



**Outcomes-focused Regulation -  
Draft CLC Regulatory & Enforcement Approach**  
CLC Consultation Paper  
September 2010

**Response Deadline: Friday 17 December 2010**

## **Executive Summary**

1. The CLC believes that its regulatory framework should achieve the following:
  - consumers receive legal services appropriately tailored to their needs;
  - the regulated community is given proper opportunities for innovation; and
  - the CLC provides efficient and effective regulation.

The regulatory framework has been revised so it is principles-based and focused upon the delivery of positive consumer outcomes. The outcomes will be delivered by the principled and professional behaviour of the regulated community. Our regulatory and enforcement approach is informed by the risks an individual, body and its activities poses to the delivery of the outcomes.
2. It is intended that the Regulatory and Enforcement Policies, and the outcomes-focused regulatory framework in its entirety will come into force in October 2011 assuming that the CLC becomes a Licensing Authority. The framework will apply to all entities regulated by the CLC, whether as an Approved Regulator regulating licensed conveyancer practices or as a Licensing Authority regulating Alternative Business Structures.
3. The CLC is simultaneously consulting on its:
  - a) Revised regulatory framework;
  - b) Code of Conduct; and
  - c) Alternative Business Structures - Licensed Body Framework.These consultations should be read in conjunction with this paper as it is upon non-compliance with these requirements that we will take enforcement action.
4. During the Consultation Period we will engage with the profession and with consumers, and seek the views of other Approved Regulators and stakeholders.

## **Responding to this Consultation**

5. The questions posed in this Consultation Paper are set out on page 8. You are welcome to respond to some or all of the questions or to comment on the proposals as a whole.
6. When you respond please give your name and address, and whether you are a licensed conveyancer. If you are not a licensed conveyancer, please state, if relevant, your status or professional qualification. Unless we are notified otherwise, the CLC reserves the right to publish any response and to refer to it specifically in any further document it publishes following this Consultation. If you wish your response to be treated as confidential please let us know when you respond. All responses should be sent by email to [consultations@clc-uk.org](mailto:consultations@clc-uk.org) or by post to

The CLC  
16 Glebe Road  
Chelmsford  
Essex CM1 1QG  
Or by to DX 121925 CHELMSFORD 6

**Submission Deadline: Friday 17 December 2010**

## Introduction

### Statutory Framework

7. The CLC was established by the Administration of Justice Act 1985 (AJA) to regulate licensed conveyancers in the provision of conveyancing services. It has no representative function. The CLC currently regulates about 1,000 licensed conveyancers and just over 200 practices.
8. As an approved regulator the CLC “must, so far as is reasonably practicable, act in a way.., which is compatible with the regulatory objectives”<sup>1</sup> as follows:
  - a) Protecting and promoting the public interest;
  - b) Supporting the constitutional principle of the rule of law;
  - c) Improving access to justice;
  - d) Protecting and promoting the interests of consumers;
  - e) Promoting competition in the provision of services by ‘authorised persons’<sup>2</sup>;
  - f) Encouraging an independent, strong, diverse and effective legal profession;
  - g) Increasing public understanding of the citizen’s legal rights and duties;
  - h) Promoting and maintaining adherence to the professional principles<sup>3</sup>.

The “professional principles” are—

- a) that authorised persons should act with independence and integrity,
  - b) that authorised persons should maintain proper standards of work,
  - c) that authorised persons should act in the best interests of their clients
  - d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence and in the interests of justice,
  - e) that the affairs of clients should be kept confidential.<sup>4</sup>
9. The CLC is also required to “have regard to...the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed”<sup>5</sup>.

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<sup>1</sup> S.28(2) Legal Services Act 2007

<sup>2</sup> defined at s.18 LSA

<sup>3</sup> s.1(1) LSA

<sup>4</sup> s.1(3) LSA

<sup>5</sup> s.28(3) LSA

## Outcomes-Focused Regulation

10. Approved Regulators and Licensing Authorities are required to operate a regulatory approach which is principles-based and outcomes-focused. This means that legal services providers must be encouraged to focus upon the positive outcomes they can generate for consumers of those services. Outcomes will be delivered by acting in accordance with high-level principles – requiring the individual or body to act in a principled, professional manner - rather than complying with prescriptive rules.
11. The shift of focus should mean that:
  - clients receive a service tailored to their needs;
  - legal service providers can develop new and different ways of delivering services to their customers; and
  - the CLC establishes an environment which enhances client protection, promotes competition and provides informed choice for consumers.

## Drafting the Regulatory & Enforcement Policies

12. Our approach has been informed by the Better Regulation Principles:

Accountability - monitor and publish our regulatory performance and enforcement actions to encourage compliance, demonstrate accountability and to address any issues or inconsistencies. Enforcement decisions are made on the basis that the respondent can appeal them.

Consistent - review our compliance monitoring approach and the responses it generates to ensure they are consistently applied.

Proportionate – our regulatory response will be proportionate to the seriousness, circumstance and impact – actual or potential – of the risk to legal services consumers and the legal profession. Fines will be proportionate; we will not seek to cause unnecessary expense. We are currently determining the proportionality of the frequency/size of our data submission requests and are making the returns simpler and quicker to complete through online submissions.

