

ENFORCEMENT HANDBOOK 2018

CILEx Regulation

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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.

ALC	means the Admissions and Licensing Committee.
Appeals Panel	means the Appeals Panel established for the purposes set out in Part IV of the Enforcement Rules.
Allegation(s)	means where CILEx Regulation receives a complaint or other information that a Relevant Person may have engaged in misconduct.
Applicant	means a Person applying (a) for Membership or Authorisation, or (b) to be an Approved Manager.
Approved Manager	has the meaning given to it in the Authorisation Rules.
Authorisation	means (a) authorisation by CILEx Regulation, or (b) authorisation or approval by CILEx Regulation, as a Relevant Person.
Authorised Entity	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.
CILEx Member	means a person who has been admitted to Membership of CILEx in any grade.
CILEx Practitioner	means a practitioner authorised by CILEx Regulation to provide one or more regulated legal activities.
Clerk	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.
the Code	means the CILEx Code of Conduct of the Chartered Institute of Legal Executives and CILEx Regulation in force from time to time.
Complainant(s)	means a person who has made a complaint against, or reported, a Relevant Person(s) to CILEx Regulation.

Disciplinary Tribunal	means the Disciplinary Tribunal established for the purposes set out in Part III of the Enforcement Rules.
Investigator(s)	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.
Membership	means enrolment or reinstatement as a CILEx Member.
Order	means a binding decision of the PCP, Disciplinary Tribunal or Appeals Panel, and may be referred to as a Decision Notice.
Panellist(s)	means a lay or professional member of the PCP, Disciplinary Tribunal or Appeals Panel.
PCP	means the Professional Conduct Panel established for the purposes set out in Part II of the Enforcement Rules.
Prior Conduct	means any adverse conduct which may have implications for an Applicant or Relevant Person's Membership or registration with CILEx (Enforcement R.11).
Relevant Person(s)	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**):

	CILEx Member	CILEx Practitioner	Approved Manager	Authorised Entity
	PROFESSIONAL CONDUCT PANEL DECISIONS ENFORCEMENT R.17(3) AND (4)			
1	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
2	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
3	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
4	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
	DISCIPLINARY TRIBUNAL DECISIONS ENFORCEMENT R.30(5)			
5	Take no further action	Take no further action	Take no further action	Take no further action
6	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
7	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
8	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

9	-	-	-	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
APPEALS PANEL DECISIONS ENFORCEMENT R.34 (7)				

	APPEAL FROM PCP, DT and ALC DECISIONS	APPEALS FROM PCP, DT and ALC DECISIONS and DISCIPLINARY TRIBUNAL DECISIONS	APPEALS FROM ALC DECISIONS	APPEALS FROM PCP, DISCIPLINARY TRIBUNAL, ALC and CILEx REGULATION DECISIONS
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 Enforcement R.35(7)(ii)	Allow the appeal and remit the matter for reconsideration in accordance with Enforcement R.35 (7)(ii)	Allow the appeal and remit the matter for reconsideration in accordance with Enforcement R.35(7)(ii)	Allow the appeal and remit the matter for reconsideration in accordance with Enforcement R.35(7)(ii)
15	Allow the appeal and substitute the decision in accordance with Enforcement R.35(7)(b)(iii)	Allow the appeal and substitute the decision in accordance with Enforcement R.35(7)(b)(iii)	Allow the appeal and substitute the decision in accordance with Enforcement R.35(7)(b)(iii)	Allow the appeal and substitute the decision in accordance with Enforcement R.35(7)(b)(iii)
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**).

	CILEx Member	CILEx Practitioner	Approved Manager	Authorised Entity
	PROFESSIONAL CONDUCT PANEL DECISIONS: ENFORCEMENT R.14(3)			

1	Refuse application for Membership	Refuse application for Authorisation	Refuse application for Approval	Refuse application for Authorisation
2	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
3	Decide to take no further action and make a direction to an Investigator as to how to deal with the matter	Decide to take no further action and make a direction to an Investigator as to how to deal with the matter	Decide to take no further action and make a direction to an Investigator as to how to deal with the matter	Decide to take no further action and 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](#)



ANNEX 1

CILEx REGULATION

POWERS OF THE PROFESSIONAL CONDUCT PANEL

POWERS OF THE PROFESSIONAL CONDUCT PANEL

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

Prior Conduct¹ - Rule 14

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

Misconduct - Rule 17

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

PRIMA FACIE CASE Retaining Jurisdiction

¹ Prior Conduct here also includes Fitness to Own declarations

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

BALANCE OF PROBABILITIES:

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

DECISION - Sanction or Referral – Rule 17(4)

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

Publication

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



ANNEX 2

CILEx REGULATION

SANCTIONS GUIDANCE

SANCTIONS GUIDANCE

PREAMBLE

1. This document has been established by CILEx Regulation as a guide for its Professional Conduct Panel (PCP), Disciplinary Tribunal (DT) and Appeals Panel (AP). These bodies are collectively referred to in this document as the 'Conduct Panels'. This guidance will also be used from time to time by Investigators of CILEx Regulation when exercising delegated functions. This guidance is an Annex 2 of the Enforcement Handbook.
2. This document is intended to promote proportionality, consistency and transparency in decision-making. CILEx Regulation is committed to promoting equality and safeguarding diversity; its procedures and processes aim to operate in a manner that is free from unlawful discrimination.
3. In the interests of fairness to all parties to the proceedings this guidance outlines the powers and sanctions available to the Conduct Panels and those involved in decision-making. In all cases written reasons must be given by the Conduct Panels for the decisions.
4. This document is guidance only. It is not binding upon a Conduct Panel to follow it. The Enforcement Rules supersede any interpretation or meaning contained within this guidance.

GENERAL CONSIDERATIONS

5. The purposes of sanctions are to:

Promote:

- good practice by CILEx members and Relevant Persons;
- public awareness of the standards they can expect of CILEx members and Relevant Persons; and
- confidence in the profession on the part of all involved in the administration of justice.

Protect:

- clients;
- the public interest; and
- the interests and reputation of CILEx, its members and the legal profession.

6. In considering what sanction or decision to make a Conduct Panel may take into account various factors for example, but not limited to:
- the nature and seriousness of the breach;
 - the risk to the public;
 - the protection of the reputation of the profession;
 - the impact of the misconduct on the affected individuals;
 - whether the actions of the Relevant Person(s) were dishonest, reckless or deliberate;
 - whether there are existing Prior Conduct matters;
 - whether the misconduct is admitted;
 - whether the Relevant Person(s) has been transparent and timely in providing information about their conduct;
 - whether the Relevant Person(s) has/have shown insight or remorse;
 - whether the Relevant Person(s) attempted to rectify the breach;
 - evidence of rehabilitation;
 - the personal circumstances of the Relevant Person(s);
 - character evidence and references.
7. Details of **Mitigating Factors** and **Aggravating Factors** are provided to assist the Conduct Panels but are not exhaustive. They are to enable the Conduct Panels to balance the facts before them when reaching a decision, or sanction. Where a Conduct Panel discounts a mitigating or aggravating factor it should provide clear written reasons as to why it has done so.

Professional Conduct Panel (PCP)

8. The PCP considers matters of Prior Conduct, Fitness to Own and allegations of misconduct.

Prior Conduct matters are considered after a Relevant Person or Applicant makes a declaration that raises a question as to their suitability to remain a Relevant Person or become a member of CILEx or Relevant Person.

Fitness to Own matters are considered after a Relevant Person or Applicant makes a declaration that raises a question as to their suitability to remain owners of entities or become an owner of an entity authorised by CILEx Regulation.

9. **The Rehabilitation of Offenders Act 1974** exempts some individuals who have historical Prior Conduct matters recorded against them from disclosure. Unless an individual is applying to become a Chartered Legal Executive (Fellow of CILEx) or applying for CILEx Practice Rights or Entity Authorisation, spent convictions or cautions do not need to be disclosed. Spent convictions must be disclosed when applying to become a Chartered Legal Executive (Fellow of

CILEx) or when applying for CILEx Practice Rights or Entity Authorisation. This is subject to the following proviso: relevant individuals do not need to declare spent convictions or cautions where the conviction or caution is protected under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 which provides as follows:

- A **protected caution** is a caution that was given to a person aged over 18 more than six years ago or to a person under 18 more than two years ago.
- A **protected conviction** is a conviction where the person did not receive a prison sentence and where they were aged over 18 at the time of the conviction and more than 11 years have passed, or where the person was under 18 more than five years and six months have passed since the date of conviction.

