

# **Investigation, Disciplinary and Appeals Rules Report 2019**

## **Introduction**

We are pleased to report on the work of our Investigators, Professional Conduct Panel, Disciplinary Tribunal and Appeals Panel during 2019.

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.

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 CILEx Regulation 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.

Our Board in May 2020 supported developing risk-based enforcement rules. I look forward to overseeing the development of these rules, which will include consultation with regulated members.

Andrew Donovan  
Enforcement Lead  
CILEx Regulation Board

## Overall developments and updates

We extended the scope of the Enforcement Rules and the Code of Conduct to cover Alternative Business Structures following CILEx's designation as a Licensing Authority, which was received on 1 April 2019.

We successfully ran two panel member training sessions to ensure that our panellists are confident in carrying out their roles and understand the relevant rules and caselaw. All panellists and Clerks were offered the opportunity to attend two training events during the year which focussed on building working relationships, identifying improvements to the delivery of the enforcement function, key case law updates relating to disciplinary procedure and best practice and key principles for good decision making.

We continue to report learning points arising from adverse findings in the CILEx Journal. We continue to promote the understanding of the Code of Conduct and the role of the enforcement function in features in the CILEx Journal and on our website aimed both at the regulated community and a consumer audience.

## Prior Conduct Declarations

### Number of Declarations

In 2019 531 declarations were received during the year. This compares with 696 declarations received in 2018 and 595 received in 2017.

### Declarations dealt with by Delegated Decision

Of the declarations processed during 2019, 96.4% were dealt with by officers as delegated decisions which compares with 85.6% in 2018. We believe that officers dealing with delegated decisions have developed more confidence in using available delegated powers thereby ensuring a more streamlined and effective process.

Of those dealt with by delegated decision in 2019, 126 had been received in Q4 2018 (104 in December 2018) at the start of the new membership cycle.

	2019	2018	2017	2016	2015	2014	2013
Declarations received	531	696	595	164	215	180	187
Declarations Delegated	512	596	442	143	184	145	135
% Delegated	96.4%	85.6%	74.3%	87.2%	85.6%	80.6%	72.2%

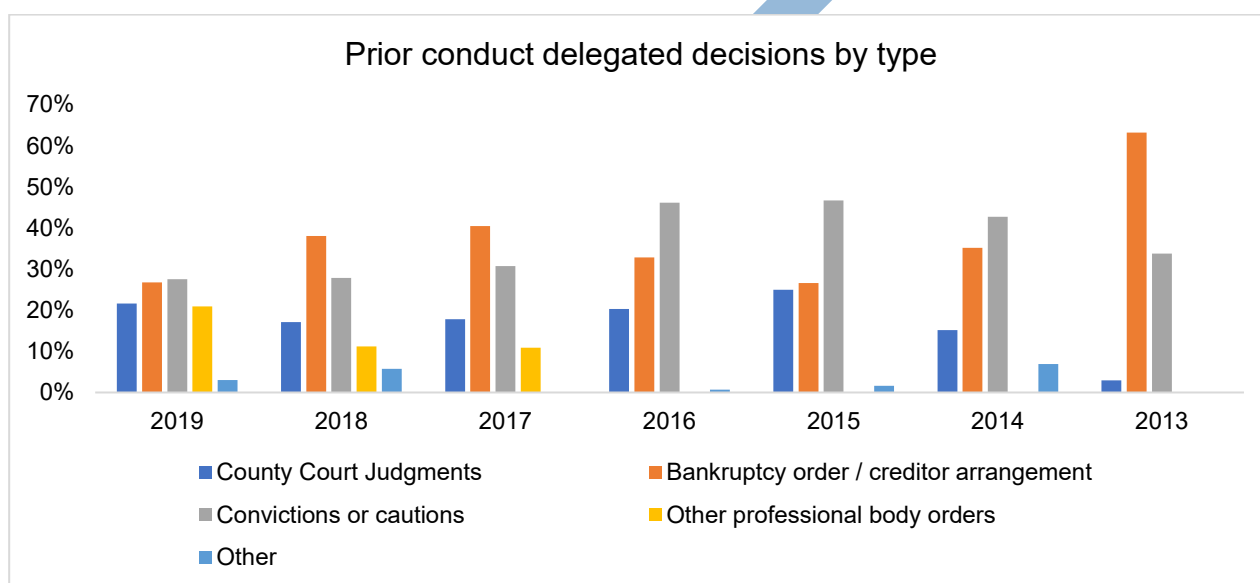
Table 1: Prior Conduct Declarations received and delegated

### Types of Declarations dealt with by Delegated Decision

Bankruptcy orders/creditor arrangements (26.8%) and convictions/cautions (27.6%) (spent cautions/convictions which should not have been declared or motoring offences where the conditions for delegated decisions are met) were the most common type of declaration that resulted in a delegated decision.

