



# CILEx Regulation Enforcement Annual Report **2023**

## Foreword

### Helen Astle, Enforcement Lead, CILEx Regulation Board

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.

Despite the continuing uncertainty over the longer term future of CILEx Regulation the Enforcement Team maintained focus on investigation and appropriate disposal of cases. During 2023 the number of live prior conduct cases were reduced by a quarter from 109 to 80 and within that the number of cases over 18 months old by 50% from 38 to 16. Regrettably, in the same period the number of live conduct cases increased by 10% from 125 to 138 and within that the number of cases over 18 months old by 20% from 42 to 51. This prompted a review of the Enforcement function in 2024, the outcome of which will be covered in next year's report.

I 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.

## Introduction

- CILEx Regulation (CRL) is designated to authorise both individuals and entities and sets the standards of professional and ethical conduct expected of its regulated community.
- 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 and the independent decision-makers in 2023.
- A report on the Equality, Diversity, and Inclusion data for those affected by decisions and for CRL panellists is provided in the **CRL Enforcement EDI Annual Report 2023 - Equality Diversity and Inclusion**.
- It also identifies areas for development of CRL's risk-based approach to enforcement.

Some data previously reported in 2022 may have changed as cases develop and the information is refined.

Investigators continued to represent CRL in disciplinary hearings, rather than instructing external advocates. CRL will continue this approach where possible, which may be fairer to those who are unrepresented.

In person training for the Disciplinary Panels was held in June this year and included:

- Regulatory case law updates on conduct in personal life, including sexual misconduct and social media use, open justice and the publication of decisions
- Ensuring fairness in remote hearings
- The use of previous adverse findings and judgments in disciplinary hearings

The introduction of feedback/debriefing sessions after each PCP meeting continued to be beneficial and, as planned, CRL now attends PCP meetings in every case where the applicant or regulated person is required to attend.

## Review of the implementation of remote hearings

In December 2022 the Legal Services Board approved CILEx Regulation's application to amend its Enforcement Rules to allow a permanent presumption of remote hearings for all disciplinary panels, with a right for either CRL or the person subject to proceedings to request an in-person hearing. The final decision as to how to proceed rests with each panel, subject to the overriding objective of fairness. The permanent rules came into effect on 1 February 2023. CRL previously had temporary rules in place to allow for remote hearings due to the coronavirus pandemic from 17 November 2020. Prior to this, individual applications for permission to proceed remotely were required to be made in respect of each matter to the relevant panel hearing the case.

CRL's overall assessment of its use of remote hearings to date is positive. Remote hearings have been an effective means of disposing of cases that would likely have resulted in an adjournment or delay if either the parties were required to attend in person, or an application for permission to proceed remotely was required in each case. There has been a general acceptance of the rules and willingness of parties to participate remotely, particularly at the PCP. This could be explained in part by the fact that PCP meetings are more informal in nature and don't often deal with contested evidence and issues, whereas DT and AP hearings are more formal and tend to be adversarial.

The PCP tends to deal with a high volume of cases with low to medium risk and complexity and there is no automatic right of attendance. There is also a greater degree of engagement and participation by those subject to PCP proceedings, particularly where the matter being considered relates to an application for membership or authorisation, or a Determination by Consent, both of which form the bulk of cases considered by the PCP.

CRL's ability to hold remote hearings as the starting point has enabled it to schedule additional PCP meetings at relatively short notice to enable the disposal of an excess of prior conduct cases and previously adjourned matters.

In June 2023, CRL delivered training on remote hearings to enforcement staff, panel members and panel clerks as part of its commitment to ensure that hearings remain fair and accessible to all. The training built on the external training delivered to panels and enforcement staff in April 2021 on the legal basis for holding remote hearings; the factors to take into account when determining whether it is fair to proceed remotely; and chairing remote hearings, in addition to the external training received by enforcement staff on virtual hearings in regulatory matters in June 2020 and September 2020.

This year's training session covered CRL's decision-making processes as to whether to proceed remotely or request an in-person hearing, guidance on the criteria that indicate whether it is fair to proceed remotely and a practical exercise on evaluating the fairness assessments that are completed by CRL at the outset.

Once a case is referred for a hearing, a questionnaire incorporating the fairness criteria is sent to the applicant or regulated person to complete and a test call is arranged if they request one. During the test call a checklist, which also incorporates the fairness criteria, is completed and assessed alongside the questionnaire responses to determine whether to proceed remotely or in person.