In each case the person must not have been convicted of any further offences.

10. In instances of Prior Conduct declarations the PCP has to decide what action to take as a result of the declaration by the Relevant Person or Applicant.
11. Allegations of misconduct against Relevant Persons can be made by anyone, but are typically made by clients, third parties in legal proceedings or employers. CILEx Regulation can also initiate an investigation into the conduct of a Relevant Person in the absence of a complaint or complainant.
12. CILEx Regulation investigates allegations and will refer cases to the PCP. Where there is no evidence of misconduct the investigation will be terminated. The PCP decides whether a case to answer can be established to substantiate the allegation. Where a case to answer can be demonstrated the PCP decides whether to dispose of the matter itself or to refer it to the DT.
13. Some decisions may be made under a delegated procedure, by an Investigator.

Disciplinary Tribunal (DT)

14. The DT considers all cases referred to it by the PCP or where a case has been referred directly by a delegated decision.
15. The DT decides on the balance of probabilities, whether the charges have been proved and will consider sanction and costs where charges are proved. The DT will hear submissions from both parties on mitigation and costs before reaching its decision. The DT will give written reasons for its determination and have consideration of paragraphs 5 to 7 above.

Appeals Panel (AP)

16. The AP considers appeals made against decisions of the PCP or DT. The AP decides whether the appellant has shown grounds for appeal and, will proceed to determine the matter, where grounds are shown.
17. Where the grounds for appeal have not been 'made out' the AP will dismiss the appeal, affirm the original decision and make any ancillary orders where appropriate.
18. Where the grounds for appeal have been 'made out' in full the AP will, after reconsideration of the original matter, quash or substitute the decision of the lower Conduct Panel. Ancillary orders are made, where appropriate.
19. The AP will give written reasons for its determination and have consideration of paragraphs 5 to 7 above.

PCP POWERS ON PRIOR CONDUCT AND FITNESS TO OWN

20. The PCP has a duty to consider cases of Prior Conduct in a manner that is fair, in the interests of the public, Relevant Person(s) or Applicant(s) and for the protection of the reputation of the profession. In order to do this it might do the following:
 - request additional information from the Relevant Person(s) or Applicant(s); or
 - seek advice from or refer the matter to an Investigator or committee of CILEx or CILEx Regulation; or
 - request the Relevant Person(s) or Applicant(s) attend a meeting. Where the Relevant Person(s) or Applicant(s) is/are an entity a representative will be requested to attend.
21. The PCP might, after considering whether further information is required and/or the new information and/or after seeking advice take the following decisions:
 - take no further action;
 - accept a Relevant Person's or Applicant's application;
 - refuse a Relevant Person's or Applicant's submitted application;
 - impose conditions on a Relevant Person or Applicant in relation to their conduct or their employment;
 - require a Relevant Person or Applicant give undertakings as to their future conduct;
 - warn and/or reprimand a Relevant Person or Applicant; or
 - refer a case to the Disciplinary Tribunal.

PCP POWERS ON ALLEGATIONS

22. The PCP has a duty to consider allegations made against a Relevant Person and determine whether there is a case to answer. The Panel shall consider it in a manner that is fair and in the interests of the public and for the protection of the reputation of the profession and Relevant Person. In order to do this they may do the following:
- consider jurisdiction, as a matter may be referred to another committee where it is more appropriate to do so, such as the Health Committee (dealing with fitness to practise on health grounds);
 - request any additional information from the Relevant Person or Applicant, such as references. The PCP may specify what matters a reference should address;
 - seek advice from, or refer the matter to, any Investigator or other committee of CILEx;
 - seek procedural advice from the Clerk present at the proceedings;
 - adjourn the hearing until such information or advice is received;
 - Request a Relevant Person or, where the Relevant Person is an entity, a representative of that entity, attend a meeting of the Panel
23. The PCP may make the following decisions:
- determine there is no case to answer;
 - decide there is a case to answer and refer the allegation to the DT;
 - decide there is a case to answer and with the consent of the Relevant Person and where they have admitted the allegation do the following:
 - impose conditions in relation to their conduct or in the case of an individual their employment;
 - require the Relevant Person to give undertakings as to their future conduct;
 - reprimand the Relevant Person and/or warn them as to their future conduct.

DT POWERS ON ALLEGATIONS

24. The DT has a duty to consider allegations made against a Relevant Person or Applicant in a manner that is fair.
25. Where an allegation is not proved the DT must:
- dismiss the charges; and
 - may order CILEx Regulation to pay the reasonable costs of the respondent.

26. Where an allegation is proved in part or whole the DT may:

- take no further action; or
- reprimand the respondent and/or warn them as to their future conduct.
- impose conditions in relation to their conduct or in the case of an individual their employment;
- fine in accordance with the CILEx Regulation Fines Policy, except where the respondent has been excluded from Membership or Authorisation;
- order exclusion of the respondent from Membership or Authorisation for a fixed or indefinite period and may make recommendations with regard to future reinstatement;
- require a respondent that is an Authorised Body which has been excluded from Authorisation to enter into a Practice Management Agreement; and/or
- make any ancillary orders where appropriate.

PRIOR CONDUCT AND FITNESS TO OWN DECLARATIONS

FACTORS TO CONSIDER

27. The PCP will decide either to:

- accept the application;
- accept the application subject to an order of the PCP;
- reject the application; or
- refer a matter to the DT.

28. In deciding Prior Conduct and Fitness to Own cases and whether to accept an application or take no further action, the PCP shall consider the timeliness of the declaration and whether there was unreasonable delay or dishonesty in making the declaration. The Panel shall consider the risk to the public and the protection of the reputation of the profession. Where an application is made in respect of a person who is struck off, disbarred, suspended or otherwise disqualified under the scheme of another approved regulator and/or a licensing authority then the Panel shall not authorise such person unless or until the disqualification order has been set aside by that approved regulator or licensing authority as the case may be or in the case of a suspension it has expired. The Panel may consider the following factors in relation to the types of declaration:

Financial orders

Mitigating factors	Aggravating factors
Arrangements have been made to pay creditors	No arrangements have been made to pay creditors and/or are not satisfactory
Arrangements are satisfactory	Arrangements are not satisfactory
Payments are being made	Payments were arranged but are not being made
Insight into conduct has been demonstrated	No insight into conduct has been demonstrated
Remorse has been expressed	There is no/little evidence of remorse
There is no dishonesty or serious financial mismanagement	There is dishonesty or serious financial mismanagement
It is an isolated incident	A pattern of minor or serious consistent failings

Convictions and cautions

Mitigating factors	Aggravating factors
The conviction or caution is spent. Protected convictions or cautions will be excluded (unless further offences have been committed)	Further offences have been committed and/or the offence is not spent
There is no other prior conduct	There is other prior conduct
It is a first time offence and/or the duration of the offence was limited	There are numerous offences and/or committed over a period of time
Insight into conduct has been demonstrated	No insight into conduct has been demonstrated
Remorse has been expressed	There is no/little evidence of remorse
Evidence of rehabilitation or associated treatment	No evidence of rehabilitation or associated treatment
There was no dishonesty and/or violence	There was dishonesty and/or violence

Additional Considerations (but not limited)

- The nature of the offence
- Was a custodial sentence imposed
- Was there any bribery involved in the offence
- Was there any conduct that involved the obstruction in the course of justice
- Has the Relevant Person been included on the Violent and Sex Offender Register
- Is any of the conduct discriminatory towards others
- Has the conduct affected vulnerable individuals
- The time elapsed since the offence took place

Order by professional body, such as s43 order

Mitigating factors	Aggravating factors
The misconduct is historical	The misconduct is recent
Evidence of rehabilitation or associated treatment	No evidence of rehabilitation or associated treatment
Insight into conduct has been demonstrated	No insight into conduct has been demonstrated
Remorse has been expressed	There is no/little evidence of remorse
No perceived and/or foreseeable risk to the public or consumer interest	There is perceived and/or foreseeable risk to the public or consumer interest

Additional Considerations (but not limited)

- Has there been a failure to disclose information (and has that failure been dishonest or reckless)?
- Has there been a failure to respond to or otherwise deal with a regulatory request?
- Have any regulatory requirements been breached?
- Has there been any disciplinary proceedings and the outcome of the same?
- Was there any conduct that involved the obstruction in the course of justice?
- Is any of the conduct discriminatory towards others?
- Has the conduct affected vulnerable individuals?

