



ADJUDICATION PANEL RULES

Consultation Paper

FEBRUARY 2022

Consultation deadline

This consultation will run for eight weeks, from 14th February, 2022 to 18th April 2022.

This version, with a short addendum at page 13, was published on 23rd February 2022.

Background

The CLC is consulting on proposed changes to the current Rules used for Adjudication Panel Procedures to ensure that they are capable of governing a range of constitutional and procedural matters. This will include amending the constitution of the independent Adjudication Panel by codifying current practice and clarifying its powers.

As the proposed amendments will constitute a change to the CLC's regulatory arrangements, LSB approval will be required.

These proposed amendments were approved at the CLC's Council meeting in November 2021 for consultation.

Summary

The CLC is proposing the following changes to the Adjudication Panel Rules 2015

- (a) The addition of definitions relating to the Adjudicator and Adjudication Panel Assistant and to clarify the difference between the Adjudication Panel Chair and a Chair of a panel for a particular hearing or case;
- (b) Removal of the role of deputy Chair; a role which is not used
- (c) An increase of the number of members of the Adjudication Panel to provide improved ability to convene Panels and to reflect the removal of the Deputy Chair role.
- (d) A requirement for the Adjudication Panel Chair to be a Legally Qualified lay person
- (e) To provide provenance for the Adjudication Panel Chair to delegate.
- (f) Amendment of the title of the Adjudication Panel Rules to the Adjudication Panel Constitution Rules

Drafts of the various procedural rules are included at the annexes of this Consultation Document.

Why this consultation is important to you

Practices regulated by the CLC and their representative bodies should consider how the options set out in this consultation could affect the disciplinary framework and the reputation of the regulated community.

Clients of regulated entities and organisations representing consumers should consider whether the options set out in this consultation have any negative or positive impact on client protection.

Other organisations in the property and probate sectors should consider whether the options set out in this consultation have any impact on the protection of their clients and themselves.

Responding to this consultation

You can respond to the consultation by email to consultations@clc-uk.org or by post to: The Council for licensed Conveyancers, WeWork, 131 Finsbury Pavement, London, EC2A 1NT.

The CLC will publish all responses and may refer to any of them 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.

Consultation deadline

This consultation will run for eight weeks, from 14th February, 2022 to 18th April 2022.

Next Steps

The Council of the CLC will consider the responses to this consultation and finalise a submission to the LSB to approve the final rule changes. That submission will be published along with consultation responses.

ADJUDICATION PANEL RULES CONSULTATION

2. Background to consultation

- 2.1 The functions of the CLC include setting standards to regulate the professional practice, conduct and discipline of licensed conveyancers or other authorised persons and regulated practices.
- 2.2 The Council has delegated the functions of its Discipline and Appeals Committee and the Investigating Committee which are referred to in the legislation to the Adjudication Panel.
- 2.3 The investigation of allegations of misconduct against licensed practitioners is a core function of the CLC and may result in disciplinary proceedings before the independently constituted Adjudication Panel to protect and promote the public interest, support the constitutional principle of the rule of law and improve access to justice.
- 2.4 The CLC has identified that the current Rules used for Adjudication Panel procedures are not sufficiently clear and comprehensive. It is therefore proposed that they should be overhauled to provide a suite of new Rules to govern a range of constitutional and procedural matters.
- 2.5 The proposals detailed within this consultation paper aim to strengthen the Rules for the Adjudication Panel by clarifying and codifying existing practice. They will enhance the ability of the Adjudication Panel Chair to convene panels to determine disciplinary and other matters and will set out how such matters should proceed.

3. Current position

- 3.1 The CLC currently has the [Adjudication Panel Rules 2015](#) (made on 25 August 2015) that set out rules of the Panel's composition, payment, delegation, tenure of office etc. and the [Adjudication Panel Procedure Rules 2013](#) (as amended on 25 August 2015) that set out the procedure of Adjudication Panel hearings and hearing management.
- 3.2 The Rules contain the existing formal provisions whereby the Council delegates the functions given to the Investigation Committee and Disciplinary and Appeals Committee in the legislation to the Adjudication Panel.
- 3.3 The CLC also has a number of "Frameworks" which govern how individuals and businesses apply for licences and are subject to ongoing obligations (contained in various CLC Codes/the Handbook).
- 3.4 For individual Licensed Conveyancers, Licensed CLC Practitioners and Recognised Bodies the Administration of Justice Act 1985 is the key piece of legislation. For ABSs (Licensed Bodies) and the various role holders within them, it is the Legal Services

Act 2007. Both Acts delegate rule-making to the CLC which is the basis of which the existing Rules and Frameworks, and new Rules are made.

- 3.5 The existing arrangements are such that individual CLC Licence Holders and Recognised Bodies, about who concerns are raised, progress via a disciplinary process which involves a case to answer stage (delegated to an individual Adjudicator) and, if referred, a hearing before the Adjudication Panel. The existing Rules make some provision for this type of case.
- 3.6 A number of other decisions sit, at first instance, with CLC staff who make decisions about the grant of all types of licence (and who could make decisions to impose conditions on licences in certain circumstances). CLC staff also deal with all concerns raised about Licensed Bodies (ABS) and managers, owners and role holders. This includes the power to issue Warning Notices and Enforcement Notices to impose sanctions.
- 3.7 This very wide range of powers are all subject to an appeal to the Adjudication Panel. The existing rules make almost no provision for this type of case.

4. Proposed amendments to the Adjudication Panel Rules 2015

- 4.1 The proposed changes to these Rules are:
 - (a) to add definitions relating to the Adjudicator and Adjudication Panel Assistant and to clarify the difference between the Adjudication Panel Chair and a Chair of a panel for a particular hearing or case;
 - (b) to remove the role of deputy Chair; a role which is not used
 - (c) to increase the number of members of the Adjudication Panel to provide improved ability to convene Panels and to reflect the removal of the Deputy Chair role.
 - (d) to require the Adjudication Panel Chair to be Legally Qualified (as well as lay). This in practice has been the status of recent Adjudication Panel Chairs and as we have not had and are not suggesting introducing legal advisors to the Panel, this would be covered by having a legally qualified Chair as a requirement.
 - (e) to provide provenance for the Adjudication Panel Chair to delegate. An important power which is also referred to below at 4.13.
- 4.2 The title of these Rules will change to the Adjudication Panel Constitution Rules.
- 4.3 The new draft Adjudication Panel Constitution Rules have been included at **Annex 1**.

Q1. Do you agree with these proposed amendments to the Adjudication Panel Rules 2015?

5. Proposed amendments to the Adjudication Panel Procedure Rules (Disciplinary)

- 5.1 The first set of new Rules are the Adjudication Panel Disciplinary Procedure Rules. These are intended to cover Licensed CLC Practitioners and Recognised Body (RB) disciplinary cases as they are covered by the same legislation.

The proposed changes are:

- 5.2 To clearly set out and define the overriding objectives of the Adjudication Panel. These are not set out in the existing Rules.
- 5.3 The explanation of the ways in which a case will be dealt with 'fairly and justly' has been clarified and reference is made to taking into account the public interest in the case. This is a key concept in modern regulatory work.
- 5.4 The stipulation that 'flexibility in the proceedings' will be sought has been removed to avoid too much flexibility may give rise to inconsistent approaches. However a new Rule provides appropriate flexibility in relation to how a case is conducted so unforeseen events can be accommodated.
- 5.5 The reference to 'using any special expertise of the Adjudication Panel effectively' has been removed. Although of course the Panel will reflect different roles and experience and Panels will be constituted with this in mind the intention is not to make the Panel Members have to act as "experts". Case law suggests that in technical cases where experts are necessary they should be called as witnesses.
- 5.6 The proposed Rules expressly state that the CLC has the burden of proving disciplinary cases before the Adjudication Panel and the standard of proof is on the balance of probabilities, something that is not referenced in the current Rules but which has always been accepted.
- 5.7 The current Rules permit a party to appoint a representative who was not legally qualified, whereas the revisions encourage the appointment of a legal representative; albeit 'another person' may be appointed at the discretion of the Adjudication Panel. There remains a requirement to provide written notice to the Adjudication Panel and any other party once a representative has been appointed, but a new amendment proposes this must take place 'within 7 days of their appointment'. The proposed Rules also clearly state that a representative cannot give evidence at a hearing.
- 5.8 The current Rules stipulate that with the permission of the Adjudication Panel, a party could be accompanied by another person at a hearing who could act as a representative or otherwise assist in presenting the party's case. However, this has been amended so that 'no other person shall appear at an Adjudication Panel hearing to represent a party without the written permission of the Adjudication Panel Chair'.
- 5.9 The proposed revisions clarify the composition of the Adjudication Panel for hearings. The revisions set out that one member of any hearing Panel must be a CLC

Lawyer member, whereas previously it was provided that "at least one of the Adjudication Panel members shall be a Licensed Conveyancer Member." This would allow for Licensed CLC Practitioners who are licensed to provide services other than conveyancing to be on the Panel.

- 5.10 There is a new stipulation that the Adjudication Panel member (the Adjudicator) who has decided a Preliminary Investigation (the case to answer stage) must not sit as a member of the substantive hearing panel deciding the case; this reflects that there must be a separation of these functions notwithstanding that they are all completed by members of the Adjudication Panel.
- 5.11 The proposed Rules clarify the power and scope of the Adjudication Panel Chair to delegate functions to a single member of the Adjudication Panel to act as an Adjudicator. The revised Rules clarify the decisions the Adjudicator can make in contrast to the broad stipulation in previous delegations that an Adjudicator "may carry out functions of a judicial nature permitted or required to be done by the Adjudication Panel"
- 5.12 The proposed Rules clearly set out the procedure that will be followed by the CLC in cases in which it is alleged that a licensed conveyancer, licensed CLC practitioner or recognised body has breached the disciplinary rules, which is currently absent.
- 5.13 The initial stage now sets out that where the CLC identifies concerns that are at a level to trigger disciplinary action, they must prepare an allegation and summary of facts and a bundle of evidence to send to the Respondent (CLC Licence Holder or Recognised Body). The Respondent has 28 days to provide a response and it is proposed (although this is not in the legislation) that the CLC will consider that response and if CLC still intend to proceed with the allegation they have 14 days to send the materials to the Adjudicator (letting the Respondent know if the Allegation has been changed).
- 5.14 The Adjudicator's decision should be made within 28 days and this is then distributed to the parties.
- 5.15 The AJA 1985 provides for an appeal of the Investigating Committee decision so a tight form of words allowing a review in certain circumstances has been drafted accommodating the fact that the Investigating Committee no longer exists.
- 5.16 The legislation provides the power to make interim orders after a case to answer decision. The proposed new Rule for consultation sets out a proposed procedure for this.
- 5.17 Other procedural clarifications include the size of a hearing panel, the appointment of a legal adviser if required and provision for the issue of directions.
- 5.18 Importantly the changed Rules make clear that hearings will usually be in public and there are provisions to proceed in the Respondent's absence if service is proved. Hearing Guidance is referred to but not included in the rules so that it can be more easily refreshed and updated.

- 5.19 Without being overly prescriptive as to the process the four stages of a Disciplinary Hearing are set out (this reflects the approach amongst many regulators and divides the stages in a way that the case law has suggested is fair):
- (a) The Facts stage: where the panel will decide whether any unadmitted facts are found proved;
 - (b) The Misconduct stage; where the Panel will consider whether the Respondent has, on the basis of the admitted and/or proven facts, a) been convicted by any court in the United Kingdom of a criminal offence which renders him unfit to practise as a licensed conveyancer; or b) while holding a licence failed to comply with any condition to which that licence was subject; or c) failed to comply with any rules made by the Council
 - (c) The Sanctions stage; where the panel will decide whether to impose a sanction on the Respondent in accordance with the CLC Sanctions Guidance;
 - (d) The Costs stage; where the panel may make such order for costs as it thinks fit.
- 5.20 Some new (and again standard amongst regulators) provisions about evidence have been set out so as to be clear and transparent in the Rules.
- 5.21 There is also proposed clarification about claiming of costs and compensation.
- 5.22 The new Adjudication Panel Disciplinary Procedure Rules are included at **Annex 2**.

