



*APPLICATIONS TO THE LEGAL SERVICES BOARD
TO BECOME AN APPROVED REGULATOR AND
ALTER REGULATORY ARRANGEMENTS*

EXECUTIVE SUMMARY





APPLICATIONS TO THE LEGAL SERVICES BOARD FOR CILEx TO BE AN APPROVED REGULATOR UNDER THE LEGAL SERVICES ACT 2007 AND TO ALTER ITS REGULATORY ARRANGEMENTS

EXECUTIVE SUMMARY

The Chartered Institute of Legal Executives (CILEx) and ILEX Professional Standards Ltd (IPS) are making three Applications to the Legal Services Board to extend CILEx's powers to authorise and regulate legal service providers undertaking reserved and regulated legal activities.

The applications are for:

- (1) CILEx to be designated by the Lord Chancellor as an Approved Regulator to grant
 - Reserved Instrument Activity Rights (Conveyancing) and
 - Probate Activity Rights under Part 2 of Schedule 4 of the Act.
- (2) Alteration to CILEx's regulatory arrangements for awarding rights to conduct litigation to be extended to include all suitably qualified Chartered Legal Executives. In particular
 - to extend the power to award litigation rights in respect of criminal proceedings to civil and family proceedings and
 - to extend the power to award rights of audience to Chartered Legal Executives who obtain rights to conduct litigation under Part 3 of Schedule 4 of the Act.

- (3) Alteration to CILEx's regulatory arrangements for authorising and regulating those who provide immigration advice and services under the Act by introducing new qualification, indemnity and compensation arrangements as well as arrangements for regulating individuals and entities. This Application is made in accordance with Part 3 of Schedule 4 of the Act.

The proposed regulatory arrangements will ensure that:

- Authorised CILEx members are fully competent to carry out the reserved and regulated legal activities.
- The regulation by IPS of entities, through which CILEx members may seek to deliver legal services, will provide assurances to consumers that risks are adequately addressed.
- Adequate arrangements to protect consumers through authorisation processes and practice rules are in place.
- CILEx has suitable indemnity and compensation arrangements.

CILEx has shown that it is competent and capable to become an Approved Regulator to award the new rights by:

- A demonstrable history as a trusted regulator, meeting external scrutiny

by the LSB and recently the Privy Council.

- Achieving Chartered body status, denoting a leading professional body promoting and protecting the public interest.
- A proven track record of effective membership regulation: The conduct of CILEx members has been exemplary.
- Engaging with consumer bodies and consumers to build its regulation on what consumers want by providing and promoting choice for consumers.
- Offering an open route into the legal profession to everyone, regardless of background or socio-economic status.
- Delivering high standard qualifications and training for members ensuring they are competent to practise, with the appropriate level of skills and knowledge for their branch of the law and a solid grounding in professional ethics and appropriate behaviours.
- Building an evidence-based and risk-based approach to the regulation of entities through which members will practise.



RIGHTS SOUGHT AND ALTERATIONS TO RULES PROPOSED

Part 1 of each Application explains the practice rights or the alterations to existing rules sought by reference to each application.

Probate practice rights

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 means 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.

Rights to conduct litigation and rights of audience

The alterations to CILEx rules governing the conduct of litigation will enable CILEx to award litigation rights to Chartered Legal Executives in one or more of three distinct specialist areas. They are set out below.

Civil Proceedings:

- To conduct litigation in civil proceedings.

Criminal Proceedings:

- To conduct litigation in criminal proceedings

Family Proceedings:

- To conduct litigation in all family proceedings.

CILEx is an Approved Regulator for the purpose of awarding rights of audience. These rights are available to Chartered Legal Executives who are employed in or share in ownership of legal practices (eg as partners). This application seeks to make it possible for Chartered Legal Executives who are granted litigation rights and practise independently to have the same rights of audience as may be granted to employed Chartered Legal Executives currently. The application does not seek to extend the rights of audience that may be exercised or to secure rights to practise as an independent self-employed advocate.

In civil and family proceedings IPS will split the rights of audience between:

- (i) Judge's room hearings (commonly referred to as chambers hearings); and
- (ii) open court rights

The rights sought are:

Civil Proceedings (Judge's room):

- To exercise rights of audience in civil proceedings in the Judge's room in the High Court and County Courts in civil proceedings.

