. The requirements in relation to equality and diversity will not be mandatory rules but recommendations that entities will monitor, collect and publish diversity data. It is disproportionate to sanction entities who do not comply. Instead IPS will provide assistance and guidance to firms in these instances and regulatory sanctions will apply where an individual or entity is found in breach of the equality and diversity principles in the Code of Conduct.

PART 7

COMPLAINTS

HANDLING

PART 7 – COMPLAINTS HANDLING

Introduction

1. As part of its regulatory arrangements IPS has a clear framework for complaints handling in accordance with s.112 and s.145 of the Legal Services Act.
2. In accordance with s.112(1) of the Act, IPS has made provisions in its regulatory arrangements requiring those it regulates to have effective procedures in place for the resolution of complaints and for the enforcement of that requirement. In accordance with s.112(2) of the Act the regulatory arrangements have been assessed by the LSB as meeting the requirements specified by them in their guidance on first-tier complaints handling. In accordance with s.145 of the Act IPS has made provisions in its regulatory arrangements requiring those it regulates to co-operate with investigations.
3. In the course of meeting the s.112(2) requirements and the LSB's guidance on first-tier complaints handling, IPS has met the requirements of the Provision of Services Regulations 2009 (implementing European Union Directive 2006/123/EC on services in the internal market) which imposes requirements on service providers in relation to responding and dealing with complaints.
4. Furthermore, IPS has ensured that key elements within the Legal Ombudsman's guides on complaints handling have been reflected within the regulatory arrangements that relate to complaints procedures and complaints handling processes.
5. The minimum requirements individuals and entities must meet to ensure consumer protection and access to redress, are set out as principles and outcomes in the Code of Conduct (the Code). Further requirements on complaints handling are set out in the Guidance on Complaints Handling which appear at **Appendix 8**. Both the Code and the Guidance on Complaints Handling have been reviewed and updated. This application seeks approval of the revised Code and Guidance.

Requirements under S.112 of the Legal Services Act 2007

6. S.112(1) of the Act requires Approved Regulators to make provisions in their regulatory arrangements that Authorised Persons have effective procedures in place for the resolution of first-tier complaints and for the enforcement of that requirement.
7. IPS has met this requirement through outcome 5.9 of the Code which states that those IPS regulates must inform their client fully as to their complaints procedure. This outcome requires those subject to the Code to have a

complaints procedure in place and to ensure that each client is provided with sufficient information about it. This requirement is also set out in paragraph 1 of the Guidance on Complaints Handling.

8. In keeping with IPS' outcomes focused approach to regulation IPS provides individuals and entities with the freedom to determine their complaints handling procedures and processes. IPS monitors compliance with outcome 5.9 of the Code and the Guidance on Complaints Handling. Entities will be required to show compliance during the authorisation process, in annual returns and during visits to the entity.

The Legal Services Board's requirements

9. S.112(2) of the Act provides that the LSB may specify requirements that the regulatory arrangements of Approved Regulators must satisfy in relation to the complaints procedures of Authorised Persons. The requirements specified by the LSB have been set out in the next section along with evidence of how IPS has met them.
10. In May 2010 the LSB issued guidance under s.112(2) of the Act on first-tier complaints handling. This set out the requirement that Authorised Persons must have effective and transparent procedures for the reasonable and prompt handling of complaints.
11. IPS has reflected this requirement, not only in outcome 5.9 of the Code, as described above, but also in paragraph 2 of the Guidance on Complaints Handling which requires its regulated community to deal with complaints fully and promptly. This requirement through the Code and Guidance on Complaints Handling will reinforce good practice in the sector and increase consumer confidence in complaints handling processes.
12. The other requirements set out by the LSB under s.112(2) of the Act relate to signposting. The signposting requirements are:
 - Clients should be informed on engagement of:
 - their right to complain
 - how to make a complaint
 - who to make a complaint to
 - their right to complain to the Legal Ombudsman (LeO)
 - time limits to complain to LeO, and
 - contact details of LeO.
 - Clients should be informed at conclusion of the first-tier complaints process of:
 - their right to complain to LeO
 - time limits to complain to LeO, and
 - contact details of LeO.

- Existing clients should be notified at the next appropriate opportunity of their rights in relation to making a complaint.
13. IPS has met the first signposting requirement regarding engagement by requiring those it regulates, through outcome 5.9 of the Code, to inform their client fully as to their complaints procedure including the client's right to refer a complaint to LeO or IPS where appropriate. In addition, in paragraph 3 of the Guidance on Complaints Handling IPS requires its regulated community to provide clients with information about the firm's complaints handling procedure, how to make a complaint, who to make a complaint to, their right to complain to LeO, the role of LeO, time limits for complaining to LeO and contact details of LeO.
 14. IPS has met the second signposting requirement regarding the conclusion of the first-tier complaints process by ensuring that CILEx members inform clients at the end of the complaints process of their right to complain to LeO, contact details of LeO, how to make a complaint to LeO and the time limits for complaining to LeO. IPS has set out these requirements in paragraph 4 of the Guidance on Complaints Handling.
 15. IPS has met the third signposting requirement regarding notifying existing clients by outlining in paragraph 5 of the Guidance on Complaints Handling that those it regulates are required to provide information on LeO to existing clients at the next appropriate time.
 16. IPS has taken an outcomes focused approach to meeting s.112(2) of the Act and the requirements of the LSB. The outcomes focused approach to complaints handling has been achieved through the balance between principles and outcomes in the Code and requirements in Guidance on Complaints Handling.

The Legal Services Board's outcomes

17. As well as producing signposting requirements the LSB has set two outcomes consumers should expect from effective complaints handling and signposting along with associated guidance on how those consumer outcomes can be met.
18. The outcomes consumers should expect from effective complaints handling and signposting set by the LSB are:
 - complaints handling procedures should provide effective safeguards for consumers, and
 - complaints should be dealt with comprehensively and swiftly with appropriate redress.
19. IPS has reflected these consumer outcomes in paragraph 2 of the Guidance on Complaints Handling which requires those it regulates to ensure their complaints handling procedures provide effective safeguards for clients, to deal

with complaints fully and promptly and to provide appropriate redress where necessary.

20. The LSB guidance on how the consumer outcomes can be met, have been reflected in outcome 5.10 of the Code which prohibits clients being charged for the cost of complaints handling. The LSB guidance has also been reflected in paragraph 4 of the Guidance on Complaints Handling which requires complaints handling procedures to be clear and simple for clients to use and make provision for complaints to be made by any reasonable means. The LSB guidance on consumer outcomes also refers to how the complaints process should be carried out. IPS has reflected this in paragraphs 2 and 4 of the Guidance on Complaints Handling by indicating that complaints processes should enable complaints to be dealt with quickly, free of charge and provide appropriate redress where necessary.

The guidance on complaints handling produced by the Legal Ombudsman

21. To date LeO has produced two sets of guidance on complaints handling. The first, published in 2010, Guide to Good Complaints Handling was used to produce IPS' current Guidance on Complaints Handling. New guidance produced by LeO in 2012, 'Listen, Inform, Respond: A Guide to Good Complaints Handling', has informed the approach taken to revise IPS current guidance.
22. Key elements of both guides on complaints handling produced by LeO have been reflected in IPS' regulatory arrangements.
23. Outcome 5.8 and 5.9 and the Code requires its regulated community to:
- advise clients of their right to complain to LeO, and
 - communicate in a clear and understandable manner.
24. Paragraphs 2, 4 and 8 of the Guidance on Complaints Handling requires its regulated community to:
- produce a complaints procedure that is clear and simple
 - deal with complaints promptly
 - provide options for resolving complaints, and
 - keep a complaints log and full record of the way the complaint was handled.

Monitoring and enforcement requirements

25. In the LSB's guidance under s.112(2) of the Act the LSB set out monitoring and enforcement requirements that Approved Regulators should meet. They are that Approved Regulators must ensure that those they regulate understand their responsibilities in relation to first-tier complaints handling and that Approved Regulators must ensure that there are consistent minimum standards

of complaints handling by those they regulate. The guidance indicates that to meet these requirements Approved Regulators will need to have in place appropriate monitoring and data gathering systems and carry out swift regulatory action where problems are identified.

26. IPS is currently meeting these monitoring and enforcement requirements. Through the publication of the Guidance on Complaints Handling IPS ensures that its regulated community understand their responsibilities in relation to first-tier complaints handling. IPS currently reviews complaints handling procedures of self-employed CILEx members to ensure that minimum standards of complaints handling are met; that self-employed CILEx members have complaints handling procedures in place which signpost to LeO.
27. IPS has in place appropriate monitoring and data gathering systems to carry out intensive monitoring of first-tier complaints handling. IPS currently surveys CILEx members and consumers with the aim of gathering information about trends in conduct and service matters. IPS:
 - conducts annual surveys of CILEx members who have had a complaint made against them which has gone through the first-tier complaints process.
 - has a standing survey for receiving feedback from clients of Chartered Legal Executives about the quality of service received.
 - requires those it regulates, through paragraph 7 of the Guidance on Complaints Handling, to engage in complaints handling and consumer feedback activities.

The data gathered from the monitoring activities illustrate consumer experiences and expectations and the ways in which the regulated community have complied with first-tier complaints requirements.

28. The survey of CILEx members, over the last two years, has shown that the most common areas of law in which complaints are made are wills and probate, family and conveyancing and the most common types of complaint are 'delay' (taking an unreasonable amount of time to carry out a specific task), 'failure to advise' (legal advice, which would reasonably be expected, was not given) and 'cost excessive' (including errors in the invoice calculation)⁵.
29. IPS has used the Oxera framework within its monitoring and data gathering systems in order to assess first-tier complaints in different practice areas. In the complaints handling and consumer feedback surveys IPS seeks information about different market groups. IPS asks for information about the area of law and the type of service complaints relate to and about the type of consumer involved. By using the Oxera framework IPS is able to evaluate, through

⁵ Legal Ombudsman – Complaint categories
http://www.legalombudsman.org.uk/lawyers/complaint_categories.html

market segmentation, how risks in the wider market measure against the trends emerging through complaints in different practice areas.

30. The proposed regulatory arrangements also fully meet the monitoring and enforcement requirements set by the LSB. As part of entity regulation IPS will monitor complaints handling procedures and complaints processes at the authorisation stage, the annual return stage and on visits to entities. At authorisation and the annual return stage IPS will check:
 - whether the entity has received any complaints in relation to any activity conducted in the course of its operation within the previous 12 months
 - the date of complaint(s)
 - the reason(s) for the complaint(s)
 - the area of law the complaint(s) related to
 - how the complaint is being or was resolved, and
 - whether the complaint(s) was referred to LeO.
31. Visits to the entity provide an opportunity for the entity to evidence the information on complaints provided during authorisation and at the annual return stage. IPS will review the complaints records held by the entity and sample check complaints that have been dealt with at first-tier by the entity and at second-tier, by LeO. In addition IPS will expect to see evidence which shows that the entity reflected on the complaint in order to identify trends, ways to improve the service provided or any system changes which are required as a result of the complaint.
32. IPS has adopted a risk based approach to enforcement in relation to complaints handling. The proposed risk framework provides an effective and efficient system for addressing systemic and specific issues in first-tier complaints. Equally it allows IPS to identify good practice.
33. The basic risk assessment, which will be conducted during authorisation, at the annual return stage and if issues are identified through intelligence received, provides a mechanism for assessing the effectiveness of an entity's information systems, which includes the entity's complaints handling system. Also, a 'history rating' is calculated as part of the basic risk assessment which relates to the information received about the past conduct of the entity. The information required to calculate the history rating will be easily obtained if the entity is made up of existing CILEx members. IPS will also have regard to information obtained from other Approved Regulators if the entity was previously regulated by another Approved Regulator.
34. After a visit has been made to an entity an advanced risk assessment is completed by the relationship officer. In completing an advanced risk assessment the relationship officer will have regard to the risk rating score obtained at the basic risk assessment balanced against factors specific to the circumstances found on the visit. The advanced risk assessment gives an indication of the severity of failures in conduct or service. Failures in relation to

complaints handling feature in the advanced risk assessment. When carrying out an advanced risk assessment IPS will be able to identify whether an entity has, in an isolated occasion or systematically, failed to deal with complaints properly; is obstructing complaints; or is charging clients for complaints handling.

35. IPS' regulatory arrangements and general approach to entity regulation provide a for a way to ensure that entities fulfil the legislative requirements for complaints handling, the requirements and consumer outcomes stipulated by the LSB and also the guidance on complaints handling produced by LeO.