Targeted – a risk-based approach enables us to focus our attention and resources on those most likely to harm the interests of the public and legal services consumers.

Transparent - continuously increasing the emphasis placed upon education and awareness-raising to help those we regulate to help themselves.
13. It has also been informed by the tenets of the Regulators Compliance Code. In keeping with the Code, we aim to have proportionate relationships with those we regulate and to respond proportionately to regulatory breaches. It is based upon the operating principle of utilising the least intrusive methods to achieve our

regulatory objectives, providing a responsive and effective mechanism for dealing with conduct concerns.

14. An informal approach will be adopted wherever possible but those who deliberately, repeatedly or seriously, fail to uphold the principles will be dealt with formally. Breaches which represent a serious risk to the public interest will receive the most formal response. Conversely, those who actively uphold the professional principles will be rewarded by less direct and intrusive contact from the CLC.
15. A risk-based approach to enforcement will increase value for money. Resources will be targeted where they will be most effective and where the risk to consumers is highest.

### **CLC Regulatory & Enforcement Policies**

#### Regulatory and enforcement aims

16. We have three main regulatory aims:
  - Those we regulate deliver high standards of service to consumers and to the wider public;
  - There are high standards of conduct amongst those we regulate;
  - There is an effective and proportionate regulatory framework in operation.
17. To achieve this, our regulatory framework seeks to ensure the protection of clients and the promotion of their best interests by requiring the delivery of positive consumer outcomes. Our regulatory approach is informed by the identification of risk to the outcomes' delivery.

#### Licence determinations

18. Licence determinations are informed by the risks identified in the application. This includes consideration of factors such as the body's activities and client type; its regulatory responsibility arrangements; foreign ownership (potentially afford less data validation opportunities); information about the body's finances; and reliability of the evidence provided.
19. Where risks are identified conditions will be imposed upon any licence granted. Where the risks are too severe to be mitigated by conditions – e.g. false information has been provided, a proposed owner has a conviction for dishonesty - a licence application will be declined.

#### Regulatory Risk

20. We collect information from the regulated community to help us monitor how effectively our regulatory framework is operating. We carry out a risk assessment of the data provided. Issues identified in a body's arrangements help inform our risk register.
21. The CLC regulatory risk register contains a range of information including CLC inspection findings; complaints; Accounting Reports information; negligence

claims; and information from other stakeholders, such as lenders, police or clients. Members of the regulated community are allocated an overall regulatory risk profile according to the information held. Those with a higher risk score will have a more intensive regulatory relationship with the CLC than lower-risk bodies.

### Enforcement

22. Enforcement actions aim to encourage compliant behaviour or to punish non-compliance with our regulatory requirements. We must ensure the regulated community meets the needs of clients by complying with both the law and our regulatory requirements. Where they fail in these responsibilities we will hold them to account. The vast majority of the regulated community already actively uphold the professional principles and deliver the specified outcomes, by compliance with the CLC's current regulatory framework. Where this is not the case, we must take, and be seen to take, action.
  
23. We propose to publish information on investigation outcomes and enforcement action to encourage compliance and demonstrate accountability. The CLC believes that publication of committee determinations provides important information for consumers and a strong incentive for those being regulated to comply with their obligations. Publication of enforcement determinations is consistent with the Legal Services Board's emphasis on transparency of enforcement and is in keeping with the determination publication policies of other Approved Regulators such as the SRA and ILEX. We currently propose to only name the respondent if they are found guilty of a breach of their regulatory responsibilities

### Decision-making

24. Enforcement decisions will be informed by all available, relevant and reliable evidence. Decisions will be based upon the 'balance of probabilities' of the evidence and will take account of both the impact on consumers and the impact on the respondent.
  
25. The respondent will be afforded the opportunity of reply. All CLC enforcement decisions are subject to review and appeal by the respondent. In all cases the review will be carried out by individuals not involved in the original enforcement decision. Should they remain aggrieved by the determination they can appeal the decision to an independent body.

### Proportionate Approach

26. The CLC operates an escalating enforcement scale. This does not mean that less serious breaches will go unchecked, it means they will receive a proportionate response so that less serious breaches do not receive the same penalties as more serious or repeated breaches. Wherever possible, we will take an informal approach, providing support and guidance to address the risks.
  
27. A range of factors will be taken into account when determining how far up the scale the response should be. Factors include the seriousness of the breach, the period of time over which it took place, the number of people affected and the

willingness of the regulated entity to rectify the breach. Issues which may lead to enforcement action include allegations of fraud, dishonesty or improper influence; failing to pay a fee or to provide information to the CLC; and a person no longer being considered a 'fit and proper' person.

28. Although the Enforcement Policy provides examples of what may constitute a regulatory breach it does not provide a typical CLC response to each action or omission. It was judged that this may itself encourage non-compliance i.e. a regulated body may judge the likely response of the CLC sufficiently mild to justify the anticipated benefits of failure to comply with its regulatory obligations. In addition, although the CLC intends that application of the Enforcement Policy is consistent, the individual circumstances of each case must be taken into consideration and this may mean that the response to what appear identical breaches may vary according to the particular circumstances of the case.