29. The Panel may consider that by making a specific order to be complied with, an application for Membership could then be accepted. The Panel will provide written reasons why, if this is the case.

UNDERTAKINGS AND CONDITIONS

30. An **undertaking** is a signed agreement by a person (in this case the Relevant Person and in the case of an entity the Approved Manager) to refrain from taking certain action, or take a particular course of action. The undertaking shall set out a timescale within which action is to be taken; and must be capable of being monitored. This is usually an act that requires completing within a certain timeframe or an agreement not to act in a particular way for a defined length of time. Undertakings may be appropriate in cases where a Relevant Person or Applicant can register or continue in Membership subject to an agreement.
31. A **condition** is something that will usually restrict, limit or modify a person's (in this case the Relevant Person's) working practice by agreement (or in the case of an entity the Approved Manager will agree to the conditions). Conditions of practice may be appropriate where the offence is not serious and imposing them will assist in modifying future practices, such as supervising administrative tasks

to ensure efficient and appropriate record-keeping takes place. Or it may limit the types of work they can do within their specialist field. Conditions should be for a defined period of time. Written confirmation from the Relevant Person or third party that the periods of conditions have been complied with must be sent to CILEx Regulation who will confirm that the conditions period is discharged.

32. Conditions should be aimed at addressing a specific risk. The PCP may consider the following factors when deciding whether an undertaking or conditions are suitable. Where the aggravating factors are numerous the PCP may consider a more serious sanction:

Financial orders

Mitigating factors	Aggravating factors
Arrangements have been made to pay creditors and are satisfactory	No arrangements have been made to pay creditors and/or are not satisfactory
Payments are not being made on a regular basis but will be if an undertaking is given or condition is imposed	No payments were arranged, or arrangements were made but no payments made, and will not be paid if an undertaking or condition is given and will be insufficient to enforce it
The Relevant Person or Applicant is willing to provide an undertaking or agree to conditions and comply	The Relevant Person or Applicant is not willing to agree to or comply with an undertaking or conditions
There is only one financial order	There are many financial orders
Controls are in place to prevent future orders	There is a risk of future orders
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	There is little/no evidence of remorse
There is no dishonesty or serious financial mismanagement	There is dishonesty or serious financial mismanagement

Convictions and cautions

Mitigating factors	Aggravating factors
The conviction or caution is spent. Protected convictions or cautions will be excluded (unless further offences have been committed)	Further offences have been committed and/or the offence is not spent
There is no other prior conduct	There is other prior conduct
There was no dishonesty and/or violence	There was a pattern of consistent dishonesty and/or violence
There is a willingness to provide undertakings/conditions	There is unwillingness to provide and comply with undertakings/conditions
Evidence of rehabilitation or associated treatment	No evidence of rehabilitation or associated treatment
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	There is little/no evidence of remorse

No perceived and/or foreseeable risk to the public or consumer interest	There is perceived and/or foreseeable risk to the public or consumer interest that cannot be resolved by way of conditions or undertakings
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Additional Considerations (but not limited)

- The nature of the offence
- Was a custodial sentence imposed?
- Was there any bribery involved in the offence?
- Was there any conduct that involved the obstruction of the course of justice?
- Has the Relevant Person been included on the Violent and Sex Offender Register?
- Is any of the conduct discriminatory towards others?
- Has the conduct affected vulnerable individuals?
- The time elapsed since the offence took place.

Order by professional body, such as s43 order

Mitigating factors	Aggravating factors
Misconduct is historical	Misconduct is recent
Action has been taken to address misconduct	No or limited action has been taken to address misconduct
Evidence of rehabilitation or associated treatment	No evidence of rehabilitation or associated treatment
Undertakings or conditions can address concerns of re-entry and/or work within the profession	Undertakings or conditions cannot address concerns of re-entry and/or work within the profession
Undertakings or conditions are sufficient to protect public or consumer interest and the Relevant Person or Applicant is likely to or will comply	Undertakings or conditions are insufficient to protect public or consumer interest and the Relevant Person or Applicant is unlikely to or will not comply
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	There is little/no evidence of remorse

Additional Considerations (but not limited)

- Has there been a failure to disclose information (and has that failure been dishonest or reckless)?
- Has there been a failure to respond to or otherwise deal with a regulatory request?
- Have any regulatory requirements been breached?
- Has there been any disciplinary proceedings and the outcome of the same?
- Was there any conduct that involved the obstruction of the course of justice?
- Is any of the conduct discriminatory towards others?
- Has the conduct affected vulnerable individuals?

REPRIMAND OR WARN

33. The PCP may reprimand or warn Relevant Persons if they are existing members or they are regulated by CILEx Regulation but not members. A reprimand may be given in respect of ***past conduct***. A warning will be given in respect of ***future conduct***. Reprimands and warnings are appropriate in cases where the matter is serious in nature but the PCP judges on the circumstances that the Relevant Person is suitable to continue as a member of CILEx or be authorised by CILEx Regulation.
34. In deciding whether to reprimand or warn a Relevant Person the PCP may consider the following factors; where the aggravating factors are numerous the PCP may consider a more serious sanction:

Financial orders

Mitigating factors	Aggravating factors
Arrangements have been made to pay creditors and are satisfactory	No arrangements have been made to pay creditors and/or are not satisfactory
Payments were not made on a regular basis but are now	Payments were arranged but none were made and no payments will be made in future
There is more than one financial order	There are many financial orders
Steps taken or being taken to prevent future orders	There is a risk of future orders
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	There is no/little evidence of remorse
There is no dishonesty or serious financial mismanagement	There is dishonesty, a pattern of consistent failings or serious financial mismanagement

Convictions and cautions

Mitigating factors	Aggravating factors
The conviction or caution is spent. Protected convictions or cautions will be excluded (unless further offences have been committed)	Further offences have been committed and/or the offence is not spent
There is no other prior conduct	There is other prior conduct
It is a first time offence and/or the duration of the offence was limited	Further offences have been committed and/or the offence is not spent
There was no dishonesty and/or violence	There was a pattern of consistent dishonesty and/or violence
There is evidence of rehabilitation or associated treatment	No evidence of rehabilitation or associated treatment
Insight has been demonstrated	No insight has been demonstrated

Remorse has been expressed	There is no/little evidence of remorse
No perceived and/or foreseeable risk to public or consumer interest	There is a perceived and/or foreseeable risk to public or consumer interest that will continue

Additional Considerations (but not limited)

- The nature of the offence
- Was a custodial sentence imposed?
- Was there any bribery involved in the offence?
- Was there any conduct that involved the obstruction in the course of justice?
- Has the Relevant Person been included on the Violent and Sex Offender Register?
- Is any of the conduct discriminatory towards others?
- Has the conduct affected vulnerable individuals?
- The time elapsed since the offence took place.

Order by professional body, such as s43 order

Mitigating factors	Aggravating factors
Misconduct is historical	Misconduct is recent
Action was taken to address misconduct	No, or limited action has been taken to address misconduct
Evidence of rehabilitation	No evidence of rehabilitation
No perceived and/or foreseeable risk to public or consumer interest	There is a perceived and/or foreseeable risk to public or consumer interest
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	There is no/little evidence of remorse

Additional Considerations (but not limited)

- Has there been a failure to disclose information (and has that failure been dishonest or reckless)?
- Has there been a failure to respond to or otherwise deal with a regulatory request?
- Have any regulatory requirements been breached?
- Has there been any disciplinary proceedings and the outcome of the same?
- Was there any conduct that involved the obstruction of the course of justice?
- Is any of the conduct discriminatory towards others?
- Has the conduct affected vulnerable individuals?

REFUSE OR REFER AN APPLICATION TO DISCIPLINARY TRIBUNAL

REFUSAL

35. The PCP may refuse an Applicant's application. An Applicant whose application is refused may make future applications to enrol or to upgrade. The PCP will determine whether their current grade of membership is appropriate. The Panel shall have in mind paragraphs 5 to 13, 20 to 23 and 27 to 34 when considering whether or not to refuse an application and will set out written reasons for their decision.

