

IDAR HANDBOOK 2015

CILEx Regulation

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INTRODUCTION

The Chartered Institute of Legal Executives (CILEx) is an Approved Regulator designated as such by the Legal Services Act 2007. It delegates its regulatory responsibilities to CILEx Regulation. The Legal Services Act 2007 sets out Statutory Objectives that CILEx Regulation must adhere to.

This Handbook is issued by CILEx Regulation and is approved by the CILEx Regulation Board.

This Handbook is intended as a guide to assist complainants, applicants and Relevant Persons of CILEx and their representatives, complainants, and members of CILEx Regulation's conduct panels by documenting the application of the administrative and procedural processes set out in the CILEx Investigation, Disciplinary and Appeals Regulations 2015 (IDAR).

The Handbook does not supersede the CILEx Regulation IDAR, the CILEx Code of Conduct and associated policies issued from time to time by which govern its fitness to practise function.

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SECTION 1: DEFINITIONS

1.1 GENERAL

These definitions are for the purposes of interpretation of the IDAR Handbook; where definitions are contained within the Royal Charter, Bye-laws, Codes of Conduct, The Investigation, Disciplinary and Appeals Rules, or other Policies they supersede any definition under 1.1 of this Handbook. Annexes referred to in this document are Annexes of the IDAR Handbook.

CILEx	means the Chartered Institute of Legal Executives and was given Royal Chartered Status on 12 October 2011; sealed on 30 January 2012.
CILEx Regulation	means the regulator of Chartered Legal Executives and other individuals and entities authorised by CILEx Regulation.
the Code	means the CILEx Code of Conduct for CILEx Members and Relevant Persons.
Relevant Person(s)	means an Approved Manager, Authorised Body, CILEx Member or CILEx Practitioner.
Allegation	means where CILEx Regulation receives a complaint or other information that a Relevant Person may have engaged in misconduct (an Allegation), it may investigate that matter (IDAR R.15(1)).
Prior Conduct	means any adverse conduct which may have implications for an applicant or member's membership or registration with CILEx (IDAR R.11(1)).
Complainant	means a person who has made a complaint against a Relevant Person(s).
IO	means an Investigating Officer who is a person appointed by CILEx Regulation responsible for investigating an Allegation who may represent CILEx Regulation in Disciplinary Tribunal (DT) proceedings.
IM	means an Investigation Manager who is a person appointed by CILEx Regulation to make delegated decisions in accordance with IDAR Rules 13, 16 and/or 18 or in their absence a CILEx Regulation Manager or Executive.
PCP	means a Professional Conduct Panel established for the purposes set out in IDAR Part II.

DT	means a Disciplinary Tribunal established for the purposes set out in IDAR Part III.
AP	means an Appeals Panel established for the purposes set out in IDAR Part IV.
Panellist	means a lay or professional member of the PCP, DT or AP.
Conduct Panel(s)	means the PCP, DT and AP.
Clerk	means an independent Clerk to the Conduct Panel(s). In this Handbook any request or application should be made to the Clerk, and addressed to the Clerk, sent care of the Investigations Team at CILEx Regulation offices.
Order	means a binding decision of a Conduct Panel, and may be referred to as a Decision Notice, Interim Order or Order No 'X' dated 'Y' of the relevant Conduct Panel.

1.2 THE CILEx CODE OF CONDUCT AND OTHER REGULATIONS

All Relevant Persons when they sign any CILEx membership or authorisation form are contractually bound by all of CILEx and, its regulatory body, CILEx Regulation's regulations. This includes the Charter, the Code, IDAR, the Accounts Rules and Authorisation Rules.

The Code comprises nine principles. A breach of the Code will result in misconduct proceedings. Where a breach of the Code is proven, a disciplinary sanction may be given. Allegations will be assessed against the CILEx Code of Conduct in force at the time of the events that give rise to the allegations. Failure to comply with financial sanctions or orders may result in CILEx Regulation seeking civil redress.

1.3 THE INVESTIGATION, DISCIPLINARY AND APPEALS RULES

The IDAR sets out the procedure under which Misconduct, Prior Conduct and Fitness to Own declarations are dealt with by CILEx Regulation. It covers the investigation process, decision making and the powers of Conduct Panel(s).

1.4 JURISDICTION OF THE CODE AND IDAR

Relevant Persons who do not pay their subscriptions remain in membership of CILEx until at least 12 months have elapsed and CILEx Council makes a resolution to resign their membership.

Relevant Persons are not able to terminate their membership or authorisation until any investigation or proceedings have concluded, whether or not they have paid their subscription or authorisation fees. (**IDAR R.6, Charter Bye-law 12**).

Relevant Persons are bound by the IDAR and are required by it to respond to all enquiries of the IO, IM and PCP in relation to investigations carried out under IDAR (**IDAR R.12(3), 14(1)(b), 15(6)**).

1.5 DISCIPLINARY AND PUBLICATION POWERS OF CILEx REGULATION

CILEx Regulation may take action against Relevant Persons in relation to their Membership and Authorisation of CILEx. Where an Allegation is proven, CILEx Regulation may apply one or more of the following sanctions (**Annexes 2 and 6**):

