



# CILEx REGULATION ENFORCEMENT RULES 2020

## CILEx REGULATION ENFORCEMENT RULES

### PART I: GENERAL

#### Application of Rules, Establishment of Panels and Tribunal

1. (1) These Rules apply to any:
  - (a) allegation of misconduct made against a Regulated Person; or
  - (b) declaration of prior conduct made by an Applicant or Relevant Person; or
  - (c) appeals and reviews in relation to authorisation and licensing procedures.
- (2) In these rules **misconduct** means any breach of the Code of Conduct.
- (3) The Professional Conduct Panel is established for the purposes set out in Part II.
- (4) The Disciplinary Tribunal is established for the purposes set out in Part III.
- (5) The Appeals Panel is established for the purposes set out in Part IV.
- (6) Responsibility for the application and administration of these Rules is delegated by CILEx to CILEx Regulation.

#### Panellists

2. (1) CILEx Regulation must appoint and maintain lists of lay and professional members to act as panellists on:
  - (a) the Professional Conduct Panel;
  - (b) the Disciplinary Tribunal; and
  - (c) the Appeals Panel.
- (2) A person must not at any one time be included in more than one list maintained under Rule 2 (1).
- (3) CILEx Regulation must remove from the relevant list the name of any panellist:
  - (a) whose term of appointment has ended and not been renewed;
  - (b) who has resigned by giving notice in writing to that effect to CILEx Regulation; or
  - (c) who in the opinion of CILEx Regulation has ceased to be a suitable person to act as a panellist.
- (4) The term of appointment of a panellist must be not more than three years and no panellist may serve for more than nine years.

### Interpretation

3. (1) In these Rules, unless otherwise provided:

<b>allegation:</b>	has the meaning given in Rule 15(1);
<b>Appeals Panel:</b>	means the Appeals Panel established under Rule 1(5) as constituted from time to time;
<b>Applicant:</b>	means a person applying: (a) for Membership or Authorisation; (b) to be an Approved Manager; (c) to be licensed or to be an owner, designated officer or manager of a licensed body;
<b>Approved Manager:</b>	has the meaning given to it in the Authorisation Rules;
<b>Authorisation:</b>	means: (a) authorisation or licensing by CILEx Regulation as an Authorised Entity; or (b) Authorisation or approval by CILEx Regulation as a Relevant Person;
<b>Authorised Entity:</b>	means a partnership (including a limited liability partnership), company or sole principal authorised by CILEx under the Legal Services Act 2007 to: (a) carry on an activity which is a reserved legal activity; or (b) provide immigration advice or immigration services;
<b>Chair:</b>	means the Chair of the Professional Conduct Panel, the Tribunal or Appeals Panel as the case may be;
<b>CILEx:</b>	means the Chartered Institute of Legal Executives;
<b>CILEx-ACCA Probate Entity:</b>	<u>means a partnership (including limited liability partnership), company or sole principal authorised by CILEx under the Legal Services Act 2007 to carry on probate activities which is a reserved legal activity.</u>
<b>CILEx Member:</b>	means a person who has been admitted to membership of CILEx in any grade;
<b>CILEx Regulation:</b>	means CILEx Regulation Limited;
<b>CILEx Practitioner:</b>	means a practitioner authorised by CILEx to provide one or more regulated legal activity;
<b>Clerk:</b>	means the Clerk to the Professional Conduct Panel, Tribunal or Appeals Panel

<b>complainant:</b>	as the case may be; means a person who has made a report in respect of a Regulated Person to CILEx Regulation;
<b>Compliance Manager:</b>	has the same meaning given in the Authorisation Rules;
<b>Designated Officer:</b>	has the same meaning given in the Licensing Rules;
<b>Employee:</b>	means an employee of a licensed body;
<b>Investigator:</b>	means a person or persons appointed by CILEx Regulation to conduct investigations and/or make such delegated decisions as may be provided for under these Rules;
<b>lay member:</b>	means a person who is not and who has never been an authorised person (within the meaning of section 18 of the Legal Services Act 2007) or registered by CILEx in any grade of membership;
<b>Licensed Body:</b>	has the same meaning given in the Licensing Rules;
<b>Manager:</b>	has the same meaning given in Section 207 of the Legal Services Act 2007;
<b>Membership:</b>	means enrolment or reinstatement as a CILEx Member;
<b>misconduct:</b>	has the meaning given in Rule 1(2);
<b>Person:</b>	includes an individual, body corporate or other entity;
<b>Practice Management Agreement:</b>	has the meaning given in Rule 30(6);
<b>Professional Conduct Panel:</b>	means the Professional Conduct Panel established under Rule 1(3) as constituted from time to time;
<b>prior conduct:</b>	has the meaning given in Rule 11(4);
<b>professional member:</b>	means a Fellow of CILEx who is not a member of any other governing body, Board or committee of the CILEx Group or the CILEx Regulation Board of Directors and who is otherwise eligible to be appointed to a list of panellists under Rule 2;
<b>regulated legal activity:</b>	means: (a) a reserved legal activity; (b) immigration advice or immigration services;
<b>Regulated Person:</b>	means either a <b>Relevant Person</b> or an Employee;
<b>Relevant address:</b>	has the meaning given in Rule 5(2);
<b>Relevant Person:</b>	means an Approved Manager, Authorised Entity, <u>CILEx-ACCA Probate Entity</u> , CILEx Member, or CILEx Practitioner ;

## Appendix 2

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<b>reserved legal activity:</b>	has the same meaning as in the Legal Services Act 2007;
<b>Respondent:</b>	means a person against whom allegations have been made;
<b>Tribunal</b>	means the Disciplinary Tribunal established under Rule 1 (4) as constituted from time to time.

- (2) Subject to Rule 3 (1) and Rules 7, 21 and 33, the Interpretation Act 1978 applies to these Rules as if they were an Act of Parliament.

### Extension of Time

4. Where these Rules prescribe a time limit by which a person must act or after which they may not act, an Investigator, the Professional Conduct Panel, the Tribunal or the Appeals Panel (as the case may be) may, upon application to the Panel or Tribunal dealing with the matter, vary that time limit if satisfied that in all the circumstances it is reasonable to do so.

