

## **APPENDIX 8**

# **INVESTIGATION, DISCIPLINARY AND APPEAL RULES**

## IPS INVESTIGATION, DISCIPLINARY AND APPEALS RULES

## PART I: GENERAL

**Application of Rules, establishment of Panels and Tribunal**

1. (1) These Rules shall apply to any:
  - (a) allegation of misconduct made against a Relevant Person; or
  - (b) declaration of prior conduct made by an Applicant or Relevant Person.
- (2) In these rules **misconduct** means any breach of the CILEx Code of Conduct.
- (3) The Professional Conduct Panel is established for the purposes set out in Part II.
- (4) The Disciplinary Tribunal is established for the purposes set out in Part III.
- (5) The Appeals Panel is established for the purposes set out in Part IV.

**Panellists**

2. (1) IPS shall appoint and maintain lists of lay and professional members to act as panellists on:
  - (a) the Professional Conduct Panel;
  - (b) the Disciplinary Tribunal; and
  - (c) the Appeals Panel.
- (2) A person shall not at any one time be included in more than one list maintained under paragraph (1).
- (3) IPS shall remove from the relevant list the name of any panellist:
  - (a) whose term of appointment has ended and not been renewed;
  - (b) who has resigned by giving notice in writing to that effect to IPS; or
  - (c) who in the opinion of IPS has ceased to be a suitable person to act as a panellist.
- (4) The term of appointment of a panellist shall be not more than five years and no panellist shall serve for more than ten years.

## Interpretation

### 3. In these Rules, unless otherwise provided:

<b>allegation:</b>	has the meaning given in Rule 15(1);
<b>Appeals Panel:</b>	means the Appeals Panel established under Rule 1(5) as constituted from time to time;
<b>Applicant:</b>	means a person applying for Membership or Authorisation;
<b>Approved Manager:</b>	means a person approved by IPS to be a Manager of an Authorised Body;
<b>Authorisation:</b>	means authorisation by IPS as an Approved Manager, Authorised Body or CILEx Practitioner;
<b>Authorised Body:</b>	means a partnership, company or sole principal authorised by IPS to provide one or more regulated legal activities;
<b>CILEx:</b>	means the Chartered Institute of Legal Executives;
<b>CILEx Member:</b>	means a person who has been admitted to membership of CILEx in any grade;
<b>CILEx Practitioner:</b>	means a practitioner authorised by IPS to provide one or more regulated legal activity;
<b>complainant:</b>	means a person who has made a complaint against a Relevant Person to IPS;
<b>Disciplinary Tribunal:</b>	means the Disciplinary Tribunal established by Rule 1(4) as constituted from time to time;
<b>IPS:</b>	means ILEX Professional Standards Limited;
<b>lay member:</b>	means a person who is not and who has never been an authorised person (within the meaning of s.18 of the Legal Services Act 2007) or registered by CILEx in any grade;
<b>Membership:</b>	means enrolment or reinstatement as a CILEx Member;
<b>misconduct:</b>	has the meaning given in Rule 1(2);
<b>person:</b>	includes an individual, body corporate or other entity;
<b>Practice Management Agreement:</b>	has the meaning given in Rule 30(6);



<b>Professional Conduct Panel:</b>	means the Professional Conduct Panel established under Rule 1(3) as constituted from time to time;
<b>professional member:</b>	means a Fellow of CILEx who is not a member of the CILEx Council or the IPS Board of Directors and who is otherwise eligible to be appointed to a list of panellists under Rule 2;
<b>regulated legal activity:</b>	means: <ul style="list-style-type: none"> <li>(a) a reserved legal activity;</li> <li>(b) immigration advice or immigration services;</li> </ul>
<b>Relevant Person:</b>	means an Approved Manager, Authorised Body, CILEx Member or CILEx Practitioner.
<b>reserved legal activity:</b>	has the same meaning as in the Legal Services Act 2007.

#### Extension of time

4. Where these Rules prescribe a time limit by which a person must act or after which they may not act, an Investigator, the Professional Conduct Panel, the Disciplinary Tribunal or the Appeals Panel (as the case may be) may, upon application, vary that time limit if satisfied that in all the circumstances it is reasonable to do so.

