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Dear Tim

Application by ILEX Professional Standards Ltd for the Chartered Institute of Legal Executives to become an approved regulator for probate and reserved instrument activities under the Legal Services Act 2007

Thank you for your letter of 15 April inviting the Panel to provide advice on the above application. Under the Legal Services Act, the Panel is a mandatory consultee on applications from bodies to become approved regulators. In deciding what advice to give, the Panel must, in particular, have regard to the likely impact on consumers of the Lord Chancellor making an order for designation as set out in the application.

Making an assessment of likely consumer impact does not lend itself to a precise formula. The Panel applies well established consumer principles – such as access, choice and redress – as reference points by which to analyse the issues. In addition, we identify the risks to consumers and the type and degree of possible harm, and then make a judgement as to whether the proposed arrangements are likely to promote access and offer sufficient protection. Finally, the regulatory objectives in the Legal Services Act underpin our assessment.

The Panel has previously responded to CILEx/IPS consultations that contain elements of the proposals in this application, accessible through our website. We have also discussed emerging plans with representatives of CILEx/IPS at Chair and executive level during the last twelve months. We are pleased to see evidence throughout the application of CILEx/IPS acting on some of the suggestions made in these meetings.

The Panel does not have any major policy concerns with the application, although we make some points of detail below. We are not in a position to assess the capacity and capability of the applicant to carry out the new responsibilities that it wishes to obtain. This is an important assessment for

the LSB to make given that CILEx proposes to regulate entities for the first time and the high potential financial detriment involved in conveyancing.

Overall regulatory approach

It is proposed that probate and conveyancing practitioners will be subject to regulation and authorisation in respect of the full range of work they undertake in these areas, e.g. probate practitioners must also be competent to undertake will-writing and estate administration, where they wish to carry out these activities. The Panel wishes to put on record its strong support for this proposal due to the high risk of consumer detriment stemming from these activities and the need to minimise consumer confusion. These activities will often be offered as a seamless package and will seem so in consumers' eyes, regardless of the regulatory implications. We also support the proposed broad approach to reserved instrument activities for the same reasons.

We also wish to place on record our support for the proposed authorisation by competence model. This places an appropriate emphasis on preventing detriment through assuring initial and ongoing competence. It also accords with the ideas around activity-based regulation contained in the Panel's submission to the Legal Education and Training Review. Welcome too is the broad definition of competence to include client care skills.

Consumer engagement

It is welcome that IPS has developed a strategy and action plan for engaging with consumers. We recognise that IPS has limited resources for such activities, but it has clearly made an effort to draw insights from research commissioned by others, has carried out small scale surveys of its own and has shown ambition with its customer feedback website idea. This is an area where much is promised but the proof will be in the eating, and as such is one aspect where the LSB might consider capacity issues. For example, it would be helpful to know the scale of investment planned for consumer engagement over the next period.

The customer feedback website is innovative, although we have some doubts about whether it will achieve sufficient participation and recognition to inform consumer choice. Making it compulsory for all entities to take part in the initiative, rather than rely on soft incentives to encourage entities to sign up, would mitigate this. The Panel is aware of the 'Legal Voices' website being developed by the Solicitors Regulation Authority, which we understand will be open to all the approved regulators. The Panel's report on empowering consumers highlighted fragmentation of information provision as a barrier to informed choice. While the remits of the two websites are not identical they appear to cover a lot of similar ground. Therefore, we would be interested to know why IPS has chosen to pursue a separate initiative of its own.

Consumer vulnerability

A consumer or client is considered by IPS to have some form of vulnerability: *"if, in obtaining or seeking to obtain legal services, they are at risk of encountering difficulties arising from any specific or general*

limitations as to their physical abilities, sensory abilities, cognitive abilities, linguistic abilities, geographic location, economic resources or any combination of these”.

The code of practice has been strengthened with respect to vulnerable clients. While a welcome step in the right direction, we are not satisfied that its current treatment of vulnerability satisfies best practice as set out in the relevant British Standard (BS18477). The key is to focus on the circumstances that make people vulnerable, including the actions of providers and features of markets, rather than just a person’s inherent characteristics. In addition, vulnerability can be transitory in nature, i.e. people can be vulnerable at some times, but not at others. Instead of defining consumers in specific groups as always vulnerable, the standard identifies ‘risk factors’ related to a person’s circumstances – such as bereavement, illiteracy, illness or disability – which could increase the likelihood of a consumer being at a disadvantage or suffering detriment.

The Panel has shared the standard with IPS and the LSB has agreed to invite approved regulators to demonstrate how they have incorporated the standard into their work. Of course, BS18477 does not provide the only acceptable definition of consumer vulnerability, but it has much credibility having been developed in partnership with consumer and disability groups. It would also be helpful for the approved regulators to have a consistent approach. We note that the Council for Licensed Conveyancers has incorporated the key elements of the standard directly into its code of conduct and we would encourage IPS to do likewise.

Code of conduct

The revised code takes the consumer outcomes identified in the LSB’s research as its starting point and translates these into broad principles. This is commendable as an effort to build the regulatory framework around consumer needs, although research should be one only source of inspiration for the code. However, this approach has resulted in quite a specific list of service features and it is possible to think of alternatives which are not covered. This could be addressed by introducing a single overarching principle, such as to ‘provide a good standard of service’ or ‘treat clients fairly’ which could act as a catch-all mechanism. We note that the SRA’s code contains such a generic principle.

Financial protection

Overall, the Panel was pleased to see that IPS has set out detailed arrangements for professional indemnity insurance and compensation arrangements which offer comprehensive coverage of the key risks. However, one issue is the compensation grant limit of £500,000 per claim is too low given that losses from conveyancing transactions may involve higher values. Although such claims are likely to be rare, many properties are worth in excess of this figure; consumers who lose out due to incompetent or fraudulent legal advice should expect to be reimbursed. We note that the Solicitors Regulation Authority’s grant limit is £2 million.

In addition, the Panel has been asked by the LSB to assess the adequacy of regulators’ financial protection arrangements overall. This advice will be

published shortly. In general we have found the arrangements proposed by IPS to be in line with the arrangements of other regulators. At a high level these provide the right degree of consumer protection. However, we have found a number of areas which deserve closer attention across the regulatory regimes as a whole, including:

- An absence of research to test consumer experience of accessing schemes.
- Caps on cover at different levels depending on the regulator: these inconsistencies are hard to explain.
- Lack of published performance data making the effectiveness of the protections difficult to assess, while a lack of claims data or performance reporting makes for poor accountability.
- An apparent lack of information sharing between different regulators.
- Regimes are currently based on professional title rather than activity or risk.
- The discretionary nature of compensation funds, which gives rise to a number of problems, including caps on the payment of claims.
- A lack of information on how claims are assessed given the discretionary nature of compensation funds.
- A lack of risk-based contributions from practitioners for compensation funds.

These are areas which we would expect IPS to address in future if they move forward with their application.

Please contact Steve Brooker, Consumer Panel Manager, for enquiries in relation to this submission.

Yours sincerely



Elisabeth Davies
Chair