

# **ANNEX 2**

## **SANCTIONS GUIDANCE**



# SANCTIONS GUIDANCE

## PREAMBLE

1. This document has been established by CILEx Regulation as a guide for its Professional Conduct Panel (PCP), Disciplinary Tribunal (DT) and Appeals Panel (AP). These bodies are collectively referred to in this document as the 'Conduct Panels'. This guidance will also be used from time to time by Investigators of CILEx Regulation when exercising delegated functions. This guidance is Annex 2 of the IDAR Handbook.
2. This document is intended to promote proportionality, consistency and transparency in decision-making. CILEx Regulation is committed to promoting equality and safeguarding diversity; its procedures and processes aim to operate in a manner that is free from unlawful discrimination.
3. In the interests of fairness to all parties to the proceedings this guidance outlines the powers and sanctions available to the Conduct Panels and those involved in decision-making. In all cases written reasons must be given by the Conduct Panels for the decisions.
4. This document is guidance only. It is not binding upon a Conduct Panel to follow it. The rules set out in the IDAR supersede any interpretation or meaning contained within this guidance.

## GENERAL CONSIDERATIONS

5. The purposes of sanctions are to:

### Promote:

- good practice by CILEx members and Relevant Persons;
- public awareness of the standards they can expect of CILEx members and Relevant Persons; and
- confidence in the profession on the part of all involved in the administration of justice.

### Protect:

- clients;
- the public interest; and
- the interests and reputation of CILEx, its members and the legal profession.

6. In considering what sanction or decision to make a Conduct Panel may take into account various factors for example, but not limited to:

- the nature and seriousness of the breach;
- the risk to the public;
- the protection of the reputation of the profession;
- the impact of the misconduct on the affected individuals;
- whether the actions of the Relevant Person(s) were dishonest, reckless or deliberate;
- whether there are existing Prior Conduct matters;
- whether the misconduct is admitted;
- whether the Relevant Person(s) has been transparent and timely in providing information about their conduct;
- whether the Relevant Person(s) has/have shown insight or remorse;
- whether the Relevant Person(s) attempted to rectify the breach;
- evidence of rehabilitation;
- the personal circumstances of the Relevant Person(s);
- character evidence and references.

7. Details of **Mitigating Factors** and **Aggravating Factors** are provided to assist the Conduct Panels but are not exhaustive. They are to enable the Conduct Panels to balance the facts before them when reaching a decision, or sanction. Where a Conduct Panel discounts a mitigating or aggravating factor it should provide clear written reasons as to why it has done so.

### **Professional Conduct Panel (PCP)**

8. The PCP considers matters of Prior Conduct, Fitness to Own and allegations of misconduct.

**Prior Conduct matters** are considered after a Relevant Person or Applicant makes a declaration that raises a question as to their suitability to remain a Relevant Person or become a member of CILEx or Relevant Person.

**Fitness to Own matters** are considered after a Relevant Person or Applicant makes a declaration that raises a question as to their suitability to remain owners of entities or become an owner of an entity authorised by CILEx Regulation.

9. The **Rehabilitation of Offenders Act 1974** exempts some individuals who have historical Prior Conduct matters recorded against them from disclosure. Unless an individual is applying to become a Chartered Legal Executive (Fellow of CILEx) or applying for CILEx Practice Rights or Entity Authorisation, spent convictions or cautions do not need to be disclosed. Spent convictions must be

disclosed when applying to become a Chartered Legal Executive (Fellow of CILEx) or when applying for CILEx Practice Rights or Entity Authorisation. This is subject to the following proviso: relevant individuals do not need to declare spent convictions or cautions where the conviction or caution is protected under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 which provides as follows:

- A **protected caution** is a caution that was given to a person aged over 18 more than six years ago or to a person under 18 more than two years ago.
- A **protected conviction** is a conviction where the person did not receive a prison sentence and where they were aged over 18 at the time of the conviction and more than 11 years have passed, or where the person was under 18 more than five years and six months have passed since the date of conviction.

In each case the person must not have been convicted of any further offences.

10. In instances of Prior Conduct declarations the PCP has to decide what action to take as a result of the declaration by the Relevant Person or Applicant.
11. **Allegations of misconduct** against Relevant Persons can be made by anyone, but are typically made by clients, third parties in legal proceedings or employers. CILEx Regulation can also initiate an investigation into the conduct of a Relevant Person in the absence of a complaint or complainant.
12. CILEx Regulation investigates allegations and will refer cases to the PCP. Where there is no evidence of misconduct the investigation will be terminated. The PCP decides whether a case to answer can be established to substantiate the allegation. Where a case to answer can be demonstrated the PCP decides whether to dispose of the matter itself or to refer it to the DT.
13. Some decisions may be made under a delegated procedure, by an Investigator.

