

ANNEX 1

CILEx REGULATION

POWERS OF THE PROFESSIONAL CONDUCT PANEL

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1. The powers of the Panel are set out at Part II of the Enforcement Rules 2018.
2. The PCP has power to deal with matters of Prior Conduct, Fitness to Own and allegations of misconduct. In considering these types of matters the PCP, after considering jurisdiction, may exercise the following powers:

Prior Conduct¹ - Rule 14

- a. refuse any application for Membership or Authorisation or any other application to which the prior conduct relates;
 - b. determine that the prior conduct does not affect any application for Membership or Authorisation or any other application to which the prior conduct relates;
 - c. decide to take no further action and make a direction to an Investigator as to how to deal with the matter under Rule 13(1)(e);
 - d. impose conditions, where appropriate, on the Relevant Person(s) or Applicant(s) in respect of their future conduct and in the case of an individual their employment.
 - e. require the Relevant Person(s) or Applicant(s) to give undertakings as to their future conduct;
 - f. reprimand the Relevant Person, warn the Applicant or Relevant Person(s) as to future conduct or both;
 - g. refer the matter to the DT as if it were an allegation.
3. To assist the PCP in making a Prior Conduct or Fitness to Own decision they have the power to do the following:
 - request additional information from a CILEx Regulation appointed investigator or a CILEx Regulation /CILEx that will assist in their deliberations.
 - request reasonable information from the Relevant Person or Representative of that party and/or request attendance at the PCP meeting.
 - defer the matter to seek advice where it is fair and reasonable to do so.

Misconduct - Rule 17

- a. Decide there is no case to answer.
- b. Decide there is a case to answer and either refer the allegation to the DT or, with the admission and consent of the Relevant Person(s), retain jurisdiction and dispose of the matter.

PRIMA FACIE CASE Retaining Jurisdiction

¹ Prior Conduct here also includes Fitness to Own declarations

4. In matters where there is an allegation of misconduct the PCP must decide if there is evidence of a prima facie case to support the allegation.
5. A prima facie case means that, if the evidence is left un-contradicted, it could be grounds for a finding of a breach of the CILEx Code of Conduct. In practice the PCP may consider that where a Relevant Person(s) or Applicant(s) makes no attempt to deny or refute the evidence, and the evidence shows that misconduct may have occurred, a prima facie case can be established.
6. The Panel must give reasons for why it considers a prima facie case exists. If a prima facie case can be established the PCP must go on to consider if the misconduct can be proven on a balance of probabilities.

BALANCE OF PROBABILITIES:

7. The balance of probabilities means the fact in issue more probably occurred than not. In deciding whether the fact more probably occurred the Panel will consider the evidence before them in support of that fact occurring.
8. If the Panel finds the evidence does not support the fact probably occurring, the misconduct is not proved on the balance of probabilities. The Panel should then properly reject the complaint.

DECISION - Sanction or Referral – Rule 17(4)

9. If the Panel finds the misconduct is proved on the balance of probabilities and the Relevant Person admits an allegation and consents to disposal by the Panel, it has power to do the following:
 - a. require the Relevant Person(s) give undertakings as to their future conduct; or
 - b. impose conditions on the Relevant Person(s) in respect of their conduct or in the case of an individual in regard to their employment; or
 - c. warn the Relevant Person(s) as to their future conduct and/or reprimand the Relevant Person(s).
10. The Panel must give clear reasons for reaching its determination on sanction.

Publication

11. Publication is deemed automatic unless there are specific reasons in accordance with Rule 37(6) of the Enforcement Rules that publication does not take place. The Panel should have due regard to the CILEx Regulation Publication Policy (Enforcement Handbook Annex 3).
12. In all circumstances they must have due regard to the Sanctions Guidance (Enforcement Handbook Annex 2).
13. The date of last review was October 2018.