REFERRAL

36. Prior Conduct declarations may be referred to the DT by the PCP where the evidence in the case demonstrates a case to answer of misconduct and it is serious (by assessing the level of culpability and the harm caused). The PCP may also refer a matter where it considers its powers of sanction are not wide enough or the evidence is such that it requires testing at a formal hearing.
37. The PCP may consider the following factors dependent on the type of case:

Financial orders

No arrangements have been made to pay creditors
Arrangements were made but not complied with
There are numerous financial orders
There is a risk of future orders
The Relevant Person has shown no insight into their conduct
The Relevant Person has not expressed remorse
There is dishonesty, a pattern of consistent failings, or serious financial mismanagement

Convictions and cautions

The nature of the offence
There is Prior Conduct
There were a number of offences and/or a risk of re-offending
There was dishonesty or violence
No evidence of rehabilitation or receipt of treatment
The Relevant Person has not shown insight into their conduct
The Relevant Person has not expressed remorse
There is a risk to public or consumer interest
Vulnerable individuals have been affected

Order by professional body such as s43 order

Misconduct is recent
No or limited action to address misconduct
No evidence of rehabilitation or associated treatment
Potential for future risk to public or consumer interest
The Relevant Person or Applicant has not shown insight into their conduct
The Relevant Person or Applicant has not expressed remorse

Additional Considerations (but not limited)

- The nature of the offence
- Was a custodial sentence imposed?
- Was there any bribery involved in the offence?
- Was there any conduct that involved the obstruction of the course of justice?
- Has the Relevant Person been included on the Violent and Sex Offenders Register?
- Is any of the conduct discriminatory towards others?
- The time elapsed since the offence took place;
- Has the conduct affected vulnerable individuals?
- Has there been a failure to disclose information (and has that failure been dishonest or reckless)?
- Has there been a failure to respond to or otherwise deal with a regulatory request?
- Have any regulatory requirements been breached?
- Has there been any disciplinary proceedings and the outcome of the same?

DECISIONS DELEGATED IN RESPECT OF PRIOR CONDUCT MATTERS

38. An Investigator of CILEx Regulation has the power to determine that no action be taken in relation to declarations of Prior Conduct where:
- (a) there is an outstanding financial judgment and there is no evidence of
 - (i) persistent or deliberate failure to meet financial obligations; or
 - (ii) a related criminal offence; or
 - (iii) failure to make arrangements to pay off debts;
 - (b) there is a caution or spent conviction and they are not a CILEx Fellow or applying for CILEx Fellowship, or they have declared a 'protected caution or conviction' as defined by SI 2013 No.1198;
 - (c) there is a driving offence, and,
 - (i) there is no persistent pattern of offending;
 - (ii) a custodial sentence was not imposed; and
 - (iii) disqualification imposed was not 18 months or more;
 - (d) there is a bankruptcy order or a credit agreement has been entered into; or
 - (e) Prior Conduct is of a kind which the Panel has given the Investigator delegated authority to determine.

Any application that relates to, entity authorisation, an Approved Manager, a Compliance Manager or Practice Rights will be sent to the PCP whether or not Prior Conduct has previously been declared.

The investigating Officer may refer any other matter to the PCP for a decision notwithstanding the general delegation to them of that type of case.

DELEGATED DECISIONS IN RESPECT OF ALLEGATIONS

39. An Investigator has the power to **reject** allegations without further reference to the PCP where:
 - there is no evidence to substantiate the allegation; or there is no misconduct as defined within the CILEx or CILEx Regulation rules or regulations; or CILEx Regulation has no jurisdiction to consider the allegation; or the complaint is 'made out' of time, namely not less than one year or such time as CILEx Regulation may prescribe.
40. An Investigator has power to **refer** allegations directly to the DT without further reference to the PCP where there is a prima facie case of misconduct, and either:
 - the allegation is of a serious nature; or
 - the Relevant Person has previously been subject to an adverse finding by the PCP or DT which is similar in nature.
41. In exercising their power to **refer or reject** a case the Investigator shall:
 - provide written reasons for their decision;
 - notify the Relevant Person and Complainant within 21 days of the decision;
 - report the decision to the PCP.

DECISIONS DELEGATED IN RESPECT OF DETERMINATION BY CONSENT

42. Where the evidence available demonstrates a case to answer and the Relevant Person admits the allegation, they may agree with an Investigator to determine the matter by consent. The terms shall be agreed between the Investigator and the Relevant Person, save as to costs. The Determination by Consent will only come into effect once it has been approved by order of the Panel.

POWERS AVAILABLE IN ALLEGATION CASES

43. These are powers available to the PCP or DT unless specifically delegated to an Investigator.

INTERIM ORDERS

44. The PCP or DT may decide, on an application by an Investigator or of its own volition, to suspend or restrict a Relevant Person's Membership or Authorisation pending a hearing or the conclusion of a hearing.

45. This order should only be made in cases where the PCP or DT is satisfied that it is necessary to protect the public, in the interests of the Relevant Person or otherwise in the public interest. The Panel should also consider the impact of an interim order upon the Relevant Person and their practice.
46. The Relevant Person must be given reasonable notice of an application unless the Panel is satisfied that notice is not possible or is inappropriate due to the seriousness or urgency of the matter. The notice must include details of all information required under Enforcement Rule 19 (3), for the Conduct Panel making the decision. The Relevant Person may submit a written response and make oral submissions before the Conduct Panel deciding the application.
47. A Conduct Panel may suspend or impose restrictions for a maximum period of 18 months. This must be reviewed every six months. Where a Relevant Person is an Authorised Body, they may be required to enter into a Practice Management Agreement. The order shall automatically terminate upon the conclusion of the case by a decision of the Conduct Panel. CILEx Regulation must ensure a Relevant Person who is suspended from, or has restricted practice, puts in place arrangements for management of files during the period of the interim order.
48. In deciding whether to make an order against a Relevant Person the PCP may consider the following factors:
 - the risk to the public;
 - whether the public confidence in the profession will be seriously damaged if practice was to continue unrestricted;
 - whether the Relevant Person requires protection from themselves and should not be left unrestricted;
 - whether there is a history of conduct issues with CILEx Regulation;
 - whether there have been any previous orders made in relation to the matter under consideration.

ALLEGATIONS OUTSIDE THE JURISDICTION OF CILEx REGULATION

49. At each stage of the disciplinary process the issue of whether an allegation is outside their jurisdiction should be considered, whether it is by the Investigator or one of the Conduct Panels.
50. The following factors should be considered when deciding to retain jurisdiction:
 - was the misconduct undertaken by a Relevant Person, or not?
 - is it a service matter for the Legal Ombudsman to investigate?
 - is it more appropriate for the Police to investigate?
 - is it more appropriate for the allegation to be tested before the Courts?

FURTHER INFORMATION OR EVIDENCE

51. This power is available to the PCP on matters of Prior Conduct, where it takes the view that further information or evidence will:
- aid in reaching a fair and just decision;
 - complete the evidence or make it clear;
 - reveal that an allegation has not been identified by the investigating Officer.

SEEK LEGAL ADVICE

52. This power is available to the PCP, on matters of Prior Conduct where advice is sought relating to the case such as:
- details about common practices subject of the allegation;
 - the statute or case law;
 - advice on legal procedure.
53. The case may be put back to the next meeting of the PCP or until such legal advice is received.

REFERENCES

54. This power is available to the PCP on matters of Prior Conduct, where it may request references to assist in deciding what action to take. References should focus on conduct and character. The PCP may specify areas a reference should address and references may be requested from any appropriate body or individual where it is reasonable to do so. The PCP may defer the proceedings pending receipt of the reference.

REJECT A COMPLAINT, ALLEGATION OR ISSUE OF MISCONDUCT OR CHARGES

55. This power is available to the PCP and DT. An allegation must be rejected where the PCP finds that there is no evidence to substantiate a case or the DT finds that charges brought against a Relevant Person are not proved.
56. In deciding whether to reject an allegation or charge/s the PCP and DT must consider whether:
- the evidence disproves a case;
 - the matter does not amount to a breach of a code or rule;
 - the evidence does not meet the standard of proof.

