



CONSULTATION

PROPOSAL TO SEEK PRACTICE RIGHTS

COMPLAINTS AND DISCIPLINARY ARRANGEMENTS

INTRODUCTION

The Chartered Institute of Legal Executives (CILEx) is an approved regulator under the Legal Services Act 2007. In accordance with the requirements of the Act it has separated its regulatory and representative functions. The regulatory functions have been delegated to ILEX Professional Standards Ltd (IPS). IPS is the regulatory body for Legal Executives and other grades of CILEx member.

IPS is making applications under the Legal Services Act 2007 for CILEx to become an approved regulator for awarding reserved legal activity rights. The rights sought are rights to conduct litigation and to undertake reserved instrument activities and probate activities. It is also making an application to introduce regulatory arrangements, including authorisation processes, for immigration advisors.

This consultation document outlines the approach that IPS will take to the investigation of complaints made about the conduct of CILEx members and entities regulated by IPS. It also sets out the disciplinary powers available to IPS.

This consultation will close on 2nd November 2012

INTRODUCTION

1. IPS is making applications under the Legal Services Act 2007 (the Act) for CILEx to become an approved regulator for awarding reserved legal activity rights to suitably qualified persons. The rights sought are rights to conduct litigation, to undertake reserved instrument activities and probate activities.
2. IPS also seeks to introduce regulatory arrangements for immigration practitioners authorised by it to provide immigration advice and services. Immigration advice and services are referred to as regulated activities under the Act.
3. This consultation outlines the approach that IPS will take to the investigation of complaints made about the conduct of CILEx members and entities regulated by IPS. It also sets out the disciplinary powers available to IPS. We seek your views on our proposals.

OUR APPROACH TO INVESTIGATION, DISCIPLINARY AND APPEAL RULES

4. IPS has in place complaints and disciplinary rules called the Investigation, Disciplinary and Appeal Rules (IDAR). The IDAR set out the procedure for the investigation of complaints and allegations of misconduct made against CILEx members. They also set out the powers available to IPS where an allegation is found proved.
5. The IDAR apply to CILEx members. As part of our work to seek reserved legal practice rights and to become a regulator of entities through which reserved legal practice rights are delivered we have reviewed the IDAR. The review was carried out to ensure that IDAR will apply to entities and owners, managers and compliance officers in entities.
6. Our review has led to proposals to amend IDAR and to change the layout of the rules. This document sets out our proposed amendments. We seek your views on our proposals.

Application of IDAR

7. We propose to award reserved legal activity rights to applicants who meet our proposed skills, knowledge and experience criteria. We also propose to become a regulator of entities through which people we authorise will deliver reserved legal activities. Our authorisation rules will require entities to have in place officers responsible for compliance matters.
8. We therefore need to deal with complaints made against CILEx members, applicants to whom we award reserved legal activity rights (called CILEx Practitioner in IDAR) and legal practices that we regulate. We reviewed and updated IDAR to allow us to receive and consider complaints and allegations of misconduct made against all of these people and structures. The draft IDAR,

which appear at **appendix 1**, have been revised at Rule 1(1) to reflect this change.

9. We have also developed separate Authorisation Rules, which appear at **appendix 2**. These rules set out the procedure for the authorisation of entities which seek to be regulated by IPS to deliver reserved legal activities. The Authorisation Rules include a requirement that entities regulated by IPS must comply with IDAR.

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

Prior conduct declarations

10. The IDAR require 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. We have reviewed and updated the prior conduct provisions. Declarations of prior conduct will need to be made by CILEx practitioners, compliance officers and owners and managers of entities seeking regulation by IPS as well as CILEx members. We take the view that it is necessary for the protection of the public to ensure that this group of people are fit and proper to be registered or authorised by IPS to hold these roles and that they continue to remain fit and proper to do so. We will therefore require this group to make declarations on prior conduct matters at the earliest point and then as part of an annual declaration.
12. We have updated the range of declarations that should be made to include financial orders against corporate bodies and decisions relating to the holding of official positions made against individuals.
13. We find that many criminal offences are now disposed of by fixed penalty notices. We believe that fixed penalty notices should be declared to IPS, where appropriate, so that we can determine whether a person is fit and proper to be a member of CILEx or authorised by IPS.
14. The revisions appear at Rule 11 IDAR.

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

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

15. The present rules require the Professional Conduct Panel to declare on a preliminary basis what view it would take of a prior conduct matter. We believe that this form of guidance should sit with IPS staff rather than require a formal panel indication. We have therefore taken this requirement out of the rules. In future the IPS staff will provide guidance to applicants.

