



Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Council for Licensed Conveyancers application for approval of changes to Regulatory Arrangements for the Adjudication Panel

The Legal Services Board (“LSB”) has approved in part the application by the Council for Licensed Conveyancers’ (“CLC”) for changes to its adjudication and disciplinary arrangements. The CLC’s Adjudication Panel Rules 2011 and the CLC’s Approved Regulator (Disciplinary Procedure) Rules 2011 are approved. The CLC’s Adjudication Panel (No 2) Rules 2011 and the CLC’s Licensing Authority (Disciplinary Procedure) Rules 2011 will be considered as part of the application by the CLC to be designated as a licensing authority. This Notice sets out basis for the LSB approval and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 of the Legal Services Act 2007 (“the Act”) to review and approve (in whole or part) or reject alterations to the Regulatory Arrangements of the Approved Regulators. The CLC is an Approved Regulator.
2. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change to the Regulatory Arrangements unless we are “...satisfied that...” the approval would fall within one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹). If the LSB is not satisfied that one or more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules about how the application to alter the Regulatory Arrangements must be made including the contents of that application. The rules highlight the applicant’s obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the Regulatory Objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

undertaken. Sub paragraph 25(3)(f) requires that each proposed alteration has been made or is likely to be made in accordance with the procedures which apply in relation to making of the alteration. This includes the LSB's rules.

4. The LSB will approve Regulatory Arrangements in so far that they appear to achieve their intended outcome and satisfy the sub paragraph 25(3) criteria. Most notably there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles.
5. We confirmed receipt of the CLC's application for approval of changes to regulatory arrangements relating to the Adjudication Panel and Disciplinary Rules 2011 on 22 February 2011. This is the Decision Notice in relation to that application. The chronology for handling of this application can be found towards the end of this Decision Notice.

Description of changes

6. The CLC's application was for approval for changes to the following regulatory arrangements:
 - The CLC's Adjudication Panel Rules 2011
 - The CLC's Approved Regulator (Disciplinary Procedure) Rules 2011
 - The CLC's Adjudication Panel (No.2) Rules 2011
 - The CLC's Licensing Authority (Disciplinary Procedure) Rules 2011

Current arrangements

7. Under the current arrangements the Discipline and Appeals Committee (DAC) determines cases referred to it by the Investigating Committee, and if it is satisfied that a conduct allegation has been proved may impose different sanctions. Since 2001 the CLC's rules have provided that no one who is a member of the Council of the CLC may also sit as a member of the DAC. The CLC's application for changes to the rules gives effect to the decision of the CLC Council that the disciplinary jurisdiction of the Investigating Committee of the CLC should be transferred to the Adjudication Panel, so that there is a single committee which determines all regulatory issues referred to it for determination or for review.

Rules that are approved with effect from the date of this Decision Notice

The CLC's Adjudication Panel Rules 2011

8. The Adjudication Panel Rules proposed by the CLC include the following key elements:
 - Delegation of powers from the current Investigating Committee to the Adjudication Panel and Authorised Officer
 - Sets out the procedures for the appointment of the Adjudication Chair and Adjudication Panel

- Specifies that in membership of the Panel, Lay Members shall exceed by one the number of Licensed Conveyancer Members
- Rules governing tenure of office, remuneration, suspension of Adjudication Chair, Deputy Chairs and Panel Members
- Composition of hearings of the Adjudication Panel, Standing Orders, and the Disciplinary Powers of the CLC as an approved regulator.

The CLC's Approved Regulator (Disciplinary Procedure) Rules 2011

9. The Disciplinary Procedure rules include the following key elements:

- The Summary Determination and Preliminary Consideration procedures
- Procedure before hearings of the Hearing Panel
- Procedure at hearings
- Additional provisions about hearings, including procedures for dealing with allegations, judgements and procedures if there is more than one respondent
- Miscellaneous provisions, such as service of documents, administration of oaths, voting by the Adjudication Panel, absence of the Adjudication Chair, quorum and conditions of relaxation of rules.

Effect of rule changes

10. The amended rules will mean that the disciplinary jurisdiction of the Investigating Committee will be delegated to the Adjudication Panel, so that there is one committee which determines all regulatory issues referred to it for determination, or for review. In summary, the arrangements will mean that:

- Powers currently given to the Investigating Committee will be delegated to the Adjudication Panel.
- The CLC's 'Authorised Officer' will be authorised to carry out preliminary investigation of conduct allegations to determine how the complaint should be dealt with (by the Authorised Officer, Adjudication Panel, Discipline and Appeals Committee, or no further steps).
- The rules will provide a right of appeal for the Respondent.

11. In assessing the application we identified no major issues.

12. As a result of our review, two changes of note were made to the rules.

- In the Adjudication Panel Rules 2011, a new rule was inserted (6.1(e)) to provide that a Adjudication Chair, Deputy Chair or Panel Member who is a lay member will cease to hold office if they become a Licensed Conveyancer or a Manager of a Recognised Body regulated by the CLC
- In the Approved Regulator (Disciplinary Procedure) Rules, Rule 28.1 (Quorum) has been amended to clarify that there should be a lay majority at each meeting.

13. Copies of the final rules agreed with the CLC are attached at **Annexes A and B**.

Rules that were not approved at this time

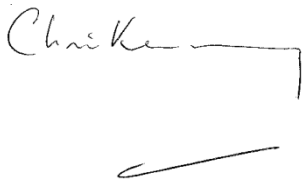
14. The Adjudication Panel Rules (No2) 2011 and the CLC Licensing Authority (Disciplinary Procedure) Rules 2011 were not approved. The changes proposed by these rules will be needed should the CLC be designated as a licensing authority. The LSB has received the CLC's application for such a designation and these two sets of rules will be reviewed and (if acceptable) approved as part of the consideration of that application.

