

# **THE CODE OF CONDUCT AND ACCOUNTS RULES ANALYSIS OF CONSULTATION RESPONSES**

## **INTRODUCTION**

IPS issued a consultation on its proposals to revise the Code on 27 July 2012. This consultation also re-issued the Accounts Rules, which had previously been consulted upon but had been subjected to minor amendments. This consultation closed on 19 October 2012.

## **SUMMARY OF RESPONSES**

IPS published the consultation on its website and additionally alerted members and the public to it by publication in the CILEx Journal. The consultation was also sent to over fifty members, consumer bodies and professional bodies and legal service regulators.

Thirteen responses were received. Of those, nine were standard form responses and four were more general responses that answered only those questions that the consultees wished to make comment upon. Ten responses were from CILEx members, one was from the Legal Ombudsman, one was from the Chartered Institute of Patent Attorneys and one was from the Legal Services Consumer Panel. All the non-member responses were general in nature, addressing only specific points.

Of the ten CILEx members who responded, nine answered all questions with the remaining respondent responding only to specific questions. Six of the CILEx members responding advised that they were happy for their responses to be published and four advised that they did not permit publication of their comments or did not permit publication without the opportunity for revision in advance.

The responses received were broadly supportive of the IPS approach to the revision of the Code of Conduct and the Accounts Rules. The content of the publishable responses is provided below.

Standard form responses will be addressed separately from the general responses to provide a full picture of the responses received.

*Standard form responses:*

**Q1. Do you agree that the approach adopted to expanding the application of the Code provides an effective overarching core regulatory framework that sets out the standards of conduct expected of everyone we regulate? If not, please identify any areas where you believe development is required.**

RESPONSES:

All nine respondents who answered this question agreed. None of the respondents provided any further comment.

**IPS COMMENTS Q1**

In the interests of transparency and clarity for consumers, the public and IPS regulated community IPS has ensured that its Code is applicable to all it regulates.

**Q2. Do you agree that the definitions of CILEx Member, CILEx Practitioner and Authorised Body (annex 3) adequately encompass all those subject to regulation by the Code? If not, please identify any area of deficiency in this respect.**

RESPONSES:

All nine respondents who answered this question agreed. None of the respondents provided any further comment.

**IPS COMMENTS Q2**

IPS carefully reviewed the definitions used in the Code and its regulatory arrangements to ensure there is consistency of application.

**Q3. Do you agree that the outcomes under principle 1 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas of deficiency in this respect.**

RESPONSES:

All nine respondents who answered this question agreed. None of the respondents provided any further comment.

### **IPS COMMENTS Q3**

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle.

### **Q4. Do you have any other comments on the outcomes under the first core principle? If so please provide details.**

#### RESPONSES:

Of the nine respondents, eight made no comment. One CILEx member stated: "Definitions should include entities as well as individuals to save confusion to the public – this may be covered in principle 2."

### **IPS COMMENTS Q4**

IPS' regulatory arrangements have been reviewed to ensure consistency of application. Supporting guidance will clarify to whom the Code and other regulatory arrangements apply.

### **Q5. Do you agree that the expansion of principle 2, as expressed above, is appropriate and effective? If not, please specify how you would propose we achieve regulatory oversight in this respect.**

#### RESPONSES:

All nine of the respondents agreed with two providing qualification. One qualification was not authorised for publication. The other qualification was from a CILEx member who stated: "Yes, save that quite frequently the public have little or no interest in the minutiae of regulation / codes of conduct. As long as they are satisfied with the job: result, costs etc. that is all that matters to them."

### **IPS COMMENTS Q5**

IPS' regulatory arrangements, including its consumer feedback proposals, will enable IPS to assess public satisfaction with its regulatory arrangements and thereby keep them under review. The mechanism will allow for consumers to provide feedback without involving themselves in the minutiae of information. Equally IPS has drawn upon existing research to assess outcomes consumers expect and to reflect them in its regulatory arrangements.

**Q6. Do you agree that the outcomes under principle 2 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

RESPONSES:

A CILEx member stated: "I am not sure I understand the references to outcomes and measurable outcomes, which seems to be so much "business speak". A code of conduct is something which professionals should be familiar with and comply with. How does one measure this? If no complaints are made against an individual then it may be assumed they are conversant and compliant". All other respondents agreed and made no further comment.

**IPS COMMENTS Q6**

The IPS regulatory arrangements from its authorisation and supervision programme to its enforcement programme place the Code of Conduct at the core. The arrangements have been developed to ensure that compliance with the outcomes and principles set out in the Code can be measured.