	2019	2018	2017	2016	2015	2014	2013
County Court Judgments	21.7%	17.1%	17.8%	20.3%	25.0%	15.2%	2.9%
Bankruptcy order / creditor arrangement	26.8%	38.1%	40.5%	32.9%	26.6%	35.2%	63.2%
Convictions or cautions	27.6%	27.9%	30.8%	46.2%	46.7%	42.8%	33.8%
Other professional body orders	20.9%	11.2%	10.9%	0.0%	0.0%	0.0%	0.0%
Other	3.0%	5.7%	0.0%	0.7%	1.6%	6.9%	0.0%
	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Table 2: Percentage of delegated decisions for Prior Conduct by type of declaration 2013-2019



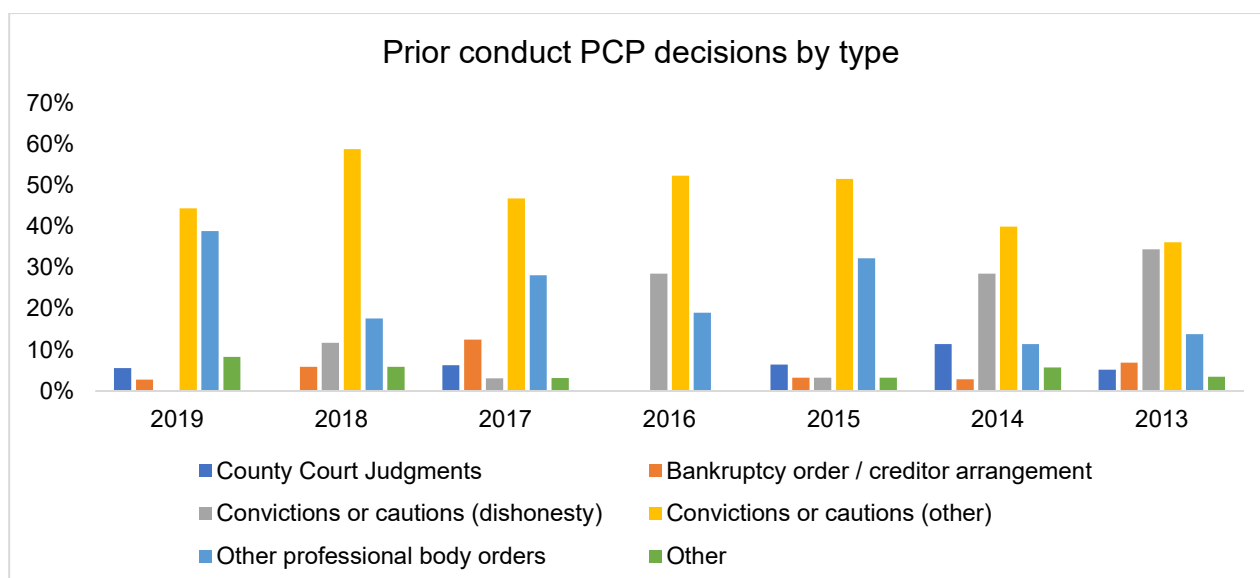
Graph 1: Percentage of delegated decisions for Prior Conduct by type of declaration 2013-2019

### Declarations dealt with by the Professional Conduct Panel (PCP)

During 2019, the PCP considered 29 declarations or matters to consider made by CILEX applicants or members. Convictions and cautions remain the highest reason for making a declaration.

	2019	2018	2017	2016	2015	2014	2013
County Court Judgments	5.6%	0.0%	6.3%	0.0%	6.5%	11.4%	5.2%
Bankruptcy order / creditor arrangement	2.8%	5.9%	12.5%	0.0%	3.2%	2.9%	6.9%
Convictions or cautions (dishonesty)	0.0%	11.8%	3.1%	28.6%	3.2%	28.6%	34.5%
Convictions or cautions (other)	44.4%	58.8%	46.9%	52.4%	51.6%	40.0%	36.2%
Other professional body orders	38.9%	17.6%	28.1%	19.0%	32.3%	11.4%	13.8%
Other	8.3%	5.9%	3.1%	0.0%	3.2%	5.7%	3.4%
TOTAL	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Table 3: Prior Conduct declarations dealt with by the PCP by type 2013 - 2019



Graph 2: Percentage of PCP decisions for Prior Conduct by type of declaration 2013 - 2019

## Professional Conduct Panel (PCP) Decisions

The majority of matters considered relate to applications for CILEx membership or Fellowship, or to reinstatements of individuals previously in membership. In 2019, three matters were referred to the Disciplinary Tribunal (DT), all 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.