### Service of Documents

5. (1) Any notice required to be given under these Rules may be given to a person or that person's representative:
- (a) by sending it by first class post to a relevant address; or
  - (b) by leaving it at a relevant address; or
  - (c) by personal service, effected by leaving the document with an individual or, in the case of a body corporate or other entity, with a director, officer or manager of that body corporate or entity; or
  - (d) by such other method as the Professional Conduct Panel, the Tribunal or the Appeals Panel (as the case may be) may direct.

CILEx Regulation may adopt a written policy as to the forms of electronic service which would constitute effective service under this Rule.

- (2) For the purpose of Rule 5 (1), a **relevant address** means:
- (a) in the case of an individual, the last known address of that person, including their usual or last known residence or usual or last known place of business; or
  - (b) in the case of a body corporate or other entity, its principal or registered office, its last known address or any other office or place of business which is connected to the proceedings to which the notice relates;
- (3) A notice which is served in accordance with Rule 5 (1) is deemed to be served at the time of personal service or delivery or on the second working day after it was posted. In the case of service under the written policy provided under Rule 5 (1) above then the policy may provide for the deemed time of service.

- (4) Where it is satisfied on reasonable grounds that it is in the public interest to do so, the Professional Conduct Panel, the Tribunal or the Appeals Panel (as the case may be) may:
  - (a) deem service to be effective even though the requirements of Rule 5 (1) have not been complied with;
  - (b) dispense with the requirement of service altogether; or
  - (c) make an order for substituted or alternative service on such terms as it considers appropriate.

#### **Effect on Membership or Authorisation**

6. Where a Relevant Person is the subject of any investigation or proceedings under these Rules termination of Membership or Authorisation will not be valid until any such investigation or proceedings are determined. Determination includes any determination by consent order entered into with the Relevant Person.

## **PART II: INVESTIGATION OF COMPLAINTS AND THE PROFESSIONAL CONDUCT PANEL**

### **Professional Conduct Panel**

7. The Panel must consider:
  - (a) declarations of prior conduct made by or on behalf of Applicants and Relevant Persons and other information relating to their prior conduct; and
  - (b) allegations made against Regulated Persons.

### **Composition of the Panel**

8. (1) The quorum for a meeting of the Professional Conduct Panel is three members from the list of panellists maintained under Rule 2(1)(a), of whom two must be lay members and one must be a professional member.
- (2) The Panel must:
  - (a) before the commencement of the meeting elect one of their number to chair the meeting; or
  - (b) if different members are to chair different parts of the meeting, elect the different Chairs before considering each particular matter.
- (3) If during the course of any consideration of a matter by the Panel, a member of the Panel is unable to continue to attend the meeting, then subject to there being two remaining members, the Panel may, with the consent of the parties continue with the meeting.

## Appendix 2

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- (4) Where under Rule 8 (3), a matter is considered by the remaining two members and they are unable to reach a determination, the matter must be re-considered by a new Panel;
- (5) The validity of any proceedings of the Panel shall not be affected by any defect in the appointment of a member.

### Conduct of Meetings

9. (1) The Panel may determine its own procedure in accordance with these Rules, the guidance published from time to time by CILEx Regulation and the overriding requirement that proceedings are fair;
- (2) Meetings of the Panel are to be held in private.
- (3) Subject to Rule 9(3)(a)-(d) meetings are to be held remotely using a suitable online video and audio conference platform unless the Panel decides otherwise.
  - (a) Where, in accordance with Rule 14(1)(c) or 17(6) the Panel has requested that an Applicant or Relevant Person attend the meeting or where the Relevant Person and/or CILEx Regulation have the right to attend the meeting in accordance with Rule 19(3) or 19(4), the Applicant or Relevant Person and/or CILEx Regulation may request the meeting is held in person if they are of the opinion that it would be unfair to hold the meeting remotely;
  - (b) any such request made shall be in writing addressed to the Panel at the offices of CILEx Regulation within 14 days of a request to attend in accordance with Rule 14(1)(c) or 17(6) or within a reasonable time of notification of a right to attend in accordance with Rule 19(3) or 19(4);
  - (c) the Panel will decide whether the meeting is held remotely or in person after considering representations from both parties, in the event that a meeting is held in person nothing in these Rules requires any meeting to be held outside the United Kingdom;
  - (d) nothing in these Rules shall prevent the Panel from deciding the meeting shall be held in person on the grounds of fairness even if both parties agree it should be held remotely.
- (4) Minutes and a record of the decisions of the Panel must be made by the Clerk.
- (5) The Panel may resolve to consider and determine a matter without a meeting and, in that event, a decision signed by the members of the Panel is as valid as if it was made at a meeting.

## Appendix 2

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- (6) In considering a matter, subject to 10(2) below the Panel:
- (a) may take account of, but is not bound by, the findings, views or analysis of an Investigator who may submit their views in writing and/or orally at a meeting of the Panel;
  - (b) may seek further information from the Relevant Person;
  - (c) may take account of any further representations and material adduced by the Applicant or Regulated Person.
- (7) Where, in accordance with Rule 14(1)(c) or 17(6), the Panel has requested that:
- (a) an Applicant or Relevant Person attend a meeting of the Panel; or
  - (b) where the Applicant or Relevant Person is an entity, that a representative of that entity attend a meeting of the Panel;
- an Applicant or Relevant Person may be represented, but the Panel may refuse to permit a particular person to assist or represent a party if the Panel is satisfied that there are good and sufficient reasons for doing so.
- (8) Decisions at a meeting of the Panel are to be made by a majority vote of the panellists present.
- (9) The Panel must give reasons for its decisions and inform the parties of any right of appeal.
- (10) Within 14 days of a decision made by the Panel:
- (a) the Clerk shall deliver to CILEx Regulation any decision and reasons of the Panel; and
  - (b) within seven days of receipt of the decision of the Panel, CILEx Regulation shall notify the Applicant or Relevant Person of that decision.