Requirements under S.145 of the Legal Services Act 2007

36. S.145 of the Act requires Approved Regulators to make provisions requiring Authorised Persons to give ombudsmen all such assistance requested by them, in connection with the investigation, consideration or determination of complaints under the ombudsman scheme, as that person is reasonably able to give and make provision for the enforcement of that requirement.
37. IPS has met this requirement through principle 4 of the Code which states that those subject to the Code must comply with their legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively. This principle is supported by a corresponding outcome, 4.4 of the Code which states that those regulated by IPS must respond openly, promptly and co-operatively to communications from their regulators and ombudsmen.
38. Principle 4 and outcome 4.4 in the Code are reflected in paragraph 9 of the Guidance on Complaints Handling which states that CILEx members must co-operate with the Legal Ombudsman and assist them to deal with complaints if a complaint is made to the Ombudsman.
39. IPS values the importance of the requirements under s.145 of the Act and has therefore made provisions at every level which are set out as principles and outcomes in the Code and are also reflected in the Guidance on Complaints Handling. IPS will monitor how entities meet this requirement.

PART 8

ENFORCEMENT

PART 8 - ENFORCEMENT ARRANGEMENTS

INTRODUCTION

1. IPS regulates the conduct of Chartered Legal Executives and other members of CILEx, including Associate Prosecutors. Upon the designation to award probate practice and reserved instrument rights to new practitioners and entities IPS will also regulate Authorised Persons and Authorised Bodies who carry out these reserved legal activities. The CILEx Code of Conduct sets out the standards expected of all those IPS regulates.
2. IPS has in place rules which address the manner in which it deals with the conduct of applicants seeking membership of CILEx, and with complaints and allegations of misconduct made against CILEx members. These rules are the Investigation, Disciplinary and Appeals Rules (IDAR), which are at **Appendix 9**.
3. Members of CILEx, Authorised Bodies and CILEx Practitioners must be clear about the standards that are expected of them. The public, consumers and clients also need to be clear about the standards of conduct and practice they can expect from those subject to IPS' regulation and that there are effective enforcement procedures in place where standards are not met. Those who are regulated and those using their services should also be clear about the action that will be taken if the required standards are not met. Disciplinary arrangements are therefore an important part of an approved regulator's overall responsibility. Although disciplinary action may involve sanctions against regulated members, authorised bodies and practitioners, the primary purpose of the disciplinary arrangements is to maintain and improve standards.
4. The purpose of the IDAR is to ensure that formal investigatory arrangements are clearly understood and disciplinary action is fair, reasonable and proportionate in the circumstances of each case. IPS also seeks through its disciplinary arrangements to engender due respect for, and acceptance of, the standards of conduct and practice provided for in the Code and attendant regulatory arrangements.
5. IPS views its role in regulatory enforcement as being:
 - to influence and advance positive behaviours across its regulated community so as to ensure that the services provided by those it regulates are delivered to a high standard and that consumers, clients and the general public are protected, and
 - to provide credible deterrence against behaviours that may place consumers, clients and the general public at risk of harm or detriment.
6. IPS has reviewed and amended its complaints handling and disciplinary arrangements to ensure that effective procedures are in place to address

misconduct exhibited by Authorised Bodies, Approved Managers and Authorised Persons. During this process of revision IPS has also enhanced the clarity of its provisions as they apply to CILEx members.

Key Amendments

7. IPS has updated and reorganised the IDAR as well as ensuring that they apply to its new regulated community. This section describes the amendments IPS has made to put in place an effective enforcement regime.
8. The IDAR establishes three decision makers:
 - the Professional Conduct Panel (PCP)
 - the Disciplinary Tribunal (DT), and
 - the Appeals Panel (AP).

The IDAR also allows IPS Officers to make decisions in certain instances either alone or with approval from panellists drawn from the PCP.

9. IPS has reviewed the roles of decision makers and who can reach decisions. The revisions in roles are explained below.

Prior conduct declarations

10. The IDAR requires that CILEx members and individuals seeking to join CILEx disclose any matters of prior conduct that may affect their registration or membership of CILEx. Prior conduct includes convictions, orders made by other professional bodies and financial matters. IPS assesses the declarations to determine whether the person may register with or continue in membership with CILEx.
11. IPS has reviewed and updated the prior conduct provisions. Declarations of prior conduct will need to be made by applicants seeking to become CILEx members, CILEx practitioners, Approved Managers and Authorised Persons. The declarations therefore apply to both IPS' existing regulated community and its new regulated community.
12. IPS has considered the range of declarations that should be made. The requirements include the obligation to declare a wider range of financial matters than the present IDAR. IPS will be authorising practitioners to hold key positions in entities which involve responsibility for handling client money. The declaration of financial orders will enable IPS to assess the risk of entrusting practitioners to manage client money.
13. The IDAR also includes the requirement that entities make a range of prior conduct declarations. These declarations focus upon financial orders made against the entity. IPS has an obligation to ensure that those it regulates demonstrate financial integrity. The new declaration requirements enable it to carry out that function.

14. The responsibility to make prior conduct declarations continues after authorisation. Entities and practitioners alike must make declarations of prior conduct at the earliest opportunity and annually.
15. The on-going requirement for declarations enables IPS to provide for the protection of the public and consumers by assessing whether those it regulates are fit and proper to be registered or authorised by IPS and that they remain so. Where they do not remain fit and proper IPS has available a range of sanctions which enable it to take a risk based approach to the management of the matter commensurate to the risks it poses to the delivery of legal services.
16. The existing IDAR requires the PCP to declare on a preliminary basis what view it would take of a prior conduct matter. This form of guidance should sit with IPS staff rather than require a formal panel declaration. It has therefore been taken out of the rules. In future IPS staff will provide guidance to applicants. The approach will allow the PCP to make decisions independent of any indication given on a preliminary basis and based upon the full information required for a formal decision.

Approach to complaints handling

17. IPS considered the approach it should take to the investigation of complaints and allegations of misconduct and the role of complainants in an investigation about conduct. The present rules provide for a formal role for complainants and require their participation in the full complaints process. This is unnecessary in a misconduct investigation.
18. The revised IDAR allow IPS to receive information from complainants and use it to formulate the issues for investigation before carrying out the investigation. Complainants do have an important role to play in investigations. Where it is appropriate to do so, IPS will ask for their comments. Complainants will also be provided with an opportunity to comment on the report of the investigation. The new approach will allow complainants to play an important part in sense checking and responding where necessary while allowing IPS to manage the investigation process.
19. In brief the IDAR allow IPS to receive and investigate complaints and allegations of misconduct made against those that IPS regulates. The IPS investigators will consider the information and determine if there is a matter to investigate and that it is in the remit of IPS to do so. The investigation process involves the gathering of evidence about the allegation and putting it to the regulated person or entity for response. At the conclusion of the investigation the investigator will produce a report of the issues for consideration.

Officer decision making

20. The existing IDAR allow for IPS Officers to make decisions in certain instances where defined criteria are met. These decisions are framed as the exercise of

powers delegated by the Professional Conduct Panel to the Officer. They require the Officer's decision to be endorsed by two members of the Professional Conduct Panel. This creates an unnecessarily layered approach to the determination of cases. The types of cases falling within this process are the rejection of complaints where IPS has no jurisdiction or where the allegation does not amount to a breach of the Code of Conduct.

21. The revised IDAR have been reframed to express these decisions as decisions of the investigator. However, there should be a level of scrutiny over such decisions. The investigator will therefore be required to report any decisions made under this procedure to the PCP. The PCP is thereby able to oversee the decisions made and ensure there is consistency in decision making.
22. It is important for complainants to be able to seek a review of decisions made by the investigator. The revised IDAR therefore includes a provision that complainants can seek review of an investigator decision by the PCP.
23. In some instances IPS will receive allegations that are serious in nature or the matter is similar to one that has been considered against the individual or the entity previously. In those instances IPS needs to act promptly to protect the public. IPS' experience is that such cases require formal consideration of evidence and charges by the DT, and the PCP has to refer the matter to the DT. The current IDAR requires the Officer to seek the endorsement of two PCP members, which experience shows adds unnecessary delay to the consideration of a case. The revised IDAR enables the investigator to directly refer these cases to the DT without recourse to the PCP.
24. IPS has in place sanctions guidance. This guidance sets out factors that a decision maker must take into account when deciding whether to refer a matter to the DT. The investigator will be required to consider the factors set out in this guidance when deciding whether to refer a matter to the DT.

Consent agreements

25. The current IDAR enable the Officer with the endorsement of two PCP members to enter into a consent agreement with a CILEx member where they admit an allegation made against them. The Officer has available to them all the sanctions that can be exercised under the IDAR.
26. The revised IDAR widens the provision beyond 'CILEx Member' using the term 'Relevant Person' which includes an Approved Manager, Authorised Person, CILEx Member, CILEx Practitioner or Authorised Body, but requires that the PCP approve the Order. This proposal allows for proportionate disposal of cases where allegations are admitted. The involvement of the PCP also enables independent scrutiny of an agreement before it can be finalised.

Role of the Professional Conduct Panel

27. The role of the PCP has been amended. The PCP can determine cases where a member admits misconduct and approve consent orders. It will receive reports of decisions made by investigators.
28. The PCP does not consider formal evidence and charges and neither does it hear from witnesses. Therefore it is inappropriate for it to determine cases that are not admitted. Under the revised IDAR such cases will be dealt with by the DT where the parties will have a fair hearing and opportunity to put forward their case orally, if they wish.
29. IPS recognises that the DT process can be costly and lengthy compared to disposal of a case by the PCP. However, access to justice and fairness require that the DT consider unadmitted allegations of misconduct.

Disciplinary Tribunal and Tribunal proceedings

30. The rules relating to the procedure of DT hearings have worked well. While the new rules have been simplified and reordered they retain the same procedural requirements as the existing IDAR, recognising that a matter subject to Tribunal proceedings may involve IPS' new regulated community as well as the existing community.
31. The Disciplinary Tribunal process is formal. It involves the drawing up of charges linked to the Code of Conduct and the presentation of formal evidence with supporting witness statements. The IDAR contain provisions as to formal procedure that the parties must follow for serving and admitting evidence and charges.
32. Hearings take place before a formal Tribunal with a lay majority. The Tribunal is supported by an independent clerk. The Tribunal reaches a determination based on the evidence presented to it by the parties. It uses the IPS policies and sanctions guidance to reach its determinations.

Service of notices

33. The service provisions in the IDAR have been reviewed. They used to require service by guaranteed post. IPS considered the approach to service taken by the regulatory sector. IPS has taken the view that service of notices should take place by first class post. This follows the approach of the Civil Procedure Rules. The rules will also allow for personal service of notices.

Representation before panels

34. The current IDAR requires members and applicants appearing before Panels to seek leave if they wish to be represented by anyone who is not an authorised person, within the definition of the Legal Services Act.

35. It should be possible for parties to be represented by anyone of their choice. The IDAR have therefore been revised to this effect. It will, however, be possible for panels to refuse to allow a person to represent a party if they are satisfied that there are good and sufficient reasons to refuse to hear that person.

Appeals

36. IPS has reviewed and updated its approach to appeals against decisions heard by the Appeals Panel (AP).
37. The rules have extended the time allowed for the parties to appeal against decisions made by the PCP and DT from 21 days to 42 days. This extended time frame is necessary to allow the parties to receive and consider decisions and put together their appeal. The revised IDAR require that the parties must submit all their documents of appeal within the 42 day period whereas at present they must submit a notice of appeal within 21 days but may delay submission of supporting documents, thereby delaying the timely disposal of cases.
38. The revised IDAR no longer sets out grounds of appeal. Instead it requires that the appellant must submit details of the decision subject to appeal and a concise statement of the grounds of appeal. This will allow appellants the opportunity to put their case for appeal without the necessity of having to link it to grounds of appeal at the risk of not putting a full submission for appeal forward. IPS recognises that the new approach will require careful management by the AP. AP panellists will receive training on handling and dealing with appeals.
39. After careful consideration IPS has introduced a rule that it may appeal against a decision of the DT. IPS believes that it is necessary to allow it to appeal where it believes a decision is made based upon a manifest error, is irrational or similarly flawed or where a sanction imposed by the Tribunal is, in its opinion, unduly lenient. In reaching its decision IPS took into account that it has an obligation to act in accordance with the regulatory objectives set out in the Legal Services Act. The areas where IPS may appeal have been carefully drawn up to allow appeals only where a DT may have acted in a manner incompatible with the regulatory objectives.

Panellists and clerks

40. The new IDAR require separate panellists to serve each of the bodies established under the rules. Each body will be served by an independent clerk.
41. IPS believes separation is necessary in the interests of natural justice and good governance to ensure that there is independence of decision making by each panel and that each body is clerked independently of the office. The IDAR

continues IPS' existing practice of a lay majority on each of its decision making bodies in the interests of good governance.

Sanctions

42. IPS reviewed the sanctions available to the disciplinary bodies. While the range of sanctions remain unchanged they are expressed so that they may be exercised against IPS' existing and new regulated community.
43. The sanctions comprise:
 - Consent agreement
 - Warning
 - Reprimand
 - Conditions
 - Undertakings
 - Fine
 - Withdrawal/Rejection of Approved Manager designation (Individual)
 - Exclusion from Membership and/or Exclusion (Rejection/Revocation) of Authorisation
44. IPS has issued guidance to panellists to assist them to determine which sanction to impose where a finding of misconduct is made. That guidance will be updated to reflect factors that panellists should consider when exercising a sanction against IPS' new regulated community. The guidance also explains the effect of a sanction on the regulated community.
45. The level of fine that can be issued is set by the IPS Board. It is currently set at £3,000 in respect of CILEx members. IPS will review the level of fine that can be ordered against Authorised Persons, Approved Managers and Authorised Bodies. It will ensure the upper limit is both proportionate and effective as a sanction.

