



## CLC Regulation and Enforcement Policy

### Regulatory approach

**Introduction** – as both 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** promotion of these objectives are:

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

This section explains what we are seeking to achieve as a regulator of legal services and how we seek to put the above into practice.

### 1. Regulatory Aims

#### 1.1 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; and
- there is an effective and proportionate regulatory framework in operation.

1.2 To achieve these aims we must:

- promote a wide, shared understanding amongst the regulated community of the **Outcomes** we require them to deliver;
- operate **regulatory arrangements** which deliver the intended **Outcomes**;
- ensure each member of the regulated community has the right people, systems, skills and knowledge to meet their regulatory responsibilities;
- operate a regulatory approach which is accountable, consistent, proportionate targeted, and transparent.

## 2. The Principles of our Regulatory Philosophy

2.1 Accountable - we are accountable to a range of stakeholders, not least clients and the regulated community itself, and so we try our best to ensure our regulatory activities demonstrate accountability to all those with **an interest in the way we regulate**. To this end, our **Code of Conduct** sets out the **Outcomes** our **regulatory arrangements** seek to deliver to clients.

2.2 Consistent - all regulatory decisions are based on evidence applying the civil standard of proof ('balance of probabilities'). We review our compliance monitoring approach and the responses it generates to ensure they are consistently applied.

2.3 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 an individual client, clients in general and the legal profession.

2.3.1 We support those who alert us to their own regulatory failings. We provide support and **guidance** where needed. 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. Regulatory action will be considered for those who commit relatively minor regulatory breaches on a regular basis and who fail to respond to more informal resolution approaches.

2.3.2 Whenever possible/appropriate we work informally 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.

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

2.4.1 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 Overriding Principles**, who deliver the required **Outcomes** and engage positively with us will be left to get on with their business with minimum supervision.

2.5 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 arrangements**; and any threats to their effective operation.

2.5.1 We are continuously increasing the emphasis placed upon education and awareness-raising to help the regulated community to help themselves.

2.5.2 The respondent will have the opportunity to make representations prior to a determination being made. Where the need for **enforcement** action has been determined we will provide the relevant body and/or individual with clear reasons for the decision at the time the action is determined.

### 3. Regulation in practice - how our regulatory philosophy is reflected in our work

3.1 Licence determination - we require all **applicants** to provide us with a range of information so we are able to determine any risk presented to the delivery of the **CLC Code of Conduct's Outcomes** should we license the individual/body. The information provided will be verified to ensure the risk can be reliably calculated. This process will also include a formal interview for the new **applicant**.

3.1.2 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.

3.1.3 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 alongside examples of good practice.

3.2 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 **Code of Conduct's Outcomes**. 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 these. 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 a client, clients in general, the **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, including anti-money laundering **arrangements**;
- 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.

3.2.1 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 rating will have a more intensive regulatory relationship with the **CLC** than lower-risk entities.

3.3 **Monitoring** - we collect information to help us monitor how effectively our **regulatory arrangements** are 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.

3.3.1 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 continuously determining the proportionality of the frequency/size of our information submission requests. Returns are simpler and quicker to complete through online submissions; as well as more timely, so we are able to respond more quickly to identified risks.

3.3.2 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 we recommend. Wherever possible, we provide support and **guidance** to address the risks identified.

3.4 **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 advice and toolkits on specific issues, as well as general **guidance**. Wherever possible/appropriate we will approach an identified compliance issue with advice provision rather than regulatory or formal **enforcement** action.

3.4.1 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.

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

## **Enforcement Approach**

### **Introduction**

This section 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**. It seeks to provide the regulated community and other stakeholders with **guidance** on examples of regulatory breaches, how the **CLC** identifies these non-compliance issues and the framework within which it will respond to these. Its aim is to encourage appropriate conduct and deter inappropriate behaviour 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 **Overriding Principles** to:

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

in order that positive **Outcomes** are delivered, particularly for **Clients**.

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 **enforcement** measures.

We aim to deliver effective, fair and consistent **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 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, proportionate and targeted in keeping with the Regulator's Compliance Code and the **Legal Services Act 2007**.

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

- 4.1 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.