	CILEx Member	CILEx Practitioner	Approved Manager	Authorised Entity
	PROFESSIONAL CONDUCT PANEL DECISIONS IDAR R.17(3) AND (4)			
1	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct
2	Require undertakings in respect of future conduct	Require undertakings in respect of future conduct	Require undertakings in respect of future conduct	Require undertakings in respect of future conduct
3	Warn in respect of future conduct or reprimand or both	Warn in respect of future conduct or reprimand or both	Warn in respect of future conduct or reprimand or both	Warn in respect of future conduct or reprimand or both
4	Refer the matter to the Disciplinary Tribunal	Refer the matter to the Disciplinary Tribunal	Refer the matter to the Disciplinary Tribunal	Refer the matter to the Disciplinary Tribunal
	DISCIPLINARY TRIBUNAL DECISIONS IDAR R.30(5)			
5	Take no further action	Take no further action	Take no further action	Take no further action
6	Reprimand or warn in respect of future conduct or both	Reprimand or warn in respect of future conduct or both	Reprimand or warn in respect of future conduct or both	Reprimand or warn in respect of future conduct

				or both
7	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct
8	Exclude from membership for a minimum fixed or indefinite period	Exclude from authorisation for a minimum fixed or indefinite period	Exclude from authorisation for a minimum fixed or indefinite period	Exclude from authorisation for a minimum fixed or indefinite period
9	-	-	-	Require a Practice Management Agreement in addition to 10 only
10	Fine and/in addition to 5,6 or 7	Fine and/in addition to 5,6 or 7	Fine and/in addition to 5,6 or 7	Fine and/in addition to 5,6 or 7
11	Order costs	Order costs	Order costs	Order costs

APPEAL PANEL DECISIONS IDAR R35 (7)			
	PCP	DT	PCP and DT
1	Dismiss the appeal	Dismiss the appeal	And may make any ancillary orders
2	Allow the appeal and quash the decision	Allow the appeal and quash the decision	And may make any ancillary orders
3	Allow the appeal and then decide the original decisions stands after a hearing	Allow the appeal and then decide the original decisions stands after a hearing	And may make any ancillary orders
4	Allow the appeal and substitute the decision in accordance with IDAR 35(7)(c) and 17	Allow the appeal and substitute the decision in accordance with IDAR 35(7)(c) and 30(5)	And make may any ancillary orders

Disciplinary findings stay on a Relevant Person's record indefinitely, and may be taken into account in determining sanction in future complaints where a finding is made. Disciplinary findings are published in accordance with the Publication Policy. DT decisions may be notified to employers, partners, other regulators and any other relevant body. (**IDAR R.38, Annex 3**)

Relevant Persons who are excluded from membership or authorisation are required to return their membership card, Practising Certificate or Certificate of Authorisation to CILEx Regulation within 14 days of the notification of the decision.

1.6 TYPES OF MISCONDUCT

Where CILEx Regulation receives a complaint or any information that a Relevant Person may have engaged in misconduct, it may investigate the complaint in accordance with **IDAR R.15(1)**. CILEx Regulation deals with the following types of allegations of misconduct:

- Prior conduct means a declaration required by Relevant Person(s) of all conduct which may have implications for their membership, or authorisation by CILEx Regulation. Categories of Prior Conduct will be reflected on the Prior Conduct section of membership or authorisation forms (**IDAR R.11(1) and (3), CILEx membership application/reinstatement/upgrade forms, All Entity regulation and Approved Manager application forms**).
- Complaint (s) means a grievance made by a person (*individual, body corporate or other entity*) against a Relevant Person about their conduct. Service complaints only must be made to the Legal Ombudsman. The Ombudsman will refer conduct issues to the entity regulator who may refer the matter to CILEx Regulation (**Part I 1(2) Legal Services Act 2007**).
- Information means information received by CILEx Regulation from any source that indicates a Relevant Person may have acted in breach of the Code. IDAR requires CILEx Regulation to investigate the matter.

SECTION 2: THE INVESTIGATION PROCESS

2.1 TIMESCALES

CILEx Regulation acknowledges correspondence within 2 working days and aims to respond substantively within 7 working days. In addition CILEx Regulation will update all parties to the investigation on progress once a month.

Correspondence that is sent by first class post takes effect on the second working day after posting. Time allowed for response from all parties (unless otherwise specified) is from the date of deemed receipt (**IDAR R.5**).

CILEx Regulation aims to refer complaints to the PCP within 6 months of receipt. All parties must correspond in a timely manner. CILEx Regulation will consider reasonable requests for additional time to respond. Extensions are granted at CILEx Regulation's discretion. Applications for extensions of time must be supported by

evidence where available. CILEx Regulation will balance the interests of fairness with the requirement to act in a timely manner when considering the application.

2.2 PRIOR CONDUCT

Declarations of Prior Conduct are made by all Relevant Persons for Membership or Authorisation and are considered by CILEx Regulation. Applicants make the declaration on all CILEx/ CILEx Regulation application or registration forms; including online and/or electronic (**IDAR R.11**). Prior Conduct includes Fitness to Own declarations made when applying for entity authorisation or when already authorised as an entity by CILEx Regulation.

Relevant Persons must make a declaration at the earliest opportunity to CILEx or CILEx Regulation. Failure to declare Prior Conduct may lead to an investigation by CILEx Regulation in relation to that failure in addition to investigating the Prior Conduct matter (**IDAR R.12**).

Relevant Persons, provide evidence of the Prior Conduct (e.g. memorandum of conviction, order of a professional body) and information about the circumstances in which the conduct arose (including mitigation and references) (**IDAR R.12(3)**).

Where a declaration of Prior Conduct is not dealt with under the delegated decision procedure (**IH Section 3.1**), it is dealt with in the following way:

The Prior Conduct is referred to a meeting of the PCP for consideration. The Relevant Person is notified of the date of the PCP meeting. The PCP may request the Relevant Person or representative of the Relevant Person attend the PCP meeting (**IDAR R.14(1)(c)**).

If, after two written requests from CILEx Regulation, a Relevant Person fails to respond or does so inadequately, additional allegations of misconduct relating to that failure may be added. Applicants seeking authorisation or membership who fail to provide the requisite information will have their application(s) withdrawn.