Closure of entities

46. The sanction of exclusion from authorisation made against an entity will have the effect of preventing the entity from practising. The sanction will be used as a last resort, where it is necessary for the purpose of protecting the interests of clients of such entities and the wider public as well as proposed clients. It should be noted that the term exclusion from authorisation encompasses the terms 'rejection' or 'revocation' of authorisation. 'Rejection' is used when referring to the rejection of an application for authorisation. The term 'revocation' is used when referring to the revocation of authorisation of a body authorised and regulated by IPS.
47. IPS needs to ensure that the interests of current clients of an entity are protected where authorisation is revoked. The new IDAR include a Practice Management Agreement that the DT will require an entity to enter into where an Order to revoke authorisation is made.

48. The Practice Management Agreement will be between IPS and the Authorised Body and will impose requirements IPS considers necessary for the orderly conduct or transfer of the Authorised Body's business, funds and client files. The terms of the agreement may require that the business be managed or supervised by a person appointed by IPS; the entity and its office holders execute documents and take steps to enable the person appointed by IPS to perform their functions; and the entity meet the costs of the arrangement.

Interim Orders and interventions

49. IPS recognises that there will be instances where the protection of the public and consumers require immediate action. The current IDAR allows for interim orders to be made in such instances to suspend a person's membership of CILEx pending the conclusion of proceedings. That order can be made by the PCP and is subject to regular review.
50. The revised IDAR updates the rule to broaden its application to IPS' new regulated community. The rules enable the power to be exercised by the PCP or the DT and enable membership or authorisation to be suspended or restricted.
51. The rules require that the respondent receive at least 7 days' notice of an application for an interim order. Where the urgency or seriousness of a case requires, a panel may allow for shorter notice to the respondent.
52. IPS recognises the effect upon an Authorised Body of an interim order to suspend. The IDAR therefore enables the Panel to order the Authorised Body to enter into a Practice Management Agreement with IPS. The agreement will enable an IPS appointed person to manage the practice of the entity while proceedings before the panel conclude.
53. There will, however, be cases where the need for protection is more urgent and notice required for an interim Order is inappropriate. IPS is therefore making an application for powers to intervene into entities. The application is being made under s69(3)(c) Legal Services Act 2007 for powers of intervention to be granted to CILEx as the approved regulator. The application for the Order outlines the scheme of intervention.

Supporting policies and procedures

54. IPS has in place a range of policies and procedures which support panels in their work. These are the:
- Sanctions guidance which sets out the factors that decision makers should take into account when reaching a determination as to sanction.
 - Publication policy which sets out the time period for which a sanction remains publishable.
 - Adjournment policy which sets out factors that panels should consider in determining applications for adjournment of proceedings.

- Procedures manual which explains the complaints handling and disciplinary procedure.
55. IPS will carry out a review of its policies and procedures to update them to encapsulate its new regulated community. It will also assess whether any other policies and procedures are required as it moves to regulating its new communities.

PART 9

INDEMNITY

ARRANGEMENTS

PART 9 - INDEMNITY ARRANGEMENTS

INTRODUCTION

1. IPS is committed to protecting and promoting the public and consumer interest, and to achieve this IPS has developed a robust authorisation and risk process. In addition to this IPS has developed indemnity and client protection arrangements which will provide consumer redress in instances of negligence, dishonesty and failure to account to clients by entities regulated by IPS.

PROFESSIONAL INDEMNITY INSURANCE (PII)

2. Entities regulated by IPS will have a continuing obligation to have qualifying PII in place at all times. PII will cover civil liability claims arising from the work done by IPS regulated entities. These claims will most commonly involve professional negligence, which means that PII will provide financial protection to consumers in circumstances where they have suffered a loss due to the acts or omissions of an entity regulated by IPS.
3. Entities will be required to take out and maintain qualifying PII in accordance with the rules administered by IPS. PII will also increase the financial security that entities offer to consumers, thereby serving as an important public interest function by covering civil liability claims.
4. PII will warrant that the public does not suffer loss as a result of an entity's civil liability. This is important in maintaining public confidence.
5. IPS has had due regard to the regulatory objectives, set out in the Legal Services Act 2007 ('the Act') and the guidance provided by the Legal Services Board (LSB). IPS appreciates that the regulatory objectives are not set out in any hierarchy but that they provide sufficient overlap and interplay between each other. A statement in relation to the relevant regulatory objectives is provided at the end of this part.
6. IPS consulted on its PII proposals in August 2012. In finalising PII requirements it has had due regard to the responses from the consultation. IPS also held a Reference Group meeting in October 2012. The Reference Group consisted of a range of practitioners, and individuals representing consumer interests. The group was set up to provide feedback on the proposals. A copy of the consultation responses with IPS comments is attached at **annex 31** and the minutes from the Reference Group are attached at **annex 32**.

Objectives of IPS PII scheme

7. IPS has taken into consideration the diverse issues that affect different segments of the market appreciating that PII needs to be flexible but at the same time be able to protect both the public and consumers. It is important to IPS that PII provides protection for consumers and guarantees cover for all entities.
8. It is also important that PII provides continuing protection to clients when an entity ceases to practise. This is defined as run-off cover in PII arrangements (a more detailed explanation of run-off cover is provided under paragraph **50** of this part).

Broker

9. IPS explored the options and models of PII with three different brokers each providing their own expert advice before deciding upon which broker to instruct.
10. IPS has instructed a leading broker. The broker provided IPS with bespoke advice and an analysis of the PII market. The broker has proven experience of providing brokerage services to a large proportion of the legal sector and other regulators. IPS is confident that the broker has a good understanding of IPS, the practice rights being sought and the future regulatory requirements of IPS to help source the appropriate PII cover.

Independent broker report

11. IPS commissioned the broker to produce a market analysis report. This report comprises independent research carried out for IPS in finding the most suitable option of PII.
12. The report:
 - defines the requirements of PII
 - considers and assesses the different models for the provision of compulsory PII
 - considers the advantages and disadvantages of the different models of PII
 - identifies features of PII cover to be included, and
 - deals with the requirements laid down by the LSB.

PII options

13. The report identified two models of PII:
 - freedom of choice model (referred to as 'open market' insurance), and
 - compulsory collective model (referred to as 'master policy').

A detailed analysis of both PII models is provided by the broker in their report.

IPS decision for PII

14. Having weighed up the two options and having sought expert advice IPS is of the view that the open market is the most competitive and suitable option of obtaining PII for its regulated community, whilst at the same time providing the required consumer/client protection. IPS will however remain alert to the changes in the market place and will periodically review this position.
15. Before explaining why IPS considers the open market to be the most suitable option it should be noted that IPS considered the alternative option of a master policy.

Master policy

16. The master policy would have required IPS to set up and run a collective insurance scheme with a single insurer/set of insurers, providing cover for all IPS regulated entities. The total premium cost would have been negotiated with insurers on the basis of expected losses for the whole master policy and then allocated to individual entities using a pre-agreed rating calculation. All entities would have been required to have cover (for the prescribed compulsory level of cover) under that single insurance policy.
17. IPS considered the benefits of a master policy, the main one being group purchasing power, which may have enabled entities regulated by IPS to take advantage of more attractive premium levels (premium pool). IPS also considered that a common process of negotiation with a single panel of insurers would lead to reduced administrative costs for insurers and entities.
18. Under a master policy cover would have been guaranteed for all entities and all types of legal work. This would have the effect of a reduced regulatory burden with regard to confirming that cover is in place for individual entities. In addition automatic run-off cover would have been provided for entities that ceased to practise. This cover would have remained in place for as long as the master policy remained in existence.
19. Despite some of the apparent benefits of a master policy the report showed there were also some significant disadvantages to this scheme. The main disadvantage being that entities would not have the freedom to individually negotiate suitable cover with insurers. Whilst it was envisaged that under the master policy the overall premium pool may be lower it appeared there was a significant risk that some entities would end up paying disproportionately higher premiums under this scheme, which would be passed onto consumers.
20. IPS felt that the master policy did not support its approach to risk based regulation as IPS did not have a mechanism to separate high risk or problematic entities. There was also a risk of cross – subsidisation, raising concerns that the master policy could disproportionately benefit smaller or higher risk entities and the larger or lower risk entities would end up being

penalised. In addition as automatic run-off cover would be provided there was a risk that practising entities could end up subsidising entities that had ceased to practise.

21. IPS is of the view that a master policy does not facilitate a risk based approach to regulation, because all entities would be able to afford cover and there would be no real facility available to IPS to be able to separate high risk or problematic entities.

Open market insurance

22. Under the open market IPS has prescribed a Minimum Wording of cover. The PII Minimum Wording is the minimum terms of insurance that insurers have to provide to entities in order to protect consumer interests (a more detailed explanation of IPS PII Minimum Wording is provided under paragraph 39 of this part). Provided that the Minimum Wording is met entities have the freedom to choose/negotiate cover with insurers individually. This provides individual entities the opportunity to bargain for cover from an insurer of their choice and gives them the flexibility to provide higher levels of protection, if they so wish.
23. Consumer protection is important to IPS therefore potential insurers wanting to provide insurance to entities regulated by IPS must agree to become Qualifying Insurers. Insurers will do this by committing themselves to the terms of a Qualifying Insurers' Agreement (QIA) set out by IPS. This agreement sets the standards IPS requires of each Qualifying Insurer and confirmation that they will deliver consumer protection according to the Minimum Wording prescribed by IPS (a more detailed explanation of the QIA is provided under paragraph 36 of this part).
24. The open market scheme will allow for more competition within the insurance market and between a wide range of insurers. This should have the effect of lowering premiums, which will assist entities to reduce overall costs to their clients.
25. The premiums quoted on the open market will be based on the level of risk presented by the entity to the insurer. Entities demonstrating good risk management are more likely to be rewarded by insurers with lower premiums. The broker instructed by IPS has experience that this approach should encourage good risk management by entities. IPS believes that this supports its risk based approach to regulation.
26. The open market will give insurers the freedom to evaluate the risks posed by an individual entity and adjust its risk rating to reflect the risk posed on an individual entity basis, thereby reducing entity cross subsidisation ('good entities' subsidising 'poor entities'). Open market insurance therefore allows entities to obtain insurance according to their own merits.

27. The open market approach to PII is also more in line with the recommendations made within the Oxera report. The flexibility of the open market is consistent with market segmentation as it allows entities to take into consideration their business model, the area of work that they specialise in and their clients.

Insurer meetings

28. The IPS broker has researched the level of interest amongst insurers in engaging and working with IPS and ultimately insuring IPS regulated entities. Discussions were held with a good mix of insurers, including a leading master policy insurer, an insurer who specialised in group schemes involving small practices and an insurer with a worldwide operation that has a substantial PII portfolio including providing insurance to other similar regulators.
29. IPS also met with a leading insurer who currently provides PII for solicitors in England and Wales ranging from sole practitioner firms to multi-national practices.
30. The insurers were appraised about and took interest in the IPS regulatory model, including authorisation by competence and the future regulatory objectives of IPS. They received background information about IPS, its regulatory functions and an explanation of the application for practice rights.

Insurer feedback

31. The insurers showed confidence in IPS, its experience in regulating individuals, its track record of regulation and the innovative approach being developed for the regulation of entities on a competency and risk based approach.
32. Two out of five insurers that IPS spoke to indicated that they would insure IPS regulated entities through a master policy and three out of five insurers indicated that they would insure IPS regulated entities on the open market.
33. One of the leading insurers commented that they were “keen to engage in further discussions and would be interested to participate as an insurer for CILEx professionals in the future”. They went on to comment that they viewed IPS as “a strong and effective regulator for this community.”
34. The feedback demonstrated that insurers are interested in the IPS regulatory model. The IPS broker is confident that they will be able to generate interest in IPS within the insurance sector. Since IPS began developing its approach a range of insurers have shown willingness to provide insurance to IPS regulated entities through the open market scheme.
35. On the premise that entities regulated by IPS must obtain insurance on the open market, IPS will protect consumer interests by prescribing that the

following rules and regulations are adopted by Qualifying Insurers and (where necessary) entities regulated by IPS.