Civil Proceedings (open court):

- To appear in open court in the County Courts in all actions, except family proceedings;
- To appear before justices or a District Judge (Magistrates' Court) in the Magistrates' Courts in relation to all matters originating by complaint or application, including applications under the licensing, betting and gaming legislation;
- To appear before any tribunal under the supervision of the Council on Tribunals where the tribunal rules provide for a non-discretionary right of audience being available to barristers and solicitors;
- To appear before Coroners' Courts in respect of all matters determined by those courts and to exercise rights of audience similar to those exercised by solicitors and barristers.

Criminal Proceedings:

- To appear before Justices Clerks, Justices or a District Judge

(Magistrates' Court) in all adult Magistrates' Courts in relation to all matters within that court's criminal jurisdiction;

- To appear before Justices Clerks, Justices or a District Judge (Magistrates' Court) in all Youth Courts in relation to all matters within that court's criminal jurisdiction;
- To appear in the Crown Court or High Court before a judge in chambers to conduct bail applications;
- To appear in the Crown Court on appeal from the Magistrates' Court, the Youth Court or on committal of an adult for sentence or to be dealt with, if he, or any approved person in the same practice as him, appeared on behalf of the defendant in the Magistrates' Court or Youth Court;
- To appear before Coroners' Courts in respect of all matters determined by those courts and to exercise rights of audience similar to those exercised by solicitors and barristers.

Family Proceedings (Judge's room):

- To exercise rights of audience in family proceedings in the Judge's room in the High Court and County Courts.

Family Proceedings (open court):

- To appear in court (including open court) in all County Court family proceedings;
- To appear before justices or a District Judge (Magistrates' Court) in the Family Proceedings Court;
- To appear before Coroners' Courts in respect of all matters determined by those courts, and to exercise rights of audience similar to those exercised by solicitors or barristers.

Immigration advice and services

To provide immigration advice and immigration services.





REGULATORY ARRANGEMENTS

Part 3 of each Application explains how the regulatory objectives, professional principles and better regulation principles prescribed by the Act are delivered by IPS.

In making these Applications IPS has built on the strong foundation of its current regulatory arrangements. This foundation was recognised by the LSB in its analysis of IPS' Regulatory Standards Self-Assessment in 2012. That analysis agreed with IPS' assessment that it was strong in the regulation of practitioners through its qualification schemes and in its enforcement activities.

The Applications draw on a range of evidence to develop schemes which are proportionate, transparent and targeted, placing the public and consumer

interest at the heart of the regulatory arrangements. There is consistency between the applications and the governance arrangements which will deliver appropriate accountability. IPS has taken into account the regulatory objectives and professional principles, set out in the Act, when preparing the Applications.

The Applications focus upon the four areas of regulation identified by the LSB in its document 'Developing Regulatory Standards'. These four areas are: risk based authorisation, supervision, enforcement and outcomes focused regulation. The proposed schemes deliver those areas of regulation. They are explained below.

Basis of Applications

The three Applications adopt a consistent approach to the way that individuals and organisations will be authorised and regulated. They set out arrangements to ensure practitioners and entities are competent to provide the services for which they are authorised and that the service they provide is of good quality; that poor service or performance is identified and remedied; and that clients and the public are protected as far as possible from the effects of service failings or misconduct.

Authorisation

IPS' authorisation processes are split into two: award of practice rights and entity

regulation. Practitioners will apply to IPS to become authorised persons for reserved and regulated legal activities. Once authorised they may practise in entities regulated by IPS or other approved regulators. IPS has developed an entity authorisation framework.

Practitioner authorisation

Part 4 of each Application explains the practitioner qualification schemes.

IPS has developed a competence based approach to the award of practice rights. It has developed frameworks that set out the knowledge, skills and experience required for each scheme. Applicants will apply for and be awarded rights in the areas of practice in which they are assessed as competent. They may apply for practice rights in more than one area, but must demonstrate competence in each area.