### Evidence

10. (1) The burden of proof rests upon CILEx Regulation and the standard of proof is the balance of probabilities.
- (2) Subject to the requirements of a fair decision, the strict rules of evidence do not apply and the Panel may:
- (a) admit evidence whether or not it would be admissible in civil proceedings; and
  - (b) exclude evidence that would otherwise be admissible.

### Duty to Declare Prior Conduct

11. (1) Every Applicant or Relevant Person who is an individual must declare in writing to CILEx Regulation if that individual has at any time:



- (a) been convicted or accepted a caution in the United Kingdom for a criminal offence, or been convicted elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
  - (b) been removed from being a trustee of, or being concerned with the management or control of, a charity;
  - (c) been removed from office as a member, director or manager of any public body;
  - (d) been adjudged bankrupt or made a composition with creditors;
  - (e) been disqualified from acting as a director of a company;
  - (f) been the subject of a civil judgment;
  - (g) been subject to any investigation or proceedings concerning the person's fitness to practise by any regulatory or professional body;
  - (h) been involved in any other matter which may be relevant to a decision by CILEx Regulation to admit, authorise or approve that Applicant.
- (2) Paragraph (1)(a) applies subject to the Rehabilitation of Offenders Act 1974.
- (3) Every Applicant or Relevant Person that is not an individual, must declare in writing to CILEx Regulation if:
- (a) a resolution for its voluntary winding-up has ever been passed without a declaration of solvency under section 89 of the Insolvency Act 1986;
  - (b) it has ever entered administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act;
  - (c) an administrative receiver within the meaning of section 251 of that Act has been appointed in respect of it;
  - (d) a meeting of creditors has been held in relation to it under section 95 of that Act;
  - (e) an order for its winding up has been made;
  - (f) a civil judgment has been made against it;
  - (g) it has been the subject of any investigation or proceedings conducted by any regulatory or professional body;
  - (h) been involved in any other matter which may be relevant to a decision by CILEx Regulation to authorise or approve it.
- (4) Each of the matters in Rule 11 (1) and (3) is referred to in these Rules as **prior conduct**.
- (5) In Rules 11 (1)(f) and (3)(f) references to a **civil judgment** are to a judgment of a court in the United Kingdom or elsewhere.
- (6) A declaration of prior conduct is to be considered and determined in accordance with Rules 13 and 14.

#### Timing of Declaration

## Appendix 2

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12. (1) Every Applicant must disclose full details of prior conduct at the earliest opportunity and, unless the conduct occurs later, in any application for Membership or Authorisation.
- (2) Every Relevant Person must disclose full details of prior conduct at the earliest opportunity and in any event:
  - (a) in any application for Membership;
  - (b) in any application for a change in Membership grade;
  - (c) in any other application to CILEx or CILEx Regulation; and
  - (d) in an annual return.
- (3) Where requested to do so by CILEx Regulation, an Applicant or Relevant Person must provide further details of any prior conduct.
- (4) Failure by a Relevant Person to comply with this Rule and Rule 11 may be treated as misconduct.

### Investigator Decisions: Prior Conduct

13. In considering any declaration or any other information relating to prior conduct the Investigator should have regard to any guidance published by CILEx Regulation.
  - (1) An Investigator may determine that no action is to be taken in relation to a declaration of prior conduct where:
    - (a) the Applicant or Relevant Person has declared an outstanding judgment and there is no evidence of:
      - (i) persistent or deliberate failure to meet financial obligations;
      - (ii) a related criminal offence; or
      - (iii) failure to make arrangements to pay off any debts;
    - (b) the Applicant or Relevant Person has declared a caution or spent conviction and is not a CILEx Fellow or CILEx Practitioner, or applying for CILEx Fellowship or CILEx Practitioner;
    - (c) the Applicant or Relevant Person has declared a driving offence and:
      - (i) there is no evidence of a persistent pattern of offending,
      - (ii) a custodial sentence was not imposed; and
      - (iii) the duration of any disqualification imposed was not 18 months or more;
    - (d) the Applicant or Relevant Person is or has been subject to a bankruptcy Order or has entered into an arrangement with their creditors; or

- (e) the prior conduct is of a kind which the Panel has given the Investigator delegated authority to determine.
- (2) The Investigator must, within 21 days of making a decision, notify the Applicant or Relevant Person of that decision and, in respect of a decision made under Rule 13 (1)(e), must at the same time inform the Panel of that decision.
- (3) An Investigator may decline to make a determination under this Rule if, in the opinion of the Investigator, it would be more appropriate for the declaration to be determined by the Panel, in which case the investigator will make a referral to the Panel and notify the Applicant or Relevant Person within seven days of the referral.
- (4) This Rule does not apply when an opinion in relation to prior conduct is sought by CILEx Regulation under the Licensing Rules.

#### Panel Decisions: Prior Conduct

- 14. (1) In considering any declaration or other information relating to prior conduct, the Panel must have regard to any guidance published by CILEx Regulation and may:
  - (a) seek advice from or refer the matter to an Investigator or any CILEx or CILEx Regulation committee it considers appropriate;
  - (b) request that the Applicant or Relevant Person provide such further information as the Panel may reasonably require; and
  - (c) request that the Applicant or Relevant Person or, where the Applicant or Relevant person is an entity, a representative of that entity, attend a meeting of the Panel. If the Relevant Person and/or their representative attends the meeting of the Panel then CILEx Regulation shall be represented if it considers it appropriate.
- (2) Failure by an Applicant or Relevant Person to comply with a request under Rule 14 (1)(b) or (c) may be treated as misconduct.
- (3) In respect of any prior conduct the Panel may:
  - (a) refuse any application for Membership or Authorisation or any other application to which the prior conduct relates;
  - (b) determine that the prior conduct does not affect any application for Membership or Authorisation or any other application to which the prior conduct relates;
  - (c) decide to take no further action and make a direction to an Investigator as to how to deal with the matter under Rule 13(1)(e) above;
  - (d) impose conditions on the Applicant or Relevant Person as it may think appropriate in respect of their future conduct and, in the case of an individual, their employment;
  - (e) require the Applicant or Relevant Person to give an undertaking as to their future conduct;

- (f) reprimand the Relevant Person, warn the Applicant or Relevant Person as to their future conduct or both;
- (g) refer the matter to the Tribunal as if it was an allegation;
- (h) in the case of an application under the Licensing Rules provide an opinion to CILEx Regulation when required by those Rules.

