

Investigation, Disciplinary and Appeals Rules Report 2018



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APPENDIX

Introduction

We are pleased to report on the work of our Investigators, Professional Conduct Panel, Disciplinary Tribunal and Appeals Panel during 2018.

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

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

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

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

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

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

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



Andrew Donovan
Enforcement Lead
CILEx Regulation Board

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Prior Conduct Declarations

Number of Declarations

At the start of 2018, 139 prior conduct declarations were open and 696 declarations were received during the year. This was higher than the figure of 595 declarations that were received in 2017. There has been a notable increase in declarations since 2016 and the causes of this will be examined in light of this report. At the end of 2018, 190 declarations were open.

Declarations dealt with by Delegated Decision

Prior conduct declarations dealt with by delegated decision-making returned to historic norms (85.6%) in 2018 from lower levels in 2017 (74.3%). Of those processed in 2018, 99 had been received in the last quarter of 2017 (at the start of the new membership cycle) and 1 had been received in 2014, but could not be progressed until enquiries by another regulator were completed.

	2018	2017	2016	2015	2014	2013
Declarations received	696	595	164	215	180	187
Declarations delegated	596	442	143	184	145	135
% Declarations delegated	85.6%	74.3%	87.2%	85.6%	80.6%	72.2%

Table 1: Prior Conduct Declarations received and delegated

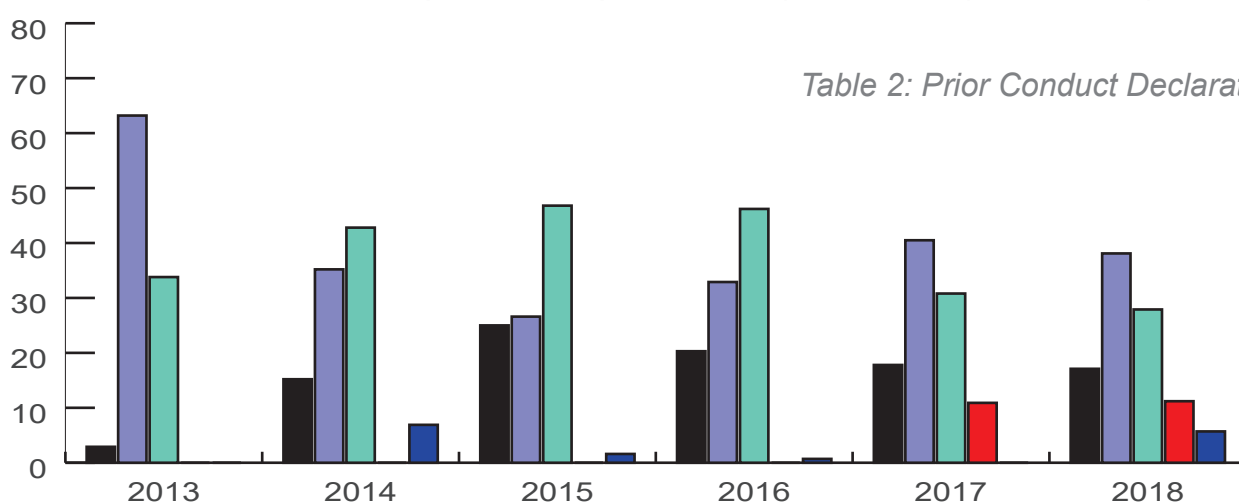
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Types of Declarations dealt with by Delegated Decision

Bankruptcy orders or creditor arrangements were the most common type of declaration that resulted in a delegated decision (38.1%), followed by convictions or cautions (27.9%). In 2018, 11.2% of delegated decisions were for declarations involving investigations or proceedings concerning fitness to practise by other regulatory or professional bodies. Prior to 2017, no declarations of this nature were dealt with by delegated decision.