**Q7. Are there any other aspects of personal conduct that should be included in the *Guidance*? If so, please set out your views**

RESPONSES:

Six of the respondents answered in the negative and made no further comment. Three respondents answered in the affirmative. Of those three only two provided their views. One of the views expressed was not authorised for publication. A CILEx member stated: "Members should act in the best interest of their client at all times."

**IPS COMMENTS Q7**

IPS agrees that members should act in the best interests of their clients at all times. IPS has an obligation, in the public interest, to consider whether the personal conduct of a member affects their integrity and practice as a member of a regulated profession. It does therefore require members to declare personal conduct. IPS assesses whether personal conduct affects their membership and continuing regulation.

**Q8. Do you have any other comments on the outcomes under the second core principle to the Code? If so please provide details.**

RESPONSES:

A CILEx member stated: "Members should not pass details of their clients onto third parties in favour of a commission fee." A further respondent answered in the affirmative but made no comment. The remaining respondents answered in the negative.

**IPS COMMENTS Q8**

The Code of Conduct requires that IPS' regulated community comply with the law. This principle encapsulates the obligation to comply with obligations set out in legislation in relation to referral fees.

**Q9. Do you agree that the outcomes under principle 3 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

RESPONSES:

Eight of the respondents answered this question in the affirmative without further comment. A CILEx member stated: "Again, I am not sure I understand these continued references to outcomes. The term "outcomes focussed" may be confusing. What does all this mean in plain English? Importantly, what is meant by "suspicion"? At the very least this should be qualified as "reasonable suspicion"

**IPS COMMENTS Q9**

IPS will issue guidance to explain its use of definitions when it launches the new Code.

**Q10. Do you have any other comments on the outcomes under the third core principle to the Code? If so please provide details.**

RESPONSES:

A CILEx member stated: "Yes, I consider there is some degree of overlap with Principle 2." Two respondents answered in the affirmative but provided no comments. The remainder of respondents answered in the negative.

### **IPS COMMENTS Q10**

IPS has carefully reviewed the principles and outcomes in the Code. It recognises that outcomes 2.2 and 3.1 could overlap. Outcome 2.2 relates to confidence and trust and outcome 3.1 to honesty. Therefore IPS assesses that it is necessary to retain both outcomes to clarify to its regulated community the outcomes that they must deliver.

### **Q11. Do you agree that Principle 4 adequately provides for outcomes focused regulation in respect of the area of legal and regulatory compliance and effectively requires co-operation and engagement with oversight bodies?**

#### RESPONSES:

Eight of the nine respondents answered in the affirmative. A CILEx member did not answer but did provide comment in the following form: "I consider there is a potential conflict here. If one is employed by an entity regulated by another regulator *e.g.* the SRA then one will have to comply with one's employer's processes and procedures first which may affect the speed with which one can respond to the LSO or IPS as one would have to go through the employer's channels."

### **IPS COMMENTS Q11**

IPS recognises that the entity based regulatory approach requires members to comply with the regulatory arrangements of the regulator of the entity. The Code confirms that the regulated community must comply with the Code where it applies to them. IPS' regulatory arrangements, in its Authorisation Rules, also address regulatory conflict, clarifying that the arrangements of the entity regulator take precedence. Principle 4 is also drafted broadly and does not require compliance with IPS but with the requirements of applicable regulators.

### **Q12. Do you agree that the outcomes under principle 4 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

#### RESPONSES:

Eight of the nine respondents answered this question in the affirmative. The remaining respondent made no comment.

### **IPS COMMENTS Q12**

IPS agrees with the view of the respondents.

### **Q13. Do you have any other comments on the outcomes under the fourth core principle to the Code? If so please provide details.**

#### RESPONSES:

Seven of the nine respondents answered in the negative. Of the remaining two responses received, one answered in the affirmative but made no comments. A CILEx member stated: "Complaints investigated by IPS should be done independently and charges can be applied but have to be reasonable, and should only apply if the fault lies with the member."

### **IPS COMMENTS Q13**

IPS complaints handling procedures are set out in its Investigation, Disciplinary and Appeal Rules. The Rules set out arrangements for the transparent and fair investigation and determination of complaints. The purpose of the charging arrangement is to bring allegations to an independent decision making body, the Disciplinary Tribunal. IPS cannot prejudge cases to only bring charges where a determination has been made that fault lies with the member. IPS does however have in place an arrangement for the early rejection of unfounded allegations. In the interests of transparency and clarity for consumers, the public and its' regulated community IPS has ensured that its Code is applicable to all it regulates.

