



## **CONSULTATION ON FINES**

The Chartered Institute of Legal Executives (CILEx) is an approved regulator under the Legal Services Act 2007 (the Act). 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 Chartered Legal Executives and other grades of a CILEx member.

IPS made applications under the Legal Services Act 2007 for CILEx to become an approved regulator for awarding reserved legal activity rights in reserved instrument activities and probate activities and to extend the award of litigation rights. IPS also made an application to introduce regulatory arrangements, including authorisation processes, for immigration advisors. These applications have been approved by the Legal Services Board and are awaiting Parliamentary orders.

This consultation outlines the approach that IPS will take when fining CILEx members, authorised persons, entities and approved managers in entities regulated by IPS after a finding of misconduct is made and where the Tribunal decides a fine is an appropriate penalty. It also sets out the factors that will be taken into consideration when deciding on the fine to be levied.

**This consultation will run for 10 weeks and will close on 22 April 2014**

## INTRODUCTION

1. This consultation provides an outline of the approach that IPS seeks to implement when fining CILEx members, authorised persons, approved managers in authorised bodies and authorised bodies regulated by IPS. Fines will only be imposed after a finding of misconduct is made and where the Tribunal decides a fine is an appropriate penalty. We seek your views on our proposals.

## OUR APPROACH TO THE FINES FIGURES

2. IPS has in place complaints and disciplinary rules called the Investigation, Disciplinary and Appeal Rules (IDAR). The IDAR set out the powers available to IPS where an allegation is found proved.
3. The IDAR applies to CILEx members and was extended to cover our new regulated community of authorised persons, approved managers and entities. As part of IPS' work to seek reserved legal practice rights and to become a regulator of entities through which reserved legal practice rights are delivered, IPS' capacity to fine was reviewed. The review was carried out to ensure that IPS will have fining powers commensurate with the risks the various segments of its regulated community carry and the legal activity they are authorised to undertake.
4. Our review has led to proposals to increase the level of fines for individual CILEx members and to introduce fines for Authorised Bodies, Approved Managers in Authorised Bodies and CILEx Practitioners. Appropriate fine levels are one of the methods that IPS will employ to ensure that it meets its regulatory intent. We seek your views on our proposals.
5. IPS will be able to award reserved legal activity rights to Applicants who meet IPS criteria. An Applicant means a person applying for membership or authorisation. IPS will also regulate entities through which authorised persons will deliver reserved legal activities. The additional rights require IPS to act to ensure the continued protection of consumers and the public. IPS recognises that in meeting its obligations it has responsibility for investigating allegations of misconduct, ensuring regulatory standards are met, and imposing sanctions upon those it regulates where standards are found not to have been met.
6. Where a complaint of misconduct is proved against CILEx members, the fine must be commensurate with the level of risk the regulated member or Authorised Body, poses to the delivery of regulated outcomes.
7. The new proposed fine levels, which appear at **appendix 1**, form part of a Fines Policy document that will sit alongside the Investigation Disciplinary and Appeal Rules (IDAR) and the IPS Fitness to Practice Procedures Manual. IPS believes the levels of fines proposed demonstrate that it can show accountability to the public, consumers and its oversight body, the Legal

Services Board. IPS' proposals also take an approach that is similar to other legal regulators in maintaining professional standards.

8. The fines levels proposed will have a threefold effect. Firstly, they will demonstrate that IPS is a regulator which takes matters of misconduct seriously and has the power behind its regulatory voice to take action. Secondly, they will be a deterrent and impress upon those who provide legal services to the public that they must always act in compliance with their regulatory responsibilities set out in the Code of Conduct. Thirdly, they are designed to influence and advance positive behaviours to ensure a high standard of service is maintained by its regulated communities while delivering legal services to their consumers. In a competitive legal market IPS is taking a strong position on accountability and in maintaining the reputation of the profession.
9. IPS is in a strong position to ensure fairness and proportionality in approach to fines in individual cases as all fining decisions are made by a Disciplinary Tribunal at the conclusion of a hearing. This means that any decision to impose a fine is made after all parties have had the opportunity to be heard before an independent body. The Tribunal will provide clear reasons for any fine imposed.
10. IPS has evaluated the approach taken by other legal services regulators along with regulators of other non-legal sectors in reaching its views on the amount of fine to levy. It has also considered established fining levels and fines applied by the courts of England and Wales. IPS has set levels at similar levels to these establishments.