Decision

15. We are satisfied that, having considered the application in the context of Schedule 4 sub paragraph 25(3) criteria, we have no grounds for refusing the application made in relation to the CLC's Adjudication Panel Rules 2011 and the CLC's Approved Regulator (Disciplinary Procedure) Rules 2011 and are therefore granting the application for both these sets of rules. The application is therefore approved for the CLC's Adjudication Panel Rules 2011 and the CLC's Approved Regulator (Disciplinary Procedure) Rules 2011.
16. The application in relation to the CLC's Adjudication Panel (No.2) Rules 2011 and the CLC's Licensing Authority (Disciplinary Procedure) Rules 2011 are refused under Schedule 4, paragraph 25(3)(b), on the grounds that approval of Licensing Authority rules will be considered in the context of an application made in accordance with paragraph 1(2)(b) of Schedule 10 to the Act.

Chronology

- The LSB confirmed receipt of an application from the CLC on 22 February 2011 for changes to: the CLC's Adjudication Panel Rules 2011; the CLC's Approved Regulator (Disciplinary Procedure) Rules 2011; the CLC's Adjudication Panel (No.2) Rules 2011; and the CLC's Licensing Authority (Disciplinary Procedure) Rules 2011.
- This Decision Notice will be issued to the CLC on 21 March 2011.
- This Decision Notice will be published on the LSB's website on 22 March 2011.



Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
21 March 2011

Annex A – CLC’s Adjudication Panel Rules 2011

**The CLC’s
Adjudication Panel Rules 2011**

Made on **[date]** by the Council for Licensed Conveyancers with the approval of the Legal Services Board pursuant to sections 24, 24A and 38 and paragraph 5 of Schedule 3 and paragraph 3 of Schedule 6 to the Administration of Justice Act 1985, Part II of Schedule 8 to the Courts and Legal Services Act 1990 and section 20 and Part 3 of Schedule 4 to the Legal Services Act 2007.

1. Citation, Commencement, Interpretation and Saving

1.1 These Rules may be cited as the CLC’s Adjudication Panel Rules 2011 and shall come into effect on **[date]** on which date the Licensed Conveyancers’ Investigating Committee Rules 2004 shall cease to have effect save that no prior decision of the Investigating Committee shall be invalidated by this repeal.

1.2 In these Rules: -

unless the contrary intention appears, words importing the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular;

“the 1985 Act” the Administration of Justice Act 1985;

“the 1990 Act” the Courts and Legal Services Act 1990;

“the Adjudication Chair” the chair of the Adjudication Panel;

“the Adjudication the rules made by the CLC currently in force for the
Procedure Rules” conduct of disciplinary proceedings referred to the
Adjudication Panel for determination;

“the Adjudication Panel” the committee established by the CLC by which the
functions conferred on the Investigating Committee under
Part II of the 1985 are to be discharged;

“Authorised Officer” An employee of the CLC appointed to exercise the
functions delegated to him by these Rules;

“the CLC” the Council for Licensed Conveyancers established under
section 12 of the 1985 Act;

“CLC’s Rules”	the Licenced Conveyancers’ Conduct Rules and any other rules made by the CLC
“Company”	has the meaning given by section 1(1) of the Companies Act 2006;
“Disciplinary Order”	in the case of a Licensed Conveyancer an order made against him pursuant to section 24A or 26 of the 1985 Act (other than an order which provides only for the payment of costs by him) or a direction made pursuant to paragraph 17(2) of schedule 8 to the 1990 Act;
“the Discipline and Appeals Committee”	the Committee established under section 25 of the 1985 Act;
“Lay Member”	a person appointed as a member of the Adjudication Panel, who is not eligible to sit as a Licensed Conveyancer Member;
“Licensed Conveyancer”	a person who holds a licence in force under Part II of the 1985 Act;
“Licensed Conveyancer Member”	an individual appointed as a member to the Committee who is a Licensed Conveyancer, who has at any time held a Licence to practise as a Licensed Conveyancer or any individual who is or has at any time been a Manager of a Recognised Body regulated by the CLC;
“Limited Liability Partnership”	a body corporate formed by being incorporated under the Limited Liability Partnerships Act 2000;
“LLP Member”	a member of a Limited Liability Partnership;
“Manager”	in relation to a Recognised Body, means a person who is: (a) a member of the Recognised Body, if the Recognised Body is a Company and its affairs are managed by its members; (b) a director of the Recognised Body, if the Recognised Body is a Company and paragraph (a) does not apply; (c) a partner, if the Recognised Body is a partnership; (d) a LLP member, if the Recognised Body is a Limited Liability Partnership; (e) a member of its governing body, if the Recognised Body is an unincorporated body (other than a

	partnership); and
	(f) a Licensed Conveyancer, if sub-paragraphs (a)-(e) do not apply and the affairs of the Recognised Body are not managed by another Licensed Conveyancer;
“Panel Member”	a person appointed as a member of the Adjudication Panel in accordance with rule 3.1;
“Party”	(a) the CLC (and includes the CLC’s Representative); (b) the Respondent; or (c) the complainant;
“Recognised Body”	a body recognised by the CLC under section 32 of the 1985 Act to provide Regulated Services to the public (“Recognised Body” is an entity regulated by the CLC and includes, without limitation, a partnership, a sole principal, a limited company and a Limited Liability Partnership);
“Regulated Services”	conveyancing services and such other services, including probate services, regulated by the CLC;
“Respondent”	the Licensed Conveyancer, Manager, employee, Recognised Body about whom the reference is made or treated as made;
“Standing Orders”	the Standing Orders made for the Adjudication Panel and the Adjudicating Committee by the CLC pursuant to paragraph 9(2) of schedule 3 to the 1985 Act.