### **Q14. Do you agree that Principle 5 adequately provides for outcomes-focused regulation in respect of the areas of competence, acting in the best interests of clients and respecting client confidentiality? If not, please identify any areas for improvement in this respect.**

#### RESPONSES:

Eight of the nine respondents answered in the affirmative. The remaining respondent, a CILEx member stated: "No, members should only practice in areas that they have qualifications in."

### **IPS COMMENTS Q14**

The IPS approach to regulation supports the view that authorisation will only be

granted where an applicant demonstrates competence in the practice area in which they seek to practise.

**Q15. Do you agree that the outcomes under principle 5 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

RESPONSES:

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle.

**IPS COMMENTS Q15**

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle.

**Q16. Do you have any other comments on the outcomes under the fifth core principle to the Code? If so please provide details.**

RESPONSES:

Six of the respondents answered in the negative. Three respondents answered in the affirmative but of those only two made comments. A CILEx member stated: "Members should not pass clients personal details onto any third parties without consent of client." Another CILEx member stated: "It does not appear that the changes markedly change those obligations already placed upon (and practiced by) practitioners. If there are marked changes to the obligations on practitioners it may be useful for CILEx / IPS to outline to practitioners where there are relevant changes that ought to be made to client care letters etc."

**IPS COMMENTS Q16**

IPS agrees that members should protect client data. The outcomes to principle 5 reflect the client care outcomes that appear in regulatory arrangements of other regulators and of the IPS existing Code. IPS will issue appropriate guidance and bring the Code to the attention of its regulated community when it is launched.

**Q17. Do you agree that principle 6 effectively deals with the issue of**



**access to justice and protection of the vulnerable? If not, please advise of any areas for improvement.**

RESPONSES:

Seven of the nine respondents answered in the affirmative. The remaining two did not answer the question but did make comment. A CILEx member stated: "Members should advise vulnerable clients with care and attention and ensure they are happy with their instructions before proceeding." Another CILEx member stated: "This is confusing as "without prejudice" has a legal meaning and in my opinion should be amended."

**IPS COMMENTS Q17**

IPS agrees that its regulated community should advise vulnerable clients with care and attention and clarify instructions with them. Outcome 5.7 sets this obligation as an outcome.

**Q18. Do you agree that the outcomes under principle 6 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

RESPONSES:

Eight of the nine respondents answered in the affirmative with the remaining respondent not answering this question. No comments were made.

**IPS COMMENTS Q18**

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle.

**Q19. Do you have any other comments on the outcomes under the sixth core principle to the Code? If so please provide details.**

RESPONSES:

Six of the nine respondents answered in the negative and made no comments. Of the remaining three responses two answered in the affirmative but only one of those made a comment. The third made comment but did not answer the questions. A CILEx member stated: "with regards to the issue of equality, I feel the legal

obligation is already covered in principle 4." Another CILEx member, stated: "Whilst I understand the principle I would ask what we are supposed to do to improve access to justice when Government seems determined to reduce it. There is also potential conflict with employers."

### **IPS COMMENTS Q19**

IPS has reviewed principle 4 following the comment made above. It believes that principle 6 is necessary to reflect that IPS expects its regulated community to treat everyone fairly. IPS recognises the impact of Government cuts in areas such as legal aid. However, it does not agree that there is a conflict with employers. The obligation at principle 6 relates to the treatment of clients of a regulated person or entity.

**Q20. Do you agree that the outcomes under principle 7 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

#### RESPONSES:

Seven of the nine respondents answered this question in the affirmative and made no comment. One respondent did not answer this question or make comment. A CILEx member stated: "Again, this seems to be stating the obvious. I also have concerns about potential conflict of interest with employers."

### **IPS COMMENTS Q20**

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle. IPS response above (under question 19) addresses the comments about conflict of interest with employers.

**Q21. Do you have any other comments on the outcomes under the seventh core principle to the Code? If so please provide details.**

#### RESPONSES:

Seven of the nine respondents answered in the negative. One respondent answered in the affirmative but made no comment. A CILEx member, did not answer the question but commented: "Members should ensure conflict of interest does not occur."

### **IPS COMMENTS Q21**

IPS agrees that its regulated community should have in place arrangements for and comply with arrangements for the identification of conflicts of interest. Its risk based approach to regulation will assess compliance with the Code, which includes an obligation to identify and act appropriately where there is a conflict of interest.

**Q22. Do you agree that principle 8 effectively deals with outcomes focused regulation in the area of practice management? If not, please advise of any areas for improvement.**

#### RESPONSES:

Eight of the nine respondents answered in the affirmative and made no comment. A CILEx member did not answer the question but stated: "Again, this is stating the obvious. I have concern re supervision. This would depend upon the employer and some are better than others. This is outside the member's control."