	CILEx Member	CILEx Practitioner	Approved Manager	Authorised Entity
	PROFESSIONAL CONDUCT PANEL DECISIONS IDAR R.14(3)			
1	Take no further action	Take no further action	Take no further action	Take no further action
2	Accept or refuse application for Membership	Accept or refuse application for Practice Rights	Accept or refuse application for Approval	Accept or refuse application for Authorisation
3	Impose conditions in	Impose conditions in	Impose conditions	Impose

	respect of future conduct and their employment	respect of future conduct and their employment	in respect of future conduct and their employment	conditions in respect of future conduct
4	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct and their employment	Impose conditions in respect of future conduct
5	Require undertakings in respect of future conduct	Require undertakings in respect of future conduct	Require undertakings in respect of future conduct	Require undertakings in respect of future conduct
6	Warn in respect of future conduct or reprimand or both	Warn in respect of future conduct or reprimand or both	Warn in respect of future conduct or reprimand or both	Warn in respect of future conduct or reprimand or both
7	Refer the matter to the Disciplinary Tribunal as if it was an allegation	Refer the matter to the Disciplinary Tribunal as if it was an allegation	Refer the matter to the Disciplinary Tribunal as if it was an allegation	Refer the matter to the Disciplinary Tribunal as if it was an allegation

2.3 COMPLAINTS

The IO will investigate a complaint by gathering information and investigating the issues involved (**IDAR R.15(2)**).

Consent is obtained from the complainant to provide a copy of the complaint and supporting evidence to the Relevant Person. The onus is on the complainant to provide evidence to support the complaint. Where an IO seeks information or advice from third parties, this information or advice will only be disclosed if it is not covered by legal professional privilege.

If a complainant does not give consent to disclose the complaint to the Relevant Person, the investigation is discontinued and the parties are notified. Where a complainant gives consent to part of the material being disclosed, only that evidence is relied upon for the purposes of continuing the investigation.

Once the information has been gathered from the complainant a summary of the complaint, evidence, and issues involved are provided to the Relevant Person. They have 14 days within which to comment from receipt of complainant providing the information. The Relevant Person's response is considered and, where further information or evidence is identified, appropriate action is taken.

A copy of the Relevant Person's response is sent to the complainant, who has 14 days within which to make written submissions, from receipt. The Relevant Person has a further 14 days within which to comment on the complainant's additional

submissions (**IDAR R.15(3), (4)**). The IO will investigate any new issues that arise as a result.

The Relevant Person must respond to requests within the timescale stipulated by CILEx Regulation (**IDAR R. 15(6)**).

Information that Relevant Persons provide will be disclosed in full to the complainant by CILEx Regulation. Confidential information may be redacted by the Relevant Person, however, any material not disclosed to the complainant, will not form part of the evidence placed before the PCP for consideration. Alternative evidence may be provided. Where a complaint has been made by an individual all Relevant Persons' personal data will be redacted and will not be included in the evidence or submitted to any party or decision making panel. CILEx Regulation's Data Protection Policy is available to view on the website or upon request.

At the conclusion of the investigation a report is prepared which includes an analysis of the issues. The PCP is not bound by the analysis. The parties in the case are notified of the date by which a report will be sent to them. The Relevant Person and complainant have 14 days within which to submit any written comments about the report to CILEx Regulation. Any comments received are included as additional evidence (**IDAR R.15(4)**).

Unless a party applies for an extension of time to comment, the case is referred to the next PCP meeting and the parties notified of the date (**IDAR R.15(5)**).

A bundle of the information and report relating to the case is provided to Panellists in advance of the PCP meeting (and Relevant Persons, where they have been ordered to attend) (**IDAR R.17(5)**).

Where CILEx Regulation acts on information received, draft allegations are prepared or further information is requested to assess whether an investigation is required. The matter is put to the Relevant Person for a response (**IH Section 3.2, 3.3 and 3.4 and Section 4.3**).

2.4 DISPOSAL OF DISCONTINUED COMPLAINTS

A complainant may withdraw their complaint at any time. If a complainant fails to engage with the investigation (expressly or impliedly by failing to respond to CILEx Regulation), the file is referred to the IM with a summary of the investigation that has taken place. The IM decides whether the complaint should be continued by CILEx Regulation.

2.5 THE DECISION TO ACT ON INFORMATION RECEIVED

CILEx Regulation may receive information which prompts an investigation, for example:

- A third party may provide evidence that demonstrates a prima facie case of misconduct. There may not be a complainant. For example, evidence that a Relevant Person has carried out unauthorised reserved legal activity, such as serving notice of proceedings or issue of a Land Registry application.

Evidence from a Relevant Person or complainant which suggests further misconduct may have been committed, may be pursued as an additional allegation(s) to the current investigation (**IH Section 1.6**).

2.6 THE ROLE OF THE INVESTIGATING OFFICER

The IO is an impartial case worker for CILEx Regulation and does not act for the complainant or Relevant Person. They record and retain relevant material obtained or generated during the course of an investigation, some of which becomes evidence in the case. They make enquires for the purpose of presenting facts to the PCP for determination. They may seek expert advice or information from third parties. At the conclusion of the investigation the IO produces a report of the investigation (**IDAR R.15(4)**).

The IO refers cases suitable for resolution under the delegated decision procedures to the IM, but is not party to decisions made under those procedures. The IM is not bound by any IO decision. The IO is available to answer questions on their report before the PCP meeting.

After the PCP's decision notice is forwarded to the Relevant Person and complainant the IO outlines the next steps or closes the case, accordingly.

An Order of the PCP becomes a decision of CILEx Regulation. The role of the IO at this stage is to conduct follow-up action. Where an appeal is lodged against a PCP decision, the IO prepares the case for appeal. Where the PCP refers a matter to the DT, the IO is CILEx Regulation's representative and will prepare the case, may act as a witness or present the case before the DT (**IH Sections 3 and 4**).

2.7 LIMIT OF INVESTIGATION

CILEx Regulation cannot carry out legal case work on behalf of a Relevant Person, who has conduct of a case. CILEx Regulation does not offer dispute resolution or mediation services.