### **Fines for Individual CILEx Members**

11. A CILEx Member means a person who has been admitted to membership of CILEx in any grade.
12. At present IPS can fine individual members a maximum of £3000. This amount has been found to be inadequate as a deterrent and admonishment when more serious cases have been determined that have caused a greater impact on individual complainants, the public and the professional reputation of CILEx; within the legal community as a whole.
13. An increase in the fine will allow the Disciplinary Tribunal to have available to it a wider range of fining powers dependent on the seriousness of the misconduct and its impact.

**Q1 Do you agree that fines should be increased for individual CILEx members from up to £3,000 to up to £5,000? If not, state why.**

### **Fines for Individual CILEx Practitioners**

14. A CILEx Practitioner means a practitioner authorised by IPS to provide one or more regulated or reserved legal activity.

15. Members who achieve the standards required for authorisation to conduct reserved or regulated legal activity will have the authority to provide legal services where they carry increased risk, due to their level or responsibility for legal matters, that they could breach the Code of Conduct. They will deal with a range of cases, including higher value matters that pose higher risks to the protection of the interests of the public and consumers. It would be disproportionate therefore to have limited ability to fine authorised persons to the same limit as individual members.
16. The new maximum fine proposed of £50 million for Authorised Persons aims to take into consideration the wide range of practices that members may set up and the level of risk they pose to the delivery of the standards of conduct expected of them. The factors detailed in appendix 2 clearly demonstrate that cases will be considered on an individual basis and IPS will not take a 'one size fits all' approach.

**Q2 Do you agree that members who hold reserved or regulated legal activity rights can be fined up to £50 million? If not, state why.**

### **Fines for Approved Managers**

17. An Approved Manager means a person approved by IPS to be a Manager of an Authorised Body.
18. Approved Managers will be in high level positions of trust with responsibility for practice; this will include accounts management in a firm. As a result of this increased level of responsibility there will be a greater exposure to the risks of breaching the outcomes set out in the Code of Conduct or other rules such as the Accounts Rules.
19. The current individual fine levels of £3000 or the new proposed fine level for individuals would be inappropriate for those Approved Managers who are found to have breached the Code of Conduct or other rules.
20. The new limit of a maximum fine of £50 million will allow IPS to deliver a significant deterrent and the appropriate levels of protection to the consumer, instilling confidence in the CILEx profession, in proportion to the level of risk they pose to the delivery of the regulatory objectives.
21. The deciding factors referred to in appendix 2 will ensure the fines imposed in individual cases will be fair and proportionate.

**Q3 Do you agree that individuals who are an Approved Manager in a body regulated by IPS can be fined up to £50 million? If not, state why.**

## **Fines for Authorised Bodies**

22. An Authorised Body means a partnership, company or sole principal authorised by IPS to provide one or more reserved or regulated activities.
23. IPS seeks to introduce an approach to fining which is comparable to that adopted by other regulators of legal services entities, to deliver similar levels of consumer protection. The proposal by IPS links the level of fine to percentage of turnover and will accommodate all sizes of practice including the very small as well as the very large.
24. At present IPS is not required to levy fines against entities. Were the current individual fine levels of £3000 or the new proposed fine level for individuals to be applied to entities that have been authorised by IPS this would create a disproportionate outcome. The reason is due to entities being more prominent with greater responsibility for practices generating higher income. It would be unfair to individual members and the consumer for entities to be dealt with in the same manner as individuals as £3,000 (or £5000) would be a minimal percentage of an Authorised Body's earnings and would not be a deterrent.
25. The percentage variance will allow the Disciplinary Tribunal to consider the size of the body as well as other circumstances of the case.