Other expressions shall have the meanings given by the 1985 Act and the 1990 Act.

2. Delegation of Powers

2.1 In accordance with paragraph 12(2) schedule 8 to the 1990 Act the functions conferred on the Investigating Committee under Part II of the 1985 are to be discharged by the Adjudication Panel which for these purposes is a committee established by the CLC under paragraph 12 schedule 8 to the 1990 Act and by the Authorised Officer.

2.2 The Adjudication Panel and the Authorised Officer shall consider or deal with such other matters specifically delegated to or referred to them by the CLC, the Council of the CLC or by any other committee of the CLC.

3. Membership of the Adjudication Panel

- 3.1 The CLC shall in accordance with rule 4 appoint the Adjudication Chair, up to two Deputy Chairs and up to six Panel Members none of whom shall be a member of the Council of the CLC.
- 3.2 The Lay Members shall exceed by one the number of Licensed Conveyancer Members.
- 3.3 If he resigns his office as Adjudication Chair, subject to these Rules, the Adjudication Chair may remain a member of the Adjudication Panel.
- 3.4 If the Adjudication Chair resigns his office or is suspended under rule 8.1, the CLC may in its absolute discretion appoint a new Adjudication Chair:
 - (a) from among the Deputy Chairs or the Panel Members; or
 - (b) in accordance with rule 4.

4. *Appointment of Adjudication Chair and Panel Members*

- 4.1 The posts of the Adjudication Chair, Deputy Chairs and Panel Members shall be advertised in such manner as the CLC shall determine.
- 4.2 The appointment of the Adjudication Chair, Deputy Chairs and Panel Members shall be made by an appointment panel, comprising no less than three persons, chosen by the CLC after considering the advice of the Chief Executive Officer of the CLC.
- 4.3 A person shall not be eligible for appointment to the Adjudication Panel if:
 - (a) he is the Chair or an employee or member of the CLC;
 - (b) he has been convicted of a criminal offence involving fraud, dishonesty, deception or violence or an indictable offence unless the conviction is spent within the meaning of the Rehabilitation of Offenders Act 1974;
 - (c) he is or has been an undischarged bankrupt, is or has been the subject of a bankruptcy restrictions order or has made a composition or arrangement with his creditors unless:
 - (i) the bankruptcy order is annulled either on the ground that he ought not to have been adjudged bankrupt, or that his debts have been paid in full, on the date of the annulment;
 - (ii) in the case of a composition or arrangement with his creditors, he pays his debts in full on the date on which payment is completed or on the expiration of five years from the date on which the terms of the deeds of composition or arrangement are fulfilled.
 - (d) if he lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers in relation to sections 15-20 or section 48 of that Act have been exercised in relation to him;

- (e) the CLC is satisfied that, in respect of the following, the circumstances of the particular case make that person ineligible for appointment to the Adjudication Panel:
- (i) a Disciplinary Order has been made against him, unless more than six years have passed since the Order was made;
 - (ii) the CLC's power of intervention have been exercised against him or his practice in accordance with part 1 of schedule 5 to the 1985 Act or against a Recognised Body of which he is a Manager in accordance with schedule 6 to the 1985 Act unless in either case more than six years have passed since such powers were exercised; or
 - (iii) the CLC is satisfied that as a member of another profession an adverse determination has been made against him by a disciplinary tribunal or committee established to regulate the activities and the conduct of members of his profession (other than an order which provides only for the payment of costs by him), unless more than six years have passed since the Order was made and if he has been disqualified from holding a licence or practising certificate (as the case may be) for a period longer than six years, his licence or practising certificate has been restored.

5. *Tenure of Office*

- 5.1 Subject in each case to rules 5.2, 6.1 and 9.1 the term of office of each Adjudication Chair, Deputy Chair and Panel Member appointed takes effect on the date specified in the letter of appointment for a term of office not exceeding four years.
- 5.2 An Adjudication Chair, Deputy Chair or Panel Member shall be eligible subject to review for re-appointment, once only, for a further term of office not exceeding four years.

6. *Vacancies*

- 6.1 A vacancy in the office of Adjudication Chair, Deputy Chair and Panel Member shall automatically occur and his right to hold office shall cease immediately:
- (a) on his death;
 - (b) on receipt by the CLC of his written resignation;
 - (c) on the expiry of his term of office as a Panel Member;
 - (d) on his appointment as Chair or member of the CLC;
 - (e) If appointed as a Lay Member, he becomes a Licensed Conveyancer or a Manager of a Recognised Body regulated by the CLC;

- (f) if, without the consent of the Adjudication Chair or (in the absence of the Adjudication Chair) a Deputy Chair, he fails to attend more than three consecutive meetings of the Adjudication Panel;
- (g) if he is convicted of a criminal offence involving fraud, dishonesty, deception or violence or an indictable offence;
- (h) if he is adjudged bankrupt, is the subject of a Bankruptcy Restrictions Order or makes a composition or arrangement with his creditors unless:
 - (1) the bankruptcy order is annulled either on the ground that he ought not to have been adjudged bankrupt, or that his debts have been paid in full, on the date of the annulment;
 - (2) in the case of a composition or arrangement with his creditors, he pays his debts in full on the date on which payment is completed or on the expiration of five years from the date on which the terms of the deeds of composition or arrangement are fulfilled.
- (i) if he lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers in relation to sections 15-20 or section 48 of that Act have been exercised in relation to him;
- (j) if, being a Licensed Conveyancer Member,
 - (1) a Disciplinary Order is made against him;
 - (2) his Licence is suspended pursuant to section 24 of the 1985 Act; or
 - (3) the CLC's powers of intervention are exercised against him in accordance with Part I of Schedule 5 to the 1985 Act or against a Recognised Body of which he is a Manager in accordance with schedule 6 to the 1985 Act;
- (k) if as a member of another profession, an adverse determination is made against him by a disciplinary tribunal or committee (other than an Order which provides only for the payment of costs by him);
- (l) if he has failed to disclose to the CLC any matter referred to in rule 4.3 subparagraphs (b), (c), (d) or (e).
- (m) if he is removed from office under rule 9.1.