As part of its ongoing monitoring and review of remote hearings, CRL collates and evaluates the remote hearing questionnaires and test call checklists to determine whether the correct weight is being given to each factor that is likely to affect fairness during the fairness assessment. CRL also seeks feedback from each panel after a hearing and discusses any learnings points on a regular basis at team meetings and management level.

Feedback is also obtained from those subject to proceedings. Observations to date have been largely positive. At least one regulated person who was subject to DT proceedings insisted that they would not have attended the hearing if it was held in person due to their medical issues.

The table below sets out the number of remote hearings held in 2023, compared with the period that the temporary rules allowing for a presumption of remote hearings were in place.

	7 November 2020 to 22 November 2022	Jan – December 2023
<b>Total number of hearings</b>	<b>118 broken down as follows:</b>  PCP: 104 meetings in respect of 88 Applicants/Regulated Persons  DT: 6 hearings & 1 interim application (6 Regulated Persons)  AP: 5 hearings & 2 interim applications in respect of 3 cases	<b>78 broken down as follows:</b>  PCP: 75 meetings (in respect of 70 cases involving individual Applicants/Regulated Persons)  DT: 1 hearing  AP: 2 hearings
<b>Attendees</b>	18 (PCP 15; DT3; AP 3)	7 (PCP 5; AP 2)
<b>Requests for in-person hearings</b>	3 final appeal hearings	1 final appeal hearing
<b>No of requests granted on grounds of fairness</b>	3 final appeal hearings	1 final appeal hearing
<b>No of requests for test calls</b>		1

In 2023, only one person requested a test call and that was in respect of a PCP meeting to determine their prior conduct. Test calls were introduced earlier during the coronavirus pandemic. CRL implemented a formal process for assessing the call and means of collating data at the beginning of 2023.

The person who requested a test call did not object to a remote hearing but raised concerns in the questionnaire about their ability to participate effectively due to health issues.

This was unlikely to have been fully alleviated by an in-person hearing. The individual was also legally represented and on balance it was fair to proceed remotely.

On one occasion, an individual who declined a test call experienced connectivity issues during a PCP meeting to determine their prior conduct. The individual lost connectivity and when they rejoined on an alternative device. Whilst they could not be seen by the Panel, the individual could see and hear the panel clearly and was content to proceed. The Panel found no prejudice in continuing remotely.

Only one person requested an in-person hearing and their application was granted. This was in respect of a final appeal hearing and was in-keeping with requests in previous years.

The AP's granting of the application was demonstrative of it meeting its overriding duty to ensure proceedings are fair. The caselaw underpinning the factors within our fairness assessment suggests that a remote hearing is less likely to be appropriate where the nature of proceedings and issues to be determined are final, compared with shorter, non-controversial or procedural matters.

In granting the application the AP considered a range of factors, which in combination resulted in an in-person hearing being more suitable. These included: language issues; the size of the hearing bundle; the anticipated length of the hearing and complexity; the number of people expected to attend the meeting, which was at least 7; the impact on the ability to facilitate a remote hearing, including breaks; and the Appellant's ability to instruct their representative. The AP also found that holding an in-person hearing would not have caused any additional delay.

In 2024 CRL will continue to monitor the effectiveness of its current procedure to ensure that it remains fair, fit for purpose and efficient. To maintain transparency, CRL will publish additional guidance on the fairness criteria so that those subject to proceedings can take a more proactive role in assessing for themselves whether to proceed remotely, or whether an in-person hearing would be more appropriate.

## Prior Conduct Declarations

Prior conduct declarations are made by members or applicants about conduct matters that have the potential to affect their suitability to become, or remain, a regulated legal professional, such as a criminal caution or conviction, other regulatory findings, civil judgments and individual insolvencies.

There have been instances where members or applicants have declared prior conduct incorrectly e.g. declaring a protected conviction, wrongly declaring a service-related client complaint as an investigation by a regulatory body or duplicating a declaration. CRL has developed a consistent approach in cancelling these cases, rather than making a delegated decision to approve the matter. The data below now reports separately the number of cancelled cases in 2023, as well as those on hold. The relatively low number of cancelled cases indicates that individuals are largely clear about the prior conduct declaration requirements, especially since new guidance was introduced in August 2021.

	2021	2022	2023
<b>Total declarations received in 2023</b>	542	258	255
<b>Total live cases (excluding on hold &amp; cancelled)</b>	-	-	366
<b>Total cases resolved in 2023</b>	698	303	280
<b>Total declarations on hold at end of 2023</b>	-	-	23
<b>Total cancelled cases in 2023</b>	-	-	10

There were 111 live prior conduct cases at the start of January 2023 and 255 received throughout the course of the year. During 2023 the Enforcement Team resolved 280 of the 366 live prior conduct cases. CRL finished the year with 86 live prior conduct cases, of which 23 were on hold, leaving 53 active cases at the end of the year.

