

Enforcement
Annual Report 2022
(Section 1)

Foreword | Helen Astle, Enforcement Lead, CRL

Consumers rightly expect honesty, integrity, and high standards of conduct from regulated individuals and firms, and they are entitled to have trust and confidence in the legal profession and services they receive.

The CILEX Code of Conduct (the Code) sets out nine principles to which all CILEX members, applicants, practitioners and regulated firms must adhere in their conduct, practice and professional performance.

Our Enforcement function is central to delivering that trust and we do this with the overriding aim of protecting and promoting the public and consumer interest, as well as the reputation of the profession.

CILEx Regulation's enforcement work includes the investigation of conduct that may breach the Code. Action is taken in the most serious cases, where there is evidence of a real risk to the public and consumers, or to the standards expected.

I highlighted last year that the expectations on members grow as new risks come to the fore and associated requirements for compliance grow. That remains the case in 2023 as we start to see more new technologies being adopted with their own risks to evaluate.

For the Enforcement Team in 2022, access to better data and more flexible resources has meant that good progress has been made in several areas of their work. There remains more to do particularly regarding a review of the underpinning rules and guidance.

Finally, I would like to take this opportunity to thank all the enforcement team staff, our panellists and their independent Clerks for their hard work and dedication during the last the year. The CILEx Regulation Board is indebted to them for their commitment, flexibility and expertise, and for their contribution to our effectiveness as a regulator.



Helen Astle
Enforcement Lead CRL

Introduction

- CILEx Regulation (CRL) is designated to authorise both individuals and entities, and all CILEX members come under the Code of Conduct.
- The Code of Conduct sets out the principles to which CILEX members, CILEX practitioners and CILEX Authorised Entities must adhere in their conduct, practise and professional performance, and the outcomes they must meet.
- CILEX ACCA firms and practitioners have their own Code of Conduct
- This report outlines the work undertaken by the Enforcement Team in 2022.
- It also identifies areas for development of CRL's risk-based approach to enforcement.

This year this report is split into two sections because of the increased Equality, Diversity and Inclusion data that CRL is publishing:

- **Section 1 – Enforcement Annual Report 2022** - A review of the activity of the Enforcement Team and the independent decision-makers in 2022.
- **Section 2 - Enforcement Annual Report 2022 - Equality Diversity and Inclusion**
A report on the Equality, Diversity and Inclusion data for those affected by decisions and for CRL panellists.

Some data previously reported in 2021 may have changed as cases develop and the data is improved.

Section 1. Review of activity in 2022

Whilst the Legal Services Board (LSB) assessment of the enforcement function was 'met' in 2021, CRL recognised the importance of addressing the staffing challenges that it had identified. By creating better flexibility within the Operations function, this meant additional resource was added to the team in 2022 and immediately there was a positive impact on timescales.

CRL was able to improve its data collection and analysis of enforcement cases, which assisted it in the approach to reducing timescales, particularly with the resolution of prior conduct cases.

The delays with the adoption of risk-based supervision in 2022 meant that CRL's plans for risk-based enforcement were delayed until 2023.

CRL had planned to consult with the regulated community and stakeholders on its approach to enforcement in 2022 and beyond, but other operational issues meant that this work will now commence towards the end of 2023.

CRL improved its consumer pages on the website related to complaints about our regulated community and published articles in Regulation Matters to assist complainants and members.

CRL Disciplinary panels

CRL has three independent disciplinary panels that consider the conduct of those regulated by us, namely the:

- **Professional Conduct Panel (PCP)**
- **Disciplinary Tribunal (DT)**
- **Appeals Panel (AP)**

The PCP considers conduct matters that have been self-declared by both regulated persons and applicants for CILEX membership or subsequent authorisation, where that conduct has the potential to impact on their suitability for CILEX membership or authorisation or, to continue to be regulated as a legal professional. The PCP also considers reports of wrongdoing against regulated persons (misconduct) to determine whether there is a case of professional misconduct for them to answer or to approve a sanction where misconduct is admitted.