During an investigation, CILEx Regulation has no power to order a Relevant Person to take a particular course of action. In some cases if it is necessary for the protection of the public; is in the public interest; or in the interests of the Relevant Person the Conduct Panels may make an interim order suspending or restricting Membership or Authorisation pending a hearing of the relevant Conduct Panel(**IDAR R.19**).

CILEx Regulation has no power to order disclosure of information or other evidence where the Relevant Person is an employee of an entity. Authorised Bodies and Approved Managers will be subject to disclosure in such instances.

CILEx Regulation has no power to investigate criminal behaviour which should be referred to the appropriate authorities. CILEx Regulation will inform the relevant authorities of allegations of criminal behaviour where it becomes aware of it.

Where a Relevant Person is a party to litigation, CILEx Regulation may not investigate allegations relating to those proceedings until their conclusion. Any finding by a court will be relied upon by CILEx Regulation as conclusive evidence of fact.

2.8 COMPLAINTS ABOUT CILEx Regulation EMPLOYEES AND APPOINTEES

Where there is a conflict of interest or an allegation is made against an individual who is a Panellist, Board Member, employee or other appointee of CILEx Regulation, CILEx Regulation may appoint an independent investigator and Panellists to consider the complaint.

Where a service complaint is made against CILEx Regulation by users of CILEx Regulation's services, the CILEx Regulation service complaints procedure will be followed. This procedure is distinct from procedures set out in IDAR and cannot be implemented to challenge any decisions made under IDAR or circumvent the disciplinary proceedings.

SECTION 3: DELEGATED DECISION PROCEDURES

IDAR allows for certain decisions, ordinarily made by the PCP to be made under a delegated process, without referral to a meeting of the PCP (**IDAR R.13(1), 16 and 18**).

These include some:

- Prior Conduct matters;
- Rejection of complaints;
- Referral directly to the DT; and
- Determination by Consent with approval of two PCP Panellists.

In each case the IM may decide whether to make the delegated decision. All delegated decisions are reported to the PCP.

3.1 PRIOR CONDUCT

The IM has discretion to decide that no action be taken in Prior Conduct declarations in accordance with **IDAR R13(1)**.

Where a declaration is received that falls within Rule 13, the IM can approve the declaration and within 21 days notify the Relevant Person in writing that no further action will be taken. A report is made to the PCP of the decision (**IDAR R13(2), IH Section 2.2**).

3.2 REJECTION OF COMPLAINTS

An Investigator may reject a complaint at any time, before it is referred to the PCP where:

- There is no evidence to substantiate an allegation
- The allegation does not disclose misconduct
- CILEx Regulation has no jurisdiction to consider the allegation
- The allegation is made outside of the prescribed period, and there is no good reason for the delay (**IDAR R.16(1) and (2)**).

The complainant is informed of the decision and the reasons why.

Where any element of the complaint identifies there may be a case to answer, the complaint is not rejected.

A complaint recommended for rejection may be pursued in some circumstances. This is where, a report is submitted to the IM, who reviews the case and decides not to reject the complaint. In these cases the investigation continues and a different IO will investigate the matter, unless it is not practicable to do so.

Where the IM decides to reject the complaint, the decision with reasons is notified to the relevant parties and is reported to the PCP (**IDAR R.16(4)**).

Where a complaint is rejected, the complainant is advised they have a right of appeal and informed of the procedure. The Relevant Person is notified of the complainant's right of appeal. Any Appeal by a complainant must be in accordance with (**IDAR R.20(3) and (4)**). The complainant and Relevant Person are notified of the outcome.

3.3 REFERRAL DIRECTLY TO DT

CILEx Regulation may refer complaints directly to the DT, without reference to the PCP, where the evidence demonstrates a prima facie case of misconduct and either:

- The allegation is of a serious nature; or
- There is a previous disciplinary finding of a Conduct Panel (**IDAR R.16 (3)**)

Referral directly to the DT may be considered at any stage prior to the complaint being referred to the PCP, but only after the Relevant Person is on notice of the complaint.

A report is prepared recommending the complaint is referred directly to the DT. The Relevant Person has 14 days within which to comment on it. The complainant is put on notice of a direct referral to DT. After receipt of comments from the Relevant Person or the time allowed for comments has lapsed, the report, information and evidence, is submitted to the IM.

The IM can direct the IO to continue with the investigation process or refer the case to the DT. Where the investigation process continues a different IO will conduct the investigation, unless it is not possible to do so.

Where a case is referred to the DT by the IM they must provide reasons for the referral. The IO will forward the decision to the relevant parties. There is no right of appeal against a decision to refer a matter directly to the DT (**IH Sections 2.2, 2.3 and 4.4**).

3.4 DETERMINATION BY CONSENT

CILEx Regulation may enter into a Determination by Consent with a Relevant Person where there is a prima facie case of misconduct, and the Relevant Person admits the misconduct (**IDAR R.18(1)**).

During the investigation, prior to DT proceedings being issued, where a Relevant Person indicates that they unreservedly admit the misconduct, the IO informs them of the option to enter into a Determination by Consent. Determinations by Consent may be entered into after referral to the DT if a Relevant Person accepts the conduct.

The IO notifies the IM of the Relevant Person's indication to enter into a Determination by Consent. The procedure and sanctions available are explained to the Relevant Person. A Determination by Consent is published in accordance with the Publication Policy.

The investigation process continues if agreement cannot be reached.

Where a Determination by Consent is reached a report is prepared and includes:

- a statement of admission by the Relevant Person; and
- the order in respect of sanction and publication.

The report is put to one lay and one professional PCP Panellist to consider.

Where the Panellists agree with the determination, they authorise the decision and sign the Order within 5 days of receipt and return it to the IM. The Order is

authorised once signed by both Panellists and on the date the second Panellist signs, if different.