TAKE NO FURTHER ACTION

57. This power is available to the PCP and DT. The PCP may accept a Relevant Person or Applicant's response to an allegation and decide to take no further action in relation to it. The DT may find that the charges against a Relevant Person are proved but no disciplinary order is necessary.
58. No further action may be appropriate in some cases where the PCP or DT judges on the circumstances that the Relevant Person may continue as a member of CILEx or to be authorised by CILEx Regulation. In such cases the PCP or DT must be satisfied that the risk is low and provide written reasons for why it is satisfied as to the same.
59. In assessing risk the PCP and DT may consider:
 - the impact the allegation had on consumer interests overall;
 - whether vulnerable individuals have been affected by the conduct;
 - the conduct of the Relevant Person and whether it presents any risk to the public;
 - the nature of the offence;
 - whether any bribery was involved in the offence;
 - whether any conduct involved the obstruction of the course of justice;
 - whether the Relevant Person been included on the Violent and Sex Offender Register;
 - whether any of the conduct was discriminatory towards others;
 - whether there been a failure to disclose information (and has that failure been dishonest or reckless);
 - whether there has been a failure to respond to or otherwise deal with a regulatory request;
 - whether any regulatory requirements have been breached;
 - whether there have been any disciplinary proceedings and the outcome of the same;
 - the Relevant Person or Applicant has accepted the allegation;
 - the Relevant Person or Applicant has apologised;
 - the Relevant Person or Applicant has taken corrective action;
 - the misconduct has not been repeated;
 - whether the conduct of the Relevant Person or Applicant has brought CILEx into disrepute.

UNDERTAKINGS

60. This power is available to the PCP who may request that a Relevant Person give an undertaking as to their future conduct in order to continue to practise as a CILEx member. The undertaking will set out timescales within which action should be taken.

61. In deciding whether to require undertakings the PCP may consider the following factors:

Mitigating factors	Aggravating factors
It is accepted that misconduct took place	It is not accepted that misconduct took place
The Relevant Person agrees to provide and comply with an undertaking	The Relevant Person does not agree to provide and comply with an undertaking
Remorse has been expressed	Remorse has not been expressed
Corrective action has been taken	Corrective action has not been taken
The undertaking is likely to prevent repeated misconduct and protect consumer and public interest	An undertaking will not prevent repeated misconduct and/or will not protect consumer or public interest
Insight has been demonstrated	No insight has been demonstrated

CONDITIONS

62. This power is available to the PCP and DT who may impose conditions on a Relevant Person in respect of their conduct or in the case of an individual in regard to their employment.
63. Conditions must be sufficient to manage the conduct of the Relevant Person and be able to act as a mechanism to manage deficiencies that were identified.
64. In deciding whether to impose conditions the PCP or DT may consider the following factors:

Mitigating factors	Aggravating factors
It is accepted that misconduct took place	It is not accepted that misconduct took place
Conditions are likely to prevent repeat misconduct and protect the public and consumer interests	Conditions will not prevent repeat misconduct and/or protect the public and consumer interests
The Relevant Person is willing to comply with conditions	The Relevant Person is not willing to comply with conditions
The range of activity a Relevant Person undertakes is capable of being restricted and/or supervised	Supervision or restrictions on the range of activity that a Relevant Person undertakes is not possible
Assessment or retraining can be undertaken by the Relevant Person to remedy failings	Assessment or retraining by the Relevant Person will not remedy failings
Insight has been demonstrated	No insight has been demonstrated
Remorse has been demonstrated	No remorse has been demonstrated

REPRIMAND AND WARNINGS

65. These powers are available to the PCP and DT. A reprimand and/or warning may be given to a Relevant Person where they are an existing member of CILEx or authorised by CILEx Regulation. A reprimand may be given in respect of past conduct. A warning will be given in respect of future conduct. Reprimands and warnings are appropriate in cases where the matter was serious in nature but the PCP judges on the circumstances that the Relevant Person may continue as a member of CILEx authorised by CILEx Regulation. In such cases the PCP or DT must be satisfied that the risk is low.
66. In deciding whether to reprimand and/or warn a Relevant Person the PCP or DT may consider the following factors. Where the aggravating factors are numerous, a more serious sanction may be considered.

Mitigating factors	Aggravating factors
It is accepted that misconduct took place	It is not accepted that misconduct took place
Continued practice poses no risks to the public and consumer interests	Continued practice poses a risk to the public and consumer interests
There was no loss to clients	There was a loss to clients
There is no Prior Conduct	There is Prior Conduct
There was no personal gain to the Relevant Person or Applicant	There was a personal gain to the Relevant Person or Applicant
It was an isolated incident	There is a pattern of behaviour
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	Remorse has not been expressed

Additional Considerations (but not limited)

- The nature of the offence;
- Was there any bribery involved in the offence;
- Was there any conduct that involved the obstruction of the course of justice;
- Has the Relevant Person been included on the Violent and Sex Offender Register;
- The time elapsed since the offence took place;
- Is there any of the conduct discriminatory towards others?
- Has the conduct affected vulnerable individuals?
- Has there been a failure to disclose information (and has that failure been dishonest or reckless)?
- Has there been a failure to respond to or otherwise deal with a regulatory request?
- Have any regulatory requirements been breached?
- Has there been any disciplinary proceedings and the outcome of the same?

REFER TO DISCIPLINARY TRIBUNAL

67. This power is available to the PCP if they judge a case to be serious. Referrals are likely to take place in cases where the PCP takes the view that there is a prima facie case and the burden of proof has been discharged but due to the seriousness of the matter its powers are insufficient, to impose an appropriate sanction and that there is a reasonable prospect CILEx Regulation will be able to prove the allegation of misconduct before the DT.
68. The PCP may also refer a case where the Relevant Person does not consent to the disposal of their case under **Enforcement Rule 17(4)**.

FINE

69. This power is available to the DT only. The DT may order a Relevant Person to pay a fine. A fine may be ordered in conjunction with another penalty, except where the DT has excluded the respondent from membership of CILEx or authorisation by CILEx Regulation.
70. In deciding whether to impose a fine the DT should refer to the CILEx Regulation Fines Policy (**Annex 6 to the Enforcement Handbook**). Failure to pay a fine itself will be a matter of misconduct.

EXCLUSION FROM MEMBERSHIP AND AUTHORISATION

71. Exclusion from membership or authorisation means that the Relevant Person is no longer a part of CILEx. This means the Relevant Person will no longer be authorised to call themselves a member of CILEx or use their designatory letters, ACILEx, GCILEx or FCILEx. An entity authorised by CILEx will no longer be allowed to state that they are regulated by CILEx Regulation.
72. This power is available to the DT only. The DT may order the exclusion of a Relevant Person from CILEx membership or authorisation by CILEx Regulation. Exclusion should only be considered in the most serious of cases; after reasoned consideration.
73. The DT may make recommendations or observations about the future reinstatement of the Relevant Person. The PCP must take those recommendations or observations into account when considering future applications for reinstatement. An application will not be accepted until the exclusion period set by the DT has expired.
74. In deciding whether to exclude a Relevant Person from membership of CILEx or authorisation by CILEx Regulation the DT may consider the following factors:

Mitigating factors	Aggravating factors
The misconduct is admitted	The misconduct is not admitted
There is no foreseeable future risk to the public or consumer interest	There is a foreseeable future risk posed to the public or consumer interest
There was no loss to clients	There was a loss to clients
Previous good character	Not of previous of good character
Action was taken to prevent or mitigate the loss	No action to prevent or mitigate the loss
The misconduct was not deliberate or persistent	The misconduct was deliberate and/or persistent
No dishonesty or abuse of trust	There was dishonesty and abuse of trust
There was no recklessness	There was recklessness
There was no personal gain to the Relevant Person	There was a personal gain to the Relevant Person
It was an isolated incident	There was a pattern of behaviour
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	Remorse has not been expressed

APPEALS

75. The AP has the power to quash or substitute a decision of the original decision-making Conduct Panel where it finds grounds of appeal are 'made out'.
76. The AP may decide that a decision reached by the DT or PCP does not require any amendment, even after finding grounds of appeal 'made out'. In those instances the AP may dismiss the appeal.
77. Where the AP finds that the decision should be varied it will have available to it all the powers available to the original decision-making body. It may exercise these having regard to the guidance in this document.

