

ANNEX 6

CILEx REGULATION FINES POLICY

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1. The Chartered Institute of Legal Executives (CILEx) is an Approved Regulator designated as such by the Legal Services Act 2007. The Legal Services Act 2007 sets out Statutory Objectives that it must adhere to. CILEx delegates its regulatory responsibilities to CILEx Regulation.
2. CILEx Regulation sets out in this document the levels of fine that may be ordered against individual CILEx Members, CILEx Practitioners, Approved Managers and Entities (Relevant Persons) where a finding of misconduct is made. The levels of fine are approved by the Legal Services Board as at 19 December 2014.
3. CILEx Regulation aims to protect the public by regulating Relevant Persons who provide legal services. In meeting that obligation CILEx Regulation has responsibility for investigating allegations of misconduct, to ensure regulatory standards are met, and imposing sanctions upon those CILEx Regulation regulates, where standards are found not to have been met.
4. It aims to take a proportionate approach to setting the level of fine.
5. CILEx Regulation seeks to use this document as its Fines Policy and it must be read in conjunction with the Investigation, Disciplinary and Appeals Rules 2015 (IDAR 2015). The IDAR Handbook is guidance that sits alongside the IDAR 2015. The sanctions guidance in the IDAR Handbook (**ANNEX 2**) is there to assist those responsible for making decisions when assessing the financial penalty that should be paid by a Relevant Person.
6. The IDAR covers the whole range of CILEx Regulation's regulated community. They include individual CILEx members; CILEx Practitioners; CILEx Regulation's new responsibility in respect of Entities, referred to as Authorised Entities: and those with lead responsibility in Authorised Entities, called Approved Managers.
7. Particular attention is drawn to CILEx members and the makeup of this group. Individual CILEx members range from students through to Fellows. Focus has been on whether CILEx students should be subject to the range of fine covered of up to £100,000. The key points to be aware of are that CILEx students are traditionally individuals who are working. They may be working within legal practices, in-house legal teams within government departments. They may be working in Citizens' Advice Bureaux. Some of these students may have had other careers, run businesses or have other life experiences. CILEx students are not all typical school leavers; the age range and experiences of these students varies greatly. The level of fine of up to £100,000 is a maximum level. The sanctions guidance has been developed to ensure that a

considered approach is taken when deciding on the fine to levy, and is there to ensure that maximum fines are not ordered unless warranted by the circumstances.

8. When considering how to apply the determining factors the application should be the same. For instance where a small number of consumers who are affected by a large detriment or where a large number of consumers have been affected by a small detriment the starting point of the fine should be the same.

Appendix 1

Fine Levels

The following table represents the level of financial penalties allowed.

Relevant Person	Financial Penalty Range
CILEx Member	Up to £100,000
CILEx Practitioner	Up to £50 million
Approved Managers	Up to £50 million
Authorised Bodies	0.5% of annual domestic turnover up to 5% of annual domestic turnover or up to a maximum of £250 million, whichever is greater.

Reasons behind Proposed Fine Levels and factors taken into consideration

9. The fine levels above have taken into account the increased level of risk and responsibility that Relevant Persons will have in line with new rights obtained and the increased risks they pose to the delivery of regulatory objectives and the protection of the public and consumers. The flexible approach has been designed to recognise that one size does not fit all. The ability to pay is a proportionality factor and will also be considered.
10. When deciding the level of fine CILEx Regulation will take into account the seriousness of the misconduct by considering the level of culpability and harm caused; the financial penalty, as outlined above; any adjustments made taking into account mitigating and aggravating factors; and proportionality by considering any personal factors. This list is not restrictive and cases will be assessed on the facts as presented individually. Factors that are not listed may be taken into account, if it is in the interests of justice to do so.

11. The types of misconduct that may attract fines are where conduct is such that a Relevant Person may remain in practice but a fine will be sufficient deterrent against repeating the misconduct. A fine may be suitable where clients have been caused a loss or where the misconduct has caused a loss of confidence in the legal profession.
12. The following table outlines some of the factors that will be considered when deciding on the level of fine for a Relevant Person.

Appendix 2 – Determining Factors

Seriousness	1	2	3				
What is the culpability of the Relevant Person?	What was the motivation for the misconduct?	Were the actions planned or unplanned?	Was there a breach of trust?				
What was the harm caused or risk of harm caused by the Relevant Person – low, medium or high?	<p><u>Low</u> There was no loss or quantifiable impact</p> <p>There was minimal loss or impact</p>	<p><u>Medium</u> There was a moderate loss</p> <p>There was a moderate impact</p> <p>There was a risk of moderate loss or impact</p>	<p><u>High</u> There was a significant loss or impact</p> <p>There was a substantial loss and impact</p> <p>There was a risk of substantial loss or impact</p>				
Adjustments	1	2	3	4	5	6	7
Aggravating Factors	The Relevant Person has failed to co-operate with its Regulator	The actions of the Relevant Person were reckless or negligent	The Relevant Person knowingly continued the misconduct for a sustained period and/or	There was a pattern of misconduct	Vulnerable persons were taken advantage of	There are previous misconduct findings made by the Tribunal	

			dishonesty was proved and/or there was concealment				
Mitigating Factors	The Relevant Person has co-operated with its Regulator	The Actions of the Relevant Person were not intentional or reckless	There was no dishonesty or deception proven	The misconduct was an isolated incident	Was there self-reporting/and or admissions at an early stage of the investigation?	Has the Relevant Person attempted to rectify the wrong caused?	Is there demonstrable insight?
Proportionality	1	2	3	4			
Removal of benefit or gain	Personal Mitigation	Ability to pay a penalty	Character Evidence	Consequences of the financial penalty to the Relevant Person			