Within 5 days the signed Order is sent to the Relevant Person and the parties to the investigation are notified of it. The Order is published in accordance with CILEx Regulation Publication Policy. The Order comes into effect from the date the Relevant Person signs the Order.

Where one or both Panellists do not agree with the Order proposed in the Determination by Consent they will give reasons and the investigation continues (**IH Sections 2.2 and 2.3**).

3.5 SUSPENSION ON THE GROUNDS OF ILL HEALTH

Where CILEx Regulation receives information about the physical or mental health of a Relevant Person which raises doubts about their fitness to practise, the IM may suspend the Relevant Person's membership in accordance with the Health Committee (Procedure) Rules (**Annexes 4.4.7 and 5**).

SECTION 4: CONDUCT PANELS

There are three conduct panels:

- the Professional Conduct Panel (PCP);
- the Disciplinary Tribunal (DT); and
- the Appeals Panel (AP).

4.1 COMPOSITION OF PANELS

There is a separate pool of Panellists for each of the PCP, DT and AP. Panellists are a collective of professional (Fellows of CILEx) and lay (non-lawyers) members.

Each meeting or hearing is made up of three Panellists. The majority will be lay Panellists. Hearing dates are scheduled at the end of the calendar year for the forthcoming year. Panellists are allocated dates at random based on availability and will serve an equal number of times, where practicable. Additional dates are allocated by the Clerk based on availability.

Professional Panellists may advise their fellow Panellists on areas of legal practice on which they have sufficient knowledge.

4.2 APPOINTMENT OF PANELLISTS

Panellists are appointed by CILEx Regulation following a public advert. Vacancies are advertised in CILEx and CILEx Regulation publications, and in national press, as appropriate. Applicants must declare they are independent of CILEx Council and CILEx Regulation Board and be free of conflict of interest. Lay members must not have been members of the legal profession. Applicants are shortlisted and interviewed by a panel (**IDAR 2(1)**).

Panellists are subject to ongoing appraisal, by way of self-appraisal and observation by Board members. Removal of a Panellist will be in accordance with **IDAR 2(3)**.

Panellists will serve a term of five years, after which they may serve one more term of five years if they continue to meet the criteria for appointment and are reappointed (**IDAR 2(4)**).

4.3 THE PROFESSIONAL CONDUCT PANEL (IDAR PART II)

The PCP is the first tier decision-making body. It determines Allegations either at meetings and considers Prior Conduct declarations (**IDAR R.8**). The PCP sits one day approximately every six weeks.

4.3.1 Powers

The PCP applies its powers as set out at Annex 1 of this document. The PCP gives reasons in respect of its findings and any sanction applied.

In cases of complaints the burden of proof is on 'the balance of probabilities'. This is the civil test and its definition and application is in accordance to civil law of England and Wales. In cases of Prior Conduct declarations the PCP does not need to prove the conduct in order to impose sanctions as they are matters of fact.

4.3.2 Conduct of meetings

Notice is given of a PCP meeting to consider cases which are referred to it. Meetings are held in private (**IDAR R.10(1)**).

The PCP elects a Chair and then commences a meeting. Decisions are made by a majority (**IDAR R.9(2), 10(7)**).

An independent Clerk advises Panellists on practical procedure but is not their legal adviser. The Clerk undertakes all administrative duties and takes no part in decision making (**IDAR R.10(3)**). The attending PCP Panellists approve the minutes of the meeting and any decisions made at it. These are then signed by the Chair of that Panel and returned to CILEx Regulation for retention.

With prior agreement of Relevant Persons and complainants, members of the CILEx Regulation Board may attend meetings as observers only to appraise Panellists. If an objection is raised, Board members will leave the meeting whilst the case in which the parties objected is considered.

The Panellists are provided with an agenda for the meeting a minimum of ten days in advance. The agenda is a list of cases and associated paperwork for consideration. Material received after distribution of the agenda will be provided to the Panellists by the IO via the clerk as soon as practicable before the meeting begins. CILEx Regulation notifies the Clerk of the times that any Relevant Persons are attending. Panellists with queries on the agenda raise them with the Clerk who contacts CILEx Regulation for further information, if necessary.

On receipt of the agenda, Panellists check for any conflict of interest and notify the Clerk immediately if there is. The Clerk will find a replacement Panellist where there is a conflict. In some circumstances where the Relevant Person agrees that the Panellist who has declared a conflict can remain on the panel this will be permissible but must be confirmed in writing by the Relevant Person.

The PCP may determine the order in which it considers cases, taking into account any Relevant Person(s') attendance times where they have been requested to attend. The PCP has the power to ask questions of Relevant Person(s) and may request attendance of the IO in a case, for clarification of the report and evidence.

Relevant Person(s) in attendance may make additional representations at the meeting.

The PCP retires to consider its decision. The Relevant Person(s) is invited to wait, unless a decision will not be reached the same day. At the conclusion of PCP deliberations Relevant Person(s) are called back to hear the announcement of and reasons for its decision as to whether:

- it will refer the matter to the DT; or
- it has rejected the complaint as not proven; or
- it has found the complaint proven and will go on to consider sanction.

Where a complaint is found proven the PCP invites the Relevant Person(s) to make submissions on mitigation and jurisdiction and whether a referral to the DT for a full, oral hearing is appropriate, or whether the PCP has sufficient powers of sanction and should retain jurisdiction. After submissions the PCP retires to deliberate. The PCP notifies the Relevant Person(s) of its decision the reasons.

The PCP may order publication of any orders it makes, in line with CILEx Regulation Publication Policy (**Annex 3**). Publication is not part of sanction. It is in the public interest to promote high standards across the profession (**IDAR R.38**).

The Clerk provides a summary of the decisions to the IO at the end of the meeting for notification to the parties. A formal record of the decision is produced by the Clerk, the procedure of which is covered at 4.3.4 below.