### **Disciplinary Tribunal (DT)**

14. The DT considers all cases referred to it by the PCP or where a case has been referred directly by a delegated decision.
15. The DT decides on the balance of probabilities, whether the charges have been proved and will consider sanction and costs where charges are proved. The DT will hear submissions from both parties on mitigation and costs before reaching

its decision. The DT will give written reasons for its determination and have consideration of paragraphs 5 to 7 above.

### **Appeals Panel (AP)**

16. The AP considers appeals made against decisions of the PCP or DT. The AP decides whether the appellant has shown grounds for appeal and, will proceed to determine the matter, where grounds are shown.
17. Where the grounds for appeal have not been 'made out' the AP will dismiss the appeal, affirm the original decision and make any ancillary orders where appropriate.
18. Where the grounds for appeal have been 'made out' in full the AP will, after reconsideration of the original matter, quash or substitute the decision of the lower Conduct Panel. Ancillary orders are made, where appropriate.
19. The AP will give written reasons for its determination and have consideration of paragraphs 5 to 7 above.

### **PCP POWERS ON PRIOR CONDUCT AND FITNESS TO OWN**

20. The PCP has a duty to consider cases of Prior Conduct in a manner that is fair, in the interests of the public, Relevant Person(s) or Applicant(s) and for the protection of the reputation of the profession. In order to do this it might do the following:
  - request additional information from the Relevant Person(s) or Applicant(s); or
  - seek advice from or refer the matter to an Investigator or committee of CILEx or CILEx Regulation; or
  - request the Relevant Person(s) or Applicant(s) attend a meeting. Where the Relevant Person(s) or Applicant(s) is/are an entity a representative will be requested to attend.
21. The PCP might, after considering whether further/new information is required, , and/or after seeking advice take the following decisions:
  - take no further action;
  - accept a Relevant Person's or Applicant's application;
  - refuse a Relevant Person's or Applicant's submitted application;
  - impose conditions on a Relevant Person or Applicant in relation to their conduct or their employment;

- require a Relevant Person or Applicant give undertakings as to their future conduct;
- warn and/or reprimand a Relevant Person or Applicant; or
- refer a case to the Disciplinary Tribunal.

## **PCP POWERS ON ALLEGATIONS**

22. The PCP has a duty to consider allegations made against a Relevant Person and determine whether there is a case to answer. The Panel shall consider it in a manner that is fair and in the interests of the public and for the protection of the reputation of the profession and Relevant Person. In order to do this they may do the following:

- consider jurisdiction, as a matter may be referred to another committee where it is more appropriate to do so, such as the Health Committee (dealing with fitness to practise on health grounds);
- request any additional information from the Relevant Person or Applicant, such as references. The PCP may specify what matters a reference should address;
- seek advice from, or refer the matter to, any Investigator or other committee of CILEx;
- seek procedural advice from the Clerk present at the proceedings;
- adjourn the hearing until such information or advice is received;
- Request a Relevant Person or, where the Relevant Person is an entity, a representative of that entity, attend a meeting of the Panel.

23. The PCP may make the following decisions:

- determine there is no case to answer;
- decide there is a case to answer and refer the allegation to the DT;
- decide there is a case to answer and with the consent of the Relevant Person and where they have admitted the allegation do the following:
  - impose conditions in relation to their conduct or in the case of an individual their employment;
  - require the Relevant Person to give undertakings as to their future conduct;
  - reprimand the Relevant Person and/or warn them as to their future conduct.

## **DT POWERS ON ALLEGATIONS**

24. The DT has a duty to consider allegations made against a Relevant Person or Applicant in a manner that is fair.

25. Where an allegation is not proved the DT must:
- dismiss the charges; and
  - may order CILEx Regulation to pay the reasonable costs of the respondent.
26. Where an allegation is proved in part or whole the DT may:
- take no further action; or
  - reprimand the respondent and/or warn them as to their future conduct.
  - impose conditions in relation to their conduct or in the case of an individual their employment;
  - fine in accordance with the CILEx Regulation Fines Policy, except where the respondent has been excluded from Membership or Authorisation;
  - order exclusion of the respondent from Membership or Authorisation for a fixed or indefinite period and may make recommendations with regard to future reinstatement;
  - require a respondent that is an Authorised Body which has been excluded from Authorisation to enter into a Practice Management Agreement; and/or
  - make any ancillary orders where appropriate.

