

Annex B – CLC’s Approved Regulator (Disciplinary Procedure) Rules 2011

The CLC’s Approved Regulator (Disciplinary Procedure) Rules 2011

Made on [date] by the Council for Licensed Conveyancers with the approval of the Legal Services Board pursuant to sections 24, 24A and 38 and paragraph 5 of Schedule 3 and paragraph 3 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.

PRELIMINARY

1. Citation and commencement

1.1 These Rules may be cited as the CLC’s Approved Regulator (Disciplinary Procedure) Rules 2011.

1.2 These Rules come into force on [date].

2. Interpretation

2.1 In these Rules, unless the context otherwise requires: -

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

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

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

"the Adjudication Panel"
the committee established by the CLC by which the functions conferred on the Investigating Committee under Part II of the 1985 are to be discharged;

"Adjudication Panel Rules"
the Licensed Conveyancers’ Adjudication Panel Rules currently in force;

"Adjudicator"
the Authorised Officer, alternatively the Adjudication Panel, nominated under rule 3.1(e) to make the determination;

"Authorised Officer"
an employee of the CLC appointed to exercise the functions delegated to him by the Adjudication Panel Rules;

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

"the CLC's Representative"	in relation to any function under these Rules, a solicitor or other representative authorised by the CLC to act on its behalf for the purposes of that function and, in relation to a hearing, includes counsel instructed to act on the CLC's behalf;
"Company"	has the meaning given by section 1(1) of the Companies Act 2006;
"the Discipline and Appeals Committee "	the Discipline and Appeals Committee established under section 25(1) of the 1985 Act;
"Individual Respondent"	a Respondent who is a Licensed Conveyancer, Manager or employee;
"Lay Member"	a person appointed as a member of the Committee, who is not eligible to sit as a Licensed Conveyancer Member;
"Licensed Conveyancer"	(a) a person who holds a licence in force under Part II of the 1985 Act, and (b) in relation to a particular allegation, includes a person who held such a licence at the time when the conduct to which the allegation relates took place;
"Licensed Conveyancer Member"	an individual appointed as a member to the 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;
"Limited Liability Partnership"	a body corporate formed by being incorporated under the Limited Liability Partnerships Act 2000;
"Limited Liability Partnerships Act 2000"	the Limited Liability Partnerships Act 2000, the Limited Liability Partnerships Regulations 2001 and any other regulations made under that Act;
"LLP Member"	a member of a Limited Liability Partnership;
"Manager"	in relation to a Recognised Body, means a person who is: <ul style="list-style-type: none"> (g) a member of the Recognised Body, if the Recognised Body is a Company and its affairs are managed by its members; (h) a director of the Recognised Body, if the Recognised Body is a Company and paragraph (a) does not apply; (i) a partner, if the Recognised Body is a partnership; (j) a LLP member, if the Recognised Body is a Limited Liability Partnership; (k) a member of its governing body, if the Recognised Body is an unincorporated body (other than a partnership); and (l) a Licensed Conveyancer, if sub-paragraphs (a)-(e) do not

apply and the affairs of the Recognised Body are not managed by another Licensed Conveyancer;

"Party"	(d) the CLC (and includes the CLC's Representative); (e) the Respondent; or (f) the complainant;
"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, includes a body which was so recognised at the time when the conduct to which the allegation relates took place; ("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);
"Resolution"	the form in which each determination, decision, order or direction of the Panel is to be announced by the Adjudication Chair;
"Respondent"	the Licensed Conveyancer, Manager, employee, Recognised 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.

- 2.2 The Interpretation Act 1978 applies to these Rules as it applies to an Act of Parliament.

INITIATING PROCEDURE

3. Summary Determination and Preliminary Consideration

- 3.1 Having carried out a preliminary investigation under section 24 of, or paragraph 3 of Schedule 6 to, the 1985 Act the Authorised Officer may refer a case to the Adjudication Panel, alternatively to the Discipline and Appeals Committee, for hearing and determination having formulated the case against the Respondent by:

- i) setting out the allegation,
- ii) stating the statutory provision under which it is made,
- iii) providing a summary of the facts relied on to support it, and
- iv) whether the determination will be made by the Authorised Officer or by the Adjudication Panel.

- 3.2 A reference may contain more than one allegation but each allegation must be separately stated in accordance with rule 3.1.
- 3.3 A copy of the reference must be served on the Respondent, together with a copy of these Rules within 14 days of the making of a reference.

