



Schedule 4 Rules Change Application – Adjudication Panel

LSB Application Requirement	Case for amendment of CLC Regulatory Arrangements relating to the Adjudication Panel
<p>a. Contact</p>	<p>Simon Blandy Email address: simonb@clc-uk.org Tel no: 01245 349599 CLC, 16 Glebe Road, Chelmsford, Essex. CM1 1QG</p>
<p>b. Details of the proposed alteration/regulatory arrangements</p>	<p><u>Overview</u></p> <p>The CLC is an approved regulator of Licensed Conveyancers and a Licensing Authority for entities providing legal services. The mechanics of the jurisdictions for determination of the CLC’s regulatory decisions and appeals against them in each case are rather different. We are now proposing amendments that will bring them closer together, thus simplifying the regulatory framework and making some reduction in the regulatory burden. We do not propose any changes to the substance of regulation. These proposals are aimed simply at streamlining procedures and increasing consistency. The changes are clearly for the benefit of the regulated community in that they will help to reduce red tape, as well as regulatory and compliance costs without adversely impacting the rigour with which the CLC determines regulatory issues. They benefit the consumer (as well as the regulated community) in providing a robust, independent process to ensure that the CLC carries out its regulatory functions fairly and proportionately.</p>

Separately, the CLC has made an application which is currently being considered by the LSB and the Ministry of Justice for a s.69 Order. One of the statutory amendments proposed is that appeals from disciplinary decisions made by the Adjudication Panel (exercising the functions of the Discipline and Appeals Committee) are determined by the First Tier Tribunal, rather than by the High Court, as currently provided. Both the LSB and the Ministry of Justice have confirmed that they have identified no reason in policy terms why the amendments proposed should not be made. Some minor consequential amendments will need to be made to the Adjudication Panel Rules 2013, the Adjudication Panel Procedure Rules 2013 and to the Regulation and Enforcement Policy when the s.69 Order is made (it is hoped that the LSB will agree that these further amendments can be categorised as Exemption Alterations under its Rules for Rule Change Applications).

The Adjudication Panel Flowchart and Table 'Adjudication Panel Jurisdiction' (at attachments A and B, pages 12-17) summarise the Adjudication Panel's proposed jurisdiction and the rights of appeal following any determination made by the Adjudication Panel.

The LSB is asked to approve the following (with the exception of the Adjudication Panel Procedure Rules 2013, all amendments made have been tracked):

- (a) The Adjudication Panel Rules 2013 (attachment C, pages 18-29, the whole but particularly rules 2.2 & 2.4 [delegation], rule 3.3 [legal qualification of Adjudication Chair and Deputy Chair], rule 11.2-11.4 [priority of rules, standing orders and Terms of Reference], rule 12 [penalty])
- (b) The Adjudication Panel Procedure Rules 2013 (attachment D, pages 30-49, the whole)
- (c) The Licensed Conveyancer Licensing Framework 2013 (attachment E, pages 50-53, paragraphs 21 and 22 only)
- (d) The Recognised Body Recognition Framework 2013 (attachment F, pages 54-60, paragraphs 36-37 only)

- (e) The Licensed Body (ABS) Licensing Framework (attachment G, pages 61-99, paragraphs 15.2-15.5 only)
- (f) The Adjudication Panel Standing Orders 2013 (attachment H, pages 100-102)
- (g) The Adjudication Panel Terms of Reference (attachment I, pages 103-106)
- (h) Regulation and Enforcement Policy (attachment J, pages 107-123, paragraphs 5.7-5.9, 7.6-7.9, 8.1, 10.1 and Table at 6.3.1)

Background

The CLC was designated a Licensing Authority with effect from 6 October 2011. Licensing decisions made by the CLC acting as a Licensing Authority may be appealed to the Adjudication Panel and then to the First Tier Tribunal (with further appeal to the Upper Chamber on a point of law).

When it acts as an Approved Regulator, the CLC's powers are prescribed by the Administration of Justice Act 1985 (AJA) as amended by the Legal Services Act 2007. S.24 AJA requires the CLC to establish the Investigating Committee to carry out preliminary investigation to determine whether there is a case to be referred for disciplinary proceedings either to be determined by the Investigating Committee (under s.24A AJA) or by the Discipline and Appeals Committee (DAC).

The CLC is required¹ to make rules as to the constitution of the DAC, the times and places of the meetings of the Committee and the mode of summoning the members of the Committee. The Rules must further provide that a person who acted as a members of the Investigating Committee does not act in relation to that case as a member of the DAC and may provide for the appointment to the DAC or persons (whether licensed conveyancers or not) who are not members of the Council.

The CLC must make rules about the procedure and practice to be followed in relation to proceedings before the DAC. These rules are required in particular to make provision:

¹¹ S.25 AJA

- a) for securing that, where proceedings are to be brought against any person, notice that the proceedings are to be brought shall be given to that person at such time and in such manner as may be specified in the rules;
- (b) for securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the Committee;
- (c) for enabling any party to the proceedings to be represented by counsel or solicitor, or (if the rules so provide and the party so elects) by a person of such other description as may be specified in the rules;
- (d) for requiring proceedings before the Committee to be held in public so far as may be provided by the rules².

A Respondent may appeal to the High Court against a disciplinary determination made by the DAC. The DAC also hears appeals against licensing decisions made by the CLC (in respect of which there is no statutory right of appeal).

The CLC is specifically empowered to make rules providing for functions conferred on the Investigating Committee and the DAC to be discharged by a committee established under paragraph 12 schedule 8 Courts and Legal Services Act 1990 (CLSA)³.

The Adjudication Panel Rules 2013 fulfil the requirements of s.24 AJA (in respect of the Investigating Committee) and s.25 AJA (in respect of the DAC). Rules 2.1 and 2.2 Adjudication Panel Rules 2013 (page 20) provide for the powers exercisable by the Investigating Committee and the DAC to be discharged by the Adjudication Panel. The Adjudication Panel Procedure Rules 2013 fulfil the requirements of schedule 4 AJA.

Current Function of the Discipline and Appeals Committee (DAC)

The panel currently comprising the Chair, Deputy Chair and members of the DAC is appointed by a selection panel itself appointed by the CLC Council. The Chair and Deputy Chair are experienced lawyers. One half of the other members of the panel are licensed conveyancers and the other half non-licensed conveyancer

² Para 1(2) sch 4 AJA

³ The CLC relies specifically on para 12(2) sch 8 CLSA

members. The DAC sits as a tribunal of three comprising a Chair, a licensed conveyancer and a non licensed conveyancer member. It is advised by a Legal Adviser, also a senior lawyer.

Over the last 10 years the number of DAC sittings has varied. Up until early 2011 when the jurisdiction was transferred to the Legal Ombudsman the DAC determined referrals made to it where CLC practices had failed to comply with a service complaint determination made by the CLC's Investigating Committee.

Because relatively few cases are referred to the DAC, the administrative function is dealt with by the CLC. Hearings take place in rooms in Chelmsford.

Provisions which remain unaltered

The provisions in the Adjudication Panel (No 2) Rules 2011 (approved by the LSB) prescribing the membership of the Adjudication Panel, for the appointment of members to the Adjudication Panel, their terms of tenure, the circumstances in which a vacancy is created, the remuneration and suspension of members, the composition of hearings before the Adjudication Panel and its disciplinary powers remain largely unaltered.

Effect of the proposed Amendments

Since October 2011 the functions of the Investigating Committee have been carried out by an Authorised Officer of the CLC and by the Adjudication Panel. The intent of the amendments proposed is that the functions of the DAC are exercised by the Adjudication Panel. However, rather than providing in the rules for functions to be exercised by the Authorised Officer, rule 2.4 Adjudication Panel Rules 2013 (page 20) supported by rule 3 Adjudication Panel Procedure Rules 2013 (page 34) now provides for the Adjudication Panel to determine its own scheme of delegation.

The powers to award a penalty for breach of the CLC's regulatory arrangements against a licensed conveyancer and a recognised body (and a manager or employee of a recognised body) have been increased from £1 million in each case to £50 million for a licensed conveyancer or a manager or employee of a recognised body and £250 million for a recognised body (rule 12 Adjudication Panel Rules 2013, page 25).

These powers will be exercisable by the Adjudication Panel which already has power in respect of a licensed body or the owner, manager or employee of a licensed body to make the same range of penalties.

In addition, Council has approved the following further amendments:

- a. Proposal The Adjudication Panel Procedure Rules (Attachment D, pages 30-49) are reframed so that they are modeled on the procedure rules currently in force for General Regulatory Chamber (GRC Rules).

Rationale Whilst they are very prescriptive the current DAC procedure rules do not provide the DAC with adequate powers to sanction parties for failure to comply either with the rules or with directions made by the DAC. The GRC Rules provide wide authority to the Tribunal to regulate proceedings and to impose proportionate sanctions on parties for failure to comply with procedural directions.

There is an added benefit in that the Discipline and Appeals Committee Procedure Rules 2011, the CLC's Approved Regulator (Procedure) Rules 2011 and the CLC's Licensing Authority (Disciplinary Procedure) Rules 2011 will be replaced by one set of rules, the Adjudication Panel Procedure Rules 2013. The CLC's Adjudication Panel (No 2) Rules 2011 and the Licensed Conveyancers' Discipline and Appeals Committee Rules 2009 will be replaced by one set of rules, the Adjudication Panel Rules 2013.

- b. Proposal The Adjudication Panel Procedure Rules provide an overriding objective (rule 2, pages 33-34) for the Adjudication Panel to deal with cases fairly and justly.

Rationale The overriding objective (also in the GRC Rules) will reinforce the Adjudication Panel's authority to make procedural directions. This will enable the Adjudication Panel, dealing with cases fairly and justly, to require the parties, including the CLC, to comply with directions it has given (see in particular rule 6, page 36). The Standing Orders make similar provision (paragraph 3, page 100) in relation to proceedings which are not conducted in accordance with the Adjudication Panel

	<p>Procedure Rules.</p> <p>c. <u>Proposal</u> A legal adviser should only attend to advise the Adjudication Panel on evidence and procedure when required by the Adjudication Chair (rule 23(2) Adjudication Panel Procedure Rules, page 44).</p> <p><u>Rationale</u> Up to 2009 the attendance of the legal adviser was a statutory requirement (paragraph 3, schedule 4 Administration of Justice Act 1985, now repealed). Since 2009 attendance of the legal adviser has been required by the DAC Rules. It is therefore now possible for the Adjudication Panel Procedure Rules to omit any requirement for the legal adviser to attend. The original rationale for a legal adviser to attend hearings of the DAC was that there was no specific requirement for the Chair of the DAC to be legally qualified (the Adjudication Chair and Deputy Chair are required to have a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990, see rule 3.3, page 21). It is anticipated that the Adjudication Chair will be content to conduct most cases without the attendance of the Adjudication Panel. The Adjudication Chair may ask the legal adviser to attend if he is satisfied it is necessary for the fair and just disposal of the case (eg the case raises a novel issue of law).</p> <p>d. <u>Proposal</u> The Adjudication Panel may delegate (rule 2.4 Adjudication Panel Rules 2013, page 20-21 ; rule 3 Adjudication Panel Procedure Rules 2013, page 34 and definition of Adjudicator, page 32) some of its powers to CLC officers (rather than for the procedure rules to specify the functions exercisable by a CLC Officer)</p> <p><u>Rationale</u> The Adjudication Panel Procedure Rules 2011 currently provide for a CLC Officer (called an Authorised Officer) to carry out preliminary investigations with a view to deciding whether there is a case to be referred to the Adjudication Panel or the DAC, and in appropriate cases to impose fines of up to £1,000. The CLC has agreed that there will be greater clarity about the jurisdiction of the CLC Officer (and greater flexibility) if the rules provide for the Adjudication Panel to delegate functions to a CLC Officer (which can be the same as the functions currently exercised by an Authorised Officer),</p>
--	---

	<p>subject to a request by a party affected to appeal to the Adjudication Panel. Whilst this appears to produce an identical result, this proposal shifts control of disciplinary proceedings from the CLC to the Adjudication Panel.</p> <p><u>Extent of the proposed amendments</u></p> <p>Despite the number of regulatory arrangements which are being amended, the effect of the amendments proposed is limited. The Adjudication Panel Procedure Rules have been completely redrafted and substantial amendments made to the Adjudication Panel Rules 2013, the Standing Orders and the Terms of Reference.</p> <p>No amendment is required to the Student Training Framework. The amendments made to the Licensed Conveyancer Licensing Framework, the Recognised Body Recognition Framework, the Licensed Body (ABS) Licensing Framework are limited to removing the entitlement of a party to ask the Adjudication Panel to review each decision it makes (a provision first introduced in October 2011). In the CLC's view this added a superfluous layer of process where the proper course is for a party dissatisfied with a determination made by the Adjudication Panel to appeal (see Adjudication Panel Jurisdiction Schedule at page 13-17). There is no statutory right of appeal from a licensing appeal⁴ determined by the Adjudication Panel, since presumably did not consider it was necessary. The Adjudication Panel comprises entirely of independent members, none of who are members of the Council. Accordingly, a determination of the Adjudication Panel satisfies the requirements for independent decision making. Ultimately, it remains open to challenge a determination of the Adjudication Panel by an application for Judicial Review.</p> <p>The amendments to the Regulation and Enforcement Policy follow the amendments made to the other regulatory arrangements as set out above and do not raise any additional policy or drafting issues.</p>
<p>c. How and why the alteration will help to promote, be neutral towards or be</p>	<p><u>I. Protecting and promoting the public interest/improving access to justice/ increasing public understanding of the citizen's legal rights and duties</u> - the CLC does not believe that the alterations proposed will have any</p>

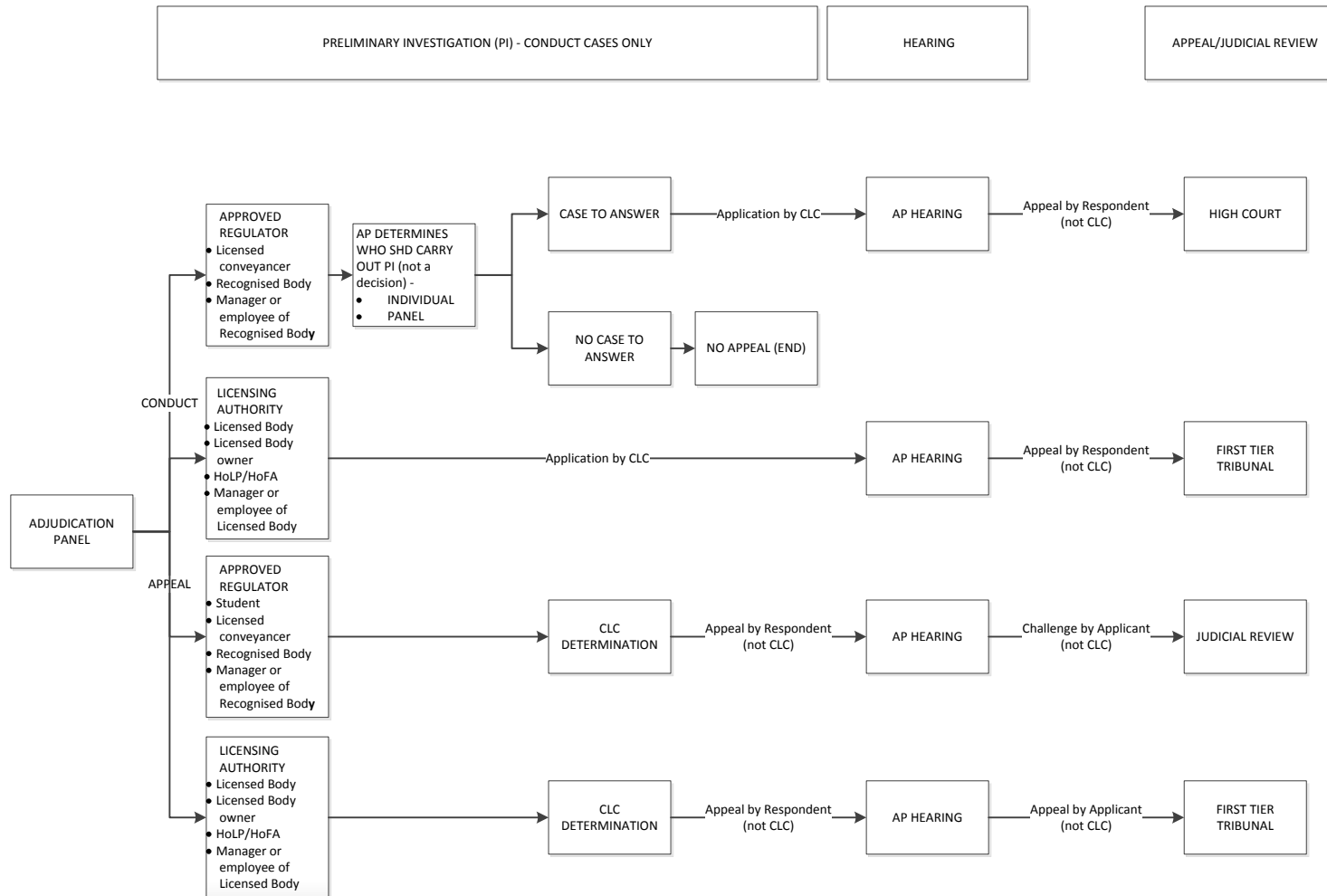
⁴ In this context a 'licensing appeal' is an appeal made under s.29 AJA against a decision made by the CLC to refuse to issue a licence or to issue a licence subject to conditions

<p>detrimental to the Regulatory Objectives</p>	<p>detrimental effect on these Regulatory Objectives and may on balance help to promote them.</p> <p><u>II. Supporting the constitutional principle of the rule of law</u> – a demonstratively fair process for exercising the CLC’s powers of enforcement and for ensuring that the CLC exercises its powers fairly and justly clearly supports the constitutional principle of the rule of law.</p> <p><u>III. Protecting and promoting the interests of consumers</u> – effective procedural arrangements ensure that the CLC is able with confidence to police compliance with its Code of Conduct and supporting codes and guidance and so protect and promote the interests of consumers.</p> <p><u>IV. Promoting competition of services provided by Authorised Persons/ encouraging an independent, strong, diverse and effective legal profession</u>– the regulatory arrangements set out a fair and proportionate process for the determination of matters by a panel with a majority of members who are not licensed conveyancers (none of whom are members of the Council or employees of the CLC). This enables the CLC effectively to ensure the regulated community complies with its regulatory arrangements and provides checks to ensure the CLC does not apply those regulatory arrangements unfairly.</p> <p><u>V. Promoting and maintaining adherence to the professional principles</u> – the regulatory arrangements as amended provide an effective way for the CLC to enforce its Code of Conduct and for applicants to challenge decisions made by the CLC.</p>
<p>d. Compliance with Better Regulation Principles</p>	<p>Proportionate: the Adjudication Panel Procedure Rules 2013 requires the Panel to deal with disciplinary cases fairly and justly and for the parties to help the Adjudication Panel further this overriding objective (rule 2, page 33-34). The Panel is given further powers in the rules to enable it to achieve that objective. The conduct of appeals from decisions made by the CLC is determined primarily by the Adjudication Panel Standing Orders. On the whole, these are likely to be less adversarial than disciplinary cases. The CLC is satisfied therefore that there is no need for the standing orders to have the same level of prescription, although paragraph 3 (page 100) provides an overriding requirement that the procedure adopted is subject to an overriding requirement of fairness.</p>

	<p>Targeted: these regulatory arrangements apply only for the conduct of disciplinary proceedings and appeals against determinations made by the CLC.</p> <p>Transparent: the revised regulatory requirements are published on the CLC website. In addition, respondents to disciplinary proceedings are provided with access to the Adjudication Panel Procedure Rules. The CLC responds to queries raised from the regulated community on the applicable procedure frankly referring to the applicable rules where appropriate.</p> <p>Accountable: the Adjudication Chair is required (paragraph 9, pages 103-104) to make a report to Council at least once in each year of key issues arising (though details of individual matters remain confidential to the Adjudication Panel and to relevant members of the CLC staff). As set out in the Jurisdiction schedule the statutory framework provides an appeal route to all decisions made in ABS matters, but only in relation to disciplinary matters where the CLC acts as an Approved Regulator (it remains open to anyone dissatisfied with an appeal determined by the Adjudication Panel (under the Student Training Framework, the Licensed Conveyancer Licensing Framework and the Recognised Body Recognition Frameworks) to make an application for Judicial Review.</p> <p>Consistent: Decisions will be made by a tribunal of three selected from the Adjudication Panel, comprising a Chair, Deputy Chair and five members. This will meet more regularly than the Discipline and Appeals Committee and the current Adjudication Panel because the combined workload is likely to be greater than at present. Determinations will continue to be made in writing. In the CLC's view, the increase in jurisdiction with an increase in workload will lead to greater experience on the part of all members of the Adjudication Panel with the consequent increase in confidence in consistent process and decision making.</p>
<p>e. Desired outcome of the alteration and how we will assess whether this has been achieved.</p>	<p>The functions of the Discipline and Appeals Committee are transferred to the Adjudication Panel. This will align more closely the CLC's discipline and appeals processes when acting as an Approved Regulator with those currently in place when it acts as a Licensing Authority. It is anticipated that this will result in increased consistency in decision making coupled with a saving in costs.</p> <p>The effectiveness of the Adjudication Panel will be one of the matters the Council will ask the Adjudication</p>

	Chair to report (paragraph 9 Adjudication Panel Terms of Reference, page 103-104).
f. Effect on areas regulated by other Approved Regulators.	We do not believe that our proposals will have any direct effect on any of the other Approved Regulators.
g. Implementation timescale.	Following LSB approval of this application we aim to bring the new rules into effect by 30 September 2013 when the current terms of office of the Chair, Deputy Chair and members of the DAC come to an end. The rules will be published on the CLC's website and CLC practices will be notified of the changes.
h. Consultation processes undertaken and responses received.	<p>The CLC published its Consultation (attachment K, pages 125-133) on 21 January 2013. The consultation ended on 19 April 2013 (a consultation period of just over 12 weeks). The consultation paper was sent out to the CLC regulated community, Approved Regulators and the Legal Services Consumer Panel. Notice of the Consultation was posted on the news section of the CLC website and a copy of the Consultation paper was made available on the download section of the website.</p> <p>The consultation set out the CLC's proposals on its Discipline and Appeals arrangements. Stakeholders were directed to a secure online survey facility (1 consultee chose to send a response by email). Attachment L (pages 135-137) provides an overview of the responses received. This was published on the CLC website in May 2013.</p> <p>There were 27 completed responses to the consultation. 100% respondents were in favour of the transfer of functions from the DAC to the Adjudication Panel. 96% respondents were unable to identify the transfer which had not previously been identified.</p> <p>71% respondents were in favour of an increase in the upper limit of the fine which could be imposed to £50 million for individuals and £250 million for entities, subject to an overriding requirement that the amount of the fine should be fair and proportionate.</p>

Attachment A – Adjudication Panel Process Flowchart



Attachment B - Table

ADJUDICATION PANEL JURISDICTION

1	DISCIPLINARY				
		Relevant statutory and regulatory provisions	Decision making powers	Entitlement to Appeal	Appeal to
1A	Licensed Conveyancer	s. 24, 24A, 26 Administration of Justice Act 1985 (AJA)	a) Revoke a licence b) Disqualify a licensed conveyancer from holding a licence c) Suspend a licence d) Order a licence has effect subject to conditions	Licensed Conveyancer against whom decision made (the CLC may appeal against any order that it pays legal costs)	High Court (appeal is final)
		paragraph 13.4(i) Adjudication Panel Rules 2013	e) Order the payment of a penalty not exceeding £50M f) Reprimand the licensed conveyancer		
1B	Recognised Body	Para 3A & 4(2) Sch 6 AJA	a) Revoke the certificate of recognition b) Direct the payment of a penalty not exceeding £250M c) Reprimand the recognised body	Recognised Body against which decision made (the CLC may appeal against any order that it pays legal costs)	High Court (appeal is final)
		paragraph 13.4(ii) Adjudication Panel Rules 2013	d) Certificate of recognition to have effect subject to conditions		

1C	Manager or employee of a Recognised Body	Para 3B & 4(2B)Sch 6 AJA paragraph 13.4(iii) Adjudication Panel Rules 2013	<ul style="list-style-type: none"> a) Direct the payment of a fine not exceeding £50M b) Require the CLC to take such steps as the Adjudication Panel may specify c) Require the CLC to refer to an appropriate regulator 	Manager or employee of Recognised Body against whom decision made (the CLC may appeal against any order that it pays legal costs)	High Court (appeal is final)
1D	Licensed Body	paragraph 14.2(i) Adjudication Panel Rules 2013	<ul style="list-style-type: none"> a) Reprimand the Licensed Body b) Direct the issue of a licence subject to conditions c) Direct the payment of a fine not exceeding £250M d) Suspend the licence of the body e) Revoke the licence of the body f) intervene 	Licensed Body against which decision made	First Tier Tribunal (FTT) (appeal to Upper Chamber against decision of FTT on point of law)
1E	Owner of a Licensed Body	paragraph 14.2(ii) Adjudication Panel Rules 2013	<ul style="list-style-type: none"> a) place conditions on the owner's material interest b) object to the owner's material interest and initiate application to 	Owner of a Licensed Body against which decision made	First Tier Tribunal (FTT) (appeal to Upper Chamber against decision of FTT on point of law)

			<p>High Court to divest the owner of the material interest</p> <p>c) direct the payment of a fine not exceeding £50M</p>		
1F	Head of Legal Practice (HoLP) or Head of Finance and Administration (HoFA)	paragraph 14.2(iii) Adjudication Panel Rules 2013	<p>a) require the CLC to take such steps as it may specify in relation to the HoLP or HoFA</p> <p>b) direct the payment of a fine not exceeding £50M</p> <p>c) withdraw approval of individual for role</p> <p>d) disqualify individual from role within Licensed Body</p>	Head of Legal Practice (HoLP) or Head of Finance and Administration (HoFA) against whom decision made	First Tier Tribunal (FTT) (appeal to Upper Chamber against decision of FTT on point of law)
1G	Manager or employee of a Licensed Body	paragraph 14.2(iv) Adjudication Panel Rules 2013	<p>a) direct payment of a fine not exceeding £50M</p> <p>b) require the CLC to take such steps as it may specify in relation to the manager or employee</p> <p>c) require the CLC to refer to an appropriate regulator any matter relating to the conduct of the manager or employee</p> <p>d) disqualify the individual from a role in the Licensed Body</p>	Manager or employee of a Licensed Body against whom decision made	First Tier Tribunal (appeal to Upper Chamber against decision of FTT on point of law)

2	APPEALS				
2A	Students				
		Paragraph 10 CLC Student Training Framework	Appeal against CLC refusal to approve application to be registered as a student	Applicant (in respect of whom CLC has made the decision)	No statutory entitlement to appeal (only challenge on grounds of procedural by Judicial Review)
		Paragraph 21 CLC Student Training Framework	Appeal against CLC to grant examination concession	Student (in respect of whom CLC has made the decision)	No statutory entitlement to appeal (only challenge on grounds of procedural by Judicial Review)
2B	Licensed Conveyancers				
		s.29 AJA and Paragraph 21 CLC Licensed Conveyancer Licensing Framework	Appeal against refusal to grant a licence or against the grant of a licence subject to conditions	Applicant (in respect of whom CLC has made the decision)	No statutory entitlement to appeal (only challenge on grounds of procedural by Judicial Review)
		s.29 AJA and Paragraph 22 CLC Licensed Conveyancer Licensing Framework	Appeal against deemed refusal of a licence	Applicant (in respect of whom CLC has failed to make a decision)	No statutory entitlement to appeal (only challenge on grounds of procedural by Judicial Review)
2C	Recognised Bodies				
		Para 8 sch 6 AJA Paragraph 36	Appeal against refusal to grant a certificate of	Applicant (in respect of whom CLC has made the	No statutory entitlement to appeal

		CLC Recognised Body Recognition Framework	recognition or against the grant of a certificate of recognition subject to conditions	decision)	(only challenge on grounds of procedural by Judicial Review)
		Paragraph 37 CLC Recognised Body Recognition Framework	Appeal against deemed refusal of a certificate of recognition	Applicant (in respect of whom CLC has failed to make a decision)	No statutory entitlement to appeal (only challenge on grounds of procedural by Judicial Review)
2D	Licensed Bodies	Paragraphs 15.1-15.3 The Licensed Body (ABS) Licensing Framework	Appeal against determinations made by the CLC	Applicant (including Licensed Body, owner, HoLP, HoFA, manager or employee in respect of whom the CLC has made or have failed to make a decision)	First Tier Tribunal (appeal to Upper Chamber against decision of FTT on point of law)

Attachment C – Adjudication Panel Rules 2013

The CLC's Adjudication Panel Rules 2013

Made on [DATE] by the Council for Licensed Conveyancers with the approval of the Legal Services Board pursuant to sections 24, 24A, 25 and 26 and paragraph 5 of Schedule 3 and paragraphs 3 and 4 of Schedule 6 to the Administration of Justice Act 1985, Part II of Schedule 8 to the Courts and Legal Services Act 1990 and section 20 and Part 3 of Schedule 4 to the Legal Services Act 2007.