6.2 In the event that a vacancy occurs by reason of the operation of rule 6.1, the CLC shall inform the Adjudication Chair, or one of the Deputy Chairs (if the office of the Adjudication Chair has been vacated).

6.3 Where a vacancy occurs, the CLC will as soon as possible make an appointment in accordance with rule 4.

7. Remuneration

7.1 The CLC will pay to the Adjudication Chair, Deputy Chairs and Panel Members attendance fees and expenses reasonably incurred, such fees to be determined by the CLC and to be reviewed periodically.

8. Suspension of the Adjudication Chair, a Deputy Chair or a Panel Member

8.1 The Adjudication Chair, Deputy Chair or Panel Member is suspended with immediate effect in the event that: -

- (a) he is charged with any offence referred to in rule 6.1(g); or
- (b) he is served with a bankruptcy petition or issues a bankruptcy petition on his own behalf; or
- (c) he receives notice of any application against him for an order under rule 6.1(k).

8.2 Any suspension imposed under rule 8.1 shall automatically be revoked in the following circumstances: -

- (a) under sub-paragraph 8.1(a) in the event that the charge is dismissed, discharged, discontinued or otherwise withdrawn;
- (b) under sub-paragraph 8.1(b) if the bankruptcy petition is disposed of without a declaration of bankruptcy being made against him;
- (c) under sub-paragraph 8.1(c) in the event that the application is withdrawn or dismissed or the only order made is for the payment of costs.

9. Removal of the Adjudication Chair, a Deputy Chair or a Panel Member

9.1 The Council may by a majority remove the Adjudication Chair, a Deputy Chair or a Panel Member who has breached the Standing Orders or the Code of Conduct applicable to the Adjudication Chair, Deputy Chairs and Panel Members.

10. Composition of hearings of the Adjudication Panel

10.1 In consultation with the CLC the Adjudication Chair shall direct the date, time and place for the hearing under the CLC's Approved Regulator (Disciplinary Procedure) Rules in consultation with the CLC when the Adjudication Panel shall meet to determine proceedings.

10.2 The CLC shall as soon as reasonably possible send notice of the hearing to each member of the Adjudication Panel nominated by the Adjudication Chair to attend the hearing and to the appropriate Parties in the manner prescribed by the Adjudication Procedure Rules.

10.3 When the Adjudication Panel direct that a new hearing date be fixed to hear or continue to hear and determine the matter before them, the Adjudication Chair shall determine the date, time and place for the hearing in consultation with the CLC.

- 10.4 The CLC shall as soon as reasonably possible send notice of the hearing to every member of the Adjudication Panel who is to attend the hearing and to the appropriate Parties in the manner prescribed by the Adjudication Procedure Rules.
- 10.5 If a case has been part heard on the expiry of the term of office of one or more members of the Adjudication Panel under rule 6.1(c) (but for no other reason), that Panel Member may with the agreement of the Adjudication Chair be treated as remaining a member of the Adjudication Panel and hear the case until its conclusion even though for all other purposes that individual has ceased to be a Panel Member.
- 10.6 If an individual sitting as a member of the Adjudication Panel ceases to be a Panel Member under rule 6.1 (other than as a result of the operation of rule 6.1(c)) where a case has been part heard and as a result the hearing is not quorate, the Adjudication Chair may nominate another Panel Member to attend the hearing to enable the hearing of that case to continue until its conclusion provided he is satisfied that it is in the interests of natural justice.

11. *Standing Orders*

- 11.1 Save as modified by these Rules and by the CLC's Approved Regulator (Disciplinary Procedure) Rules as provided for under rule 10.1, proceedings of the Adjudication Panel shall be governed by the Standing Orders.

12. *Disciplinary Powers of the CLC as an Approved Regulator*

- 12.1 Rule 12 applies when the Respondent is regulated by the CLC acting as an Approved Regulator.
- 12.2 The Authorised Officer must carry out a preliminary investigation of any case in which it is alleged that:
- (a) a Licensed Conveyancer:
 - (i) has (whether as a licensed conveyancer or not) been convicted by any court in the United Kingdom of a criminal offence which renders him unfit to practise as a licensed conveyancer; or
 - (ii) has, while holding a licence in force under Part II of the 1985 Act, failed to comply with any condition to which that licence was subject; or
 - (iii) has failed to comply with any rules made by the Council under Part II of the 1985 Act;
 - (b) a Recognised Body:

- (i) has (while a Recognised Body) been convicted of a criminal offence which renders it unsuitable to be recognised under section 32 of the 1985 Act; or
 - (ii) has failed to comply with any rules applicable to it by virtue of section 32 of the 1985 Act; or
 - (iii) has (while a Recognised Body) failed to comply with a condition subject to which its recognition has effect;
- (c) a manager or employee of a Recognised Body who is not a Licensed Conveyancer has failed to comply with any rules applicable to him by virtue of section 32 of the 1985 Act;

with a view to determining whether such case ought to be determined by him, or ought to be referred to the Discipline and Appeals Committee, alternatively the Adjudication Panel, for hearing and determination.