IPS' decision to base these Applications on specialist competence reflects its current approach to qualification as a Chartered Legal Executive and as an Advocate, and also consumer expectations. Research has shown that consumers presume legal service providers are qualified and competent to undertake the particular work in hand. IPS' award of practice rights by competence as opposed to by title meets consumers' legitimate expectations. Furthermore, the competence frameworks developed by IPS assess competence in the full practice area, delivering full consumer expectations.

CILEx members are specialist lawyers. They study a broad range of law and practice subjects at 'A' Level (Level 3) standard and qualify at Honours Degree (Level 6) standard in specialist subjects which lead to practice in that area. The

award of practice rights by competence builds upon that existing model, which has been recognised within the legal profession as a strong foundation for producing specialist lawyers. This specialism is recognised by the existence of specialist quality groups which CILEx members may join.

The probate and reserved instrument rights are not linked to any grade of CILEx membership. However, the litigation and immigration rights are limited to those Chartered Legal Executives who meet the competency requirements. In the case of immigration the Act imposes this limitation. In the case of rights to conduct litigation the connection with rights of audience requires Chartered Legal Executive status.

Skills

The Applications define the skills an applicant must demonstrate. IPS has set these out in the competence frameworks, describing them in terms of outputs. Applicants will produce a log of their skills mapped against outputs and supported by appropriate evidence from the workplace.

Experience

The experience element will be demonstrated by applicants through portfolios of cases, showing how they meet the experience criteria.

Knowledge

The knowledge element is set at Honours Degree standard for each practice right. It may be demonstrated by Applicants who have completed the CILEx examinations at Level 6 or equivalent as set out in the competency framework. Applicants who lack the formal qualifications required to meet the criteria may submit alternative evidence, for example based on experience, to show they have the requisite knowledge.

IPS will assess the evidence of knowledge, skills and experience produced by Applicants to determine whether they meet the standards set out in the competency frameworks. An Applicant who is assessed as competent will be awarded the relevant practice right. They are referred to as CILEx practitioners in this document.





Accounts and practice management

CILEx practitioners who seek to practise in entities regulated by IPS will be required also to meet competence standards in practice management and accounts. Those competencies have been set according to the level of involvement a practitioner will have in practice management or accounts in their practice. Those with direct responsibility will be required to demonstrate higher level competences. The models for defining and assessing competence in practice management and accounts reflect the same approach as for the rights themselves.

Entity authorisation

Part 5 of each Application explains the entity regulation proposals.

Practitioners will be able to exercise practice rights either as employees in legal practices or through entities regulated by IPS or another Approved Regulator. IPS has developed an authorisation process for those entities seeking its regulation. It takes a risk

based approach, determining risks posed to consumer and public interests, through a comprehensive framework.

The entity authorisation process involves:

- Collation of information from applicant bodies focused around risk
- Assessment of the information using the risk assessment framework
- Determination of application at the basic risk assessment stage
- Advanced risk assessment, where determination could not be reached at basic risk assessment stage
- Decision as to authorisation or rejection of application.

The IPS risk assessment framework for entity regulation was developed following research conducted into legal practices. The research enabled IPS to identify the elements of risk that should form part of the assessment framework, taking into account different business models. The research analysed different types of entities and the differing risks that they present. The research also led to the development of governance arrangements for entity regulation

and production of an application form that seeks information to enable authorisation and sufficient annual return information to enable an effective assessment of risk.

Risk is assessed by multiplying impact and probability. The impact factors are environment and size, which have a multiplicative relationship. The probability factors are history, leverage, dependency and systems, which have an additive relationship.

Basic assessment

The framework allows for assessment of risks to the delivery of the Principles and Outcomes set out in the CILEx Code of Conduct and supporting regulatory arrangements, (which are explained in Part 6 of the Applications). The entity authorisation process will begin with the completion of an authorisation application form. The information gathered from this is applied to the relevant factors in the risk assessment framework and assessed against the Principles and Outcomes in the CILEx Code of Conduct. Assessment

determines the level of compliance with the Principles and Outcomes. This is the basic risk assessment. It is a desk based activity.