COSTS

78. This power is available to the DT and AP who may order a Relevant Person to pay costs to CILEx Regulation in respect of the investigation and proceedings.
79. Costs may be ordered, by the DT or AP, in all cases or where the charges have been found proved. The DT or AP will determine whether the costs in the case incurred were reasonable. The means of a Relevant Person, their ability to pay and any aggravating circumstances by either party will also be considered. A payment for costs can be enforced through the contractual nature of the relationship between CILEx and the Relevant Persons they authorise through CILEx Regulation.
80. For more information see CILEx Regulation Costs Policy (**Annex 7** of the Enforcement Handbook).

Last updated: 1 August 2018 (applies to cases referred to panels on or after 1 August 2018).



ANNEX 3

CILEx REGULATION

PUBLICATION POLICY

PUBLICATION POLICY

Introduction

This policy is constituted in accordance with Part V Rule 37 of the Enforcement Rules (ER). It sets out the arrangements for publishing disciplinary decisions made by the Professional Conduct Panel, Disciplinary Tribunal and Appeals Panel (Conduct Panels). This policy has been developed in order to provide a service to the public and the profession and complies with Art 6(1) of ECHR as applied by HRA 1998 s6 (1) which provides for 'judgement [to] be pronounced publically'. Publication is also in accordance with S31 of the Data Protection Act 1998.

General

1. CILEx Regulation has the power to publish all adverse findings and orders made against a Relevant Person or Applicant determined by the Conduct Panels. Publication is not a sanction but is necessary to protect the public and to promote high standards across the profession. An order not to publish will be made in exceptional circumstances only. Only proven misconduct decisions will be published. A decision shall be published after the appeal period has expired or after any substantive appeal hearing and an order for publication is made.
2. Disciplinary decisions will be retained permanently on CILEx records once any publication period has passed and will be processed in accordance with CILEx and CILEx Regulation data protection policies or as permitted by law.

Order for publication

3. Where an allegation of misconduct is proved, the Conduct Panels must publish all decisions in accordance with Rule 37 (1).

4. The Conduct Panels may decide not to publish in accordance with their power under Rule 37 (6).
5. In considering whether to exercise its power under Rule 37 (6) the Conduct Panels should have in mind proportionality, accountability, consistency and transparency. The Conduct Panels shall consider what effect publication will have on the parties to the proceedings; whether publication is necessary for the protection of the public; or whether publication is necessary to inform the membership of changing or improving work practices.
6. Factors to support publication:
 - To provide information to the public about regulatory action taken. This can include where there is a specific public interest and the matters affect a large group of individuals or relate to the administration of justice
 - To provide transparency and show consistency in decision making, to the public and regulated community
 - To provide learning points to the regulated community
7. Factors to support non publication:
 - Where there is a risk that an individual's sensitive personal data would be disclosed not in accordance with the law
 - Where there is a risk that an individual's confidential or legally privileged information would be disclosed
 - Where it will prejudice legal, regulatory or disciplinary investigations or proceedings
 - Where there would be a breach of the law
 - Where the effect of publication on the individual would be disproportionate to the regulatory function

8. Neither list in regard to the factors on publication is exhaustive. There may be other factors specific to individual cases that require consideration and them to be taken into account.

Types of information that will be published

9. The following information will be included in published decisions:
 - Date the matter was decided
 - Name
 - CILEx Membership and Authorisation status
 - A description of the allegation or charges
 - The decision of the conduct panel and a summary of their reasons

Format of publication for the Professional Conduct Panel (PCP)

10. PCP decisions that are published shall include the name of the Relevant Person or Applicant, the date of the decision, the allegations found proved against them and the findings and order of the PCP.

Format of publication for the Disciplinary Tribunal (DT)

11. DT decisions that are published shall include the name of the Relevant Person or Applicant, the date of the decision, the charges against them and the findings and order of the DT.
12. A copy of the recorded DT hearing will be available, on request, a charge may be applied.

Format of publication for the Appeals Panel (AP)

13. AP decisions are published where a decision of the DT or PCP has been affirmed. The publication will be in accordance with the format of the conduct panel that heard the original matter. The publication will include the decision of the AP.

Place of publication

14. Findings of the Conduct Panels will be recorded against the relevant entry in the CILEx Regulation and/or CILEx register and directory. Publication will also include in the CILEx Journal and the CILEx Regulation website.
15. Decisions may be published in other publications ordered by the Conduct Panels. CILEx Regulation may also issue press releases of disciplinary decisions where it is in the public interest to do so.

Publication of forthcoming DT and AP hearings

16. CILEx Regulation shall publish, four weeks in advance, on the CILEx Regulation website details of all forthcoming DT and AP hearings which will include the name of the Relevant Person, their area and location of practice and the date of the hearing. This is removed at the conclusion of the hearing.

Duration of publication

17. Disciplinary orders will be published for the following periods and will run from the date the member was informed of the decision. They also apply to all decisions made by Conduct Panels prior to the implementation of this Policy.

SANCTION	DURATION OF PUBLICATION
Reprimand	1 year
Warning	1 year
Undertakings	3 years unless otherwise ordered
Conditions	Until a successful application to revoke the order is made. On revocation, publication will immediately cease
Fine	3 years

SANCTION	DURATION OF PUBLICATION
Interim Suspension*	Until the suspension is lifted
Exclusion	Indefinitely or until a successful application for reinstatement of CILEx membership or authorisation is made
Indefinite exclusions or Exclusions with no time specified	Indefinitely or until a successful application for reinstatement of CILEx membership or authorisation is made
Indefinite exclusion with a minimum time specified before an individual can reapply to CILEx**	These remain published until the minimum time has been reached. (<i>Example – if a person is excluded for a minimum of four years publication will cease once four years have passed</i>)
Indefinite exclusion for a minimum period with no reference to reapplication to CILEx**	These remain published until the minimum time has been reached (<i>example – as above.</i>)
Exclusion where there is an ongoing requirement to inform another party by the CILEx member/authorised person of the exclusion**	Indefinitely or until a successful application to vary the ongoing requirement is made

* An interim suspension is a power available to the Conduct Panels pending the outcome of investigations or proceedings only. Once a decision of the conduct panel has been made an application for the interim suspension to be lifted will be made and will cease to be published.

** Where exclusion has been expressed to include a minimum time and that time has passed the effect of this is to remove publication only. It does not denote the end of the sanction of Exclusion.

18. Where more than one disciplinary order was made they will all remain published until the period for the sanction with the latest publication period has expired.

Application to remove publication from the website

19. In some limited circumstances CILEx Regulation will consider whether it is in the interests of the public to remove the published disciplinary decision of a CILEx Member or CILEx Practitioner. Paragraphs 19 to 21 are not intended to be exhaustive.
20. Where a CILEx Member or CILEx Practitioner becomes deceased CILEx Regulation will remove the published decision on receipt of evidence confirming the same. Types of evidence that CILEx Regulation will consider suitable are:
- Copy of a certified death certificate
 - Documentary evidence signed by a medical practitioner such as a medical certificate of death
 - Documentary evidence signed by an officer of the law
 - Proof of death such as a funeral directors proof of death
 - Copy of the Grant of Probate
21. Where a CILEx Member or CILEx Practitioner becomes impaired CILEx Regulation will consider applications from next of kin or a person with a lawful power of attorney for the removal of the published decision. Types of evidence required by CILEx Regulations are:
- Medical evidence from a UK registered practitioner or equivalent for any other country
 - Documentary evidence from another UK certified health provider
 - Documentary evidence signed by an officer of the law

22. CILEx Regulation will require evidence from the person applying for removal that they are the next of kin or have a valid power of attorney and that the CILEx Member or CILEx Practitioner is either deceased, or impaired and is no longer a risk to the public.
23. Any application for removal of a published decision must be made in writing to CILEx Regulation at Kempston Manor, Manor Drive, Kempston MK42 7AB or by email to info@cilexregulation.org.uk.
24. The date of last review was October 2018.