12.3 The Authorised Officer must refer an allegation to the Discipline and Appeals Committee if, having made a preliminary investigation of such an allegation, he is satisfied that the nature of the allegation, if proved, is likely to justify:

- (i) the imposition of a penalty in excess of £50,000; or
- (ii) the making of one or more of the orders referred to in section 26(2)(a)-(d) or (f) of, alternatively paragraph 4(2)(a), (ba) or (bb) of Schedule 6 to, the 1985 Act.

12.4 If, having made a preliminary investigation of the allegation in accordance with rule 12.3, he does not make a referral to the Discipline and Appeals Committee, the Authorised Officer the Authorised Officer may certify that the complaint is appropriate for hearing and determination by the Adjudication Panel under section 24(1A)(a) of, alternatively paragraph 3(1A)(a) of Schedule 6 to, the 1985 Act in accordance with the Adjudication Procedure Rules provided he is satisfied that the nature of the allegation, if proved, is likely to justify the imposition of a penalty which does not exceed £50,000, and no other order, other than an order that a Party pays costs.

12.5 If, having made a preliminary investigation of the allegation in accordance with rule 12.2, he does not make a referral to the Discipline and Appeals Committee or to the Adjudication Panel, the Authorised Officer may certify that the complaint is appropriate for hearing and determination by him under section 24(1A)(a) of, alternatively paragraph 3(1A)(a) of Schedule 6 to, the 1985 Act in accordance with the Adjudication Procedure Rules provided he is satisfied that the nature of the allegation, if proved, is likely to justify the imposition of a penalty which does not exceed £1,000, and no other order, other than an order that a Party pays costs.

12.6 Not less than 14 days after notice has been given to the Parties in accordance with rule

12.5, the Authorised Officer may:

- i) direct that the Respondent pay a penalty not exceeding £1,000 in respect of each allegation made; or
- ii) dismiss the complaint; and
- iii) in either case, order the payment of costs by a Party.

12.7 Where any Party gives notice to the Authorised Officer not more than 7 days after a notice has been served in accordance with rule 12.5 that he does not accept the certificate, the Authorised Officer must refer the case to the Discipline and Appeals Committee in accordance with rule 12.3, alternatively to the Adjudication Panel in accordance with rule 12. 4.

12.8 Any Party may apply for determination by the Adjudication Panel within 14 days after a determination made by the Authorised Officer in accordance with rule 12.6 has been served on the Parties, such determination shall be determined by the Adjudication Panel in accordance with the CLC's Approved Regulator (Disciplinary Procedure) Rules as if a referral had been made in accordance with rule 12.5. The Adjudication Panel will be notified as a fact of the determination made in accordance with rule 12.6.

Annex B – CLC’s Approved Regulator (Disciplinary Procedure) Rules 2011

**The CLC’s
Approved Regulator (Disciplinary Procedure) Rules 2011**

Made on **[date]** by the Council for Licensed Conveyancers with the approval of the Legal Services Board pursuant to sections 24, 24A and 38 and paragraph 5 of Schedule 3 and paragraph 3 of Schedule 6 to the Administration of Justice Act 1985, Part II of Schedule 8 to the Courts and Legal Services Act 1990 and section 20 and Part 3 of Schedule 4 to the Legal Services Act 2007.

PRELIMINARY

1. Citation and commencement

1.1 These Rules may be cited as the CLC’s Approved Regulator (Disciplinary Procedure) Rules 2011.

1.2 These Rules come into force on [date].

2. Interpretation

2.1 In these Rules, unless the context otherwise requires: -

"the 1985 Act" the Administration of Justice Act 1985;

"the 1990 Act" the Courts and Legal Services Act 1990;

"Adjudication Chair" the chair of the Adjudication Panel;

"the Adjudication Panel" the committee established by the CLC by which the functions conferred on the Investigating Committee under Part II of the 1985 are to be discharged;

"Adjudication Panel Rules" the Licensed Conveyancers’ Adjudication Panel Rules currently in force;

"Adjudicator" the Authorised Officer, alternatively the Adjudication Panel, nominated under rule 3.1(iv) to make the determination;

"Authorised Officer" an employee of the CLC appointed to exercise the functions delegated to him by the Adjudication Panel Rules;

"the CLC" the Council for Licensed Conveyancers established under section

	12 of the 1985 Act;
"the CLC's Representative"	in relation to any function under these Rules, a solicitor or other representative authorised by the CLC to act on its behalf for the purposes of that function and, in relation to a hearing, includes counsel instructed to act on the CLC's behalf;
"Company"	has the meaning given by section 1(1) of the Companies Act 2006;
"the Discipline and Appeals Committee"	the Discipline and Appeals Committee established under section 25(1) of the 1985 Act;
"Individual Respondent"	a Respondent who is a Licensed Conveyancer, Manager or employee;
"Lay Member"	a person appointed as a member of the Committee, who is not eligible to sit as a Licensed Conveyancer Member;
"Licensed Conveyancer"	(a) a person who holds a licence in force under Part II of the 1985 Act, and (b) in relation to a particular allegation, includes a person who held such a licence at the time when the conduct to which the allegation relates took place;
"Licensed Conveyancer Member"	an individual appointed as a member to the Panel who is a Licensed Conveyancer, who has at any time held a Licence to practise as a Licensed Conveyancer or any individual who is or has at any time been a Manager of a Recognised Body regulated by the CLC;
"Limited Liability Partnership"	a body corporate formed by being incorporated under the Limited Liability Partnerships Act 2000;
"Limited Liability Partnerships Act 2000"	the Limited Liability Partnerships Act 2000, the Limited Liability Partnerships Regulations 2001 and any other regulations made under that Act;
"LLP Member"	a member of a Limited Liability Partnership;
"Manager"	in relation to a Recognised Body, means a person who is: (a) a member of the Recognised Body, if the Recognised Body is a