Q2. Do you think these changes to the rules clarify the scope and functions of the Adjudication Panel in respect of disciplinary cases relating to CLC Lawyers and Recognised Bodies? If not, please outline any further additional changes that think should be introduced.

Q3. Do you think these changes clarify the procedure that will be followed by the CLC in disciplinary cases? Do you have any views on the procedural steps noted at paragraph [3.14 to 3.16]?

Q4. Do you have any views on the procedures relating to interim orders? [paragraph 3.18]

Q5. Do you agree with the proposed four stages of Disciplinary Hearing set out at paragraph [3.22]?

6. Proposal for the creation of the Adjudication Panel Licensing and Recognition Rules.

- 6.1 The second set of new procedure Rules are the Adjudication Panel Licensing and Recognition Procedure Rules. These are intended to cover a variety of appeals that can be made by those who are not granted a licence or recognition (or who are granted a licence subject to conditions to which they object). They cover all the

appeals that flow from decisions made under the ABS Framework impacting ABSs, managers, owners and role holders as well as appeals from Disciplinary decisions.

6.2 The Rules cover appeals against:

- (a) an order as to the payment of costs
- (b) a direction for payment of a penalty
- (c) a decision of the CLC in relation to a licence under the 1985 Act or under the ABS Licensing Framework
- (d) a decision of the CLC in relation to recognition of a body under the 1985 Act

6.3 The proposed amendment to the Rules reflects that the burden of proof in an appeal is on the appellant. There are provisions that ensure that the Panel is comprised of members who have not been involved with the case previously. Appeals must be made within 28 days and the Rules clarify that the effect of appealing is that the original sanction/penalty is suspended pending determination of the appeal.

6.4 The amendments set out provisions for service of documentation and representation in appeal cases. There is flexibility to allow the admission of new evidence, and this effectively allows a rehearing of issues which may be considered appropriate particularly where the appeal is against a decision made by CLC staff to impose a sanction.

6.5 The new Adjudication Panel Licensing and Recognition Rules are included at **Annex 3**.

Q6. Do you think these amendments clarify the appeals process?

7. Proposed creation of the Adjudication Panel Restoration Procedure Rules 2022

7.1 Currently, there is no clear procedure for an individual or body to seek to restore their CLC licence/recognition or role within a Recognised Body or CLC Licenced Body if this has been revoked or the person is currently subject to disqualification.

7.2 There is provision for a person to apply for a fresh Licence when a disqualification period has lapsed (and to appeal the decision if registration/recognition is refused).

7.3 The CLC is therefore considering the development of a new set of Rules to cover applications for Restoration in the following circumstances:

- (a) when an individual is subject to an ongoing disqualification (either permanent or for a specified period) by the Adjudication Panel from (i) holding a role within a Recognised Body or CLC Licenced Body, or (ii) holding a licence;

(b) when an individual or body has had their CLC licence or recognition revoked by an Adjudication Panel because of fraud on that person's part.

7.4 Under these new rules, the Applicant has the burden of proving to the Adjudication Panel that a licence should be issued or recognition granted notwithstanding the disqualification or revocation for fraud.

7.5 An Applicant may only apply for Restoration if the disqualification is in force and either 10 months have elapsed from (i) the date of the Disciplinary Order detailing their disqualification or revocation of licence, or (ii) their last application for Restoration.

7.6 In situations where an individual is subject to a Disciplinary Order that provides for a period of disqualification and that period has elapsed, that person must apply for a new licence from the CLC Registration team instead of issuing an application to the Adjudication Panel via the route described above. If a licence is refused they may appeal to the Adjudication Panel.

7.7 The new Adjudication Panel Restoration Procedure Rules are included at **Annex 4**.

Q7. Do you think these new rules clarify the process whereby a disqualified applicant can apply to have their CLC licence restored?

8. Proposed creation of the Adjudication Panel Fraud & Error Rules 2022

8.1 The AJA 1985 envisages a process whereby the Investigation Committee may revoke a licence found to have been issued as a result of error or fraud. Should the CLC wish to use this power there are currently no Rules to govern the process, but these new Rules create this option.

8.2 If the CLC identify that a Licensed Conveyancer or Recognised Body has been issued with a licence or granted recognition as a result of fraud or error, the CLC must notify that individual or Recognised Body and invite representations in response. The burden is on the CLC to show that it was fraud or error that resulted in the issue of a licence or recognition.

8.3 The CLC may then decide to proceed with a referral to the Adjudication Panel who will decide whether a licence was issued or recognition granted as a result of any error or fraud. The Panel may revoke the licence or recognition and must give detailed reasons for its decision which shall take immediate effect.

The new Adjudication Panel Fraud & Error Rules are included at **Annex 5**.

Q8. Do you think these new rules clarify the process whereby fraud and error cases can be decided by the Adjudication Panel?

9. Diversity and Inclusion Impact

- 9.1 The proposals within this consultation paper support equal, independent access to justice.
- 9.2 Equality, diversity and inclusion considerations will be taken into account in determining Adjudication Panel membership to ensure that it retains the appropriate balance of skills, experience, independence and knowledge.
- 9.3 The recruitment of members to the Adjudication Panel will be advertised and promoted widely to attract a diverse range of candidates.

Q9. Do you have any comments regarding the diversity and inclusion impact and issues which, in your view, may arise from our proposed changes to the CLC Rules? Are there any wider diversity and inclusion issues that you want to make us aware of?

10. Responding to the consultation

- 10.1 The questions posed in this consultation are listed below for reference:

Adjudication Panel Rules 2015

Q1. Do you agree with these proposed amendments to the Adjudication Panel Rules 2015?

Adjudication Panel Disciplinary Procedure Rules

Q2. Do you think these changes to the rules clarify the scope and functions of the Adjudication Panel in respect of disciplinary cases relating to CLC Lawyers and Recognised Bodies? If not, please outline any further additional changes that think should be introduced.

Q3. Do you think these changes clarify the procedure that will be followed by the CLC in disciplinary cases? Do you have any views on the procedural steps noted at paragraph [3.14 to 3.16]?

Q4. Do you have any views on the procedures relating to interim orders? [paragraph 3.18]

Q5. Do you agree with the proposed four stages of Disciplinary Hearing set out at paragraph [3.22]?

Adjudication Panel Licensing and Recognition Rules

Q6. Do you think these amendments clarify the appeals process?

Adjudication Panel Restoration Procedure Rules

Q7. Do you think these new rules clarify the process whereby one can apply to have their CLC licence restored?

Adjudication Panel Fraud & Error Rules

Q8. Do you think these new rules clarify the process whereby fraud and error cases can be decided by the Adjudication Panel?

Diversity and Inclusion Impact

Q9. Do you have any comments regarding the diversity and inclusion impact and issues which, in your view, may arise from our proposed changes to the CLC rules? Are there any wider diversity and inclusion issues that you want to make us aware of?

Addendum

Q.10 Do you have any comments on these fast-track arrangements? (See addendum below.)

11. Responding to this consultation

- 11.1 You can respond to the consultation by email to consultations@clc-uk.org or by post to: The Council for licensed Conveyancers, WeWork, 131 Finsbury Pavement, London, EC2A 1NT. The CLC will publish all responses and may refer to any of them 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.
- 11.2 We will review all responses to this consultation and consider making amendments to the Rules as appropriate. We will then proceed with our application to the LSB.
- 11.3 In the interim, the [Adjudication Panel Rules 2015](#) and [Adjudication Panel Procedure Rules 2013](#) (as amended on 25 August 2015) shall continue to apply.

ADDENDUM (23RD February 2022)

In light of further internal discussions, the CLC proposes to introduce a fast track procedure for certain matters.

The AJA gives the Adjudicator the power to make a preliminary investigation of an allegation and hear and determine the allegation and then order payment of a penalty and costs (see section 24(1A) and section 24A(1) and (2)).

This procedure will be used

- (i) for certain minor breaches (eg single Code breaches and AML breaches) where it would be disproportionate to go through the full Adjudication Panel process, and
- (ii) where a respondent admits liability and agrees to pay a fine.

Provision is made in the draft Disciplinary Procedure Rules at Annex 2, below.

Q.10 Do you have any comments on these fast-track arrangements?

ANNEX 1

The CLC's DRAFT Adjudication Panel Constitution Rules 2022

These Rules were made by the Council for Licensed Conveyancers (CLC) under sections 20, 24(4), 24(4A), 25, 26, and Schedule 4 to the Administration of Justice Act 1985 and as part of the regulatory arrangements of the CLC with the approval of the Legal Services Board pursuant to Part 3 of Schedule 4 to the Legal Services Act 2007.

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1. Citation, commencement, interpretation and saving

1.1 These Rules may be cited as the CLC's Adjudication Panel Constitution Rules 2022 and shall come into effect on [X] 2022 on which date the CLC's Adjudication Panel Rules 2015 shall cease to have effect save that:

(a) no prior decision of the Investigating Committee, the Discipline and Appeals Committee or the Adjudication Panel shall be invalidated by the coming into force of these Rules;

(b) any case referred for determination prior to the coming into force of these Rules, and which has not been finally determined at that time, shall continue and shall be determined in accordance with these Rules; and

(c) the term of office of any Existing Panel Members shall continue in effect until their expiry unaffected by the coming into force of these Rules.

1.2 In these Rules and the Adjudication Panel Procedure Rules:

Unless the contrary intention appears, words importing the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular;

A reference to legislation or to a legislative provision is a reference to it as amended, extended or re-enacted from time to time;

"1985 Act" means the Administration of Justice Act 1985;

"1990 Act" means the Courts and Legal Services Act 1990;

"2007 Act" means the Legal Services Act 2007;

"Adjudicator" means a single member of the Adjudication Panel appointed by the Adjudication Panel Chair (which can be the Adjudication Panel Chair themselves) to take certain decisions during the initial stages of a case as set out in the Adjudication Panel Disciplinary Procedure Rules;

"Adjudication Panel Chair" means the individual appointed to chair the whole of the Adjudication Panel for a term of office as set out in the Adjudication Panel Constitution Rules;

"Adjudication Panel Assistant" means an individual who may be an employee of the CLC who is appointed to assist the panel and Adjudicator with matters of administration;

"Adjudication Panel" means the committee established by the CLC's Council by which the functions conferred on the Investigating Committee and the Discipline Appeals Committee under Part II of the 1985 Act are to be discharged;

"Adjudication Panel Procedure Rules" means the rules in force from time to time to govern the procedures of the Adjudication Panel and included the Adjudication Panel Disciplinary Procedure Rules, and the Adjudication Panel Appeal Procedure Rules;

"Appointments Committee" is the Committee of CLC responsible for making appointments to CLC bodies.