ANNEX 4

CILEx REGULATION

**POLICY ON ADJOURNMENTS OF
DISCIPLINARY HEARINGS**

POLICY ON ADJOURNMENTS OF DISCIPLINARY HEARINGS

1. CILEx Regulation aims to dispose of cases expeditiously. It is in the interests of the public, Applicants and Relevant Persons that cases are dealt with in a timely manner. CILEx Regulation aims to refer 80% of cases to the Professional Conduct Panel (PCP) within 6 months of a complaint being made and 100% of cases to the PCP within 9 months of the complaint being made. Where cases are referred to the Disciplinary Tribunal (DT), CILEx Regulation aims to bring 65% cases to hearing within 6 months of the referral being made and 100% within 9 months of the referral.
2. Adjournments will not be granted as a matter of course. Good reasons with supporting evidence must be submitted to justify any delay.
3. An application for adjournment must be submitted in writing and include reasons for the request. Supporting evidence, such as medical evidence, attempts to contact witnesses, or steps taken to meet the hearing date should be provided. If evidence is not available details must be given as to what steps were taken.
4. A copy of the request must be sent to all parties to the proceedings. A minimum of 2 working days will be allowed for responses to be submitted to the Panel scheduled to hear the case via the Clerk. Another Panel may consider the application if it is reasonable to do so.
5. The Panel will take into account the following factors in determining an application for adjournment:
 - Reasons for the adjournment and supporting evidence, including the impact of it on all the parties.
 - Can alternative arrangements be made, such as seeking alternative representation?
 - What attempts have been made by the party seeking adjournment to prepare for the hearing?
 - The interests of the public in hearing the case. CILEx Regulation has obligations to bring cases to an expeditious conclusion.
 - The interests of the party seeking the adjournment, including whether an adjournment will enable the Panel to have the benefit of evidence at a hearing which would otherwise not be available.
 - The length of adjournment sought. The Panel may grant a shorter adjournment than was requested where appropriate.
 - Is the application for adjournment opposed? If so what are the

reasons? Is it in the interests of the parties and the public to adjourn the case?

6. If a request for adjournment is refused, the case will proceed to the PCP or DT on the date it was originally to proceed. If a request for adjournment is granted, the matter will be put to the next meeting of the PCP or a new hearing date will be set by the Panel with agreement of the parties to the DT proceedings.
7. An order for **costs** may be made associated with the hearing having to be adjourned.
8. The date of the last review was October 2018.



ANNEX 5

CILEx REGULATION

HEALTH COMMITTEE (PROCEDURE) RULES

HEALTH COMMITTEE (PROCEDURE) RULES

1. These Rules shall apply where CILEx Regulation or The Chartered Institute of Legal Executives (CILEx) receive information about a Relevant Person or Applicant that raises questions of their fitness to practise on the grounds of health.
2. The Health Committee shall consist of three members of the CILEx Regulation Disciplinary Tribunal constituted under the Enforcement Rules (ER). Two shall be lay members and one shall be a professional member.
3. CILEx Regulation shall delegate responsibility to an Investigator to consider whether a member's fitness to practise is seriously impaired, unless it decides otherwise.
4. If on the evidence presented CILEx Regulation considers there is immediate risk to the public and/or the Relevant Person or Applicant CILEx Regulation may suspend their membership. In all other matters of health, CILEx Regulation shall follow the procedure as set out in these Rules.
6. CILEx Regulation shall send notice by guaranteed post to the Relevant Person or Applicant informing them that:-
 - (a) Information has been received raising questions as to their fitness to practise. CILEx Regulation shall outline the nature of the condition alleged to affect their impairment;
 - (b) They should consent and agree to disclose to CILEx Regulation medical reports on his fitness to practise;
 - (c) That they should submit any representations or evidence as to their fitness to practise;
 - (d) That failure to reply within 14 days or to provide medical reports without good reason, will enable CILEx Regulation to decide the matter on the information available. CILEx Regulation will notify them of their power to suspend membership.

7. Once the expiry of the time limit referred to in Rule 5 (d) above occurs, CILEx Regulation shall determine whether the member's fitness to practise is seriously impaired.
8. Where there is no medical evidence on account of the Relevant Person or Applicant refusing to or failing to provide it, CILEx Regulation may reasonably conclude that the Relevant Persons fitness to practise is impaired.
9. If CILEx Regulation decides the member's fitness to practise is seriously impaired, CILEx Regulation may suspend the Relevant Persons membership for the protection of the public or in the member's own interest.
10. The decision of CILEx Regulation in Rule 6 shall be notified to the member.
11. CILEx Regulation may review any Relevant Person or Applicants suspension of its own volition every three months or at the request of the Relevant Person or Applicant where new medical evidence is submitted.
12. The Relevant Person may appeal a decision notified under paragraph 7 to the Health Committee by lodging Notice of Appeal within 42 days.
13. The Health Committee shall review the decision as soon as is practicable and shall take into consideration all relevant matters in reaching its decision.
15. The Health Committee may uphold the decision of the Investigator to suspend the Relevant Person or make any such order as it sees fit.
16. The Health Committee shall sit in private. A hearing will only be held in public where the Relevant Person or Applicant consents or where no medical evidence is to be adduced.
17. A suspended member remains bound by membership obligations under Article 18D.
18. The date of last review was October 2018.



ANNEX 6

CILEx REGULATION

FINES POLICY

FINES POLICY

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

CILEx Regulation sets out in this document the levels of fine that may be ordered against individual CILEx Members, CILEx Practitioners, Approved Managers and Entities (Relevant Persons) where a finding of misconduct is made. The levels of fine are approved by the Legal Services Board as at 19 December 2014.

CILEx Regulation aims to protect the public by regulating Relevant Persons who provide legal services. In meeting that obligation CILEx Regulation has responsibility for investigating allegations of misconduct, to ensure regulatory standards are met, and imposing sanctions upon those, CILEx Regulation regulates where standards are found not to have been met.

It aims to take a proportionate approach to setting the level of fine.

CILEx Regulation seeks to use this document as its Fines Policy and it must be read in conjunction with the Enforcement Rules (ER). The Enforcement Handbook is guidance that sits alongside the ER. The sanctions guidance is an annex in the Enforcement Handbook to assist those responsible for making decisions to assess the financial penalty that should be paid by a Relevant Person.

The ER covers the whole range of CILEx Regulation's regulated community. They include individual CILEx members; CILEx Practitioners; CILEx Regulation's new responsibility in respect of Entities, referred to as Authorised Bodies: and those with lead responsibility in Authorised Bodies, called Approved Managers.

Particular attention is drawn to CILEx members and the makeup of this group. Individual CILEx members range from students through to Fellowship grade. Focus has been on whether CILEx students should be subject to the range of fine covered of up to £100,000. The key points to be aware of are that CILEx students are traditionally individuals who are working. They may be working within legal practices, in-house legal teams, within government departments. They may be working in Citizens Advice Bureau. Some of these students may have had other careers, run businesses or have other life experiences. CILEx students are not all typical school leavers; the age range and experiences of these students varies greatly. The level of fine of, up to £100,000 is a maximum level. The sanctions guidance has been developed to ensure that a considered approach is taken when deciding on the fine to levy, and is there to ensure that maximum fines are not ordered unless warranted by the circumstances.

When considering how to apply the determining factors the application should be the

same. For instance where a small number of consumers who are affected by a large detriment or where a large number of consumers have been affected by a small detriment the starting point of the fine should be the same.

Appendix 1

Fine Levels

The following table represents the level of financial penalties allowed.

Relevant Person	Financial Penalty Range
CILEx Member	Up to £100,000
CILEx Practitioner	Up to £50 million
Approved Managers	Up to £50 million
Authorised Bodies	0.5% of annual domestic turnover up to 5% of annual domestic turnover or up to a maximum of £250 million, whichever is greater.

Reasons behind Proposed Fine Levels and factors taken into consideration

The fine levels above have taken into account the increased level of risk and responsibility that Relevant Persons will have in line with new rights obtained and the increased risks they pose to delivery of regulatory objectives and the protection of the public and consumers. The flexible approach has been designed to recognise that one size does not fit all. The ability to pay is a proportionality factor and will also be considered.

When deciding the level of fine CILEx Regulation will take into account the seriousness of the misconduct by considering the level of culpability and harm caused; the financial penalty, as outlined above; any adjustments made taking into account mitigating and aggravating factors; and proportionality by considering any personal factors. This list is not restrictive and cases will be assessed on the facts as presented individually. Factors that are not listed may be taken into account, if it is in the interests of justice to do so.