#### Guidance, support and advice

29. We obtain regulated community, economic and market-specific information. Where a thematic risk is identified we will tailor our guidance, advice, events and publication provision to help explain - and where possible, mitigate - any inherent or emerging risks which may affect or threaten the regulated community as a whole.
30. We provide general guidance, as well as advice and toolkits on specific issues. We will increasingly provide awareness-raising materials such as case studies, expected standards and best practice examples and awareness-raising events such as roadshows.

#### Conclusion

31. The Regulatory and Enforcement Policies have been drafted with the intention that they provide more transparency on the CLC's approach in the advent of outcomes-focused and risk and principles-based regulation and to ensure we are held accountable for our regulatory and enforcement decisions. We welcome any constructive feedback which would make it even more so. Please provide feedback submissions by Wednesday 15<sup>th</sup> December 2010.

## Questions

In each case you are asked to provide reasons for the answer you have given. You may wish to give specific examples.

1. Do you agree that the CLC should publish its enforcement findings? If so, do you agree that the respondent should be named only if it is determined that they had breached their regulatory responsibilities?
2. Is the approach taken in the Enforcement Policy clear and sufficiently aligned to the Outcomes identified in the Code of Conduct?
3. Is the approach taken in the Regulatory Policy clear and sufficiently aligned to the Outcomes identified in the Code of Conduct?
- | 4. Do you have any other comments/feedback on this Consultation Paper?





## CLC Regulatory Policy

### Policy Statement

As an Approved Regulator (and Licensing Authority) the CLC must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives:

- a) protect and promote the public interest;
- b) support the constitutional principle of the rule of law;
- c) improve access to justice;
- d) protect and promote the interests of consumers;
- e) promote competition in the provision of legal services;
- f) encourage an independent, strong, diverse and effective legal profession;
- g) increase public understanding of the citizen's legal rights and duties;
- h) promote and maintain adherence to the professional principles.

The key elements of the CLC's philosophy of meeting the regulatory objectives are:

- An Outcomes-focused and evidence and risk-based approach to our work;
- Working with CLC-regulated entities to change, maintain and improve high standards of professional behavior;
- A proportionate approach: we apply our resources where they are needed most and resolve issues informally wherever possible/appropriate;
- Enabling those we regulate to innovate and compete;
- Helping those we regulate to help themselves – helping to change behaviours through provision of advice, support and guidance;
- Anticipating potential problems and addressing or preventing them wherever possible.

This Regulatory Policy explains what we are seeking to achieve as a regulator of legal

services and how we seek to put our regulatory philosophy into practice.

## **Regulatory Aims**

The CLC has three key regulatory aims:

- those we regulate deliver high standards of service to consumers and to the wider public.
- there are high standards of conduct among those we regulate.
- there is an effective and proportionate regulatory framework in operation.

To achieve these aims we must:

- promote a wide, shared understanding amongst the regulated community of the Outcomes we require them to deliver;
- operate a regulatory framework that delivers intended Outcomes and minimises unintended ones;
  - ensure entities regulated by us have the right people, systems, skills and knowledge to meet their regulatory responsibilities;
- operate a regulatory approach which is accountable, consistent, proportionate targeted, and transparent.

### **Accountable**

We are accountable to a range of stakeholders, not least consumers and those we regulate, and so we try our best to ensure that our regulatory activities demonstrate accountability to all those with a vested interest. To this end, our Code of Conduct identifies the Outcomes our regulatory framework is seeking to deliver to consumers of legal services; and identifies the Professional Principles the regulated community must demonstrate in order to deliver them.

We will monitor and publish our regulatory performance and seek to address any issues.

### **Consistent**

All regulatory decisions are based upon the 'balance of probabilities' of the evidence, except where a criminal act or fraud or dishonesty is alleged in which case the standard applied will be 'beyond reasonable doubt'. We review our compliance monitoring approach and the responses it generates to ensure they are consistently applied.

**Proportionate**

An issue which gives rise to, or is likely to give rise to, a risk to the delivery of the Outcomes will be discussed with the individual body. Their capacity and/or willingness to address the issue will help inform our response. Our response will be proportionate to the seriousness, circumstance and impact – actual or potential – of the risk to legal services consumers and the legal profession.

We support those who alert us to their own regulatory failings. As long as clients are not at risk and the body/individual is addressing the failure(s) in a reasonable way we are less likely to take formal enforcement action. We provide support and guidance where needed.

Whenever possible/appropriate we work with regulated entities to address any risks, but where serious issues are apparent or suspected, we will take formal enforcement action to safeguard the interests of the public and clients. Please see our Enforcement Policy for details.

**Targeted**

Our risk-based approach identifies those bodies/activities that pose the greatest risk to the delivery of the Outcomes, and by that, the regulatory objectives. This enables us to focus our attention and resources on those most likely to harm the interests of the public and legal services consumers.

We believe in a right-touch, not light-touch, approach to regulation: we maintain contact with all members of the regulated community, but seek to focus our resources on those demonstrating higher risks; those who comply with the CLC’s Professional Principles, who deliver the required Outcomes and engage positively with us will be left to get on with their business with minimum supervision.

**Transparent**

We make every effort to ensure that the regulated community and other stakeholders are kept informed about our regulatory philosophy; the aims and the requirements of the regulatory framework; and any threats to its effective operation.

