

# ENFORCEMENT HANDBOOK 2018

## CILEx Regulation

College House  
Kempston  
Bedford MK42 7AB

Tel: 01234 845770

Email: [info@cilexregulation.org.uk](mailto:info@cilexregulation.org.uk)

Web: [www.cilexregulation.org.uk](http://www.cilexregulation.org.uk)

## **INTRODUCTION**

The Chartered Institute of Legal Executives (CILEx) is an Approved Regulator designated as such by the Legal Services Act 2007. It delegates its regulatory responsibilities to CILEx Regulation. The Legal Services Act 2007 sets out statutory objectives that CILEx Regulation must adhere to.

This Handbook is issued by CILEx Regulation and is approved by the CILEx Regulation Board.

This Handbook is intended as a guide to assist:

- Complainants
- Applicants
- Relevant Persons of CILEx and their representatives
- Members of CILEx Regulation's conduct panels

by documenting the application of the administrative and procedural processes set out in the CILEx Regulation Enforcement Rules 2018 (the "Enforcement Rules").

The Handbook does not supersede the CILEx Regulation's Enforcement Rules, the CILEx Code of Conduct and associated policies issued from time to time which governs among other things its fitness to practise function.

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## SECTION 1: DEFINITIONS

### 1.1 GENERAL

These definitions are for the purpose of the interpretation of this Enforcement Handbook. Any definitions contained within the Royal Charter, Bye-laws, Codes of Conduct, Enforcement Rules, and/or other Policies supersede those contained within this Handbook. Annexes referred to in this document are those listed in section 5 of this Handbook.

<b>ALC</b>	means the Admissions and Licensing Committee.
<b>Appeals Panel</b>	means the Appeals Panel established for the purposes set out in Part IV of the Enforcement Rules.
<b>Allegation(s)</b>	means where CILEx Regulation receives a complaint or other information that a Relevant Person may have engaged in misconduct.
<b>Applicant</b>	means a Person applying (a) for Membership or Authorisation, or (b) to be an Approved Manager.
<b>Approved Manager</b>	has the meaning given to it in the Authorisation Rules.
<b>Authorisation</b>	means (a) authorisation by CILEx Regulation, or (b) authorisation or approval by CILEx Regulation, as a Relevant Person.
<b>Authorised Entity</b>	means a partnership (including a limited liability partnership), company or sole principal authorised by CILEx under the Legal Services Act 2007 to (a) carry on an activity which is a reserved legal activity, or (b) provide immigration advice or immigration services.
<b>CILEx Member</b>	means a person who has been admitted to Membership of CILEx in any grade.
<b>CILEx Practitioner</b>	means a practitioner authorised by CILEx Regulation to provide one or more regulated legal activities.
<b>Clerk</b>	means an independent Clerk to either the PCP, Disciplinary Tribunal or Appeals Panel. In this Handbook any request or application should be made to the Clerk, addressed to the Clerk, and sent care of the Investigations Team at CILEx Regulation offices.
<b>the Code</b>	means the CILEx Code of Conduct of the Chartered Institute of Legal Executives and CILEx Regulation in force from time to time.
<b>Complainant(s)</b>	means a person who has made a complaint against, or reported, a Relevant Person(s) to CILEx Regulation.
<b>Disciplinary</b>	

<b>Tribunal</b>	means the Disciplinary Tribunal established for the purposes set out in Part III of the Enforcement Rules.
<b>Investigator(s)</b>	means a person or persons appointed by CILEx Regulation to conduct investigations and/or make such delegated decisions as may be provided for under the Enforcement Rules.
<b>Membership</b>	means enrolment or reinstatement as a CILEx Member.
<b>Order</b>	means a binding decision of the PCP, Disciplinary Tribunal or Appeals Panel, and may be referred to as a Decision Notice.
<b>Panellist(s)</b>	means a lay or professional member of the PCP, Disciplinary Tribunal or Appeals Panel.
<b>PCP</b>	means the Professional Conduct Panel established for the purposes set out in Part II of the Enforcement Rules.
<b>Prior Conduct</b>	means any adverse conduct which may have implications for an Applicant or Relevant Person's Membership or registration with CILEx ( <b>Enforcement R.11</b> ).
<b>Relevant Person(s)</b>	means an Approved Manager, Authorised Entity, CILEx Member or CILEx Practitioner.

## **1.2 CILEx CODE OF CONDUCT AND OTHER REGULATIONS**

All Relevant Persons are contractually bound by all of CILEx and CILEx Regulation's rules when they sign any CILEx Membership or Authorisation form. This includes the Royal Charter, Bye-laws, Regulatory Rules, Standing Orders made by the Group Board, the Code, the Enforcement Rules, the Accounts Rules and Authorisation Rules, and other policies.

The Code comprises nine principles. A breach of the Code can result in misconduct proceedings. Where a breach of the Code is proved, a disciplinary sanction may be given. Allegations will be assessed against the Code in force at the time of the events that give rise to the Allegation. Failure to comply with financial sanctions or Orders may result in CILEx Regulation seeking civil redress.

## **1.3 THE ENFORCEMENT RULES**

The Enforcement Rules set out the procedure under which misconduct and declarations concerning Prior Conduct and fitness to own are dealt with by CILEx Regulation. It covers the investigation process, decision making and the powers of the PCP, Disciplinary Tribunal and Appeals Panel.

## **1.4 JURISDICTION OF THE CODE AND ENFORCEMENT RULES**

Relevant Persons are not able to terminate their Membership or Authorisation until any investigation or proceedings have concluded, whether or not they have paid their subscription or Authorisation fees (**Enforcement R.6, Charter Bye-law 11**).

Relevant Persons are bound by the Enforcement Rules and are required to respond to all enquiries of Investigators and the PCP in relation to investigations carried out under the Enforcement Rules (**Enforcement R.12(3), 14(1)(b), 15(7)**).

### 1.5 DISCIPLINARY AND PUBLICATION POWERS OF CILEx REGULATION

CILEx Regulation may take action against Relevant Persons in relation to their Membership of CILEx and Authorisation by CILEx Regulation. Where an Allegation is proven, CILEx Regulation may apply one or more of the following sanctions (**Annexes 2 and 6**):

	<b>CILEx Member</b>	<b>CILEx Practitioner</b>	<b>Approved Manager</b>	<b>Authorised Entity</b>
	<b>PROFESSIONAL CONDUCT PANEL DECISIONS ENFORCEMENT R.17(3) AND (4)</b>			
<b>1</b>	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct
<b>2</b>	Require undertakings in respect of future conduct	Require undertakings in respect of future conduct	Require undertakings in respect of future conduct	Require undertakings in respect of future conduct
<b>3</b>	Warn in respect of future conduct or reprimand or both	Warn in respect of future conduct or reprimand or both	Warn in respect of future conduct or reprimand or both	Warn in respect of future conduct or reprimand or both
<b>4</b>	Refer the matter to the Disciplinary Tribunal	Refer the matter to the Disciplinary Tribunal	Refer the matter to the Disciplinary Tribunal	Refer the matter to the Disciplinary Tribunal
	<b>DISCIPLINARY TRIBUNAL DECISIONS ENFORCEMENT R.30(5)</b>			
<b>5</b>	Take no further action	Take no further action	Take no further action	Take no further action
<b>6</b>	Reprimand or warn in respect of future conduct or both	Reprimand or warn in respect of future conduct or both	Reprimand or warn in respect of future conduct or both	Reprimand or warn in respect of future conduct or both
<b>7</b>	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct
<b>8</b>	Exclude from Membership for a minimum fixed or indefinite period	Exclude from Membership or Authorisation for a minimum fixed or indefinite period	Exclude from Membership or Authorisation for a minimum fixed or indefinite period	Exclude from Authorisation for a minimum fixed or indefinite period
<b>9</b>	-	-	-	Require a Practice Management Agreement only in addition to 8