PROCEDURE BEFORE HEARINGS OF THE HEARING PANEL

4. Notice of hearing

- 4.1 As soon as reasonably possible after the making of a reference to the Adjudication Panel within rule 3, the Authorised Officer must serve on the Respondent a notice in writing, stating the date, time and place at which the Adjudication Panel will hold a hearing into the matter and which includes a statement as to the Parties' rights under rule 10.
- 4.2 The notice also must contain details of the matters alleged against the Respondent in the form of an allegation dealing with each matter separately and setting out the details as required by rule 3.1.
- 4.3 A hearing must not be held earlier than 28 days after the notice of hearing is served under rule 4.1 unless the Parties agree.

5. Postponement of hearing

- 5.1 The Adjudicator may postpone a hearing at any stage of the proceedings if any Party applies for a postponement or it appears appropriate.
- 5.2 The postponement may be on such terms as the Adjudicator think fit.
- 5.3 The CLC must serve on the Respondent a notice in writing of a postponed or adjourned hearing stating the date, time and place of the hearing.

6. Referral to the Discipline and Appeals Committee

- 6.1 Any Party may make an application for the case to be referred to the Discipline and Appeals Committee.
- 6.2 Whether or not such an application has been made the Adjudicator may at any time before the allegations have been determined direct the allegations against the Respondent be referred to the Discipline and Appeals Committee for hearing and determination in accordance with section 25 of the 1985 Act.

7. Documents upon which the CLC proposes to rely

- 7.1 At least 21 days before the date of a hearing the CLC must supply to the Respondent a collection of copies of all the documents on which it proposes to rely with all pages numbered.

8. Amending allegations

- 8.1 The CLC may amend any allegation or summary of facts set out in an allegation served in accordance with rule 3 by serving an amended notice under rule 4, but where the case has been referred to the Adjudication Panel the consent of the Adjudication Panel is required for an amendment served less than 21 days before the date of the hearing.
- 8.2 Where an amendment is made under this rule and the case has been referred to the Adjudication Panel, on an application by any Party the Adjudication Panel may postpone the hearing.

PROCEDURE AT HEARINGS

9. Hearing and adjournment

- 9.1 Subject to rules 9.2 and 9.3, any hearing before the Adjudicator must be held in public.
- 9.2 If it appears to the Adjudicator to be appropriate in the interests of any child or for the protection of the private life of any Party or in the interests of justice, the Adjudicator may direct that the public are to be excluded from the whole or part of the proceedings.
- 9.3 The Adjudicator may at any time adjourn the hearing of any proceedings as they think fit.

10. Representation

- 10.1 Any Party may either make written submissions to, or attend at a hearing before, the Adjudicator under these Rules –
- (a) in person,
 - (b) represented by counsel or a solicitor,
 - (c) represented by an officer or member of any professional organisation of which he is a member,
 - (d) represented by a Licensed Conveyancer, or
 - (e) if the Party is a Recognised Body, represented by one of its Managers or employees;

and references in these Rules to the Parties are to be taken in appropriate cases to include the persons representing them.

- 10.2 If a Party does not answer the allegations either in writing or by attending before it, the Adjudicator may proceed to hear and determine the matter.

11. Witnesses

- 11.1 Subject to the following provisions of this rule, evidence of fact may be given in person or by witness statement.

- 11.2 The evidence of a witness (including the Respondent) shall be contained in a witness statement served in accordance with this rule unless the Adjudicator is satisfied that there is good reason for not serving a witness statement.

- 11.3 In the event that no witness statement is served for a witness, the Party calling that witness must provide a summary of the evidence which it is believed the witness will give in person.

- 11.4 A Party may only rely on evidence given by witness statement –

(a) if -

(i) a copy of it has been served on all other Parties at least 14 days before the date of the hearing, and

(ii) a copy of it has been sent to the Adjudication Panel at least 7 days before that date, or

(b) if all the Parties agree.

- 11.5 Such witness statement by a witness may be treated as the witness' evidence in chief, unless the Adjudicator determine otherwise.

- 11.6 The Adjudication Chair may examine any Party or witness at any stage of a hearing and with his consent any member of the Adjudication Panel may do so.

12. Quality of evidence and standard of proof

- 12.1 Subject to rule 12.2, in any proceedings before the Adjudicator –

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

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

- 12.2 In proceedings where dishonesty is alleged –

(a) the allegation is only to be regarded as proved if the Adjudication Panel consider that it has been proved beyond reasonable doubt, and

- (b) the Adjudication Panel may only consider evidence which –
 - (i) would be admissible in criminal proceedings in England or Wales, or
 - (ii) they are satisfied it is desirable in the interests of justice to consider.