1. Citation, Commencement, Interpretation and Saving

1.1 These Rules may be cited as the CLC's Adjudication Panel Rules 2013 and shall come into effect on **[30 October 2013]** on which date the CLC's Adjudication Panel (No 2) Rules 2011 and the Licensed Conveyancers' Discipline and Appeals Committee Rules 2009 shall cease to have effect save that:

(a) no prior decision of the Investigating Committee, the Discipline and Appeals Committee nor the Adjudication Panel shall be invalidated by this repeal,

(b) any case referred for determination in accordance with the Discipline and Appeals Committee Rules 2009 or the CLC's Adjudication Panel (No 2) Rules 2011, which has not been finally determined on the coming into force of these Rules, shall continue and shall be determined in accordance with these Rules, and

(c) the terms of office of the Adjudication Chair and members of the Adjudication Panel appointed in accordance with the CLC's Adjudication Panel Rules 2011 or the CLC's Adjudication Panel (No 2) Rules 2011 shall continue in effect until expiry of their terms of office unaffected by the coming into force of these Rules. These persons shall be deemed to be appointed in accordance with these Rules.

1.2 In these 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;

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

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

"the 2007 Act" the Legal Services Act 2007;

"the Adjudication Chair" the chair of the Adjudication Panel;

"the Adjudication Procedure Rules" the rules made by the CLC currently in force for the conduct of disciplinary proceedings referred to the Adjudication Panel or determination;

“the Adjudication Panel” the committee established by the CLC by which the functions conferred on the Investigating Committee and the Discipline Appeals Committee under Part II of the 1985 are to be discharged;

“the CLC” the Council for Licensed Conveyancers established under section 12 of the 1985 Act;

“CLC Body” a Licensed Body or a Recognised Body;

“CLC’s Rules” the CLC’s Code of Conduct and any other codes or rules made by the CLC;

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

“Disciplinary Order” in the case of a Licensed Conveyancer an order made against him pursuant to section 24A or 26 of the 1985 Act (other than an order which provides only for the payment of costs by him);

“Lay Member” a person appointed as a member of the Adjudication Panel, who is not eligible to sit as a Licensed Conveyancer Member;

“Licensed Body” a body regulated by the CLC which provides legal services to the public and in which a non-lawyer is a Manager and/or owner as provided at s.72 of the 2007 Act;

“Licensed Conveyancer” a person who holds a licence in force under Part II of the 1985 Act;

“Licensed Conveyancer Member” an individual appointed as a member to the Adjudication Panel who is a Licensed Conveyancer, who has at any time held a Licence to practise as a Licensed Conveyancer or any individual who is or has at any time been a Manager of a CLC Body;

“Limited Liability Partnership” a body corporate formed by being incorporated under the Limited Liability Partnerships Act 2000;

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

“Manager” in relation to a CLC Body, means a person 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); and
- (f) a Licensed Conveyancer, if sub-paragraphs(a)-(e) do not apply and the affairs of the CLC Body are not managed by another Licensed Conveyancer;

“Panel Member” a person appointed as a member of the Adjudication Panel in accordance with rule 3.1;

“Party”

- (a) the CLC (and includes the CLC’s Representative); or
- (b) the Respondent;

“Recognised Body” a body recognised by the CLC under section 32 of the 1985 Act to provide Regulated Services to the public (“Recognised Body” is an entity regulated by the CLC and includes, without limitation, a partnership, a sole principal, a limited company and a Limited Liability Partnership);

“Regulated Services” conveyancing services and such other services, including probate services, regulated by the CLC;

"Respondent" the Licensed Conveyancer, Manager, employee or CLC Body about whom the reference is made or treated as made;

“Standing Orders” the Standing Orders made for the Adjudication Panel by the CLC pursuant to paragraph 9(2) of schedule 3 to the 1985 Act.

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

2. Delegation of Powers

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

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

2.3 The Adjudication Panel shall consider or deal with such other matters specifically delegated to or referred to them by the CLC, the Council of the CLC or by any other committee of the CLC.

2.4 The Adjudication Panel may arrange its own scheme of delegation provided that any Adjudication Chair, Deputy Chair or member participating in the preliminary investigation of a case does not act in relation to that case as a member of the Adjudication Panel determining that case.

3. Membership of the Adjudication Panel

3.1 The CLC shall in accordance with rule 4 appoint the Adjudication Chair, up to two Deputy Chairs and up to six Panel Members none of whom shall be a member of the Council of the CLC.

3.2 The Lay Members shall exceed by one the number of Licensed Conveyancer Members.

3.3 The Adjudication Chair and each of the Deputy Chairs must have a ten year general qualification within the meaning of section 71 of the 1990 Act.

3.4 If he resigns his office as Adjudication Chair, subject to these Rules, the Adjudication Chair may remain a member of the Adjudication Panel.

3.5 If the Adjudication Chair resigns his office or is suspended under rule 8.1, the CLC may in its absolute discretion appoint a new Adjudication Chair:

- (a) from among the Deputy Chairs or the Panel Members; or
- (b) in accordance with rule 4.

4. Appointment of Adjudication Chair and Panel Members

4.1 The posts of the Adjudication Chair, Deputy Chairs and Panel Members shall be advertised in such manner as the CLC shall determine.

4.2 Other than as provided at rule 3.5, the appointment of the Adjudication Chair, Deputy Chairs and Panel Members shall be made by an appointment panel, comprising no less than three persons, chosen by the CLC after considering the advice of the Chief Executive Officer of the CLC.

4.3 A person shall not be eligible for appointment to the Adjudication Panel if:

(a) he is, or has been within the immediately preceding 18 months, the Chair or an employee or member of the CLC;

(b) he has 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) he is or has been an undischarged bankrupt, is or has been the subject of a bankruptcy restrictions order or has made a composition or arrangement with his creditors unless:

(i) the bankruptcy order is annulled either on the ground that he ought not to have been adjudged bankrupt, or that his debts have been paid in full, on the date of the annulment;

(ii) in the case of a composition or arrangement with his creditors, he pays his 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 he lacks 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 him;

(e) the CLC is satisfied that, in respect of the following, the circumstances of the particular case make that person ineligible for appointment to the Adjudication Panel:

(i) a Disciplinary Order has been made against him, unless more than six years have passed since the Order was made;

(ii) the CLC's power of intervention have been exercised against him or his practice in accordance with part 1 of schedule 5 to the 1985 Act, against a Recognised Body of which he is a Manager in accordance with schedule 6 to the 1985 Act or against a Licensed Body of which he is 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) the CLC is satisfied that as a member of another profession an adverse determination has been made against him by a disciplinary tribunal or committee established to regulate the activities and the conduct of members of his profession (other than an order which provides only for the payment of costs by him), unless more than six years have passed since

the Order was made and if he has been disqualified from holding a licence or practising certificate (as the case may be) for a period longer than six years, his licence or practising certificate has been restored.

5. Tenure of Office

5.1 Subject in each case to rules 5.2, 6.1 and 9.1 the term of office of each Adjudication Chair, Deputy Chair and Panel Member appointed takes effect on the date specified in the letter of appointment for a term of office not exceeding four years.

5.2 An Adjudication Chair, Deputy Chair or Panel Member shall be eligible subject to review for re-appointment, once only, for a further term of office not exceeding four years.

6. Vacancies

6.1 A vacancy in the office of Adjudication Chair, Deputy Chair and Panel Member shall automatically occur and his right to hold office shall cease immediately:

(a) on his death;

(b) on receipt by the CLC of his written resignation;

(c) on the expiry of his term of office as a Panel Member;

(d) on his appointment as Chair or member of the CLC;

(e) If appointed as a Lay Member, he becomes a Licensed Conveyancer or a Manager of a Recognised Body or a Licensed Body regulated by the CLC;

(f) if, without the consent of the Adjudication Chair or (in the absence of the Adjudication Chair) a Deputy Chair, he fails to attend more than three consecutive meetings of the Adjudication Panel;

(g) if he is convicted of a criminal offence involving fraud, dishonesty, deception or violence or an indictable offence;

(h) if he is adjudged bankrupt, is the subject of a Bankruptcy Restrictions Order or makes a composition or arrangement with his creditors unless:

(1) the bankruptcy order is annulled either on the ground that he ought not to have been adjudged bankrupt, or that his debts have been paid in full, on the date of the annulment;

(2) in the case of a composition or arrangement with his creditors, he pays his 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.

(i) if he lacks 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 him;

(j) if, being a Licensed Conveyancer Member,

(1) a Disciplinary Order is made against him;

(2) his Licence is suspended pursuant to section 24 of the 1985 Act; or

(3) the CLC's powers of intervention are exercised against him in accordance with Part I of Schedule 5 to the 1985 Act, against a Recognised Body of which he is a Manager in accordance with schedule 6 to the 1985 Act or against a Licensed Body of which he is a Manager in accordance with schedule 14 to the 2007 Act;

(k) if as a member of another profession, an adverse determination is made against him by a disciplinary tribunal or committee (other than an Order which provides only for the payment of costs by him);

(l) if he has failed to disclose to the CLC any matter referred to in rule 4.3 subparagraphs(b), (c), (d) or(e).

(m) if he is removed from office under rule 9.1.

6.2 In the event that a vacancy occurs by reason of the operation of rule 6.1, the CLC shall inform the Adjudication Chair, or one of the Deputy Chairs (if the office of the Adjudication Chair has been vacated).

6.3 Where a vacancy occurs, the CLC will as soon as possible make an appointment in accordance with rule 4.

7. Remuneration

7.1 The CLC will pay to the Adjudication Chair, Deputy Chairs and Panel Members attendance fees and expenses reasonably incurred, such fees to be determined by the CLC and to be reviewed periodically.

8. Suspension of the Adjudication Chair, a Deputy Chair or a Panel Member

8.1 The Adjudication Chair, Deputy Chair or Panel Member is suspended with immediate effect in the event that: -

(a) he is charged with any offence referred to in rule 6.1(g); or

(b) he is served with a bankruptcy petition or issues a bankruptcy petition on his own behalf; or

(c) he receives notice of any application against him for an order under rule 6.1(k).

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

(a) under sub-paragraph 8.1(a) in the event that the charge is dismissed, discharged, discontinued or otherwise withdrawn;

(b) under sub-paragraph 8.1(b) if the bankruptcy petition is disposed of without a declaration of bankruptcy being made against him;

(c) 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.

9. Removal of the Adjudication Chair, a Deputy Chair or a Panel Member

9.1 The Council may by a majority remove the Adjudication Chair, a Deputy Chair or a Panel Member who has breached the Standing Orders or the Code of Conduct applicable to the Adjudication Chair, Deputy Chairs and Panel Members.

10. Composition of hearings of the Adjudication Panel

10.1 In consultation with the CLC the Adjudication Chair shall direct the date, time and place for the hearing under the Adjudication Panel Procedure Rules 2013 in consultation with the CLC when the Adjudication Panel shall meet to determine proceedings.

10.2 The CLC shall as soon as reasonably possible send notice of the hearing to each member of the Adjudication Panel nominated by the Adjudication Chair to attend the hearing and to the appropriate Parties in the manner prescribed by the Adjudication Panel Procedure Rules 2013.

10.3 When the Adjudication Panel direct that a new hearing date be fixed to hear or continue to hear and determine the matter before them, the Adjudication Chair shall determine the date, time and place for the hearing in consultation with the CLC.

10.4 The CLC shall as soon as reasonably possible send notice of the hearing to every member of the Adjudication Panel who is to attend the hearing and to the appropriate Parties in the manner prescribed by the applicable procedure rules.

10.5 If a case has been part heard on the expiry of the term of office of one or more members of the Adjudication Panel under rule 6.1(c) (but for no other reason), that Panel Member may with the agreement of the Adjudication Chair be treated as remaining a member of the Adjudication Panel and hear the case until its conclusion even though for all other purposes that individual has ceased to be a Panel Member.

10.6 If an individual sitting as a member of the Adjudication Panel ceases to be a Panel Member under rule 6.1 (other than as a result of the operation of rule 6.1(c)) where a case has been part heard and as a result the hearing is not quorate, the Adjudication Chair may nominate another Panel Member to attend the hearing to enable the hearing of that case to continue until its conclusion provided he is satisfied that it is in the interests of natural justice.

11. Standing Orders

11.1 Save as modified by these Rules and by the Adjudication Panel Procedure Rules 2013 as provided for under rule 10.1, proceedings of the Adjudication Panel shall be governed by the Standing Orders.

11.2 The CLC's regulatory arrangements shall have this order of precedence:

- (a) the Adjudication Panel Rules 2013;
- (b) the Adjudication Panel Procedure Rules 2013;
- (c) the Adjudication Panel Standing Orders 2013;
- (d) the Adjudication Panel Terms of Reference.

11.3 Where there is a conflict or inconsistency between the regulatory arrangements listed in rule 11.2, the provisions of those named higher in the list are preferred over those listed lower in the list.

11.4 Where there is a conflict or inconsistency between the provisions of any of the CLC's regulatory arrangements (other than those listed at rule 11.2) and the regulatory arrangements listed at rule 11.2, the provision of the CLC's regulatory arrangements (other than those listed at rule 11.2) is preferred.

11.5 Where there is a conflict or inconsistency between the provisions of any statute or statutory instrument and any of the CLC's regulatory arrangements, the provision of the statute or statutory provision is preferred.

12. Penalty

12.1 The amount of any penalty required to be paid must be fair and proportionate, and (a) in the case of a penalty imposed on a CLC Body under paragraph 4(2)(b) of schedule 6 to the 1985 Act, alternatively under the CLC's Licensed Body (ABS) Licensing Framework, must not exceed £250 million; and

(b) in the case of a penalty imposed on a manager or employee of a CLC Body under section 26(2) of and paragraph 4(2B)(a) of schedule 6 to the 1985 Act, alternatively under the CLC's Licensed Body (ABS) Licensing Framework, must not exceed £50 million.

13. Disciplinary Powers of the CLC as an Approved Regulator

13.1 Rule 13 applies when the Respondent is regulated by the CLC acting as an Approved Regulator.

13.2 The Adjudication Panel must carry out a preliminary investigation of any case in which it is alleged that:

(a) a Licensed Conveyancer:

(i) has (whether as 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 made by the Council under Part II of the 1985 Act;

(b) a Recognised Body:

(i) has (while a Recognised Body) been convicted of a criminal offence which renders it unsuitable to be recognised under section 32 of the 1985 Act; or

(ii) has failed to comply with any rules applicable to it by virtue of section 32 of the 1985 Act; or

(iii) has (while a Recognised Body) failed to comply with a condition subject to which its recognition has effect;

(c) a manager or employee of a Recognised Body who is not a Licensed Conveyancer has failed to comply with any rules applicable to him by virtue of section 32 of the 1985 Act;

with a view to determining whether such case ought to be referred for hearing and determination by the Adjudication Panel.

13.3 The Adjudication Panel may make the following orders or directions

(i) in respect to a Licensed Conveyancer

(a) an order revoking any licence held by the licensed conveyancer;

(b) an order directing that the licensed conveyancer shall be disqualified (either permanently or during a specified period) from holding a licence under this Part;

(c) an order suspending any licence held by the licensed conveyancer;

(d) an order that any such licence shall have effect subject to such conditions as may be specified in the order;

(e) an order directing the payment by the licensed conveyancer of a penalty which must be fair and proportionate, and not exceed £50 million to be forfeited to Her Majesty;

(f) an order reprimanding the licensed conveyancer;

(ii) in respect of a Recognised Body

(a) an order revoking the recognition under section 32 of the 1985 Act of that Recognised Body;

(b) an order directing the payment by that Recognised Body of a penalty which must be fair and proportionate, and not exceed £250 million, to be forfeited to Her Majesty;

(c) an order reprimanding that Recognised Body;

(d) an order that the recognition of that Recognised Body under section 32 is to have effect subject to such conditions as may be specified in the order;

(iii) in respect of the manager or employee of a Recognised Body

(a) an order directing the payment by the manager or employee of a penalty which must be fair and proportionate, and not exceed £50 million, to be forfeited to Her Majesty;

(b) an order requiring the CLC to consider taking such steps as the Adjudication Panel may specify in relation to the manager or employee;

(c) an order requiring the CLC to refer to an appropriate regulator (as specified at paragraph 4(2C) of schedule 6 to the 1985 Act) of any matter relating to the conduct of the manager or employee.

13.4 The Adjudication Panel may make such order as it thinks fit as to the payment of costs by the CLC or the Respondent in accordance with s.24A(2), s.26(2A) or schedule 6 of the 1985 Act.

13.5 A Respondent may within 28 days after the determination made under rule 13.3 appeal to the High Court.

14. Disciplinary Powers of the CLC as a Licensing Authority

14.1 Rule 14 applies when the Respondent is regulated by the CLC acting as a Licensing Authority.

14.2 The Adjudication Panel may in respect of:

(i) a Licensed Body:

- (a) reprimand the body;
- (b) direct the issue of a licence subject to conditions it may specify;
- (c) direct the payment of a fine which is fair and proportionate, not exceeding £250million;
- (d) suspend the licence of the body;
- (e) revoke the licence of the body;
- (f) intervene;

(ii) a Licensed Body owner:

- (a) place conditions on the owner's material interest;
- (b) object to the owner's material interest, and initiate the application to the High Court to divest the owner of their material interest;
- (c) direct the payment of a fine which is fair and proportionate, not exceeding £50 million;

(iii) a Head of Legal Practice (HoLP) or Head of Finance & Administration (HoFA):

- (a) require the CLC to take such steps as it may specify in relation to the HoLP or HoFA;
- (b) direct the payment of a fine which is fair and proportionate, not exceeding £50 million;
- (c) withdraw approval of the individual for the role;
- (d) disqualify the individual from a role within a Licensed Body;

(iv) a manager or employee:

- (a) direct the payment of a fine which is fair and proportionate fine, not exceeding £50 million;
- (b) require the CLC to take such steps as it may specify in relation to the manager or employee;
- (c) require the CLC to refer to an appropriate regulator any matter relating to the conduct of the manager or employee;
- (d) disqualify the individual from a role in the Licensed Body.

14.3 A Respondent may within 28 days after the determination has been made appeal to the First Tier Tribunal.

Attachment D –

THE ADJUDICATION PANEL PROCEDURE RULES 2013

CONTENTS

PART 1

Introduction

1. Citation, commencement, application and interpretation
2. Overriding objective and parties' obligation to co-operate with the Adjudication Panel

PART 2

General powers and provisions

3. Delegation
4. Case management powers
5. Procedure for applying for and giving directions
6. Failure to comply with rules or Adjudication Panel directions
7. Striking out a party's case
8. Addition, substitution and removal of parties
9. Orders for costs
10. Representatives
11. Calculating time
12. Sending and delivery of documents
13. Disclosure, evidence and submissions
14. Summoning or citation of witnesses and orders to answer questions or produce documents
15. Withdrawal
16. Procedure for applying for a stay of a decision pending an appeal

PART 3

Proceedings before the Adjudication Panel

CHAPTER 1

Before the hearing

17. References and complaints
18. Revocation of licences and recognitions obtained through fraud or error
19. Applications after disqualification or revocation
20. The notice of appeal

CHAPTER 2

Hearings

21. Decision with or without a hearing
22. Entitlement to attend and take part in a hearing
23. Notice of hearings
24. Public and private hearings
25. Hearings in a party's absence
26. Quality of evidence and standard of proof
27. Proof of conviction
28. Announcements by the Adjudication Panel
29. Parties' rights as to record of proceedings

CHAPTER 3

Decisions

30. Consent orders
31. Decisions

PART 4

Correcting, setting aside, reviewing and appealing Adjudication Panel decisions

32. Clerical mistakes and accidental slips or omissions
33. Setting aside a decision which disposes of proceedings
34. Power to treat an application as a different type of application
35. Panel voting
36. Absence of Adjudication Chair
37. Relaxation of Rules

Made on [DATE] by the Council for Licensed Conveyancers with the agreement of the Legal Services Board under section 30 and paragraph 1 of schedule 4 to the Administration of Justice Act 1985 and section 20 and part 3 of schedule 4 to the Legal Services Act 2007

PART 1

Introduction

Citation, commencement, application and interpretation

1.—(1) These Rules may be cited as the Adjudication Panel Procedure Rules 2013.

(2) These Rules come into force on 30 September 2013 on which date the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2011, the CLC's Approved Regulator (Disciplinary Procedure) Rules 2011 and the CLC's Licensing Authority (Disciplinary Procedure) Rules 2011 shall cease to have effect save as provided for in these Rules or otherwise where the same still subsist or are capable of subsisting.

(3) These Rules apply to proceedings before the Adjudication Panel.

(4) In these Rules—

“the 1985 Act” means the Administration of Justice Act 1985;

“the 1990 Act” means the Courts and Legal Services Act 1990;

“the 2007 Act” means the Legal Services Act 2007; “Adjudication Chair” means the Chair or acting Chair of the Adjudication Panel

“Adjudication Panel” means the committee established by the CLC by which the functions conferred on the Investigating Committee and the Discipline and Appeals Committee under Part II of the 1985 Act and such other functions as are delegated to it are to be discharged;

“Adjudicator” means the Adjudication Chair, any Deputy Chair or member of the Adjudication Panel, any employee of the CLC or any other person appointed by the Adjudication Panel;

“appellant” means a person who—

(a) commences Adjudication Panel proceedings, whether by making an appeal, an application, a claim, a complaint, a reference or otherwise; or

(b) is added or substituted as an appellant under rule 8 (addition, substitution and removal of parties);

“the CLC” means the Council for Licensed Conveyancers;

“document” means anything in which information is recorded in any form, and an obligation under these Rules or any direction to provide or allow access to a document or a copy of a document for any purpose means, unless the Adjudication Panel directs otherwise, an

obligation to provide or allow access to such document or copy in a legible form or in a form which can be readily made into a legible form;

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“the Legal Adviser” means a person appointed by the CLC to advise the Adjudication Panel;

“Licensed Conveyancer” means—

(a) means a person who holds a licence in force under Part II of the 1985 Act, and

(b) in relation to a particular allegation or complaint, includes a person who held such a licence at the time when the conduct to which the allegation or complaint relates took place;

“Licensed Conveyancer Member” means an individual appointed as a member to the Adjudication Panel who is a Licensed Conveyancer, who has at any time held a Licence to practise as a Licensed Conveyancer or any individual who is or has at any time been a Manager of a Recognised Body regulated by the CLC;

“party” means—

(a) a person who is an appellant or a respondent;

(b) if the proceedings have been concluded, a person who was an appellant or a respondent when the Adjudication Panel finally disposed of all issues in the proceedings;

“recognised body” —

(a) means a body for the time being recognised under section 32 of the 1985 Act, and

(b) in relation to a particular allegation or complaint, includes a body corporate which was so recognised at the time when the conduct to which the allegation or complaint relates took place;

“respondent” means—

(a) in proceedings appealing against or challenging a decision, direction or order, the person who made the decision, direction or order appealed against or challenged;

(b) a person against whom an appellant otherwise brings proceedings; or

(c) a person added or substituted as a respondent under rule 8 (addition, substitution and removal of parties);

Overriding objective and parties’ obligation to co-operate with the Adjudication Panel

2.—(1) The overriding objective of these Rules is to enable the Adjudication Panel to deal with cases fairly and justly.

(2) 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 anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Adjudication Panel effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Adjudication Panel must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule.

(4) Parties must—

(a) help the Adjudication Panel to further the overriding objective; and

(b) co-operate with the Adjudication Panel generally.

PART 2

General powers and provisions

Delegation

3.—(1) In accordance with a scheme of delegation made by the Adjudication Panel in accordance with the Adjudication Panel Rules 2013, the Adjudicator may carry out functions of a judicial nature permitted or required to be done by the Adjudication Panel.

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions of a specified description in specified circumstances.

(3) Within 14 days after the date that the Adjudication Panel sends notice of a decision made by the Adjudicator pursuant to an approval under paragraph (1) to a party, that party may apply in writing to the Adjudication Panel for that decision to be considered afresh by another member of the Adjudication Panel who may be the Adjudication Chair or a Deputy Chair, provided neither has already acted in relation to that matter as the Adjudicator.

Case management powers

4.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Adjudication Panel may regulate its own procedure.

(2) The Adjudication Panel may 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.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Adjudication Panel may—

(a) extend or shorten the time for complying with any rule or direction, unless such extension or shortening would conflict with a provision of another enactment containing a time limit;

(b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues.

(c) permit or require a party to amend a document;

(d) permit or require a party or another person to provide documents, information or submissions to the Adjudication Panel or a party;

(e) deal with an issue in the proceedings as a preliminary issue;

(f) hold a hearing to consider any matter, including a case management issue;

(g) decide the form of any hearing;

(h) adjourn or postpone a hearing;

(i) require a party to produce a bundle for a hearing;

(j) stay proceedings;

(l) suspend the effect of its own decision pending the determination by the Adjudication Panel or the First-tier Tribunal of an application for permission to appeal against, and any appeal or review of, that decision.

