



## Decision notice

**Issued by the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007**

### **The ILEX Professional Standards (IPS) application for approval of changes to its regulatory arrangements to increase the maximum level of fine in enforcement proceedings**

The Legal Services Board (**LSB**) has granted an application from IPS approving alterations to the regulatory arrangements to increase the level of fine in enforcement proceedings. The Chartered Institute of Legal Executives (CILEx) is an approved regulator and IPS is the regulatory arm to which CILEx has delegated its regulatory functions.

This decision notice sets out the decision taken, including a brief description of the changes. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB's handling of this application is set out at the end of this decision notice.

### **Proposed changes**

1. The proposed change is to increase the maximum level of fines in enforcement proceedings that can be levied against CILEx members, CILEx Practitioners, Approved Managers, and Authorised Entities (collectively known as 'Relevant Persons') where disciplinary findings are made against them. The existing maximum fine level is set at £3,000.
2. The maximum level of fines now proposed for each category of Relevant Persons is as follows:
  - Up to £100,000 for CILEx members
  - Up to £50,000,000 for CILEx Practitioners
  - Up to £50,000,000 for Approved Managers
  - From 0.5% of annual domestic turnover up to 5% of annual domestic turnover or up to a maximum of £250,000,000 whichever is the greater for Authorised Entities
3. The proposed changes to maximum fine levels are as a result of IPS extending its regulatory scope. Specifically its regulated community may now undertake civil, criminal and family litigation. IPS is also a designated qualifying regulator for authorising and regulating those that provide immigration advice and immigration services, and is designated an approved regulator for reserved instrument activities and probate activities. It now also has a new category of membership which is

CILEx Practitioner. Finally, it will commence entity authorisation in 2015 and this includes the authorisation of Approved Managers. These greater and varied practice rights and increased remit of regulation have led IPS to conclude that the current maximum level of fine is inadequate.

### **Key issues considered in the assessment of the application**

4. Overall the LSB welcomes the changes IPS proposes to its maximum fine levels to reflect its new wider regulatory scope. As part of the assessment of the application, the LSB asked IPS to clarify a number of points and the outcome of our enquiries is presented below.

#### *Evidence base for maximum level of fine*

5. The LSB wanted to know what evidence and rationale IPS had relied upon to set the maximum level of fines as proposed in the application. IPS responded stating that it had looked at the maximum fining powers of some other approved regulators, in particular the Bar Standards Board, Solicitors Regulation Authority (SRA) (including the Solicitors Disciplinary Tribunal), Council for Licensed Conveyancers (CLC) and Intellectual Property Regulation Board. IPS explained that it had decided to pitch the maximum fine levels at a similar level to those of the CLC, as the CLC's membership is made up of specialist (mostly conveyancing) lawyers and this specialism element was similar in nature to IPS membership levels.
6. The LSB is satisfied that IPS has taken into account appropriate considerations such as the maximum fine levels of other regulators, and in doing so is aiming to apply appropriate levels of deterrent in order to make an impact on the behaviours of its regulated community. We are further reassured that IPS, through its existing review arrangements, will be in a position to monitor the actual level of fines imposed.

#### *Consultation on setting the maximum levels of fine*

7. The LSB noted that IPS only received two responses to its consultation on maximum fine levels; one from the SRA and one from the Legal Services Consumer Panel. In terms of visibility, IPS confirmed it had published the consultation on its website and an article had appeared in the trade press. IPS also sent out the consultation to other approved regulators and to several organisations including Which?. Prior to the formal consultation, IPS also consulted directly with the CILEx Council, which is made up of CILEx members representing membership on a constituency basis. IPS said this was part of the reason why it had not received any comments or objections from its regulated community during the formal consultation period. While some responses from CILEx members directly to the formal consultation might have been expected, the LSB is satisfied that IPS was transparent in engaging with stakeholders and consulted as would be expected on this issue.

### **Decision**

8. The LSB has considered this IPS application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 (the Act). The LSB considers that there is no reason to refuse this application; accordingly, the application is granted.
9. The amendments to IPS' regulatory arrangements approved by the LSB are contained in paragraph 2 of this notice.

### **Chronology**

- The LSB confirmed receipt of an application from IPS on 25 November 2014.
- The 28 day initial decision period for considering the application ends on 23 December 2014.
- This decision notice is effective from 19 December 2014.
- The decision notice will be published on our website on 22 December 2014.

**Caroline Wallace (Strategy Director)**

**Acting under delegated authority granted by the Board of the Legal Services Board  
19 December 2014**

*Notes:*

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that
  - (a) granting the application would be prejudicial to the regulatory objectives
  - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
  - (c) granting the application would be contrary to the public interest
  - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
  - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
  - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
  - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
  - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
  - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules<sup>1</sup> about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

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<sup>1</sup> Rules for Rule Change Applications – Version 2 (November 2010)