



Schedule 4 Rules Change Application – Adjudication Panel Rules and Disciplinary Procedure

LSB Application Requirement	Case for introduction of Adjudication Rules and Disciplinary Procedure
a. Contact	Simon Blandy, Director of Policy and Standards: simonb@clc-uk.org Tel no: 01245 349599 CLC, 16 Glebe Road, Chelmsford, Essex. CM1 1QG
b. Details of the proposed alteration	<p>There are two main drivers for the CLC to introduce the Adjudication Panel Rules and Disciplinary Procedures:</p> <ol style="list-style-type: none"> 1. Amendments made at s,24A to the Administration of Justice Act 1985 (AJA) permit the CLC as an Approved Regulator to make rules enabling the Investigating Committee to determine disciplinary matters (they may impose a penalty and direct a party to pay costs but have no wider powers). The CLC made rules in 2009 which received concurrence from the Secretary of State. However, they did not come into force because the CLC was at the same time undertaking a fundamental governance review. As a result, the powers previously conferred on the Investigating Committee (to carry out preliminary investigations and determine less serious conduct complaints), the Licence and Practice Committee (to determine licence applications and applications to set up in practice) and the Education Committee (to determine issues relating to the registration of students and examinations) have been delegated to CLC Officers (referred to the “Authorised Officer” in the Adjudication Rules) where they do not raise issues of policy. Determination of issues of policy and serious matters will be transferred to the Adjudication Panel (as permitted by paragraph 12 schedule 8 to the Courts and Legal Services Act 1990). <p>The primary function of the Authorised Officer under the Adjudication Panel Rules is to carry out the preliminary investigation to determine whether any disciplinary case should be determined</p> <ul style="list-style-type: none"> • by the Discipline and Appeals Committee (which has a wide range of powers including disqualifying a licensed

	<p>conveyancer or recognised body from holding a licence, imposing a fine of up to £1million and awarding costs),</p> <ul style="list-style-type: none"> • by the Adjudication Panel (which may impose a fine of up to £50,000 and award costs), or • by the Authorised Officer (which may impose a fine of up to £1,000 and award costs). <p>The procedure to be followed by the Adjudication Panel at a hearing is set out in the Approved Regulator (Disciplinary Procedure) Rules 2011 (Annex B). These rules follow closely the Discipline and Appeals Committee (Procedure) Rules 2001 (SI 2001/2797). At the request of the Respondent the Adjudication Panel will review a determination made by the Authorised Officer. A Respondent can appeal any determination of the Adjudication Panel (including a review of a determination of the Authorised Officer) to the Discipline and Appeals Committee.</p> <p>2. The CLC's Adjudication Panel (No 2) Rules 2011 (Annex C) will come into force when the CLC's designation as a Licensing Authority becomes effective. These are in the same form as the CLC's Adjudication Panel Rules 2011 (Annex A), except that they include the CLC's enforcement powers as a Licensing Authority. The Licensing Authority (Disciplinary Procedure) Rules 2011 (Annex D) follow the format for the Approved Regulator (Disciplinary Procedure) Rule 2011 except that there is provision at rule 24 for a decision made by the Adjudication Panel to be reviewed by the Review Panel (comprising members of the Adjudication Panel who have not been a member of the Adjudication Panel which determined the matter which is the subject of review).</p>
<p>c. Details of regulatory arrangements:</p>	<p>CLC acting as an Approved Regulator</p> <p>The process for the appointment of members to the Adjudication Panel in the CLC's Adjudication Panel Rules 2011 (Annex A) follows that proposed for the Investigating Committee in the 2009 Investigating Committee Rules, itself modelled on the Appointment and Service of Council Members Rules 2009 (approved by the Legal Services Board). These Rules set out the enforcement powers of the CLC as an Approved Regulator. The CLC's Adjudication Panel Rules (No 2) 2011 which will supersede the CLC's Adjudication Panel Rules 2011 also incorporate the CLC's enforcement powers as a Licensing Authority.</p> <p>The purpose of the CLC's Approved Regulator (Disciplinary Procedure) Rules 2011 is to ensure that the Respondent has every reasonable opportunity to appear and be represented before either the Authorised Officer of the Adjudication Panel. The process for giving notice of the hearing, the</p>