	2019	2018	2017
Further information	1	1	0
Application allowed	7	6	12
Reinstatement allowed	0	0	5
Reinstatement refused	1	2	0
Conditions applied	1	0	0
Conditions removed	0	1	0
Resignation accepted	0	1	0
Application refused / withdrawn	4	0	1
Reprimand / Warning	1	1	3
Referred to DT	3	2	3
Prior Conduct does not affect application	3	0	0
NFA	8	3	4
	<b>29</b>	<b>17</b>	<b>28</b>

Table 4: PCP decisions for 2017 - 2019

## Prior Conduct Declarations and Decisions by Grade

The prospective grade of a new applicant to membership, ex-member applying for reinstatement and the current grade of members declaring prior conduct are recorded for declarations received and decisions made at the different stages of the process. It should be noted that new applicants cannot apply directly for membership at the Fellow grade, so

Fellows declaring prior conduct are either current members or are applying for reinstatement to membership.

	Declarations Received	Delegated Decisions	PCP Decisions
Fellow	38.3%	37.7%	16.1%
Graduate	21.0%	22.1%	48.4%
Associate	21.8%	19.0%	6.5%
Associate Prosecutor	0.0%	0.2%	0.0%
Affiliate	10.9%	14.6%	6.5%
Student	8.1%	6.5%	22.6%

Table 5: Prior Conduct declarations and decisions by grade of membership (applicants and members) in 2019

### 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 was one appeal during 2019 in which the panel’s decision was upheld.

### Misconduct Complaints and Allegations

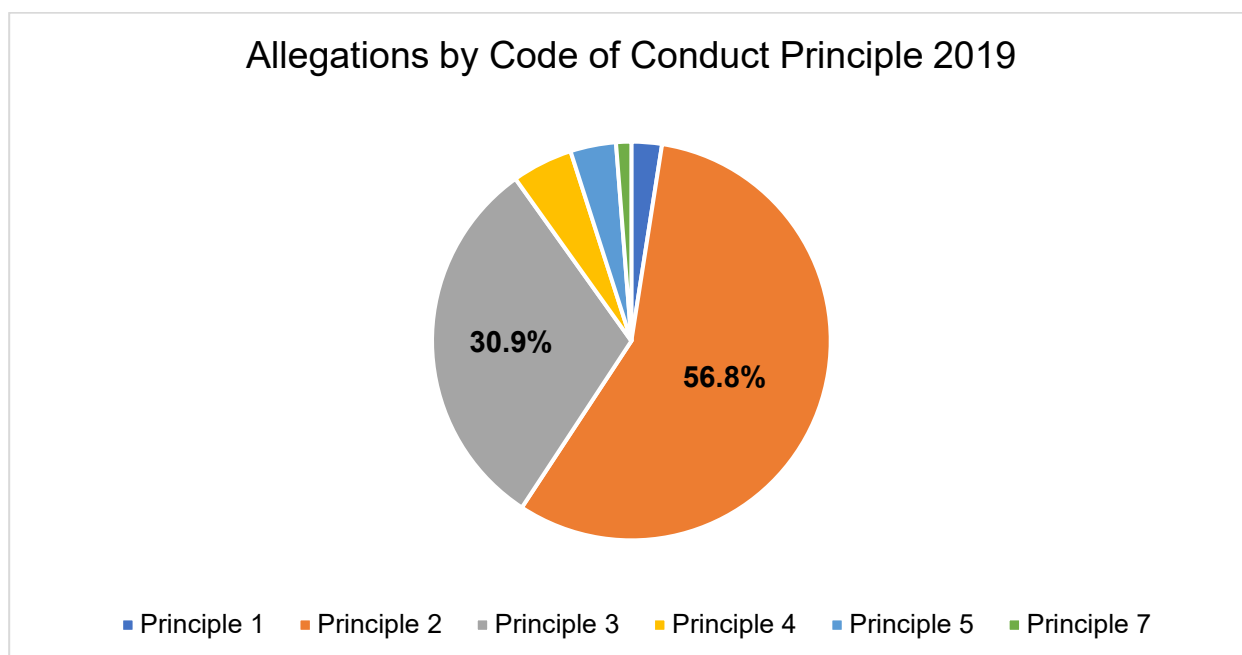
At the start of 2019, 52 misconduct complaints were open compared with 43 at the start of 2018. Of these, there were no cases relating to Continuing Professional Development (CPD) non-compliance (compared with 121 at the start of 2017). This is the result of a revised approach to enforcement in relation to CPD non-compliance to a more proportionate, risk-based approach.