QUALIFYING INSURERS' AGREEMENT

36. IPS has taken legal advice and drawn up a Qualifying Insurer's Agreement (QIA), to which Qualifying Insurers will subscribe. The QIA is a contract that will be entered into each year between each Qualifying Insurer and IPS. It requires Qualifying Insurers to offer a minimum level of cover to each IPS regulated entity. This minimum level of cover applies regardless of the actual wording of the policies issued. Once an insurer signs the QIA they will become a Qualifying Insurer for the purpose of providing insurance to IPS regulated entities.
37. A Qualifying Insurer is an insurer that is authorised to conduct insurance business in the UK by the Financial Services Authority (FSA), and has signed the IPS QIA. Regulation of Qualifying Insurers is undertaken by the FSA, or, where an insurer from another jurisdiction is pass-ported into the UK system, the financial regulator of that jurisdiction.
38. The QIA has a 'difference in conditions' clause, which stipulates that where there is a dispute in connection with the cover, conditions, exclusions or limits of a policy, it will be specifically understood and agreed that the IPS Minimum Wording shall take precedence over any cover, conditions, exclusions or limit which are less favourable to the insured entity, or their clients.

MINIMUM WORDING

39. The IPS Minimum Wording requires all IPS regulated entities conducting reserved or regulated legal activities to obtain insurance to the same level of cover; and that all claims are dealt with consistently. On this basis Qualifying Insurers will have to adopt the IPS Minimum Wording. This will provide consistent protection for consumers who seek assistance from an IPS regulated entity.
40. IPS has worked with its broker and a leading insurance company to draft Minimum Wording that provides suitable levels of cover for consumers, whilst at the same time learning from past experiences of others in this area.
41. IPS has kept at the forefront of discussions with its broker and the insurance company the issues raised within the Oxera report, and in particular the need for PII to be adaptable to the individual needs of entities by taking into consideration each entity's consumer, type of consumer problem and type of legal activity. The insurance company has advised that these issues will automatically be taken into consideration as part of its own risk analysis of

each entity. More importantly for IPS, it is able to determine that consumers are protected.

42. The IPS Minimum Wording is set out in **Appendix 11**. The Minimum Wording must be included as part of an entity's compulsory policy of qualifying insurance.

IPS INDEMNITY INSURANCE RULES

43. IPS Professional Indemnity Insurance (PII) Rules are set out in **Appendix 10**.
44. The PII Rules impose obligations upon entities to obtain Qualifying insurance from a Qualifying Insurer.

CLAUSES WITHIN THE MINIMUM WORDING, QIA & PII RULES

45. This application does not attempt to detail all of the clauses within the IPS Minimum Wording, QIA and PII Rules but rather highlights some of the more important obligations on entities and Qualifying Insurers.

Compulsory level of cover

46. The total amount of PII will depend on the entity's size and exposure to risk. Entities will be able to seek advice from their broker and/or insurer to ensure that they have a sufficient level of cover in place.
47. The QIA establishes a minimum level of cover for all entities. This has been set to at least £2million in compulsory cover. This level of cover is comparable to that provided in the legal sector generally.
48. Entities will not be allowed to exclude or attempt to exclude liability below the minimum level of cover.
49. If an entity decides to obtain cover above the compulsory level, this additional cover will not be subject to the rules. This means that an entity can obtain it from any insurer, not just a Qualifying Insurer, and on different terms and conditions to the Minimum Wording. It will not be necessary to buy all of the cover from one insurer.

Run-off cover

50. To ensure adequate public protection IPS Minimum Wording requires Qualifying Insurers to provide run-off cover for at least six years following the closure of an entity without a successor practice.

51. Run-off cover will be provided on the proviso that the entity will have a period of 28 days to pay for the run-off premium. If the entity does not provide the premium for run-off within 28 days the run-off cover will be withdrawn by the insurer.
52. It is the experience of the broker employed by IPS and the insurance company that entities that cease practising do normally take run-off cover without difficulty. In order to assist them in obtaining run-off cover, entities will be able to obtain finance from a premium finance company. The run-off premium will be 2.25 times the amount of an entity's last annual PII premium. In the rare instance that a claim arises where run-off is not in place such claims will be dealt with through the IPS Compensation Fund.
53. If an entity does not pay for the run-off cover within 28 days of ceasing and run-off cover is withdrawn by an insurer, the entity will be referred to IPS, which may give rise to disciplinary action.

Extended indemnity period

54. IPS will not have a set annual indemnity period however PII will be obtained by entities on a yearly basis. This allows entities the flexibility of not being tied to a common renewal date. Entities unable to obtain qualifying insurance at the end of their indemnity year must be given an Extended Indemnity Period (EIP) by their insurer from the previous indemnity year. The terms of EIP are set out in the Minimum Wording.
55. The EIP comprises a 30 day extended indemnity period in which an entity can continue to practise and try to obtain qualifying insurance. After this time entities 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.
56. The 90 day period will provide IPS with sufficient time to investigate why the entity has not renewed their insurance policy. Within the 90 day investigation IPS will require entities to either renew their PII or cease practising and to take run-off cover.
57. IPS understands the obligation it has to consumers. Therefore any payments of negligence claims resulting from uninsured entities will be managed through the IPS Compensation Fund.

Ceasing practice

58. Entities will have to consider the PII ramifications before ceasing to practise. In particular, they should consider who will cover claims that arise after the practice has ceased. Responsibility for covering claims against a former practice will depend largely on whether there is a successor practice to an entity.

59. Where there is no successor practice, the entity will have to close and take run-off cover, which under the Minimum Wording will be for six years' from the expiry date of their policy.
60. Where there is a successor practice the entity may elect to trigger run-off cover under their current PII policy. If they do not elect to, or do not meet the notification and premium payment requirements, the risk will be transferred and must be managed by the successor.

Non-disclosure or misrepresentation

61. There are provisions in the Minimum Wording that permit insurers to avoid cover in certain circumstances, that is, non-disclosure and misrepresentation.
62. Failure by an entity to disclose material information to their insurer may permit the insurer to avoid cover for claims within the compulsory level of cover set out in the Minimum Wording. The entity will have to establish to the reasonable satisfaction of the insurer that any alleged non-disclosure, misrepresentation or breach of warranty was free of any fraudulent conduct or intent to deceive. The insurer will be able to adjust the premium and the terms and conditions to those which would have applied had the circumstances of the misrepresentation or non-disclosure been disclosed. Under the QIA insurers must also report matters of non-disclosure and misrepresentation to IPS, which may give rise to disciplinary action.
63. IPS understands the obligation it has to consumers. Therefore any payments of negligence claims resulting from uninsured entities will be managed through the IPS Compensation Fund.

Provision of Services Regulations 2009

64. IPS is aware of and will assist entities in meeting their obligations under the Provision of Services Regulations 2009 (implementing European Directive 2006/123/EC on services in the internal market). These regulations impose requirements under regulation 8(1)(n) that a service provider that is subject to a requirement to hold any professional indemnity insurance must provide information about the insurance to clients.
65. The specified information that must be provided under the Regulations is the contact details for the insurer and the territorial coverage of the insurance. In the case of the minimum terms, the territorial coverage is worldwide.
66. IPS will provide guidance to entities on the regulations, which state that the above mentioned information must be made available to customers through a choice of four methods. These are:
 - provide the customer with such information on their own initiative

- make it is easily available to the customer at the place where the service is provided, or where the contract for the service is concluded
- make it is easily available to the customer electronically (for example, on a website)
- include it in an information document supplied to customers which gives a detailed description of the service provided (such as client care letter).

STATEMENT IN RESPECT OF THE REGULATORY OBJECTIVES

Protecting and promoting the public interest

67. A professional indemnity scheme offering a high degree of financial protection is in the interest of all stakeholders but particularly consumers of legal services, for whom the security afforded by the arrangement is of a very high order. PII provided through the open market not only protects but helps promote consumer interests.

Supporting the constitutional principle of the rule of law

68. IPS considers that the QIA, Minimum Wording and PII rules will be neutral towards this objective.

Improving access to justice

69. Consumers of legal services are entitled to expect a good quality service from their legal representative, and they should have confidence that if something does go wrong, resulting in a financial loss to them, that there is a mechanism through which they can access justice and redress.
70. IPS insurance and compensation arrangements are aimed at providing consumers with continued assurance and confidence that access to justice is provided.

Protecting and promoting the interests of consumers

71. Consumers should have confidence that if the advice or service they receive from an entity regulated by IPS is negligent, which leads to financial loss there is in place a source of financial redress. The Rules and PII cover are aimed at providing consumers with continued assurance and confidence that comprehensive financial protection arrangements remain in place. IPS' PII arrangements clearly do protect and promote the interests of consumers and the wider public interest.
72. The level of client financial protection will be maintained at a minimum of £2million for each entity, which should be sufficient in protecting and promoting the interests of consumers.

Promoting competition in the provision of services

73. Open market insurance will help promote competition in the provision of services within the context of the QIA. IPS anticipates that there will be a continued flow of new Qualifying Insurers into the PII market. IPS seeks to strike a balance between providing excellent protection for consumers of legal services and fostering a competitive market for its regulated community.

Encouraging an independent, strong, diverse and effective legal profession

74. IPS believes that the PII scheme will encourage a diverse and independent legal profession. The PII scheme will also encourage a strong and effective legal profession by requiring that all regulated entities conducting reserved or regulated legal activities are insured. This will assist in creating conditions for a competitive market for legal services which, given the diversity of CILEx membership, will encourage new, diverse groups to be established to provide independent legal services.

Increasing public understanding of the citizen's legal rights and duties

75. IPS considers that the Rules will be neutral towards this objective.

Promoting and maintaining adherence to the professional principles

76. The legal profession's reputation for high-quality and conscientious service is built on the foundation of the professional rules and principles of conduct established by IPS. IPS' PII and compensation arrangements underpin this objective.

PART 10

COMPENSATION

ARRANGEMENTS

PART 10 - COMPENSATION ARRANGEMENTS

INTRODUCTION

1. IPS is committed to protecting and promoting the public and consumer interest, and to achieve this IPS has developed a robust authorisation and risk process. In addition it has developed indemnity and client protection arrangements, to provide consumer redress in instances of negligence, dishonesty and failure to account to clients by entities regulated by IPS.

COMPENSATION FUND

2. Case law requires that the power to set up a Compensation Fund must be given by statute. IPS will therefore be seeking an order under s69(3)(a) and (c) of the Legal Services Act 2007 to set up the Compensation Fund.
3. IPS will maintain a Compensation Fund for the purposes of making grants to persons who have suffered loss and hardship by reason of the dishonesty or as a consequence of a failure to account by an IPS regulated entity. Grants will be made at the discretion of IPS.
4. The purpose of the Compensation Fund will be to protect clients/consumers who have no other route of redress available to them and as far as possible to put them back into the position that they were in before the loss occurred.
5. In developing its approach IPS has had due regard to the responses made to the consultation that it issued in August 2012 and the feedback from its Reference Group held in October 2012. A copy of the consultation responses with IPS comments is attached at **annex 31** and the comments from the Reference Group are attached at **annex 32**.

How the Compensation Fund will work

6. CILEx has set aside reserves to establish the Fund and will maintain the Fund, which shall be applied to the payment of Discretionary Grants. Although the Fund will be maintained by CILEx, it will be managed by IPS. Every IPS regulated entity shall make contributions to the Fund which will assist in maintaining and building the Fund. Where contributions have not been paid by an entity, these will be recovered by CILEx as a debt.
7. To preserve the independence of the Compensation Fund independent Trustees will be appointed to make decisions concerning grants out of the Fund and advise how reserves in the Compensation Fund may be invested.

8. IPS has Compensation Fund Rules, which are attached at **Appendix 12**. These Rules set out the procedure that will be followed where an application for a claim is made.
9. The Fund will be a Discretionary Fund of last resort and IPS will expect clients to have exhausted all other forms of redress before making a claim against it.
10. Clients of the entity must provide information in support of their claim and demonstrate the loss they have suffered.
11. In assessing what level of payment to make to a client who has suffered loss, IPS will take into account various factors such as whether the client contributed to their loss, failed to act with integrity or failed to co-operate with IPS.
12. Where a client is suffering severe hardship IPS may make an interim grant. This will be important for providing assistance to vulnerable clients.
13. A client compensated through the Fund will subrogate to IPS their right to make a claim against an entity and will be required to support IPS in making any such claim.

Compensation Fund insurance

14. CILEx has set aside reserves to establish the Compensation Fund and the Fund will be further maintained through entity contributions. However, as the initial number of entities regulated by IPS is anticipated to be low, building up further reserves is likely to take some time. IPS has therefore secured an insurance policy to help protect consumers and pay against assessed claims.
15. The insurance company is in the process of providing IPS with a detailed quote of what the premiums will be under this policy. IPS is aware of indicative figures and can confirm that it is able to fund the premium.
16. The premium under this policy will be payable by IPS and will be worked into each entity's contribution to the Compensation Fund.
17. Each claim on the insurance will attribute an excess. The excess will be calculated on a per claim basis and will be payable by IPS. The insurance company is in the process of providing IPS with a detailed quote on the excess. IPS is aware of indicative figures and can confirm that it is able to fund the excess.