10	Fine or Fine and 5,6 or 7	Fine or Fine and 5,6 or 7	Fine or Fine and 5,6 or 7	Fine except in relation to 8
11	Order costs	Order costs	Order costs	Order costs
<b>APPEALS PANEL DECISIONS ENFORCEMENT R.34 (7)</b>				

	<b>APPEAL FROM PCP, DT and ALC DECISIONS</b>	<b>APPEALS FROM PCP, DT and ALC DECISIONS and DISCIPLINARY TRIBUNAL DECISIONS</b>	<b>APPEALS FROM ALC DECISIONS</b>	<b>APPEALS FROM PCP, DISCIPLINARY TRIBUNAL, ALC and CILEx REGULATION DECISIONS</b>
12	Dismiss the appeal	Dismiss the appeal	Dismiss the appeal	Dismiss the appeal
13	Allow the appeal and quash the decision appealed against	Allow the appeal and quash the decision appealed against	Allow the appeal and quash the decision appealed against	Allow the appeal and quash the decision appealed against
14	Allow the appeal and remit the matter for reconsideration in accordance with <b>Enforcement R.35(7)(ii)</b>	Allow the appeal and remit the matter for reconsideration in accordance with <b>Enforcement R.35(7)(ii)</b>	Allow the appeal and remit the matter for reconsideration in accordance with <b>Enforcement R.35(7)(ii)</b>	Allow the appeal and remit the matter for reconsideration in accordance with <b>Enforcement R.35(7)(ii)</b>
15	Allow the appeal and substitute the decision in accordance with <b>Enforcement R.35(7)(b)(iii)</b>	Allow the appeal and substitute the decision in accordance with <b>Enforcement R.35(7)(b)(iii)</b>	Allow the appeal and substitute the decision in accordance with <b>Enforcement R.35(7)(b)(iii)</b>	Allow the appeal and substitute the decision in accordance with <b>Enforcement R.35(7)(b)(iii)</b>
16	Allow the appeal and make any ancillary orders it considers appropriate including orders for costs	Allow the appeal and make any ancillary orders it considers appropriate including orders for costs	Allow the appeal and make any ancillary orders it considers appropriate including orders for costs	Allow the appeal and make any ancillary orders it considers appropriate including orders for costs

Disciplinary findings stay on a Relevant Person's record indefinitely and may be taken into account in determining sanctions in future complaints where a finding is made. Disciplinary findings are published in accordance with the CILEx Regulation Publication Policy (Annex 3). Disciplinary Tribunal decisions may be notified to employers, partners, other regulators and any other relevant body. (**Enforcement R.37, Annex 3**)

Relevant Persons who are excluded from Membership or Authorisation must return their membership card, Practising Certificate or Certificate of Authorisation to CILEx Regulation within 14 days of the notification of the decision.

## **1.6 MATTERS DEALT WITH BY CILEx REGULATION**

Where CILEx Regulation receives a complaint or any information that a Relevant Person may have engaged in misconduct (an Allegation) it may investigate the



complaint in accordance with **Enforcement R.15**. CILEx Regulation deals with the following types of Allegations:

### 1.6.1 Prior Conduct

**Prior Conduct:** This is where a Relevant Person declares any adverse conduct which may have implications for an Applicant or Relevant Person's Authorisation, Membership or registration with CILEx as required by **Enforcement R.11**.

All CILEx Regulation authorisation forms application and CILEx Membership forms contain a section that sets out the relevant categories of Prior Conduct that Applicants and Relevant Persons must declare to CILEx Regulation.

Prior Conduct declarations are referred to the PCP for a decision or dealt with by an Investigator under delegated decision-making powers. In some cases, the conduct declared may result in a separate investigation for misconduct being undertaken.

### 1.6.2 Misconduct

**Complaint(s):** This is where somebody reports the CILEx Member to CILEx Regulation because they are unhappy with the conduct of the Relevant Person. This is made by a person (individual, body corporate and other entity). Complaints about service only must be made to the Legal Ombudsman (LeO), who should in turn refer any conduct issues to the appropriate regulator.

**Information:** This is where CILEx Regulation receives information from any source that indicates a Relevant Person may have acted in breach of the Code. The Enforcement Rules provide that CILEx Regulation may investigate the matter.

## SECTION 2: THE INVESTIGATION PROCESS

### 2.1 TIMESCALES

CILEx Regulation aims to acknowledge correspondence within 2 working days and aims to respond substantively within 10 working days.

Correspondence that is sent by first class post takes effect on the second working day after posting (**Enforcement R.5**). Time allowed for response from all parties (unless otherwise specified) is from the date of deemed receipt.

CILEx Regulation aims to refer Allegations to the PCP within 6 months of receipt of the Allegation. All parties must correspond in a timely manner. CILEx Regulation will consider reasonable requests for additional time to respond. Extensions are granted at CILEx Regulation's discretion. Applications for extensions of time must be supported by evidence where available. CILEx Regulation will balance the interests of fairness with the requirement to act in a timely manner when considering the application.

**2.2 PRIOR CONDUCT**

All Applicants must declare their Prior Conduct in writing to CILEx Regulation and disclose full details of their Prior Conduct at the earliest opportunity and in any application for Membership or Authorisation.

Relevant Persons must also declare their Prior Conduct to CILEx Regulation and disclose full details of their Prior Conduct at the earliest opportunity and in any application to CILEx or CILEx Regulation. This includes applications for Membership and changes to Membership grade, as well as their annual returns.

Prior Conduct declarations can be made online/electronically or by completing an application or registration form, or by any other written means.

Prior Conduct declarations include “fitness to own” declarations made in respect of an entity seeking Authorisation from CILEx Regulation.

Applicants and Relevant Persons must provide evidence of the Prior Conduct (eg memorandum of conviction, order of a professional body) and information about the circumstances in which the conduct arose (including mitigation and references) (**Enforcement R.12(3)**).

Applicants seeking Authorisation or Membership who fail to provide the requisite information will have their application(s) rejected.

If, after two written requests from CILEx Regulation, a Relevant Person fails to respond, or does so inadequately, an additional Allegation of misconduct relating to that failure may be added.

Where a declaration of Prior Conduct is not dealt with under the delegated decision procedure set out at **Enforcement R.13** it is referred to a meeting of the PCP for consideration. The Relevant Person is notified of the date of the PCP meeting. The PCP may request the Relevant Person or representative of the Relevant Person to attend the PCP meeting (**Enforcement R.14(1)(c)**).

