

# Consultation response

## ILEX Professional Standards: Fines

### Overview

1. **The Panel welcomes this consultation on the IPS's powers to fine members in breach of regulations. We see this as an opportunity to make sanctions more consistent with other legal service providers to ensure that consumers of chartered legal executives' services perceive them as regulated effectively and therefore safe to use.**
2. **The Panel agrees with the proposed fine amounts of £50 million for CILEx Practitioners and Authorised Managers, and a maximum fine of £250 million for Authorised Bodies. In our view, these should be sufficient to eliminate any financial gain or benefit from non-compliance, and it should change the individual's behaviour and deter others.**
3. **We do not support an increase in fine for CILEx members from £3,000 to £5,000. Discriminating between reserved and unreserved activities in this way is hard to justify when looked at from a consumer detriment perspective. Such an upper limit potentially could be less than the illicit gains from this activity and fail to influence the behaviour of the individual concerned or deter others. The limit for reserved and unreserved legal activities should be the same.**
4. **Inconsistent sanctioning and appeal regimes across the approved regulators was a key finding of the LSB's recent survey of current practice. Should the IPS proposals go ahead, it would remain the case that SRA and IPS authorised individuals and entities could be fined differently for the same offence.**
5. **Overall we support the approach to the 'determining factors', in particular the focus on consumer outcomes. It will be important for IPS to apply this in the context of each case, for example by treating severe detriment for a small number of people as seriously as a small detriment for a large number of people.**
6. **This consultation exercise should give cause for IPS to look again at its overall sanctioning and appeals regime in light of the LSB's report. In particular, its inability to impose any fine without recourse to the Disciplinary Tribunal risks acting as a disincentive to punish for lesser offences.**

## The proposals

7. ILEX Professional Standards (IPS) is consulting on proposals to change its fining powers, as follows:
  - Individual CILEx Members – an increase from £3,000 to £5,000
  - Individual CILEx Practitioners – a fine for this new category of £50 million
  - Approved Managers – a fine for this new category of £50 million
  - Authorised Bodies – a fine for this new category of 0.5% of annual domestic turnover up to a maximum of 5% or up to a maximum of £250 million whichever is greater
8. IPS has also reviewed the criteria that will be considered by the Disciplinary Tribunal when deciding what fine to impose.

## The Panel's response

9. The Panel's response draws on our submission to the Solicitors Regulation Authority (SRA) consultation on fining amounts, which covers similar ground. We have been able to reflect the findings of the Legal Services Board (LSB) review of sanctioning and appeals regimes across the approved regulators, which was published following the start of the IPS consultation period.

### **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.**

10. This category of individual CILEx members refers to those who are not authorised to provide reserved activities. This includes a range of situations including students, and

members working under supervision on unreserved matters within solicitors firms.

11. The proposals would discriminate between reserved and unreserved activities. This could mean a CILEx member sanctioned in relation to a wills matter could be fined up to £5,000 but up to £50 million for a probate matter. This is hard to justify when looked at from a consumer detriment perspective. Further, as highlighted in the LSB's report, sanctions should eliminate any financial gain or benefit from non-compliance, and it should change the individual's behaviour and deter others. We do not consider that a maximum penalty of £5,000, which is only a very modest increase on the current level, would satisfy these good practice criteria.
12. There is also regulatory arbitrage since the SRA does not discriminate in this way and, depending on the outcome of its current consultation on fines, could penalise a solicitor £100,000 for the same offence. Moreover, the SRA proposes to be able to fine this amount without reference to the Solicitors Disciplinary Tribunal (SDT), whereas the current IPS system means fines may only be imposed by a Tribunal. Inconsistency of powers and sanctions was a key feature of the LSB's review of the sanctioning and appeals regimes across the approved regulators – this IPS proposal would not help to simplify this situation.
13. Finally, we understand this category of membership includes individuals, such as students, who do not provide legal services to the public. This being the case, it is not clear why the regulatory arm of CILEx is responsible for sanctioning such persons. Indeed, the range of individuals within this class of membership may contribute to, what in our view, is an insufficient fine level

for chartered legal executives doing unreserved work within solicitors firms.