4.3.3 Representation

A complainant has no right to appear or be represented before the PCP. CILEx Regulation is not represented at the PCP meeting but the IO may be required to attend to answer questions.

Meetings are held in private but Relevant Person(s) must attend if ordered to do so. On these occasions Relevant Person(s) may be represented at the meeting subject to approval by the PCP. Costs of representation or attendance are not recoverable from CILEx Regulation. (**IDAR 10(1), (5), (6)**).

4.3.4 Decision notices

Decisions of the PCP are notified, in writing, to the parties to the proceedings within 21 days of the decision and the complainant after the appeal period expires (**IDAR 10(9)**).

A record of each decision is produced by the Clerk to the PCP and agreed by the Panellists. It is signed by the Chair. Approval of decision notices/minutes may be delegated to the Chair by other Panellists. The decision notice is forwarded to the IO within seven working days of the meeting; The Relevant Person(s) is/are notified of

any right of appeal and if a referral to the DT has been made, what the next steps are.

Any fee paid by an applicant whose application is refused will be refunded by CILEx.

4.3.5 Power to decide matters without a meeting

The PCP may determine a matter without a meeting (**IDAR R.10(4)**). Where a matter is decided in this way the PCP must balance the interests of the parties involved. Where a sanction is imposed that restricts membership serious consideration should be given to obtaining further representations and clear reasons given as to the decision made.

4.3.6 Appeals

A Relevant Person(s) may appeal the decision of the PCP unless a referral was made to the DT. They have 42 days after the date of the decision notice in question to lodge an appeal. Complainants may appeal against a decision to reject a complaint under the delegated procedures and must be made in writing within 21 days of notification of the decision. The Panel only has the power to confirm the decision made by CILEx Regulation, to require the matter to be investigated further or to refer the matter to the DT on the basis there is a prima facie case (**IDAR R.20, R.34**).

An application to appeal is not accepted out of time, unless an extension of time is granted. Once the time to appeal has passed, the Order of the PCP is in effect. Where publication of the decision is ordered, it is published on the CILEx Regulation website, in the CILEx Journal and to other parties where CILEx Regulation deems it appropriate (**IH Annex 3**).

Appeals may be made on the appeal form which is available on request from CILEx Regulation. This appeal form must be served on the Clerk, with a copy for service on CILEx Regulation. Appeals may be against decision and/or sanction (**IDAR R.20 or R.32**).

The grounds of appeal are likely to fall within the following categories:

- (1) Appeals against a Panel decision - new evidence has come to light that was not available and could not have been made available at the time of the original proceedings; and
- (2) Appeals against sanction - the sanction was excessive, the wrong facts were used when calculating sanction, or there was a legitimate expectation from the Tribunal that a particular sanction would be imposed.

An appeal hearing will be listed as directed by CILEx Regulation with consideration to all parties where it is practicable to do so.

4.4 THE DISCIPLINARY TRIBUNAL (IDAR Part III)

The DT is the second-tier decision-making body. It deals with cases where a prima facie case of misconduct has been established and which is serious in nature, or where the evidence in the interests of justice requires testing. Hearings dates are listed by CILEx Regulation.

4.4.1 Powers

The DT must find the charges proved on the balance of probabilities. Where it finds one or more charges proved, it may make the following orders:

- take no further action;
- reprimand or warn as to future conduct or both;
- impose conditions in respect of conduct or employment; or
- exclude a Relevant Person(s) from Membership or Authorisation for a period it decides;
- require the Relevant Person(s) to enter into a Practice Management Agreement.

In addition to the above, the DT may:

- impose a fine (see CILEx Regulation Fines Policy **Annex 6**); and/or
- make an order for costs (**IDAR R.30(5)(a), (b) and (c)**).

Where the case is against an Authorised Body whose Authorisation has been limited or excluded a Practice Management Agreement may be required (**IDAR R.30(5)(c), R.30(6)**).

Where any allegation against a Relevant Person is not proven, the DT may order CILEx Regulation to pay their reasonable costs.

The DT may order publication of any orders it makes, in line with CILEx Regulation Publication Policy (**Annex 3**). Publication is not part of sanction. It is in the public interest to promote high standards across the profession (**IDAR R.38**).

4.4.2 Proceedings

CILEx Regulation is the applicant in the proceedings and the Relevant Person is the respondent. Complainants are not a party to the proceedings, but may be called as witnesses.

The burden of proof rests on the applicant who must prove all charges of misconduct on the balance of probabilities before the DT. The IO will present the case or may instruct a Fellow, solicitor or other authorised person to represent CILEx Regulation.

Once the PCP refers a matter to the DT, CILEx Regulation has no power to overturn the decision. CILEx Regulation may make an application to withdraw the allegation in circumstances where new evidence is brought to light. The decision rests with the DT.

The conduct of the proceedings is in accordance with **IDAR R24** and **R25**.

The allegations are considered by CILEx Regulation and formal charges are drafted. Once notice of proceedings is issued, CILEx Regulation has power with leave of the DT to amend or add new charges.

CILEx Regulation will serve notice and evidence which the Relevant Person must acknowledge and respond to. CILEx Regulation acknowledges all documents received from the respondent and/or their representative.

The DT may consider interim applications. Applications must be made to the Clerk and copies served on all parties to the proceedings for response. The Clerk forwards applications and subsequent responses to the allocated Panellists sitting on the Tribunal. The Clerk is notified of the decision, who then draws up an Order and serves a copy on all relevant parties. Applications for adjournments are considered in line with the CILEx Regulation Policy (**Annex 4**).

Not less than 14 days prior to the hearing all parties must agree the bundle to be placed before the DT. If the bundle cannot be agreed then a bundle must be served not less than 7 days prior to the hearing and include:

- any part that has been agreed; and
- a statement from the party seeking to rely on any disputed material why they seek to include it in the bundle.