"Chair" means the person appointed by the Adjudication Panel Chair to chair a particular hearing. They may or may not be legally qualified;

"CLC" means the Council for Licensed Conveyancers established under section 12 of the 1985 Act;

"Council" means the Council of the CLC;

"CLC Body" means a Licensed Body or a Recognised Body;

"CLC Lawyer" means a Licensed Conveyancer or a Licensed CLC Practitioner;

"CLC Lawyer Member" means an individual appointed as a member to the Adjudication Panel who is or has at any time held a licence to practise as a CLC Lawyer, or any individual who is or has at any time been a Manager of a CLC Body;

"CLC Practitioner Services Body" has the meaning given by section 32B of the 1985 Act;

"CLC's Rules" means the CLC's Code of Conduct and any other relevant codes or rules made by the CLC in each case as they are in force from time to time including the Code of Conduct for Council and Committee Members and any relevant provisions of the Staff Handbook;

"Company" has the meaning given by section 1(1) of the Companies Act 2006;

"Conveyancing Services Body" has the meaning given by section 32A of the 1985 Act;

"Disciplinary Order" in the case of a CLC Lawyer means an order made against them pursuant to section 24A or 26 of the 1985 Act (other than an order which provides only for the payment of costs by them);

"Existing Panel Members" means the Adjudication Panel Chair and any other members of the Adjudication Panel holding office as of the coming into force of these Rules;

“**Lay Member**” means an individual appointed as a member of the Adjudication Panel, who is not eligible to sit as a CLC Lawyer Member;

“**Licensed Body**” a body regulated by the CLC which provides legal services to the public and which is a 'licensable body' under section 72 of the 2007 Act;

“**Licensed CLC Practitioner**” means an individual, other than a Licensed Conveyancer, holding a licence in force issued by the CLC under section 53 of the 1990 Act to provide probate and other legal services regulated by the CLC, but not conveyancing services;

“**Licensed Conveyancer**” means an individual who holds a licence in force issued by the CLC under Part II of the 1985 Act to provide conveyancing and other legal services regulated by the CLC;

“**Limited Liability Partnership**” means a body corporate formed by being incorporated under the Limited Liability Partnerships Act 2000, recognised by the CLC under section 32 of the 1985 Act to provide Reserved Legal Activities;

“**LLP Member**” means a member of a Limited Liability Partnership;

“**Manager**” in relation to a CLC Body, means an individual who is:

- (a) a member of the CLC Body, if the CLC Body is a Company and its affairs are managed by its members;
- (b) a director of the CLC Body, if the CLC Body is a Company and paragraph (a) does not apply;
- (c) a partner, if the CLC Body is a partnership;
- (d) a LLP member, if the CLC Body is a Limited Liability Partnership;
- (e) a member of its governing body, if the CLC Body is an unincorporated body (other than a partnership); or
- (f) a CLC Lawyer, if sub-paragraphs (a)-(e) do not apply and the affairs of the CLC Body are not managed by another CLC Lawyer];

“**Panel Member**” means an individual appointed as a member of the Adjudication Panel (including the Adjudication Panel Chair) in accordance with rule 4;

“**Recognised Body**” means a body corporate or incorporate recognised by the CLC either as a Conveyancing Services Body or as a CLC Practitioner Services Body under section 32 of the 1985 Act to provide Regulated Services to the public;

“**Regulated Services**” means all of the legal activities (including both Reserved Legal Activities and non-reserved services) which the CLC authorises or permits a CLC Lawyer or a CLC Body, in each case within the terms of their licence, to provide and which are therefore be regulated by the CLC; and

“**Reserved Legal Activities**” means the reserved legal activities listed in section 12 of the 2007 Act.

Other expressions shall have the meanings given to them by the 1985 Act, the 1990 Act and the 2007 Act.

2. Delegation of powers

2.1 In accordance with paragraph 12(2) of schedule 8 to the 1990 Act the functions conferred on the Investigating Committee under Part II of the 1985 Act are to be discharged by the Adjudication Panel which for these purposes is a committee established by the CLC under paragraph 12 of schedule 8 to the 1990 Act.

2.2 In accordance with paragraph 12(1A) of schedule 8 to the 1990 Act the Adjudication Panel or the Adjudication Panel Chair may arrange for the discharge of the functions of the Investigating Committee by an individual member of the Adjudication Panel.

2.3 In accordance with paragraph 12(2) of schedule 8 to the 1990 Act the functions conferred on the Discipline and Appeals Committee under Part II of the 1985 Act are to be discharged by the Adjudication Panel which for these purposes is a committee established by the CLC under paragraph 12 of schedule 8 to the 1990 Act.

2.4 The Adjudication Panel shall consider or deal with such other matters specifically delegated to or referred to it by the Council or otherwise by the CLC.

2.5 The Adjudication Panel may arrange its own scheme of delegation provided that any Adjudication Panel Chair or member directed either to act as an Adjudicator for a case, or who is part of a Panel which considers any appeal against an Adjudicator's decision (including an appeal against an interim order) does not act in relation to that case as a member of the Adjudication Panel following a referral.

3. Membership of the Adjudication Panel

3.1 The Adjudication Panel shall, subject to rule 4, be comprised of an Adjudication Chair and up to [] other Panel Members.

3.2 The number of Lay Members on the Adjudication Panel shall exceed the number of CLC Lawyer Members.

4. Appointment of the Adjudication Panel Chair, and any other Panel Member

4.1 The posts of the Adjudication Panel Chair and any other Panel Members shall be advertised in such manner as the Council shall determine.

4.2 The appointment of the Adjudication Panel Chair and other Panel Members shall, subject to rules 3, 4.3, 4.4 and rule 5, be made by the Appointments Committee (provided that, in the event that a vacancy in the office of Adjudication Panel Chair occurs by reason of the operation of rules 6.1 or 9 or the Adjudication Panel Chair is suspended under rule 8.1, the Council may, subject to

rule 4.4, appoint a new Adjudication Panel Chair from among the other Panel Members and any individual so appointed shall hold their office until, as applicable, the appointment of a new Adjudication Panel Chair by the Appointments Committee or until the suspension is lifted pursuant to rule 8.2).

4.3 An individual shall not be eligible for appointment to the Adjudication Panel if:

- (a) they are, or have been within the immediately preceding 24 months, a member of the Council or an employee of the CLC;
- (b) they have been convicted of a criminal offence involving fraud, dishonesty, deception or violence or an indictable offence unless the conviction is spent within the meaning of the Rehabilitation of Offenders Act 1974;
- (c) they are or have been an undischarged bankrupt, are or have been the subject of a bankruptcy restrictions order or have made a composition or arrangement with their creditors unless:
 - (i) the bankruptcy order is annulled either on the ground that they ought not to have been adjudged bankrupt, or that their debts have been paid in full, on the date of the annulment; or
 - (ii) in the case of a composition or arrangement with their creditors, they pay their debts in full on the date on deeds which payment is completed or on the expiration of five years from the date on which the terms of the composition or arrangement are fulfilled;
- (d) if they lack capacity within the meaning of the Mental Capacity Act 2005 and powers in relation to sections 15-20 or section 48 of that Act have been exercised in relation to them;
- (e) the [Council or Appointments Committee] is satisfied that, in respect of the following, the circumstances of the particular case make that individual ineligible for appointment to the Adjudication Panel:
 - (i) a Disciplinary Order has been made against them, unless more than six years have passed since the Order was made;
 - (ii) the CLC's power of intervention have been exercised against them or their practice in accordance with part 1 of schedule 5 to the 1985 Act, against a Recognised Body of which they are a Manager in accordance with schedule 6 to the 1985 Act or against a Licensed Body of which they are a Manager in accordance with schedule 14 to the 2007 Act unless in any case more than six years have passed since such powers were exercised; or
 - (iii) as a member of another profession, an adverse determination has been made against them by a disciplinary tribunal or committee established to regulate the activities and the conduct of members of their profession (other than an order which provides only for the payment of costs by them), unless more than six years have passed since the determination was made and if they have been disqualified from holding a licence or practising certificate (as the case may be) for a period longer than six years, their licence or practising certificate has been restored.

4.4 An individual shall not be eligible for appointment to the post of Adjudication Panel Chair:

- a) if they sit, or are eligible to sit, as a CLC Lawyer Member
- b) If they are not legally qualified .

5. Term of office

5.1 Subject to rules 1.1(c), 5.2, 5.4, 6.1, 8 and 9, the term of office of the Adjudication Panel Chair, and each other Panel Member shall take effect on the date specified in their letter of appointment for a term of office not exceeding four years.

5.2 Subject to rule 5.3, an Adjudication Panel Chair, or other Panel Member shall, upon the expiry of their term of office as a Panel Member, be eligible for, but shall not be subject to automatic, reappointment, in accordance with rule 4, once only, for a second term of office not exceeding four years.

5.3 Rule 5.2 shall not apply to any Existing Panel Member who has, as of the coming into force of these Rules, completed at least one full term of office.

5.4 The Adjudication Panel Chair may, with the consent of the relevant other Panel Member, recommend to the Appointments Committee that the term of office of another Panel Member should be extended for a specified period of time and, following the Appointments Committee's approval of the same, the relevant Panel Member's term of office shall, notwithstanding rules 5.1 or 6.1(c), be deemed to be extended accordingly and notice of the same shall be provided to both the Adjudication Panel Chair and the relevant other Panel Member.

6. Vacancies

6.1 A vacancy in the office of Adjudication Panel Chair or other Panel Member shall automatically occur and the relevant individual's right to hold office shall, as applicable, cease immediately:

- (a) upon their death;
- (b) upon receipt by the Council of their written resignation;
- (c) upon the expiry of their term of office as a Panel Member;
- (d) upon their appointment as a member of the Council;

- (e) if a Lay Member at the time of their appointment, they become a CLC Lawyer Member;
- (f) if they are convicted of a criminal offence involving fraud, dishonesty, deception or violence or an indictable offence or, upon any conviction for any criminal offence, a custodial sentence is imposed;
- (g) if they are adjudged bankrupt, are the subject of a Bankruptcy Restrictions Order or makes a composition or arrangement with their creditors unless:
 - (i) the bankruptcy order is annulled either on the ground that they ought not to have been adjudged bankrupt, or that their debts have been paid in full, on the date of the annulment; or
 - (ii) in the case of a composition or arrangement with their creditors, they pay their debts in full on the date on which payment is completed or on the expiration of five years from the date on which the terms of the deeds of composition or arrangement are fulfilled;
- (h) if they lack capacity within the meaning of the Mental Capacity Act 2005 and powers in relation to sections 15-20 or section 48 of that Act have been exercised in relation to them;
 - (i) if, being a CLC Lawyer Member:
 - (i) a Disciplinary Order is made against them;
 - (ii) their licence is suspended; or
 - (iii) the CLC's powers of intervention are exercised against them in accordance with Part I of Schedule 5 to the 1985 Act, against a Recognised Body of which they are a Manager in accordance with schedule 6 to the 1985 Act or against a Licensed Body of which they are a Manager in accordance with schedule 14 to the 2007 Act;
 - (j) if as a member of another profession, an adverse determination is made or an order is issued against them by a disciplinary tribunal or committee (other than an order which provides only for the payment of costs by them);
 - (k) if they have failed to disclose to the Appointments Committee any matter referred to in rule 4.3 subparagraphs (b), (c), (d) or (e); or
 - (l) if they are removed from office under rule 9.

6.2 In the event that a vacancy occurs by reason of the operation of rule 6.1, the Council shall inform the Adjudication Panel Chair.

6.3 Where a vacancy occurs by reason of the operation of rule 6.1, a replacement appointment shall be made in accordance with rule 4.

7. Remuneration

The CLC shall pay to the Adjudication Panel Chair and the other Panel Members attendance fees and expenses reasonably incurred, in accordance with the remuneration policy, such fees to be determined by the Council and to be reviewed periodically by the Remuneration Committee of CLC.

8. Suspension of the Adjudication Panel Chair or any other Panel Member

8.1 The Adjudication Panel Chair or any other Panel Member shall be suspended with immediate effect in the event that:

- (a) they are charged with any offence referred to in rule 6.1(f);
- (b) they are served with a bankruptcy petition or issues a bankruptcy petition on their own behalf;
- (c) they receive notice of any application against them for an order under rule 6.1(j); or
- (d) they are notified in writing by the Council that it is investigating whether any of the circumstances contemplated by rule 6.1 applies to them.

8.2 Any suspension imposed under rule 8.1 shall automatically be lifted in the following circumstances:

- (a) in relation to a suspension imposed under sub-paragraph 8.1(a) in the event that the charge is dismissed, discharged, discontinued or otherwise withdrawn;
- (b) in relation to a suspension imposed under sub-paragraph 8.1(b), if the bankruptcy petition is disposed of without a declaration of bankruptcy being made against the relevant Panel Member;
- (c) in relation to a suspension imposed under sub-paragraph 8.1(c), in the event that the application is withdrawn or dismissed or the only order made is for the payment of costs; and
- (d) in relation to a suspension imposed under sub-paragraph 8.1(d), in the event that the relevant Panel Member is notified in writing by the Council that it has concluded that the relevant circumstance does not apply to them.

