

Other



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 Regulatory Policy 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.

4. Enforcement tools

- 4.1 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 usually seek to take this route before considering more formal **enforcement**. 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. This is likely to take the form of formal **enforcement** action, though we will be open to the individual/body providing fresh evidence not previously available, or to them proposing a compliance remedy.
- 4.2 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.
- 4.3 We have a range of **enforcement** tools at our disposal should an informal response not be appropriate. We will only exercise our formal **enforcement** power 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**.

- 4.4 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):
- 4.4.1 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.
- 4.4.2 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.
- 4.4.3 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.
- 4.4.4a 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.
- 4.4.4b 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 in our **Enforcement** Policy).
- 4.4.4c 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.
- 4.4.5 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.

- 4.4.6 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.
- 4.4.7 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.
- 4.4.8a 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.
- 4.4.8b 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).
- 4.4.8c **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.
- 4.4.9a 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**).
- 4.4.9b Where **intervention** has been necessary the body's **licence/certificate** is automatically suspended.

5. Equalities Considerations

- 5.1 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** regulatory 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.

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

6. Policy Consultation, Review & Evaluation

- 6.1 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** or to the **Discipline and Appeals Committee** due to the options of review/appeal applicable).

- 6.2 This policy came into effect October 2011. 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.

- 6.3 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.