#### Service of documents

5. (1) Any notice required to be given under these Rules may be given to a person or that person's representative:
- (a) by sending it by first class post to a relevant address;
  - (b) by leaving it at a relevant address;
  - (c) by personal service, effected by leaving the document with an individual or, in the case of a body corporate or other entity, with a director, officer or manager of that body corporate or entity;
  - (d) by such other method as the Professional Conduct Panel, the Disciplinary Tribunal or the Appeals Panel (as the case may be) may direct.
- (2) For the purpose of paragraph (1), a **relevant address** means:
- (a) in the case of an individual, the last known address of that person, including their usual or last known residence or usual or last known place of business;

(b) in the case of a body corporate or other entity, its principal or registered office, its last known address or any other office or place of business which is connected to the proceedings to which the notice relates;

and for this purpose, the last known address of a Relevant Person is the address of that person as it appears in records maintained by IPS.

- (3) A notice which is served in accordance with paragraph (1) shall be deemed to be served at the time of personal service or delivery or on the second working day after it was posted.
- (4) Where it is satisfied on reasonable grounds that it is in the public interest to do so, the Professional Conduct Panel, the Disciplinary Tribunal or the Appeals Panel (as the case may be) may:
- (a) deem service to be effective even though the requirements of paragraph (1) have not been complied with; or
  - (b) dispense with the requirement of service altogether.

#### **Effect on Membership or Authorisation**

6. A Relevant Person shall not be permitted to terminate their Membership or Authorisation whilst the subject of any investigation or proceedings under these Rules.



**PART II: INVESTIGATION OF COMPLAINTS AND THE PROFESSIONAL CONDUCT  
PANEL**

**Interpretation of Part II**

7. In this Part, unless the context otherwise requires:

<b>Clerk:</b>	means the Clerk to the Professional Conduct Panel;
<b>Investigator:</b>	means a person appointed by IPS to conduct investigations under this Part;
<b>Panel:</b>	means the Professional Conduct Panel; and
<b>prior conduct:</b>	has the meaning given in Rule 11(4).

**Professional Conduct Panel**

8. The Panel shall consider:

- (a) declarations of prior conduct made by or on behalf of Applicants and Relevant Persons and other information relating to their prior conduct; and
- (b) allegations made against Relevant Persons.

**Composition of the Panel**

9. (1) The quorum for a meeting of the Professional Conduct Panel is three members from the list of panellists maintained under Rule 2(1)(a), of whom two shall be lay members and one shall be a professional member.
- (2) The Panel must
- (a) select one of their number to chair the meeting; or
  - (b) if different members are to chair different parts of the meeting, elect one of their number to chair the proceedings on any matter before considering that matter.

**Conduct of meetings**

10. (1) Meetings of the Panel shall be held in private.
- (2) Meetings shall be held at the offices of IPS unless the Panel decides otherwise but nothing in these Rules shall require any meeting to be held outside the United Kingdom.

- (3) Minutes and a record of the decisions of the Panel shall be made by the Clerk.
- (4) The Panel may resolve to consider and determine a matter without a meeting and, in that event, a decision signed by the members of the Panel shall be as valid as if it was made at a meeting.
- (5) In considering a matter, the Panel:
  - (a) may take account of, but is not bound by, the findings, views or analysis of an Investigator;
  - (b) may seek further information from the Relevant Person;
  - (c) may take account of any further representations and material adduced by the Applicant or Relevant Person.
- (6) Where, in accordance with Rule 14(1)(c) or 17(5), the Panel has requested that:
  - (a) an Applicant or Relevant Person attend a meeting of the Panel; or
  - (b) where the Applicant or Relevant Person is an entity, that a representative of that entity attend a meeting of the Panel;

an Applicant or Relevant Person who so attends or which is so represented may be represented at the meeting by any person, whether or not legally qualified, but the Panel may refuse to permit a particular person to assist or represent a party if the Panel is satisfied that there are good and sufficient reasons for doing so.
- (7) Decisions at a meeting of the Panel shall be made by a majority vote of the panellists present.
- (8) The Panel shall give reasons for its decisions and inform the parties of any right of an appeal.
- (9) IPS shall within 21 days of any decision of the Panel notify the Applicant or Relevant Person of that decision and, in the case of an allegation, IPS shall notify any complainant of the decision once it takes effect.