Procedure for applying for and giving directions

5.—(1) The Adjudication Panel may give a direction on the application of one or more of the parties or on its own initiative.

(2) An application for a direction may be made—

(a) by sending or delivering a written application to the Adjudication Panel; or

(b) orally during the course of a hearing.

(3) An application for a direction must include the reason for making that application.

(4) Unless the Adjudication Panel considers that there is good reason not to do so, the Adjudication Panel must send written notice of any direction to every party and to any other person affected by the direction.

(5) If a party or any other person sent notice of the direction under paragraph (4) wishes to challenge a direction which the Adjudication Panel has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.

Failure to comply with rules or Adjudication Panel directions

6.—(1) An irregularity resulting from a failure to comply with any provision of these Rules or a direction does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules or a direction, the Adjudication Panel may take such action as the Adjudication Panel considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 7 (striking out a party's case); or
- (d) barring or restricting a party's participation in the proceedings.

Striking out a party's case

7.—(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by the appellant to comply with the direction would lead to the striking out of the proceedings or that part of them.

(2) The Adjudication Panel may strike out the whole or a part of the proceedings if—

- (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
- (b) the appellant has failed to co-operate with the Adjudication Panel to such an extent that the Adjudication Panel cannot deal with the proceedings fairly and justly; or
- (c) the Adjudication Panel considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(3) The Adjudication Panel may not strike out the whole or a part of the proceedings under paragraph (2)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(4) If the proceedings, or part of them, have been struck out under paragraph (1) or (2)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.

(5) An application under paragraph (4) must be made in writing and received by the Adjudication Panel within 28 days after the date on which the Adjudication Panel sent notification of the striking out to that party.

(6) This rule applies to a respondent as it applies to an appellant except that—

(a) a reference to the striking out of the proceedings is to be read as a reference to the barring of the respondent from taking further part in the proceedings; and

(b) a reference to an application for the reinstatement of proceedings which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings.

(7) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Adjudication Panel need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

Addition, substitution and removal of parties

8.—(1) The Adjudication Panel may give a direction adding, substituting or removing a party as an appellant or a respondent.

(2) If the Adjudication Panel gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) Any person who is not a party may apply to the Adjudication Panel to be added or substituted as a party.

Orders for costs

9.—(1) [Subject to paragraph (1A)], the Adjudication Panel may make an order in respect of costs —

under the 1985 Act

(2) The Adjudication Panel may make an order under paragraph (1) on an application or on its own initiative.

(3) A person making an application for an order under this rule must—

(a) send or deliver a written application to the Adjudication Panel and to the person against whom it is proposed that the order be made; and

(b) send or deliver a schedule of the costs or expenses claimed with the application.

(4) The Adjudication Panel may not make an order under paragraph (1) against a person (“the paying person”) without first—

(a) giving that person an opportunity to make representations; and

(b) if the paying person is an individual, considering that person’s financial means.

(5) The amount of costs or expenses to be paid under an order under paragraph (1) may be ascertained by—

(a) summary assessment by the Adjudication Panel;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs or expenses (“the receiving person”); or

(c) assessment of the whole or a specified part of the costs or expenses incurred by the receiving person, if not agreed.

Representatives

10.—(1) A party may appoint a representative (whether legally qualified or not) to represent that party in the proceedings.

(2) If a party appoints a representative, that party must send or deliver to the Adjudication Panel and to each other party written notice of the representative’s name and address.

(3) Anything permitted or required to be done by or provided to a party under these Rules or a direction may be done by or provided to the representative of that party except—

(a) signing a witness statement; or

(b) sending or delivering a notice under paragraph (2), if the representative is not a person who, for the purposes of the 2007 Act, is an authorised person .

(4) A person who receives due notice of the appointment of a representative—

(a) must provide to the representative any document which is required to be sent to the represented party, and need not provide that document to the represented party; and

(b) may assume that the representative is and remains authorised until receiving written notification to the contrary from the representative or the represented party.

(5) At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (2) but who, with the permission of the Adjudication Panel, may act as a representative or otherwise assist in presenting the party’s case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person who accompanies a party under paragraph (5).

Calculating time

11.—(1) An act required by these Rules or a direction to be done on or by a particular day must be done before 5pm on that day.

(2) If the time specified by these Rules or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) In this rule “working day” means 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.

Sending and delivery of documents

12.—(1) Any document to be provided to the Adjudication Panel under these Rules or a direction must be—

(a) sent by prepaid post or by document exchange, or delivered by hand to the address specified for the proceedings;

(b) sent by fax to the number specified for the proceedings; or

(c) sent or delivered by such other method as the Adjudication Panel may permit or direct.

(2) Subject to paragraph (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.

(3) If a party informs the Adjudication Panel and all other parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to provide documents to that party, that form of communication must not be so used.

(4) If the Adjudication Panel or a party sends a document to a party or the Adjudication Panel by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Adjudication Panel and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

Disclosure, evidence and submissions

13.—(1) Without restriction on the general powers in rule 4(1) and (2) (case management powers), the Adjudication Panel may give directions as to—

(a) the exchange between parties of lists of documents which are relevant to the proceedings, or relevant to particular issues, and the inspection of such documents;

(b) the provision by parties of statements of agreed matters;

(c) issues on which it requires evidence or submissions;

(d) the nature of the evidence or submissions it requires;

(e) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;

(f) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;

(g) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—

- (i) orally at a hearing; or
- (ii) by written submissions or witness statement; and
- (h) the time at which any evidence or submissions are to be provided.
- (2) The Adjudication Panel may—
 - (a) admit evidence whether or not—
 - (i) the evidence would be admissible in a civil trial in England and Wales or
 - (ii) the evidence was available to a previous decision maker; or
 - (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction;
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction; or
 - (iii) it would otherwise be unfair to admit the evidence.
- (3) The Adjudication Panel may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

Summoning or citation of witnesses and orders to answer questions or produce documents

- 14.—(1) On the application of a party or on its own initiative, the Adjudication Panel may—
- (a) by summons (require any person to attend as a witness at a hearing at the time and place specified in the summons or citation; or
 - (b) order any person to answer any questions or produce any documents in that person’s possession or control which relate to any issue in the proceedings.
- (2) A summons or citation under paragraph (1)(a) must—
- (a) give the person required to attend 14 days’ notice of the hearing or such shorter period as the Adjudication Panel may direct; and
 - (b) where the person is not a party, make provision for the person’s necessary expenses of attendance to be paid, and state who is to pay them.
- (3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in England and Wales.
- (4) A summons, citation or order under this rule must—

(a) state that the person on whom the requirement is imposed may apply to the Adjudication Panel to vary or set aside the summons, citation or order, if they have not had an opportunity to object to it; and

(b) state the consequences of failure to comply with the summons, citation or order.

Withdrawal

15.—(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—

(a) at any time before a hearing to consider the disposal of the proceedings (or, if the Adjudication Panel disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the Adjudication Panel a written notice of withdrawal; or

(b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Adjudication Panel consents to the withdrawal.

(3) A party who has withdrawn their case may apply to the Adjudication Panel for the case to be reinstated.

(4) An application under paragraph (3) must be made in writing and be received by the Adjudication Panel within 28 days after—

(a) the date on which the Adjudication Panel received the notice under paragraph (1)(a); or

(b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).

(5) The Adjudication Panel must notify each party in writing of a withdrawal under this rule.

Procedure for applying for a stay of a decision pending an appeal

16.— (1) A person who wishes the Adjudication Panel to decide whether the substantive decision should be stayed or suspended must make a written application to the Adjudication Panel which must include the grounds on which the person making the application relies.

(2) If the Adjudication Panel grants a stay or suspension following an application under this rule the Adjudication Panel may, where appropriate, grant the stay or suspension subject to conditions.

(3) Unless the Adjudication Panel considers that there is good reason not to do so, the Adjudication Panel must send written notice of any decision made under this rule to each party.

PART 3

Proceedings before the Adjudication Panel

CHAPTER 1

Before the hearing

References and complaints

17.—(1) A reference in the form of an allegation to the Adjudication Panel made under the Adjudication Panel Rules or the 1985 Act must—

(a) be made in writing, and

(b) set out the allegation or complaint and a summary of the facts relied on to support it.

(2) A copy of such a reference or complaint must be served on the respondent, together with a copy of these Rules, and a copy lodged with the Adjudication Chair, within 14 days of the making of the reference or the decision to make the complaint.

Revocation of licences and recognitions obtained through fraud or error

18.—(1) Where—

(a) it is considered that a licence was issued to any person as a result of error or of fraud on his part, and

(b) the CLC decide that there is any question of the Adjudication Panel exercising their powers under section 28(1) of the 1985 Act, the CLC must refer the matter to the Adjudication Panel.

(2) Where—

(a) it is considered that recognition was granted to any Recognised Body as a result of error or of fraud on its part, and

(b) the CLC decide that there is any question of the Adjudication Panel exercising their powers under paragraph 7(1) of Schedule 6 to the 1985 Act, the CLC must refer the matter to the Adjudication Panel.

(3) A reference under this rule must—

(a) be made in writing,

(b) state that it is made under this rule, and

(c) set out the allegation and a summary of the facts relied on to support it.

(4) A copy of such a reference must be served on the respondent, together with a copy of these Rules.

(5) On such a reference, the Adjudication Panel must hold a hearing to determine the allegation.

Applications after disqualification or revocation

19. An application to the Adjudication Panel under section 27(1) or 28(2) of, or paragraph 7(2) of Schedule 6 to, the 1985 Act must—

- (a) be made in writing and sent to the CLC's principal place of business, and
- (b) set out any facts which support the application.

The notice of appeal

20.—(1) An appellant must start proceedings before the Adjudication Panel by sending or delivering to the CLC's principal place of business a notice of appeal so that it is received within one month of the date on which notice of the act or decision to which the proceedings relate was sent to the appellant.

(2) The notice of appeal must include—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (e) specify the statutory provision details of the decision or act, or failure to decide or act, to which the proceedings relate;
- (f) the result the appellant is seeking; and
- (g) the grounds on which the appellant relies;

(3) If the proceedings challenge a decision, the appellant must provide with the notice of appeal a copy of any written record of that decision, and any statement of reasons for that decision that the appellant has or can reasonably obtain.

(4) When the Adjudication Panel receives the notice of appeal, it must send a copy of the notice of appeal and any accompanying documents to each respondent.

CHAPTER 2

Hearings

Decision with or without a hearing

21.—(1) Subject to paragraphs (2) and (3), the Adjudication Panel must hold a hearing before making a decision which disposes of proceedings unless—

- (a) each party has consented to the matter being determined without a hearing; and
- (b) the Adjudication Panel is satisfied that it can properly determine the issues without a hearing.

(2) This rule does not apply to a decision under Part 4 (correcting, setting aside, reviewing and appealing Adjudication Panel decisions).

(3) The Adjudication Panel may in any event dispose of proceedings without a hearing under rule 7 (striking out a party's case).

(4) Notwithstanding any other provision in these Rules, if the Adjudication Panel holds a hearing to consider a preliminary issue, and following the disposal of that preliminary issue no further issue remains to be determined, the Adjudication Panel may dispose of the proceedings without holding any further hearing.

Entitlement to attend and take part in a hearing

22.—(1) Subject to rule 24(4) (exclusion of a person from a hearing) each party is entitled to—

(a) attend any hearing that is held; and

(b) send written representations to the Adjudication Panel and each other party prior to the hearing.

(2) The Adjudication Panel may give a direction permitting or requesting any person to—

(a) attend and take part in a hearing to such extent as the Adjudication Panel considers proper; or

(b) make written submissions in relation to a particular issue.

Notice of hearings

23. – (1) When the Adjudication Chair directs that a hearing before the Adjudication Panel is to be convened the Adjudication Chair shall select the Hearing Chairman and the two Adjudication Panel Members to constitute the Adjudication Panel for the purpose of that hearing, provided that at least one of the Adjudication Panel members shall be a Licensed Conveyancer Member. The Hearing Chairman shall determine the date, time and place for the hearing and notify the CLC.

(2) When he directs that a hearing be convened as provided by rule 17, the Adjudication Chair may at that time (and at any time up to and including the hearing) also select a Legal Adviser to attend the hearing to advise the Adjudication Panel if the Adjudication Chair is satisfied it is necessary for the fair and just disposal of the case.

3) The Adjudication Panel must give each person entitled, permitted or requested to attend a hearing (including any adjourned or postponed hearing) reasonable notice of the time and place of the hearing and any changes to the time and place of the hearing.

(4) The period of notice under paragraph (1) in relation to a hearing to consider disposal of the proceedings must be at least 14 days, except that the Adjudication Panel may give shorter notice—

(a) with the parties' consent; or

(b) in urgent or exceptional circumstances.

Public and private hearings

24.—(1) Subject to the following paragraphs, all hearings must be held in public.

(2) The Adjudication Panel may give a direction that a hearing, or part of it, is to be held in private if it appears to the Adjudication Panel in the interests of any child or for the protection of the private life of any party or in the interests of justice.

(3) Where a hearing, or part of it, is to be held in private, the Adjudication Panel may determine who is permitted to attend the hearing or part of it.

(4) The Adjudication Panel may give a direction excluding from any hearing, or part of it—

(a) any person whose conduct the Adjudication Panel considers is disrupting or is likely to disrupt the hearing;

(b) any person whose presence the Adjudication Panel considers is likely to prevent another person from giving evidence or making submissions freely; or

(c) any person where the purpose of the hearing would be defeated by the attendance of that person.

(5) The Adjudication Panel may give a direction excluding a witness from a hearing until that witness gives evidence.

Hearings in a party's absence

25. If a party fails to attend a hearing the Adjudication Panel may proceed with the hearing if the Adjudication Panel—

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing.

Quality of evidence and standard of proof

18.—(1) In any proceedings before the Adjudication Panel —

(a) a fact is to be regarded as proved if the Adjudication Panel consider that it has been proved on the balance of probabilities, and

(b) the Adjudication Panel may consider any evidence which would be admissible in civil proceedings in England or Wales.

(2) This rule does not apply to an allegation to which rule 27 applies.

Proof of conviction

27.—(1) If—

(a) it is alleged that a respondent has been convicted of an offence, and

(b) the respondent denies the allegation or is deemed to have done so, the conviction must be proved by the CLC by the production of a certificate of conviction or the affidavit of a person who attended the trial.

(2) If the respondent denies a conviction, he may adduce evidence on the question whether he was convicted as alleged, and may address the Committee about that question.

(3) Only one address may be made by a respondent under paragraph (2) and, where the respondent adduces evidence, the address may be made either before that evidence is begun or after it is concluded.

(4) The CLC is entitled to reply to any submission made by the respondent under Paragraphs (1) to (3), and may call evidence in rebuttal.

(5) If the CLC does call such evidence, the respondent may make a further address limited to the rebutting evidence.

(6) At the conclusion of submissions and the calling of evidence, the Adjudication Panel must determine whether or not the conviction has been proved to their satisfaction.

(7) If they are not so satisfied, they must dismiss the allegation or complaint relating to the conviction.

(8) If they are so satisfied, the conviction is to be admitted in evidence against the respondent.

Announcements by the Adjudication Panel

28. The Adjudication Chair must announce the decisions, direction, determinations and judgements of the Adjudication Panel under these Rules in such terms and in such manner as the Adjudication Panel agree.

Parties' rights as to record of proceedings

29. Any party to the proceedings is entitled to a copy of any matters recorded concerning the proceedings and kept by the CLC, on payment of the cost of recording them and supplying the copy.

CHAPTER 3

Decisions

Consent orders

30.—(1) The Adjudication Panel may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.

(2) Notwithstanding any other provision of these Rules, the Adjudication Panel need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

Decisions

31.—(1) The Adjudication Panel may give a decision orally at a hearing.

(2) The Adjudication Panel must provide to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings (except a decision under rules 32 or 33)—

(a) a decision notice stating the Adjudication Panel’s decision;

(b) written reasons for the decision; and

(c) notification of any right of appeal against the decision and the time within which, and manner in which, such right of appeal may be exercised.

(3) The Adjudication Panel may provide written reasons for any decision to which paragraph (2) does not apply.

PART 4

Correcting, setting aside, reviewing and appealing Adjudication Panel decisions

Clerical mistakes and accidental slips or omissions

32. (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 necessary amendment to any information published in relation to the decision, direction or document.

Setting aside a decision which disposes of proceedings

33.—(1) The Adjudication Panel may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant part of it, if—

(a) the Adjudication Panel considers that it is in the interests of justice to do so; and

(b) one or more of the conditions in paragraph (2) are satisfied.

(2) The conditions are—

(a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party’s representative;

(b) a document relating to the proceedings was not sent to the Adjudication Panel at an appropriate time;

(c) a party, or a party's representative, was not present at a hearing related to the proceedings; or

(d) there has been some other procedural irregularity in the proceedings.

(3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Adjudication Panel so that it is received no later than 28 days after the date on which the Adjudication Panel sent notice of the decision to the party.

Power to treat an application as a different type of application

34. The Adjudication Panel may treat an application for a decision to be corrected, set aside or reviewed as an application for any other one of those things.

Panel voting

35.—(1) Any question put to the vote must be formulated and put to the Adjudication Panel members present by the Adjudication Chair.

(2) The Adjudication Chair must call on the Adjudication Panel members present to vote for or against the question and must declare the result.

(3) The Adjudication Chair is entitled to vote.

(4) If an equal number of votes is cast for and against the question, the question is deemed to have been determined—

(a) in the case of a hearing of an allegation or complaint within rule 17 or a reference under rule 18, in favour of the respondent,

(b) in the case of an application within rule 19, in favour of the applicant,

(c) in the case of an appeal, in favour of the CLC, and

(d) in the case of the question whether a hearing is to be postponed, in favour of postponement.

Absence of Adjudication Chair

36. Subject to paragraph 4 of Schedule 4 to the 1985 Act, anything authorised or required by these Rules to be done by the Adjudication Chair may, if he is absent or unable to act or continue to act, be done by any other member of the Adjudication Panel who is authorised for the purpose by the Adjudication Chair or, if no person is authorised, by the other members present.

Relaxation of rules

37.—(1) At the request of any appellant or respondent (including, in either case, the CLC), the Adjudication Panel may direct that any requirement of these Rules is not to apply or is relaxed in any manner they think fit; and such a direction may be given subject to such other requirements as they think fit.

(2) Where they have given such a direction, they may give a further direction that the requirement is again to apply or, as the case may be, to apply without the relaxation or with others.

Attachment E – Licensed Conveyancer Licensing Framework



Council for
**Licensed
Conveyancers**

CLC Licensed Conveyancer Licensing Framework

Outcomes-Focused

This Framework seeks to ensure that only those individuals able and committed to delivering the ***CLC's Code of Conduct's Outcomes*** for ***Clients*** are awarded a Practising ***Licence***.

To achieve this, the ***CLC*** will only license individuals able and willing to act in a principled manner and deliver the ***CLC Code of Conduct's Outcomes*** by complying with its ***Overriding Principles***:-

- Act with independence and integrity;
- Maintain high standards of work;
- Act in the best interests of ***Clients***;
- Comply with your duty to the court;
- Deal with regulators and ombudsmen in an open and co-operative way; and
- Promote equality of access and service.

Applying for a Licence

1. An individual wishing to apply for a ***Licence***
 - a. must deliver to the ***CLC's*** offices:
 - i. a correctly completed application in the form prescribed by the ***CLC***; and
 - ii. the fee payable; and
 - b. the application must identify the ***authorisations*** and ***permissions*** sought (see item 5); and
 - c. if the ***applicant*** has not held a ***conveyancing licence*** before, they must satisfy the ***CLC*** they are a ***fit and proper person*** to practise as a ***licensed conveyancer*** (see item 8.22 of the ***Licensed Body (ABS)*** Licensing Framework for an overview of the type of factors taken into account when applying the fit and proper test); and
 - d. must:
 - i. either have passed the ***CLC's*** Qualifying Examination, and completed the ***CLC's Practical Training*** requirements; or

- ii. demonstrate to the satisfaction of the **CLC**, and in accordance with such **terms** and **conditions** as may be prescribed, that they have the relevant educational and professional qualifications and experience in the provision of the **reserved legal activity** or activities the subject of the application.

Issuing a *Licence*

2. If the **CLC** is satisfied as to the matters identified at requirement 1 and if it is satisfied of capability and willingness to comply with the **CLC Code of Conduct** and other **CLC** Codes, then the **CLC** shall:
 - a. issue them with a **Licence** as provided at item 5; or
 - b. issue them with a **Licence** as provided at item 5 subject to such **conditions** as it considers appropriate.
3. **Conditions** may result in the **applicant/licensed conveyancer** incurring expenditure and include:
 - a. Limiting the types of **Legal Activities** they may provide;
 - b. Requiring them to take specific steps the **CLC** deems conducive to safeguarding the interests of consumers or other **regulatory objectives**.
4. If it is not satisfied of the matters set out at requirement 2, the **CLC** shall refuse the application.
5. Any **Licence** issued by the **CLC** will be endorsed with:
 - a. all **authorisations** that it grants the individual to carry on **reserved legal activities** (“the **authorisations**”);
 - b. all **permissions** that it grants the individual to provide non-**reserved legal activities** (“the **permissions**”);
 - c. any **conditions** applicable to the exercise of the individual’s **authorisations** and **permissions** (“the **conditions**”); and
 - d. any **condition** imposed will take effect at the time the **CLC** directs.
 - e. the **CLC** will record on its register maintained under s19. of the 1985 Act:
 - i. the **authorisations** and **permissions** granted and any **conditions** imposed;
 - ii. the licensee’s full name and your practising address; and
 - iii. the date and time from which the **Licence** takes effect and its duration.
6. A **Licence** will be in the form prescribed by the **CLC** and will remain valid from the date specified for an indefinite period or for such period as is specified. A **licensed conveyancer** will be entitled to undertake the **Legal Activities** set out in their **Licence**, subject to the **condition** that all regulatory fees have been paid as and when due, and that no order is made or **condition** imposed which affects their continuing entitlement to provide all (or any) of the **Legal Activities** set out in their **Licence**. A **licensed conveyancer** wishing to renew their **licence** must apply to do so one month before its expiry.

Practising as the holder of a *Licence*

7. An individual can only practise as a ***licensed conveyancer*** if they hold a ***Licence***.
8. A ***licensed conveyancer*** can only carry on your ***authorisations*** and ***permissions*** in their capacity as holder of a ***Licence***.
9. A ***licensed conveyancer*** must not carry on any ***reserved legal activity*** that is not within their ***authorisations***.
10. A ***licensed conveyancer*** can only carry on their ***authorisations*** and ***permissions***
 - a. as a ***manager*** of a ***CLC Body***; or
 - b. as a ***manager*** of a body recognised by a ***Approved Regulator*** or a ***Licensing Authority*** other than the ***CLC***; or
 - c. as an ***employee*** of a ***CLC Body***; or
 - d. as an ***employee*** of a body recognised by an ***Approved Regulator*** or a ***Licensing Authority*** other than the ***CLC***.
11. When carrying on their ***authorisations*** and ***permissions***, the ***licensed conveyancer*** must comply at all times with their ***conditions***.
12. The individual must return their ***Licence*** promptly to the ***CLC*** if they cease to be eligible to remain a ***licensed conveyancer***, or if the ***CLC*** demand return of the ***Licence***.
13. Whilst holding a ***Licence***, the ***licensed conveyancer*** must notify the ***CLC*** of any changes to the information they provided under requirement 1 within seven days of becoming aware of such changes.

Conditions on your *Licence*

14. At the time of issuing a ***Licence***, or at any time subsequently, the ***CLC*** may, in its discretion, endorse the ***Licence*** with such ***conditions*** as it thinks fit, or remove any ***condition*** that has been imposed.
15. Where an endorsement is made to a ***Licence***, or an endorsement that has been made is later amended or removed, then the ***CLC*** shall record this in the register.
16. If a licensed conveyancer wishes to apply for the removal or amendment of any ***condition*** endorsed on your ***Licence***, they must provide the ***CLC*** with a completed application and the fee payable.
17. Where a ***Licence condition*** application has been made the ***CLC*** will notify the ***licensed conveyancer*** of its decision within 42 days of its receipt of the application. If the applicant is not been notified of a decision within this period, the application will be deemed to have been refused.
18. When the ***CLC*** agrees to the removal or amendment of all or any of the ***conditions*** imposed, those ***conditions*** will remain effective until the ***Licence*** is delivered to the ***CLC***'s offices together with the fee payable.
19. The ***CLC*** may refuse an application for the removal or amendment of a ***Licence condition*** if:

- a. the *licensed conveyancer* has not complied with item 1; or
 - b. it is not satisfied that the person remains a *fit and proper person* to practise with the removal or variation of such a *condition* on the *Licence*.
20. In any case where it decides to issue a *Licence* subject to *conditions*, to refuse an application for a *Licence* or to refuse an application for the removal or amendment of a *condition* on a *Licence* the *CLC* will notify the individual of the refusal of the application and of the grounds on which it has been refused.
21. Where a determination has been made under requirement 2, 4, 5 or 19, the applicant/licensed conveyancer may within one month of publication of the *CLC*'s determination appeal to the *Adjudication Panel* under section 29 of the *1985 Act*.
22. If an application is deemed to have been refused as provided under requirement 17, the individual may

within one month of the deemed refusal, appeal to the *Adjudication Panel* under section 29 of the *1985 Act*.

Additional Information

Application

- 23. The *CLC* will treat a *Licence* application as having been made on the day on which the *applicant* has complied fully and finally with item 1.
- 24. In considering an application for a *Licence* the *CLC* may, at its discretion, require an *applicant* to attend for interview.
- 25. A *condition* may take effect immediately or at a future time, or it may not have effect until after any appeal in relation to it.
- 26. An *applicant* may, when applying for a *Licence*, apply in addition for a duplicate *Licence* which, if issued, shall be free of charge. If a *licensed conveyancer* applies to the *CLC* at any other time for a duplicate *Licence* a fee is payable.

Duration of Licence

- 27. The fees payable are those prescribed by the *CLC*'s Fees Framework.

Attachment F – Recognised Body Recognition Framework



CLC Recognised Body Recognition Framework

Outcomes-Focused

This Framework seeks to ensure that only those firms able and committed to delivering the **CLC's Code of Conduct's Outcomes** for **Clients** are awarded a **Certificate of Recognition**.

To achieve this, the **CLC** will only license bodies able and willing to act in a principled manner and deliver the **CLC Code of Conduct's Outcomes** by complying with its **Overriding Principles:-**

- Act with independence and integrity;
- Maintain high standards of work;
- Act in the best interests of **Clients**;
- Comply with your duty to the court;
- Deal with regulators and ombudsmen in an open and co-operative way; and
- Promote equality of access and service.