If a Relevant Person and/or their representative attends the meeting of the PCP, CILEx Regulation shall also be represented if it considers it appropriate.

Failure by a Relevant Person to declare Prior Conduct may be treated as misconduct and may lead to an investigation by CILEx Regulation (**Enforcement R.12**).

	<b>CILEx Member</b>	<b>CILEx Practitioner</b>	<b>Approved Manager</b>	<b>Authorised Entity</b>
	<b>PROFESSIONAL CONDUCT PANEL DECISIONS: ENFORCEMENT R.14(3)</b>			
<b>1</b>	Refuse application for Membership	Refuse application for Authorisation	Refuse application for Approval	Refuse application for Authorisation
<b>2</b>	Determine that the Prior Conduct does not affect the application	Determine that the Prior Conduct does not affect the application	Determine that the Prior Conduct does not affect the application	Determine that the Prior Conduct does not affect the application
<b>3</b>	Decide to take no further action and	Decide to take no further action and	Decide to take no further action and	Decide to take no further action and

	make a direction to an Investigator as to how to deal with the matter	make a direction to an Investigator as to how to deal with the matter	make a direction to an Investigator as to how to deal with the matter	make a direction to an Investigator as to how to deal with the matter
4	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct
5	Require undertakings in respect of future conduct	Require undertakings in respect of future conduct	Require undertakings in respect of future conduct	Require undertakings in respect of future conduct
6	Warn in respect of future conduct or reprimand or both	Warn in respect of future conduct or reprimand or both	Warn in respect of future conduct or reprimand or both	Warn in respect of future conduct or reprimand or both
7	Refer the matter to the Disciplinary Tribunal as if it was an Allegation	Refer the matter to the Disciplinary Tribunal as if it was an Allegation	Refer the matter to the Disciplinary Tribunal as if it was an Allegation	Refer the matter to the Disciplinary Tribunal as if it was an Allegation

## 2.3 COMPLAINTS

The Investigator may investigate a complaint by gathering information and investigating the issues involved (**Enforcement R.15(2)**).

Consent is obtained from the Complainant to provide a copy of the complaint and supporting evidence to the Relevant Person. The onus is on the Complainant to provide evidence to support the complaint. Where an Investigator seeks information or advice from third parties this information or advice will only be disclosed if it is relevant and not covered by legal professional privilege.

If a Complainant does not give consent to disclose the complaint to the Relevant Person the investigation may be discontinued, in which case the parties will be notified. Where a Complainant gives consent to part of the material being disclosed, only that evidence is relied upon for the purposes of continuing the investigation.

Once the information has been gathered from the Complainant a summary of the complaint, evidence and issues involved is provided to the Relevant Person together with a copy of the Enforcement Rules. The Relevant Person has 14 days from receipt of the notification by CILEx Regulation within which to comment. The Relevant Person's response is considered and, where further information or evidence is identified, appropriate action is taken.

A copy of all, or part, of the Relevant Person's response may be sent to the Complainant who has 14 days from receipt of the response within which to make written submissions. The Relevant Person has a further 14 days within which to comment on the Complainant's additional submissions (**Enforcement R.15(3), (4)**). The Investigator will investigate any new issues that arise as a result.

The Relevant Person must respond to requests within the timescale stipulated by CILEx Regulation (**Enforcement R.15(7)**).

Information that Relevant Persons provide will usually be disclosed in full to the Complainant by CILEx Regulation. Confidential information may be redacted by the Relevant Person. Where a complaint has been made all irrelevant personal data,

including contact information where necessary, will be redacted from any correspondence sent to the parties and will not be included in the evidence or submitted to any party or decision-making panel. CILEx Regulation's Data Protection Policy is available to view on the website or upon request.

Where CILEx Regulation acts on information received rather than a complaint (see paragraph 2.5 below) draft Allegations are prepared or further information is requested to assess whether an investigation is required. The matter is put to the Relevant Person for a response (**Enforcement R. 15**).

At the conclusion of the investigation a report is prepared which includes an analysis of the issues for the PCP to consider. The PCP is not bound by the analysis. The Relevant Person is notified of the date by which a report will be sent to them. The Relevant Person has 14 days within which to submit any written comments about the report to CILEx Regulation (**Enforcement R.15(4)**).

The Investigator may provide a copy of the report to the Complainant, if there is one, and invite their comments where that would assist the inquiry or if it is in the public interest to do so. Any comments received may be included as additional evidence (**Enforcement R.15(6)**).

Unless a party applies for an extension of time to comment, the case is referred to the next available PCP meeting and the parties notified of the date.

A bundle of the information and report relating to the case is provided to the Clerk and Panellists in advance of the PCP meeting.

## **2.4 DISPOSAL OF DISCONTINUED COMPLAINTS**

A Complainant may withdraw their complaint at any time. If a Complainant fails to engage with the investigation (expressly or impliedly by failing to respond to CILEx Regulation) the Investigator decides whether the complaint should be continued by CILEx Regulation.

## **2.5 THE DECISION TO ACT ON INFORMATION RECEIVED**

CILEx Regulation may receive information which prompts an investigation, eg:

A third party, including individuals, organisations and other regulators, may provide evidence that demonstrates a prima facie case of misconduct. For example, evidence that a Relevant Person has carried out an unauthorised reserved legal activity such as serving notice of proceedings or issuing of a Land Registry application.

Although the information received amounts to an Allegation it is not treated as a complaint and the informant is not regarded as a Complainant.

Any evidence, whether received from a Relevant Person, Complainant or other third party, which suggests further misconduct may have been committed may be pursued as an additional Allegation(s) to the current investigation.

## **2.6 THE ROLE OF THE INVESTIGATOR**

The Investigator is an impartial case worker for CILEx Regulation and does not act for the Complainant or Relevant Person. They record and retain relevant material obtained or generated during the course of an investigation, some of which becomes evidence in the case. They make enquiries for the purpose of presenting facts to the PCP for determination as to whether a Relevant Person has a case to answer. They may seek expert advice or information from third parties. At the conclusion of the investigation the Investigator produces a report of the investigation which contains analysis of the issues for the PCP to consider. (**Enforcement R.15(4)**).

The Investigator may reject Allegations without further reference to the PCP where one or more of the conditions set out in **Enforcement R.16** are satisfied (see paragraph 3.2 below). They may also refer serious matters straight to the Disciplinary Tribunal or determine Allegations that are admitted by the Relevant Person by consent (**Enforcement R.18**) – see paragraph 3 (Delegated Decision Procedures) below.

After the PCP's decision notice is forwarded to the Relevant Person and any Complainant the Investigator outlines the next steps or closes the case accordingly.

An Order of the PCP becomes a decision of CILEx Regulation. The role of the Investigator at this stage is to conduct follow-up action. Where an appeal is lodged against a PCP decision the Investigator prepares the case for appeal. Where a matter is referred to the Disciplinary Tribunal the Investigator is CILEx Regulation's representative and will prepare the case, may act as a witness and/or present the case before the Disciplinary Tribunal.

