

IPS RISK BASED REGULATION SUMMARY OF CONSULTATION RESPONSES

Q1. Do you have any comments on the risk framework described at Annex 1 of this consultation?

Consultee Responses

- It is accepted that the consultation addresses only certain elements of the regulatory approach so it is difficult to assess whether the proposed measures to assess risks are adequate. The consultation also does not set out the intended benefits to consumers of the proposed extension to practice rights and what IPS sees as the main risks to these benefits being achieved.
- It is difficult to assess the framework as it is silent on what IPS regulated entities will be able to do, in particular whether they will handle client money which has implications for the framework.
- The controls and measures to manage at the authorisation stage are welcome but IPS needs to understand the consumer experience to better inform any risk assessment of both individual entities and the regulatory objectives as a whole, e.g. by LeO complaints data and consumer feedback tools.
- The overall approach to risk assessment is welcome but the risk assessment should also include the scale and severity of impact.
- IPS should be taking into account the needs of vulnerable consumers.
- We appreciate that IPS has invested resources in developing its approach to risk assessment. This is important as regulating entities will break new ground for IPS. This work shows some encouraging signs but we would need to see the whole application for entity regulation to see how the risk framework fits within it to give a more definitive view on the narrow or wider proposals being consulted on.
- We note that the impact x probability = risk formula accords with the approach of other regulators. We would be interested to understand the respective weightings for the different factors and how different impact and risk factors will be assessed. Based on our consideration of these issues we question their appropriateness and reliability as an objective a fair measure of risk. We suggest that a qualitative review and assessment might be better suited.
- We broadly support the IPS focus on the regulatory objectives, particularly the emphasis on the public interest, the interests of consumers, and the broad approach to targeting higher risks and acting proportionately. However, CILEx

members should only undertake new areas of work or functions if IPS has demonstrated that it has the capacity and experience to regulate such activities. Furthermore, proposed practitioners of the new areas of work should be educated and trained at a level comparable to solicitors conducting the same activity, and robust public protection requirements, both financial and otherwise must be put in place.

- IPS principles are similar to those of other regulators but we strongly suggest a principle which covers business management in accordance with sound financial and risk management principles.
- We are in favour of an outcomes based approach but IPS needs a more prescriptive rules based approach in areas such as accounts/client money, professional indemnity insurance (PII) and compensation.
- Terminology comments – use 'business' instead of 'entity' and 'client' instead of 'consumer'.
- Any practitioner should be suitably qualified, e.g. ILEX level 6 in law and practice or equivalent.
- Risk will vary according to practice. There is a lack of training on risk in the CILEx syllabus in areas such as business and financial management. Suggest a training course by a recognised training provider. Training to reduce risk is key.
- Struggle to see what is being proposed. Can at this stage only see extra admin for CILEx members. Can't see what can be gained from introducing complex new requirements as the qualifications and experience gained by CILEx members and Fellows is already well-respected.
- Regulation should support entities that offer legal services in diverse ways, e.g. a self-employed individual based at home without a formal office who delivers services face to face at clients' premises/homes and uses email and telephone for communication instead of writing letters. Many customers prefer this approach, so there are diversity and access to justice benefits.
- In appropriate circumstances IPS should offer assessment by attendance at IPS rather than IPS visiting the business.
- It is essential that IPS is successful in practice rights applications to ensure that those already providing services such as will writing and related services can continue to do so. IPS proposals will ensure that any authorised person will be properly regulated by IPS thereby providing protection for the public and clients.
- The IPS risk framework is the best way forward and it is good that it is not based purely on educational achievement.

- If regulated by IPS this will broaden my role in the legal profession since some of my clients are from abroad. I agree with the IPS proposals in the consultation as long as the risk framework is not cumbersome.
- The risk framework does not define what constitutes a 'risk'.
- The application consideration period of three months for authorisation is too long, but three months for a conditional authorisation would be adequate.
- Happy to work with CILEx to polish up skills as keen to maintain high standards.
- I am not convinced that even with the proposed layers of risk and outcomes based processes that the best interests of consumers will be protected.
- There is currently an oversupply of legally trained people and if existing will writers are to be CILEx trained then this will further dilute current possibilities for those who are seeking trainee employment positions and they many will end up having to train to do something else.
- Unless the regulation is policed properly then I feel it is highly probable confidence and trust in the legal professional will be eroded. Currently there is a perception that solicitors are highly trained professionals but charge too much. I fear in the future professionalism will be eroded as consumers will be unable to judge whether they are getting the right advice or the advice the provider wishes them to take so the provider will make the most money. Based on the regulatory proposals I will not be continuing with my will writing business once regulation is mandatory. I receive full marks and complimentary comments from my clients under the Trading Standards Buy with Confidence scheme. This must be the outcome required by the LSB but I fear overly complex structures will impact on the costs of regulation and lead to fewer and larger entities. More particularly all consumers will see is: regulated by IPS not trained and regulated by CILEx so those who have decided up to now to take the easy option will have been rewarded by their ability to maximize their profit and in my opinion may seek to continue this approach but with legitimacy. I would like to wish you all the best with the work you are doing as I recognize the amount of work involved and your heavy responsibility with regard to the future of CILEx.

IPS response

The risk framework consultation preceded all other consultations IPS has made. IPS entity regulation proposals have since been developed further to explain how the framework links with the wider aspects of the IPS approach to entity regulation.

Consumer issues have been addressed separately within the IPS application for entity regulation, along with the further development of the risk framework (e.g. by using

the advanced risk assessment process).