9. Removal of Panel Members

The Council may remove with immediate effect any Panel Member who has breached any of the CLC's Rules which are applicable to them.

10. Hearings of the Adjudication Panel

The Adjudication Panel Chair shall direct the date, time and place for any hearing in accordance with the Adjudication Panel Procedure Rules.

11. Proceedings of the Adjudication Panel

The proceedings of the Adjudication Panel shall be conducted in accordance with the Adjudication Panel Procedure Rules (and, if there is any conflict or inconsistency between these Rules and the Adjudication Panel Procedure Rules, the Adjudication Panel Procedure Rules shall prevail).

12. Order of precedence

Where there is a conflict or inconsistency between these Rules and the provisions of any relevant statute or statutory instrument, the provision of the statute or statutory provision shall prevail.

ANNEX 2

DRAFT ADJUDICATION PANEL DISCIPLINARY PROCEDURE RULES 2022

These Rules were made by the Council for Licensed Conveyancers under sections 20, 24(4A), 24(5), 25 and Schedule 4 to the Administration of Justice Act 1985 and as part of the regulatory arrangements of the CLC, with the approval of the Legal Services Board pursuant to Section 30 and paragraph 1 of the Legal Services Act 2007

CONTENTS

1. Commencement

The Rules may be cited as the CLC's Adjudication Panel Disciplinary Procedure Rules and shall come into effect on superseding all previous Adjudication Panel Procedure Rules save that:

- (a) no prior decision of the Investigating Committee, the Discipline and Appeals Committee or the Adjudication Panel shall be invalidated by the coming into force of these Rules;
- (b) any case referred for determination prior to the coming into force of these Rules, where notice of the time and place of the hearing has been given or the hearing has commenced, shall continue and shall be determined in accordance with the Adjudication Panel Procedure Rules 2013 (as amended August 2015).

2. Interpretation

Words and expressions shall have the meanings given to them by:

- (a) the 1985 Act, the 1990 Act and the 2007 Act
 - (b) the Adjudication Panel Constitution Rules 2022; or
 - (c) as set out below
 - (d) "Allegation" includes an allegation that a licensed conveyancer:
 - (i) has (whether while a licensed conveyancer or not) been convicted by any court in the United Kingdom of a criminal offence which renders him unfit to practise as a licensed conveyancer; or
 - (ii) has, while holding a licence in force under Part II of the 1985 Act, failed to comply with any condition to which that licence was subject; or
 - (iii) has failed to comply with any Rules, including the CLC Handbook, made by the Council under Part II of the 1985 Actand includes an allegation against a recognised body as set out in paragraph 3(1) of Schedule 6 to the 1985 Act
- "Appellant" means an individual or a body who is appealing any of the following:
- A direction to suspend a licence under s24(5) of the 1985 Act (interim suspension)
 - An order as to the payment of costs under s24(7), s24A(2), paragraph 3A(2) of Schedule 6 of the 1985 Act
 - A direction for payment of a penalty under s24A(1) or paragraph 3A(1) of Schedule 6 of the 1985 Act

	<ul style="list-style-type: none"> - a decision of the Council in relation to a licence under s29(1) of the 1985 Act or under the ABS Licensing Framework made pursuant to the 2007 Act - a decision of the Council in relation to recognition of a body under paragraph 8 of Schedule 6
"Applicant"	<p>means an individual or a body who is applying for any of the following:</p> <ul style="list-style-type: none"> - removal of disqualification from holding a licence under s27(1) of the 1985 Act
"CLC Role Holder"	<p>includes Manager, Owner, Person with a material interest or a controlled interest, a Head of Legal Practice or a Head of Financial Administration</p>
"Disciplinary Case"	<p>means a case against a Licensee alleging a breach of CLC Rules</p>
"Licensee"	<p>includes Licensed Body, Licensed Conveyancer, Licensed CLC Practitioner or Recognised Body as applicable and shall include a person who was a licensed conveyancer at the time when the conduct to which an allegation relates took place</p>
"Licensing Appeal"	<p>means appeal against a decision of the Council in relation to a licence under s29(1) of the 1985 Act or under the ABS Licensing Framework made pursuant to the 2007 Act</p>
"Party"	<p>is as defined in the 1985 Act (Schedule 4) and may include the CLC, Licensees, CLC Role Holders, and Appellants</p>
"registered address"	<p>means the Licensee's address in the Register and/or their last known address</p>
"Respondent"	<p>in these Rules means the Licensed Conveyancer or Recognised Body against whom an allegation is made</p>
"working day"	<p>includes any day except a Saturday or Sunday, Christmas Day, Good Friday or a Bank Holiday under section 1 of the Banking and Financial Dealings Act 1971;</p> <p>Any direction to be complied with on or by a particular day must be complied with before 5pm on that day</p>

3. **Sending and Delivery of Documents**

Any document to be provided to the Adjudication Panel or the parties under these Rules or a direction must be:

- (a) sent by pre-paid post to the registered address of the recipient;
- (b) delivered by hand to the registered address of the recipient; or
- (c) sent by email to the registered email address of the recipient, with a delivery receipt requested as proof of sending, provided that the parties have agreed to service by email.

4. **Function and Scope of these Rules**

4.1 Any complaint of misconduct shall be dealt with in accordance with these Rules and the Adjudication Panel Rules 2022 and guidance on such matters published from time to time.

4.2 The objective of these Rules is to enable the Adjudication Panel to deal with cases in accordance with its overriding objectives.

4.3 The Adjudication Panel's overriding objectives are:

- To protect the public and consumers of legal services
- To protect, promote and maintain public confidence in the profession of Licensed Conveyancing
- To promote and maintain proper standards and conduct amongst Licensed Conveyancers
- To deal with cases fairly and justly.

4.4 Dealing with a case fairly and justly includes: -

- Dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the public interest in the case, the anticipated costs and the resources of the parties;
- Avoiding unnecessary formality in the proceedings;
- Ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- Avoiding unnecessary delay.

4.5 The Adjudication panel must seek to give effect to the overriding objective when it exercises any power under these Rules.

4.6 The parties to a case must help the Adjudication Panel to further the overriding objective and co-operate with the Adjudication Panel to the best of their ability in the circumstances.

5. **Burden and Standard of Proof**

5.1 The burden of proving the facts in a disciplinary case before the Adjudication panel is on the CLC.

5.2 The burden of proving that an applicant is suitable to be licensed or recognised in a Licence Appeal to the Adjudication Panel is on the Applicant.

5.3 The standard of proof in relation to disputed facts is on the balance of probabilities.

6. **Representation**

6.1 A party may appoint a representative to represent that party in the proceedings and at any hearing. That representative must be either practising Counsel, a practising Solicitor, a representative from any professional organisation of which they are a member; or at the discretion of the Adjudication Panel, another person.

6.2 If a party appoints a representative, that party must provide the Adjudication Panel and the other party with the name, address and email address of the representative, within 7 days of their appointment.

6.3 A person appointed by a party as their representative may carry out any action or receive any document on behalf of that party except for:

- signing a witness statement
- giving evidence at any hearing

6.4 If a representative is appointed on behalf of a party, it is assumed that the representative remains authorised to act on behalf of that party, and to receive any documentation on behalf of that party, until the Adjudication panel and the other party receives written notification to the contrary from the representative or the represented party.

6.5 No other person shall appear at an Adjudication Panel hearing to represent a party without the written permission of the Adjudication Panel Chair.

7. **The Adjudication Panel**

Composition of the panels

7.1 The Adjudication panel appointed to hear a case must be composed of three members, of whom one must be a CLC Lawyer member. A member who has decided a Preliminary Investigation on a case must not sit as a member of the substantive hearing panel deciding that case.

- 7.2 It is the responsibility of the Adjudication Panel Chair to appoint the panel, in accordance with the Adjudication Panel Constitution Rules

Legal Advisor

- 7.3 Every Adjudication panel will either have:-

- (a) a legally qualified Chair, who is able to advise the panel on the relevant law should any matters arise or,
- (b) if the appointed Chair is not legally qualified, a Legal Advisor to provide appropriate legal advice to the panel if the Adjudication Panel Chair considers it necessary, having made an assessment of the issues in the case.

Delegation

- 7.4 The Adjudication Panel Chair may direct a single member of the Adjudication Panel to act as an Adjudicator, which can be the Adjudication Panel Chair themselves. An Adjudicator can decide:

- (a) to refer an allegation or allegations against a Respondent to a fresh panel of the Adjudication Panel for determination in accordance with these Rules;
- (b) to issue a direction to suspend a licence under s24(5) of the 1985 Act ("interim suspension") subject to the provisions of Rule 9 below;
- (c) to order payment of costs under s24(7) ("interim suspension costs")

- 7.5 In the event of the Adjudication Panel Chair being absent or unable to act or continue to act, anything authorised or required to be done by the Adjudication Panel Chair may be done by any other Adjudication Panel member who is authorised for the purpose by the Adjudication Panel Chair.

8. Initial stages and Adjudicator procedure and powers

- 8.1 Where the CLC identify a case in which it is alleged that a licensed conveyancer

- (a) has (whether while a licensed conveyancer or not) been convicted by any court in the United Kingdom of a criminal offence which renders him unfit to practise as a licensed conveyancer; or
- (b) has, while holding a licence failed to comply with any condition to which that licence was subject; or
- (c) has failed to comply with any rules made by the Council

the CLC must send to the Respondent a written draft allegation(s), a summary of the facts relied on and any supporting evidence and seek the Respondent's representations and if CLC considers it appropriate an indication that it considers the case suitable for an agreed penalty outcome.

- 8.2 If the Respondent wishes to provide representations and/or to consent to an agreed penalty outcome they should do so within 28 days, setting out any matter on which they would rely if the matter proceeded to a hearing before the Adjudication Panel.

- 8.3 If the CLC, having received the Respondent's response document or after 28 days, intend to proceed with a referral to the Adjudication Panel, that referral, in the form of a draft allegation and supporting evidence, and any response and documents received from the Respondent, must be made to the Adjudication Panel Chair within 14 days of any Respondent's response being received or if not received, 14 days from expiry of the 28 day period.

- 8.4 The CLC should confirm to the Respondent if it has amended the draft allegation.

- 8.5 Within 28 days of being appointed to review the draft allegation and supporting evidence, the Adjudicator will provide to the Adjudication Panel Chair and the Adjudication Panel Assistant written notice of their reasoned decision.

- 8.6 Within 7 days of receiving the written reasoned decision from the Adjudicator, the Adjudication Panel Assistant will distribute the written decision to the parties.
- 8.7 The Adjudicator shall refer a case under Rule 7.4(a) above if they decide there is a case for the Respondent to answer.
- 8.8 In the event that the Respondent fails to pay the agreed penalty within 28 days, the CLC shall provide an update to the Adjudicator who shall decide whether to refer the case to the Adjudication Panel for determination.
- 8.9 The Adjudicator shall not issue directions or provide guidance to the CLC in relation to the draft allegation(s) and supporting evidence.
- 8.10 Appeal of referral decision
- (a) There is no general right to appeal the Adjudicator's decision to refer a case to the Adjudication Panel for hearing.
 - (b) However, in certain circumstances only, the Respondent or the CLC may request a review of the decision by the Adjudication Panel Chair. Those circumstances are limited to the following:
 - (i) If the decision in question may be materially flawed, for any reason, wholly or partly; or
 - (ii) There is new information which may have, wholly or partly, led to a different decision.
 - (c) Save for in cases where subsection (e) below applies, the Adjudication Panel Chair will only conduct a review of the Adjudicator's decision if they are satisfied that one of those circumstances is made out **and** they consider that the review is necessary for the protection of the public, the prevention of injustice to the Respondent, or is otherwise necessary in the public interest.
 - (d) Any such review shall be a review on the papers only, the Adjudication Panel Chair having invited written representations from both parties.
 - (e) No review will be undertaken if the decision was made by the Adjudicator more than 12 months ago or if Notice of Hearing has been sent, unless there are exceptional circumstances.
9. **Interim Orders**
- 9.1 Where the Adjudicator has referred a case under Rule 7.4(a) and they consider that it may be necessary for the protection of consumers to make a direction for interim suspension of the Respondent's licence the Adjudicator shall:
- (a) direct that notice be given to the Respondent inviting the Respondent to make any representations against the making of the proposed directions within 14 days of receipt of the notice;
 - (b) consider any representations received from the Respondent;
 - (c) decide whether to direct that the Respondent's licence be suspended until the allegation is determined by the Adjudication Panel or until otherwise directed by an Adjudication Panel;
 - (d) make such order as they think fit as to the payment of costs by the Council, or the Respondent.
- 9.2 In accordance with s24(5)(b) of the 1985 Act the Adjudicator may only direct that the Respondent's licence be suspended where they consider it is necessary for the protection of consumers to make such a direction.
- 9.3 In accordance with s24(8) of the 1985 Act where a direction for interim suspension of a licence has been made, a Respondent may appeal to the Adjudication Panel, within 21 days of the initial direction or in the event of a material change of circumstances.