## **2.7 LIMIT OF INVESTIGATION**

During an investigation CILEx Regulation has no power to order a Relevant Person to take a particular course of action. In some cases, if it is necessary for the protection of the public, is in the public interest, or in the interests of the Relevant Person, the PCP (**Enforcement R.19**) or Disciplinary Tribunal (**Enforcement R.31**), as appropriate, may make an interim order suspending or restricting Membership or Authorisation pending a hearing of the Relevant Person's case before the Disciplinary Tribunal.

CILEx Regulation has no power to order disclosure of information or other evidence where the Relevant Person is an employee of an entity. Authorised Entities and Approved Managers will be subject to disclosure in such instances.

CILEx Regulation has no power to investigate criminal behaviour which should be referred to the appropriate authorities. CILEx Regulation will inform the relevant authorities of any Allegation of criminal behaviour where it becomes aware of such Allegation.

Where a Relevant Person is a party to litigation CILEx Regulation may not investigate Allegation(s) relating to those proceedings until their conclusion. Any finding by a court will be relied upon by CILEx Regulation as conclusive evidence of fact.

Similarly, where a Relevant Person is the subject of any ongoing investigation by the police, or another professional or regulatory body, CILEx Regulation may place its own investigation on hold pending the outcome of any such investigation. Any adverse findings against the Relevant Person may be investigated as a further Allegation of

misconduct and may also be relied on as conclusive evidence of misconduct (**Enforcement R.39(6)**).

## **2.8 COMPLAINTS ABOUT CILEx REGULATION APPOINTEES**

Where there is a conflict of interest or an Allegation is made against an individual who is a Panellist, Board Member, or other appointee of CILEx Regulation, CILEx Regulation may appoint an independent investigator and Panellists to consider the complaint.

Where a service complaint is made against CILEx Regulation the CILEx Regulation service complaints procedure will be followed. This procedure is different to procedures set out in the Enforcement Rules and cannot be implemented to challenge any decisions made under the Enforcement Rules or circumvent investigations or disciplinary proceedings.

## **SECTION 3: DELEGATED DECISION PROCEDURES**

The Enforcement Rules allows for certain decisions, ordinarily made by the PCP, to be made by an Investigator under a delegated process without referral to a meeting of the PCP (**Enforcement R.13(1), 16 and 18**).

These include some:

- Prior Conduct matters;
- rejection of complaints;
- referral directly to the Disciplinary Tribunal; and
- determinations by consent with approval of the PCP Panellists.

### **3.1 PRIOR CONDUCT**

An Investigator has discretion to decide that no action be taken in Prior Conduct declarations in accordance with **Enforcement R.13(1)**.

Where a declaration is received that falls within Rule 13 the Investigator can approve the declaration and within 21 days notify the Applicant or Relevant Person in writing that no further action will be taken.

Where such a decision is made under **Enforcement R.13(1)(e)** a report is made to the PCP of the decision (**Enforcement R.13(2)**).

### **3.2 REJECTION OF ALLEGATIONS**

An Investigator may reject an Allegation at any time before it is referred to the PCP where:

- there is no evidence to substantiate the Allegation;
- the Allegation does not disclose misconduct, ie a breach of the Code;
- CILEx Regulation has no jurisdiction to consider the Allegation; or
- the Allegation is made outside of the prescribed period (ie more than one year after the event(s) giving rise to the Allegation or more than one year after knowledge of the events, if later) and there is no good reason for the delay (**Enforcement R.16(1) and (2)**).

All rejections are reported to the PCP for noting (**Enforcement R.16(4)**).

Where any element of the Allegation identifies there may be a case to answer it is not rejected.

Where an Allegation in the form of a complaint is rejected the Complainant is informed of the decision and the reasons why. They are also advised that they have a right to request a review and informed of the procedure. The Relevant Person is notified of the rejections and the Complainant's right to request a review if they have been notified of the complaint. Any request by a Complainant for a review must be in accordance with **Enforcement R.20(3)**. A report of the rejection and request for a review is prepared and put before the PCP to consider at the next available meeting. A copy of the report of the review may be provided to the Complainant and Relevant Person for comment before the meeting. The Complainant and Relevant Person are notified of the outcome of the review.

### **3.3 REFERRAL DIRECTLY TO DISCIPLINARY TRIBUNAL**

CILEx Regulation may refer Allegations directly to the Disciplinary Tribunal without reference to the PCP where the evidence demonstrates a prima facie case of misconduct and either:

- the Allegation is of a serious nature; or
- an adverse finding has previously been made against the Relevant Person in respect of a similar Allegation (**Enforcement R.16(3)**).

Referral directly to the Disciplinary Tribunal may be considered at any stage prior to the Allegation(s) being referred to the PCP but only after the Relevant Person has been notified of the Allegation.

Where a case is referred to the Disciplinary Tribunal by the Investigator they must provide reasons for the referral. The Investigator will forward the decision to the relevant parties. There is no right of appeal against a decision to refer a matter directly to the Disciplinary Tribunal.

### **3.4 DETERMINATION BY CONSENT**

CILEx Regulation may enter into a determination by consent with a Relevant Person where there is a prima facie case of misconduct and the Relevant Person admits the misconduct (**Enforcement R.18(1)**).

A determination by consent is where CILEx Regulation enters into an agreement with the Relevant Person to dispose of the Allegation(s) by issuing one of the sanctions available to the PCP or Disciplinary Tribunal, without further reference to the PCP or Disciplinary Tribunal.

During the investigation where a Relevant Person indicates that they unreservedly admit the misconduct the Investigator informs them of the option to enter into a determination by consent. Determinations by consent may also be entered into after referral to the PCP or Disciplinary Tribunal, prior to Disciplinary Tribunal proceedings being issued, if the Relevant Person admits the misconduct. The procedure and sanctions available are explained to the Relevant Person.

The investigation process continues if agreement cannot be reached.

Where a determination by consent is reached a report is made to the PCP including:

- a statement of admission by the Relevant Person; and
- the proposed Order in respect of sanction and publication.

Where the Panellists agree with the determination they approve the sanction as agreed by the Investigator with the Relevant Person. The Order must be signed by the Relevant Person and then takes effect when signed by the Chair of the PCP.

The Order is published in accordance with the CILEx Regulation Publication Policy.

## **SECTION 4: PANELS AND DISCIPLINARY TRIBUNAL**

### **4.1 COMPOSITION OF PANELS AND DISCIPLINARY TRIBUNAL**

There is a separate pool of Panellists for each of the PCP, Disciplinary Tribunal and Appeals Panel. Panellists are either professional (Fellows of CILEx) or lay (non-lawyer) members.

Each meeting or hearing is made up of three Panellists. The majority will be lay Panellists. Hearing dates are scheduled at the end of the calendar year for the forthcoming year. Panellists are allocated dates at random based on availability and will serve an equal number of times, where practicable. Additional dates are allocated by the Clerk based on availability.

Professional Panellists may advise their fellow Panellists on areas of legal practice on which they have sufficient knowledge.