#### **Duty to declare prior conduct**

11. (1) Every Applicant or Relevant Person who is an individual must declare in writing to IPS if that individual has at any time:
  - (a) been convicted or accepted a caution in the United Kingdom for a criminal offence, or been convicted elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;



- (b) been removed from being a trustee of, or being concerned with the management or control of, a charity;
  - (c) been removed from office as a member, director or manager of any public body;
  - (d) been adjudged bankrupt or made a composition with creditors;
  - (e) been disqualified from acting as a director of a company;
  - (f) been the subject of a civil judgment;
  - (g) been subject to any investigation or proceedings concerning the person's fitness to practise by any regulatory or professional body.
- (2) Paragraph (1)(a) shall apply subject to the Rehabilitation of Offenders Act 1974.
- (3) In respect of every Applicant or Relevant Person that is not an individual, a declaration must be made in writing to IPS if:
- (a) a resolution for a voluntary winding-up of the Relevant Person has ever been passed without a declaration of solvency under section 89 of the Insolvency Act 1986;
  - (b) the Relevant Person has ever entered administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act;
  - (c) an administrative receiver within the meaning of section 251 of that Act has been appointed in respect of that Relevant Person;
  - (d) a meeting of creditors has been held in relation to the Relevant Person under section 95 of that Act;
  - (e) an order for the winding up of the Relevant Person has been made;
  - (f) a civil judgment has been made against that Relevant Person;
  - (g) that Relevant Person has been the subject of any investigation or proceedings conducted by any regulatory or professional body.
- (4) Each of the matters in paragraph (1) and (3) is referred to in these Rules as **prior conduct**.
- (5) In paragraphs (1)(f) and (3)(f) references to a **civil judgment** are to a judgment of a civil court concerning any debt, fraud, misrepresentation or conduct related to the administration of justice.
- (6) A declaration of prior conduct shall be considered and determined in accordance with Rules 13 and 14.



### Timing of declaration

12. (1) Every Applicant must disclose full details of prior conduct at the earliest opportunity and, unless the conduct occurs later, in any application for Membership or Authorisation.
- (2) Every Relevant Person must disclose full details of prior conduct at the earliest opportunity and in any event (if not previously disclosed to IPS or CILEx):
  - (a) in the case of a CILEx Member:
    - (i) in any application for Membership;
    - (ii) in any application for a change in Membership grade;
    - (iii) in any other application to CILEx or IPS; and
    - (iv) in an annual return.
  - (b) in the case of an Approved Manager, Authorised Body or CILEx Practitioner:
    - (i) in any application for Authorisation; and
    - (ii) in any annual return form.
- (3) Where requested to do so by IPS, an Applicant or Relevant Person must provide further details of any prior conduct.
- (4) Failure by a Relevant Person to comply with this Rule and Rule 11 may be treated as misconduct.

### Investigator decisions: prior conduct

13. (1) An Investigator may determine that no action is to be taken in relation to a declaration of prior conduct where:
  - (a) the Applicant or Relevant Person has declared an outstanding judgment and there is no evidence of:
    - (i) persistent or deliberate failure to meet financial obligations;
    - (ii) a related criminal offence; or
    - (iii) failure to make arrangements to pay off any debts;
  - (b) the Applicant or Relevant Person has declared a caution or spent conviction and is not a CILEx Fellow or applying for CILEx Fellowship;
  - (c) the Applicant or Relevant Person has declared a driving offence and:
    - (i) there is no evidence of a persistent pattern of offending,
    - (ii) a custodial sentence was not imposed; and
    - (iii) the duration of any disqualification imposed was not 18 months or

- more;
- (d) the Applicant or Relevant Person is or has been subject to a bankruptcy Order or has entered into an arrangement with their creditors; or
  - (e) the prior conduct is of a kind which the Panel has given the Investigator delegated authority to determine.
- (2) The Investigator shall, within 21 days of making a decision, notify the Applicant or Relevant Person of that decision and, in respect of a decision made under paragraph (1)(e), shall at the same time inform the Panel of that decision.
- (3) An Investigator may decline to make a determination under this rule if, in the opinion of the Investigator, it would be more appropriate for the declaration to be determined by the Panel.