	2018	2017	2016	2015	2014	2013
County Court Judgment	17.1%	17.8%	20.3%	25.0%	15.2%	2.9%
Bankruptcy order/ creditor arrangement	38.1%	40.5%	32.9%	26.6%	35.2%	63.2%
Convictions or cautions	27.9%	30.8%	46.2%	46.7%	42.8%	33.8%
Other professional body orders	11.2%	10.9%	0.0%	0.0%	0.0%	0.0%
Other	5.7%	0.0%	0.7%	1.6%	6.9%	0.0%
	100%	100%	100%	100%	100%	100%

Table 2: Prior Conduct Declarations by type



Graph 1: Prior Conduct delegated decisions by type



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Declarations dealt with by the Professional Conduct Panel (PCP)

During 2018, the PCP considered 17 declarations or matters to consider made by CILEx applicants or members.

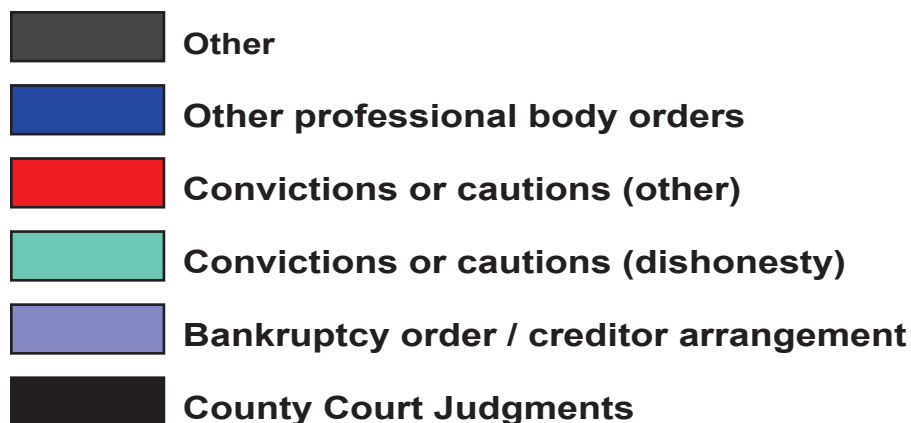
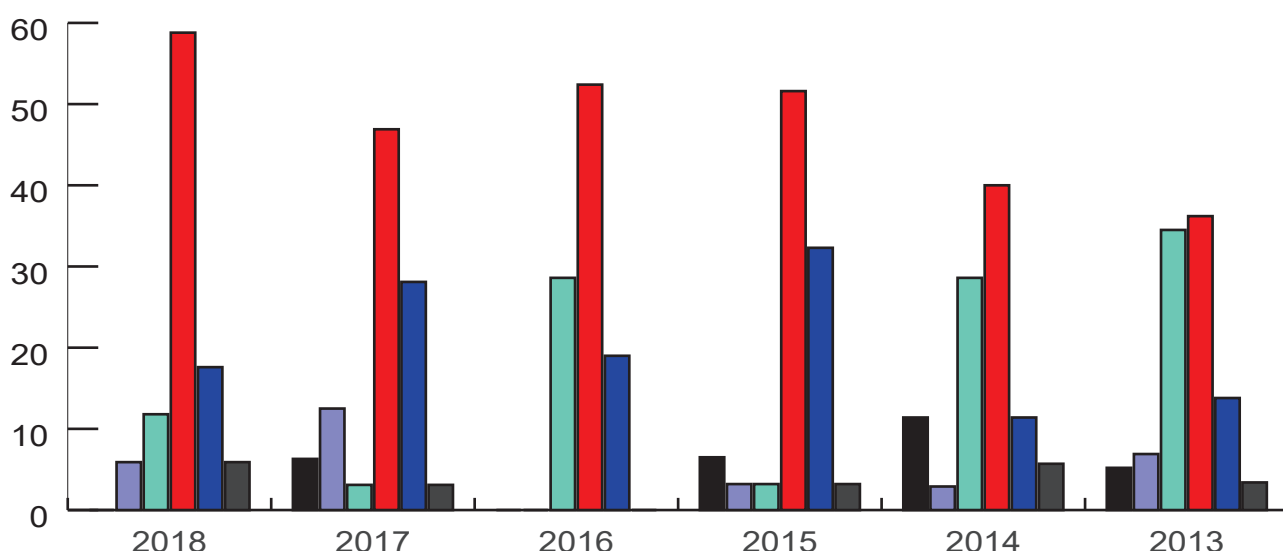
Subject to the provisions of the Rehabilitation of Offenders Act 1974, our Rules require applicants and members of the regulated community to declare criminal convictions or cautions. In 2017, we introduced more details analysis of types of convictions or cautions declared. This supports the further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