### **4.2 APPOINTMENT OF PANELLISTS**

Panellists are appointed by CILEx Regulation following a public advert. Vacancies are advertised in CILEx and CILEx Regulation publications, and externally, as appropriate. Applicants must declare they are independent of CILEx Group companies and CILEx Regulation Board and be free of conflict of interest. Lay members must not have been members of the legal profession. Applicants are shortlisted and interviewed by a panel (**Enforcement R.2(1)**).

Panellists are subject to ongoing appraisal. Removal of a Panellist will be in accordance with **Enforcement R.2(3)**.

The term of appointment of a Panellist must not be more than three years. No Panellist may serve for more than six years in total (**Enforcement R.2(4)**).

### **4.3 THE PROFESSIONAL CONDUCT PANEL (ENFORCEMENT RULES PART II)**



The PCP is the first-tier decision-making body. It considers Allegations and Prior Conduct declarations (**Enforcement R.7**). The PCP sits approximately every six weeks.

#### 4.3.1 Powers

The PCP applies its powers as set out at Annex 1 of this Handbook. The PCP gives reasons for its findings and any sanction applied.

In misconduct cases the burden of proof is on 'the balance of probabilities'. This is the civil test of proof. Its definition and application are in accordance with civil law of England and Wales. In Prior Conduct cases the PCP does not need to prove the conduct in order to impose sanctions as they are matters of fact.

#### 4.3.2 Conduct of meetings

PCP meetings are held in private (**Enforcement R.9(2)**). The PCP elects a Chair before the start of each meeting. Decisions are made by a majority vote of Panellists (**Enforcement R.9(8)**).

An independent Clerk advises Panellists on procedure and administers their meetings (**Enforcement R.9(4)**). The Clerk is not their legal adviser and takes no part in decision making. The attending Panellists approve the minutes of the meeting including the record of decisions made. Minutes are signed by the Chair of that PCP panel and held by CILEx Regulation as a record.

The Panellists are provided with an agenda for the meeting at least 10 days in advance of the meeting. The agenda is a list of cases and associated paperwork for consideration. Material received after the agenda has been sent out is provided to the Panellists by the Investigator, via the PCP Clerk, as soon as possible and before the meeting begins. CILEx Regulation notifies the Clerk of the times that any Relevant Person(s) will be attending, where their attendance has been requested by the PCP. Panellists raise any queries on the agenda with the Clerk who contacts CILEx Regulation for further information, if necessary.

On receipt of the agenda Panellists check for any conflict of interest and notify the Clerk immediately if there is a conflict of interest. The Clerk will find a replacement Panellist where there is a conflict. In some circumstances where the Relevant Person agrees that the Panellist who has declared a conflict can remain on the panel this will be permissible but must be confirmed in writing by the Relevant Person.

The PCP may determine the order in which it considers cases taking into account any Relevant Person's attendance times where they have been requested to attend. The PCP has the power to ask questions of Relevant Person(s). The Investigator may submit their views in writing and/or orally at the meeting (**Enforcement R.9(6)**). If the Investigator has submitted their views in writing only the PCP may request the Investigator's attendance to clarify the report and evidence, if necessary. Relevant Person(s) in attendance may make additional representations at the meeting.

The burden of proof rests with CILEx Regulation. This means that it is up to CILEx Regulation to establish its case rather than it being up to the Relevant Person to disprove it. The strict rules of evidence do not apply and the PCP may admit evidence

whether or not it would be admissible in civil proceedings and exclude evidence that would otherwise be admissible (**Enforcement R.10(2)**).

Where Relevant Persons or Investigators are in attendance the PCP retires to consider its decision. The Relevant Person(s) is invited to wait, unless a decision is unlikely to be reached on the same day. At the conclusion of the PCP's deliberations Relevant Person(s) are called back to hear the announcement of the PCP's decision, with reasons, as to whether:

- it will refer the matter to the Disciplinary Tribunal; or
- it has rejected the complaint as not proven; or
- it has found the complaint proven and will go on to consider sanction.

Where a complaint is found proven the PCP invites the Relevant Person(s) to make submissions on mitigation and jurisdiction, including whether a referral to the Disciplinary Tribunal for a full, oral hearing is appropriate, or whether the PCP has sufficient powers of its own to deal with the sanction. After submissions the PCP retires to deliberate. The PCP notifies the Relevant Person(s) of its decision and the reasons.

The PCP may order the publication of any Orders it makes in line with CILEx Regulation's Publication Policy (**Annex 3**). Publication is made in the public interest to promote high standards across the profession and does not form part of a sanction.

The Clerk provides a summary of the decisions to CILEx Regulation at the end of the meeting for notification to the parties. A formal record of the decision is produced by the Clerk within 14 days of the meeting (see Decision Notices at paragraph 4.3.4 below).

### **4.3.3 Representation**

PCP meetings are held in private (**Enforcement R.9(2)**). A Complainant has no right to appear or be represented before the PCP.

CILEx Regulation's Investigator may appear before the PCP to make oral submissions. If they do not exercise their right to make oral submissions, then the Investigator may still be required by the PCP to attend to answer questions.

Relevant Person(s) must attend if requested to do so by the PCP. In considering matters of Prior Conduct the PCP may request the Relevant Person's attendance at the meeting. If the Relevant Person and/or their representative attends the meeting, then CILEx Regulation can be represented too where it considers it appropriate (**Enforcement R.14(1)(c)**).

In cases of misconduct the PCP may also require a Relevant Person to attend before deciding on a sanction where the Relevant Person has admitted the Allegation(s) and consented to the PCP issuing one or more of the sanctions that fall within its powers (**Enforcement R.17(6)**). If the Relevant Person attends or is represented, then CILEx Regulation will also be represented if it considers it appropriate (**Enforcement R.17(6)**).

Costs of representation or attendance are not recoverable from CILEx Regulation.

### **4.3.4 Decision notices**

A record of each decision is produced by the Clerk and agreed by the Panellists. It is signed by the Chair. Approval of decision notices/minutes may be delegated to the Chair by other Panellists.

The PCP Clerk provides CILEx Regulation with a formal record of the PCP's decision within 14 days of the meeting. CILEx Regulation notifies the Applicant or Relevant Person of the PCP decision in writing and provides them with a copy of the decision notice within 7 days of receipt of the decision from the PCP Clerk. This means that, in practice, Applicants and Relevant Persons are notified of the PCP decision no later than 21 days after the PCP meeting (**Enforcement R.9(10)**).

The Applicant or Relevant Person is also notified of the next steps and of any right of appeal.

Any fee paid by an Applicant whose application is refused will be refunded by CILEx.

Any Complainants are notified of the decision after the appeal period expires.

#### **4.3.5 Power to decide matters without a meeting**

The PCP may determine a matter without a meeting (**Enforcement R.9(5)**). Where a matter is decided in this way the PCP must balance the interests of the parties involved. Where a sanction is imposed that restricts Membership serious consideration should be given to obtaining further representations and clear reasons should be given as to the decision made.