The DT hears charges of professional misconduct against regulated persons in both contested and uncontested cases.

The AP hears appeals from CRL and regulated persons against decisions made by the PCP and DT. It also hears appeals against decisions relating to admissions, authorisation, licencing and supervision matters.

Many cases require consideration by one of the disciplinary panels at a hearing, in other cases Enforcement staff may make delegated decisions.

How CRL Disciplinary Panels operated in 2022

In 2022, CRL consulted on a change to its Enforcement Rules to allow for a presumption for remote hearings to be held for all its disciplinary panels where appropriate. CRL considered how it would ensure that the hearings remain fair and accessible to all and committed to further training for panellists in 2023. The Legal Services Board agreed the application in December 2022 and CRL policies and processes came into force at the beginning of 2023. CRL will report on their effectiveness in its 2023 report.

Disciplinary Tribunals remain open to the public and operated successfully in 2022. There were no Appeals Panel hearings.

Investigators represented CRL in disciplinary hearings, rather than instructing external advocates. This was fairer to the members, all of whom were unrepresented, in addition to providing efficiency savings.

In person training for the Disciplinary Panels this year included presentation on and practical application of judicial review with a focus on:

- Grounds
- Outcomes
- Risk for CRL disciplinary panels (procedural fairness, reasons for decisions and bias)
- Procedure and timescales
- Responsibilities of the parties

as well as receiving case law updates on:

- Identifying dishonest (rather than merely unprofessional) conduct
- Correct application of two stage test for dishonesty
- Lack of insight -v- denial of allegations

Ongoing engagement with panellists and clerks on how we can improve our enforcement resulted in the introduction of feedback/debriefing session after each PCP meeting and agreement that CRL will now attend PCP meetings in every case where the member or applicant is required to attend. Following earlier feedback from the AP we also introduced a clear procedure and standard directions in appeal cases.

Prior Conduct Declarations

Prior conduct declarations are made by members or applicants about conduct matters such as a criminal conviction, other regulatory findings or civil judgments, which may affect their suitability to become, or remain, a regulated legal professional.

The changes CRL made in 2021 to streamline the prior conduct declaration process which enabled members and applicants to view any previously declared conduct, has continued to have benefits for members and applicants by significantly reducing duplicate declarations.

There are instances where members or applicants have declared conduct incorrectly e.g. declaring a spent or protected conviction or wrongly declaring an investigation by a regulatory body rather than a client complaint.

CRL has identified that it has not had a consistent approach to how these cases are dealt with, in some cases, treating them as cancelled after the necessary enquiries were made, and in others making a delegated decision to approve the matter. The data below does not include cancelled cases, which will be reported separately in 2023.

	2020	2021	2022
Prior conduct declarations	945	542	258

During 2022, CRL started recording the status of some prior conduct declarations that it was unable to materially progress (e.g., due to their relationship to other ongoing investigations) to be classed as 'on hold' (albeit with an obligation on the member to provide material updates). This meant that work on progressing live cases could be undertaken more effectively.

The number of "live" prior conduct cases peaked at 203 in 2022 but finished at 89 live cases, 20 of which were 'on hold'. These are historic low numbers and reflect the significant progress made by the Enforcement Team in 2022.

CRL received prior conduct declarations from accountants seeking to be authorised as CILEX Practitioners (ACCA-Probate) in 2022. The checks CRL carried out highlighted instances of intelligence which raised serious issues relating to character and suitability. This was shared with ACCA and is good evidence that appropriate information-sharing with other key regulators enables standards to be maintained across the legal and other professional sectors.

Determined Prior Conduct Cases

During 2022 the Enforcement Team determined 303 declarations and the table below sets out how they were resolved.