- Company and its affairs are managed by its members;
- (b) a director of the Recognised Body, if the Recognised Body is a Company and paragraph (a) does not apply;
 - (c) a partner, if the Recognised Body is a partnership;
 - (d) a LLP member, if the Recognised Body is a Limited Liability Partnership;
 - (e) a member of its governing body, if the Recognised Body is an unincorporated body (other than a partnership); and
 - (f) a Licensed Conveyancer, if sub-paragraphs (a)-(e) do not apply and the affairs of the Recognised Body are not managed by another Licensed Conveyancer;
- “Party”
- (a) the CLC (and includes the CLC’s Representative);
 - (b) the Respondent; or
 - (c) the complainant;
- “Recognised Body”
- (a) means a body for the time being recognised under section 32 of the 1985 Act, and
 - (b) in relation to a particular allegation, includes a body which was so recognised at the time when the conduct to which the allegation relates took place;
- (“Recognised Body” is an entity regulated by the CLC and includes, without limitation, a partnership, a sole principal, a limited company and a Limited Liability Partnership);
- “Resolution”
- the form in which each determination, decision, order or direction of the Panel is to be announced by the Adjudication Chair;
- “Respondent”
- the Licensed Conveyancer, Manager, employee, Recognised Body about whom the reference is made or treated as made;
- “Standing Orders”
- the Standing Orders made for the Adjudication Panel by the CLC pursuant to paragraph 9(2) of schedule 3 to the 1985 Act.

2.2 The Interpretation Act 1978 applies to these Rules as it applies to an Act of Parliament.

INITIATING PROCEDURE

3. Summary Determination and Preliminary Consideration

- 3.1 Having carried out a preliminary investigation under section 24 of, or paragraph 3 of Schedule 6 to, the 1985 Act the Authorised Officer may refer a case to the Adjudication Panel, alternatively to the Discipline and Appeals Committee, for hearing and determination having formulated the case against the Respondent by:
- i) setting out the allegation,
 - ii) stating the statutory provision under which it is made,
 - iii) providing a summary of the facts relied on to support it, and
 - iv) whether the determination will be made by the Authorised Officer or by the Adjudication Panel, or by the Discipline and Appeals Committee.
- 3.2 A reference may contain more than one allegation but each allegation must be separately stated in accordance with rule 3.1.
- 3.3 A copy of the reference must be served on the Respondent, together with a copy of these Rules within 14 days of the making of a reference.

PROCEDURE BEFORE HEARINGS OF THE HEARING PANEL

4. Notice of hearing

- 4.1 As soon as reasonably possible after the making of a reference to the Adjudication Panel within rule 3, the Authorised Officer must serve on the Respondent a notice in writing, stating the date, time and place at which the Adjudication Panel will hold a hearing into the matter and which includes a statement as to the Parties' rights under rule 10.
- 4.2 The notice also must contain details of the matters alleged against the Respondent in the form of an allegation dealing with each matter separately and setting out the details as required by rule 3.1.
- 4.3 A hearing must not be held earlier than 28 days after the notice of hearing is served under rule 4.1 unless the Parties agree.

5. Postponement of hearing

- 5.1 The Adjudicator may postpone a hearing at any stage of the proceedings if any Party applies for a postponement or it appears appropriate.
- 5.2 The postponement may be on such terms as the Adjudicator think fit.

- 5.3 The CLC must serve on the Respondent a notice in writing of a postponed or adjourned hearing stating the date, time and place of the hearing.

6. Referral to the Discipline and Appeals Committee

- 6.1 Any Party may make an application for the case to be referred to the Discipline and Appeals Committee.
- 6.2 Whether or not such an application has been made the Adjudicator may at any time before the allegations have been determined direct the allegations against the Respondent be referred to the Discipline and Appeals Committee for hearing and determination in accordance with section 25 of the 1985 Act.

7. Documents upon which the CLC proposes to rely

- 7.1 At least 21 days before the date of a hearing the CLC must supply to the Respondent a collection of copies of all the documents on which it proposes to rely with all pages numbered.

8. Amending allegations

- 8.1 The CLC may amend any allegation or summary of facts set out in an allegation served in accordance with rule 3 by serving an amended notice under rule 4, but where the case has been referred to the Adjudication Panel the consent of the Adjudication Panel is required for an amendment served less than 21 days before the date of the hearing.
- 8.2 Where an amendment is made under this rule and the case has been referred to the Adjudication Panel, on an application by any Party the Adjudication Panel may postpone the hearing.

PROCEDURE AT HEARINGS

9. Hearing and adjournment

- 9.1 Subject to rules 9.2 and 9.3, any hearing before the Adjudicator must be held in public.
- 9.2 If it appears to the Adjudicator to be appropriate in the interests of any child or for the protection of the private life of any Party or in the interests of justice, the Adjudicator may direct that the public are to be excluded from the whole or part of the proceedings.
- 9.3 The Adjudicator may at any time adjourn the hearing of any proceedings as they think fit.

10. Representation

- 10.1 Any Party may either make written submissions to, or attend at a hearing before, the Adjudicator under these Rules –

- (a) in person,
- (b) represented by counsel or a solicitor,
- (c) represented by an officer or member of any professional organisation of which he is a member,
- (d) represented by a Licensed Conveyancer, or
- (e) if the Party is a Recognised Body, represented by one of its Managers or employees;

and references in these Rules to the Parties are to be taken in appropriate cases to include the persons representing them.