- 9.4 Where an interim suspension is appealed by reason of a material change of circumstances the Adjudication Panel Chair will only schedule an appeal if they are satisfied that this is made out.
- 9.5 If an appeal is scheduled the Adjudication Panel Chair shall:
- (a) appoint a panel, in accordance with Rule 7 above;
 - (b) determine whether the matter can be considered on the papers or whether a hearing is required;
 - (c) make an assessment as to whether a Legal Advisor is required to advise the panel on the relevant law at any hearing;
 - (d) if required arrange for service of a notice of the hearing on the panel and parties, which must include the date, time and location of the hearing and the names of the hearing panel members.
- 9.6 At any Adjudication Panel hearing to consider an interim suspension:
- (a) Rule 6 Representation shall apply;
 - (b) Rule 12.4 Proceeding in absence shall apply;
 - (c) Relevant parts of Rule 10 shall apply;
 - (d) There will be a presumption that the matter will be heard in private:
 - (e) No person shall give oral evidence at a hearing unless the Adjudication Panel considers such evidence is necessary to enable it to discharge its functions;
 - (f) The Adjudication Panel shall hear from the CLC and the Respondent representations as to whether an Interim Order is necessary;
 - (g) The Adjudication Panel shall decide whether to direct that the Respondent's licence be suspended until the allegation is determined by the Adjudication Panel or until otherwise directed by an Adjudication Panel;
 - (h) The Adjudication Panel shall make such order as they think fit as to the payment of costs by CLC, or the Respondent.

10. Adjudication Panel powers

- 10.1** The Adjudication panel, when considering a case referred to it, may
- (a) Give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending, or setting aside an earlier direction
 - (b) Extend or shorten the time for complying with any rule or direction, unless such extension or shortening would conflict with the over-riding objective;
 - (c) Consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues;
 - (d) Deal with an issue in the proceedings as a preliminary issue;
 - (e) Hold a hearing to consider any case management issue;
 - (f) Make or permit an amendment to the allegation(s), where it is satisfied that there would be no injustice caused to either party in so doing;
 - (g) Permit or require a party to amend a document, where it is in the interests of justice to do so;
 - (h) Exclude evidence that would otherwise be admissible where
 - (i) The evidence was not relevant to the matter being considered
 - (ii) The evidence was not provided within the time specified by a direction
 - (iii) The evidence was not provided in a manner or format specified by a direction

- (iv) It would be otherwise unfair to admit the evidence
 - (i) Compel a party to attend and/or to produce documents in accordance with paragraph 2 of Schedule 4 to the 1985 Act
 - (j) Adjourn or postpone a hearing;
- 10.2 All decisions made by a three-member panel will be made on the basis of a majority decision, with all members of the panel having an equal vote.
11. **Referral to hearing**
- 11.1 Where the Adjudicator has decided to refer the case to a freshly constituted Adjudication Panel the Adjudication Panel Assistant will notify the CLC, the Respondent and the Adjudication Panel Chair a request for an oral hearing.
- 11.2 The Adjudication Panel Chair shall thereafter
- (a) appoint a hearing panel and Chair, in accordance with the requirements set out at Rule 7.1 and 7.2 above
 - (b) Make an assessment as to whether a Legal Advisor is required to advise the panel on the relevant law at the hearing, in accordance with rule 7.3 above.
 - (c) Arrange for service of a notice of the hearing on the panel and parties, which must include the date, time and location of the hearing and the names of the hearing panel members
 - (d) issue the Standard Directions (Schedule A).
- 11.3 The Chair will issue any other directions in the case that they deem appropriate, bearing in mind the overarching objectives and any application in writing by the parties. Directions may include the calling of a case management hearing if necessary.
12. **Hearing**
- 12.1 The Chair shall be responsible for the management of the hearing.
- 12.2 The Adjudication Panel may hear:
- (a) two or more cases against a Respondent at the same time; or
 - (b) cases against two or more Respondents at the same time where it would be just to do so.
- 12.3 There is a presumption that all hearings will be held in public, unless a direction has been made by the Chair that it will be held in private. Such a direction will only be made where the panel are satisfied that the particular circumstances of the case outweigh the public interest in holding the hearing, or any part of the hearing, in public. It will only be made in exceptional circumstances, and reasons must be given for the making of that decision.
- 12.4 If, at the hearing, the Respondent is not present or represented, the hearing panel may proceed to hear the matter in the Respondent's absence if it is satisfied it is in the interests of justice to do so. Before deciding to proceed in the absence of the Respondent,:
- (a) the hearing panel must be satisfied that the Respondent has been sent notice of the hearing
 - (b) The CLC should confirm whether the Respondent made any contact with as a result of receiving notice of the hearing
 - (c) The CLC should confirm if any information been received which would suggest that it is not in the interests of justice to proceed without the Respondent being present
- 12.5 The hearing panel, or the Chair may give a direction excluding any person (who is not a party to the proceedings) from a hearing or part of a hearing if:
- (a) The panel considers their conduct is disrupting or is likely to disrupt the hearing
 - (b) The panel considers their presence is likely to prevent another person from giving evidence or making submissions freely

- 12.6 The hearing panel, or the Chair, may make a direction excluding a witness from a hearing until that person gives evidence.
- 12.7 At the request of either party, or of its own volition, the hearing panel (or the Chair alone) may adjourn the hearing if it is satisfied it is in the interests of justice to do so. An application for an adjournment may be made by a party in writing in advance of the hearing, or orally at the hearing itself.
- 12.8 The order of proceedings for the hearing before the Adjudication hearing panel, unless the Chair otherwise directs, are set out in the Hearing Guidance.
- 12.9 The hearing will consist of four stages;
- (a) The Facts stage; where the panel will decide whether any unadmitted facts are found proved;
 - (b) The Misconduct stage; where the panel will consider whether the Respondent has, on the basis of the admitted and/or proven facts, a) been convicted by any court in the United Kingdom of a criminal offence which renders him unfit to practise as a licensed conveyancer; or b) while holding a licence failed to comply with any condition to which that licence was subject; or c) failed to comply with any rules made by the Council
 - (c) The Sanctions stage; where the panel will decide whether to impose a sanction on the Respondent in accordance with the CLC Sanctions Guidance;
 - (d) The Costs stage; where the panel may make such order for costs as it thinks fit.
- 12.10 The panel must make its decision at each stage before moving on to the next, and must not conflate the stages in any way. Submissions however can be made on Facts and Misconduct together, and Sanctions and Costs together, if the panel considers it appropriate in the facts of the case.
- 12.11 All oral evidence will be given on oath or by affirmation.
- 12.12 Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.
- 12.13 Production of a Court order, finding or certified note of a civil court penalty or findings of fact shall be conclusive proof of the facts found or penalty imposed.
- 12.14 Production of a certificate signed by an officer of a regulatory body in the UK or overseas, that has made a determination about the fitness to practise of a person shall be conclusive evidence of the facts found proved in relation to that determination.
- 12.15 The panel has the power to award costs against either party. Any application for costs must be accompanied by a Schedule of Costs prepared by the party applying, which should usually have been served on the other party at least 2 working days earlier.
- 12.16 Where the Respondent wishes to make representations about their ability to pay this must be accompanied by a signed and dated Statement of Means served at least 2 working days earlier.
- 12.17 A complete record of the hearing must be made and retained for a period of [x] That record should be in the form of a digital audio recording, but in the event that is not practically possible, the Chair must make a full note and their note will stand as the official record of the hearing.
- 12.18 The record of the panel’s findings, with detailed reasons, will be distributed to the parties and filed with the CLC within five working days of the conclusion of the hearing, and will be published on the CLC website within 28 days of the conclusion of the hearing, if there has been no appeal, otherwise within 28 days of the conclusion of any appeal proceedings.

6 Correcting mistakes and omissions

- 6.1 The Adjudication Panel may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by:

- (a) Sending notification of the amended decision or direction, or a copy of the amended document, to each party, and
- (b) Making any amendment to information published in relation to the decision, direction or document.

ANNEX 3

DRAFT ADJUDICATION PANEL LICENSING AND RECOGNITION APPEAL PROCEDURE RULES 2022

These Rules were made by the Council for Licensed Conveyancers under sections 20, and paragraph 8(3) Schedule 6 to the Administration of Justice Act 1985 and as part of the regulatory arrangements of the CLC, with the approval of the Legal Services Board pursuant to section 30 and paragraph 1 of the Legal Services Act 2007.

CONTENTS

1. Commencement

These Rules may be cited as the CLC's Adjudication Panel Licensing and Recognition Appeal Procedure Rules (or Appeal Procedure Rules) and shall come into effect on

2. Interpretation

Words and expressions shall have the meanings given to them by:

- (a) the 1985 Act, the 1990 Act and the 2007 Act;
- (b) the Adjudication Panel Constitution Rules 2022;
- (c) the Adjudication Panel Disciplinary Procedure Rules 2022.
- (d) the Adjudication Panel Fraud and Error Procedure Rules 2022; or
- (e) the Adjudication Panel Restoration Procedure Rules 2022.

3. Sending and Delivery of Documents

Any document to be provided to the Adjudication Panel or the parties under these Rules or a direction must be:

- (a) sent by pre-paid post to the registered address of the recipient;
- (b) delivered by hand to the registered address of the recipient; or
- (c) sent by email to the registered email address of the recipient, with a delivery receipt requested as proof of sending, provided that the parties have agreed to service by email.

4. Function and Scope of these Rules

4.1 Any appeal against:

- (a) An order as to the payment of costs under s24(7), s24A(2), paragraph 3A(2) of Schedule 6 of the 1985 Act;
- (b) A direction for payment of a penalty under s24A(1) or paragraph 3A(1) of Schedule 6 of the 1985 Act;
- (c) a decision of the Council in relation to a licence under s29(1) of the 1985 Act or under the ABS Licensing Framework made pursuant to the 2007 Act; or
- (d) a decision of the Council in relation to recognition of a body under paragraph 8 of Schedule 6 of the 1985 Act;

shall be dealt with in accordance with these Rules and such other Adjudication Panel Rules and guidance on such matters published from time to time.

4.2 The objective of these Rules is to enable the Adjudication Panel to deal with cases in accordance with its overriding objectives.

4.3 The Adjudication Panel's overriding objectives are:

- (a) To protect the public and consumers of legal services;
- (b) To protect, promote and maintain public confidence in the profession of Licensed Conveyancing
- (c) To promote and maintain proper standards and conduct amongst Licensed Conveyancers
- (d) To deal with cases fairly and justly.

4.4 Dealing with a case fairly and justly includes: -

- (a) Dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the public interest in the case, the anticipated costs and the resources of the parties;
- (b) Avoiding unnecessary formality in the proceedings;
- (c) Ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) Avoiding unnecessary delay.

4.5 The Adjudication Panel must seek to give effect to the overriding objective when it exercises any power under these Rules.

