



## **IPS Proposal on Fine Levels**

CILEx is an Approved Regulator designated as such by the Legal Services Act 2007. The Legal Services Act 2007 sets out Statutory Objectives that it must adhere to. CILEx delegates its regulatory responsibilities to Ilex Professional Standards Limited (IPS).

IPS sets out in this document the levels of fine that may be ordered against individual CILEx Members, CILEx Practitioners, Approved Managers and Entities (Relevant Persons) where a finding of misconduct is made.

IPS aims to protect the public by regulating Relevant Persons who provide legal services. In meeting that obligation IPS has responsibility for investigating allegations of misconduct, to ensure regulatory standards are met, and imposing sanctions upon those IPS regulates where standards are found not to have been met.

This document sets out the level of fine that IPS proposes to levy against those it regulates now and in the future, where the IPS Conduct Panels have decided that a fine is an appropriate sanction in accordance with the IPS Sanctions Guidance. IPS has to consider the range of fine in accordance with disciplinary outcomes reached before and after a full Tribunal hearing. It aims to take a proportionate approach to setting the level of fine.

The current level of fine that IPS Conduct Panels can impose is capped at £3,000 after a full Tribunal hearing. The current fine level is inadequate for future regulation; in particular with any increase in responsibility of Relevant Persons there is a greater risk to the public and therefore a need to protect interests of consumers and the public. With this greater risk comes the necessity to increase the level of accountability.

The way in which IPS may demonstrate the greater level of accountability is to show that where things go wrong IPS has the power to impose fines that will have a threefold effect. Firstly, it will demonstrate that IPS is a Regulator which takes matters of misconduct seriously and has the power behind its regulatory voice to take action. Secondly, it will be a deterrent and impress upon those who provide legal services to the public that they must always act in compliance with their regulatory responsibilities set out in the Code of Conduct. Thirdly, it is designed to influence and advance positive behaviours to ensure a high standard of service is maintained while delivering legal services to their consumers.

IPS seeks to use this document as the basis for a Fines Policy which will be read in conjunction with the Investigation, Disciplinary and Appeals Rules (IDAR). IPS will construct guidance that will sit alongside IDAR and the sanctions guidance to assist those responsible for making decisions to assess the financial penalty that should be paid by a Relevant Person.

The IDAR covers the whole range of IPS' regulated community. They include individual CILEx members; CILEx Practitioners; IPS new responsibility in respect of Entities, referred to as Authorised Bodies: and those with lead responsibility in Authorised Bodies, called Approved Managers.

Particular attention is drawn to CILEx members and the makeup of this group. Individual CILEx members range from students through to Fellowship grade. Focus has been on whether CILEx students should be subject to the range of fine covered of up to £100, 000. The key points to be aware of are that CILEx students are traditionally individuals who are working. They may be working within legal practices, in-house legal teams, within government departments. They may be working in Citizens Advice Bureaus. Some of these students may have had other careers, run business or have other life experiences. CILEx students are not all typical school leavers; the age range and experiences of these students varies greatly. The level of fine of, up to £100,000 is a maximum level. The sanctions guidance has been developed to ensure that a considered approach is taken when deciding on the fine to levy, and is there to ensure that maximum fines are not ordered unless warranted by the circumstances.

When considering how to apply the determining factors the application should be the same. For instance where a small number of consumers who are affected by a large detriment or where a large number of consumers have been affected by a small detriment the starting point of the fine should be the same.

## **Appendix 1** **Fine Levels**

The following table represents the level of financial penalties allowed.

<b>Relevant Person</b>	<b>Financial Penalty Range</b>
CILEx Member	Up to £100,000
CILEx Practitioner	Up to £50 million
Approved Managers	Up to £50 million
Authorised Bodies	0.5% of annual domestic turnover up to 5% of annual domestic turnover or up to a maximum of £250 million whichever is greater.

### **Reasons behind Proposed Fine Levels and factors taken into consideration**

The fine levels above have taken into account the increased level of risk and responsibility that Relevant Persons will have in line with new rights obtained and the increased risks they pose to delivery of regulatory objectives and the protection of the public and consumers. The flexible approach has been designed to recognise that one size does not fit all. The ability to pay is a proportionality factor and will also be considered.

When deciding the level of fine IPS will take into account the seriousness of the misconduct by considering the level of culpability and harm caused; the financial penalty, as outlined above; any adjustments made taking into account mitigating and aggravating factors; and proportionality by considering any personal factors. This list is not restrictive and cases will be assessed on the facts as presented individually. Factors that are not listed may be taken into account, if it is in the interests of justice to do so.

The types of misconduct that may attract fines are where conduct is such that a Relevant Person may remain in practice but a fine will be sufficient deterrent against repeating the misconduct. A fine may be suitable where clients have been caused a loss or where the misconduct has caused a loss of confidence in the legal profession.

The following table outlines some of the factors that will be considered when deciding on the level of fine for a Relevant Person.

## Appendix 2

<b>Seriousness</b>	1	2	3				
What is the culpability of the Relevant Person	What was the motivation for the misconduct	Were the actions planned or unplanned	Was there a breach of trust				
What was the harm caused or risk of harm caused by the relevant person? – Low, Medium or High	Low - There was no loss or quantifiable impact. - There was minimal loss or impact	Medium - There was a moderate loss -There was a moderate impact -There was a risk of moderate loss or impact	High -There was a significant loss or impact - There was a substantial loss and impact - There was a risk of substantial loss or impact.				
<b>Adjustments</b>	1	2	3	4	5	6	7
Aggravating Factors	The Relevant Person has failed to co-operate with its Regulator	The actions of the Relevant Person were reckless or negligent	The Relevant Person knowingly continued the misconduct for a sustained period and/or	There was a pattern of misconduct	Vulnerable persons were taken advantage of	There are previous misconduct findings made by the Tribunal	

			dishonesty was proved and/or there was concealment				
Mitigating Factors	The Relevant Person has co-operated with its Regulator	The Actions of the Relevant Person were not intentional or reckless	There was no dishonesty or deception proven	The misconduct was an isolated incident	Was there self-reporting/and or admissions at an early stage of the investigation	Has the Relevant Person attempted to rectify the wrong caused.	Is there demonstrable insight
<b>Proportionality</b>	1	2	3	4			
Removal of benefit or gain	Personal Mitigation	Ability to pay a penalty	Character Evidence	Consequences of the financial penalty to the Relevant Person			