	2018	2017	2016	2015	2014	2013
County Court Judgment	0.0%	6.3%	0.0%	6.5%	11.4%	5.2%
Bankruptcy order/ creditor arrangement	5.9%	12.5%	0.0%	3.2%	2.9%	6.9%
Convictions or cautions (dishonesty)	11.8%	3.1%	28.6%	3.2%	28.6%	34.5%
Convictions or cautions (other)	58.8%	46.9%	52.4%	51.6%	40.0%	36.2%
Other professional body orders	17.6%	28.1%	19.0%	32.3%	11.4%	13.8%
Other	5.9%	3.1%	0.0%	3.2%	5.7%	3.4%
	100%	100%	100%	100%	100%	100%

Table 3: Prior Conduct declarations dealt with by the PCP by type

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Graph 2: Prior Conduct PCP decisions by type



In total, convictions or cautions make up 70.6% of the matters referred to the PCP. The level of declarations concerning fitness to practise by other bodies made up 17.6% of PCP matters referred, which we believe continues to demonstrate the good progress we have made in building collaborative working relationships with other regulators to support legitimate and lawful sharing of regulatory information, under published Memoranda of Understanding, in order to protect the public.

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Professional Conduct Panel Decisions

The majority of matters considered relate to applications for CILEx membership or Fellowship, or to reinstatements of individuals previously in membership. In 2018, two matters were referred to the Disciplinary Tribunal (DT), one for a conviction (driving offence) and one relating to an investigation by another regulator. On referral to DT, the matters are classed as potential misconduct and are dealt with through the misconduct process.

	2018	2017
Further information	1	0
Application allowed	6	12
Reinstatement allowed	0	5
Reinstatement refused	2	0
Conditions removed	1	0
Resignation accepted	1	0
Application withdrawn	0	1
Reprimand	1	3
Referred to DT	2	3
NFA	3	4
	17	28

Table 4: PCP decisions compared with 2017

Appeals Panel (AP)

An applicant or regulated member may appeal to the Appeals Panel (AP) against a decision of the PCP in relation to a matter of prior conduct. There were no such appeals during 2018.

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Misconduct complaints and allegations

At the start of 2018, 43 misconduct complaints were open. There were 53 open misconduct cases at the end of 2018.

A trial of strict early enforcement in relation Continuing Professional Development (CPD) in 2017 saw a significant spike in CPD cases. Following this trial it was concluded that the dis-benefits of immediate and strict enforcement outweighed the benefits. In particular, given CPD is about competence, we found getting regulated members to focus their energies on improving competence rather than responding to enforcement action was more constructive and better use of resources. Therefore, we reverted to the traditional approach of a reminder to support ongoing competence and only taking enforcement in the event of persistent non-compliance. Enforcement action was taken against three persistent CPD non-compliers in 2018.

33 misconduct complaints were not proceeded with. The most common reasons were CILEx Regulation had no jurisdiction or no further action was most appropriate.