We are continuously increasing the emphasis placed upon education and awareness-raising to help those we regulate to help themselves.

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**Regulation in practice**

How our regulatory philosophy is reflected in our work:

**Licence Determination**

To determine a licence application we require all applicants to provide us with a range of information to determine the risk of non-compliance with the CLC Code of Conduct. The information provided will be verified to ensure the risk can be reliably calculated. This process may also include a formal interview for the new applicant.

The information enables us to determine whether a licence should be granted, granted with conditions, or declined. Licence conditions will be imposed where additional safeguards are needed to address a potential risk. Where the severity of the risk posed could not be countered through conditions, the licence will be declined.

We inspect all entities new to CLC regulation. An inspection may be carried out remotely or through a site visit, depending upon the nature of the entity and any risks identified in the initial analysis. All new entities are required to attend an Induction Day which provides an introduction to the CLC's regulatory requirements and provides examples of good practice.

### **Risk Assessment**

Our regulatory relationship with a member of the regulated community is informed by an assessment of the risks they or their activities pose to the regulatory objectives.

To be confident of our resource allocations we must identify and measure the capacity for, or actual harm, and of the likelihood of an occurrence of actual harm, to the regulatory objectives - through non-compliance with the CLC Code of Conduct's Professional Principles and the threat to the Client outcomes these seek. This includes consideration of factors such as:

- reliability of the evidence provided;
- the body's regulatory responsibility arrangements;
- seriousness of the act or omission and the likely impact on consumers, CLC's regulated community and public confidence;
- if the breach is/was deliberate or vexatious;
- seriousness of the information provided and the likely impact on consumers, CLC's regulated community and public confidence;
- the body's activities and/or client type;
- Information about the entity's finances;
- foreign ownership (our scope for data verification may be limited in some instances);
- past compliance performance;
- risk-management systems;
- management competence and inclination to address issues;
- qualifications and experience of the Head of Legal Practice and the Head of Finance and Administration;
- conflicts of interests arrangements;
- improper influence arrangements;
- complaints-handling arrangements;
- recognised external accreditation.

The CLC regulatory risk register contains a range of information including CLC inspection findings; complaints; Accounting Reports information; negligence claims; and information from other stakeholders, such as lenders, police or clients. Members of the regulated community are allocated an overall regulatory risk score according to the information held. Those with a higher risk score will have a more intensive regulatory relationship with the CLC than lower-risk entities.

## **Monitoring**

We aim to keep information requirements to a pertinent but meaningful minimum e.g. we do not ask those we regulate to supply us with unnecessary information, or the same information twice. We are determining the proportionality of the frequency/size of our submission requests. We are making the returns simpler and quicker to complete through online submissions; as well as more timely, so we are able to respond more quickly to identified risks.

We collect information to help us monitor how effectively our regulatory framework is operating. Much of this is obtained from regulated community returns. We analyse the information received and carry out a risk assessment of the data provided.

When a potential risk is identified we will investigate. This may include an inspection, which may be carried out remotely or through a site visit. Our monthly monitoring reports check that an inspection has been justified and conducted impartially. We conduct an interview with the entity at the end of the inspection and provide a full written report identifying our findings and any improvements recommended. Wherever possible, we provide support and guidance to address the risks identified.

## **Guidance, support and advice**

We try our best to ensure that our guidance, support and advice provision is authoritative, appropriate and helpful; as well as easy to access and understand. We provide general guidance, as well as advice and toolkits on specific issues. Wherever possible/appropriate we will approach an identified compliance issue with advice provision rather than formal enforcement action.

We obtain information from a range of sources, including the regulated community and economic and market-specific information. Where a thematic risk is identified we will tailor our guidance, advice, events and publication provision to help explain - and where possible, mitigate - any inherent or emerging risks which may affect or threaten the regulated community as a whole.

Our ongoing commitment to education will see us provide more awareness-raising materials such as case studies, expected standards and best practice examples.



## Enforcement Policy

### Introduction

This policy explains how the CLC identifies and responds to non-compliance with its regulatory requirements - as identified in the Code of Conduct and other regulatory arrangements. Our aim is to deter inappropriate behaviour and encourage appropriate conduct so that clients receive the standard of legal services that they should reasonably expect to receive.

The CLC's Code of Conduct requires those we regulate to comply with its professional principles to:

- act with independence and integrity;
- maintain proper standards of work;
- act in the best interests of their clients;
- comply with their duty to the court
- deal with regulators and ombudsmen in an open and co-operative way;
- promote equality of access and services.

The vast majority of the CLC's regulated community act in a way which is consistent with these principles. However, where this is not the case, we will take fair, effective and consistent enforcement measures.

We aim to deliver efficient, effective, transparent and proportionate risk-based regulation. Our approach to enforcement will be targeted particularly on those areas we judge to most threaten the regulatory objectives, through the risk they pose to the professional principles and the delivery of positive outcomes, particularly for clients.

Depending upon the nature of the matter our approach may be to seek informal resolution or may involve regulatory action. The CLC will, wherever possible, try to achieve an informal resolution, to provide a more timely and satisfactory outcome for clients and saving both the resources of the licensee and the CLC. We will engage in dialogue with the respondent, encouraging good practice through guidance and support.