## **PRIOR CONDUCT AND FITNESS TO OWN DECLARATIONS**

### **FACTORS TO CONSIDER**

27. The PCP will decide either to:
- accept the application;
  - accept the application subject to an order of the PCP;
  - reject the application; or
  - refer a matter to the DT.
28. In deciding Prior Conduct and Fitness to Own cases and whether to accept an application or take no further action, the PCP shall consider the timeliness of the declaration and whether there was unreasonable delay or dishonesty in making the declaration. The Panel shall consider the risk to the public and the protection of the reputation of the profession. Where an application is made in respect of a person who is struck off, disbarred, suspended or otherwise disqualified under the scheme of another approved regulator and/or a licensing authority then the Panel shall not authorise such person unless or until the disqualification order has been set aside by that approved regulator or licensing authority, as the case may be, or in the case of a suspension it has expired. The Panel may consider the following factors in relation to the types of declaration:

## Financial orders

Mitigating factors	Aggravating factors
Arrangements have been made to pay creditors	No arrangements have been made to pay creditors and/or are not satisfactory
Arrangements are satisfactory	Arrangements are not satisfactory
Payments are being made	Payments were arranged but are not being made
Insight into conduct has been demonstrated	No insight into conduct has been demonstrated
Remorse has been expressed	There is no/little evidence of remorse
There is no dishonesty or serious financial mismanagement	There is dishonesty or serious financial mismanagement
It is an isolated incident	A pattern of minor or serious consistent failings

## Convictions and cautions

Mitigating factors	Aggravating factors
The conviction or caution is spent. Protected convictions or cautions will be excluded (unless further offences have been committed)	Further offences have been committed and/or the offence is not spent
There is no other prior conduct	There is other prior conduct
It is a first time offence and/or the duration of the offence was limited	There are numerous offences and/or committed over a period of time
Insight into conduct has been demonstrated	No insight into conduct has been demonstrated
Remorse has been expressed	There is no/little evidence of remorse
Evidence of rehabilitation or associated treatment	No evidence of rehabilitation or associated treatment
There was no dishonesty and/or violence	There was dishonesty and/or violence

## Additional considerations (but not limited)

- The nature of the offence.
- Was a custodial sentence imposed?
- Was there any bribery involved in the offence?
- Was there any conduct that involved the obstruction in the course of justice?
- Has the Relevant Person been included on the Violent and Sex Offender Register?
- Is any of the conduct discriminatory towards others?
- Has the conduct affected vulnerable individuals?
- The time elapsed since the offence took place.

### Order by professional body, such as s43 order

Mitigating factors	Aggravating factors
The misconduct is historical	The misconduct is recent
Evidence of rehabilitation or associated treatment	No evidence of rehabilitation or associated treatment
Insight into conduct has been demonstrated	No insight into conduct has been demonstrated
Remorse has been expressed	There is no/little evidence of remorse
No perceived and/or foreseeable risk to the public or consumer interest	There is perceived and/or foreseeable risk to the public or consumer interest

### Additional Considerations (but not limited)

- Has there been a failure to disclose information (and has that failure been dishonest or reckless)?
- Has there been a failure to respond to or otherwise deal with a regulatory request?
- Have any regulatory requirements been breached?
- Has there been any disciplinary proceedings and if so the outcome of the same?
- Was there any conduct that involved the obstruction in the course of justice?
- Is any of the conduct discriminatory towards others?
- Has the conduct affected vulnerable individuals?

29. The Panel may consider that by making a specific order to be complied with, an application for Membership could then be accepted. The Panel will provide written reasons why, if this is the case.

### UNDERTAKINGS AND CONDITIONS

30. An **undertaking** is a signed agreement by a person (in this case the Relevant Person and in the case of an entity the Approved Manager) to refrain from taking certain action, or take a particular course of action. The undertaking shall set out a timescale within which action is to be taken; and must be capable of being monitored. This is usually an act that requires completing within a certain timeframe or an agreement not to act in a particular way for a defined length of time. Undertakings may be appropriate in cases where a Relevant Person or Applicant can register or continue in Membership subject to an agreement.

31. A **condition** is something that will usually restrict, limit or modify a person's (in this case the Relevant Person's) working practice by agreement (or in the case of

an entity the Approved Manager will agree to the conditions). Conditions of practice may be appropriate where the offence is not serious and imposing them will assist in modifying future practices, such as supervising administrative tasks to ensure efficient and appropriate record-keeping takes place. Or it may limit the types of work they can do within their specialist field. Conditions should be for a defined period of time. Written confirmation from the Relevant Person or third party that the periods of conditions have been complied with must be sent to CILEx Regulation who will confirm that the conditions period is discharged.