- 4.2 The **enforcement** tool applied in a matter will be proportionate to the risks identified to the **regulatory objectives** in the form of a threat to the delivery of the positive **outcomes** identified in our **Code of Conduct**, due to non-compliance with our **regulatory arrangements**.
- 4.3 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 an individual; any penalty imposed will be fair.
- 4.4 Informal resolution is desirable to the regulated community, its clients and the **CLC** and its appropriateness to an issue will always be considered. We will check to see that any agreed course of action is implemented. We will usually seek to take this route before considering regulatory or disciplinary action. Where this is not appropriate – due to the immediate, serious and/or widespread nature of the issue - or it has not achieved the desired outcome we will determine what further action is needed. We will be open to the individual/body providing fresh evidence not previously available, or to them proposing a compliance remedy.
- 4.5 We will assess the evidence applying the civil standard of proof ('balance of probabilities) and in determining our response we will take account of the impact on a **client, clients** in general and on the **respondent**. The **respondent** will be afforded the opportunity to make representations.
- 4.6 We have a range of **enforcement** tools at our disposal should an informal response not be appropriate. We will only exercise our disciplinary powers if the act or omission of a regulated body or individual was a serious breach. The seriousness of an act or omission will be judged on the impact, actual or potential, of the risk to delivery to the **Code of Conduct's Outcomes**.
- 4.7 Each of the following **enforcement** tools may be used in isolation, simultaneously, or consecutively where the usage of one tool has not generated compliance (e.g. if **licence conditions** are not complied with, other **enforcement** action may be used):
- 4.7.1 Refer to an appropriate regulator - we are likely to refer the conduct of a **manager** or **employee** to the appropriate regulator where we have reason to believe that the individual's behaviour is in breach of their regulatory responsibilities.
- 4.7.2 Reprimand - we are likely to issue a reprimand when an act or omission needs particular attention drawn to it, with the intention that the behaviour of the individual/body is changed.
- 4.7.3 Licence Conditions - we are likely to require the entity to take a specific actions where an act, omission or an arrangement needs to be rectified. Where this requires expenditure we will take into account the operational costs of that body. We will make every effort to ensure the condition/direction is understood by the body.
- 4.7.4a Financial penalties - we are likely to direct the payment of a fine (by the body and/or an individual concerned with it i.e. an **employee** or **owner**) exceeding £50,000 only in serious circumstances. This will be used to penalise inappropriate behaviour demonstrated by a specific act or omission and to deter future non-compliance (by both the individual/body and others). The level of the penalty will take into account the size/resources of the body so it is proportionate whilst also at a level likely to give **clients** and the public confidence that issues which cause them detriment are dealt with appropriately. Should a number of breaches be separately investigated we may determine it appropriate for a separate penalty to be imposed in each case.

- 4.7.4b We will not create a perverse incentive by providing details of the exact criteria/procedure which will be applied in setting the level of the fine. It will be determined on a case by case basis but we will always seek to ensure it is fair and proportionate and does not exceed the maximum levels (specified within this Policy).
- 4.7.4c We do not benefit financially from any penalties imposed. Fines received from **CLC Lawyers** or Recognised Bodies are paid into Her Majesty's Treasury; those received from Licensed Bodies go into the Government's Consolidated Fund.
- 4.7.5 **Material interest conditions/objections/divestiture** - where there are concerns that a material interest holder in **Licensed Body** may be demonstrating **improper influence** – i.e. an **owner** is influencing, or attempting to influence the decisions of a **Licensed Body** or the conduct of **Authorised Persons** in a way which would constitute a breach of their regulatory duties - we will take action. Where there are mild concerns this is likely to take the form of **conditions**; where the concerns are more serious we are likely to object to the interest and this may ultimately result in divestiture.
- 4.7.6 **Withdrawal of approval** – we are likely to withdraw our approval of a **Licensed Body's Head of Legal Practice or Head of Finance and Administration** where the individual has become demonstrably inappropriate for the role e.g. an event has occurred which impacts upon their fit and proper status or they repeatedly fail to meet their regulatory responsibilities.
- 4.7.7 **Disqualification** - we are likely to disqualify an individual from a role within a **Licensed Body** or a **CLC Lawyer** from holding a **licence** only in exceptional circumstances and where the seriousness of the act or omission means that no other **enforcement** action is judged adequate to address it.
- 4.7.8a **Licence suspension or revocation** - the decision to suspend or revoke a **licence** will not be taken lightly. We will only use this measure where, due to the seriousness and/or persistence of the act or omission – or the body has changed its structure/provision arrangements so it is no longer licensable - no other **enforcement** action is judged adequate to address the identified issue.
- 4.7.8b We will need to be satisfied that clients' interests are protected and this may include a/all **Client's** case being transferred to another firm. (Suspension is likely to lead to the enforced closure of the **CLC Body** unless the reason for the suspension is cured very quickly, in which case intervention and its case management processes will take place).
- 4.7.8c **Licence** suspension does not automatically mean **licence** revocation. A **licence** may be suspended because a significant threat to **clients** has been identified. Where this is found not to be the case or where we (or the First Tier Tribunal) are satisfied that a risk is no longer presented the **licence** is unlikely to be revoked. Where this is the case, the body may be subject to a more intensive regulatory relationship in order that we are confident that the risks to **clients** is minimised.
- 4.7.9a **Intervention - intervention** is an extreme measure and will only be used where no other **enforcement** action is judged adequate to address the identified issue due to the seriousness and persistence of the act or omission or if the body's viability is threatened or it becomes insolvent. As with all **enforcement** actions, we will carefully assess the proportionality of the proposed response. We can revoke an intervention direction following the body's request (but

