

Investigation, Disciplinary and Appeals Rules Report 2017



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Introduction

We are pleased to report on the work of our Investigators, Professional Conduct Panel, Disciplinary Tribunal and Appeals Panel during 2017.

The CILEx Code of Conduct sets out principles to which CILEx members, CILEx Practitioners and CILEx regulated firms must adhere in their conduct, practice and professional performance and the outcomes they must meet.

Membership and regulated practice carry both privileges and responsibilities. They require members of our regulated community to ensure that in their conduct, practice and professional performance, they develop and use their professional knowledge and skills for the benefit of those who use their services, maintain good professional relationships with others and act in a way that promotes confidence and trust in the legal professions and the provision of legal services.

CILEx Regulation investigates complaints and allegations of misconduct against individuals or firms regulated by us. We are also responsible for considering prior conduct declarations made by members of our regulated community or those applying to join it and for determining fitness to practise and fitness to own a business delivering legal services.

CILEx Regulation has three independent decision-making bodies which consider the conduct of those regulated by us, namely the:

- ✓ **Professional Conduct Panel**
- ✓ **Disciplinary Tribunal**
- ✓ **Appeals Panel**

This report reviews the activity of these independent decision makers and the Investigators making decisions under powers delegated by them.

Investigation, Disciplinary and Appeals Rules Report 2017

We would like to take this opportunity to thank all our panellists and their independent Clerks for their work and dedication across the year, and also for their active participation in training events, consultation on changes to the Rules, and constructive feedback to the office on improved ways of working. We are indebted to them for their commitment and expertise and for their generous contribution to our continuous improvement as a regulator.



Andrew Donovan and Luisa Fulci
Joint leads for Enforcement
CILEx Regulation Board

Investigation, Disciplinary and Appeals Rules Report 2017

Prior conduct declarations

Number of Declarations

At the start of 2017, 40 prior conduct declarations were open and 595 declarations were received during the year. This is notably higher than previous years, as shown in Table 1 due to a change in the phrasing of a question on renewal forms for 2018 membership, relating to membership of other organisations which resulted in over declarations. The question has now been amended.

	2013	2014	2015	2016	2017
Declarations received	187	180	215	164	595
Declarations delegated	136	145	184	143	442
% Declarations delegated	72.7%	80.6%	85.6%	87.2%	74.3%

Table 1: Prior Conduct Declarations received and delegated

This increase in declarations occurred in the final quarter of the year as a feature of the membership renewal cycle for 2018 (and into early 2018) and therefore, despite being largely dealt with via the delegated decision process, produced a backlog of work taken into Q1 2018.

Of the declarations processed during 2017, 74.3% were dealt with by officers as delegated decisions.

Cases dealt with by Delegated Decision

Table 2 and Graph 1 show the percentage of cases dealt with by the delegated decision process under each type of declaration.

Investigation, Disciplinary and Appeals Rules Report 2017

Table 2: Percentage of delegated decisions by type of declaration

	2010	2011	2012	2013	2014	2015	2016	2017
County Court Judgment	6.6%	1.2%	6.3%	2.9%	15.2%	25.0%	20.3%	17.9%
Bankruptcy order/ creditor arrangement	51.6%	66.9%	51.4%	63.2%	35.2%	26.6%	32.9%	40.5%
Convictions or cautions	41.8%	30.1%	41.7%	33.8%	42.8%	46.7%	46.2%	30.8%
Other professional body orders	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	10.9%
Other	0.0%	1.8%	0.6%	0.0%	6.9%	1.6%	0.7%	0.0%
	100%							

Graph 1: Percentage of delegated decisions by type of declaration



Investigation, Disciplinary and Appeals Rules Report 2017

Cases dealt with by the Professional Conduct Panel (PCP)

During 2017, the PCP considered 28 cases involving 32 allegations or matters to consider. Table 3 and Graph 2 show the breakdown of the allegations by type of declaration. There was an increase in declarations involving investigation or proceedings concerning fitness to practise by other regulatory or professional bodies which were serious enough to be referred to the PCP.

We believe this demonstrates the good progress we have made in building collaborative working relationships with other regulators to support legitimate and lawful sharing of regulatory information, under published Memoranda of Understanding, in order to protect the consumer.

Subject to the provisions of the Rehabilitation of Offenders Act 1974, our Rules require applicants and members of the regulated community to declare criminal convictions or cautions. In 2017 we introduced more detailed analysis of types of convictions or cautions declared. This supports the further development of our risk-based approach to regulation by enabling us to monitor the level of declaration of offences of dishonesty and associated risk in terms of suitability to provide legal services. This split between offences of dishonesty and other offences is also shown in Table 3 and Graph 2.