32. Conditions should be aimed at addressing a specific risk. The PCP may consider the following factors when deciding whether an undertaking or conditions are suitable. Where the aggravating factors are numerous the PCP may consider a more serious sanction:

### Financial orders

Mitigating factors	Aggravating factors
Arrangements have been made to pay creditors and are satisfactory	No arrangements have been made to pay creditors and/or are not satisfactory
Payments are not being made on a regular basis but will be if an undertaking is given or condition is imposed	No payments were arranged, or arrangements were made but no payments made, and will not be paid if an undertaking or condition is given and will be insufficient to enforce it
The Relevant Person or Applicant is willing to provide an undertaking or agree to conditions and comply	The Relevant Person or Applicant is not willing to agree to or comply with an undertaking or conditions
There is only one financial order	There are many financial orders
Controls are in place to prevent future orders	There is a risk of future orders
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	There is little/no evidence of remorse
There is no dishonesty or serious financial mismanagement	There is dishonesty or serious financial mismanagement

### Convictions and cautions

Mitigating factors	Aggravating factors
The conviction or caution is spent. Protected convictions or cautions will be excluded (unless further offences have been committed)	Further offences have been committed and/or the offence is not spent
There is no other prior conduct	There is other prior conduct
There was no dishonesty and/or violence	There was a pattern of consistent dishonesty and/or violence
There is a willingness to provide	There is unwillingness to provide and

undertakings/conditions	comply with undertakings/conditions
Evidence of rehabilitation or associated treatment	No evidence of rehabilitation or associated treatment
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	There is little/no evidence of remorse
No perceived and/or foreseeable risk to the public or consumer interest	There is perceived and/or foreseeable risk to the public or consumer interest that cannot be resolved by way of conditions or undertakings

### Additional considerations (but not limited)

- The nature of the offence.
- Was a custodial sentence imposed?
- Was there any bribery involved in the offence?
- Was there any conduct that involved the obstruction of the course of justice?
- Has the Relevant Person been included on the Violent and Sex Offender Register?
- Is any of the conduct discriminatory towards others?
- Has the conduct affected vulnerable individuals?
- The time elapsed since the offence took place.

### Order by professional body, such as s43 order

Mitigating factors	Aggravating factors
Misconduct is historical	Misconduct is recent
Action has been taken to address misconduct	No or limited action has been taken to address misconduct
Evidence of rehabilitation or associated treatment	No evidence of rehabilitation or associated treatment
Undertakings or conditions can address concerns of re-entry and/or work within the profession	Undertakings or conditions cannot address concerns of re-entry and/or work within the profession
Undertakings or conditions are sufficient to protect public or consumer interest and the Relevant Person or Applicant is likely to or will comply	Undertakings or conditions are insufficient to protect public or consumer interest and the Relevant Person or Applicant is unlikely to or will not comply
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	There is little/no evidence of remorse

### Additional considerations (but not limited)

- Has there been a failure to disclose information (and has that failure been dishonest or reckless)?

- Has there been a failure to respond to or otherwise deal with a regulatory request?
- Have any regulatory requirements been breached?
- Has there been any disciplinary proceedings and the outcome of the same?
- Was there any conduct that involved the obstruction of the course of justice?
- Is any of the conduct discriminatory towards others?
- Has the conduct affected vulnerable individuals?

## REPRIMAND OR WARN

33. The PCP may reprimand or warn Relevant Persons if they are existing members or they are regulated by CILEx Regulation but not members. A reprimand may be given in respect of *past conduct*. A warning will be given in respect of *future conduct*. Reprimands and warnings are appropriate in cases where the matter is serious in nature but the PCP judges on the circumstances that the Relevant Person is suitable to continue as a member of CILEx or be authorised by CILEx Regulation.
34. In deciding whether to reprimand or warn a Relevant Person the PCP may consider the following factors; where the aggravating factors are numerous the PCP may consider a more serious sanction:

### Financial orders

Mitigating factors	Aggravating factors
Arrangements have been made to pay creditors and are satisfactory	No arrangements have been made to pay creditors and/or are not satisfactory
Payments were not made on a regular basis but are now	Payments were arranged but none were made and no payments will be made in future
There is more than one financial order	There are many financial orders
Steps taken or being taken to prevent future orders	There is a risk of future orders
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	There is no/little evidence of remorse
There is no dishonesty or serious financial mismanagement	There is dishonesty, a pattern of consistent failings or serious financial mismanagement

### Convictions and cautions

Mitigating factors	Aggravating factors
The conviction or caution is spent. Protected convictions or cautions will be excluded (unless further offences have been committed)	Further offences have been committed and/or the offence is not spent

There is no other prior conduct	There is other prior conduct
It is a first time offence and/or the duration of the offence was limited	Further offences have been committed and/or the offence is not spent
There was no dishonesty and/or violence	There was a pattern of consistent dishonesty and/or violence
There is evidence of rehabilitation or associated treatment	No evidence of rehabilitation or associated treatment
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	There is no/little evidence of remorse
No perceived and/or foreseeable risk to public or consumer interest	There is a perceived and/or foreseeable risk to public or consumer interest that will continue

### **Additional considerations (but not limited)**

- The nature of the offence.
- Was a custodial sentence imposed?
- Was there any bribery involved in the offence?
- Was there any conduct that involved the obstruction in the course of justice?
- Has the Relevant Person been included on the Violent and Sex Offender Register?
- Is any of the conduct discriminatory towards others?
- Has the conduct affected vulnerable individuals?
- The time elapsed since the offence took place.