Where an informal approach has been unsuccessful or is not judged appropriate because of the actual (or perceived risk of) detriment to clients, the CLC will initiate

the disciplinary powers available.

All enforcement processes will be exercised in a way which is transparent, accountable, consistent and targeted in keeping with the Regulator's Compliance Code and the Legal Services Act 2007.

## **1. What is meant by Enforcement?**

- 1.1 We must ensure the regulated community meets the needs of clients by complying with both the law and our regulatory requirements. Where they fail in these responsibilities we will hold them to account. Actions taken to encourage compliant behaviour or to punish non-compliance are known as enforcement. Enforcement action will be based upon reliable evidence, clear standards and the ability to appeal enforcement decisions. It is our aim that our enforcement approach is helpful, open, accountable and transparent. Our enforcement activities will be proportionate, consistent and targeted at cases where action is needed. This does not mean that less serious breaches will go unchecked, it means they will receive a proportionate response so that less serious breaches do not receive the same penalties as more serious or repeated breaches.
- 1.2 The enforcement tool applied in a matter will be proportionate to the risks identified to the regulatory objectives (particularly the protection of the consumer, and safeguarding the public interest) where there is a threat to the delivery of the positive outcomes identified in our Code of Conduct and other regulatory arrangements. Regulation and enforcement will be proportionate and flexible enough to encourage economic progress within the regulated community. We will not seek to cause unnecessary expense to individual .
- 1.3 We will check to see that any agreed course of action is implemented. Where it is not, we will take formal enforcement action.

## **2. Scope of the CLC's Enforcement Powers**

- 2.1 We may take enforcement action against:
  - CLC Bodies,
  - licensed conveyancers, and
  - Owners, Managers and employees of CLC Bodies.
- 2.2 In this Policy we use the term "respondent" or "the regulated community" to refer to any of those listed at 2.1.
- 2.3 This Policy seeks to provide the regulated community and other stakeholders with guidance on how the CLC identifies non-compliance issues and the framework within which it will respond to these.
- 2.4 The CLC has a wide range of regulatory powers which it can exercise in different circumstances. For instance:

- on an application for a licence the CLC is required to be satisfied that the applicant is a fit and proper person before it issues a licence, or issues it subject to conditions. The CLC has issued guidance setting out the factors it will take into account in determining whether an applicant is a fit and proper person. Applications for licences are determined by the Licensing and Casework Manager, subject to appeal to Adjudication Panel and then to the Discipline and Appeals Committee;
- the Adjudication Panel (which has taken over the functions of the Investigating Committee) and the Discipline and Appeals Committee can only impose disciplinary sanctions after they are satisfied that allegations put to them have been proved to their satisfaction. A respondent may appeal to the High Court against a determination made by the Discipline and Appeals Committee;
- A number of different regulatory actions which mirror its powers as an Approved Regulator can be taken by the CLC acting as a Licensing Authority.

Subject to statutory constraints the CLC makes regulatory decisions applying similar procedures and considerations whether exercising its powers as an Approved Regulator or as a Licensing Authority.

2.5 Intervention - The CLC has the power to intervene in a CLC Body when it is considered appropriate to do so in view of the risk it poses to Clients.

2.6 Regulatory breaches – The following are examples of allegations of breaches which may lead to enforcement proceedings (this list is not exhaustive and is not ranked):

- Persons no longer ‘fit and proper’;
- Failures in governance arrangements;
- Fraud and dishonesty;
- Improper influence;
- Failure to comply with the CLC’s Regulatory Arrangements;
- Ineffective complaints-handling procedures;
- Failure to provide the CLC with information, or provision of false, incomplete or misleading information;
- Failure to pay any CLC annual fee or contribution.

2.7 Enforcement can take many forms. The framework for responding to issues of non-compliance varies depending on the individual circumstances from the informal to the application of the CLC’s statutory powers, as set out below:

Informal Approach – delegated powers of CLC staff:

Enforcement tool	Authority	Review of Decision
An Undertaking on terms agreed with the CLC to take or cease taking a particular	CLC staff:	<ul style="list-style-type: none"> <li>• Director of Operations</li> </ul>



action	Head of Monitoring & Practice Support, or other CLC employee of equivalent or senior position	• Director of Policy & Standards, or other CLC employee of equivalent or senior position (provided any review is not determined by an employee who made the determination which is the subject of the review)
Inspection or re-inspection		
Reminder of responsibilities		
Provision of information and advice		

### Approach using statutory powers in AJA and LSA

The CLC may take a wide range of enforcement proceedings and (depending on the nature of those proceedings) this may result in one or more of the following for the individual or CLC Body (this list is not exhaustive):

Note: The LSA provides (in the case of CLC regulated ABS) that appeals from determinations will be made to the DAC with an entitlement in limited circumstances to appeal to the High Court. The LSB is currently consulting<sup>6</sup> on a proposal that the LSA is amended to provide for appeals against determinations of a Licensing Authority to be made to the First Tier Tribunal and in limited circumstances to the Upper Chamber. This policy assumes that the necessary amendments will be made to the LSA by October 2011.