only where all relevant information corroborates that to do so would not cause a risk to the **Code of Conduct's Outcomes**).

4.7.9b Where **intervention** has been necessary the body's **licence/certificate** is automatically suspended.

#### Suspension of a **Licence** on **intervention**

4.8 The exercise by the **CLC** of its powers of **intervention** in respect of a **CLC Body** operates immediately to suspend the **licence** of any **CLC Lawyer** who is **manager** or **employee** of that **Body**.

4.9 At the time when it exercises the powers of **intervention** the **CLC** may direct that such power is not to apply in relation to a particular **CLC Lawyer** (subject to such **conditions**, if any, as the **CLC** sees fit to impose), but only if:

4.9.1 (where that power of **intervention** is exercised because of a breach of the rules) the **CLC** is satisfied that:

4.9.1a the **CLC Lawyer** did not fail to comply with the rules applicable to the **CLC Body**, or contribute to the failure by the **CLC Body** to comply with such rules; and

4.9.1b the **CLC** is satisfied that the **CLC Lawyer** was not a **manager** or **employee** of the **CLC Body** when the conduct providing the basis for the exercise of the power of **intervention** took place; and

4.9.2 (where the power of **intervention** is exercised because of suspected dishonesty) the **CLC**:

4.9.2a does not suspect the **CLC Lawyer** of dishonesty; and

4.9.2b the **CLC** is satisfied that the **CLC Lawyer** was not a **manager** or **employee** of the **CLC Body** when the conduct providing the basis for the exercise of the powers of **intervention** is suspected of having taken place.

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

5.1 We may take **enforcement** action against:

- **CLC Bodies**;
- **CLC Lawyers**; and
- **Owners, Managers** and **employees** of **CLC Bodies**.

5.2 In this Policy we use the term "**respondent**" and "the regulated community" to refer to any of those listed at 5.1.

5.3 Information sources - information on possible breaches of regulatory responsibilities is obtained from a number of sources, including:

- A body proactively admitting non-compliance by act or omission – all bodies we regulate 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 the entity is addressing the failures identified in a reasonable way;
- Information from stakeholders, including **complaints** from **clients** or information from lenders, police and findings of other regulatory or professional bodies etc;
- Overall regulatory **risk profile** 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**.



5.4 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.

5.5 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 **Overriding Principles** and the **Outcomes** they seek. We will take into account some or all of the following:

- the seriousness of the act or omission and the likely or actual impact on an individual **client, clients** in general and the regulated community;
- the intended **outcome** for **clients** 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 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.

5.6 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 civil standard of proof ('balance of probabilities'). Account will be taken of the impact on **clients**, the impact on the **respondent** and the reliability of the available evidence. The **respondent** will be afforded the opportunity to reply; we will be open to the individual/body providing fresh evidence not previously available, or to them proposing a compliance remedy. **Enforcement** decisions made will be regularly and **systematically** scrutinised to ensure that criteria are being consistently applied.

