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Dear Ian

Consultation on risk-based and outcomes-focused regulation

Thank you for inviting the Panel to comment on your proposed approach to regulating entities providing legal services based on risk and outcomes.

IPS is currently preparing applications to seek Practice Rights for CILEx members in litigation, conveyancing and probate and to become a regulator of legal practices. As you are aware, the Panel has the formal status of a mandatory consultee once the application is formally submitted, but we hope it is helpful to make some brief remarks on the consultation. We were pleased to meet with CILEx/IPS officials and to be interviewed for the CFE research, in advance of this consultation being issued.

We appreciate that the current consultation addresses only certain elements of your proposed regulatory approach, which will inform a full application that should describe your overall approach in some detail. Perhaps as a result, the consultation does not set out the intended benefits for consumers of the proposed extension of practice rights and what IPS sees as the main risks to these benefits being achieved. However, without this analysis, it is difficult for us to assess whether the proposed measures to manage the risks are likely to be adequate.

Similarly, the consultation is silent on what IPS-regulated entities will be able to do. In particular, it is unclear whether entities could handle client money, which clearly has implications for the risk framework. Again, it is difficult to assess the risk framework in the absence of this information.

The consultation suggests that IPS will principally seek to manage risk at the authorisation stage, supported by ongoing monitoring measures that include spot checks, an annual Risk Register return by entities, voluntary disclosure of non-compliance by HoLPs and intelligence received. IPS may also put in place a relationship management programme for larger entities. These controls are welcome, but we would like to see evidence of IPS additionally using proactive measures to understand the consumer

experience to inform its risk assessment of both individual entities and the achievement of regulatory objectives as a whole. This should include mining of Legal Ombudsman complaints data, requiring entities to submit returns on first-tier complaints and imaginative use of consumer feedback tools. The Panel has already shared examples of engagement techniques employed by small regulatory organisations with IPS staff.

We welcome the proposed overall approach to risk assessment, and we are pleased this will apply to both reserved and non-reserved activities. It is encouraging that the Basic Risk Assessment framework includes consideration of the type and number of clients the entity works with. An assessment of risk should include both the scale and severity of impact, for example poor quality conveyancing could cause serious detriment to a small number of consumers, so this should be treated as high risk.

IPS should assess risk to clients at a sufficient level of granularity, in particular taking account of the needs of vulnerable consumers. We have previously written to IPS in relation to the British Standard in this area. This uses a 'risk factor' approach and we suggest this could quite easily be incorporated within the overall IPS risk assessment model.

In short, we appreciate that IPS has invested resources in developing its approach to risk assessment. This is important because regulating entities will break new ground for IPS. This work shows some encouraging signs, but the appropriateness of the risk framework is inextricably linked to the wider elements of IPS' planned application to the LSB. As such, we need to see the application as a whole before being able to give a more definitive view on the narrow or wider proposals being consulted on.

Yours sincerely



Elisabeth Davies
Chair