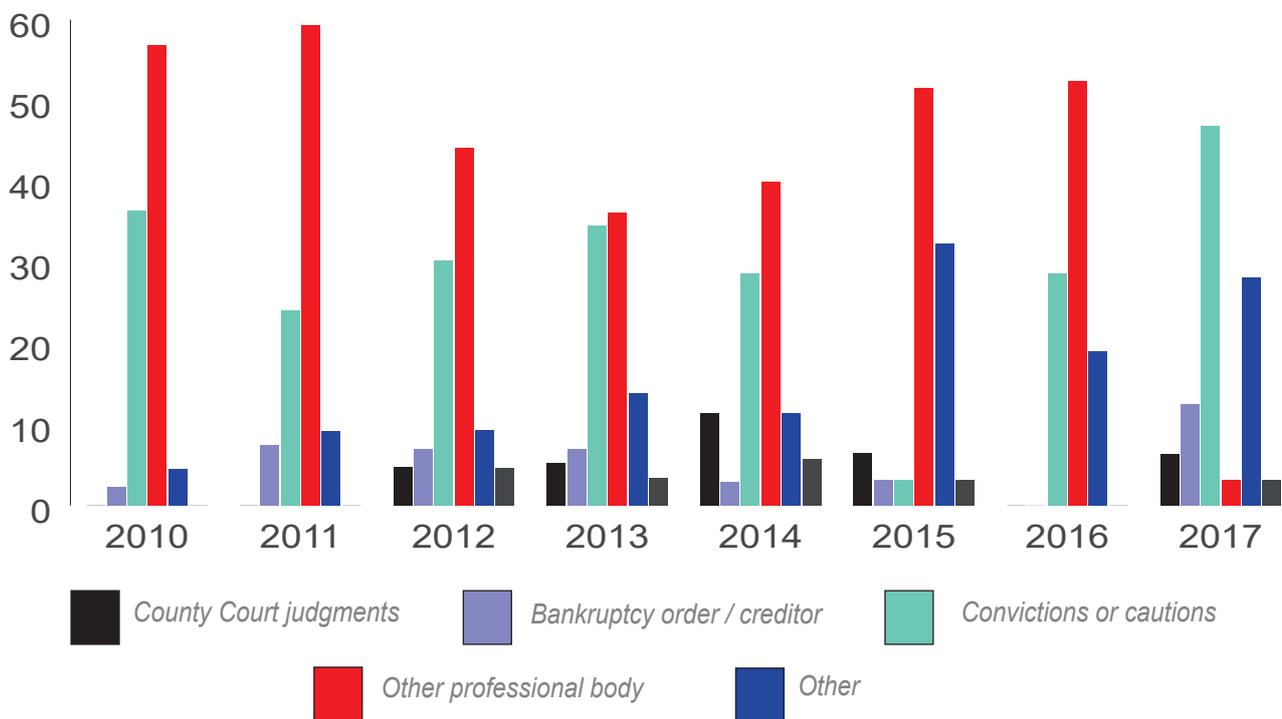
Table 3: Percentage of allegations referred to PCP by type of declaration

	2010	2011	2012	2013	2014	2015	2016	2017
County Court Judgment	0.0%	0.0%	4.7%	5.2%	11.4%	6.5%	0.0%	6.3%
Bankruptcy order/ creditor arrangement	2.3%	7.4%	7.0%	6.9%	2.9%	3.2%	0.0%	12.5%
Convictions or cautions (dishonesty)	36.4%	24.1%	30.2%	34.5%	28.6%	3.2%	28.6%	46.9%
Convictions or cautions (other)	56.8%	59.3%	44.2%	36.2%	40.0%	51.6%	52.4%	3.1%
Other professional body	4.5%	9.3%	9.3%	13.8%	11.4%	32.3%	19.0%	28.1%
Other	0.0%	0.0%	4.7%	3.4%	5.7%	3.2%	0.0%	3.1%
	100%							

Investigation, Disciplinary and Appeals Rules Report 2017

Most of the prior conduct matters referred to the PCP related to convictions and cautions. The combined percentage for 2017 was 50.0% compared with 81.0% in 2016.

Graph 2: Percentage of declarations considered by the PCP by type



PCP Decision making Outcome

Table 4 shows the PCP decision making outcomes in 2017.