**Panel decisions: prior conduct**

- 14 (1) In considering any declaration or other information relating to prior conduct, the Panel shall have regard to any guidance published by IPS and may:
- (a) seek advice from or refer the matter to an Investigator or any CILEx or IPS committee it considers appropriate;
  - (b) request that the Applicant or Relevant Person provide such further information as the Panel may reasonably require; and
  - (c) request that the Applicant or Relevant Person or, where the Applicant or Relevant person is an entity, a representative of that entity, attend a meeting of the Panel.
- (2) Failure by a Relevant Person to comply with a request under paragraph (1)(b) or (c) may be treated as misconduct.
- (3) In respect of any prior conduct the Panel may:
- (a) decide to take no further action;
  - (b) accept or refuse any application for Membership or Authorisation or any other application to which the prior conduct relates;
  - (c) impose conditions on the Applicant or Relevant Person as it may think appropriate in respect of their future conduct and, in the case of an individual, their employment;
  - (d) require the Applicant or Relevant Person to give an undertaking as to their future conduct;
  - (e) reprimand the Relevant Person, warn the Relevant Person as to their future conduct or both; or
  - (f) refer the matter to the Disciplinary Tribunal as if it was an allegation.



**Investigating misconduct: initial procedure**

15. (1) Where IPS receives a complaint or any other information to the effect that a Relevant Person may have engaged in misconduct (an **allegation**), it may investigate the allegation in accordance with these Rules.
- (2) An Investigator shall investigate an allegation as follows:
  - (a) the Investigator shall gather information about and investigate the issues involved including, where the allegation arises from a complainant, obtaining:
    - (i) any information about the complaint that the complainant wishes to provide; and
    - (ii) the consent of the complainant to provide a copy of the complaint and any supporting information to the Relevant Person;
  - (b) the Investigator shall notify the Relevant Person that an allegation has been made against them, provide the Relevant Person with details of the allegation (including a copy of any complaint or supporting information) and a copy of the Rules and invite the Relevant Person to submit representations to the Investigator within 14 days;
  - (c) the Investigator may seek information or advice from third parties.
- (3) The Investigator may supply the complainant with a copy of all or part of any response from the Relevant Person and, in that event:
  - (a) shall allow the complainant a period of 14 days in which to make written observations; and
  - (b) shall allow the Relevant Person a period of 14 days in which to comment on any observations received from the complainant.
- (4) At the conclusion of the investigation, the Investigator shall prepare a report containing a summary of the information obtained and an analysis of the issues for consideration and shall forward the same to the Relevant Person and complainant and invite them within a period of 14 days to comment in writing on the report.
- (5) Upon receipt of comments from the Relevant Person or the expiry of the time allowed for comments (whichever is the sooner), the Investigator shall either determine the matter or refer it to the Panel.
- (6) A Relevant Person is obliged to comply with and respond to reasonable enquiries made by an Investigator and failure to do so may be treated as misconduct.



### Decisions by Investigators in certain cases

16. (1) Where an Investigator is of the opinion that:
- (a) there is no evidence available to substantiate an allegation;
  - (b) the allegation does not disclose any misconduct by the Relevant Person;
  - (c) IPS has no jurisdiction to consider the allegation; or
  - (d) the time which has elapsed since the events (or knowledge of those events, if later) giving rise to the allegation exceeds the prescribed period;
- the Investigator may reject the allegation without further reference to the Panel.
- (2) For the purpose of paragraph (1)(d), the **prescribed period** means such period of not less than one year as IPS may prescribe.
- (3) Where an Investigator is of the opinion that the evidence available indicates that the Relevant Person has a case to answer in respect of an allegation; and either:
- (a) the allegation is of a serious nature; or
  - (b) an adverse finding has previously been made against the Relevant Person by the Professional Conduct Panel or Disciplinary Tribunal in respect of an allegation of a similar nature;
- the Investigator may refer the allegation directly to the Disciplinary Tribunal without further reference to the Panel.
- (4) An Investigator shall:
- (a) provide reasons for rejecting or referring to the Disciplinary Tribunal any allegation under this Rule;
  - (b) notify the Relevant Person and any complainant of the decision within 21 days; and
  - (c) report any such decision to the Panel.