Advanced assessment

Where the basic risk assessment process identifies risks that require further investigation IPS will carry out an advanced risk assessment. This involves a visit to the entity premises to carry out an on-site assessment to explore and discuss the risks. The findings of the visit culminate in the production of a report for the entity, and the completion of the advanced risk assessment which will recommend the most appropriate regulatory response dependent on the risk found.

At the end of the basic or advanced risk assessment, as appropriate, IPS will determine whether to authorise the entity. In the case of an authorised entity the risk assessment process will have identified any areas where compliance is not fully evidenced and prescribe the appropriate regulatory action which IPS will take. An authorised entity will be known as an Authorised Body.

Approved managers

An entity will be required to have one or more Approved Managers, approved by IPS to be responsible for practice management and accounts management. At least one Approved Manager must be an authorised person for the purposes of carrying out the reserved or regulated activity the entity seeks to provide. IPS will require the entity to seek authorisation of its Approved Managers.

IPS will consider the conduct and financial history of proposed applicants and determine whether to approve or reject the Approved Manager applications.

Applicant support

IPS will support entities through the authorisation and monitoring process. Entities may, for example, seek a voluntary risk review visit (which will culminate in an advanced risk assessment) from IPS. This involves detailed analysis of the entity's systems and procedures to enable them to ensure that they deliver legal services in a manner that protects and promotes the interest of consumers and the public.

Supervision

IPS will carry out on-going supervision of those individuals and entities it has authorised. This includes:

- The CPD scheme
- Annual returns
- On-going reviews of risks and assessment of their impact on the regulation of entities.

Part 4 of the Applications also explains the supervision of authorised persons.

Practitioner supervision

Authorised persons will be required to comply with IPS' CPD scheme, which is that they undertake 16 hours CPD each year. The CPD scheme has recently been reviewed from first principles. New proposals, which are undergoing a pilot exercise, involve an outputs based scheme with an input element. Practitioners will identify development needs and how they may be met. After undertaking activity to meet their development needs practitioners will reflect on the effectiveness of that activity and how it met their needs. They will make at least 9 entries of CPD activities undertaken each year.

IPS assesses compliance with CPD each year. This compliance check will be extended to those who are authorised under the proposed arrangements.

The new CPD proposals introduce an additional sampling and risk based monitoring activity, which will also cover authorised persons.

Entity supervision

Part 5 of the Applications also explains the supervision of entities.

IPS will require Authorised Bodies to complete an annual return. This will seek information on changes to practices and procedures in an entity as well as obtain accounting returns. IPS will carry out an assessment of the annual return information through the basic and advanced risk assessment processes outlined earlier to determine its on-going supervision activity.

The legal services market and associated risks are not static and therefore supervision activities additional to the annual return are required. IPS will therefore gather intelligence on new and emerging risks on an on-going basis. The information will be fed to the IPS teams, including the entity regulation team, so that the effectiveness of risk assessments can be kept under review.



OUTCOMES FOCUSED REGULATION AND REGULATORY ARRANGEMENTS

Part 6 of the Applications explains IPS' outcomes focused approach to regulation.

IPS has in place a Code of Conduct for its existing regulated community. It covers all CILEx members. The Code takes a principles based approach. IPS has significant experience of operating through a principles based Code, which has proved productive in setting standards for CILEx members and provides an effective measure for dealing with fitness to practise issues.

IPS has reviewed the Code to extend its application to its new regulated community, Authorised Bodies and CILEx Practitioners. The review commenced by identifying the Outcomes consumers expect. This led to the development of a statement of Consumer Outcomes.

The Consumer Outcomes have been translated into the updated principles in the new Code. The principles are supported by Outcomes in the Code. The Principles and supporting Outcomes have also been developed into the Outcomes expected of those IPS regulates. They provide the basis for IPS' risk assessment processes.



IPS recognises that in some instances its regulated community requires detailed direction. This is usually necessary to ensure suitable protection for consumers and the public. Therefore IPS' Accounts Rules and First Tier Complaints Handling guidance set out requirements in some detail.

IPS believes that such direction is necessary in the Accounts Rules because consumers entrust practitioners with their money and must have confidence that it will be protected through suitable regulation. The Accounts Rules require the separation of client and office money, record keeping of transactions and regular cross checking of accounting records. The Rules also require an annual accountant's report, which will be considered as part of the annual return of entities.