Approximately 62 out of the 86 live prior conduct cases will likely require a PCP decision. 42 of these were received in 2023. Many of the 20 declarations received before 2023 were awaiting further information from the declarant.

CRL receives prior conduct declarations from accountants seeking to be authorised as CILEX Practitioners (ACCA-Probate) and any declarations received are included in the above numbers.

Declarations made by CRL entities are not included in the above figures.

## Resolved Prior Conduct cases

The table below sets out how the 280 resolved prior conduct cases were determined.

	2021	2022	2023
<b>Total resolved prior conduct cases</b>	698	303	280
<b>Delegated</b>	656	238	222
<b>Rejected (committee)</b>	-	-	9
<b>Approved (committee)</b>	-	-	49

Of the 280 prior conduct cases that were resolved, 222 were delegated (approved by an Investigation Officer without reference to the PCP). The remaining 58 cases were referred to the PCP for determination, of which 9 were rejected and 49 were approved. Rejected cases are those relating to applications for membership or authorisation only, whereas approved cases include declarations by existing regulated persons and those that either received a sanction, or were escalated to be dealt with as misconduct.

## Declarations dealt with by the Professional Conduct Panel

Of the 58 cases categorised as requiring a PCP decision, 37 related to declarations received before 2023, and 21 during 2023. The main types of declaration referred to the PCP were as follows:

- investigations and proceedings by other regulators 26 (44.8%) and
- criminal cautions and convictions 16 (30.7%).

## Declarations dealt with by Delegated Decision

Of the 222 cases dealt with by delegated decision, 49 related to declarations received before 2023, and 173 during 2023. The main types of declaration dealt with by a delegated decision are broken down as follows:

- Civil judgements 71 (32%)
- Cautions and convictions 40 (18%)
- IVAs and other compositions with creditors 30 (13.5%) and
- Bankruptcies 27 (12.1%)

There were limited circumstances in which declarations relating to investigations and proceedings by other regulators were determined by delegated powers. These would have been where the PCP had previously considered the conduct or noted a rejection of a misconduct allegation. Investigation Officers can also apply for delegated authority on a case-by-case basis to take no further action in respect of an investigation or proceedings by a regulatory or professional body that resulted in no further action or findings of wrongdoing.

The financial declarations, such as CCJs, IVAs and Bankruptcies, were 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.

The PCP continues to delegate certain matters back to CRL to determine on a case-by-case basis, CRL will continue to explore alternative ways of determining prior conduct through rule changes.

## Prior Conduct Timescales

The average time for an investigator to make a delegated decision is 11 weeks, whereas the average time taken from receipt of a declaration until determination by the PCP was 38 weeks.

Because the PCP tends to deal with the more serious and/or complex declarations compared with those that can be dealt with under delegated authority, such as adverse findings by other regulators, 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.

CRL now captures separately those cases which are classed as 'on hold' to better reflect cases that can be progressed. In addition to regular reviews with the other investigating party, CRL actions these 'on hold' cases once the other investigating party confirms it has concluded its investigation.

## Misconduct Complaints and Allegations

The triage procedure for new complaints continued to operate successfully with 100% of initial reviews completed by the Investigation Manager within one month of receipt. The cases were then allocated to an investigator (based on several factors including seriousness, complexity and volume of evidence).

This triage procedure allows for better risk assessment and 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 order.

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

The Enforcement Team continued working to reduce the backlog, prioritising those cases that posed the greatest risk to the public and avoiding newer cases becoming part of the backlog. Weekly case reviews continued to enable effective oversight of progress and lines of enquiry.

The following table shows the number of misconduct complaints in 2023.

Misconduct Cases 2023	
Cases open at the start of 2023	122
Reports received in 2023	74
Total live cases in 2023	196 (167 individuals)
On hold misconduct cases at the end of 2023	49
No of cases determined in 2023	62 (closed cases in 2023)

There were 196 live misconduct cases during the course of 2023, relating to 167 individuals, of which 74 reports of misconduct were received during the course of 2023. The majority of reports received in 2023 related to Authorised Persons, namely Fellows (36) and Entities (5) as opposed to non-authorised members (33).

There were 134 misconduct cases open at the end of 2023, of which 49 were on hold, leaving 85 live cases.