- 10.2 If a Party does not answer the allegations either in writing or by attending before it, the Adjudicator may proceed to hear and determine the matter.

11. Witnesses

- 11.1 Subject to the following provisions of this rule, evidence of fact may be given in person or by witness statement.

- 11.2 The evidence of a witness (including the Respondent) shall be contained in a witness statement served in accordance with this rule unless the Adjudicator is satisfied that there is good reason for not serving a witness statement.

- 11.3 In the event that no witness statement is served for a witness, the Party calling that witness must provide a summary of the evidence which it is believed the witness will give in person.

- 11.4 A Party may only rely on evidence given by witness statement –

(a) if -

(i) a copy of it has been served on all other Parties at least 14 days before the date of the hearing, and

(ii) a copy of it has been sent to the Adjudication Panel at least 7 days before that date, or

(b) if all the Parties agree.

- 11.5 Such witness statement by a witness may be treated as the witness' evidence in chief, unless the Adjudicator determine otherwise.

- 11.6 The Adjudication Chair may examine any Party or witness at any stage of a hearing and with his consent any member of the Adjudication Panel may do so.

12. Quality of evidence and standard of proof

- 12.1 Subject to rule 12.2, in any proceedings before the Adjudicator –

- (a) a fact is to be regarded as proved if the Adjudicator consider that it has been proved on the balance of probabilities, and
- (b) the Adjudicator may consider any evidence which would be admissible in civil proceedings in England or Wales.

12.2 In proceedings where dishonesty is alleged –

- (a) the allegation is only to be regarded as proved if the Adjudication Panel consider that it has been proved beyond reasonable doubt, and
- (b) the Adjudication Panel may only consider evidence which –
 - (i) would be admissible in criminal proceedings in England or Wales, or
 - (ii) they are satisfied it is desirable in the interests of justice to consider.

13. Announcements by the Adjudicator

13.1 The Adjudicator must announce the decisions and directions of the Adjudication Panel under these Rules in relation to the conduct of any case in such terms and in such manner as the Adjudicator determines.

13.2 All such decisions and directions shall be noted and sent to the Respondent.

14. Determinations of the Adjudicator

14.1 The Adjudicator must announce each determination and order made.

14.2 Each determination and order made by the Adjudicator shall be filed with the CLC and sent to the Respondent within 28 days after it has been made.

14.3 Every determination and order signed by the Authorised Officer (if the determination has been made by him), alternatively by the Adjudication Chair or by some other member of the Adjudication Panel authorised by the Adjudication Chair for this purpose shall be filed with the CLC and shall be available for inspection during office hours.

ADDITIONAL PROVISIONS ABOUT HEARINGS

15. Procedure: general

15.1 Where a hearing relates to two or more allegations the Adjudicator may deal with them separately or together as the Adjudicator thinks fit.

16. The allegation

- 16.1 Each allegation must be read out by the CLC's Representative and if he attends the hearing in the presence of the Respondent.
- 16.2 If the Respondent has appeared at the hearing, as soon as the allegations have been read, the Adjudicator must ask him if he wishes to object to any allegation, or any part of any allegation, on a point of law.
- 16.3 If the Respondent so wishes, he must make his objection and the CLC's Representative may reply to it.
- 16.4 If the Respondent does not attend the hearing but has made a written submission to the Adjudicator on a point of law, it shall be read out by the CLC's Representative who may reply to it.
- 16.5 If the objection is upheld and no amendment of the allegation is allowed by the Adjudicator, they must dismiss it.
- 16.6 If only part of the allegation is disallowed, no further proceedings may be taken on that part of it.

17. Respondent's response to the allegation

- 17.1 The Adjudicator must ask the Respondent attending the hearing to respond to each allegation against him, and his response must be recorded.
- 17.2 If the Respondent does not attend the hearing but the Adjudicator decide to proceed in his absence, he is deemed to have denied each allegation against him, and that denial must be recorded, unless the Respondent has made a submission to the Adjudicator in writing unequivocally admitting the allegations against him.
- 17.3 Any qualified or equivocal response by the Respondent must be recorded as a denial of the allegation.

18. Admission of all allegations

- 18.1 Where the Respondent unequivocally admits an allegation in writing or at the hearing, the Authorised Officer (if he is to determine the matter), alternatively Adjudication Chair must announce that the allegation has been admitted and determine that it is proved.
- 18.2 The CLC's Representative must then in relation to any admitted allegation first –
 - (a) summarise the facts supporting that allegation,
 - (b) specify the circumstances leading up to the conduct or, as the case may be, the conviction in question, and
 - (c) adduce evidence of the previous history and character of the Respondent.
- 18.3 If the Respondent has attended the hearing, the Adjudicator must then invite the Respondent to -

- (a) adduce evidence relating to the allegation, any mitigating circumstances, his character and behaviour; and
- (b) make representations to the Adjudicator if he wishes to do so.

18.4 If the Respondent has made an admission by written submission, the Adjudicator I may consider any of the matters referred to in rule 18.3 (a) and (b) contained in that submission.

19. Denial of some or all allegations

19.1 If the Respondent denies or is deemed to deny any allegation, the CLC's Representative must, in relation to any such allegation, first set out the case against the Respondent and then adduce evidence of the allegations.

19.2 If no evidence about an allegation is given, the Adjudicator must determine that they are not satisfied as to it and dismiss it.

19.3 If the Respondent attends the hearing he may cross-examine any witness called by the CLC's representative to give evidence;

19.4 If he attends the hearing the Respondent may –

- a) adduce evidence relating to any allegation, and
- (b) at the conclusion of the evidence address the Adjudicator, (but only once, unless the Adjudicator gives leave for a further address).

