

COMPLAINTS AND DISCIPLINARY ARRANGEMENTS CONSULTATION ANALYSIS

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.

Yes	No
-----	----

4	
---	--

Yes

- Can see no reason why not in theory, but professional input and experience required.

IPS response

IPS has sought professional legal advice in framing the IDAR and its application to entities.

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.

Yes	No
-----	----

4	
---	--

Yes

- But panel members must remain independent so a fair conclusion can be made.
- Can see no reason why not in theory, but is this the same client group?

IPS response

IPS has and will continue to ensure its governance arrangements provide for independent panellists who reach decisions using the sanctions guidance

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.

Yes	No
-----	----

4	
---	--

Yes

- But how will retrospection apply? Will members be required to comply with the new declaration and be given a period of, say, 12 months as an

amnesty so to do?

IPS response

All existing CILEx members make annual prior conduct declarations. The new range of declarations will only need to be made once the new IDAR are in force.

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.

Yes	No
-----	----

4	
---	--

Yes

- But they must be independent from other staff members if they are also involved – matters should be kept confidential to IPS and their staff.

IPS response

IPS has in place mechanisms for the security of information, which is only available to IPS officers. The decision making role on prior conduct matters will rest with an officer suitably able to make such decisions. The new structure puts in place arrangements for the separation of roles.

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

Yes	No
-----	----

4	
---	--

Yes

- But IPS have to note that there is such a thing as a bad client and must take the members comments into the investigation.

IPS response

The investigation process allows opportunity for members to respond to complaints and it allows for early rejection of complaints where there is no evidence to support the allegations made.

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.

Yes	No
2	2
<p>No</p> <ul style="list-style-type: none"> • The rule of Natural Justice must be in operation. Equity regards as done that which ought to be done. • But the process could be simplified whereby a single member of PCP franks a recommendation without producing a detailed report which I, at least, currently prepare. In my experience a read through is generally sufficient to support a recommendation, or otherwise. This would not preclude a fuller report if required, but would probably be quicker. 	
<p>IPS response</p> <p>IPS has given careful consideration to this proposal. It had also considered the approach taken by other bodies to decision making. The officer decisions will be subject to internal scrutiny as well as Panel scrutiny and may only be made where set criteria are met. Furthermore IPS has built a route of reconsideration by the Panel which will be available to complainants.</p>	

<p>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.</p>	
Yes	No
4	
<p>Yes</p> <ul style="list-style-type: none"> • Unless my response above precludes the need. 	
<p>IPS response</p> <p>IPS believes that the review process is necessary for providing a route of redress to complainants.</p>	

<p>Q8. Do you agree that the investigating officer should be able to refer the matters direct to the Disciplinary Tribunal in the two instances set out in the IDAR? If not, state why.</p>	
Yes	No
2	2
<p>Yes</p> <ul style="list-style-type: none"> • For serious matters <p>No</p> <ul style="list-style-type: none"> • This must be a set of rules upon which the investigating officer assess 	

the information they have. Such rules must be drafted by ILEX Professional Standards.

- The endorsement of two PCP members should be retained because it may be necessary to consider the imposition of an interim Suspension Order. Which body would frank, or otherwise, Determinations by Consent?

IPS response

IPS has an obligation to protect the public and consumers. Its sanctions guidance set out factors to be considered when deciding whether to refer a matter to the Disciplinary Tribunal. This power is already available under IDAR except that at present the Officer must exercise it in conjunction with two panellists. IPS has found that the process does not deliver timely consumer protection. IPS has taken into account that the officer referral will still allow the parties to the case to make representations before the Tribunal, in reaching its decision to continue with its proposal.

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

Yes	No
2	2

Yes

- But who will deal with cases when misconduct is not accepted.

No

- See Q6 and if the misconduct charges has been proved by a Panel.
- This will lead to a number of relatively 'minor' cases going to DT at additional cost. If adopted the question of whether misconduct is accepted will need to be put specifically. Currently case papers are vague in this regard and respondents often hedge their bets. It seems to me that PCP currently deals with (90%?) of the cases before it in a timely and efficient manner. More cases going to DT can only increase costs of external lawyers unless it is the intention to process these in house. If that is the intention then I consider it dangerous to have no independent body reviewing cases prior to DT. Pressure can, and with the best will in the world will be, or perceived to be applied, and this runs counter to my many years of experience in such matters.

IPS response

IPS has carefully considered this proposal. The PCP process is a procedure for determining cases on the basis of the papers before the Panel. It does not involve formal charges and evidence. IPS believes that in the interests of justice determinations should be made after the parties have had opportunity to put their positions formally to a Panel.