MANAGEMENT OF THE FUND

18. The management of the Fund will be the responsibility of IPS and it will authorise grants out of the Fund. Although there will be an insurance policy

that will protect the Compensation Fund and pay out on claims, the insurance company cannot and will not be able to influence the management of the Fund. The terms of the insurance will require that the insurance company will be obliged to pay claims/grants that have been authorised by IPS.

19. The insurance will not cover grants made in respect of losses arising solely by reason of professional negligence or where there is a policy or policies of qualifying insurance against which a claim could be or has been made in respect of civil liability. Any civil liability claims arising due to negligence by an entity's failure to have qualifying insurance in place will be made directly out of the Compensation Fund.

ESCROW

20. The risk of dishonesty or failure to account mainly arises where entities hold client money. The aim of the Compensation Fund is to provide protection against dishonesty or fraud. As most dishonesty and fraud claims involve client money IPS explored alternative methods of protecting consumers and to reduce the risk of losses arising in the first instance. In this context IPS has made provisions for entities to opt for escrows.
21. An escrow is a legal arrangement where money is delivered to a neutral third party (escrow agent) to be held in trust pending the fulfilment of a contract or, in the case of IPS regulated entities, the fulfilment of activities which lead to the trigger of transactions involving client money. The escrow agent is bound by a fiduciary duty to maintain the escrow account until completion of the contract. On completion of the contract, the escrow agent delivers the money to the proper recipient, according to the terms of the contract.

Escrow agent

22. IPS has sourced and been working with an escrow agent. IPS has also considered the Bar Council (BARCO) model and similar models offered by other sectors.
23. The escrow agent will be independent of both parties (e.g. the buyer and the seller; parties to a litigation matter; parties in an estate administration) and will help protect the interests of the parties and most importantly client money.
24. IPS has obtained confirmation from the escrow agents' broker and is satisfied that the escrow agent has the relevant crime insurance and securities in place to safeguard all client money paid into the escrow account.

Objectives of an escrow

25. The main objective of the escrow is to remove responsibility for the management of client money from entities regulated by IPS; and to pass this responsibility onto the escrow agent, who will be the subject of close regulatory control by the FSA.
26. This arrangement transfers most of the risks associated with holding client money, concentrating them with the escrow agent who will act as trustee and manager of the accounts. IPS has held detailed meetings with the escrow agent and is satisfied that the escrow agent has in place adequate arrangements to minimise risk and protect client money. The arrangements are set out below.

Delivery of escrow services

27. Each entity will need to enter into a contract with the escrow agent. The escrow agent will maintain records for each entity that opts for an escrow. The records will include itemised receipts and disbursements for each transaction for each client of each entity. The agent will undertake and supply reconciliation reports to each entity on a monthly basis.
28. The escrow accounts will undergo an independent annual audit, providing an assurance to IPS and to entities that the escrow account is being maintained in accordance with required procedures. The audit report will be made available to IPS.
29. The escrow agent will properly account for the funds they hold and agree to be responsible for ensuring that funds are only used for the purpose intended. IPS is satisfied that the escrow agent has the appropriate systems and checks in place to verify instructions to release funds and to deal with instructions relating to the accounts.
30. The escrow arrangement will reduce the opportunity of dishonesty and/or theft. This in turn will inspire consumer confidence because it will provide a layer of independent protection for client money, which other accounting arrangements cannot provide.
31. The escrow will reduce (but not eliminate) the need for a Compensation Fund. Entities utilising escrow accounts will still be required to make annual Compensation Fund contributions to cover the Compensation Fund insurance premiums. However, the IPS broker and insurance company that IPS has been working with have made observations that an escrow should assist in lowering the Compensation Fund insurance premiums.
32. The escrow will reduce ledger maintenance and reconciliation work for entities as the onus will be on the escrow agent to produce this information on behalf of each entity that subscribes to the scheme. Equally this independent record

keeping will ensure accounting records are fully maintained to ensure proper accounting takes place.

33. The escrow agent will carry out the compliance obligations necessary for the protection of client money as set out in the IPS Account Rules.

Costs of escrow

34. The escrow agent will charge a transaction fee. Discussions have taken place between IPS and the escrow agent and IPS is confident that a feasible transaction fee will be set by the escrow agent.
35. The responsibility lies with entities regulated by IPS to decide whether to opt for the escrow method. There are benefits to entities in reducing their accounting burden as well as providing an increased level of protection for client funds.

Opting for escrow

36. IPS wants to provide a flexible mechanism of client protection that will take into account the needs of the individual entity and its clients. For this reason IPS has decided to give entities the option of utilising an escrow.
37. Providing entities with this option is in line with the recommendations made within the Oxera report, as entities will be able to adopt client protection mechanisms most suited to their business and their clients' needs. The option also allows for changes in the market as it will enable entities to evolve with the demands on their business without compromising client protection.

STATEMENT IN RESPECT OF THE REGULATORY OBJECTIVES

38. The existence and effective operation of a Compensation Fund protects and promotes the interests of consumers, in ensuring that they receive compensation if their money is lost while in the hands of an entity regulated by IPS. However it also promotes the public interest and improves access to justice in giving the public the confidence to entrust funds to IPS regulated entities and so facilitate many legal transactions.
39. Escrow will deliver a simple and secure system, operated through a central financial institution, for handling client money. Making this option available gives IPS regulated entities the flexibility to provide the best value legal services that they can. The escrow will primarily protect and promote the interests of consumers and provide public confidence that their money is entrusted with an escrow agent who is independent, reducing the risk of theft or misappropriation.

PART 11

DELIVERY OF THE

SCHEME

PART 11 - DELIVERING THE PRACTICE RIGHTS SCHEMES**INTRODUCTION**

1. This part of the application sets out IPS' proposals for the implementation and delivery of the practice rights schemes. It identifies the organisational structure that IPS will adopt and the resources and arrangements it will have in place to deliver the practice rights schemes. It also sets out details of the applications IPS needs to make ancillary to the practice rights applications to deliver the regulatory arrangements proposed in the applications.
2. In developing its proposals IPS has assumed that its rule change applications to bring in new regulatory arrangements for immigration advisors and extend the award of rights to conduct litigation will be approved by the LSB in September 2013. IPS has therefore made the working assumptions that the application for designation to award probate and reserved instrument activity rights will complete the Parliamentary processes by March 2014; and that the statutory orders required for both the designation and the rule change applications will also be granted by Parliament by March 2014.

IPS' EXISTING CAPABILITY

3. IPS has considerable expertise and experience, developed over many years, in the regulation of CILEx members as individuals. This is well recognised. In planning to meet the above anticipated timescales for implementation, IPS recognises the need to enhance its capacity and capabilities.
4. Early in 2012 IPS identified the need for additional staff, with particular knowledge and understanding of the regulation of entities, to develop its proposals. It successfully recruited staff from other regulators with those skills, who have been involved in developing the key regulatory arrangements contained within this application. It is expected that these staff, with the existing, will become the core of the new structure and that IPS will then be able to recruit further additional staff, with the necessary skills and knowledge, to fully staff the structures summarised in this document.
5. IPS has undertaken significant development in 2012 to develop its regulatory arrangements for the award of reserved and regulated legal activity rights. It will build upon that firm foundation to deliver as a regulator of reserved and regulated legal activities and as a regulator of entities delivering those services.

FACTORS INFORMING IPS' DELIVERY

6. IPS has conducted research into the likely demand for the proposed practice rights, and entity regulation by IPS, from both existing CILEx members and

non-members. This research has been used to identify the level of work required in the first 12 and 24 months and developed into detailed business plans, shown in **annexes 33 and 34**, which have been fully costed. These plans will ensure that staff are recruited into post at the appropriate time, thus enabling IPS to meet the timescales for dealing with applications. It is important to recognise that demand may build slowly, but that initial workload will focus on implementation, with routine monitoring activity starting after 12 months of authorisation of entities.

7. IPS also considered the governance arrangements to implement and carry out its functions as a regulator authorising practitioners and entities to practise. This document sets out IPS' proposals.
8. Support and corporate functions are delivered to IPS through shared services as set out in Protocols and Service Level Agreements between IPS and CILEx. IPS has assessed the level of additional demand its expanded responsibilities will make on shared services.

IPS' CURRENT STRUCTURE

9. IPS regulates CILEx members, Associate Prosecutors, immigration practitioners; and the award of rights of audience and rights to conduct litigation.
10. IPS carries out the authorisation of practitioners, supervision of practitioners and the investigation of complaints and associated enforcement activity. IPS' functions are split into education standards and policy; investigation; and projects.

Education Standards and Policy

11. The Education Standards and Policy Team have responsibility for carrying out the authorisation and supervision of practitioners as well as oversight of standards and development of IPS policies in relation to education standards. Staff undertaking this work have:
 - qualifications in law
 - worked in legal practice, and
 - delivered and developed legal education and training.
12. Staff are experienced in:
 - assessing and determining applications for Fellowship of CILEx
 - determining applications for rights of audience
 - carrying out compliance assessments with continuing professional development (CPD) requirements
 - developing competency frameworks and putting in place arrangements to implement a competency based approach to regulation

- assessing applications made under competency based schemes
- assessing quality of course provision
- developing arrangements for the moderation of standards and consistency of assessment
- oversight of standards of education
- development of policy proposals relating to the authorisation and supervision of practitioners to ensure continuing competence
- development, in conjunction with other regulators, of common sector wide standards.

Investigation

13. The Investigation Team is responsible for handling cases where complaints are made about, or an issue arises concerning the conduct of, IPS' regulated community. Staff have:

- qualifications in law
- experience of a range of legal practice areas which inform investigative activity.

14. Staff are experienced in:

- dealing with and assessing declarations of prior conduct
- investigating complaints made against CILEx members
- preparing cases for Disciplinary Tribunal proceedings
- presenting cases before the Tribunal or instructing advocates to do so
- dealing with post hearing matters, including the management of cases where appeals are made
- developing and implementing arrangements for the delivery of IPS' complaints handling and disciplinary activities.

Projects

15. In 2012 IPS set up a project team to develop its arrangements for the regulation of entities and development of the practice rights applications. Recruitment of new staff members took place with full funding from CILEx. Staff have:

- qualifications in law and legal practice
- experience of working in legal practice
- experience of entity regulation.

16. They are experienced in:

- carrying out regulatory visits to entities to assess compliance with regulatory arrangements under a risk based approach
- preparation of adjudication reports

- supporting and guiding entities to achieve compliance and managing relationships with them to improve standards
- conducting forensic investigations
- working with professional indemnity insurance compliance matters
- carrying out the investigation of compensation claims
- developing regulatory arrangements and rules, and
- developing outcomes focused regulation proposals.

17. The project team have led the work of IPS in developing regulatory arrangements, which include entity regulation; innovative consumer engagement initiatives; outcomes focused regulation; and client protection arrangements.

Range of experience

18. IPS staff have experience of working in, and regulation of, a range of legal practice models. They also have experience of working in and regulating a range of legal practice areas, which encompass those areas in which practice rights are sought. This insight from an operational and regulatory point helps inform their work.

IPS NEW STRUCTURE

19. The LSB report, *Developing Regulatory Standards*, states approved regulators will be able to regulate in a manner that promotes the regulatory objectives by focusing on four constituent parts of regulation: outcomes focused regulation, risk identification framework, proportionate supervision and appropriate enforcement strategy. IPS has considered this report and will adopt a staff structure which correlates with these four areas.
20. These proposals will have two authorisation and supervision teams: one for entities and one for individuals, with one investigation/enforcement team. The managers of these three teams will report to a new post of Head of Operations. IPS will also have a business development team, reporting to a new Head of Business Development and responsible for delivery of outcomes focused regulation, consumer engagement and governance arrangements.
21. A new structure has been developed. Job descriptions for these posts have been developed and the funding approved. Appointments to the new senior posts will be made as soon as approval of this application is given. Other appointments will take place incrementally during 2013.
22. IPS believes that separate teams for practitioner and entity regulation will enable it to deliver regulatory services more efficiently than separation of functions between authorisation and supervision. Retaining authorisation and monitoring within the same teams will also enable IPS officers to forge the relationships with practitioners and entities which are necessary for building

expertise, knowledge stores and understanding of risks distinct to each of the entity and practitioner fields.

23. IPS already carries out the authorisation and supervision of individuals and has a team in place to undertake that activity. The remit of this team will be extended to include authorisation and supervision of practice rights applicants, whereas a split between authorisation and supervision functions will not facilitate the effective operation and co-ordination of information in respect of these functions.
24. IPS staff have developed a risk identification framework which will be used to profile risks presented by entities both at initial authorisation and under later supervision. These staff will be the core of the new team responsible for the authorisation and supervision of entities.
25. The IPS investigation/enforcement activity will be carried out by the existing Investigation Team, expanded as necessary to encapsulate fitness to own and action involving entities.
26. The Business Development Team will be responsible for development and review of IPS' approach to outcomes focused regulation and for consumer engagement and governance.
27. The work of each team is described later in this document. It is described by reference to IPS' research into demand for practice rights, which has enabled it to identify the resources needed to deliver the practice rights schemes.

