

CONSULTATION ON PROPOSALS TO REVISE THE INVESTIGATION, DISCIPLINARY AND APPEALS RULES

1. CILEx Regulation is the independent regulator for Chartered Legal Executives, other grades of CILEx membership, CILEx Practitioners and firms. We take a risk based and outcomes focused approach to regulation, by working constructively with our regulated community to ensure that they deliver the best outcomes for clients. We believe that setting out clear principles within our Code of Conduct (the Code) and informing the public what standards they can expect provides a balanced approach.
2. The Investigation, Disciplinary and Appeals Rules (the Rules) outline how we deal with declarations of past conduct by our regulated community and investigate allegations of misconduct. The Rules set out the disciplinary powers available to our Professional Conduct Panel, Disciplinary Tribunal and the Appeals Panel.
3. We are applying to become a licensing authority. This will enable us to licence applicants to become Licensed Bodies, known as an Alternative Business Structures (ABS). This consultation seeks your views on our proposal to extend the application of the Rules to ABS, and other changes to provide operational clarity.
4. Whilst we consulted on changes to extend the Rules to ABS in early 2016, we believe it is appropriate to seek your views on these changes again for completeness.
5. This consultation will run for six weeks, closing at 5pm on 20 July 2017.

Why are we proposing change?

6. Since 5 January 2015 we have been authorised to regulate law firms whose owners and managers are authorised persons under the Act. The Act enables regulators to become Licensing Authorities and to regulate Licensed Bodies (known as ABS). An ABS is a regulated firm which provides legal services and has non-lawyer involvement either at management level, as an owner or shareholder. A non-lawyer is a person who is not authorised under the Act to carry out reserved or regulated legal activities.
7. The Rules were implemented on 5 January 2015. The current version applies equally across all members of our regulated community, regardless of the type of work they do or the setting within which they practise. The Rules govern how we investigate allegations, how our Panels and Tribunals work, how matters of prior conduct and fitness to own are dealt with, and other matters such as publication.
8. We made proposals in 2016 to extend the Rules to Licensed Bodies. The changes proposed will reflect our extended regulatory remit to include ABS, their owners, managers, designated officers and employees, and will make reference to powers conferred to us under our Licensing Rules.
9. The Licensing Rules will give us the power to:
 - require ABS and their owners, managers, designated officers and employees to declare fitness to own matters, (known as fit and proper declarations within the Licensing Rules);
 - investigate allegations of misconduct;
 - disqualify a person in an ABS and anyone who owns or is employed by it, where an allegation of misconduct is proved;
 - review disqualifications of individuals; and
 - deal with appeals.
10. These powers will apply to all employees of Licensed Bodies, whereas the powers under the Rules do not extend to all employees of firms that we regulate. The application of the Rules to employees of Licensed Bodies accords with the powers granted to licensing authorities under the Act.
11. The Rules will be referenced within our Licensing Rules to provide the Professional Conduct Panel, Disciplinary Tribunal and Appeals Panel with powers to investigate or decide matters that fall within their remit through our Licensing Rules.
12. The Rules are set out at Annex 1 with the changes we propose shown tracked. Our Licensing Rules are attached at Annex 2. Should you wish to refer to the consultation held previously on extending the Rules to ABS this is still on our website¹.

¹ http://www.cilexregulation.org.uk/~media/pdf_documents/cilex-regulation/consultations/closed-consultations/idar/consultation-idar-final-feb2016.pdf?la=en

13. We are also updating our Rules to provide greater transparency to the public about our role as a regulator when considering allegations of misconduct, and managing the expectations of outcomes that can be achieved throughout proceedings.

TITLE AND DEFINITIONS

14. We are changing the name of the Rules to the Enforcement Rules for simplicity and greater clarity for the regulated community and the public.
15. We have updated the definitions in the Rules to include the key positions of persons owning or working at an ABS, which are required by the Act in order for a firm to be licensed as an ABS. They have also been updated to provide operational clarity. The definitions have been consolidated so they appear at Rule 3 for ease of reference.

MISCONDUCT ALLEGATIONS

16. We propose to broaden the application of the Rules to cover investigation into misconduct allegations and disciplinary proceedings against ABS and all persons employed or holding relevant positions in an ABS. This will include owners, designated officers and managers. The Licensing Rules will require ABS to meet the criteria and standards set out in our Code and our Licensing Rules. In particular Rule 24 of the Licensing Rules provides us with the power to investigate failure to comply with the Licensing Rules as misconduct. This will be known as a “default”. We have reviewed and updated the Rules to allow complaints or allegations of misconduct received against owners, designated officers and managers and the ABS to be considered.
17. Our intention is that the process and powers for investigating complaints or allegations of misconduct about an ABS and anyone who works at an ABS, will be the same as for the remainder of the regulated community. However they will include additional powers conferred by the Licensing Rules, such as disqualification, or the power to consider reviews of some decisions made on licensing.
18. Broadening the scope of the Rules ensures that the procedures that apply to ABS are the same as those that apply to firms for the protection of the public and to maintain consistency in regulation and decision making. The proposed changes will enable us to better meet our regulatory objectives set out in the Act. The Rules have been drafted to ensure that client and public interest are at the forefront of the work of those subject to them and that procedures are transparent.