Application allowed	42.9%
Reinstatement allowed	17.9%
Reprimand	10.7%
Referred to DT	10.7%
NFA	14.3%
Withdrew application during process	3.5%
TOTAL	100%

Table 4: PCP decision making outcomes

Investigation, Disciplinary and Appeals Rules Report 2017

The majority of the matters considered relate to applications for CILEx membership or Fellowship, or reinstatements of individuals previously in membership. In 2017, 60.8% of decisions resulted in an application being allowed to proceed.

Declarations by Membership Grade

	Declarations received	Delegated decisions	PCP decisions
Fellow	37.5%	36.9%	28.6%
Graduate	15.0%	13.6%	21.4%
Associate	16.5%	17.4%	7.1%
Associate Prosecutor	0.2%	0.2%	0.0%
Affiliate	15.8%	14.5%	0.0%
Student	3.9%	4.8%	3.6%
Non-member Applicant	11.3%	12.7%	39.3%
TOTAL	100%	100%	100%

Table 5: Prior conduct declarations by grade of membership

Table 5 shows the breakdown by membership grade or non-member applicant for declarations received, delegated and PCP decisions. Whilst non-member applications form the largest share of prior conduct declarations referred to PCP (almost 40%), Fellows provide the largest share of declarations received and dealt with by delegated decisions.

Disciplinary Tribunal and Appeals Panel

The PCP has power to refer a prior conduct matter to the Disciplinary Tribunal (DT) as if it were an allegation of misconduct. No prior conduct matters were referred to DT in 2017. An applicant or regulated member may appeal to the Appeals Panel (AP) against a decision of the PCP in relation to a matter of prior conduct. There were no such appeals during 2017.

Investigation, Disciplinary and Appeals Rules Report 2017

Misconduct complaints and allegations

From 2017, CILEx Regulation improved its data collection for misconduct cases with a view to further deepening our understanding of this area of work. We added more granular performance reporting of timescales for case completion and identification of risk. Complaints and allegations are now also recorded against the nine core principles of the Code of Conduct, bringing data collection in line with the investigation process and documentation. These improvements mean we have less scope for meaningful comparison with the performance data for previous years, although we anticipate as comparative data sets build going forward, we will be in a better position to identify risk and to identify opportunities for segmented learning amongst the regulated community about expectations as to conduct and how to maintain high standards of professionalism.

Number of Complaints

At the start of 2017, 154 misconduct complaints were open. Of these, 121 related to CPD non-compliance. This backlog was cleared by April 2017. In 2017 we revisited our approach to enforcement in relation to CPD non-compliance, following discussion with CILEx and members of the DT and moved to a more proportionate, risk-based approach, following agreement with CILEx to better support their members in complying with CPD requirements.

During 2017, 42 complaints relating to 45 allegations were received, of which 14 were either outside CILEx Regulation's jurisdiction or otherwise resulted in no further action. Of the 42 complaints, 28 (66.7%) concerned CILEx Fellows.

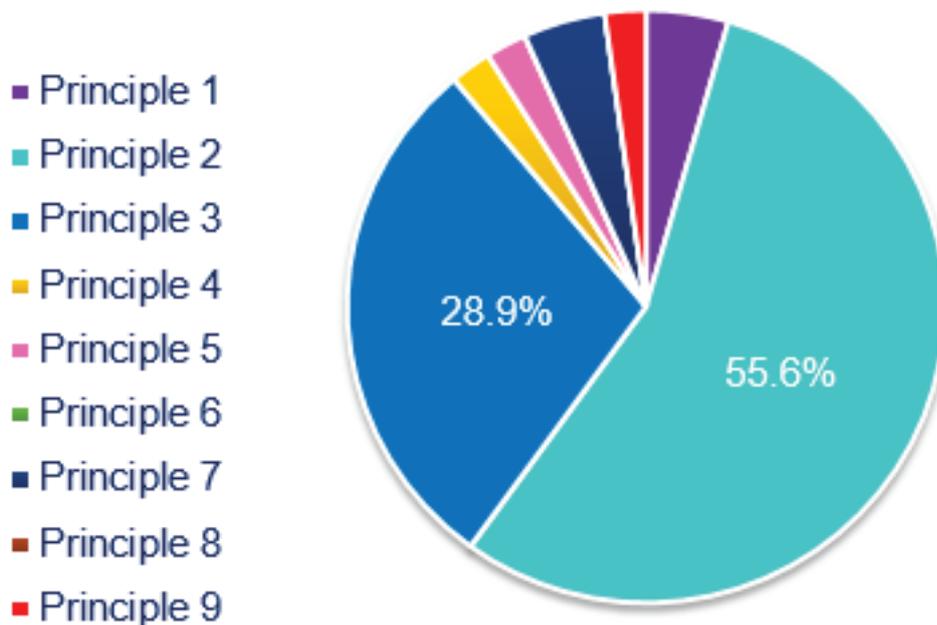
Graph 3 shows the breakdown of the 45 allegations by the Code of Conduct principles. The principles which attracted the highest level of allegations were:

- ✓ Principle 2 – Maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services (55.6%): and
- ✓ Principle 3 – Behave with honesty and integrity (28.9%).