DEMAND FOR RIGHTS & REGULATION AND THE OXERA FRAMEWORK

28. IPS sent a survey to all CILEx members and to a sample of practitioners who were not CILEx members. IPS obtained a 5% response rate from CILEx members. The response rate of non-members was too low to be statistically valid, but nevertheless provided some interesting indicators. A report of the survey results appears at **annex 35**.
29. The data return from CILEx members indicated that 55.1% of respondents would probably or definitely apply for reserved legal activity rights and that 21.7% respondents would subsequently practise independently. 7.1% respondents stated they would practise independently within the next 2 years.
30. The survey was sent to all CILEx members who were provided with reminders to respond. It seems reasonable to assume that many members interested in practice rights did respond.
31. IPS believes that the flexibility of its regulatory model will attract non-members to seek practice rights, who may not form part of the non-member respondents. It must therefore be able to meet that demand.

32. Through its growing understanding of the regulated community, developed through research and regulatory activity, IPS is able to target regulatory protection of consumers and assess impact and proportionality of specific elements of regulation, as recommended within the Oxera report.
33. IPS understands from the recommendations made within the Oxera report that the collection of data needs to be used efficiently and that better regulation means transparency, which means collecting, providing and utilising sufficient information. By collecting this information IPS will continue to enhance its understanding of the market that it is likely, and will continue, to regulate. IPS will gain information about the types of consumer problems that are likely occur within the regulated community, the risk of consumer detriment that arises, and an assessment of whether regulatory action is required to mitigate associated risks and thereby target resources at appropriate regulatory activity.
34. A summary of the outcome of the research IPS has conducted is set out below. This has informed IPS' assessment of the resources it requires to regulate the award of practice rights and to regulate entities. The research and the summary segment demand by reference to the practice areas in which applications are being made.

Demand for practice rights

35. By understanding the community that IPS regulates and their areas of specialism, IPS is able to focus its resources accordingly, rather than subjecting all of its regulated community to regulation for the sake of it.
36. Based on the research this document assumes that IPS might receive the following number of applications for practice rights, segmented by practice area. The reasoning for this approach is set out below.

Year	Low	Mid	High
1 (Apr 2014- Mar 2015) of which:	300	610	1217
Litigation	160	325	650
Probate	35	70	140
Conveyancing	100	200	400
Immigration	5	15	27
2 (Apr 2015– Mar 2016) of which:	60	120	240
Litigation	35	70	140
Probate	5	11	22
Conveyancing	15	30	60
Immigration	5	9	18

37. IPS' research into demand identified that 31% respondents would apply for rights to conduct litigation. Of these respondents 56% stated they would seek rights during the first year of the scheme and a further 24% within 1 to 5 years. This amounted to 65 respondents to the survey making applications in year one and a further 20 in the following four years. IPS has considered the level of demand if the 65 members were a representative sample of CILEx members eligible to seek rights to conduct litigation. These are Fellows of

CILEx practising in civil, criminal or family litigation. If the number of respondents are representative of CILEx members who may seek litigation rights demand could be in the region of 650 members for year one and approximately 70 members annually thereafter. The year one demand forms high level demand in the above table and the subsequent annual demand forms mid-level demand.

38. The research indicated that 17% respondents would seek probate practice rights, of which 60% would seek rights within the first year of the scheme and a further 16% within 1 to 5 years. This amounts to 40 respondents to the survey seeking probate practice rights in year one and a further 11 respondents in each of the following four years. IPS has considered the level of demand if the responding members were a representative sample of CILEx members eligible to obtain probate practice rights. These are CILEx members practising in probate practice holding the relevant knowledge requirements. If the number of respondents to the survey are representative of CILEx members who may seek probate practice rights demand could be in the region of 140 members for year one, which appears as the high level demand in the above table; and demand would be 11 members annually thereafter which forms the mid-level demand in the above table.
39. The research indicated that 23% respondents would apply for conveyancing practice rights, of whom 64% would apply within 1 year of the scheme and a further 17% within the following four years. This amounts to 126 respondents to the survey making applications for conveyancing rights within 1 year of the scheme and a further 33 in the following four years. IPS has considered the level of demand if the responding members were a representative sample of CILEx members eligible to seek conveyancing practice rights. These are members of CILEx practising in conveyancing who hold the relevant examinations to meet the knowledge requirements for the award of practice rights. If the survey is a representative sample of CILEx members who will seek conveyancing practice rights demand could be in the region of 400 members for year one and 30 members annually thereafter. The year one demand appears as the high level demand in the above table and the subsequent years' demand as mid-point demand.
40. The research did not cover potential applications for immigration practice rights. IPS is already aware of those existing immigration advisors who would transition to the new scheme. There are a total of 27 potential applicants. IPS recognises that in future there will be additional applicants but Schedule 18 of the Legal Services Act requires that immigration advisors seeking authorisation by IPS must first qualify as Fellows of CILEx. Therefore demand will build up slowly for authorisation by IPS to provide immigration advice and services as applicants must become Fellows of CILEx first.
41. Based on the research IPS has assessed the resources it needs to deal with applications for all four practice rights schemes. Low level demand has been set at 300, as the number of respondents seeking practice rights. IPS used this

number as it is similar to a return it received from a similar survey conducted into demand in October 2011. High level demand has been set as the figure to demonstrate that the survey return is representative of the CILEx membership. This totals 1217. IPS set mid-point level at 610 to represent a figure at half of high level demand.

42. Research indicates that demand will fall significantly in years two to five of the schemes. The low level demand has been set as those numbers of members responding to the survey, mid-point on the basis that the survey is representative of demand from members, and high level doubling mid-point on the basis that demand may be made equally by non-members of CILEx. Demand has been equally apportioned between the four years. IPS is aware that demand during those years will depend upon marketing, its approach to regulation and new entrants into its regulatory schemes, who are not existing members.

Demand for entity regulation

43. The research also considered how many applicants seeking practice rights would seek to practise independently in an entity regulated by IPS.
44. Based on the research this document works on the assumption that IPS might receive the following number of applications for regulation made by entities:

Year	Low	Mid	High
1 (Apr 2014 - Apr 2015) of which:	60	185	400
Litigation	22	65	140
Probate	10	30	70
Conveyancing	26	85	180
Immigration	2	5	10
2 (Apr 2015 - Apr 2016) of which:	120	360	720
Litigation	44	132	264
Probate	20	60	120
Conveyancing	52	156	312
Immigration	4	12	24

45. Of the respondents who stated they would apply for litigation practice rights 23% indicated that they would probably or definitely practise litigation independently. IPS segmented this data by reference to practice model to distinguish between those models it will be able to authorise at this point and those that it cannot. Of the respondents, 63% would practise in entities that IPS could regulate. Approximately 45 applicants would seek to practise independently in the first year. Taken as a representative sample of CILEx members eligible to seek litigation rights (Fellows practising in litigation field) this amounts to 65 entities possibly seeking IPS regulation to deliver litigation services in year one. The research concluded that between 26 and 61 respondents would look to practise independently within two years.
46. Of the respondents who stated they would apply for probate practice rights 48% indicated that they would probably or definitely practise probate

independently. IPS segmented this data by reference to practice model to distinguish between those models it will be able to authorise at this point and those that it cannot. Of these respondents 68% would practise in entities that IPS could regulate. Approximately 32 applicants would seek to practise independently in the first year. Taken as a representative sample of CILEx members eligible to seek probate practice rights this amounts to 30 entities possibly seeking IPS regulation to deliver probate services in year one. The research concluded that between 24 and 41 respondents would look to practise independently within two years.

47. Of the respondents who stated they would apply for conveyancing practice rights 47% indicated that they would probably or definitely practise conveyancing independently. IPS segmented this data by reference to practice model to distinguish between those models it will be able to authorise at this point and those that it cannot. Of these respondents 64% would practise in entities that IPS could regulate. Approximately 40 applicants would seek to practise independently in the first year. Taken as a representative sample of CILEx members eligible to seek reserved instrument practice rights, this amounts to 85 entities possibly seeking IPS regulation to deliver conveyancing services in year one. The research concluded that between 25 and 58 respondents would look to practise independently within two years.
48. IPS is aware that in the short term there are a total of 5 immigration practitioners who will seek regulation of their entities.
49. The research concludes that in total 75 to 160 entities may seek regulation within two years of the schemes. IPS is aware that long term demand is likely to arise from applicants who are not yet CILEx members and therefore the research may be inconclusive on long term demand.
50. Applicants seeking to practise in new entities will need time to set up their business structures. Therefore the anticipated demand identified by the research for entity regulation of 185 and 360 for years one and two respectively has been set as the mid-point. This is on the basis that results are representative of CILEx members eligible for practice rights and seeking to practise in an entity that IPS will be able to regulate (ie not a licensed body).
51. Low demand has been set at 60 in year one and 120 in year two, on the basis that only half of the proposed applicants will be sufficiently prepared to set up practices in the first year. High has been set at twice the mid-point demand on the basis that demand for regulation will be made also by those who are not currently members of CILEx and might match in number CILEx members seeking entity regulation.
52. IPS will carry out regular surveys into demand and will regularly monitor the activities of the various teams, to enable it to keep its resource requirements under review. This will enable IPS to ensure that it focuses its regulatory attention according to risks as and when they emerge.

53. The collection of information from its regulated community and wider legal sector will place IPS in a stronger position to monitor developments in the legal sector and improve its understanding of its regulated community.
54. IPS will throughout use the Oxera framework, which will inform its analysis of its surveys into demand enabling it to analyse data by market segmentation.

PREPARATION TO IMPLEMENT REGULATORY ARRANGEMENTS

55. IPS needs to put in place measures to implement its regulatory arrangements for practice rights and entity regulation. IPS' business plan to implement the schemes is at **annex 33**.
56. The plan identifies the activities that IPS will undertake to prepare to deliver the new schemes. It includes restructuring IPS teams and recruitment of additional staff and development of application forms and IT systems.

BUSINESS PLAN TO DELIVER PRACTICE RIGHTS SCHEMES

57. IPS has a business plan to deliver the practice rights schemes. This is at **annex 34**. It sets out IPS' proposals to deliver the schemes once it has completed its implement phase.
58. The IPS model of authorisation follows a consecutive approach. Applicants will begin by obtaining practice rights, followed by an application for authorisation of the entity through which they seek to practise. This approach will allow IPS to keep under review the number of applications being made for practice rights which might then translate to entity authorisation applications. The consecutive approach will allow regular forecasting of resources needed for the Entity Authorisation & Supervision Team.

Practitioner Authorisation & Supervision Team

59. IPS already carries out structured assessments of applications to become Fellows of CILEx. It also monitors compliance with CPD (continuing professional development) requirements of all Associate, Associate Prosecutor, Graduate members and Fellows of CILEx. IPS has existing resources in place to carry out these activities.
60. In future, applicants seeking practice rights will produce portfolios of evidence, along with a supporting application demonstrating their knowledge, skills and experience. IPS has considerable experience in assessing applications as part of its rights of audience scheme and Fellowship applications.
61. The Practitioner Authorisation & Supervision Team will be responsible for applications for practice rights and for carrying out monitoring of authorised

persons. This function comprises work the team carry out already, set out at paragraph 10, and new functions under the practice rights schemes. The additional functions include:

- applications for authorisation to become an approved person for each of the reserved and regulated legal activities
- CPD compliance by new authorised persons
- assess the output of the legal education and training review and its impact upon IPS' regulatory arrangements
- development, implementation and delivery of quality assurance arrangements in advocacy.

62. The team will be overseen by the Practitioner Authorisation and Supervision Manager with responsibility for:

- the management of delivery staff
- management of individual authorisation and supervision function
- lead responsibility for policy development in relation to education and standards
- pilot and implementation of individual authorisation and supervision policy development initiatives.

The manager will report to the Head of Business Development.

63. IPS' existing experience has enabled it to assess accurately the resources required in future to authorise new applications. It has studied the work of the team, the time activities will take and the level of responsibility each aspect of the authorisation and monitoring activity requires. IPS has broken down the authorisation and monitoring process into a quantifiable time period and correlated it by reference to the level of staff resource required for its assessment and processing. This enabled IPS to identify the resources required for both current and new functions.

64. Based on this, IPS has assessed that the recruitment of one additional member of staff to this team will enable the team to process over 500 applications for practice rights. This assessment takes into account research into average productivity of individuals per annum. Although a low level of demand could be met by existing IPS staff, IPS will recruit one dedicated member of staff immediately to develop and implement the schemes and support other IPS education functions while demand rises. The additional staff member will be able to carry out functions to meet half of the high level demand. IPS will keep demand under review and recruit additional staff as demand rises and existing staff reach capacity. Equally if demand decreases IPS will be able to deploy that additional member in other activities in this team, where otherwise it might incrementally increase its resources.