#### Investigating Misconduct: Initial Procedure

15. (1) Where CILEx Regulation receives information to the effect that a Regulated Person may have engaged in misconduct (an **allegation**) it may investigate the allegation in accordance with these Rules.
- (2) An Investigator may investigate an allegation as follows:
- (a) by gathering information about and investigating the issues involved including, where the information is provided by a complainant, obtaining:
    - (i) any further factual information about the allegation that the complainant wishes to provide; and
    - (ii) the consent of the complainant to provide a copy of the allegation and any supporting information to the Regulated Person;
  - (b) the Investigator must at an appropriate stage notify the Regulated Person that an allegation has been made against them, provide the Regulated Person with details of the allegation (including a copy of any complaint or supporting information) and a copy of the Rules and invite the Regulated Person to submit representations to the Investigator within 14 days;
  - (c) the Investigator may seek information or advice from third parties.
- (3) In order to assist in the investigation, the Investigator may supply the complainant with a copy of all or part of any response from the Relevant Person and, in that event:
- (a) must allow the complainant a period of 14 days in which to provide any further relevant information; and
  - (b) the Regulated Person a period of 14 days in which to comment on further information received from the complainant.
- (4) At the conclusion of the investigation, the Investigator must prepare a report containing a summary of the information obtained and an analysis of the issues for consideration and must forward the same to the Regulated Person and invite them within a period of 14 days to comment in writing on the report.
- (5) Upon receipt of comments from the Regulated Person or the expiry of the time allowed for comments (whichever is the sooner), the Investigator must either determine the matter or refer it to the Panel.

- (6) The investigator may provide a copy of the report to the complainant and invite their comments where that would assist the inquiry or if it is in the public interest to do so;
- (7) A Relevant Person is obliged to comply with and respond to reasonable enquiries made by an Investigator and failure to do so may be treated as misconduct.

#### Decisions by Investigators in Certain Cases

16. (1) Where an Investigator is of the opinion that:
- (a) there is no evidence available to substantiate an allegation;
  - (b) the facts alleged do not disclose any misconduct by the Regulated Person;
  - (c) CILEx Regulation has no jurisdiction to consider the allegation; or
  - (d) the time which has elapsed since the events (or knowledge of those events, if later) giving rise to the allegation exceeds the prescribed period;
- the Investigator may reject the allegation without further reference to the Panel.
- (2) For the purpose of Rule 16 (1)(d), the **prescribed period** means such period of not less than one year or as CILEx Regulation may prescribe.
- (3) Where an Investigator is of the opinion that the evidence available indicates that the Regulated Person has a case to answer in respect of an allegation; and either:
- (a) the allegation is of a serious nature; or
  - (b) an adverse finding has previously been made against the Regulated Person by the Panel or Tribunal in respect of an allegation of a similar nature;
- the Investigator may refer the allegation directly to the Tribunal without further reference to the Panel.
- (4) An Investigator must:
- (a) provide reasons for rejecting or referring to the Tribunal any allegation under this Rule;
  - (b) notify the Regulated Person and any complainant of the decision within 21 days; and
  - (c) report any such decision to the Panel.

#### Powers of the Professional Conduct Panel

17. (1) The Panel must consider any allegation which is referred to it and determine whether the Regulated Person has a case to answer.
- (2) In determining whether there is a case to answer, the Panel must consider whether, based upon the available evidence, there is a realistic prospect that

CILEx Regulation would be able to prove the allegation of misconduct before the Tribunal.

- (3) In respect of an allegation, the Panel may determine that:
  - (a) there is no case to answer; or
  - (b) there is a case to answer and:
    - (i) refer the allegation to the Tribunal; or
    - (ii) with the admission and consent of the Regulated Person, dispose of the allegation in accordance with Rule 17 (4).
- (4) Where the Regulated Person admits an allegation and consents to the Panel doing so, the Panel may dispose of the matter by:
  - (a) requiring the Regulated Person to give undertakings as to their future conduct;
  - (b) imposing conditions on the Regulated Person in respect of their conduct or, in the case of an individual, their employment;
  - (c) reprimanding the Regulated Person, warning them as to their future conduct or both.
- (5) Where the Panel makes a determination under (3)(b)(i) above and the Regulated Person admits the allegation within 14 days of notification of the Panel's decision and consents to the Panel dealing with the matter under Rule 17(4) then the Panel may consider whether to substitute its determination with a disposal under Rule 17 (4).
- (6) Before reaching a decision under Rule 17(4), the Panel may request that the Regulated Person or, where the Regulated Person is an entity, a representative of that entity, attend a meeting of the Panel. Failure to comply with such a request may constitute misconduct. If the Regulated Person attends or is represented at the meeting of the Panel, then CILEx Regulation shall be represented if it considers it appropriate.
- (7) If at any time after allegation(s) have been referred under Rules 16(3) or 17(3)(b)(i), but before any proceedings have been commenced in accordance with Rule 24(1) below, CILEx Regulation considers that the matter should no longer be referred then it can withdraw the allegations.

#### Determination by Consent

18. (1) Where, in respect of any allegation:
  - (a) an Investigator is of the opinion that the Regulated Person has a case to answer; and
  - (b) the Regulated Person admits the allegation;

then subject to Rule 18(3), the Investigator and the Regulated Person may agree to determine the allegation by consent and agree a sanction that would be available to the Panel or Tribunal considering the matter.

- (2) The terms of any determination by consent must include:
  - (a) the allegation(s) and a statement to the effect that the Regulated Person admits the allegation(s);
  - (b) the imposition on the Regulated Person of one or more of the sanctions available to the Panel under Rule 17 or the Tribunal under Rule 30 (other than the imposition of costs); and
  - (c) a provision that CILEx Regulation may in its absolute discretion notify any person or publish the terms of the determination by consent.
- (3) A determination by consent will not take effect until:
  - (a) it has been approved by order of the Panel who have the power to approve any sanction as agreed by the Investigator with the Regulated Person; and
  - (b) the determination by consent is signed by the Chair of the Panel.
- (4) Failure by a Regulated Person to comply with the terms of a determination by consent constitutes misconduct.