The IPS practice rights applications clarify what entities will be able to do and the authorisation process they will follow. IPS will also be taking forward arrangements which provide IPS Authorised Bodies with the option of holding client money in an escrow account. Use of the escrow account will not be mandatory. However, IPS is working to encourage its Authorised Bodies to hold client money in escrow as this will reduce the risks associated with the administration of client funds.

IPS will develop its focus on the consumer through tools such as a Specialist Lawyers website and Consumer Feedback Programme. IPS has also used existing research on consumer experiences and expectations, and its existing consumer engagement programme in developing its proposals. The measure of 'vulnerability' has also been factored in to the IPS basic risk assessment process.

The IPS basic risk assessment is simply an initial assessment of risk based on information received in respect of an Applicant Body/Authorised Body. The Strategic Risk Committee (SRC) will keep the IPS approach to risk under review.

The IPS risk framework relies on a combination of quantitative and qualitative measures. Qualitative judgements are used when assessing the relative severity, impact, and context of any failure to deliver a particular outcomes or outcomes. IPS staff also have extensive experience in the regulation of individuals and entities providing legal services. This will assist IPS in applying proportionate regulatory decision making.

The IPS approach to the development of its education and training provisions, and in particular to its approach to regulating by competence, will ensure that IPS authorised bodies will only be allowed to provide services in specific reserved/regulated areas of legal practice where they have demonstrated the required competence to do so.

IPS has developed robust and innovative public protection requirements including compulsory open market Professional Indemnity Insurance (PII) for IPS Authorised Bodies, compensation fund arrangements and an optional escrow facility to reduce risks associated with the administration of client funds. Rules accompanying the revised Code of Conduct also include Authorisation Rules, Accounts Rules, Investigation Disciplinary and Appeals Rules (IDAR). IPS is also developing further rules including rules addressing Indemnity Insurance and Compensation Arrangements.

Principles 8 and 9 of the revised Code of Conduct deal with business management and accounts management, and Approved Managers in IPS Authorised Bodies will be required to demonstrate competence in these areas. The IPS competency framework includes competencies in business management including risk, and accounts. IPS risk review visits will also be used to provide Authorised Bodies and those applying to be authorised with guidance and support on risk management and accounts

management.

IPS has engaged positively with the other regulators, and this application proposes developing this approach further by exploring information sharing mechanisms which will ultimately be in the public interest.

IPS uses the term 'entity' as this term is used by the LSB in relation to the description of businesses (i.e. in the legal sector). The word 'consumer' has a wider definition than 'client' and consequently IPS uses both terms where applicable.

IPS will be making basic risk assessments at its own premises based on information provided by the entity. It would not be appropriate for a manager of an entity (whether a self-employed member or otherwise) to visit IPS as this would be impractical. This would also not be an efficient way of assessing business and compliance processes and client files. It should be noted that IPS staff have experience of conducting visits on compliance matters to CILEx members working from home and are aware of the sensitivities of conducting visits of this nature.

The outcomes based rules cover what is expected of individuals and entities regulated by IPS.

IPS has and will continue to review the timescales for authorisation to ensure that applications are processed as quickly as possible. From the review of independent research conducted into its anticipated regulated community, IPS now expects to be able to process fully completed applications for authorisation within one month of receipt. It will retain the option of extending this timescale to three months to cater for any unforeseen exceptional circumstances. It will keep its resources and staffing options under review to ensure that it can meet demand and deliver efficient and effective regulatory services.

IPS recognises the additional burdens that regulation may bring. IPS has developed a proportionate outcomes focused regulatory scheme which balances the burden of regulation with its obligation to protect the public and consumers.

Q2. Do you have any comments on the proposed IPS roles, functions and processes shown at Annex 2 of this consultation?

Consultee Responses

- Broadly in favour of suggested roles and processes but suggest start-ups require a greater degree of scrutiny. 'Dip sampling' more established businesses should be sufficient to cover more established businesses.

IPS response

Start-ups may need a greater level of support. IPS regulatory proposals, including the promotion of voluntary risk review visits, describe how IPS proposes to deliver such support. However, as IPS will regulate on a risk basis the level of support provided and regulatory action it will take in any given situation will depend upon a wide range of risk factors which will be assessed using the IPS basic and advanced risk assessment processes.

Q3. Do you have any comments on the proposed basis of charging which will seek to reward those that best manage risk with lower regulatory costs**Consultee Responses**

- I would advocate 'light touch' regulation proportionate to the degree of risk that is deemed to exist.
- I would also advocate a flat fee to cover regulatory costs or a clearly defined upper limit.
- The charging regime should not price potential providers out of the market. If this happens it will adversely impact on the objects of increasing diversity in the provisions of legal services, promoting competition and improving access to justice. Ability to pay for regulation should also be based on the entity's size and turnover and stage in the business development cycle. A charging regime should be based on escalating regulatory charges from a low base for new businesses and which is based not only on a risk assessment but level of affordability.
- Low regulatory costs as a reward for good risk management will provide an incentive/reward for those who deserve it.
- The concept of lower regulatory costs for good risk management appears reasonable but there is still a potential concern as many will writers for example are on low incomes and if the cost of regulation is too high they won't continue in business.
- There is no indication of the level of charges based on the size of the entities.
- The recession in the UK is a problem as is tougher legislation leading to a drop in immigration work. This situation could be made worse with higher regulatory costs.

IPS response

The IPS regulatory charging structure has yet to be agreed.

IPS will put in place a proportionate regulatory fee structure. Its innovative consumer protection and risk management arrangements are focused on introducing proportionate regulation which will be reflected in the costs of regulation.

IPS is considering a number of options including flat fees and fees based on turnover. The size and risk posed by an entity may also be a factor used to determine the appropriate level of fees.