### **Order by professional body, such as s43 order**

<b>Mitigating factors</b>	<b>Aggravating factors</b>
Misconduct is historical	Misconduct is recent
Action was taken to address misconduct	No, or limited action has been taken to address misconduct
Evidence of rehabilitation	No evidence of rehabilitation
No perceived and/or foreseeable risk to public or consumer interest	There is a perceived and/or foreseeable risk to public or consumer interest
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	There is no/little evidence of remorse

### **Additional considerations (but not limited)**

- Has there been a failure to disclose information (and has that failure been dishonest or reckless)?
- Has there been a failure to respond to or otherwise deal with a regulatory request?
- Have any regulatory requirements been breached?
- Has there been any disciplinary proceedings and if so the outcome of the same
- Was there any conduct that involved the obstruction of the course of justice

- Is any of the conduct discriminatory towards others?
- Has the conduct affected vulnerable individuals?

## REFUSE OR REFER AN APPLICATION TO DISCIPLINARY TRIBUNAL

### REFUSAL

35. The PCP may refuse an Applicant’s application. An Applicant whose application is refused may make future applications to enrol or to upgrade. The PCP will determine whether their current grade of membership is appropriate. The Panel shall have in mind paragraphs 13, 20 to 23 and 27 to 34 when considering whether or not to refuse an application and will set out written reasons for their decision.

### REFERRAL

36. Prior Conduct declarations may be referred to the DT by the PCP where the evidence in the case demonstrates a case to answer of misconduct and it is serious (by assessing the level of culpability and the harm caused). The PCP may also refer a matter where it considers its powers of sanction are not wide enough or the evidence is such that it requires testing at a formal hearing.

37. The PCP may consider the following factors dependent on the type of case:

#### Financial orders

No arrangements have been made to pay creditors
Arrangements were made but not complied with
There are numerous financial orders
There is a risk of future orders
The Relevant Person has shown no insight into their conduct
The Relevant Person has not expressed remorse
There is dishonesty, a pattern of consistent failings, or serious financial mismanagement

#### Convictions and cautions

The nature of the offence
There is Prior Conduct
There were a number of offences and/or a risk of re-offending
There was dishonesty or violence
No evidence of rehabilitation or receipt of treatment
The Relevant Person has not shown insight into their conduct
The Relevant Person has not expressed remorse
There is a risk to public or consumer interest

Vulnerable individuals have been affected
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### **Order by professional body such as s43 order**

Misconduct is recent
No or limited action to address misconduct
No evidence of rehabilitation or associated treatment
Potential for future risk to public or consumer interest
The Relevant Person or Applicant has not shown insight into their conduct
The Relevant Person or Applicant has not expressed remorse

### **Additional considerations (but not limited)**

- The nature of the offence.
- Was a custodial sentence imposed?
- Was there any bribery involved in the offence?
- Was there any conduct that involved the obstruction of the course of justice?
- Has the Relevant Person been included on the Violent and Sex Offenders Register?
- Is any of the conduct discriminatory towards others?
- The time elapsed since the offence took place.
- Has the conduct affected vulnerable individuals?
- Has there been a failure to disclose information (and has that failure been dishonest or reckless)?
- Has there been a failure to respond to or otherwise deal with a regulatory request?
- Have any regulatory requirements been breached?
- Has there been any disciplinary proceedings and the outcome of the same?

## **DECISIONS DELEGATED IN RESPECT OF PRIOR CONDUCT MATTERS**

38. An Investigator of CILEx Regulation has the power to determine that no action be taken in relation to declarations of Prior Conduct where:
- (a) there is an outstanding financial judgment and there is no evidence of
    - (i) persistent or deliberate failure to meet financial obligations; or
    - (ii) a related criminal offence; or
    - (iii) failure to make arrangements to pay off debts;
  - (b) there is a caution or spent conviction and they are not a CILEx Fellow or applying for CILEx Fellowship, or they have declared a 'protected caution or conviction' as defined by SI 2013 No.1198;

- (c) there is a driving offence, and,
  - (i) there is no persistent pattern of offending;
  - (ii) a custodial sentence was not imposed or it falls within 28 (b) above; or
  - (iii) disqualification imposed was not more than 18 months;
- (d) there is a bankruptcy order or a credit agreement has been entered into; or
- (e) Prior Conduct has previously been declared and determined by the PCP or Investigating Committee and there is no evidence of repetition of such Prior Conduct.

Any application that relates to, entity authorisation, an Approved Manager, a Compliance Manager or Practice Rights will be sent to the PCP whether or not Prior Conduct has previously been declared.