### Interim Orders

19. (1) The Panel may at any time, on the application of an Investigator or of its own motion, consider whether it is necessary for the protection of the public, in the interests of the Relevant Person concerned or otherwise in the public interest to suspend or restrict a Relevant Person's Membership or Authorisation pending a hearing before the Tribunal.
- (2) CILEx Regulation must give the Relevant Person reasonable notice of an application for an Interim Order. If, however, the Panel is satisfied that notice is not possible or is inappropriate due to the seriousness or urgency of the matter, then the Interim Order will become immediately effective. In this event, CILEx Regulation must arrange for the Interim Order to be reviewed by the Panel following notification to the Relevant Person.
- (3) The notice under Rule 19(2) must inform the Relevant Person of the time, date and place of the hearing, brief details of the matters giving rise to the application for an interim order and of the right to appear before and be heard by the Panel.
- (4) In considering whether to make an Interim Order, the Panel may determine its own procedure in accordance with these Rules, any guidance published by CILEx Regulation and the overriding requirement of fairness. CILEx Regulation shall be represented at the meeting of the Panel if it considers it appropriate.

- (5) The Panel may order that the Relevant Person's Membership or Authorisation be:
  - (a) suspended; or
  - (b) subject to such restrictions as the Panel considers appropriate.
- (6) Where the Panel makes an Interim Order it shall provide:
  - (a) that the order can only be in force for a maximum period of 18 months;
  - (b) a review date for the Interim Order which is not later than six months from the date of the Interim Order;
  - (c) for subsequent review dates;
  - (d) for the review date being vacated with the consent of CILEx Regulation and the Relevant Person;
  - (e) liberty for the Relevant Person to apply to set the Interim Order aside if there is a change in circumstances.
- (7) Where the Panel makes an Interim Order against a Relevant Person that is an Authorised Entity, it may also require the Relevant Person to enter into a Practice Management Agreement, the terms of which will be determined by the Panel.

### Appeals

20. (1) An Applicant, Relevant Person or CILEx Regulation may appeal against any decision or order of the Panel other than a decision to refer a matter to the Tribunal.
- (2) A complainant may make an application to the Panel seeking the review of a decision of an Investigator under Rule 16 to reject an allegation.
- (3) An application under Rule 20(2) must be made in writing within 21 days of notification of the decision of the Investigator and, in conducting any review, the Panel may confirm the Investigator's decision, require the Investigator to investigate the matter further or consider the matter as if it was a referral made under Rule 17, but subject to such modifications as the Panel consider appropriate.
- (4) An appeal under Rule 20(2) must be made in accordance with Part IV.
- (5) The Panel may make an order that its decision is stayed pending an appeal on such terms as it considers appropriate.

## PART III: THE DISCIPLINARY TRIBUNAL

### Interpretation of Part III

21. (1) In this Part, unless the context otherwise requires:



- first hearing date:** means the hearing date set under Rule 24(1);
- finalised hearing date:** means either the first hearing date or, where the first hearing date is varied by the Tribunal, that varied hearing date;
- Party and parties:** means CILEx Regulation and the Respondent(s); and

- (2) Any reference to the Panel or Investigator having referred a matter to the Tribunal includes a decision by an Appeals Panel under Part IV to refer a matter to the Tribunal.

### Disciplinary Tribunal

22. (1) The Tribunal has jurisdiction to hear:
- (a) those matters referred to it under Part II by the Professional Conduct Panel or Investigator or by an Appeals Panel under Part IV;
  - (b) reviews of disqualification decisions under Rule 25 of the Licensing Rules in which case Rule 32 applies to such reviews
- (2) The Tribunal may determine its own procedure in accordance with these Rules, the guidance published from time to time by CILEx Regulation and the overriding requirement of fairness.

### Disciplinary Tribunal Panel

23. (1) A matter that has been referred to the Tribunal must be heard by a Tribunal of three members from the list of panellists maintained under Rule 2(1)(b), of whom two must be lay members and one must be a professional member.
- (2) The members of the Tribunal must, prior to commencement of the hearing, choose one of their number to act as Chair for the purposes of the hearing.
- (3) If, during the course of any hearing, a member of the Tribunal is unable to continue to attend the hearing, the remaining members may, with the consent of the parties, continue with the hearing.
- (4) Where, under Rule 23(3), a matter is heard by the remaining two members and they are unable to reach a determination, the matter must be re-heard by a new Tribunal.
- (5) The validity of any proceedings of the Tribunal shall not be affected by any defect in the appointment of a member.

Proceedings

24. (1) Where a matter has been referred to the Tribunal, CILEx Regulation must, as soon as reasonably practicable:
- (a) notify the parties that the matter has been referred to the Tribunal; and
  - (b) fix a date, time and venue for the hearing of the matter by the Tribunal.
- (2) Subject to Rule 24(3)(a)-(c) hearings are to be held remotely using a suitable online video and audio conference platform.
- (a) The Respondent and/or CILEx Regulation may request at least 14 days before the hearing that it is held in person if they are of the opinion that it would be unfair to hold the hearing remotely;
  - (b) any such a request must be made in writing to the Tribunal addressed to Tribunal at offices of CILEx Regulation. The Tribunal will decide whether the hearing is held remotely or in person after considering representations from both parties, nothing in these Rules requires any hearing to be held outside the United Kingdom;
  - (c) nothing in these Rules shall prevent the Tribunal from deciding the meeting shall be held in person on the grounds of fairness even if both parties agree it should be held remotely.
- (3) CILEx Regulation must, not less than 42 days before the first hearing date, serve a notice on the Respondent setting out:
- (a) the charges, including particulars of the allegations, against the Respondent that are to be heard by the Tribunal; and
  - (b) the evidence that CILEx Regulation will present to the Tribunal.
- (4) CILEx Regulation must, at the same time that any notice is lodged under Rule 24(3), lodge a copy of that notice with the Clerk.
- (5) Not less than 28 days before the first hearing date, each party will serve on the other copies of any documentary evidence in their possession or control relating to the allegations and any witness statements upon which they intend to rely.
- (6) Any fact which needs to be proved at a hearing by the evidence of witnesses may be proved by evidence given in a witness statement, and a party who requires a witness to attend a hearing, for the purpose of cross-examination upon the content of a witness statement served in accordance with Rule 24(5), must serve notice to that effect upon the opposing party within seven days of disclosure of the statement.