IPS recognises its obligation to keep costs proportionate. Where possible IPS is making use of in-house advocacy resources. Its new organisation structure will allow more resources for in-house advocacy to become available than it currently has.

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

Yes	No
4	

Yes

- As per the CPR Rules
- First class post is better, emails can be opened by staff so may not be the best way in my view.

IPS response
 IPS carefully reviewed the position and the CPR. It has amended IDAR to allow for service by first class post.

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.

Yes	No
4	

Yes

- See Q6. This is no good or sufficient reason as to why any party cannot be represented, or why such representation should be refused.

IPS response
 In the interests of fairness IPS has amended IDAR to allow the parties to be represented by any party unless there is good reason to refuse to hear a person.

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

Yes	No
3	1

Yes

- Yes as extra time could be needed.

No

- Whilst some extension may be necessary/desirable based on your experience, I consider 42 days to be excessive.

IPS response

IPS carefully considered the time frame for making appeals. It has extended it to 42 days in the interests of fairness to the parties, to allow them sufficient opportunity to put forward evidence in support of an appeal.

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.

Yes	No
4	

Yes

- But I would add 'detailed' before statement.

IPS response

IPS has revised its appeal rules to accord with best practice on appeal grounds.

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

Yes	No
4	

No comments

IPS response

IPS has carefully considered whether it should have a right of appeal. The rules allow appeals to be made in circumstances where the interests of justice and protection of the public require it.

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.

Yes	No
4	1

Yes

- People have to know/have experience in the matter/area they are dealing with.
- Probably – if you consider three panels and three clerks to be necessary.

No

I have no problem with the PCP being separate : there appears to be plenty of business for them in addition to the work on disciplinary and appeals. As to the notion of separating appeals and disciplinary I would oppose this. There are a number of grounds.

a)there would be a real risk of appeal panel members hearing no cases in a year, if my understanding of present workload is correct. While some members are engaged in other regulatory work, it seems to me that this cannot substitute for regular experience and teamwork with colleagues. At present I am in a period of 6 months plus when not engaged in hearings – this would clearly be exacerbated by this proposal.

b) at present the combined panel can hear a disciplinary case and an appeal on the same day , expediting hearings and reducing cost.

c)there would appear in any case to be an unnecessary cost in establishing two panels.

d)I am unpersuaded that the argument for clarity of independence is other than specious we already ensure that members who have dealt with cases at first instance do not hear the appeals.

IPS response

IPS believes that in the interests of good governance each panel should be served by separate panellists.

IPS moved to a pool of panellists hearing Tribunal and Appeal cases for the reasons mentioned by the respondent. However, it has carried out a governance review which led to the proposal to separate out panellists serving each panel.

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

Yes	No
3	1

No

- The powers in total may well be, only experience will tell, there will always need to be changes based on situations that arise, but the allocation between PCP and DT is unbalanced. Failure to declare prior conduct at the earliest opportunity should be subject to a fixed fine (say £250), failure to pay within 28 days being a disciplinary offence. Appeals to PCP.

IPS response

IPS has researched the powers and sanctions available to it. It has in place sanctions guidance which guides panellists in determining sanction. The Board portfolio report on fitness to practise allows for reporting on the effectiveness of the sanctions and use of the powers. This enables regular reviews to take place.

IPS has not opted for fixed penalties as suggested by the respondent. It considers each case based on its facts and by using the sanctions guidance.

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.

Yes	No
4	

Yes

- This is wider than Q1 I think. Should the terminology be consistent? In theory I support this as answer 1.

IPS response
 IPS will take an entity based approach to the regulation of entities that it authorises. However, there will be circumstances where action is needed against office holders.
 The rules have been updated to ensure there is consistency of terminology.

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

Yes	No
4	

Yes

- As above as long as the practicalities are addressed appropriately.

IPS response
 IPS has undertaken detailed research into the powers of intervention. IPS is not a statutory body with intervention powers. The IDAR put in place a practice management arrangement which allows for the orderly management of client money and files where an entity's authorisation is revoked. IPS is seeking a s69 Order for intervention powers.

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

Yes	No
4	
Yes <ul style="list-style-type: none">• This is the curate's egg – good in parts – but which raises concerns about the desirability of the reduced role envisaged for PCP for which there is no supporting justification. Evidence required!!	
IPS response <p>The responses set out above explain the reason for the revised role for the PCP.</p>	