The Officer may refer any other matter to the PCP for a decision notwithstanding the general delegation to them of that type of case.

## DELEGATED DECISIONS IN RESPECT OF ALLEGATIONS

- 39. An Investigator has the power to *reject* allegations without further reference to the PCP where:
  - there is no evidence to substantiate the allegation; or there is no misconduct as defined within the CILEx or CILEx Regulation rules or regulations; or CILEx Regulation has no jurisdiction to consider the allegation; or the complaint is 'made out' of time, namely not less than one year or such time as CILEx Regulation may prescribe.
- 40. An Investigator has the power to *refer* allegations directly to the DT without further reference to the PCP where there is a prima facie case of misconduct, and either:
  - the allegation is of a serious nature; or
  - the Relevant Person has previously been subject to an adverse finding by the PCP or DT which is similar in nature.
- 41. In exercising their power to *refer or reject* a case the Investigator shall:
  - provide written reasons for the decision;
  - notify the Relevant Person and Complainant within 21 days of the decision;
  - report the decision to the PCP.

## **DECISIONS DELEGATED IN RESPECT OF DETERMINATION BY CONSENT**

42. Where the evidence available demonstrates a case to answer and the Relevant Person admits the allegation, they may agree with an Investigator to determine the matter by consent. The terms shall be agreed between the Investigator and the Relevant Person, save as to costs. The Determination by Consent will only come into effect once it has been approved by order of the Panel.

## **POWERS AVAILABLE IN ALLEGATION CASES**

43. These are powers available to the PCP or DT unless specifically delegated to an Investigator.

## **INTERIM ORDERS**

44. The PCP or DT may decide, on an application by an Investigator or of its own volition, to suspend or restrict a Relevant Person's Membership or Authorisation pending a hearing or the conclusion of a hearing.
45. This order should only be made in cases where the PCP or DT is satisfied that it is necessary to protect the public, in the interests of the Relevant Person or otherwise in the public interest. The Panel should also consider the impact of an interim order upon the Relevant Person and their practice.
46. The Relevant Person must be given no less than seven days' notice of an application unless the case is urgent or serious in which case a shorter notice period may be allowed. The notice must include details of all information required under IDAR Rule 36 (3), for the Conduct Panel making the decision. The Relevant Person may submit a written response and make oral submissions before the Conduct Panel deciding the application.
47. A Conduct Panel may suspend or impose restrictions for a maximum period of 18 months. This must be reviewed every three months. Where a Relevant Person is an Authorised Body, they may be required to enter into a Practice Management Agreement. The order shall automatically terminate upon the conclusion of the case by a decision of the Conduct Panel. CILEx Regulation must ensure a Relevant Person who is suspended from, or has restricted practice, puts in place arrangements for management of files during the period of the interim order.
48. In deciding whether to make an order against a Relevant Person the PCP may consider the following factors:
  - the risk to the public;

- whether the public confidence in the profession will be seriously damaged if practice was to continue unrestricted;
- whether the Relevant Person requires protection from themselves and should not be left unrestricted;
- whether there is a history of conduct issues with CILEx Regulation;
- whether there has there been any previous orders made in relation to the matter under consideration.

## **ALLEGATIONS OUTSIDE THE JURISDICTION OF CILEx REGULATION**

49. At each stage of the disciplinary process the issue of whether an allegation is outside their jurisdiction should be considered, whether it is by the Investigator or one of the Conduct Panels.
50. The following factors should be considered when deciding to retain jurisdiction:
- was the misconduct undertaken by a Relevant Person, or not?
  - is it a service matter for the Legal Ombudsman to investigate?
  - is it more appropriate for the Police to investigate?
  - is it more appropriate for the allegation to be tested before the Courts?

## **FURTHER INFORMATION OR EVIDENCE**

51. This power is available to the PCP on matters of Prior Conduct, where it takes the view that further information or evidence will:
- aid in reaching a fair and just decision;
  - complete the evidence or make it clear;
  - reveal that an allegation has not been identified by the Investigating Officer.

## **SEEK LEGAL ADVICE**

52. This power is available to the PCP, on matters of Prior Conduct where advice is sought relating to the case such as:
- details about common practices subject of the allegation;
  - the statute or case law;
  - advice on legal procedure.
53. The case may be put back to the next meeting of the PCP or until such legal advice is received.

## **REFERENCES**

54. This power is available to the PCP on matters of Prior Conduct, where it may request references to assist in deciding what action to take. References should focus on conduct and character. The PCP may specify areas a reference should address and references may be requested from any appropriate body or individual where it is reasonable to do so. The PCP may defer the proceeding pending receipt of the reference.