5.7 Review/appeal of decisions - 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, and who makes it, the appeal may be heard by the the First Tier Tribunal **with the possibility, in some cases, of appealing to** the Upper **Chamber on a point of law** (see Table at 6.3.1). 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. **Either the Respondent or the CLC may appeal against a determination made by the Adjudication Panel.** All requests for appeal to the FTT must be made within 28 days of the determination, unless otherwise directed by the FTT.

5.8 **Stay** –the **Adjudication Panel**, may provide that an order or direction is not to have effect pending the hearing and determination of a review or an appeal taking into account the **CLC’s** statutory duty to act in a way which is compatible with the regulatory objectives (in particular those relating to the consumer interest and the public interest) and 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.

5.9 **Decision-makers** – all staff with delegated powers and all members of the **Adjudication Panel** 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.

5.10 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 **CLC Lawyer** 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 twelve 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.

## 6. **Enforcement Tools**

6.1 **Enforcement** can take many forms. The framework for responding to issues of non-compliance varies, depending on the identified risk, from the informal to the application of the **CLC’s** statutory powers.

6.2 **Informal/Regulatory Action Approach** – delegated powers of **CLC** staff:

| <b>Enforcement</b> tool   | Authority   | Review of Decision  |
|---|---|---|
| An <b>Undertaking</b> on terms agreed with the <b>CLC</b> to take or cease taking a particular action | <b>CLC</b> staff:<br>Legal Practice Inspector, CLC<br>Authorised Officer or other | <ul style="list-style-type: none"> <li>• Director of Operations</li> <li>• Director of Policy &amp; Standards,</li> </ul> |
| Inspection or re-inspection   |   |   |

|                                     |  |  |
|-------------------------------------|--|--|
| Reminder of responsibilities        | <b>CLC</b> employee of equivalent or senior position | or other <b>CLC</b> 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) |
| Provision of information and advice |  |  |

### 6.3 Approach using statutory powers in **1985 Act** and **2007 Act**

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

| <b>Enforcement</b> tool                          | Statutory Authority                          | Determination made by   | Appeal determined by   | Further appeal on a <b>point of law</b> determined by |
|--|--|---|------------------------|---|
| <b>Licence</b> terminated                        | <a href="#">1985 Act s.18(3)</a>             | Lacks mental capacity   | No statutory provision |   |
| <b>Licence/certificate</b> Revoked               | <a href="#">1985 Act s.26(2)(a)</a>          | <b>CLC Adjudication Panel</b>   | First Tier Tribunal    | Upper Chamber   |
|  | <a href="#">1985 Act s.28 fraud or error</a> | <b>CLC Adjudication Panel</b>   | First Tier Tribunal    | No statutory provision                                |
|  | <a href="#">2007 Act s101</a>                | <b>CLC Adjudication Panel</b>   | First Tier Tribunal    | Upper Chamber   |
| Intervention                                     | <a href="#">Sch 5 1985 Act</a>               | Any Director with the agreement of not less than one other member of the Senior Management Team | First Tier Tribunal    | Upper Chamber   |
|  | <a href="#">Para 10-12 of Sch 5 1985 Act</a> |   | First Tier Tribunal    | Upper Chamber   |
|  | <a href="#">Sch 14 2007 Act</a>              |   | First Tier Tribunal    | Upper Chamber   |
| Disqualified from holding a <b>licence/</b> role | <a href="#">s.26(2)(b) 1985 Act</a>          | <b>CLC Adjudication Panel</b>   | First Tier Tribunal    | Upper Chamber   |
|  | <a href="#">s.99 2007 Act</a>                | <b>CLC Adjudication Panel</b>   | First Tier Tribunal    | Upper Chamber   |
| <b>Divestiture</b> of owner                      | <a href="#">2007 Act, Sch. 13, Part 5</a>    | <b>CLC Adjudication Panel</b>   | First Tier Tribunal    | Upper Chamber   |
| <b>Licence/Certificate</b> suspended             | <a href="#">1985 Act s.18</a>                | immediate on bankruptcy   |                        | No statutory provision                                |
|  | <a href="#">1985 Act s.18</a>                | immediate on intervention   | First Tier Tribunal    | Upper Chamber   |
| <b>Licence/Certificate</b> suspended             | <a href="#">1985 Act s.24(5)</a>             | <b>CLC Adjudication Panel</b>   | First Tier Tribunal    |   |
|  | <a href="#">1985 Act s.26(2)(c)</a>          | <b>CLC Adjudication Panel</b>   |                        | Upper Chamber   |
|  | <a href="#">2007 Act s101</a>                | <b>CLC Adjudication Panel</b>   | First Tier Tribunal    | Upper Chamber   |