	2018	2017
Number of misconduct complaints	68	42
- Number of allegations within these complaints	75	45
- Outside jurisdiction / NFA	33	14

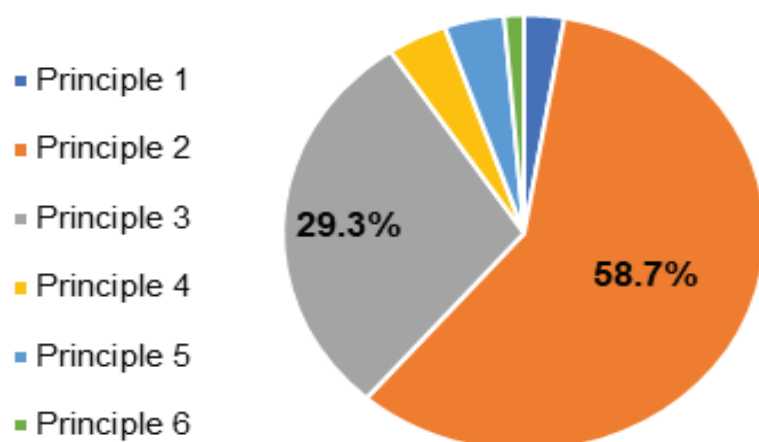
Table 5: Misconduct numbers

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Allegations made are recorded against the nine principles of the CILEx Code of Conduct. For both 2017 and 2018, over 80% of allegations related to Principles 2 and 3.

	2018	2017
Principle 1 - Uphold the rule of law and the impartial administration of justice	2.7%	1.5%
Principle 2 - Maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services	58.7%	55.6%
Principle 3 - Behave with honesty and integrity	29.3%	28.9%
Principle 4 - Comply with your legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively	4.0%	3.2%
Principle 5 - Act competently in the best interests of your client and respect client confidentiality	4.0%	3.2%
Principle 6 - Treat everyone fairly and without prejudice	1.3%	1.5%
Principle 7 - Ensure your independence is not compromised	0%	3.2%
Principle 8 - Act effectively and in accordance with proper governance and sound financial and risk management principles	0%	1.5%
Principle 9 - Protect client money and assets	0%	1.5%

Table 6: Top Misconduct allegations



Graph 3: Types of Misconduct allegations

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Delegated Decisions for misconduct cases

Six misconduct cases were dealt with by delegated decision during 2018. Of these, four complaints were rejected following investigation and two complaints were assessed as suitable for Determination by Consent (DBC).

	2018	2017
Number of delegated decisions	6	5
- Determination by consent (DBC)	2	3
- Complaint rejected	4	1
- Referred directly to Disciplinary Tribunal (DT)	0	1

Table 7: Delegated decisions for Misconduct matters

Professional Conduct Panel (PCP)

During 2018, 18 misconduct cases were heard by the Professional Conduct Panel of which 11 related to Fellows. Of the 18 cases, six were considered serious enough to be referred to the Disciplinary Tribunal.

	2018	2017
Number of misconduct cases heard by the PCP	18	6
- Number relating to Fellows	11	2
Cases referred to DT	6	4
DBC upheld	3	1
Decision to reject a complaint upheld	4	1
Reprimand / Warning	3	0
NFA	2	0

Table 8: Professional Conduct Panel decisions for Misconduct matters compared with 2017

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The PCP heard cases involving members in all the main grades of membership.

Outcome	Grade	2018
Refer to DT	Fellow	2
Refer to DT	Associate	2
Refer to DT	Affiliate	1
Refer to DT	Student	1
Warning	Fellow	3
Approval of DBC	Fellow	2
Approval of DBC	Graduate	1
Delegated Decision upheld	Fellow	3
Delegated Decision upheld	Graduate	1
NFA	Fellow	1
NFA	Associate	1

Table 9: PCP decisions for Misconduct matters by grade of membership

Disciplinary Tribunal (DT)

During 2018, five misconduct cases were heard by the Disciplinary Tribunal, with one case resulting in exclusion. Three members, including a Fellow, received a reprimand regarding past conduct and a warning about future conduct. There were no interim suspensions made during the year.