Enforcement tool	Statutory Authority	Authority	First Tier Review	Review of decision
Licence terminated	AJA s.18(3)	Lacks mental capacity		No statutory provision
Licence/certificate Revoked	AJA s.26(2)(a)	DAC		High Court
	AJA s.28 fraud or error	DAC		No statutory provision
	LSA s101	CLC	Adjudication Panel	First Tier Tribunal
Intervention	Sch 5 AJA	CLC after consultation with Adjudication Panel		High Court
	Para 10-12 AJA			High Court
	Sch 14 LSA			First Tier Tribunal

<sup>6</sup>

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/2010/pdf/20100819\\_abs\\_appeals\\_consultation\\_v10\\_to\\_publish.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/2010/pdf/20100819_abs_appeals_consultation_v10_to_publish.pdf)

Payment of the costs of preliminary investigation (to include the costs of licence/role inspection) incurred by the CLC	AJA s.24A(2)	IC/Adjudication Panel	DAC	
Disqualified from holding a licence/role	s.26(2)(b) AJA	Panel		High Court
	AJA s.26(2A) s.99 LSA	DAC CLC	Adjudication Panel	High Court
Divestiture of owner	LSA s.102, Sch. 13	CLC	Adjudication Panel	First Tier Tribunal
Licence/Certificate suspended	AJA s.18	immediate on bankruptcy or intervention		No statutory provision
	AJA s.24(5)	IC/Adjudication Panel	DAC	High Court
	AJA s.26(2)(c)	DAC		
	LSA s101	CLC	Adjudication Panel	First Tier Tribunal
Withdrawal of approval of HoLP or HoFA	Para 11-12 sch 11 LSA	CLC	Adjudication Panel	First Tier Tribunal
Licence/Certificate made subject to conditions	AJA s.15(1) s.16(2) s.17(1)	CLC Staff: Licensing Casework Manager &		DAC
	AJA s.26(2)(d)	DAC		High Court
	LSA Sch. 11 (6)	CLC	Adjudication Panel	First Tier Tribunal
Payment of a penalty	AJA s.24A(1) and IC Rules 2009	IC/Adjudication Panel	DAC	High Court
	AJA s.26(2)(e) and DAC Rules 2009	DAC		
	LSA s. 95	CLC/ Adjudication Panel	First Tier Tribunal	Upper Chamber
Reprimand	AJA s.26(2)(f)	DAC		High Court

## Abbreviations

AJA – Administration of Justice Act 1985  
DAC – Discipline and Appeals Committee  
HoLP – Head of Legal Practice  
HoFA - Head of Finance & Administration  
LSA – Legal Services Act 2007  
IC – Investigating Committee

- 2.8 Decision-making – enforcement decisions taken by the CLC will be informed by all available, relevant and reliable evidence, and will be based upon criteria published on our website. Decisions will be taken on the evidence applying the ‘balance of probabilities’ standard, except where a criminal act (including fraud or dishonesty) is alleged in which case the standard applied will be ‘beyond reasonable doubt’. Account will be taken of the impact on consumers, the impact on the respondent and the reliability of the available evidence. The respondent will be afforded the opportunity to reply. Enforcement decisions made will be regularly and systematically scrutinised to ensure that criteria are being consistently applied. The respondent may ask for any decision to be reviewed by the Adjudication Panel. The respondent will also be entitled to appeal. Depending on the nature of the decision made by the CLC, the appeal may be heard by the Discipline and Appeals Committee, the High Court, the First Tier Tribunal or the Upper Chamber (see Table at 2.7). In the case of informal, regulatory or disciplinary action taken by CLC staff the matter will be referred to their line manager or another Director (with no prior involvement in the matter) who will review the decision.
- 2.9 Decision-makers – all staff with delegated powers and all members of the Investigating Committee, the Adjudication Panel and the Discipline & Appeals Committee receive training to ensure that decisions are made consistently and to assist in the determination of appropriate sanctions. The Committees are made up of lay members and members of the regulated community.
- 2.10 Penalties - The CLC has the flexibility to impose a penalty on an individual or an entity. If a number of breaches are being investigated separately it may be appropriate to impose separate penalties.
- 2.11 Matters which may be excluded – Other than in exceptional circumstances, we do not generally investigate these issues:
- Conduct which does not relate to the provision of legal services regulated by the CLC;
  - Disputes between an employer and employee;
  - Partnership disputes, unless the interests of clients are adversely affected or there is a finding of a court or tribunal;
  - Non-payment of fees incurred in the course of providing services regulated by the CLC, unless there is a judgment against the regulated person for non-payment relating to their legal practice;

- Allegations from lending institutions of a failure to hand over deeds or papers to which the lender is entitled, unless the lender has already made a successful application to the court;
- An isolated report of misconduct from a regulated person about a licensed conveyancer or CLC Body, unless there is an allegation of serious misconduct, or it is made on the instructions of a client, or is made to protect the interests of an identifiable client who has an interest in the outcome;
- Allegations of misconduct made more than six months after the alleged misconduct could reasonably have come to light;
- Where there is a clear alternative legal remedy available which has not yet been pursued.

Allegations of discrimination or dishonesty are not excluded.