Structural Requirements

1. A Recognised **Body** may be established as a Sole Principal, partnership, a Limited **Company** or a **Limited Liability Partnership** provided all the **Managers** and owners are **Authorised Persons**.
2. A **Recognised Body** which is a **Company** must:
 - a) be registered in England and Wales under the Companies Acts; and
 - b) have its registered office in England and Wales and at the place, or one of the places, of business of the **Company**.
3. A **Recognised Body** which is **Limited Liability Partnership (LLP)** must:
 - a) be registered in England and Wales under the Limited Liability Partnerships Act 2000;
 - b) have its registered office in England and Wales and at its place, or one of its places, of business;
 - (c) have at least two **LLP Members**.

4. At least one **manager** is a **Licensed Conveyancer**.

Application for and Grant of a Certificate

5. Any **applicant** for a Certificate must:
 - (a) deliver to the **CLC** offices
 - (i) a correctly completed application in the form prescribed by the **CLC**, signed by a **Manager**;
 - (ii) the fee payable;
 - (iii) evidence of or a quotation for **professional indemnity insurance**;
 - (iv) any contribution required towards the **CLC's Compensation Fund**;
 - (v) where the **applicant** is a **Company** the application must also be signed by the **company** secretary or a director and accompanied by a copy of its Memorandum and Articles and a declaration that they comply with this Framework; and
 - (vi) where the **applicant** is a **Company** or **LLP**, its application must include its certificate of incorporation.
 - (b) identify the endorsements for which application is made (see item 11);
6. The **applicant** must inform the **CLC** (with such additional information and documentation as the **CLC** may require) of any issues as a result of which may cause the **applicant** to fail to meet requirements 1-4, or:
 - (a) If, as a **Recognised Body**, it has at any time had made against it:
 - (i) one or more of the orders referred to in paragraphs 4(2), 4(2D) and 5(4) of Schedule 6 to the **1985 Act**;
 - (ii) an order of the High Court made under paragraph 6(1) or 6(1A) of Schedule 6 to the **1985 Act**;
 - (b) If the issue of a Certificate will have, or is likely to have, an adverse effect on the delivery of positive **Outcomes** for **Clients**.

so that these issues can be taken into account when the application is determined.

Determinations of applications for Recognised Body Certificates

7. If the **CLC** is satisfied as to the matters identified under items 5 and 6 and of the capability and willingness of the entity to comply with the **CLC Code of Conduct** and other **CLC** Codes, then the **CLC** will:
 - (a) issue a Certificate endorsed as provided at item 11; or
 - (b) issue a Certificate endorsed as provided at item 11, subject to such additional **conditions** as it considers appropriate.Please see items 8.1-8.22 of the **Licensed Body (ABS) Licensing Framework** for an overview of the type of factors taken into account when determining a licence application.
8. If it is not satisfied of the matters set out at requirements 5 and 6 the **CLC** shall refuse the application.

9. If an application is granted with **conditions** attached, the **conditions** must be complied with.
10. **Conditions** may result in the **Recognised Body** incurring expenditure and include:
 - (a) limiting the types of **Regulated Services** a **Recognised Body** may provide; or
 - (b) requiring the **Recognised Body** to take specific steps the **CLC** deems conducive to safeguarding the interests of consumers or other **regulatory objectives**.
11. Any Certificate issued by the **CLC** will be endorsed with:
 - (a) all **authorisations** that it grants the **Recognised Body** to carry on **reserved legal activities** ('the **authorisations**');
 - (b) all **permissions** that it grants the **Recognised Body** to provide non-**reserved legal activities** ('the **permissions**'); and
 - (c) any **conditions** applicable to the exercise of the **authorisations** and the **permissions** ('the **conditions**').
12. Any endorsement or **condition** imposed will take effect at the time the **CLC** directs (a **condition** may take effect immediately or at a future time, or it may not have effect until after any review or appeal in relation to it).
13. The **CLC** will record on its register in respect of each **Recognised Body**:
 - (a) its name and practising address,
 - (b) the endorsements and **conditions**, and
 - (c) the date from which the Certificate takes effect and its duration
14. An entity can only undertake **Legal Activities** as a **Recognised Body** if it has a Certificate in force.
15. A **Recognised Body** can only carry on its **authorisations** and **permissions** whilst acting as a **Recognised Body**.
16. A **Recognised Body** must not carry on any **reserved legal activity** which is not within its **authorisations**.
17. When carrying on its **authorisations** and **permissions**, a **Recognised Body** must comply at all times with its **terms**.
18. The Certificate must be returned promptly to the **CLC** if it ceases to be eligible to remain a **Recognised Body**, or if the **CLC** demands return of its Certificate.
19. Whilst the Certificate remains in force, the **Recognised Body** must notify the **CLC** of any changes to the information provided under items 5 and 6 within seven days of becoming aware of such changes.
20. A new Certificate takes effect the day following the expiration of the existing Certificate unless otherwise directed.
21. Provided a completed application has been received by the **CLC** and no new Certificate has been issued, an existing Certificate shall not expire at that time but

shall remain in force until a new Certificate has been issued. If the renewal application is refused, the existing Certificate remains current until expiry of the period within which an appeal may be brought, or, if an appeal is brought, until the appeal is determined or abandoned.

22. At the time of issuing the Certificate, or at any time subsequently, the **CLC** may, in its discretion, issue the Certificate with such endorsements or **conditions** as it thinks fit, or remove any endorsement or **condition** that it has imposed.
23. Where an endorsement or **condition** is made to a Certificate or an endorsement or **condition** that has been made is later amended or removed the **CLC** shall record this in the register.
24. If making an application for removal or variation of any endorsement or **condition** on a Certificate other than when the Certificate is due to be renewed the **applicant** must use the appropriate **CLC** form, correctly completed and signed by a **Manager** and accompanied by the fee payable.
25. Where an application has been made for amendment or removal of any endorsement or **condition** the **CLC** will notify the **applicant** of its decision within 42 days after it has received the application. If the **applicant** is not notified of a decision within this period, the application will be deemed to have been refused.
26. When the **CLC** agrees to the removal or amendment of any endorsement or **condition**, such endorsement or **condition** will remain effective until the Certificate is delivered to the **CLC**'s offices together with the fee payable.
27. The **CLC** may refuse an application for the removal or amendment of an endorsement or **condition** if:
 - a. item 26 has not been complied with; or
 - b. it is not satisfied that the **Recognised Body** is a **fit and proper person** to practise with the removal or variation of such a **condition** on the Certificate.
28. In any case where it decides to issue a Certificate subject to any endorsement or **condition**, or to refuse an application for a Certificate or for the removal or amendment of an endorsement or a **condition** on a Certificate the **CLC** will notify the **applicant** of the refusal of the application and of the grounds on which it has been refused.

Changes in the Recognised Body

29. No change permitted under items 30-34 is effective unless and until it has been approved by the CLC with or without **conditions** and any fee (as provided by item 26) has been paid. Depending on the nature of the change proposed, the CLC may require the **Recognised Body** or any of its owners or **Managers** to comply with some or all of the provisions of items 5 and 6.
30. In addition to the requirements of the **Notification Code**, we must be **promptly** informed of all such vacancies or changes and we must be provided with full and complete details of the **Authorised Person** or the **Recognised Body** (as appropriate) so that we can determine/approve their appointment.

31. In an **LLP** of two **Members**, if one of them:
- (a) is committed to prison in civil or criminal proceedings;
 - (b) is unable, because of incapacity caused by illness, accident or age, to attend to the practice for a period of more than 14 days (or such other period as the **CLC** may determine);
 - (c) lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15-20, or section 48, of that Act have been exercised in relation to him;
 - (d) abandons the **LLP**;
 - (e) has a **licence** issued by the **CLC** subject to a **condition** which would be breached by continuing as a **LLP Member**;
 - (f) is not a **Licensed Conveyancer**; or
 - (g) dies,

the Certificate will continue in full force and effect provided the remaining **LLP Member** is an **Authorised Person**, and within 28 days of the occurrence (or the end of any time period determined under paragraph (b)) an additional person who is an **Authorised Person** has become an **LLP Member**. The remaining **LLP** must notify the **CLC** of these changes.

32. With the exception of a **LLP** (to which requirement 31 applies) where a **Recognised Body** has only one **Manager** who:
- (a) is committed to prison in civil or criminal proceedings;
 - (b) is unable, because of incapacity caused by illness, accident or age, to attend to the practice of the **Recognised Body** for a period of more than 14 days (or such other period as the **CLC** may determine);
 - (c) lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15-20, or section 48, of that Act have been exercised in relation to him;
 - (d) abandons the practice of the **Recognised Body**;
 - (e) has a **licence** issued by the **CLC** subject to a **condition** which would be breached by continuing as a **Manager**; or
 - (f) dies;

the Certificate will continue in full force and effect provided that within 28 days of the occurrence (or the end of any time period determined under paragraph (b)) a **Manager** who is an **Authorised Person** is in place for the Certificate to remain valid, and that in the meantime the **CLC** has been advised of the **arrangements** in place to ensure that the interests of consumers are protected.

33. No person lacking capacity (within the meaning of the Mental Capacity Act 2005) may continue as a **Manager**. No voting powers may be exercised in respect of any shares registered in that person's name.

34. Where there is a change in ownership in a **Recognised Body** the effect of which is that:
- (a) there is a change of 10% or more in the interest a person has in a **Recognised Body**); and/or
 - (b) a **Body** ceases to exist and another entity (which may be a **Recognised Body**) succeeds to the whole or substantially the whole of the business of the **Recognised Body**

the **CLC** may determine that:

- 1) the **licence** of the **Recognised Body** continues in effect (with or without such **Authorisations, Permissions** and/or **Conditions** as the **CLC** may determine);
- 2) the **licence** of the **Body** is transferred to the entity which has succeeded to the whole or substantially the whole of that **Recognised Body's** business (or to another person approved by the **CLC**) and that **licence** has effect with or without such **Authorisations, Permissions** and/or **Conditions** as the **CLC** may determine

provided that the owners and **Managers** of the **Recognised Body** are **Authorised Persons**.

Cessation of Recognition

35. If the **CLC** determines that the issue or continuation of a Certificate is likely to have or will have a serious adverse effect on the delivery of positive **Outcomes** for **Clients**, the **CLC** will determine that the Certificate ceases to have effect, notify the **Recognised Body** and require immediate delivery to it of the Certificate

Appeal

36. An **applicant** dissatisfied with a determination made under requirement 7, 8 or 27 may within one month of publication of the **CLC's** determination appeal to the **Adjudication Panel**.
37. If the application is deemed to have been refused as provided under item 25, the applicant may within one month of the deemed refusal appeal to the **Adjudication Panel** under section 29 of the **1985 Act**.

Inspection and Discipline

38. To enable the **CLC** to investigate whether there has been a breach of its **regulatory arrangements** and to prepare a report as part of that investigation, the **Recognised Body** must provide to the **CLC** all its records, papers, files and financial accounts, all

of which must be stored on a **Durable Medium** and be immediately accessible to the **CLC**.

39. If it appears to it that there has been a breach of any of its **regulatory arrangements**, the **CLC** may take **enforcement** action in accordance with its **Enforcement** Policy.

Additional Information

40. The **CLC** will treat an application for a Certificate as having been made on the day on which the **applicant** has complied fully and finally with item 5.
41. In considering an application for a Certificate the **CLC** may, at its discretion, require representatives of the **applicant** to attend for interview.
42. Any Certificate issued remains the property of the **CLC**.
43. Any document served on a **Recognised Body** under this Framework will be posted to the **applicant's** or the **Recognised Body's** principal office.
44. Any endorsements or **conditions** imposed will take effect at the time the **CLC** directs e.g. an endorsement or **condition** may take effect immediately, or at a future date.
45. A Certificate automatically ceases to have effect if the **CLC** refuses to recognise an **applicant** or to continue to recognise a **Recognised Body**.
46. An **applicant** is entitled to a duplicate Certificate free of charge if issued at the same time as the original. At any other time a fee is payable for the issue of a duplicate Certificate.
47. The fees payable are those prescribed by the **CLC's** Fees Framework.



Licensing *Alternative Business Structures* - The *Licensed Body (ABS)* Licensing Framework

1. Introduction

Purpose of Framework

The purpose of this framework is to ensure that consumers have confidence in the way bodies owned or managed by ***Non-Authorised Persons*** – i.e. someone who is not a lawyer and so is not authorised by an ***Approved Regulator*** to provide a ***reserved legal activity*** such as ***conveyancing, probate, litigation or advocacy*** - deliver services regulated by the ***CLC***. To achieve this, the ***CLC*** will only license bodies able and willing to act in a principled manner and deliver the ***CLC Code of Conduct's Outcomes*** by complying with its ***Overriding Principles***:-

- Act with independence and integrity;
- Maintain high standards of work;
- Act in the best interests of ***Clients***;
- Comply with your duty to the court;
- Deal with regulators and ombudsmen in an open and co-operative way; and
- Promote equality of access and service.

Overview of Framework

This document sets out:

- what is meant by a ***Licensed Body*** (also called an ***Alternative Business Structure***);
- how the ***CLC*** expects ***Licensed Body*** applications to be made;
- the information upon which it bases its application determinations;
- the circumstances in which an application may be approved, made subject to ***conditions*** or refused;
- how ***licence*** determinations can be appealed; and
- the regulatory responsibilities of successful ***applicants*** must comply; and the range of regulatory/***enforcement*** responses available to us if these are not met.

Terms used - words presented in bold italicised font – such as ***Authorised Persons, Approved Regulator*** and ***Overriding Principles*** above - are defined in the Glossary of Terms provided at the rear of the ***CLC Handbook***. Please refer to these definitions where you need clarification.

CLC Handbook - references are made to the ***CLC's Code of Conduct, Licensed Body, and Conflicts***

of Interest Code; these are found in the **CLC Handbook** (available on the **CLC website**) and should be read in conjunction with this Framework.

2. Forms of *Alternative Business Structures (ABS)*

2.1 The **2007 Act** removed restrictions on the management and ownership structures of traditional legal services firms. **Non-Authorised Persons** (non-lawyers) are now able to be owners of legal services providers and such firms are now able to provide other services alongside **legal activities**. For instance:

- a sole **Licensed Conveyancer** and an independent financial adviser might set up a business providing **conveyancing services** and mortgage advice;
- **conveyancing services** are provided alongside estate agency or surveying services;
- **probate** activity is made available alongside funeral services.

2.2 Combining businesses in such a way might allow overhead savings to be made, enhance career progression opportunities for **Non-Authorised Persons** – providing skills such as strategic leadership, management, human resources, finance and IT, essential to a well-run business - and offer **Clients** the opportunity to source a range of different services from one provider (a one-stop shop).

2.3 We use the term **licensable body** to mean a business which is applying to become a **CLC Licensed Body**. '**Alternative Business Structure**' is a widely recognised term but it is not used in the main body of the **2007 Act** text. Therefore we use the term '**Licensed Body**' when referring to the licensing of such structures.

2.4 A **Licensed Body** may take the form of:

- A legal body part-owned by a **Non-Authorised Person**;
- A legal body owned by **Authorised Persons** but managed by at least one **Non-Authorised Person**;
- A business wholly owned by a **Non-Authorised Person(s)** providing both legal and other services; or
- A range of models in between.

2.5 It may be constituted as a partnership, a **Limited Liability Partnership**, or **Limited Company**. The structure and business model is of the body's choosing.

2.6 A **licensable body** can be partly or wholly owned by a **Non-Authorised Person(s)** and it can provide both legal and non-legal services. Provided that one **manager**, the **Head of Legal Practice (HoLP)**, is an **Authorised Person** it can otherwise be managed by **Non-Authorised Persons**. NB. If the **HoLP** is not authorised to deliver the particular legal service the body provides there must be another **Authorised Person** who is so authorised.

2.7 As a **Licensing Authority** regulated by the **Legal Services Board** the **CLC** is able to license and regulate **ABS** providing **conveyancing, probate, litigation** and **advocacy*** services with a range of other services.

*Applicable should our application to regulate *litigation* and *advocacy* prove successful.

3. Who can apply?

3.1 The *licensable body* must have:

- A practising address in England and Wales (or Wales);
- A designated *Head of Legal Practice* who is an *Authorised Person* in relation to *Reserved Legal Activities*;
- A *Head of Finance and Administration (HoFA)*.

3.2 Legal services must be provided or supervised by *Authorised Persons* licensed by an *Approved Regulator*, such as the *CLC* or Solicitors Regulation Authority. Any non-*reserved legal activities* must be provided or supervised by appropriately experienced and/or qualified persons.

3.3 A *Licensed Body* must have *professional indemnity insurance* in place. The *CLC* operates a *Master Policy* to provide *professional indemnity insurance* cover to its regulated community. Licensable bodies can obtain cover through this or may arrange other cover. Should you choose to opt out of the *CLC Master Policy* you are required to obtain this cover from an *authorised insurer*.

3.4 If the *CLC* is not satisfied by the *conditions* and cover provided by the *authorised insurer*, the body will be required to take out a *supplemental policy* so that the professional indemnity cover it has in place is equivalent in all respects to the cover which would be provided by the *CLC's Master Policy*.

3.5 No body may provide legal services regulated by the *CLC* unless and until it has *Professional Indemnity Insurance* which complies with these requirements and has produced *evidence of insurance* to us. NB. A body may increase the level of indemnity cover above the minimum required under the *Master Policy*.

3.6 The *CLC* maintains a *Compensation Fund* for the purpose of making discretionary payments to persons who have suffered loss as a result of negligence, fraud or dishonesty or a failure to account, by a *CLC*-regulated body. Each body licensed by the *CLC* is required to make a contribution to the *Compensation Fund*. The fee payable is a percentage (as determined by the *CLC* and approved by the *LSB*) of the turnover (or estimated turnover) of that body. The income received is applied solely for the purpose of maintaining, managing and administering the Fund.

3.7 The *CLC* requires each body to pay an annual regulatory fee. The fee payable is a percentage (as determined by the *CLC* and approved by the *LSB*) of the turnover (or estimated turnover) of that body. The income received funds the regulatory activities of the *CLC*, but not any costs attributed to the *Compensation Fund*.

- 3.8 A body which is able and willing to meet all of these requirements can apply to become a **CLC Licensed Body**.
- 3.9 We cannot accept applications from **Special Bodies**.

4. **Licensed Body (ABS) Applications**

4.1 Applications must include:

- (a) a correctly completed **CLC ABS Licensed Body** application form (including identification of the **Regulated Services** the body wishes to provide);
- (b) declaration, and proof of identity, of the **HoLP** and **HoFA** and consent for data verification to be carried out;
- (c) declaration, and proof of identity, of each **Authorised Person Manager**;
- (d) declaration, and proof of identify, of each **Non-Authorised Person Manager**, and consent for data verification to be carried out;
- (e) declaration, and proof of identity, of each **Authorised Person** with a **material interest***;
- (f) declaration, and proof of identity, of each **Non-Authorised Person** with a **material interest***, and consent for data verification to be carried out (the declaration must identify any **associates**);
- (g) if it is a **Company** or **LLP** its certificate of incorporation;
- (h) evidence (or an offer) of appropriate **professional indemnity insurance**;
- (i) the application fee payable.

There are many ways a person can hold a **material interest*** – please ensure you reference the **CLC Handbook Glossary of Terms**.

4.2 We would prefer to receive applications electronically (in Microsoft Word format), but hard copy applications by post are also welcome.

Licence Application Data

4.3 Full and frank information disclosure is needed to help us determine if:

- owners are fit to own;
- **managers** are fit to manage; and
- the body is fit to provide legal services to the public.

4.4 We require the following information:

Persons	<ul style="list-style-type: none"> • Declaration of Persons with a material interest of 10% or more interest in the body; • Declaration of associates with 3% or more interest; • Declaration of Head of Legal Practice accompanied by details of relevant experience, qualifications, training and professional history information;
----------------	--

	<ul style="list-style-type: none"> • Declaration of Head of Finance and Administration accompanied by details of relevant experience, qualifications, training and professional history information; • Declarations of all Managers; • Declarations of Authorised Persons (specifying which activities they are authorised to provide and by which Approved Regulator); • Staff structure, including numbers of Authorised Persons and Non-Authorised Persons.
Financial	<ul style="list-style-type: none"> • Proof of funding source; • Business Plan & Financial Forecasts; • Bank details; • Where applicable, the organisation's last 3 years of accounts.
Statements	<ul style="list-style-type: none"> • An outline of the services proposed and how you will ensure they are delivered to a high standard; • Statement outlining compatibility with delivery of the Code of Conduct Outcomes and the Licensed Body Code (and where there are issues, details of how these have been, or will be resolved); • Who will carry out Reserved Legal Activities; • How the body aims to improve access to justice.
Arrangements for:	<ul style="list-style-type: none"> • Compliance with CLC regulatory arrangements; • Notifying us of a breach of regulatory responsibilities; • Notifying us of a proposed change of material interest; • Provision of any non-reserved legal activities; • Governance and management; • HoLP and HoFA to have management level status and entitlement to dissent from decisions made by the management; • Preventing and dealing with conflicts of interests and improper influence; • Complaints-handling; • Ensuring the body employs only fit and proper persons (and no-one disqualified by a Licensing Authority).
Fit and Proper Declaration – Persons with material interest, HoLP, HoFA & Managers	<ul style="list-style-type: none"> • Any criminal charge or conviction (including spent convictions and cautions) or cases pending in the UK or elsewhere; • Any previous disciplinary proceedings commenced by a professional or regulatory body in the UK or elsewhere (whether concluded or not); • Any adverse order or finding of a civil court or employment tribunal; • Any disqualification as a director; • Any declaration of bankruptcy (and whether or not this has been discharged) or Individual Voluntary Arrangement;

	<ul style="list-style-type: none"> • Disqualification from acting in any capacity for a legal services, financial or other provider (including a Licensed Body); • Any other information that could reasonably be expected to have a bearing on the individual being fit and proper to own or manage a Licensed Body.
--	---

NB. The requirement for accounts for the 3 years immediately preceding an application applies to companies which own (10% or more) of the **licensable body**.

Governance and Management Arrangements

- 4.5 The **CLC Code of Conduct** and the underpinning **Conflicts of Interest** Code make clear our requirements regarding the prevention, identification and mitigation of such conflicts. All bodies regulated by the **CLC** must comply with these requirements in order that **Clients** receive high standards, and independent, service.
- 4.6 The **CLC Licensed Body** Code explicitly requires that **Non-Authorised Persons** with a **material interest** must not be allowed to exert **improper influence**. **Licensed Bodies** and the **Authorised Persons** within them must always support the constitutional principle of the rule of law and act in the best interests of their **Clients**. Licensable bodies must be able to demonstrate that they have in place **arrangements** enabling this.
- 4.7 To be licensed a **licensable body** must employ at least one **Authorised Person** who is authorised to provide each of the **Reserved Legal Activities** the body proposes to deliver. If these persons are not **managers** we will need to be satisfied that the body's **arrangements** take this into account.
- 4.8 Given the importance of the roles of the **HoLP** and **HoFA** we will be looking for skilled individuals suited to the business needs of the body. We set no specific requirements in this area other than the **HoLP** should be an **Authorised Person** and a recommendation that the **HoFA** should have accountancy experience and/or an accountancy qualification.
- 4.9 The suitability of the proposed **candidates** will be judged according to the body's size and **risk profile**. For example, it may be acceptable for the **HoFA** of a small firm not to have an accountancy qualification. In such instances, accountancy experience would be acceptable.
- 4.10 Only those bodies with appropriate **arrangements** will be licensed. Examples of high-level good practice of risk management and business **arrangements** are provided in the **CLC Handbook, Management and Supervision Guidance**.

Employment Arrangements

- 4.11 Our licensing **terms** are clear in their requirement that the interests of the public and of **Clients** must be protected. It is therefore very important that a **Licensed Body** employs only those persons it is confident will act in a manner compatible with these interests.
- 4.12 It is for the body to determine the most appropriate **arrangements** for it to be confident of the fitness and probity of its **employees**. This may take the form of an employment contract clause which requires **employees** to declare an issue to the

body, a self-declaration form (which is completed when an offer of employment is made and on an annual basis thereafter), a Criminal Record Bureau check, or other system. The body may target particular roles which it considers more important in this regard than others e.g. those handling **Client monies** may be subject to a Criminal Record Bureau check whilst other **employees** are required to declare any fit and proper issues.

- 4.13 The **Legal Services Board (LSB)** maintains a list of all persons disqualified from roles in Licensed Bodies. The list is available to view on the **LSB's** website for you to check against your **employees**, or proposed **employees**. The list is available to view on the **LSB's** website: <http://www.legalservicesboard.org.uk/>
- 4.14 You must not employ any listed person in the role in respect of which they are disqualified. To do so is a significant breach of your regulatory responsibilities and is likely to result in the body's **licence** being suspended and/or revoked.
- 4.15 We consider the qualifications and experience of the **Licensed Body's employees** to be a matter for the body itself to decide. It is the **licensable body's** duty to ensure it has the appropriate individuals in place to ensure the regulatory requirements are met and that the rule of law is supported.

Business Plan and financial projections

- 4.16 The Business Plan must cover the 3 years from when the body could reasonably expect to be licensed (90 days after the **CLC** has received a complete application). An **applicant** will need to demonstrate they have critically examined their:
- financial forecasts;
 - **employees** numbers, skills and knowledge;
 - anticipated turnover;
 - running expenses;
 - capital investment;
 - capital expenditure and liquidity;
 - how the body will be initially funded (and how prepared for a given initial period where it is likely to receive little comparative income);
 - proposed premises;
 - the body's marketing strategy;
 - its accounting systems and procedures;
 - any expansion plans; and
 - any other information deemed relevant by the **applicant** or the **CLC**.

Access to Justice

- 4.17 An **applicant** must be able to demonstrate that licensing the body would improve **access to justice** i.e. recognition of, and response to potential and actual, consumer needs. This may take the form of provision of a greater range of services and methods of accessing these services, lower prices, extended opening hours, accessibility, online provision, or other factors. It is up to the individual **applicant** as to how they define **access to justice** and how they demonstrate they will improve it.
- 4.18 We anticipate that an application will be refused because of **access to justice** considerations only in exceptional circumstances.

Supplementary Information

- 4.19 You may wish to provide examples of how you actively promote the **CLC Outcomes**, e.g.:-
- Certification or assessment of activities by independent or accredited bodies; or
 - Drawing up your own quality charter or participation in quality charters or labels drawn up by professional bodies (particularly consumer association assessments).
- 4.20 Provision of supplementary information will be welcomed and judged favourably by the **CLC** as long as it is pertinent to your application. Please do not provide irrelevant material as this is likely to unnecessarily prolong the application determination period time.

Any other info

- 4.21 We require the declaration of ‘any other information that could reasonably be expected to have a bearing on their being fit and proper’ with regard to **Non-Authorised Persons** with 10% or more **material interest**, **HoLPs** and **HoFAs**. This could include:
- by a reason of character, conduct or association and in particular has been in breach of statutory requirements regarding payment of tax or for a **licence**;
 - they lack capacity within the meaning of the Mental Capacity Act 2005 and powers under sections 15 to 20 or section 48 have been exercised.