#### **4.3.6 Appeals**

An Applicant, Relevant Person or CILEx Regulation may appeal any decision or Order of the PCP other than a decision to refer a matter to the Disciplinary Tribunal. Each party has 42 days after the date on which the decision was made to appeal. An appeal must be in writing addressed to the Appeals Panel at the offices of CILEx Regulation (**Enforcement R.33**).

An appeal will not be accepted out of time unless an extension of time is granted. Once the time for appeal has passed the decision or Order of the PCP takes effect. Where publication of the decision is ordered it is published on the CILEx Regulation website, in the CILEx Journal and to other parties where CILEx Regulation deems it appropriate after the appeal period has expired.

An appeal against a PCP decision must state that it is being made under **Enforcement R.20(1)** and include the following:

- the name and address of the person appealing;
- the date, nature and other relevant details of the decision which are the subject of the appeal;
- a concise statement of the grounds of the appeal; and
- the name and address of the appellant's representative (if any) and whether correspondence should be sent to them instead of the appellant.

The appeal must also be signed by, or on behalf of, the person making the appeal.

Copies of any documents the appellant proposes to rely on for the purposes of the appeal must be sent with the appeal.

The grounds of appeal are likely to fall within the following categories:

- appeals against a PCP decision – new evidence has come to light that was not available and could not have been made available at the time of the original proceedings; and
- appeals against a sanction – the sanction was excessive, the wrong facts were used when calculating sanction, or there was a legitimate expectation that a particular sanction would be imposed.

An appeal hearing will be listed by CILEx Regulation taking into account the availability of all parties as far as is practicable. See also paragraph 4.5.4 below.

#### **4.3.7 Requests by Complainants for review of no action decisions**

Complainants may request a review by the PCP of a decision by an Investigator to take no action on a complaint. A request for a review must be made in writing within 21 days of notification of the decision to take no action. The PCP may decide to:

- confirm the Investigator's decision;
- require the matter to be investigated further; or
- refer the matter to the Disciplinary Tribunal on the basis there is a case to answer (**Enforcement R.20(3)**).

### **4.4 THE DISCIPLINARY TRIBUNAL (ENFORCEMENT RULES PART III)**

The Disciplinary Tribunal is the second-tier decision-making body. It deals with cases where a prima facie case of misconduct has been established and which is serious in nature or where evidence requires testing in the interests of justice.

Hearing dates are listed by CILEx Regulation.

#### **4.4.1 Powers**

The Disciplinary Tribunal must find the charges proved on the balance of probabilities. Where it finds one or more charges proved it may make the following orders:

- take no further action;
- reprimand or warn as to future conduct or both;
- impose conditions in respect of conduct or employment;
- exclude a Relevant Person(s) from Membership or Authorisation for a period it decides; or
- require an Authorised Entity who has been excluded from Authorisation to enter into a Practice Management Agreement.

In addition to the above, the Disciplinary Tribunal may:

- impose a fine, except where the Relevant Person has been excluded from Membership or Authorisation (see CILEx Regulation Fines Policy **Annex 6**); and/or
- make an order for costs (see CILEx Regulation Costs Policy **Annex 7**) (**Enforcement R.30(5)(a), (b) and (c)**).

Where the case is against an Authorised Entity whose Authorisation has been limited or excluded a Practice Management Agreement may be required (**Enforcement R.30(5)(c), R.30(6)**).

Where any Allegation against a Relevant Person is not proved the Disciplinary Tribunal may order CILEx Regulation to pay their reasonable costs.

The Disciplinary Tribunal may order the publication of any orders it makes in line with CILEx Regulation's Publication Policy (**Enforcement R.37(5)**). Publication is not part of a sanction. It is made in the public interest to promote high standards across the profession (**Annex 3**).

#### **4.4.2 Proceedings**

The conduct of the proceedings is in accordance with **Enforcement R.24 to R.29**.

The Allegations are considered by CILEx Regulation and formal charges are drafted. Once notice of proceedings is issued CILEx Regulation may, with leave of the Disciplinary Tribunal, amend or add new charges.

CILEx Regulation is the applicant in the proceedings and the Relevant Person is the respondent. Complainants are not a party to the proceedings but may be called as witnesses.

The burden of proof rests on CILEx Regulation to prove the charge(s) of misconduct on the balance of probabilities. The Investigator may present the case on behalf of CILEx Regulation or CILEx Regulation may be represented by a third party.

If at any time after an Allegation(s) has been referred to the Disciplinary Tribunal, either by an Investigator or by the PCP, and CILEx Regulation considers that the matter should no longer be referred (eg where new evidence comes to light) it can withdraw the Allegation(s) provided it does so before notice of the Disciplinary Tribunal hearing has been issued (**Enforcement R.17(7)**). Any later application to withdraw may be determined by the Disciplinary Tribunal.

CILEx Regulation will serve the notice of proceedings and evidence which the Relevant Person must acknowledge and respond to. CILEx Regulation acknowledges all documents received from the respondent and/or their representative.

Not less than 28 days prior to the hearing each party will serve on the other copies of the documentary evidence relating to the Allegation(s) and any witness statements which they intend to rely on.

Not less than 7 days before the hearing date CILEx Regulation produces and serves a hearing bundle on the respondent and the Clerk who forwards copies to the Disciplinary Tribunal members, in accordance with **Enforcement R.27**, comprising a minimum of:

- the allegations;
- all evidence including documents relied upon by CILEx Regulation and the respondent(s);
- any witness statements; and
- any other relevant notices, material or correspondence between the parties.

CILEx Regulation serves a copy of the bundle on all relevant parties including the respondent, the Disciplinary Tribunal Clerk and Panellists and any representative(s) of CILEx Regulation or the respondent. New evidence will not form part of the evidence without application to the Tribunal either prior to the hearing or as a preliminary application on the day of the hearing. The Disciplinary Tribunal will consider the introduction of any new evidence on the basis of whether it is in the interests of justice.

The Disciplinary Tribunal may consider preliminary matters and give directions for the management and conduct of the proceedings at any time after the matter has been referred to it. Applications for directions by any party must be made to the Clerk and copies served on all parties to the proceedings for response. The Clerk forwards applications and subsequent responses to the allocated Panellists sitting on the Disciplinary Tribunal.

When determining preliminary issues and giving directions for the management and conduct of proceedings the Disciplinary Tribunal, or a single Disciplinary Tribunal member, may direct that submissions or evidence at the substantive hearing be heard by video link or telephone.

The Clerk is notified of the Disciplinary Tribunal's decision and draws up an Order which is served by CILEx Regulation on all relevant parties. Applications for adjournments are considered in line with the CILEx Regulation Policy on Adjournment of Disciplinary Hearings (**Annex 4**).

#### **4.4.3 Conduct of hearings**

The Disciplinary Tribunal elects a Chair and makes decisions by majority. A hearing may continue with only two Disciplinary Tribunal members with consent of the parties. If a Disciplinary Tribunal of two is unable to make a decision the case will be re-heard by a new Disciplinary Tribunal at a later date (**Enforcement R.23**).