**Q4 Do you agree that entities who obtain Authorised Body status can be fined 0.5% of annual domestic turnover up to a maximum of 5% or up to a maximum of £250 million whichever is greater? If not, state why.**

26. IPS has looked at regulation as a whole within the United Kingdom and Wales, and considers these proposals to increase fine levels are proportionate and fair, to all parties involved during misconduct investigations and proceedings.
27. The distinct fine levels for different regulated statuses allows for flexibility in decision making and ensures that individual cases can be considered on individual circumstances.

**Q5 Do you agree with our general proposal on the level of fine? If not, state why.**

## **OUR APPROACH TO THE DETERMINING FACTORS**

28. IPS has also reviewed the criteria that will be considered when deciding what fine to impose within the financial ranges proposed. The criteria appear at **appendix 2**. They set out the factors that may be taken into consideration by the Disciplinary Tribunal when assessing the level of fine.

29. We have considered the role of the Disciplinary Tribunal and the responsibility they have to give clear reasons and to be fair and consistent when determining the level of fines they impose. We have considered that the best way to be fair and consistent is by building on our established approach of having guidelines for our conduct panels. We have developed new guidelines for setting the level of fine in individual cases.
30. Our new guidance sets out three stages in setting levels of fines. These 3 stages are Seriousness, Adjustments and Proportionality. They are explained below and the guidance at appendix 2 sets out the factors the decision making bodies will take into account.
31. **Seriousness** looks at the nature of the misconduct and the outcome as a result of those actions. The outcome element focuses on the impact of the misconduct.
32. **Adjustments** look at aggravating and mitigating factors, such as a pattern of sustained conduct or whether attempts have been made to rectify the misconduct.
33. **Proportionality** separates out what might ordinarily have been taken into account as personal mitigating factors into a separate category of their own. This is to ensure specific weight is placed on the personal individual circumstances of the Member/Applicant/Body. This section will take into account details such as the ability of that person or body to pay, and the impact of the fine upon them. The aim of IPS is to sanction in a manner that instigates changes in practices and makes the regulated community accountable for their mistakes and wrong doing. This is to ensure the protection of the public and the maintenance of the standards by the profession.

**Q6 Do you agree with the proposed Seriousness Factors? If not state why.**

**Q7 Do you agree with the adjustment factors that will be taken into account when considering the level of fine? If not, state why.**

**Q8 Do you agree with the proportionality factors that will be taken into account when considering the level of fine? If not, state why.**

34. We have given consideration to equality and diversity issues and we do not consider these proposals have a detrimental impact on the regulated community or its service users.

35. **Q9 Do you agree that at present there is no detrimental impact on equality and diversity? If you consider there to be some, what are they?**

## 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 fines should be increased for individual CILEx members from up to £3,000 to up to £5,000? If not, state why.
- Q2.** Do you agree that members who obtain Practitioner Rights can be fined up to £50 million? If not, state why.
- Q3.** Do you agree that members who obtain Approved Manager status can be fined up to £50 million? If not, state why.
- Q4.** Do you agree that entities who obtain Authorised Body status with CILEx can be fined 0.5% of annual domestic turnover up to a maximum of 5% or up to a maximum of £250 million whichever is greater? If not, state why.
- Q5.** Do you agree with our general guidance proposal on how to assess the level of fine? If not, state why.
- Q6.** Do you agree with the approach taken in relation to the Seriousness Factors? If not, state why.
- Q7.** Do you agree with the adjustment factors that will be taken into account when considering the level of fine? If not, state why.
- Q8.** Do you agree with the proportionality factors that will be taken into account when considering the level of fine? If not, state why.
- Q9.** Do you agree that these proposals will have no detrimental impact on equality and diversity? If you consider there to be any, what are they?
- Q10.** Do you have any other comments on our Fines Policy? If so, please state what they are.

## 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](mailto: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 **22, APRIL 2014**