## **REJECT A COMPLAINT, ALLEGATION OR ISSUE OF MISCONDUCT OR CHARGES**

55. This power is available to the PCP and DT. An allegation must be rejected where the PCP finds that there is no evidence to substantiate a case or the DT finds that charges brought against a Relevant Person are not proved.
56. In deciding whether to reject an allegation or charge/s the PCP and DT must consider whether:
- the evidence disproves a case;
  - the matter does not amount to a breach of a code or rule;
  - the evidence does not meet the standard of proof.

## **TAKE NO FURTHER ACTION**

57. This power is available to the PCP and DT. The PCP may accept a Relevant Person or Applicant's response to an allegation and decide to take no further action in relation to it. The DT may find that the charges against a Relevant Person are proved but no disciplinary order is necessary.
58. No further action may be appropriate in some cases where the PCP or DT judges on the circumstances that the Relevant Person may continue as a member of CILEx or to be authorised by CILEx Regulation. In such cases the PCP or DT must be satisfied that the risk is low and provide written reasons for why it is satisfied as to the same.
59. In assessing risk the PCP and DT may consider:
- the impact the allegation had on consumer interests overall;
  - whether vulnerable individuals have been affected by the conduct;
  - the conduct of the Relevant Person and whether it presents any risk to the public;
  - the nature of the offence;
  - whether any bribery was involved in the offence;
  - whether any conduct involved the obstruction of the course of justice;

- whether the Relevant Person has been included on the Violent and Sex Offender Register;
- whether any of the conduct was discriminatory towards others;
- whether there been a failure to disclose information (and has that failure been dishonest or reckless);
- whether there has been a failure to respond to or otherwise deal with a regulatory request;
- whether any regulatory requirements have been breached;
- whether there have been any disciplinary proceedings and the outcome of the same;
- the Relevant Person or Applicant has accepted the allegation;
- the Relevant Person or Applicant has apologised;
- the Relevant Person or Applicant has taken corrective action;
- the misconduct has not been repeated;
- whether the conduct of the Relevant Person or Applicant has brought CILEx into disrepute.

## UNDERTAKINGS

60. This power is available to the PCP who may request that a Relevant Person give an undertaking as to their future conduct in order to continue to practise as a CILEx member. The undertaking will set out timescales within which action should be taken.
61. In deciding whether to require undertakings the PCP may consider the following factors:

Mitigating factors	Aggravating factors
It is accepted that misconduct took place	It is not accepted that misconduct took place
The Relevant Person agrees to provide and comply with an undertaking	The Relevant Person does not agree to provide and comply with an undertaking
Remorse has been expressed	Remorse has not been expressed
Corrective action has been taken	Corrective action has not been taken
The undertaking is likely to prevent repeated misconduct and protect consumer and public interest	An undertaking will not prevent repeated misconduct and/or will not protect consumer or public interest
Insight has been demonstrated	No insight has been demonstrated

## CONDITIONS

62. This power is available to the PCP and DT who may impose conditions on a Relevant Person in respect of their conduct or in the case of an individual in regard to their employment.
63. Conditions must be sufficient to manage the conduct of the Relevant Person and be able to act as a mechanism to manage deficiencies that were identified.
64. In deciding whether to impose conditions the PCP or DT may consider the following factors:

Mitigating factors	Aggravating factors
It is accepted that misconduct took place	It is not accepted that misconduct took place
Conditions are likely to prevent repeat misconduct and protect the public and consumer interests	Conditions will not prevent repeat misconduct and/or protect the public and consumer interests
The Relevant Person is willing to comply with conditions	The Relevant Person is not willing to comply with conditions
The range of activity a Relevant Person undertakes is capable of being restricted and/or supervised	Supervision or restrictions on the range of activity that a Relevant Person undertakes is not possible
Assessment or retraining can be undertaken by the Relevant Person to remedy failings	Assessment or retraining by the Relevant Person will not remedy failings
Insight has been demonstrated	No insight has been demonstrated
Remorse has been demonstrated	No remorse has been demonstrated

## REPRIMAND AND WARNINGS

65. These powers are available to the PCP and DT. A reprimand and/or warning may be given to a Relevant Person where they are an existing member of CILEx or authorised by CILEx Regulation. A reprimand may be given in respect of past conduct. A warning will be given in respect of future conduct. Reprimands and warnings are appropriate in cases where the matter was serious in nature but the PCP judges on the circumstances that the Relevant Person may continue as a member of CILEx authorised by CILEx Regulation. In such cases the PCP or DT must be satisfied that the risk is low.
66. In deciding whether to reprimand and/or warn a Relevant Person the PCP or DT may consider the following factors. Where the aggravating factors are numerous, a more serious sanction may be considered.

