



Enforcement Policy

Introduction

This policy 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**.

1. What is meant by **Enforcement**?

- 1.1 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.
- 1.2 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**.
- 1.3 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.
- 1.4 We will check to see that any agreed course of action is implemented. Where it is not, we will take formal **enforcement** action.

2. Scope of the **CLC's Enforcement Powers**

- 2.1 We may take **enforcement** action against:
 - **CLC** Bodies;
 - **licensed conveyancers**; and
 - **Owners, Managers** and **employees** of **CLC** Bodies.
- 2.2 In this Policy we use the term "**respondent**" to refer to any of those listed at 2.1 and "the regulated community" to refer to all of those listed at 2.1.

2.3 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**.

2.4 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.

2.5 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.
- 2.6 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.
- 2.7 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 **Discipline and Appeals Committee**, 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 review or appeal must be made within 28 days of the determination.
- 2.8 Stay – the **Authorised Officer**, alternatively 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.
- 2.9 Decision-makers – all staff with delegated powers and all members of the **Adjudication Panel** and the **Discipline & Appeals Committee** 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.
- 2.10 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.

3. **Enforcement Tools**

3.1 **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.

3.2 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: Legal Practice Inspector, CLC Authorised Officer or other CLC employee of equivalent or senior position	<ul style="list-style-type: none"> • Director of Operations • Director of Policy & Standards, 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)
Inspection or re-inspection		
Reminder of responsibilities		
Provision of information and advice		

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

3.3.1 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	Authority	First Tier Review	Review of decision
Licence terminated	1985 Act s.18(3)	Lacks mental capacity		No statutory provision
Licence/certificate Revoked	1985 Act s.26(2)(a)	DAC		High Court
	1985 Act s.28 fraud or error	DAC		No statutory provision
	2007 Act s101	CLC Adjudication Panel	Review 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	DAC		High Court
	s.99 2007 Act	CLC Adjudication Panel	Review Panel	First Tier Tribunal
Divestiture of owner	2007 Act, Sch. 13, Part 5	CLC Adjudication Panel	Review Panel	First Tier Tribunal
Licence/Certificate suspended	1985 Act s.18	immediate on bankruptcy or intervention		No statutory provision
	1985 Act s.24(5)	IC/Adjudication	DAC	

Licence/Certificate suspended		Panel		High Court
	1985 Act s.26(2)(c)	DAC		
	2007 Act s101	Adjudication Panel	Review Panel	First Tier Tribunal
Withdrawal of approval of HoLP or HoFA	Para 11-12 sch 11 2007 Act	Adjudication Panel	Review 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		DAC
	1985 Act s.26(2)(d)	DAC		High Court
	2007 Act Sch. 11 (6)	Adjudication Panel	Review Panel	First Tier Tribunal
Payment of a penalty	1985 Act s.24A(1) and Adjudication Panel Rules 2011	Adjudication Panel	DAC	High Court
	1985 Act s.26(2)(e) and DAC Rules 2009	DAC		
	2007 Act s. 95	CLC Authorised Officer/ Adjudication Panel	First Tier Tribunal	Upper Chamber
Reprimand	1985 Act s.26(2)(f)	DAC		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)	Adjudication Panel	DAC	High Court
	1985 Act s.26(2A)	DAC		

Abbreviations

DAC – Discipline and Appeals Committee; HoLP – Head of Legal Practice; HoFA - Head of Finance & Administration;
IC – Investigating Committee

4. **Enforcement Process**

- 4.1 **Informal approach** – 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.
- 4.2 **Regulatory action** - 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.
- 4.3 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.
- 4.4 Disciplinary action - disciplinary proceedings may be initiated where steps taken under paragraphs 4.1-4.3 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.
- 4.5 The **CLC** may:
- require a regulated entity to provide specific information;
 - authorise an inspection of a body;
 - refer the matter to the CLC Authorised Officer.
- 4.6 Having carried out a preliminary assessment the CLC Authorised Officer may:
- (a) certify that where the **complaint** referred to them is appropriate for summary determination, and in either case giving reasons in writing:
 - i) direct that the **respondent** pay a penalty not exceeding £1,000 in respect of each allegation made; or

ii) dismiss the **complaint**; or

(b) refer the case to the **Adjudication Panel**, alternatively to the **Discipline and Appeals Committee** for hearing and determination.

4.7 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) for the allegation to be heard by the **Discipline and Appeals Committee** because it is satisfied that the nature of the allegation, if proved, is likely to justify either the imposition of a penalty in excess of £50,000 or some other sanction which the **Adjudication Panel** does not have power to impose.

4.8 If the **Adjudication Panel** decides to determine the case itself it will do so in accordance with its Procedure Rules [link] and will make a determination consistent with its **Guidance** [link]. If it is satisfied the allegations have been proved the **Adjudication Panel** may direct:

- o the payment of a fine of up to £50,000; and
- o costs (which may include costs incurred in the preliminary investigation of the allegation).

4.9 A **respondent** may appeal against a determination of the **Adjudication Panel** to the **Discipline and Appeals Committee**; or where a matter has been referred to it and an allegation has been proved to its satisfaction, the **Discipline and Appeals Committee** may make one or more of the following orders against:

In the case of an individual Licensed Conveyancer or a Recognised Body,

4.9.1

- a **licensed conveyancer**:
 - o Revoke the **licence** of a **licensed conveyancer**;
 - o Disqualify a **licensed conveyancer** from holding a **licence** (either permanently or for a specified period);
 - o Suspend a **licence**;
 - o Direct the issue of a **licence** subject to **conditions** it may specify;
 - o Direct the payment of a fine which is fair and proportionate, and does not exceed £1 million;
 - o 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 £1 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 £1 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**;

4.9.2 The **Discipline and Appeals Committee** 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.

4.9.3 A **respondent** may appeal to the High Court against a decision of the **Discipline and Appeals Committee** which may make such order as it thinks fit.

In the case of Licensed ABS Body, or an employee or manager within, or owner, of the Licensed ABS Body:

4.9.4 A **CLC Authorised Officer** may in respect of:

- a **Licensed Body owner**:
 - Place **conditions** on the **owner's material interest**;
 - Direct the payment of a fine which is fair and proportionate, not exceeding £1,000;

- 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 £1,000;
- 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**;
 - Withdraw approval of the individual for the role;
 - Direct the payment of a fine which is fair and proportionate, not exceeding £1,000;
- a **manager** or **employee**:
 - 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;
 - Direct the payment of a fine which is fair and proportionate, not exceeding £1,000;
 - Disqualify the individual from a role in a **Licensed Body** .

4.9.5 The **CLC Adjudication Panel** (with a quorum of 3) may in respect of:

- 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 **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 **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**.

4.9.6 Any determination made by the CLC Authorised Officer may be reviewed by the Adjudication Panel and then appealed to the First Tier Tribunal. Any determination made by the Adjudication Panel may be reviewed by the Review Panel and then 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.

5. Publication

5.1 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.

5.2 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.

5.3 We will publish details of the final determinations of both the **Adjudication Panel** (or the **Review Panel**) and the **Discipline and Appeals Committee** 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.

- 5.4 The **CLC** is registered as a data controller under the Data Protection Act 1998 and must comply with the rules of good information handling.

6. Equalities Considerations

- 6.1 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.

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

7. Policy Consultation, Review & Evaluation

- 7.1 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**, the **Review Panel** or to the **Discipline and Appeals Committee** due to the options of review/appeal applicable).

- 7.2 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.

- 7.3 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.