Having started 2022 with 179 live cases, CRL finished the year with 109 live cases, of which 43 could be delegated (determined by an investigator) with the remaining 66 likely requiring a committee decision (PCP). The team are dealing much quicker with current declarations, so that the percentage requiring a PCP decision is higher.

The average time for an investigator to make a delegated decision has decreased. As the number of open cases to be determined by delegated decision reduced, extra PCP meetings were scheduled to resolve those that required a PCP decision urgently and to speed up the process for the benefit of applicants/members in certain cases (e.g. in applications for authorisation). Additional meetings averted the need for a formal appeal by enabling some applications to be reconsidered before a differently constituted panel.

Declarations dealt with by the Professional Conduct Panel

Of the 65 cases categorised as requiring a committee decision, 40 related to declarations received before 2022, and 25 during 2022. Analysis of the types of declaration referred to the PCP identified two main reasons:

- investigations and proceedings by other regulators (50.8%) and
- criminal convictions (30.8%).

A small number of members/applicants raised the possibility of appealing a PCP decision. However only one member served a formal appeal which was against a decision to refuse an application for fellowship. The hearing itself is listed in 2023.

Declarations dealt with by the Delegated Decision

Of the 238 cases dealt with by delegated decision, 94 related to declarations received before 2022, and 144 during 2022. When analysing the types of declaration dealt with by a delegated decision, the main declarations made related to:

- civil judgements (38.2%)
- IVAs (13%) and
- bankruptcies (10.1%)

While some investigations and proceedings by other regulators (15.1%) were determined by delegated powers this would be in limited circumstances only e.g. where the PCP had previously considered the conduct, or noted a rejection of a misconduct allegation.

The financial declarations, such as CCJs, IVAs and Bankruptcies, are mainly due to personal circumstances where there was no related criminal conduct or breach of the CILEX Code of Conduct and therefore did not impact on suitability.

CRL intends to streamline its PC processes further and reconsider exactly what prior conduct questions are needed and relevant. While the PCP continues to delegate certain matters back to CRL to determine on a case-by-case basis, alternative ways of determining prior conduct through rule changes will be part of the work of the team in 2023.

Prior Conduct Timescales

Because the PCP tends to deal with the more serious and/or complex declarations, including criminal conduct and proceedings involving other regulatory bodies, the timescales for their cases are necessarily longer. These cases often rely on other bodies completing their investigations before the conduct can be considered by the PCP. Such delays are outside the control of CRL.

During the year it was identified that the data for the age of prior conduct cases was being inflated because of those cases that were classed as 'on hold'. In addition to regular reviews with the other investigating party, CRL actions these cases once the other investigating party confirms it has concluded its investigation. New KPIs in 2023 will allow these types of cases to be reported separately from live cases and more clearly reflect when CRL is able to progress a case. This will both improve the overall timescales for actioning complaints, as well as prioritisation.

Misconduct Complaints and Allegations

In 2022, CRL improved its triage procedure for new complaints. The positive outcome was that 100% of initial reviews were completed by the Investigation Manager within one month of receipt. The cases were then allocated to an investigator (based on several factors including complexity and volume of evidence).

The improved triage has also enabled better identification of those misconduct complaints needing to be put 'on hold', usually as a result of an existing investigation by another regulator or criminal investigation and it not being appropriate to conduct a parallel investigation. In the most serious cases the team will consider whether to utilise its power to apply for an interim sanction.

Further, it has enabled an initial review and an investigator decision to be made concurrently, avoiding the need for full investigation whether there is no evidence of misconduct.

There were 110 misconduct cases open at the start of 2022, but the year finished at 90 live cases and 36 'on hold' cases.

For investigations not 'on hold' the Enforcement Team worked to reduce the backlog, prioritising those that pose the greatest risk to the public and avoiding newer cases becoming part of the backlog. Weekly case reviews are held to enable effective oversight of progress and lines of enquiry. The overall number of complaints outstanding had increased by just 16 cases; a small increase given the number of complaints received during the year.

