



Better Regulation Delivery Office and the Department for Business, Innovation and Skills:

Extending the scope of the duty for non-economic regulators to
have economic growth and defining the scope of the Small
Business Appeals Champions

A response by:

ILEX Professional Standards

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Introduction

1. This response represents the views of ILEX Professional Standards (IPS), the regulatory body for Chartered Legal Executives, CILEx Practitioners and legal entities.
2. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEx). CILEx is the professional body representing 22,000 qualified and trainee Fellows and is an Applicable Approved Regulator under the Legal Services Act 2007 (LSA). Fellows are authorised persons under the LSA. IPS regulates all grades of CILEx members.
3. CILEx has recently become an Approved Regulator under the LSA able to award additional reserved and regulated legal practice rights. This enables CILEx, through IPS, to award practice rights in litigation, immigration, conveyancing and probate. Individuals holding practice rights are called CILEx Practitioners. IPS is able to regulate legal entities of practising members of CILEx, authorised conveyancing and probate practitioners and other lawyers delivering these reserved legal activities.
4. IPS is a progressive regulator and jointly with CILEx it has successfully obtained the power to grant practice rights and entity regulation rights. IPS and CILEx together provide an alternative route to legal qualification and the new practice rights will allow members and practitioners who do not come from the traditional legal route to qualify as lawyers and own their own legal practice. With the implementation of the new practice and entity rights, IPS has demonstrated its emphasis on economic growth, as it aims to capture a wider range of individuals and entities, liberalising the market in legal services and providing consumers with greater choice and direct access to value for money alternatives to traditional legal firms. As a membership regulator we understand the needs of small businesses we regulate. It is this understanding that has enabled us to create the regulatory framework to enable them to grow.

Growth Duty

5. Independent legal regulatory bodies adhere to the provisions set out in the LSA. IPS believes that the introduction of the economic growth duty on legal regulators would conflict with the objectives imposed by the LSA. The new economic growth duty either duplicates or contradicts the existing statutory obligations. High quality professional regulation safeguards the independence of the legal profession from government, enabling it to operate in the public and consumer interest.
6. IPS has noted the Government's research which suggests that non-economic regulators are not consistently paying attention to the economic significances of their actions. Although IPS understands that regulation can encourage growth and potentially reduce unnecessary burdens on compliant businesses, we believe the main role of regulators is to protect consumers and this should feature at the forefront of each regulator's strategy and business plan; a further imposition of the economic growth duty may inhibit regulators in meeting their primary role of consumer protection through the promotion of high standards among the providers of professional services.
7. The guidance issued by the Government explains that the extension of the growth duty is a factor for regulators to consider in their decision making; but the growth duty is in fact already covered by the Better Regulation Principles, which have the same objectives. Legal Services regulators are required by the LSA to have regard to the better regulation principles.
8. The Government's aim to encourage business growth may be interpreted by some as an acceptance for regulators to provide 'light touch regulation'. If the growth duty is introduced, regulators will have the difficult task of having regard to the growth duty as well as providing efficient regulation.

9. IPS as a regulator began regulating businesses from early 2015 and therefore holds no records of previously compliant entities. If the economic growth duty were imposed on regulators, IPS would be placed in the difficult position of balancing economic growth against ensuring compliance with regulatory arrangements that are necessary for protecting the public when authorising entities.

10. The Government has stated in the consultation paper that it would like to introduce three-part guidance on the growth duty. First of all the Government has confirmed that it does not want Regulators diverting resources away from a business' core operational or strategic activity. This implies that Regulators should not take up too much of the time of businesses or impose unnecessary burdens on them. The Government's aim is to assist a business to concentrate its effort on growth and expansion, rather than on regulation. Although this seems a straightforward aspiration, regulators do need a contact point (i.e. a Compliance Manager for Legal Practice) in organisations to liaise with. The largest proportion of misconduct matters and complaints relate to failure to manage businesses or client money. These matters indicate a need for lawyers to demonstrate competence and integrity in these areas as well as in their core legal practice area. IPS requires lawyers to demonstrate competence at the point of authorisation. We believe that this requirement at the outset is necessary to protect consumers.