Mitigating factors	Aggravating factors
It is accepted that misconduct took place	It is not accepted that misconduct took place
Continued practice poses no risks to the public and consumer interests	Continued practice poses a risk to the public and consumer interests
There was no loss to clients	There was a loss to clients
There is no Prior Conduct	There is Prior Conduct
There was no personal gain to the Relevant Person or Applicant	There was a personal gain to the Relevant Person or Applicant
It was an isolated incident	There is a pattern of behaviour
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	Remorse has not been expressed

### Additional considerations (but not limited)

- The nature of the offence.
- Was there any bribery involved in the offence?
- Was there any conduct that involved the obstruction of the course of justice?
- Has the Relevant Person been included on the Violent and Sex Offender Register?
- The time elapsed since the offence took place.
- Is any of the conduct discriminatory towards others?
- Has the conduct affected vulnerable individuals?
- Has there been a failure to disclose information (and has that failure been dishonest or reckless)?
- Has there been a failure to respond to or otherwise deal with a regulatory request?
- Have any regulatory requirements been breached?
- Has there been any disciplinary proceedings and if so the outcome of the same

### REFER TO DISCIPLINARY TRIBUNAL

67. This power is available to the PCP if they judge a case to be serious. Referrals are likely to take place in cases where the PCP takes the view that there is a prima facie case and the burden of proof has been discharged but due to the seriousness of the matter its powers are insufficient, to impose an appropriate sanction and that there is a reasonable prospect CILEx Regulation will be able to prove the allegation of misconduct before the DT.
68. The PCP may also refer a case where the Relevant Person does not consent to the disposal of their case under **IDAR Rule 17(4)**.

## FINE

69. This power is available to the DT only. The DT may order a Relevant Person pay a fine. A fine may be ordered in conjunction with another penalty, except where the DT has excluded the respondent from membership of CILEx or authorisation by CILEx Regulation.
70. In deciding whether to impose a fine the DT should refer to the CILEx Regulation Fines Policy (**Annex 6 to the IDAR Handbook**). Failure to pay a fine itself will be a matter of misconduct.

## EXCLUSION FROM MEMBERSHIP AND AUTHORISATION

71. Exclusion from membership or authorisation means that the Relevant Person is no longer a part of CILEx. This means the Relevant Person will no longer be authorised to call themselves a member of CILEx or use their designatory letters, ACILEx, GCILEx or FCILEx. An entity authorised by CILEx will no longer be allowed to state that they are regulated by CILEx Regulation.
72. This power is available to the DT only. The DT may order the exclusion of a Relevant Person from CILEx membership or authorisation by CILEx Regulation. Exclusion should only be considered in the most serious of cases; after reasoned consideration.
73. The DT may make recommendations or observations about the future reinstatement of the Relevant Person. The PCP must take those recommendations or observations into account when considering future applications for reinstatement. An application will not be accepted until the exclusion period set by the DT has expired.
74. In deciding whether to exclude a Relevant Person from membership of CILEx or authorisation by CILEx Regulation the DT may consider the following factors:

<b>Mitigating factors</b>	<b>Aggravating factors</b>
The misconduct is admitted	The misconduct is not admitted
There is no foreseeable future risk to the public or consumer interest	There is a foreseeable future risk posed to the public or consumer interest
There was no loss to clients	There was a loss to clients
Previous good character	Not of previous of good character
Action was taken to prevent or mitigate the loss	No action to prevent or mitigate the loss
The misconduct was not deliberate or persistent	The misconduct was deliberate and/or persistent
No dishonesty or abuse of trust	There was dishonesty and abuse of trust

There was no recklessness	There was recklessness
There was no personal gain to the Relevant Person	There was a personal gain to the Relevant Person
It was an isolated incident	There was a pattern of behaviour
Insight has been demonstrated	No insight has been demonstrated
Remorse has been expressed	Remorse has not been expressed

## APPEALS

75. The AP has the power to quash or substitute a decision of the original decision-making Conduct Panel where it finds grounds of appeal are 'made out'.
76. The AP may decide that a decision reached by the DT or PCP does not require any amendment, even after finding grounds of appeal 'made out'. In those instances the AP may dismiss the appeal.
77. Where the AP finds that the decision should be varied it will have available to it all the powers available to the original decision-making body. It may exercise these having regard to the guidance in this document.

## COSTS

78. This power is available to the DT and AP who may order a Relevant Person pay costs to CILEx Regulation in respect of the investigation and proceedings.
79. Costs may be ordered, by the DT or AP, in all cases or where the charges have been found proved. The DT or AP will determine whether the costs in the case incurred were reasonable. The means of a Relevant Person, their ability to pay and any aggravating circumstances by either party will also be considered. A payment for costs can be enforced through the contractual nature of the relationship between CILEx and the Relevant Persons they authorise through CILEx Regulation.
80. For more information see CILEx Regulation Costs Policy (**Annex 7** of the IDAR Handbook).

Last updated: 21 July 2016 (applies to cases referred to panels on or after 1 August 2016)