When looking at the complaints received during the year, the following table shows that, post-pandemic, misconduct complaints increased by over 25% in 2022.

	2020	2021	2022
Misconduct complaints	65	58	73

Of the 73 reports of misconduct received during the year, it is notable from the following table that the largest number of those received involved non-authorised members as opposed to Fellows or Authorised Entities.

Complaints were received from a range of sources including employers, other regulators, clients, members of the public and opponents in legal disputes.

No particular post-pandemic trends were identified. Allegations based on Principle 2 (Professional Standards) and Principle 3 (Honesty and Integrity) remain the most common types of concerns reported to us which is expected. There was a small increase in Principle 5 (Competence), in particular outcome 5.6 not to act in a matter without the right or authorisation to do so. This is most apparent for self-employed members working in an unregulated firm.

Complaints do not necessarily result in formal allegations or charges and may either be modified or rejected after a preliminary investigation, or where there is no jurisdiction to investigate e.g. a criminal offence. In cases where an allegation is made by a client or former client, there is frequently an overlap between conduct and a service complaint (which CRL does not investigate).

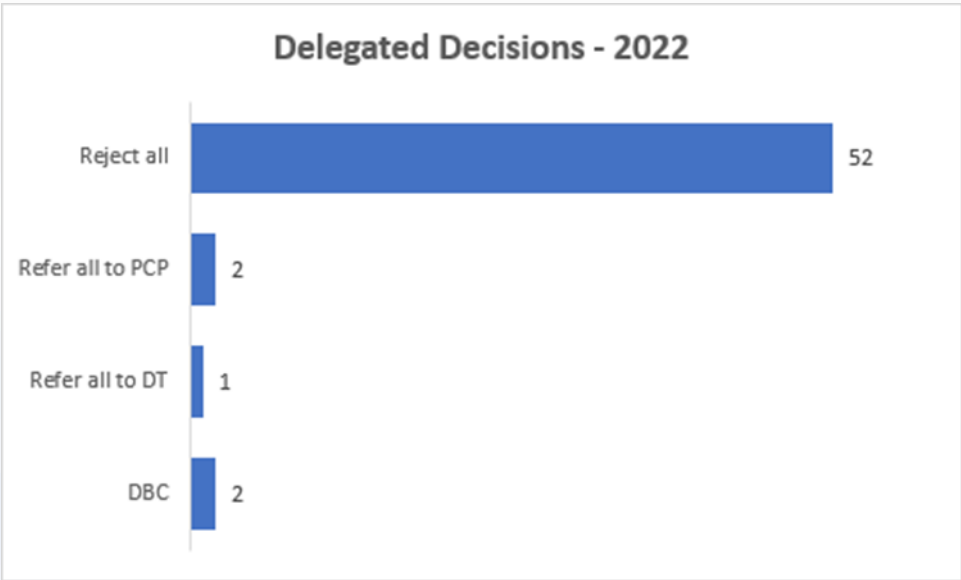
The most serious types of conduct against which CRL investigated and/or took action in 2022 included:

- criminal convictions
- conducting reserved activities without being entitled;
- Academic malpractice
- misappropriating client funds;
- deliberately and dishonestly failing to disclose prior conduct; and
- adverse findings made by other regulators and professional bodies.

Whilst no evidence of misconduct related to financial sanctions breaches were identified, three cases were placed on hold pending conclusion of other investigations related to possible breaches of the Money Laundering Regulations. Although it should be noted that none relate to CRL authorised firms or individuals supervised by CRL for Anti Money Laundering compliance.