Not less than 7 days before the hearing date, CILEx Regulation produces and serves a hearing bundle on the Clerk in accordance with **IDAR R.27** comprising a minimum of:

- the Charges;
- all evidence including documents relied upon by CILEx Regulation;
- all evidence including documents relied upon by the parties;
- all evidence that is agreed between the parties and that does not need to be called;
- all interim orders; all skeleton legal arguments; and
- any other relevant material or correspondence between the parties.

CILEx Regulation serves a copy of the bundle on all relevant parties including the Clerk who forwards copies to the Panellists. New evidence will not form part of the evidence without application to the DT either prior to the hearing or as a preliminary application on the day of the hearing. The DT will consider the introduction of any new evidence on the basis of whether it is in the interests of justice.

4.4.3 Conduct of hearings

The DT elects a chair and makes all decisions by a majority. A hearing may continue with only two Panellists with consent of the parties. If a Tribunal of two are unable to

make a decision, the case will be re-heard by a new panel on a later date (**IDAR R.23**).

The Clerk deals with the administration of Conduct Panels and is independent of CILEx Regulation. The Clerk does not take part in deliberations of Conduct Panel decisions. Any procedural or legal advice given during private deliberations will be relayed to parties to the hearing, unless it is legally privileged. Hearings are held in public (**IDAR R.28(1)**).

CILEx Regulation Board members may attend the DT as observers to conduct appraisals, unless there is objection by the parties to the hearing. They take no part in the proceedings.

The DT may from time to time determine its own procedure, in accordance with IDAR if it is in the interest of justice to do so and for the purpose of maintaining fair and proportionate proceedings. This will be decided on the individual circumstances of each case (**IDAR R.22(2)**).

The DT has power to make an interim order either on the application of an Investigator or of its own motion (**IDAR R.31**).

A hearing may proceed in the absence of a Relevant Person(s) in accordance with the guidelines set out in case law (**Annex 6**).

The DT may consider and determine preliminary issues at the hearing, such as legal arguments. Judgments on preliminary issues are given prior to the substantive hearing.

Proceedings commence with CILEx Regulation presenting its case. The Relevant Person(s) presents their case in response. Both parties may make submissions in response and call live evidence in support of their cases. The Relevant Person(s) may give live evidence at their hearing. The DT has the power to question Relevant Person(s), CILEx Regulation, representatives and witnesses.

At the conclusion of each party's evidence, the DT retires to consider whether the charges are proved on the balance of probabilities.

The DT announces its decision before the relevant parties, but may reserve its judgement to a later date where a decision has not been reached. Notification of their decision must not be more than twenty-one working days after the hearing. The DT has power to set a hearing date to consider sanction and costs (**IDAR R.30(3)**).

Where the decision is not reserved and the charge(s) are found proved, the parties are invited to make submissions on sanction and costs. The Relevant Person is required to provide a statement of means to the DT. CILEx Regulation informs the DT of the details of any previous disciplinary proceedings in which any allegation has been proved against the Relevant Person (**IDAR R.30(4) (a)**).

After further private deliberations the DT announces its decision on sanction, costs and publication to those parties in attendance.

4.4.4 Representation

CILEx Regulation may be represented by a solicitor or other authorised person or by a representative of the investigation team at CILEx Regulation.

A Relevant Person(s) may be represented by a Fellow, solicitor or other authorised person, but must seek permission from the DT in advance or at the commencement of the hearing (via the Clerk) for that person to appear on their behalf at the hearing.

4.4.5 Orders

An Order, approved by the Panellists and signed by the Chair, is provided to CILEx Regulation and the Relevant Person(s). This is sent within 21 days of the hearing date. Complainants are notified of the outcome of a hearing after any appeal period has expired, except where no adverse finding was made which is notified immediately.

Hearings may be audio recorded and are kept for a minimum of one year. The DT's private deliberations are not recorded. A copy of the recording will be made available on request after the hearing date. A charge may be levied. Where a transcription is required, the party requesting it must pay the costs of this (**IDAR R.40**).

The Order of the Conduct Panel comes into effect and is published after the appeal period has expired (**IDAR R.32(1)**).

Where a Relevant Person(s) has been ordered to pay costs or a fine, arrangements are made for recovery of the fine and/or costs. Where there is default in payment or no payment from the Relevant Person(s), CILEx Regulation will consider taking appropriate action.

4.4.6 Appeals

A Relevant Person may appeal a decision of the DT (**IDAR R20 or R30**). Notice must be lodged no later than 42 days after the date of the decision to be appealed. Appeals against an interim order made by the PCP to suspend a Relevant Person on health grounds may be made to the Health Committee (**Annex 5 FTTP**).

4.5 THE APPEALS PANEL (IDAR Part IV)

The AP considers appeals against:

- PCP or DT decisions brought by CILEx Regulation, Relevant Person(s) or applicants other than referrals to the DT;

- CILEx Regulation delegated decisions to reject complaints brought by complainants;
- decisions made by the DT brought by Relevant Persons

A hearing may be in private or in public depending on the type of appeal and may be considered without a hearing where Relevant Person(s) and/or representatives are notified and consent (**IDAR R.20, 32, R.34(2), 35(3)(11) and (12) and 37**).

4.5.1 Powers

The AP may:

- dismiss or allow the appeal
- quash the decision;
- substitute the decision; and
- make ancillary orders, including orders for costs and publication (**IDAR R.35(7)**).

Appeals are a two-stage process:

- (1) the AP must consider whether the appellant has demonstrated that the grounds of Appeal are 'made out'. If the grounds are not made out the appeal is dismissed.
- (2) if the AP agrees that some or all of the grounds of appeal are made out they review whether the decision made at first instance was correct.