The types of misconduct that may attract fines are where conduct is such that a Relevant Person may remain in practice but a fine will be sufficient deterrent against repeating the misconduct. A fine may be suitable where clients have been caused a loss or where the misconduct has caused a loss of confidence in the legal profession.

The following table outlines some of the factors that will be considered when deciding on the level of fine for a Relevant Person.

Appendix 2

Seriousness	1	2	3				
What is the culpability of the Relevant Person?	What was the motivation for the misconduct?	Were the actions planned or unplanned ?	Was there a breach of trust?				
What was the harm caused or risk of harm caused by the Relevant Person – low, medium or high?	<u>Low</u> - There was no loss or quantifiable impact. - There was minimal loss or impact	<u>Medium</u> - There was a moderate loss -There was a moderate impact -There was a risk of moderate loss or impact	<u>High</u> -There was a significant loss or impact - There was a substantial loss and impact - There was a risk of substantial loss or impact.				
Adjustments	1	2	3	4	5	6	7
Aggravating Factors	The Relevant Person has failed to co-operate with its Regulator	The actions of the Relevant Person were reckless or negligent	The Relevant Person knowingly continued the misconduct for a sustained period and/or dishonesty was proved	There was a pattern of misconduct	Vulnerable persons were taken advantage of	There are previous misconduct findings made by the Tribunal	

			and/or there was concealment				
Mitigating Factors	The Relevant Person has co-operated with its Regulator	The Actions of the Relevant Person were not intentional or reckless	There was no dishonesty or deception proven	The misconduct was an isolated incident	Was there self-reporting/and or admissions at an early stage of the investigation?	Has the Relevant Person attempted to rectify the wrong caused?	Is there demonstrable insight
Proportionality	1	2	3	4			
Removal of benefit or gain	Personal Mitigation	Ability to pay a penalty	Character Evidence	Consequences of the financial penalty to the Relevant Person			

The date of last review was October 2018.



ANNEX 7

CILEx REGULATION

COSTS POLICY

COSTS POLICY

INTRODUCTION

1. This policy sets out the costs CILEx Regulation will seek to recover the cost of investigations and proceedings where misconduct allegations are proved after referral to the Disciplinary Tribunal. This policy also applies to cases which are unsuccessfully appealed by the Relevant Person before the Appeals Panel.
2. This policy will be implemented for all new investigations commenced on or after 1 August 2018.
3. Under the Enforcement Rules (ER) CILEx Regulation investigates allegations of misconduct made against CILEx members and persons or entities authorised by CILEx. CILEx Regulation also deals with Prior Conduct and Fitness to Own declarations.
4. Cases concerning misconduct allegations are categorised as follows for the purposes of this policy:
 - Investigation stage up to the conclusion of a Professional Conduct Panel meeting (PCP) including any PCP related post decision work.
 - From the date of the PCP decision notice to the date of the Disciplinary Tribunal (DT) decision notice including in-house advocacy and any DT post decision work.
 - Appeal Panel (AP) stage up to the conclusion of an AP hearing including in-house advocacy and any AP post decision work.
 - Cases dealt with by way of a Determination by Consent (DBC)
 - Cases that are not proceeded with (NPW)
5. Cases where a self-declaration or matter has been raised are categorised as follows:
 - Prior Conduct (PC)
 - Fitness to Own (FTO)
6. For the purpose of this policy the PCP, DT and AP are the decision making panels.
7. More details about the investigation procedure itself can be found in the ER and the Enforcement Handbook or from the CILEx Regulation website.

RECOVERY OF COSTS

8. Under Rule 30 (5)(b)(ii) of the Enforcement Rules (ER) CILEx Regulation has the power to claim costs in regard to proceedings. Under Rule 30 (7) the Tribunal has a power to award reasonable costs against CILEx Regulation where an allegation is found not proved.
9. Under Rule 34 (7) the Appeals Panel has the power to make such ancillary orders, including order for costs, as it considers just and appropriate.

10. Therefore the CILEx Regulation Board agreed that Rule 30 (5)(b)(ii) and Rule 34 (7) would also include the cost of in-house investigation, disciplinary and advocacy costs and that they have the power to set the rate of costs that can be recovered for this work.
11. The CILEx Regulation Board agreed that CILEx Regulation has power to set the rate of costs for in-house investigation, disciplinary and advocacy costs in accordance with this policy.

COSTS RATES AND APPLICATION

12. Costs will be recoverable as fixed sums and may attract an hourly rate for additional time where cases go outside of Band 3 of each type of case. Where there is an hourly rate it will be calculated at £30 per hour for work undertaken by Assistants and £75 per hour for work undertaken by Officers. Some cases will have a fixed one off payment, where this is the case it has been specified.
13. Where a PC or FTO matter is referred, for investigation or to the DT the cost of work undertaken by the Assistant will be added to the cost of investigation
14. An application for costs will only be made where the decision making panel finds misconduct proved.
15. A table of costs applicable in cases appears in the following table:

Case Stage	Hours	Total Cost
Prior Conduct where referred to the DT	N/A	£45
Fitness to Own where referred to DT	N/A	£45
Band 1 PCP	up to 12	£900
Band 2 PCP	up to 20	£1500
Band 3 PCP	up to 45	£3500
Band 1 DT	up to 12	£900
Band 2 DT	up to 20	£1500
Band 3 DT	up to 30	£2250

Band 1 AP	Less than 12	£900
Band 2 AP	Up to 20	£1500
Time spent outside of band 3 in each type of case	£75/hour	Time spent x hourly rate + Band 3
NPW	N/A	No costs

16. CILEx Regulation will keep a schedule of work conducted on an actual time spent basis in minutes and hours.
17. CILEx Regulation will provide costs information to CILEx Members, CILEx Practitioners and Entities during the course of the investigation. CILEx Regulation will also provide costs information at the conclusion of each stage of the investigation as set out below.

18. Where conduct is referred to the DT a costs schedule will also be provided to the CILEx Member's, CILEx Practitioner's and Entities', and their representatives, where they have them, no later than one day prior to the final hearing date.
19. Where a CILEx Member, CILEx Practitioner or Entity appeals a decision of the PCP or DT a costs schedule will also be provided to them and their representatives, where they have them, no later than one day prior to the final hearing date.
20. Any costs incurred after submission of a costs schedule will be updated at the conclusion of the hearing.
21. CILEx Regulation will seek evidence of means from CILEx Members, CILEx Practitioners and Entities which must be provided to CILEx Regulation no later than one day prior to the final meeting or hearing of the decision making panels.
22. Documentary evidence of means will be forwarded to the respective decision making panel for consideration when deciding on the amount of costs to award. The amount of costs will be at the discretion of the Panel.

MEANS

23. The following types of evidence will be required as evidence of financial means:

Evidence of Income

- Wage Slips
- Tax Return/accounts for last tax year (if self-employed)
- Company Accounts
- Company Annual Returns
- Bank statement (redacted if appropriate)
- Savings Account statements/books
- Letter from the Department for Work and Pensions confirming receipt of welfare benefits (dated within the last month)

Evidence of outgoings

- Bank statements (suitably redacted)
 - Mortgage statements
 - Council Tax bills
 - Utility bills
 - Child care invoices
 - Other bills or debts
24. The lists above are not exhaustive.
 25. Failure to provide such evidence or equivalent may reduce the weight that can be placed on the information in support of any submission made by CILEx Members, CILEx Practitioners and Entities in respect of their ability to pay or

timing of payment.

26. CILEx Members, CILEx Practitioners and Entities will be responsible for providing this information to CILEx Regulation and will be given ample opportunity to do so in advance of any final meetings or hearings.

PAYMENT

27. Costs must be payable in one instalment unless different arrangements are negotiated.
28. Payment can be made by the following methods:
 - i. Cheque made payable to 'CILEx Regulation Ltd;
 - ii. Direct Debit or Standing Order; or
 - iii. Debit card or credit card payment over the telephone.

CONCLUSION

29. Rule 38 of the ER allow CILEx Regulation to recover costs as a debt. Failure to pay may also lead to further disciplinary action being taken.
30. The date of last review was October 2018.