IPS' First Tier Complaints Handling requirements are set out in Part 7 of the Applications. These requirements are set out as guidance to the Code.

IPS' approach to the regulatory arrangements was adopted following its analysis of research in the legal services sector conducted by the LSB, the Legal Services Consumer Panel and other regulators. It also builds upon IPS' own research into its regulated community and the views of representatives of consumer groups who attended its reference group meetings to provide feedback on its proposed regulatory arrangements.



ENFORCEMENT AND CLIENT PROTECTION

The client protection arrangements comprise:

- the disciplinary and complaints handling rules
- professional indemnity insurance requirements and
- Compensation Fund.

Enforcement

Part 8 of the Applications explains IPS' enforcement arrangements.

IPS has been recognised by the LSB for having strong and effective enforcement arrangements. It has a good foundation for dealing with complaints about misconduct and assessing past conduct of CILEx members and applicants seeking membership. These arrangements are set out in the Investigation, Disciplinary and Appeal Rules (IDAR).

The IDAR was reviewed and updated to encapsulate entity regulation and the ensuing regulation of Approved

Managers and CILEx practitioners. IDAR continues to deliver a proportionate but targeted and accountable approach to complaints handling and disciplinary procedures.

The roles of the decision making panels set up under IDAR have been reviewed and updated. The Professional Conduct Panel, which is the first tier decision making body, will make decisions in prior conduct matters and, in the case of misconduct cases, where admissions have been made. The IDAR allows for flexible and proportionate decision making in the interests of delivering timely consumer protection through enforcement action. Formal disciplinary proceedings are taken through the existing Disciplinary Tribunal and Appeals Panel.

The IDAR provides a range of disciplinary powers from taking no further action, to reprimand, to exclusion from membership or revocation of

authorisation. IPS' sanctions guidance assists panellists in the determination of penalties. This guidance is being reviewed and updated to encapsulate the extended remit of the Panels in respect of enforcement powers.

Professional Indemnity Insurance

Part 9 of the Applications explains IPS' professional indemnity insurance requirements.

IPS has developed an open market professional indemnity insurance scheme. It sought advice and undertook significant research, through a leading insurance broker, into professional indemnity insurance options. Its broker has extensive experience of arranging indemnity insurance in the regulated and unregulated sector. The research included discussion with a number of insurance providers and consideration of others' experience.



GOVERNANCE

CILEx and IPS have a long established reputation for good governance and independence of decision making. The additional arrangements for regulation introduced by the Practice Rights schemes will build upon the existing approaches to governance.

Each function will be overseen or, where necessary, involve decision making by an independent body with a lay majority. The professional members that serve on these bodies are members neither of the IPS Board nor the CILEx Council, thereby delivering independence in decision making from those who are policy makers.

DELIVERY OF THE SCHEMES

Part 11 of the Applications sets out IPS' arrangements to deliver the Practice Rights schemes.

IPS will reorganise itself around the four constituent parts of regulation. It has identified the resources required to deliver the additional regulatory schemes and developed plans to put those resources in place. They include staffing, information technology and other resources. The resources were identified following research and an assessment of demand for regulation from IPS.

IPS has also identified the development that needs to take place of policies, procedures, forms and arrangements,

including the appointment of new committee and panel members. The applications set out how these new arrangements will be implemented.

IPS will further test its entity regulation proposals during 2013 so that it is able to deliver regulation through tried and tested procedures and processes.

Plans have been developed for the delivery of the Practice Rights schemes. They provide for the ongoing authorisation, supervision and enforcement functions and for the monitoring of the outcomes focused approach to regulation.

In conjunction with its broker and an insurance provider IPS has developed minimum terms for professional indemnity insurance. The consumer interest was placed at the core in settling the minimum terms for insurance. They require cover of at least £2 million.

IPS will contract with qualifying insurers, who it is satisfied can meet the minimum terms, before they will be authorised to provide indemnity insurance to IPS regulated entities. It has developed a Qualifying Insurers Agreement. Insurers must have a rating of grade B+ before IPS will consider an application from them to become a qualifying insurer. IPS believes that it is necessary to deliver consumer protection through insurers who have themselves been assessed as having a sound financial basis to deliver protection to consumers.