14. In our view:

- The fine amount should be the same for reserved and unreserved legal activities, i.e. £50 million (see below)
- IPS should only sanction individuals involved in delivering legal services
- IPS should be able to fine up to a certain amount without reference to a Disciplinary Tribunal

**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.**

15. A maximum fine of £50 million should be sufficient to eliminate any financial gain or benefit from non-compliance and influence the behaviour of the individual concerned and the regulated community as a whole. This amount would improve consistency across regulatory regimes since the fine limits for authorised persons working in ABS's regulated by the SRA and Council for Licensed Conveyancers (CLC) are also currently a maximum of £50 million.
16. However, while the SRA and LSB wish to see a £50 million fine limit for individual solicitors, the Ministry of Justice has so far not supported these plans. The situation for SRA and IPS authorised persons may thus be dramatically different in future. Unlike the SRA situation, the IPS proposals could be approved by the LSB without requiring any external confirmation. Should IPS decide to seek approval for its current set of proposals, clearly the LSB would have an acute dilemma. Our wish would be that the LSB approve a £50 million limit for IPS and

continue its efforts to seek the same limit for individual solicitors. Otherwise this would lead to a lowest common denominator or race to the bottom situation that fails to put the interests of consumers first.

**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.**

17. Yes. Approved Managers are in positions of responsibility and the fine level should reflect this. The same considerations apply as in the previous question.

**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.**

18. We agree that entities should be subject to a higher maximum fine than individuals due to the potentially higher gains that entities might obtain from non-compliant behaviour. This would also reinforce the importance of having effective systems and controls within entities to prevent consumer detriment and the role of senior leadership in taking responsibility for the behaviour of entities.
19. The consultation document does not offer a rationale for the proposed approach, although an upper limit of £250 million is consistent with the SRA and CLC limits for ABS/licensed bodies. While we support the proposal on consistency grounds, IPS is designing a sanctioning regime for a group of entities it does not yet authorise. There seems a risk that this will be out of kilter with the profile of its regulated community notwithstanding the proportionality factors it will take into account when setting fines. The risk for consumers here is that it has a

chilling effect which discourages market entry, restricting innovation and choice.

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

20. We have nothing to add to our comments in response to earlier questions. However, while this consultation focuses on the level of fine, we hope that IPS will look again at its overall sanctioning and appeals regime in light of the LSB's report. In particular, its inability to impose any fine without recourse to the Disciplinary Tribunal risks acting as a disincentive to punish lesser offences which though low in value might have serious consequences for individual consumers. Consistent failure to address effectively what may be perceived as minor offences could over time damage consumers' trust in legal executives and their reputation.

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

21. We support the proposed factors, which correctly focus on the outcome or harm caused. In considering this, IPS should consider the impact of non-compliance on both individual consumers and consumers collectively. A small group of consumers who are severely affected should be treated as seriously as a large group of consumers who each suffer a small amount of harm but where the total illicit gains are high. Dealing effectively with both types of detriment are important to maintaining consumer perceptions of fairness and trust in legal executives and in their regulation.

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

22. We are pleased that impact on vulnerable consumers is an aggravating factor. This should be based on the definition of a vulnerable consumer in the British Standard on Inclusive Service Provision (BS18477). Both the LSB and the Panel have written to the regulators about the benefits of using BS18477. During 2014/15, the Panel will produce a clear and simple guide to help the regulators apply the learning from the standard in a legal services context.
23. We support the inclusion of attempting to rectify the wrong caused as a mitigating factor, although clearly a successful attempt to repair the damage should have greater weight than an unsuccessful one. IPS might also consider introducing an SRA-style regulatory settlements process whereby an individual or entity would voluntarily offer to compensate consumers following a breach of the rules which causes financial loss.

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

24. Yes.

**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?**

25. Yes.

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