The Clerk deals with the administration of the Disciplinary Tribunal and is independent of CILEx Regulation. The Clerk does not take part in the Disciplinary Tribunal's deliberations. Any procedural or legal advice given during private deliberations will be relayed to parties to the hearing, unless it is legally privileged. Hearings are held in public unless the Disciplinary Tribunal decides to exclude the public from all or part of a hearing (**Enforcement R.28(1)**).

The Disciplinary Tribunal may from time to time determine its own procedure in accordance with the Enforcement Rules and guidance published by CILEx Regulation, subject to the overriding requirement of fairness. This will be decided on the individual circumstances of each case (**Enforcement R.22(2)**).

The Disciplinary Tribunal has power to make an interim order either on the application of an Investigator or of its own motion (**Enforcement R.31**).

A hearing may proceed in the absence of a Relevant Person. A Relevant Person who has neither attended nor been represented at the hearing may apply for a rehearing within 28 days of being notified of the decision (**Enforcement R.30(10)**).

Proceedings commence with CILEx Regulation presenting its case. The Relevant Person presents their case in response. Both parties may make submissions in response and call evidence from witnesses in support of their cases. The Relevant Person(s) may give evidence in person at their hearing. The Disciplinary Tribunal has the power to question Relevant Person(s), CILEx Regulation, representatives and witnesses.

At the conclusion of each party's evidence the Disciplinary Tribunal retires to consider whether the charges are proved on the balance of probabilities.

The Disciplinary Tribunal may announce its decision and reasons at the conclusion of the parties' cases, announce its decision but give reasons at a later date, or it may reserve its decision and reasons to a later date. Where the Disciplinary Tribunal reserves its decision or reasons or the Relevant Person does not attend it must notify its decision within 21 days after the hearing. The Disciplinary Tribunal has power to set a further hearing date to consider sanctions and costs.

Where the decision is not reserved and the charge(s) are found proved the parties are invited to make submissions on sanction and costs. The Relevant Person is required to provide a statement of means. CILEx Regulation informs the Disciplinary Tribunal of the details of any previous disciplinary proceedings in which any Allegation has been proved against the Relevant Person (**Enforcement R.30(4)(a)**). The Relevant Person may make submissions in mitigation in respect of costs.

After further private deliberations the Disciplinary Tribunal announces its decision on sanction, costs and publication to those parties in attendance. The Clerk draws up an Order which is served by CILEx Regulation on all relevant parties.

#### **4.4.4 Representation**

A party may be represented by any person whether or not they are legally qualified. However, the Disciplinary Tribunal has the power to refuse to permit a particular person to assist or represent a party if it is satisfied that there are good and sufficient reasons for doing so (**Enforcement R.28(3)**).

#### **4.4.5 Orders**

An Order approved by the Disciplinary Tribunal and signed by the Chair is provided to CILEx Regulation and the Relevant Person(s). This is sent by the Clerk to CILEx Regulation within 21 days of the hearing date. In turn, CILEx Regulation notifies the Relevant Person of the outcome, their right to appeal and provides them with a copy of the Order. Complainants are notified of the outcome of a hearing after any appeal period has expired except where no adverse finding was made in which case they are notified immediately.

The Order of the Disciplinary Tribunal sets out the Disciplinary Tribunal's decision and takes effect on the date of the hearing unless the Disciplinary Tribunal orders otherwise (**Enforcement R.30(8)**).

Hearings may be audio recorded. Recordings are kept for a minimum of one year (**Enforcement R.39**). The Disciplinary Tribunal's private deliberations are not recorded. A copy of the recording may be made available after the hearing. Any request for these may incur a reasonable administrative fee determined by CILEx Regulation, from time to time. Where a transcript of the audio is required the cost is borne by the party making the request.

Where a Relevant Person(s) has been ordered to pay costs or a fine, arrangements are made for recovery of the fine and/or costs, usually after the appeal period expires. CILEx Regulation will take appropriate action to recover payment from a Relevant Person where they default in making payment(s).

#### **4.4.6 Appeals**

Either CILEx Regulation or the Relevant Person may appeal a decision of the Disciplinary Tribunal (**Enforcement R.32**). Notice of appeal must be made in accordance with part 5 of the Enforcement Rules and lodged no later than 42 days after the date of the decision to be appealed.

### **4.5 THE APPEALS PANEL (ENFORCEMENT RULES PART IV)**

The Appeals Panel considers appeals:

- by Applicants for Membership, Authorisation or to be an Approved Manager or by CILEx Regulation, against decisions or orders of the PCP, other than referrals to the Disciplinary Tribunal (**Enforcement R.20(1)**);
- by persons against whom Allegations have been made, against a finding by the Disciplinary Tribunal that one or more Allegation(s) have been proved, or any sanctions or costs ordered by the Disciplinary Tribunal (**Enforcement R.32(2)**);
- by CILEx Regulation against a Disciplinary Tribunal decision or sanction (**Enforcement R.32(3)**);
- by persons or organisations affected by decisions of the Admissions and Licensing Committee against decisions of that Committee made by way of reconsideration (**Admissions and Licensing Committee Rules R.5, R.7**);
- by Chartered Legal Executive Litigators and Advocates who hold or have held a Criminal Proceedings Certificate against decisions of the Admissions and Licensing Committee to refuse or revoke reaccreditation or certification (**Admissions and Licensing Committee R.8**);
- by an Applicant or Authorised Entity or Applicant or designated Approved Manager against a decision by CILEx Regulation under the Authorisation Rules (**Authorisation Rules R.9**).

A hearing may be in private or in public depending on the type of appeal (**Enforcement R. 34(11) and (12)**); see also paragraph 4.5.5 below). An appeal may be considered without a hearing where Relevant Person(s) and/or representatives are notified and consent (**Enforcement R.36**).

#### **4.5.1 Powers of the Appeals Panel**

The Appeals Panel may:



- dismiss the appeal;
- allow the appeal and make such further Orders to enable it to give effect to its decisions including:
  - quash the decision appealed against;
  - remit the matter to the Disciplinary Tribunal, Admissions and Licensing Committee or CILEx Regulation (as the case may be) for reconsideration;
  - substitute the decision for one that the PCP, Disciplinary Tribunal, Admissions and Licensing Committee or CILEx Regulation could have made; and
- make ancillary orders including orders for costs and publication at any time after the notice of appeal has been lodged (**Enforcement R.34(7)**).

Appeals are a two-stage process:

- 1) The Appeals Panel must consider whether the appellant has demonstrated that the grounds of Appeal are 'made out'. If the grounds are not 'made out' the appeal is dismissed.
- 2) If the Appeals Panel agrees that some or all of the grounds of appeal are 'made out' they review whether the decision made at first instance was correct.

#### **4.5.2 PCP and Disciplinary Tribunal decisions**

In appeals against decisions of the PCP the Appeals Panel may substitute a decision with one that the PCP could have made at the time including a decision to refer to the Disciplinary Tribunal. The Appeals Panel applies the powers of the PCP (**Annex 1**).

In appeals against decisions of the Disciplinary Tribunal the Appeals Panel may substitute a decision with one that the Disciplinary Tribunal could have made at the time of the original hearing. The Appeals Panel applies the powers of the Disciplinary Tribunal (**Enforcement Rules Part III**).

