

ANNEX 1

POWERS OF THE PROFESSIONAL CONDUCT PANEL (PCP)

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1. The powers of the Panel in relation to this matter are set out at Part II of the Investigation, Disciplinary and Appeals Rules (IDAR) 5 January 2015.
2. The PCP has the power to deal with matters of Prior Conduct, Fitness to Own and allegations of misconduct. In considering these types of matters the PCP, after considering jurisdiction, may exercise the following powers:

Prior Conduct ¹ - Rule 14

- a. Take no further action.
 - b. Accept or refuse an application for membership or authorisation or any other application to which Prior Conduct relates.
 - c. Impose conditions, where appropriate, on the Relevant Person(s) or Applicant(s) in respect of their future conduct and in the case of an individual their employment.
 - d. Require the Relevant Person(s) or Applicant(s) to give undertakings as to their future conduct.
 - e. Reprimand and/or warn as to future conduct of the Relevant Person(s).
 - f. Refer the matter to the DT as if it were an allegation.
3. To assist the PCP in making a Prior Conduct or Fitness to Own decision they have the power to do the following:
 - a. Request additional information from a CILEx Regulation appointed investigator or a CILEx Regulation /CILEx committee that will assist in their deliberations.
 - b. Request reasonable information from the Relevant Person or Representative of that party and/or request attendance at the PCP meeting.
 - c. Defer the matter to seek advice where it is fair and reasonable to do so.

Misconduct - Rule 17

- a. Decide there is no case to answer.
- b. Decide there is a case to answer and either refer the allegation to the DT or, with the consent of the Relevant Person(s), retain jurisdiction and dispose of the matter.

¹ Prior Conduct here also includes Fitness to Own declarations

PRIMA FACIE CASE

Retaining Jurisdiction

4. In matters where there is an allegation of misconduct the PCP must decide if there is evidence of a prima facie case to support the allegation.
5. A prima facie case means that, if the evidence is left un-contradicted, it could be grounds for a finding of a breach of the CILEx Code of Conduct. In practice the PCP may consider that where a Relevant Person(s) or Applicant(s) make(s) no attempt to deny or refute the evidence, and the evidence shows that misconduct may have occurred, a prima facie case can be established.
6. The Panel must give reasons why it considers a prima facie case exists. If a prima facie case can be established the PCP must go on to consider if the misconduct can be proven on a balance of probabilities.

BALANCE OF PROBABILITIES

7. The balance of probabilities means the fact in issue more probably occurred than not. In deciding whether the fact more probably occurred the Panel will consider the evidence before them in support of that fact occurring.
8. If the Panel finds the evidence does not support the fact probably occurring, the misconduct **is not proved** on the balance of probabilities. The Panel should then properly reject the complaint.

DECISION

Sanction or Referral – Rule 17(4)

9. If the Panel finds the misconduct **is proved** on the balance of probabilities and only if the Relevant Person consents to disposal by the Panel, it has the power to do the following:
 - a. Request the Relevant Person(s) give undertakings as to their future conduct; or
 - b. Impose conditions on the Relevant Person(s) in respect of their conduct or in the case of an individual in regard to their employment; or
 - c. Warn the Relevant Person(s) as to their future conduct and/or reprimand the Relevant Person(s) or
10. The Panel must give clear reasons for reaching its determination on sanction.

11. Where the Relevant Person consents to disposal the Panel may refer matters to the Disciplinary Tribunal, where they consider they have insufficient powers to dispose of the matter.
12. If the Relevant Person does not consent where the misconduct is proved, the Panel should then properly refer the matter to the Disciplinary Tribunal.

Publication

13. Publication is deemed automatic unless there are specific reasons in accordance with **Rule 38(6)** of the **IDAR** that publication does not take place. The Panel should have due regard to the CILEx Regulation Publication Policy (**IH Annex 3**).
14. In all circumstances they must have due regard to the CILEx Regulation Sanctions Guidance (**IH Annex 2**).