4.6 The parties to a case must help the Adjudication Panel to further the overriding objective and co-operate with the Adjudication Panel to the best of their ability in the circumstances.

5. Burden and Standard of Proof

5.1 The burden of proving the facts in an appeal case before the Adjudication Panel is on the Appellant.

5.2 The burden of proving that an applicant is suitable to be licensed or recognised in a Licence Appeal to the Adjudication Panel is on the Applicant.

5.3 The standard of proof in relation to disputed facts is on the balance of probabilities.

6. Representation

6.1 A party may appoint a representative to represent that party in the proceedings and at any hearing. That representative must be either practising Counsel, a practising Solicitor, a representative from any professional organisation of which they are a member; or at the discretion of the Adjudication Panel, another person.

6.2 If a party appoints a representative, that party must provide the Adjudication Panel and the other party with the name, address and email address of the representative, within 7 days of their appointment.

6.3 A person appointed by a party as their representative may carry out any action or receive any document on behalf of that party except for:

- (a) signing a witness statement
- (b) giving evidence at any hearing

6.4 If a representative is appointed on behalf of a party, it is assumed that the representative remains authorised to act on behalf of that party, and to receive any documentation on behalf of that party, until the Adjudication Panel and the other party receives written notification to the contrary from the representative or the represented party.

6.5 No other person shall appear at an Adjudication Panel hearing to represent a party without the written permission of the Adjudication Panel Chair.

7. The Adjudication Panel

Composition of the panels for appeals

7.1 The Adjudication Panel appointed to hear an appeal must be composed of three members, of whom one must be a CLC Lawyer member. If the appeal is against an Adjudication Panel decision no member who sat as a member of the substantive hearing panel can sit on the appeal.

7.2 It is the responsibility of the Adjudication Panel Chair to appoint the panel, in accordance with the Adjudication Panel Constitution Rules

Legal Advisor

7.3 Every appeal panel will either have:-

- (a) a legally qualified Chair, who is able to advise the panel on the relevant law should any matters arise or,
- (b) if the appointed Chair is not legally qualified, a Legal Advisor to provide appropriate legal advice to the appeal panel

if the Adjudication Panel Chair considers it necessary, having made an assessment of the issues in the case.

Delegation

7.4 The Adjudication Panel Chair will consider any Appeal Notice and confirm if it complies with the Appeal Notice Requirements before appointing a hearing panel.

7.5 In the event of the Adjudication Panel Chair being absent or unable to act or continue to act, anything authorised or required to be done by the Adjudication Panel Chair may be done by any other Adjudication Panel member who is authorised for the purpose by the Adjudication Panel Chair.

8. Consequences of making Appeal

8.1 Where an appeal is against:

- (a) a Disciplinary decision of the Adjudication Panel;
- (b) an order as to the payment of costs;
- (c) a direction for payment of a penalty;
- (d) a decision of the Council in relation to a licence under the 1985 Act; or
- (e) a decision of the Council under the ABS Licensing Framework

the decision shall not take effect (and no penalty or costs will be payable) pending consideration of the appeal by the Adjudication Panel.

8.2 Where an appeal is requested, the Adjudication Panel shall review the existing order, direction, or decision that forms the subject of the appeal. The appeal will not be a re-hearing. The Adjudication Panel shall assess whether the order, direction, or decision was within the range of reasonable options open to the Panel and proportionate in all the circumstances.

8.3 Rule 8.1(d) and 8.1(e) do not apply to automatic consequences for licences as a result of intervention.

8.4 Where an appeal is against a decision not to grant a licence or give recognition the individual or business will remain unlicensed or without recognition pending consideration of the appeal by the Adjudication Panel.

9. Adjudication Panel powers

9.1 The Adjudication Panel, when considering an appeal, may

- (a) Give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending, or setting aside an earlier direction;
- (b) Extend or shorten the time for complying with any rule or direction, unless such extension or shortening would conflict with the over-riding objective;

- (c) Consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues;
- (d) Deal with an issue in the proceedings as a preliminary issue;
- (e) Hold a hearing to consider any case management issue;
- (f) Permit or require a party to amend a document, where it is in the interests of justice to do so;
- (g) Exclude evidence that was not before the original decision maker(s) unless
 - (i) The evidence was not relevant to the matter being considered
 - (ii) The evidence was not provided within the time specified by a direction
 - (iii) The evidence was not provided in a manner or format specified by a direction
 - (iv) It would be otherwise unfair to admit the evidence;
- (h) Compel a party to attend and/or to produce documents in accordance with paragraph 2 of Schedule 4 to the 1985 Act;
- (i) Adjourn or postpone a hearing.

9.2 All decisions made by a three-member panel will be made on the basis of a majority decision, with all members of the panel having an equal vote.

10. Arrangements for an appeal hearing

10.1 Where the Adjudication Panel Chair confirms an appeal complies with the Appeal Notice Requirements the Adjudication Panel Assistant will notify the CLC and the Appellant.

10.2 The Adjudication Panel Chair shall thereafter

- (a) appoint an appeal panel and Chair, in accordance with the requirements set out at Rule 7.1 and 7.2 above.
- (b) Make an assessment as to whether a Legal Advisor is required to advise the appeal panel on the relevant law at the hearing, in accordance with rule 7.3 above.
- (c) Arrange for service of a notice of the hearing on the appeal panel and parties, which must include the date, time and location of the hearing and the names of the appeal panel members. The date notified must be not earlier than 14 days from the date of the notice of the meeting or hearing.
- (d) issue such directions in the case that they deem appropriate, bearing in mind the overriding objectives and any application in writing by the parties. Directions may include the calling of a case management hearing if necessary.

11. Hearing

11.1 The Chair shall be responsible for the management of the hearing.

11.2 The appeal panel considering an appeal may hear two or more appeals at the same time where it would be just to do so.

11.3 There is a presumption that all hearings (except for decisions relating to the grant or refusal of a licence or recognition) will be held in public, unless a direction has been made by the Chair that it will be held in private. Such a direction will only be made where the appeal panel are satisfied that the particular circumstances of the case outweigh the public interest in holding the hearing, or any part of the hearing, in public. It will only be made in exceptional circumstances, and reasons must be given for the making of that decision.

11.4 If, at the hearing, the Appellant is not present or represented, the appeal panel may proceed to determine the appeal in the Appellant's absence if it is satisfied it is in the interests of justice to do so. Before deciding to proceed in the absence of the Appellant:

- (a) the appeal panel must be satisfied that the Appellant has been sent notice of the hearing;

- (b) The CLC should confirm whether the Appellant made any contact with CLC as a result of receiving notice of the hearing;
 - (c) The CLC should confirm if any information has been received which would suggest that it is not in the interests of justice to proceed without the Appellant being present.
- 11.5 The appeal panel, or the Chair, may give a direction excluding any person (who is not a party to the proceedings) from a hearing or part of a hearing if:
- (a) The appeal panel considers their conduct is disrupting or is likely to disrupt the hearing
 - (b) The appeal panel considers their presence is likely to prevent another person from giving evidence or making submissions freely.
- 11.6 At the request of either party, or of its own volition, the appeal panel (or the Chair alone) may adjourn the hearing if it is satisfied it is in the interests of justice to do so. An application for an adjournment may be made by a party in writing in advance of the hearing, or orally at the hearing itself.
- 11.7 The order of proceedings for the appeal hearing before the appeal panel, unless the Chair otherwise directs will consist of the following:
- (a) The Appellant will refer the appeal panel to the existing decision in their case and outline their grounds of appeal;
 - (b) The CLC will respond to the appeal;
 - (c) The parties may only adduce fresh evidence with the permission of the appeal panel (or the Chair);
 - (d) The Appellant will be permitted to make any closing submissions;
 - (e) The appeal panel shall determine the appeal and announce its decision.
- 11.8 The appeal panel considering any appeal may:
- (a) Dismiss the appeal and uphold the original decision;
 - (b) Allow the appeal (in full or in part) and vary the original decision or make any decision which would have been available to the original decision makers;
 - (c) Make such order for costs as it thinks fit, having sought and considered submissions from the parties.
- 11.9 Any oral evidence will be given on oath or by affirmation.
- 11.10 Any application for costs must be accompanied by a Schedule of Costs prepared by the party applying, which should be made in writing and usually have been served on the other party at least 2 working days earlier.
- 11.11 Where the Appellant wishes to make representations about their ability to pay this must be accompanied by a signed and dated Statement of Means served at least 2 working days earlier.
- 11.12 A complete record of the hearing must be made and retained for a period of []. That record should be in the form of a digital audio recording, but in the event that is not practically possible, the Chair must make a full note and their note will stand as the official record of the hearing.
- 11.13 The record of the appeal panel's decision with detailed reasons, will be distributed to the parties and filed with the CLC within five working days of the conclusion of the hearing.
- 11.14 Within 28 days of the conclusion of the hearing:
- (a) Where an appeal against a disciplinary case is dismissed the original decision will then be published on the CLC website.

- (b) Where an appeal is allowed (in full or in part) and the Adjudication Panel varies the original decision or makes a new decision, that appeal decision will then be published on the CLC website.

12. Correcting mistakes and omissions

12.1 The Adjudication Panel may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by:

- (a) Sending notification of the amended decision or direction, or a copy of the amended document, to each party, and
- (b) Making any amendment to information published in relation to the decision, direction or document.

ANNEX 4

DRAFT ADJUDICATION PANEL RESTORATION PROCEDURE RULES 2022

These Rules were made by the Council for Licensed Conveyancers under sections 20, 24(4A), 25 and Schedules 4 and 6 to the Administration of Justice Act 1985 and as part of the regulatory arrangements of the CLC, with the approval of the Legal Services Board pursuant to section 30 and paragraph 1 of the Legal Services Act 2007.

CONTENTS

1. Commencement

The Rules may be cited as the CLC's Adjudication Panel Restoration Rules and shall come into effect on

2. Interpretation

Words and expressions shall have the meanings given to them by:

- (a) the 1985 Act, the 1990 Act and the 2007 Act;
- (b) the Adjudication Panel Constitution Rules 2022;
- (c) the Adjudication Panel Disciplinary Procedure Rules 2022;
- (d) The Adjudication Panel Fraud and Error Procedure Rules 2022;
- (e) The Adjudication Panel Licensing and Recognition Appeal Procedure Rules 2022; or
- (f) as set out below

"Applicant" means an individual or a body who is applying for any of the following:

- removal of disqualification from holding a licence under s27(1) of the 1985 Act
- a licence under s29(1) of the 1985 Act
- recognition of a body under paragraph 8 of Schedule 6 of the 1985 Act
- a licence under the ABS Licensing Framework made pursuant to the 2007 Act
- removal or waiver of a disqualification from holding a role within a Recognised Body or CLC Licenced Body

"party" is as defined in the 1985 Act (Schedule 4) and may include Applicants, the CLC, Licensees, CLC Role Holders, and Appellants

"working day" includes any day except a Saturday or Sunday, Christmas Day, Good Friday or a Bank Holiday under section 1 of the Banking and Financial Dealings Act 1971

Any direction to be complied with on or by a particular day must be complied with before 5pm on that day.

3. **Sending and Delivery of Documents**

Any document to be provided to the Adjudication Panel or the parties under these Rules or a direction must be:

- (a) sent by pre-paid post to the address of the recipient;
- (b) delivered by hand to the address of the recipient; or
- (c) sent by email to the email address of the recipient, with a delivery receipt requested as proof of sending, provided that the parties have agreed to service by email.

4. **Function and Scope of these Rules**

4.1 Where an Applicant has previously:

- (a) Had their CLC licence or recognition revoked by an Adjudication Panel (or the Discipline and Appeals Panel) or as a result of a licence being issued or recognition being granted as a result of fraud or error;
- (b) Been disqualified by an Adjudication Panel (or the Discipline and Appeals Panel) from holding a licence and that period of disqualification is ongoing;
- (c) Been disqualified by an Adjudication Panel (or the Discipline and Appeals Panel) from holding a role within a Recognised Body or CLC Licenced Body and that period of disqualification is ongoing;

their application for a new licence or recognition must be decided in accordance with these rules.