Delegated Decisions for misconduct cases

In 2022, there were 57 delegated decisions taken by officers. The breakdown of decisions is shown in the table below:

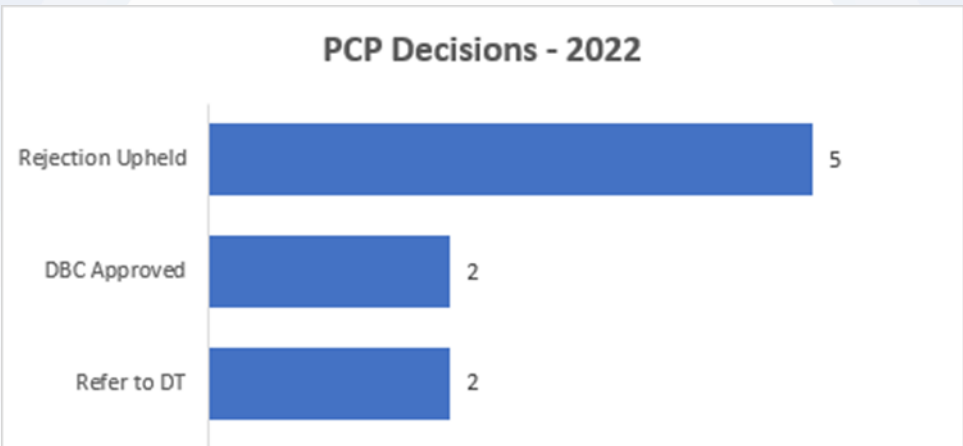


Complaints are rejected where there is no evidence available to substantiate an allegation; the facts alleged do not disclose misconduct; CRL has no jurisdiction; or where more than a year has elapsed since the conduct complained of took place.

Once a complaint has been decided by an investigator, complainants currently have an absolute entitlement to ask the PCP to review the investigator’s decision to reject an allegation. Complainants will often make a request for review on the basis that they have ‘nothing to lose’. During 2022 all complaints that have been subject to a PCP review have upheld the investigator’s decision.

Panel Decisions for misconduct cases

During 2022 the PCP considered 9 cases relating to professional misconduct as follows:



The PCP upheld 5 Officer decisions to reject a complaint following the complainant's request for a review of the Officers' decisions. This remains an important option for complainants, but as there is no redress offered by our enforcement processes, we are mindful that this should not be treated as a default approach by complainants.

In addition, the PCP were informed of 40 other matters that had been rejected by investigators previously but in which no request for a review had been received. The PCP has no decision-making power in such cases, but such oversight provides evidence of a consistent decision-making approach by the team.

Disciplinary Tribunal

The Disciplinary Tribunal heard 1 misconduct case in 2022. All charges were proved and resulted in an exclusion from membership. The member did not appeal the decision.

Appeals Panel

There were no appeals heard in 2022. One appeal was received and listed for hearing in 2023.

Judicial Review

CRL had been subject to a Judicial Review following the investigation of a non-authorised member for performing reserved activities. The member had previously been excluded from membership by the Disciplinary Tribunal and his appeal against that decision had been dismissed by the Appeals Panel. The individual sought a judicial review of these decisions.

The court refused leave for a judicial review on all grounds and further refused a renewed application for permission to apply for judicial review in November 2022.

Misconduct Timescales

The timescales for misconduct can often be long because of the nature of the complaint that needs to be investigated, again including criminal conduct and proceedings involving other regulatory bodies. However, the overall trend is improving.

As with prior conduct declarations, the data for the age of misconduct cases was being artificially inflated because of those cases that were classed as 'on hold'. CRL has implemented regular reviews with the other investigating party and prioritises these cases once the other investigating party confirms it has concluded its investigation. New KPIs in 2023 will allow these types of cases to be reported separately from live cases and more clearly reflect when CRL is able to progress a case. This will both improve the overall timescales for actioning complaints, as well as enabling CRL to prioritise those cases posing the greatest risk.

How CRL delivered its Enforcement function

Following the enforcement function coming under the Director Operations in 2022, this has seen a greater focus on the work of the Enforcement Team. This has included extra information on the activities of the team including progress on timescales being provided to the CRL Board.