Material Interest Details

- 4.22 The holding by a **Non-Authorised Person** (i.e. non-lawyer) of a **material interest** in a **Licensed Body** is subject to the **CLC**’s approval. A **licence** will not be granted until we have approved all **Non-Authorised Persons** with a **material interest**. A **licence** application must identify all **Non-Authorised Persons** who own or are expected to own such a **material interest** in the body when the **licence** is issued. All **Non-Authorised Persons** with a **material interest** will be subject to the fit and proper test and must consent to the **CLC** sharing the information with other bodies for verification purposes.
- 4.23 The **material interest** declaration refers both to the actual or proposed **material interest** (10% or more) and/or any of that person’s **associates** with a **material interest** of 3% or more. The type of interest concerned must be identified. Failure to fully and truthfully to declare this information when aware of the facts is a criminal offence making the declarer liable on summary conviction to a fine. There are a number of different ways in which a **Non-Authorised Person** can have a **material interest**.
- 4.24 It is very important that a body providing legal services is able to meet its regulatory responsibilities. Having an accurate picture of those who control Licensed Bodies is an important part of the **CLC** recognising any risks to this. Therefore all **Non-Authorised Persons’ material interest** must be declared as they are subject to our approval.
- 4.25 If any of these details look likely to change – e.g. the identity of an owner, or the nature or value of their interest - whilst we are determining the **licence** application, the **applicant** must notify us of this within 7 days of the proposal. If the **applicant** had no knowledge of a change which has taken place they must notify us within 7 days after they are made aware. It is a criminal offence not to identify a **Non-Authorised Person** who has, or expects to have, an interest in the event a **Licensed**

Body licence is issued to the **applicant**. If such a breach were to occur, the breach and the fine would be likely to be taken into account as part of the determination of the **licence** application. However, it is a defence for a person charged with such an offence if they are able to show that they had no knowledge of the duty to notify.

- 4.26 You must inform all **Non-Authorised Person** with a **material interest** that the **Licensed Body** application process requires them to be identified and that they will need to undergo a fit and proper test, which includes a Criminal Record Bureau Check. You must obtain from them a completed and signed fit and proper declaration form. You must advise them that they may need to provide us with information/documents to inform our **licence** application assessment (or during the duration of the **licence** if we become concerned by their **material interest**). You should also explain that provision of false or misleading information is a criminal offence liable on summary conviction to a fine and on conviction on indictment to a term of imprisonment.
- 4.27 The fit and proper test helps inform our assessment of **improper influence** i.e. whether the **Non-Authorised Person's material interest** would compromise the delivery of the **CLC Code of Conduct's Outcomes** or could cause **Authorised Persons** to be unable to meet their regulatory duties.

5. Transitional arrangements for *CLC Recognised Bodies*

- 5.1 These arrangements apply to bodies licensed by the *CLC* as a *Recognised Body* on the date it is authorised as a *Licensing Authority* but which, because they are owned or managed by persons who are not *Authorised Persons*, need to become a *Licensed Body* by the date specified by the *CLC*.
- 5.2 We will provide these bodies with the information we currently hold on them, requiring them to verify or amend it as appropriate. Relevant data to fill any information gaps must be provided. These bodies must appoint their Heads of Legal Practice and Heads of Finance and Admin; and declare *Authorised Persons* with *material interest* and their *associates*.
- 5.3 These applications will be fast-tracked as they have a track record with us. We are familiar with the structures, systems and *controls* of these bodies; and have carried out monitoring inspections on them (often over a number of years). A current *CLC Recognised Body* which applies to become a *CLC Licensed Body* will receive notification of the *CLC*'s determination within 42 days of receipt of their completed *Licensed Body* application. The application will be assessed and determined using the same criteria as new *applicants*.
- 5.4 Should there have been significant changes to ownership we will extend the 42 day determination period to 90 days to ensure we are confident of capturing any risks to the *Code of Conduct Outcomes* the new owner(s) may present. Any additional work we have to undertake will increase the application fee payable (see paragraph 7.5).

6. Licensed Bodies regulated by other *Licensing Authorities*

- 6.1 An *ABS* already licensed by another *Licensing Authority* which is seeking instead to be licensed by the *CLC* will need to complete the *licence* application as required by all *applicants*. An *applicant* which has had its *Licensed Body licence* revoked by another *Licensing Authority* will not automatically be excluded from applying for a *CLC Licence*. However, the *licence* revocation will be a relevant factor in our determination of the application. Where we have revoked a body's *licence* we will not accept an application if it is made within 12 months of the *licence* revocation, unless there are exceptional circumstances. We will need to be fully satisfied that the issue which triggered the revocation has been addressed and the remainder of the application would need to evidence that all *CLC* licensing requirements are met in full.

7. Fees

- 7.1 The standard **licence** application fee is broadly reflective of a range of key factors including cost, size and **risk profile** of Licensed Bodies.
- 7.2 The **applicant** will be charged the cost to the **CLC** of processing a standard application. On the basis that the standard application will take 2 days to process the fee for a first time **Licensed Body** application is £1200.
- 7.3 We reserve the right to require further information and/or statements should we see reasonable grounds to do so. We also reserve the right to charge additional amounts above the standard fee for applications which take more than the expected determination period of 2 days e.g. bodies with unusual or complex ownership, structures, particularly where there is a foreign – i.e. not in England or Wales - ownership element (which may require more extensive data verification endeavours), or where incomplete information has been provided. These will be charged at £80 per hour.
- 7.4 The **CLC** will use external advisers where it feels that it is necessary, more appropriate or more efficient to consider parts of the application (e.g. to deal with technically complex, unusually data intense, poorly prepared or urgent applications). It will ask the **applicant** to pay for the work performed.
- 7.5 We anticipate there will be less resource required to process an application from a **Recognised Body** which is currently regulated by the CLC than from an entity which we have not previously regulated. We shall therefore require payment of a lower standard fee of £600 for such applications. We reserve the right to charge an increased fee (based on an hourly rate of £80) on an hourly basis where the time we need to spend in assessing the application exceeds 2 days (e.g. where there have been significant ownership changes or incomplete information has been provided).
- 7.6 We reserve the right to review the fee schedule and to vary the fee methodology as appropriate.
- 7.7 The **applicant** will be required to pay for the data verification (including Criminal Record Checks) which needs to accompany the application. This will be carried out by a provider accredited by the **CLC**. As the extent of verification of fit and proper data varies according to the role, so does the cost, which is currently in the range £85-£120. We shall notify applicants at the time of making their application of current prices. You may be able to claim back the Value Added Tax from these costs if VAT-registered. We may carry out additional checks if we believe it is appropriate to do so and shall charge the **applicant** the cost of doing so.
- 7.8 We anticipate that **licence** modifications/removal of **conditions** requests will take no more than 4 hours to determine. The standard application fee for such requests will be £320. We reserve the right to charge additional amounts for particularly complex

applications which take longer than this to determine. These will be charged at £80 per hour.

- 7.9 Should a **Licensed Body** apply to change the individual person occupying the role of **HoLP** or **HoFA** the standard application fee will be £240. This is based on the assumption that such requests will take no more than 3 hours to determine. We reserve the right to charge additional amounts for particularly complex applications which take longer than this to determine. The **applicant** will be required to pay for the data verification which needs to accompany the application.
- 7.10 The annual Regulatory Fee will be determined each year. The current rates are set out in the Fees Rules 2010 at www.clc-uk.org.
- 7.11 **Compensation Fund** contribution to be determined each year. For the period 1 November 2010 to 31 October 2011, there is a nil contribution.

8. Licence Application Assessment

Acknowledgement of receipt of application

- 8.1 We will aim to acknowledge receipt of your application within 3 **working days**. If your application is incomplete we will return it to you identifying those elements which are missing or have not been properly completed.
- 8.2 Provision of any false, misleading or incomplete information is likely to delay consideration of your application and if material will result in the application being rejected. If the **CLC** becomes aware after granting a **licence** that a body, a person with **material interest** or a **manager** of that body, has provided false or misleading information the **licence** may be suspended or revoked.

Data Verification

- 8.3 The **HoLP**, **HoFA**, persons with **material interest** and all **Managers** must sign their declarations to confirm the information they have provided is correct. Information provided will be kept secure and used only for these purposes.
- 8.4 We shall carry out such checks as we consider necessary to verify the information you have provided. For the **Non-Authorised Persons** with **material interest**, **Non-Authorised Person Managers**, the **HoLP** and **HoFA**, this will include checks of the fit and proper declarations e.g. credit, **insolvency**, and insurance. We will obtain Standard Criminal Record Bureau (CRB) checks of both unspent and spent convictions for the HoLP and HoFA and those with a material interest (this may include associates – see item 8.6). We reserve the right to request a Basic CRB check (covers unspent convictions only) for a manager or Authorised Person. The applicant will be required to pay for these checks (see paragraph 7.7). We have information-sharing agreements with other regulatory, professional and data verification bodies to aid the verification. The information will be shared in accordance with data protection legislation.
- 8.5 We will check the disciplinary records of **Authorised Persons** with their relevant **Approved Regulator**. Where this identifies issues we may verify the fit and proper declaration data and charge the **applicant** accordingly.
- 8.6 Verification of information on all **associates** is unlikely to be either practical or proportionate. Only where there are concerns about an **associate**, particularly significant influence or control concerns, will we seek additional, information or require information to be verified.

Licensing Approach

- 8.7 All **Approved Regulators** of legal services providers must act in a way which is compatible with the **regulatory objectives**. Therefore the **Overriding Principles** and **Outcomes** of our **regulatory arrangements** are devised to support them and a body's **licence** application will be assessed in light of these; on receipt of the application and validation of relevant data we will carry out an assessment of the

risks posed to delivery of the **Outcomes** and compliance with the **Licensed Body Code** if we approve the application for a **licence**.

- 8.8 All interested parties will be signposted to the electronic version, or provided with a hard copy of, the **CLC Handbook** so they are aware of the regulatory responsibilities of a **Licensed Body** and those involved with it.
- 8.9 We will assess the application to determine the body's capability and capacity to deliver the **CLC's Code of Conduct's Outcomes** and to meet the **CLC's Licensed Body Code**. Please see the **CLC Handbook**.
- 8.10 This will be determined by an assessment of the following factors:

- The body's activities and **Client** type (including whether the non-**reserved legal activities** the body is proposing to provide are closely related to the **reserved legal activities** proposed);
- The quality of the governance/management **arrangements** (including regulatory compliance **arrangements** such as ensuring **Non-Authorised Persons** do not cause or substantially contribute to a regulatory breach by the **licensed body**, or **Authorised Persons** within it) and risk management strategies;
- The quality of the **arrangements** to prevent and deal with **Improper Influence** and **Conflicts of Interest**, ensuring **Authorised Persons** maintain the **Overriding Principles** and comply with their own individual regulatory responsibilities;
- Probity of funding source;
- Financial viability of the body and the integrity of the Business Plan/financial projections in light of the body's proposals;
- **Client money** handling **arrangements**;
- The quality of operating procedures including **complaints**-handling;
- Resources allocated to, and **arrangements** for **reserved legal activities** (in particular who will be providing them or supervising their provision), this will include an assessment of the ratio of **Authorised Persons** to **Non-Authorised Persons**;
- Competence to deliver non-reserved activities, including the resources, **arrangements**, sophistication or vulnerability of their **Clients**, its relatedness to the **reserved legal activities** the **applicant** proposes to provide and **access to justice** implications if the activities were not permitted;
- Suitability of proposed **Non-Authorised Persons** with **material interests** and how they may impact upon the body's independence and integrity (they must not prejudice a) delivery of the **Code of Conduct's outcomes** or b) the ability of **Authorised Persons** to meet their regulatory duties);
- Suitability of proposed **Head of Legal Practice (HoLP)** and **Head of Finance & Administration (HoFA)**;
- The **arrangements** in place which permit the **HoLP** and **HoFA** to report on matters direct to the **CLC** without prior consultation or approval from the **licensable body**, its **Managers**, owners or **associates**;
- Where the **applicant** is proposing that the designated **HoLP** and the **HoFA**

are the same person whether this is appropriate taking account of the size and **risk profile** of the **licensable body**;

- Suitability of proposed **Managers** and **Authorised Persons**;
- Where the body has chosen to opt out of the **CLC Master Policy** whether their own **arrangements** provide their **Clients** with cover equal to that which would be provided by the **Master Policy**;
- Quality of employment **arrangements**, particularly procedures for ensuring **managers** and **employees** are **fit and proper persons**;
- Any significantly prejudicial **access to justice** barriers;
- Any other factors which the **CLC** believes may pose a risk to delivery of the **Code of Conduct's Outcomes**.

8.11 We will consider the following factors in determining the suitability of declared **Non-Authorised Persons** with **material interest**:

- a) Whether there is a risk of **improper influence** i.e. that the person's **material interest** is likely to compromise delivery of the **Code of Conduct Outcomes** and the regulatory duties of both the **Licensed Body** and its **Authorised Persons** (e.g. they are subject to other duties which may conflict/compromise the regulatory duties);
- b) Any concerns identified by the fit and proper tests;
- c) Their financial position;
- d) Whether they have been disqualified by a **Licensing Authority** from acting as an **HoLP, HoFA, manager** or **employee** of a **Licensed Body**;
- e) The person's **associates**.

8.12 We will consider the following factors in determining the suitability of the proposed **HoLP**:

- a) Any concerns identified by the fit and proper test;
- b) If they are an **Authorised Person**;
- c) Whether they have been disqualified by a **Licensing Authority** from acting as an **HoLP, HoFA, manager** or **employee** of a **Licensed Body**;
- d) Whether they have been subject to disciplinary proceedings or disciplinary investigation;
- e) Their competence and credibility to fulfil the role effectively;
- f) Their level of seniority and whether this is appropriate to the size and structure of the **Licensed Body**.

8.13 We will consider the following factors in determining the suitability of the proposed **HoFA**:

- a) Any concerns identified by the fit and proper test;
- b) Whether they have been disqualified by a **Licensing Authority** from acting as an **HoLP, HoFA, manager** or **employee** of a **Licensed Body**;
- c) Their competence and credibility to fulfil the role, including their accountancy experience, competence and/or whether they have a recognised

accounting qualification;
d) Their level of seniority and whether this is appropriate to the size and structure of the **Licensed Body**.

8.14 We will consider the following factors in determining the suitability of the proposed **Managers**:

a) Any concerns identified by the fit and proper test;
b) Whether they have been disqualified by a **Licensing Authority** from acting as an **HoLP, HoFA, manager** or **employee** of a **Licensed Body**;
c) Their competence and credibility to fulfil the role;
d) Their level of seniority and area of management.

8.15 Where the **beneficial owner** is a corporate body the fit and proper test will broadly reflect the approach taken in respect of **Licensed Body** applications. This may include governance **arrangements**, financial **arrangements** and application of the fit and proper test to its Directors. This test may also be applied to the owner(s) of a corporate body.

8.16 We will approve a person's **material interest** where we are satisfied that it would not present a risk to the **Code of Conduct Outcomes** or **Authorised Persons'** duties and the person is otherwise considered a **fit and proper person** to own that interest. Should we approve a **Non-Authorised Person's material interest** this will be taken to mean that we have also approved any lesser **material interest** they have in the body.

8.17 Where we consider a **Non-Authorised Person's material interest** presents a risk we will seek to impose **conditions** on that interest. Where we consider a risk too significant to be mitigated by **conditions** we will object to the interest. In both cases we will issue a warning notice to both the **applicant** body and the investor specifying the reasons for our intended measure. The notice will state the reasons for our determination and, if we propose to issue a **licence** subject to **conditions**, their nature.

Licence Application Determination

8.18 All of our **regulatory arrangements** seek to promote the **regulatory objectives**. Our **Code of Conduct** identifies positive **Outcomes** which all licensees must deliver through compliance with a number of **Overriding Principles** of behaviour. All applications will be assessed against the body's capability and capacity to deliver on these responsibilities.

8.19 If we are not completely satisfied that the body will deliver the **Outcomes**, we may issue a **licence** subject to **conditions** or may refuse the **licence** application.

8.20 Provision of adverse information concerning an individual does not necessarily preclude our approval of them. We will assess the information provided against the individual's proposed role and against the circumstances e.g. the individual may be able to satisfy the **CLC** they have learnt from the identified event. Our determination will depend upon the nature of the information provided and whether this puts at risk compliance with the body's regulatory responsibilities. For instance, we are likely to disregard spent convictions for less serious offences,

provided they are not dishonesty or fraud related. We consider that dishonesty or fraud related convictions are likely to present too great a risk to delivery of positive **Outcomes** for **Clients**. In such instances, we are unlikely to be confident that the body will meet **Overriding Principle 1 Act with Independence and Integrity**; and **Overriding Principle 5 to Deal with regulators and ombudsmen in an open and cooperative way**. Where an individual has been declared bankrupt or been subject to an Individual Voluntary Arrangement (particularly if it is recent), it is likely that an application for that individual to be approved as a **HoFA** will be refused as the role requires both financial capability as well as probity.

8.21 We are likely to defer our decision until after any pending cases or proceedings have been determined, unless the subject matter of the case or proceeding is less serious and is not dishonesty related.

8.22 The determination of the risks presented by individual persons will be based upon an assessment of the following:

(a) Is there full confidence that the HoLP/HoFA has integrity and is trustworthy and honest?

(i) Unless there are exceptional circumstances the **CLC** will not be satisfied that the individual is a **fit and proper person** and will refuse the **candidate** if they have:

- convictions for offences involving dishonesty; or
- deceived or sought to deceive others, e.g. academic authorities, employers or members of the public.

(ii) The following might satisfy the Committee of the individual's present integrity, honesty and trustworthiness:

- if in view of the time since the behaviour occurred the individual has demonstrated a subsequent pattern of exemplary behaviour; or
- the incident was of a minor nature, as indicated by the sentence or sanction applied.

(iii) The type of evidence considered should normally include each of the following:

- at least one independent account of the event(s), including sentencing remarks where a criminal conviction is being considered;
- references from at least two independent people who know the individual well and are familiar with the matters being considered. Ideally one of the references should be provided by an **Authorised Person** of good standing;
- evidence of rehabilitation independently corroborated e.g. independent reports,
- references from employers, or from a professional or regulatory body; and
- the individual's account of the events and attitude towards them.

(iv) Where a conviction or disciplinary hearing is being considered the **CLC** will not question or look behind the finding other than in exceptional circumstances, although material such as sentencing remarks and any explanatory statement will be considered. For example, a decision may be demonstrably wrong where later events, such as after acquired evidence or a change in the law, call the original decision into question.

(v) Where the matter being considered concerns academic misconduct (e.g. plagiarism) the **CLC** will take into account the range of academic misconduct that occurs.

(vi) For the purposes of the assessment whether an individual is a **fit and proper person** to become an **HoLP/HoFA**, there will be particular concern where in the commission of academic misconduct the individual has committed deliberate and dishonest acts in order to achieve personal gain or advantage.

(vii) The following factors would therefore be of particular interest to the **CLC**:

- the extent to which the individual was aware of the rules and procedures governing the referencing of material, or the use of group work or collaborative material;
- the extent to which the individual could reasonably have been expected to realise that the offence did not constitute legitimate academic body;
- the extent to which the individual acted with intent to deceive; and
- the degree of benefit or advantage gained as a result of the offence.

(viii) As in the approach to consideration of criminal convictions, the assessment will not seek to re-open the investigation undertaken by the training organisation, nor will it cast doubt on the validity and appropriateness of the decision taken, providing appropriate investigation and disciplinary procedures were followed, but statements intended to explain or mitigate the conduct in issue will be considered.

(b) Is there full confidence that the HoLP/HoFA are willing now to comply with legal and regulatory requirements?

(i) Unless there are exceptional circumstances there will not be full confidence and will refuse the **candidate** if they:

- have been convicted of a criminal offence;
- have failed to disclose information to a regulatory body when required to do so or has provided false or misleading information;
- have been formally disciplined, sanctioned, or barred by a regulatory body;
or
- have failed to comply with the reasonable requests of a regulatory body.

(ii) It may be possible for full confidence to be established in the individual's willingness to comply with legal and regulatory requirements if:

- in view of the time since the incident the individual is able to demonstrate that there has been a subsequent pattern of exemplary behaviour;
- a matter that was not disclosed was trivial or in view of the time when it occurred is no longer material or the breach was minor, as indicated by any sanction imposed; or
- the incident can be shown to have been the result of a genuine mistake or oversight.

(iii) The evidence considered should normally include each of the following:

- certificates of standing or statements from the relevant regulatory body or disciplinary tribunal and any limitations on the individual's rights to practise or freedom to act;
- the individual's explanation for failure to comply; and
- evidence of rehabilitation independently corroborated e.g. independent reports, references from employers, or from a professional or regulatory body.

(c) Is there full confidence that the *HoFA* is able responsibly to manage financial affairs?

(i) Unless there are exceptional circumstances there will not be full confidence that the individual can responsibly manage financial affairs and the ***candidate*** refused if:

- the individual has been made bankrupt, has entered into an individual voluntary arrangement or has unmanageable debts arising from the individual's recklessness,
- incompetence or dishonesty;
- the individual has deliberately sought to avoid responsibility for debts; or
- there is evidence of dishonesty in relation to the management of finances.

(ii) The following might help to establish confidence in the individual's ability to manage financial affairs:

- if in view of the time since the bankruptcy or occurrence of the debts there is evidence of subsequent sound financial management and conduct and that creditors have been paid;
- the individual is able to establish that he was affected by exceptional circumstances beyond his control or which he could not have reasonably foreseen.

(iii) The type of evidence considered should normally include each of the following:

- credit check information;
- the individual's explanation of the circumstances, corroborated where possible;
- actions taken to clear any debts.

(iv) The Business Plan and Financial Forecasts will be reviewed to determine:

- if it has adequate resources, including financial, skills and knowledge, for the body to be viable and to be effectively run;
- how critically they have examined the business' aims and the market for it;
- how realistic the financial projections are;
- if the financial forecasts take into account a realistic anticipated turnover, fixed costs and calculated variable costs.

Where there are concerns about the viability or suitability of a ***licensable body*** the ***CLC*** may refuse to issue a ***licence*** or issue a ***licence*** subject to ***conditions***.

(d) Is there a risk that the issue of a *licence* to the body will diminish public confidence in the legal services profession?

(i) Unless there are exceptional circumstances there is a risk that public confidence in the profession will be diminished if a ***licence*** is issued to a body in which the ***HoLP/HoFA***:

- has served a prison sentence, has remained on ***licence*** or is listed on the Sexual Offenders Register;
- has misused his position to obtain pecuniary advantage, particularly if associated with the provision of legal services;
- has been responsible for dishonest or violent behaviour;
- has been convicted of offences associated with obstructing the course of justice;
- has been convicted of a racially motivated offence; or

- has knowingly worked when his competence was impaired by alcohol or drugs;

in which case, unless the risk can be addressed to the satisfaction of the **CLC**, the application will be refused or will be issued subject to **conditions**.

(ii) The risk might be addressed satisfactorily if:

- in view of the time since the misbehaviour occurred the individual concerned is able to demonstrate that there has been a subsequent pattern of exemplary behaviour; or
- the misbehaviour was not of a serious nature, as indicated by the sentence or sanction applied.

(iii) The evidence provided should normally include each of the following:

- independent accounts of the convictions and behaviours that have given rise to the concerns, e.g. sentencing remarks;
- evidence of rehabilitation independently corroborated e.g. independent reports,
- references from employers, or from a professional or regulatory body.

(iv) Proposed governance and management **arrangements** are not sufficiently adequate to ensure the **Licensed Body** meets the licensing requirements and all members of staff are aware of their licensing responsibilities.

v) Proposed owner **arrangements** demonstrate there is a significant risk of undue or **improper influence** risk

vi) Proposed operating procedures and quality assurance systems are not sufficiently adequate to instil public confidence in the quality of services provision.

vii) The **HoLP& HoFA** are not readily provided with access to the **Licensed Body's** management and staff and the **CLC** whenever necessary and are not of an appropriate management level)

(e) Is there a risk that the issue of a licence to the body could result in harm to members of the public, the profession or the body?

(i) The **CLC** will consider there is a risk of harm to members of the public, the profession or the individual if there is evidence in respect of a **HoLP/HoFA** that:

- they are or have been dependent on drugs or alcohol;
- their mental health or their exposure to stressful situations can seriously impair their judgment, their ability to manage their work or their professional relationships;
- they have been violent with colleagues or **Clients**; or
- they have experienced recurrent episodes of behaviour/dependency/illness;

which have given cause for concern in which case, unless the risk can be addressed to the satisfaction of the **CLC**, the application will be refused.

(ii) The evidence considered will normally include:

- recent and full medical reports, including psychiatric reports where relevant;
- accounts from employers and other parties; and
- a statement from the individual concerned.

8.23 Unless a **HoLP** or **HoFA** is demonstrably inappropriate for the role – for instance, the **HoLP** is not an **Authorised Person** - we are unlikely to decline an application for either of these posts. If however, a **candidate** is in our view insufficiently skilled given the body's size or profile this will inform our risk assessment of the body and may result in **conditions** such as targeted **Continuous Professional Development**

(CPD) requirements of the individual and/or increased supervision. It is the **licensable body's** duty to ensure it has the appropriate individuals in place to ensure the regulatory requirements are met and that the rule of law is supported.

- 8.24 Should we decide not to approve a proposed **HoLP** or **HoFA** because the **candidate** is wholly unsuited for the role we will not use this decision to refuse the application itself if we are satisfied with all other elements of the application and the body subsequently nominates a more satisfactory individual for the role. Note: the Rehabilitation of Offenders Act 1974 does not apply for a HoLP or HoFA. Spent convictions should be declared

Non-Authorised Person with Material Interest

- 8.25 The approach taken will be similar to that identified at 8.22 (a)-(e) and will be assessed against the quality of the body's **arrangements** for regulatory compliance (including the calibre and management level of the **HoLP/HoFA candidates**). All other things being equal we are likely to be less stringent about adverse information provided on these individuals rather than the roles of the **HoLP/HoFA**. As identified at 8.22 (a)-(e) we will assess the risks posed by the information presented. This approach will also be adopted where we seek information on an **associate** who causes us concern. Where an **associate** is an **employee** of the body this will inform our assessment of the likelihood of **improper influence**. Note: the Rehabilitation of Offenders Act 1974 does not apply for those who hold a material interest. Spent convictions should be declared.

Managers

- 8.26 The approach taken will be similar to that identified at 8.22 (a)-(e) – 8.24. Note: the Rehabilitation of Offenders Act 1974 is not exempted for managers as it is for HoLP/HoFAs and those who hold a material interest. Spent convictions do not need to be declared.

Outcomes-focused

- 8.27 To protect the public, **Clients** and the reputation of the legal sector the grant of a **licence** must not compromise the **Code of Conduct outcomes**. The **CLC** determines all correctly completed **licence** applications it receives. We will only grant a **Licensed Body licence** where the assessment set out at 8.10-8.26 has satisfied us that our **regulatory arrangements** are/will be complied with.
- 8.28 The **CLC Authorised Officer** and their team will determine **licence** applications based upon an assessment of risk to the **Outcomes**. Where clarification of the information provided in an application is required the licensable body will be contacted. We will interview the **HoLP** and/or the **HoFA** as part of their designation, to discuss details of the application and the **applicant's** proposals and to achieve clarification (or reassurance where needed). We may also require other stakeholders to attend an interview to address particular concerns.