11. The second part of the guidance suggests that Regulators should intervene only when necessary. This extends to the principle that if there are minor regulatory issues they should be dealt with informally. IPS already has such procedures in place, one of which is the 'determination by consent' procedure, where enforcement action can be taken swiftly. Both IPS and the regulated member or firm can mutually agree a conclusion for the complaint. Our outcomes-based approach to entity regulation provides IPS-regulated entities with the flexibility to demonstrate how their business model establishes that outcomes of the Code of

Conduct are met. IPS would take action where there was evidence to indicate that outcomes are not being met by a regulated entity.

12. The final point of the guidance states that regulators should tailor regulation; this is the opposite of the one size fits all approach. IPS' regulation is outcomes-focused; therefore it provides a real degree of flexibility and will allow businesses to tailor their regulatory activity to our specified requirements.

Small Business Appeals Champions

13. The Government is considering introducing a Small Business Appeals Champion to work within each regulator. This individual would help ensure that small businesses would be able to challenge regulatory enforcement if they felt they had been unfairly treated by a Regulator. There are numerous difficulties with the appointment of such a champion in the legal services context because of the requirement to separate regulatory and representative functions. For example, if the champion is a member of an approved regulator's Board, they would automatically be unable to interfere with the regulatory arrangements of the front line regulator. Placing a champion on a front line regulator's Board would not be appropriate because their function is to represent members' interests. It would also mean that they became involved in casework, making for poor governance. There are already requirements to publish information and have in place transparent procedures. The LSA prescribes appeals procedures for ABSs. It is also essential to ensure that the regulation of legal and other professional services remains independent of the state.

14. The Legal Services Board already has powers to scrutinise front line regulators' rules and require clarity and proportionality. Appeals Champions could do no more than duplicate existing safeguards for regulated organisations.

15. IPS' regulatory decisions are overseen by casework committees. These committees consist of professional and lay members and remain impartial when

making decisions. In addition businesses can also appeal to an Appeals Panel. The rules of the Appeals Panel are flexible to allow consideration of a broad range of grounds for appeal. They also allow for representation of the entity before the Panel by anyone.

16.If the Government felt it was essential to appoint a Champion for legal regulation, we feel that only one Champion should be appointed to cover the remit of the legal services market. This would be cost effective and would have the benefit of the Champion being able to identify good practice amongst all legal regulators and then to share the information proactively.

Conclusion

17.IPS supports the aim of ensuring that regulation supports, rather than inhibits, economic growth. But the kind of duty envisaged would compete with and/or duplicate existing duties, probably hindering their function. There are particular concerns that the new duty would undermine existing, necessary forms of consumer protection. Imposing a duty would not add value to established statutory requirements and proportionate, outcomes-focussed, risk-based regulation; and would add an additional regulatory layer. Regulators such as IPS are constantly working to support the development of innovative service delivery models for legal practitioners and to ensure the highest level of consumer protection.

18. The Government has stated in the consultation that it:

'..... expects that appointments to the role of Champion will be made at board level. Appointments will be made by the relevant Secretary of State on a case by case basis, taking into account the individual requirements of different regulators and the business sectors they affect'.¹

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320830/bis-14-859-small-business-appeals-champion-government-response-corrected.pdf Questions 10 and 16

19. If such appointments were made, the Secretary of State would need to appoint nine new Appeals Champions for front line regulators of legal services. This particular new appointee would have a very narrow remit of work and the Board would lose out on the broad range of experience each member brings to the Board. This will also increase regulatory costs further which will undoubtedly be passed onto consumers.
20. The Legal Services Board (LSB) as an oversight regulator is more than capable of scrutinising existing arrangements and addressing any concerns identified in the legal regulatory sector. There are particular difficulties in implementing the Small Business Appeals Champion proposals in the context of legal services because of the separation of regulatory and representative functions. It is not possible for the representative body to dictate to the front line regulator on regulatory issues. Also a representative member would be out of place on a regulatory Board. If an Appeals Champion is to exist, it should be either a function of the LSB Board members or a single overarching appointment for the sector, outside the proposed statutory arrangements.

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