Q4 Do you agree that IPS staff may give guidance about the view that IPS would take on a prior conduct matter? If not, state why.

Approach to complaints handling

16. We have considered the approach we should take to the investigation of complaints and allegations of misconduct. In particular we have considered the role of complainants. The present rules provide for a formal role for complainants and require their participation in the full complaints process. We take the view that this is unnecessary in a misconduct investigation.
17. Our proposal is that we will receive information from complainants. We will then formulate the issues for investigation and carry out the investigation. However, we recognise that complainants have an important role to play in investigations. Where appropriate, we will ask for their comments on responses made to complaints. Complainants will also be provided with an opportunity to comment on the report of the investigation.

Q5 Do you agree with our proposals on the role of complainants? If not, state why.

18. The IDAR allowed IPS investigating officers to make decisions in certain instances where defined criteria were met. These decisions were framed as the exercise of powers delegated by the Professional Conduct Panel to the investigating officer. They required the investigating officer's decision to be endorsed by two members of the Professional Conduct Panel. This created an unnecessarily layered approach to the determination of cases. The types of cases falling within this process were the rejection of complaints where we have no jurisdiction or where the allegation could not amount to a breach of the Code of Conduct.
19. The IDAR have been reframed to express these decisions as decisions of the investigating Officer. However, we still believe that there should be a level of scrutiny over such decisions. The investigating officer will therefore be required to report any decisions made under this procedure to the

Professional Conduct Panel. The Panel will thereby be allowed to question and have oversight of the decisions made.

20. We believe that it is important for complainants to be able to seek a review of decisions made by the investigating officer. We have therefore built in a rule allowing complainants to ask the Professional Conduct Panel to review an investigating officer decision.

Q6 Do you agree that the investigating officer should be able to make decisions without the endorsement of Professional Conduct Panel members but that they continue to be reported to the Panel? If not, state why.

Q7 Do you agree that complainants should be able to ask the Professional Conduct Panel to review a decision made by the investigating officer? If not, state why.

21. In some instances we 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 in practice we find that the case can be disposed of only by the Disciplinary Tribunal. The IDAR therefore allow the Officer to directly refer these cases to the Tribunal without recourse to the Professional Conduct Panel. The IDAR previously required the investigating officer to seek the endorsement of two Professional Conduct Panel members to these decisions.

Q8 Do you agree that the investigating officer should be able to refer matters direct to the Disciplinary Tribunal in the two instances set out in the IDAR? If not, state why.

Role of the Professional Conduct Panel

22. The role of the Professional Conduct Panel (the Panel) has been revised under the draft IDAR. The Panel is responsible for sifting cases to determine whether there is a case to answer.
23. In some instances the Panel will find that the party accepts that misconduct took place. The IDAR allow the Panel to dispose of those cases through the range of disciplinary powers available to it. We have not revised the powers already available to the Panel. However, where the misconduct has not been accepted the Panel will have to refer the matter to the Tribunal for the formal consideration of evidence and witness testimony. The Panel will therefore be unable to dispose of cases where misconduct is not accepted.

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

Service of notices

24. The service provisions in the IDAR have been reviewed. They currently require service by guaranteed post. We have considered the approach to service taken by the regulatory sector. We have taken the view that service of notices should take place by first class post. This also follows the approach of the Civil Procedure Rules. The rules will also allow for service by personal service. We are also exploring the inclusion of rules allowing for electronic service.
25. The IDAR require that service may be proved by a confirmation of posting or a signed statement in the case of personal service.

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

Representation before panels

26. The IDAR require members and applicants appearing before Panels to seek leave if they wished to be represented by anyone who is not an authorised person, within the meaning of the Legal Services Act. We believe that it should be possible for parties to be represented by anyone of their choice. The IDAR have therefore been reviewed to this effect. It will, however, be possible for the 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 a person.

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

Appeals

27. We have reviewed our approach to appeals against decisions. The rules have extended the time allowed for the parties to appeal against decisions made by the Professional Conduct Panel and Disciplinary Tribunal from 21 days to 42 days. We believe that this extended time frame is necessary to allow the parties to receive and consider decisions and put together their appeal. The IDAR require that the parties must submit all their documents of appeal within the 42 day period.
28. We also considered the grounds under which appeals can be made. The IDAR have been simplified and no longer set out grounds of appeal. Instead they require that the appellant must submit details of the decision subject to appeal and a concise statement of the grounds of appeal.