13. Announcements by the Adjudicator

- 13.1 The Adjudicator must announce the decisions and directions of the Adjudication Panel under these Rules in relation to the conduct of any case in such terms and in such manner as the Adjudicator determines.
- 13.2 All such decisions and directions shall be noted and sent to the Respondent.

14. Determinations of the Adjudicator

- 14.1 The Adjudicator must announce each determination and order made.
- 14.2 Each determination and order made by the Adjudicator shall be filed with the CLC and sent to the Respondent within 28 days after it has been made.
- 14.3 Every determination and order signed by the Authorised Officer (if the determination has been made by him), alternatively by the Adjudication Chair or by some other member of the Adjudication Panel authorised by the Adjudication Chair for this purpose shall be filed with the CLC and shall be available for inspection during office hours.

ADDITIONAL PROVISIONS ABOUT HEARINGS

15. Procedure: general

- 15.1 Where a hearing relates to two or more allegations the Adjudicator may deal with them separately or together as the Adjudicator thinks fit.

16. The allegation

- 16.1 Each allegation must be read out by the CLC's Representative and if he attends the hearing in the presence of the Respondent.

- 16.2 If the Respondent has appeared at the hearing, as soon as the allegations have been read, the Adjudicator must ask him if he wishes to object to any allegation, or any part of any allegation, on a point of law.
- 16.3 If the Respondent so wishes, he must make his objection and the CLC's Representative may reply to it.
- 16.4 If the Respondent does not attend the hearing but has made a written submission to the Adjudicator on a point of law, it shall be read out by the CLC's Representative who may reply to it.
- 16.5 If the objection is upheld and no amendment of the allegation is allowed by the Adjudicator, they must dismiss it.
- 16.6 If only part of the allegation is disallowed, no further proceedings may be taken on that part of it.

17. Respondent's response to the allegation

- 17.1 The Adjudicator must ask the Respondent attending the hearing to respond to each allegation against him, and his response must be recorded.
- 17.2 If the Respondent does not attend the hearing but the Adjudicator decide to proceed in his absence, he is deemed to have denied each allegation against him, and that denial must be recorded, unless the Respondent has made a submission to the Adjudicator in writing unequivocally admitting the allegations against him.
- 17.3 Any qualified or equivocal response by the Respondent must be recorded as a denial of the allegation.

18. Admission of all allegations

- 18.1 Where the Respondent unequivocally admits an allegation in writing or at the hearing, the Authorised Officer (if he is to determine the matter), alternatively Adjudication Chair must announce that the allegation has been admitted and determine that it is proved.
- 18.2 The CLC 's Representative must then in relation to any admitted allegation first –
- (a) summarise the facts supporting that allegation,
 - (b) specify the circumstances leading up to the conduct or, as the case may be, the conviction in question, and
 - (c) adduce evidence of the previous history and character of the Respondent.
- 18.3 If the Respondent has attended the hearing, the Adjudicator must then invite the Respondent to -
- (a) adduce evidence relating to the allegation, any mitigating circumstances, his character and behaviour; and

- (b) make representations to the Adjudicator if he wishes to do so.
- 18.4 If the Respondent has made an admission by written submission, the Adjudicator I may consider any of the matters referred to in rule 18.3 (a) and (b) contained in that submission.
- 19. Denial of some or all allegations**
- 19.1 If the Respondent denies or is deemed to deny any allegation, the CLC 's Representative must, in relation to any such allegation, first set out the case against the Respondent and then adduce evidence of the allegations.
- 19.2 If no evidence about an allegation is given, the Adjudicator must determine that they are not satisfied as to it and dismiss it.
- 19.3 If the Respondent attends the hearing he may cross-examine any witness called by the CLC's representative to give evidence;
- 19.4 If he attends the hearing the Respondent may –
- a) adduce evidence relating to any allegation, and
 - (b) at the conclusion of the evidence address the Adjudicator, (but only once, unless the Adjudicator gives leave for a further address).
- 19.5 Any witness who attends and gives evidence for the Respondent may be cross-examined by the CLC's Representative, and the Authorised Officer, alternatively the Adjudication Chair, may permit the Respondent to re-examine the witness.
- 19.6 The CLC's Representative may, at the conclusion of the evidence and the Respondent's address to the Adjudicator (if any), address the Adjudicator (but only once, unless the Adjudicator gives leave for a further address).
- 20. Determination of allegations that have been denied or deemed to have been denied**
- 20.1 At the conclusion of the hearing the Adjudicator must determine whether the allegations have been proved to their satisfaction.
- 20.2 If the Adjudicator determines that any allegation has not been proved to their satisfaction, the Adjudicator must dismiss that allegation.
- 20.3 If the Adjudicator determines that any allegation has been proved to their satisfaction –
- (a) the Authorised Officer, alternatively the Adjudication Chair, must invite the CLC's Representative to address the Adjudicator and adduce evidence as to the Respondent's previous character and history,

- (b) if the Respondent appears the Authorised Officer, alternatively the Adjudication Chair, must then invite him to address the Adjudicator in relation to mitigation, character and matters relevant to penalty and to adduce evidence in support.
- 20.4 If the Respondent has chosen to make written representations, rather than to attend, the Adjudicator may consider any written submission relating to the matters specified under rule 20.3 (b).