|   |  |                                   |                               |               |
|---|--|-----------------------------------|-------------------------------|---------------|
| Withdrawal of approval of <b>HoLP</b> or <b>HoFA</b>  | <a href="#">Para 11-12 sch 11 2007 Act</a>   | <b>CLC Adjudication Panel</b>     | First Tier Tribunal           | Upper Chamber |
| Licence/Certificate made subject to conditions  | <a href="#">1985 Act s.15(1)</a><br><a href="#">s.16(2)</a><br><a href="#">s.17(1)</a> | CLC Staff: CLC Authorised Officer | <b>CLC Adjudication Panel</b> |               |
|   | <a href="#">1985 Act s.26(2)(d)</a>  | <b>CLC Adjudication Panel</b>     | First Tier Tribunal           | Upper Chamber |
|   | <b>2007 Act</b> Sch. 11 (6)  | <b>CLC Adjudication Panel</b>     | First Tier Tribunal           | Upper Chamber |
| Payment of a penalty  | <a href="#">1985 Act s.24A(1)</a> and Adjudication Panel Rules 2013                    | <b>CLC Adjudication Panel</b>     | First Tier Tribunal           | Upper Chamber |
|   | <a href="#">1985 Act s.26(2)(e)</a> and Adjudication Panel Rules 2013                  | <b>CLC Adjudication Panel</b>     |                               |               |
|   | <a href="#">2007 Act s. 95</a>   | <b>CLC Adjudication Panel</b>     | First Tier Tribunal           | Upper Chamber |
| Reprimand   | <a href="#">1985 Act s.26(2)(f)</a>  | <b>CLC Adjudication Panel</b>     | First Tier Tribunal           | Upper Chamber |
| Payment of the costs of preliminary investigation (to include the costs of any inspection) incurred by the <b>CLC</b> | <a href="#">1985 Act s.24A(2)</a>  | <b>CLC Adjudication Panel</b>     | First Tier Tribunal           | Upper Chamber |
|   | <a href="#">1985 Act s.26(2A)</a>  | <b>CLC Adjudication Panel</b>     |                               |               |

#### Abbreviations

**HoLP** – Head of Legal Practice; **HoFA** - Head of Finance & Administration;

## 7. Enforcement Process

- 7.1 Informal approach – staff investigation and advice: 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 take informal action and offer advice, support and **guidance** to help address the issue.
- 7.2 Regulatory action – staff delegated powers: if we are satisfied further investigation is required, the support offered has not been accepted, or the individual/body commits relatively minor breaches on a regular basis and fails to respond to our informal resolution approaches, we shall consider whether it is likely that the case can be resolved by regulatory action. We may direct the **CLC Lawyer** or **CLC Body** to provide information to assure us that their 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.

7.3 Dependent on the circumstances of the individual case, we may take the view that the **Outcomes** can best be delivered by agreeing with the regulated person the terms of an **undertaking** to provide information, to take specific action or to cease taking a 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.

7.4 Disciplinary action – **Adjudication Panel** hearing: disciplinary proceedings may be initiated where steps taken under paragraphs 7.1-7.3 have failed to achieve the intended **outcome**, or it is not appropriate because of the actual or likely impact on a **client**, or **clients**, 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 set out in the Enforcement Policy. The **respondent** will be afforded the opportunity to make oral and/or written representations to the **Adjudication Panel**.

7.5 The **CLC** may:

- require a regulated entity to provide specific information;
- authorise an inspection of a body;
- refer the matter to the **Adjudication Panel**.