19.5 Any witness who attends and gives evidence for the Respondent may be cross-examined by the CLC's Representative, and the Authorised Officer, alternatively the Adjudication Chair, may permit the Respondent to re-examine the witness.

19.6 The CLC's Representative may, at the conclusion of the evidence and the Respondent's address to the Adjudicator (if any), address the Adjudicator (but only once, unless the Adjudicator gives leave for a further address).

20. Determination of allegations that have been denied or deemed to have been denied

20.1 At the conclusion of the hearing the Adjudicator must determine whether the allegations have been proved to their satisfaction.

20.2 If the Adjudicator determines that any allegation has not been proved to their satisfaction, the Adjudicator must dismiss that allegation.

20.3 If the Adjudicator determines that any allegation has been proved to their satisfaction –

- (a) the Authorised Officer, alternatively the Adjudication Chair, must invite the CLC's Representative to address the Adjudicator and adduce evidence as to the Respondent's previous character and history,

- (b) if the Respondent appears the Authorised Officer, alternatively the Adjudication Chair, must then invite him to address the Adjudicator in relation to mitigation, character and matters relevant to penalty and to adduce evidence in support.

20.4 If the Respondent has chosen to make written representations, rather than to attend, the Adjudicator may consider any written submission relating to the matters specified under rule 20.3 (b).

21. Cases where some allegations are admitted and some denied

21.1 If some allegations are admitted but others are denied, the procedure set out in rule 18 must be postponed until the determination of the denied allegations.

21.2 The procedure relating to mitigation in respect of admitted allegations must be dealt with in conjunction with mitigation in respect of any disputed allegations which the Adjudicator determines have been proved.

22. Judgment

22.1 After an allegation has been proved and the procedures referred to in rules 18, 19, 20 and 21 have been concluded, the Adjudicator shall proceed to judgment by making any order directing the payment of a fine or costs by the Respondent, as the Adjudicator may determine.

22.2 If a matter is dismissed or is not proven, the Adjudicator may proceed to judgment by making any order directing the payment of costs by the CLC or the complainant, but such judgment must be postponed until after any allegation which remains outstanding has been determined.

23. Procedure where there is more than one Respondent

23.1 A single hearing may be held into allegations against two or more Respondents.

23.2 Subject to rule 23.3 these Rules apply to such a hearing as they do to a hearing involving one Respondent, but with the necessary adaptations and subject to any directions given by the Adjudicator as to the order in which proceedings are to be taken in relation to each of the Respondents.

23.3 The rights of a Respondent under these Rules are to be exercised separately by each of the Respondents who wishes to exercise them.

MISCELLANEOUS PROVISIONS

24. Service of documents

24.1 Unless otherwise agreed by the Parties or unless the Authorised Officer, alternatively the Adjudication Chair or the Adjudication Panel, direct that service under these Rules may be effected by another method specified in the direction, such service on a Party may be effected only –

(a) by delivering the document personally;

(b) in the case of service on an Individual Respondent, by sending it by first class ordinary post addressed to him at his address registered with the CLC or one of his places of business or his last known address;

(c) in the case of service on a Recognised Body, by sending it by first class ordinary post addressed to it at its principal office or its last known address;

(d) in the case of service on any person not within rule 24.1 (b) or (c), by first class post to his last known address; or

(e) by document exchange.

24.2 Any document required by these Rules to be served on the CLC must be served by a method mentioned in rule 24.1 at the principal place of business of the CLC .

24.3 Service by a method mentioned in rule 24.1 (b) to (e) is deemed to have been effected on the second business day after the document is dispatched.

25. Administration of Oaths

25.1 For the purposes of any proceedings before the Adjudicator under these Rules—

(1) the Adjudicator may administer oaths; and

(2) any Party to the proceedings may issue a witness summons requiring a witness to give evidence before the Adjudicator on oath or produce documents, but no person shall be compelled under any such witness summons to produce any document which he could not be compelled to produce on the trial of an action.

26. Voting by the Adjudication Panel

26.1 The Adjudication Panel shall vote and deliberate in private.

26.2 Any question put to the vote must be formulated and put to the Adjudication Panel members present by the Adjudication Chair.

26.3 The Adjudication Chair must call on the members present to vote for or against the question and must declare the result.

26.4 The Adjudication Chair is entitled to vote.

26.5 If an equal number of votes is cast for and against the question, the question is deemed to have been determined in favour of the Respondent.

27. Absence of the Adjudication Chair

27.1 Subject to rule 28, anything authorised or required by these Rules to be done by the Adjudication Chair may, if he is absent or unable to act or continue to act, be done by any other member of the Adjudication Panel who is authorised for the purpose by the Adjudication Chair or, if no person is authorised, by the other members present.

28. Quorum

28.1 No meeting of the Adjudication Panel shall begin to hear and determine an allegation unless no less than three members of the Adjudication Panel (including the Adjudication Chair) are present the majority of whom are Lay Members including at least one Licensed Conveyancer Member and two Lay Members.

28.2 Paragraphs 8 and 9 of the Standing Orders shall not apply to meetings of the Adjudication Panel held under these Rules.

29. Relaxation of rules

29.1 At the request of any of the Parties (including the CLC) or on its own initiative, the Adjudicator may direct that any requirement of these Rules is not to apply or is relaxed in any manner they think fit provided the Adjudicator is satisfied that such disapplication or relaxation is not prejudicial to the interests of the Respondent; and such a direction may be given subject to such other requirements as they think fit.

29.2 Where it has given such a direction, the Adjudication Panel may give a further direction that the requirement is again to apply or, as the case may be, to apply without the relaxation or with others.