During 2019, 66 complaints were received relating to 81 allegations. Allegations made are recorded against the nine principles of the CILEx Code of Conduct. Across the last three years, over 80% of allegations related to Principles 2 and 3. In 2019, no allegations related to Principles 6, 8 or 9.

	2019	2018	2017
Principle 1 - Uphold the rule of law and the impartial administration of justice	2.5%	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	56.8%	58.7%	55.6%
Principle 3 - Behave with honesty and integrity	30.9%	29.3%	28.9%
Principle 4 - Comply with your legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively	4.9%	4.0%	3.2%
Principle 5 - Act competently in the best interests of your client and respect client confidentiality	3.7%	4.0%	3.2%
Principle 6 - Treat everyone fairly and without prejudice	0.0%	1.3%	1.5%

Principle 7 - Ensure your independence in not compromised	1.2%	0%	3.2%
Principle 8 - Act effectively and in accordance with proper governance and sound financial and risk management principles	0.0%	0%	1.5%
Principle 9 - Protect client money and assets	0.0%	0%	1.5%

Table 6: Percentage of misconduct allegations by Code of Conduct principles 2017 - 2019



Graph 3: Percentage of misconduct allegations by Code of Conduct Principles in 2019

### Delegated Decisions for misconduct cases

A total of 24 misconduct cases were dealt with by delegated decision during 2019, of which 22 complaints were rejected following investigation, one was assessed as suitable for Determination by Consent (DBC) and one was referred directly to the Disciplinary Tribunal.

Delegated Decisions	2019	2018	2017
Number of delegated decisions	24	6	5
- Determination by consent (DBC)	1	2	3
- Complaint rejected	22	4	1
- Referred directly to DT	1	0	1

Table 7: Delegated decisions for Misconduct matters

### Professional Conduct Panel (PCP)

During 2019, 18 misconduct cases were heard by the Professional Conduct Panel of which 10 related to Fellows. Of the 18 cases, four were considered serious enough to be referred to the Disciplinary Tribunal. These related to two Fellows, one Associate and one Affiliate member and the allegations were under principles 2, 3 and 4 of the Code of Conduct.

	2019	2018	2017
Number of misconduct cases considered	18	18	6
- Number relating to Fellows	10	11	2
Cases referred to DT	4	6	4
DBC upheld	3	3	1
Decision to reject a complaint upheld	1	4	1
Reprimand / Warning / Undertaking	1	3	0
NFA / No case to answer	9	2	0

Table 8: Professional Conduct Panel decisions for Misconduct matters 2017 - 2019

## Disciplinary Tribunal (DT)

During 2019, seven misconduct cases were heard by the Disciplinary Tribunal, of which one related to a Fellow. Four cases resulted in exclusion which related to three Graduate and one Associate member and the allegations were under principles 1, 2 and 3 of the Code of Conduct.

	2019	2018	2017
Number of cases heard by the DT	7	5	12
- Number relating to Fellows	1	2	1
Exclusion	4	1	6
Warning / Reprimand	1	3	2
Withdrawn / NFA	2	1	2
Ordered to resign	0	0	1
Not proven	0	0	1

Table 9: Disciplinary Tribunal decisions for Misconduct cases

## Appeals Panel (AP)

There were no cases considered by the Appeals Panel for misconduct matters during the year.

## Conclusion

The data does not identify any significant matters to highlight. In addition, we continue to improve data collection and analysis of complaints and allegations enabling us more effectively to draw out trends in the types of allegations and adverse findings being made and inform development of our risk-based approach.

As we develop our risk-based approach to enforcement to further improve delivery of our enforcement function, we look forward to consulting with our regulated members and stakeholders on our approach to investigating allegations of misconduct and to assessing suitability and fitness to practice and own.