### **IPS COMMENTS Q22**

The preamble to the Code clarifies that the regulated community comply with it where it applies to them. IPS recognises that CILEx members working in entities regulated by other regulators will need to comply with the arrangements of those regulators.

**Q23. Do you agree that the outcomes under principle 8 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

#### RESPONSES:

Eight of the nine respondents answered in the affirmative and made no comment. One respondent did not answer this question and made no comment.

### **IPS COMMENTS Q23**

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle.

**Q24. Do you have any other comments on the outcomes under the eighth core principle to the Code? If so please provide details.**

RESPONSES:

Six of the respondents answered in the negative and made no comment. One respondent did not answer this question and made no comment. Two of the respondents answered this question in the affirmative but one of those did not then comment. A CILEx member answered in the affirmative and stated: "The person / body regulated should be accountable for the work carried out by the entity and the people employed by the entity."

**IPS COMMENTS Q24**

IPS agrees with the comment. Its entity based approach to regulation will deliver this proposal, targeting regulation at the entity before assessing whether any action is needed at individual level.

**Q25. Do you agree that principle 9 effectively addresses regulation of the financial protection of clients? If not, please identify any areas for improvement.**

RESPONSES:

Eight of the nine respondents answered in the affirmative and of those, seven made no comment. The comment made was not agreed for publication. The remaining respondent did not answer the question but stated: "Again, this is stating the obvious".

**IPS COMMENTS Q25**

IPS considered in detail the principle to ensure that it delivers suitable outcomes for the protection of client money. The Accounts Rules provide further clarification of this obligation.

**Q26. Do you agree that the outcomes under principle 9 are sufficient and appropriate as a method by which to expand that principle into measurable outcomes? If not, please identify any areas for improvement in this respect.**

RESPONSES:

Eight of the nine respondents answered in the affirmative and made no comment. One of the respondents neither answered the question nor made comment.

### **IPS COMMENTS Q26**

IPS considered in detail the outcomes to ensure that they translate into measurable outcomes for the principle.

### **Q27. Do you have any other comments on the outcomes under the ninth core principle to the Code? If so please provide details.**

#### RESPONSES:

Six of the respondents answered this question in the negative and made no comment. One of the respondents did not answer the question. Two of the respondents answered in the affirmative but of those only one made comment. A CILEx member stated: "IPS have to look at how this will affect a small business implementing new account rules."

### **IPS COMMENTS Q27**

IPS has developed a proportionate approach to regulation. Its proposals for the support of regulated entities and its accounts training course will provide entities with the tools to implement new accounts requirements, which are necessary for the protection of client money.

### **Q28. Do you agree that the proposed structure of our regulatory arrangements constitutes an effective outcomes-focused approach to regulation? If not, please explain why, and provide any suggestions you may have to improve upon our proposals.**

#### RESPONSES:

Seven of the nine respondents answered this question in the affirmative and made no comment. One of the respondents, a CILEx member, did not answer the question but commented: "These proposed further arrangements are just an expansion. For those who already follow the Code they need not be frightened by those changes." One further respondent neither answered the question nor made comment.

### **IPS COMMENTS Q28**

IPS agrees with the response. The Code has been reordered to cover IPS' new regulated community. Additional obligations are introduced only where necessary for the new regulatory arrangements.

**Q29. Do you agree that our proposed amendments to our Code effectively expand its provisions to cover practitioners and authorised bodies in addition to CILEx members? If not, please explain any areas for improvement.**

RESPONSES:

Eight of the nine respondents answered in the affirmative and of those, only one made comment. A CILEx member, stated: "IPS will have to review the Code on a yearly basis as things will change and IPS will have to be able to maintain this." A further respondent did not answer this question.

**IPS COMMENTS 29**

IPS agrees that it will have to keep under review the operation and effectiveness of its Code and regulatory arrangements to ensure that they enable IPS to deliver its obligations under the regulatory objectives. Its committee and Board reporting processes will facilitate these reviews.

**Q30. Do you agree that our Accounts Rules have been redrafted appropriately to cover our new definitions and approach? If not, please provide any areas for improvement.**

RESPONSES:

Seven respondents answered in the affirmative and of those seven one commented. However the comments were not agreed for publication. One respondent did not answer this question or make comment. A CILEx member answered in the negative and stated: "I understand the importance of these rules but for a small business / sole owner the impact this would have on our business would be massive. IPS should consider implementing these rules in 3 or 4 parts (one part at a time) to allow small business time to change to these. It will also have a financial effect on small business as they will have to have the right accountant in place."