Complex applications

- 8.29 In the case of a particularly complex application or where adverse information is provided the **licence** application will be determined by the **CLC Authorised Officer** in consultation with a Legal Practice Inspector (or an **employee** of equivalent or senior status).

- 8.30 Adverse information does not necessarily mean **licence conditions** will be imposed or the application will be refused. If adverse information is provided it will be discussed with the **applicant** to determine the risk posed to the **Code of Conduct's outcomes**, any resource implications for the **CLC** and the **applicant's** willingness or capacity to address the issue. We will not grant the **Licensed Body licence** unless we approve, either unconditionally or conditionally, each **Non-Authorised Person's material interest**. Please see section 10 for information on the options available to us on provision of adverse information which could threaten delivery of the **Code of Conduct's Outcomes**.
- 8.31 Where we are not fully satisfied with information provided but would require the body to make only minor adjustments – e.g. a slight amendment of an arrangement – we will require confirmation, which we shall verify, that the adjustment has been made before the **licence** is issued, rather than impose a **condition** upon the **licence**. **Conditions** will only be imposed where they are needed to safeguard **Client** interests and where the issue is such that it must be formally recognised within the **licence terms**.

Notification

- 8.32 We aim to notify all **applicants** of our **licence** determination within 90 days of receiving a complete application. If, because of the complex nature of the application or because we require additional information, additional time is needed to make the determination we will notify you of this before the end of the original 90 day determination period. We will inform you of the reasons for the extension and its additional period, which will not exceed a further 90 days.
- 8.33 The **CLC** will determine one of the following:
- a) To grant a **licence** free of **conditions**; or
 - b) To grant a **licence** subject to **conditions** (to mitigate risks posed to the **Code of Conduct Outcomes**);
 - c) To refuse the application (because of the seriousness of the risk(s) posed to the **Code of Conduct Outcomes**).

Granting of a Licence

- 8.34 Where a **licence** is granted it will be issued as soon as is reasonably practicable. If we are satisfied that all **Non-Authorised Persons material interest** holders meet our approval requirements the interest will be approved without **conditions** and we will advise both the **Licensed Body** and the investor of this as soon as is reasonably practicable.
- 8.35 The **Licence** will specify its **terms** by way of endorsement:
- All **authorisations** that the **CLC** grants the body to carry on **reserved legal activities**;
 - All **permissions** that the **CLC** grants the body to provide non-**reserved legal activities**;
 - Any **conditions** applicable to the exercise of the **authorisations** and **permissions**.
- 8.36 The **Licensed Body** can only carry on its **authorisations** and **permissions** in its capacity as the holder of its **Licence**.
- 8.37 The **Licensed Body** must not carry on a **reserved legal activity** which is not within its **authorisations**.

- 8.38 When carrying on its **authorisations**, a **Licensed Body** must comply at all times with its **conditions**.
- 8.39 Where non-reserved services are permitted we will adopt a co-regulatory approach with the relevant **Approved Regulator** as per our ABS Multidisciplinary **Memorandum of Understanding**. Where this is not appropriate it is likely we will require the **applicant** to ring-fence the services for which it has **authorisations** and **permissions**.
- 8.40 If the application is approved, as a new licensee, we will provide you with any reasonable support or advice you require in the initial setting-up stages and for a short time.
- 8.41 **Licences** are issued for an indefinite period – other than temporary **licences** issued because of a change in the membership of a body - and are valid from the date of issue. **Licensed Bodies** will be required each year to pay the Regulatory Fee and a contribution to the **CLC Compensation Fund**. Should a body not provide this fee/contribution they will have invalidated the **licence**. **Licences** continue to have effect after a **Licensed Body** has ceased to practise.

9. **Licensed Body (ABS) Register**

- 9.1 Our register of **Licensed Bodies** will be available on our website. This should aid public confidence in legal services providers, enabling interested parties such as the public to be able to identify licensed bodies and their owners, **managers** and statutory officers. The following information is held on this register:
- Name of **Licensed Body**
 - Whether the **licence** is suspended or revoked and the date on which suspension or revocation took place
 - Any **enforcement** action or sanction on the **Licensed Body**, its owner or any **employee**
 - Trading name of the **Licensed Body**
 - Previous names of the **Licensed Body**
 - The **company** registration number
 - The **licence** number of the body
 - Previous **licences** held by the body
 - The date the **licence** was issued
 - Registered address of the **Licensed Body**
 - Practising address(es) of the **Licensed Body**
 - The names of the **Head of Legal Practice** and the **Head of Finance and Administration**
 - The authorising body of the **Head of Legal Practice**
 - The **reserved legal activities** that the body is authorised to undertake
 - Any endorsements placed on the **Licensed Body**
- 9.2 We will keep the register as up to date as reasonably practicable. It will reflect any change made within 28 days.
- 9.3 In very exceptional circumstances the **CLC** may agree it is appropriate not to publish details of the **beneficial owner**; it is up to the individual **applicant** to make such a

case to us. The **CLC** will only consider this in exceptional circumstances e.g. where a real risk of physical harm has been demonstrated.

10. Adverse Information

Licence Conditions

10.1 We will assess the risk posed by an **applicant** body. Where risks differ, so do our requirements. If we are not satisfied that an **applicant's arrangements** meet our approval requirements, but could be met through the implementation of additional safeguards, the **licence** will be issued with **conditions**. Any **conditions** will be noted on the **licence** and on the **CLC's** register, in addition to any endorsements (see 8.35).

10.2 We will simultaneously issue you with a notice explaining the requirements of the **condition(s)**, the reasons for its imposition and its duration (if time-bound). Any **conditions** imposed will take effect at the time the **CLC** directs e.g. a **condition** may take immediate effect or at a future date, or may not have effect until after any appeal in relation to it. **Conditions** will only be imposed where we consider that compliance with them would mean the **Code of Conduct Outcomes** would no longer be threatened e.g. if we are satisfied that our notified **material interest** approval requirements are likely not to be met by the imposition of **conditions** we would object to the notified interest. In contrast, the purpose of endorsements is to make it clear which **legal activities** a **Licensed Body** is authorised to undertake.

10.3 **Conditions** placed upon the **Licensed Body** may result in it incurring expenditure and can include:

(i) a limitation of the types of non-reserved services it may provide

- This **condition** will be imposed where the **CLC** is not satisfied that there are adequate **arrangements** in place to ensure the non-reserved activities are provided or supervised by suitably experienced or qualified staff;

(ii) a requirement that the body as a whole or a person within, or connected to it, takes a specific step, such as:

- Where we consider a **Non-Authorised Person's material interest** poses a risk to **Authorised Persons'** duties we may approve the notified interest subject to **conditions** e.g. prohibited from engaging in the day-to-day activities of the business or exerting influence on any of the **managers** or **employees** to act, or refuse to act, for a particular person;
- Improvements to be made to the body's **arrangements**;
- Targeted **Continuous Professional Development** for persons within the body (this may be the **HoLP** and/or the **HoFA**, as well as **managers** and/or other relevant staff).

10.4 Where **arrangements** need to be improved, the **licence** will only be fully endorsed when these improvements have been made and where they are to the satisfaction of the **CLC**.

- 10.5 In cases where **conditions** would not be appropriate due to the significance of the risk posed and/or where the body lacks the capacity or inclination to comply with the proposed **conditions** the **licence** application will be refused.

Licence Refusal

- 10.6 When refusing an application, the **CLC** shall notify the **applicant** of the grounds on which the refusal was made.

- 10.7 The **CLC** may refuse to grant a **Licensed Body licence** where it is not satisfied that the business is able to comply with the **CLC Licensed Body Code** and presents a significant risk to the delivery of positive **Client Outcomes**. Factors which could determine such a decision include:

- A **material interest** causes significant concern which cannot be mitigated through **conditions**;
- Inadequate funds and/or resources;
- Inappropriate governance/management **arrangements**;
- Legal services would/are not delivered and/or managed by appropriately qualified **Authorised Persons**;
- The **conditions** imposed by the **CLC** upon which a **licence** would be issued have not been met;
- The body's **arrangements** make it vulnerable to **improper influence**;
- The body has not provided the application information requested, or has provided incomplete, or false or misleading information;
- Concerns that the proposed **HoLP/HoFA**/owner(s) is not fit and proper for their proposed role have not been resolved by mitigating measures and there is no suitable substitute;
- Indemnity insurance provisions do not provide suitable protection for **Clients** (particularly where the **applicant** has elected to opt out of the **CLC Master Policy**);
- The **Compensation Fund** contribution required has not been made;
- Fees owed to the **CLC** have not been paid.

- 10.8 The **CLC** shall notify the **applicant** of the grounds on which the application has been refused and their right for this to be reviewed.

11. Regulatory Responsibilities of a *Licensed Body (ABS)*

- 11.1 All entities regulated by the **CLC** must comply with the **Code of Conduct**. The aim of the Code is to help promote the **regulatory objectives**. All applications will be assessed against the body's capability and capacity to deliver the Code's **Outcomes** and to comply with its **Overriding Principles**.
- 11.2 All the other **CLC** Codes are designed to ensure those we regulate deliver the **Code of Conduct's Outcomes**. We require **applicant** bodies to provide us with a Compatibility Statement concerning the **Code of Conduct Outcomes** and **Licensed Body Code** and any steps taken to address any identified issues e.g. a **Non-Authorised Person** with a **material interest** is subject to other duties which could potentially conflict with the **Code of Conduct's Overriding Principles**. Wherever appropriate or possible we will work with an **applicant** to address an issue which has been reported to us.
- 11.3 No **licensable body** will be licensed as a **CLC Licensed Body** until we are satisfied that their application demonstrates that the body will meet these regulatory responsibilities and deliver the **Code of Conduct's Outcomes**.
- 11.4 All of our **regulatory arrangements** are set out in the **CLC Handbook**, an electronic copy of which is available on the **CLC** website: <http://www.clc-org.uk/>
A hard copy of this document will be available to those unable to access an electronic copy.

Improper Influence

- 11.5 We will always investigate allegations of **improper influence** and where we are satisfied there is evidence of this we will follow our **Enforcement** Policy (please see the **CLC Handbook**).
- 11.6 Should a **HoLP** need to report **improper influence** they should do so to the **CLC Authorised Officer**

Material interests

- 11.7 As identified in the **Licensed Body Code** persons proposing to take a step which would result in them acquiring a **material interest** in a **Licensed Body** must notify both the **Licensed Body** and the **CLC** of this. A person with an existing **material interest** acquiring an additional kind of **material interest** must do the same.
- 11.8 Any proposed **Non-Authorised Person** with a **material interest** (of 10% or more) of a **CLC Licensed Body** will be given temporary pre-approval of their notifiable interest for an initial period of 90 days (which on notice to them and the body the **CLC** may extend by up to a further 90 days) during which time the status of the body's **licence** will become temporary. The approval will become permanent only when the **CLC** has judged them fit to own. The 90 day determination of whether to approve, place

conditions (or further **conditions**) on, or object to, an interest gives us sufficient time to analyse the information provided and to properly consider all relevant issues to determine what the appropriate approach should be. Failure to respond promptly to requests for information may result in a delay in determining the application, or in exceptional circumstances in the application being refused.

- 11.9 If a person had no knowledge of the facts that led to this (such as on inheritance of shares) they must inform both us and the body within 7 calendar days upon possessing such knowledge.
- 11.10 Failure to notify a proposed step, or an actual acquisition, is a criminal offence which upon conviction could result in a fine. If we are notified of a proposed step and the person subsequently takes the step without our approval they are liable on summary conviction to a fine and a conviction on indictment to a term of imprisonment or a fine (or both).
- 11.11 We will consider representations made regarding our stated intention to impose **conditions** or object. These will be considered within 28 days of issue of the notice. Should we then approve the **material interest** subject to **conditions** we will issue both the **applicant** body and the investor with a notice specifying the reasons for the **conditions**, their nature, and explaining that we could ultimately divest the person of their **material interest** if it is judged necessary in the interests of the public and **Clients** to do so.
- 11.12 In a partnership a **Non-Authorised Person's material interest** which is not approved by us does not make it unlawful for the partnership's business to be carried on or for the partners to carry it on in partnership.

12. Monitoring

- 12.1 The factors which determine our regulatory relationship with the bodies and persons we regulate are set out in the **CLC** Regulatory Policy. We systematically collect information to help us monitor how effectively our **regulatory arrangements** are operating. All **CLC** regulated entities are required to submit data into our secure online Management Information System. The information held on this system is analysed and helps inform our regulatory profiling. We may require you to provide us with information (such as reconciliation statements) on a periodic basis to satisfy us that your declared systems are in place and are operating satisfactorily.
- 12.2 All entities regulated by the **CLC** are required to submit an annual information form. The data the Licensed Bodies are required to provide includes:
- **HoLP** and **HoFA, Managers, owners and Authorised Persons** (including any changes in their circumstance);
 - **HoLP/HoFA Continuing Professional Development** Records;
 - Who is involved in dealing with and managing **Client Money**;
 - Breakdown of work;
 - Volume of transactions;
 - Profile of work by complexity;
 - Referral **arrangements**;
 - Significant new sources of work;
 - The type of services provided;
 - Turnover and profit;
 - How **Clients** access services;
 - **Complaints** data;
 - Any additional information you may wish to provide e.g. evidence of recognised external accreditation, customer satisfaction feedback results or findings from internal compliance activity.
- 12.3 According to the risk posed by the body we may require information more frequently (and more varied). This will only be requested when justified by risk assessment. Our investigation may include an inspection which may be carried out remotely or through a site visit.

13. **CLC Enforcement Powers**

- 13.1 All Licensed Bodies and their stakeholders must comply with our **regulatory arrangements** at all times. Where a non-compliance issue is identified we will always seek to resolve it informally in the first instance. Where this has failed or where the severity of the risk renders this inappropriate, we will take formal **enforcement** action. We always seek to ensure our **enforcement** response is proportionate to the risk identified. We have a number of statutory powers available to us to protect the interests of the public and **Clients**. These powers can be exercised against the **Licensed Body** itself or an owner, **manager** or **employee** of it (or all of these individuals) and can be used in isolation or in conjunction.
- 13.2 Where an issue has been identified the **CLC** will provide you with a warning notice* to inform you of the action we intend to take as a result, why it is considered necessary and when the Notice will come into effect. You will be able to make representations to us concerning our intentions.
- 13.3 The **CLC** Regulatory Policy explains what we as a regulator of legal services are seeking to achieve and how our regulatory philosophy is put into practice. The **CLC Enforcement** Policy explains how we identify and respond to non-compliance with our regulatory requirements and the factors which determine the form our response takes.
- 13.4 *The exception to this is where **intervention** is deemed necessary.

Licence Conditions

- 13.5 In addition to any endorsement (see 8.34), we will impose **conditions** upon a **licence** where we consider additional safeguards are needed to protect **Clients**. **Conditions** include:
- Requiring the body as a whole or a person within, or connected to it, must take a specific step e.g. where the **CLC** is not satisfied that the **HoLP** or **HoFA** remains 'fit and proper' for the role, we may withdraw our approval of that individual (requiring another individual be designated for the role);
 - Limiting the duration of the **licence** (applied only in exceptional circumstances and in conjunction with other **conditions** e.g. in the event of the running down of a practice).
- 13.6 **Conditions** may be imposed in the granting of a **licence** or at any stage in a **licence's** duration. We may impose further **conditions** or adopt other **enforcement** measures if **conditions** are not complied with.
- 13.7 **Conditions** are likely to be time-bound. The period within which they must be complied with will be stated on the re-issued **licence**.

Financial Penalties

- 13.8 We may impose a financial penalty upon a **Licensed Body**, and/or one or more of its **Managers** or **employees**. We are likely to issue a financial penalty when behaviour is inappropriate and needs changing to deter future non-compliance. We will determine if the act or omission was deliberate, the impact (potential or actual) of the behaviour on a **Client**, or **Clients** in general, the reputation of the legal services sector, whether the breach was a one-off or a repeated issue and the attitude of the individual or body, to determine if a financial penalty could be considered an appropriate action and if so, the appropriate level. The penalty will be proportionate to the breach and take account of the resources of the **Licensed Body**.
- 13.9 The **Legal Services Board (LSB)** has set the maximum penalty thresholds for a **Licensed Body** and an individual within it at £250 million and £50 million respectively.
- 13.10 We do not profit from a financial penalty; the payment is made into the Government's Consolidated Fund.

Disqualification

- 13.11 Disqualification is a serious sanction. If a **HoLP, HoFA, manager** or **employee** is found to have intentionally, or through neglect, significantly breached their duties, or caused, or substantially contributed to a significant breach of the **licence terms** or its **conditions** they may be disqualified from holding that post, or any role, in any **Licensed Body**. A disqualified individual may apply for the disqualification to be terminated only when 12 months have passed since they were disqualified.
- 13.12 The **LSB** will maintain a list of those individuals who have been disqualified to ensure that people who are disqualified from involvement in the provision of legal services are kept from further harming the public. We will notify the **LSB** – within 7 days of these events - of a determination to disqualify, the results of any review, if one is requested, and any decision that the disqualification should cease to be in force.
- 13.13 The list of disqualified persons will include the following information:
- Full name
 - Other names known by
 - Date of birth
 - Type of disqualification (as a **manager, employee, HoLP, or HoFA**)
 - Date of disqualification decision
 - Review date
 - Result of review
 - Cessation of disqualification
 - Name of the **Licensed Body** they were previously employed by, or **manager** of
 - Number of **licence**
 - **Licensing Authority**
 - Type of authorisation (if an **Authorised Person** e.g. solicitor, **licensed conveyancer** etc.)
 - Practising certificate number (if any)
 - Details of misconduct i.e. reason for disqualification.

The list is available to view on the **LSB's** website:
<http://www.legalservicesboard.org.uk/>

- 13.14 The **LSB** maintains a similar list of the persons **Licensing Authorities** have objected to owning a **material interest**, who have had **conditions** placed on it, or for whom a **divestiture** application has been made.

Divestiture

- 13.15 Where there are **improper influence** concerns regarding a **material interest** holding we will act. Our **enforcement** response may take the form of **conditions** or an objection, or could result in a Restriction Notice and ultimately **divestiture**. We will issue a Restriction Notice where a person has a **material interest** shareholding in a body corporate with a share capital and:
- they are a **Non-Authorised Person** who has acquired that interest without having secured our approval of that holding; or
 - the **conditions** imposed (Conditional Approval of Notified Interest) upon that interest have been breached; or
 - our objection to the interest has been disregarded.
- 13.16 The Notice will advise you of our intention to apply to the High Court for the holding to be divested if at the end of the period prescribed in the Notice the **divestiture conditions** (identified above) still apply. The Notice will direct that the relevant shares are until further notice - i.e. until the High Court makes an Order; we decide not to apply for an Order; or the body ceases to be licensed by the **CLC** - made subject to one or more of the following restrictions:-

- a transfer (or agreement) of shares or the right to be issued with them is void;
- voting rights are not exercisable in respect of the shares;
- no further shares are to be issued to or in pursuance of any offer made to their holder; and
- no payment is to be made of any sum due from the **company** on the shares (except in a liquidation).

- 13.17 The **material interest** holder will be given the opportunity to make representations for the action not to be taken.
- 13.18 We will notify the **LSB** of any objections/**conditions** imposed, varied or cancelled, any Restriction Notice issued, as well as the outcome of any subsequent review or appeal. We will also notify them if we approve the holding of a person included in this list and provide reasons for that decision. The Notice will state the reasons for the action taken. We will issue a copy of the Notice to both the individual investor and the **Licensed Body**.
- 13.19 If the High Court is satisfied that the **divestiture condition** is met it may order the sale of the shares so the **Non-Authorised Person** will no longer have a **material interest** (if they hold more than one type of interest, the interest to which the **divestiture condition** applies is satisfied). No such Order will be made as a result of breach of **conditions** or of an objection until the end of the period within which an appeal could be made, or if such an appeal is made, it has been determined or

withdrawn. Where an Order is made, the proceeds of the sale (less the sale costs) must be paid into court for the benefit of the persons beneficially interested to them.

- 13.20 Alternatively, in the case of notified interest **conditions** being breached the High Court may order compliance with the **conditions**.

Suspension and/or Revocation of a body's Licence

- 13.21 The decision to suspend or revoke a **licence** will not be taken lightly. We will only use this measure where, due to the seriousness and/or persistence of the act or omission no other **enforcement** action is judged adequate to address the identified issue.

- 13.22 A **licence** may be suspended or revoked if:

- a) The body changes its structure and/or **arrangements** so it is no longer a **Licensed Body**;
- b) A **Reserved Legal Activity** is not carried out by an **Authorised Person** entitled to carry out that activity;
- c) An **employee/manager/non-Authorised Person** with **material interest** causes or substantially contributes to the **Licensed Body** breaching our **regulatory arrangements**, or one of its **Authorised Person managers** or **employees** to breach their regulatory duties;
- d) The **Licensed Body**, or one of its **Authorised Person managers/employees**, breach its/their regulatory responsibilities;
- e) The body employs a person disqualified from being a **manager/employee** of a **Licensed Body** as a **manager/employee** and that person was disqualified for breaching their duties (as set out at c) & d));
- f) The **Licensed Body** does not have a designated **Head of Legal Practice** or **Head of Finance & Administration** approved by the **CLC**;
- g) A **Non-Authorised Person** with **material interest** has not notified us of their interest;
- h) A **Non-Authorised Person** with **material interest** is in breach of the **conditions** (or further **conditions**) we have placed upon the (notifiable or existing) interest;
- i) We have objected to the (notifiable or existing) holding of a **Non-Authorised Person's material interest**;
- j) The **Licensed Body** is in breach of the **terms** or **conditions** applicable to its **licence** if the breach is incapable of being remedied or has not been remedied within a reasonable period;
- k) The **Licensed Body** is the subject of an allegation or **complaint** which, if substantiated, is likely to have serious implications for that body.

- 13.23 **Licence** suspension will not automatically result in **licence** revocation. We may end the suspension where we (or the FTT) are satisfied that to do so would not present a risk to **Clients**. Where this is the case, the body may be subject to a more intensive regulatory relationship to ensure the risks are kept to a minimum.

13.24 A **CLC Licensed Body licence** will also cease to have effect if the body is issued with a **Licensed Body licence** by another **Licensing Authority**.

Intervention

13.25 Where a body's **licence** has suspended or revoked or the **CLC** is satisfied that one or more of the following **conditions** applies:-

- The **licence terms** are not being complied with;
- Persons have been appointed receiver or **manager** of the **Licensed Body's** property;
- A relevant **insolvency event** has occurred;
- We have reason to suspect a **Manager's** or **employee's** dishonesty in connection with the **Licensed Body's** business, any related Trust or the business of another body in which a **Manager** or **employee** is or was employed;
- Undue delay* by the **Licensed Body** in any matter in which it is/was acting for a **Client** or with any related trust;
- Undue delay* by a **Manager** or **employee** in connection with any trust of which that persons is/was a trustee (in their capacity as such a **Manager** or **employee**)
- It is necessary to protect the interests of **Clients** or the beneficiaries of a related Trust;

we may exercise our powers to intervene in the business. As set out in our Regulatory Policy (please see the **CLC Handbook**) we would only take this action where the interests of **Clients** have been seriously compromised or are at grave risk of being seriously compromised, and where no other **enforcement** action is judged adequate to address a serious and or persistent issue, or if the body's viability is threatened or it becomes insolvent. This power can be invoked even after the **Licensed Body Licence** has ceased/been revoked.

13.26 *The undue delay **conditions** apply only where we have given you a notice inviting you to explain the reason for the undue delay and you have not provided an explanation we are satisfied with within the period specified in the notice. In such cases you will be given notice of the failure and advised that **intervention** will take place.

Intervention - Applications & Orders

13.27 Where it is judged that **intervention** is the appropriate measure we can apply to the High Court for the following Orders to be made:

- Prohibiting the payment of money by a person or financial institution holding money on behalf of the **Licensed Body**;
- Recovery or receipt of money held by or on behalf of the **Licensed Body** (in connection with its **Licensed Body** activities or a trust);**
- Information about and identification of money and accounts held;
- Production/delivery of documents (this may ultimately result in an appointed person being authorised to enter any premises to search/take possession);
- Communication redirection (this may ultimately result in steps being taken in

relation to a website of the **Licensed Body**);

- Possession/disposal/destruction/take copies (or extracts from) of documents;
- Appointment of a new or substitute trustee (where the **Licensed Body** or any of its **employees** or **managers** is a trustee of a trust);
- Liable party to payment costs incurred due to **CLC intervention** activities.

13.28 We must inform you of our intention to do so via a Notice. If an application is agreed the High Court will make an Order to that affect. The Order will take effect once we have provided you with a copy of it.

13.29 ** The sums of money and the right to recover or receive them will vest in us and are held by us on trust and for the persons beneficially entitled to them.

13.30 Where we intervene in a body we will suspend or revoke a **licence** (though we will not intervene in all cases where a **licence** has been suspended or revoked)

14. **Licence Modification**

- 14.1 We will not issue any automatic waivers of **regulatory arrangements**; a body wishing to have a responsibility waived will need to make a specific application. A **Licensed Body** is entitled at any time to apply for a modification of its **licence terms** or **conditions**. If the modification concerns removal of **licence conditions** it is unlikely that an application will be successful if it is made within 12 months after the **terms** or **conditions** have been imposed, unless there are exceptional circumstances. (The 12 month exemption period does not apply to **conditions** which are time-bound). It is a matter for the **Licensed Body** to satisfy the **CLC** that the **condition** should be removed.
- 14.2 A body wishing to modify its **licence terms**, endorsements or **conditions** must complete the appropriate **CLC** form and provide us with evidence to justify the modification. The standard modification fee will be £320. This is cost-reflective of the 4 hours we judge will be required to assess the modification application. We reserve the right to charge additional amounts above the standard fee for particularly complex applications which take more than the expected time. These will be charged at £80 per hour. The request will be determined by the **CLC Authorised Officer**. The determination will be made within 28 days of receipt of the complete modification application.
- 14.3 The **CLC** will only modify **licence terms**, endorsements or a **condition** without obtaining consent from the affected body or individual where there is an evidenced need to do so, for example:
- There has been a change in legislation or in our **regulatory arrangements** which impacts upon the **terms** of the **licence**;
 - Where a **licence condition** is only to have effect for a period of time, that period has expired – we may decide to remove the **condition** if we are satisfied it is no longer applicable, or where we believe there are good reasons to do so we may extend the period the **condition** is to have effect;
 - The **CLC** is satisfied any **condition** or endorsement in force is no longer applicable – we may decide to remove the **condition** or endorsement or to substitute it with a further **condition** or endorsement which in the circumstances of the case is more likely to address the regulatory concerns we have identified;
 - We have identified a significant and/or immediate risk to **Clients** which justifies the imposition of a **condition(s)** or endorsement(s) for the protection of **Clients** or it is consistent with the **regulatory objectives** for a **condition(s)** or endorsement(s) to be imposed as a matter of emergency pending a more detailed investigation, particularly if the alternative would be to require the body to cease trading.
- 14.4 We will modify the **terms, conditions** or endorsements of the **licence** by giving the **Licensed Body** written notice. The modifications will have effect from the time we give the notice, or such later time as the notice may specify.