7.6 [removed]

7.7 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) [removed]

7.8 [removed]

7.9 [removed]

In the case of an individual **CLC Lawyer** or a **Recognised Body**, a preliminary investigation has determined that the allegation should be referred for hearing and determination, and after considering the evidence and submissions made by the Parties, the **Adjudication Panel (with a quorum of three)** may make one or more of the following orders:

7.9.1

- a **CLC Lawyer**:
  - Revoke the **licence** of a **CLC Lawyer**;
  - Disqualify a **CLC Lawyer** 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 a fine which is fair and proportionate, and does not exceed £50 million;
  - Reprimand the **CLC Lawyer**;
- a **Recognised Body** or **sole practitioner** practice regulated by the **CLC**

- Revoke the recognition of the entity;
  - Direct the payment of a fine which is fair and proportionate, and does not exceed £250 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 **CLC Lawyer**
    - Direct the payment of fine which is fair and proportionate, not exceeding £50 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**;
- 7.9.2 The **Adjudication Panel** 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.
- 7.9.3 A **respondent** may appeal to the **First Tier Tribunal** against a decision of the **Adjudication Panel** which may make such order as it thinks fit.
- 7.9.4 [removed]
- 7.9.5 In the case of Licensed **ABS Body**, or an **employee or manager** within, or **owner**, of the Licensed **ABS Body**, the **Adjudication Panel (with a quorum of 3)** may make one or more of the following orders:
- a **Licensed Body**:
    - Reprimand the body;
    - Direct the issue of a **licence** subject to **conditions** it may specify;
    - Direct the payment of a fine which is fair and proportionate, not exceeding £250 million;
    - Suspend the **licence** of the body;
    - Revoke the **licence** of the body;
    - Intervene;
  - a **Licensed Body owner**:
    - Place **conditions** on the **owner's material interest**;
    - Object to the **owner's material interest**, and initiate the application to the High Court to divest the **owner** of their **material interest**;
    - Direct the payment of a fine which is fair and proportionate, not exceeding £50 million;
  - a **Head of Legal Practice (HoLP)** or **Head of Finance & Administration (HoFA)**:
    - Require the **CLC** to take such steps as it may specify in relation to the **HoLP** or **HoFA**;

- Direct the payment of a fine which is fair and proportionate, not exceeding £50 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 fine which is fair and proportionate fine, not exceeding £50 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 role in the **Licensed Body**.
- 7.9.6 Any determination made by the **Adjudication Panel** may be appealed to the First Tier Tribunal. The CLC or the **respondent** may appeal to the First Tier Tribunal against a determination of the **Adjudication Panel** and then to the Upper Chamber on a point of law.

## 8. Publication

- 8.1 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.
- 8.2 Publication of determinations - publishing the **determinations of the Adjudication Panel** acts as an incentive for the regulated community to positively 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.
- 8.3 We will publish details of any disciplinary determination made by the **Adjudication Panel** including the name of the respondent. Whether or not an application has been made, the **Adjudication Panel** may direct the **CLC** not to name the respondent in any notice of hearing or determination if in its opinion, to do so would:
- a) prejudice legal proceedings or regulatory or disciplinary investigations;
  - b) risk breaching a person’s rights under Article 8 of the European Convention on Human Rights, or
  - c) not be just.
- Unless otherwise directed by the **Adjudication Panel**, any disciplinary determination made against an individual or firm, will remain listed on the **CLC** website for the duration of any suspension, disqualification, or other sanction, subject to a minimum of 2 years from the date of publication. The respondent may ask the **CLC** not to include their name in any disciplinary determination which is published where the case against them has been dismissed. In exceptional circumstances we may publish details of the progress of an investigation which has given rise to significant public concern.
- 8.4 The **CLC** is a data controller under the EU General Data Protection Regulations (GDPR) and the Data Protection Act 2018 and must comply with all relevant information handling obligations.

## 9. Equalities Considerations

- 9.1 It is our intention that the application of this policy is fair and equitable and does not disadvantage anyone because of their age, disability, gender reassignment, marital and civil partnership status, pregnancy and maternity, race, religion or faith, sex 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.
- 9.2 The **CLC** will monitor its **enforcement** action to ensure there is no disproportionate impact on any sections of the regulated community.

## 10. Policy Consultation, Review & Evaluation

- 10.1 The **CLC** will carry out an investigation in accordance with its **complaints** policy into any **complaint** received from an individual or body about the way in which the **CLC** has exercised its functions in relation to that individual or body (except where a referral is or has been made to the **Adjudication Panel** due to the options of review/appeal applicable).
- 10.2 This policy came into effect in October 2011 and has been reviewed in July 2013. 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.
- 10.3 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.

24 September 2019