**IPS COMMENTS Q30**

IPS does not agree that the Accounts Rules can be implemented on a part by part basis. As set out earlier IPS tools will support small businesses in the

implementation of accounting requirements.

### ***Non Standard Form Responses***

54. One non-standard form response was from a CILEx member. However this response expressly withheld consent as to publication. The response will therefore not be published.
55. IPS received a response from the Legal Ombudsman which addresses a number of consultations in the same document. The Legal Ombudsman provided detailed responses to questions eleven and fourteen of the consultation document. The questions are restated below, together with the Legal Ombudsman's responses.
56. Consultees were asked: "Do you agree that Principle 4 adequately provides for outcomes-focused regulation in respect of the area of legal and regulatory compliance and effectively requires co-operation and engagement with oversight bodies?"
57. The Legal Ombudsman stated: "IPS is proposing that their code of conduct is comprised of a series of principles. The fourth principle is designed to ensure compliance with regulators and the Legal Ombudsman, it states: "you must comply with your legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively." We believe that assistance with regulators and ombudsmen could be stated more firmly so that firms realise that full co-operation is required in our investigations. The SRA provide a little more detail in their handbook: "O(10.6) You co-operate fully with the SRA and the Legal Ombudsman at all times including in relation to any investigation about a claim for redress against you." We would recommend that principle 4 is amended slightly to state: "4.4 Respond openly and promptly to communications and fully co-operate at all times with regulators and ombudsmen."
58. ***IPS response:*** IPS has developed separate guidance on complaints handling which provides further guidance to IPS' regulated community in respect of their obligations to co-operate with the Legal Ombudsman.
59. Consultees were asked: "Do you agree that Principle 5 adequately provides for outcomes-focused regulation in respect of the areas of client care and on-going competency? If not, please identify any areas for improvement in this respect."
60. The Legal Ombudsman has responded in the following terms: "Principle five states that authorised persons "must act competently in the best interests of your clients and respect confidentiality". We suggest that the provisions in

principle five are drafted to include a requirement that information should be provided to consumers about members' complaints policy and consumers' entitlement to complain to the Legal Ombudsman. ILEX members should be required to inform clients of:

- Their entitlement to complain
- Any time limits for lodging complaints
- Details of the complaints procedure, which should include contact information for the Legal Ombudsman.

Providing this information would be consistent with the requirements placed on SRA regulated practitioners. This information should be supplied by the authorised person when they are first instructed – for example, in a client care letter – and also at the conclusion of the authorised person's internal complaints procedure. Insight into consumers' experience of in-house complaints handling can be found in our recent research, published on our website, which was commissioned jointly with the Legal Services Consumer Panel. It showed that consumers are often unaware of their right to complain and how to go about this. Therefore it is important to ensure that the right information is provided to consumers about these processes."

61. ***IPS response:*** IPS has developed separate guidance on complaints handling which provides further guidance to IPS' regulated community in respect of their obligations to co-operate with the Legal Ombudsman. This guidance covers the points raised by the Legal Ombudsman above.
62. The Legal Services Consumer Panel provided a response which dealt with more than one IPS consultation. The Legal Services Consumer Panel did not answer consultation questions directly but made the following observations which directly relate to this consultation process.
63. The Panel stated as follows: "Under the proposals to revise the Code of Conduct, the Panel notes the distinction IPS has drawn between 'clients' and 'consumers'. We support IPS' recognition of the fact that some consumers may seek legal services but have difficulty in accessing them due to particular vulnerabilities. However, we believe IPS should rely on the definition of consumer in the Legal Services Act 2007. This definition is broad and includes those who use, have used, or are contemplating using, legal services. The panel also notes IPS' definition of vulnerability. This should be expanded to take into consideration the British Standard on inclusive service provision (BS 18477), which recognises that vulnerability can be dynamic, changing with time or circumstances, and that consumers may be placed in a position of disadvantage during certain transactions depending on their individual situation. The Panel has previously sent a copy of this standard to IPS."
64. ***IPS response:*** IPS carefully considered and assessed the response by the Consumer Panel however IPS has decided to continue with its proposal



because IPS has had to differentiate between broader consumers and those consumers who are clients of an entity.

65. IPS received a consultation response from the Chartered Institute of Patent Attorneys. This did not address any specific element of the consultation and made no observations save to seek an assurance that the Code of Conduct would require “legal executives to act only in areas where they are qualified and competent to do so”.
66. ***IPS response:*** IPS has ensured that its Code adequately reflects this obligation.