

<b>Date</b>	<b>9 July 2024</b>
<b>Item</b>	<b>10.0</b>
<b>Title</b>	<b>Review of Enforcement</b>
<b>Author</b>	<b>Simon Blandy, Director of Regulation Mohammed Chowdhury, Investigation and Enforcement Manager</b>
<b>Purpose</b>	This paper provides the Board with a report on the outcome of a review of CRL's Enforcement function update on the work of the Regulation Directorate
<b>Recommendation</b>	The Board is asked to <b>NOTE</b> this report.
<b>Timing</b>	N/A
<b>Impact Assessment</b>	N/A
<b>Impact on Regulatory Objectives</b>	The work covered in this report impacts on the following: <ul style="list-style-type: none"> <li>- encouraging an independent, strong, diverse, and effective legal profession.</li> <li>- protecting and promoting the consumer and public interest; and</li> <li>- promoting and maintaining adherence to the professional principles.</li> <li>- promoting the prevention and detection of economic crime</li> </ul>
<b>Implications for resources</b>	N/A
<b>Impact on consumer empowerment</b>	N/A
<b>Impact on ongoing competence</b>	N/A
<b>Publication status</b>	For publication.
<b>Appendices</b>	None

### **Summary**

1. This Report sets out the context to the current review, identifies concerns about the current Enforcements process arising from the initial review, reports on progress to date and sets out a proposed plan of action.
2. Further reports on progress will be included in the Director of Regulation's quarterly report to Board.

### **Context**

3. The Enforcement Team currently comprises:
  - Investigation and Enforcement Manager
  - Disciplinary and Standards Manager
  - 3 Investigations Officers (2 of which are currently shared with the PAS<sup>1</sup> Team)
  - Investigation Assistant.

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<sup>1</sup> Practitioner, Authorisation and Supervision

4. The Enforcement Team’s principal responsibilities are investigation of:
  - (a) Prior Conduct Referrals (most of which are determined under delegated authority), and
  - (b) Misconduct Complaints.
5. The key statistics<sup>2</sup> can be summarised as follows:

Prior Conduct Referrals

Year/period to	31/12/2022	31/12/2023	31/05/2024
<b>Received</b>	258	260	112
<b>Resolved</b>	303	289	136
<b>Open</b>	109	80	69
<b>Of which on hold</b>		23	15

Misconduct Investigations

Year/period to	31/12/2022	31/12/2023	31/05/2024
<b>Received</b>	73	71	22
<b>Resolved</b>	58	44	65
<b>Open</b>	125	138	99
<b>Of which on hold</b>		49	39

Prior Conduct Referrals aged cases (24+ months)

Mar-24	24+ months		Total	
	No	%	No	%
<b>No of open cases</b>	5	7	68	100
<b>Of which ‘On Hold’</b>	3	15	20	100

Misconduct Investigations aged cases (24+ months)

	24+ months		Total	
	No	%	No	%
<b>No of open cases</b>	40	40	99	100
<b>Of which ‘On Hold’</b>	24	62	39	100

6. The oldest open case, which is on hold, is **279 weeks** and was last reviewed on 31 May 2024.
7. This snapshot illustrates the effect of not progressing cases over an extended period at an appropriate pace or with appropriate rigour.
8. This has been exacerbated in the short term by:
  - A shortage of panel clerks and lay members available to convene quorate meetings.

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<sup>2</sup> taken from DoR Report in Board Agenda papers

- A pause in the active management of misconduct investigations following departure of the outgoing Investigation and Enforcement Manager whilst the current incumbent familiarised himself with CRL's Enforcement Rules and processes.
- Limited operational guidance in place to assist with the proactive management of investigations.
- 2 investigation officers who are currently shared with the PAS Team.

## Review

9. Since March 2024 the Investigating and Enforcement Manager has led a review of the Enforcement performance and processes with the support of the Disciplinary and Standards Manager and other members of the Enforcement Team. The objective has been to identify what process and other changes should be made immediately (without the requirement for a rule change) to improve efficiency and effectiveness.

## Prior Conduct

10. In addition to other training sessions and case reviews, the Enforcement Team had an in-person training day at Wrest Park on prior conduct rules and processes led by the Disciplinary and Standards Manager with the Investigating and Enforcement Manager. This was very well received, as evidenced by the constructive contributions and comments from members of the Team.
11. The review of the prior conduct process has resulted in the development of new templates for Right of Review Forms and Prior Conduct Reports to reduce the workload and resources required for preparing reports, particularly for straightforward cases. The Right of Review Forms will place greater expectation on complainants to provide robust reasons/grounds why a complaint should not be closed at the initial stage. This will increase capacity to progress misconduct investigations.

## Misconduct Investigations

### Progress to date

12. The immediate steps taken in relation to misconduct investigations have been:
  - A marketing campaign for applications for panel clerks and lay members (for the Disciplinary Tribunal and Appeals Panel) which closed on 20 June 2024 with interviews scheduled in the first two weeks of July 2024 with a view to the appointment of a further two panel clerks and 5 lay panel members.
  - Documented case reviews and risk assessments with the relevant Investigation Officer have been introduced.
  - At the start of an investigation ways will be agreed of concluding cases in a proportionate, fair and timely manner and a case plan will be developed. These will be followed by further case reviews (minimum every 8 weeks).
  - Further quality reviews of cases will be carried out 9 and 20 weeks from the start of the investigation to include a review of correspondence and witness statements/evidence to provide additional assurance of the quality of the investigation and file management.
  - There will also be a focus on reducing caseload received over the period December 2020 – July 2023 with targeted case reviews. Cases will be

identified for closure, referral to Professional Conduct Panel (PCP) or Determination by Consent (DBC).

- Some older cases need to be (but have yet to be) closed on CRM even though the investigations have concluded.
- Whilst not formally part of the review process, as at 31 May 2024 65 cases have been closed since the beginning of 2024.

13. Resources have been developed for the Team:

- A case law library/learning hub provides guidance on disposal route for cases, key regulatory matters (e.g. dishonesty, reinstatement) and potential sanction bids.
- DBCs and Disciplinary Tribunal determinations have been summarised to assist in determining the appropriate length of exclusions and to aid standardisation of the approach to be taken for determining the length of exclusions and level of fines.
- This is being followed by a revision of the Sanctions Guidance to assist panel members in adopting a more proportionate, fair and transparent approach to the exercise of their sanctions and fining powers.

14. Resources have been developed for the profession:

- New guidance for our regulated community around the misuse of non-disclosure agreements, social media and communications guidance.

15. Over the next 3 months:

- KPIs informed by the current reporting data will be trialled and agreed.
- A training and induction programme will be developed for panel clerks and lay members to be delivered over the summer with the aim of convening a series of panel hearings in the early autumn to determine misconduct cases
- Guidance will be developed to improve the quality and timeliness of investigations. The first two are on evidence gathering and parallel investigations. Further guidance will be on best evidence, investigation planning, risk assessment and applying for interim orders (the last two to ensure the most serious cases are actioned promptly).
- A more person-centred approach will be adopted when managing complaints.
- A safeguarding referral procedure will set out safeguarding commitments to those who are subject to disciplinary proceedings and/or key witnesses.

16. Within the next 6 months:

- A review of the misconduct process will be undertaken to identify whether any further process and other changes should be made (without the requirement for a rule change) to improve efficiency and effectiveness.
- There will be a review of the operation of remote hearings since the implementation of the permanent rule change.
- Further training workshops will be rolled out into 2025 to ensure greater understanding and knowledge within the team to progress certain types of complex cases.