The Appeals Panel should have regard to the CILEx Regulation Sanctions Guidance in determining a sanction (**Annex 2**).

#### **4.5.3 Publication of decisions**

Orders for notification and publication must be in line with the CILEx Regulation Publication Policy (**Annex 3**).

#### **4.5.4 Proceedings**

Proceedings are formal in nature. The party that lodges a notice of appeal is the appellant, the party who opposes the application is the respondent.

An appeal must be made in writing no later than 42 days after the date on which the decision that is being challenged was made. Appeals are lodged by giving notice in writing in accordance with **Enforcement R.33**. The notice of appeal must be addressed to the Appeals Panel at the CILEx Regulation offices and include the following:

- a statement that it is a notice of appeal;
- the rule that the appeal is being made under;
- the name and address of the appellant;

- the date, nature and other relevant details of the decision which is the subject of the appeal;
- a concise statement of the grounds of the appeal; and
- the name and address of the appellant's representative (if any) and whether correspondence should be sent to them instead of the appellant.

The appeal must also be signed by, or on behalf of, the person making the appeal and be accompanied by any documents on which the appellant wishes to rely for the purpose of the appeal.

On receipt of a notice of appeal the Clerk will send an acknowledgement of service to the appellant or his representatives. Thereafter a hearing date and time is set and all relevant parties are notified.

Prior to the appeal hearing CILEx Regulation produces a hearing bundle and as a minimum will comprise the following:

- the Disciplinary Tribunal or PCP case papers;
- all Orders of the lower decision making body;
- all evidence in support of the application to appeal and any response to the appeal.

CILEx Regulation produces copies of bundles which are served on the Appeals Panel and relevant parties to the proceedings. Should either party wish to introduce additional evidence after service of the bundles they must notify the Clerk and obtain leave from the Appeals Panel to introduce it.

Any request for adjournment is considered in accordance with CILEx Regulation Policy on Adjournments of Disciplinary Hearings (**Annex 4**).

#### **4.5.5 Conduct of hearings**

The Appeals Panel comprises of two lay members and one professional, one of whom will act as Chair (**Enforcement R.34(1) and R.34(2)**).

The Appeals Panel is assisted by an independent Clerk who advises the Panellists on procedure and makes a record of their decisions. The Clerk retires with the Appeals Panel but takes no part in the decision making.

Appeals made under **Enforcement R.32** are heard in public subject to rules under **Enforcement R.34(12)**.

An appeal hearing is conducted in accordance with **Enforcement R.34**. The Appeals Panel has the power to conduct the hearing in a manner that it considers most suitable. The burden of proof rests on the appellant.

Preliminary issues that require determination will be decided after CILEx Regulation and the appellant (or their representative) have made representations. The Appeals Panel will announce its decision on preliminary applications prior to the substantive hearing.

The Appeals Panel must decide if the grounds of appeal have been made out by the appellant and will listen to submissions from the appellant and respondent and may

ask questions. The Appeals Panel retires to consider its decision. Decisions of the Appeals Panel are to be made by a majority vote of the Panellists present. Where the grounds of appeal are not made out the appeal is dismissed.

Where any appeal grounds are made out the substantive appeal is heard. The Appeals Panel invites submissions from all parties to the application. The Appeals Panel may question both parties. The Appeals Panel retires to consider what action to take in respect of the decision under appeal and calls the parties back in to announce its decision.

The Appeals Panel may invite the parties to make submissions in respect of costs and, where applicable, on sanctions. The Appeals Panel retires to consider its decision. A further hearing date may be set where the Appeals Panel decides that it is in the interests of justice to do so. A decision will be announced at a hearing or in writing where appropriate.

There is no further right of appeal against a decision of the Appeals Panel.

#### **4.5.6 Representation**

A party may be represented by any person whether or not they are legally qualified. However, the Appeals Panel has the power to refuse to permit a particular person to assist or represent a party if it is satisfied that there are good and sufficient reasons for doing so (**Enforcement R.35**).

#### **4.5.7 Orders**

Notice of the Appeals Panel's decision is given in writing to the appellant within 21 days of the Appeals Panel's decision and will take effect 28 days after the date on which it was made (**Enforcement R.34(9)**).

### **4.6 INTERIM ORDERS**

If it is in the interests of the Relevant Person or for public protection the PCP (where a case is referred to the Disciplinary Tribunal) or the Disciplinary Tribunal may consider on its own motion or at the request of CILEx Regulation whether to suspend or restrict the Relevant Person's Membership or Authorisation by making an interim order. A Relevant Person that is also an Authorised Entity may be required to enter into a Practice Management Agreement (**Enforcement R.19(7) and R.31**).

An application for an interim order will be listed on the Agenda of a PCP meeting. In urgent cases a separate meeting will be called. The Relevant Person will be notified not less than seven working days before a proposed hearing date and the reasons for it (**Enforcement R.19(1) and R.31(2)**).

Notice must comply with **Enforcement R.19(3) and/or R.31(3)**. The Relevant Person(s) may make written and oral submissions. CILEx Regulation may be represented at the meeting.

Any hearing will be in accordance with procedure under the **Enforcement Rules Parts II and III** respectively.

Orders for suspension or restricted practice are effective immediately. Suspension or restriction can be ordered for up to 18 months and are reviewed every six months (**Enforcement R.19(6) and R.31(6)**). In some cases a Relevant Person(s) will be required to enter into a Practice Management Agreement (**Enforcement R.19(7)**).

Notice of the review dates are sent to the Relevant Person(s) who is invited to make submissions. The interim order may be revoked or extended. The Clerk informs CILEx Regulation of the decision who notifies the Relevant Person(s) in writing.

The Relevant Person(s) has a right of appeal to the Appeals Panel (**Enforcement R.32**).

Publication is in accordance with CILEx Regulation Publication Policy (**Enforcement R.37(5) Annex 3**).

#### **4.7 OTHER MATTERS**

Exhibits and transcripts will be held for a minimum of one year after the proceedings to which they relate (**Enforcement R.39**). Any request for these may incur a reasonable administrative fee determined by CILEx Regulation from time to time. Where a transcript of the audio is required the cost is borne by the party making the request.

Individuals may seek legal advice at any time during and at the conclusion of proceedings.

Where an order for costs has been made the parties to the proceedings may arrange mutually agreeable steps for payment. Where necessary CILEx Regulation will pursue its recovery of the costs through the courts. Where a Relevant Person remains in Membership failure to comply with the costs order may lead to a further Allegation of misconduct being brought against them and may affect their Membership and right to practise.

## **SECTION 5: ANNEXES**

[Annex 1: Powers of the Professional Conduct Panel \(PCP\)](#)

[Annex 2: Sanctions Guidance](#)

[Annex 3: CILEx Regulation Publication Policy](#)

[Annex 4: CILEx Regulation Policy on Adjournments of Disciplinary Hearings](#)

[Annex 5: Health Committee \(Procedure\) Rules](#)

[Annex 6: CILEx Regulation Fines Policy](#)

[Annex 7: CILEx Regulation Costs Policy](#)