exchange of evidence in advance of the hearing and the hearing itself is clearly set out. The rules may be relaxed at the request of one of the parties or on the initiative of the Adjudicator (the term is used to include the Authorised Officer or the Adjudication Panel) where the Adjudicator "is satisfied that such disapplication or relaxation is not prejudicial to the interests of the Respondent". Appropriate adjustments will be made to the process if the Respondent chooses not to be represented or does not appear. The experience of the Discipline and Appeals Committee (Procedure) Rules 2001 (on which these procedure rules are closely modelled) has been positive. Any relaxation of the DAC procedure rules has almost invariably been for the benefit of the Respondent. For instance, the Respondent frequently fails to provide to the CLC a copy of the documents on which he intends to rely until very shortly before the hearing, and may with the permission of the DAC give evidence of facts without having previously served a witness statement. Generally, the CLC take no objection to such failure provided it is satisfied that the issues to be determined can be fairly determined by the DAC in the hearing time allowed. If an adjournment is required because of the way in which the Respondent has conducted the hearing then the CLC will press the DAC to direct that the costs wasted by the adjournment are paid by the Respondent.

The CLC's intention is that the Authorised Officer will determine less serious cases where the matter in issue is a reasonably clear cut breach of the regulatory arrangements. Where the CLC is acting as an Approved Regulator, the DAC will continue to determine the more serious disciplinary matters.

The maximum penalty which the DAC will be able to impose will continue to be £1 million. Until March 2009 the maximum penalty which the DAC could impose per allegation was £3,000 (unchanged since the AJA came into force) and the total fine given in any one case had not exceeded £10,000. The CLC sees no requirement to raise the limit of the penalty above £1million, particularly because those recognised bodies which have external managers or owners will be required before the expiry of the transitional period to be licensed by the CLC acting as a Licensing Authority. On the basis of its experience to date as an Approved Regulator, the CLC believes it is highly unlikely that a licensed conveyancer or recognised body will be responsible for a regulatory failure of the nature identified by the LSB in its consultation paper "Setting the maximum financial penalty for ABS licensing" (published after the CLC's Adjudication Panel Consultation Paper), or of a recognised

	<p>body (owned and managed by Authorised Persons) generating the turnover of the scale anticipated in that consultation paper. There is a requirement that any fine imposed is fair and proportionate following broadly the test applied in the Courts. Any Respondent will continue to be entitled to appeal to the High Court (there is no permission requirement).</p> <p>The draft Adjudication Panel Rules annexed to the CLC’s Consultation Paper provided for the Authorised Officer to be able to impose fines of up to £250 and the Adjudication Panel of up to £3,000. Having regard to the proposals made by the LSB in its Consultation Paper “Setting the maximum financial penalty for ABS licensing”, the maximum fines capable of being awarded by the Authorised Officer have been increased to £1,000 and by the Adjudication Panel to £50,000. This is to ensure that, subject to the constraints of s.24A AJA, there is as much consistency as possible between the enforcement powers of the CLC acting as an Approved Regulator and as a Licensing Authority.</p> <p>CLC acting as a Licensing Authority The approach to be taken by the CLC when it acts as a Licensing Authority as reflected in the CLC’s Licensing Authority (Disciplinary Procedure) Rules 2011 makes such amendments as are necessary to comply with the requirements of the Part 5 LSA. There is specific provision at rule 24 for a determination made by the Adjudication Panel to be reviewed by the Review Panel prior to an appeal to the First Tier Tribunal.</p>
<p>d. How and why the alteration will help to promote, be neutral towards or be detrimental to the Regulatory Objectives</p>	<p>These rules will underpin the CLC’s Code of Conduct (see the CLC’s separate applications) and ensure that appropriate steps can be taken in a proportionate and timely manner to penalise breach of the regulatory arrangements. This in itself will be an important factor in encouraging CLC practices to comply with its regulatory arrangements.</p> <p>The CLC believes this will ensure the entities we regulate are increasingly driven by consumer need rather than being led by prescriptive regulatory arrangements. This in turn will promote competition within the sector and improve access to justice. Taking all these factors into account will underline the CLC’s commitment to protecting and promoting the public interest.</p>
<p>e. Compliance with Better Regulation Principles</p>	<p>We have been transparent in our development of the regulatory arrangements and began informing both staff and the regulated community from late 2009 of our commitment towards an outcomes-focused regulatory approach.</p>