15. Review/appeal of *CLC* determination/enforcement

- 15.1 An individual or **Licensed Body** who is dissatisfied with any **CLC** licensing or **enforcement** determination e.g.:
- Refusal of application for a **licence**;
 - Any endorsement or **condition** imposed on a **licence**;
 - Modification of a **licence**;
 - Refusal to designate as **Head of Legal Practice**, or withdrawal of approval;
 - Refusal to designate as **Head of Finance and Administration**, or withdrawal of approval;
 - Disqualification from some or all of the roles within a **Licensed Body**;
 - Suspension and Revocation of **licence**;
 - A financial penalty i.e. its imposition, the amount and/or the payment timescales;
 - Imposition of **conditions** on or objections to a holding.

may appeal against the determination. The **respondent** must submit an appeal to the CLC within 28 days of being notified of the determination.

- 15.2 The **Adjudication Panel** (with a quorum of 3) will determine when it is appropriate to impose sanctions – such as disqualification of the Body or a **Manager**, licence revocation or imposition of a penalty.
- 15.3 No member of the **Adjudication Panel** is a member of the **CLC** Council or an **employee** of the **CLC**.
- 15.4 Wherever possible the **applicant** making the appeal will be provided with the decision of the **Adjudication Panel** within 42 days of receipt of the request for the appeal. We reserve the right to extend this to 90 days where needed.

First-Tier Tribunal

- 15.5 Having been notified of the determination made by the Adjudication Panel, the **applicant** may appeal to the First-Tier Tribunal (FTT). The FTT provides a general right of appeal wherever an individual or **ABS** does not accept our decision. It will hear appeals only from those who have exhausted their resolution options within the **CLC**, or where the **CLC Adjudication Panel** has not met its published timescales. The appeal request must be made within 28 days after the determination was sent to the **applicant**, or within 14 days after expiry of the time for the **Adjudication Panel** to determine an appeal.
- 15.6 The FTT is an independent public body, established under the Tribunals, Court and Enforcement Act 2007. The General Regulatory Chamber of the FTT will hear the appeal. This will constitute a substantive re-hearing of the issue and its

determination. Appeals will be heard by a Committee of a legally qualified chairperson and a lay member.

- 15.7 The FTT can reach any decision which the **CLC** could have made and can:
- Affirm the **CLC** decision wholly or in part;
 - Quash the **CLC** decision wholly or in part;
 - Substitute the whole or part of a **CLC** decision with a new decision of a kind the **CLC** could have made;
 - Remit the matter to the **CLC** (generally, or for determination in accordance with a finding made or direction given by the Tribunal).

15.8 Subject to its Procedure Rules, the First Tier Tribunal is likely to award costs only where it considers a party has acted unreasonably.

15.9 There is a right of onward appeal to the Upper Tribunal on any point of law arising from a decision made by the First-Tier Tribunal.

Consistency of determinations

15.10 After operating as a **Licensing Authority** for six months we will assess the consistency of our licensing determinations – including the circumstances in which **conditions** are made and how often – to ensure we are employing a consistent approach. This quality control exercise will be carried out every year after to ensure our licensing approach is consistently applied. With the approval of the **LSB** we shall make such changes as we consider necessary in the light of these assessments.

16. Transfer and Continuity of Licences

16.1 No change permitted under requirement 16 is effective unless and until it has been approved by the CLC with or without **conditions** and any fee (as provided by requirement 7) has been paid. Depending on the nature of the change proposed, the CLC may require the **Body** or any of its **HoLP, HoFA, Non-Authorised Persons** with a **Material Interest** or **Managers** to comply with some or all of the provisions of requirements 4 and 8.

16.2 In addition to the requirements of the **Notification Code**, we must be **promptly** informed of all such vacancies or changes and we must be provided with full and complete details of the new relevant person so that we can determine/approve their appointment.

16.3 In a **Limited Liability Partnership** of two **Members**, if one of them:

(a)	is committed to prison in civil or criminal proceedings; or
(b)	is unable, because of incapacity caused by illness, accident or age, to attend to the body for a period of more than 14 days (or such other period as the CLC may determine); or
(c)	Lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15-20, or section 48, of that Act have been exercised in relation to him; or
(d)	abandons the body; or

(e)	has a licence issued by the CLC subject to a condition which would be breached by continuing as a LLP Member ; or
(f)	is not a Licensed Conveyancer ; or
(g)	dies,

the **licence** will continue in full force and effect provided the remaining **LLP Member** is an **Authorised Person**, and within 28 days of the occurrence an additional person has become an **LLP Member**. We may extend the 28 day period (up to a maximum of 120 days) upon the **Licensed Body's** request.

16.4 Where the **Head of Legal Practice** or the **Head of Finance and Administration**:

(a)	is committed to prison in civil or criminal proceedings;
(b)	is unable, because of incapacity caused by illness, accident or age, to attend to the body for a period of more than 14 days (or such other period as the CLC may determine);
(c)	Lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15-20, or section 48, of that Act have been exercised in relation to him;
(d)	leaves the Licensed Body ;
(e)	has a licence issued by an Approved Regulator subject to a condition which would be breached by continuing as a Head of Legal Practice or Head of Finance and Administration ; or
(f)	dies;

the **licence** will only continue in full force and effect provided an appropriately qualified and suitable replacement is in place within 28 days of the occurrence. We may extend the 28 day period (up to a maximum of 120 days) upon the **Licensed Body's** request.

16.5 Where there is a change in ownership in a **Body** the effect of which is that:

- (a) a **Non-Authorised Person** acquires a **Material Interest** in a **Body** (or there is a change of 10% or more in the **Material Interest** a **Non-Authorised Person** has in a **Body**); and/or
- (b) a **Body** ceases to exist and another entity (which may be a **Body**) succeeds to the whole or substantially the whole of that **Body's** business

the **CLC** may determine that:

- 1) the *licence* of the *Body* continues in effect (with or without such *Authorisations, Permissions* and/or *Conditions* as the *CLC* may determine);
- 2) the *licence* of the *Body* is transferred to the entity which has succeeded to the whole or substantially the whole of that *Body's* business (or to another person approved by the *CLC*) and that *licence* has effect with or without such *Authorisations, Permissions* and/or *Conditions* as the *CLC* may determine; or
- 3) a temporary *licence* is issued to the *Body* or to the entity which has succeeded to the whole or substantially the whole of that *Body's* business (or to another person approved by the *CLC*) for a period of up to 28 days (or such further period as the *CLC* may determine up to a maximum period of 120 days) and that the temporary *licence* has effect with or without such *Authorisations, Permissions* and/or *Conditions* as the *CLC* may determine.

16.6 If the above requirements are not met the *licence* may have effect with or without such *Authorisations, Permissions* and/or *Conditions* as the *CLC* may determine, be suspended, cease to have effect or be revoked.

17. Other

17.1 Any *CLC* document served on a licensable or *Licensed Body (ABS)* under our *regulatory arrangements* will be posted to its principal office in the United Kingdom.

Attachment H – The CLC’s Standing Orders for the Adjudication Panel 2013

The CLC’s Standing Orders for the Adjudication Panel 2013

Made on 30 September 2013 by the Council for Licensed Conveyancers pursuant to section 12 and schedule 3 of the Administration of Justice Act 1985.

Contents

1. Citation and Commencement
2. Applicability
3. Procedure
4. Dates of Committee Meetings
5. Committee Chair and Committee Members
6. Quorum
7. Virtual Meetings
8. Order of Proceedings
9. Voting
10. Minutes
11. Confidentiality
12. Code of Conduct

1. Citation and Commencement

These Standing Orders may be cited as the CLC’s Adjudication Panel Standing Orders 2013 and come into force on 30 September 2013 on which date the Council for Licensed Conveyancers’ Standing Orders for the Adjudication Panel 2013 will cease to have effect.

2. Applicability

These Orders apply to the Adjudication Panel established by the CLC under section 24 of the Administration of Justice Act 1985, but when it carries out a preliminary investigation or meets to hear and determine an allegation of misconduct the Adjudication Panel Rules 2013 and the Adjudication Procedure Rules 2013 shall apply.

3. Procedure

The Adjudication Panel shall determine its own procedure in accordance with these Standing Orders, guidance published from time to time by the CLC and the overriding requirement of fairness.

4. Dates of Meetings of the Adjudication Panel

The Adjudication Panel shall meet on such dates as shall be determined by the Adjudication Chair, who will determine whether paragraph 7 should apply.

5. Appointment of Adjudication Chair and Panel Members

5.1 The Adjudication Chair and members of the Adjudication Panel shall be appointed in accordance with the Adjudication Panel Rules currently in force.

5.2 The chair shall be taken at all meetings of the Adjudication Panel by the Adjudication Chair but if the Adjudication Chair is absent or declines to take the chair then one of Deputy Chairs shall take the chair, alternatively the members present shall choose one of their

number to take the chair.

- 5.3 The Adjudication Chair shall conduct the meeting. At his discretion the Adjudication Chair may adjourn the meeting and shall do so if the Adjudication Panel so resolves.

6. Quorum

No meeting of the Adjudication Panel shall begin (or if it has begun it shall stand adjourned) unless three members of the Adjudication Panel are present to include at least one member who is a Licensed Conveyancer and at least two Lay members.

7. Virtual meetings

The Adjudication Panel may conduct any meeting or hearing in whole or in part by video link, telephone or other means of instantaneous two way electronic communication. Taking part in this way will be counted as being present at the meeting. These meetings will be treated as taking place where most of the participants are (or where the Adjudication Chair is if there is no majority in any one place).

8. Order of Proceedings

- 8.1 The agenda for meetings of the Adjudication Panel shall be determined by the Adjudication Chair in consultation with the Staff who shall prepare it.

8.2 The order of business shall be set out in the circulated agenda.

8.3 No motion, other than a motion from the Adjudication Chair, shall be discussed unless proposed and seconded.

8.4 Members shall speak only when called by the Adjudication Chair.

8.5 Members' speeches shall be concise and to the point. In any event no member shall speak for more than five minutes except with the consent of the Adjudication Chair.

9. Voting

9.1 All questions shall be decided by a majority of the members present and voting.

9.2 All members of the Adjudication Panel (including the Chair) shall have a single vote.

10. Minutes

10.1 Any resolution passed shall be recorded in the Minutes.

10.2 The Staff will be responsible for taking Minutes of all meetings save as determined by the Adjudication Panel.

11. Confidentiality

All proceedings and all agenda and other papers relating to them are confidential to the Members and may not be disclosed to non-members (other than to members of Staff) without the authority of the Adjudication Panel. Such authority may be implied where, but only to the extent that, the particular disclosure is necessary for the execution of a resolution of the Adjudication Panel. Members must have particular regard to these duties in relation to communications with those who are not members of Staff.

12. Code of Conduct

Members must conduct themselves at meetings of the Adjudication Panel in accordance with the Code of Conduct for Members of the Council for Licensed Conveyancers.

Attachment I - Adjudication Panel Terms of Reference

Adjudication Panel Terms of Reference

Introduction

1. The CLC has established an Adjudication Panel to support its responsibilities as follows:
 - To deal with any reviews or appeals of regulatory decisions made by the CLC;
 - To determine allegations of misconduct.
2. The conduct of business of the Adjudication Panel is governed by the CLC's Standing Orders for the Adjudication Panel.

Membership

3. The CLC will make appointments to the Panel, including the Adjudication Chair, for a term of office of up to four years.
4. All members of the Panel (including the Adjudication Chair) must be Associate Members (or an Associate Chair).
5. There must be a majority on the Adjudication Panel and at each panel meeting of members who are not Licensed Conveyancers.
6. The Adjudication Panel consists of a Adjudication Chair and up to two Deputy Chairs and not more than six other Members.
7. A panel meeting (usually consisting of the Adjudication Chair or a Deputy Chair and two other members of the Panel) shall determine allegations of misconduct and determine appeals of regulatory decisions made by the CLC.
8. Membership of the Panel will be reviewed at the end of each Member's term of office with the possibility of re-appointment once only, for a further period of up to four years.

Reporting

9. The Adjudication Chair, or in his absence, another member of the Adjudication Panel will advise the CLC in writing of the key issues arising from the work of the Adjudication Panel no less than once in each calendar year, and more frequently if the Adjudication Panel so determine, or the Council so request. Details of individual matters will remain confidential to the Adjudication Panel and the Staff in the CLC, and will not be disclosed to the Council.
10. As soon as is practicable any determinations made or minutes of any meeting will be circulated to all members of the Adjudication Panel for noting. They will otherwise remain confidential except to the extent any determination is published to the parties.

Responsibilities

11. To review the following regulatory decisions made by the CLC:
 - To refuse the registration of a student;
 - To refuse to grant concessions with or without conditions with regard to examinations;
 - To refuse to issue licence or certificate of recognition with or without conditions or restrictions;
 - To impose conditions or restrictions on a licence or certificate of recognition;
 - To refuse to vary or remove conditions or restrictions on a licence or certificate of recognition;
 - To refuse to give concessions with regard to CPD;
 - To suspend a licence pending determination of disciplinary proceedings.
12. To carry out a preliminary investigation of an allegation of breaches of the CLC's regulatory arrangements.
13. To require a Licensed Conveyancer to pay such sum as it may consider reasonable to cover the cost of the first or any further inspection and of the cost of any investigation where there is reason to believe that a respondent has failed to comply with the provisions of the CLC's regulatory arrangements.
14. To suspend a licence pending determination of disciplinary proceedings.
15. To consider or deal with matters specifically delegated to it by the CLC or by any other Committee of the CLC.
16. To liaise and consult with the other Committees as appropriate in exercising its functions

Review of Effectiveness

17. The Adjudication Panel will annually review its own effectiveness and terms of reference and report the results of that review to the Council of the CLC, including any recommendations for change.
18. The Adjudication Chair will annually review the performance of members. These individual annual reviews will be used as the basis for assessment of members at the point of re-appointment as provided at paragraph 8. The Chair of the Council will review annually the performance of the Chair of the Adjudication Panel.

Authority

19. The Adjudication Panel is authorised by the CLC to review or investigate any activity within its terms of reference.

20. The Adjudication Panel is authorised by the CLC to require of the Staff such additional activity as it deems appropriate within its terms of activity.
21. The Adjudication Panel may delegate some of its powers as appropriate to the Adjudication Chair, Deputy Chair, members of the Adjudication Panel and members of Staff or other individuals, or to a sub-committee of the Adjudication Panel following consultation with the Chief Executive in accordance with a scheme of delegation approved by the CLC.
22. The Adjudication Panel is authorised to obtain independent legal or professional advice as approved in the budgets to support its decision making.

Meetings

23. The Adjudication Panel shall meet at least once a year. The Adjudication Chair may convene additional meetings when considered necessary.
24. A minimum of three members of the Adjudication Panel including one Licensed Conveyancer will be present for the meeting to be quorate.

Attachment J – CLC Regulation and Enforcement Policy



Council for
**Licensed
Conveyancers**
CLC Regulation and Enforcement Policy

Regulatory approach

Introduction – as both an *Approved Regulator* and *Licensing Authority* the **CLC** must, so far as is reasonably practicable, act in a way which is compatible with the *regulatory objectives*:

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

The key elements of the **CLC’s** promotion of these objectives are:

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

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

1. Regulatory Aims

1.1 The **CLC** has three key regulatory aims:

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

1.2 To achieve these aims we must:

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

2. The Principles of our Regulatory Philosophy

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

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

2.3 Proportionate - an issue which gives rise to, or is likely to give rise to, a risk to the delivery of the **Outcomes** will be discussed with the individual/body. Their capacity and/or willingness to address the issue will help inform our response. Our response will be proportionate to the seriousness, circumstance and impact – actual or potential – of the risk to an individual client, clients in general and the legal profession.

2.3.1 We support those who alert us to their own regulatory failings. We provide support and **guidance** where needed. As long as clients are not at risk and the body/individual is addressing the failure(s) in a reasonable way we are less likely to take formal **enforcement** action. Regulatory action will be considered for those who commit relatively minor regulatory breaches on a regular basis and who fail to respond to more informal resolution approaches.

2.3.2 Whenever possible/appropriate we work informally with regulated entities to address any risks, but where serious issues are apparent or suspected, we will take formal **enforcement** action to safeguard the interests of the public and clients.

2.4 Targeted - our **risk-based** approach identifies those bodies/activities that pose the greatest risk to the delivery of the **Outcomes**. This enables us to focus our attention

and resources on those most likely to harm the interests of the public and legal services consumers.

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

2.5 Transparent - we make every effort to ensure that the regulated community and other stakeholders are kept informed about our regulatory philosophy; the aims and the requirements of the **regulatory arrangements**; and any threats to their effective operation.

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

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

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

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

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

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

3.2 Risk Assessment - our regulatory relationship with a member of the regulated community is informed by an assessment of the risks they or their activities pose to the **Code of Conduct's Outcomes**. To be confident of our resource allocations we must identify and measure the capacity for, or, actual harm, and of the likelihood of an occurrence of actual harm, to these. This includes consideration of factors such as:

- reliability of the evidence provided;
- the body's regulatory responsibility **arrangements**;

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

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

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

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

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

3.4 Guidance, support and advice - we try our best to ensure that our **guidance**, support and advice provision is authoritative, appropriate and helpful as well as easy to access and understand. We provide advice and toolkits on specific issues, as well as general **guidance**. Wherever possible/appropriate we will approach an identified

compliance issue with advice provision rather than regulatory or formal **enforcement** action.

- 3.4.1 We obtain information from a range of sources, including the regulated community and economic and market-specific information. Where a thematic risk is identified we will tailor our **guidance**, advice, events and publication provision to help explain - and where possible, mitigate - any inherent or emerging risks which may affect or threaten the regulated community as a whole.
- 3.4.2 Our ongoing commitment to education means we will provide more awareness-raising materials such as case studies, expected standards and best practice examples.

Enforcement Approach

Introduction

This section explains how the **CLC** identifies and responds to non-compliance with its regulatory requirements - as identified in the **Code of Conduct** and other **regulatory arrangements**. It seeks to provide the regulated community and other stakeholders with **guidance** on examples of regulatory breaches, how the **CLC** identifies these non-compliance issues and the framework within which it will respond to these. Its aim is to encourage appropriate conduct and deter inappropriate behaviour so that **clients** receive the standard of legal services that they should reasonably expect to receive.

The **CLC's Code of Conduct** requires those we regulate to comply with its **Overriding Principles** to:

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

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

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

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

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

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

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

4. What is meant by Enforcement?

- 4.1 We must ensure the regulated community meets the needs of **clients** by complying with both the law and our regulatory requirements. Where they fail in these

responsibilities we will hold them to account. Actions taken to encourage compliant behaviour or to punish non-compliance are known as **enforcement**. **Enforcement** action will be based upon reliable evidence, clear standards and the ability to appeal **enforcement** decisions. It is our aim that our **enforcement** approach is helpful, open, accountable and transparent. Our **enforcement** activities will be proportionate, consistent and targeted at cases where action is needed. This does not mean that less serious breaches will go unchecked, it means they will receive a proportionate response so that less serious breaches do not receive the same penalties as more serious or repeated breaches.

- 4.2 The **enforcement** tool applied in a matter will be proportionate to the risks identified to the **regulatory objectives** in the form of a threat to the delivery of the positive **outcomes** identified in our **Code of Conduct**, due to non-compliance with our **regulatory arrangements**.
- 4.3 Regulation and **enforcement** will be proportionate and flexible enough to encourage economic progress within the regulated community. We will not seek to cause unnecessary expense to an individual; any penalty imposed will be fair.
- 4.4 Informal resolution is desirable to the regulated community, its clients and the **CLC** and its appropriateness to an issue will always be considered. We will check to see that any agreed course of action is implemented. We will usually seek to take this route before considering regulatory or disciplinary action. Where this is not appropriate – due to the immediate, serious and/or widespread nature of the issue - or it has not achieved the desired outcome we will determine what further action is needed. We will be open to the individual/body providing fresh evidence not previously available, or to them proposing a compliance remedy.
- 4.5 We will assess the evidence applying the civil standard of proof ('balance of probabilities) and in determining our response we will take account of the impact on a **client, clients** in general and on the **respondent**. The **respondent** will be afforded the opportunity to make representations.
- 4.6 We have a range of **enforcement** tools at our disposal should an informal response not be appropriate. We will only exercise our disciplinary powers if the act or omission of a regulated body or individual was a serious breach. The seriousness of an act or omission will be judged on the impact, actual or potential, of the risk to delivery to the **Code of Conduct's Outcomes**.
- 4.7 Each of the following **enforcement** tools may be used in isolation, simultaneously, or consecutively where the usage of one tool has not generated compliance (e.g. if **licence conditions** are not complied with, other **enforcement** action may be used):
 - 4.7.1 Refer to an appropriate regulator - we are likely to refer the conduct of a **manager** or **employee** to the appropriate regulator where we have reason to believe that the individual's behaviour is in breach of their regulatory responsibilities.
 - 4.7.2 Reprimand - we are likely to issue a reprimand when an act or omission needs particular attention drawn to it, with the intention that the behaviour of the individual/body is changed.

- 4.7.3 **Licence Conditions** - we are likely to require the entity to take a specific actions where an act, omission or an arrangement needs to be rectified. Where this requires expenditure we will take into account the operational costs of that body. We will make every effort to ensure the condition/direction is understood by the body.
- 4.7.4a **Financial penalties** - we are likely to direct the payment of a fine (by the body and/or an individual concerned with it i.e. an **employee** or **owner**) exceeding £50,000 only in serious circumstances. This will be used to penalise inappropriate behaviour demonstrated by a specific act or omission and to deter future non-compliance (by both the individual/body and others). The level of the penalty will take into account the size/resources of the body so it is proportionate whilst also at a level likely to give **clients** and the public confidence that issues which cause them detriment are dealt with appropriately. Should a number of breaches be separately investigated we may determine it appropriate for a separate penalty to be imposed in each case.
- 4.7.4b We will not create a perverse incentive by providing details of the exact criteria/procedure which will be applied in setting the level of the fine. It will be determined on a case by case basis but we will always seek to ensure it is fair and proportionate and does not exceed the maximum levels (specified within this Policy).
- 4.7.4c We do not benefit financially from any penalties imposed. Fines received from **licensed conveyancers** or Recognised Bodies are paid into Her Majesty's Treasury; those received from Licensed Bodies go into the Government's Consolidated Fund.
- 4.7.5 **Material interest conditions/objections/divestiture** - where there are concerns that a material interest holder in **Licensed Body** may be demonstrating **improper influence** – i.e. an **owner** is influencing, or attempting to influence the decisions of the **Licensed Body** or the conduct of **Authorised Persons** in a way which would constitute a breach of their regulatory duties - we will take action. Where there are mild concerns this is likely to take the form of **conditions**; where the concerns are more serious we are likely to object to the interest and this may ultimately result in divestiture.
- 4.7.6 **Withdrawal of approval** – we are likely to withdraw our approval of a **Licensed Body's Head of Legal Practice** or **Head of Finance and Administration** where the individual has become demonstrably inappropriate for the role e.g. an event has occurred which impacts upon their fit and proper status or they repeatedly fail to meet their regulatory responsibilities.
- 4.7.7 **Disqualification** - we are likely to disqualify an individual from a role within a **Licensed Body** or a **licensed conveyancer** from holding a **licence** only in exceptional circumstances and where the seriousness of the act or omission means that no other **enforcement** action is judged adequate to address it.
- 4.7.8a **Licence suspension or revocation** - the decision to suspend or revoke a **licence** will not be taken lightly. We will only use this measure where, due to the seriousness and/or persistence of the act or omission – or the body has changed its structure/provision arrangements so it is no longer licensable - no other **enforcement** action is judged adequate to address the identified issue.

4.7.8b We will need to be satisfied that clients' interests are protected and this may include a/all **Client's** case being transferred to another firm. (Suspension is likely to lead to the enforced closure of the CLC Body unless the reason for the suspension is cured very quickly, in which case intervention and its case management processes will take place).

4.7.8c **Licence** suspension does not automatically mean **licence** revocation. A **licence** may be suspended because a significant threat to **clients** has been identified. Where this is found not to be the case or where we (or the First Tier Tribunal) are satisfied that a risk is no longer presented the **licence** is unlikely to be revoked. Where this is the case, the body may be subject to a more intensive regulatory relationship in order that we are confident that the risks to **clients** is minimised.

4.7.9a **Intervention - intervention** is an extreme measure and will only be used where no other **enforcement** action is judged adequate to address the identified issue due to the seriousness and persistence of the act or omission or if the body's viability is threatened or it becomes insolvent. As with all **enforcement** actions, we will carefully assess the proportionality of the proposed response. We can revoke an intervention direction following the body's request (but only where all relevant information corroborates that to do so would not cause a risk to the **Code of Conduct's Outcomes**).

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

5. Scope of the CLC's Enforcement Powers

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

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

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

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

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

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

- Persons no longer '**fit and proper**';
- Failures in governance **arrangements**;

- Fraud and dishonesty;
- **Improper influence**;
- Failure to comply with the **CLC's regulatory arrangements**;
- Ineffective **complaints**-handling procedures;
- Failure to provide the **CLC** with information, or provision of false, incomplete or misleading information;
- Failure to pay any **CLC** annual fee or contribution.

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

- the seriousness of the act or omission and the likely or actual impact on an individual **client, clients** in general and the regulated community;
- the intended **outcome** for **clients** in taking action compared with the impact of not taking action;
- the effect the particular breach is likely to have on:
 - the reputation of the rest of the profession; and
 - public confidence in those services and on the **CLC's Regulatory Arrangements**;
- the extent to which the act or omission is a one-off occurrence or is part of a series of similar matters or appears to be deliberate or vexatious;
- the period of time over which the act or omission has occurred;
- management competence and willingness to comply;
- the existence of good systems for managing risks;
- evidence of recognised external accreditation;
- whether the resource requirements needed are proportionate to achieving the desired results; and
- any other matters that it appears appropriate to take into account.

5.6 **Decision-making – enforcement** decisions taken by the **CLC** will be informed by all available, relevant and reliable evidence, and will be based upon criteria published on our website. Decisions will be taken on the evidence applying the civil standard of proof ('balance of probabilities'). Account will be taken of the impact on **clients**, the impact on the **respondent** and the reliability of the available evidence. The **respondent** will be afforded the opportunity to reply; we will be open to the individual/body providing fresh evidence not previously available, or to them proposing a compliance remedy. **Enforcement** decisions made will be regularly and **systematically** scrutinised to ensure that criteria are being consistently applied.

5.7 **Review/appeal of decisions** - the **respondent** may ask for any decision to be reviewed by the **Adjudication Panel**. The **respondent** will also be entitled to appeal. Depending on the nature of the decision made, and who makes it, the appeal may be heard by the High Court, the First Tier Tribunal or the Upper Chamber (see Table at 3.3.1). In the case of informal, regulatory or disciplinary action taken by **CLC** staff the matter will be referred to their line **manager** or another Director (with no prior involvement in the matter) who will review the decision. All requests for appeal must be made within 28 days of the determination.