The majority of complaints were received from individual opponents in legal disputes, closely followed by clients and third-party members of the public. The table below sets out the source of complaints in all 74 reports of misconduct received in 2023, compared with 2022. Reports from CILEX all related to allegations of academic malpractice.

Source of report	2022	2023
Employer (regulated)	10	10
Employer (unregulated)	-	-
Client	9	16
Third Party (member of public)	18	13
Third Party (legal opponent – firm)	2	6
Third Party (legal opponent – individual)	12	17
Other Regulator	5	4
CILEx Regulation	1	2
CILEX	11	6
CILEX Member/ Regulated Person	-	-
CILEX Member/ Regulated Person (Prior Conduct)	1	-
Police/ other prosecuting authority	1	-
Unknown / unrecorded	2	-

Reports of misconduct to CRL 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. an ongoing legal dispute. 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 that CRL investigated and/ or which resulted in a finding or admission of misconduct in 2023 included:

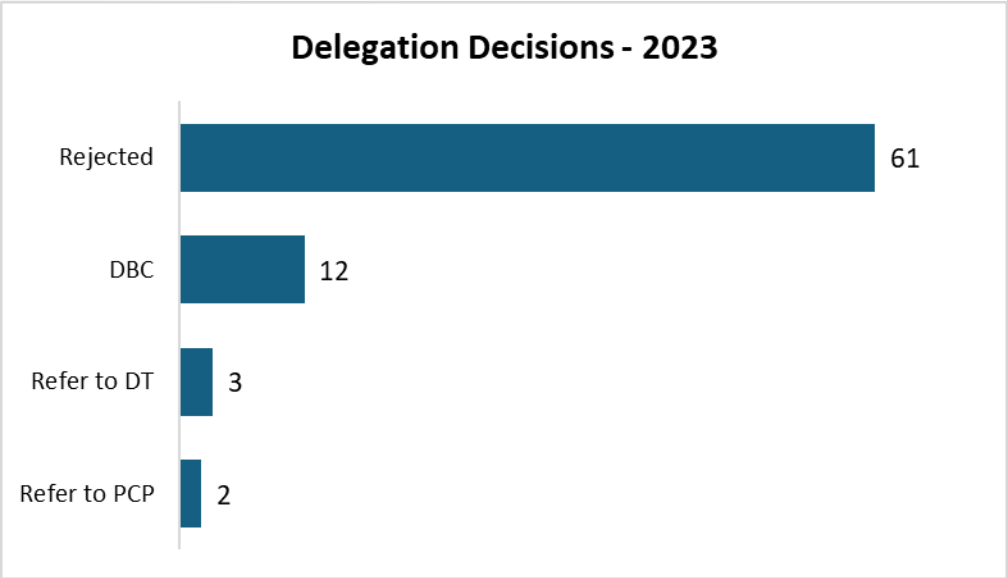
- Dishonesty, misleading clients and the public
- Misleading the regulator
- Fabricating letters of administration and powers of attorney
- Threatening and abusive behaviour
- Acting outside authorisation
- Academic malpractice

In 2024 CRL will explore ways to capture trends in the nature of conduct that results in a formal allegation/ charge and finding of misconduct.

There was no evidence of misconduct relating to financial sanctions breaches.

## Delegated Decisions for misconduct cases

In 2023, there were 78 delegated decisions taken by officers. The breakdown of decisions is shown in the table below.