DT outcomes	2018	2017
Number of cases heard by the DT	5	12
- Number relating to Fellows	2	1
Exclusion	1	6
Warning and Reprimand	3	2
NFA	1	2
Ordered to resign	0	1
Not proven	0	1

Table 10: DT decisions for Misconduct cases compared with 2017

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The case where the main allegation related to failing to behave with honesty and integrity also involved; failure to act competently in the best interest of your client and respect client confidentiality; failure to ensure independence is not compromised; failure to act effectively and in accordance with proper governance and risk management principles.

The primary code of conduct breach alleged at DT	2018
Principle 2 - Maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services	3
Principle 3 - Behave with honesty and integrity	1
Principle 4 - Comply with your legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively	1

Table 11: Disciplinary Tribunal types of complaint

Cases involving three grades of membership were heard by the Disciplinary Tribunal.

DT outcomes 2018 by grade	Grade
Exclusion	Associate
Reprimand and Warning	Fellow
Reprimand and Warning	Associate
Reprimand and Warning	Affiliate
NFA	Fellow

Table 12: DT decisions by grade of membership

Appeals Panel (AP)

There was one case considered by the Appeals Panel during the year. It was an appeal against the Order for Costs in a case where the member was excluded by the Disciplinary Tribunal. The Appeals Panel rejected the appeal and upheld the Order for Costs.

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Other matters and overall analysis

Updated Enforcement Rules 2018 came into force on 1 August 2018 and the Enforcement Handbook providing guidance was approved by the CILEx Regulation board in November 2018.

The changes to the Enforcement Rules were designed to provide operational clarity and transparency to consumers, so they have clear information on the results that we as a regulator can achieve, to meet the regulatory objectives set out in the Legal Services Act 2007. It also changed the length of Panel terms changing from two terms of five years to two terms of three years.

This report includes more detailed two years data for 2018 and 2017 to draw out insights and trends. An update on interim suspensions is now included and the aim is for future annual reports to include timescale analysis to help understanding in relation to timeliness and customer service.

PCP work continues to be the majority of independent panel activity, with 18 cases considered by the PCP, five by the DT and one by the Appeals Panel. The majority of panel work related to non-Fellow grades.

The majority of work of the PCP (70.6%) continues to relate to convictions or cautions, but through improved data capture we have been able to break this down into dishonesty offences and other offences.

The significant increase in prior conduct declared matters seen in 2017 has continued into 2018. Therefore, we will examine if the changes that resulted in this increase have improved effective regulation and standards to justify the additional time these declarations entail.

Of the entire current 60 published disciplinary records, only three disciplinary records relate to Fellows with the other 57 cases relating to other grades of CILEx membership. This provides a significant endorsement of the standards of Chartered Fellows. It is notable that 57 (95%) of the 60 published disciplinary cases relate to non-Fellow grades who do not contribute to regulator costs through the PCF.

2018 has seen new members join the Enforcement team who have brought renewed vigour and insights to our work. This includes exploring new ways we can improve the percentage of enforcement time spent on the highest risk cases through a risk-based enforcement approach. To ensure prior conduct declarations were kept to timescale, additional interim capacity was brought in temporarily in 2018, whilst new members of the Enforcement team embedded into their roles.

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We successfully ran panel members training to ensure that our panellists are confident in carrying out their roles. All panellists and Clerks were offered the opportunity to attend which focussed on understanding the revised Enforcement Rules 2018 and new case law.

We continue to report learning points arising from adverse findings in the CILEx Journal. We Also continue to promote the understanding of the Code of Conduct in features in our web-based publication Regulation Matters.

Conclusion

Work in previous years to capture broader enforcement data is starting to pay dividends in understanding risks and opportunities within enforcement, which is why a new overall analysis section has been added to this report.

Learning from 2018 and before has informed the desire to develop our risk-based approach to enforcement. As part of this, we look forward to consulting with our members and stakeholders on our approach to investigating allegations of misconduct and to assessing suitability and fitness to practice and own. If supported, this will require an Enforcement Rules change and we have discussed this intention with the LSB.