- 5.8 Stay –the **Adjudication Panel**, may provide that an order or direction is not to have effect pending the hearing and determination of a review or an appeal taking into account the **CLC**'s statutory duty to act in a way which is compatible with the regulatory objectives (in particular those relating to the consumer interest and the public interest) and to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.
- 5.9 Decision-makers – all staff with delegated powers and all members of the **Adjudication Panel** receive training to ensure that decisions are made consistently and to assist in the determination of appropriate sanctions. The Committees are made up of lay members and members of the regulated community.
- 5.10 Matters which may be excluded – Other than in exceptional circumstances, we do not generally investigate these issues:
- Conduct which does not relate to the provision of legal services regulated by the **CLC**;
 - Disputes between an employer and **employee**;
 - Partnership disputes, unless the interests of **clients** are adversely affected or there is a finding of a court or tribunal;
 - Non-payment of fees incurred in the course of providing services regulated by the **CLC**, unless there is a judgment against the regulated person for non-payment relating to their legal practice;
 - Allegations from lending institutions of a failure to hand over deeds or papers to which the lender is entitled, unless the lender has already made a successful application to the court;
 - An isolated report of misconduct from a regulated person about a **licensed conveyancer** or **CLC** body, unless there is an allegation of serious misconduct, or it is made on the instructions of a **client**, or is made to protect the interests of an identifiable **client** who has an interest in the outcome;
 - Allegations of misconduct made more than twelve months after the alleged misconduct could reasonably have come to light;
 - Where there is a clear alternative legal remedy available which has not yet been pursued.
- Allegations of discrimination or dishonesty are not excluded.

6. **Enforcement Tools**

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

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

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

Inspection or re-inspection	Legal Practice Inspector, CLC Authorised Officer or other CLC employee of equivalent or senior position	or other CLC employee of equivalent or senior position (provided any review is not determined by an employee who made the determination which is the subject of the review)
Reminder of responsibilities		
Provision of information and advice		

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

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

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

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

Abbreviations

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

7. Enforcement Process

- 7.1 Informal approach – staff investigation and advice: in the event of the **CLC** becoming aware that a member of its regulated community may have failed to comply with our standards, we shall carry out an informal inquiry to enable us to decide whether there is a case which requires further investigation. If we are satisfied there is not an issue no action will be taken. If there is judged to be an issue but it is less serious, we will take informal action and offer advice, support and **guidance** to help address the issue.
- 7.2 Regulatory action – staff delegated powers: if we are satisfied further investigation is required, the support offered has not been accepted, or the individual/body commits relatively minor breaches on a regular basis and fails to respond to our informal resolution approaches, we shall consider whether it is likely that the case can be resolved by regulatory action. We may direct the **licensed conveyancer** or body to provide information to assure us that that their regulatory requirements are being complied with. This may be in a written report or may require the **respondent** to attend the **CLC**'s offices to explain how the issues identified will be resolved and the steps needed to ensure they do not recur.

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

7.4 Disciplinary action – Committee hearing: disciplinary proceedings may be initiated where steps taken under paragraphs 7.1-7.3 have failed to achieve the intended **outcome**, or it is not appropriate because of the actual or likely impact on a **client**, or **clients**, or because of the serious nature of the issue. Decisions will be informed by all available, relevant and reliable evidence. Decisions will be based on the application of published guidelines or criteria set out in the Enforcement Policy. The **respondent** will be afforded the opportunity to make oral and/or written representations to the Committee.

7.5 The **CLC** may:

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

7.6 [repealed]

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

- a) to dismiss the allegation;
- b) to hear and determine the allegation;
- c)

7.8 [repealed]

7.9

In the case of an individual *Licensed Conveyancer* or a *Recognised Body*, after it has carried out a preliminary investigation and determined that the allegation should be referred for hearing and determination, the Adjudication Panel may make one or more of the following orders:

7.9.1

- a **licensed conveyancer**:
 - Revoke the **licence** of a **licensed conveyancer**;
 - Disqualify a **licensed conveyancer** from holding a **licence** (either permanently or for a specified period);
 - Suspend a **licence**;
 - Direct the issue of a **licence** subject to **conditions** it may specify;
 - Direct the payment of a fine which is fair and proportionate, and does not exceed 50 million;
 - Reprimand the **licensed conveyancer**;

- a **Recognised Body** or sole **practitioner** practice regulated by the **CLC**
 - Revoke the recognition of the entity;
 - Direct the payment of a fine which is fair and proportionate, and does not exceed £250 million;
 - Reprimand the entity;
 - Direct the issue of a **certificate of recognition** subject to **conditions** it may specify;
- a **Manager** or **employee** who is not a **licensed conveyancer**
 - Direct the payment of fine which is fair and proportionate, not exceeding £50 million;
 - Require the **CLC** to take such steps as it may specify in relation to the **Manager** or **employee**;
 - Require the **CLC** to refer to an appropriate regulator any matter relating to the conduct of the **Manager** or **employee**;

7.9.2 The **Adjudication Panel** may direct the payment of costs by any party to proceedings including the **CLC**. Such costs may include the costs incurred in a preliminary investigation.

7.9.3 A **respondent** may appeal to the High Court against a decision of the **Adjudication Panel** which may make such order as it thinks fit.

7.9.4 [repealed]

7.9.5 In the case of Licensed **ABS Body**, or an **employee** or **manager** within, or **owner**, of the Licensed **ABS Body**, the **Adjudication Panel** (with a quorum of 3) may make one or more of the following orders:

- a **Licensed Body**:
 - Reprimand the body;
 - Direct the issue of a **licence** subject to **conditions** it may specify;
 - Direct the payment of a fine which is fair and proportionate, not exceeding £250 million;
 - Suspend the **licence** of the body;
 - Revoke the **licence** of the body;
 - Intervene;
- a **Licensed Body owner**:
 - Place **conditions** on the **owner's material interest**;
 - Object to the **owner's material interest**, and initiate the application to the High Court to divest the **owner** of their **material interest**;
 - Direct the payment of a fine which is fair and proportionate, not exceeding £50 million;
- a **Head of Legal Practice (HoLP)** or **Head of Finance & Administration (HoFA)**:

- Require the **CLC** to take such steps as it may specify in relation to the **HoLP** or **HoFA**;
 - Direct the payment of a fine which is fair and proportionate, not exceeding £50 million;
 - Withdraw approval of the individual for the role;
 - Disqualify the individual from a role within a **Licensed Body**;
- a **manager** or **employee**:
 - Direct the payment of a fine which is fair and proportionate fine, not exceeding £50 million;
 - Require the **CLC** to take such steps as it may specify in relation to the **manager** or **employee**;
 - Require the **CLC** to refer to an appropriate regulator any matter relating to the conduct of the **manager** or **employee**;
 - Disqualify the individual from a role in the **Licensed Body**.

7.9.6 Any determination made by the Adjudication Panel may be appealed to the First Tier Tribunal. The CLC or the **respondent** may appeal against a determination of the First Tier Tribunal to the Upper Chamber on a point of law.

8. Publication

- 8.1 Publication of investigation **outcomes** – the **CLC** will publish the statistics mapping the outcome of investigations so that the levels of compliance in the regulated community can be understood.
- 8.2 Publication of determinations - publishing the **enforcement** action we have taken acts as an incentive for the regulated community to apply the **professional principles** outlined in the **Code of Conduct**. It also provides the public with confidence that the regulatory activities of the **CLC** are responsive and proportionate.
- 8.3 We will publish details of the final determinations of the **Adjudication Panel** where there has been found a case to answer and an appeal has not been made within the 28 days or has not been successful. The **respondent** will be named where a penalty exceeds £5000 or an individual has been disqualified or our approval of them withdrawn, or a **licence** has been suspended or revoked. We will not publish determinations concluding no case to answer, unless the individual/body has asked for it to be published. In exceptional circumstances we may publish details of the progress of an investigation which has given rise to significant public concern.
- 8.4 The **CLC** is registered as a data controller under the Data Protection Act 1998 and must comply with the rules of good information handling.

9. Equalities Considerations

- 9.1 It is our intention that the application of this policy is fair and equitable and does not disadvantage anyone because of their age, disability, gender reassignment, marital and civil partnership status, pregnancy and maternity, race, religion or faith, sex or sexual orientation. Members of the regulated community subject to **CLC enforcement** action are asked to advise the **CLC** of any **specific requirements** they have which need

to be taken into consideration. These will be accommodated as far as is reasonably practicable and on a case-by-case basis.

- 9.2 The **CLC** will monitor its **enforcement** action to ensure there is no disproportionate impact on any sections of the regulated community.

10. Policy Consultation, Review & Evaluation

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

- 10.2 This policy came into effect in October 2011 and has been reviewed in July 2013. We shall consult with stakeholders to evaluate its effectiveness within 2 years of its initial application. Where the policy is failing to generate the relevant **outcomes** - identified in the **Code of Conduct** it will be amended as appropriate. In the meantime, we welcome any feedback on the policy's content, implementation and effectiveness.

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

Attachment K – The CLC’s Discipline and Appeals Arrangements Consultation Paper



Discipline and Appeals Arrangements
CLC’s Consultation

Issue date: Monday 21st January 2013

Consultation ends: Friday 19th April 2013

The CLC's Discipline and Appeals Arrangements

Executive Summary

1. In implementing the changes facilitated by the Legal Services Act, one of the CLC's objectives has been to ensure that the same regulatory arrangements and processes apply to those it regulates, whether as an Approved Regulator or as a Licensing Authority.
2. The CLC agree with the Legal Services Board's analysis that appeals from determinations made by the CLC acting as a Licensing Authority should be heard by the First-tier Tribunal, rather than by its Discipline and Appeals Committee.
3. The result is that there is now a mismatch between the appeal arrangements for recognised bodies and licensed conveyancers, on the one hand, and for Alternative Business Structures on the other.
4. The CLC proposes that the appeals and disciplinary jurisdiction of the Discipline and Appeals Committee is transferred to the CLC's Adjudication Panel and that the entitlement to appeal from such determinations is transferred from the High Court to the First-tier Tribunal.
5. The CLC believes that this proposal will result in greater transparency and consistency in the exercise of its appeal arrangements, that the interests of respondents will be safeguarded and that there will be a saving of cost for both respondents and for the CLC.

Responding to this Consultation

You are invited to respond to the questions asked in this Consultation. Please consider the questions posed in the document below and respond via the online link provided at the end of this document. The consultation ends on Friday 19th April 2013.

(Note: Questions 1-3 in the online survey relate to your details).

Introduction

The CLC

1. The Council for Licensed Conveyancers (the CLC) was established under the provisions of the Administration of Justice Act 1985 (AJA) to regulate licensed conveyancers and since 1 January 2010 has been designated an Approved Regulator under the Legal Services Act 2007 (LSA).
2. As set out at section 28 LSA the CLC must, so far as is reasonably practicable, act in a way—
 - (a) which is compatible with the regulatory objectives (set out at s.1 LSA), and
 - (b) which it considers most appropriate for the purpose of meeting those objectives.
3. Further, the CLC must have regard to-
 - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
 - (b) any other principle appearing to it to represent the best regulatory practice.

The purpose of the CLC

4. To set entry standards and regulate the profession of Licensed Conveyancers effectively in order to:
 - secure adequate consumer protection and redress;
 - promote effective competition in the legal services market, and;
 - provide choice for consumers.

Changes in Governance Arrangements

5. Up until 2011 CLC regulatory determinations were made by committee⁵. The framework of delegated powers has now been modified so that almost all regulatory determinations are made by a CLC Officer. Any appeal against the determination of a CLC Officer is made to the Adjudication Panel.

About the Discipline and Appeals Committee

6. Under the AJA (and acting as an Approved Regulator) the CLC is required to establish the Discipline and Appeals Committee⁶ (DAC) to hear and determine disciplinary cases referred to it by the Investigating Committee. A Respondent may appeal to the High Court against a disciplinary determination made by the DAC. The DAC also hears appeals against licensing decisions made by the CLC (in respect of which there is no statutory right of appeal).

⁵ These included the Investigating Committee, the Conduct and Compliance Committee, the Licence and Practice Committee, the Finance and General Purposes Committee, the Student Registration Appeals Committee

⁶ s.25

7. The DAC panel is appointed by a selection panel itself appointed by the CLC Council⁷. The Chair and Deputy Chair are senior lawyers. One half of the other members of the panel are licensed conveyancers and the other half non licensed conveyancer members. The DAC sits as a tribunal of three comprising a Chair, a licensed conveyancer and a non licensed conveyancer member. It is advised by a Legal Adviser, also a senior lawyer.
8. Over the last 10 years the number of DAC sittings has varied. Up until early 2011 when the jurisdiction was transferred to the Legal Ombudsman⁸ the DAC determined referrals made to it where CLC practices had failed to comply with a service complaint determination made by the CLC's Investigating Committee.
9. Because relatively few cases are referred to the DAC, the administrative function is dealt with by the CLC. Hearings take place in rooms in Chelmsford.

CLC as a Licensing Authority

10. The CLC was designated as a Licensing Authority authorised to license Alternative Business Structures in October 2011. The LSA provides that the DAC should determine appeals from decisions made by the CLC acting as a Licensing Authority⁹. Following guidance issued by the Legal Services Board, the CLC agreed that appeals from determinations made by the CLC acting as a Licensing Authority are heard by the CLC's Adjudication Panel and then by the General Regulatory Chamber (GRC) of the First-tier Tribunal (rather than by the DAC). These arrangements are now in force.

Appeals to the First-tier Tribunal

11. The First-tier Tribunal was established by the Tribunals, Courts and Enforcement Act 2007¹⁰. Appeals will be made to the General Regulatory Chamber of the First-tier Tribunal. The tribunal is empowered to deal with a wide range of issues which might form the substance of appeals, and to ensure cases are dealt with in the interest of justice and to minimise the parties' costs. The composition of a tribunal is a matter for the Senior President of Tribunals to decide, and may include non legal members with suitable expertise or experience in the issues in an appeal in addition to Tribunal Judiciary.
12. The General Regulatory Chamber operates under the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 which provide flexibility for dealing with individual cases. Rule 2 of the General Regulatory Chamber Rules states its overriding objective as being to deal with a case fairly and justly. This includes dealing with a case in ways which are proportionate to the importance of the case, the complexity of the issues and the anticipated costs and resources of the parties. The Rules give the tribunal judge wide case management powers in order to achieve these objectives.

⁷ See Discipline and Appeals Committee Rules 2009 at http://www.clc-uk.org/pdf_files/regulatory_arrangements/other/CLC_DAC_Rules_2009.pdf

⁸ The Legal Ombudsman started to accept service complaints in October 2010

⁹ s.80

¹⁰ Further information about the Tribunal is at <http://www.justice.gov.uk/about/hmcts>

Onward appeal from the tribunal

13. Any party to a case has a right to appeal to the Upper Tribunal on points of law arising from a decision of the First-tier Tribunal. The right may only be exercised with the permission of the First-tier Tribunal or the Upper Tribunal. Where permission is given, the further appeal would be made to the Upper Tribunal.

Effect of the Changes

14. Because it is authorised as both an Approved Regulator and as a Licensing Authority, the CLC is now operating two parallel regulatory regimes. The CLC's aim has been to minimise the distinctions between these regulatory regimes on the basis that
- the CLC's statutory duty remains the same whether it is acting as an Approved Regulator or as a Licensing Authority;
 - the interests of consumers remain the same;
 - the regulatory arrangements are the same; and
 - the CLC's approach to regulation remains the same.

However, there remains a significant discrepancy in the exercise of disciplinary and appeals functions.

15. This is most clearly apparent in the enforcement powers which are exercisable. Where the respondent is:
- a Recognised Body or Licensed Conveyancer (so the CLC is acting as an Approved Regulator) the maximum penalty which can be imposed is £50,000 if the determination is made by the Adjudication Panel, and £1 million if it is made by the Discipline and Appeals Committee; or
 - a Licensed Body (or ABS) (so the CLC is acting as a Licensing Authority) the maximum penalty which can be imposed by the Adjudication Panel is £250 million (and £150 million if the disciplinary proceedings are against an individual manager or employee).
16. If this were the only imbalance it could be corrected by a change in the CLC's Enforcement Policy (and supporting rules). However, there is also a structural imbalance, best illustrated at Table 1.

Options

17. On initial consideration, following the changes made to the appeal arrangements for ABS, the most obvious solution appeared to be for the DAC to be replaced by the First-tier Tribunal so that the First-tier Tribunal would hear all appeals and disciplinary matters relating to recognised bodies and licensed conveyancers. The effect of such a change would be to continue the mismatch between the appeal processes relating to ABS and those relating to recognised bodies and licensed conveyancers.

	CLC acting as an Approved Regulator		CLC acting as a Licensing Authority
Nature of Entity	Recognised Body/Licensed Conveyancer		Alternative Business Structure
	Current Arrangements in force	Arrangements proposed in this Consultation Paper (not in force)	Current Arrangements in force
Determination (members appointed by the CLC)	Adjudication Panel £50,000	<i>Adjudication Panel</i> <i>£250M/£150M</i>	Adjudication Panel £250M/£150M
	Discipline and Appeals Committee £1million	<i>Review Panel*</i>	Review Panel*
Appeal (the CLC has no influence on the appointment of judges to the courts or tribunals)	High Court	<i>General Regulatory Chamber (GRC)</i>	GRC
Further appeal	no right of onward appeal [‘the decision of the High Court on an appeal shall be final’ (s.26(8) AJA)]	<i>Upper Chamber</i>	Upper Chamber

Table 1

* there is a right of review by the Review Panel where the Adjudication Panel has made a first instance decision. If the Adjudication Panel has determined an appeal from a determination made by a CLC Officer, then there is no entitlement to refer the matter to the Review Panel, though any entitlement to appeal from the Adjudication Panel to the GRC will remain unaffected,

18. There would in fact be greater consistency of process if the jurisdiction of the DAC were to be transferred to the Adjudication Panel and for the jurisdiction of the High Court to be transferred to the First-tier Tribunal.

Question 4:

Do you agree our analysis of the mismatch between the appeal jurisdiction where the CLC is acting as a Licensing Authority and where it is acting as an Approved Regulator?

19. There are complications with this proposal: the Adjudication Panel has already taken over the disciplinary functions of the Investigating Committee¹¹ which permit it to carry out a preliminary investigation to determine whether there is a disciplinary case to answer and also to impose a fine (currently up to £50,000). The respondent is entitled to appeal the disciplinary decision of the Investigating Committee (now exercised by the Adjudication Panel) to the DAC and then on to the High Court. The transfer of the DAC's jurisdiction to the Adjudication Panel would arguably mean that the Respondent is deprived of one statutory tier of appeal.
20. The Adjudication Panel Rules 2011¹² provide at rule 13.3 that any determination made by the Adjudication Panel at first instance (ie it is not determining an appeal made against a determination made by a CLC Officer) may be appealed first to the Review Panel before an appeal is made to the First-tier Tribunal. The Review Panel comprises a Chair and members of the Adjudication Panel who were not on the panel which made the determination which is the subject of appeal. It is proposed that the Review Panel assumes a similar role where a Respondent recognised body or licensed conveyancer appeals against a disciplinary determination made by the Adjudication Panel. Entitlement to appeal to the First-tier Tribunal would remain unaffected.

Question 5:

Do you agree our proposal for aligning the disciplinary jurisdictions of the CLC where it is acting as an Approved Regulator or as a Licensing Authority?

21. Up until March 2009 the maximum fine the DAC could award was £3,000 per allegation. Between 2000 and 2009 in one matter the total fine imposed by the DAC was £8,250 (covering a number of different allegations). Since 2009 when the maximum award was increased to £1 million, the maximum fine awarded has been £2,500.
22. Following the principal of parity as between the Approved Regulator and Licensing Authority jurisdiction it follows that the maximum fine which can be awarded against a licensed conveyancer, or manager or employee of a recognised body, should be increased from £1 million to £150 million and for a recognised body from £1 million to £250 million. This does not mean that the level of fines imposed will be

¹¹ at s.24 and s.24A and in schedule 6 AJA

¹² http://www.clc-uk.org/pdf_files/regulatory_arrangements/other/CLC_Adjudication%20Panel%20No%20%20Rules_2011.pdf

increased since there will continue to be an overriding requirement for the amount of the fine imposed to be fair and proportionate. Relevant factors in determining the level of fine will include the nature of the disciplinary offence, the consequences to other persons of that offence, the benefits the respondent has accrued as a result of commission of the disciplinary offence and the effect the commission of that disciplinary offence has on the reputation of the profession.

Question 6:

Do you agree that the maximum fine which can be awarded against a licensed conveyancer, or a manager of employee of a recognised body should be increased to £150 million, and against a recognised body to £250 million?

23. The principal advantages to the CLC if the DAC jurisdiction is transferred to the Adjudication Panel would be consistency of process (see paragraphs 14-18 above) and a saving in costs. The CLC would not need to have a lengthy and expensive periodic recruitment campaign for the DAC, which meets relatively infrequently, as well as for the Adjudication Panel.
24. Since 2000 only one licensed conveyancer has exercised his entitlement to appeal against a determination of the DAC to the High Court. On one level it could be argued that this is evidence that the CLC profession is largely compliant and that the DAC has made fair and proportionate determinations which have been accepted by the respondents. On the other hand, it could be argued that whilst the CLC has explained in writing to respondents their entitlement to appeal in practice there have been barriers preventing appeals which have merit from being made: since appeals are rare the procedure for making appeals to the High Court is unclear, the legal costs of making an appeal are significant and there is a risk that the respondent will be ordered to pay the CLC's costs if the appeal is unsuccessful.
25. The CLC has identified no detriment to the respondent if the appeal is to the First-tier Tribunal, rather than to the High Court. The process for appealing against an ABS determination made by the Adjudication Panel is clearly set out on the Tribunals Service's website¹³. Links are given to the relevant forms. Whilst there is no bar against a respondent being legally represented, it is understood that the expectation is that a respondent will not usually be legally represented. There is less procedural formality and costs are awarded against a party only if the Tribunal considers that a party has acted unreasonably or where it is satisfied costs have been 'wasted'¹⁴.
26. There is no requirement for the respondent to obtain permission before appealing to the First-tier Tribunal (as is currently the case in respect of the High Court), though the respondent in the First-tier Tribunal is entitled to appeal on a point of law, whereas in the High Court the decision of the judge on an appeal is final.
27. Arguably, the CLC will incur additional costs if appeals are made to the First-tier Tribunal as opposed to the High Court because it will contribute to the costs of the Tribunal Service determined by reference to the number of cases referred to the First-tier Tribunal. Such cost should, however, be more than off set by the legal

¹³ <http://www.justice.gov.uk/tribunals/alternative-business-structures>

¹⁴ as defined at s.29 Tribunals, Courts and Enforcement Act 2007

costs the CLC is likely to save by not having to arrange for independent legal representation before the First-tier Tribunal.

28. For the avoidance of doubt, the jurisdiction of the High Court in supervising the exercise of the CLC's powers of intervention under schedules 5 and 6 AJA remain unaffected by these proposals.

Question 7:

Do you agree our analysis of the effect of the changes we propose?

Question 8:

Are you able to identify any detriment to respondents which we have not mentioned?

Question 9:

Are you satisfied with the proposed procedures for appeals? If not, why not?

Question 10:

(Asked on behalf of the Tribunal Procedure Committee) Do you consider that the General Regulatory Chamber Rules will suit the handling of appeals against designations and the associated circumstances? If not, why not?

Question 11:

We welcome any comments that you wish to make on the proposals as a whole.

Please click on [this link](#) to respond to this consultation.

Consultation ends: Friday 19th April 2013.

Attachment L – CLC Consultation Discipline and Appeals Arrangements – Analysis of Responses



**CLC Consultation
Discipline and Appeals Arrangements
Analysis of Responses**

Between January 2013 and March 2013 we consulted on our Discipline and Appeals Arrangements. The CLC received 27 completed responses. Thank you to everyone who contributed to the consultation. This document sets out the findings of that consultation exercise.

100% respondents agreed that the CLC should apply the same procedural rules to discipline and appeals proceedings whether the CLC is acting as an Approved Regulator (regulating recognised bodies and licensed conveyancers) or as a Licensing Authority (regulating Alternative Business Structures, their managers and employees). Over 70% respondents agreed to an increase in the maximum penalty which can be awarded against a recognised body and a licensed conveyancer so that they are the same as the maximum penalty which can be awarded against an Alternative Business Structure and its managers and employees, subject to the overriding requirement that the penalty must be fair and proportionate.

The CLC is in the course of submitting an application under s.69 Legal Services Act 2007 for statutory amendments transferring the appeals jurisdiction from the High Court to the First-tier Tribunal. An application will shortly be made to the Legal Services Board to approve rules made by the CLC transferring the jurisdiction of the Discipline and Appeals Committee to the Adjudication Panel.

Further detail about the responses is set out in the table.

Question no	Question	Agree	Disagree	Comment
1-3	Related to the name, professional status and current engagement in legal services of the individual respondents			
4	Do you agree our analysis of the mismatch between the appeal jurisdiction where the CLC is acting as a Licensing Authority and where it is acting as an Approved Regulator?	100%	0%	
5	Do you agree our proposal for aligning the disciplinary jurisdictions of the CLC where it is acting as an Approved Regulator or as a Licensing Authority?	100%	0%	
6	Do you agree that the maximum fine which can be awarded against a licensed conveyancer, or a manager of employee of a recognised body should be increased to £150 million, and against a recognised body to £250 million?	71%	29%	Some respondents queried the distinction between a licensed conveyancer and a recognised body since it was thought that everyone was now regulated as a recognised body. It was also pointed out that the maximum size of a fine was to an extent irrelevant because it could not be paid. One respondent commented that raising the maximum amount of a fine would help to drive out malpractice. The CLC's intent is that the level of fine in a specific case is fair and proportionate in all the circumstances but that in the interests of fairness as between the CLC's two regulatory regimes the maximum level of fine should be the same whether a practice is being regulated as an ABS or as a recognised body. The maximum level of fine which can be awarded against an ABS is £250 million and a manager or employee £50 million. The maximum fine proposed where the CLC is acting for Approved Regulator was £250 million for a recognised body and £150 million for

				a licensed conveyancer. Clearly, this was an error. The revised proposal is that the maximum fine should be £250 million for a recognised body (as currently proposed) and £50 million (not £150 million) for a licensed conveyancer.
7	Do you agree our analysis of the effect of the changes we propose?	100%	0%	
8	Are you able to identify any detriment to respondents which we have not mentioned?	4%	96%	No additional points made by respondents not identified elsewhere in summary of responses
9	Are you satisfied with the proposed procedures for appeals? If not, why not?	100%	0%	
10	(Asked on behalf of the Tribunal Procedure Committee) Do you consider that the General Regulatory Chamber Rules will suit the handling of appeals against designations and the associated circumstances? If not, why not?	100%	0%	