21. Cases where some allegations are admitted and some denied

- 21.1 If some allegations are admitted but others are denied, the procedure set out in rule 18 must be postponed until the determination of the denied allegations.
- 21.2 The procedure relating to mitigation in respect of admitted allegations must be dealt with in conjunction with mitigation in respect of any disputed allegations which the Adjudicator determines have been proved.

22. Judgment

- 22.1 After an allegation has been proved and the procedures referred to in rules 18, 19, 20 and 21 have been concluded, the Adjudicator shall proceed to judgment by making any order directing the payment of a fine or costs by the Respondent, as the Adjudicator may determine.
- 22.2 If a matter is dismissed or is not proven, the Adjudicator may proceed to judgment by making any order directing the payment of costs by the CLC or the complainant, but such judgment must be postponed until after any allegation which remains outstanding has been determined.

23. Procedure where there is more than one Respondent

- 23.1 A single hearing may be held into allegations against two or more Respondents.
- 23.2 Subject to rule 23.3 these Rules apply to such a hearing as they do to a hearing involving one Respondent, but with the necessary adaptations and subject to any directions given by the Adjudicator as to the order in which proceedings are to be taken in relation to each of the Respondents.
- 23.3 The rights of a Respondent under these Rules are to be exercised separately by each of the Respondents who wishes to exercise them.

MISCELLANEOUS PROVISIONS

24. Service of documents

- 24.1 Unless otherwise agreed by the Parties or unless the Authorised Officer, alternatively the Adjudication Chair or the Adjudication Panel, direct that service under these Rules may be effected by another method specified in the direction, such service on a Party may be effected only –

(a) by delivering the document personally;

(b) in the case of service on an Individual Respondent, by sending it by first class ordinary post addressed to him at his address registered with the CLC or one of his places of business or his last known address;

(c) in the case of service on a Recognised Body, by sending it by first class ordinary post addressed to it at its principal office or its last known address;

(d) in the case of service on any person not within rule 24.1 (b) or (c), by first class post to his last known address; or

(e) by document exchange.

24.2 Any document required by these Rules to be served on the CLC must be served by a method mentioned in rule 24.1 at the principal place of business of the CLC .

24.3 Service by a method mentioned in rule 24.1 (b) to (e) is deemed to have been effected on the second business day after the document is dispatched.

25. Administration of Oaths

25.1 For the purposes of any proceedings before the Adjudicator under these Rules—

(1) the Adjudicator may administer oaths; and

(2) any Party to the proceedings may issue a witness summons requiring a witness to give evidence before the Adjudicator on oath or produce documents, but no person shall be compelled under any such witness summons to produce any document which he could not be compelled to produce on the trial of an action.

26. Voting by the Adjudication Panel

26.1 The Adjudication Panel shall vote and deliberate in private.

26.2 Any question put to the vote must be formulated and put to the Adjudication Panel members present by the Adjudication Chair.

26.3 The Adjudication Chair must call on the members present to vote for or against the question and must declare the result.

26.4 The Adjudication Chair is entitled to vote.

26.5 If an equal number of votes is cast for and against the question, the question is deemed to have been determined in favour of the Respondent.

27. Absence of the Adjudication Chair

27.1 Subject to rule 28, 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.

28. Quorum

28.1 No meeting of the Adjudication Panel shall begin to hear and determine an allegation unless three members of the Adjudication Panel (including the Adjudication Chair) are present to include one Licensed Conveyancer Member and two Lay Members.

28.2 Paragraphs 8 and 9 of the Standing Orders shall not apply to meetings of the Adjudication Panel held under these Rules.

29. Relaxation of rules

29.1 At the request of any of the Parties (including the CLC) or on its own initiative, the Adjudicator may direct that any requirement of these Rules is not to apply or is relaxed in any manner they think fit provided the Adjudicator is satisfied that such disapplication or relaxation is not prejudicial to the interests of the Respondent; and such a direction may be given subject to such other requirements as they think fit.

29.2 Where it has given such a direction, the Adjudication Panel 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.