4.2 The objective of these Rules is to enable the Adjudication Panel to deal with cases in accordance with its overriding objectives.

4.3 The Adjudication Panel's overriding objectives are:

- (a) To protect the public and consumers of legal services;
- (b) To protect, promote and maintain public confidence in the profession of Licensed Conveyancing
- (c) To promote and maintain proper standards and conduct amongst Licensed Conveyancers
- (d) To deal with cases fairly and justly.

4.4 Dealing with a case fairly and justly includes:

- (a) Dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the public interest in the case, the anticipated costs and the resources of the parties;
- (b) Avoiding unnecessary formality in the proceedings;
- (c) Ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) Avoiding unnecessary delay.

4.5 The Adjudication Panel must seek to give effect to the overriding objective when it exercises any power under these Rules.

4.6 The parties to a case must help the Adjudication Panel to further the overriding objective and co-operate with the Adjudication Panel to the best of their ability in the circumstances.

5. **Burden and Standard of Proof**

- 5.1 The burden of proving to the Adjudication Panel that a licence should be granted or disqualification revoked is on the Applicant.
- 5.2 The standard of proof in relation to disputed facts is on the balance of probabilities.
6. **Representation**
- 6.1 A party may appoint a representative to represent that party in the proceedings and at any hearing. That representative must be either practising Counsel, a practising Solicitor, a representative from any professional organisation of which they are a member; or at the discretion of the Adjudication Panel, another person.
- 6.2 If a party appoints a representative, that party must provide the Adjudication Panel and the other party with the name, address and email address of the representative, within 7 days of their appointment.
- 6.3 A person appointed by a party as their representative may carry out any action or receive any document on behalf of that party except for:
- (a) signing a witness statement
 - (b) giving evidence at any hearing
- 6.4 If a representative is appointed on behalf of a party, it is assumed that the representative remains authorised to act on behalf of that party, and to receive any documentation on behalf of that party, until the Adjudication Panel and the other party receives written notification to the contrary from the representative or the represented party.
- 6.5 No other person shall appear at an Adjudication Panel hearing to represent a party without the written permission of the Adjudication Panel Chair.
7. **The Adjudication Panel**
- Composition of the panels
- 7.1 The Adjudication Panel appointed to hear a case must be composed of three members, of whom one must be a CLC Lawyer member.
- 7.2 It is the responsibility of the Adjudication Panel Chair to appoint the hearing panel, in accordance with the Adjudication Panel Constitution Rules.
- Legal Advisor
- 7.3 Every hearing panel will either have:-
- (a) a legally qualified Chair, who is able to advise the hearing panel on the relevant law should any matters arise or,
 - (b) if the appointed Chair is not legally qualified, a Legal Advisor to provide appropriate legal advice to the hearing panel
- if the Adjudication Panel Chair considers it necessary, having made an assessment of the issues in the case.
- Delegation
- 7.4 In the event of the Adjudication Panel Chair being absent or unable to act or continue to act, anything authorised or required to be done by the Adjudication Panel Chair may be done by any other Adjudication Panel member who is authorised for the purpose by the Adjudication Panel Chair.
8. **Applications**
- 8.1 An Applicant subject to one of the outcomes set out at 4.1 may apply to have their disqualification revoked and/or a licence issued or recognition granted by applying in writing to the CLC.
- 8.2 Such applications can only be made after at least 10 months have elapsed from:

- (a) the date of the relevant order;
- (b) the date of the last such application.

8.3 Such applications will be accompanied by any evidence the Applicant wishes the Adjudication Panel to consider.

8.4 If the CLC wishes to oppose the application it must send to the Applicant a written summary of the facts relied on and any supporting evidence usually within 42 days.

8.5 The CLC, having received the Applicant's application and having provided its response to the Applicant should refer the case to the Adjudication Panel Chair within 14 days.

9. **Adjudication Panel powers**

9.1 The Adjudication Panel, when considering a case referred to it, may

- (a) Give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending, or setting aside an earlier direction;
- (b) Extend or shorten the time for complying with any rule or direction, unless such extension or shortening would conflict with the over-riding objective;
- (c) Consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues;
- (d) Deal with an issue in the proceedings as a preliminary issue;
- (e) Hold a hearing to consider any case management issue;
- (f) Permit or require a party to amend a document, where it is in the interests of justice to do so;
- (g) Exclude evidence that would otherwise be admissible where
 - (i) The evidence was not relevant to the matter being considered
 - (ii) The evidence was not provided within the time specified by a direction
 - (iii) The evidence was not provided in a manner or format specified by a direction
 - (iv) It would be otherwise unfair to admit the evidence;
- (h) Compel a party to attend and/or to produce documents in accordance with paragraph 2 of Schedule 4 to the 1985 Act;
- (i) Adjourn or postpone a hearing;

9.2 All decisions made by a three-member panel will be made on the basis of a majority decision, with all members of the panel having an equal vote.

10. **Referral to hearing**

10.1 Where the CLC has referred a restoration case to an Adjudication Panel the Adjudication Panel Assistant will notify the CLC, the Applicant and the Adjudication Panel Chair and request either a meeting or a hearing.

10.2 The Adjudication Panel Chair shall thereafter

- (a) appoint a hearing panel and Chair, in accordance with the requirements set out at Rule 7.1 and 7.2 above.
- (b) make an assessment as to whether a Legal Advisor is required to advise the hearing panel on the relevant law at the hearing, in accordance with rule 7.3 above.

- (c) arrange for service of a notice of the hearing on the panel and parties, which must include the date and the names of the hearing panel members for the meeting or hearing, and for a hearing, the time and location of the hearing. The date notified must be not earlier than 14 days from the date of the notice of the meeting or hearing.
- 10.3 The Chair will issue any directions in the case that they deem appropriate, bearing in mind the overriding objectives and any application in writing by the parties. Directions may include the calling of a case management hearing if necessary.
11. **Meeting**
- 11.1 The Adjudication Panel Assistant shall before the meeting of the meeting panel provide to each meeting panel member:
- (a) a copy of the application and any documents sent under 8.1; and
 - (b) copies of any written representations and documents provided by the CLC
- 11.2 The provisions as to evidence and costs set out at 12.12 to 12.16 will apply.
- 11.3 There will not be a formal record of the meeting.
- 11.4 The meeting panel will decide whether to advise the CLC to, as appropriate,:
- (a) Issue a licence;
 - (b) Grant recognition;
 - (c) Permit a person to hold a role within a Recognised Body or Licensed Body.
- 11.5 The meeting panel may make such order as it thinks fit in relation to the payment of costs.
- 11.6 The meeting panel's advice, with detailed reasons, will be distributed to the parties and filed with the CLC within five working days of the conclusion of the hearing.
12. **Hearing**
- 12.1 The Chair shall be responsible for the management of the hearing.
- 12.2 There is a presumption that all restoration hearings will be held in private, unless an Applicant requests that it be held in public.
- 12.3 If, at the hearing, the Applicant is not present or represented, the hearing panel may proceed to hear the matter in the Applicant's absence if it is satisfied it is in the interests of justice to do so. Before deciding to proceed in the absence of the Applicant:
- (a) the hearing panel must be satisfied that the Applicant has been sent notice of the hearing.
 - (b) The CLC should confirm whether the Applicant made any contact with the CLC as a result of receiving notice of the hearing.
 - (c) The CLC should confirm if any information has been received which would suggest that it is not in the interests of justice to proceed without the Applicant being present, bearing in mind the nature of restoration cases.
- 12.4 At any public hearing the hearing panel, or the Chair may give a direction excluding any person (who is not a party to the proceedings) from a hearing or part of a hearing if:
- (a) The hearing panel considers their conduct is disrupting or is likely to disrupt the hearing; or
 - (b) The hearing panel considers their presence is likely to prevent another person from giving evidence or making submissions freely.

- 12.5 The hearing panel, or the Chair, may make a direction excluding a witness from a hearing until that person gives evidence.
- 12.6 At the request of either party, or of its own volition, the hearing panel (or the Chair alone) may adjourn the hearing if it is satisfied it is in the interests of justice to do so. An application for an adjournment may be made by a party in writing in advance of the hearing, or orally at the hearing itself.
- 12.7 The order of proceedings for the hearing before the Adjudication hearing panel, unless the Chair otherwise directs, are set out in the Hearing Guidance.
- 12.8 The hearing will consist of two stages;
- (a) The Restoration stage: where the hearing panel will decide whether to advise the CLC whether or not to:
 - (i) Issue a licence;
 - (ii) Grant recognition;
 - (iii) Permit a person to hold a role within a Recognised Body or Licensed Body
 - (b) The Costs stage; where the hearing panel may make such order for costs as it thinks fit.
- 12.9 The hearing panel must make its decision at each stage before moving on to the next, and must not conflate the stages in any way. Submissions however can be made on the various stages together, if the hearing panel considers it appropriate in the facts of the case.
- 12.10 All oral evidence will be given on oath or by affirmation.
- 12.11 Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas, that states a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.
- 12.12 Production of a Court order, finding or certified note of a civil court penalty or findings of fact shall be conclusive proof of the facts found or penalty imposed.
- 12.13 Production of a certificate signed by an officer of a regulatory body in the UK or overseas, that has made a determination about the fitness to practise of a person shall be conclusive evidence of the facts found proved in relation to that determination.
- 12.14 The hearing panel has the power to award costs against either party. Any application for costs must be accompanied by a Schedule of Costs prepared by the party applying, which should be made in writing and usually have been served on the other party at least 24 hours earlier.
- 12.15 Where the Applicant wishes to make representations about their ability to pay this must be accompanied by a signed and dated Statement of Means.
- 12.16 A complete record of the hearing must be made and retained in accordance with the CLC's data retention policy. That record should be in the form of a digital audio recording, but in the event that is not practically possible, the Chair must make a full note and their note will stand as the official record of the hearing.
- 12.17 The record of the hearing panel's findings, with detailed reasons, will be distributed to the parties and filed with the CLC within five working days of the conclusion of the hearing. The CLC will take steps to promptly implement the advice given by the hearing panel.
13. **Appeal**
- 13.1 There is no appeal from decisions made under these Rules.
14. **Correcting mistakes and omissions**

- 14.1 The Adjudication Panel may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by:
- (a) Sending notification of the amended decision or direction, or a copy of the amended document, to each party, and
 - (b) Making any amendment to information published in relation to the decision, direction or document.

ANNEX 5

DRAFT ADJUDICATION PANEL FRAUD AND ERROR PROCEDURE RULES 2022

These Rules were made by the Council for Licensed Conveyancers under sections 20, 24(4A), 25, and Schedules 4 and 6 to the Administration of Justice Act 1985 and as part of the regulatory arrangements of the CLC, with the approval of the Legal Services Board pursuant to section 30 and paragraph 1 of the Legal Services Act 2007.

CONTENTS

1. Commencement

These Rules may be cited as the CLC's Adjudication Panel Fraud and Error Procedure Rules and shall come into effect on save that:

- (a) no prior decision of the Investigating Committee, the Discipline and Appeals Committee or the Adjudication Panel shall be invalidated by the coming into force of these Rules.

2. Interpretation

Words and expressions shall have the meanings given to them by:

- (a) the 1985 Act, the 1990 Act and the 2007 Act;
- (b) the Adjudication Panel Constitution Rules 2022;
- (c) the Adjudication Panel Disciplinary Procedure Rules 2022
- (d) the Adjudication Panel Licensing and Recognition Appeal Procedure Rules 2022;
- (e) the Adjudication Panel Restoration Procedure Rules 2022; or
- (f) as set out below

"party" is as defined in the 1985 Act (Schedule 4) and may include the CLC, Licensees, CLC Role Holders, and Appellants

"registered address" means the Licensee's address in the Register and/or their last known address

"Respondent" in these Rules means the Licensed Conveyancer or Recognised Body whose licence it is suggested was issued or recognition granted as a result of fraud or error

"working day" includes any day except a Saturday or Sunday, Christmas Day, Good Friday or a Bank Holiday under section 1 of the Banking and Financial Dealings Act 1971

Any direction to be complied with on or by a particular day must be complied with before 5pm on that day.