Compensation Fund

Part 10 of the Applications explains IPS' compensation scheme.

There may be instances where dishonesty, fraud or another uninsured event arises. In those instances it is necessary to protect consumers. IPS has therefore made provision for a Compensation Fund, for which a start-up sum has been set aside by CILEx, to provide redress to consumers. The Compensation Fund will be backed by insurance obtained from a leading provider. The insurance option will provide security that IPS can deliver redress through the Compensation Fund scheme.

The Fund will be a fund of last resort, managed by independent trustees who will adjudicate upon claims made against it.

Escrow

To reduce the risks of dishonesty or fraud in connection with client money IPS has explored the possibility of Authorised Bodies not holding client money. It has identified an escrow proposal and has secured a provider of escrow accounting services. The escrow service, which provides for client money to be held independently, will be available to Authorised Bodies if they wish to use it, although it is not felt that escrow arrangements offer a complete alternative to a Compensation Fund.



DELIVERING IPS' STRATEGIC OBJECTIVES

IPS' strategy incorporates its development into an entity regulator able to award Practice Rights. Part 5 of the application maps the regulatory arrangements against IPS' strategic objectives.

IPS' strategic objectives are supported by its research into demand for regulation from IPS. This identified the strong appetite of CILEx members to become authorised persons delivering reserved legal activities. It also identified demand amongst practitioners who are not currently CILEx members.

IPS consulted widely with key stakeholders and gained support for its strategic proposals, taking careful account of their feedback.

Furthermore IPS is already established as the regulatory body for Associate Prosecutors, who are employees of the Crown Prosecution Service. The quality of IPS' regulatory arrangements was recognised in 2012 when independent assessment by HMCPSI commended the quality of advocacy delivered by Associate Prosecutors. IPS' arrangements

for the award of practice rights deliver similarly robust qualification and competence arrangements.

IPS is developing a strategy for the communication of its new status as an entity regulator and regulator of reserved and regulated legal activities, should the present applications be successful.

OPPORTUNITIES FOR CILEx AND ITS MEMBERS

The award of Approved Regulator status to CILEx for the new Practice Rights will build upon its good reputation, the most recent recognition of which was through the grant of a Royal Charter.

Many CILEx members already undertake in employment the legal activities which are reserved and in many instances are the lead lawyers for their speciality

in existing practices. The success of the Practice Rights Applications will bring both formal recognition of their competence through the award of authorisation and the flexibility for CILEx members to practise independently in delivering those rights and services to consumers.

The CILEx strategy includes objectives focused around growth and taking advantage of new opportunities. The availability of Practice Rights will open new opportunities for CILEx members. It is recognised that demand for the new Practice Rights may be made by those who are currently not CILEx members. The new forms of demand will therefore support the delivery of the CILEx strategy for growth.



REGULATION THAT DELIVERS CONSUMER PROTECTION AND IS IN THE CONSUMER INTEREST

The IPS proposals for the award of Practice Rights and entity regulation meet significant consumer expectations. These are expectations which have been identified through research primarily conducted by the Legal Services Consumer Panel. Consumers expect competence around the whole range of a practice area. The IPS approach to the award of Practice Rights by competence in the full legal service area will deliver to that.

Consumers also expect engagement. IPS is developing an on-going consumer engagement action plan, drawing on current research amongst CILEx

members and the legal profession generally. The proposals for regulation include a new Specialist Lawyers website. This will provide base line information to consumers about the law and those who deliver legal services to them. It will include an option for consumers to provide feedback on those from whom they obtained services. IPS will use the feedback to build upon its regulatory arrangements and guidance to its regulated community with the objective of improving the risk rating of entities.

The feedback will also enable IPS to gather information to help it improve the quality of the consumer experience delivered by entities regulated by IPS.

Consumers also expect accessibility, which is often not delivered by existing legal services providers. The CILEx community is diverse and links closely to the diversity of the population. By its nature the availability of the Practice Rights will open up opportunities for the diverse regulated community and delivery of services by them to the diverse population.





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