The AP may exercise the following powers where any ground(s) of appeal are made out:

4.5.2 Delegated decisions

In respect of a delegated decision to reject a complaint, the AP may:

- dismiss the appeal; or
- order that further investigation be carried out.

4.5.3 PCP and DT decisions

The AP may substitute a decision with one that the PCP could have made at the time including a decision to refer to the DT. The AP applies the powers of the PCP (**Annex 1**).

The AP may substitute a decision with one that the DT could have made at the time of the original hearing. The AP applies the powers of the DT (**IDAR Part III**).

The AP should have regard to the CILEx Regulation Decision Making Guidance for Disciplinary Bodies in determining sanction (**Annex 2**).

4.5.4 Publication of decisions

Orders for notification and publication must be in line with powers of the Conduct Panel which considered the matter at first instance and CILEx Regulation Publication Policy (**Annex 3**).

4.5.5 Additional powers

The AP may make ancillary orders against either party where it is appropriate, such as additional costs orders in respect of the appeal (**IDAR R35(7)**).

4.5.6 Proceedings

Proceedings are formal in nature. Whosoever lodges a notice of appeal is the appellant; the respondent will be the party who is opposing the application. On receipt of notice of appeal the Clerk will send acknowledgement of service to the appellant or his representatives. Thereafter a hearing date and time is set and all relevant parties are notified.

Prior to the appeal hearing CILEx Regulation produces a hearing bundle and as a minimum will comprise the following:

- the DT or PCP case papers
- all Orders of the lower panel
- all evidence in support of the application to appeal and any response to the appeal.

CILEx Regulation produces copies of bundles which are served on the Appeal Panel and relevant parties to the proceedings. Should either party wish to introduce additional evidence after service of the bundles they must notify the Clerk and obtain leave from the AP to adduce it.

Any request for adjournment is considered in accordance with CILEx Regulation Policy (**Annex 4**).

4.5.7 Conduct of hearings

The AP comprises of two lay members and one professional; one of whom will act as Chair (**IDAR R.3 (1) and (2)**).

The AP is assisted by an independent Clerk, who advises the Panellists on procedure, and makes a record of their decisions. The Clerk retires with the AP but takes no part in the decision making.

Appeals made under **IDAR R.32** are heard in public subject to rules under **IDAR R.35(12)**. The CILEx Regulation Board may be present at hearings for appraisals unless there is an objection.

Preliminary issues that require determination will be decided after CILEx Regulation and the appellant (or their representative) have made representations. The AP will announce its decision on preliminary applications prior to the substantive hearing.

An appeal hearing is conducted in accordance with **IDAR R.35**. The AP must decide if the grounds of appeal have been made out and will listen to submissions from parties to the application and may ask questions. The AP retires to consider its decision. Where the grounds of appeal are not made out the appeal is dismissed.

Where any appeal grounds are made out the substantive appeal is heard. The AP invites submissions from all parties to the application. The AP may question both parties. The AP retires to consider what action to take in respect of the decision under appeal and calls the parties back in to announce its decision.

The AP may invite the parties to make submissions in respect of costs and, where applicable, on sanction. The AP retires to consider its decision. A further hearing date may be set where the AP decides that in the interests of justice to do so. A decision will be announced at a hearing or in writing where appropriate

4.5.8 Representation

Where a party wishes to be represented by a person who is not a Fellow, solicitor or other Authorised Person leave of the AP must be sought in advance (**IDAR R.36(2)**).

4.5.9 Orders

Notice of the decision is given to the appellant and will take effect after twenty-eight days (**IDAR R.35(9)**).

4.6 INTERIM ORDERS

If it is in the interests of the Relevant Person or for the public protection, the PCP (where a case is referred to the DT) or the DT may consider on its own motion or at the request of CILEx Regulation whether to suspend or restrict the Relevant Person's membership or authorisation. A Relevant Person(s) that is also an Authorised Body may be required to enter into a Practice Management Agreement (**IDAR R.19 and R.31**).

An application for an interim order will be listed on the Agenda of a PCP meeting. In urgent cases a separate meeting will be called. The Relevant Person will be notified of it not less than seven working days before a proposed hearing date and the reasons for it (**IDAR R.19(1) and R.31(2)**).

Notice must comply with **IDAR R.19(3) and/or R.31 3**). The Relevant Person(s) may make written and oral submissions. CILEx Regulation may be represented at the meeting.

Any hearing will be in accordance with procedure under **IDAR parts II and III** respectively.

Orders for suspension or restricted practice are effective immediately (**IDAR R.20 (1) and R.32(1)**). Suspension or restriction can be ordered for up to 18 months and are reviewed every 3 months (**IDAR R.19(5) and R.31(5)**). In some cases a Relevant Person(s) will be required to enter into a Practice Management Agreement (**IDAR R.19(6)**).

Notice of the review dates are sent to the Relevant Person(s), who is invited to make submissions. The interim order may be revoked or extended. The Clerk informs CILEx Regulation of the decision who notifies the Relevant Person(s) in writing.

The Relevant Person(s) has a right of appeal to the AP (**IDAR R.34(3)**).

Publication is in accordance with CILEx Regulation Publication Policy (**IDAR R.38(5) Annex 3**).

4.7 OTHER MATTERS

Exhibits and transcripts will be held for one year (**IDAR R.40**). Any request for these may incur a reasonable administrative fee determined by CILEx Regulation from time to time. Where a transcript of the audio is required the cost is borne by the party making the request.

There is no further right of appeal. Individuals may seek legal advice at any time during and at the conclusion of proceedings.

Where an order for costs has been made the parties to the proceedings may arrange mutually agreeable steps for payment. Where it is necessary CILEx Regulation will pursue recovery of the costs through the courts. Where the appellant remains in membership, failure to comply with the costs order may lead to further allegations of misconduct being brought against them, and may affect their membership and right to practise as a Relevant Person(s).