### Powers of the Professional Conduct Panel

17. (1) The Panel shall consider any allegation which is referred to it and determine whether the Relevant Person has a case to answer.
- (2) In determining whether there is a case to answer, the Panel shall consider whether, based upon the available evidence, there is realistic prospect that IPS would be able to prove the allegation of misconduct before the Disciplinary Tribunal.
- (3) In respect of an allegation, the Panel may determine that:



- (a) there is no case to answer; or
  - (b) there is a case to answer and:
    - (i) refer the allegation to the Disciplinary Tribunal; or
    - (ii) with the consent of the Relevant Person, dispose of the allegation in accordance with paragraph (4).
- (4) Where the Relevant Person admits an allegation and consents to the Panel doing so, the Panel may dispose of the matter by:
- (a) requiring the Relevant Person to give undertakings as to their future conduct;
  - (b) imposing conditions on the Relevant Person in respect of their conduct or, in the case of an individual, their employment;
  - (c) reprimanding the Relevant Person, warning them as to their future conduct or both.
- (5) Before reaching a decision under paragraph (4), the Panel may request that the Relevant Person or, where the Relevant Person is an entity, a representative of that entity, attend a meeting of the Panel and failure to comply with such a request may constitute misconduct.

#### Determination by consent

18. (1) Where, in respect of any allegation:
- (a) an Investigator is of the opinion that the Relevant Person has a case to answer; and
  - (b) the Relevant Person admits the allegation;
- then subject to paragraph (3), the Investigator and the Relevant Person may agree to determine the allegation by consent.
- (2) The terms of any determination by consent shall include:
- (a) a statement to the effect that the Relevant Person admits the allegation(s);
  - (b) the imposition on the Relevant Person of one or more of the sanctions available to the Professional Conduct Panel under Rule 17 or the Disciplinary Tribunal under Rule 30 (other than the imposition of costs); and
  - (c) a provision that IPS may in its absolute discretion notify any person or publish the terms of the determination by consent.
- (3) A determination by consent shall not take effect until it has been approved by order of the Panel.

- (4) Failure by a Relevant Person to comply with the terms of a determination by consent shall constitute misconduct.

### Interim orders

19. (1) The Panel may at any time, on the application of an Investigator or of its own motion, consider whether it is necessary for the protection of the public, in the interests of the Relevant Person concerned or otherwise in the public interest to suspend or restrict a Relevant Person's Membership or Authorisation pending a hearing before the Disciplinary Tribunal.
- (2) The Panel shall give the Relevant Person not less than 7 days' notice of a meeting to consider the imposition or review of an interim order, unless the Panel consider that due to the seriousness or urgency of the case a shorter period of notice is appropriate.
- (3) The notice under paragraph (2) shall inform the Relevant Person of the time, date and place of the hearing, brief details of the matters giving rise to the application for an interim order and of the right to appear before and be heard by the Panel.
- (4) In considering whether to make an interim order, the Panel shall determine its own procedure in accordance with these Rules, any guidance published by IPS and the overriding requirement of fairness.
- (5) The Panel may order that the Relevant Person's Membership or Authorisation be:
  - (a) suspended; or
  - (b) subject to such restrictions as the Panel considers appropriate;for a maximum period of 18 months and any such order must be reviewed by the Panel every 3 months.
- (6) Where the Panel makes an interim order against a Relevant Person that is an Authorised Body, it may also require the Relevant Person to enter into a Practice Management Agreement.

### Appeals

20. (1) Decisions of the Panel (other than a decision to impose an interim suspension order which shall take effect immediately) shall only take effect after the period for lodging an appeal against the decision has expired or, where an appeal is made, after the appeal has been disposed of or withdrawn.