	<p>These rules follow on from the Code of Conduct which encapsulates the principles based and outcomes focused approach to regulation. The CLC’s response to breaches of the Code is determined to a large extent by the behaviour and response of the regulated individual or entity. The Regulatory and Enforcement policies provide transparency in our approach and the procedure rules provide transparency of process. Whilst it is not appropriate for the CLC to specify exhaustively how we shall respond (since this may promote unintended and undesirable behaviours) we believe setting out the approach and processes gives clarity and confidence that the outcomes of disciplinary proceedings will be proportionate, consistent and targeted only at cases in which action is needed fair and proportionate. This in turn will encourage increased compliance within the regulated community.</p> <p>See also (f) below.</p>
<p>f. Desired outcome of the alteration and how we will assess whether this has been achieved.</p>	<p>As set out in the Enforcement Policy, the CLC will publish the statistics mapping the outcome of investigations so that the levels of compliance in the regulated community can be understood. In addition the CLC will publish the enforcement action we have taken to encourage 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.</p> <p>In addition, as set out in our Rules Changes application, we will survey the regulated community one year after the roll-out of outcomes-focused regulation to determine whether the revised arrangements demonstrate the transparency, accountability and proportionality sought. We will provide a dedicated website address for the regulated community to signpost us to any arrangements which they consider do not deliver the Outcomes sought. If we agree with the feedback provided we will make the appropriate amendments to our regulatory arrangements (in liaison with the LSB).</p>
<p>g. Effect on areas regulated by other Approved Regulators.</p>	<p>The aim of the CLC is to continue to raise the standards of those we regulate. We do not believe that our proposals will have any direct effect on any of the other Approved Regulators.</p> <p>There will be some differences in approach. However, we consider that, within limited boundaries, some divergence as a positive factor in encouraging innovation within the legal services sector.</p>

<p>h. Implementation timescale.</p>	<p>It is intended that the CLC's Adjudication Panel Rules 2011 (Annex A) and the CLC's Approved Regulator (Disciplinary Procedure) Rules 2011 (Annex B) will come into force on 30 April 2011.</p> <p>Assuming the CLC's application to be designated as a licensing authority is successful, it is intended that the CLC's Adjudication Panel Rules 2011 (Annex A) will be repealed when the designation takes effect (currently expected 6 October 2011) and replaced by the CLC's Adjudication Panel Rules (No 2) 2011 (Annex C). The CLC's Licensing Authority (Disciplinary Procedure) Rules (Annex D) will come into force at the same time. The CLC's Approved Regulator (Disciplinary Procedure) Rules 2011 (Annex B) will continue in force after 6 October 2011, since they will not be affected by the CLC's designation as a Licensing Authority.</p>
<p>i. Consultation processes undertaken and responses received.</p>	<p>The CLC published its Consultation Outcomes Focused Regulation – Draft Regulatory and Enforcement Approach in September 2010. This was sent out to the CLC regulated community, Approved Regulators and a number of consumer representative bodies including the Legal Services Consumer Panel. It was also sent to the Office of Fair Trading and the office of the Lord Chief Justice. 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. The Consultation Period ended on 17 December 2010. This set out in broad terms how the CLC will regulate compliance with the regulatory arrangements and enforce compliance where there is a breach. The CLC received three responses from the Legal Services Consumer Panel, the Law Society and a Recognised Body. None of the respondents took issue with the proposed arrangements for investigating and determining issues of a disciplinary nature.</p> <p>The Consultation on the proposed application to the Legal Services Board to approve the CLC's arrangements for the Adjudication Panel was published on 14 December 2010. This was sent out to the CLC regulated community and other stakeholders. 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. The Consultation Period ended on 11 February 2011. The CLC received two responses, both from Recognised Bodies and both supportive of the proposals. Queries were raised whether the Authorised Officer would be legally qualified and how any enforcement decisions would be publicised. It is not intended that the Authorised Officer will be legally qualified. However, he will have access to legal advice and to practical knowledge of the area of</p>

	practice. Enforcement decisions will be published on the CLC website.
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Annex List

- A – CLC’s Adjudication Panel Rules 2011
- B – CLC’s Approved Regulator (Disciplinary Procedure) Rules 2011
- C – CLC’s Adjudication Panel (No 2) Rules 2011
- D – CLC’s Licensing Authority (Disciplinary Procedure) Rules 2011