65. IPS will build on the existing model for the assessment of portfolios of evidence produced by applicants for rights of audience, where it has external examiners

in respect of civil, criminal and family proceedings. Additional resource will be needed for these practice areas as demand increases. New resource is required for conveyancing, immigration and probate. External advisors are available with some ready for immediate appointment once IPS is able to implement the practice rights schemes. IPS has assessed it will require one external advisor for each practice area for low demand and three external advisors as demand reaches mid-point levels for probate and conveyancing. The number of external advisors will double for each practice area if demand reaches the levels indicated as 'high' in the analysis above.

66. The scheme allows for approval of applications by IPS officers where agreed criteria are met. However, some applications will require detailed consideration by a Committee. IPS has an Admissions and Licensing Committee which considers Fellowship and rights of audience applications. The work in respect of practice rights naturally falls within the remit of that Committee, which already possesses considerable experience of such matters.
67. The Admissions and Licensing Committee already meets on a regular basis. On the basis that fewer than 5% of applications, in IPS' experience, are referred to the Committee it will be able to deal with 'low' demand. IPS has budgeted for up to three extra meetings a year to cope with the additional demand of work generated by the new practice rights schemes if demand should reach 'mid-point'. It has resources for a further three meetings if demand is at the high end of the range.
68. Authorised persons will be subject to supervision, in respect of their continuing competence to deliver services to clients. IPS' research has indicated that most practitioners who will seek authorisation to deliver reserved legal services are already members of CILEx. IPS already has resources in place to supervise compliance with CPD requirements. Its existing resources will be able to cope with the small additional numbers of practitioners who are not already subject to supervision requirements by IPS.
69. The LSB is working towards making will writing a reserved legal activity. The IPS model for authorisation by competence may attract will writers into regulation, in anticipation of the forthcoming authorisation requirements. While IPS has not yet commissioned research into demand for regulation for will writing, it recognises that the position is subject to change. It will keep under review the resources required to carry out authorisation and supervision activities in this area. Certain numbers can be managed within the increased resources set out above. A more significant increase would require an additional member of staff, both in this team and in the Entity Authorisation & Supervision Team.

Entity Authorisation & Supervision Team

70. The Entity Authorisation & Supervision Team will be responsible for entity regulation, with the work being risk based. The team will:

- receive and determine applications made by entities seeking regulation by IPS
- assess applications against the risk framework
- carry out supervision activities, including visits to undertake detailed risk assessments
- develop and maintain relationships with entities
- receive and consider annual accountants reports and annual returns
- receive and consider applications made by entities to vary the terms of their authorisation
- monitor compliance with conditions placed on the authorisation of entities.

71. The team members carrying out the above functions will be called Relationship Officers. They will maintain relationships with entities falling within their remit. This continuity will enable Relationship Officers to develop a detailed understanding of entities within their remit and enable efficient decision making by officers who have developed an existing understanding of the arrangements of the entities for which they are responsible.

72. The team will be overseen by the Entity Authorisation & Supervision Manager with responsibility for:

- authorising decisions on risk assessments
- management of Relationship Officers and the entity authorisation and supervision function
- development and implementation of IPS' risk assessment framework
- developing a programme of utilising intelligence gathered and maintaining the risk assessment framework
- developing, implementing and maintaining a programme of supervision of entities
- referring matters for forensic analysis or investigation and enforcement action.

IPS already has staff members with direct, good quality experience of this work, and will recruit more as required.

73. Entities will make an application to IPS seeking authorisation. IPS staff will assess each application using the risk assessment framework. IPS has existing staff who are experienced in carrying out risk assessments and conducting visits to assess compliance with required outcomes by entities. This experience has enabled IPS to design the authorisation and supervision process; make an assessment of the average time needed to carry out authorisation and supervision of entities; the level of staff needed for each activity; and thereby identify the costs of these activities.

74. In designing its arrangements IPS has taken into account the range of activity involved, such as consideration of the application, collection of data and

evidence, consideration and assessment of the data against expected outcomes and assessment using the framework.

75. IPS has calculated the resource required to carry out a detailed risk assessment from the visit, preparation, post-visit reports and action for an entity application. IPS is aware that the amount of resource required will vary according to factors such as the size and structure of entity and areas of law practised.
76. The assessment identified that one Relationship Officer can manage approximately 50 entities per annum, with about half of them requiring advanced risk assessments. The IPS model, where risk visits are offered to entities, has led to the calculation of 50% of applicant entities requesting visits, particularly in the early stages of the scheme. This indicates that IPS will need to recruit one Relationship Officer immediately to meet low level demand, increasing to four officers to meet mid-point demand and seven to eight officers to meet high demand. IPS will keep demand under review, appointing additional Relationship Officers as existing officers approach capacity.
77. IPS has also secured the availability of external support resources which it could call on if demand increases quickly, pending the recruitment of additional staff. The funding of those additional resources will be available through the application fees paid for authorisation. The existing expertise within the IPS team will underpin the recruitment of personnel with the appropriate skills and knowledge.
78. In securing external support, on which it can call if demand increases suddenly, IPS ensured that the provider has in place suitably skilled personnel to carry out required activities. The organisation on which it will call has personnel who are qualified lawyers and also have accounting skills to analyse risks pertaining to financial management of practices. The organisation has experience of carrying out similar risk assessment activities and visits for two other regulators in the legal profession. The outsource organisation would be required to carry out the risk assessment work but IPS will retain responsibility for decision making on cases. This approach will allow the Entity Authorisation & Supervision Manager to maintain a system of checks and balances over the work of the outsource organisation.
79. Once entities are approved, they will make annual returns as part of routine monitoring. The annual return will include a reassessment of risks, consideration of annual accounts and a review of risk profiles. As IPS approaches the autumn of 2014 it will assess and put in place additional Relationship Officers to support this annual monitoring work.
80. IPS has already undertaken significant work on the development of authorisation and supervision applications, as well as the assessment framework and processes. It is ready to implement its entity authorisation procedures. It has tested some of the procedures during the application

development phase with immigration advisors practising independently. Testing will continue during 2013 through voluntary visits to entities to ensure the forms and processes are fully tested and developed for the formal implementation stage. The testing mechanism will also provide IPS with the mechanism to train new Relationship Officers.

81. IPS has developed annual accounting requirements, which are set out in its Accounts Rules. It will be working with experts to develop its accountants report format. The work will be completed by August 2013.
82. The work on identifying the resources required is based on assumptions of demand. It is however possible that demand may be higher than anticipated, for example, through additional requirements such as the regulation of will writing. IPS has identified an organisation which has experience of conducting authorisation and supervision activity in respect of entities delivering legal services, who could provide additional resources at short notice to receive and consider applications while IPS puts in place further in-house resources.
83. IPS' approach to risk will be set by a Strategic Risk Committee. The role of this committee is described in Part 5 of this application. It will be responsible for assessment and overall direction on risk assessment, including taking a view on the risk rating, rejection or revocation of authorisation, rejection or withdrawal of Approved Manager status, standardisation of approach between risk ratings and taking a view on risks in the sector and data gathered about risks.
84. The Strategic Risk Committee is a new committee. IPS has considerable experience of recruiting committee members and will use the same processes to appoint members to the Strategic Risk Committee. The cost of the Committee has been factored into IPS' entity regulation fees.
85. IPS recognises it might be necessary to seek external advice from experts. These may include accountants and expert risk assessors. IPS has budgeted for this need and will undertake work during 2013 to identify expert assessors and develop arrangements to make use of identified resources on a case by case basis.

Client Protection Team

86. Working alongside the authorisation and supervision of entities, IPS will have a Client Protection Team overseen by a Client Protection Manager. The work of this team encompasses:
 - professional indemnity insurance compliance and liaison with insurance providers, gathering intelligence and sharing information on risks identified in the market
 - compensation arrangements, including the processing and investigation of claims made against the Compensation Fund, and work to set the annual Compensation Fund contributions and level of insurance of the fund

- investigation into the regulatory arrangements of entities triggered by the authorisation and supervision of entities and external factors such as market intelligence gathered by IPS
 - forensic investigations
 - oversight of client protection matters such as escrow arrangements
 - oversight of the orderly transfer of client matters and money on the closure of an entity or intervention into an entity.
87. IPS has in place a member of staff with direct knowledge and experience of these activity areas.
88. All entities will need to have in place adequate professional indemnity insurance cover in accordance with the minimum terms set by IPS. The Client Protection Manager will handle liaison with brokers and insurers, assess compliance by entities, share risk assessment information with insurers and receive relevant information from insurers.
89. The Client Protection Manager will undertake work each year to identify and set contributions to the Compensation Fund; process and investigate claims made against the fund; and present claims to the Trustees of the Fund. IPS has developed robust authorisation and supervision processes, which will manage and ensure compliance with the outcomes it expects entities to deliver. Therefore IPS is satisfied that one manager can undertake this area of work in the short term. It has identified outsourcing resources, should that become necessary, to support aspects of the client protection work.
90. IPS is aware that as its regulated community grows it will need to recruit a claims assessor to handle claims made against the Compensation Fund. It will keep under review the workload and level of claims and recruit additional resources as required.
91. Claims will have to be considered and determined by Trustees. IPS has carried out work to cost the appointment and payment of Trustees. Trustees will be appointed using principles similar to those for other IPS committees.
92. IPS has considered the governance arrangements for its range of client protection provisions. The team manager will report to the Head of Business Development and the IPS Board on indemnity insurance and compensation scheme rules and setting annual contributions. Claims against the Compensation Fund will be overseen by the Trustees of the Fund. The delivery elements will report to the Head of Operations.
93. The Client Protection Manager will, with the Entity Authorisation & Supervision Manager, handle forensic investigations at the commencement of practice rights schemes. As demand increases, additional forensic investigators will be recruited and report to the Client Protection Manager. Forensic investigations will be triggered by the Entity Authorisation & Supervision Team. The outcomes of the investigations will either be acted on by the Entity

Authorisation & Supervision Team or, in the case of misconduct, by the Investigation Team.

94. Where disciplinary action leads to the revocation of the authorisation of an entity the entity will enter into a Practice Management Agreement. The Client Protection Manager will oversee compliance with the Practice Management Agreement, the appointment of a manager to manage the closure of entities. Equally where IPS assesses that it needs to intervene into an entity the Client Protection Manager will oversee the intervention process and liaise with intervention agents.

Investigations Team

95. The Investigations Team will be responsible for carrying out investigations of complaints and misconduct allegations made against individuals and entities. The team will also consider matters of past conduct that may affect fitness to own or manage an entity. They will prepare cases for tribunal and appeal hearings.
96. IPS already has in place a strong unit which carries out the investigation of complaints and allegations of misconduct and fitness to become or remain CILEx members where a matter of past conduct is declared. The work of this unit will be extended to include investigating the conduct of entities. This team also manages Disciplinary Tribunal applications. IPS will continue with this approach.
97. The Investigations Team will additionally:
- Liaise with other front line regulators, Legal Ombudsman and other external regulatory organisations
 - monitor performance against key performance indicators
 - develop investigation practices and procedures
 - collate intelligence gathered from investigation/enforcement activities and refer information to the Business Development Team for dissemination
 - exercise decision making powers.
98. The team will be managed by an Investigations Manager. This is a new post to which recruitment will take place immediately. The Investigations Manager will:
- manage the Investigations Team
 - oversee the investigation and enforcement function
 - carry out file reviews to ensure consistency in approach
 - manage relationships with Panel and Tribunal clerks
 - identify policy and procedural development areas
 - carry out decision making.

99. IPS has two Investigation Officers, one of whom presently carries out other duties for part of their time. The new structure will require two full time Investigation Officers to enable the team to handle additional complaints arising from IPS new regulation of entities. IPS also has an officer who handles prior conduct cases. IPS has assessed that this officer will be able to process additional fitness to own declarations, with the Investigations Manager making decisions under delegated procedures.
100. The expansion in resources will enable the team to develop processes and procedures in readiness for entity investigations.
101. The remit of the existing Professional Conduct Panel, Disciplinary Tribunal and Appeals Panel will be extended to include considering allegations made about the conduct of entities. While this may lead to additional hearings by the Disciplinary Tribunal, IPS has assessed that the new panel structure set out in the Investigation, Disciplinary and Appeals Rules will enable panellists to manage the additional workload.

Head of Operations

102. The Head of Operations will be responsible for oversight of the entity authorisation and supervision, client protection and investigation teams. They will also be responsible for:
- compliance with money laundering requirements
 - appointment of panellists and members to IPS committees
 - management of team managers
 - liaison with Head of Business Development
 - reporting on performance to IPS Board
 - external liaison in accordance with MOUs
 - monitoring delivery in accordance with Protocols and SLAs.

Business Development Team

103. IPS will have a Business Development Team led by the Head of Business Development. The team will be responsible for:
- oversight of delivery to ensure IPS regulates in an outcomes focussed manner
 - keeping IPS' regulatory arrangements under review
 - developing and delivering IPS consumer engagement activities, the outcomes of which will support the work of the IPS teams
 - developing and ensuring compliance with IPS governance arrangements
 - developing IPS' application to become a licensing authority and special body regulator
 - liaison with special bodies
 - liaison with stakeholders
 - IPS compliance with FSA regulation

- gathering data and statistics on IPS' regulated community.