### 3. Enforcement Process

3.1 Information sources - information on possible breaches of licensing requirements is obtained from a number of sources, including:

- A CLC Body proactively admitting non-compliance by act or omission – CLC Bodies must advise us if they are failing to comply with the CLC's Regulatory Arrangements. We will support those who alert us to their failings. We are unlikely to take formal disciplinary action as long as clients are not at risk and any CLC Body is addressing the failures identified in a reasonable way;
- Information from stakeholders, including complaints from clients or information from lenders, police etc;
- Overall regulatory risk score according to the CLC's risk register. The register holds a range of regulatory information including CLC inspection findings, complaints, Accounting Reports information and negligence claims

3.2 Risk - We take a risk-based approach to regulation. That means that in determining what (if any) action to take when non-compliance is brought to our attention we will determine the impact that risk is likely to have on the professional principles. We will take into account some or all of the following:

- the impact the act or omission has on a specific client(s);
- the intended outcome for consumers in taking action compared with the impact of not taking action;
- the effect the particular breach is likely to have on
  - the reputation of the rest of the profession; and
  - public confidence in those services and on the CLC's Regulatory Arrangements;
- the seriousness of the act or omission and the likely or actual impact of it on consumers and the regulated community;

- the extent to which the act or omission is a one-off occurrence or is part of a series of similar matters or appears to be deliberate or vexatious;
- the period of time over which the act or omission has occurred;
- management competence and willingness to comply;
- the existence of good systems for managing risks;
- evidence of recognised external accreditation;
- whether the resource requirements needed are proportionate to achieving the desired results; and
- any other matters that it appears appropriate to take into account.

3.3 Informal approach – in the event of the CLC becoming aware that a member of its regulated community may have failed to comply with our standards, we shall carry out an informal inquiry to enable us to decide whether there is a case which requires further investigation. If we are satisfied there is not an issue no action will be taken. If there is judged to be an issue but it is less serious, we will offer advice, support and guidance to help address the issue.

3.4 Regulatory action - If we are satisfied further investigation is required or the support offered has not been accepted, we shall then consider whether it is likely that the case can be resolved by regulatory action. We may direct the licensed conveyancer or CLC Body to provide information to assure us that that the regulatory requirements are being complied with. This may be in a written report or may require the respondent to attend the CLC's offices to explain how the issues identified will be resolved and the steps needed to ensure they do not recur.

3.5 Dependent on the circumstances of the individual case, we may take the view that the professional principles can best be met by agreeing with the regulated person the terms of an undertaking to provide information, to take specific action or to cease taking specific action. Failure to comply with the undertaking will in itself be a breach of the CLC's Regulatory Arrangements which will lead to an investigation, and possibly disciplinary proceedings.

#### Disciplinary Action

3.6 Disciplinary proceedings may be initiated where steps taken under paragraphs 3.3-3.5 have failed to achieve the intended outcome, or it is not appropriate because of the actual or likely impact on consumers, or because of the serious nature of the issue. Decisions will be informed by all available, relevant and reliable evidence. Decisions will be based on the application of published guidelines or criteria.

3.7 The CLC may:

- require a regulated entity to provide specific information;
- authorise an inspection of a CLC Body;
- refer the matter to the Licensing and Casework Manager.

**In the case of an individual Licensed Conveyancer or a Recognised Body,**

3.8 Having carried out a preliminary investigation under section 24 of, or paragraph 3 of Schedule 6 to, the 1985 Act the Licensing and Casework Manager may:

- (a) certify that there the complaint referred to him is appropriate for summary determination, and in either case giving reasons in writing:
  - i) direct that the Respondent pay a penalty not exceeding [£250] in respect of each allegation made; or
  - ii) dismiss the complaint; or
- (b) refer the case to the Adjudication Panel, alternatively to the Discipline and Appeals Committee for hearing and determination.

3.9 The Adjudication Panel will decide which of the following options is appropriate to the case:

- a) to dismiss the allegation;
- b) to hear and determine the allegation;
- c) for the allegation to be heard by the Discipline and Appeals Committee because it is satisfied that the nature of the allegation, if proved, is likely to justify either the imposition of a penalty in excess of £3,000 or some other sanction which the Adjudication Panel does not have power to impose.

3.10 If the Adjudication Panel decides to determine the case itself it will do so in accordance with its Procedure Rules [\[link\]](#) and will make a determination consistent with its Guidance [\[link\]](#). If it is satisfied the allegations have been proved the Adjudication Panel may direct:

- o the payment of a fine of up to £3,000 (although as a matter of practice the Adjudication Panel will generally only determine cases where the penalty per allegation likely to be imposed will not exceed £500; such allegations are likely to be referred to the Discipline and Appeals Committee); and
- o costs (which may include costs incurred in the preliminary investigation of the allegation).