29. We carefully considered whether IPS should be able to make appeals. We propose to introduce a rule that IPS may appeal against a decision of the Disciplinary Tribunal. We believe that it is necessary to allow IPS to appeal where it believes it has an obligation to act to protect the public interest. In deciding whether to appeal IPS would also consider its obligations comply with the regulatory objectives set out in the Legal Services Act.
30. The IDAR therefore allows IPS to appeal a decision of the Tribunal which IPS has grounds to believe is irrational or substantially flawed or where a sanction imposed by the Tribunal is based upon a manifest error, or in its opinion, unduly lenient.

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

Q13 Do you agree that the grounds of appeal be simplified to requiring the appellant to set out a statement of the grounds of their appeal? If not, state why.

Q14 Do you agree that IPS should be able to appeal in the circumstances set out in the rules? If not, state why.

Panellists

31. The rules in IDAR on panellists have been updated. They require a separate groups of panellists to serve each of the bodies established under the rules. They are the Professional Conduct Panel, Disciplinary Tribunal and Appeal Panel. Each body will be served by an independent clerk.
32. We believe that this separation is necessary to ensure that there is independence of decision making by each panel and that each body is clerked independently of the office.

Q15 Do you agree that there should be a separate panel for each body and that each body should have a separate independent clerk? If not, state why.

Powers

33. We have reviewed the powers that should be available to the disciplinary bodies. The disciplinary powers that can be applied to CILEx members will also be applied where misconduct is found against an entity or CILEx practitioners, compliance officers and owners and managers of entities.

34. The powers are to reprimand, warn, impose conditions on the respondent in respect of their conduct or employment or order their exclusion. The powers also include the power to fine respondents and order the payment of costs.

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

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

35. As a regulator of entities we will encounter instances where we need to intervene into an entity to ensure that we can protect the interests of clients of such entities. While intervention is an action of last resort we will need to act quickly in instances where there is a threat to the interests of clients, the public or justice which cannot be managed through other action. Our rules will be developed to allow IPS to intervene into practices.
36. The rules will allow IPS or an agent acting on its behalf to carry out the intervention activity. The agent may be another legal practice.
37. The intervention activity will include the transfer of client files, property and client money to the intervention agent. The intervention agent will thereby arrange distribution of client money and files in accordance with client instructions. Where the agent is unable to obtain client instructions they will be required to hold the file for a minimum period of 6 years.
38. IPS will review its approach to intervention when it makes an application to become a licensing authority.

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

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

CONSULTATION QUESTIONS

The questions are listed below. Please provide your responses on the attached response form providing reasons for your answers.

- Q1** Do you agree that IDAR should be extended to apply CILEx Practitioners and entities, including relevant officers, regulated by IPS? If not, state why.
- Q2** Do you agree that the requirement to make declarations of prior conduct should be extended to CILEx practitioners, compliance officers and owners and managers of entities seeking regulation by IPS? If not, state why.
- Q3** Do you agree that we should require the new range of declarations set out at Rule 11 to be made? If not, state why.
- Q4** Do you agree that IPS staff may give guidance about the view that IPS would take on a prior conduct matter? If not, state why.
- Q5** Do you agree with our proposals on the role of complainants? If not, state why.
- Q6** Do you agree that the investigating officer should be able to make decisions without the endorsement of Professional Conduct Panel members but that they continue to be reported to the Panel? If not, state why.
- Q7** Do you agree that complainants should be able to ask the Professional Conduct Panel to review a decision made by the investigating officer? If not, state why.
- Q8** Do you agree that the investigating officer should be able to refer matters direct to the Disciplinary Tribunal in the two instances set out in the IDAR? If not, state why.
- Q9** Do you agree that the Panel should only be able to dispose of cases where misconduct is accepted? If not, state why.
- Q10** Do you agree that notices can be served by first class post and by electronic means? If not, state why.
- Q11** Do you agree that it should be possible for the parties to be represented by anyone unless the Panel find there are good and sufficient reasons to refuse to hear a person? If not, state why.
- Q12** Do you agree that we should extend the period for making appeals to 42 days? If not, state why.
- Q13** Do you agree that the grounds of appeal be simplified to requiring the appellant to set out a statement of the grounds of their appeal? If not, state why.

Q14 Do you agree that IPS should be able to appeal in the circumstances set out in the rules? If not, state why.

Q15 Do you agree that there should be a separate panel for each body and that each body should have a separate independent clerk? If not, state why.

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

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

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

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

HOW TO RESPOND

A response form has been produced for completion. Please send the response form to IPS through one of the following methods:

- Email to ipsconsultations@ilexstandards.org.uk
- By post to ILEX Professional Standards Ltd, Kempston Manor, Kempston, Bedford MK42 7AB
- By DX to ILEX Professional Standards Ltd, DX 124780 Kempston 2

SUBMISSION DEADLINE

The deadline for the submission of responses is 2 November 2012