Staffing

In 2022, the consolidation of authorisation, supervision and enforcement under Operations has allowed greater flexibility to adapt to workflows and has had a positive impact on the delivery of the enforcement function. Two members of the Practitioner team have taken the opportunity to develop their knowledge and skills further through a successful hybrid working arrangement with the existing responsibilities.

Communications

The Enforcement Team ensures the availability of guidance and material to the regulated community, the public, and other stakeholders who may rely on CRL's enforcement work.

The CILEX Journal and Regulation Matters are used to support the regulated community in understanding their obligations and CRL's expectations under the Code of Conduct.

Timescales

CRL is aware of the need to communicate to the regulated community and the public details of our anticipated timescales to complete misconduct investigations. CRL continues to review the information that we provide on expected timescales, which for those complex cases or involving other parties, may take longer than expected. The information that is provided on the CRL website is to be reviewed to see how we can improve clarity for the user.

Processes and rules

In addition to the rule change to allow for a presumption for remote hearings to be held for CRL disciplinary panels, CRL continued to identify areas where further rule changes would benefit members and complaints by providing greater clarity. Any changes would be alongside the implementation of risk-based supervision and starting to develop a more transparent, risk-based approach to enforcement.

CRL has agreed a set of standard directions to manage AP hearings, bringing greater clarity and consistency to the AP procedure and introduce shorter timescales similar to the DT procedures.

Having identified a significant risk in 2021 regarding the automatic reinstatement of Fellows CRL without CRL consideration, a new process was introduced enabling the Enforcement Team to conduct routine internal and open-search checks in such applications, whether or not the applicant declared prior conduct. Over 40 such checks were made in 2022.

Intelligence Sharing

CRL has referenced above the 'on hold' cases where it needs to work with other regulators.

As a commitment to ongoing co-operation with the police and/or other regulators and to protect the interest of consumers, CRL complied with 12 requests for witness statements to be used in criminal investigations and/or prosecutions.

CRL has shared learnings with other regulators and bodies on its approach to supervision and financial penalties. It has commenced work with HM Land Registry on their approach to enforcement of misconduct related to lawyer assurance and how this might relate to regulators approach to misconduct.

Data analysis

Data collection and monitoring have been enhanced in 2022 following recruitment of a specialist Research and Performance Analyst. CRL is reviewing KPIs to enhance further the case management and analysis of outcomes.

The changes to data reporting have also led to improvements in the recording and analysis of EDI data for reports of misconduct received and decided in 2022.

Work has commenced on expanding the categories of protected characteristics and social mobility data analysed which will help to give a clearer picture whether the EDI composition of the subjects of misconduct cases is reflective of the CILEX membership as a whole, or whether there is any over representation across any group(s).

As well as analysing all decisions, the intention is to look in more detail at the source of complaints and whether there is over representation from a particular type of complainant as well as other factors that could explain any differential outcome. This includes individual engagement levels measured by representation, response, and admission. The new ability to measure engagement levels as a separate variable will also help the Enforcement Team to identify whether CRL is communicating with all the regulated community at the right level.

As part of its first EDI strategy, published in 2022, CRL collected and published data in relation to its staff, panels, committees and the Board to ensure and demonstrate that their composition is reflective of the regulated community.

Conclusion

The 2022 LSB Regulatory Performance Assessment concluded that CRL had provided 'sufficient assurance' that it meets the enforcement standard. CRL will draw upon the feedback received and the good practice that the LSB has identified at other regulators.

In 2023 CRL will:

- monitor the implementation of its new arrangements allowing for remote hearings
- ensure its processes are accessible and clear
- review the information provided to complainants on timescales and outcomes
- focus on those complaints causing greatest risk to the public
- continue its work on improving timescales for resolution of complaints
- commence embedding risk-based supervision as part of its plans for risk-based enforcement in 2023, and
- consult with the CRL regulated community and stakeholders on its approach to enforcement in 2023 and beyond.