- (7) A party is deemed to admit the authenticity of any document disclosed under Rule 24(5) above unless, within seven days of disclosure of the document, that party serves notice requiring the document to be proved at a hearing.

### Directions and Preliminary Matters

25. (1) The Tribunal may at any time give directions for the management and conduct of proceedings (and the consequences of failing to comply with such directions) and determine any preliminary issues raised by any party.
- (2) The Tribunal may give directions or determine issues under Rule 25 (1) without a meeting of the Tribunal but by two or more of the Tribunal advising the Clerk of their decision and, in that event, the Clerk must notify the parties of the decision within three days of the date on which the decision was made.
- (3) Where the parties consent, a single Tribunal member may give directions or determine an issue under Rule 25 (1).
- (4) When giving directions or determining issues in accordance with Rule 25(2) and (3) above the Tribunal or a single Tribunal member may also direct that submissions or evidence at the substantive hearing be heard by video link or telephone, or in person, as the case may be.

### Additional Allegations

26. Where the Tribunal is satisfied that it would not cause unfairness to the Respondent, the Tribunal may permit CILEx Regulation to add or amend allegations to the matter referred to the Tribunal, and those additional or amended allegations may be treated as if they were included in the original matter referred to the Tribunal.

### Hearing Documentation

27. Not less than seven days before the finalised hearing date, CILEx Regulation must produce and provide the Clerk and the Respondent with copies of an indexed and paginated hearing bundle comprising:
- (a) the allegations;
  - (b) any documents relied upon by the parties;
  - (c) any witness statements; and
  - (d) any relevant notices.

### Conduct of Hearings

28. (1) Hearings must be held in public unless the Tribunal is satisfied that, in the interests of justice or for the protection of the private life of the Respondent, the

complainant, a person giving evidence or any other person, the public should be excluded from all or part of a hearing.

- (2) The Tribunal must give CILEx Regulation and the Respondent and, in its discretion any other person, the opportunity of being heard.
- (3) A party may be represented at a hearing by any person, whether or not legally qualified, but the Tribunal may refuse to permit a particular person to assist or represent a party if the Tribunal is satisfied that there are good and sufficient reasons for doing so.

### Evidence

29. (1) The Tribunal may control the evidence by giving directions as to:
  - (a) the issues on which it requires evidence;
  - (b) the nature of the evidence which it requires to decide those issues; and
  - (c) the way in which the evidence is to be placed before the Tribunal.
- (2) The burden of proof rests upon CILEx Regulation and the standard of proof is the balance of probabilities.
- (3) Subject to the requirements of a fair hearing, the Tribunal may:
  - (a) admit evidence whether or not it would be admissible in civil proceedings; and
  - (b) exclude evidence that would otherwise be admissible.
- (4) The Tribunal may limit cross-examination.
- (5) Subject to any other provisions of these Rules, the Civil Evidence Act 1968 and the Civil Evidence Act 1995 apply in relation to the hearing of a matter as they apply in relation to civil proceedings.
- (6) Production before the Tribunal of:
  - (a) a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a Respondent has been convicted of a criminal offence is conclusive evidence of the offence committed;
  - (b) a copy of the determination of any body in or outside England and Wales exercising a professional disciplinary jurisdiction is conclusive evidence of the facts found proved in relation to that determination;
  - (c) a copy of the judgment of any court or statutory tribunal is conclusive evidence of the facts found proved in relation to that judgment.

### Decisions

30. (1) Decisions of the Tribunal are to be made by a majority vote of the panellists present.
- (2) The Tribunal may:
  - (a) announce its decision and reasons at the conclusion of the parties' cases;
  - (b) announce its decision at the conclusion of the parties' cases and give its reasons on a later date; or
  - (c) reserve its decision and reasons to a later date.
- (3) Where the Tribunal reserves its decision or reasons or the Regulated Person does not attend, the Tribunal must notify the parties of its decision, reasons and any order made within 21 days of the conclusion of the hearing and, where necessary, the notice must specify a date, not more than 21 days after the date of the notice, for any further hearing.
- (4) Where the Tribunal's decision is that one or more of the allegations against the Respondent has been proved:
  - (a) CILEx Regulation must inform the Tribunal of any previous disciplinary proceedings in which any allegation has been proved against the Respondent; and
  - (b) the Respondent may then make submissions in mitigation and, where appropriate, in respect of costs.
- (5) Where the Tribunal finds that one or more of the allegations against the Respondent has been proved the Tribunal:
  - (a) may:
    - (i) take no further action;
    - (ii) reprimand the Respondent, warn the Respondent as to their future conduct or both;
    - (iii) impose conditions on the Respondent as it may think appropriate in respect of the Respondent's conduct or, where the Respondent is an individual, their employment (and such conditions may be imposed in addition to any reprimand or warning); or
    - (iv) order that the Respondent be excluded from Membership or Authorisation for such period (which may be a minimum fixed or indefinite period) as it may decide; and
  - (b) may order the Respondent:
    - (i) except where the Panel has ordered that the Respondent be excluded from Membership or Authorisation, to pay a fine not exceeding an amount determined by CILEx Regulation from time to time; and
    - (ii) to pay costs to CILEx Regulation in respect of the proceedings; and