104. The Business Development Team will be responsible for a number of key initiatives which will feed into the work of the other IPS teams. They include development and delivery of IPS' consumer engagement activities. IPS has in place a consumer engagement action plan. IPS already undertakes work to deliver its consumer engagement initiatives. It has sufficient resources in place to deliver to its action plan. IPS will develop its understanding of consumer expectations, particularly its understanding of risks in respect of the supervision and authorisation of entities. This work will feed into the work of the other teams.
105. IPS will appoint a Legal and Policy Manager to take responsibility for keeping under review IPS policies, procedures, compliance with regulatory requirements and provision of legal advice. The Legal and Policy Manager will collect data and information from the IPS operational teams on the effectiveness of policies and procedures to inform developments.
106. The Business Development Team will be responsible for analysing data and collating statistical information on IPS' regulated community. It will act as a central point for the collection of intelligence and its dissemination to the operational teams, who will assess its impact upon risk operations. Formats will be developed for the collection and sharing of data. In the immediate short term this role will be carried out by the Legal and Policy Manager but IPS recognises that it will require an additional member of staff to perform this function in the longer term.
107. The Business Development Team will deliver IPS' governance initiatives such as the Practice Certificate Fee assessments and internal governance rule requirements; keep the protocols and service level agreements with CILEX under review; and keep IPS' own governance documents under review.

Transition to the new structure

108. A detailed business plan (**annex 33**) has been developed, to ensure an effective and managed transition to the new structure.
109. Role and person specifications are being developed for each post, to ensure that functions are performed by staff members who possess the skills necessary for the new role profiles. The work of many existing staff members falls naturally into one or more of the new teams, but the new or additional responsibilities may require the development of additional skills. Once role profiles have been completed IPS will map existing staff roles to the new roles to designate staff to new roles and identify the posts where recruitment is required.
110. The role profiles map out the skills and experience required for each post. IPS will carry out a skills audit for staff transitioned into new roles to identify any

skills gaps. It will ensure that appropriate training is provided to staff where gaps are identified and that training does take place before the commencement of the practice rights schemes. The CILEx Group has policies which support its objective to train and develop staff and to support equality and diversity opportunities. It has a strong record for retention of staff, with over 92% staff stability rate, is accredited as an Investor in People and has met the two tick Equality scheme. The group also has a range of staff policies designed to cover matters such as staff rewards, welfare support and employee relations.

111. Where posts have been identified that need to be in place for implementation IPS will begin the recruitment process to enable development work to continue in the immediate term and to time with the approval of the new applications.

Succession plan

112. IPS has developed a succession policy which takes into account its new organisational structure.

IPS ACTIVITY AND RESOURCES

113. IPS has given consideration to the other resources it requires. These include information technology systems (IT), case management systems and office equipment and space.
114. IPS already makes use of a case management system which holds data about the contact details, qualification, membership and financial details of CILEx members and other contacts. The system is used by IPS for the management of conduct, investigation and disciplinary procedures. It will continue to make use of that system for both entity and individual investigations and recording of information about them.
115. The CILEx database system allows for the recording of practitioners holding practice rights and non-members who become authorised by IPS in the future. The present database system will also allow for recording of entities that IPS regulates with a link through to the individuals working within organisations, with some small scale changes which have been scheduled to take place during 2013. The present system does not allow for the recording of a risk assessment framework but IPS is able to manage that separately while a bespoke system is developed.
116. IT is delivered as a shared service for the CILEx Group. The IT team have sufficient resources to support the work of the CILEx Group, including IPS' increased remit and capacity. Work commenced in 2012 to develop requirements for a new database and recording system. The CILEx Group has agreed that a new IT system will be sourced during 2013 and developed during 2014 for implementation in 2015. Therefore an IT system meeting IPS' specific

needs will be put in place. In the meantime the existing system is adequate to meet IPS' needs for the practice rights schemes.

117. IPS has immediate office space available for the placement of four of the additional staff members required to deliver the new practice rights schemes. Activity is taking place within the CILEx Group to provide additional office space to accommodate the future growth of IPS and other parts of the CILEx Group. Adequate equipment is available within the CILEx Group to enable the additional staff to have access to the tools required to deliver their responsibilities.
118. Central resources, such as accounting, human resources support, procurement, communications and publicity, are delivered by shared services in the CILEx Group, under Service Level Agreements. CILEx is aware of and has made provision for the additional call IPS will make on shared service resource in implementing and delivering practice rights.

FINANCING THE SCHEME

119. Funding for the additional posts identified in this report has been secured from CILEx.
120. IPS has prepared a budget for 2013 which includes the resources needed to complete the development work to implement the practice rights schemes. Those budgets formed part of the IPS Practice Fee Submission for 2013. IPS has prepared for and has undertaken work on the 2014 budget required for the practice rights schemes.
121. Separate budgeting has taken place to identify fees to be charged for practice rights applications and entity authorisation applications. The budgets demonstrate that IPS is able to fund the additional activities it will be undertaking. IPS is aware that it will need to keep charging and funding structures under regular review and as part of the annual Practice Certificate Fee submission to the LSB.

REGULATORY FEES

122. As part of its budgeting work IPS has considered its approach to charging. Charges will be made in respect of practice rights, entity regulation and for the Compensation Fund. IPS' annual practice certificate fee submissions will include submissions to seek approval for these charging areas. In this work IPS will take the following principles it has developed on its approach to charging into account.
123. In setting its regulatory costs IPS will strive to ensure they meet its authorisation, supervision and enforcement activities. IPS recognises that this

might not be achievable in the short term, but its financial projections will identify break even points, according to demand. Equally IPS will aim to be competitive, in its regulatory charges, to other regulators.

124. The award of practice rights will attract a practice fee, capped at £350 for 2014. The practice fee will include the Fellowship Practice Fee, where relevant, in the first year of authorisation. The full rate practice rights fee will become payable at the beginning of the first full authorisation year. Non CILEX members seeking practice rights will be charged the full authorisation fee.
125. Entity regulation fees will comprise a mix of practice and entity fees. In setting entity regulatory fees IPS will ensure that risk is a key determining factor to support its approach to risk based regulation. IPS will provide discounts on regulatory costs to entities who engage positively with risk management initiatives. IPS' regulatory costs will be set in a manner that aims to not restrict entry to the market for sole/small practitioner entities.
126. While the risk based approach will be IPS' priority in fee setting, entity regulation fees will also include an element to reflect the resource needed to supervise and monitor an entity proportionate to its size. The approach to fee setting may therefore include a calculation based on turnover.
127. IPS will collect contributions from entities for compensation. Compensation Fund contributions will be set at a level to cover the costs of the Fund insurance premium, the costs of administering the Fund and dealing with claims made under it and contribute to growth in the Fund. IPS intends that the Compensation Fund should be self-sufficient in future but recognises that the time taken to achieve this will depend upon demand for regulation and claims upon the Fund.
128. IPS will work with insurers to ensure that the Compensation Fund insurance premium is set on a risk based approach, enabling IPS to set a risk based approach in setting the level of contribution. Risks will relate to the events which incur costs to the fund such as fraud, insolvency, run-off costs and other insurance failures. Contributions will take into account the differing levels of risk relating to different specialist practice areas.
129. Contributions to the Compensation Fund may be based on one or other or a combination of individual and/or entity based contributions. However, IPS recognises that the numbers of fee earners and authorised persons working in an entity is not of itself an indicator of risk to the Compensation Fund, although it is relevant to practice fees.

RISK MANAGEMENT STRATEGY

130. The business plans for implementation and delivery of the practice rights schemes are supported by project plans. The project plans include risk and issues logs.
131. The office will report to IPS' Practice Rights Working Group regularly on the implementation work. The Working Group is responsible for overseeing the applications for practice rights and implementation of the schemes. Post implementation progress of the schemes will be kept under regular review by the IPS Board. IPS has a Board member with specific responsibility for business development and the practice rights schemes.

ANCILLARY APPLICATIONS

132. IPS has identified that it needs to make applications for Orders and registrations ancillary to its practice rights applications.
133. IPS has identified it needs to seek Orders or make applications for the following matters. Each are discussed below, including an outline as to how the Order may be sought or the application made:
- Royal Charter amendments
 - Compensation Fund
 - Intervention powers
 - Rehabilitation of Offenders Act
 - FSA registration
 - Money Laundering
 - Probate trust and service providers

Royal Charter amendments

134. CILEx derives powers from its Royal Charter, which include the provision for the delegation of its regulatory activities to IPS in accordance with the Legal Services Act.
135. The Royal Charter permits the regulation of Fellows and other members of CILEx. Under the practice rights applications IPS seeks to regulate entities and practitioners who do not hold other grades of CILEx membership. CILEx is therefore preparing an application for approval by its Council and thereafter the Privy Council to seek amendments to give effect to the new forms of regulation facilitated by the Legal Services Act.
136. Liaison has commenced with the Ministry of Justice (MOJ) and the Privy Council, whose officers have indicated their support for the amendments. CILEx has begun the process of drafting and scheduled approval timelines for the amendments.

S69 Orders – Compensation Fund and Intervention Powers

137. IPS will be setting up a Compensation Fund to be able to compensate clients who suffer loss as a result of dishonesty or fraud. Case law requires that the power to set up a Compensation Fund must be given by statute. IPS will therefore be seeking an order under s69(3)(a) and (c) Legal Services Act 2007 to set up the Compensation Fund.
138. IPS/CILEx are not statutory bodies. They do not have any statutory intervention powers into entities. Under the Legal Services Act a Licensing Authority may acquire intervention powers in respect of ABS. However, the Act includes no provision for the acquisition of intervention powers in respect of non-ABS entities. IPS assesses that it is important for the purpose of protecting clients to seek a power to intervene into entities. IPS therefore seeks this power through a s69 Order.
139. In determining whether to seek Orders under s69 IPS has assessed that it meets the policy issued by the LSB on s69 orders.
140. IPS has placed the MOJ on notice that it will be seeking an Order to set up the Compensation Fund and to obtain the power to intervene into an entity. IPS has instructed a Parliamentary Agent to commence drafting the Order. It will work with the LSB and MOJ on the draft and aim to schedule the work so that Orders are made at the same time as the Designation Order for probate and conveyancing practice rights.

Rehabilitation of Offenders Act 1974 and exemptions

141. The Rehabilitation of Offenders Act 1974 sets out periods of time after which certain criminal convictions can become exempt and therefore do not need to be declared. There are various exemptions from this provision. Chartered Legal Executives are exempt under the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 (SI 441/2002).
142. IPS' proposals under the probate and conveyancing applications will lead to IPS regulating non-Fellows who are nonetheless 'authorised persons' under s.18 of the Legal Services Act 2007. As such IPS needs to seek a further extension to the list of exempt persons to include 'probate or conveyancing practitioner' and 'Approved Managers' of entities.
143. IPS has notified the MOJ of its proposal to seek the above addition to the list of exempt persons. It is liaising with the MOJ on the timescale and nature of application involved, which is dependent upon the MOJ taking action following a recent ruling by the Court of Appeal on the validity of general exemption provisions. IPS aims to put its business case to the MOJ by May 2013. It has sought an outline of the timeline from the MOJ as to post submission processes. The timeline is dependent upon the MOJ action following the Court of Appeal judgment.

FSA registration

144. IPS has considered whether it needs to become a Designated Professional Body (DPB) under the Financial Services and Markets Act 2000. IPS begun discussion with the FSA to discuss registration, the application process and the resources and processes FSA need to put in place for such an application. The Treasury have been notified by the FSA about the potential application.
145. IPS has identified that entities will be able to practise without authorisation through IPS for the purpose of providing financial advice. IPS therefore does not assess that its registration with the FSA is a dependency of the practice rights applications.

Money Laundering

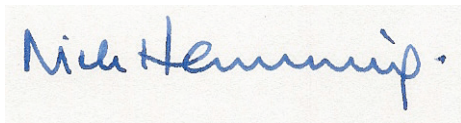
146. CILEx needs to become a Designated Professional Body under the Financial Services and Markets Act 2000 for the purpose of the Money Laundering Regulations. IPS is in dialogue with HM Treasury in order to clarify its position in this respect.

Trust or company service providers

147. The Money Laundering Regulations 2007 require trust or company service providers to be registered with HMRC or with a supervisory authority. Probate practitioners may act for or arrange for others to act as trustees. They therefore may need registration.
148. IPS is in dialogue HM Treasury to explore whether it should register as a supervisory authority. As it assessed that the number of probate practitioners who are likely to provide services of the type which require registration is initially low IPS will require those practitioners to register with HMRC. IPS will then explore feasibility of registration.

Statement by office holders

The information provided in this Application is accurate to the best of our knowledge and belief and can be relied upon.



N. Hanning
President
Chartered Institute of Legal Executives

Dated 13 March 2013



A. Kershaw
Chair
ILEX Professional Standards Ltd

Dated 13 March 2013



D. Burleigh
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