PRIOR CONDUCT

19. All CILEx members, CILEx Practitioners and owners of firms must declare prior conduct in any application for authorisation and annually at renewal or as part of an annual return.
20. A similar approach will be taken to ABS where any owner, designated officer or manager will be required to declare prior conduct. Prior conduct includes past criminal convictions,

financial orders and matters relating to whether a person is fit to own or manage a firm. Under our Licensing Rules these individuals will be required to declare that they are fit and proper to be an owner, designated officer or manager of the ABS. The procedure for dealing with whether someone is fit and proper will be the same as the procedure for dealing with fitness to own declarations.

21. Under our Licensing Rules the Professional Conduct Panel considers whether someone is a fit and proper person. The Panel will have the power to decide whether or not someone is fit and proper to become an owner, designated officer or manager in an ABS. This will be deemed a decision on fitness to own.
22. We will develop guidance for panellists in considering fit and proper declarations. This will take the same approach as the current fitness to own declarations.
23. We have made the definition of prior conduct clearer for the regulated community in order to assist those making declarations and those seeking to be regulated by us. These changes also provide further protections to the reputation of the profession, the public and those who retain the legal services of anyone we regulate.

REVIEW AND APPEALS

24. The Rules have also been broadened by our Licensing Rules and Admissions and Licensing Committee Rules to allow us to consider additional appeals. The Disciplinary Tribunal will have power to review decisions made under Rule 19 (4) (a) and (b) and 25 (h) of the Licensing Rules. Appeals against decisions under Rule 25 (1) (a) to (g) of the Licensing Rules will be heard by the Appeals Panel.
25. The procedure for review of decisions made under Rules 19 and 25 (h) of the Licensing Rules will be dealt with under Part III of the Rules which allow the Disciplinary Tribunal to consider and review the decisions made by us. They will both be called a “disqualification review”. As with current decisions of the Disciplinary Tribunal there will be an appeal available under Part IV of the Rules to the Appeals Panel.
26. The appeals procedure allows for independent review of decisions and delivers fairness and impartiality. Rule 26 of the Licensing Rules provides for decisions made under Rule 25 (1) (a) to (g) of the Licensing Rules to be appealed under Part IV of the Rules. This is to maintain consistency in decision making and to deliver the same fairness and impartiality.
27. Where an owner of an ABS considers that an unfavourable decision has been made, under Rule 26 of the Licensing Rules by the Appeals Panel, a further right of appeal exists. The further right of appeal to an appellate body is available under Rule 27 of the Licensing Rules. We will apply for these appeals to be made to the General Regulatory Chamber of the First Tier Tribunal.
28. Appeals under Rules 5, 7 and 8 of our Admissions and Licensing Committee Rules will introduce a formal appeal process under Part IV of the Rules, for those matters decided by

the Admissions and Licensing Committee. This will provide independent and impartial review of their decision, and deliver fairness to individuals.

CONSULTATION QUESTIONS

Question 1

Do you agree that the procedure and powers set out under the Rules for investigation of misconduct allegations be extended to ABS, their owners, designated officers, managers and employees?

Yes/No?

Please provide any other comments.

Question 2

Do you agree that the Rules be extended to allow fit and proper declarations to be decided by the Professional Conduct Panel under the same procedure as fitness to own declarations?

Yes/No?

Please provide any other comments.

Question 3

Do you agree that the procedure within the Rules be used for a review of disqualification decisions?

Yes/No?

Please provide any other comments.

Question 4

Do you agree that we should select the First Tier Tribunal to deal with licensing appeals?

Yes/No?

Please provide any other comments.

Question 5

Do you have any further comments regarding the changes proposed to the Rules?

Yes/No?

HOW TO RESPOND

Please send your response to this consultation by one of the following methods:

- By email to consultations@cilexregulation.org.uk. Mark it for the attention of Saadia Siddiqui, Investigation Manager.
- By post to CILEx Regulation Ltd, Kempston Manor, Kempston, Bedford MK42 7AB.
- By DX to CILEx Regulation, DX 124780 Kempston 2.

You may use the response form on our website here:

<http://www.cilexregulation.org.uk/about-us/consultations/open-consultations>

The deadline for responses is **5pm on 20 July 2017**.