- (c) may, in the case of a Respondent that is an Authorised Entity or CILEx-ACCA firm which has been excluded from Authorisation, also require the Respondent to enter into a Practice Management Agreement.
- (6) For the purpose of these Rules a **Practice Management Agreement** means an agreement between CILEx Regulation and an Authorised Entity or CILEx-ACCA firm imposing such requirements as CILEx Regulation considers appropriate in the circumstances for the orderly conduct or transfer of the Authorised Entity's business, funds and client files and the terms of such an agreement may include (but are not limited to) requirements that:
  - (a) the Authorised Entity or CILEx-ACCA firm cease to accept new business or clients;
  - (b) the business of the Authorised Entity or CILEx-ACCA firm be managed or supervised by a person appointed by CILEx Regulation;
  - (c) the Authorised Entity or CILEx-ACCA firm and those responsible for its management to execute powers of attorney, bank mandates or other instruments and take such other steps as are required to enable any person appointed by CILEx Regulation to perform their functions under a Practice Management Agreement, including safeguarding client funds, files and other assets; and
  - (d) the Authorised Entity or CILEx-ACCA firm meet the costs of any steps taken by CILEx Regulation or any person appointed by it under a Practice Management Agreement.
- (7) Where the Tribunal finds that one or more of the allegations against the Respondent has not been proved, it may order CILEx Regulation to pay the reasonable costs of the respondent.
- (8) An Order of the Tribunal takes effect on the date of the hearing unless the Tribunal orders otherwise.
- (9) Where the Tribunal makes an Order under Rule 30(5) any certificate previously issued to the Relevant Person by CILEx or CILEx Regulation ceases to have effect and must be delivered by the Respondent to CILEx Regulation within 14 days of the date of the Tribunal's decision.
- (10) A Regulated Person who has neither attended nor been represented at the hearing of their case may apply for a re-hearing within 28 days of the notification of the decision. If the Tribunal is satisfied that it is just to do so, it may direct a re-hearing upon such terms as it thinks appropriate.

### Interim Orders

- 31. (1) The Tribunal may at any time, on the application of the Investigator or of its own motion, consider whether it is necessary for the protection of the public, in the interests of the Respondent concerned or otherwise in the public interest to

suspend or restrict a Respondent's Membership or Authorisation pending the conclusion of proceedings before the Tribunal.

- (2) The Tribunal must give the Respondent reasonable notice before an Interim Order is made by the Tribunal. If, however the Tribunal is satisfied that notice is not possible or inappropriate due to the seriousness or urgency of the case, then the Interim Order will become immediately effective. In this event, CILEx Regulation must arrange for the Interim Order to be reviewed by the Tribunal following notification to the Respondent
- (3) The notice under Rule 31 (2) must inform the Respondent of the time, date and place of the hearing, brief details of the matters giving rise to the application for an Interim Order for suspension and of the right to appear before and be heard by the Tribunal.
- (4) In considering whether to make an Interim Order, the Tribunal may determine its own procedure in accordance with these Rules, any guidance published by CILEx Regulation and the overriding requirement of fairness. CILEx Regulation shall be represented at the meeting of the Tribunal if it considers it appropriate.
- (5) The Tribunal may order that the Respondent's Membership or Authorisation be:
  - (a) suspended; or
  - (b) subject to such restrictions as the Tribunal considers appropriate.
- (6) Where the Tribunal makes an Interim Order, it shall provide:
  - (a) that the Order can only be in force for a maximum period of 18 months;
  - (b) a review date for the Interim Order which is not later than six months from the date of the Interim Order;
  - (c) for subsequent review dates;
  - (d) for the review date being vacated with the consent of CILEx Regulation and the Respondent;
  - (e) liberty for the Respondent to apply to set the Interim Order aside if there is a change in circumstances.
- (7) Where the Tribunal makes an Interim Order against a Respondent that is an Authorised Entity or CILEx-ACCA firm it may also require the Respondent to enter into a Practice Management Agreement, the terms of which will be determined by the Tribunal.

#### Procedure in relation to Disqualification Reviews

32. (1) Where a person seeks a review of a disqualification made pursuant to Rule 25(h) of the Licensing Rules then they shall serve on CILEx Regulation a document setting out the basis of their application and any evidence or other documents relied upon in support of the review.

## Appendix 2

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- (2) Upon receipt of the application for a review, CILEx Regulation shall set a date, time and venue for a hearing before the Tribunal.
- (3) the following Rules shall apply in relation to the procedure for the determination of the application for a review:
  - (a) Rules 23, 24(2) and (5) to (7);
  - (b) Rules 25,27 and 28;
  - (c) Rule 29 save that the burden of proof shall be on the person seeking the review; and
  - (d) Rule 30(1) to (3).

### Appeals

33. (1) Decisions of the Tribunal (other than a decision to impose an Interim Order which takes effect immediately) only take effect after the period for lodging an appeal against the decision has expired or, where an appeal is made, after the appeal has been disposed of or withdrawn.
- (2) The Respondent may appeal against:
  - (a) a finding by the Tribunal that one or more allegations has been proved; or
  - (b) any sanction or costs imposed by the Tribunal.
- (3) CILEx Regulation may appeal against:
  - (a) a decision of the Tribunal which, in the opinion of CILEx Regulation, was made based upon a manifest error, is irrational or similarly flawed; or
  - (b) the imposition by the Tribunal of a sanction which, in the opinion of CILEx Regulation, is unduly lenient.
- (4) An appeal must be made in accordance with Part IV.

## PART IV: THE APPEALS PANEL

### Interpretation of Part IV

#### Notice of Appeal

34. (1) An appeal must be made by giving notice in writing in accordance with this Rule.
- (2) The notice must be addressed to the Appeals Panel at the offices of CILEx Regulation and must:
  - (a) state that it is a notice of appeal and whether the appeal is made under:



- (i) Rule 20;
  - (ii) Rule 32;
  - (iii) Rule 26 of the Licensing Rules;
  - (iv) Rule 5, 7 and 8 of the Admissions and Licensing Committee Rules; or
  - (v) Rule 9 of the Authorisation Rules.
- (b) include:
- (i) the name and address of the appellant;
  - (ii) the date, nature and other relevant details of the decision which is the subject of the appeal;
  - (iii) a concise statement of the grounds of the appeal; and
  - (iv) the name and address of the appellant's representative (if any) and state whether correspondence concerning the appeal should be sent to the representative instead of the appellant;
- (c) be signed by or on behalf of the appellant; and
- (d) be accompanied by a copy of any documents on which the appellant proposes to rely for the purposes of the appeal.
- (3) A notice of appeal must be lodged no later than 42 days after the date on which the decision that is the subject of the appeal was made. In the case of appeals under Rule 26 of the Licensing Rules then an appeal must be lodged in accordance with those Rules.
- (4) An appeal complying with Rule 34(2) above may be served by email to an address specified from time to time by CILEx Regulation. Service by email is not effective unless receipt is acknowledged by CILEx Regulation.