A respondent may appeal against a determination of the Adjudication Panel to the Discipline and Appeals Committee; or

3.11 Where a matter has been referred to it and an allegation has been proved to its satisfaction, the Discipline and Appeals Committee may make one or more of the following orders against

- a licensed conveyancer<sup>7</sup>:
  - o Revoke the licence of a licensed conveyancer;

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<sup>7</sup> S.26(2) AJA

- Disqualify a licensed conveyancer from holding a licence (either permanently or for a specified period);
  - Suspend a licence;
  - Direct the issue of a licence subject to conditions it may specify;
  - Direct the payment of fine which is fair and proportionate, and does not exceed [£1 million];
  - Reprimand the licensed conveyancer;
- a Recognised Body or sole practitioner practice regulated by the CLC<sup>8</sup>
    - Revoke the recognition of the entity;
    - Direct the payment of fine which is fair and proportionate, and does not exceed [£1 million];
    - Reprimand the entity;
    - Direct the issue of a certificate of recognition subject to conditions it may specify;
- a Manager or employee who is not a licensed conveyancer<sup>9</sup>
    - Direct the payment of a fair and proportionate fine, not exceeding [£1 million];
    - Require the CLC to take such steps as it may specify in relation to the Manager or employee;
    - Require the CLC to refer to an appropriate regulator any matter relating to the conduct of the Manager or employee;

The Discipline and Appeals Committee may direct the payment of costs by any party to proceedings including the CLC. Such costs may include the costs incurred in a preliminary investigation.

3.12 A respondent may appeal to the High Court against a decision of the Discipline and Appeals Committee which may make such order as it thinks fit<sup>10</sup>.

**In the case of Licensed ABS Body, or an employee or manager within, or owner, of the Licensed ABS Body:**

3.13 Where having regard to the CLC's Regulatory Framework and in particular the Licensed Body Code it considers it appropriate to do so, the CLC may make the following directions:

- a Licensed Body owner:
  - Object to the owner's material interest;
  - Divest the owner of their material interest;

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<sup>8</sup> Para 4(2) sch 6 AJA

<sup>9</sup> Para 4(2B) sch 6 AJA

<sup>10</sup> S.26(7) AJA

- Direct the payment of a (fair and proportionate) fine, not exceeding £2.5 million;
- Disqualify the individual from owning a Licensed Body
- a Licensed Body:
  - Reprimand the body;
  - Direct the issue of a licence subject to conditions it may specify;
  - Direct the payment of a (fair and proportionate) fine, not exceeding £2.5 million;
  - Suspend the licence of the body;
  - Revoke the licence of the body;
  - Intervene;
- a Head of Legal Practice or Head of Finance & Administration:
  - Direct the payment of a (fair and proportionate) fine, not exceeding £2.5 million;
  - Withdraw approval of the individual for the role;
  - Disqualify the individual from a role within a Licensed Body;
- a manager or employee:
  - Direct the payment of a (fair and proportionate) fine, not exceeding £2.5 million;
  - Require the CLC to take such steps as it may specify in relation to the manager or employee;
  - Require the CLC to refer to an appropriate regulator any matter relating to the conduct of the manager or employee;
  - Disqualify the individual from a Licensed Body role.

A respondent may

- ask the Adjudication Panel to review the decision made by the CLC; and
- appeal to the First Tier Tribunal against any decision of the Adjudication Panel.

The respondent may appeal against on determination of the First Tier Tribunal to the Upper Chamber in respect of the following matters:

- Financial Penalty
- Condition or objection to existing restricted interest; and
- Divestiture.

#### **4. Equalities Considerations**



- 4.1 It is our intention that the application of this policy is fair and equitable and does not disadvantage anyone because of their age, disability, faith or religion, gender, race or sexual orientation. Members of the regulated community subject to CLC enforcement action are asked to advise the CLC of any specific requirements they have which need to be taken into consideration. These will be accommodated as far as is reasonably practicable and on a case-by-case basis.
- 4.2 The CLC will monitor its enforcement action to ensure there is no disproportionate impact on any sections of the regulated community.

## **5. Publication**

- 5.1 Publication of investigation outcomes – the CLC will publish the statistics mapping the outcome of investigations so that the levels of compliance in the regulated community can be understood.
- 5.2 Publication of determinations - publishing the enforcement action we have taken acts as an incentive for the regulated community to apply the professional principles outlined in the Code of Conduct. It also provides the public with confidence that the regulatory activities of the CLC are responsive and proportionate.
- 5.3 We will publish details of the final determinations of both the Adjudication Panel and the Discipline and Appeals Committee where there has been found a case to answer and an appeal has not been made within the 28 days or has been unsuccessful. We will not publish determinations concluding no case to answer, unless the individual/CLC Body has asked for it to be published. In exceptional circumstances we may publish details of the progress of an investigation which has given rise to significant public concern.
- 5.4 The CLC is registered as a data controller under the Data Protection Act 1998 and must comply with the rules of good information handling.

## **6. Policy Consultation, Review & Evaluation**

- 6.1 The CLC will carry out an investigation in accordance with its complaints policy into any complaint received from an individual or CLC Body about the way in which the CLC has exercised its functions as set out at paragraphs 3.3 to 3.7 in relation to that individual or CLC Body (except where a referral is or has been made to the Adjudication Panel or to the Discipline and Appeals Committee).
- 6.2 This policy was agreed by the Council [date TBA] and came into effect [date TBA]. We shall consult with stakeholders to evaluate its effectiveness within 2 years of its initial application. Where the policy is failing to generate the relevant outcomes - identified in the Code of Conduct it will be amended as appropriate. In the meantime, we welcome any feedback on the policy's content, implementation and effectiveness.

- 6.3 This policy is available for reference and downloading from the CLC website. A copy of the policy will be available to all those involved in disciplinary enquiries and proceedings.