3. Sending and Delivery of Documents

Any document to be provided to the Adjudication Panel or the parties under these Rules or a direction must be:

- (a) sent by pre-paid post to the registered address of the recipient;
- (b) delivered by hand to the registered address of the recipient; or
- (c) sent by email to the registered email address of the recipient, with a delivery receipt requested as proof of sending, provided that the parties have agreed to service by email.

4. Function and Scope of these Rules

- 4.1 Any concern that a licence has been issued or recognition granted as a result of fraud or error shall be dealt with in accordance with these Rules. These Rules outline the procedure to be followed for decisions made pursuant to s28 or paragraph 7 of Schedule 6 of the Administration of Justice Act 1985.
- 4.2 The objective of these Rules is to enable the Adjudication Panel to deal with cases in accordance with its overriding objectives.
- 4.3 The Adjudication Panel's overriding objectives are:
- (a) To protect the public and consumers of legal services;
 - (b) To protect, promote and maintain public confidence in the profession of Licensed Conveyancing;
 - (c) To promote and maintain proper standards and conduct amongst Licensed Conveyancers;
 - (d) To deal with cases fairly and justly.
- 4.4 Dealing with a case fairly and justly includes: -
- (a) Dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the public interest in the case, the anticipated costs and the resources of the parties;
 - (b) Avoiding unnecessary formality in the proceedings;
 - (c) Ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) Avoiding unnecessary delay.
- 4.5 The Adjudication Panel must seek to give effect to the overriding objective when it exercises any power under these Rules.
- 4.6 The parties to a case must help the Adjudication Panel to further the overriding objective and co-operate with the Adjudication Panel to the best of their ability in the circumstances.
5. **Burden and Standard of Proof**
- 5.1 The burden of proving to the Adjudication Panel the fraud or error that resulted in the issue of a licence or recognition is on the CLC.
- 5.2 The standard of proof in relation to disputed facts is on the balance of probabilities.
6. **Representation**
- 6.1 A party may appoint a representative to represent that party in the proceedings and at any hearing. That representative must be either practising Counsel, a practising Solicitor, a representative from any professional organisation of which they are a member; or at the discretion of the Adjudication Panel, another person.
- 6.2 If a party appoints a representative, that party must provide the Adjudication Panel and the other party with the name, address and email address of the representative, within 7 days of their appointment.
- 6.3 A person appointed by a party as their representative may carry out any action or receive any document on behalf of that party except for:
- (a) signing a witness statement
 - (b) giving evidence at any hearing
- 6.4 If a representative is appointed on behalf of a party, it is assumed that the representative remains authorised to act on behalf of that party, and to receive any documentation on behalf of that party, until the Adjudication Panel and the other party receives written notification to the contrary from the representative or the represented party.
- 6.5 No other person shall appear at an Adjudication Panel hearing to represent a party without the written permission of the Adjudication Panel Chair.

7. **The Adjudication Panel**

Composition of the panels

- 7.1 The Adjudication Panel appointed to hear a case must be composed of three members, of whom one must be a CLC Lawyer member.
- 7.2 It is the responsibility of the Adjudication Panel Chair to appoint the hearing panel, in accordance with the Adjudication Panel Constitution Rules.

Legal Advisor

- 7.3 Every hearing panel will either have:-
- (a) a legally qualified Chair, who is able to advise the hearing panel on the relevant law should any matters arise or,
 - (b) if the appointed Chair is not legally qualified, a Legal Advisor to provide appropriate legal advice to the hearing panel,
- if the Adjudication Panel Chair considers it necessary, having made an assessment of the issues in the case.

Delegation

- 7.4 In the event of the Adjudication Panel Chair being absent or unable to act or continue to act, anything authorised or required to be done by the Adjudication Panel Chair may be done by any other Adjudication Panel member who is authorised for the purpose by the Adjudication Panel Chair.

8. **Initial stages and Adjudication Panel procedure and powers**

- 8.1 Where the CLC identify a case in which it is alleged that a licensed conveyancer or recognised body has been issued with a licence or granted recognition as a result of fraud or error it must send to the Respondent a written summary of the facts relied on and any supporting evidence and seek the Respondent's representations.
- 8.2 If the Respondent wishes to provide representations they should do so within 14 days, setting out any matter on which they would rely if the matter proceeded to a hearing before the Adjudication Panel.
- 8.3 If the CLC, having received the Respondent's response document or after 14 days, intend to proceed with a referral to the Adjudication Panel, that referral, in the form of the summary of facts and supporting evidence, and any response and documents received from the Respondent, must be made to the Adjudication Panel Chair within 14 days of any Respondent's response being received or if not received, 14 days from expiry of the 7-day period.

9. **Adjudication Panel powers**

- 9.1 The Adjudication Panel, when considering a case referred to it, may
- (a) Give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending, or setting aside an earlier direction;
 - (b) Extend or shorten the time for complying with any rule or direction, unless such extension or shortening would conflict with the overriding objective;
 - (c) Consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues;
 - (d) Deal with an issue in the proceedings as a preliminary issue;
 - (e) Hold a hearing to consider any case management issue;

- (f) Permit or require a party to amend a document, where it is in the interests of justice to do so;
 - (g) Exclude evidence that would otherwise be admissible where
 - (i) The evidence was not relevant to the matter being considered
 - (ii) The evidence was not provided within the time specified by a direction
 - (iii) The evidence was not provided in a manner or format specified by a direction
 - (iv) It would be otherwise unfair to admit the evidence;
 - (h) Compel a party to attend and/or to produce documents in accordance with paragraph 2 of Schedule 4 to the 1985 Act;
 - (i) Adjourn or postpone a hearing.
- 9.2 All decisions made by a three-member panel will be made on the basis of a majority decision, with all members of the panel having an equal vote.
- 10. Referral to hearing**
- 10.1 Where the CLC has referred a fraud or error case to an Adjudication Panel, the Adjudication Panel Assistant will notify the CLC, the Respondent and the Adjudication Panel Chair and request a meeting for an error case or an oral hearing for a fraud case.
- 10.2 The Adjudication Panel Chair shall thereafter
- (a) appoint a meeting or hearing panel and Chair, in accordance with the requirements set out at Rule 7.1 and 7.2 above.
 - (b) make an assessment as to whether a Legal Advisor is required to advise the hearing panel on the relevant law at the meeting or hearing, in accordance with rule 7.3 above.
 - (c) arrange for service of a notice of the meeting or hearing on the panel and parties, which must include the date, time and location of the hearing and the names of the hearing panel members. The date notified must be not earlier than 14 days from the date of the notice of the meeting or hearing.
- 10.3 The Chair will issue any directions in the case that they deem appropriate, bearing in mind the overriding objectives and any application in writing by the parties. Directions may include the calling of a case management hearing if necessary and the listing of an error case as a hearing if the Chair deems this appropriate.
- 11. Meeting**
- 11.1 The Adjudication Panel Assistant shall before the meeting of the meeting panel provide to each panel member:
- (a) a copy of the notice and any documents sent under 8.1; and
 - (b) copies of any written representations and documents received from the Respondent.
- 11.2 The provisions as to evidence and costs set out at 12.12 to 12.16 will apply.
- 11.3 Before reaching a decision on the matter, the meeting panel may if they think fit, cause further investigations to be made or request further information from the CLC or from the Respondent.
- 11.4 There will not be a formal record of the meeting.
- 11.5 The meeting panel will decide whether it is satisfied that a licence was issued or recognition granted as a result of any error or fraud and may if they think fit, revoke the licence or recognition.

- 11.6 The meeting panel may make such order as it thinks fit in relation to the payment of costs.
- 11.7 The meeting panel's findings, with detailed reasons, will be distributed to the parties and filed with the CLC within five working days of the conclusion of the hearing. Where the meeting panel have ordered revocation of the licence or recognition it shall take immediate effect.
12. **Hearing**
- 12.1 The Chair shall be responsible for the management of the hearing.
- 12.2 The hearing panel may hear cases against two or more Respondents at the same time where it would be just to do so.
- 12.3 There is a presumption that all fraud or error hearings will be held in private, unless a Respondent requests that it be held in public.
- 12.4 If, at the hearing, the Respondent is not present or represented, the hearing panel may proceed to hear the matter in the Respondent's absence if it is satisfied it is in the interests of justice to do so. Before deciding to proceed in the absence of the Respondent:
- (a) the hearing panel must be satisfied that the Respondent has been sent notice of the hearing.
 - (b) The CLC should confirm whether the Respondent made any contact with the CLC as a result of receiving notice of the hearing.
 - (c) The CLC should confirm if any information has been received which would suggest that it is not in the interests of justice to proceed without the Respondent being present, bearing in mind the seriousness nature of fraud or error cases.
- 12.5 At any public hearing, the hearing panel, or the Chair may give a direction excluding any person (who is not a party to the proceedings) from a hearing or part of a hearing if:
- (a) The hearing panel considers their conduct is disrupting or is likely to disrupt the hearing.
 - (b) The hearing panel considers their presence is likely to prevent another person from giving evidence or making submissions freely.
- 12.6 The hearing panel, or the Chair, may make a direction excluding a witness from a hearing until that person gives evidence.
- 12.7 At the request of either party, or of its own volition, the hearing panel (or the Chair alone) may adjourn the hearing if it is satisfied it is in the interests of justice to do so. An application for an adjournment may be made by a party in writing in advance of the hearing, or orally at the hearing itself.
- 12.8 The order of proceedings for the hearing before the Adjudication hearing panel, unless the Chair otherwise directs, are set out in the Hearing Guidance.
- 12.9 The hearing will consist of three stages;
- (a) The Fraud/Error stage; where the hearing panel will decide whether it is satisfied that the licence was issued or recognition granted as a result of fraud or error;
 - (b) The Revocation stage; where, if it is satisfied that the licence was issued or recognition granted as a result of fraud or error the hearing panel will decide whether to revoke the licence or recognition;
 - (c) The Costs stage; where the hearing panel may make such order for costs as it thinks fit.
- 12.10 The hearing panel must make its decision at each stage before moving on to the next, and must not conflate the stages in any way. Submissions however can be made on the various stages together, if the hearing panel considers it appropriate in the facts of the case.
- 12.11 All oral evidence will be given on oath or by affirmation.

- 12.12 Production of a certificate, purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas, that states a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.
- 12.13 Production of a Court order, finding or certified note of a civil court penalty or findings of fact shall be conclusive proof of the facts found or penalty imposed.
- 12.14 Production of a certificate signed by an officer of a regulatory body in the UK or overseas, that has made a determination about the fitness to practise of a person shall be conclusive evidence of the facts found proved in relation to that determination.
- 12.15 The hearing panel has the power to award costs against either party. Any application for costs must be accompanied by a Schedule of Costs prepared by the party applying, which should be made in writing and usually have been served on the other party at least 24 hours earlier.
- 12.16 Where the Respondent wishes to make representations about their ability to pay this must be accompanied by a signed and dated Statement of Means.
- 12.17 A complete record of the hearing must be made and retained in accordance with the CLC's data retention policy. That record should be in the form of a digital audio recording, but in the event that is not practically possible, the Chair must make a full note and their note will stand as the official record of the hearing.
- 12.18 The record of the hearing panel's findings, with detailed reasons, will be distributed to the parties and filed with the CLC within five working days of the conclusion of the hearing. Where the hearing panel has directed revocation of the licence or recognition it shall take immediate effect.

13. **Appeal**

- 13.1 There is no appeal from decisions under these Rules.

14. **Correcting mistakes and omissions**

- 14.1** The Adjudication Panel may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by:
- (a) Sending notification of the amended decision or direction, or a copy of the amended document, to each party, and
 - (b) Making any amendment to information published in relation to the decision, direction or document.