#### Appeals Panel

35. (1) The Appeals Panel must comprise two lay members and one professional member from the list maintained under Rule 2(1)(c).
- (2) The members of the Appeals Panel must choose one of their number to act as Chair for the purposes of the appeal.
- (3) An Appeals Panel must consider and determine any appeal made in accordance with Rules set out at Rule 34 (2)(a) above.
- (4) At the beginning of the hearing the Chair must explain to the parties the order of proceedings which the Appeal Panel proposes to adopt.
- (5) The Appeals Panel may conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings and the parties may be heard in such order as the Panel determines, taking into account that the burden of proof rests upon the

appellant.

- (6) In determining an appeal, the Appeals Panel may admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in civil proceedings.
- (7) Having considered an appeal, the Appeals Panel may:
  - (a) dismiss the appeal;
  - (b) allow the appeal and make such further orders to enable it to give effect to its decision including:
    - (i) quash the decision appealed against;
    - (ii) remit the matter, to the Tribunal, Admissions and Licensing Committee or CILEx Regulation (as the case may be), for reconsideration on such terms as the Appeals Panel considers appropriate;
    - (iii) substitute for the decision appealed against any other decision that, the Professional Conduct Panel, Tribunal, Admissions and Licensing Committee or CILEx Regulation (as the case may be), could have made;

and may make such ancillary orders, including orders for costs, as it considers just and appropriate, at any stage after a notice of appeal has been given pursuant to Rule 34.

- (8) Decisions of the Appeals Panel are to be made by a majority vote of the panellists present.
- (9) Notice of the decision of the Appeals Panel must be given in writing to the appellant within 21 days and takes effect 28 days after the date on which it was made.
- (10) Where the decision in an Appeal under Rule 20(1) has the effect of referring a matter to the Disciplinary Tribunal, that referral may be treated for all purposes as if it was made by the Professional Conduct Panel.
- (11) Appeals under Rule 20 of these Rules, Rule 26 of the Licensing Rules or Rule 5 and 7 of the Admissions and Licensing Committee Rules, Rule 9 of the Authorisation Rules are to be heard in private unless the appellant requests otherwise.
- (12) Appeals under Rule 32 are to be heard in public, unless the Appeals Panel is satisfied that, in the interests of justice or for the protection of the private life of the appellant, any complainant, person giving evidence or any other person, the public should be excluded from all or part of a hearing.

### Representation

36. A party may be represented at a hearing by any person, but the Appeals Panel may refuse to permit a particular person to assist or represent a party if the Appeals Panel is satisfied that there are good and sufficient reasons for doing so.

### Determination without Convening Hearing

37. The Appeals Panel may determine an appeal without convening a hearing, on the basis of any documents or written representations provided by the parties, where:
- (a) the Appeals Panel has notified the parties of its intention to do so; and
  - (b) the parties have consented.

## PART V: OTHER MATTERS

### Publication of decisions etc.

38. (1) CILEx Regulation must cause all adverse findings and orders of the Panel, Tribunal and Appeals Panel (decisions) to be recorded against the relevant entry in the relevant CILEx Regulation register.
- (2) Where a Regulated Person against whom a decision is made is:
- (a) employed; or
  - (b) is a partner, director, manager of, or holds a financial interest in, a relevant body,
- CILEx Regulation must notify the employer or relevant body of the decision.
- (3) In this Rule **relevant body** means:
- (a) an Authorised Entity;
  - (b) a legal services body within the meaning of s.9A of the Administration of Justice Act 1985; or
  - (c) a body licensed under Part 5 of the Legal Services Act 2007.
- (4) CILEx Regulation must give notice of all decisions to such other regulatory and oversight bodies as it considers appropriate.
- (5) CILEx Regulation must cause all decisions and the name of the Relevant Person concerned to be published in such manner as it considers appropriate.
- (6) Rule 38(2), (4) and (5) do not apply to the extent that the Professional Conduct Panel, Tribunal or Appeals Panel directs otherwise.

## Appendix 2

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### Recovery of Fines and Costs

39. Any fine or costs order imposed under these Rules is recoverable as a debt.

### Maintenance of Exhibits and Transcripts

40. Any exhibits produced or used at a hearing of the Panel, Tribunal or Appeals Panel and any recording or transcript of those proceedings must be kept by CILEx Regulation for a period of at least one year after the proceedings to which they relate.

### Annual Report

41. An annual report must be made to the CILEx Regulation Board of the work of the Investigators, Panel, Tribunal and Appeals Panel during the previous year.

### Transitional Provisions

42. (1) These Rules come into force on 17 November 2020 (the **Commencement Date**).
- (2) Any allegation or prior conduct declaration received by CILEx Regulation on or after the Commencement Date must be dealt with in accordance with these Rules.
- (3) Any allegation or prior conduct declaration received by CILEx Regulation before the Commencement Date but which on that date has not been referred to the Panel, Tribunal or Appeals Panel in accordance with previous enforcement rules must be dealt with under these Rules.
- (4) Any allegation or prior conduct declaration received by CILEx Regulation which has been referred to the Panel, Tribunal or Appeals Tribunal between 1 August 2018 and 12 August 2019 must continue to be dealt with in accordance with the Enforcement Rules 2018.
- (5) Any allegation or prior conduct declaration received by CILEx Regulation which has been referred to the Panel, Tribunal or Appeals Tribunal between 13 August 2019 and the Commencement Date must continue to be dealt with in accordance with the Enforcement Rules 2019.