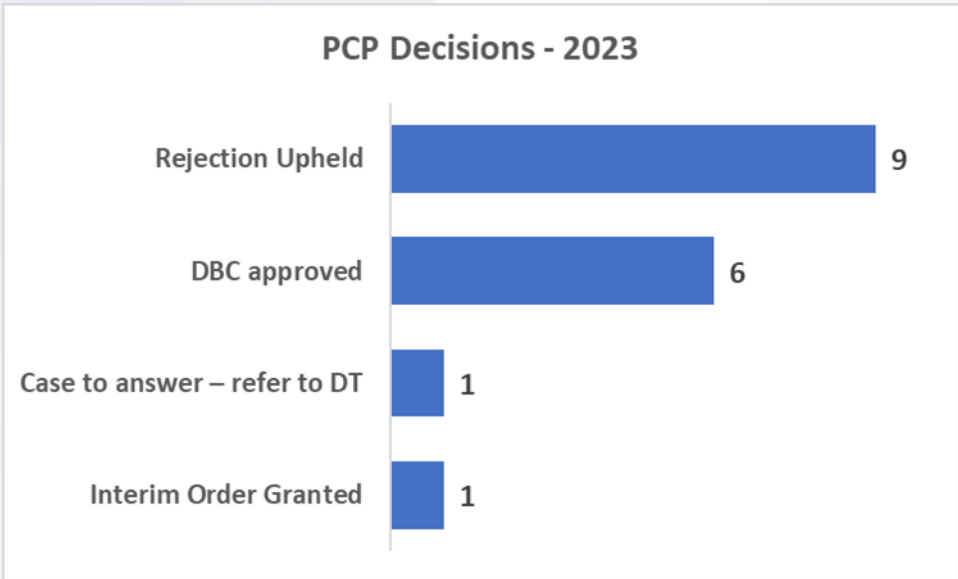


Complaints are rejected where there is no evidence available to substantiate an allegation; the facts alleged do not disclose misconduct; CRL has no jurisdiction; or where more than a year has elapsed since the conduct complained of took place.

Once a complaint has been rejected by an investigator, complainants currently have an absolute entitlement to ask the PCP to review the investigator’s decision to reject an allegation. During 2023 the Investigators’ decision was upheld in all complaints that were subject to a PCP review.

## Panel Decisions for misconduct cases

### Professional Conduct Panel



The PCP upheld 9 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 CRL is mindful that this should not be treated as a default approach by complainants.

The PCP has no decision-making power in such cases, but such oversight provides evidence of a consistent decision-making approach by the team. In 2024 CRL will review the mechanism by which complainants request a review of an officer's decision to ensure that the key issues being challenged are more clearly identified.

The PCP approved 3 recommendations for a determination by consent (DBC) in respect of 6 different cases involving 3 individuals. The PCP also rejected two recommendations relating to a single individual in 2023. A final decision is expected to be made in 2024 in respect of the DBCs awaiting approval.

## Disciplinary Tribunal

The Disciplinary Tribunal heard one misconduct case in 2023. All charges were proved and resulted in an exclusion from membership. The Respondent did not appeal the decision.

## Appeals Panel

The Appeals Panel heard one appeal in respect of a misconduct cases, against a decision by the PCP to order the publication of a DBC. The other appeal related to the prior conduct matter referred to above.

## 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. During 2023 the overall trend has improved.

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. CRL now records and tracks the review and release dates to more clearly reflect when case can be progressed. This has helped CRL to better prioritise those cases posing the greatest risk.

## How CRL delivered its Enforcement function

The CRL Board has continued to receive improved information on the work of the Enforcement Team in the Director of Operations Board report and has been encouraged by the progress being made.

### Staffing

The team has been settled in 2023 and this has allowed the further development of knowledge and skills for the more recent members. Opportunities for external training and the acquisition of qualifications relevant to the role have been taken during the year.

### 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.

## Intelligence Sharing

CRL has referenced above the 'on hold' cases where it needs to work with other regulators or law enforcement agencies and has remained committed to the ongoing co-operation with other regulators to protect the interest of consumers.

In September 2023, CRL shared learnings with LawCare and other regulators on improving the experience of those involved in the disciplinary process. Proposals were identified around outlining the key stages of the enforcement process and helping to better manage the expectations of those subject to proceedings. CRL also continued its work with HM Land Registry on their approach to enforcement of misconduct relating to lawyer assurance and how this might relate to the regulator's approach to misconduct and explored the possibility and potential nature of future information sharing arrangements.

## Data analysis

CRL has continued to review its KPIs to enhance further the case management and analysis of outcomes.

Work continued around expanding and analysing the categories of protected characteristics and social mobility data and this was reflected in the 2022 annual report that was produced this year. Further work is needed to secure more contemporaneous data, including the EDI composition of decision makers, to identify whether the EDI composition of the subjects of misconduct cases is reflective of the CILEX membership as a whole and in comparison, with decision makers; whether there is any over representation across any group(s) within the enforcement process and if so, whether any disparities identified can be explained by existing data.

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 outcomes. CRL has started collecting data around these potential explanatory factors, including individual engagement levels measured by representation, response, and admission.

Once we have more contemporaneous data, makers we can start to analyse these factors in more detail. Further detail will be provided in the CRL Enforcement EDI Annual Report 2023 - Equality Diversity and Inclusion.

## Conclusion

In 2024 CRL will:

- Review its plans to consult with the CRL regulated community and stakeholders on its approach to enforcement in 2024 and beyond.
- Work with the LSB on its review of enforcement powers.
- Focus on those complaints causing greatest risk to the public, including those related to professional ethics.
- Continue its work on improving timescales for resolution of complaints.
- Build on the information and guidance it provides to its regulated community.
- Continue to monitor the implementation and any impact of remote hearings.