Investigation, Disciplinary and Appeals Rules Report 2017

Graph 3

Allegations by Code of Conduct Principles



Delegated Decisions

Five cases were dealt with by delegated decision during 2017. Three of these were suitable for Determination by Consent (DBC). One complaint was rejected following investigation and one case was considered sufficiently serious to be referred directly to the DT.

Professional Conduct Panel (PCP)

The PCP considered six misconduct cases during the year. Four cases were referred to the DT, of which three were for CPD non-compliance under the earlier approach to enforcement for non-compliance with CPD requirements. The two remaining cases endorsed a Determination by Consent and upheld a decision by an investigator to reject a complaint made against a member following a request by the complainant for a review.

Investigation, Disciplinary and Appeals Rules Report 2017

The six cases concerned two Fellows, three Graduate members and one Associate member of CILEx.

Disciplinary Tribunal (DT)

During 2017, 12 cases were heard by the DT. Six resulted in exclusion from CILEx membership for periods ranging from six months to seven years. The outcomes/sanctions applied are shown by grade of the membership in Table 6.

Grade of Member	Outcome/Sanction
Fellow	Not proven
Graduate	Exclusion
Graduate	NFA
Associate	Exclusion
Associate	Exclusion
Associate	Exclusion
Associate	Warning and Reprimand
Associate	Ordered to resign membership
Associate	NFA
Affiliate	Exclusion
Affiliate	Exclusion
Affiliate	Warning and Reprimand

Table 6: Outcome/sanction at DT by membership grade

Appeals Panel

During 2017, one case was heard by the Appeals Panel (AP). The appeal was brought by an Associate member of CILEx excluded by a decision of the DT in 2016. The exclusion was upheld.

Investigation, Disciplinary and Appeals Rules Report 2017

Conclusion

Building on the opportunities for improvement identified in last year's annual report we have delivered on improved analysis of complaints and allegations enabling us more effectively to draw out trends in the types of allegations and adverse findings being made. This will enable us to feed this information into the risk framework supervised by our Strategic Risk Committee. It will also enable us to consolidate our programme of learning for the regulated community about the expectations on them to maintain high standards of professional conduct.

We continue to report learning points arising from adverse findings in the CILEx Journal. We have built on this by promoting the understanding of the Code of Conduct in features in our web based publication Regulation Matters launched in 2017 aimed both at the regulated community and a consumer audience.

We successfully ran our panel member training to ensure that our panellists are confident in carrying out their roles. All panellists and Clerks were offered the opportunity to attend two training events during the year. The unconscious bias training attended by most panellists in 2017 was particularly well received.

During 2017 we consulted on changes to the IDAR 2015 and sought the approval of the Legal Services Board to alterations to provide operational clarity and transparency to consumers, so they have clear information on the results that we as a regulator can achieve, to meet the regulatory objectives set out in the Legal Services Act 2007.

Approval was granted on 14 December 2017 for changes we will implement in 2018. The changes include updates reflecting the increasing role of digitisation in the administration of enforcement processes, such as the provision for evidence by video link at Tribunals.

These changes also include the addition of provisions for Investigators to make written submissions or attend a PCP to make oral representations. These address the situation where the regulator considers that oral representations should be made in the public interest, but currently has no right to do so other than with the permission of the PCP. Where the PCP requests attendance by an individual or firm and they attend or are represented, the regulator will also be able to be represented in future and will be able to appeal against any decision of the PCP other than a referral to DT.

Investigation, Disciplinary and Appeals Rules Report 2017

The changes will also see the scope of the Rules extended to include determination by the Appeals Panel of appeals against decisions on authorisation of individuals by the Admissions and Licensing Committee and decisions by the regulator to:

- ✓ refuse or revoke entity authorisation;
- ✓ refuse an application to be an Approved Manager: and
- ✓ withdraw and Approved Manager designation.

We look forward to further extending the scope of the Rules to Alternative Business Structures in due course, to reflect the designation we have applied for to become a Licensing Authority.